Legal Info

USA V JULIAN ASSANGE EXTRADITION HEARING

When:

Part 1: **24th February -28th February**
Part 2: **18th May - 5th June**

Where: Woolwich Crown Court/Belmarsh Magistrate's Court, which is adjacent to HMP Belmarsh (See end of this briefing for travel advice).

Magistrate: Vanessa Baraitser

Defence team: Solicitor Gareth Peirce (Birnberg, Peirce & Partners), lead
Barristers Edward Fitzgerald QC, Doughty Street Chambers, Mark Summers QC, Matrix Chambers

The US is seeking to imprison Julian Assange for obtaining and publishing the 2010/2011 leaks, which exposed the reality of the Bush Administration's "War on Terror": Collateral Murder (Rules of Engagement), Afghan War Diaries, Iraq War Logs, Cablegate, and The Guantanamo Files.

The US began its criminal investigation against Julian Assange and WikiLeaks in early 2010. After several years, the Obama administration decided not to prosecute WikiLeaks because of the precedent that this would set against media organisations. In January 2017, the campaign to free Mr. Assange's alleged source Chelsea Manning was successful and President Obama gave her a presidential commutation and freed her from prison.

In August 2017 an attempt was made under the Trump administration to pressure Mr. Assange into saying things that would be politically helpful to the President.
After Mr. Assange did not comply, he was indicted by the Trump Administration and the extradition request was set in motion. Chelsea Manning was re-imprisoned due to her refusal to cooperate with the grand jury against WikiLeaks.

President Trump has declared that the press is "the enemy of the people" (https://www.nytimes.com/2017/02/17/business/trump-calls-the-news-media-the-enemy-of-the-people.html). It is the first time the 1917 Espionage Act has been used to indict a publisher or journalist. Press Freedom organisations have emphasised that the indictment criminalizes normal newsgathering behaviour. The indictment applies the Espionage Act extraterritorially. Assange was publishing from the United Kingdom in partnership with UK media and other European and US press. The indictment opens the door for other journalists involved in the 2010 publications to be prosecuted. The USA will make the extraordinary claim that foreigners are not entitled to constitutional protections, so Julian Assange cannot benefit from the First Amendment.

FAQs

Will Julian be in court?
Yes, he will be present in the court room every day. Julian Assange is on remand in HMP Belmarsh, next to the courthouse.

What are the charges against Julian?
Seventeen charges under the 1917 Espionage Act for obtaining and publishing classified information, and one charge under the Computers Fraud and Abuse Act (CFAA).
The CFAA indictment was unsealed on 11 April 2019. On May 23rd, the Trump Administration unveiled a superceding indictment adding 170 years to Assange's potential sentence.

What is the potential sentence?
175 years. Espionage Act: 170 years. CFAA: 5 years.

What publications does the indictment cover?

- **Collateral Murder, specifically the "Iraq Rules of Engagement 2007-2009"** that were published in Collateral Murder. (https://collateralmurder.wikileaks.org/en/resources.html)
  - The Rules of Engagement were published alongside the video depicting a war crime perpetrated by the US army. The US military had conducted an internal investigation which concluded the US military acted in accordance with its own Rules of Engagement for Iraq. Yet the video shows a war crime being committed under international law.
  - WikiLeaks published the Collateral Murder video alongside the Rules of Engagement for Iraq for 2006, 2007 and 2008, revealing these rules before, during, and after the killings. The fact the US military had classed the actions as lawful when they were clearly illegal was a central part of the publication.
  - https://collateralmurder.wikileaks.org/
  - https://collateralmurder.wikileaks.org/en/resources.html
- **Afghan War Diaries**, referred to by the US prosecution as "Afghanistan SIGACTs" https://wardiaries.wikileaks.org/
- **Iraq War Logs**, referred to by the US prosecution as "Iraq SIGACTs" https://wardiaries.wikileaks.org/
- **Cablegate**, referred to by the US prosecution as "State Department cables" https://wikileaks.org/plusd/
- **Guantanamo Files/GITMO Files**, referred to by the US prosecution as "Guantanamo Detainee Assessment Briefs" https://wikileaks.org/gitmo/

Surely if Assange is extradited, he can argue that he published in the public interest?
No. There is no public interest defence under the Espionage Act.

What conditions would he be placed under in the United States?
If extradited, Julian Assange will be placed under "Special Administrative Measures" (SAMS) which are far more restrictive than the UK's most restrictive conditions. He will be in solitary confinement, in a small cell. He will not be permitted any contact with family. He will only able to speak to his lawyers, who will not be able to transmit any messages from him or themselves face criminal charges. Such conditions are a living death sentence.

Can Assange rely on the First Amendment?
The Trump Administration has stated that Julian Assange has no First Amendment rights (free speech and free press) because he is a foreigner national. Hence, US criminal laws apply abroad -

- but US constitutional protections do not. This means that all journalists, anywhere in the world, risk US prosecution if they publish something the US government considers to be in violation of its laws.

But surely US laws do not apply in the UK where Assange was publishing from?
Julian Assange published the 2010/2011 publications in the UK and Europe. The extradition is a test of sovereignty. The US-UK extradition treaty is centre stage.

Can the US-UK Extradition treaty stop the extradition?
There is consensus in the UK Parliament that the US-UK Treaty is in need of reform. Both the UK Prime Minister Boris Johnson and the leader of the opposition, Jeremy Corbyn, criticised the Treaty's imbalance in favour of the United States in Parliament on 12 February 2020. https://www.independent.co.uk/news/uk/politics/jeremy-corbyn-julian-assange-extradition-us-wikileaks-war-crimes-a9331376.html.

Doesn't the US-UK Extradition Treaty exclude "political offences"?

Yes. Espionage is a classical political offence. The UK executive had a chance to throw out the extradition request before it reached the courts. Instead, the then Home Secretary Sajid Javid certified the US request. It is now up to the judge to determine whether the extradition should be thrown out on these grounds.

Is Assange charged with hacking?
No. The indictment makes no claim that Assange "hacked" anything. In fact, the indictment makes no mention of "hacking". The "hacking" language comes from a press release from the US prosecution office announcing Assange's indictment on 11 April 2019. The charge is that Julian Assange allegedly agreed to try to help Manning log into her work computers (which she already had access to) using a different username so that she could maintain her anonymity.
https://theintercept.com/2019/04/11/the-u-s-governments-indictment-of-julian-assange-poses-grave-threats-to-press-freedoms/

But doesn't the US allege that Assange went beyond what 'normal' journalists do by helping Manning obtain access to document databases to which she had no valid access?
No. The US allegation is that Assange agreed to attempt to help Manning use a different login with the same security access. This extremely flimsy allegation is made using the CFAA, a statute that is vague, outdated and overbroad, and does not clearly define what "computer intrusion" actually means. This lack of clarity in the legislation has led to the statute having been used for political purposes before, and US courts and the US government has even interpreted the CFAA to include consensual password sharing or web scraping by data journalists (https://www.wired.com/story/julian-assange-computer-fraud-and-abuse-act/, https://www.rcfp.org/wp-content/uploads/2018/12/12-8-2019-Leaks-Chart-1.pdf).
As Assange's US criminal defence lawyer put it, the "factual allegations boil down to encouraging a source to provide him information and taking efforts to protect the identity of that source."
https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html

Does the US indictment criminalise normal journalistic activities?
Yes. The US allegations that Julian Assange coordinated with Manning on the receipt and publication of classified documents (Counts 2-14 of the indictment). The Espionage Act (which was formulated in 1917, in relation to espionage) is now being applied to a journalist communicating with a source. The Espionage Act states that someone who aids, abets, counsels, commands, induces, or procures, or "willfully causes," an offense to be committed can be punished as the offender.

Counts 15-17 concern what the Reporters Committee for the Freedom of the Press call "pure publication". To fit the language of the Espionage Act, the indictment alleges that Julian Assange "communicated" reports from the Afghanistan and Iraq wars, and the State Department cables, "by publishing [the documents] on the internet." The RCFP calls this a "profoundly troubling legal theory, one rarely contemplated and never successfully deployed. Under those counts, the Justice Department now seeks to punish the pure act of publication of newsworthy government secrets under the nation's spying laws." It calls this theory a "dire threat" to newsgathering and the "pure publication" counts a "direct threat to news reporting.

https://www.rcfp.org/wp-content/uploads/2018/12/12-8-2019-Leaks-Chart-1.pdf
https://www.lawfareblog.com/assange-indictment-seeks-punish-pure-publication
https://www.rcfp.org/may-2019-assange-indictment-analysis/
https://www.rcfp.org/may-2019-assange-indictment-analysis/

The US alleges that the 2010 publications have resulted in harm. Is there any evidence of this?
The "harm" rhetoric by the US aims to distract from the tens of thousands of named victims of extrajudicial killings, torture, war crimes, and other hard evidence of human rights violations revealed in the publications by WikiLeaks and its publishing partners. The US military and current or former administration officials are guilty of many of the crimes that WikiLeaks has exposed, none of which has been prosecuted.

During the Manning Court Martial, the United States stated under oath that they had not found any person who had been killed as a result of the publications. Ten years on, the US still has not been able to produce any evidence that anyone has been seriously harmed as a result of the Iraq War Logs, the Afghan War Logs, and the 2010 diplomatic cables.

The public rhetoric by the US government contrasts with its internal briefs and assessments, as Reuters reported in 2011: "A congressional official briefed on the reviews said the administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers. . . . 'We were told (the impact of WikiLeaks revelations) was embarrassing but not damaging,' said the official, who attended a briefing given in late 2010 by State Department officials." (Reuters, "U.S. officials privately say WikiLeaks damage limited," Reuters, January 18, 2011 https://www.reuters.com/article/us-wikileaks-damage/u-s-officials-privately-say-wikileaks-damage-limited-idUSTRE70H6TO20110118)

What role does the Spanish case of illegal spying on lawyers play in this extradition case?
Evidence is being investigated in Spain which involves United States agencies, specifically unlawful

acts committed against Mr. Assange and his lawyers, which make a fair trial in the United States impossible and which make the extradition abusive.

Whistleblowers in Spain who worked for the security company hired by Ecuador to man the Ecuadorian embassy stepped forward last year, leading to a criminal complaint that is now in the hands of the Spanish High Court or Audiencia Nacional, being led by the judge de la Mata. The whistleblowers have given evidence that the company's director was carrying out espionage on Julian Assange's lawyers for US intelligence via the head of security of Sheldon Adelson, Trump's biggest financial backer, a casino magnate who owns the company Las Vegas Sands. The Spanish company installed hidden microphones and cameras that surreptitiously recorded sound, opening visiting journalists' and doctors' cellphones to copy serial numbers and IMEI codes, an attempt to steal a baby's DNA, physical surveillance, breaking into lawyers' offices, and more.

The Spanish company's spying coincides with New York Times reports of Mike Pompeo's (then CIA director) "more aggressive efforts to try to disrupt WikiLeaks" which made "some lawmakers express[] discomfort." CIA director Mike Pompeo vowed to "take down" WikiLeaks, calling WikiLeaks a "hostile non-state intelligence service".

https://web.archive.org/web/20181117193457/https://www.nytimes.com/2018/11/16/us/politics/trump-administration-assange-wikileaks.html

Does it matter if Julian Assange is a journalist?
Julian Assange has been a card-holding member of the Journalist Union of Australia MEAA for more than a decade, and has received the highest journalistic award bestowed in his country, the Walkley Award, which is the equivalent of the Pulitzer Prize. He is also a member of the International Federation of Journalists and has won dozens of journalism awards.

The discussion about whether Julian Assange is a journalist is irrelevant, because the activities that the US has indicted him over are normal journalistic activities, therefore the precedent that is being set affects all journalists.

https://defend.wikileaks.org/2019/12/03/the-fate-of-journalism-and-julian-assange/
https://www.walkleys.com/board-statement-4-16/
https://defend.wikileaks.org/wikileaks/

Can Julian Assange get a fair trial in the Eastern District of Virginia?
The court that will hear Julian Assange's case is the "national security" court of the United States. The jury pool is drawn from Virginia, which is a small state which headquarters the CIA and national security contractors. Former CIA officer John Kiriakou, who blew the whistle on CIA waterboarding and prosecuted under the Espionage Act for exposing torture, was tried and convicted in this court.

John Kiriakou on the prospects of Assange getting a fair trial in the Eastern District Court of Virginia: https://www.zerohedge.com/news/2019-05-24/cia-whistleblower-assange-going-get-railroaded-hanging-judge

Has Donald Trump said anything about the prosecution of Assange over the Manning leaks?
In 2010, Donald Trump said that Julian Assange should "face the death penalty" over the Manning publications.

https://www.youtube.com/watch?v=V-pv_3i-dOs

Does WikiLeaks only publish leaks about the United States?
WikiLeaks has published leaks from many other countries including Kenya, Peru, Syria, Saudi Arabia, Russia, Namibia, Norway and Iceland. For example:

https://wikileaks.org/wiki/Category:Kenya
https://wikileaks.org/wiki/Category:Peru
https://wikileaks.org/Syria-Files.html
https://wikileaks.org/saudi-cables/
https://wikileaks.org/spyfiles/russia/
https://wikileaks.org/fishrot/

Recommended reading

James Goodale: Will alleged CIA misbehavior set Julian Assange free? (The Hill, 13 January 2020
https://thehill.com/opinion/criminal-justice/477939-will-cia-misbehavior-set-julian-assange-free

James Goodale: Pentagon Papers lawyer: The indictment of Assange is a snare and a delusion (The Hill, 14 April 2019)
https://thehill.com/opinion/criminal-justice/438709-pentagon-papers-lawyer-indictment-of-assange-snare-and-delusion

James Goodale: More Than a Data Dump - Why Julian Assange deserves First Amendment protection (Harpers Magazine, April 2019)
https://harpers.org/archive/2019/04/more-than-a-data-dump-julian-assange/
Jack Goldsmith: The U.S. Media Is in the Crosshairs of the New Assange Indictment
https://www.lawfareblog.com/us-media-crosshairs-new-assange-indictment

Gabe Rottman: The Assange Indictment Seeks to Punish Pure Publication
https://www.lawfareblog.com/assange-indictment-seeks-punish-pure-publication

Essential Background:
Press conference (19 February 2020) at London's Foreign Press Association with Assange lawyer Jennifer Robinson, Kristinn Hrafnsson (editor-in-chief of WikiLeaks), and Australian Members of Parliament George Chirstensen and Andrew Wilkie
https://www.pscp.tv/w/1MYGNkaYogwJw?t=2m14s

Kristinn Hrafnsson address to the Australian Press Association (7 December 2019)
https://fowlchicago.wordpress.com/2019/12/07/transcript-wikileaks-editor-in-chief-hrafnsson-speaks-natl-press-club-australia/

Selected Commentary on the Prosecution of Julian Assange:

New York Times Editorial board
"With this indictment, the Trump administration has chosen to go well beyond the question of hacking to directly challenge the boundaries of the First Amendment. This case now represents a threat to freedom of expression and, with it, the resilience of American democracy itself."
https://www.nytimes.com/2019/05/23/opinion/julian-assange-wikileaks.html

Washington Post Executive Editor Marty Baron:
"With the new indictment of Julian Assange, the government is advancing a legal argument that places such important work in jeopardy and undermines the very purpose of the First Amendment. The administration has gone from denigrating journalists as 'enemies of the people' to now criminalizing common practices in journalism that have long served the public interest. Meantime, government officials continue to engage in a decades-long practice of overclassifying information, often for reasons that have nothing to do with national security and a lot to do with shielding themselves from the constitutionally protected scrutiny of the press."
https://thehill.com/homenews/media/445426-washington-post-new-york-times-editors-blast-assange-indictment

Wall Street Journal Editor-in-Chief Matt Murray:
"the indictment's use of the Espionage Act raises deeply troubling implications for traditional journalism and freedom of the press in this country. The right to publish uncomfortable, important information that the government would prefer to be kept secret is central to a truly free press."

USA Today Editor-in-Chief Nicole Carroll:
"Investigative journalists routinely obtain and publish information the government would like kept secret. This indictment threatens such reporting and is a chilling attack on press freedoms and the public's right to know."

International Federation of Journalists
"Julian Assange, publisher of Wikileaks, has been charged under the US espionage act for publishing the Afghanistan and Iraq war diaries and US embassy cables, important documents that many of us around the world used and helped to publicise. This sets an extremely dangerous precedent for journalists, media organizations and freedom of the press. We do not want to be silent at this time."
https://www.ifj.org/media-centre/news/detail/category/regions/article/speak-up-for-assange-international-journalists-statement-in-defence-of-julian-assange.html

Council of Europe

Commissioner for Human Rights, Dunja Mijatovic

> "In view of both the press freedom implications and the serious concerns over the treatment Julian Assange would be subjected to in the United States, my assessment as Commissioner for Human Rights is that he should not be extradited."

https://www.coe.int/en/web/commissioner/-/julian-assange-should-not-be-extradited-due-to-potential-impact-on-press-freedom-and-concerns-about-ill-treatment

Council of Europe Alert on Journalists in jail (UK): Julian Assange
https://www.coe.int/en/web/media-freedom

Council of Europe Parliamentary Assembly Resolution 2317 (2020)
"consider that the detention and criminal prosecution of Mr Julian Assange sets a dangerous precedent for journalists, and join the recommendation of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment who declared, on 1 November 2019, that Mr Assange's extradition to the United States must be barred and that he must be promptly released"
http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28508&lang=en

Reporters Committee for the Freedom of the Press

"This is the first time the Justice Department has ever successfully obtained an indictment from a grand jury with Espionage Act charges based exclusively on the act of publication"
https://www.rcfp.org/may-2019-assange-indictment-analysis/

Committee to Protect Journalists

"Taken together, the 18 counts in the DOJ indictment criminalize key reporting practices and the publication of information obtained through them. And the extraterritorial application of the U.S. Espionage Act means that any journalist anywhere in the world could potentially be prosecuted for publishing classified information. A successful prosecution would chill whistleblowers and investigative reporting. This is why CPJ opposes Assange's extradition."
https://cpj.org/blog/2019/12/press-freedom-julian-assange-wikileaks-defend.php

Amnesty International's Deputy Europe Director, Massimo Moratti:
"All charges underpinning the US extradition request should be dropped to allow for Julian Assange's prompt release. If the charges against him are not dropped, the UK authorities are under a clear and unequivocal obligation not to send him to the USA where he could suffer serious human rights violations. Julian Assange could face detention conditions in the USA that amount to torture and other ill-treatment, including prolonged solitary confinement. The risk of an unfair trial is very real given the targeted public campaign against him undertaken by US officials at the highest levels, which has severely undermined his right to be presumed innocent."

https://www.amnesty.org/en/latest/news/2020/02/usuk-drop-charges-and-halt-extradition-of-julian-assange/

European Federation of Journalists General Secretary Ricardo Gutiérrez:
"the arbitrary detention and criminal prosecution of Julian Assange set an extremely dangerous precedent for journalists, media actors and freedom of the press,"
https://europeanjournalists.org/blog/2020/01/02/international-journalist-statement-in-defence-of-julian-assange/

Reporters Without Borders (RSF) General Secretary, Christophe Deloire
"If Assange is tried under the Espionage Act, he will even be denied the possibility of demonstrating that the information he revealed served the public interest. These proceedings violate the US Constitution. The democratic example set by Thomas Jefferson and Benjamin Franklin is in danger."
https://rsf.org/en/news/assanges-extradition-us-would-threaten-work-all-journalists

Commentators

First Amendment
James Goodale, lawyer for the New York Times for the Pentagon Papers
Jack Goldsmith, Harvard Law Professor, head the Office of Legal Counsel under the Bush Administration (Department of Justice) 2003-2004, which provides legal guidance to the president and all executive branch agencies.
Ben Wizner, American Civil Liberties Union
Computer Fraud and Abuse Act
Electronic Frontier Foundation
Lauri Love

US Intelligence
John Kiriakou, former CIA Counterterrorism Officer and former Senior Investigator, Senate Foreign Relations Committee
William Binney, former NSA Technical Director for World Geopolitical & Military Analysis; Co-founder of NSA's Signals Intelligence Automation Research Center
Coleen Rowley, FBI Special Agent and former Minneapolis Division Legal Counsel (ret.)
Ann Wright, U.S. Army Reserve Colonel (ret) and former U.S. Diplomat

US-UK Extradition treaty
David Davis, MP (https://www.standard.co.uk/comment/comment/justice-s-scales-are-lopsided-in-extradition-treaty-with-us-a4343671.html
Marjorie Cohn (former pres. of Nat'l Lawyers Guild) https://truthout.org/articles/extradition-of-assange-would-set-a-dangerous-precedent/
Lauri Love

Torture
UN Special Rapporteur on Torture, Nils Melzer

Spying in the Ecuadorian embassy, US-Ecuador relations
Fidel Narvaez, former consul of Ecuador in the United Kingdom
Guillaume Long, former Foreign Minister of Ecuador

How to get to Court

- **Bus:** From Woolwich Arsenal Station catch the 244/380 bus to the prison. The bus stops are situated directly outside the exit from the railway station.
- **Train:** The nearest stations are Woolwich Arsenal and Plumstead. Catch a bus from Woolwich Arsenal station to the prison, or walk from Plumstead station (contact the visitor centre for details).
- **Approach from M25 Dartford Bridge/Tunnel:**

- **Heading South - over Bridge:** Take first slip road immediately after tolls, (NB head for 4 left hand tolls when coming over the bridge). Signposted A206. First exit at roundabout and come over the motorway. Then to * (below):
- **Heading North - towards tunnel:** Take last exit (Junction 1) before tunnel signposted A206 Crayford/Erith. Then to * (below):
  - ***:** Roundabout over M25 - signposted A206 Crayford/ Erith. University Way.
  - Roundabout end of University Way/ dual carriageway signposted A206 Crayford / Erith.
  - Into Bexley / single carriageway / roundabout.
  - 4th exit signposted Erith A206 Crayford/Erith
  - Roundabout end dual carriageway
  - 2nd exit signposed Woolwich/ Thamesmead A206
  - Roundabout 2nd exit signposted A2016 Thamesmead, Plumstead, Woolwich
  - Series of roundabouts signposted A2016 Thamesmead, Plumstead, Woolwich
  - Dual carriageway towards Thamesmead, roundabout signposted Western Way
  - Signpost to Belmarsh and Courts - left slip road at traffic lights.

- **Approach from Woolwich:** Proceed along Plumstead Road, turn left into Pettman Crescent (just before Plumstead Bus Garage) then take the second left at the traffic lights into Western Way. Belmarsh is situated approximately half a mile down on the right-hand side. Follow signs for HMP Belmarsh and Courts.
- **Approach from Plumstead:** Proceed along Plumstead High Street, turn right into Pettman Crescent (just after Plumstead Bus Garage) then take the second left at the traffic lights into Western Way. Belmarsh is situated approximately half a mile down on the right-hand side. Follow signs for HMP Belmarsh and Courts.
- There is a visitors' car park.

Media

Die wichtigsten Videos zu Assange

Collateral Murder - Das Video, weswegen, die USA Julian Assange zu 175 Jahren verurteilen wollen

Collateral Murder - Augenzeugenbericht eines Soldaten vor Ort

Mark Davis über die Behauptung, Julian Assange hätte durch seine Veröffentlichung Menschen in Gefahr gebracht

COURAGE
couragefound.org

THE "ASSANGE PRECEDENT":

THE THREAT TO THE MEDIA POSED BY TRUMP'S PROSECUTION OF JULIAN ASSANGE

March 2019

A precedent with profound implications for press freedom

New York Times - "An indictment centering on the publication of information of public interest... would create a precedent with profound implications for press freedoms."[1] "Mr. Assange is not a traditional journalist, but what he does at WikiLeaks has also been difficult to distinguish in a legally meaningful way from what traditional news organizations, like The New York Times, do every day: seek out and publish information that officials would prefer to be kept secret, including classified national security matters."[2]

David McCraw, lead lawyer for New York Times - "I think the prosecution of him [Assange] would be a very, very bad precedent for publishers. From that incident, from everything I know, he's sort of in a classic publisher's position and I think the law would have a very hard time drawing a distinction between The New York Times and WikiLeaks."[3]

The Atlantic - "If the U.S. government can prosecute the WikiLeaks editor for publishing classified material, then every media outlet is at risk".[4]

The Trump Administration has confirmed that it has charged WikiLeaks' publisher Julian Assange and that it seeks his extradition from the United Kingdom.[5] The charges relate to WikiLeaks' 2010-2011 joint publications on war, diplomacy and rendition with a range of media organizations; these were published in Europe while Julian Assange was in Europe.[6] In the US, Assange faces life in prison.

The alleged source, Chelsea Manning, who was granted a commutation by President Obama, was re-jailed on 8 March 2019 by the Trump administration to coerce her to testify in secret against WikiLeaks over the 2010 publications. On her jailing, she stated that "I stand by my previous public testimony".[7] In her 2013

trial, Manning stated that "the decisions that I made to send documents and information" to WikiLeaks "were my own".[8]

The Trump Administration's actions are a serious threat to freedom of expression and freedom of the media.

The case raises fundamental issues:

1. The Trump administration is seeking to use its case against WikiLeaks as an "icebreaker" to crush the rest of the press.

The Administration is seeking to end the rash of leaks about it by using the case against WikiLeaks as an "icebreaker" against the rest of the media. The Administration has been plagued by hundreds of government leaks, on everything from Trump's conversations with the leaders of Australia and Mexico to Jared Kushner's security clearance to an upcoming meeting with Kim Jong Un to his personal diary etc. In fact, the Trump administration has **already threatened to prosecute journalists** publishing classified leaks.[9] The Trump administration is hostile to the press and will not stop at WikiLeaks; WikiLeaks is the desired precedent-setter to hobble the rest of the press.

2. Prosecuting WikiLeaks is a severe precedent-setting threat to press freedoms.

If the US succeeds in prosecuting the publisher and editor of WikiLeaks, for revealing information the US says is "secret", it will open the flood gates to an extremely dangerous precedent. Not only will the US government immediately seize on the precedent to initiate further prosecutions, states the world over will follow suit and claim that their secrecy laws must apply globally too. Assange's co-publishers at *Der Spiegel, Le Monde, New York Times, Espresso and The Guardian*, among others, will also risk immediate prosecution in (and extradition to) the US. The prosecution of Assange will have a profound chilling effect on the press and national security reporting. Publishers should not be prosecuted, in the US or elsewhere, for the "crime" of publishing truthful information.

3. The Trump administration should not be able to prosecute a journalist in the UK, operating from the UK and the rest of Europe, over claims under US laws.

The extradition and prosecution of Julian Assange would post an invitation to other states to follow suit, severely threatening the ability of journalists, publishers and human rights organizations to safely reveal information about serious international issues. If the Trump Administration can prosecute an Australian journalist in Europe for publishing material on the US, why can't Russia prosecute an American journalist in Washington revealing secrets about Moscow? Why can't Saudi Arabia prosecute a Turkish journalist for revealing secrets about the Khashoggi murder?

With the Assange precedent established, foreign states will have grounds to insist journalists and publishers are extradited for their reporting. Even in states that bar the extradition of their citizens, as soon as the journalist goes on holiday or on assignment, they can be arrested and extradited from a third state using the Assange precedent.

4. The Trump administration seeks to turn Europe and the rest of the world into a legal "Guantanamo bay".

The US seeks to apply its laws to European journalists and publishers and at the same time strip them of constitutional rights, effectively turning Europe into a legal "Guantanamo bay", where US criminal laws are asserted, but US rights are withheld. In April 2017, CIA director Mike Pompeo said that "Julian Assange has no First Amendment privileges. He is not a U.S. citizen". He stated:

> "We have to recognize that we can no longer allow Assange and his colleagues the latitude to use free speech values against us. To give them the space to crush us with misappropriated secrets is a perversion of what our great Constitution stands for. It ends now."[10]

But while rejecting any rights under the first amendment, which guarantees free speech and freedom of the media under the US Constitution, the US believes it still has a right to prosecute a non-US publisher in Europe.

Alan Rusbridger, former editor of the *Guardian*: "Journalists - whatever they think of Julian Assange - should defend his First Amendment rights".[11]

James Goodale, the lawyer representing the *New York Times* in the Pentagon Papers case, put it succinctly:

> "... the prosecution of Assange goes a step further. He's not a source, he is a publisher who received information from sources. The danger to journalists can't be overstated... As a matter of fact, a charge against Assange for 'conspiring' with a source is the most dangerous charge that I can think of with respect to the First Amendment in almost all my years representing media organizations. The reason is that one who is gathering/writing/distributing the news, as the law stands now, is free and clear under the First Amendment. If the government is able to say a person who is exempt under the First Amendment then *loses* that exemption because that person has "conspired" with a source who is subject to the Espionage Act or other law, then the government has succeeded in applying the standard to all news-gathering. That will mean that the press' ability to get newsworthy classified information from government sources will be severely curtailed, because every story that is based on leaked info will theoretically be subject to legal action by the government. It will be up to the person with the information to prove that they got it without violating the Espionage Act. This would

be, in my view, the worst thing to happen to the First Amendment—almost ever."[12]

Which other publishers and journalists are also in the frame?

Wikileaks co-published the Afghanistan and Iraq files in 2010 with a range of media organizations. The co-publishers of the Afghanistan material were **Der Spiegel, The New York Times, The Guardian, and Espresso**. The co-publishers of the Iraq material were **Der Spiegel, The Guardian, The New York Times, Al Jazeera, Le Monde, the Bureau of Investigative Journalism, Channel 4's Dispatches, the Iraq Body Count project, RUV (Iceland) and SVT (Sweden)**. The individual journalists reporting the Afghanistan and Iraq material are identified below.

Co-publishers with WikiLeaks of the Afghanistan war logs	**Journalists who reported the material**
Espresso	Gianluca Di Feo, Stefania Maurizi[13]
Guardian	Nick Davies, David Leigh, Declan Walsh, Simon Tisdall, Richard Norton-Taylor, Rob Evans[14]
New York Times	Mark Mazzetti, Jane Perlez, Eric Schmitt, Andrew W. Lehren, C. J. Chivers, Carlotta Gall, Jacob Harris, Alan McLean[15]
Der Spiegel	Matthias Gebauer; John Goetz; Hans Hoyng; Susanne Koelbl; Marcel Rosenbach; Gregor Peter Schmitz[16]
Co-publishers with WikiLeaks of the Iraq war logs	
Bureau of Investigative Journalism	Writers not named[17]
Channel 4 (UK TV)	Anna Doble, Kris Jepson[18]
The Guardian	Nick Davies, Jonathan Steele, David Leigh, James Meek, Jamie Doward, Mark Townsend, Maggie O'Kane[19]
Iraq Body Count	Writers not named[20]
Al Jazeera	Gregg Carlstrom[21]
Le Monde	Patrice Claude, Yves Eudes, Rémy Ourdan, Damien Leloup, Frédéric Bobin[22]
New York Times	Michael R. Gordon, Andrew W. Lehren, Sabrina Tavernise, James Glanz[23]
RUV (Icelandic state TV)	Kristinn Hrafnsson
Der Spiegel	Writers not named[24]
SVT (Swedish state TV)	Susan Ritzén, Örjan Magnusson[25]

The Guardian published hundreds of documents in full, in various sets, often using those exposes as major headlines, as did the other papers.[26] The New York Times published WikiLeaks "war logs", as: "An archive of classified military documents offers views of the wars in Iraq and Afghanistan".[27]

Re-reported coverage of WikiLeaks files by other media organizations is of course even more extensive. Hundreds of outlets reported on the files, often quoting from them extensively. Some of these news organizations published dozens of files in full, with interactive maps and facilities to search the documents, such as The Telegraph in the UK.[28]

All major newspapers prominently covered the WikiLeaks publication of thousands of CIA files in March 2017, the biggest leak in the history of the CIA and the stimulus for the Trump Administration to shut down WikiLeaks.

The fact that media freedom under threat is recognized by a raft of organizations

Dinah PoKempner, General Counsel, Human Rights Watch:
"No one should be prosecuted under the antiquated Espionage Act for publishing leaked government documents. That 1917 statute was designed to punish people who leaked secrets to a foreign government, not to the media, and allows no defense or mitigation of punishment on the basis that public interest served by some leaks may outweigh any harm to national security."[29]

David Kaye: UN special rapporteur on freedom of opinion and expression:
"Prosecuting Assange would be dangerously problematic from the perspective of press freedom… and should be strongly opposed"[30]

Kenneth Roth, Director of Human Rights Watch:
"Deeply troubling if the Trump administration, which has shown little regard for media freedom, would charge Assange for receiving from a government official and publishing classified information–exactly what journalists do all the time."[31]

David Bralow, an attorney with The Intercept:
"It's hard to see many of WikiLeaks' activities as being different than other news organizations' actions when it receives important information, talks to sources and decides what to publish. The First Amendment protects all speakers, not simply a special class of speaker."[32]

Alexandra Ellerbeck, Committee to Protect Journalists, North America program coordinator:
"We would be concerned by a prosecution that construes publishing government documents as a crime. This would set a dangerous precedent that could harm all journalists, whether inside or outside the United States."[33]

Trevor Timm, director of Freedom of the Press Foundation:
"Any charges brought against WikiLeaks for their publishing activities pose a profound and incredibly dangerous threat to press freedom".[34]

Bruce Shapiro, contributing editor to The Nation:

"The notion of sealed charges against a publisher of leaked documents ought to have warning sirens screaming in every news organization, think tank, research service, university, and civil-liberties lobby.... The still-secret Assange charges, if unchallenged, could burn down the scaffolding of American investigative reporting".[35]

Ben Wizner, ACLU:
"Any prosecution of Mr Assange for WikiLeaks' publishing operations would be unprecedented and unconstitutional and would open the door to criminal investigations of other news organizations".[36]

High ranking Trump Administration officials have issued a **series of threats** against Assange and WikiLeaks to "take down" the organization, asserting that "Julian Assange has no First Amendment privileges. He is not a US citizen" (then CIA director Mike Pompeo[37]) and stating that arresting Assange is a "priority" for the US (then US Attorney General Jeff Sessions[38]).

The key reason for this approach is WikiLeaks' release of **thousands of files on the CIA in 2017** - which revealed the CIA's efforts to infest computers, smartphones, TVs, routers and even vehicles with CIA viruses and malware. The US government arrested a young US intelligence officer as WikiLeaks' source who now faces 160 years in prison and is being held in harsh conditions. The media reported in 2017, just after the Vault 7 publications, that the US was expanding the investigation against Assange and had prepared charges against him.[39] All the while, it has never been questioned that WikiLeaks simply published truthful information.

Julian Assange's contribution to journalism

Julian Assange and WikiLeaks have won numerous major journalism prizes, including Australia's highest journalistic honour (equivalent to the Pulitzer), the Walkley prize for "The Most Outstanding Contribution to Journalism", The Martha Gellhorn Prize for Journalism (UK), the Index on Censorship and The Economist's New Media Award, the Amnesty International New Media Award, and has been nominated for the UN Mandela Prize (2015) and the 2019 Nobel Peace Prize (nominated by Nobel Laureate Mairead Maguire). WikiLeaks has been repeatedly found by courts to be a media organization.[40]

WikiLeaks receives censored and restricted documents anonymously after Julian Assange invented the first anonymous secure online submission system for documents from journalistic sources. For years it was the only such system of its kind, but secure anonymous dropboxes are now seen as essential for many major news and human rights organizations.

WikiLeaks publications have been cited in tens of thousands of articles and academic papers and have been used in numerous court cases promoting human rights and human rights defenders. For example, documents published by WikiLeaks were recently successfully used in the International Court of Justice

over the UK's illegal depopulation of the Chagos Islands, which were cleared to make way for a giant US military base at the largest Island, Diego Garcia. The Islanders have been fighting for decades for recognition.

Julian Assange pioneered large international collaborations to secure maximum spread and contextual analysis of large whistleblower leaks. For "Cablegate", WikiLeaks entered into partnerships with 110 different media organizations and continues to establish partnerships in its publications. This model has since been replicated in other international media collaborations with significant successes, such as the Panama Papers.

Conclusion

All media organizations and journalists must recognize the threat to their freedom and ability to work posed by the Trump administration's prosecution of Assange. They should join human rights organizations, the United Nations and many others in opposing Assange's extradition. They should do so out of their own self-interest given that their ability to safely publish is under serious threat.

For more information, contact: courage.contact@couragefound.org

The Courage Foundation – www.couragefound.org - is an international organization that supports those who risk life or liberty to make significant contributions to the historical record. It campaigns and fundraises for the legal and public defence of specific individuals such as Julian Assange who are subject to serious prosecution or persecution.

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«Ich habe noch nie einen vergleichbaren Fall gesehen»: Nils Melzer, Uno-Sonderberichterstatter für Folter.

«Vor unseren Augen kreiert sich ein mörderisches System»

Eine konstruierte Vergewaltigung und manipulierte Beweise in Schweden, Druck von Grossbritannien, das Verfahren nicht einzustellen, befangene Richter, Inhaftierung, psychologische Folter – und bald die Auslieferung an die USA mit Aussicht auf 175 Jahre Haft, weil er Kriegsverbrechen aufdeckte: Erstmals spricht der Uno-Sonderberichterstatter für Folter, Nils Melzer, über die brisanten Erkenntnisse seiner Untersuchung im Fall von Wikileaks-Gründer Julian Assange.

Ein Interview von Daniel Ryser und Yves Bachmann (Bilder), 31.01.2020

«A murderous system is being created before our very eyes»

Here you find the complete English version of this interview.

1. Die schwedische Polizei konstruiert eine Vergewaltigung

Nils Melzer, warum befasst sich der Uno-Sonderberichterstatter für Folter mit Julian Assange?
Das hat mich das Auswärtige Amt in Berlin kürzlich auch gefragt: Ist das wirklich Ihr Kernmandat? Ist Assange ein Folteropfer?

Was haben Sie geantwortet?
Der Fall berührt mein Mandat in dreifacher Hinsicht. Erstens: Der Mann hat Beweise für systematische Folter veröffentlicht. Statt der Folterer wird nun aber er verfolgt. Zweitens wird er selber so misshandelt, dass er heute selbst Symptome von psychologischer Folter aufzeigt. Und drittens soll er ausgeliefert werden an einen Staat, der Menschen wie ihn unter Haftbedingungen hält, die von Amnesty International als Folter bezeichnet werden. Zusammengefasst: Julian Assange hat Folter aufgedeckt, er wurde selber gefoltert und könnte in den USA zu Tode gefoltert werden. Und so etwas soll nicht in meinen Zuständigkeitsbereich fallen? Zudem ist der Fall von emblematischer Bedeutung, er ist für jeden Bürger in einem demokratischen Staat von Bedeutung.

Warum haben Sie sich denn nicht viel früher mit dem Fall befasst?
Stellen Sie sich einen dunklen Raum vor. Plötzlich richtet einer das Licht auf den Elefanten im Raum, auf Kriegsverbrecher, auf Korruption. Assange ist der Mann mit dem Scheinwerfer. Die Regierungen sind einen Moment lang schockiert. Dann drehen sie mit den Vergewaltigungsvorwürfen den Lichtkegel um. Ein Klassiker in der Manipulation der öffentlichen Meinung. Der Elefant steht wieder im Dunkeln, hinter dem Spotlight. Stattdessen steht jetzt Assange im Fokus, und wir sprechen darüber, ob er in der Botschaft Rollbrett fährt, ob er seine Katze richtig füttert. Wir wissen plötzlich alle, dass er ein Vergewaltiger ist, ein Hacker, Spion und Narzisst. Und die von ihm enthüllten Missstände und Kriegsverbrechen verblassen im Dunkeln. So ist es auch mir ergangen. Trotz meiner Berufserfahrung, die mich zur Vorsicht mahnen sollte.

50 Wochen Haft wegen Verstosses gegen Kautionsauflagen: Julian Assange im Januar 2020 in einem Polizeiwagen auf dem Weg ins Londoner Hochsicherheitsgefängnis Belmarsh. Dominic Lipinski/Press Association Images/Keystone

Können wir von vorne beginnen? Wie sind Sie zu dem Fall gekommen?
Im Dezember 2018 wurde ich erstmals von seinen Anwälten um eine Intervention gebeten. Zunächst sagte ich ab. Ich war mit anderen Gesuchen überlastet und kannte den Fall nicht wirklich. In meiner von den Medien geprägten Wahrnehmung hatte auch ich das Vorurteil, dass Julian Assange irgendwie schuldig ist und ja, dass er mich manipulieren will. Im März 2019 kamen die Anwälte ein zweites Mal auf mich zu, da sich die Anzeichen verdichteten, dass Assange bald aus der ecuadorianischen Botschaft ausgewiesen werden könnte. Sie schickten mir einige Schlüsseldokumente und eine Zusammenfassung des Falls. Und da dachte ich, dass ich es meiner professionellen Integrität schuldig bin, mir das zumindest einmal anzuschauen.

Und dann?
Schnell wurde mir klar, dass hier etwas nicht stimmt. Dass es einen Widerspruch gibt, der sich mir mit meiner ganzen juristischen Erfahrung nicht erschliesst: Warum befindet sich ein Mensch neun Jahre lang in einer strafrechtlichen Voruntersuchung zu einer Vergewaltigung, ohne dass es je zur Anklage kommt?

Ist das aussergewöhnlich?
Ich habe noch nie einen vergleichbaren Fall gesehen. Jeder kann gegen jeden eine Voruntersuchung auslösen, indem er zur Polizei geht und die andere Person beschuldigt. Die schwedischen Behörden wiederum waren an der Aussage von Assange nie interessiert. Sie liessen ihn ganz gezielt ständig in der Schwebe. Stellen Sie sich vor, Sie werden neuneinhalb Jahre lang von einem ganzen Staatsapparat und von den Medien mit Vergewaltigungsvorwürfen konfrontiert, können sich aber nicht verteidigen, weil es gar nie zur Anklage kommt.

Sie sagen: Die schwedischen Behörden waren an der Aussage von Assange nicht interessiert. Medien und Behörden zeichneten in den vergangenen Jahren ein gegenteiliges Bild: Julian Assange sei vor der schwedischen Justiz geflüchtet, um sich der Verantwortung zu entziehen.
Das dachte ich auch immer, bis ich zu recherchieren begann. Das Gegenteil ist der Fall. Assange hat sich mehrfach bei den schwedischen Behörden

gemeldet, weil er zu den Vorwürfen Stellung nehmen wollte. Die Behörden wiegelten ab.

Was heisst das: Die Behörden wiegelten ab?
Darf ich von vorn beginnen? Ich spreche fliessend Schwedisch und konnte deshalb alle Originaldokumente lesen. Ich traute meinen Augen nicht: Nach Aussagen der betroffenen Frau selber hat es nie eine Vergewaltigung gegeben. Und nicht nur das: Die Aussage dieser Frau wurde im Nachhinein ohne ihre Mitwirkung von der Stockholmer Polizei umgeschrieben, um irgendwie einen Vergewaltigungsverdacht herbeibiegen zu können. Mir liegen die Dokumente alle vor, die Mails, die SMS.

«Die Aussage der Frau wurde von der Polizei umgeschrieben» – wovon reden Sie?
Am 20. August 2010 betritt eine Frau namens S. W. in Begleitung einer zweiten Frau namens A. A. einen Polizeiposten in Stockholm. S. W. sagt, sie habe mit Julian Assange einvernehmlichen Geschlechtsverkehr gehabt. Allerdings ohne Kondom. Jetzt habe sie Angst, dass sie sich mit HIV infiziert haben könnte, und wolle wissen, ob sie Assange dazu verpflichten könne, einen HIV-Test zu machen. Sie sei in grosser Sorge. Die Polizei schreibt ihre Aussage auf und informiert sofort die Staatsanwaltschaft. Noch bevor die Einvernahme überhaupt abgeschlossen werden kann, informiert man S. W. darüber, dass man Assange festnehmen werde wegen Verdachts auf Vergewaltigung. S. W. ist schockiert und weigert sich, die Befragung weiterzuführen. Noch aus der Polizeistation schreibt sie einer Freundin eine SMS und sagt, sie wolle Assange gar nicht beschuldigen, sondern wolle nur, dass er einen HIV-Test mache, aber die Polizei wolle ihn ganz offensichtlich «in die Finger kriegen».

Was bedeutet das?
S. W. hat Julian Assange gar nicht der Vergewaltigung bezichtigt. Sie weigert sich, die Einvernahme weiterzuführen, und fährt nach Hause. Trotzdem erscheint zwei Stunden später im «Expressen», einer schwedischen Boulevardzeitung, die Titel-Schlagzeile: Julian Assange werde der doppelten Vergewaltigung verdächtigt.

