

IN THE CITY OF WESTMINSTER MAGISTRATES' COURT

THE UNITED STATES OF AMERICA

-v-

JULIAN ASSANGE

OPENING NOTE

ON BEHALF OF THE UNITED STATES OF AMERICA

INTRODUCTION

1. The extradition of Julian Assange is sought by the United States of America so that he may be tried for offences related to one of the largest compromises of classified information in the history of the United States. The alleged conduct which forms the basis of the request relates to the encouragement and assistance which Mr Assange provided to Bradley Manning (now known, and referred to in this opening note as, Chelsea Manning) in unlawfully obtaining and receiving classified information and Mr Assange's subsequent publication, through the 'Wikileaks' website, of a large part of that information. This included classified information which contained the unredacted names of human sources who provided information to United States forces in Iraq and Afghanistan, and to U.S. State Department diplomats around the world. These human sources included local Afghans and Iraqis, as well as journalists, religious leaders, human rights advocates, and political dissidents from repressive regimes.
2. At the time, the volume of classified materials which were compromised by their provision to Mr Assange was unprecedented. It included four almost complete databases classified up to the SECRET level, including approximately 90,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activity reports, 800 Guantanamo Bay detainee assessment briefs, 250,000 U.S. State Department cables, as well as Iraq war rules of engagement files.

3. The conduct alleged against Mr Assange includes that he conspired with and aided and abetted Chelsea Manning in unlawfully obtaining and then providing classified information to Mr Assange; that Mr Assange received this information knowing it to have been obtained unlawfully; and that Mr. Assange communicated a large volume of this information to the public at large. By this conduct, Mr Assange caused damage to the strategic and national security interests of the United States and put the safety of individuals at serious risk. It is specifically alleged against Mr. Assange that by publishing this information on the Wikileaks website, he created a grave and imminent risk that the human sources named therein would suffer serious physical harm and, or arbitrary detention. It is further 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 forces; and would endanger the interests of the United States abroad.
4. This is conduct which would constitute a number of different offences had it occurred in this jurisdiction for the reasons set out below.

Procedural History (extradition proceedings)

5. On 2 May 2019, Mr Assange appeared before the Court pursuant to a provisional request for his extradition by the United States. The matter was adjourned until 14 June 2019 for a case management hearing (on the basis that the request for his extradition would have been submitted by then).
6. The request for extradition was served on the court on 13 June 2019 (within the 65 day period permitted by paragraph 4 of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/333). The initial matters which arise under the 2003 Act were considered. It was confirmed on behalf of Mr Assange that no issues arose under section 78(2)(a) to 78(2)(d) nor section 78(4)(a) and (c) of the Act. The issue of whether the request for extradition discloses an extradition offence (per section 78(4)(b)) was reserved until the substantive hearing.
7. Mr Assange is a serving prisoner. He was convicted on 11 April 2019 at this Court of an offence under s.6(1) of the Bail Act 1976. He was committed to the Crown Court for sentence. On 1 May 2019 he was sentenced to a term of fifty weeks imprisonment. He is due to be released from custody on 22 September 2019.

8. This opening note is served pursuant to the direction that an opening note be served on behalf of the United States by 31 July 2019.

Procedural History (United States)

9. A federal magistrate judge, in the Commonwealth of Virginia, issued a criminal complaint against Mr Assange, charging him with conspiracy contrary to Title 18 of the United States Code, section 371 ("Conspiracy against the United States"). The offence alleged to be the object of the conspiracy was Computer Intrusion (Title 18 US Code Section 1030) [Affidavit of Kellen Dwyer at §53].
10. On 6 March 2018, a federal grand jury returned an indictment against Mr Assange charging him with conspiracy (contrary to Title 18, United States Code, section 371) to commit unlawful computer intrusion (contrary to section 1030(a)(1) and (2)) [Affidavit of Kellen Dwyer at §54].
11. On 23 May 2019, a federal grand jury returned a Superseding indictment containing 18 counts. This indictment charged Mr Assange with further offences related to the obtaining, receiving and disclosure of "National Defense Information" (contrary to the provisions of Title 18, United States Code, sections 793(g), 793(b), 793 (c), 793 (d) and 793 (e)) [Affidavit of Kellen Dwyer at §55].
12. On the same date that the Superseding indictment was returned, a warrant was issued by the United States District Court for the Eastern District of Virginia, for the arrest of Mr Assange for the offences specified in the superseding warrant [Exhibit 1 to the Affidavit of Kellen Dwyer].

The Conduct Alleged in the United States

- A. **The counseling or procuring, soliciting or encouragement of the provision of information from Ms Manning. (Secondary participation)**
13. The conduct alleged in the United States is set out in extensive detail in the affidavit of Kellen Dwyer. This opening note is not exhaustive as to all of the conduct alleged against Mr Assange but focuses on those elements of the conduct alleged which demonstrate that the requirement for dual criminality is made out.

14. The United States alleges that Mr Assange, through the Wikileaks website actively counseled, solicited for, or encouraged the provision to it, of classified, censored, or restricted materials of political, diplomatic or ethical significance. Wikileaks published a list of its "Most Wanted Leaks", a 'wish list' of information which it sought the supply of. In November 2009, the "Most Wanted Leaks" for the United States included "Military and Intelligence" documents including documents classified up to the SECRET level.
15. It is alleged that Chelsea Manning responded to WikiLeaks' solicitation. In 2009, Ms Manning was an intelligence analyst in the United States Army. She was deployed to the Forward Operating Base Hammer in Iraq. Ms Manning held a "Top Secret" security clearance and had signed a classified information non-disclosure agreement. By signing this agreement, Ms Manning acknowledged 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.
16. The United States alleges that searches carried out by Ms Manning, using a United States classified information-network search engine to search databases or servers located in the United States, correspond to the information that Mr Assange, through Wikileaks, sought.
17. The request alleges that between January and May 2010 Ms Manning downloaded the four nearly completed databases referred to above [Affidavit of Kellen Dwyer at §21]. The request specifies that, in general terms, many of the documents that comprised this material were classified up to the SECRET level pursuant to Executive Order No. 13526 (or prior orders) [Affidavit of Kellen Dwyer at §21].
18. It is alleged by the United States that in addition to the general solicitation of, or encouragement of, the provision of classified, censored, or restricted materials of political, diplomatic, or ethical significance through Mr Assange and the Wikileaks website, Mr Assange specifically encouraged Ms Manning to unlawfully disclose information to him. In particular, the request alleges that Mr Assange through his direct contact with Ms Manning encouraged her to steal classified documents from the United States and unlawfully disclose that information to Wikileaks [Affidavit of Kellen Dwyer at §24].
19. As part of this conduct, it is alleged that Mr Assange agreed with, and to assist, Ms Manning in cracking a password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network [Affidavit of Kellen Dwyer at §28]. The request

describes the steps which were taken in an attempt to achieve this. Had Ms Manning and Mr Assange succeeded in cracking a password hash, Ms Manning might have been able to log on to computers connected to a classified network called the Secret Internet Protocol Network under a username that did not belong to her. The United States specifically alleges that Mr Assange entered into the agreement to crack the password hash for the purpose of Ms Manning's ongoing efforts to steal classified material [Affidavit of Kellen Dwyer at §32].

20. The United States alleges that Mr Assange knew, understood, and fully anticipated that Ms Manning was taking and illegally providing Wikileaks with classified records containing national defence information (that was from classified databases) and that he was receiving this information for the purpose of publishing it [Affidavit of Kellen Dwyer at §31].
21. On or about 22 March 2010, Ms Manning (having already been in contact with Mr Assange) downloaded multiple Iraq rules of engagement files, which were specifically listed in the "Most Wanted Leaks," from the Secret Internet Protocol Network, copied these onto a CD, and provided them to Assange and Wikileaks. [Affidavit of Kellen Dwyer at §§ 12-16, 33].
22. Between on or about 28 March 2010 and 9 April 2010, Ms Manning (having already been in contact with Mr Assange) downloaded approximately 250,000 Department of State Cables. She uploaded these to Mr Assange and Wikileaks through a Secure File Transfer Protocol connection to a cloud drop box operated by Wikileaks (into a directory which had been created for Ms Manning). By this way, she provided the 250,000 Cables to Assange and Wikileaks [Affidavit of Kellen Dwyer at §36]. Ms Manning's theft of these cables was consistent with WikiLeaks' prior solicitation of classified, censored, or otherwise restricted material of political, diplomatic, or ethical significance. [Affidavit of Kellen Dwyer at §12].
23. Following Ms Manning's arrest, throughout 2010 and 2011, Wikileaks published, in the United States and elsewhere, classified information up to the SECRET level which had been obtained from Ms Manning. In addition to the approximately 250,000 Department of State cables, this included:
 - (i) approximately 75,000 Afghanistan war-related significant activity reports;
 - (ii) approximately 400,000 Iraq war-related significant activity reports; and
 - (iii) approximately 800 Guantanamo Bay detainee assessment briefs