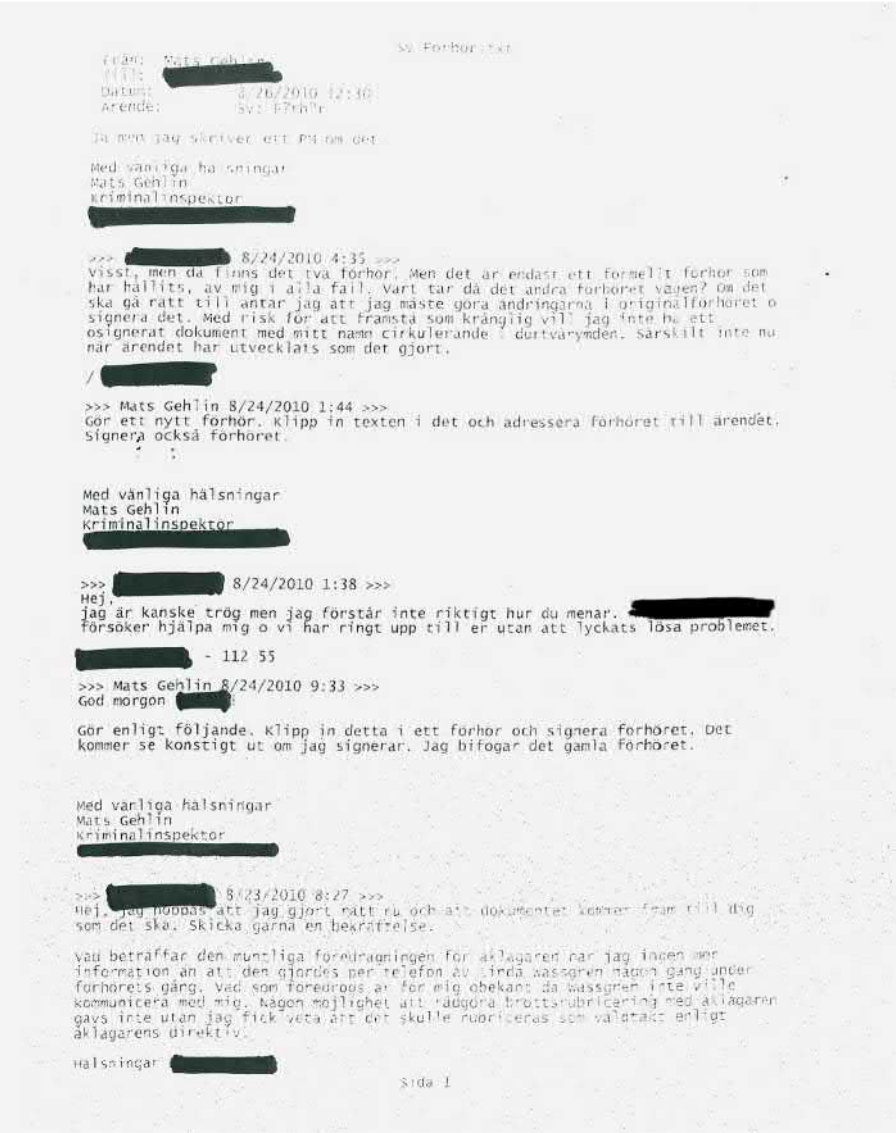
Der doppelten Vergewaltigung?
Ja, denn es gibt ja noch eine zweite Frau, A. A. Auch sie wollte keine Anzeige erstatten, sondern hat lediglich S. W. auf den Polizeiposten begleitet. Sie wurde an dem Tag noch gar nicht einvernommen. Später sagte sie dann aber, Assange habe sie sexuell belästigt. Ich kann natürlich nicht sagen, ob das wahr ist oder nicht. Ich beobachte einfach den Ablauf: Eine Frau betritt einen Polizeiposten. Sie will keine Anzeige machen, aber einen HIV-Test einfordern. Die Polizei kommt auf die Idee, dass dies eine Vergewaltigung sein könnte, und erklärt die Sache zum Offizialdelikt. Die Frau weigert sich, das zu unterschreiben, geht nach Hause, schreibt einer Freundin, sie wolle das nicht, aber die Polizei wolle Assange «in die Finger kriegen». Zwei Stunden später steht es in der Zeitung. Wie wir heute wissen, hat die Staatsanwaltschaft es der Presse gesteckt. Und zwar ohne Assange überhaupt zu einer Stellungnahme einzuladen. Und die zweite Frau, die laut Schlagzeile vom 20. August ebenfalls vergewaltigt worden sein soll, wurde erst am 21. August überhaupt einvernommen.

Was hat die zweite Frau später ausgesagt?
Sie sagte aus, sie habe Assange, der für eine Konferenz nach Schweden gekommen war, ihre Wohnung zur Verfügung gestellt. Eine kleine Einzimmerwohnung. Als Assange in der Wohnung ist, kommt sie früher als geplant nach Hause. Sie sagt, das sei kein Problem. Er könne mit ihr in ihrem Bett schlafen. In jener Nacht sei es zum einvernehmlichen

Sex gekommen. Mit Kondom. Sie sagt aber, Assange habe während des Geschlechtsverkehrs das Kondom absichtlich kaputtgemacht. Wenn dem so ist, ist das natürlich ein Sexualdelikt, sogenanntes *stealthing*. Die Frau sagt aber auch: Sie habe erst im Nachhinein gemerkt, dass das Kondom kaputt ist. Das ist ein Widerspruch, der unbedingt hätte geklärt werden müssen: Wenn ich es nicht merke, kann ich nicht wissen, ob der andere es absichtlich getan hat. Auf dem als Beweismittel eingereichten Kondom konnte keine DNA von Assange oder A. A. nachgewiesen werden.

Woher kannten sich die beiden Frauen?
Sie kannten sich nicht wirklich. A. A., die Assange beherbergte und als seine Pressesekretärin fungierte, hatte S. W. an einem Anlass kennengelernt, an dem sie einen rosa Kaschmirpullover getragen hatte. Sie wusste offenbar von Assange, dass er auch mit S. W. ein sexuelles Abenteuer anstrebte. Denn eines Abends erhielt sie von einem Bekannten eine SMS: Assange wohne doch bei ihr, er möchte ihn gerne kontaktieren. A. A. antwortet ihm: Assange schlafe im Moment wohl gerade mit dem «Kashmir-Girl». Am nächsten Morgen telefoniert S. W. mit A. A. und sagt, sie habe tatsächlich ebenfalls mit Assange geschlafen und habe nun Angst, sich mit HIV infiziert zu haben. Diese Angst ist offenbar echt, denn S. W. hat sogar eine Klinik aufgesucht, um sich beraten zu lassen. Darauf schlägt ihr A. A. vor: Lass uns zur Polizei gehen, die können Assange zwingen, einen HIV-Test zu machen. Die beiden Frauen gehen allerdings nicht zur nächstgelegenen Polizeistation, sondern zu einer weit entfernten, wo eine Freundin von A. A. als Polizistin arbeitet, die dann auch noch gerade die Einvernahme macht; und zwar anfänglich in Anwesenheit ihrer Freundin A. A., was alles nicht korrekt ist. Bis hierhin könnte man allenfalls noch von mangelnder Professionalität sprechen. Die bewusste Böswilligkeit der Behörden wurde aber spätestens dann offensichtlich, als sie die sofortige Verbreitung des Vergewaltigungsverdachts über die Tabloidpresse forcierten, und zwar ohne Befragung von A. A. und im Widerspruch zu den Aussagen von S. W.; und auch im Widerspruch zum klaren Verbot im schwedischen Gesetz, die Namen von mutmasslichen Opfern oder Verdächtigen in einem Sexualstrafverfahren zu veröffentlichen. Jetzt wird die vorgesetzte Hauptstaatsanwältin auf den Fall aufmerksam und schliesst die Vergewaltigungsuntersuchung einige Tage später mit der Feststellung, die Aussagen von S. W. seien zwar glaubwürdig, doch gäben sie keinerlei Hinweise auf ein Delikt.

Aber dann ging die Sache erst richtig los. Warum?
Nun schreibt der Vorgesetzte der einvernehmenden Polizistin eine Mail: Sie solle die Aussage von S. W. umschreiben.



Sv Forhor.txt

Från: Mats Gehlin
Till: [redacted]
Datum: 8/26/2010 12:30
Ärende: Sv: förhör

Ja men jag skriver ett PM om det.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/24/2010 4:35 >>>
Visst, men då finns det två förhör. Men det är endast ett formellt förhör som har hållits, av mig i alla fall. Vart tar då det andra förhöret vägen? Om det ska gå rätt till antar jag att jag måste göra ändringarna i originalförhöret o signera det. Med risk för att framstå som krångligt vill jag inte ha ett osignerat dokument med mitt namn cirkulerande i dörtvärymden. Särskilt inte nu när ärendet har utvecklats som det gjort.

/ [redacted]

>>> Mats Gehlin 8/24/2010 1:44 >>>
Gör ett nytt förhör. Klipp in texten i det och adressera förhöret till ärendet. Signera också förhöret.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/24/2010 1:38 >>>
Hej,
jag är kanske trög men jag förstår inte riktigt hur du menar. [redacted]
försöker hjälpa mig o vi har ringt upp till er utan att lyckats lösa problemet.

[redacted] - 112 55

>>> Mats Gehlin 8/24/2010 9:33 >>>
God morgon [redacted]

Gör enligt följande. Klipp in detta i ett förhör och signera förhöret. Det kommer se konstigt ut om jag signerar. Jag bifogar det gamla förhöret.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/23/2010 8:27 >>>
Hej, jag hoppas att jag gjort rätt nu och att dokumentet kommer fram till dig som det ska. Skicka gärna en bekräftelse.

Vad beträffar den muntliga föredragningen för åklagaren har jag inget mer information än att den gjordes per telefon av Jörda Wassgren någon gång under förhörets gång. Vad som föredrogs är för mig obekant då Wassgren inte ville kommunicera med mig. Någon möjlighet att rådgöra brottsrubricering med åklagaren gavs inte utan jag fick veta att det skulle rubriceras som våldtäkt enligt åklagarens direktiv.

Hälsningar [redacted]

Sida 1

«Verfahre wie folgt. Füge es in ein Verhör ein und signiere das Verhör»: Der Mailverkehr bei der schwedischen Polizei im Original. Die deutsche Übersetzung finden Sie hier.

Was hat die Polizistin umgeschrieben?
Das weiss man nicht. Denn die erste Befragung wurde im Computerprogramm direkt überschrieben und existiert nicht mehr. Wir wissen nur, dass die ursprüngliche Aussage gemäss Hauptstaatsanwältin offenbar keinerlei Hinweise auf ein Delikt beinhaltete. In der revidierten Form steht, es sei zu mehrmaligem Geschlechtsverkehr gekommen. Einvernehmlich und mit Kondom. Aber am Morgen sei die Frau dann aufgewacht, weil er versucht habe, ohne Kondom in sie einzudringen. Sie fragt: «Trägst du ein Kondom?» Er sagt: «Nein.» Da sagt sie: «You better not have HIV», und lässt ihn weitermachen. Diese Aussage wurde ohne Mitwirkung der betroffenen Frau redigiert und auch nicht von ihr unterschrieben. Es ist ein manipuliertes Beweismittel, aus dem die schwedischen Behörden dann eine Vergewaltigung konstruiert haben.

Warum sollten die schwedischen Behörden das tun?
Der zeitliche Kontext ist entscheidend: Ende Juli veröffentlicht Wikileaks in Zusammenarbeit mit der «New York Times», dem «Guardian» und dem «Spiegel» das sogenannte «Afghan War Diary». Es ist eines der grössten Leaks in der Geschichte des US-Militärs. Die USA fordern ihre Alliierten umgehend dazu auf, Assange mit Strafverfahren zu überziehen. Wir kennen nicht die ganze Korrespondenz. Aber Stratfor, eine für die US-Regierung tätige Sicherheitsberatungsfirma, rät der amerikanischen Regierung offen-

bar, Assange die nächsten 25 Jahre mit allen möglichen Strafverfahren zu überziehen.

2. Assange meldet sich mehrfach bei der schwedischen Justiz, um auszusagen. Diese wiegelt ab

Warum hat sich Assange damals nicht der Polizei gestellt?
Das hat er ja eben. Ich habe es bereits angetönt.

Dann führen Sie es jetzt bitte aus.
Assange erfährt aus der Presse von dem Vergewaltigungsvorwurf. Er nimmt Kontakt mit der Polizei auf, um Stellung nehmen zu können. Trotz des publizierten Skandals wird ihm dies erst neun Tage später zugestanden, als der Vorwurf der Vergewaltigung von S. W. bereits wieder vom Tisch war. Das Verfahren wegen sexueller Belästigung von A. A. lief aber noch. Am 30. August 2010 erscheint Assange auf dem Polizeiposten, um auszusagen. Er wird von jenem Polizisten befragt, der in der Zwischenzeit die Anweisung gegeben hatte, die Aussage von S. W. umzuschreiben. Zu Beginn des Gesprächs sagt Assange, er sei bereit auszusagen. Er wolle aber den Inhalt nicht wieder in der Presse lesen. Dies ist sein Recht, und es wird ihm zugesichert. Am selben Abend steht wieder alles in der Zeitung. Das kann nur von Behörden gekommen sein, denn sonst war ja niemand beim Verhör anwesend. Es ging also offensichtlich darum, seinen Namen gezielt kaputtzumachen.

Der Schweizer Rechtsprofessor Nils Melzer in der Nähe von Biel.

Wie ist diese Geschichte denn überhaupt entstanden, dass sich Assange der schwedischen Justiz entzogen habe?
Diese Darstellung wurde konstruiert, entspricht aber nicht den Tatsachen.

Hätte er sich entzogen, wäre er nicht freiwillig auf dem Posten erschienen. Auf der Grundlage der umgeschriebenen Aussage von S. W. wird gegen die Einstellungsverfügung der Staatsanwältin Berufung eingelegt und am 2. September 2010 das Vergewaltigungsverfahren wieder aufgenommen. Den beiden Frauen wird auf Staatskosten ein Rechtsvertreter ernannt namens Claes Borgström. Der Mann war Kanzleipartner des vorherigen Justizministers Thomas Bodström, unter dessen Ägide die schwedische Sicherheitspolizei von den USA verdächtigte Menschen mitten in Stockholm ohne jedes Verfahren verschleppt und an die CIA übergeben hatte, welche diese Menschen dann folterte. Damit werden die transatlantischen Hintergründe der Angelegenheit deutlicher. Nach Wiederaufnahme der Vergewaltigungsvorwürfe lässt Assange wiederholt durch seinen Anwalt ausrichten, dass er dazu Stellung nehmen will. Die zuständige Staatsanwältin wiegelt ab. Mal passt es der Staatsanwältin nicht, mal ist der zuständige Polizist krank. Bis sein Anwalt drei Wochen später schreibt: Assange müsse nun wirklich zu einer Konferenz nach Berlin. Ob er das Land verlassen dürfe? Die Staatsanwaltschaft willigt schriftlich ein. Er dürfe Schweden für kurzfristige Abwesenheiten verlassen.

Und dann?
Der Punkt ist: An dem Tag, an dem Julian Assange Schweden verlässt, wo noch gar nicht klar ist, ob er kurzfristig geht oder langfristig, wird gegen ihn ein Haftbefehl erlassen. Er fliegt mit Scandinavian Airlines von Stockholm nach Berlin. Dabei verschwinden seine Laptops aus seinem eingecheckten Gepäck. Als er in Berlin ankommt, bittet die Lufthansa um Nachforschungen bei der SAS. Diese verweigert aber offenbar jede Auskunft.

Warum?
Das ist ja genau das Problem. Ständig passieren in diesem Fall Dinge, die eigentlich gar nicht möglich sind, ausser man ändert den Betrachtungswinkel. Assange reist nun jedenfalls nach London weiter, entzieht sich aber nicht der Justiz, sondern bietet der Staatsanwaltschaft über seinen schwedischen Anwalt mehrere Daten für eine Einvernahme in Schweden an – diese Korrespondenz gibt es. Dann geschieht Folgendes: Assange bekommt Wind davon, dass in den USA ein geheimes Strafverfahren gegen ihn eröffnet worden ist. Damals wurde das von den USA nicht bestätigt, aber heute wissen wir, dass es stimmt. Ab jetzt sagt sein Anwalt: Assange sei bereit, in Schweden auszusagen, aber er verlange eine diplomatische Zusicherung, dass Schweden ihn nicht an die USA weiterausliefere.

Wäre das überhaupt ein realistisches Szenario gewesen?
Absolut. Einige Jahre zuvor, wie ich schon erwähnte, hatte die schwedische Sicherheitspolizei zwei in Schweden registrierte Asylbewerber ohne jedes Verfahren der CIA übergeben. Bereits auf dem Flughafengelände in Stockholm wurden sie misshandelt, betäubt und dann nach Ägypten geflogen, wo sie gefoltert wurden. Wir wissen nicht, ob dies die einzigen Fälle waren. Aber wir kennen die Fälle, weil die Männer überlebt haben. Beide haben später bei Uno-Menschenrechtsmechanismen geklagt und gewonnen. Schweden musste jedem von ihnen eine halbe Million Dollar Entschädigung bezahlen.

Ist Schweden auf die Forderung von Assange eingegangen?
Die Anwälte sagen, sie hätten den schwedischen Behörden während der fast sieben Jahre, in denen Assange in der ecuadorianischen Botschaft lebte, über dreissig Mal angeboten, dass Assange nach Schweden komme – im Gegenzug für eine Zusicherung der Nichtauslieferung an die USA. Die Schweden weigerten sich mit dem Argument, es gebe ja gar kein Auslieferungsgesuch der USA.

Wie beurteilen Sie diese Forderung?
Solche diplomatischen Zusicherungen sind in der internationalen Praxis alltäglich. Man lässt sich zusichern, dass jemand nicht an ein Land weiterausgeliefert wird, wo die Gefahr schwerer Menschenrechtsverletzungen besteht, und zwar völlig unabhängig davon, ob bereits ein Auslieferungsgesuch des betreffenden Landes vorliegt oder nicht. Das ist ein politischer, kein rechtlicher Prozess. Ein Beispiel: Frankreich verlangt von der Schweiz die Auslieferung eines kasachischen Geschäftsmannes, der in der Schweiz lebt, aber sowohl von Frankreich wie auch von Kasachstan wegen Steuerbetrugs gesucht wird. Die Schweiz sieht keine Foltergefahr in Frankreich, wohl aber in Kasachstan. Darum teilt die Schweiz Frankreich mit: Wir liefern euch den Mann aus, wollen aber eine diplomatische Zusicherung, dass er nicht an Kasachstan weiterausgeliefert wird. Dann sagen die Franzosen nicht: «Kasachstan hat ja noch gar kein Gesuch gestellt!», sondern sie geben selbstverständlich die Zusicherung. Die Argumente der Schweden waren an den Haaren herbeigezogen. Das ist das eine. Das andere ist, und das sage ich Ihnen mit all meiner Erfahrung hinter den Kulissen der internationalen Praxis: Wenn eine solche diplomatische Zusicherung verweigert wird, dann sind alle Zweifel am guten Glauben des betreffenden Landes berechtigt. Warum sollten die Schweden das nicht garantieren können? Rechtlich gesehen haben die USA mit dem schwedischen Sexualstrafverfahren ja wirklich gar nichts zu tun.

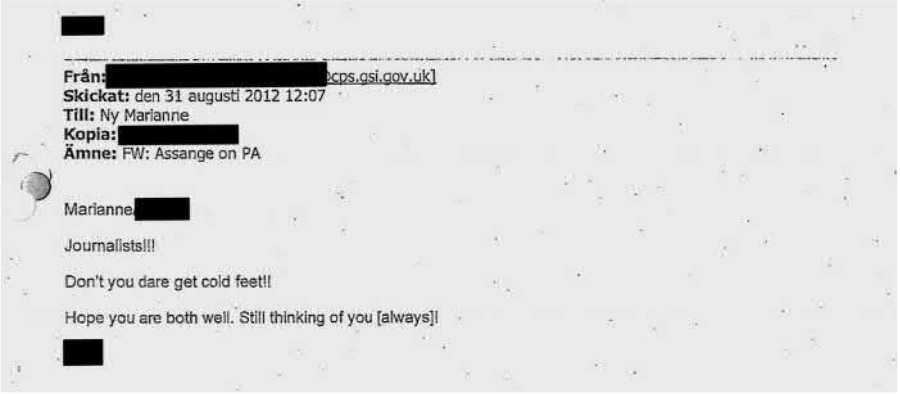
Warum wollte Schweden diese Zusicherung nicht geben?
Man muss nur schauen, wie das Verfahren geführt wurde: Es ist Schweden nie um die Interessen der beiden Frauen gegangen. Assange wollte ja auch nach der Verweigerung einer sogenannten Nichtauslieferungszusicherung immer noch aussagen. Er sagte: Wenn ihr nicht garantieren könnt, dass ich nicht ausgeliefert werde, stehe ich euch in London oder über Videolink für Befragungen zur Verfügung.

Aber ist das normal oder rechtlich so einfach möglich, dass schwedische Beamte für eine solche Vernehmung extra in ein anderes Land reisen?
Das ist ein weiterer Beleg dafür, dass es Schweden nie um Wahrheitsfindung ging: Es gibt genau für solche Justizfragen ein Kooperationsabkommen zwischen Grossbritannien und Schweden, welches vorsieht, dass für die Einvernahme von Personen schwedische Beamte nach England reisen oder umgekehrt. Oder dass man eine Vernehmung per Video macht. Das wurde in jenem Zeitraum zwischen Schweden und England in 44 anderen Verfahren so gemacht. Nur bei Julian Assange hat Schweden darauf bestanden, es sei essenziell, dass er persönlich erscheine.

3. Als das höchste schwedische Gericht die Stockholmer Staatsanwaltschaft zwingt, endlich Anklage zu erheben oder das Verfahren einzustellen, fordern die britischen Behörden: «Kriegt jetzt bloss keine kalten Füsse!!»

Warum bestanden sie darauf?
Es gibt für all das, für das Verweigern einer diplomatischen Garantie, für die Weigerung, ihn in London einzuvernehmen, nur eine Erklärung: Man wollte ihn in die Finger kriegen, um ihn an die USA ausliefern zu können. Was sich in Schweden im Rahmen einer strafrechtlichen Voruntersuchung innert weniger Wochen an Rechtsbrüchen akkumuliert hat, ist absolut grotesk. Der Staat hat den beiden Frauen einen Rechtsvertreter bestellt, der ihnen erklärt hat, Vergewaltigung sei ein Offizialdelikt, sodass die strafrechtliche Interpretation ihrer Erfahrung Sache des Staates sei, nicht mehr

ihre. Auf den Widerspruch zwischen den Aussagen der Frauen und der Version der Behörden angesprochen, sagt deren Rechtsvertreter, die Frauen «seien halt keine Juristinnen». Doch die Staatsanwaltschaft vermeidet es fünf Jahre lang, Assange zu der ihm vorgeworfenen Vergewaltigung auch nur zu vernehmen, bis seine Anwälte letztlich an das höchste schwedische Gericht gelangen, um zu erzwingen, dass die Staatsanwaltschaft entweder endlich Anklage erhebt oder das Verfahren einstellt. Als die Schweden den Engländern mitteilen, dass sie das Verfahren möglicherweise einstellen müssten, schrieben die Briten besorgt zurück: *«Don't you dare get cold feet!!»* Kriegt jetzt bloss keine kalten Füsse.


[redacted]

Från: [redacted]cps.gsi.gov.uk]
Skickat: den 31 augusti 2012 12:07
Till: Ny Marianne
Kopia: [redacted]
Ämne: FW: Assange on PA

Marianne [redacted]

Journalists!!!

Don't you dare get cold feet!!

Hope you are both well. Still thinking of you [always]!

[redacted]

«Kriegt jetzt bloss keine kalten Füsse!!»: Mail der englischen Strafverfolgungsbehörde CPS an die leitende schwedische Staatsanwältin Marianne Ny. Dieses Dokument hat die italienische Investigativ-Journalistin Stefania Maurizi durch ihre fünfjährige «Freedom of Information»-Klage bekommen. Diese ist nicht abgeschlossen.

Wie bitte?
Ja, die Engländer, namentlich der Crown Prosecution Service, wollten die Schweden unbedingt davon abhalten, das Verfahren einzustellen. Dabei müssten die Engländer doch eigentlich froh sein, wenn sie nicht mehr für Millionen an Steuergeldern die Botschaft Ecuadors überwachen müssten, um Assanges Flucht zu verhindern.

Warum sind die Engländer daran interessiert, dass die Schweden das Verfahren nicht einstellen?
Wir müssen aufhören zu glauben, dass es hier wirklich darum gegangen ist, eine Untersuchung wegen Sexualdelikten zu führen. Was Wikileaks getan hat, bedroht die politischen Eliten in den USA, England, Frankreich und Russland gleichermassen. Wikileaks veröffentlicht geheime staatliche Informationen – sie sind «Anti-Geheimhaltung». Und das wird in einer Welt, in der auch in sogenannt reifen Demokratien die Geheimhaltung überhandgenommen hat, als fundamentale Bedrohung wahrgenommen. Assange hat deutlich gemacht, dass es den Staaten heute nicht mehr um legitime Vertraulichkeit geht, sondern um die Unterdrückung wichtiger Informationen zu Korruption und Verbrechen. Nehmen wir den emblematischen Wikileaks-Fall aus den Leaks von Chelsea Manning: Das sogenannte «Collateral Murder»-Video. *(Am 5. April 2010 veröffentlicht Wikileaks ein als geheim eingestuftes Video des US-Militärs, das zeigt, wie US-Soldaten in Bagdad mehrere Menschen ermorden, darunter zwei Mitarbeiter der Nachrichtenagentur Reuters; Anmerkung der Redaktion.)* Als langjähriger IKRK-Rechtsberater und Delegierter in Kriegsgebieten kann ich Ihnen sagen: Es handelt sich dabei zweifellos um ein Kriegsverbrechen. Eine Helikoptercrew mäht Menschen nieder. Es mag sogar sein, dass einer oder zwei von diesen Leuten eine Waffe dabeihatten. Aber es wird ganz gezielt auf Verletzte geschossen. Das ist ein Kriegsverbrechen. *«He is wounded»,* hört man einen Amerikaner sagen. *«I'm firing»* Und dann wird gelacht. Dann kommt ein Minibus angefahren, der die Verwundeten retten will. Der Fahrer hat

zwei Kinder mit dabei. Man hört die Soldaten sagen: Selber schuld, wenn er Kinder auf das Schlachtfeld bringt. Und dann wird gefeuert. Der Vater und die Verwundeten sind sofort tot, die Kinder überleben schwer verletzt. Durch die Publikation werden wir direkte Zeugen eines kriminellen, gewissenlosen Massakers.

Was sollte denn ein Rechtsstaat in einem solchen Fall machen?
Ein Rechtsstaat würde möglicherweise gegen Chelsea Manning ermitteln wegen Amtsgeheimnisverletzung, weil sie das Video an Assange weitergegeben hat. Er würde aber sicher nicht Assange verfolgen, denn dieser hat das Video im öffentlichen Interesse publiziert, im Sinne des klassischen investigativen Journalismus. Was ein Rechtsstaat aber vor allem tun würde, ist, dass er die Kriegsverbrecher verfolgt und bestraft. Diese Soldaten gehören hinter Gitter. Es wurde aber gegen keinen einzigen von ihnen ein Strafverfahren durchgeführt. Stattdessen sitzt der Mann, der die Öffentlichkeit informiert hat, in London in Auslieferungshaft und könnte in den USA dafür 175 Jahre ins Gefängnis kommen. Das ist ein Strafmass, das vollkommen absurd ist. Als Vergleich: Die Hauptkriegsverbrecher im Jugoslawien-Tribunal haben Strafen von 45 Jahren bekommen. 175 Jahre Gefängnis unter Haftbedingungen, die vom Uno-Sonderberichterstatter und von Amnesty International als unmenschlich eingestuft werden. Das wirklich Erschreckende an diesem Fall ist der rechtsfreie Raum, der sich entwickelt hat: Mächtige können straflos über Leichen gehen, und aus Journalismus wird Spionage. Es wird ein Verbrechen, die Wahrheit zu sagen.

«Schauen Sie, wo wir in 20 Jahren stehen werden, wenn Assange verurteilt wird. Was Sie dann als Journalist noch schreiben können. Ich bin überzeugt, dass wir in ernsthafter Gefahr sind, die Pressefreiheit zu verlieren»: Nils Melzer.

Was erwartet Assange, wenn er ausgeliefert wird?
Er wird kein rechtsstaatliches Verfahren bekommen. Auch deswegen darf er nicht ausgeliefert werden. Assange wird vor ein Geschworenengericht in Alexandria, Virginia, kommen. Vor den berüchtigten «Espionage Court», wo die USA alle National-Security-Fälle führt. Der Ort ist kein Zufall, denn die Geschworenen müssen jeweils proportional zur lokalen Bevölkerung ausgewählt werden, und in Alexandria arbeiten 85 Prozent der Einwohner bei der National-Security-Community, also bei der CIA, der NSA, dem Verteidigungsdepartement und dem Aussenministerium. Wenn Sie vor so einer Jury wegen Verletzung der nationalen Sicherheit angeklagt werden, dann ist das Urteil schon von Anfang an klar. Das Verfahren wird immer von derselben Einzelrichterin geführt, hinter geschlossenen Türen und aufgrund geheimer Beweismittel. Niemand wurde dort in einem solchen Fall jemals freigesprochen. Die meisten Angeklagten machen daher einen Deal, in dem sie sich zumindest teilweise schuldig bekennen und dafür eine mildere Strafe bekommen.

Sie sagen: Julian Assange wird in den USA kein rechtsstaatliches Verfahren bekommen?

Ohne Zweifel. Solange sich US-Staatsangestellte an die Befehle ihrer Vorgesetzten halten, können sie Aggressionskriege, Kriegsverbrechen und Folter begehen im Wissen, dass sie nicht verfolgt werden. Wo ist da die Lektion der Nürnberger Prozesse? Ich habe lange genug in Konfliktgebieten gearbeitet, um zu wissen, dass in Kriegen Fehler passieren. Das ist nicht immer gewissenlose Kriminalität, sondern vieles passiert aus Stress, Überlastung und Panik heraus. Deshalb kann ich es durchaus nachvollziehen, wenn Regierungen sagen: Wir bringen die Wahrheit zwar ans Licht, und wir übernehmen als Staat die Verantwortung für den angerichteten Schaden, aber wenn das individuelle Verschulden nicht allzu schwer wiegt, fällen wir keine drakonischen Strafen. Wenn die Wahrheit aber unterdrückt wird und Verbrecher nicht mehr zur Verantwortung gezogen werden, wird es extrem gefährlich. In den Dreissigerjahren des vergangenen Jahrhunderts traten Deutschland und Japan aus dem Völkerbund aus. Fünfzehn Jahre später lag die Welt in Trümmern. Heute sind die USA aus dem Menschenrechtsrat der Uno ausgetreten, und weder das «Collateral Murder»-Massaker, die CIA-Folterungen nach 9/11 oder der Aggressionskrieg gegen den Irak haben zu strafrechtlichen Untersuchungen geführt. Jetzt folgt Grossbritannien diesem Beispiel: Dort hat das eigene Parlament, das Intelligence and Security Committee, 2018 zwei grosse Berichte veröffentlicht, die bewiesen, dass Grossbritannien viel tiefer involviert war in die geheimen CIA-Folterprogramme als bisher angenommen. Das Komitee verlangte eine gerichtliche Untersuchung. Die erste Amtshandlung von Boris Johnson war, dass er diese Untersuchung annulliert hat.

4. In England gibt es bei Kautionsverstössen normalerweise nur Bussen, allenfalls ein paar Tage Haft. Assange jedoch wird im Schnellverfahren zu 50 Wochen in einem Hochsicherheitsgefängnis verurteilt ohne Möglichkeit, seine eigene Verteidigung vorzubereiten

Im April 2019 wurde Julian Assange von der englischen Polizei aus der ecuadorianischen Botschaft geschleppt. Wie beurteilen Sie dieses Vorgehen?
2017 bekommt Ecuador eine neue Regierung. Daraufhin schreibt der US-Kongress einen Brief: Es würde uns freuen, wenn die USA mit Ecuador kooperieren könnten. Es geht natürlich auch um viel Geld. Aber es gebe da ein Hindernis: Julian Assange. Man sei gewillt, zu kooperieren, wenn Ecuador Assange an die USA übergebe. Ab diesem Moment beginnt in der ecuadorianischen Botschaft der Druck auf Assange massiv zu wachsen. Man macht ihm das Leben schwer. Aber er bleibt. Dann hebt Ecuador sein Asyl auf und gibt England grünes Licht für die Verhaftung. Da ihm die vorherige Regierung die ecuadorianische Staatsbürgerschaft verliehen hatte, musste Assange auch gleich noch der Pass entzogen werden, denn die Verfassung Ecuadors verbietet die Auslieferung eigener Staatsbürger. Das passiert alles über Nacht und ohne jedes rechtsstaatliche Verfahren. Assange hat keine Möglichkeit, Stellung zu nehmen oder Rechtsmittel zu ergreifen. Er wird von den Briten verhaftet und noch am gleichen Tag einem englischen Richter vorgeführt, der ihn wegen Kautionsverletzung verurteilt.

Dieses schnelle Aburteilen – wie beurteilen Sie das?
Assange hatte nur 15 Minuten Zeit, sich mit seinem Anwalt vorzubereiten. Das Verfahren selber dauerte ebenfalls 15 Minuten. Assanges Anwalt legte ein dickes Dossier auf den Tisch und erhob Einspruch wegen Befangenheit

einer beteiligten Richterin, weil ihr Mann in 35 Fällen von Wikileaks exponiert worden sei. Der Richter wischte die Bedenken ohne jede Prüfung vom Tisch. Seiner Kollegin einen Interessenkonflikt vorzuwerfen, sei ein Affront. Assange hatte während der Verhandlung nur einen Satz gesagt: *«I-plead not guilty.»* (auf Deutsch: Ich plädiere auf nicht schuldig.) Der Richter wandte sich ihm zu und sagte: *«You are a narcissist who cannot get beyond his own self-interest. I convict you for bail violation.»* (auf Deutsch: Sie sind ein Narzisst, der nur an seine eigenen Interessen denkt. Ich verurteile Sie wegen Verletzung der Kautionsauflagen.)

Wenn ich Sie richtig verstehe: Julian Assange hatte von Anfang an gar nie eine Chance?
Das ist der Punkt. Ich sage nicht, Julian Assange sei ein Engel. Oder ein Held. Aber das muss er auch nicht sein. Denn wir sprechen von Menschenrechten und nicht von Engels- oder Heldenrechten. Assange ist ein Mensch, er hat das Recht, sich zu verteidigen und menschlich behandelt zu werden. Was auch immer man Assange vorwirft, er hat ein Recht auf ein faires Verfahren. Das hat man ihm konsequent verwehrt, und zwar sowohl in Schweden wie auch in den USA, in England und in Ecuador. Stattdessen liess man ihn fast sieben Jahre in der Schwebe in einem Zimmer schmoren. Dann wird er unvermittelt rausgerissen und innert Stunden und ohne jede Vorbereitung wegen eines Kautionsverstosses verurteilt, der darin bestand, dass er von einem anderen Uno-Mitgliedsstaat wegen politischer Verfolgung diplomatisches Asyl erhalten hatte, ganz so, wie es das Völkerrecht vorsieht und wie es unzählige chinesische, russische und andere Dissidenten in westlichen Botschaften gemacht haben. Es ist offensichtlich, dass es sich hier um einen politischen Verfolgungsprozess handelt. Auch gibt es in England bei Verstössen gegen Kautionsauflagen kaum Haftstrafen, sondern im Regelfall nur Bussen. Assange hingegen wurde im Schnellverfahren zu 50 Wochen Haft in einem Hochsicherheitsgefängnis verurteilt – eine offensichtlich unverhältnismässige Strafe, die nur einen Zweck hatte: Assange so lange festzusetzen, bis die USA ihre Spionagevorwürfe in Ruhe vervollständigen konnten.

Wie beurteilen Sie als Uno-Sonderbeauftragter für Folter seine momentanen Haftbedingungen?
England verweigert Julian Assange den Kontakt zu seinen Anwälten in den USA, wo ein geheimes Verfahren gegen ihn läuft. Auch seine britische Anwältin beklagt sich, dass sie nicht einmal genügend Zugang zu ihm hat, um die Gerichtseingaben und Beweismittel mit ihm durchzugehen. Bis im Oktober durfte er kein einziges Dokument seiner Rechtsakten in seiner Zelle haben. Man hat ihm das Grundrecht verweigert, seine Verteidigung vorzubereiten, wie es die Europäische Menschenrechtskonvention verlangt. Hinzu kommt die fast vollständige Isolationshaft, die völlig unverhältnismässige Haftstrafe wegen Kautionsverstosses. Sobald er die Zelle verliess, wurden die Korridore leer geräumt, um jeden Kontakt mit anderen Insassen zu vermeiden.

Derartige Bedingungen für einen simplen Kautionsverstoss: Wann wird Haft zu Folter?
Julian Assange wurde von Schweden, England, Ecuador und den USA gezielt psychologisch gefoltert. Zuerst mit der Art von zutiefst willkürlicher Prozessführung. Die Verfahrensführung von Schweden, mit aktiver Beihilfe durch England, war darauf ausgerichtet, ihn unter Druck zu setzen und in der Botschaft festzusetzen. Es ging Schweden nie darum, die Wahrheit herauszufinden und diesen Frauen zu helfen, sondern darum, Assange in eine Ecke zu drängen. Es handelt sich um den Missbrauch von Justizverfahren, um einen Menschen in eine Position zu bringen, in der er sich

nicht wehren kann. Dazu kamen die Überwachungsmassnahmen, die Beleidigungen, Erniedrigungen und Angriffe durch Politiker dieser Länder bis hin zu Todesdrohungen. Dieser konstante Missbrauch staatlicher Macht verursachte bei Assange enorme Stress- und Angstzustände und hat messbare kognitive und neurologische Schäden hinterlassen. Ich habe Assange im Mai 2019 in seiner Zelle in London besucht mit zwei erfahrenen, weltweit respektierten Ärzten, die auf die forensische und psychiatrische Untersuchung von Folteropfern spezialisiert sind. Die Diagnose der beiden Ärzte war eindeutig: Julian Assange zeigte die typischen Symptome psychologischer Folter. Wenn er nicht bald in Schutz genommen werde, sei mit einer rapiden Verschlechterung seines Gesundheitszustandes zu rechnen, bis hin zur Todesfolge.

Als er bereits ein halbes Jahr in England in Ausschaffungshaft sitzt, stellt Schweden das Verfahren gegen Assange im November 2019 plötzlich sehr leise ein. Nach neun langen Jahren. Was ist da passiert?
Fast ein Jahrzehnt lang hat der schwedische Staat Julian Assange ganz gezielt öffentlich als Sexualstraftäter an den Pranger gestellt. Dann stellt man das Verfahren plötzlich ein mit demselben Argument, das die erste Stockholmer Staatsanwältin 2010 bereits nach fünf Tagen geliefert hatte, als sie das Verfahren erstmals einstellte: Die Aussage der Frau sei zwar glaubwürdig, doch bestünden keine Beweise für eine Straftat. Es ist ein unfassbarer Skandal. Aber der Zeitpunkt war kein Zufall. Am 11. November wurde ein offizielles Schreiben veröffentlicht, das ich zwei Monate zuvor an die schwedische Regierung übermittelt hatte. In diesem Schreiben forderte ich die schwedische Regierung auf, in rund 50 Punkten die Vereinbarkeit ihrer Verfahrensführung mit den Menschenrechten zu erklären: Wie ist es möglich, dass die Presse alles sofort erfährt, obwohl das verboten ist? Wie ist es möglich, dass ein Verdacht öffentlich wird, obwohl die Befragung noch gar nicht stattgefunden hat? Wie ist es möglich, dass ihr sagt, es handle sich um eine Vergewaltigung, wenn die betroffene Frau widerspricht? Am Tag der Veröffentlichung erhielt ich von Schweden eine karge Antwort: Die Regierung habe keine weiteren Bemerkungen zu dem Fall.

Was bedeutet diese Antwort?
Es ist ein Schuldeingeständnis.

Warum?
Als Uno-Sonderberichterstatter bin ich von den Staaten beauftragt, Individualbeschwerden von Folteropfern zu prüfen und die Regierungen gegebenenfalls um Erklärungen oder Untersuchungen zu bitten. Das ist meine tägliche Arbeit mit allen Uno-Mitgliedsstaaten. Aus Erfahrung kann ich sagen, dass Staaten, die im guten Glauben handeln, praktisch immer sehr interessiert sind, mir die gewünschten Antworten zu liefern, um die Rechtmässigkeit ihres Verhaltens zu betonen. Wenn ein Staat wie Schweden die Fragen des Uno-Sonderermittlers für Folter nicht beantworten will, dann ist sich die Regierung der Unrechtmässigkeit ihres Verhaltens bewusst. Dann will sie für ihr Handeln keine Verantwortung übernehmen. Weil sie wussten, dass ich nicht lockerlassen würde, haben sie eine Woche später die Reissleine gezogen und das Verfahren eingestellt. Wenn sich Staaten wie Schweden derart manipulieren lassen, dann sind unsere Demokratien und unsere Menschenrechte fundamental bedroht.

Sie sagen: Schweden hat dieses Spiel bewusst gespielt?
Ja. Aus meiner Sicht hat Schweden eindeutig in schlechtem Glauben gehandelt. Hätten sie im guten Glauben gehandelt, gäbe es keinen Grund, mir die Antworten zu verweigern. Dasselbe gilt für die Briten: Sie haben nach meinem Besuch bei Assange im Mai 2019 fünf Monate gebraucht, um mir zu antworten. In einem einseitigen Brief, der sich im Wesentlichen

darauf beschränkte, jeden Foltervorwurf und jede Verfahrensverletzung zurückzuweisen. Für derartige Spielchen braucht es mein Mandat nicht. Ich bin der Sonderberichterstatter für Folter der Vereinten Nationen. Ich bin beauftragt, klare Fragen zu stellen und Antworten einzufordern. Was ist die Rechtsgrundlage dafür, jemandem das fundamentale Recht seiner eigenen Verteidigung zu verweigern? Warum wird ein ungefährlicher, nicht gewalttätiger Mann monatelang in Isolationshaft gehalten, wo doch die Uno-Standards jede Isolationshaft von mehr als 15 Tagen grundsätzlich verbieten? Keiner dieser Uno-Mitgliedsstaaten hat eine Untersuchung eingeleitet, meine Fragen beantwortet oder auch nur den Dialog gesucht.

5. 175 Jahre Haft für Journalismus und Straflosigkeit für Kriegsverbrechen. Die möglichen Folgen des Präzedenzfalls USA vs. Julian Assange

Was bedeutet es, wenn Uno-Mitgliedsstaaten ihrem eigenen Folter-Sonderberichterstatter die Auskunft verweigern?
Dass es ein abgekartetes Spiel ist. Man möchte an Julian Assange mit einem Schauprozess ein Exempel statuieren. Es geht um die Einschüchterung anderer Journalisten. Einschüchterung ist im Übrigen einer der Hauptzwecke, für den Folter weltweit eingesetzt wird. Die Botschaft an uns alle ist: Das ist es, was mit euch passiert, wenn ihr das Modell Wikileaks kopiert. Ein Modell, das so gefährlich ist, weil es so einfach ist: Menschen, die an brisante Informationen ihrer Regierungen oder Firmen gelangt sind, übermitteln diese an Wikileaks, und der Whistleblower bleibt dabei anonym. Wie bedrohlich das empfunden wird, zeigt sich an der Reaktion: Vier demokratische Staaten schliessen sich zusammen, USA, Ecuador, Schweden und Grossbritannien, um mit ihrer geballten Macht aus einem Mann ein Monster zu machen, damit man ihn nachher auf dem Scheiterhaufen verbrennen kann, ohne dass jemand aufschreit. Der Fall ist ein Riesenskandal und die Bankrotterklärung der westlichen Rechtsstaatlichkeit. Wenn Julian Assange verurteilt wird, dann ist das ein Todesurteil für die Pressefreiheit.

Was bedeutet dieser mögliche Präzedenzfall für den Journalismus?
Konkret bedeutet das, dass Sie als Journalist sich jetzt wehren müssen. Denn wenn investigativer Journalismus einmal als Spionage eingestuft wird und überall auf der Welt verfolgt werden kann, folgen Zensur und Tyrannei. Vor unseren Augen kreiert sich ein mörderisches System. Kriegsverbrechen und Folter werden nicht verfolgt. Youtube-Videos zirkulieren, auf denen amerikanische Soldaten damit prahlen, gefangene irakische Frauen mit routinemässiger Vergewaltigung in den Selbstmord getrieben zu haben. Niemand untersucht das. Gleichzeitig wird einer mit 175 Jahren Gefängnis bedroht, der solche Dinge aufdeckt. Er wird ein Jahrzehnt lang überzogen mit Anschuldigungen, die nicht nachgewiesen werden, die ihn kaputtmachen. Und niemand haftet dafür. Niemand übernimmt die Verantwortung. Es ist eine Erosion des Sozialvertrags. Wir übergeben den Staaten die Macht, delegieren diese an die Regierungen – aber dafür müssen sie uns Rede und Antwort stehen, wie sie diese Macht ausüben. Wenn wir das nicht verlangen, werden wir unsere Rechte über kurz oder lang verlieren. Menschen sind nicht von Natur aus demokratisch. Macht korrumpiert, wenn sie nicht überwacht wird. Korruption ist das Resultat, wenn wir nicht insistieren, dass die Macht überwacht wird.

«Es handelt sich um den Missbrauch von Justizverfahren, um einen Menschen in eine Position zu bringen, in der er sich nicht wehren kann.»

Sie sagen: Der Angriff auf Assange bedroht die Pressefreiheit im Kern.
Schauen Sie, wo wir in 20 Jahren stehen werden, wenn Assange verurteilt wird. Was Sie dann als Journalist noch schreiben können. Ich bin überzeugt, dass wir in ernsthafter Gefahr sind, die Pressefreiheit zu verlieren. Es passiert ja schon: Plötzlich wird im Zusammenhang mit dem «Afghan War Diary» das Hauptquartier von ABC News in Australien durchsucht. Der Grund? Wieder hat die Presse das Missverhalten von Staatsvertretern enthüllt. Damit die Gewaltenteilung funktioniert, braucht es eine Überwachung der Staatsgewalt durch eine freie Presse als die vierte Macht im Staat. Wikileaks ist eine logische Konsequenz eines Prozesses: Wenn die Wahrheit nicht mehr aufgearbeitet werden kann, weil alles von Geheimhaltung überzogen ist, wenn Untersuchungsberichte zur Folterpolitik der US-Regierung geheimgehalten und selbst die veröffentlichte Zusammenfassung über weite Strecken geschwärzt wird, kommt es zwangsläufig irgendwann zu einem Leck. Wikileaks ist die Folge wuchernder Geheimhaltung und widerspiegelt die mangelnde Transparenz unserer modernen Staatswesen. Sicher, es gibt enge Zonen, wo Vertraulichkeit durchaus wichtig sein kann. Aber wenn wir nicht mehr wissen, was unsere Regierungen tun und nach welchen Kriterien und wenn Straftaten nicht mehr verfolgt werden, dann ist das für die gesellschaftliche Integrität unglaublich gefährlich.

Mit welchen Folgen?
Als Uno-Sonderberichterstatter für Folter und vorher als IKRK-Delegierter habe ich schon viel Schrecken und Gewalt gesehen. Wie schnell sich friedliche Länder wie Jugoslawien oder Ruanda in eine Hölle verwandeln können. An der Wurzel solcher Entwicklungen stehen immer Strukturen mangelnder Transparenz und unkontrollierter politischer oder wirtschaftlicher Macht, kombiniert mit der Naivität, Gleichgültigkeit und Manipulierbarkeit der Bevölkerung. Plötzlich kann das, was heute immer nur den anderen passiert – ungesühnte Folter, Vergewaltigung, Vertreibung und Ermordung – ebenso gut auch uns oder unseren Kindern passieren. Und es wird kein Hahn danach krähen. Das kann ich Ihnen versichern.

«I have never seen a comparable case» – Nils Melzer, the UN Special Rapporteur on Torture.