B. The nature of the material provided by Ms Manning to Mr Assange

24. The United States has described the nature of the materials which were unlawfully provided by Chelsea Manning to Mr Assange as follows:

- (i) In general terms, and as noted above, the materials provided by Ms Manning to Wikileaks, and published by Wikileaks, were largely classified as SECRET. Documents are classified as SECRET if their unauthorised disclosure could reasonably be expected to cause serious damage to the national security [Affidavit of Kellen Dwyer at §9];
- (ii) The Rules of Engagement files (Iraq) - were classified SECRET [§34]. It is specifically alleged that Wikileaks' disclosure of this information would allow enemy forces in Iraq to anticipate actions or responses by United States armed forces and to carry out more effective attacks [§35];
- (iii) The approximately 250,000 Department of State cables were classified up to the SECRET LEVEL [§36]. They included the names of persons throughout the world who provided information to the US government in circumstances where they expected their identity to be treated as confidential. They were people whose reporting of information to the United States put their personal safety at great risk. They numbered journalists, religious leaders, human rights activists and political dissidents. It is alleged that the publication of these cables without the redaction of the names of those who were providing information was done knowing that it would put those individuals at risk of serious harm and, or arbitrary detention [§39, §42];
- (iv) The approximately 90,000 Afghanistan war-related significant activity reports, classified up to the SECRET level, contained the names of local Afghans who had provided information to the US and coalition forces [§39]. Again, it is alleged that Mr Assange published these significant activity reports knowing that it put these individuals at serious risk of harm in Afghanistan (see Affidavit of Kellen Dwyer at §41 for specific examples);
- (v) The approximately 400,000 Iraq war-related significant activity reports, classified up to the SECRET level, contained the names of local Iraqis who had provided information to the US and coalition forces [§39]. The publication of this material was done knowing that it put individuals at serious risk of harm in Iraq (see §41 for specific examples); and

- (vi) Approximately 800 Guantanamo Bay detainee assessment briefs, classified up to the SECRET level.

C. Publication of the material provided by Ms Manning

25. The request alleges that the materials provided by Ms Manning to Mr Assange were published in the United States and elsewhere [§8]. They were published in the following manner:

- (i) Wikileaks disclosed on its website the rules of engagement (Iraq) files that Ms Manning had provided on 5 April 2010 [§34];
- (ii) Wikileaks disclosed the approximately 250,000 Department of State cables to the public, on its website, in an unredacted form subsequent to the arrest of Ms Manning [§8/36/38];
- (iii) Wikileaks disclosed approximately 75,000 Afghanistan war-related significant activity reports on its website in 2010 [§8/38/82];
- (iv) Wikileaks disclosed approximately 400,000 Iraq war-related significant activity reports on its website in 2010 [§8/38/82]; and
- (v) Wikileaks disclosed approximately 800 Guantanamo Bay detainee assessment briefs on its website in 2011 [§8/38].

D. Damage

26. The request explains the multiple ways in which the publication of the unlawfully obtained information caused both human damage and damage to the interests of the United States:

- (i) Critically, the indiscriminate publication of the Department of State cables, the significant activity reports (Iraq), and the significant activity reports (Afghanistan) put the safety and security of those individuals, who had provided information and whose identity was revealed, at serious risk. The request sets out specific examples of documents classified as SECRET, the publication of which gave rise to a specific risk of harm to an individual [§§41, 42]. The request also specifies that persons whose identities were revealed through the publication of the classified material have subsequently disappeared (although the United States cannot prove at this point that their disappearance was the result of their identity being revealed by WikiLeaks) [§43];

- (ii) The information published by Wikileaks was useful to an enemy of the United States (see information as to the consideration given to it and interest it held for Osama Bin Laden) [Affidavit of Kellen Dwyer at §40];
- (iii) The publication of this information caused damage to the work of the intelligence and security services of the United States [Affidavit of Kellen Dwyer at §4];
- (iv) The publication of this information caused damage to the Armed Forces capabilities of the United States [Affidavit of Kellen Dwyer at §4];
- (v) The publication of this information endangered the interests of the United States abroad [Affidavit of Kellen Dwyer at §4]; and
- (vi) The US Government devoted enormous resources to identifying and warning people put at risk by the publication of the information [Affidavit of Kellen Dwyer at §43].

27. The request also specifies that Mr Assange knew that the publication of information which would reveal the identities of individuals would put them at risk of harm [44]. In addition to a public statement to this effect, Mr Assange was warned by letter (from the Department of State legal advisor) that publication of the State Department cables would put the lives of journalists, human rights activists and others at risk. Mr Assange indicated that he would publish the materials in conjunction with mainstream media outlets and by reading every cable and redacting identities. Whilst some cables were published in redacted form in September 2010, approximately 250,000 were published in an unredacted form in September 2011.

OFFENCES THIS CONDUCT COULD CONSTITUTE HAD IT OCCURRED IN ENGLAND

28. The conduct alleged by the United States would constitute numerous inchoate and substantive offences had it occurred in England.

A. Soliciting, aiding or abetting an offence contrary to Section 1 of the Official Secrets Act 1911

29. Section 7 of the Official Secrets Act 1920 makes it an offence to solicit or persuade or aid or abet another person to commit an offence under section 1 of the Official Secrets Act 1911.¹

¹ Official Secrets Act 1920
7. Attempts, incitements, &c:

30. Section 1(1)(c) of the 1911 Act provides that if any person for any purpose prejudicial to the safety or interests of the State—(c) obtains, collects, records, or publishes, or communicates to any other person any secret official code word, or pass word, or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; he shall be guilty of felony.²

31. Pursuant to section 1(2) of the 1911 Act is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State. The individual can be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State.

32. The principal offence can be committed by a British citizen or a British officer anywhere (per section 10(1)).

33. Per section 8 of the Official Secrets Act 1920, soliciting, aiding and abetting an offence under section 1 of the 1911 Act is punishable by up to fourteen years imprisonment.

34. As regards the allegations in the United States, the following is relied upon:

- (i) Chelsea Manning, a US citizen and serving soldier, obtained and communicated to Mr Assange documents and information which were or might have been directly or indirectly useful to an enemy;
- (ii) Chelsea Manning knew that the materials which she was obtaining and communicating were documents of a nature that their unauthorised disclosure could reasonably be expected to cause serious damage to the national security of the United States;
- (iii) Mr Assange knew that the documents and information were of this nature and knew that they were or might be directly or indirectly useful to an enemy;
- (iv) Mr Assange solicited from the world at large, via the Wikileaks website, the provision of such materials;

“Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.”

² The conduct caught by this provision is not restricted to spying (regardless of the marginal note); see *Chandler and Others; v Director of Public Prosecutions*. [1964] A.C. 763

- (v) Mr Assange solicited the provision of materials specifically from Chelsea Manning;
and
- (vi) Mr Assange encouraged Chelsea Manning to provide the materials.

B. Conspiracy to commit an offence contrary to Section 1 of the Official Secrets Act 1911

35. The description of the conduct would also constitute a conspiracy to commit an offence under section 1 of the 1911 Act in that Mr Assange and Chelsea Manning conspired together so that (i) Chelsea Manning would unlawfully provide the information to Mr Assange and (ii) Mr Assange would publish that information. The description of the conduct includes a number of acts which were done in furtherance of that conspiracy. These include (i) the communications between them by which Mr Assange sought the provision of information; (ii) the attempts by Mr Assange and Chelsea Manning to crack the password hash code; (iii) the creation of a directory which had been created for Chelsea Manning in the drop box that she could uplift documents to; (iv) the uplifting of information to the Secure File Transfer Protocol connection to a cloud drop box operated by Wikileaks and (v) the publication of the material provided on the Wikileaks website.