«A murderous system is being created before our very eyes»

A made-up rape allegation and fabricated evidence in Sweden, pressure from the UK not to drop the case, a biased judge, detention in a maximum security prison, psychological torture – and soon extradition to the U.S., where he could face up to 175 years in prison for exposing war crimes. For the first time, the UN Special Rapporteur on Torture, Nils Melzer, speaks in detail about the explosive findings of his investigation into the case of Wikileaks founder Julian Assange.

An interview by Daniel Ryser, Yves Bachmann (Photos) and Charles Hawley (Translation), 31.01.2020

«Vor unseren Augen kreiert sich ein mörderisches System»

Hier finden Sie das Interview in der deutschsprachigen Originalversion.

1. The Swedish Police constructed a story of rape

Nils Melzer, why is the UN Special Rapporteur on Torture interested in Julian Assange?
That is something that the German Foreign Ministry recently asked me as well: Is that really your core mandate? Is Assange the victim of torture?

What was your response?
The case falls into my mandate in three different ways: First, Assange published proof of systematic torture. But instead of those responsible for the torture, it is Assange who is being persecuted. Second, he himself has been ill-treated to the point that he is now exhibiting symptoms of psychological torture. And third, he is to be extradited to a country that holds people like him in prison conditions that Amnesty International has described as torture. In summary: Julian Assange uncovered torture, has been tortured himself and could be tortured to death in the United States. And a case like that isn't supposed to be part of my area of responsibility? Beyond that, the case is of symbolic importance and affects every citizen of a democratic country.

Why didn't you take up the case much earlier?
Imagine a dark room. Suddenly, someone shines a light on the elephant in the room – on war criminals, on corruption. Assange is the man with the spotlight. The governments are briefly in shock, but then they turn the spotlight around with accusations of rape. It is a classic maneuver when it comes to manipulating public opinion. The elephant once again disappears into the darkness, behind the spotlight. And Assange becomes the focus of attention instead, and we start talking about whether Assange is skateboarding in the embassy or whether he is feeding his cat correctly. Suddenly, we all know that he is a rapist, a hacker, a spy and a narcissist. But the abuses and war crimes he uncovered fade into the darkness. I also lost my focus, despite my professional experience, which should have led me to be more vigilant.

Fifty weeks in prison for violating his bail: Julian Assange in January 2020 in a police van on the way to London's maximum security Belmarsh prison. Dominic Lipinski/Press Association Images/Keystone

Let's start at the beginning: What led you to take up the case?
In December 2018, I was asked by his lawyers to intervene. I initially declined. I was overloaded with other petitions and wasn't really familiar with the case. My impression, largely influenced by the media, was also colored by the prejudice that Julian Assange was somehow guilty and that he wanted to manipulate me. In March 2019, his lawyers approached me for a second time because indications were mounting that Assange would soon be expelled from the Ecuadorian Embassy. They sent me a few key documents and a summary of the case and I figured that my professional integrity demanded that I at least take a look at the material.

And then?
It quickly became clear to me that something was wrong. That there was a contradiction that made no sense to me with my extensive legal experience: Why would a person be subject to nine years of a preliminary investigation for rape without charges ever having been filed?

Is that unusual?
I have never seen a comparable case. Anyone can trigger a preliminary investigation against anyone else by simply going to the police and accusing the other person of a crime. The Swedish authorities, though, were never interested in testimony from Assange. They intentionally left him in limbo. Just imagine being accused of rape for nine-and-a-half years by an entire state apparatus and by the media without ever being given the chance to defend yourself because no charges had ever been filed.

You say that the Swedish authorities were never interested in testimony from Assange. But the media and government agencies have painted a completely different picture over the years: Julian Assange, they say, fled the Swedish judiciary in order to avoid being held accountable.
That's what I always thought, until I started investigating. The opposite is true. Assange reported to the Swedish authorities on several occasions because he wanted to respond to the accusations. But the authorities stonewalled.

What do you mean by that: «The authorities stonewalled?»
Allow me to start at the beginning. I speak fluent Swedish and was thus able to read all of the original documents. I could hardly believe my eyes:

According to the testimony of the woman in question, a rape had never even taken place at all. And not only that: The woman's testimony was later changed by the Stockholm police without her involvement in order to somehow make it sound like a possible rape. I have all the documents in my possession, the emails, the text messages.

«The woman's testimony was later changed by the police» – how exactly?
On Aug. 20, 2010, a woman named S. W. entered a Stockholm police station together with a second woman named A. A. The first woman, S. W. said she had had consensual sex with Julian Assange, but he had not been wearing a condom. She said she was now concerned that she could be infected with HIV and wanted to know if she could force Assange to take an HIV test. She said she was really worried. The police wrote down her statement and immediately informed public prosecutors. Even before questioning could be completed, S. W. was informed that Assange would be arrested on suspicion of rape. S. W. was shocked and refused to continue with questioning. While still in the police station, she wrote a text message to a friend saying that she didn't want to incriminate Assange, that she just wanted him to take an HIV test, but the police were apparently interested in «getting their hands on him.»

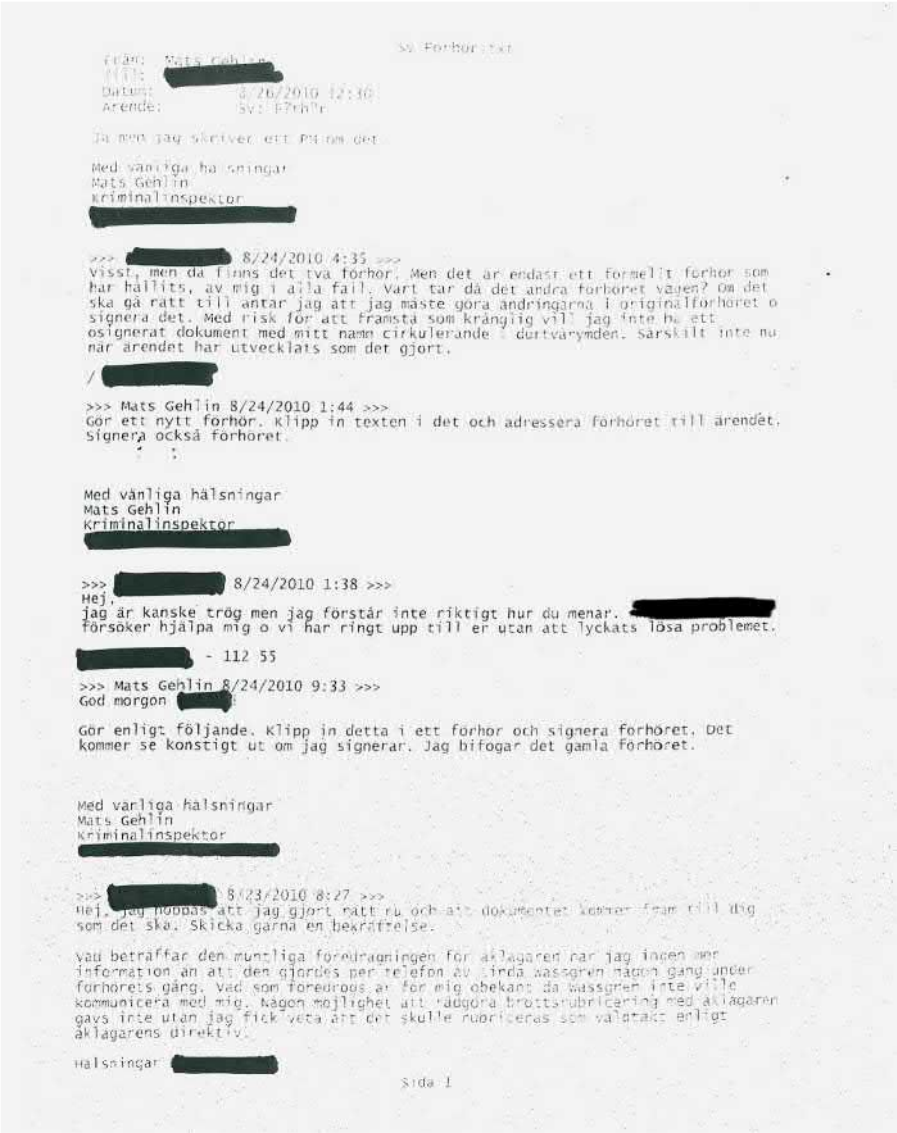
What does that mean?
S.W. never accused Julian Assange of rape. She declined to participate in further questioning and went home. Nevertheless, two hours later, a headline appeared on the front page of Expressen, a Swedish tabloid, saying that Julian Assange was suspected of having committed two rapes.

Two rapes?
Yes, because there was the second woman, A. A. She didn't want to press charges either; she had merely accompanied S. W. to the police station. She wasn't even questioned that day. She later said that Assange had sexually harassed her. I can't say, of course, whether that is true or not. I can only point to the order of events: A woman walks into a police station. She doesn't want to file a complaint but wants to demand an HIV test. The police then decide that this could be a case of rape and a matter for public prosecutors. The woman refuses to go along with that version of events and then goes home and writes a friend that it wasn't her intention, but the police want to «get their hands on» Assange. Two hours later, the case is in the newspaper. As we know today, public prosecutors leaked it to the press – and they did so without even inviting Assange to make a statement. And the second woman, who had allegedly been raped according to the Aug. 20 headline, was only questioned on Aug. 21.

What did the second woman say when she was questioned?
She said that she had made her apartment available to Assange, who was in Sweden for a conference. A small, one-room apartment. When Assange was in the apartment, she came home earlier than planned, but told him it was no problem and that the two of them could sleep in the same bed. That night, they had consensual sex, with a condom. But she said that during sex, Assange had intentionally broken the condom. If that is true, then it is, of course, a sexual offense – so-called «stealthing». But the woman also said that she only later noticed that the condom was broken. That is a contradiction that should absolutely have been clarified. If I don't notice it, then I cannot know if the other intentionally broke it. Not a single trace of DNA from Assange or A. A. could be detected in the condom that was submitted as evidence.

How did the two women know each other?
They didn't really know each other. A. A., who was hosting Assange and was serving as his press secretary, had met S. W. at an event where S. W. was wearing a pink cashmere sweater. She apparently knew from Assange that he was interested in a sexual encounter with S. W., because one evening, she received a text message from an acquaintance saying that he knew Assange was staying with her and that he, the acquaintance, would like to contact Assange. A. A. answered: Assange is apparently sleeping at the moment with the "cashmere girl." The next morning, S. W. spoke with A. A. on the phone and said that she, too, had slept with Assange and was now concerned about having become infected with HIV. This concern was apparently a real one, because S.W. even went to a clinic for consultation. A. A. then suggested: Let's go to the police – they can force Assange to get an HIV test. The two women, though, didn't go to the closest police station, but to one quite far away where a friend of A. A.'s works as a policewoman – who then questioned S. W., initially in the presence of A. A., which isn't proper practice. Up to this point, though, the only problem was at most a lack of professionalism. The willful malevolence of the authorities only became apparent when they immediately disseminated the suspicion of rape via the tabloid press, and did so without questioning A. A. and in contradiction to the statement given by S. W. It also violated a clear ban in Swedish law against releasing the names of alleged victims or perpetrators in sexual offense cases. The case now came to the attention of the chief public prosecutor in the capital city and she suspended the rape investigation some days later with the assessment that while the statements from S. W. were credible, there was no evidence that a crime had been committed.

But then the case really took off. Why?
Now the supervisor of the policewoman who had conducted the questioning wrote her an email telling her to rewrite the statement from S. W.



Sv: Förhör.txt

Från: Mats Gehlin
Till: [redacted]
Datum: 8/26/2010 12:30
Ärende: Sv: förhör

Ja men jag skriver ett PM om det.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/24/2010 4:35 >>>
Visst, men då finns det två förhör. Men det är endast ett formellt förhör som har hållits, av mig i alla fall. Vart tar då det andra förhöret vägen? Om det ska gå rätt till antar jag att jag måste göra ändringarna i originalförhöret o signera det. Med risk för att framstå som krångligt vill jag inte ha ett osignerat dokument med mitt namn cirkulerande i domstolsmiljön. Särskilt inte nu när ärendet har utvecklats som det gjort.

/ [redacted]

>>> Mats Gehlin 8/24/2010 1:44 >>>
Gör ett nytt förhör. Klipp in texten i det och adressera förhöret till ärendet. Signera också förhöret.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/24/2010 1:38 >>>
Hej,
jag är kanske trög men jag förstår inte riktigt hur du menar. [redacted]
försöker hjälpa mig o vi har ringt upp till er utan att lyckats lösa problemet.

[redacted] - 112 55

>>> Mats Gehlin 8/24/2010 9:33 >>>
God morgon [redacted]

Gör enligt följande. Klipp in detta i ett förhör och signera förhöret. Det kommer se konstigt ut om jag signerar. Jag bifogar det gamla förhöret.

Med vänliga hälsningar
Mats Gehlin
Kriminalinspektor
[redacted]

>>> [redacted] 8/23/2010 8:27 >>>
Hej, jag hoppas att jag gjort rätt nu och att dokumentet kommer fram till dig som det ska. Skicka gärna en bekräftelse.

Vad beträffar den muntliga föredragningen för åklagaren har jag inget mer information än att den gjordes per telefon av Jorda Wassgren någon gång under förhörets gång. Vad som föredrogs är för mig obekant då Wassgren inte ville kommunicera med mig. Någon möjlighet att rådgöra brottsrubricering med åklagaren gavs inte utan jag fick veta att det skulle rubriceras som våldtäkt enligt åklagarens direktiv.

Hälsningar [redacted]

Sida 1

The original copies of the mail exchanges between the Swedish police.

What did the policewoman change?
We don't know, because the first statement was directly written over in the computer program and no longer exists. We only know that the original statement, according to the chief public prosecutor, apparently did not contain any indication that a crime had been committed. In the edited form it says that the two had had sex several times – consensual and with a condom. But in the morning, according to the revised statement, the woman woke up because he tried to penetrate her without a condom. She asks: «Are you wearing a condom?» He says: «No.» Then she says: «You better not have HIV» and allows him to continue. The statement was edited without the involvement of the woman in question and it wasn't signed by her. It is a manipulated piece of evidence out of which the Swedish authorities then constructed a story of rape.

Why would the Swedish authorities do something like that?
The timing is decisive: In late July, Wikileaks – in cooperation with the «New York Times», the «Guardian» and «Der Spiegel» – published the «-Afghan War Diary». It was one of the largest leaks in the history of the U.S.- military. The U.S. immediately demanded that its allies inundate Assange with criminal cases. We aren't familiar with all of the correspondence, but Stratfor, a security consultancy that works for the U.S. government, advised American officials apparently to deluge Assange with all kinds of criminal cases for the next 25 years.

2. Assange contacts the Swedish judiciary several times to make a statement – but he is turned down

Why didn't Assange turn himself into the police at the time?
He did. I mentioned that earlier.

Then please elaborate.
Assange learned about the rape allegations from the press. He established contact with the police so he could make a statement. Despite the scandal having reached the public, he was only allowed to do so nine days later, after the accusation that he had raped S. W. was no longer being pursued. But proceedings related to the sexual harassment of A. A. were ongoing. On Aug. 30, 2010, Assange appeared at the police station to make a statement. He was questioned by the same policeman who had since ordered that revision of the statement had been given by S. W. At the beginning of the conversation, Assange said he was ready to make a statement, but added that he didn't want to read about his statement again in the press. That is his right, and he was given assurances it would be granted. But that same evening, everything was in the newspapers again. It could only have come from the authorities because nobody else was present during his questioning. The intention was very clearly that of besmirching his name.

The Swiss Professor of International Law, Nils Melzer, is pictured near Biel, Switzerland.

Where did the story come from that Assange was seeking to avoid Swedish justice officials?
This version was manufactured, but it is not consistent with the facts. Had he been trying to hide, he would not have appeared at the police station of his own free will. On the basis of the revised statement from S.W., an appeal was filed against the public prosecutor's attempt to suspend the

investigation, and on Sept. 2, 2010, the rape proceedings were resumed. A legal representative by the name of Claes Borgström was appointed to the two women at public cost. The man was a law firm partner to the previous justice minister, Thomas Bodström, under whose supervision Swedish security personnel had seized two men who the U.S. found suspicious in the middle of Stockholm. The men were seized without any kind of legal proceedings and then handed over to the CIA, who proceeded to torture them. That shows the trans-Atlantic backdrop to this affair more clearly. After the resumption of the rape investigation, Assange repeatedly indicated through his lawyer that he wished to respond to the accusations. The public prosecutor responsible kept delaying. On one occasion, it didn't fit with the public prosecutor's schedule, on another, the police official responsible was sick. Three weeks later, his lawyer finally wrote that Assange really had to go to Berlin for a conference and asked if he was allowed to leave the country. The public prosecutor's office gave him written permission to leave Sweden for short periods of time.

And then?
The point is: On the day that Julian Assange left Sweden, at a point in time when it wasn't clear if he was leaving for a short time or a long time, a warrant was issued for his arrest. He flew with Scandinavian Airlines from Stockholm to Berlin. During the flight, his laptops disappeared from his checked baggage. When he arrived in Berlin, Lufthansa requested an investigation from SAS, but the airline apparently declined to provide any information at all.

Why?
That is exactly the problem. In this case, things are constantly happening that shouldn't actually be possible unless you look at them from a different angle. Assange, in any case, continued onward to London, but did not seek to hide from the judiciary. Via his Swedish lawyer, he offered public prosecutors several possible dates for questioning in Sweden – this correspondence exists. Then, the following happened: Assange caught wind of the fact that a secret criminal case had been opened against him in the U.S. At the time, it was not confirmed by the U.S., but today we know that it was true. As of that moment, Assange's lawyer began saying that his client was prepared to testify in Sweden, but he demanded diplomatic assurance that Sweden would not extradite him to the U.S.

Was that even a realistic scenario?
Absolutely. Some years previously, as I already mentioned, Swedish security personnel had handed over two asylum applicants, both of whom were registered in Sweden, to the CIA without any legal proceedings. The abuse already started at the Stockholm airport, where they were mistreated, drugged and flown to Egypt, where they were tortured. We don't know if they were the only such cases. But we are aware of these cases because the men survived. Both later filed complaints with UN human rights agencies and won their case. Sweden was forced to pay each of them half a million dollars in damages.

Did Sweden agree to the demands submitted by Assange?
The lawyers say that during the nearly seven years in which Assange lived in the Ecuadorian Embassy, they made over 30 offers to arrange for Assange to visit Sweden – in exchange for a guarantee that he would not be extradited to the U.S. The Swedes declined to provide such a guarantee by arguing that the U.S. had not made a formal request for extradition.

What is your view of the demand made by Assange's lawyers?
Such diplomatic assurances are a routine international practice. People

request assurances that they won't be extradited to places where there is a danger of serious human rights violations, completely irrespective of whether an extradition request has been filed by the country in question or not. It is a political procedure, not a legal one. Here's an example: Say France demands that Switzerland extradite a Kazakh businessman who lives in Switzerland but who is wanted by both France and Kazakhstan on tax fraud allegations. Switzerland sees no danger of torture in France, but does believe such a danger exists in Kazakhstan. So, Switzerland tells France: We'll extradite the man to you, but we want a diplomatic assurance that he won't be extradited onward to Kazakhstan. The French response is not: «Kazakhstan hasn't even filed a request!» Rather, they would, of course, grant such an assurance. The arguments coming from Sweden were tenuous at best. That is one part of it. The other, and I say this on the strength of all of my experience behind the scenes of standard international practice: If a country refuses to provide such a diplomatic assurance, then all doubts about the good intentions of the country in question are justified. Why shouldn't Sweden provide such assurances? From a legal perspective, after all, the U.S. has absolutely nothing to do with Swedish sex offense proceedings.

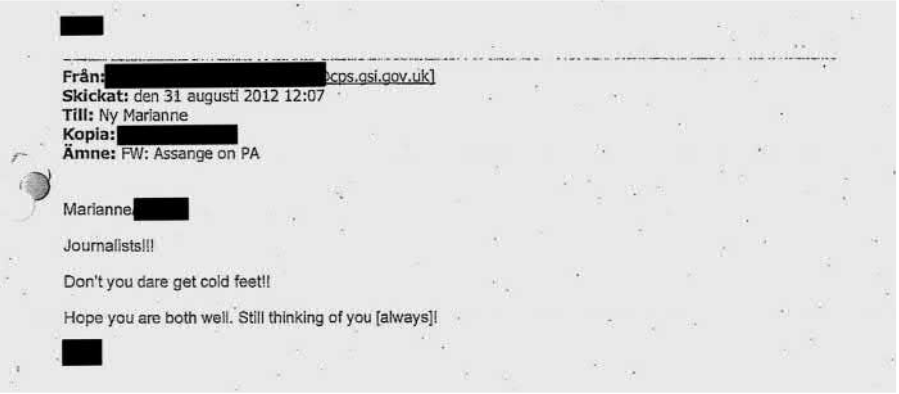
Why didn't Sweden want to offer such an assurance?
You just have to look at how the case was run: For Sweden, it was never about the interests of the two women. Even after his request for assurances that he would not be extradited, Assange still wanted to testify. He said: If you cannot guarantee that I won't be extradited, then I am willing to be questioned in London or via video link.

But is it normal, or even legally acceptable, for Swedish authorities to travel to a different country for such an interrogation?
That is a further indication that Sweden was never interested in finding the truth. For exactly these kinds of judiciary issues, there is a cooperation treaty between the United Kingdom and Sweden, which foresees that Swedish officials can travel to the UK, or vice versa, to conduct interrogations or that such questioning can take place via video link. During the period of time in question, such questioning between Sweden and England took place in 44 other cases. It was only in Julian Assange's case that Sweden insisted that it was essential for him to appear in person.

3. When the highest Swedish court finally forced public prosecutors in Stockholm to either file charges or suspend the case, the British authorities demanded: «Don't get cold feet!!»

Why was that?
There is only a single explanation for everything – for the refusal to grant diplomatic assurances, for the refusal to question him in London: They wanted to apprehend him so they could extradite him to the U.S. The number of breaches of law that accumulated in Sweden within just a few weeks during the preliminary criminal investigation is simply grotesque. The state assigned a legal adviser to the women who told them that the criminal interpretation of what they experienced was up to the state, and no longer up to them. When their legal adviser was asked about contradictions between the women's testimony and the narrative adhered to by public officials, the legal adviser said, in reference to the women: «ah, but they're not lawyers.» But for five long years the Swedish prosecution avoids questioning Assange regarding the purported rape, until his lawyers finally petitioned Sweden's Supreme Court to force the public prosecution to either press charges or

close the case. When the Swedes told the UK that they may be forced to abandon the case, the British wrote back, worriedly: «Don't you dare get cold feet!!»


[redacted]

Från: [redacted]cps.gsi.gov.uk]
Skickat: den 31 augusti 2012 12:07
Till: Ny Marianne
Kopia: [redacted]
Ämne: FW: Assange on PA

Marianne [redacted]

Journalists!!!

Don't you dare get cold feet!!

Hope you are both well. Still thinking of you [always]!

[redacted]

«Don't you dare get cold feet!!»: Mail from the English law enforcement agency CPS to the Swedish Chief Prosecutor Marianne Ny. This Document was obtained by the Italian investigative journalist, Stefania Maurizi, in a five-year long FOIA litigation which is still ongoing.

Are you serious?
Yes, the British, or more specifically the Crown Prosecution Service, wanted to prevent Sweden from abandoning the case at all costs. Though really, the English should have been happy that they would no longer have to spend millions in taxpayer money to keep the Ecuadorian Embassy under constant surveillance to prevent Assange's escape.

Why were the British so eager to prevent the Swedes from closing the case?
We have to stop believing that there was really an interest in leading an investigation into a sexual offense. What Wikileaks did is a threat to the political elite in the U.S., Britain, France and Russia in equal measure. Wikileaks publishes secret state information – they are opposed to classification. And in a world, even in so-called mature democracies, where secrecy has become rampant, that is seen as a fundamental threat. Assange made it clear that countries are no longer interested today in legitimate confidentiality, but in the suppression of important information about corruption and crimes. Take the archetypal Wikileaks case from the leaks supplied by Chelsea Manning: The so-called «Collateral Murder» video. *(Eds. Note: On April 5, 2010, Wikileaks published a classified video from the U.S. military which showed the murder of several people in Baghdad by U.S. soldiers, including two employees of the news agency Reuters.)* As a long-time legal adviser to the International Committee of the Red Cross and delegate in war zones, I can tell you: The video undoubtedly documents a war crime. A helicopter crew simply mowed down a bunch of people. It could even be that one or two of these people was carrying a weapon, but injured people were intentionally targeted. That is a war crime. «He's wounded,» you can hear one American saying. «I'm firing.» And then they laugh. Then a van drives up to save the wounded. The driver has two children with him. You can hear the soldiers say: Well it's their fault for bringing their kids into a battle. And then they open fire. The father and the wounded are immediately killed, though the children survive with serious injuries. Through the publication of the video, we became direct witnesses to a criminal, unconscionable massacre.

What should a constitutional democracy do in such a situation?
A constitutional democracy would probably investigate Chelsea Manning for violating official secrecy because she passed the video along to Assange. But it certainly wouldn't go after Assange, because he published the video in the public interest, consistent with the practices of classic investigative

journalism. More than anything, though, a constitutional democracy would investigate and punish the war criminals. These soldiers belong behind bars. But no criminal investigation was launched into a single one of them. Instead, the man who informed the public is locked away in pre-extradition detention in London and is facing a possible sentence in the U.S. of up to 175 years in prison. That is a completely absurd sentence. By comparison: The main war criminals in the Yugoslavia tribunal received sentences of 45 years. One-hundred-seventy-five years in prison in conditions that have been found to be inhumane by the UN Special Rapporteur and by Amnesty International. But the really horrifying thing about this case is the lawlessness that has developed: The powerful can kill without fear of punishment and journalism is transformed into espionage. It is becoming a crime to tell the truth.

Nils Melzer: «Let's see where we will be in 20 years if Assange is convicted – what you will still be able to write then as a journalist. I am convinced that we are in serious danger of losing press freedoms.»

What awaits Assange once he is extradited?

He will not receive a trial consistent with the rule of law. That's another reason why his extradition shouldn't be allowed. Assange will receive a trial-by-jury in Alexandria, Virginia – the notorious «Espionage Court» where the U.S. tries all national security cases. The choice of location is not by co-

incidence, because the jury members must be chosen in proportion to the local population, and 85 percent of Alexandria residents work in the national security community – at the CIA, the NSA, the Defense Department and the State Department. When people are tried for harming national security in front of a jury like that, the verdict is clear from the very beginning. The cases are always tried in front of the same judge behind closed doors and on the strength of classified evidence. Nobody has ever been acquitted there in a case like that. The result being that most defendants reach a settlement, in which they admit to partial guilt so as to receive a milder sentence.

You are saying that Julian Assange won't receive a fair trial in the United States?
Without doubt. For as long as employees of the American government obey the orders of their superiors, they can participate in wars of aggression, war crimes and torture knowing full well that they will never have to answer to their actions. What happened to the lessons learned in the Nuremberg Trials? I have worked long enough in conflict zones to know that mistakes happen in war. It's not always unscrupulous criminal acts. A lot of it is the result of stress, exhaustion and panic. That's why I can absolutely understand when a government says: We'll bring the truth to light and we, as a state, take full responsibility for the harm caused, but if blame cannot be directly assigned to individuals, we will not be imposing draconian punishments. But it is extremely dangerous when the truth is suppressed and criminals are not brought to justice. In the 1930s, Germany and Japan left the League of Nations. Fifteen years later, the world lay in ruins. Today, the U.S. has withdrawn from the UN Human Rights Council, and neither the «Collateral Murder» massacre nor the CIA torture following 9/11 nor the war of aggression against Iraq have led to criminal investigations. Now, the United Kingdom is following that example. The Security and Intelligence Committee in the country's own parliament published two extensive reports in 2018 showing that Britain was much more deeply involved in the secret CIA torture program than previously believed. The committee recommended a formal investigation. The first thing that Boris Johnson did after he became prime minister was to annul that investigation.

4. In the UK, violations of bail conditions are generally only punished with monetary fines or, at most, a couple of days behind bars. But Assange was given 50 weeks in a maximum-security prison without the ability to prepare his own defense

In April, Julian Assange was dragged out of the Ecuadorian Embassy by British police. What is your view of these events?
In 2017, a new government was elected in Ecuador. In response, the U.S. wrote a letter indicating they were eager to cooperate with Ecuador. There was, of course, a lot of money at stake, but there was one hurdle in the way: Julian Assange. The message was that the U.S. was prepared to cooperate if Ecuador handed Assange over to the U.S. At that point, the Ecuadorian Embassy began ratcheting up the pressure on Assange. They made his life difficult. But he stayed. Then Ecuador voided his amnesty and gave Britain a green light to arrest him. Because the previous government had granted him Ecuadorian citizenship, Assange's passport also had to be revoked, because the Ecuadorian constitution forbids the extradition of its own citizens. All that took place overnight and without any legal proceedings. Assange had no opportunity to make a statement or have recourse to legal remedy. He was arrested by the British and taken before a British judge that same day, who convicted him of violating his bail.

What do you make of this accelerated verdict?
Assange only had 15 minutes to prepare with his lawyer. The trial itself also lasted just 15 minutes. Assange's lawyer plopped a thick file down on the table and made a formal objection to one of the judges for conflict of interest because her husband had been the subject of Wikileaks exposures in 35 instances. But the lead judge brushed aside the concerns without examining them further. He said accusing his colleague of a conflict of interest was an affront. Assange himself only uttered one sentence during the entire proceedings: «I plead not guilty.» The judge turned to him and said: «You are a narcissist who cannot get beyond his own self-interest. I convict you for bail violation.»

If I understand you correctly: Julian Assange never had a chance from the very beginning?
That's the point. I'm not saying Julian Assange is an angel or a hero. But he doesn't have to be. We are talking about human rights and not about the rights of heroes or angels. Assange is a person, and he has the right to defend himself and to be treated in a humane manner. Regardless of what he is accused of, Assange has the right to a fair trial. But he has been deliberately denied that right – in Sweden, the U.S., Britain and Ecuador. Instead, he was left to rot for nearly seven years in limbo in a room. Then, he was suddenly dragged out and convicted within hours and without any preparation for a bail violation that consisted of him having received diplomatic asylum from another UN member state on the basis of political persecution, just as international law intends and just as countless Chinese, Russian and other dissidents have done in Western embassies. It is obvious that what we are dealing with here is political persecution. In Britain, bail violations seldom lead to prison sentences – they are generally subject only to fines. Assange, by contrast, was sentenced in summary proceedings to 50 weeks in a maximum-security prison – clearly a disproportionate penalty that had only a single purpose: Holding Assange long enough for the U.S. to prepare their espionage case against him.

As the UN Special Rapporteur on Torture, what do you have to say about his current conditions of imprisonment?
Britain has denied Julian Assange contact with his lawyers in the U.S., where he is the subject of secret proceedings. His British lawyer has also complained that she hasn't even had sufficient access to her client to go over court documents and evidence with him. Into October, he was not allowed to have a single document from his case file with him in his cell. He was denied his fundamental right to prepare his own defense, as guaranteed by the European Convention on Human Rights. On top of that is the almost total solitary confinement and the totally disproportionate punishment for a bail violation. As soon as he would leave his cell, the corridors were emptied to prevent him from having contact with any other inmates.

And all that because of a simple bail violation? At what point does imprisonment become torture?
Julian Assange has been intentionally psychologically tortured by Sweden, Britain, Ecuador and the U.S. First through the highly arbitrary handling of proceedings against him. The way Sweden pursued the case, with active assistance from Britain, was aimed at putting him under pressure and trapping him in the embassy. Sweden was never interested in finding the truth and helping these women, but in pushing Assange into a corner. It has been an abuse of judicial processes aimed at pushing a person into a position where he is unable to defend himself. On top of that come the surveillance measures, the insults, the indignities and the attacks by politicians from these countries, up to and including death threats. This constant abuse of

state power has triggered serious stress and anxiety in Assange and has resulted in measurable cognitive and neurological harm. I visited Assange in his cell in London in May 2019 together with two experienced, widely respected doctors who are specialized in the forensic and psychological examination of torture victims. The diagnosis arrived at by the two doctors was clear: Julian Assange displays the typical symptoms of psychological torture. If he doesn't receive protection soon, a rapid deterioration of his health is likely, and death could be one outcome.

Half a year after Assange was placed in pre-extradition detention in Britain, Sweden quietly abandoned the case against him in November 2019, after nine long years. Why then?
The Swedish state spent almost a decade intentionally presenting Julian Assange to the public as a sex offender. Then, they suddenly abandoned the case against him on the strength of the same argument that the first Stockholm prosecutor used in 2010, when she initially suspended the investigation after just five days: While the woman's statement was credible, there was no proof that a crime had been committed. It is an unbelievable scandal. But the timing was no accident. On Nov. 11, an official document that I had sent to the Swedish government two months before was made public. In the document, I made a request to the Swedish government to provide explanations for around 50 points pertaining to the human rights implications of the way they were handling the case. How is it possible that the press was immediately informed despite the prohibition against doing so? How is it possible that a suspicion was made public even though the questioning hadn't yet taken place? How is it possible for you to say that a rape occurred even though the woman involved contests that version of events? On the day the document was made public, I received a paltry response from Sweden: The government has no further comment on this case.

What does that answer mean?
It is an admission of guilt.

How so?
As UN Special Rapporteur, I have been tasked by the international community of nations with looking into complaints lodged by victims of torture and, if necessary, with requesting explanations or investigations from governments. That is the daily work I do with all UN member states. From my experience, I can say that countries that act in good faith are almost always interested in supplying me with the answers I need to highlight the legality of their behavior. When a country like Sweden declines to answer questions submitted by the UN Special Rapporteur on Torture, it shows that the government is aware of the illegality of its behavior and wants to take no responsibility for its behavior. They pulled the plug and abandoned the case a week later because they knew I would not back down. When countries like Sweden allow themselves to be manipulated like that, then our democracies and our human rights face a fundamental threat.

You believe that Sweden was fully aware of what it was doing?
Yes. From my perspective, Sweden very clearly acted in bad faith. Had they acted in good faith, there would have been no reason to refuse to answer my questions. The same holds true for the British: Following my visit to Assange in May 2019, they took six months to answer me – in a single-page letter, which was primarily limited to rejecting all accusations of torture and all inconsistencies in the legal proceedings. If you're going to play games like that, then what's the point of my mandate? I am the Special Rapporteur on Torture for the United Nations. I have a mandate to ask clear questions and to demand answers. What is the legal basis for denying

someone their fundamental right to defend themselves? Why is a man who is neither dangerous nor violent held in solitary confinement for several months when UN standards legally prohibit solitary confinement for periods extending beyond 15 days? None of these UN member states launched an investigation, nor did they answer my questions or even demonstrate an interest in dialogue.

5. A prison sentence of 175 years for investigative journalism: The precedent the USA vs. Julian Assange case could set

What does it mean when UN member states refuse to provide information to their own Special Rapporteur on Torture?
That it is a prearranged affair. A show trial is to be used to make an example of Julian Assange. The point is to intimidate other journalists. Intimidation, by the way, is one of the primary purposes for the use of torture around the world. The message to all of us is: This is what will happen to you if you emulate the Wikileaks model. It is a model that is so dangerous because it is so simple: People who obtain sensitive information from their governments or companies transfer that information to Wikileaks, but the whistleblower remains anonymous. The reaction shows how great the threat is perceived to be: Four democratic countries joined forces – the U.S., Ecuador, Sweden and the UK – to leverage their power to portray one man as a monster so that he could later be burned at the stake without any outcry. The case is a huge scandal and represents the failure of Western rule of law. If Julian Assange is convicted, it will be a death sentence for freedom of the press.

What would this possible precedent mean for the future of journalism?
On a practical level, it means that you, as a journalist, must now defend yourself. Because if investigative journalism is classified as espionage and can be incriminated around the world, then censorship and tyranny will follow. A murderous system is being created before our very eyes. War crimes and torture are not being prosecuted. YouTube videos are circulating in which American soldiers brag about driving Iraqi women to suicide with systematic rape. Nobody is investigating it. At the same time, a person who exposes such things is being threatened with 175 years in prison. For an entire decade, he has been inundated with accusations that cannot be proven and are breaking him. And nobody is being held accountable. Nobody is taking responsibility. It marks an erosion of the social contract. We give countries power and delegate it to governments – but in return, they must be held accountable for how they exercise that power. If we don't demand that they be held accountable, we will lose our rights sooner or later. Humans are not democratic by their nature. Power corrupts if it is not monitored. Corruption is the result if we do not insist that power be monitored.

«It has been an abuse of judicial processes aimed at pushing a person into a position where he is unable to defend himself.»

You're saying that the targeting of Assange threatens the very core of press freedoms.

Let's see where we will be in 20 years if Assange is convicted – what you will still be able to write then as a journalist. I am convinced that we are in serious danger of losing press freedoms. It's already happening: Suddenly, the headquarters of ABC News in Australia was raided in connection with the «Afghan War Diary». The reason? Once again, the press uncovered misconduct by representatives of the state. In order for the division of powers to work, the state must be monitored by the press as the fourth estate. WikiLeaks is a the logical consequence of an ongoing process of expanded secrecy: If the truth can no longer be examined because everything is kept secret, if investigation reports on the U.S. government's torture policy are kept secret and when even large sections of the published summary are redacted, leaks are at some point inevitably the result. WikiLeaks is the consequence of rampant secrecy and reflects the lack of transparency in our modern political system. There are, of course, areas where secrecy can be vital. But if we no longer know what our governments are doing and the criteria they are following, if crimes are no longer being investigated, then it represents a grave danger to societal integrity.

What are the consequences?
As the UN Special Rapporteur on Torture and, before that, as a Red Cross delegate, I have seen lots of horrors and violence and have seen how quickly peaceful countries like Yugoslavia or Rwanda can transform into infernos. At the roots of such developments are always a lack of transparency and unbridled political or economic power combined with the naivete, indifference and malleability of the population. Suddenly, that which always happened to the other – unpunished torture, rape, expulsion and murder – can just as easily happen to us or our children. And nobody will care. I can promise you that.

«Sie wollen eine Linie ziehen zwischen Wikileaks und dem übrigen Journalismus, zwischen Assange und den anderen Journalisten»

Julian Assange hat Kriegsverbrechen öffentlich gemacht, dafür wollen ihn die USA wegen Spionage ins Gefängnis werfen. Ein Gespräch mit Wikileaks-Chefredaktor Kristinn Hrafnsson über Transparenz und Journalismus in einer von Geheimhaltung überzogenen Welt. Und über sauberes Handwerk.

Von Daniel Ryser, 24.02.2020

Der TV-Enthüllungsjournalist Kristinn Hrafnsson, 57, fand bei Wikileaks neue Energie: Von 2010 bis 2017 als Sprecher, seit 2018 als Chefredaktor. Hörður Sveinsson

Teil 1. Reykjavík, Kollaps

«Ich bin ein Journalist alter Schule», sagt Kristinn Hrafnsson bei der ersten Zigarette. «Ich komme aus der Zeit der Schreibmaschinen und Faxgeräte.» Und das ist natürlich dann irgendwie überhaupt nicht das, was man vom Chefredaktor einer Internet-Enthüllungsplattform erwarten würde, die immer auf dem neusten Stand der Verschlüsselungstechnologie kommuniziert und den Journalismus in den letzten zehn Jahren mit breit angelegten Medienkooperationen revolutioniert hat. Und die keine eigentlichen Redaktionsräume kennt, «und wenn dem so wäre, dann könnte ich es Ihnen nicht sagen, die Überwachung ist zu massiv», sagt er. (Hrafnsson weiss das, weil Google ihm Ende 2014 mitgeteilt hat, dass die US-Regierung das Unternehmen gezwungen hatte, alle vorhandenen Daten – private Mailkorrespondenz, GPS-Daten – des Wikileaks-Kernteams herauszugeben, jene von Hrafnsson, Sarah Harrison und Joseph Farrell.)

Also quasi alles, nur nicht Schreibmaschinen.

«Ich war lange ein klassischer Reporter», sagt der 57-jährige Isländer. «Ich arbeitete für das Staatsfernsehen. Mit Wikileaks hat sich mein Arbeits-

umfeld komplett verändert. Wir waren von Anfang an onlinebasiert. An keinen Ort gebunden. Das ist kein Nine-to-five-Job. Häufig vergessen die Leute, dass sie mit jemandem telefonieren, der in einer anderen Zeitzone lebt. Aber man gewöhnt sich daran. An die zerstückelten Tage. Nach zwanzig Jahren als klassischer Reporter hatte ich eine gewisse Müdigkeit verspürt. Ich kann behaupten: Diese Müdigkeit spüre ich nicht mehr.»

Und zum neuen Job kam er so.

Kristinn Hrafnsson war im kleinen Island bekannt (und mehrfach ausgezeichnet) für seine Recherchen zu Kriminalität und Korruption. 2009 recherchierte er rund um den drohenden Kollaps der drei grössten isländischen Banken, die im Zuge der Finanzkrise mit angehäuften Milliardenschulden das ganze Land in einen Abgrund zu reissen drohten.

Hrafnsson schaufelte immer mehr Dreck an die Oberfläche. «Aber es fehlte uns das Gesamtbild, was wirklich passiert war.»

Damals reiste ein junger Australier namens Julian Paul Assange nach Island. 2006 hatte er eine Website namens Wikileaks gegründet, wo Whistleblower anonym interne Dokumente von Regierungen und Firmen hochladen konnten.

Das Ziel war Transparenz.

Wenn öffentliches Interesse gegeben war, publizierte Wikileaks die Dokumente. Assange war nach Island gekommen, um befreundete Aktivisten zu treffen – und weil ihm Dokumente aus dem Inneren der Kaupthing Bank zugespielt worden waren, der grössten der drei wankenden Banken. Die Dokumente bewiesen Korruption. Assange veröffentlichte.

«Es war das erste Mal, dass ich von Wikileaks hörte», sagt Hrafnsson. «Ich bekam einen Tipp, dass dort Dokumente hochgeladen worden seien, die für meine Recherchen von Interesse seien. Tatsächlich stiess ich dort auf Dokumente, die belegten, wie die Banker ohne jegliche Sicherheiten Kredite in Milliardenhöhe vergeben hatten.»

Damals habe er ein wenig den Glauben an den Journalismus verloren gehabt. «Weil wir es alle nicht hatten kommen sehen: die Korruption der Banken, das Versagen der Politik, die mit zu laschen Regeln die Krise erst ermöglicht hatte», sagt Hrafnsson. «Ich erkannte schnell, dass das Ideal von Wikileaks purer journalistischer Natur war: die Pflicht, geheime Informationen zu veröffentlichen, wenn die Geheimhaltung der Vertuschung von Korruption und Verbrechen dient.»

Die Oberfläche, unter der es gebrodelt hatte: Assange sprengte sie mit dem System Wikileaks einfach weg. «Damit ist schon beantwortet, warum diese Plattform als derart gefährlich betrachtet wird: Sie steht gegen den Zeitgeist, in dem immer mehr als geheim klassifiziert wird.»

«Für eine Demokratie wird Geheimhaltung schon ab einem sehr frühen Stadium zur Gefahr», sagt Hrafnsson. «Wir haben den kritischen Punkt längst überschritten. Das heutige Mass an Geheimhaltung bedroht die Demokratien fundamental. In den USA steigt seit dem 11. September 2001 die Zahl der als geheim eingestuften Dokumente jedes Jahr stark an. Einfach gesagt: Die Mächtigen betreiben immer mehr Geheimhaltung, während die Bürgerinnen und Bürger immer exponierter werden und es für sie keine Privatsphäre mehr gibt. Das ist ein Ungleichgewicht, das einhergeht mit der wachsenden ökonomischen Ungleichheit.»

Island, 2009: «Die Kaupthing Bank versuchte mit einer gerichtlichen Verfügung, meine Berichterstattung zu verhindern», sagt Hrafnsson. «Es war eine hilflose Aktion, die die Empörung und den Ruf nach Transparenz in der Bevölkerung nur noch verstärkte. Die Dokumente waren ja sowieso auf Wikileaks einzusehen. Bald darauf wanderten die ersten Banker ins Gefängnis.» Daraufhin habe man Assange als Experten ins Parlament eingeladen, und er selber sei bald bei Wikileaks eingestiegen. «Island sollte zu einem Hafen der Transparenz werden, wo auch Whistleblower maximalen Schutz geniessen.»

Teil 2. Bagdad, Body Count

Ich treffe Kristinn Hrafnsson im Frontline Club in London – ein Club für Journalistinnen und Journalisten mit Schwerpunkt Kriegsberichterstattung mit eigenem Restaurant und Schlafzimmern. Hier hatte Julian Assange im Sommer 2010 eine denkwürdige Pressekonferenz abgehalten: die Präsentation des «Afghan War Diary», «eines umfassenden Archivs von geheimem Militärmaterial aus sechs Jahren, das ein ungeschminktes und düsteres Bild des Krieges in Afghanistan zeigt», wie die «New York Times» am 25. Juli 2010 schrieb, die an der Publikation beteiligt war.

Wie sollen Medien zu Informationen kommen, wenn alles der Geheimhaltung unterliegt? Julian Assange 2010 mit dem «Guardian» und einem Bericht über das «Afghan War Diary». EPA/Photoshot/Keystone

Bilder getöteter Kriegsreporter zieren die Wände. Ehemalige Mitglieder des Clubs. Im Treppenhaus erinnert eine Tafel an Jamal Khashoggi, den Journalisten und Kolumnisten der «Washington Post», der 2018 im saudiarabischen Konsulat in Istanbul ermordet worden war.

«Das ist die Zeit, in der wir leben», sagt Hrafnsson, seltsam unaufgeregt, klar, bodenständig, Typ Handwerker, als wir vor dem Club stehen und rauchen. «Ein Alliierter der USA, Saudiarabien, kann eine Todesschwadron in das Land eines Nato-Mitglieds schicken, um einen kritischen Journalisten zu ermorden und zu zerstückeln – und der grosse Aufschrei bleibt aus. Und die Auftraggeber dieser abscheulichen Tat bleiben straffrei.»