36. On well-established principles, the statutory conspiracy under section 1 of the Criminal Law Act 1977 was committed by Chelsea Manning as a US citizen and soldier, and therefore the conspiracy and all the conspirators would be triable in the UK if the conduct occurred in the UK. In addition, at common law, it matters not which jurisdiction Mr Assange (or Chelsea Manning) were in during the currency of the conspiracy alleged as the resultant damage was in the USA and therefore the conspiracy would be justiciable in the UK if it had happened in the UK; *HM Advocate v Megrahi* 2000 JC 555; *Clements v HM Advocate* 1991 JC 6; *R v Doot* [1973] AC 807 and *Liangsiriprasert (Somchai) v Government of the United States* [1991] 1 AC 225.

Offences under the Official Secrets Act 1989

37. The conduct alleged would also constitute a number of different offences under the Official Secrets Act 1989. The offence created by Section 1 of the Act is distinct in that it does not require that the Prosecution demonstrate that the disclosure was damaging. It is submitted that an offence under section 1 is made out here, having regard to the description of the conduct, because Chelsea Manning was subject to an agreement which is analogous to a notification under Section 1. That ultimately does not matter here however as the United States have

described the many ways in which the disclosures made by Chelsea Manning and published by Mr Assange were damaging.

C. Aiding or Abetting an Offence Contrary to Section 1(1) of the Official Secrets Act 1989

38. Section 1(1) of the 1989 applies to a person who is or has been a member of the security or intelligence services or has been notified that he is subject to the provisions of the subsection.³

39. Section 1(1) makes it an offence for such an individual to disclose any information relating to security or intelligence which is in (or has been) possession by virtue of his position or in the course of his work whilst a notification was in place. The maximum sentence for this offence is two years (each disclosure could be charged in this jurisdiction as a separate offence).⁴

40. The allegation made by the United States is that Ms Manning had signed a classified information non-disclosure agreement.⁵ The effect of signing was that Ms Manning acknowledged that the unauthorised disclosure, 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.

41. The allegations made against Mr Assange include:

- (i) That, by his direct contact with her, he encouraged Ms Manning to make disclosures of materials and information which he knew to be classified as SECRET or knew to relate to security or intelligence which Ms Manning had possession of by virtue of her position or in the course of her work;
and

³ Section 1(9) provides:

"In this section "*security or intelligence*" means the work of, or in support of, the security and intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of, or of any part of, them." Ms Manning as a member of the United States armed forces would be regarded as a Crown Servant for the purposes of the 1989 Act – see section 12(1)(d).

⁴ Section 10 of the Official Secrets Act 1989

⁵ This is analogous to the notification given under section 1 of the Official Secrets Act 1989. See section 1(6): Notification that a person is subject to subsection (1) above shall be effected by a notice in writing served on him by a Minister of the Crown; and such a notice may be served if, in the Minister's opinion, the work undertaken by the person in question is or includes work connected with the security and intelligence services and its nature is such that the interests of national security require that he should be subject to the provisions of that subsection.

- (ii) That he assisted her in making such a disclosure, including by providing a cloud drop box operated by Wikileaks (and a directory which had been created for Ms Manning); and
 - (iii) That he assisted Ms Manning in attempting to crack a password hash in order to gain access to an account on United States Department of Defense computers connected to the Secret Internet Protocol Network;
- and
- (iv) That the purpose of encouraging and assisting the principal offence was so that these materials could be published by Wikileaks in America and elsewhere.

42. Again, it is irrelevant that Mr Assange (and Chelsea Manning⁶) would, if the conduct was transposed to England, have been outside the jurisdiction when the encouragement or assistance took place.

43. The conduct would also constitute an offence contrary to section 44 of the Serious Crime Act 2007 (Intentionally encouraging or assisting an offence) or an offence contrary to section 45 of that Act (Encouraging or assisting an offence believing it will be committed) insofar as the request discloses that Mr Assange encouraged and assisted Chelsea Manning to commit an offence contrary to section 1(1) of the Official Secrets Act 1989.

D. Conspiracy to commit an Offence Contrary to Section 1(1) of the Official Secrets Act 1989

44. The conduct described would also constitute an offence of conspiracy to commit the offence under section 1. The acts in furtherance of the conspiracy could upon transposition include:

- (i) The encouragement given to Chelsea Manning to provide the material;
- (ii) The attempt to crack the password hash;
- (iii) The ongoing provision of materials and information classified as SECRET;
- (iv) The contact between them during this period; and
- (v) The publication of such materials in America and elsewhere.

45. Again, it is irrelevant to the commission of the conspiracy where Mr Assange was located during it.

⁶See Section 15 of the 1989 Act

E. Aiding or Abetting Offences Contrary to Sections 1(3) or 2(1) of the Official Secrets Act 1989 (or conspiracy to commit those offence)

46. Without repeating the particulars of how it is put by the United States, it is plain that the conduct alleged would also amount, in this jurisdiction, to offences of aiding or abetting offences under section 1(3) or 2(1) of the Official Secrets Act 1989. The maximum sentence for these offences is two years (again, each disclosure could be charged in this jurisdiction as a separate offence).

7

47. Upon transposition:

- (i) Chelsea Manning would be regarded in this jurisdiction as having been a Crown Servant (she having been in the armed forces);
- (ii) For the purposes of the offence under section 1(3), the disclosures which she made were documents or information (or of a class of information or documents), the unauthorised disclosure of which would be damaging to the work of the security and intelligence services or would be likely to have that effect; and
- (iii) For the purposes of the offence under section 2(1), the disclosures which she made were documents or information (or of a class of information or documents), the unauthorised disclosure of which would: (i) be damaging to the capability of the armed forces to carry out their tasks; (ii) endanger the interests of the United Kingdom abroad; (iii) would be likely to have those effects.

48. For the reasons set out above, the conduct alleged in the United States would also amount to the offence of conspiracy to commit offence contrary to sections 1(3) and 2(1) of the Official Secrets Act 1989.

49. The conduct would also constitute an offence contrary to section 44 of the Serious Crime Act 2007 (Intentionally encouraging or assisting an offence) or an offence contrary to section 45 of that Act (Encouraging or assisting an offence believing it will be committed) insofar as the request discloses that Mr Assange encouraged and assisted Chelsea Manning to commit offences contrary to section 1(3) and 2(1) of the Official Secrets Act 1989.

⁷ Section 10 of the Official Secrets Act 1989

50. Again, these offences would be made out regardless of the location of Chelsea Manning or Mr Assange.

F. Disclosing materials contrary to section 5 of the Official Secrets Act 1989

51. The conduct alleged would constitute the offence of disclosing information or materials (protected from disclosure by sections 1 and 2 of the 1989 Act) by Mr Assange.

52. This offence is carried out by an individual who is not a Crown Servant, a contractor or a notified person.

53. Section 5 reflects the concern that an unauthorised disclosure, published by a newspaper (or anyone else), may be just as harmful to the interests of the State as a disclosure by the categories of person specific in the Act. The White Paper which underpinned the 1989 Act explained this [54]:

“The objective of official secrets legislation is not to enforce Crown service discipline – that is not a matter for the criminal law – but to protect information which in the public interest should not be disclosed. Such protection would not be complete if it applied to disclosure only by certain categories of person. The Government accordingly proposes that the unauthorised disclosure by any person of information in the specified categories in circumstances where harm is likely to be caused should be an offence.”

54. The description of the conduct alleged against Mr Assange falls squarely within this offence:

- (i) The documents and information which Mr Assange disclosed were documents which were protected from disclosure in that they (i) related to security or intelligence or (ii) related to defence and (iii) were protected from unauthorised disclosure by virtue of sections 1 and 2 (section 5(1)(i));
- (ii) The documents and information disclosed to him by Chelsea Manning were disclosed by her without lawful authority (section 5(1)(i));

- (iii) Mr Assange, in turn, disclosed the materials and information without lawful authority (section 5(2));
- (iv) He knew or had reasonable cause to believe that the materials were protected from disclosure having regard to their being security, intelligence or defence materials of a type and nature that were protected from disclosure (section 5(2));
- (v) The disclosure by him was damaging; (section 3(a)); and
- (vi) He made it knowing, or having reasonable cause to believe, that it would be damaging (section 3(a)).⁸

55. Transposing the conduct to England, if the original disclosure is by a Crown Servant, then it is irrelevant, for the purposes of section 5 where that disclosure took place.