Ein paar Monate bevor Julian Assange im Frontline Club die afghanischen «Kriegstagebücher» präsentiert, reist Kristinn Hrafnsson mit einem Kamerateam nach Bagdad: Im Februar war der Enthüllungsplattform von der US-Soldatin Chelsea Manning ein riesiger Datensatz von als geheim

eingestuften militärischen Dokumenten zugespielt worden. Die Dokumente betreffen den Irakkrieg, den Afghanistankrieg, Depeschen von US-Botschaften. Letztere, zum Beispiel, dokumentierten unter anderem die von den USA beobachtete, dokumentierte und tolerierte massive Korruption des tunesischen Autokraten Zine al-Abidine Ben Ali und befeuerten somit bereits laufende Proteste, die Forderung nach Demokratisierung des Landes und schliesslich Ben Alis überstürzten Abgang (er floh im Januar 2011, wenige Wochen nach den Wikileaks-Publikationen, nach Saudiarabien).

Durch die schrittweise Publikation von Dokumenten zwischen April 2010 und August 2011 – in einer bis dato ungesehenen Kooperation verschiedener Medienhäuser, die Wikileaks als Partner gewinnen konnte, zuallererst die «New York Times», der «Spiegel» und der «Guardian» – waren die USA unter anderem gezwungen, die Opferzahlen von irakischen Zivilisten um Zehntausende nach oben zu korrigieren.

«Diese vielen durch den Krieg getöteten Menschen, die meisten davon Zivilisten, waren zwar vom US-Militär registriert, aber nicht öffentlich gemacht worden», sagt Hrafnsson.

Die Leaks dokumentierten Hunderte Fälle von Folter durch US-Soldaten im Irak («The Iraq War Logs»). Oder die Verschleppung und Folterung von Menschen aufgrund völlig unzulänglicher Beweise im Gefangenenlager Guantánamo («Guantánamo Bay files leak»). Und sie dokumentierten das ganze und viel grössere und schrecklichere Ausmass des Krieges in Afghanistan, als bisher vermittelt worden war («The Afghan War Logs»).

Der «Guardian» nannte die «Afghanistan-Tagebücher» «eines der grössten Leaks in der Geschichte des US-Militärs». Die in Kooperation mit Wikileaks, «Spiegel» und «New York Times» publizierten Dokumente seien, so das damalige «Guardian»-Editorial, «ein erschütterndes Porträt des scheiternden Krieges in Afghanistan, das enthüllt, wie Koalitionstruppen Hunderte Zivilisten ermordeten, wie die Angriffe der Taliban zunehmen und wie die Nato-Kommandanten befürchten, dass die angrenzenden Länder Pakistan und Iran den Aufstand befeuern.»

Und die Reise von Hrafnsson nach Bagdad.

Sie war zentral. Und brisant.

Denn die Dokumente enthielten auch ein Video, das die Wahrheit zum Vorschein brachte über einen Vorfall aus dem Jahr 2007, als über ein Dutzend irakische Zivilisten und zwei Reuters-Journalisten ermordet worden waren. Ein Vorfall, der von der US-Regierung nie kommentiert worden war.

Das Video, das von Wikileaks als Auftakt der zahlreichen Leaks am 5. April 2010 unter dem Titel «Collateral Murder» veröffentlicht wurde, zeigt, wie US-Soldaten aus einem Hubschrauber heraus mit Salven aus einem Maschinengewehr ein Dutzend Menschen niedermähen. Darunter die beiden Reuters-Journalisten Namir Noor-Eldeen und Saeed Chmagh sowie einen Mann namens Saleh Matasher Tomal, der in einem kleinen Bus unterwegs war, auf dem Rücksitz sein zehnjähriger Sohn und seine fünfjährige Tochter.

Videostill mit dem Reuters-Journalisten Saeed Chmagh (Mitte), der von US-Soldaten erschossen wurde. Die Aufdeckung von «Collateral Murder» brachte Hrafnsson 2010 die Auszeichnung als Islands Journalist des Jahres. AP Photo/Wikileaks.org/Keystone

«Das Video war ein eindringlicher Gegenstand: eine unbearbeitete Darstellung der Vielschichtigkeit und Grausamkeit moderner Kriegsführung – und er hoffte, dass seine Veröffentlichung eine weltweite Debatte über die Konflikte im Irak und in Afghanistan auslösen würde», schrieb der «New Yorker» später in einem grossen Porträt über Julian Assange.

«In Bagdad traf ich Verwandte der Getöteten», sagt Hrafnsson. «Da sass ich in diesem grossen Raum mit vielen Angehörigen der Getöteten, auch der Witwe von Matasher Tomal, seinen beiden Kindern, und schämte mich für meine Branche. Die Geschichte hatte wegen der beiden Reuters-Journalisten drei Jahre lang zirkuliert, aber niemand war auf die Idee gekommen, vor Ort zu recherchieren. Die Leute vor Ort schien das aber auch nicht weiter zu erstaunen. Der Grund offenbarte sich in den Dokumenten, die wir publizierten: Das fast schon beiläufige Abschlachten von Zivilisten durch Soldaten, etwa durch wahlloses Feuern aus dem vorbeifahrenden Wagen, war im Irak Alltag. Absolut nichts Aussergewöhnliches. Wir haben in Bagdad ihre Version der Geschichte dokumentiert. Etwa, wie sich der Vater über die beiden Kinder warf, um sie zu schützen. So fügte sich das Puzzle zusammen.»

Hrafnsson spürte auch den US-Soldaten Ethan McCord auf: Er kam als Teil eines sogenannten Platoons als Erster an den Ort des Geschehens und zog die beiden Kinder unter ihrem getöteten Vater hervor aus dem zerschossenen Bus. Er trat vor die Kamera.

«McCord wurde ein ausgesprochener Gegner des Krieges», sagt Hrafnsson. «Wie viele andere Soldaten bestätigte er, was man auf diesem Video sieht, das für mich ein Symbol dieses Krieges ist: das Ungleichgewicht der Kräfte; die Blutlust; die totale Geringschätzung menschlichen Lebens durch eine hochgerüstete, martialische Militärmacht. Zivilisten werden mit 3-Zentimeter-Kugeln niedergemetzelt, die eigentlich dafür gemacht sind, Panzer zu durchbrechen. Sie explodieren beim Einschlag. McCord sagte, der Körper von Matasher Tomal sei als solcher gar nicht mehr zu erkennen gewesen.»

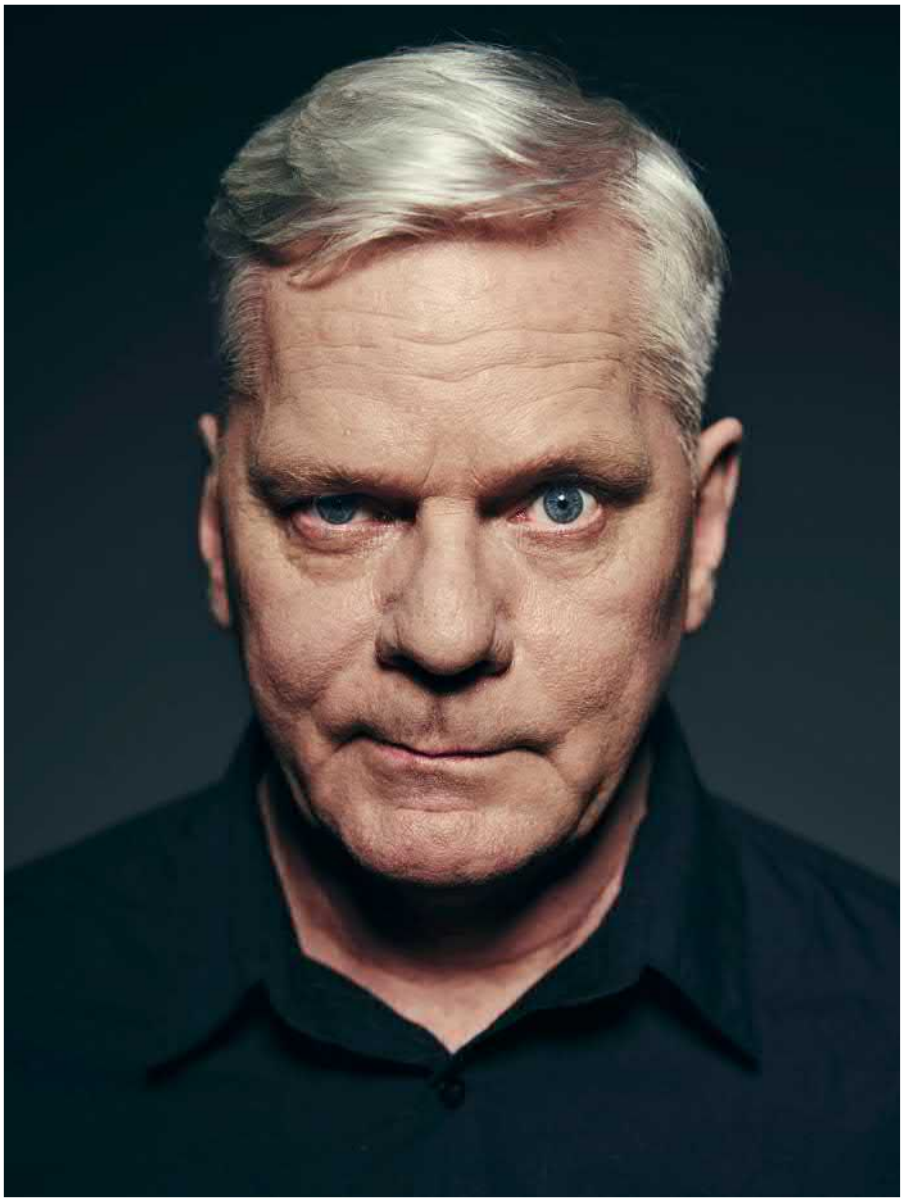
Teil 3. London, Isolation

Für die Publikation von «Collateral Murder» und die weiteren Publikationen, veröffentlicht zwischen April 2010 und August 2011, in Zusammenarbeit mit bis zu hundert Medienhäusern, soll Julian Assange wegen Spionage an die USA ausgeliefert werden. Er ist angeklagt, als geheim eingestuftes Material beschafft und erhalten zu haben. Ihm drohen 175 Jahre Haft.

«Ich empfand den Wikileaks-Co-Gründer immer als eine schwierige Figur, um zusammenzuarbeiten», schrieb Ex-«Guardian»-Chef Alan Rusbridger, als das Auslieferungsbegehren bekannt wurde. «Aber eine Auslieferung an die USA würde journalistisches Arbeiten kriminalisieren.»

«Die Anklage gegen Julian Assange ist eine Bedrohung für den Journalismus», schrieb John Cassidy im «New Yorker»: «In den Ausführungen der Anschuldigungen gegen Assange werden viele Handlungen als Verschwörung bezeichnet, die eindeutig legitime journalistische Praktiken sind, etwa das Verwenden verschlüsselter Nachrichten, das Bewirtschaften von Quellen, die Ermutigung, dass sie mehr Material beschaffen.»

Das US-Justizdepartement unter Barack Obama (das gleichzeitig Whistleblower wie Chelsea Manning mit aller Härte verfolgte) hatte auf eine Anklage von Assange verzichtet, wie ein ehemaliger hochrangiger Mitarbeiter dem «New Yorker» sagte: «Das grösste Problem in der Sache war immer, was wir als ‹New-York-Times-Problem› bezeichneten: Wie verfolgt man Julian Assange, weil er als geheim eingestuftes Material veröffentlicht hat – aber nicht die ‹New York Times›?» Man klagte nicht, so «The Intercept», weil man den Unterschied nicht festmachen konnte.



«Man macht Leute wütend mit unbequemen Wahrheiten: Das ist Journalismus.» Hörður Sveinsson

«Wir wissen jetzt, wie sie es zumindest versuchen wollen», sagt der Wikileaks-Chefredaktor bei unserem Treffen in London.

«Kurz nachdem Mike Pompeo unter Donald Trump CIA-Direktor wurde, bezeichnete er Wikileaks als feindlichen, nicht staatlichen Geheimdienst. Niemand hat jemals zuvor von einer solchen Definition gehört. Damit aber will die Trump-Administration eine Linie ziehen zwischen Wikileaks und dem übrigen Journalismus, zwischen Assange und den anderen Journalisten. Man bestreitet einfach, dass es sich hier um Journalismus handelt. Es ist ein absolut irreführender Akt, zu behaupten, Julian Assange sei kein Journalist. Er hat den höchsten Journalistenpreis erhalten, den Australien zu vergeben hat. Und zweitausend weitere Journalistenpreise. Entweder als Person oder als Repräsentant von Wikileaks. Die australische Journalistengewerkschaft betrachtet ihn als Journalisten, wie auch jene in der UK. Ebenso die Internationale Journalisten-Föderation. Niemand bezweifelt, dass er ein Journalist ist. Ausser CIA-Direktor Mike Pompeo.»

«Sie wissen, woher das kommt.»

«Woher kommt was?»

«Die Behauptung, Assange sei ein Spielball der russischen Regierung. Quasi ein Agent. Wikileaks hatte im Wahlkampf 2016 publik gemacht, dass die Demokratische Partei intern versucht hat, Bernie Sanders zu verhindern, damit er Hillary Clinton nicht in die Quere kommt. Der Vorwurf aus dem Clinton-Lager lautete: Wikileaks sei von Russland gefüttert worden.»

«Zuerst einmal geht es bei diesem Auslieferungsbegehren nicht um diese Dinge. Ein New Yorker Gericht hat in jener Sache 2019 entschieden, dass Wikileaks durch das First Amendment geschützt ist, den ersten Zusatzartikel zur Verfassung der Vereinigten Staaten, der die Pressefreiheit garantiert. Fragen Sie mich jetzt, warum wir derartige Dinge publiziert haben? Es waren News, die von allen aufgenommen wurden. Journalismus ist kein Spiel, um Leuten zu gefallen. Wenn Sie es als Ihre Aufgabe betrachten, zu gefallen, indem Sie immer die richtigen Dinge sagen, dann sind Sie im Journalismus am falschen Ort. Man macht Leute wütend mit unbequemen Wahrheiten: Das ist Journalismus. Für mich als Chefredaktor von Wikileaks sind letztlich zwei Dinge entscheidend: Ist das Material echt? Und wenn ja, ist es von öffentlichem Interesse? Selbstverständlich war es für den Vorsitz der Demokratischen Partei sehr unbequem, dass bekannt wurde, wie man sich gegenüber einem der eigenen Kandidaten verhalten hat.»

Zum Fall Julian Assange

Die USA fordern von Grossbritannien die Auslieferung des Wikileaks-Gründers Julian Assange, um ihn wegen Spionage vor Gericht stellen zu können. Ihm drohen 175 Jahre Haft. Heute Montag beginnt der erste Teil der Anhörungen im Auslieferungsverfahren, der zweite Teil folgt im Mai. Assange sitzt derzeit in einem Hochsicherheitsgefängnis in London – im April 2019 verurteilt zu fünfzig Wochen Haft wegen Kautionsverstosses, was das Uno-Gremium «Arbeitsgruppe gegen willkürliche Inhaftierungen», das dem Hochkommissariat für Menschenrechte untersteht, als «völlig unverhältnismässige Haftstrafe» bezeichnete. Bereits 2015 warf dasselbe Uno-Gremium Schweden und Grossbritannien vor, Julian Assange «willkürlich gefangen zu halten», und forderte die beiden Staaten auf, umgehend eine Lösung für die Situation zu finden (was beide Staaten kommentarlos ignorierten). Im November 2019 hatte der Uno-Sonderbeauftragte einen umfassenden Fragenkatalog publik gemacht, den er zuvor der schwedischen Regierung zugestellt hatte: Wie Schweden die Prozessführung im Fall Assange mit den Menschenrechten in Einklang bringe? Die schwedische Regierung verweigerte eine Stellungnahme. Im Januar 2020 sagte der Uno-Sonderbeauftragte für Folter, Nils Melzer, in einem Gespräch mit der Republik, Assanges Menschenrechte seien in den vergangenen zehn Jahren systematisch verletzt worden, der Mann sei durch eine völlig willkürliche Prozessführung psychologisch gefoltert worden – und wenn er an die USA ausgeliefert werde, drohe das Ende der Pressefreiheit.

Wir stehen vor dem Frontline Club. Rauchend.

«Haben Sie eigentlich keine Angst, der Nächste zu sein?», frage ich.

«Der nächste was?»

«Der nächste Journalist, der im Gefängnis landet?»

«Es gibt viele Journalisten, die sich jeden Tag in viel grössere Gefahr begeben. Oder sogar getötet werden. Oder jetzt, in diesem Moment, im Gefängnis sitzen. Ihnen gilt meine Bewunderung und meine Solidarität. Aber ja, wenn ich mir vorstelle, dass in Zukunft jeder Journalist an jedem Ort

der Welt für die Publikation von geheimem Material verfolgt werden kann, kriege ich es mit der Angst zu tun.»

«Haben Sie diese heftige Reaktion erwartet?»

«Es wurde mir sehr schnell bewusst, dass unser Material, das wir publizierten, nicht die ganze Geschichte darstellt. Sondern dass ebenfalls zur Geschichte gehört, wie heftig darauf reagiert wird.»

«Wie wurde reagiert?»

«Wir hatten aufgrund der Leaks sehr gutes Feedback in Form von Spenden, was bis heute eine finanzielle Grundlage unserer Organisation ist. Eine Woche nachdem wir im November 2010 die Depeschen US-amerikanischer Botschaften veröffentlicht hatten, blockierten die Bank of America, Visa, Mastercard, Paypal, Western Union alle unsere Zahlungen und Konten. Firmen, die immer behauptet hatten, Plastikgeld sei bloss das Äquivalent zu Papiergeld. Politik spiele dabei keine Rolle. Jetzt bewiesen sie, dass dem nicht so war. Erst nach drei Jahren gelang es uns, die Blockade gerichtlich aufzuheben. Und dann gab es all diese direkten Drohungen von Leuten, die in den USA am Fernsehen auftraten und die Ermordung von Julian forderten. Irgendwer, ich glaube die Tochter eines ehemaligen Vizepräsidenten, forderte, man müsse unverzüglich Island bombardieren, weil sie irgendwie meinte, dort sei unser Hauptquartier.»

Julian Assange 2011 vor dem High Court in London, rechts von ihm Kristinn Hrafnsson. Xinhua/Keystone

«Kaum waren die Afghanistan-Tagebücher publiziert, behauptete der damalige US-Verteidigungsminister Robert Gates, nicht die US-Regierung gefährde Leben, sondern Wikileaks: Mit der Publikation der Afghanistan-Tagebücher habe Wikileaks Hunderte ‹Informanten› in Lebensgefahr gebracht. Was sagen Sie zu diesem Vorwurf?»

«Die Behauptung ist eine Erfindung, die umgehend erhoben wurde. Aber sie ist falsch», sagt Kristinn Hrafnsson.

Tatsächlich ist es so, dass sich für die Behauptung des amerikanischen Verteidigungsministeriums keine Belege finden lassen. In einer Radiostunde der BBC vom Mai 2019 sagte die italienische Journalistin Stefania Maurizi, die sich für «Espresso» und später «La Repubblica» intensiv mit den Wikileaks- und Snowden-Dokumenten beschäftigte, die Darstellung sei sogar

nachweislich falsch. «Die Publikationen haben niemanden das Leben gekostet», sagte Maurizi. «Wir wissen das, weil während des Prozesses gegen Chelsea Manning ein hochrangiger Offizier der US-Spionageabwehr unter Eid ausgesagt hat, dass durch die Leaks niemand zu Schaden gekommen sei.»

Hrafnsson sagt, plötzlich habe das US-Militär von Schaden gesprochen. Von Schaden für die nationale Sicherheit. Für taktische Interessen. Für Soldaten. Für Zivilisten. Nur über den eigentlichen Inhalt der Dokumente habe das Militär nicht gesprochen.

«Die Behauptung, wir hätten das Material ungefiltert publiziert, hält einer Prüfung nicht stand», sagt der Isländer. «Wir haben die Dokumente analytisch auf Echtheit und Inhalt geprüft. Zusammen mit unseren Medienpartnern. Die Behauptung, es sei anders gewesen, war Propaganda, um nicht über die aufgedeckten Kriegsverbrechen reden zu müssen.»

Ich frage ihn, ob es das alles wert war, und er fragt mich, wie ich das meine.

«Die Kriegsverbrechen, die Sie aufgedeckt haben: Niemand ist dafür verfolgt worden», sage ich. «Die einzigen zwei Menschen, die dafür einen hohen Preis bezahlt haben, sind jene, die geholfen haben, sie aufzudecken: Chelsea Manning und Julian Assange.»

Whistleblowerin Chelsea Manning: 2010 verhaftet, 2013 zu 35 Jahren Haft verurteilt, 2017 vom damaligen US-Präsidenten Barack Obama begnadigt. Dominik Butzmann/Laif/Keystone

Hrafnsson sagt, Edward Snowden habe die Vorgänge von 2010 als Inspiration bezeichnet, die ihn dazu bewogen habe, den eigenen Schritt zu wagen. «Das ermutigt wiederum mich. Man kann vielleicht Assange einsperren, aber nicht die Idee. Auch wenn ich befürchte, dass der Umgang mit ihm, diese Abschreckung, sein Ziel nicht verfehlen wird. Aber Snowden hat bewiesen, dass es immer Leute geben wird, die ihre eigene persönliche Sicherheit beiseiteschieben für die Wahrheit.»

Und dann spricht Hrafnsson von Bagdad.

«Auch das ist ja ein wichtiger Teil dieser Geschichte: dass offenbar geworden ist, in welcher Welt wir heute leben. Dass Kriegsverbrechen einfach ungesühnt bleiben können.»

Als Journalist sei es seine Aufgabe, Wahrheit ans Licht zu befördern.

«Den Rest hätte die internationale Gemeinschaft erledigen müssen, die Gerichte», sagt er.

Alles, was er als Journalist den beiden Kindern – heute sind sie späte Teenager – des ermordeten Matasher Tomal habe anbieten können, sei gewesen, dass sie und die Welt die Wahrheit erfahren.

«Es ist nur eine kleine Form von Gerechtigkeit», sagt Hrafnsson. «Und es ist auch nicht die Gerechtigkeit, die wir eigentlich wollen: dass sie immerhin erfahren, was mit ihrem Vater genau passiert ist. Jetzt wissen sie es.»

RELIGIONS Comment sont formés les imams de Suisse? Une étude fait le point et propose des pistes d'améliorations. **15**

SOLIDARITÉ Depuis trente ans, l'éducation se retrouve au centre des conflits sociaux au Chili. **18**

le**MAG** Les podcasts féministes font un tabac. Interview de Victoire Tuaillon, des «Couilles sur la table». **23**

Le fondateur de WikiLeaks sera au cœur de «Presse (censure)», le mois d'agitation créative proposé dès ce soir à Genève. En prélude, *Le Courrier* a rencontré Andreas Noll, cheville ouvrière de l'offre d'asile suisse à Julian Assange

«A travers Assange, c'est le journalisme qu'on veut domestiquer»

Arrêté en avril dernier, Julian Assange serait en très mauvaise santé. Le rapporteur onusien ad hoc estime qu'il est victime de torture psychologique. KEYSTONE

PROPOS RECUEILLIS PAR
BENITO PEREZ

Libertés ▸ La prise de position, en avril dernier, quelques jours après que Julian Assange avait été livré à la police londonienne, avait eu un certain écho. Vingt-deux personnalités, alémaniques essentiellement, invitaient le Conseil fédéral à octroyer l'asile au fondateur de WikiLeaks, menacé d'extradition vers les Etats-Unis, pays qui lui reproche d'avoir divulgué des secrets d'Etats, dont des crimes de guerre, contre l'humanité et des surveillances illégales. «Face au risque de torture et de procès inéquitable» et «parce que Julian Assange et Wikileaks n'ont fait que défendre les valeurs fondamentales de notre constitution, à savoir la liberté de la presse, la liberté de parole et d'expression et la démocratie», justifiait l'appel adressé au gouvernement suisse.

Corédacteur du texte, l'avocat pénaliste bâlois Andreas Noll, 46 ans, sera ce vendredi soir à Genève pour lancer, au côté du père de Julian Assange, «Presse (censure)», une série d'expos, de débats, de rencontres et d'ateliers sur ce thème (lire ci-dessous). Au *Courrier*, il dit le caractère fondamental du combat pour Julian Assange.

Pourquoi vous êtes vous engagé pour que la Suisse donne l'asile à Julian Assange?

Andreas Noll: Celui qui a révélé des crimes de guerre ne doit pas être livré à ceux qui les ont commis! Toute cette affaire est obscène et illégale. Julian Assange a été traîné hors de l'ambassade d'Equateur en violation du droit international impérieux. En tant que journaliste de révélation, il a été récompensé à plusieurs reprises. Nous ne pouvons pas détourner le regard. Ni, pire, regarder et garder le silence! Nous devons prendre parti pour ceux qui ont le courage de dénoncer et qui risquent de le payer d'un emprisonnement à vie.

Pourquoi le cas Assange est-il si important, de quoi est-il symbolique?

Je répondrais par la première phrase de l'acte d'accusation aux Etats-Unis: «Julian Paul Assange est le visage public de 'WikiLeaks', un site Web créé avec d'autres personnes comme 'agence de renseignement du peuple'.» Cette phrase résume remarquablement et ouvertement le programme américain: ce n'est pas une procédure contre un justiciable, c'est une opération politique contre WikiLeaks. Julian Assange incarne le risque que l'opinion publique se forme sur la base de faits, la possibilité d'un journalisme remplissant pleinement son rôle démocratique. Un antidote aux médias de manipulations et une alternative à l'information-divertissement.

L'objectif réel des Etats-Unis n'est pas seulement Assange, il est d'influencer toute la sphère médiatique. Les chiens de garde de l'opinion (*public watchdog*) doivent devenir des chiens de compagnie (*public lapdog*). Si Julian Assange n'est pas protégé de la procédure américaine, cela marquera probablement la fin des acquis occidentaux en matière de libertés individuelles. C'est dans les moments de crise, de conflit aigu, comme celui-ci, que les droits individuels montrent leur validité, leur robustesse. Sinon la jurisprudence dégénérera.

Quelles démarches avez-vous entreprises? Quelles ont été les réactions? Et les résultats?

Le Conseil fédéral n'a pas réagi. La couverture médiatique a été relativement importante, malheureusement pour une courte période seulement.

> «C'est dans les moments de crise, de conflit aigu, que les droits individuels montrent leur validité» **Andreas Noll**

Nous ne lâchons pas. Mais nous manquons de ressources humaines et financières. Pour cette raison, notre champ d'action se limite actuellement à rendre l'appel accessible à un large public. On peut le signer sur notre site www.asylassange.ch ou inviter d'autres personnes à en faire de même.

Finalement, malgré l'impact qu'ont eu ses révélations, Julian Assange n'est pas très populaire…

Lors de l'audience du 21 octobre dernier, Julian Assange l'a dit ainsi devant le tribunal: «La superpuissance a eu dix ans pour préparer son dossier, elle disposait de ressources illimitées alors que, moi, je n'avais même pas accès à mes écrits.» Quand il s'est réfugié dans l'ambassade équatorienne au nez et à la barbe des Américains, il a été célébré dans le monde entier en tant que héros, voire idole. A l'époque, il était impossible de le traduire en justice sans en faire un martyr. Puis il y a eu un démontage minutieux du travail journalistique de ce professionnel pourtant plusieurs fois primé.

Et il y a eu l'affaire des allégations d'agression sexuelle en Suède. Celles-ci ont été abandonnées quatre fois et chaque fois relancées. En tant qu'avocat, je n'ai jamais eu connaissance d'une affaire pareille, où l'on rouvre constamment un dossier sans nouveauté substantielle. Encore moins dans une affaire où il n'y a d'autre élément que les déclarations des personnes directement impliquées. L'affaire est bien évidemment politique. Le rapporteur spécial des Nations Unies sur la torture, Nils Melzer, l'a lui-même récemment déclaré.

Enfin son image a souffert des allégations selon lesquelles Donald Trump lui devrait son élection.

On lui a aussi reproché d'avoir pris le risque de publier des documents diplomatiques sans prendre le temps d'en expurger les noms. Ce qui aurait mis des informateurs en danger.

Cela fait partie de la même campagne de diffamation. La vérité est bien différente: la publication des *Afghan War Logs* (*Journal de guerre afghan*, lire page suivante, ndlr) en 2010 était une collaboration entre le *Guardian*, le *New York Times* et *Der Spiegel*, d'une part, et Julian Assange, de l'autre. Le témoignage du journaliste d'investigation Mark Davis[1], qui a accompagné Assange dans le bunker du *Guardian*, est clair. Assange souhaitait reporter la date de publication. Ce qui a été refusé par le journal. Il est le seul des journalistes impliqués à avoir exprimé son inquiétude •••

UN MOIS CONTRE LES CENSURES

Au milieu des vieilles presses réhabilitées, l'ancienne usine de pièces détachées de la rue du Vuache, à Genève, hébergera une foule d'événements jusqu'au 7 décembre. Du vernissage des expositions (lire en page suivante), ce soir à 17h, en présence de John Shipton, le père de Julian Assange, et de l'avocat bâlois Andreas Noll, jusqu'au finissage musical, performatif, festif et engagé du samedi 7 décembre (20 h), les locaux de l'Association pour le patrimoine industriel (API) accueilleront plusieurs ateliers d'écriture ou de «prise de vue, prise de parole, prise de position»[1]. Le débat et la dénonciation des nouvelles formes de censure s'articuleront autour de deux tables rondes, les 14 (18 h 30) et 28 novembre (18 h). La première discussion, intitulée «La guerre contre la vérité», bénéficiera de la présence du rapporteur spécial des Nations Unies sur la torture, Nils Melzer. La seconde portera sur les mécanismes de la censure, avec des contributions du secrétaire général suisse de Reporters sans frontières, Denis Masmejan, d'un étudiant et de Benito Perez, journaliste au *Courrier*. CO

Programme: www.patrimoineindustriel.ch/2019/10/27/presse-censure
[1] Rens. et inscriptions: 022 340 44 10. Prix: à bien plaire. Avec le soutien de la Courage Foundation.

... à propos des personnes nommées. Bien que le *Guardian* et le *New York Times* disposent de ressources abondantes, Assange n'a reçu aucune aide de leur part pour anonymiser les quelque 90 000 documents. Malgré cela, il a réussi à occulter quelque 10 000 noms en moins de trois jours de travail nocturne.

Les forces américaines et australiennes ont elles-mêmes admis que la publication de ces documents n'avait eu aucune conséquence dramatique.

Julian Assange a passé sept ans enfermé dans l'ambassade d'Equateur à Londres, les deux derniers dans un environnement devenu hostile. Il est désormais incarcéré depuis avril dans l'attente que la Grande-Bretagne se prononce sur la demande d'extradition des Etats-Unis. Comment voyez-vous évoluer sa situation?

Ceux qui ont lu les récits de témoins oculaires – par exemple l'ancien diplomate du Royaume-Uni Craig Murray[2] – de l'audience de Julian Assange devant le tribunal le 21 octobre 2019 savent dans quel état de santé inquiétant il se trouve: il a perdu plus de 15 kg et son état psychique est catastrophique. Cette personne reconnue pour son intelligence avait même du mal à préciser son nom et sa date de naissance. Il n'était visiblement pas en mesure de suivre son procès.

Ce sont les symptômes typiques de la torture mentale continue à laquelle Julian Assange est exposé. Il est enfermé seul dans sa cellule vingt-trois heures par jour. Et pendant son heure de sortie, tous les autres prisonniers sont enfermés dans leurs cellules pour qu'il ne puisse parler à personne. C'est la torture psychique classique de la «privation sensorielle». Ses conséquences dévastatrices sont très bien documentées: perte de la capacité d'articulation et de la parole, manque de concentration, trouble de la pensée, diminution de la mémoire, anxiété, délires avec hallucinations, pouvant même conduire à une schizophrénie irréversible. L'isolement provoque également des symptômes physiques tels que vertiges, troubles du sommeil, changements de poids, etc.

Le rapporteur spécial des Nations unies sur la torture, Nils Melzer, a déclaré dans son rapport du 27 mai 2019 que Julian Assange montrait «tous les symptômes d'une torture psychologique prolongée». Le 1er novembre, Melzer a sonné l'alerte estimant qu'Assange pouvait mourir s'il n'était pas libéré prochainement. Les Américains ne veulent même pas l'extradition. Il leur suffit de lui faire subir des dommages durables. Son naufrage psychique devenant ainsi une sorte de mémorial vivant, un avertissement pour tous ceux qui voudraient dénoncer les sales machinations de la superpuissance militaire américaine.

La demande d'un asile en Suisse a-t-elle encore un sens? Comment et quand pourrait-elle se réaliser?

Elle est plus urgente que jamais. Bien que l'Equateur et le Royaume-Uni aient violé le droit international, cela ne dédouane pas les autres Etats. Tous ont la responsabilité de faire appliquer les droits humains. La Suisse pourrait agir. Par le passé, elle a fait preuve d'ingéniosité comme dans le cas d'Emin Hüseynov (*journaliste azerbaidjanais réfugié à l'ambassade suisse à Bakou et exfiltré en 2014 par le conseiller fédéral Didier Burkhalter, ndlr*). Quoi qu'il en soit, il est extrêmement important que des Etats comme la Suisse commencent à s'investir sur le cas de Julian Assange, par exemple au sein des Nations Unies. **I**

[1] www.youtube.com/watch?v=uZky-LoaMvRg
[2] www.craigmurray.org.uk/archives/2019/10/assange-in-court

La parole aux artistes

Expos ▸ A l'API, à Genève, quatre accrochages rendent hommage aux médias écrits sous pression.

La star, c'est elle: #WeAreMillions, une installation venue tout droit de Norvège. Au cœur des locaux de l'Association pour le patrimoine industriel (API), à Genève, entre moult trésors liés à l'impression, la proposition imaginée par la Courage Foundation est participative. Le public peut se faire prendre en photo avec une pancarte en soutien à Julian Assange ou en faveur de la liberté de la presse. Le cliché sera imprimé puis exposé sur place, tout en alimentant une base de données en ligne comprenant d'ores et déjà les bobines de Ken Loach, Pamela Anderson, M.I.A. ou Oliver Stone.

Dans les salles voisines, après un survol de l'histoire de la presse écrite proposé par Armand Brulhart, la dimension artistique de «Presse (censure)» s'exprime dans une exposition de groupe. Multipliant les médiums, les œuvres sont présentées entre machines, meubles et moult cadratins – une proposition commissionnée par Mael Denegri.

Raccord avec ce qui se passe actuellement au Chili, Marisa Cornejo évoque les années Pinochet et les exactions de la Dina, la police secrète de la dictature. Par une photo, Angela Marzullo surprend pour sa part ses filles en train d'écrire «désobéissance» sur le mur d'un salon arty; alors qu'Omar Ba peint un grand visage noir à la bouche qu'on soupçonne entravée. A côté, un panneau «Fight The Power» invite à agir: écrit à l'envers, le slogan est destiné à l'impression.

Les œuvres d'Angela Marzullo et Hadrien Dussoix, à l'API. TTH

En face, référence directe au film *Sleep* (1963) d'Andy Warhol, qui espionnait le sommeil du poète John Giorno, la vidéo *Sleep - Al Naim* (2005-2012) de Mounir Fatmi montre l'écrivain Salman Rushdie dans les bras de morphée. Ou plutôt une animation 3D de l'auteur des *Versets sataniques* – une rencontre Fatmi-Rushdie n'a été rendue possible qu'après la réalisation de l'œuvre. La vidéo a été censurée à plusieurs reprises, notamment dans le cadre d'une exposition itinérante de l'Institut du monde arabe, à Paris.

A l'extérieur de l'API, on admire encore un extrait de la série *In Jesus' Name* de Christian Lutz. En 2012, un livre du photographe avait été censuré, malgré l'autorisation donnée dans un premier temps par la congrégation évangélique au cœur de l'ouvrage. Pour le coup, Lutz avait décidé de présenter les clichés attaqués avec un bandeau de texte barrant les visages – il reprend les mots de la plainte pour atteinte à l'image déposée contre lui, entre-temps retirée. **SAMUEL SCHELLENBERG**

API, 25 rue du Vuache, Genève, expositions du 8 novembre (vernissage à 17 h) au 7 décembre, lu-ve 10 h-15 h.

WikiLeaks: treize ans de révélations

Portrait ▸ Informaticien autodidacte, hacker et spécialiste du cryptage, Julian Assange a 35 ans lorsqu'il démarre le projet WikiLeaks en 2006. L'Australien vient de lâcher la faculté de mathématiques de Melbourne, disant refuser de travailler pour des commanditaires militaires. Surtout, il a une idée précise en tête: offrir une plateforme aux lanceurs d'alerte, où ceux-ci pourraient partager leurs informations sans risque d'être identifiés. Leurs informations sont ensuite, après filtrage et médiation de spécialistes de la société civile, publiées sur le site.

Lancé en Suède, pour des raisons de protection légale, en 2007, WikiLeaks fait ses armes en révélant des informations sur la prison secrète et illégale de Guantanamo. En 2008, le site fait une première irruption dans la politique US en publiant des e-mails de l'ultraconservatrice Sarah Palin. L'année suivante, WikiLeaks révèle comment la société Trafigura a tenté de minimiser son rôle dans le scandale des déchets toxiques du Probo Koala. La firme sera condamnée en 2011.

Mais c'est surtout une vidéo datant de 2007 et publiée en avril 2010 qui va faire exploser l'influence du site et la surveillance des services de renseignement étasuniens. Les images montrent un hélicoptère de l'armée US cibler un groupe de civils irakiens. L'attaque coûtera la vie à 18 personnes, dont des enfants et deux journalistes de Reuters. Avec cette vidéo, la version officielle, qui prétendait que les reporters se trouvaient du côté des rebelles, s'écroule. Condamnée pour avoir transmis ces images classifiées à WikiLeaks, Chelsea Manning a purgé plus de sept ans de prison. Elle est à nouveau incarcérée aux Etats-Unis depuis ce printemps pour son refus de témoigner contre Julian Assange.

Apogée de WikiLeaks, l'année 2010 est aussi celle du début des ennuis

En 2010, c'est aussi le début d'une collaboration entre WikiLeaks et plusieurs grands journaux (*New York Time*, *Spiegel*, *The Guardian*, *Le Monde*) pour trier et analyser des milliers de câbles diplomatiques étasuniens. Le plus célèbre concerne les quelque 90 000 fichiers militaires, documentant la guerre en Afghanistan entre 2004 à 2009 et qui font apparaître de très nombreux cas de «bavures» de l'armée étouffées par les Etats-Unis ou par la France. Ces *War Afghan Logs* montrent aussi l'implication de l'allié pakistanais au côté des Talibans et surtout leur montée en puissance, soulignant l'échec de la campagne alliée en Afghanistan.

Apogée de WikiLeaks, l'année 2010 est aussi celle du début des ennuis. Deux mois après la révélation des premiers *War Afghan Logs* et quelques jours après que M. Assange a prévenu de son intention de publier les 15 000 documents restants, la justice suédoise révèle être saisie d'une plainte pour viol contre Julian Assange. A peine lancée, la demande d'arrestation est révoquée. En octobre, l'Australien voit toutefois les autorités lui refuser un permis de séjour permanent. Et en novembre, quelques jours après la divulgation des nouveaux documents afghans, la demande d'arrestation est réactivée.

Comme un symbole de cette année 2010 à deux facettes: Julian Assange est plébiscité en novembre comme «homme de l'année» par les lecteurs de *Time Magazine*, mais n'a pas droit à la fameuse couverture de décembre. Il a été déclassé par la rédaction, qui lui préfère Mark Zuckerberg.

Julian Assange est arrêté ce mois-là à Londres, puis libéré sous conditions. Il se réfugiera en 2012 à l'ambassade d'Equateur pour échapper à l'extradition. Il obtient même la nationalité équatorienne mais Quito échoue à le rapatrier.

Malgré la situation complexe de son fondateur, WikiLeaks poursuit ses révélations. Sur le régime Assad en 2012. Ou sur les négociations secrètes des traités de libre-échange (transatlantique, transpacifique, TISA).

En 2016, le site fait de nouveau parler de lui lors d'une campagne présidentielle étasunienne, lorsqu'il publie des milliers de courriels de la candidate démocrate Hillary Clinton. Cela vaudra à Julian Assange la réputation d'avoir fait le jeu de Donald Trump.

L'année d'après, WikiLeaks dévoile les méthodes de piratage des réseaux sociaux et des applications par la CIA et la NSA.

Mais en avril 2019, Julian Assange perd la nationalité équatorienne et son statut de réfugié. Livré à la police londonienne, il est menacé d'être extradé vers les Etats-Unis, où il est inculpé pour espionnage. Il risque la prison à vie. **BPZ**

Legal Doku

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA v. JULIAN PAUL ASSANGE, Defendant.	Criminal No. 1:18-cr-111 (CMH) Count 1: 18 U.S.C. § 793(g) Conspiracy To Receive National Defense Information Counts 2-4: 18 U.S.C. § 793(b) and 2 Obtaining National Defense Information Counts 5-8: 18 U.S.C. § 793(c) and 2 Obtaining National Defense Information Counts 9-11: 18 U.S.C. § 793(d) and 2 Disclosure of National Defense Information Counts 12-14: 18 U.S.C. § 793(e) and 2 Disclosure of National Defense Information Counts 15-17: 18 U.S.C. § 793(e) Disclosure of National Defense Information Count 18: 18 U.S.C. §§ 371 and 1030 Conspiracy To Commit Computer Intrusion

SUPERSEDING INDICTMENT

May 2019 Term – at Alexandria, Virginia

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At times material to this Superseding Indictment:

A. ASSANGE and WikiLeaks Repeatedly Encouraged Sources with Access to Classified Information to Steal and Provide It to WikiLeaks to Disclose.

1. JULIAN PAUL ASSANGE ("ASSANGE") is the public face of "WikiLeaks," a website he founded with others as an "intelligence agency of the people." To obtain information to release on the WikiLeaks website, ASSANGE encouraged sources to (i) circumvent legal safeguards on information; (ii) provide that protected information to WikiLeaks for public dissemination; and (iii) continue the pattern of illegally procuring and providing protected information to WikiLeaks for distribution to the public.

2. ASSANGE and WikiLeaks have repeatedly sought, obtained, and disseminated information that the United States classified due to the serious risk that unauthorized disclosure could harm the national security of the United States. WikiLeaks's website explicitly solicited censored, otherwise restricted, and until September 2010,[1] "classified" materials. As the website then-stated, "WikiLeaks accepts *classified, censored*, or otherwise *restricted* material of *political, diplomatic, or ethical significance*."[2]

3. ASSANGE personally and publicly promoted WikiLeaks to encourage those with access to protected information, including classified information, to provide it to WikiLeaks for public disclosure. For example, in December 2009, ASSANGE and a WikiLeaks affiliate gave a presentation at the 26th Chaos Communication Congress (26C3), described by the website as an annual conference attended by the hacker community and others that is hosted by the Chaos

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[1] When the Grand Jury alleges in this Superseding Indictment that an event occurred on a particular date, the Grand Jury means to convey that the event was alleged to occur "on or about" that date.

[2] One month later, the WikiLeaks website not only deleted the term "classified" from the list of materials it would accept, but also included the following disclaimer: "WikiLeaks accepts a range of material, but we do not solicit it."

Computer Club (CCC), which its website purports is "Europe's largest association of hackers." During that presentation, WikiLeaks described itself as the "leading disclosure portal for classified, restricted or legally threatened publications."

4. To further encourage the disclosure of protected information, including classified information, the WikiLeaks website posted a detailed list of "The Most Wanted Leaks of 2009," organized by country, and stated that documents or materials nominated to the list must "[b]e likely to have political, diplomatic, ethical or historical impact on release . . . and be plausibly obtainable to a well-motivated insider or outsider."

5. As of November 2009, WikiLeaks's "Most Wanted Leaks" for the United States included the following:

a. "Bulk Databases," including an encyclopedia used by the United States intelligence community, called "Intellipedia;" the unclassified, but non-public, CIA Open Source Center database; and

b. "Military and Intelligence" documents, including documents that the list described as classified up to the **SECRET** level, for example, "Iraq and Afghanistan Rules of Engagement 2007-2009 (SECRET);" operating and interrogation procedures at Guantanamo Bay, Cuba; documents relating to Guantanamo detainees; CIA detainee interrogation videos; and information about certain weapons systems.

6. ASSANGE intended the "Most Wanted Leaks" list to encourage and cause individuals to illegally obtain and disclose protected information, including classified information, to WikiLeaks contrary to law. For example, in 2009, ASSANGE spoke at the "Hack in the Box Security Conference" in Malaysia. ASSANGE referenced the conference's "capture the flag" hacking contest and noted that WikiLeaks had its own list of "flags" that it wanted captured—

namely, the list of "Most Wanted Leaks" posted on the WikiLeaks website. He encouraged people to search for the list and for those with access to obtain and give to WikiLeaks information responsive to that list.

7. ASSANGE designed WikiLeaks to focus on information, restricted from public disclosure by law, precisely because of the value of that information. Therefore, he predicated his and WikiLeaks's success in part upon encouraging sources with access to such information to violate legal obligations and provide that information for WikiLeaks to disclose.

B. Chelsea Manning Responded to ASSANGE'S Solicitation and Stole Classified Documents from the United States.

8. Chelsea Manning, formerly known as Bradley Manning, was an intelligence analyst in the United States Army who was deployed to Forward Operating Base Hammer in Iraq.

9. Manning held a "Top Secret" security clearance, and signed a classified information nondisclosure agreement, acknowledging that the unauthorized disclosure or retention or negligent handling of classified information could cause irreparable injury to the United States or be used to the advantage of a foreign nation.

10. Beginning by at least November 2009, Manning responded to ASSANGE's solicitation of classified information made through the WikiLeaks website. For example, WikiLeaks's "Military and Intelligence" "Most Wanted Leaks" category, as described in paragraphs 4-5, solicited CIA detainee interrogation videos. On November 28, 2009, Manning in turn searched the classified network search engine, "Intelink," for "retention+of+interrogation+videos." The next day, Manning searched the classified network for "detainee+abuse," which was consistent with the "Most Wanted Leaks" request for "Detainee abuse photos withheld by the Obama administration" under WikiLeaks's "Military and Intelligence" category.

11. On November 30, 2009, Manning saved a text file entitled "wl-press.txt" to her external hard drive and to an encrypted container on her computer. The file stated, "You can currently contact our investigations editor directly in Iceland +354 862 3481; 24 hour service; ask for 'Julian Assange.'" Similarly, on December 8, 2009, Manning ran several searches on Intelink relating to Guantanamo Bay detainee operations, interrogations, and standard operating procedures or "SOPs." These search terms were yet again consistent with WikiLeaks's "Most Wanted Leaks," which sought Guantanamo Bay operating and interrogation SOPs under the "Military and Intelligence" category.

12. Between in or around January 2010 and May 2010, consistent with WikiLeaks's "Most Wanted Leaks" solicitation of bulk databases and military and intelligence categories, Manning downloaded four nearly complete databases from departments and agencies of the United States. These databases contained approximately 90,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activities reports, 800 Guantanamo Bay detainee assessment briefs, and 250,000 U.S. Department of State cables. The United States had classified many of these records up to the **SECRET** level pursuant to Executive Order No. 13526 or its predecessor orders. Manning nevertheless provided the documents to WikiLeaks, so that WikiLeaks could publicly disclose them on its website.

13. Manning was arrested on or about May 27, 2010. The "Most Wanted Leaks" posted on the WikiLeaks website in May 2010 no longer contained the "Military and Intelligence" category.

C. ASSANGE Encouraged Manning to Continue Her Theft of Classified Documents and Agreed to Help Her Crack a Password Hash to a Military Computer.

14. During large portions of the same time period (between November 2009, when Manning first became interested in WikiLeaks, through her arrest on or about May 27, 2010), Manning was in direct contact with ASSANGE, who encouraged Manning to steal classified documents from the United States and unlawfully disclose that information to WikiLeaks.

15. In furtherance of this scheme, ASSANGE agreed to assist Manning in cracking a password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network, a United States government network used for classified documents and communications, as designated according to Executive Order No. 13526 or its predecessor orders.

16. Manning, who had access to the computers in connection with her duties as an intelligence analyst, was also using the computers to download classified records to transmit to WikiLeaks. Army regulations prohibited Manning from attempting to bypass or circumvent security mechanisms on Government-provided information systems and from sharing personal accounts and authenticators, such as passwords.

17. The portion of the password hash Manning gave to ASSANGE to crack was stored as a "hash value" in a computer file that was accessible only by users with administrative-level privileges. Manning did not have administrative-level privileges, and used special software, namely a Linux operating system, to access the computer file and obtain the portion of the password provided to ASSANGE.

18. Had Manning retrieved the full password hash and had ASSANGE and Manning successfully cracked it, Manning may have been able to log onto computers under a username that did not belong to her. Such a measure would have made it more difficult for investigators to identify Manning as the source of disclosures of classified information.

19. Prior to the formation of the password-cracking agreement, Manning had already provided WikiLeaks with hundreds of thousands of documents classified up to the **SECRET** level that she downloaded from departments and agencies of the United States, including the Afghanistan war-related significant activity reports and Iraq war-related significant activity reports.

20. At the time he entered into this agreement, ASSANGE knew, understood, and fully anticipated that Manning was taking and illegally providing WikiLeaks with classified records containing national defense information of the United States that she was obtaining from classified databases. ASSANGE was knowingly receiving such classified records from Manning for the purpose of publicly disclosing them on the WikiLeaks website.

21. For example, on March 7, 2010, Manning asked ASSANGE how valuable the Guantanamo Bay detainee assessment briefs would be. After confirming that ASSANGE thought they had value, on March 8, 2010, Manning told ASSANGE that she was "throwing everything [she had] on JTF GTMO [Joint Task Force, Guantanamo] at [Assange] now." ASSANGE responded, "ok, great!" When Manning brought up the "osc," meaning the CIA Open Source Center, ASSANGE replied, "that's something we want to mine entirely, btw," which was consistent with WikiLeaks's list of "Most Wanted Leaks," described in paragraphs 4-5, that solicited "the complete CIA Open Source Center analytical database," an unclassified (but non-public) database. Manning later told ASSANGE in reference to the Guantanamo Bay detainee assessment briefs that "after this upload, thats all i really have got left." In response to this statement, which indicated that Manning had no more classified documents to unlawfully disclose, ASSANGE replied, "curious eyes never run dry in my experience." ASSANGE intended his

statement to encourage Manning to continue her theft of classified documents from the United States and to continue the unlawful disclosure of those documents to ASSANGE and WikiLeaks.

22. Manning used a Secure File Transfer Protocol ("SFTP") connection to transmit the Detainee Assessment briefs to a cloud drop box operated by WikiLeaks, with an X directory that WikiLeaks had designated for her use.

23. Two days later, ASSANGE told Manning that there was "a username in the gitmo docs." Manning told ASSANGE, "any usernames should probably be filtered, period." Manning asked ASSANGE whether there was "anything useful in there." ASSANGE responded, in part, that "these sorts of things are always motivating to other sources too." ASSANGE stated, "gitmo=bad, leakers=enemy of gitmo, leakers=good . . . Hence the feeling is people can give us stuff for anything not as 'dangerous as gitmo' on the one hand, and on the other, for people who know more, there's a desire to eclipse." Manning replied, "true. ive crossed a lot of those 'danger' zones, so im comfortable."

D. At ASSANGE's Direction and Agreement, Manning Continued to Steal Classified Documents and Provide Them to ASSANGE.

24. Following ASSANGE's "curious eyes never run dry" comment, on or about March 22, 2010, consistent with WikiLeaks's "Most Wanted Leaks" solicitation of "Iraq and Afghanistan US Army Rules of Engagement 2007-2009 (**SECRET**)," as described in paragraphs 4-5, Manning downloaded multiple Iraq rules of engagement files from her Secret Internet Protocol Network computer and burned these files to a CD, and provided them to ASSANGE and WikiLeaks.

25. On April 5, 2010, WikiLeaks released on its website the rules of engagement files that Manning provided. It entitled four of the documents as follows: "US Rules of Engagement for Iraq; 2007 flowchart," "US Rules of Engagement for Iraq; Refcard 2007," "US Rules of Engagement for Iraq, March 2007," and "US Rules of Engagement for Iraq, Nov 2006." All of

these documents had been classified as **SECRET**, except for the "US Rules of Engagement for Iraq; Refcard 2007," which was unclassified but for official use only.

26. The rules of engagement files delineated the circumstances and limitations under which United States forces would initiate or continue combat engagement upon encountering other forces. WikiLeaks's disclosure of this information would allow enemy forces in Iraq and elsewhere to anticipate certain actions or responses by U.S. armed forces and to carry out more effective attacks.

27. Further, following ASSANGE's "curious eyes never run dry" comment, and consistent with WikiLeaks's solicitation of bulk databases and classified materials of diplomatic significance, as described in paragraphs 2, 4-5, between on or about March 28, 2010, and April 9, 2010, Manning used a United States Department of Defense computer to download over 250,000 U.S. Department of State cables, which were classified up to the **SECRET** level. Manning subsequently uploaded these cables to ASSANGE and WikiLeaks through an SFTP connection to a cloud drop box operated by WikiLeaks, with an X directory that WikiLeaks had designated for Manning's use. ASSANGE and WikiLeaks later disclosed them to the public.

28. At the time ASSANGE agreed to receive and received from Manning the classified Guantanamo Bay detainee assessment briefs, the U.S. Department of State Cables, and the Iraq rules of engagement files, ASSANGE knew that Manning had unlawfully obtained and disclosed or would unlawfully disclose such documents. For example, not only had ASSANGE already received thousands of military-related documents classified up to the **SECRET** level from Manning, but Manning and ASSANGE also chatted about military jargon and references to current events in Iraq, which showed that Manning was a government or military source; the "releasability" of certain information by ASSANGE; measures to prevent the discovery of

Manning as ASSANGE's source, such as clearing logs and use of a "cryptophone;" and a code phrase to use if something went wrong.

E. ASSANGE, WikiLeaks Affiliates, and Manning Shared the Common Objective to Subvert Lawful Restrictions on Classified Information and to Publicly Disseminate it.

29. ASSANGE, Manning, and others shared the objective to further the mission of WikiLeaks, as an "intelligence agency of the people," to subvert lawful measures imposed by the United States government to safeguard and secure classified information, in order to disclose that information to the public and inspire others with access to do the same.

30. Manning and ASSANGE discussed this shared philosophy. For example, when Manning said, "i told you before, government/organizations cant control information ... the harder they try, the more violently the information wants to get out," ASSANGE replied, "restrict supply = value increases, yes." Further, when Manning said, "its like you're the first 'Intelligence Agency' for the general public," ASSANGE replied, that is how the original WikiLeaks had described itself.

31. Even after Manning's arrest on or about May 27, 2010, ASSANGE and others endeavored to fulfill this mission of WikiLeaks to publish the classified documents that Manning had disclosed by threatening to disclose additional information that would be even more damaging to the United States and its allies if anything should happen to WikiLeaks or ASSANGE to prevent dissemination.

32. On August 20, 2010, for instance, WikiLeaks tweeted that it had distributed an encrypted "'insurance' file" to over 100,000 people and referred to the file and the people who downloaded it as "our big guns in defeating prior restraint."

33. ASSANGE spoke about the purpose of this "insurance file," stating that it contained information that WikiLeaks intended to publish in the future but without "harm minimization," that is to say, without redactions of things, like names of confidential informants, that could put lives at risk. When asked how these insurance files could be used to prevent "prior restraint and other legal threats," ASSANGE responded that WikiLeaks routinely "distributed encrypted backups of material we have yet to release. And that means all we have to do is release the password to that material and it's instantly available. Now of course, we don't like to do that, because there is various harm minimization procedures to go through." But, ASSANGE continued, the insurance file is a "precaution[] to make sure that sort of material [the data in WikiLeaks's possession] is not going to disappear from history, regardless of the sort of threats to this organization."

34. Similarly, on August 17, 2013, WikiLeaks posted on its Facebook account: "WikiLeaks releases encrypted versions of upcoming publication data ('insurance') from time to time to nullify attempts at prior restraint." The post also provided links to previous insurance files and asked readers to "please mirror" the links, meaning to post the links on other websites to help increase the number of times the files are downloaded.

F. ASSANGE Revealed the Names of Human Sources and Created a Grave and Imminent Risk to Human Life.

35. Also following Manning's arrest, during 2010 and 2011, ASSANGE published via the WikiLeaks website the documents classified up to the **SECRET** level that he had obtained from Manning, as described in paragraphs 12, 21, and 27, including approximately 75,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activities reports, 800 Guantanamo Bay detainee assessment briefs, and 250,000 U.S. Department of State cables.

36. The significant activity reports from the Afghanistan and Iraq wars that ASSANGE published included names of local Afghans and Iraqis who had provided information to U.S. and coalition forces. The State Department cables that WikiLeaks published included names of persons throughout the world who provided information to the U.S. government in circumstances in which they could reasonably expect that their identities would be kept confidential. These sources included journalists, religious leaders, human rights advocates, and political dissidents who were living in repressive regimes and reported to the United States the abuses of their own government, and the political conditions within their countries, at great risk to their own safety. By publishing these documents without redacting the human sources' names or other identifying information, ASSANGE created a grave and imminent risk that the innocent people he named would suffer serious physical harm and/or arbitrary detention.

37. On May 2, 2011, United States armed forces raided the compound of Osama bin Laden in Abbottabad, Pakistan. During the raid, they collected a number of items of digital media, which included the following: (1) a letter from bin Laden to another member of the terrorist organization al-Qaeda in which bin Laden requested that the member gather the DoD material posted to WikiLeaks, (2) a letter from that same member of al-Qaeda to Bin Laden with information from the Afghanistan War Documents provided by Manning to WikiLeaks and released by WikiLeaks, and (3) Department of State information provided by Manning to WikiLeaks and released by WikiLeaks.

38. Paragraphs 39 and 40 contain examples of a few of the documents ASSANGE published that contained the unredacted names of human sources. These are not the only documents that WikiLeaks published containing the names of sources, nor the only documents that put innocent people in grave danger simply because they provided information to the United States.

39. The following are examples of significant activity reports related to the Afghanistan and Iraq wars that ASSANGE published without redacting the names of human sources who were vulnerable to retribution by the Taliban in Afghanistan or the insurgency in Iraq:

a. Classified Document C1 was a 2007 threat report containing details of a planned anti-coalition attack at a specific location in Afghanistan. Classified Document C1 named the local human source who reported the planned attack. Classified Document C1 was classified at the **SECRET** level.

b. Classified Document C2 was a 2009 threat report identifying a person who supplied weapons at a specific location in Afghanistan. Classified Document C2 named the local human source who reported information. Classified Document C2 was classified at the **SECRET** level.

c. Classified Document D1 was a 2009 report discussing an improvised explosive device (IED) attack in Iraq. Classified Document D1 named local human sources who provided information on the attack. Classified Document D1 was classified at the **SECRET** level.

d. Classified Document D2 was a 2008 report that named a local person in Iraq who had turned in weapons to coalition forces and had been threatened afterward. Classified Document D2 was classified at the **SECRET** level.

40. The following are examples of State Department cables that ASSANGE published without redacting the names of human sources who were vulnerable to retribution.

a. Classified Document A1 was a 2009 State Department cable discussing a political situation in Iran. Classified Document A1 named a human source of information

located in Iran and indicated that the source's identity needed to be protected. Classified Document A1 was classified at the **SECRET** level.

b. Classified Document A2 was a 2009 State Department cable discussing political dynamics in Iran. Classified Document A2 named a human source of information who regularly traveled to Iran and indicated that the source's identity needed to be protected. Classified Document A2 was classified at the **SECRET** level.

c. Classified Document A3 was a 2009 State Department cable discussing issues related to ethnic conflict in China. Classified Document A3 named a human source of information located in China and indicated that the source's identity needed to be protected. Classified Document A3 was classified at the **SECRET** level.

d. Classified Document A4 was a 2009 State Department cable discussing relations between Iran and Syria. Classified Document A4 named human sources of information located in Syria and indicated that the sources' identities needed to be protected. Classified Document A4 was classified at the **SECRET** level.

e. Classified Document A5 was a 2010 State Department cable discussing human rights issues in Syria. Classified Document A5 named a human source of information located in Syria and indicated that the source's identity needed to be protected. Classified Document A5 was classified at the **SECRET** level.

G. ASSANGE Knew that the Dissemination of the Names of Individual Sources Endangered Those Individuals.

41. ASSANGE knew that his publication of Afghanistan and Iraq war-related significant activity reports endangered sources, whom he named as having provided information to U.S. and coalition forces.

42. In an interview in August 2010, ASSANGE called it "regrettable" that sources disclosed by WikiLeaks "may face some threat as a result." But, in the same interview, ASSANGE insisted that "we are not obligated to protect other people's sources, military sources or spy organization sources, except from unjust retribution," adding that in general "there are numerous cases where people sell information . . . or frame others or are engaged in genuinely traitorous behavior and actually that is something for the public to know about."

43. ASSANGE also knew that his publication of the State Department cables endangered sources whom he named as having provided information to the State Department. In a letter dated November 27, 2010 from the State Department's legal adviser to ASSANGE and his counsel, ASSANGE was informed, among other things, that publication of the State Department cables would "[p]lace at risk the lives of countless innocent individuals—from journalists to human rights activists and bloggers to soldiers to individuals providing information to further peace and security." Prior to his publication of the unredacted State Department cables, ASSANGE claimed that he intended "to gradually roll [the cables] out in a safe way" by partnering with mainstream media outlets and "reading through every single cable and redacting identities accordingly." Nonetheless, while ASSANGE and WikiLeaks published some of the cables in redacted form beginning in November 2010, they published over 250,000 cables in September 2011, in unredacted form, that is, without redacting the names of the human sources.

44. On July 30, 2010, the New York Times published an article entitled "Taliban Study WikiLeaks to Hunt Informants." The article stated that, after the release of the Afghanistan war significant activity reports, a member of the Taliban contacted the New York Times and stated, "We are studying the report. We knew about the spies and people who collaborate with U.S. forces. We will investigate through our own secret service whether the people mentioned are really

spies working for the U.S. If they are U.S. spies, then we know how to punish them." When confronted about such reports, ASSANGE said, "The Taliban is not a coherent outfit, but we don't say that it is absolutely impossible that anything we ever publish will ever result in harm—we cannot say that."

H. United States Law to Protect Classified Information

45. Executive Order No. 13526 and its predecessor orders define the classification levels assigned to classified information. Under the Executive Order, information may be classified as "Secret" if its unauthorized disclosure reasonably could be expected to cause serious damage to the national security, and information may be classified as "Confidential" if its unauthorized disclosure reasonably could be expected to cause damage to the national security. Further, under the Executive Order, classified information can generally only be disclosed to those persons who have been granted an appropriate level of United States government security clearance and possess a need to know the classified information in connection to their official duties.

46. At no point was ASSANGE a citizen of the United States, nor did he hold a United States security clearance or otherwise have authorization to receive, possess, or communicate classified information.

COUNT 1

(Conspiracy to Obtain, Receive, and Disclose National Defense Information)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and continuing until at least September 2011, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, knowingly and unlawfully conspired with other co-conspirators, known and unknown to the Grand Jury, to commit the following offenses against the United States:

1. To obtain documents, writings, and notes connected with the national defense, for the purpose of obtaining information respecting the national defense—namely, detainee assessment briefs related to detainees who were held at Guantanamo Bay, U.S. State Department cables, and Iraq rules of engagement files classified up to the **SECRET** level—and with reason to believe that the information was to be used to the injury of the United States or the advantage of any foreign nation, in violation of Title 18, United States Code, Section 793(b);

2. To receive and obtain documents, writings, and notes connected with the national defense—namely, detainee assessment briefs related to detainees who were held at Guantanamo Bay, U.S. State Department cables, Iraq rules of engagement files, and information stored on the Secret Internet Protocol Network classified up to the **SECRET** level—for the purpose of obtaining information respecting the national defense, and knowing and with reason to believe at the time such materials are obtained, they had been and would be taken, obtained, and disposed of by a person contrary to the provisions of

Chapter 37 of Title 18 of the United States Code, in violation of Title 18, United States Code, Section 793(c);

3. To willfully communicate documents relating to the national defense—namely, detainee assessment briefs related to detainees who were held at Guantanamo Bay, U.S. State Department cables, Iraq rules of engagement files, and documents containing the names of individuals in Afghanistan, Iraq, and elsewhere around the world, who risked their safety and freedom by providing information to the United States and our allies, which were classified up to the **SECRET** level—from persons having lawful possession of or access to such documents, to persons not entitled to receive them, in violation of Title 18, United States Code, Section 793(d); and

4. To willfully communicate documents relating to the national defense—namely, (i) for Manning to communicate to ASSANGE the detainee assessment briefs related to detainees who were held at Guantanamo Bay, U.S. State Department cables, and Iraq rules of engagement files classified up to the **SECRET** level, and (ii) for ASSANGE to communicate documents classified up to the **SECRET** level containing the names of individuals in Afghanistan, Iraq, and elsewhere around the world, who risked their safety and freedom by providing information to the United States and our allies to the public—from persons in unauthorized possession of such documents to persons not entitled to receive them in violation of Title 18, United States Code, Section 793(e).

C. In furtherance of the conspiracy, and to accomplish its objects, the defendant and his conspirators committed overt acts including, but not limited to, those described in the General Allegations Section of this Indictment.

(All in violation of Title 18, United States Code, Section 793(g))

COUNT 2

(Unauthorized Obtaining of National Defense Information)
(Detainee Assessment Briefs)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, knowingly and unlawfully obtained and aided, abetted, counseled, induced, procured and willfully caused Manning to obtain documents, writings, and notes connected with the national defense, for the purpose of obtaining information respecting the national defense—namely, detainee assessment briefs classified up to the **SECRET** level related to detainees who were held at Guantanamo Bay—and with reason to believe that the information was to be used to the injury of the United States or the advantage of any foreign nation.

(All in violation of Title 18, United States Code, Sections 793(b) and 2)

COUNT 3

(Unauthorized Obtaining of National Defense Information)
(State Department Cables)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, knowingly and unlawfully obtained and aided, abetted, counseled, induced, procured and willfully caused Manning to obtain documents, writings, and notes connected with the national defense, for the purpose of obtaining information respecting the national defense—namely, U.S. Department of State cables classified up to the **SECRET** level—and with reason to believe that the information was to be used to the injury of the United States or the advantage of any foreign nation.

(All in violation of Title 18, United States Code, Sections 793(b) and 2)

COUNT 4

(Unauthorized Obtaining of National Defense Information)
(Iraq Rules of Engagement Files)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, knowingly and unlawfully obtained and aided, abetted, counseled, induced, procured and willfully caused Manning to obtain documents, writings, and notes connected with the national defense, for the purpose of obtaining information respecting the national defense—namely, Iraq rules of engagement files classified up to the **SECRET** level—and with reason to believe that the information was to be used to the injury of the United States or the advantage of any foreign nation.

(All in violation of Title 18, United States Code, Sections 793(b) and 2)

COUNT 5

(Attempted Unauthorized Obtaining and Receiving of National Defense Information)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, knowingly and unlawfully attempted to receive and obtain documents, writings, and notes connected with the national defense—namely, information stored on the Secret Internet Protocol Network classified up to the **SECRET** level—for the purpose of obtaining information respecting the national defense, knowing and having reason to believe, at the time that he attempted to receive and obtain them, that such materials would be obtained, taken, made, and disposed of by a person contrary to the provisions of Chapter 37 of Title 18 of the United States Code.

(All in violation of Title 18, United States Code, Sections 793(c) and 2)

COUNT 6

(Unauthorized Obtaining and Receiving of National Defense Information)
(Detainee Assessment Briefs)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, knowingly and unlawfully received and obtained documents, writings, and notes connected with the national defense—namely, detainee assessment briefs classified up to the **SECRET** level related to detainees who were held at Guantanamo Bay—for the purpose of obtaining information respecting the national defense, knowing and having reason to believe, at the time that he received and obtained them, that such materials had been and would be obtained, taken, made, and disposed of by a person contrary to the provisions of Chapter 37 of Title 18 of the United States Code.

(All in violation of Title 18, United States Code, Sections 793(c) and 2)

COUNT 7

(Unauthorized Obtaining and Receiving of National Defense Information)
(State Department Cables)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, knowingly and unlawfully received and obtained documents, writings, and notes connected with the national defense—namely, U.S. Department of State cables classified up to the **SECRET** level—for the purpose of obtaining information respecting the national defense, knowing and having reason to believe, at the time that he received and obtained them, that such materials had been and would be obtained, taken, made, and disposed of by a person contrary to the provisions of Chapter 37 of Title 18 of the United States Code.

(All in violation of Title 18, United States Code, Sections 793(c) and 2)

COUNT 8

(Unauthorized Obtaining and Receiving of National Defense Information)
(Iraq Rules of Engagement Files)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, knowingly and unlawfully received and obtained documents, writings, and notes connected with the national defense—namely, Iraq rules of engagement files classified up to the **SECRET** level—for the purpose of obtaining information respecting the national defense, knowing and having reason to believe, at the time that he received and obtained them, that such materials had been and would be obtained, taken, made, and disposed of by a person contrary to the provisions of Chapter 37 of Title 18 of the United States Code.

(All in violation of Title 18, United States Code, Sections 793(c) and 2)

COUNT 9

(Unauthorized Disclosure of National Defense Information)
(Detainee Assessment Briefs)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had lawful possession of, access to, and control over documents relating to the national defense—namely, detainee assessment briefs classified up to the **SECRET** level related to detainees who were held at Guantanamo Bay—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(d) and 2)

COUNT 10

(Unauthorized Disclosure of National Defense Information)
(State Department Cables)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had lawful possession of, access to, and control over documents relating to the national defense—namely, U.S. Department of State cables classified up to the **SECRET** level—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(d) and 2)

COUNT 11

(Unauthorized Disclosure of National Defense Information)
(Iraq Rules of Engagement Files)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had lawful possession of, access to, and control over documents relating to the national defense—namely, Iraq rules of engagement files classified up to the **SECRET** level—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(d) and 2)

COUNT 12

(Unauthorized Disclosure of National Defense Information)
(Detainee Assessment Briefs)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had unauthorized possession of, access to, and control over documents relating to the national defense—namely, detainee assessment briefs classified up to the **SECRET** level related to detainees who were held at Guantanamo Bay—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(e) and 2)

COUNT 13

(Unauthorized Disclosure of National Defense Information)
(State Department Cables)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had unauthorized possession of, access to, and control over documents relating to the national defense—namely, U.S. Department of State cables classified up to the **SECRET** level—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(e) and 2)

COUNT 14

(Unauthorized Disclosure of National Defense Information)
(Iraq Rules of Engagement Files)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, aided, abetted, counseled, induced, procured and willfully caused Manning, who had unauthorized possession of, access to, and control over documents relating to the national defense—namely, Iraq rules of engagement files classified up to the **SECRET** level—to communicate, deliver, and transmit the documents to ASSANGE, a person not entitled to receive them.

(All in violation of Title 18, United States Code, Sections 793(e) and 2)

COUNT 15

(Unauthorized Disclosure of National Defense Information)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. From in or about July 2010 and continuing until at least the time of this Superseding Indictment, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, having unauthorized possession of, access to, and control over documents relating to the national defense, willfully and unlawfully caused and attempted to cause such materials to be communicated, delivered, and transmitted to persons not entitled to receive them.

C. Specifically, as alleged above, ASSANGE, having unauthorized possession of significant activity reports, classified up to the **SECRET** level, from the Afghanistan war containing the names of individuals, who risked their safety and freedom by providing information to the United States and our allies, communicated the documents containing names of those sources to all the world by publishing them on the Internet.

(All in violation of Title 18, United States Code, Section 793(e))

COUNT 16

(Unauthorized Disclosure of National Defense Information)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. From in or about July 2010 and continuing until at least the time of this Superseding Indictment, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, having unauthorized possession of, access to, and control over documents relating to the national defense, willfully and unlawfully caused and attempted to cause such materials to be communicated, delivered, and transmitted to persons not entitled to receive them.

C. Specifically, as alleged above, ASSANGE, having unauthorized possession of significant activity reports, classified up to the **SECRET** level, from the Iraq war containing the names of individuals, who risked their safety and freedom by providing information to the United States and our allies, communicated the documents containing names of those sources to all the world by publishing them on the Internet.

(All in violation of Title 18, United States Code, Section 793(e))

COUNT 17

(Unauthorized Disclosure of National Defense Information)

A. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

B. From in or about July 2010 and continuing until at least the time of this Superseding Indictment, in an offense begun and committed outside of the jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, having unauthorized possession of, access to, and control over documents relating to the national defense, willfully and unlawfully caused and attempted to cause such materials to be communicated, delivered, and transmitted to persons not entitled to receive them.

C. Specifically, as alleged above, ASSANGE, having unauthorized possession of State Department cables, classified up to the **SECRET** level, containing the names of individuals, who risked their safety and freedom by providing information to the United States and our allies, communicated the documents containing names of those sources to all the world by publishing them on the Internet.

(All in violation of Title 18, United States Code, Section 793(e))

COUNT 18

(Conspiracy to Commit Computer Intrusion)

1. The general allegations of this Superseding Indictment are re-alleged and incorporated into this Count as though fully set forth herein.

2. Beginning on or about March 2, 2010, and continuing thereafter until on or about March 10, 2010, the exact date being unknown to the Grand Jury, in an offense begun and committed outside of the jurisdiction of any particular State or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, did knowingly and unlawfully conspire with others known and unknown to the Grand Jury to commit offenses against the United States, to wit:

(A) to knowingly access a computer, without authorization and exceeding authorized access, to obtain information that has been determined by the United States Government pursuant to an Executive order and statute to require protection against unauthorized disclosure for reasons of national defense and foreign relations, namely, documents relating to the national defense classified up to the **SECRET** level, with reason to believe that such information so obtained could be used to the injury of the United States and the advantage of any foreign nation, and to willfully communicate, deliver, transmit, and cause to be communicated, delivered, or transmitted the same, to any person not entitled to receive it, and willfully retain the same and fail to deliver it to the officer or employee entitled to receive it; and

(B) to intentionally access a computer, without authorization and exceeding authorized access, to obtain information from a department and agency of the United States

in furtherance of a criminal act in violation of the laws of the United States, that is, a violation of Title 18, United States Code, Sections 641, 793(c), and 793(e).

PURPOSE AND OBJECT OF THE CONSPIRACY

The primary purpose of the conspiracy was to facilitate Manning's acquisition and transmission of classified information related to the national defense of the United States so that WikiLeaks could publicly disseminate the information on its website.

MANNERS AND MEANS OF THE CONSPIRACY

ASSANGE and his conspirators used the following ways, manners and means, among others, to carry out this purpose:

1. It was part of the conspiracy that ASSANGE and Manning used the "Jabber" online chat service to collaborate on the acquisition and dissemination of the classified records, and to enter into the agreement to crack the password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network.

2. It was part of the conspiracy that ASSANGE and Manning took measures to conceal Manning as the source of the disclosure of classified records to WikiLeaks, including by removing usernames from the disclosed information and deleting chat logs between ASSANGE and Manning.

3. It was part of the conspiracy that ASSANGE encouraged Manning to provide information and records from departments and agencies of the United States.

4. It was part of the conspiracy that ASSANGE and Manning used a special folder on a cloud drop box of WikiLeaks to transmit classified records containing information related to the national defense of the United States.

ACTS IN FURTHERANCE OF THE CONSPIRACY

In order to further the goals and purposes of the conspiracy, ASSANGE and his conspirators committed overt acts, including, but not limited to, the following:

1. On or about March 2, 2010, Manning copied a Linux operating system to a CD, to allow Manning to access a United States Department of Defense computer file that was accessible only to users with administrative-level privileges.

2. On or about March 8, 2010, Manning provided ASSANGE with part of a password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network.

3. On or about March 10, 2010, ASSANGE requested more information from Manning related to the password hash. ASSANGE indicated that he had been trying to crack the password hash by stating that he had "no luck so far."

(All in violation of Title 18, United States Code, Sections 371, 1030(a)(1), 1030(a)(2), 1030(c)(2)(B)(ii).)

A TRUE BILL

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

5/23/19
DATE

FOREPERSON

G. Zachary Terwilliger
United States Attorney

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IN THE WESTMINSTER MAGISTRATES' COURT

B E T W E E N:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

v

JULIAN ASSANGE

Defendant

SUBMISSIONS ON BEHALF OF THE DEFENDANT
THAT HIS EXTRADITION IS UNLAWFUL BY REASON OF THE FACT THAT HIS ALLEGED OFFENCES ARE 'POLITICAL OFFENCES'

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1. Introduction and Overview

1.1 Unlike many other modern extradition treaties, but in accordance with long and well-established Anglo-US practice, Article 4(1) of the Anglo-US Extradition Treaty 2003 (ratified in 2007) expressly provides that '*extradition shall not be granted if the offence for which extradition is requested is a political offence*'.

1.2 The offences with which Mr Assange is charged, and for which his extradition is sought, are, on the face of the extradition request, '*political offences*'.

1.3 The offences alleged in the US indictment that forms the basis of the extradition request are a series of offences, cumulatively punishable with 170 years' imprisonment, under the Espionage Act 1917 (now codified in Title 18, USC chapter 37 '*espionage and censorship'*), namely:

a) Conspiracy to obtain, receive and disclose national defence information (Count 1);

b) Unauthorised obtaining and receiving of national defence information (Counts 2 to 8);

c) Unauthorised disclosure of national defence information (Counts 9 to 17).

1.4 There is also an offence[1] (punishable with 5 years' imprisonment) of '*conspiracy to commit computer intrusion'* in order to '*facilitate Manning's acquisition and transmission of classified information related to the national defence of the United States*' (Count 18; Indictment, p36).

1.5 The gravamen (and defining legal characteristic) of each of the 18 charges is an alleged intention to obtain or disclose US state secrets in a manner that was damaging to the security of the US state.

1.6 These are *'political offences'* and extradition is prohibited and unlawful in respect of all such offences under the 2003 Anglo-US Extradition Treaty.

2. A 'pure political offence'

2.1 The concept of a '*political offence'*, or an offence '*of a political character',* has featured in successive Extradition Acts and in numerous bilateral treaties over

[1]. Originally the only offence charged.

the last century and a half. It is a concept familiar to the courts of both the US and the UK and carries a particular meaning under international law.

2.2 As a starting point, the authorities, both in England and abroad, first identify certain offences that are, by definition, paradigm or '*pure'* political offences because they are clearly offences against the state. Viscount Radcliffe states in ***Schtraks v Government of Israel*** [1964] AC 556 at p588 that there are '*two alternative ways of identifying a political offence – one, a charge that on the face of it smacks of the political, say caricaturing the head of state* [2] *or distributing subversive pamphlets'* (at p588). These are offences which are '*on their face political'*. Viscount Radcliffe contrasts this with the '*other'* type of political offence where '*a charge which, ostensibly criminal in the ordinary sense, is nevertheless shown to be 'political' in the context in which the actual offence occurred*'.

2.3 The distinction between '*purely political crimes*' and '*relative political crimes which are common crimes with a political overlay*' was reiterated in ***T v Immigration Officer*** [1996] AC 742 per Lord Mustill at p761D. Treason is, for example, per Lord Mustill, a '*purely political crime'* because it is a crime that, by definition, is '*directed at the sovereign and his apparatus of state'*. ***Oppenheim's International Law*** identifies as clearly within this definition '*certain offences against the state only, such as high treason, lese-majeste and the like'* (at p964). These are '*offences obviously of a political character...treason, sedition, or any other offence of that kind'* (***Schtraks*** per Lord Reid at p581). They are '*crimes such as treason or sedition'* (***Cheng v Governor of Pentonville Prison*** [1973] AC 931 per Lord Hodson at p941E). They are '*on the face of them political offences*' (per Lord Diplock at p943G, 944F). They are '*the type of political offence which is necessarily committed against the state seeking extradition'* (per Lord Simon at p949F-G).

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[2]. Making remarks critical of the Queen ('*leasing-making'*) and seditious libel were, until 2011, offences in the UK (s73 of the Coroners and Justice Act 2009; s.51 of the Criminal Justice and Licencing (Scotland) Act 2010). It is still currently an offence in, *inter alia*, Spain, Denmark, Germany, Netherlands, Kuwait, Jordan, Saudi Arabia, Morocco, Cambodia, Malaysia and Thailand to insult the monarch or head of state.

Espionage is a 'pure political offence'

2.4 There is powerful authority that the offence of espionage is understood under American law, common law and international law, to be a paradigm example of a '*pure political offence*', because it is not an ordinary crime and it is, by definition, directed against the political order of the state itself. ***Bassiouni*** on International Extradition speaks in terms of '*purely political offences'* as offences against the state itself in his analysis at pp677-679 and identifies '*treason, sedition and espionage'* as paradigm examples belonging to this category.

2.5 ***R v Governor of Brixton Prison, ex parte Kolczynski*** [1955] 1 QB 540 concerned potential allegations of '*spying, weakening of the armed forces; going over to the enemy'*. That '*is an offence of a political character'* per Cassels J at p547. Even the allegations of revolt on a ship, as Lord Mustill observed in ***T v Immigration Officer*** (supra) at p766D, '*were in reality "pure" political offences, such as sedition'*.

2.6 In ***Minister for Immigration and Multicultural Affairs v Singh*** [2002] HCA 7, the High Court of Australia identified '*offences such as treason, sedition, and espionage*' as pure political offences (per Gleeson CJ at §§15, 21). '*Crimes designated as "purely political" would involve such offences as high treason, capital treason, activities contrary to the external security of the State and so on'* (ibid., per Kirby J at §103).

2.7 Likewise ***Dutton v O' Shane*** [2003] FCAFC 195 the Full Federal Court (Finn and Dowsett JJ) said at §§185-186:

> *'...It is well accepted, though the terminology is not used in the Act itself, that there are two analytically distinct kinds of political offence, the one being "the pure political offence", the other, "the relative political offence": see Aughterson, at 90ff; Stanbrook and Stanbrook, at 69; 31A Am Jur 2d "Extradition" §44...*

...Illustrative of pure political offences are offences such as treason, espionage, sabotage, subversion and sedition. Such are offences "directed solely against the political order": Shearer, Extradition in International Law, 151 (1971). Their purpose has been described, variously, as to protect the political institutions of the State: Aughterson, 91; the State itself; 34A Am Juris 2d §44; or the sovereign or public order: Bassiouni, International Extradition 512 (3rd ed)...'

2.8 See also, for example:

- The US Court of Appeals in ***McMullen v Immigration and Naturalization Service*** (1986) 788 F.2d 591, at p596 ('...*'pure' political crimes, such as sedition, treason, and espionage*');

- Per Piersol CJ in the US District Court in ***Arambasic v Ashcroft*** (2005) 403 F Supp 2d 951 at p956 ('*A purely political offense involves conduct directed against the sovereign or its political subdivisions but does not have any of the elements of a common crime. Treason, sedition and espionage are examples of purely political offenses*'); and

- Per North J in the Australian Federal Court in ***Santhirarajah v Attorney-General for the Commonwealth of Australia*** [2012] FCA 940 at §§103, 107, 111, 123, 145 (recording *inter alia* the Government's assertion that '*pure political offences [encompass] treason, sedition, and espionage*').

2.9 In sum, espionage is, without more, an offence directed against the state itself and therefore well established as a '*pure political offence'*, for which extradition is prohibited under the terms of the Treaty.

3. <u>The conduct underlying all charges is that of 'pure political offences'</u>

3.1 Even if one ignores (which one cannot) the juridical label of the Espionage Act, the <u>conduct</u> which underlies those charges (and charge 18) is unquestionably one of a '*pure political offence'*. Mr Assange is alleged to have sought, obtained and published official state secrets. That is an allegation of an offence *'designed to protect the political institutions' or 'protecting the political order' of the USA'*.

3.2 As the extradition request states, the case levelled against Mr Assange by the US government itself is of alleged involvement in a:

> *'...scheme to steal classified documents from the United States and publish them...knowing that the documents were unlawfully obtained classified documents relating to security, intelligence, defense and international relations of the United States of America...The disclosure of these documents was damaging to the work of the security and intelligence services of the United States of America...it damaged the capability of the armed forces of the United States of America to carry out their tasks; and endangered the interests of the United States of America abroad; and ASSANGE knew publishing them on the Internet would be so damaging...'* (Dwyer affidavit, §4).

3.3 Thus:

a) Under Count 1: '...*the objective of the conspiracy charged in Count 1 of the Superseding Indictment was to obtain, receive, and disclose national defense information*...' (Dwyer, §§61-62) '...*which were classified up to SECRET level*...' (Indictment, p17);

b) Counts 2-8: require proof of the purposeful obtaining / receiving of information '...*connected with the U.S. national defense*...' (Dwyer, §§66-68) '...*classified up to the SECRET level*...' (Indictment, p19-25);

c) Counts 9-17: require proof of the wilful obtaining / receiving of information '...*relating to the national defense*...' (Dwyer, §§66-68) '...*classified up to the SECRET level*...' (Indictment, p26-34);

d) That is equally true of Count 18 (conspiracy to commit computer intrusion). Count 18 is not an allegation of common computer hacking; it is (and is predicated upon) a legally necessary allegation that Mr Assange planned *'...to obtain information that has been determined by the United States Government...to require protection against unauthorized disclosure for reasons of national defense and foreign relations, namely, documents relating to the national defense classified up to the "Secret" level...'* (Dwyer, §85) (Indictment, p35). In sum, s.1030 USC as alleged here requires that (and is only engaged where) the '*conspiracy'* is directed at state secrets as defined by Executive Order. '...*The primary purpose of the conspiracy was to facilitate Manning's acquisition and transmission of classified information related to the national defense of the United States so that WikiLeaks could publicly disseminate the information on its website*...' (Indictment, p36).

3.4. According to the Government's Opening Note:

> '...*By this conduct, Mr Assange caused damage to the strategic and national security interests of the United States*...'. It is '...*specifically alleged that Mr Assange knew (as must have been obvious) that the disclosure of this information would be damaging to the work of the security and intelligence services of the United States; would damage the capability of the United States armed forced; and would endanger the interests of the United States abroad*...' (§3).

3.5 The conduct alleged against Mr Assange is, by analysis as well as by label, of '*espionage'*. That is, on the authorities, a '*violation of laws designed to protect the political institutions*' or '*protecting the political order'* of the USA (***Dutton***). It is activity '*contrary to the external security of the [USA]'* (***Singh***). It is '*conduct directed against the sovereign or its political subdivisions'* (***Arambasic)*** and '*against the state itself'* (***Bassiouni***).

3.6 It is conduct *'on [its] face political' (**Schtraks**), 'necessarily committed against the state' (**Cheng**),* or *'directed at the sovereign and his apparatus of state' (**T**).* It is conduct equivalent to say, sedition, and is certainly every bit '*obviously of a political character*' as political caricature or handing out political pamphlets *(**Schtraks**).*

3.7 It is ultimately no different to the extradition request concerning MI5 agent David Shayler, prosecuted under the Official Secrets Act 1989 for passing top secret documents to The Mail on Sunday in 1997 (including disclosing the names of agents who had been put in fear of their lives by his actions).[3] That extradition request was rejected by the French Cour d'Appel on 18 November 1998 as being a '*political offence'* (under Article 3(1) of the European Convention on Extradition 1957).[4]

3.8 In addition to alleging the commission of political conduct, the motivation and purpose attributed to Mr Assange (which constitutes a core aspect of the criminal allegation against him) is to damage '*the work of the security and intelligence of the US'* and to '*damage the capability of the armed forces of*

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[3]. Shayler disclosed that MI5 kept files on prominent politicians, including Labour ministers, that the bombings of the City of London in 1993 and the Israeli embassy in London in 1994 could have been avoided, and that MI6 were involved in a plot to assassinate Libyan leader Colonel Gaddafi.

[4]. *'...Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence...'*

the USA to carry out their tasks; and endanger the interests of the United States of America abroad' (Dwyer affidavit, §4). For example:

> *'...ASSANGE knew the disclosure of these classified documents would be damaging to the work of the security and intelligence services of the United States of America...'* (Dwyer, §8);
>
> *'...ASSANGE is the public face of "WikiLeaks," a website he founded with others as an "intelligence agency of the people." To obtain information to release on the WikiLeaks website...for distribution to the public...'* (Dwyer, §11) (Indictment, §1);
>
> *'...As the website then-stated, "WikiLeaks accepts classified, censored, or otherwise restricted material of political, diplomatic, or ethical significance...'* (Dwyer, §12) (Indictment, §2);
>
> *'...the WikiLeaks website...stated that documents or materials...must "[b]e likely to have political, diplomatic, ethical or historical impact...*' (Dwyer, §14) (Indictment, §4);
>
> '...*ASSANGE and WikiLeaks have repeatedly sought, obtained, and disseminated information that the United States classified due to the serious risk that unauthorized disclosure could harm the national security of the United States*...' (Indictment, §2);
>
> '...*ASSANGE personally and publicly promoted WikiLeaks to encourage those with access to protected information, including classified information, to provide it to WikiLeaks for public disclosure*...' (Indictment, §3);
>
> '...*ASSANGE designed WikiLeaks to focus on information, restricted from public disclosure by law, precisely because of the value of that information. Therefore, he predicated his and WikiLeaks's success in part upon encouraging sources with access to such information*...' (Indictment, §7);

'...*ASSANGE knew, understood, and fully anticipated that Manning was taking and illegally providing WikiLeaks with classified records containing national defense information of the United States that she was obtaining from classified databases. ASSANGE was knowingly receiving such classified records from Manning for the purpose of publicly disclosing them on the WikiLeaks website*...' (Indictment, §20);

'...*ASSANGE, Manning, and others shared the objective to further the mission of WikiLeaks, as an "intelligence agency of the people," to subvert lawful measures imposed by the United States government to safeguard and secure classified information, in order to disclose that information to the public and inspire others with access to do the same*...' (Indictment, §29);

'...*this shared philosophy*...' (Indictment, §30);

'...*this mission...'* (Indictment, §31);

'...to publish the classified documents...damaging to the United States...' (Indictment, §31).

3.9 Thus:

a) Count 1: specifically alleges that Mr Assange's knowing objective and purpose '...*was to obtain, receive, and disclose national defense information*...' (Dwyer, §62), with '*reason to believe that the information was to be used to the injury of the United States or the advantage of any foreign nation*' (Indictment, p17) (USC Title 18, s.793(b)-(e));

b) Counts 2-8 (unauthorised obtaining and receiving of national defence information) specifically allege that Mr Assange wilfully aided or abetted Manning acting '*with intent or reason to believe that the information was to be used to the injury of the United States or the advantage of any*

foreign nation' (Dwyer, §§66-68) (Indictment, p19-25) (USC Title 18, s.793(b)-(c));

c) Counts 9-17 (unauthorised disclosure of national defence information) specifically allege that Mr Assange wilfully aided or abetted Manning disclosing '*to all the world'* with '...*reason to believe [the disclosure] could be used to the injury of the United States or to the advantage of any foreign nation*...' (Indictment, p26-34) (USC Title 18, s.793(d)-(e));

d) Count 18: alleges that the purpose of Mr Assange's alleged conspiracy to commit '*computer intrusion'* was likewise to enable Manning to '*steal classified documents from the United States'* (Dwyer, §87) and was carried out '...*with reason to believe that such information so obtained could be used to the injury of the United States and the advantage of any foreign nation*...' (Dwyer, §85) (Indictment, p35).

3.10 The reason offences such as espionage are pure political offences, per the government before the Australian Federal Court in ***Santhirarajah v Attorney-General for the Commonwealth of Australia*** [2012] FCA 940 at §§103, 107, 111, 123, 145, is that '*The elements of pure political offences such as treason, sedition, and espionage* <u>*contain a requirement that the offender intend to harm the government of the state*</u>*. For this reason pure political offences do not require the demonstration of purpose by the alleged offender*'.

3.11 US government officials moreover freely, publicly and regularly ascribe motives *'hostile'* to the USA to Mr Assange. For example:

- '...*WikiLeaks walks like a hostile intelligence service and talks like a hostile intelligence service. It has encouraged its followers to find jobs at CIA in order to obtain intelligence. It directed Chelsea Manning in her theft of specific secret information. And it overwhelmingly focuses on the United States, while seeking support from anti-democratic*

countries and organizations. It is time to call out WikiLeaks for what it really is – a non-state hostile intelligence service often abetted by state actors...' (Mike Pompeo, US Secretary of State and former CIA Director, 13 April 2017);[5]

- '...*WikiLeaks will take down America any way they can and find any willing partner to achieve that end...I mean you can go – you only need to go to WikiLeaks' Twitter account to see that every month they remind people that you can be an intern at the CIA and become a really dynamite whistleblower...free range chickens [who] run around the world with resources to spare, and who don't intend well for the United States of America*...' (Mike Pompeo, Aspen Security Forum in July 2017);[6]

- '...*guilty of treason*...' (Mick Huckabee, Republican candidate for the 2010 Presidential election);[7]

- '...*He's waging cyberwar on the United States...'* (KT McFarland, deputy national security advisor, 2017);[8]

- '...*a conduit for...some other adversary of the United States just to push out information to damage the United States*...' (FBI Director, James Comey, testifying before the Senate Judiciary Committee on FBI oversight, May 2017);[9]

- '...*Section 623 provides a Sense of Congress that WikiLeaks and its senior leadership resemble a non-state hostile intelligence service, often abetted by state actors, and should be treated as such*...' it is

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5. https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-csis.html
6. https://www.denverpost.com/2017/07/20/mike-pompeo-cia-aspen-security-forum-2017/
7. https://www.theguardian.com/world/2010/dec/01/us-embassy-cables-executed-mike-huckabee
8. https://www.telegraph.co.uk/news/worldnews/wikileaks/8172916/WikiLeaks-guilty-parties-should-face-death-penalty.html
9. https://www.washingtonpost.com/news/post-politics/wp/2017/05/03/read-the-full-testimony-of-fbi-director-james-comey-in-which-he-discusses-clinton-email-investigation/

'...*part of a direct attack on our democracy*...' (s.623 in the Intelligence Authorization Act for Fiscal Year 2018, approved by the U.S Senate Intelligence Committee on 18th August 2017);[10]

- '...*Under the guise of transparency, Julian Assange and Wikileaks have effectively acted as an arm of...'* foreign intelligence services (Richard Burr, Chairman of the Senate Select Committee, 11 April 2019: the day of Mr Assange's arrest).[11]

3.12 In short, Mr Assange faces precisely the same sort of accusation (of wilful disclosure of state secrets harmful to the state) that the UK brought against Katherine Gunn under the Official Secrets Acts (and which was ultimately discontinued in the face of a defence plea of justification / preventing illegality). Of course, in the domestic context, the political nature of the charge is no defence (***Castioni*** at p162 per Hawkins J) but, as ***Shayler*** shows, such conduct is not properly the subject of extradition. Had Alfred Dreyfus fled to Germany (or anywhere), for example, he could never have been extradited to France (and the scandal that has come to symbolise modern injustice throughout the French speaking world would never have played out).

4. <u>The Test for relative political offence</u>

4.1 Even in cases where a common crime is alleged (such as computer misuse; count 18), if it is plain from the context of the allegation itself, and the motivation ascribed to (or claimed by) the offender, that the conduct is directed against the interests of the state, it will nonetheless be regarded as constituting a '*political offence*':

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[10]. https://www.intelligence.senate.gov/publications/report-accompany-s1761-intelligence-authorization-act-fiscal-year-2018-september-7-2017

[11]. https://thehill.com/homenews/senate/438456-top-senate-republican-assange-put-millions-of-lives-at-risk

'...Relative political offences, in contrast, are common crimes which acquire their political character from the political purpose sought to be achieved by an offender in committing them...For this reason it is conceivable that the commission of the common crime of fraud on the State could, because of the offender's purpose, constitute a "political offence" for the purposes of the Act...' (***Dutton*** (supra) at §186).

4.2 The greater part of the English law relating to '*political offences'* has concentrated on this broader concept of '*relative political offence'* in the context of '*ordinary crimes'.*

The early formulation – political disturbance

4.3 Such as murder[12] in ***In re Castioni*** [1891] 1 QB 149 where it was held that the core test of whether a common crime is a political crime is that it is committed as part of a political activity and with a political object in mind:[13]

'...it must at least be shewn that the act is done in furtherance of, done with the intention of assistance, as a sort of <u>*overt act in the course of acting in*</u>*....'* either *'...*<u>*a political matter*</u>*, a political rising,* <u>*or*</u> *a dispute between two parties in the State as to which is to have the government in its hands'* (per Denman J at p156).

'...*The question really is, whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts...of a political character with a political object, and as part of the political movement...in which he was taking part*...' (p159)

4.4 Hawkins J however formulated the test as '*incidental to and formed a part of political disturbances*' (per Hawkins J at p166).

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12. Until 1978, crimes of violence, such as murder were capable of being *'political crimes*': see below at section 6.

13. See ***Prevato v the Governor, Metropolitan Remand Centre*** [1986] 8 FCR 358 per Wilcox J at §62.

4.5 Even under this early (later rejected) formulation it was never part of the the enquiry to assess the quality or merits of the politics in question:

> '...*whether the act done at the moment at which it was done was a wise act in the sense of being an act which the man who did it would have been wise in doing with the view of promoting the cause in which he was engaged. I do not think it would be at all consistent with the real meaning of the words of the statute if we were to attempt so to limit it. I mean, I do not think it would be right to limit it...by considering whether it was necessary at that time that the act should be done*...' (per Denman J at pp158-159)

> '...*even though it is an act which may be deplored and lamented, as even cruel and against all reason, by those who can calmly reflect upon it after the battle is over*...' per Hawkins J at p167).

The modern law – attempts to alter governmental policy – in a disturbed political atmosphere

4.6 Sixty years later, in ***R v Governor of Brixton Prison, ex parte Kolczynski*** [1955] 1 QB 540, Lord Goddard CJ stated at p551 that it was now *'...necessary, if only for reasons for humanity, to give a wider and more generous meaning to the words we are now construing, which we can do without in any way encouraging the idea that ordinary crimes which have no political significance will thereby be excused...'.* The Divisional Court thus recognised that the mere '*expression of political opinions*' (even if articulated through the medium of an ordinary criminal act, such as revolt on a ship) is a '*political offence*' if it becomes the subject of prosecution.

4.7 A number of core principles later emerged from ***Schtraks v Government of Israel*** [1964] AC 556.

4.8 First, the House of Lords confirmed that it is <u>not necessary for the defendant to be seeking political power, or the overthrow of government</u> (despite suggestions to the contrary in the earlier case law). Whilst the concept of a political offence is limited to opposition between citizen and government in power (i.e. it is not enough to be in contest with a political force not in power) (per Viscount Radcliffe), the House of Lords rejected the necessity for open insurrection or for an intention to change the composition of the government:

> *'...I do not think that the application of the section can be limited to cases of open insurrection...And I do not see why the section should be limited to attempts to overthrow a government. <u>The use of</u> force, or it may be other <u>means</u>, to compel a sovereign to change his advisers, or <u>to compel a government to change its policy</u> may be just as political in character as the use of force to achieve a revolution. And I do not see why it should be necessary that the refugee's party should have been trying to achieve power in the State. It would be <u>enough if they were trying to make the government concede some measure of freedom</u> but not attempting to supplant it...'* (per Lord Reid at pp583 and 584).

4.9 <u>Secondly</u>, so far as the notion of '*political disturbance'* as a necessary element of the test (per ***Castioni***), Lord Reid also reminded (p583) that '<u>*political disturbance'* means no more than that '*the political atmosphere must be disturbed*</u>', not that '*there must have been some disturbance of public order*'.

4.10 Thirdly, Lord Reid reiterated (at p583):

> *'...We cannot inquire whether a "fugitive criminal" was engaged in a good or a bad cause. A fugitive member of a gang who committed an offence in the course of an unsuccessful putsch is as much within the Act as the follower of a Garibaldi. But not every person who commits an offence in the course of a political struggle is entitled to protection. If a person takes advantage of his position as an insurgent to murder a man against whom he has a grudge I would not think that that could be called a political offence. So it appears to me that the motive and purpose of the accused in committing the offence must be relevant and may be decisive. It is one thing to commit an offence for the purpose of promoting a political cause and quite a different thing to commit the same offence for an ordinary criminal purpose...'*

4.11 Viscount Radcliffe thus summarised '*the idea that lies behind the phrase "offence of a political character'*" as that:

> '*...the fugitive is at odds with the State that applies for his extradition on some issue connected with the political control or government of the country. The analogy of "political" in this context is with "political" in such phrases as "political refugee," "political asylum" or "political prisoner." It does indicate, I think, that the requesting State is after him for reasons other than the enforcement of the criminal law in its ordinary, what I may call its common or international, aspect... It is not departed from by taking a liberal view as to what is meant by disturbance or these other words, provided that* <u>*the idea of political opposition as between fugitive and requesting State*</u> *is not lost sight of...'* (p591).

What is required is evidence to '...*suggest that the appellant's offences, if committed, were committed as a* *demonstration against any policy of the Government*...*itself or that he has been abetting those who oppose the Government...'* (p592)

4.12 ***Schtraks*** was confirmed in ***Cheng v Governor of Pentonville Prison*** [1973] AC 931:

'...*Political character in its context, in my opinion, connotes the notion of opposition to the requesting state...taking political action vis-à-vis the American Government*...' (per Lord Hodson at p943A-B);

'...*it was no part of his purpose to influence the policy of the Government of the United States*...' (per Lord Diplock at p943C);

'..."Political" as descriptive of an object to be achieved must, in my view, be confined to the object of overthrowing or changing the government of a state or inducing it to change its policy or escaping from its territory the better so to do. No doubt any act done with any of these objects would be a "political act"...' (per Lord Diplock at p945C), and if the government in question was the one seeking extradition, it would be a '*political offence'* (per Lord Diplock at p945E);

'...even apart from authority, I would hold that prima facie an act committed in a foreign state was not 'an offence of a political character' unless the only purpose sought to be achieved by the offender in committing it were to change the government of the state in which it was committed, or to induce [the government] to change its policy, or to enable him to escape from the jurisdiction of a government whose political policies the offender disapproved but despaired of altering so long as he was there...' (per Lord Diplock at p945E-F);

'...I would not hold that an act constituted 'an offence of a political character'...if the only 'political' *purpose which the offender sought to achieve by it was* *not* *directed against* *the government or* *governmental policies* *of that state within whose territory the offence was committed...'* (per Lord Diplock at p945F-G);

'*...the most exacting relevant test, namely...[is] his crime was committed both from a political motive and for a political purpose*...' (Per Lord Simon at p952C);

It is not part of the '*political offence'* exception that *'...the courts of this country [should] inquire into the merits of those who have committed crimes against the requesting state or to pass judgment upon the political acts or policy of the government of that state...'* if *'...a man who has committed a crime directed against the régime of the requesting state and which, in that sense, was a crime of a political character...'* (per Lord Salmon at p961C-G).

4.13 See also ***Prevato v the Governor, Metropolitan Remand Centre*** [1986] 8 FCR 358. Italy. Prevato was a member of the Ronde Armate Proletarie (Proletarian Armed Patrols) which opposed a system called the selection in schools program. He was charged with various offences involving damage to schools and threats to teachers and other officials, committed in furtherance of the Ronde Armate Proletarie's '*long and bitter campaign to induce a change in education policy in government schools in Padua*'. Extradition was refused on the ground that the offences were political offences. Per Wilcox J at §§71-72:

'...71...the object of changing government policy...may...be sufficient to institute an offence of a political character. [The contrary view] would be inconsistent with the speeches in both Schtraks and Cheng.

72....The early debate upon the necessity for there to be a campaign to change the government itself was decisively resolved in the negative in Schtraks; it is enough that there be a concerted campaign to change government policy. Not every offence committed in the course of opposition to government policy is a political offence. There must be, at least, an organized, prolonged campaign involving a number of people. The offence must be directed solely[14] to that purpose; it must not involve the satisfaction of private ends. And the offence must be committed in the direct prosecution of that campaign; so an assault upon a political opponent in the course of the campaign may be a political offence but an assault upon a bank teller in the course of a robbery carried out to obtain funds for use in the campaign would not be...'

4.14 In ***T v Immigration Officer*** [1996] AC 742, Lord Mustill reiterated at p761D-E the:

'...broad division, established by a series of bi-lateral treaties and a handful of decisions into (a) 'common' crimes, (b) purely political crimes such as treason, and (c) 'relative' political crimes which are common crimes with a political overlay...'. That is to say that *'there was a need for certain of such crimes to be exempt, when impressed with a political character.*

4.15 According to Lord Mustill, a '*relative political offence'* will '*look to the connection between the motive and political content of the crime and the criminal act itself*' (p764D). '*The general proposition, which I believe is binding on this House as a matter of English law, is known in the literature as the "incidence" theory. The essence of this is that there must be a political*

[14]. In fact, it is an '*error of law'* to regard political motivation and revenge as mutually exclusive (***Minister for Immigration and Multicultural Affairs v Singh*** [2002] HCA 7 per Gleeson CJ at §§18-20).

struggle either in existence or in contemplation between the government and one or more opposing factions within the state where the offence is committed, and that the commission of the offence is an incident of this struggle' (p764F-G). That is to say (p764G-765A): '*the fugitive is at odds with the state that applies for his extradition on some issue connected with the political control or government of the country'* (per Viscount Radcliffe in ***Schtraks***) and that '*the only purpose sought to be achieved by the offender in committing it'* is *'to change the government of the state in which it was committed, <u>or to induce it to change its policy</u>'* (per Lord Diplock in ***Cheng***). '*This principle underlies the major English decisions on extradition law'* (p765B).

5. <u>The exceptions to the exemption: violent offences</u>

5.1 All this would, of course, also offer protection to acts of violent insurrection, or terrorism. In the nineteenth century that was acceptable. But in view of the societal shift described by Lord Mustill in ***T v Immigration Officer*** (supra), such means are no longer regarded as tolerable: '*certain acts of violence, even if political in a narrow sense, are beyond the pale'* (p755H). For this reason (and at the same time recognising and reinforcing the breadth of the definition of '*political offence*'),[15] international law has moved to exclude certain violent offences from qualifying as '*political offences'*.

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[15]. See e.g. ***Santhirarajah*** (supra) per North J at §250: *'...the fact that Parliament has expressed limitations on what amounts to a political offence recognises that the ordinary meaning of that term covers a range of conduct which today is viewed as inappropriate for exclusion from the process of extradition...'*. Put otherwise (per North J at §242) '*...Such violent activity was undertaken in aid of political campaigns. It is difficult to argue that offences arising out of such conduct are not political. The means used are designed to advance political ends. In the words of Lord Mustill [in T v Immigration Officer at p762C-D] which bear repeating: Those who struggle against odious regimes have now come to seem, by their aims and methods, scarcely less odious than their oppressors. Yet it was (and still is) hard to see why their crimes, however distasteful and heartless, are any the less "political" than those of the heroes of the Risorgimento. International terrorism must be fought, but the vague outlines of the political exception are of no help...'*.

5.2 In the asylum context, under article 1F(b) of the Refugee Convention, no international rules exist which govern how to identify such cases and thus the Courts have sought to articulate and erect rules which exclude acts of terrorism and the like (***T v Immigration Officer*** (supra)); ***Minister for Immigration and Multicultural Affairs v Singh*** (supra)).

5.3 In extradition law, by contrast, as Lord Mustill observed in ***T v Immigration Officer*** at p753G, 761B-763A, 765G-H, the limits are set instead by Treaties which '*depoliticise'* certain violent offences.[16]

5.4 For example, following Lord Simon's plea in 1973 in ***Cheng*** '*for governments in international conclave*' to set the applicable limits, the Council of Europe's Convention on the Suppression of Terrorism 1977,[17] excludes certain listed violent offences from being regarded as '*political'* for the purposes of extradition between Convention states. Those exclusions were, in turn, given effect to by s.1 of and Schedule 1 to the Suppression of Terrorism Act 1978.[18]

5.5 As with other Treaties elsewhere, the UK/USA Supplementary extradition Treaty 1985 also erected a similar (but narrower) list of excluded offences. Accordingly, the 1978 Act was applied to extradition with the USA (with relevant omissions designed to reflect the more limited exclusionary list).[19]

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[16]. See also ***Santhirarajah*** (supra) per North J at §250 '*...Any further limitation to be imposed on the ordinary scope of the term political offence is a matter for Parliament...*'

[17]. And now its 2003 Protocol.

[18]. For offences excluded from the ambit of '*political'* by the Convention, the UK is also obliged to establish extra-territorial or universal jurisdiction (see article 6 of the 1977 Convention, s.4 of the 1978 Act) so that if, for some other reason, extradition is not granted, the UK will be in a position to prosecute itself (*aut dedere aut judicare*). See ***T v Immigration Officer*** (supra) per Lord Mustill at p763.

[19]. See Schedule 2 to the Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986 (1986/2146).

5.6 Neither the USA list, nor even the wider Council of Europe list, have ever included espionage[20] or computer misuse.[21]

5.7 The USA exclusionary list is now contained in Article 4(2) of the 2003 UK / USA Treaty. It still does not include espionage or computer misuse.

5.8 ***Santhirarajah*** is an example of a '*relative political offence'* disclosed by the face of a USA extradition request. It concerned an allegation of purchasing night vision goggles (in the USA) to provide to the Tamil Tigers to support their cause for independence in Sri Lanka. Common crimes were alleged (conspiracy to violate export control laws, conspiracy to provide material support to a terrorist organisation, money laundering). All, however, were exempt from extradition as '*relative political offences'* because:

> *'...252...the applicant was a member of the LTTE. That organisation had been engaged in a civil war in Sri Lanka since 1983. The charged conduct involved a conspiracy to supply weapons for use against government forces in that civil war. It was a critical factor that the charged conduct was in relation to the LTTE which was expressly designated by the US Secretary of State as the object of the offences. In designating the LTTE the Secretary of State formed the view that the LTTE was a foreign organisation engaged in terrorist activity which threatened the security of the US or nationals of the US.*
>
> *253. No doubt the struggle in Sri Lanka was a political confrontation. The contending parties were seeking the power to govern Tamils in Sri Lanka.*

[20]. No doubt because it is a pure political offence.

[21]. Which is why, for example, neither espionage or computer misuse committed in the USA are offences which the UK has extra-territorial jurisdiction to prosecute (see above, fn. 15).

254. The designation of the LTTE by the US Secretary of State was directed to that struggle. It made some dealings in support of one side of the political struggle illegal. When the US criminalised dealing with the LTTE it took a political stand.

255. When the applicant took the actions alleged against him it should be inferred from the circumstances that he did so in support of the political struggle of the LTTE. That is to say, he was at odds with the US over the political issue of support for the LTTE against the government of Sri Lanka in the civil war. These circumstances fall within the ordinary understanding of the expression "political offence".

256...The alleged conspiracy to provide weapons to the LTTE is an incident in the political struggle no less than was the arming of Mr Castioni in preparing for his assault on the municipal buildings. <u>If the applicant had acquired the weapons to advance the cause of the LTTE and they had been used to kill and maim innocent civilians indiscriminately the conduct would have been atrocious. However</u>, because the actions were in furtherance of a political cause the offences are properly described as political. No satisfactory definition has been formulated in the cases that would exclude the conduct from that characterisation. That is recognised by Parliament in expressly excluding certain terrorist activities from the purview of the political exception. It is common ground that <u>Parliament has not expressly excluded the offences with which the applicant has been charged</u>...'

5.9 In sum, extradition for all of the offences alleged against Mr Assange are, on the face of the extradition request itself, squarely prohibited by Article 4 of the Treaty.

6. Reliance on Treaty

6.1 True the 2003 Extradition Act itself provides no '*political offence'* bar, but authority establishes that it is the duty of the Court, not the executive, to ensure the legality of extradition under the terms of the Treaty.

6.2 The Extradition Act 2003 removed '*political offence'* as a bar to extradition. With reference to the international trend under which the '*political offence'* bar has disappeared from most modern extradition Treaties,[22] ***Nicholls Montgomery Knowles***, 3rd ed. observes at §5.41:

> *'...In the EA 2003 Parliament took this process to its conclusion by removing entirely the political offence exception to extradition for both Category 1 and Category 2 countries...'.*

6.3 Despite that, the UK / USA Treaty containing the '*political offence'* exception was ratified, and came into force, in 2007; after the 2003 Act had been passed. Both governments must therefore have regarded Article 4 as a protection for the liberty of the individual, whose necessity continues (at least in relations as between the USA and the UK).

6.4 Applying clear authority discussed below, and notwithstanding the terms of the 2003 Act, Mr Assange is entitled to the substantive protection of the Treaty.

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[22]. Including the EAW Framework decision. Which is why, for example, Spain feels able to issue EAWs for '*rebellion'*, and now '*sedition'*, against members of the Catalan regional government; and yet European States still balk at such cases.

Sinclair [1991]

6.5 Since ***R v Governor of Pentonville prison, ex parte Sinclair*** [1991] 2 AC 64,[23] it has been the law that '*monitoring the provisions of the Treaty is an executive, and not a magisterial, function*' (per Lord Ackner at pp89E and 91H).[24] On that analysis, the defendant who asserts that his extradition is prohibited by the Treaty must issue habeas corpus proceedings directed to the Secretary of State's decision to initiate proceedings under the Act (p81E, 82G).

6.6 The point was reiterated in ***R (Guisto) v Governor of Brixton Prison*** [2004] 1 AC 101 where Lord Hope spoke at §§36-37 about the '*basic point'* that '...*It is the function of the Secretary of State to see that the provisions of the treaty have been satisfied*...'

Article 5 ECHR and *Kashamu [2002]*

6.7 However, ***Sinclair*** precedes the incorporation of the ECHR by the Human Rights Act.

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[23]. Prior to ***Sinclair***, it was well recognised that where the governing Treaty provides protections additional to those found in the statute, its provisions had to be given effect to by the magistrate. See, e.g. ***R v Governor of Pentonville prison, ex parte Sotiriadis*** [1975] AC 1, per Lord Diplock at p33H-34C '...*The treaty between the United Kingdom and Germany is a contract, whereby the parties 'engage to deliver up to each other...under the circumstances and conditions stated in the present treaty'...the question on this contract, as it seems to me, is whether under the circumstances and the conditions stated in the treaty the United Kingdom is obliged to carry out the terms of the contract...which limit, for the protection of a fugitive, the obligations imposed upon the party called upon to surrender him...'*; ***In re: Nielsen*** [1984] AC 606 per Lord Diplock at p616B-C '...*the magistrate's jurisdiction and powers under the Acts are subject to such limitations, restrictions, conditions, exceptions and qualifications as may be provided for in the extradition treaty with the particular foreign state. The jurisdiction conferred upon the Bow Street magistrate by the Acts of 1870 to 1932 is the widest that he may lawfully exercise upon applications for extradition of fugitive criminals from foreign states. His jurisdiction cannot be extended beyond that maximum but it may be limited, in the case of fugitive criminals from a particular foreign state, by the terms of the extradition treaty with that state...'*.

[24]. See also, e.g. ***Rey v Government of Switzerland*** [1999] 1 AC 54 at p63.

6.8 Detention for the purposes of extradition is now governed by (and must therefore comply with) Article 5 ECHR: see Article 5(1)(f).

6.9 Article 5(4) ECHR requires an independent impartial '*court'* (in adversarial proceedings) to determine the '*lawfulness'*[25] of detention for the purposes of extradition. In this context, that means that (contrary to ***Sinclair***) the legality of detention pending extradition cannot be determined by the executive. See ***R (Kashamu) v Governor of Brixton Prison*** [2002] QB 887 at §§27-36:

> '*... It is, in my judgment, plain that article 5 expressly requires the lawfulness of the detention of a person detained with a view to extradition under paragraph (1)(f) to be decided speedily by a court. It is equally plain to my mind that, in the extradition context, the Secretary of State lacks the qualities of independence and impartiality required of the court-like body by the Strasbourg jurisprudence...*' (per Rose LJ at §27)
>
> '*Having regard, as this court must, to the Strasbourg jurisprudence, it seems to me to be clear that a court and not the Secretary of State is the appropriate forum for a decision as to the lawfulness of a fugitive's detention*' (§29)
>
> '*Furthermore, as it seems to me, the district judge's obligation under section 6(1) of the Human Rights Act 1998 to act compatibly with Convention rights requires him to make a determination under article 5(4)...he must consider whether the detention is lawful by English domestic law, complies with the general requirements of the Convention and is not open to criticism for arbitrariness'* (§32).

[25]. Which includes arbitrariness: ***R v Governor of Brockhill Prison, ex parte Evans*** [2001] 2 AC 19 at p38B-E.

6.10 Specifically, the High court held that ***Sinclair***:

> '...*does not now, in the light of the provisions of article 5(4), provide a rationale for excluding the courts from exercising abuse jurisdiction in relation to the lawfulness of detention...*' (§§29-30).

6.11 ***Kashamu***, the Human Rights Act, and their combined implications for the Secretary of States' duty to monitor Treaty compliance (per ***Sinclair***), was not considered in ***Guisto.***

6.12 ***Kashamu*** was however approved and applied by the Privy Council in ***Fuller v Attorney-General of Belize*** (2011) 32 BHRC 394 per Lord Phillips at §37; again having expressly considered ***Sinclair***. The ***Kashamu*** principle was in fact extended to encompass:

> '...*Both the lawfulness of the detention and the lawfulness of the extradition [which] are a matter for the courts and not the executive...'* (§50).
>
> '...*For the reasons given by the Administrative Court in* ***Kashamu****...[it is not lawful] to confer on the executive rather than the courts the determination of any issue that goes to the legitimacy of extradition or of detention pending possible extradition...'* (§51).

6.13 The Human Rights Act requires (per ***Kashamu*** and ***Fuller***) the transference from the executive to the judiciary of determination of compliance with Article 4 of the Treaty.

7. Abuse of Process

7.1 It is, in any event, an abuse of process for the USA to request extradition for conduct prohibited by the terms of the relevant Treaty. Article 1 provides that '*the Parties agree to extradite to each other, pursuant to the provisions of this Treaty*'.

7.2 It is an abuse of process to prosecute in breach of the terms of the provisions of a Treaty or Convention that confers rights on the citizen. In ***R v Uxbridge Magistrates Court, ex parte Adimi*** [2001] QB 667, Simon Brown LJ held that '*the abuse of process jurisdiction*' would '*provide a sufficient safety net'* for those wrongly prosecuted in a manner that breached Article 31 of the Refugee Convention, even though the Convention was not incorporated into English law (at p684E-F). That was, in turn, upheld and applied by the House of Lords in ***R v Asfaw*** [2008] 1 AC 1061, in the case of a prosecution that bypassed the protections of the Refugee Convention (at §§31-34 per Lord Bingham, §§70-71 per Lord Hope, §118 per Lord Carswell).

7.3. Extradition detention pursuant to an abuse of process is arbitrary within the meaning of Article 5 ECHR: ***Kashamu***. In ***Pomiechowski v District Court of Legnica, Poland*** [2012] 1 WLR 1604, Lord Mance stated at §§24-26:

> '...*As the Board [in **Fuller**] made clear the abuse alleged went, in that case also, to the extradition as much as to any prior detention...Where detention and the extradition proceedings as a whole stand and fall together, according to whether or not they involve an abuse of process, then **Fuller** suggests that article 5.4 may be an effective means by which a root and branch challenge to extradition may be pursued*...'

7.4 Thus it is that this Court has power to restrain the requesting state from abusing the process: ***R (Government of the USA) v Bow Street Magistrates' Court*** [2007] 1 WLR 1157.

8. Conclusions and Course to be Taken

8.1 For the reasons set out above, Mr Assange's extradition '*shall not be granted'* under the applicable Treaty because it concerns a '*political offence*':

a) Espionage (counts 1-17) is self-evidently a paradigm political offence. It is a '*pure political offence*'.

b) Even if stripped of nomenclature, the conduct underlying charges 1-17 (and indeed charge 18) is a *prima facie* political offence directed against the state. It is an allegation of a '*pure political offence*'.

c) Even if regarded as '*common crimes'*, all charges nonetheless allege a '*relative political offence*'. The alleged conduct is, on the face of the extradition request, incidental to a '*political'* struggle to influence governmental policy, and alleged to be motivated as such.

8.2 Separately from the evidential hearing scheduled for February 2020, the Court is therefore respectfully invited to list this matter for urgent resolution of the following:

a) **First,** the Court is invited to rule that it has jurisdiction to determine whether the offences for which Mr Assange's extradition is sought are '*political offences*';

b) **Secondly,** then the Court is invited to rule that the offences for which Mr Assange's extradition is sought are '*political offences'* for the purposes of Article 4 of the Treaty;

c) **Thirdly,** the Court is invited to rule that for that reason alone, extradition must be refused in this case.

Friday, 18 October 2019

Edward Fitzgerald QC

Doughty Street Chambers

Mark Summers QC

Matrix

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

-and-

JULIAN ASSANGE

Defendant

Defence Reply on Political Offence Protection

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1. Introduction

1.1. These submissions briefly reply to the prosecution skeleton argument on "Political Offence" and the Treaty point.

1.2. The prosecution rely upon the decision of the Divisional Court in the case of ***Norris*** at paragraphs 15 – 19. They also suggest that the "Political Offence" exception has been abolished; and even that the defence has conceded that much.

1.3. But in fact we submit that the prosecution's reliance upon ***Norris*** is misconceived, and that it is an oversimplification to state that the political offence exception has been abolished. Where, as here, the modern Anglo-US Treaty that is the basis of this particular extradition request expressly preserves the protection from extradition for a "Political Offence", it is an abuse of process to seek extradition for a self-evidently political offence. The US state that has itself expressly agreed that "extradition shall not be granted" for a "Political Offence", cannot then properly seek extradition for precisely such an offence. The Court should treat such an application as an abuse of process.

1.4. The defence submissions in reply can be briefly summarised as follows: -

i. The Anglo-US Extradition Treaty 2003 is a recent treaty, ratified in 2007. Article 4 (1) of the Treaty enshrines and re-states the political offence exception by stating that *"extradition shall not be granted if the offence for which extradition is requested is a political offence".*

ii. The protection in question is still one of extensive application. It is a prominent and important feature in US extradition treaties including all the US treaties with Western democracies. (see Appendix to Julia Jansson's book on "*Terrorism, Criminal Law and Politics*" in Political Offences Authorities Tab E42). The same basic protection is enshrined in Article 3 of the Interpol Convention (see Political Offences Authorities Tab A3). It still continues to have widespread application throughout the world.

iii. The specific protections set out in Part 2 of the UK 2003 Act and in particular section 81 cannot reasonably be read to exclude any additional protection where such additional protection is contained in the particular Treaty on which the application for extradition is founded. At the very least this additional protection can be invoked by reliance on the abuse jurisdiction. It becomes an abuse to disregard such a treaty protection because a state which seeks extradition in reliance on its bilateral treaty with the UK should be expected by the Court to honour the fundamental protections guaranteed in the Treaty by which it has bound itself.

iv. The decision in *Norris* is distinguishable on the following grounds:-

a. Firstly, the context was completely different. It concerned a challenge to the designation by the Secretary of State under section 84(7) of the US as a Part 2 requesting state that did not need to provide a *prima facie* case.

b. Secondly, the decision in *Norris* did not relate to a protection contained in a treaty that **post-dated** the 2003 Act, as is the case here, but to the 1972 Anglo-US Treaty which **pre-dated** the 2003 Act and which the Court found to have been superseded by the provisions of the 2003 Treaty (which dispensed with the *prima facie* case requirement). As the Court in *Norris* stated at para 52:- "*the 2003 treaty represents a diminution of the rights of the citizens of both countries*". But despite that diminution the 2003 Treaty, ratified in 2007, expressly maintains the protection from extradition for political offences.

c. Thirdly, there was no reliance in the *Norris* case on the abuse of process jurisdiction. This is fundamental since Mr Assange primarily invokes the abuse jurisdiction to resist extradition for what are undoubtedly **"political offences".** All the leading textbooks and authorities recognise espionage to be a primary or pure political offence; and there can be little doubt that the CFAA offence here is also itself a pure political offence. Carey Shenkman, in his expert report, makes it clear that the relevant offence under subsection 1030(a)(1) of the CFAA is identical to section 793 of the Espionage Act. (see Core Bundle tab 4 p. 38).

1.5. In what follows we will briefly develop some of these points.

2. The Fundamental Nature of the Prohibition on Extradition for Political Offences

2.1. The prohibition on extradition for political offences has venerable historic importance. It is one of the most fundamental protections recognised in international and extradition law. It features in Article 3a of the United Nations Model Treaty on Extradition. It features in Article 3 of the Interpol Convention. It is enshrined in the substantive law of numerous Western democracies including Canada, Argentina, Belgium, Spain, Italy, and Germany. It is one of the most universally accepted rules of international law governing extradition.

2.2. **The prohibition on extradition for political offences is contained within nearly all US extradition treaties**. Some of the first treaties to contain the

political offences exception were signed by the US[1], dating as far back as 1856. More recently, the US signed an extradition treaty with Kosovo in 2016. Article 3.1 of this treaty contains, in materially similar terms to the 117 other US extradition treaties, that: "*Extradition shall not be granted if the offense for which extradition is requested is a political offense*". Following the increase in violent terrorist extremism, the prohibition has been limited to non-violent political acts. For example, murder, taking hostages, and using explosive devices to cause bodily harm or property damage (or the conspiracy to do so) have all been excluded from the political offences exception. **Nonetheless**, **purely political acts remain covered by the prohibition.** And a leading authority on this subject, Julia Jansson, has described Mr Assange's actions in publishing the WikiLeaks documents as "***clearly and purely political in character***"[2].

2.3. Where such a prohibition is deliberately and expressly contained in a modern extradition treaty, it would be a violation of the international rule of law to simply disregard it as the prosecution invite this court to do.

3. The 2003 Extradition Act does not remove the duty to have regard to the provisions of the treaty

3.1. There is nothing in the 2003 Act to prohibit reliance upon the express provisions of this Treaty protecting against extradition for political offences. And it is significant that this treaty was ratified after the 2003 Act came into force.

3.2. At the very least:-

i. There is nothing in the 2003 Act to exclude reliance on the abuse of process protection invoked here where extradition would be in direct conflict with the express provisions of the treaty that forms the whole bedrock of the extradition request.

[1] Ecuador International Extradition Treaty with the United States, 28 June 1872; Convention between the United States of America and the Austro-Hungarian Monarchy relating to Extradition for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, 3 July 1856.

[2] Jansson, J., 2019. *Terrorism, Criminal Law and Politics: The Decline of the Political Offence Exception to Extradition.* Routledge, p201

ii. Section 81 need not be interpreted to remove the protection from extradition for a political offence in a case where that express protection is contained in the treaty. It may simply make express provision for the minimum statutory safeguards set out in section 81.

3.3. In case after case the courts have stressed the importance of respecting treaty obligations as a cardinal principle that guides the whole extradition process and the way that the courts should approach it.

3.4. Thus as Laws LJ observed in *R (Bermingham and others) v Director of Serious Fraud Office* [2007] QB 77 at para 118 a proposed extradition must be "properly constituted according to the domestic law of the sending state **and the relevant bilateral treaty**".

3.5. Later at paragraph 127 Laws LJ refers to Lord Bingham's reference to "**the great desirability of honouring extradition treaties**". But this is not a one-way street. There is as much value in not allowing extradition where the treaty prohibits it as in permitting it to go ahead when the conditions have been met.

3.6. Laws LJ went on to cite the words of Hale LJ (as she then was) in *R (Warren) v Secretary of State for the Home Department* [2003] EWHC 1177 in paragraph 40 where she also mentioned the strong public interest in respecting "**treaties involving mutually agreed and reciprocal commitments**".

3.7. Therefore, it is not self-evident, nor is it accepted, that the 2003 Act removed the need for the court to respect the prohibition on extradition for political offences where that time-honoured protection is expressly retained in the bilateral treaty that governs the particular extradition, as is the case here.

4. The Decision in *Norris*

4.1. The decision in *Norris* on which the US principally relies is readily distinguishable on the grounds set out above and developed below.

4.2. **Firstly,** the context in *Norris* was completely different. It concerned a challenge to the designation by the Secretary of State under section 84(7) of the US as a Part 2 requesting state that did not need to provide a *prima facie* case even

though such a requirement was retained in the 1972 Treaty. In that case there was express provision in the 2003 Act for the Secretary of State to remove the requirement of a *prima facie* case. Here, by contrast, there is no express provision in the 2003 Act to dispense with the requirement not to extradite for a political offence where the treaty continues to require it, and where it would be an abuse of process to disregard this fundamental human rights protection in the case of an extradition request founded on a treaty that retains the protection.

4.3. **Secondly**, the decision in *Norris* did not relate to a protection contained in a treaty that **post-dated** the 2003 Act as is the case here, but to the 1972 Anglo-US Treaty which pre-dated the 2003 Act.

4.4. **Thirdly**, there was no reliance in the *Norris* case on the abuse jurisdiction. This is fundamental since Mr Assange primarily invokes the abuse jurisdiction to resist extradition for what are undoubtedly **"political offences".** All the leading textbooks and authorities recognise espionage to be a primary or pure political offence; and there can be little doubt that the CFAA offence here is also a pure political offence.

5. Reliance on the Abuse of Process Jurisdiction

5.1. The abuse of process jurisdiction can be invoked where extradition or a prosecution resulting therefrom would involve a violation of the principles of public international law: see ***R v Mullen*** [2000] QB 520.

5.2. It can also be invoked in circumstances where there has been a breach of an international human rights convention.

5.3. **The prosecution's simplistic rejection of any reliance on the requesting state's duties under public international law as of relevance even to the abuse jurisdiction is oversimplistic.** It ignores the fact that the abuse of process jurisdiction is there to protect against the disregard of the rule of law, of which international law itself forms a part. Thus in a number of cases the courts have found that international treaties can create rights and impose duties in such a way as to justify the court's rejection of any general executive power simply to disregard the human rights and protections created by such treaties:-

i. In ***R v Mullen*** (*Abuse authorities, tab 7)* pp535E and 537G the abuse jurisdiction was successfully invoked, partly because the Divisional Court found that a deportation bypassed proper extradition procedures because the behaviour of the British authorities involved them "acting in breach of public international law" (page 535 E).

ii. In ***Thomas v Baptiste*** [2000] 2 A.C. 1 (*Police Offence authorities, tab 26*) the Privy Council found that the due process clause of the Trinidad Constitution "invokes the concept of the rule of law itself". They further found that the treaty invoked in that case, the Inter-American Convention on Human Rights did confer the right to complete the process of petition to the Inter-American Commission and Court even though that right was the product of an "unincorporated treaty" and not of any provision of domestic law.

iii. In ***Neville Lewis v Att. Gen. Jamaica*** [2001] 2 AC 50 (*Political Offences authorities, tab 14*) at pages 84G – 85C the Privy Council followed their earlier decision in *Thomas v Baptiste*. They held that the constitutional concept of "the protection of law" extended to protect a prisoner's right to petition the Inter-American Commission of Human Rights, even though that was the product of a treaty protection. That was despite the extensive reliance by the Jamaican state on the very authorities cited by the prosecution in this case to establish that treaty law cannot confer any rights in domestic law. Moreover the court implicitly questioned the assumption that a "ratified but unincorporated treaty only creates obligations for the state under international law" when Lord Slynn stated at page 84H:- "**even assuming** that that (principle) applies to international treaties dealing with human rights."

Conclusion

5.4. For all these reasons it is submitted that it would be an abuse of process to extradite Mr Assange in reliance on the very treaty which governs the legality of his extradition whilst disregarding a major protection contained in that treaty, namely the protection against extradition for a political offence. To do so would effectively violate the rule of law and render any extradition both arbitrary and inconsistent with Article 5 of the European Convention on Human

Rights. For that reason extradition would also be barred under section 87 of 2003 Act, which undoubtedly is an express provision of domestic law.

EDWARD FITZGERALD QC
MARK SUMMERS QC
FLORENCE IVESON

21 February 2020

IN THE WESTMINSTER MAGISTRATES' COURT

B E T W E E N:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

v

JULIAN ASSANGE

Defendant

OPENING SUMMARY
OF DEFENCE CASE

---

1. Introduction

Course to be taken

1.1. I would like first to deal with the **history of this prosecution**. Because that history shows that this prosecution is not motivated by genuine concerns for criminal justice but by politics.

1.2. Next I will summarise the three ways in which we say these proceedings constitute an **abuse of process;**

i. First, because the prosecution is being pursued for ulterior political motives and not in good faith. That engages the jurisdiction recognised in the successive cases of *Bermingham* and *Tollman.*

ii. Secondly, because the request **fundamentally misrepresents the facts** in order to bring this case within the bounds of an extradition crime; both by misrepresenting that Julian Assange materially assisted Chelsea Manning in accessing national security information; and then by misrepresenting that there was a reckless disclosure of the names of particular individuals [as

alleged in counts 15, 16, 17]. That point engages the jurisdiction recognised in the successive cases of *Castillo, Murua* and *Zakrewski.* We will deal with it more fully in due course.

iii. Thirdly, because the request seeks extradition for what is a classic "**political offence"**. Extradition for a political offence is expressly prohibited by Article 4(1) of the Anglo-US Extradition Treaty. Therefore, it constitutes an abuse of this Court's process to require this Court to extradite on the basis of the Anglo-US Treaty in breach of the Treaty's express provisions.

1.3. That concludes my summary of the abuse case. I turn to the special protections set out in the Extradition Act itself and the successive bars to extradition which we rely on. We say that extradition should be refused on the following additional grounds:-

i. **Firstly**, extradition is barred under s81a by reason of the political motivation of the request. It is directed at him because of the political opinions he holds and that have guided his actions. Moreover extradition is barred under s81b because it exposes him to the real risk of discrimination on grounds of his foreign nationality and "political opinions" at every stage of the criminal justice process in the US.

ii. **Secondly**, extradition is barred under s87 because it would involve a flagrant denial of his right to a fair trial under Article 6 and a clear violation of his right to freedom of expression under Article 10.

iii. **Thirdly**, extradition is barred because it would expose him to inhuman and degrading treatment contrary to Article 3. That is because of the risk of a wholly disproportionate sentence, amounting in effect to a life sentence; and because of the virtual certainty of inhuman and degrading treatment in prison in the United States, if not an even worse fate.

iv. **Fourthly**, extradition should be refused under section 91 because it would be unjust and oppressive to extradite him by reason of his mental condition and the high risk of suicide if he is extradited.

v. **Fifthly**, we say that it would be unjust and oppressive to extradite him by reason of the lapse of time since the alleged offences. So we rely also on section 82.

1.4. I will take these points in turn. But first can I say something about the witnesses. You have before you a core bundle of witness statements. The tab references will be to that bundle.

1.5. The key witnesses whose evidence we propose adduce in relation to the **history** and **political motivation** of the prosecution, and the **free speech** issues raised by it, are as follows:

i. Professor Mark Feldstein, a distinguished academic specialising in broadcast journalism [tab 18].
ii. Carey Shenkman, an academic who has made a special study of history of the Espionage Act and the Computer Fraud Abuse Act [tab 4].
iii. Jameel Jaffer, Executive Director of the Knight First Amendment Institute at Columbia University [tab 22].
iv. Professor Michael Tigar, former journalist and academic specialising in constitutional and criminal law [tab 23].
v. Professor Noam Chomsky, Professor of Politics and world renowned author [tab 39].
vi. Professor Paul Rogers, Emeritus Professor of Peace Studies at Bradford Univeristy [tab 40].

1.6. I want to summarise the history of the proceedings.

2. History of the proceedings

2.1. The background facts are more fully set out in the chronology and in the Particulars of Abuse served on 20th February.

The original conduct

2.2. Extradition is being sought for the receipt and publication of materials provided to WikiLeaks by Chelsea Manning. All the relevant conduct occurred between 2010 and 2011, and was known about at that time. Yet, **Mr Assange's prosecution** and **this request** were not even begun until December 2017; and the superseding indictment on which the prosecution now rely did not come until 23rd May 2019. Moreover during the intervening period there was a well-publicised DOJ decision under the Obama administration that he should not be prosecuted.

Chelsea Manning's Court Martial

2.3. Chelsea Manning was arrested in 2010. She was convicted in 2013. At her trial, she explained her motivation for downloading documents and videos which exposed war crimes in Afghanistan and Iraq, and the torture of detainees in Guantanamo. (See Chronology at page 3). In her plea allocution statement to the Court Martial on the 30th July 2013, she stated "the decisions I made to send documents and information to the WLO website were my own decisions and I take full responsibility for my own actions". At that time no attempt was made to indict Julian Assange. The prosecution say that Julian Assange caused Chelsea Manning to obtain the materials referred to in Counts 2 – 4, 9 – 11, and 12 – 14. But her own account gives the lie to that false claim.

Decision not to prosecute Julian Assange in 2013

2.4. A decision was made under the Obama administration not to prosecute Julian Assange. That was because of what has been described as 'the New York Times problem', which is referred to in the Washington Post article dated 26th November 2013. The US prosecutors concluded that charging Assange would have been tantamount to prosecuting any journalist who published leaked national security information, and would thus violate the First Amendment [Feldstein, tab 18, §9] [Jaffer, tab 22, §21] [Shenkman, tab 4, §27] [Lewis 2, tab 3, §15].

2.5. Former DOJ spokesman Matthew Miller set out the main reason for the decision in 2013: *"If you are not going to prosecute journalists for publishing*

classified information, which the department is not, then there is no way to prosecute Assange." (Politico, BK, Tab 4; The Washington Post, BK, Tab 5). Quoted at paragraph 9 of Feldstein (see tab 18).

2.6. This point is analysed by Professor Feldstein at paragraph 9 of his report. He also refers to the '*longstanding precedent that publishing secret records is not a crime'.* As all our First Amendment experts make clear, it is for that reason that no journalist had ever been prosecuted for like conduct in the US despite *'thousands upon thousands of national security leaks to the press'* [Feldstein, tab 18, §§5, 8-11] [Shenkman, tab 4, §§21, 25-27, 32-34, 41-42] [Jaffer, tab 22, §21] [Tigar, tab 23, pp16-18].

Political war on journalists under Trump

2.7. But the principled and consistent stand taken under the Obama administration was reversed under the present Trump administration from early 2017 onwards. And the prosecution initiated later in December 2017 was the result of President Trump's effective declaration of war on leakers and journalists.

2.8. You will see from the expert reports that President Trump has '*repeatedly referred to the press as 'the opposition party'* and the *'enemy of the people''* [Jaffer, tab 22, §§4, 28]. He has '*denounced the news media as a whole as 'sick', 'dishonest', 'crazed', 'unpatriotic', 'unhinged' and 'totally corrupt' and attacked them as 'purveyors of 'fake news"* [Feldstein, tab 18, §2] [Prince 2, tab 13].

2.9. So it is no surprise that in February 2017 President Trump met with FBI Director James Comey and agreed that they should be 'putting a head on a pike' as a message to journalists over leaks and 'putting journalists in jail' [Feldstein, tab 18, §9] [Shenkman, §30]. **As Professor Feldstein shows, President Trump then instructed his attorney general to '*investigate 'criminal leaks' of 'fake news' reports that had embarrassed the White***

House' [Feldstein, tab 18, §9] [Shenkman, tab 4, §30]. The Trump administration has thus set about systemically punishing whistle-blowers in general, and it '*dramatically escalated the number of criminal investigations into journalistic leaks'* [Feldstein, tab 18, §2]. As Feldstein further states: President Trump's *'use of government power to punish his media critics'* is a 'deliberate attempt to '*stifle the exercise of the constitutional protections of free speech and the free press''* such that '*all journalists work under the threat of government retaliation'* [Feldstein, tab 18, §2].

Julian Assange as target

2.10. It was against that background that President Trump and his administration then decided to make an example of Julian Assange. He was the obvious symbol of all that Trump condemned. He had brought American war crimes to the attention of the world [Boyle, tab 5, §11] [Tigar, tab 23, p8-9]. Again Professor Feldstein puts it in this way: **'*On a worldwide scale [he disclosed] significant governmental duplicity, corruption, and abuse of power that had previously been hidden from the public... [he] exposed outrageous, even murderous wrongdoing, including war crimes, torture and atrocities on civilians*'** [Feldstein, tab 18, §4]. You will see set out at paragraph 4 of his report [page 6] the sheer scale and significance of the revelations brought about by Julian Assange and WikiLeaks. They range from the video of American soldiers shooting unarmed civilians from a helicopter, to the brutal torture of detainees in Iraq and the exposure of the true figures of civilian deaths resulting from the invasion of Iraq. Such revelations obviously put him in the sights of the aggressive 'America First' ideologues of the Trump Administration.

The denunciations of Julian Assange in April 2017

2.11. That is why the prosecution of Mr Assange, based on no new evidence, was now pursued and advocated by the Trump administration, led by spokesman such as Mike Pompeo of the CIA and Attorney General Sessions. They began denouncing him in **April 2017.** I refer you to the following:

i. Firstly, the statements of **Mr Pompeo**, as director of the CIA, on 13 April 2017, denouncing Julian Assange and WikiLeaks as "**a non-state hostile intelligence agency**". [Feldstein, tab 18, p19 and K10]. On the same occasion, Pompeo also stated that Julian Assange as a foreigner had no First Amendment rights. (See Guardian article, bundle K)

ii. Then there was the political statement of **Attorney General Sessions** on 20 April 2017 that the arrest of Julian Assange was now a priority and that *'if a case can be made, we will seek to put some people in jail'* [Feldstein quoting Washington Post article of Ellen Nakashima, tab 18, at page 19].

2.12. The full scale of these denunciations is set out in the report of Professor Feldstein at page 19.

2.13. We say that these public denunciations indicate the political motivation that fuelled the later prosecution. They violate the presumption of innocence. And they prejudice the prospects of a fair trial. And they form the context in which Attorney General **Sessions,** a political appointee with a political agenda, was directly responsible for the First Indictment in December 2017.

2.14. Thus, as Professor Feldstein shows, pressure was then put on prosecutors by the Attorney General and *'the new leaders of the justice department'* to bring an indictment, even in the face of 'vigorous debate' from 'career professionals' who were 'sceptical' about its legality, and despite open objections from prosecutors directly involved in the case. That was the position in April 2017 as confirmed by reports in the Washington Post and the New York Times on April 20th 2017. [Feldstein, tab 18, paragraph 9, page 19].

The Criminal Complaint in December 2017

2.15. That is why on 21st December 2017 a criminal complaint was made of computer misuse against Julian Assange; and his extradition on a provisional warrant was sought. The timing is also very significant because it coincided

with the grant of diplomatic status by the Ecuadorian government. The US were of course well-informed of all developments in the Ecuadorian embassy, because US intelligence agencies had access to recordings of all conversations between Julian Assange and his lawyers in the embassy. I will develop that point further later. And by then, prosecution had become a political imperative.

2.16. I will pass over the intervening period during which Julian Assange continued to have his conversations with his lawyers and family constantly monitored and recorded by a private agency acting on the instructions of US intelligence and for their benefit.

Superseding indictment

2.17. Then, in May 2019, a superseding indictment was proffered. That indictment charged Julian Assange under the Espionage Act. It charged him with publication of state secrets in a multi-count indictment that dramatically ratcheted up the scale of the charges, the pressure on him, and the potential penalties. As Eric Lewis shows, Mr Assange faces up to 175 years in prison if he is convicted of all offences charged in the Superseding Indictment [tab 3, para 36].

Unprecedented

2.18. This decision to prosecute for the **publication** of state secrets was **unprecedented.** The unprecedented nature of the decision is stressed by witness after witness whose reports you have before you. The Court is referred to:-

i. Professor Feldstein [tab 18, paras 5 and 8 – 11].
ii. Carey Shenkman [tab 4, paras 32and 41 – 42].
iii. Jameel Jaffer [tab 22, para 21].
iv. Professor Michael Tigar [tab 23, pages 16 – 18 and 20].

2.19. <u>As Professor Feldstein says</u>: '*The Indictment breaks all legal precedents. No publisher has ever been prosecuted for disclosing national*

secrets since the founding of the nation more than two centuries ago...The only previous attempts to do so were highly politicized efforts by presidents seeking to punish their enemies' [Feldstein, tab 18, §10]. '*The belated decision to disregard this 230-year-old precedent and charge Assange criminally for espionage was not an evidentiary decision but a political one'* [Feldstein, tab 18, §11].

2.20. Jameel Jaffer in his report at tab 22, characterises the novel nature of the Superseding Indictment in equally troubling terms. I quote: '*the government's indictment of a publisher under the act* ***crosses a new legal frontier'*** [see paragraph 21].

The Swedish investigation and the timing of the superseding indictment

2.21. **The timing** of the superseding indictment, the **23rd May 2019** is also highly significant. At that time, the Swedish prosecution had just made two significant statements. On the **13th May 2019**, they had announced that it was their intention to reopen the investigation of Julian Assange for sexual offences and on **14th May 2019,** they specifically announced that they intended to issue an EAW. The full facts are set out in the Defence Reply on Abuse of Process at paragraphs 53 to 54. As made clear there, the coincidence is too great. It leads to the inescapable inference that the US ratcheted up the charges so as to ensure that their extradition request would take precedence over any Swedish request. Again this is not about criminal justice. It is about the manipulation of the system, to ensure that the US was able to make an example of Julian Assange.

3. Accompanying abuses of the rule of law

3.1. The means employed in the targeting of Julian Assange further show that he has been made the object of exceptional extra-legal measures; and that this is no ordinary case.

Invasion of legal professional privilege

3.2. First, his conversations with his lawyers were monitored and recorded by private security agents acting on behalf of the US whilst he was sheltering in the Ecuadorian Embassy. Then he was evicted from the Embassy after the intervention of the US. Finally his confidential papers were illegally taken from him at the request of the US. That is confirmed by the second statement of Gareth Peirce, tab 21, paragraph 12(v) and (vi).

3.3. To pause for a moment, the evidence of illegal monitoring and intrusion is set out in detail in the particulars of abuse at tab 5 of the submissions bundle, at paragraphs 36 – 39 and in the statement of Witness 2, [at tab 12]. Can I turn to these briefly just to spell out the details?

3.4. All this points to an agenda that is not confined to a *bona fide* prosecution. It also points to a casual disregard for the rule of law. It violated the sanctity of diplomatic premises. And it took place in this country, which is relevant to the question of abuse.

Pressuring Ecuador to expel Julian Assange

3.5. Then too steps were taken to ensure that he was expelled from the Ecuadorian embassy by a process of bullying and bribing Ecuador into expelling him, so as to make him available for extradition. This is set out at paragraphs 43 to 45 of the Particulars of Abuse.

Further breach of legal privilege

3.6. After the removal and arrest of Julian Assange, his legally privileged papers were seized. They have not been returned – see Gareth Peirce's second statement at tab 21, paragraph 12(v) and (vi). It is respectfully submitted that the US ought to clarify whether they now have access to those materials, why they were requested and why they have not been returned to Mr Assange's lawyers.

The pardon offer

3.7. Further evidence of the bad faith and abuse of power at the heart of this prosecution is evidenced by the approach to Mr Assange by Republican Congressman Dana Rohrabacher, in August 2017. Mr Rohrabacher visited Julian Assnage and discussed a pre-emptive pardon in exchange for personal assistance to President Trump in the enquiry then ongoing concerning Russian involvement in the hacking and leaking of the Democratic National Committee emails [Peirce 1, tab 1, §28] [Witness 2, tab 12, §30] [Peirce 2, tab 21, §9]. You now have admitted the statement of Jennifer Robinson at tab 42. This statement sets out clearly that on 15 August 2017 the visit took place to Mr Assange in the embassy by Mr Rohrabacher and a man called Charles Johnson [who we know to be closely associated with President Trump]; that they told Julian Assange and Jennifer Robinson that President Trump was aware of and approved of them coming to meet with Mr Assange to discuss a proposal [paragraph 5]. And as to the nature of the proposal itself, Jennifer Robinson explains it in this way at paragraph 10 of her statement:-

> "*the proposal put forward by Congressman Rohrabacher was that Mr Assange identify the source for the 2016 election publications in return for some kind of pardon, assurance or agreement which would both benefit President Trump politically and prevent US Indictment and extradition.'*

3.8. Rohrabacher has publicly stated in the last few days that he and Charles Johnson did meet with Julian Assange, that he did make the proposal about a pardon. But he denies it was at the direction or with the approval of President Trump. President Trump himself denies everything. But in the immortal words of Mandy Rice Davies: 'Well he would, wouldn't he?'. And there may yet be further developments in relation to this particular aspect of the case, prompted by the public reporting of this allegation last week.

3.9. We say that this whole pardon incident shows that, just as the prosecution was initiated in December 2017 for political purposes, so too the Trump

administration had been prepared to use the threat of prosecution as a means of extortion to obtain personal political advantage from Mr Assange.

4. The particulars are capable of amounting to abuse

4.1. The whole history that I have just set out provides the clearest evidence that this extradition request is an abuse of process by reason of bad faith and abuse of power.

4.2. The prosecution required us to identify the particulars of abuse. We have done so in the Particulars of Abuse document. I refer you in particular to the 12 particulars of abuse set out at paragraph 7, tab 5 of the submissions bundle. There is also a shorter summary at paragraph 87. We say that these allegations, if made good, amply make out a case of abuse.

4.3. We have dealt with the legal test for abuse of process at paragraphs 11 – 16 of the Particulars skeleton and have further developed it in our reply at paragraphs 6 – 28. We say that it is clear that the allegations, if made out, would satisfy the test of a prosecution pursued in bad faith for ulterior purposes, with accompanying violations of the rule of law. That satisfies the test laid in ***Bermingham*** [tab 19] and ***Symeou*** [tab 29], and in ***Fuller v Att Gen of Belize***. [tab 32]. Procedurally, that is all that is required for the second stage laid down in the ***Tollman*** procedure.

4.4. **Madam you yourself have questioned the point of the exercise required by the prosecution.** That is because in this case, any ruling at this stage would fail to exclude any significant factual issue. And it would fail to render any evidence inadmissible – because the evidence goes in any event to make out our case on the statutory bars.

4.5. But I am ready if necessary to argue this point in detail if you would wish me to do so – after I have summarised our overall case that extradition is ruled out under the successive statutory bars.

***Zakrzewski* abuse**

4.6. The key witnesses on the ***Zakrzewski*** abuse are:

i. **Patrick Eller,** a former US Army investigator and expert in digital forensics [tab 17];
ii. **John Goetz,** an international investigative journalist who worked with Der Spiegel in collaboration with WikiLeaks in 2010 – 2011 [tab 31].
iii. **Jakob Augstein,** an experienced journalist who worked at Der Freitag at the relevant time [tab 32].
iv. **Andy Worthington,** a journalist who worked collaboratively on the WikiLeaks disclosures relating to the Guantanamo Detainee assessment briefs [tab 33].
v. **Emily Dische-Becker**, a journalist who was working in Beirut at the relevant time, in a media partnership with WikiLeaks. She deals with the impact of the revelations and the work done to minimise risk to opposition activists [tab 34].
vi. **Sami Ben Garbia,** a journalist based in Tunisia, who confirms the efforts made to ensure redaction and the lack of any knowledge or evidence of persons physically harmed as result of the publications [tab 35].
vii. **Professor Christian Grothoff,** professor of Computer science, who confirms that *'at the time when the WikiLeaks site re-published the unredacted cables the information was already easily available to any technically competent person'* [tab 36.3].

4.7. As to ***Zakrzewski*** abuse, we say that the facts have been presented in a misleading way so as to bring this case within the ambit of an extradition offence. Therein lies the abuse. In particular, we say the following:

i. The prosecution misrepresented the position by suggesting that Julian Assange caused Chelsea Manning to obtain and upload the classified documents to WikiLeaks. **Chelsea Manning's own evidence at the Court Martial refutes this.**

ii. The allegation that Julian Assange assisted Chelsea Manning in decoding the hash value is simply incorrect; and in any event a complete red herring. I say that based on the **evidence of the Manning Court Martial itself** and the expert opinion of **Patrick Eller** explaining that evidence.

iii. Finally, it is completely misleading to suggest that it was Julian Assange and WikiLeaks that were responsible for the disclosure of unredacted names to the public. In fact Julian Assange took every step to prevent the disclosure of unredacted names; and WikiLeaks only published the unredacted materials after they had been published in full by others who themselves have never faced legal action. These points are established by the evidence of John Goetz, Professor Grothoff and other key participants in the events relating to publication I have just mentioned. We have summarised the effect of their evidence in the Abuse skeleton at paragraphs 54 – 85.

The evidence of Patrick Eller

4.8. These points will be dealt with in detail by my learned friend Mr Summers in due course. But we respectfully submit that the court was right to indicate the better course is to hear and assess the evidence relating to ***Zakrzewski*** abuse and related issues, and then decide all matters at the conclusion of the hearing. That is particularly so in relation to the evidence of Patrick Eller, which seems to be the only evidence the prosecution continue to seek to exclude as inadmissible.

4.9. **Against that background I now turn to the statutory bars and will deal with them in turn.**

5. <u>Political motivation and section 81(a)</u>

5.1. I start with political motivation and the protection of section 81. Mr Assange's extradition is now being sought on the basis of a prosecution for Espionage because of his alleged act of publishing state secrets in 2010.

5.2. As set out above, the prosecution has all the hallmarks of a politically motivated prosecution:-

i. The prosecution initiated at the end of 2017 constitutes a complete reversal of the decision taken under the Obama administration in 2013 not to prosecute him. The reason for that earlier decision under President Obama not to prosecute him was that to do so would constitute a violation of the First Amendment of the American Constitution.
ii. It is unprecedented to indict a publisher of official secrets under the Espionage Act.
iii. The prosecution was the culmination of an escalating public war on free speech by the Trump administration which first targeted whistle blowers and then proceeded to attack investigative journalists and publishers.
iv. It was preceded and accompanied by public denunciations of Julian Assange by senior figures in the Trump administration including Mike Pompeo and Attorney General Sessions.
v. Finally, the means adopted to monitor and target Julian Assange and to strip of his protections in the Ecuadorian Embassy were the actions of a lawless state bent on adopting any means necessary to 'bring him down'. Even if it meant violating public international law. Even if it meant violating legal professional privilege and the sanctity of the Embassy's protection.

Political Opinions

5.3. For the purposes of section 81(a), I next have to deal with the question of how this politically motivated prosecution satisfies the test of being directed against Julian Assange because of his political opinions. The essence of his **political opinions** which have provoked this prosecution are summarised in the reports

of Professor Feldstein [tab 18], Professor Rogers [tab 40], Professor Noam Chomsky [tab 39] and Professor Kopelman:-

i. He is a leading proponent of an open society and of freedom of expression.
ii. He is anti-war and anti-imperialism.
iii. He is a world-renowned champion of political transparency and of the public's right to access information on issues of importance – issues such as political corruption, war crimes, torture and the mistreatment of Guantanamo detainees.

5.4. Those beliefs and those actions inevitably bring him into conflict with powerful states including the current US administration, for political reasons. Which explains why he has been denounced as a terrorist and why President Trump has in the past called for the death penalty.

5.5. But I should add his revelations are far from confined to the wrongdoings of the US. He has exposed surveillance by Russia; and published exposes of Mr Assad in Syria; and it is said that WikiLeaks revelations about corruption in Tunisia and torture in Egypt were the catalyst for the Arab Spring itself.

5.6. **The US say he is no journalist.** But you will see a full record of his work in Bundle M. He has been a member of the Australian journalists union since 2009, he is a member of the NUJ and the European Federation of Journalists. He has won numerous media awards including being honoured with the highest award for Australian journalists. His work has been recognised by the Economist, Amnesty International and the Council of Europe. He is the winner of the Martha Gelhorn prize and has been repeatedly nominated for the Nobel Peace Prize, including both last year and this year. You can see from the materials that he has written books, articles and documentaries. He has had articles published in the Guardian, the New York Times, the Washington Post and the New Statesman, just to name a few. Some of the very publications for which his extradition is being sought have been refereed to and relied upon in Courts throughout the world, including the UK Supreme Court and the

European Court of Human Rights. In short, he has championed the cause of transparency and freedom of information throughout the world.

5.7. Professor Noam Chomsky puts it like this: - ***'in courageously upholding political beliefs that most of profess to share he has performed an enormous service to all those in the world who treasure the values of freedom and democracy and who therefore demand the right to know what their elected representatives are doing'*** [see tab 39, paragraph 14]. So Julian Assange's **positive impact** on the world is **undeniable**. The hostility it has provoked from the Tump administration is **equally undeniable.**

The legal test for 'political opinions'

5.8. I am sure you are aware of the legal authorities on this issue: namely whether a request is made because of the defendant's political opinions. A broad approach has to be adopted when applying the test. In support of this we rely on the case of *Re Asliturk* [2002] EWHC 2326 (abuse authorities, tab 11, at paras 25 – 26) which clearly establishes that such a wide approach should be adopted to the concept of political opinions. And that will clearly cover Julian Assange's ideological positions. Moreover, we also rely on cases such as *Emilia Gomez v SSHD* [2000] INLR 549 at tab 43 of the political offence authorities bundle. These show that the concept of "political opinions" extends to the political opinions imputed to the individual citizen by the state which prosecutes him. For that reason the characterisation of Julian Assange and WikiLeaks as a "non-state hostile intelligence agency" by Mr Pompeo makes clear that he has been targeted for his imputed political opinions. All the experts whose reports you have show that Julian Assange has been targeted because of the political position imputed to him by the Trump administration – as an enemy of America who must be brought down.

6. Prejudice in his treatment at trial, sentencing and subsequent detention by reason of political opinions and his status as a foreigner

6.1. Turning to section 81(b) we submit that Julian Assange will be exposed to prejudice and discrimination both at trial and on sentence and in any subsequent detention by reason of his political opinions and indeed his foreign status. That is for the following reasons:

i. He has been publicly denounced by the most high-ranking public officials, including the President, the Secretary of State and the Attorney General because of his political opinions. Those overtly intemperate denunciations have irretrievably prejudiced the presumption of innocence and his prospects of a fair trial. That is highly relevant to section 81(b).

ii. Furthermore the US are taking the position **that he has no First Amendment rights as a foreigner.** That is clear from the statement of Mr **Pompeo** reported in the Guardian on 21 April 2017 that '*Julian Assange has no First Amendment Freedoms'* because *'he is not a US citizen'* [see bundle K tab 11]. Even the prosecution attorney Mr Kromberg indicates an intention to argue that *'foreign nationals are not entitled to protections under the First Amendment'* at paragraph 71 of his First Declaration, prosecution bundle, tab 2].

iii. Mr Assange's political status will also result in him being held in especially harsh prison conditions. He is likely to be placed in isolation both pre-trial and post-trial, and may well be held under the excessively restrictive regime of SAMs. That is established by the evidence of the US lawyer **Yancey Ellis** at tab 15 **and Joel Sickler,** the renowned expert on the US prison system, at tab 20. **US Attorney Kromberg** himself accepts the real possibility that Mr Assange will be put in administrative segregation because of his notoriety [see paragraph 84 of his First Declaration, prosecution bundle, tab 2]. This point is further developed in part 8 below.

iv. Finally Julian Assange's trial, sentence and any subsequent detention will all take place in the context of a criminal justice system that lends itself to political manipulation in cases such as this. And all this at a time when the Trump Administration is blatantly demonstrating its readiness to interfere in

the criminal justice system to harm its enemies and favour its supporters (such as Roger Stone).

7. Flagrant Denial of Justice and Article 6

7.1. The evidence of a number of experts supports the view that there is a real risk that Julian Assange will be exposed to a flagrant denial of justice both at trial and at the sentencing stage. The Court is referred to the evidence of:

i. **Eric Lewis,** a practicising lawyer in the US who deals with issues both of trial and sentence [tab 3, tab 24]
ii. **Barry Pollack,** Julian Assange's lawyer in the US [tab 19].
iii. **Robert Boyle,** an expert on grand juries, who deals with Chelsea Manning contempt proceedings [tab 5].
iv. **Thomas Durkin,** a former Federal Prosecutor who will deal with the history of this prosecution and fair trial issues tab 16, tab 43].

7.2. The US Federal System operates to secure pleas through coercive plea-bargaining powers, swinging sentences and overloaded indictments designed to increase sentence exposure [Lewis 1, tab 3, §§36-48] [Durkin, tab 16, §§17-23]. These pressures are coupled, in case such as this, with the effects of pre-trial detention in solitary confinement in a '*cage the size of a parking space, deprived of any meaningful human contact'* [Lewis 1, tab 3, §§12-23] [Ellis, tab 15, §§7-8]. The result is a system in which the plea rate is over 97%, higher than any other country, including Russia. That is confirmed by the evidence of Eric Lewis in his statement at tab 3, paragraph 40 and by the first statement of Thomas Durkin at tab 16, paragraph 18.

7.3. But the system will be skewed even further against Julian Assange, because this prosecution will be located in Alexandria, Virginia; from which a jury pool comprised almost entirely of government employees and/or government contractors is guaranteed [Pollack, tab 19, §§10-11] [Prince 1, tab 13].

7.4. He will then be deprived of the supporting evidence of Chelsea Manning because of coercion by the contempt proceedings - described by grand jury expert Robert Boyle at tab 5.

His trial will be prejudiced by public denunciations violating the presumption of innocence

7.5. In addition, his trial will be prejudiced irretrievably by the very fact of the public denunciations of him made by a series of administration officials from the President, to the present secretary of state Mike Pompeo and successive Attorney Generals. These intemperate public denunciations violate the presumption of innocence, as is clearly established by the European Court decision in ***Allenet de Ribemont***.

The unjust sentencing procedure

7.6. Moreover, his sentence can be enhanced on the basis of unproven allegations even where he is acquitted of those same allegations at trial. This point is dealt with by the former federal prosecutor Thomas Durkin in his first statement tab 16, paragraphs 19 – 24. The prosecution say that this procedure has been found to accord with the principles of specialty. That may be so, but it does not mean that a procedure which enables the Court to enhance the sentence by reference to allegations rejected even by the jury, accords with the fundamental principles of a fair trial.

7.7. For these reasons his extradition would violate Article 6.

8. Article 10 and Article 7

8.1. The same witnesses as are relied in relation to political motivation also support the case that Julian Assange will be exposed to a flagrant denial of his Article 10 rights.

8.2. In short summary, we submit that this unprecedented prosecution of a journalist for publication of state secrets clearly violates Article 10. And we will seek to make that good by reference to the expert reports of Professor Feldstein, Jameel Jaffer, Professor Chomsky and Professor Russell.

8.3. **Professor Feldstein** sums up the threat to Article 10 rights posed by this prosecution and extradition request (Tab 18, para 11); *"**Julian Assange faces lifetime imprisonment for publishing truthful information about governmental criminality and abuse of power, precisely what the First Amendment was written to protect. In the end, however, this case about more than Assange or journalism.** It is about the right of citizens to have the information they need to participate in a democracy. A free society depends on democratic decision-making by an informed public. And an informed public depends on a free and independent press that can serve as a check on governmental abuse of power—the kinds of abuses that WikiLeaks made public. "In a free society, we are supposed to know the truth," a US congressman said when WikiLeaks first began publishing this batch of documents. "In a society where truth becomes treason, we are in trouble."*

8.4. **Jameel Jaffer** similarly concludes that this prosecution is a '*deliberate effort on the part of the Trump administration to deter journalism that is vital to American democracy'* [Jaffer, tab 22, §§4, 22, 29].

8.5. This prosecution will have a chilling effect on freedom of expression in this country and throughout the world. For that reason Julian Assange's extradition would not be in accordance of the requirements of Article 10.

Article 7 and uncertainty of the law

8.6. But there is in addition the fact that the interference with freedom of expression posed by this prosecution comes as a result of the arbitrary and unpredictable application of the law. This point is made by all the US First Amendment

experts whose evidence we have adduced. The very fact that what was regarded as incapable of being prosecuted under the Obama administration is now being aggressively prosecuted under the Trump administration points to the uncertainty of the law and the fact that any conviction would represent an interference with freedom of expression that is neither foreseeable, nor in accordance with the principle of legal certainty. This gives rise to a violation of both article 10 and article 7 itself.

8.7. These points will be developed at the full hearing after hearing all of the evidence.

9. Article 3

9.1. I turn to Article 3 and the real risk that Julian Assange will be exposed to inhuman treatment whilst detained in the United States. In support of the submission that extradition would violate Article 3, we rely upon the evidence of:

i. **Eric Lewis,** on the issue of sentencing [tab 3].
ii. **Yancey Ellis,** an experienced lawyer who practices in the very area of Virginia in which Mr Assange's trial and pre-trial detention will take place [tab 15].
iii. **Joel Sickler,** a renowned expert on prison conditions in the Federal System [tab 20].

9.2. **Firstly**, I should stress that we are dealing here with an individual who is likely to be singled out for special conditions of administrative segregation both at the pre-trial stage and the post-trial stage because of his political profile. **As to the pre-trial stage** the risk of detention in administrative segregation and even the most repressive regime of special administrative measures ("SAMS") is confirmed by the evidence of Yancey Ellis at paragraph 6 and paragraph 10. And the evidence of Sickler tab 20, paras 13 – 16. Indeed Mr Kromberg at

paragraph 95 expressly recognises the possibility that Julian Assange would be subject to SAMs.

9.3. **As to the post trial stage** there is then the risk detention under special segregation in a Communications Management Unit or worse still the notorious ADX Colorado, at paragraphs 102 – 106. Again Mr Kromberg does not rule out detention in ADX Colorado. The reality is, that this would involve conditions tantamount to solitary confinement. For prolonged periods. Without proper review. And without proper consideration of his mental condition.

9.4. The evidence is clear that such a regime precipitates mental breakdowns and heightens the risk of suicide even for mentally stable prisoners and that such a regime is inappropriate and dangerous for mentally ill inmates. Mental health treatment and care in these regimes fails to comply with minimum Article 3 protections [see for example Joel Sickler, tab 20, paragraphs 18 – 19].

Relevant Judicial Observations

9.5. Both the English High Court and the European Court of Human Rights have expressed profound concerns about the inhumanity of conditions in so-called administrative segregation in the US prison system, amounting effectively to solitary confinement. In the case of ***Abu Hamza v United States*** [2008] EWHC 1357 (admin) Lord Judge stated "*like Judge Workman, we too are troubled about what we have read about the conditions in some of the Supermax prisons in the United States… confinement for years and years in what effectively amounts to isolation may well be held to be, if not torture, then ill treatment which contravenes Article 3. This problem may fall to be addressed in a different case".* Moreover in the case of ***Aswat v UK*** *(Application no. 17299/12)* [2013] 4 WLUK 283, the European Court refused extradition of an accused terrorist because they were not satisfied that there was sufficient provision in the US prison system for the appropriate treatment of a mentally ill prisoner in high-security conditions.

9.6. Those cases are significant because here were are dealing with an extremely vulnerable person with a long history of clinical depression and an established risk of suicide. Detention in such conditions for Julian Assange would be the height of inhumanity. And the High Court and European Court have refused extradition in circumstances where the combination of a long standing mental disorder with the appalling conditions in pre-trial detention in the US have resulted in the real risk of article 3 inhumanity. I refer to the cases of ***Aswat*** and ***Laurie Love.***

9.7. And it does not even end there. Because added to that there is a real risk of a sentence that effectively amounts to a life sentence without any realistic possibility of review or parole. That too is inconsistent with the minimum requirements of Article 3 as laid down by the European Court in the case of ***Trabelsi v Belgium.***

9.8. We say that, when you put all those factors together, there is a real risk of treatment so cruel and degrading that it violates Article 3.

10. Section 91: unjust and oppressive to extradite by reason of Julian Assange's medical condition

10.1. Section 91 affords a protection from extradition where extradition would be rendered unjust or oppressive by reason of physical or mental disorder. In this context we rely upon the evidence of expert psychiatrists and psychologists who will deal with Mr Assange's history of clinical depression and trauma, and the risk of suicide if he is extradited to the US. They are, in turn:

i. **Professor Kopelman**, a distinguished forensic psychiatrist who's report you have at tab 6.

ii. **Dr Sondra Crosby,** who examined Mr Assange in the Ecuadorian Embassy and whose report is at tab 7.

iii. **Professor Mullen,** who was his treating psychiatrist in Australia and who has prepared a report on his current condition, following a recent visit whose evidence is at tab 8.

10.2. We rely also **on section 91**. This is a sensitive issue but I have to go into it because it is relevant and of itself entitles him to discharge. We say this is a classic case for invoking the jurisdiction exercised by the High Court in the case of ***Lauri Love***. That case provides this Court with a precedent for protecting a person suffering from mental illness from the high risk of suicide posed by extradition to, and detention in, the oppressive conditions of the US prison system.

History of Clinical Depression and Trauma

10.3. There is no doubt that Julian Assange suffers from a long history of clinical depression that dates back many years. It is aggravated by his experience as the object of death threats, and in wholly abnormal conditions over the years when he was confined to the Ecuadorian Embassy. It is further aggravated by his knowledge that throughout his time in the embassy, he and his family were being surveilled and recorded, and that he himself was being targeted for extradition or some even worse fate than that. You will have seen the reference by Witness 2 to more extreme measures being discussed, including plans to try to kidnap or poison Mr Assange whilst in the embassy [see tab 12, page 7]

10.4. As a result, Julian Assange is now in the situation where the very thought of extradition to the US understandably fills him with overwhelming dread – that he will not be fit to defend himself, that he will not get a fair trial, that he will receive an excessive sentence, and that he will be detained thereafter in conditions of long-term solitary confinement. I refer you to the report of Professor Kopelman at pages 10 – 11 and 12. He spells out the fatal consequences if Julian Assange is taken away from this country, where he has the support of his own family unit and is then exposed to the brutal isolation of

the US prison system. The European Court in ***Aswat*** attached significance to the separation of a mentally ill person from all family support in the alien and hostile prison system of the US. So too did the English High Court in ***Love.***

High risk of suicide

10.5. Both **Professor Kopelman** and **Professor Mullen** refer to the high risk of suicide if Julian Assange is extradited. Professor Kopelman puts it in this way:

"Mr Assange shows virtually all the risk factors which researchers from Oxford have described in prisoners who either suicide or make lethal attempts". … I am as confident as a psychiatrist can ever be that, if extradition to the United States were to become imminent, Mr Assange would find a way of suiciding." (paras 14 (i) and 35 of the Kopelman's report at tab 6.)

10.6. **Dr Sondra Crosby** puts it this way in her statement at tab 7:

"It is my strong medical opinion that extradition of Mr Assange to the United States will further damage his current fragile state of health and very likely cause his death. This opinion is not given lightly."

10.7. In dealing with the question of oppression under s91, the Court is entitled to look at all factors, including the nature of the charges. Here the charges are, to say the least, highly controversial. Though the relevant facts were known in 2010, it was not even considered proper to pursue them until 2017, when President Trump took office. The Court can have regard to all these matters. It can take account of the delay and the highly unusual and unprecedented nature of the case against him. In the light of all these factors taken together it is our case that it would be "oppressive and "unfair" to expose Julian Assange to the very high risk, if not certainty, of suicide if he is extradited to the US.

11. Section 82

11.1. I turn finally to the fact of the passage of time and the protection against extradition where it has become unjust and oppressive by reason of the passage of time. I know that you will be fully aware of the authorities on this issue. So I will simply make these short points at this stage.

11.2. **Firstly,** there clearly has been a long passage of time. No explanation has been given by the US for bringing the charges as late as December 2017 in respect of conduct known as long ago as 2010.

11.3. **Secondly,** there has been an earlier considered decision not to prosecute, in 2013. The fact of an earlier inconsistent decision not to pursue a prosecution was recognised to be a highly significant factor in determining injustice and oppression in the leading case of ***Kakis.***

11.4. **Thirdly**, there is a real risk of prejudice given the great difficulties in reconstructing the events of 2010 and 2011. But this will be necessary in order to rebut the US's misleading allegations as to recklessness to the causation of harm. Gareth Peirce's Affidavit of 12 February 2020, at tab 35, paragraphs 10 – 18, explains the grave problems in now attempting to reconstruct and prove the sequence of events in 2011 which led to the eventual publication of unredacted materials after publication by others. She further explains at paragraphs 15 – 17 the difficulties of rebutting the allegations that individuals in various countries were exposed to danger as a result of the revelations. This gives rise to a real risk of prejudice at any forthcoming trial.

11.5. **Fourthly,** during the intervening period, Julian Assange's mental state has deteriorated such that there is a real risk he could not effectively participate in his trial. That is in no small part due to the prolonged period of uncertainty caused by the original decision not to prosecute followed by repeated calls for prosecution in 2017 and the eventual bringing of a criminal complaint in December 2017.

11.6. **Finally,** it is oppressive to seek his extradition now after the well-publicised decisions in 2013 not to prosecute him for espionage or any other

offences. In dealing with this issue of oppression, the Court can also take into account the very grave effect of all this on Julian Assange's own fragile mental condition.

Edward Fitzgerald QC
Mark Summers QC
Florence Iveson

24 February 2020

Berichterstattung über Hearings

https://www.craigmurray.org.uk/archives/2019/10/assange-in-court/

Assange in Court

22 Oct, 2019 in Uncategorized by craig

I was deeply shaken while witnessing yesterday's events in Westminster Magistrates Court. Every decision was railroaded through over the scarcely heard arguments and objections of Assange's legal team, by a magistrate who barely pretended to be listening.

Before I get on to the blatant lack of fair process, the first thing I must note was Julian's condition. I was badly shocked by just how much weight my friend has lost, by the speed his hair has receded and by the appearance of premature and vastly accelerated ageing. He has a pronounced limp I have never seen before. Since his arrest he has lost over 15 kg in weight.

But his physical appearance was not as shocking as his mental deterioration. When asked to give his name and date of birth, he struggled visibly over several seconds to recall both. I will come to the important content of his statement at the end of proceedings in due course, but his difficulty in making it was very evident; it was a real struggle for him to articulate the words and focus his train of thought.

Until yesterday I had always been quietly sceptical of those who claimed that Julian's treatment amounted to torture – even of Nils Melzer, the UN Special Rapporteur on Torture – and sceptical of those who suggested he may be subject to debilitating drug treatments. But having attended the trials in Uzbekistan of several victims of extreme torture, and having worked with survivors from Sierra Leone and elsewhere, I can tell you that yesterday changed my mind entirely and Julian exhibited exactly the symptoms of a torture victim brought blinking into the light, particularly in terms of disorientation, confusion, and the real struggle to assert free will through the fog of learned helplessness.

I had been even more sceptical of those who claimed, as a senior member of his legal team did to me on Sunday night, that they were worried that Julian might not live to the end of the extradition process. I now find myself not only believing it, but haunted by the thought. Everybody in that court yesterday saw that one of the greatest journalists and most important dissidents of our times is being tortured to death by the state, before our eyes. To see my friend, the most articulate man, the fastest thinker, I have ever known, reduced to that shambling and incoherent wreck, was unbearable. Yet the agents of the state, particularly the callous magistrate Vanessa Baraitser, were not just prepared but eager to be a part of this bloodsport. She actually told him that if he were incapable of following proceedings, then his lawyers could explain what had happened to him later. The question of why a man who, by the very charges against him, was acknowledged to be highly intelligent and competent, had been reduced by the state to somebody incapable of following court proceedings, gave her not a millisecond of concern.

The charge against Julian is very specific; conspiring with Chelsea Manning to publish the Iraq War logs, the Afghanistan war logs and the State Department cables. The charges are nothing to do with Sweden, nothing to do with sex, and nothing to do with the 2016 US election; a simple clarification the mainstream media appears incapable of understanding.

The purpose of yesterday's hearing was case management; to determine the timetable for the extradition proceedings. The key points at issue were that Julian's defence was requesting more time to prepare their evidence; and arguing that political offences were specifically excluded from the extradition treaty. There should, they argued, therefore be a preliminary hearing to determine whether the extradition treaty applied at all.

The reasons given by Assange's defence team for more time to prepare were both compelling and startling. They had very limited access to their client in jail and had not been permitted to hand him any documents about the case until one week ago. He had also only just been given limited computer access, and all his relevant records and materials had been seized from the Ecuadorean Embassy by the US Government; he had no access to his own materials for the purpose of preparing his defence.

Furthermore, the defence argued, they were in touch with the Spanish courts about a very important and relevant legal case in Madrid which would provide vital evidence. It showed that the CIA had been directly ordering spying on Julian in the Embassy through a Spanish company, UC Global, contracted to provide security there. Crucially this included spying on privileged conversations between Assange and his lawyers discussing his defence against these extradition proceedings, which had been in train in the USA since 2010. In any normal process, that fact would in itself be sufficient to have the extradition proceedings dismissed. Incidentally I learnt on Sunday that the Spanish material produced in court, which had been commissioned by the CIA, specifically includes high resolution video coverage of Julian and I discussing various matters.

The evidence to the Spanish court also included a CIA plot to kidnap Assange, which went to the US authorities' attitude to lawfulness in his case and the treatment he might expect in the United States. Julian's team explained that the Spanish legal process was happening now and the evidence from it would be extremely important, but it might not be finished and thus the evidence not fully validated and available in time for the current proposed timetable for the Assange extradition hearings.

For the prosecution, James Lewis QC stated that the government strongly opposed any delay being given for the defence to prepare, and strongly opposed any separate consideration of the question of whether the charge was a political offence excluded by the extradition treaty. Baraitser took her cue from Lewis and stated categorically that the date for the extradition hearing, 25 February, could not be changed. She was open to changes in dates for submission of evidence and responses before this, and called a ten minute recess for the prosecution and defence to agree these steps.

What happened next was very instructive. There were five representatives of the US government present (initially three, and two more arrived in the course of the hearing), seated at desks behind the lawyers in court. The prosecution lawyers immediately went into huddle with the US representatives, then went outside the courtroom with them, to decide how to respond on the dates.

After the recess the defence team stated they could not, in their professional opinion, adequately prepare if the hearing date were kept to February, but within Baraitser's instruction to do so they nevertheless outlined a proposed timetable on delivery of evidence. In responding to this, Lewis' junior counsel scurried to the back of the court to consult the Americans again while Lewis actually told the judge he was "taking instructions from those behind". It is important to note that as he said this, it was not the UK Attorney-General's office who were being consulted but the US Embassy. Lewis received his American instructions and agreed that the defence might have two months to prepare their evidence (they had said they needed an absolute minimum of three) but the February hearing date may not be moved. Baraitser gave a ruling agreeing everything Lewis had said.

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At this stage it was unclear why we were sitting through this farce. The US government was dictating its instructions to Lewis, who was relaying those instructions to Baraitser, who was ruling them as her legal decision. The charade might as well have been cut and the US government simply sat on the bench to control the whole process. Nobody could sit there and believe they were in any part of a genuine legal process or that Baraitser was giving a moment's consideration to the arguments of the defence. Her facial expressions on the few occasions she looked at the defence ranged from contempt through boredom to sarcasm. When she looked at Lewis she was attentive, open and warm.

The extradition is plainly being rushed through in accordance with a Washington dictated timetable. Apart from a desire to pre-empt the Spanish court providing evidence on CIA activity in sabotaging the defence, what makes the February date so important to the USA? I would welcome any thoughts.

Baraitser dismissed the defence's request for a separate prior hearing to consider whether the extradition treaty applied at all, without bothering to give any reason why (possibly she had not properly memorised what Lewis had been instructing her to agree with). Yet this is Article 4 of the UK/US Extradition Treaty 2007 in full:

ARTICLE 4

Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

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(b) a murder or other violent crime against the person of a Head of State of one of the Parties, or of a member of the Head of State's family;

(c) murder, manslaughter, malicious wounding, or inflicting grievous bodily harm;

(d) an offense involving kidnaping, abduction, or any form of unlawful detention, including the taking of a hostage;

(e) placing or using, or threatening the placement or use of, an explosive, incendiary, or destructive device or firearm capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

(f) possession of an explosive, incendiary, or destructive device capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

(g) an attempt or a conspiracy to commit, participation in the commission of, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to any of the foregoing offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated. In the United States, the executive branch is the competent authority for the purposes of this Article.

4. The competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. In the United States, the executive branch is the competent authority for the purposes of this Article.

On the face of it, what Assange is accused of is the very definition of a political offence – if this is not, then what is? It is not covered by any of the exceptions from that listed. There is every reason to consider whether this charge is excluded by the extradition treaty, and to do so before the long and very costly process of considering all the evidence should the treaty apply. But Baraitser simply dismissed the argument out of hand.

Just in case anybody was left in any doubt as to what was happening here, Lewis then stood up and suggested that the defence should not be allowed to waste the court's time with a lot of arguments. All arguments for the substantive hearing should be given in writing in advance and a "guillotine should be applied" (his exact words) to arguments and witnesses in court, perhaps of five hours for the defence. The defence had suggested they would need more than the scheduled five days to present their case. Lewis countered that the entire hearing should be over in two days. Baraitser said this was not procedurally the correct moment to agree this but she will consider it once she had received the evidence bundles.

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(SPOILER: Baraitser is going to do as Lewis instructs and cut the substantive hearing short).

Baraitser then capped it all by saying the February hearing will be held, not at the comparatively open and accessible Westminster Magistrates Court where we were, but at Belmarsh Magistrates Court, the grim high security facility used for preliminary legal processing of terrorists, attached to the maximum security prison where Assange is being held. There are only six seats for the public in even the largest court at Belmarsh, and the object is plainly to evade public scrutiny and make sure that Baraitser is not exposed in public again to a genuine account of her proceedings, like this one you are reading. I will probably be unable to get in to the substantive hearing at Belmarsh.

Plainly the authorities were disconcerted by the hundreds of good people who had turned up to support Julian. They hope that far fewer will get to the much less accessible Belmarsh. I am fairly certain (and recall I had a long career as a diplomat) that the two extra American government officials who arrived halfway through proceedings were armed security personnel, brought in because of alarm at the number of protestors around a hearing in which were present senior US officials. The move to Belmarsh may be an American initiative.

Assange's defence team objected strenuously to the move to Belmarsh, in particular on the grounds that there are no conference rooms available there to consult their client and they have very inadequate access to him in the jail. Baraitser dismissed their objection offhand and with a very definite smirk.

Finally, Baraitser turned to Julian and ordered him to stand, and asked him if he had understood the proceedings. He replied in the negative, said that he could not think, and gave every appearance of disorientation. Then he seemed to find an inner strength, drew himself up a little, and said:

> *I do not understand how this process is equitable. This superpower had 10 years to prepare for this case and I can't even access my writings. It is very difficult, where I am, to do anything. These people have unlimited resources.*

The effort then seemed to become too much, his voice dropped and he became increasingly confused and incoherent. He spoke of whistleblowers and publishers being labeled enemies of the people, then spoke about his children's DNA being stolen and of being spied on in his meetings with his psychologist. I am not suggesting at all that Julian was wrong about these points, but he could not properly frame nor articulate them. He was plainly not himself, very ill and it was just horribly painful to watch. Baraitser showed neither sympathy nor the least concern. She tartly observed that if he could not understand what had happened, his lawyers could explain it to him, and she swept out of court.

The whole experience was profoundly upsetting. It was very plain that there was no genuine process of legal consideration happening here. What we had was a naked demonstration of the power of the state, and a naked dictation of proceedings by the Americans. Julian was in a box behind bulletproof glass, and I and the thirty odd other members of the public who had squeezed in were in a different box behind more bulletproof glass. I do not know if he could see me or his other friends in the court, or if he was capable of recognising anybody. He gave no indication that he did.

In Belmarsh he is kept in complete isolation for 23 hours a day. He is permitted 45 minutes exercise. If he has to be moved, they clear the corridors before he walks down them and they lock all cell doors to ensure he has no contact with any other prisoner outside the short and strictly supervised exercise period. There is no possible justification for this inhuman regime, used on major terrorists, being imposed on a publisher who is a remand prisoner.

I have been both cataloguing and protesting for years the increasingly authoritarian powers of the UK state, but that the most gross abuse could be so open and undisguised is still a shock. The campaign of demonisation and dehumanisation against Julian, based on government and media lie after government and media lie, has led to a situation where he can be slowly killed in public sight, and arraigned on a charge of publishing the truth about government wrongdoing, while receiving no assistance from "liberal" society.

Unless Julian is released shortly he will be destroyed. If the state can do this, then who is next?

———————————

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Your Man in the Public Gallery – Assange Hearing Day 1

25 Feb, 2020 in Uncategorized by craig | View Comments

Woolwich Crown Court is designed to impose the power of the state. Normal courts in this country are public buildings, deliberately placed by our ancestors right in the centre of towns, almost always just up a few steps from a main street. The major purpose of their positioning and of their architecture was to facilitate public access in the belief that it is vital that justice can be seen by the public.

Woolwich Crown Court, which hosts Belmarsh Magistrates Court, is built on totally the opposite principle. It is designed with no other purpose than to exclude the public. Attached to a prison on a windswept marsh far from any normal social centre, an island accessible only through navigating a maze of dual carriageways, the entire location and architecture of the building is predicated on preventing public access. It is surrounded by a continuation of the same extremely heavy duty steel paling barrier that surrounds the prison. It is the most extraordinary thing, a courthouse which is a part of the prison system itself, a place where you are already considered guilty and in jail on arrival. Woolwich Crown Court is nothing but the physical negation of the presumption of innocence, the very incarnation of injustice in unyielding steel, concrete and armoured glass. It has precisely the same relationship to the administration of justice as Guantanamo Bay or the Lubyanka. It is in truth just the sentencing wing of Belmarsh prison.

When enquiring about facilities for the public to attend the hearing, an Assange activist was told by a member of court staff that we should realise that Woolwich is a "counter-terrorism court". That is true de facto, but in truth a "counter-terrorism court" is an institution unknown to the UK constitution. Indeed, if a single day at Woolwich Crown Court does not convince you the existence of liberal democracy is now a lie, then your mind must be very closed indeed.

Extradition hearings are not held at Belmarsh Magistrates Court inside Woolwich Crown Court. They are always held at Westminster Magistrates Court as the application is deemed to be delivered to the government at Westminster. Now get your head around this. This hearing is at Westminster Magistrates Court. It is being held by the Westminster magistrates and Westminster court staff, but located at Belmarsh Magistrates Court inside Woolwich Crown Court. All of which weird convolution is precisely so they can use the "counter-terrorist court" to limit public access and to impose the fear of the power of the state.

One consequence is that, in the courtroom itself, Julian Assange is confined at the back of the court behind a bulletproof glass screen. He made the point several times during proceedings that this makes it very difficult for him to see and hear the proceedings. The magistrate, Vanessa Baraitser, chose to interpret this with studied dishonesty as a problem caused by the very faint noise of demonstrators outside, as opposed to a problem caused by Assange being locked away from the court in a massive bulletproof glass box.

Now there is no reason at all for Assange to be in that box, designed to restrain extremely physically violent terrorists. He could sit, as a defendant at a hearing normally would, in the body of the court with his lawyers. But the cowardly and vicious Baraitser has refused repeated and persistent requests from the defence for Assange to be allowed to sit with his lawyers. Baraitser of course is but a puppet, being supervised by Chief Magistrate Lady Arbuthnot, a woman so enmeshed in the defence and security service establishment I can conceive of no way in which her involvement in this case could be more corrupt.

It does not matter to Baraitser or Arbuthnot if there is any genuine need for Assange to be incarcerated in a bulletproof box, or whether it stops him from following proceedings in court. Baraitser's intention is to humiliate Assange, and to instill in the rest of us horror at the vast crushing power of the state. The inexorable strength of the sentencing wing of the nightmarish Belmarsh Prison must be maintained. If you are here, you are guilty.

It's the Lubyanka. You may only be a remand prisoner. This may only be a hearing not a trial. You may have no history of violence and not be accused of any violence. You may have three of the country's most eminent psychiatrists submitting reports of your history of severe clinical depression and warning of suicide. But I, Vanessa Baraitser, am still going to lock you up in a box designed for the most violent of terrorists. To show what we can do to dissidents. And if you can't then follow court proceedings, all the better.

You will perhaps better accept what I say about the Court when I tell you that, for a hearing being followed all round the world, they have brought it to a courtroom which had a total number of sixteen seats available to members of the public. 16. To make sure I got one of those 16 and could be your man in the gallery, I was outside that great locked iron fence queuing in the cold, wet and wind from 6am. At 8am the gate was unlocked, and I was able to walk inside the fence to another queue before the doors of the courtroom, where despite the fact notices clearly state the court opens to the public at 8am, I had to queue outside the building again for another hour and forty minutes. Then I was processed through armoured airlock doors, through airport type security, and had to queue behind two further locked doors, before finally getting to my seat just as the court started at 10am. By which stage the intention was we should have been thoroughly cowed and intimidated, not to mention drenched and potentially hypothermic.

There was a separate media entrance and a media room with live transmission from the courtroom, and there were so many scores of media I thought I could relax and not worry as the basic facts would be widely reported. In fact, I could not have been more wrong. I followed the arguments very clearly every minute of the day, and not a single one of the most important facts and arguments today has been reported anywhere in the mainstream media. That is a bold claim, but I fear it is perfectly true. So I have much work to do to let the world know what actually happened. The mere act of being an honest witness is suddenly extremely important, when the entire media has abandoned that role.

James Lewis QC made the opening statement for the prosecution. It consisted of two parts, both equally extraordinary. The first and longest part was truly remarkable for containing no legal argument, and for being addressed not to the magistrate but to the media. It is not just that it was obvious that is where his remarks were aimed, he actually stated on two occasions during his opening statement that he was addressing the media, once repeating a sentence and saying specifically that he was repeating it again because it was important that the media got it.

I am frankly astonished that Baraitser allowed this. It is completely out of order for a counsel to address remarks not to the court but to the media, and there simply could not be any clearer evidence that this is a political show trial and that Baraitser is complicit in that. I have not the slightest doubt that the defence would have been pulled up extremely quickly had they started addressing remarks to the media. Baraitser makes zero pretence of being anything other than in thrall to the Crown, and by extension to the US Government.

The points which Lewis wished the media to know were these: it is not true that mainstream outlets like the Guardian and New York Times are also threatened by the charges against Assange, because Assange was not charged with publishing the cables but only with publishing the names of informants, and with cultivating Manning and assisting him to attempt computer hacking. Only Assange had done these things, not mainstream outlets.

Lewis then proceeded to read out a series of articles from the mainstream media attacking Assange, as evidence that the media and Assange were not in the same boat. The entire opening hour consisted of the prosecution addressing the media, attempting to drive a clear wedge between the media and Wikileaks and thus aimed at reducing media support for Assange. It was a political address, not remotely a legal submission. At the same time, the prosecution had prepared reams of copies of this section of Lewis' address, which were handed out to the media and given them electronically so they could cut and paste.

Following an adjournment, magistrate Baraitser questioned the prosecution on the veracity of some of these claims. In particular, the claim that newspapers were not in the same position because Assange was charged not with publication, but with "aiding and abetting" Chelsea Manning in getting the material, did not seem consistent with Lewis' reading of the 1989 Official Secrets Act, which said that merely obtaining and publishing any government secret was an offence. Surely, Baraitser suggested, that meant that newspapers just publishing the Manning leaks would be guilty of an offence?

This appeared to catch Lewis entirely off guard. The last thing he had expected was any perspicacity from Baraitser, whose job was just to do what he said. Lewis hummed and hawed, put his glasses on and off several times, adjusted his microphone repeatedly and picked up a succession of pieces of paper from his brief, each of which appeared to surprise him by its contents, as he waved them haplessly in the air and said he really should have cited the Shayler case but couldn't find it. It was liking watching Columbo with none of the charm and without the killer question at the end of the process.

Suddenly Lewis appeared to come to a decision. Yes, he said much more firmly. The 1989 Official Secrets Act had been introduced by the Thatcher Government after the Ponting Case, specifically to remove the public interest defence and to make unauthorised possession of an official secret a crime of strict liability – meaning no matter how you got it, publishing and even possessing made you guilty. Therefore, under the principle of dual criminality, Assange was liable for extradition whether or not he had aided and abetted Manning. Lewis then went on to add that any journalist and any publication that printed the official secret would therefore also be committing an offence, no matter how they had obtained it, and no matter if it did or did not name informants.

Lewis had thus just flat out contradicted his entire opening statement to the media stating that they need not worry as the Assange charges could never be applied to them. And he did so straight after the adjournment, immediately after his team had handed out copies of the argument he had now just completely contradicted. I cannot think it has often happened in court that a senior lawyer has proven himself so absolutely and so immediately to be an unmitigated and ill-motivated liar. This was undoubtedly the most breathtaking moment in today's court hearing.

Yet remarkably I cannot find any mention anywhere in the mainstream media that this happened at all. What I can find, everywhere, is the mainstream media reporting, via cut and paste, Lewis's first part of his statement on why the prosecution of Assange is not a threat to press freedom; but nobody seems to have reported that he totally abandoned his own argument five minutes later. Were the journalists too stupid to understand the exchanges?

The explanation is very simple. The clarification coming from a question Baraitser asked Lewis, there is no printed or electronic record of Lewis' reply. His original statement was provided in cut and paste format to the media. His contradiction of it would require a journalist to listen to what was said in court, understand it and write it down. There is no significant percentage of mainstream media journalists who command that elementary ability nowadays. "Journalism" consists of cut and paste of approved sources only. Lewis could have stabbed Assange to death in the courtroom, and it would not be reported unless contained in a government press release.

I was left uncertain of Baraitser's purpose in this. Plainly she discomfited Lewis very badly on this point, and appeared rather to enjoy doing so. On the other hand the point she made is not necessarily helpful to the defence. What she was saying was essentially that Julian could be extradited under dual criminality, from the UK point of view, just for publishing, whether or not he conspired with Chelsea Manning, and that all the journalists who published could be charged too. But surely this is a point so extreme that it would be bound to be invalid under the Human Rights Act? Was she pushing Lewis to articulate a position so extreme as to be untenable – giving him enough rope to hang himself – or was she slavering at the prospect of not just extraditing Assange, but of mass prosecutions of journalists?

The reaction of one group was very interesting. The four US government lawyers seated immediately behind Lewis had the grace to look very uncomfortable indeed as Lewis baldly declared that any journalist and any newspaper or broadcast media publishing or even possessing any government secret was committing a serious offence. Their entire strategy had been to pretend not to be saying that.

Lewis then moved on to conclude the prosecution's arguments. The court had no decision to make, he stated. Assange must be extradited. The offence met the test of dual criminality as it was an offence both in the USA and UK. UK extradition law specifically barred the court from testing whether there was any evidence to back up the charges. If there had been, as the defence argued, abuse of process, the court must still extradite and then the court must pursue the abuse of process as a separate matter against the abusers. (This is a particularly specious argument as it is not possible for the court to take action against the US government due to sovereign immunity, as Lewis well knows). Finally, Lewis stated that the Human Rights Act and freedom of speech were completely irrelevant in extradition proceedings.

Edward Fitzgerald then arose to make the opening statement for the defence. He started by stating that the motive for the prosecution was entirely political, and that political offences were specifically excluded under article 4.1 of the UK/US extradition treaty. He pointed out that at the time of the Chelsea Manning Trial and again in 2013 the Obama administration had taken specific decisions not to prosecute Assange for the Manning leaks. This had been reversed by the Trump administration for reasons that were entirely political.

On abuse of process, Fitzgerald referred to evidence presented to the Spanish criminal courts that the CIA had commissioned a Spanish security company to spy on Julian Assange in the Embassy, and that this spying specifically included surveillance of Assange's privileged meetings with his lawyers to discuss extradition. For the state trying to extradite to spy on the defendant's client-lawyer consultations is in itself grounds to dismiss the case. (This point is undoubtedly true. Any decent judge would throw the case out summarily for the outrageous spying on the defence lawyers).

Fitzgerald went on to say the defence would produce evidence the CIA not only spied on Assange and his lawyers, but actively considered kidnapping or poisoning him, and that this showed there was no commitment to proper rule of law in this case.

Fitzgerald said that the prosecution's framing of the case contained deliberate misrepresentation of the facts that also amounted to abuse of process. It was not true that there was any evidence of harm to informants, and the US government had confirmed this in other fora, eg in Chelsea Manning's trial. There had been no conspiracy to hack computers, and Chelsea Manning had been acquitted on that charge at court martial. Lastly it was untrue that Wikileaks had initiated publication of unredacted names of informants, as other media organisations had been responsible for this first.

Again, so far as I can see, while the US allegation of harm to informants is widely reported, the defence's total refutation on the facts and claim that the fabrication of facts amounts to abuse of process is not much reported at all. Fitzgerald finally referred to US prison conditions, the impossibility of a fair trial in the US, and the fact the Trump Administration has stated foreign nationals will not receive First Amendment protections, as reasons that extradition must be barred. You can read the whole defence statement, but in my view the strongest passage was on why this is a political prosecution, and thus precluded from extradition.

> *For the purposes of section 81(a), I next have to deal with the question of how this politically motivated prosecution satisfies the test of being directed against Julian Assange because of his political opinions. The essence of his political opinions which have provoked this prosecution are summarised in the reports of Professor Feldstein [tab 18], Professor Rogers [tab 40], Professor Noam Chomsky [tab 39] and Professor Kopelman:-*
> *i. He is a leading proponent of an open society and of freedom of expression.*
> *ii. He is anti-war and anti-imperialism.*
> *iii. He is a world-renowned champion of political transparency and of the public's right to access information on issues of importance – issues such as political corruption, war crimes, torture and the mistreatment of Guantanamo detainees.*
> *5.4.Those beliefs and those actions inevitably bring him into conflict with powerful states including the current US administration, for political reasons. Which explains why he has been denounced as a terrorist and why President Trump has in the past called for the death penalty.*
> *5.5.But I should add his revelations are far from confined to the wrongdoings of the US. He has exposed surveillance by Russia; and published exposes of Mr Assad in Syria; and it is said that WikiLeaks revelations about corruption in Tunisia and torture in Egypt were the catalyst for the Arab Spring itself.*

> *5.6.The US say he is no journalist. But you will see a full record of his work in Bundle M. He has been a member of the Australian journalists union since 2009, he is a member of the NUJ and the European Federation of Journalists. He has won numerous media awards including being honoured with the highest award for Australian journalists. His work has been recognised by the Economist, Amnesty International and the Council of Europe. He is the winner of the Martha Gelhorn prize and has been repeatedly nominated for the Nobel Peace Prize, including both last year and this year. You can see from the materials that he has written books, articles and documentaries. He has had articles published in the Guardian, the New York Times, the Washington Post and the New Statesman, just to name a few. Some of the very publications for which his extradition is being sought have been refereed to and relied upon in Courts throughout the world, including the UK Supreme Court and the European Court of Human Rights. In short, he has championed the cause of transparency and freedom of information throughout the world.*
> *5.7.Professor Noam Chomsky puts it like this: – 'in courageously upholding political beliefs that most of profess to share he has performed an enormous service to all those in the world who treasure the values of freedom and democracy and who therefore demand the right to know what their elected representatives are doing' [see tab 39, paragraph 14].*
> *So Julian Assange's positive impact on the world is undeniable. The hostility it has provoked from the Trump administration is equally undeniable.*
> *The legal test for 'political opinions'*
> *5.8.I am sure you are aware of the legal authorities on this issue: namely whether a request is made because of the defendant's political opinions. A broad approach has to be adopted when applying the test. In support of this we rely on the case of Re Asliturk [2002] EWHC 2326 (abuse authorities, tab 11, at paras 25 – 26) which clearly establishes that such a wide approach should be adopted to the concept of political opinions. And that will clearly cover Julian Assange's ideological positions. Moreover, we also rely on cases such as Emilia Gomez v SSHD [2000] INLR 549 at tab 43 of the political offence authorities bundle. These show that the concept of "political opinions" extends to the political opinions imputed to the individual citizen by the state which prosecutes him. For that reason the characterisation of Julian Assange and WikiLeaks as a "non-state hostile intelligence agency" by Mr Pompeo makes clear that he has been targeted for his imputed political opinions. All the experts whose reports you have show that Julian Assange has been targeted because of the political position imputed to him by the Trump administration – as an enemy of America who must be brought down.*

Tomorrow the defence continue. I am genuinely uncertain what will happen as I feel at the moment far too exhausted to be there at 6am to queue to get in. But I hope somehow I will contrive another report tomorrow evening.

With grateful thanks to those who donated or subscribed to make this reporting possible.

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Your Man in the Public Gallery – Assange Hearing Day 2

26 Feb, 2020 in Uncategorized by craig | View Comments

This afternoon Julian's Spanish lawyer, Baltasar Garzon, left court to return to Madrid. On the way out he naturally stopped to shake hands with his client, proffering his fingers through the narrow slit in the bulletproof glass cage. Assange half stood to take his lawyer's hand. The two security guards in the cage with Assange immediately sprang up, putting hands on Julian and forcing him to sit down, preventing the handshake.

That was not by any means the worst thing today, but it is a striking image of the senseless brute force continually used against a man accused of publishing documents. That a man cannot even shake his lawyer's hand goodbye is against the entire spirit in which the members of the legal system like to pretend the law is practised. I offer that startling moment as encapsulating yesterday's events in court.

Day 2 proceedings had started with a statement from Edward Fitzgerald, Assange's QC, that shook us rudely into life. He stated that yesterday, on the first day of trial, Julian had twice been stripped naked and searched, eleven times been handcuffed, and five times been locked up in different holding cells. On top of this, all of his court documents had been taken from him by the prison authorities, including privileged communications between his lawyers and himself, and he had been left with no ability to prepare to participate in today's proceedings.

Magistrate Baraitser looked at Fitzgerald and stated, in a voice laced with disdain, that he had raised such matters before and she had always replied that she had no jurisdiction over the prison estate. He should take it up with the prison authorities. Fitzgerald remained on his feet, which drew a very definite scowl from Baraitser, and replied that of course they would do that again, but this repeated behaviour by the prison authorities threatened the ability of the defence to prepare. He added that regardless of jurisdiction, in his experience it was common practice for magistrates and judges to pass on comments and requests to the prison service where the conduct of the trial was affected, and that jails normally listened to magistrates sympathetically.

Baraitser flat-out denied any knowledge of such a practice, and stated that Fitzgerald should present her with written arguments setting out the case law on jurisdiction over prison conditions. This was too much even for prosecution counsel James Lewis, who stood up to say the prosecution would also want Assange to have a fair hearing, and that he could confirm that what the defence were suggesting was normal practice. Even then, Baraitser still refused to intervene with the prison. She stated that if the prison conditions were so bad as to reach the very high bar of making a fair hearing impossible, the defence should bring a motion to dismiss the charges on those grounds. Otherwise they should drop it.

Both prosecution and defence seemed surprised by Baraitser's claim that she had not heard of what they both referred to as common practice. Lewis may have been genuinely concerned at the shocking description of Assange's prison treatment yesterday; or he may have just had warning klaxons going off in his head screaming "mistrial". But the net result is Baraitser will attempt to do nothing to prevent Julian's physical and mental abuse in jail nor to try to give him the ability to participate in his defence. The only realistic explanation that occurs to me is that Baraitser has been warned off, because this continual mistreatment and confiscation of documents is on senior government authority.

A last small incident for me to recount: having queued again from the early hours, I was at the final queue before the entrance to the public gallery, when the name was called out of Kristin Hrnafsson, editor of Wikileaks, with whom I was talking at the time. Kristin identified himself, and was told by the court official he was barred from the public gallery.

Now I was with Kristin throughout the entire proceedings the previous day, and he had done absolutely nothing amiss – he is rather a quiet gentleman. When he was called for, it was by name and by job description – they were specifically banning the editor of Wikileaks from the trial. Kristin asked why and was told it was a decision of the Court.

At this stage John Shipton, Julian's father, announced that in this case the family members would all leave too, and they did so, walking out of the building. They and others then started tweeting the news of the family walkout. This appeared to cause some consternation among court officials, and fifteen minutes later Kristin was re-admitted. We still have no idea what lay behind this. Later in the day journalists were being briefed by officials it was simply over queue-jumping, but that seems improbable as he was removed by staff who called him by name and title, rather than had spotted him as a queue-jumper.

None of the above goes to the official matter of the case. All of the above tells you more about the draconian nature of the political show-trial which is taking place than does the charade being enacted in the body of the court. There were moments today when I got drawn in to the court process and achieved the suspension of disbelief you might do in theatre, and began thinking "Wow, this case is going well for Assange". Then an event such as those recounted above kicks in, a coldness grips your heart, and you recall there is no jury here to be convinced. I simply do not believe that anything said or proved in the courtroom can have an impact on the final verdict of this court.

So to the actual proceedings in the case.

For the defence, Mark Summers QC stated that the USA charges were entirely dependent on three factual accusations of Assange behviour:

1) Assange helped Manning to decode a hash key to access classified material.
Summers stated this was a provably false allegation from the evidence of the Manning court-martial.

2) Assange solicited the material from Manning
Summers stated this was provably wrong from information available to the public

3) Assange knowingly put lives at risk
Summers stated this was provably wrong both from publicly available information and from specific involvement of the US government.

In summary, Summers stated the US government knew that the allegations being made were false as to fact, and they were demonstrably made in bad faith. This was therefore an abuse of process which should lead to dismissal of the extradition request. He described the above three counts as "rubbish, rubbish and rubbish".

Summers then walked through the facts of the case. He said the charges from the USA divide the materials leaked by Manning to Wikileaks into three categories:

a) Diplomatic Cables
b) Guantanamo detainee assessment briefs
c) Iraq War rules of engagement
d) Afghan and Iraqi war logs

Summers then methodically went through a), b), c) and d) relating each in turn to alleged behaviours 1), 2) and 3), making twelve counts of explanation and exposition in all. This comprehensive account took some four hours and I shall not attempt to capture it here. I will rather give highlights, but will relate occasionally to the alleged behaviour number and/or the alleged materials letter. I hope you follow that – it took me some time to do so!

On 1) Summers at great length demonstrated conclusively that Manning had access to each material a) b) c) d) provided to Wikileaks without needing any code from Assange, and had that access before ever contacting Assange. Nor had Manning needed a code to conceal her identity as the prosecution alleged – the database for intelligence analysts Manning could access – as could thousands of others – did not require a username or password to access it from a work military computer. Summers quoted testimony of several officers from Manning's court-martial to confirm this. Nor would breaking the systems admin code on the system give Manning access to any additional classified databases. Summers quoted evidence from the Manning court-martial, where this had been accepted, that the reason Manning wanted to get in to systems admin was to allow soldiers to put their video-games and movies on their government laptops, which in fact happened frequently.

Magistrate Baraitser twice made major interruptions. She observed that if Chelsea Manning did not know she could not be traced as the user who downloaded the databases, she might have sought Assange's assistance to crack a code to conceal her identity from ignorance she did not need to do that, and to assist would still be an offence by Assange.

Summers pointed out that Manning knew that she did not need a username and password, because she actually accessed all the materials without one. Baraitser replied that this did not constitute proof she knew she could not be traced. Summers said in logic it made no sense to argue that she was seeking a code to conceal her user ID and password, where there was no user ID and password. Baraitser replied again he could not prove that. At this point Summers became somewhat testy and short with Baraitser, and took her through the court martial evidence again. Of which more...

Baraitser also made the point that even if Assange were helping Manning to crack an admin code, even if it did not enable Manning to access any more databases, that still was unauthorised use and would constitute the crime of aiding and abetting computer misuse, even if for an innocent purpose.

After a brief break, Baraitser came back with a real zinger. She told Summers that he had presented the findings of the US court martial of Chelsea Manning as fact. But she did not agree that her court had to treat evidence at a US court martial, even agreed or uncontested evidence or prosecution evidence, as fact. Summers replied that agreed evidence or prosecution evidence at the US court martial clearly was agreed by the US government as fact, and what was at issue at the moment was whether the US government was charging contrary to the facts it knew. Baraitser said she would return to her point once witnesses were heard.

Baraitser was now making no attempt to conceal a hostility to the defence argument, and seemed irritated they had the temerity to make it. This burst out when discussing c), the Iraq war rules of engagement. Summers argued that these had not been solicited from Manning, but had rather been provided by Manning in an accompanying file along with the Collateral Murder video that showed the murder of Reuters journalists and children. Manning's purpose, as she stated at her court martial, was to show that the Collateral Murder actions breached the rules of engagement, even though the Department of Defense claimed otherwise. Summers stated that by not including this context, the US extradition request was deliberately misleading as it did not even mention the Collateral Murder video at all.

At this point Baraitser could not conceal her contempt. Try to imagine Lady Bracknell saying "A Handbag" or "the Brighton line", or if your education didn't run that way try to imagine Pritti Patel spotting a disabled immigrant. This is a literal quote:

> *"Are you suggesting, Mr Summers, that the authorities, the Government, should have to provide context for its charges?"*

An unfazed Summers replied in the affirmative and then went on to show where the Supreme Court had said so in other extradition cases. Baraitser was showing utter confusion that anybody could claim a significant distinction between the Government and God.

The bulk of Summers' argument went to refuting behaviour 3), putting lives at risk. This was only claimed in relation to materials a) and d). Summers described at great length the efforts of Wikileaks with media partners over more than a year to set up a massive redaction campaign on the cables. He explained that the unredacted cables only became available after Luke Harding and David Leigh of the Guardian published the password to the cache as the heading to Chapter XI of their book **Wikileaks**, published in February 2011.

Nobody had put 2 and 2 together on this password until the German publication Der Freitag had done so and announced it had the unredacted cables in August 2011. Summers then gave the most powerful arguments of the day.

The US government had been actively participating in the redaction exercise on the cables. They therefore knew the allegations of reckless publication to be untrue.

Once Der Freitag announced they had the unredacted materials, Julian Assange and Sara Harrison instantly telephoned the White House, State Department and US Embassy to warn them named sources may be put at risk. Summers read from the transcripts of telephone conversations as Assange and Harrison attempted to convince US officials of the urgency of enabling source protection procedures – and expressed their bafflement as officials stonewalled them. This evidence utterly undermined the US government's case and proved bad faith in omitting extremely relevant fact. It was a very striking moment.

With relation to the same behaviour 3) on materials d), Summers showed that the Manning court martial had accepted these materials contained no endangered source names, but showed that Wikileaks had activated a redaction exercise anyway as a "belt and braces" approach.

There was much more from the defence. For the prosecution, James Lewis indicated he would reply in depth later in proceedings, but wished to state that the prosecution does not accept the court martial evidence as fact, and particularly does not accept any of the "self-serving" testimony of Chelsea Manning, whom he portrayed as a convicted criminal falsely claiming noble motives. The prosecution generally rejected any notion that this court should consider the truth or otherwise of any of the facts; those could only be decided at trial in the USA.

Then, to wrap up proceedings, Baraitser dropped a massive bombshell. She stated that although Article 4.1 of the US/UK Extradition Treaty forbade political extraditions, this was only in the Treaty. That exemption does not appear in the UK Extradition Act. On the face of it therefore political extradition is not illegal in the UK, as the Treaty has no legal force on the Court. She invited the defence to address this argument in the morning.

It is now 06.35am and I am late to start queuing...

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Your Man in the Public Gallery – The Assange Hearing Day 3

27 Feb, 2020 in Uncategorized by craig | View Comments

In yesterday's proceedings in court, the prosecution adopted arguments so stark and apparently unreasonable I have been fretting on how to write them up in a way that does not seem like caricature or unfair exaggeration on my part. What has been happening in this court has long moved beyond caricature. All I can do is give you my personal assurance that what I recount actually is what happened.

As usual, I shall deal with procedural matters and Julian's treatment first, before getting in to a clear account of the legal arguments made.

Vanessa Baraitser is under a clear instruction to mimic concern by asking, near the end of every session just before we break anyway, if Julian is feeling well and whether he would like a break. She then routinely ignores his response. Yesterday he replied at some length he could not hear properly in his glass box and could not communicate with his lawyers (at some point yesterday they had started preventing him passing notes to his counsel, which I learn was the background to the aggressive prevention of his shaking Garzon's hand goodbye).

Baraitser insisted he might only be heard through his counsel, which given he was prevented from instructing them was a bit rich. This being pointed out, we had a ten minute adjournment while Julian and his counsel were allowed to talk down in the cells – presumably where they could be more conveniently bugged yet again.

On return, Edward Fitzgerald made a formal application for Julian to be allowed to sit beside his lawyers in the court. Julian was "a gentle, intellectual man" and not a terrorist. Baraitser replied that releasing Assange from the dock into the body of the court would mean he was released from custody. To achieve that would require an application for bail.

Again, the prosecution counsel James Lewis intervened on the side of the defence to try to make Julian's treatment less extreme. He was not, he suggested diffidently, quite sure that it was correct that it required bail for Julian to be in the body of the court, or that being in the body of the court accompanied by security officers meant that a prisoner was no longer in custody. Prisoners, even the most dangerous of terrorists, gave evidence from the witness box in the body of the court nest to the lawyers and magistrate. In the High Court prisoners frequently sat with their lawyers in extradition hearings, in extreme cases of violent criminals handcuffed to a security officer.

Baraitser replied that Assange might pose a danger to the public. It was a question of health and safety. How did Fitzgerald and Lewis think that she had the ability to carry out the necessary risk assessment? It would have to be up to Group 4 to decide if this was possible.

Yes, she really did say that. Group 4 would have to decide.

Baraitser started to throw out jargon like a Dalek when it spins out of control. "Risk assessment" and "health and safety" featured a lot. She started to resemble something worse than a Dalek, a particularly stupid local government officer of a very low grade. "No jurisdiction" – "Up to Group 4". Recovering slightly, she stated firmly that delivery to custody can only mean delivery to the dock of the court, nowhere else in the room. If the defence wanted him in the courtroom where he could hear proceedings better, they could only apply for bail and his release from custody in general. She then peered at both barristers in the hope this would have sat them down, but both were still on their feet.

In his diffident manner (which I confess is growing on me) Lewis said "the prosecution is neutral on this request, of course but, err, I really don't think that's right". He looked at her like a kindly uncle whose favourite niece has just started drinking tequila from the bottle at a family party.

Baraitser concluded the matter by stating that the Defence should submit written arguments by 10am tomorrow on this point, and she would then hold a separate hearing into the question of Julian's position in the court.

The day had begun with a very angry Magistrate Baraitser addressing the public gallery. Yesterday, she said, a photo had been taken inside the courtroom. It was a criminal offence to take or attempt to take photographs inside the courtroom. Vanessa Baraitser looked at this point very keen to lock someone up. She also seemed in her anger to be making the unfounded assumption that whoever took the photo from the public gallery on Tuesday was still there on Wednesday; I suspect not. Being angry at the public at random must be very stressful for her. I suspect she shouts a lot on trains.

Ms Baraitser is not fond of photography – she appears to be the only public figure in Western Europe with no photo on the internet. Indeed the average proprietor of a rural car wash has left more evidence of their existence and life history on the internet than Vanessa Baraitser. Which is no crime on her part, but I suspect the expunging is not achieved without considerable effort. Somebody suggested to me she might be a hologram, but I think not. Holograms have more empathy.

I was amused by the criminal offence of *attempting to take* photos in the courtroom. How incompetent would you need to be to attempt to take a photo and fail to do so? And if no photo was taken, how do they prove you were attempting to take one, as opposed to texting your mum? I suppose "attempting to take a photo" is a crime that could catch somebody arriving with a large SLR, tripod and several mounted lighting boxes, but none of those appeared to have made it into the public gallery.

Baraitser did not state whether it was a criminal offence to publish a photograph taken in a courtroom (or indeed to attempt to publish a photograph taken in a courtroom). I suspect it is. Anyway **Le Grand Soir** has published a translation of my report yesterday, and there you can see a photo of Julian in his bulletproof glass anti-terrorist cage. Not, I hasten to add, taken by me.

We now come to the consideration of yesterday's legal arguments on the extradition request itself. Fortunately, these are basically fairly simple to summarise, because although we had five hours of legal disquisition, it largely consisted of both sides competing in citing scores of "authorities", e.g. dead judges, to endorse their point of view, and thus repeating the same points continually with little value from exegesis of the innumerable quotes.

As prefigured yesterday by magistrate Baraitser, the prosecution is arguing that Article 4.1 of the UK/US extradition treaty has no force in law.

ARTICLE 4

Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

(b) a murder or other violent crime against the person of a Head of State of one of the Parties, or of a member of the Head of State's family;

(c) murder, manslaughter, malicious wounding, or inflicting grievous bodily harm;

(d) an offense involving kidnaping, abduction, or any form of unlawful detention, including the taking of a hostage;

(e) placing or using, or threatening the placement or use of, an explosive, incendiary, or destructive device or firearm capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

(f) possession of an explosive, incendiary, or destructive device capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

(g) an attempt or a conspiracy to commit, participation in the commission of, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to any of the foregoing offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated. In the United States, the executive branch is the competent authority for the purposes of this Article.

4. The competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. In the United States, the executive branch is the competent authority for the purposes of this Article.

The UK and US Governments say that the court enforces domestic law, not international law, and therefore the treaty has no standing. This argument has been made to the court in written form to which I do not have access. But from discussion in court it was plain that the prosecution argue that the Extradition Act of 2003, under which the court is operating, makes no exception for political offences. All previous Extradition Acts had excluded extradition for political offences, so it must be the intention of the sovereign parliament that political offenders can now be extradited.

Opening his argument, Edward Fitzgerald QC argued that the Extradition Act of 2003 alone is not enough to make an actual extradition. The extradition requires two things in place; the general Extradition Act and the Extradition Treaty with the country or countries concerned. "No Treaty, No Extradition" was an unbreakable rule. The Treaty was the very basis of the request. So to say that the extradition was not governed by the terms of the very treaty under which it was made, was to create a legal absurdity and thus an abuse of process. He cited examples of judgements made by the House of Lords and Privy Council where treaty rights were deemed enforceable despite the lack of incorporation into domestic legislation, particularly in order to stop people being extradited to potential execution from British colonies.

Fitzgerald pointed out that while the Extradition Act of 2003 did not contain a bar on extraditions for political offences, it did not state there could not be such a bar in extradition treaties. And the extradition treaty of 2007 was ratified after the 2003 extradition act.

At this stage Baraitser interrupted that it was plain the intention of parliament was that there could be extradition for political offences. Otherwise they would not have removed the bar in previous legislation. Fitzgerald declined to agree, saying the Act did not say extradition for political offences could not be banned by the treaty enabling extradition.

Fitzgerald then continued to say that international jurisprudence had accepted for a century or more that you did not extradite political offenders. No political extradition was in the European Convention on Extradition, the Model United Nations Extradition Treaty and the Interpol Convention on Extradition. It was in every single one of the United States' extradition treaties with other countries, and had been for over a century, at the insistence of the United States. For both the UK and US Governments to say it did not apply was astonishing and would set a terrible precedent that would endanger dissidents and potential political prisoners from China, Russia and regimes all over the world who had escaped to third countries.

Fitzgerald stated that all major authorities agreed there were two types of political offence. The pure political offence and the relative political offence. A "pure" political offence was defined as treason, espionage or sedition. A "relative" political offence was an act which was normally criminal, like assault or vandalism, conducted with a political motive. Every one of the charges against Assange was a "pure" political offence. All but one were espionage charges, and the computer misuse charge had been compared by the prosecution to breach of the official secrets act to meet the dual criminality test. The overriding accusation that Assange was seeking to harm the political and military interests of the United States was in the very definition of a political offence in all the authorities.

In reply Lewis stated that a treaty could not be binding in English law unless specifically incorporated in English law by Parliament. This was a necessary democratic defence. Treaties were made by the executive which could not make law. This went to the sovereignty of Parliament. Lewis quoted many judgements stating that international treaties signed and ratified by the UK could not be enforced in British courts. "It may come as a surprise to other countries that their treaties with the British government can have no legal force" he joked.

Lewis said there was no abuse of process here and thus no rights were invoked under the European Convention. It was just the normal operation of the law that the treaty provision on no extradition for political offences had no legal standing.

Lewis said that the US government disputes that Assange's offences are political. In the UK/Australia/US there was a different definition of political offence to the rest of the world. We viewed the "pure" political offences of treason, espionage and sedition as not political offences. Only "relative" political offences – ordinary crimes committed with a political motive – were viewed as political offences in our tradition. In this tradition, the definition of "political" was also limited to supporting a contending political party in a state. Lewis will continue with this argument tomorrow.

That concludes my account of proceedings. I have some important commentary to make on this and will try to do another posting later today. Now rushing to court.

With grateful thanks to those who donated or subscribed to make this reporting possible.

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Subscriptions are still preferred to donations as I can't run the blog without some certainty of future income, but I understand why some people prefer not to commit to that.

View with comments

Your Man in the Public Gallery – Assange Hearing Day Four

28 Feb, 2020 in Uncategorized by craig | View Comments

Please try this experiment for me.
Try asking this question out loud, in a tone of intellectual interest and engagement: "Are you suggesting that the two have the same effect?".

Now try asking this question out loud, in a tone of hostility and incredulity bordering on sarcasm: "Are you suggesting that the two have the same effect?".

Firstly, congratulations on your acting skills; you take direction very well. Secondly, is it not fascinating how precisely the same words can convey the opposite meaning dependent on modulation of stress, pitch, and volume?

Yesterday the prosecution continued its argument that the provision in the 2007 UK/US Extradition Treaty that bars extradition for political offences is a dead letter, and that Julian Assange's objectives are not political in any event. James Lewis QC for the prosecution spoke for about an hour, and Edward Fitzgerald QC replied for the defence for about the same time. During Lewis's presentation, he was interrupted by Judge Baraitser precisely once. During Fitzgerald's reply, Baraitser interjected seventeen times.

In the transcript, those interruptions will not look unreasonable:
"Could you clarify that for me Mr Fitzgerald…"
"So how do you cope with Mr Lewis's point that…"
"But surely that's a circular argument…"
"But it's not incorporated, is it?…"

All these and the other dozen interruptions were designed to appear to show the judge attempting to clarify the defence's argument in a spirit of intellectual testing. But if you heard the tone of Baraitser's voice, saw her body language and facial expressions, it was anything but.

The false picture a transcript might give is exacerbated by the courtly Fitzgerald's continually replying to each obvious harassment with "Thank you Madam, that is very helpful", which again if you were there, plainly meant the opposite. But what a transcript will helpfully nevertheless show was the bully pulpit of Baraitser's tactic in interrupting Fitzgerald again and again and again, belittling his points and very deliberately indeed preventing him from getting into the flow of his argument. The contrast in every way with her treatment of Lewis could not be more pronounced.

So now to report the legal arguments themselves.

James Lewis for the prosecution, continuing his arguments from the day before, said that Parliament had not included a bar on extradition for political offences in the 2003 Act. It could therefore not be reintroduced into law by a treaty. "To introduce a Political Offences bar by the back door would be to subvert the intention of Parliament."

Lewis also argued that these were not political offences. The definition of a political offence was in the UK limited to behaviour intended "to overturn or change a government or induce it to change its policy." Furthermore the aim must be to change government or policy in the short term, not the indeterminate future.

Lewis stated that further the term "political offence" could only be applied to offences committed within the territory where it was attempted to make the change. So to be classified as political offences, Assange would have had to commit them within the territory of the USA, but he did not.

If Baraitser did decide the bar on political offences applied, the court would have to determine the meaning of "political offence" in the UK/US Extradition Treaty and construe the meaning of paragraphs 4.1 and 4.2 of the Treaty. To construe the terms of an international treaty was beyond the powers of the court.

Lewis perorated that the conduct of Julian Assange cannot possibly be classified as a political offence. "It is impossible to place Julian Assange in the position of a political refugee". The activity in which Wikileaks was engaged was not in its proper meaning political opposition to the US Administration or an attempt to overthrow that administration. Therefore the offence was not political.

For the defence Edward Fitzgerald replied that the 2003 Extradition Act was an enabling act under which treaties could operate. Parliament had been concerned to remove any threat of abuse of the political offence bar to cover terrorist acts of violence against innocent civilians. But there remained a clear protection, accepted worldwide, for peaceful political dissent. This was reflected in the Extradition Treaty on the basis of which the court was acting.

Baraitser interrupted that the UK/US Extradition Treaty was not incorporated into English Law.

Fitzgerald replied that the entire extradition request is on the basis of the treaty. It is an abuse of process for the authorities to rely on the treaty for the application but then to claim that its provisions do not apply.

> *"On the face of it, it is a very bizarre argument that a treaty which gives rise to the extradition, on which the extradition is founded, can be disregarded in its provisions. It is on the face of it absurd." Edward Fitzgerald QC for the Defence*

Fitzgerald added that English Courts construe treaties all the time. He gave examples.

Fitzgerald went on that the defence did not accept that treason, espionage and sedition were not regarded as political offences in England. But even if one did accept Lewis's too narrow definition of political offence, Assange's behaviour still met the test. What on earth could be the motive of publishing evidence of government war crimes and corruption, other than to change the policy of the government? Indeed, the evidence would prove that Wikileaks had effectively changed the policy of the US government, particularly on Iraq.

Baraitser interjected that to expose government wrongdoing was not the same thing as to try to change government policy. Fitzgerald asked her, finally in some exasperation after umpteen interruptions, what other point could there be in exposing government wrongdoing other than to induce a change in government policy?

That concluded opening arguments for the prosecution and defence.

MY PERSONAL COMMENTARY

Let me put this as neutrally as possible. If you could fairly state that Lewis's argument was much more logical, rational and intuitive than Fitzgerald's, you could understand why Lewis did not need an interruption while Fitzgerald had to be continually interrupted for "clarification". But in fact it was Lewis who was making out the case that the provisions of the very treaty under which the extradition is being made, do not in fact apply, a logical step which I suggest the man on the Clapham omnibus might reason to need rather more testing than Fitzgerald's assertion to the contrary. Baraitser's comparative harassment of Fitzgerald when he had the prosecution on the ropes was straight out of the Stalin show trial playbook.

The defence did not mention it, and I do not know if it features in their written arguments, but I thought Lewis's point that these could not be political offences, because Julian Assange was not in the USA when he committed them, was breathtakingly dishonest. The USA claims universal jurisdiction. Assange is being charged with crimes of publishing committed while he was outside the USA. The USA claims the right to charge anyone of any nationality, anywhere in the world, who harms US interests. They also in addition here claim that as the materials could be seen on the internet in the USA, there was an offence in the USA. At the same time to claim this could not be a political offence as the crime was committed outside the USA is, as Edward Fitzgerald might say, on the face of it absurd. Which curiously Baraitser did not pick up on.

Lewis's argument that the Treaty does not have any standing in English law is not something he just made up. Nigel Farage did not materialise from nowhere. There is in truth a long tradition in English law that even a treaty signed and ratified with some bloody Johnny Foreigner country, can in no way bind an English court. Lewis could and did spout reams and reams of judgements from old beetroot faced judges holding forth to say exactly that in the House of Lords, before going off to shoot grouse and spank the footman's son. Lewis was especially fond of the Tin Council case.

There is of course a contrary and more enlightened tradition, and a number of judgements that say the exact opposite, mostly more recent. This is why there was so much repetitive argument as each side piled up more and more volumes of "authorities" on their side of the case.

The difficulty for Lewis – and for Baraitser – is that this case is not analogous to me buying a Mars bar and then going to court because an International Treaty on Mars Bars says mine is too small.

Rather the 2003 Extradition Act is an Enabling Act on which extradition treaties then depend. You can't thus extradite under the 2003 Act without the Treaty. So the Extradition Treaty of 2007 in a very real sense becomes an executive instrument legally required to authorise the extradition. For the executing authorities to breach the terms of the necessary executive instrument under which they are acting, simply has to be an abuse of process. So the Extradition Treaty owing to its type and its necessity for legal action, is in fact incorporated in English Law by the Extradition Act of 2003 on which it depends.

The Extradition Treaty is a necessary precondition of the extradition, whereas a Mars Bar Treaty is not a necessary precondition to buying the Mars Bar.

That is as plain as I can put it. I do hope that is comprehensible.

It is of course difficult for Lewis that on the same day the Court of Appeal was ruling against the construction of the Heathrow Third Runway, partly because of its incompatibility with the Paris Agreement of 2016, despite the latter not being fully incorporated into English law by the Climate Change Act of 2008.

VITAL PERSONAL EXPERIENCE

It is intensely embarrassing for the Foreign and Commonwealth Office (FCO) when an English court repudiates the application of a treaty the UK has ratified with one or more foreign states. For that reason, in the modern world, very serious procedures and precautions have been put into place to make certain that this cannot happen. Therefore the prosecution's argument that all the provisions of the UK/US Extradition Treaty of 2007 are not able to be implemented under the Extradition Act of 2003, ought to be impossible.

I need to explain I have myself negotiated and overseen the entry into force of treaties within the FCO. The last one in which I personally tied the ribbon and applied the sealing wax (literally) was the Anglo-Belgian Continental Shelf Treaty of 1991, but I was involved in negotiating others and the system I am going to describe was still in place when I left the FCO as an Ambassador in 2005, and I believe is unchanged today (and remember the Extradition Act was 2003 and the US/UK Extradition Treaty ratified 2007, so my knowledge is not outdated). Departmental nomenclatures change from time to time and so does structural organisation. But the offices and functions I will describe remain, even if names may be different.

All international treaties have a two stage process. First they are signed to show the government agrees to the treaty. Then, after a delay, they are ratified. This second stage takes place when the government has enabled the legislation and other required agency to implement the treaty. This is the answer to Lewis's observation about the roles of the executive and legislature. The ratification stage only takes place after any required legislative action. That is the whole point.

This is how it happens in the FCO. Officials negotiate the extradition treaty. It is signed for the UK. The signed treaty then gets returned to FCO Legal Advisers, Nationality and Treaty Department, Consular Department, North American Department and others and is sent on to Treasury/Cabinet Office Solicitors and to Home Office, Parliament and to any other Government Department whose area is impacted by the individual treaty.

The Treaty is extensively vetted to check that it can be fully implemented in all the jurisdictions of the UK. If it cannot, then amendments to the law have to be made so that it can. These amendments can be made by Act of Parliament or more generally by secondary legislation using powers conferred on the Secretary of State by an act. If there is already an Act of Parliament under which the Treaty can be implemented, then no enabling legislation needs to be passed. International Agreements are **not** all individually incorporated into English or Scottish laws by specific new legislation.

This is a very careful step by step process, carried out by lawyers and officials in the FCO, Treasury, Cabinet Office, Home Office, Parliament and elsewhere. Each will in parallel look at every clause of the Treaty and check that it can be applied. All changes needed to give effect to the treaty then have to be made – amending legislation, and necessary administrative steps. Only when all hurdles have been cleared, including legislation, and Parliamentary officials, Treasury, Cabinet Office, Home Office and FCO all certify that the Treaty is capable of having effect in the UK, will the FCO Legal Advisers give the go ahead for the Treaty to be ratified. **You absolutely cannot ratify the treaty before FCO Legal Advisers have given this clearance.**

This is a serious process. That is why the US/UK Extradition Treaty was signed in 2003 and ratified in 2007. That is not an abnormal delay.

So I know for certain that ALL the relevant British Government legal departments MUST have agreed that Article 4.1 of the UK/US Extradition Treaty was capable of being given effect under the 2003 Extradition Act. That certification has to have happened or the Treaty could never have been ratified.

It follows of necessity that the UK Government, in seeking to argue now that Article 4.1 is incompatible with the 2003 Act, is knowingly lying. There could not be a more gross abuse of process.

I have been keen for the hearing on this particular point to conclude so that I could give you the benefit of my experience. I shall rest there for now, but later today hope to post further on yesterday's row in court over releasing Julian from the anti-terrorist armoured dock.

With grateful thanks to those who donated or subscribed to make this reporting possible. I wish to stress again that I absolutely do not want anybody to give anything if it causes them the slightest possibility of financial strain.

This article is entirely free to reproduce and publish, including in translation, and I very much hope people will do so actively. Truth shall set us free.

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