56. In addition, it is alleged by the United States that the information and materials disclosed by Mr Assange were disclosed in the United States.

G. Computer Misuse Act 1990 offences

57. The conduct alleged in the United States would also constitute offences of aiding and abetting offences under the Computer Misuse Act 1990 or conspiracy to commit those offences. These include:

Aiding or abetting an offence contrary to section 1 of the Computer Misuse Act 1990

58. This conduct alleged in the Request would constitute an offence of assisting or encouraging an offence under section 1(1):

- (i) It alleged that Chelsea Manning caused a computer to perform a function with intent to secure access to data held in a computer;
- (ii) The particular access to data she secured was copying or moving the data to a storage medium other than that in which it was held;
- (iii) This was unauthorised in that Chelsea Manning was accessing this data for the purpose of searching for, downloading, storing or providing information or materials to Mr Assange and not for the purposes of her role as an intelligence officer;⁹ and

⁸ Although this is an obvious implication given the nature of the information and the documents provided by Chelsea Manning, the request specifies that Mr Assange knew the disclosures would be damaging to various interests of the United States (see § 4 and 8) and that he knew he was putting the safety of individuals whose identity was disclosed at risk (§§4,8,44).

⁹ R. v Bow Street Magistrates Court Ex p. Allison (No.2) [2000] 2 A.C. 216

- (iv) Chelsea Manning was not herself entitled to control access of the kind in question to the data nor did she have consent to access the data from any person who was so entitled to provide it.

59. The offence is punishable by up to two years imprisonment (section 1(3)).

60. The conduct alleged in the request specifies that Mr Assange encouraged Chelsea Manning to copy the data which he sought and that he knew that Chelsea Manning was not authorised to do this. He also assisted her in committing this offence by providing her with a directory in the cloud drop box operated by Wikileaks.

61. The conduct alleged would also constitute a conspiracy to commit this offence.

62. The conduct would also constitute an offence contrary to section 44 of the Serious Crime Act 2007 (Intentionally encouraging or assisting an offence) or an offence contrary to section 45 of that Act (Encouraging or assisting an offence believing it will be committed) insofar as the request discloses that Mr Assange encouraged and assisted Chelsea Manning to commit an offence contrary to section 1 of the Computer Misuse Act 1990.

63. It is irrelevant for the purposes of section 1 that Chelsea Manning was located outside England; see section 4. It is also irrelevant that Mr Assange was outwith the jurisdiction.

Extradition offence (section 137)

64. Having regard to the above, the constituent elements for an extradition offence are made out (per section 137(1) (2) and (3)):

- (i) Mr Assange is accused in the United States of an offence constituted by the conduct (s.137(1)(a));
- (ii) The conduct occurred in the United States (s.137(3)(a));¹⁰
- (iii) The conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12

¹⁰ Per Office of the King's Prosecutor (Brussels) v Cando Armas [2005] UKHL 67, [2006] 2 A.C. 1, [2005] 11 WLUK 490, the harm caused by the conduct took place in the United States (by publication on the Wikileaks website) and by the harm caused to United States interests.

months or a greater punishment if it occurred in that part of the United Kingdom (s.137(3)(b)); and

- (iv) The conduct is so punishable under the law of the category 2 territory (s.137(3)(c)).
[Affidavit of Kellen Dwyer at §55].

Bars to extradition and human rights.

65. It is not yet known what grounds might be advanced on behalf of Mr Assange pursuant to sections 79 and 87 of the Extradition Act 2003. As regards any reliance which Mr Assange may place upon Article 10 of the Convention (as precluding his extradition) ¹¹ the preliminary observation is made that the United States is not seeking Mr Assange's extradition in respect of any responsible journalistic treatment of the material provided by Chelsea Manning. He is being sought for his complicity in receiving and obtaining classified information and the wholesale and indiscriminate publication on the internet of unredacted documents and information which not only were damaging to the interests of the United States but also revealed the identities of individuals (who he thereby put at grave and imminent risk). As is explained, the allegations (in the United States) encompass not only damage caused to United States interests but also to the risk it created to individuals who had provided information to the United States, (including journalists and human rights activists).

James Lewis QC

Clair Dobbin

3 Raymond Buildings

30 July 2019

¹¹ ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary