IN THE CITY OF WESTMINSTER MAGISTRATES' COURT

BETWEEN:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

v

JULIAN ASSANGE

Defendant

DEFENCE BUNDLE – GRAND JURIES

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STATEMENT OF WITNESS

(Criminal Justice Act 1967, ss 2,9/M.C. Rules, 1968, r.58)

Statement of :	Robert J. Boyle
Age of witness (if over 18 enter 'over 18') :	Over 18
Occupation of witness :	Attorney
Address :	277 Broadway, Suite 1501 New York, N.Y. 10007

This statement, consisting of 26 pages, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

1. I am an attorney admitted to the bar in New York State in 1981. In addition to the New York State bar, I am a member in good standing of the bars of the United States District Courts for the Southern, Eastern, Northern and Western Districts of New York, the United States Courts of Appeal for the Second, Third and Fourth Circuits and the Supreme Court of the United States. I received a Juris Doctor Degree from Brooklyn Law School in 1980.

2. I have been a member of the Criminal Justice Act Panel of the United States Court of Appeals for the Second Circuit since 1991 and in that capacity have represented well over one hundred defendant-appellants before that court.

3. From 1982 to 1984 I was employed as a staff attorney at the Grand Jury Project, Inc. That organization sought to educate the public on the use and misuse of Federal Grand Juries.

4. I am the author of the Third Edition of the treatise Representation of Witnesses Before Federal Grand Juries published by the Clark Boardman Company (now West Publishing). I also prepared yearly updates for four years following publication of the Third Edition.

5. Throughout my career, I have lectured attorneys, law students and members of the general public on grand jury issues. I have also regularly consulted with attorneys representing individuals subpoenaed to testify before grand juries, particularly those grand juries believed to be investigating political movements.

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

7. I have been provided with portions of the Court Martial Proceedings conducted in the case of Chelsea Manning including Manning's Guilty Plea Allocution.

8. I have also reviewed all of the publicly available legal pleadings filed in connection with the subpoena requiring that Manning appear and testify before a grand jury in the Eastern District of Virginia.

9. I have also reviewed a copy of the superseding indictment filed in the Eastern District of Virginia charging Julian Assange with a variety of federal crimes including violations of the Espionage Act.

10. I have been asked by the attorneys for Mr Assange to provide an opinion concerning the law surrounding subpoenas to testify before federal grand juries in the United States and how those laws have been applied in the case of Chelsea Manning.

The Military Court Martial Proceedings

a. The Arrest and Charges

11. Former United States Army Private First Class Chelsea Manning entered training for active duty in the United States Army in October 2007. She became an intelligence analyst and was deployed to Eastern Baghdad, Iraq. In May 2010 Manning was arrested and charged with violating Articles 92 and 134 of the Uniform Code of Military Justice. It was alleged that Manning disclosed to the website, WikiLeaks, Guantanamo Detainee Assessment Briefs, 251,287 United States diplomatic cables and over 400,000 army classified reports relating to Iraq and Afghanistan.It was also alleged that Manning disclosed to WikiLeaks a video of a July 12, 2007 United States airstrike on the city of Baghdad, dubbed the

"Collateral Murder" video. The video depicts United States soldiers in a helicopter gunship shooting and killing unarmed Iraqi civilians, including two Reuters journalists. Following her arrest Manning was imprisoned in solitary confinement pending adjudication of the charges in a military court martial. Manning's treatment was ruled as cruel, inhumane and degrading by the United Nations Special Rapporteur on Torture, who stated in a report that 'imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of his (sic) right to physical and psychological integrity as well as the presumption of innocence' (**Exhibit 1**).

12. On March 11, 2011 the military lodged superseding charges. The 22 specifications now included aiding the enemy, wrongfully causing intelligence to be published on the internet knowing that it was accessible to the enemy, theft of public property or records and transmitting defense information. If convicted of the most serious charge, aiding the enemy, Manning faced the death penalty.

13. Between 2010 and 2013, Manning, through counsel, filed several motions to dismiss. All were denied by the presiding Military Judge.

b. Manning's Guilty Plea and Allocution

14. On February 28, 2013 Manning pleaded guilty to 10 of the 22 specified charges. She did so without the benefit of a plea agreement. She did not plead guilty to aiding the enemy. Under the Rules for Courts-Martial, Manning was required to

state, under oath, the facts surrounding her disclosure of the classified information. She was also required to answer any questions posed to her by the presiding Judge including those suggested by the prosecutor.

15. The February 28, 2013 proceedings began with Manning reading a prepared statement. The statement covers fifty (50) pages of the double-spaced plea transcript (**Exhibit 2**).[1] In it, she acknowledges her guilt and sets forth, in great detail, what she did on each of the occasions when she disclosed information to Wikileaks.

Manning's Plea Allocution Statement

16. Manning's statement set out the following: Manning explained that due to her position as an intelligence analyst, she had access to information about United States military activities in Iraq. Some of those activities contradicted the stated goals of U.S. policy. She told the court

> [the United States military] became obsessed with capturing/killing targets on lists and being suspicious and avoiding cooperation with our host nation partners and ignoring the second and third order effects of accomplishing short-term goals and missions.
>
> I believe that if the general public, especially the American public, had access to the information...this could spark a domestic debate on the role of the military and our foreign policy, in general, as well as it related to Iraq and Afghanistan.

[1] The entire plea allocution covers approximately 98 double-spaced transcript pages. Exhibit 2 contains only Manning's oral presentation of her written statement.

(**Exhibit 2**, p. 6757-58, hereinafter referenced by the page number)

17. In early 2010, she transferred classified information onto a secure memory card. She took that card with her when she left Iraq and went on mid-tour leave to her aunt's home in Maryland. It was her intention to disclose that information to the press and general public. (6755). While on leave, Manning contacted *The Washington Post,* speaking briefly with a reporter. She then left messages at *The New York Times* and Bloomberg News that were not returned. (6759). A participant in an online chat pointed Manning to WikiLeaks' online submission system. Manning was somewhat familiar with WikiLeaks. In her view the organization "seemed to be dedicated to exposing illegal activities and corruption [and had] received numerous awards and recognition for its reporting activities." (6751-52).

18. On February 3, 2010 Manning visited the WikiLeaks website. Through an "Onion Router", also known as TOR, she anonymously uploaded the CIDNE-I and CIDNE-A SignActs, also known as the Iraq War log Logs and the Afghan War Diary, to WikiLeaks. (6760). Upon doing so Manning felt that she had accomplished something that allowed her "to have a clear conscience based upon what I had seen and read about and knew were happening in Iraq and Afghanistan every day." (6761). Manning admitted that she made additional disclosures to Wikileaks. These included the Reykjavik 13 Cable regarding certain diplomatic efforts concerning Iceland that were published by WikiLeaks within hours (6763). This prompted her to upload to Wikileaks the July 12, 2007 'Collateral Murder'

video depicting an aerial attack in Baghdad that left the two Reuters reporters and others dead. It was released by Wikileaks on April 5, 2010. (6769-70). Addressing that video, Manning told the court that she "wanted the American public to know that not everyone in Iraq and Afghanistan were targets that needed to be neutralized, but rather people who were struggling to live in the pressure cooker environment of what we call asymmetric warfare." (6769).

19. Following the publication of the video, Manning began conversing online with a person she came to believe was an "important" part of Wikileaks. Identifying information was not exchanged. However, Manning assumed that the person, to whom she gave the name "Nathaniel", was either Julian Assange, Daniel Schmidt or one of their representatives (6770). Over the course of the next few months Manning conversed generally with that person on a variety of topics.

20. At about the same time Manning was called upon by her military superiors to investigate claims by the Iraqi government that 15 individuals detained by the Iraqi police were part of a terrorist militia and had been distributing anti-Iraqi literature. She determined, by comparing the Federal Police's report on the allegations to an interpreters transcript of the original documents, that contrary to the Iraqi government's claims, the detained individuals had no connections to terrorism and were, in her view, citizens who were critical of their government. When she brought that fact to the attention of her superiors she was told to "drop it" and to instead assist the Iraqi police. Shocked, Manning decided to disseminate her report to Wikileaks. To her disappointment, however, Wikileaks declined to

publish it absent additional corroboration. (6772-6777). Manning made one other disclosure to Wikileaks, on March 8, 2010. (6778).

21. Manning's online conversations with Nathaniel continued. Manning stressed to the court that at no time did Nathaniel, or anyone else associated with Wikileaks, solicit or otherwise pressure Manning into disclosing any information:

> Although I stopped sending documents to WLO, no one associated with the WLO pressured me into giving more information. The decisions I made to send documents and information to WLO and website were my own decisions and I take full responsibility for my actions. (6779).

c. **The Trial and Sentence**

22. After Manning entered her guilty plea, the military prosecutors elected to proceed with the remaining, and more serious, charges. That trial began on June 3, 2013 at Fort Meade, Maryland. On July 30, 2013 presiding Judge Lind issued her findings (**Exhibit 3)**. The court acquitted Manning of aiding the enemy but found her guilty of the remaining charges. On August 21, 2013 Manning was sentenced to 35 years in prison and remanded to an all-male military prison.

d. **Petition for Commutation of Sentence**

23. On or about September 3, 2013 Manning, through counsel, filed a petition for commutation of sentence to the Secretary of the Army and, via the United States Department of Justice, to former President Barack Obama. On January 17, 2017, one of his last days in office, President Obama commuted Manning's sentence to a total of 7 years. In one of his first "tweets" after taking office, President Donald

Trump called Manning a "traitor who should never have been released from prison" (**Exhibit 4**). As a result of the commutation, Manning was released from prison on May 17, 2017.

The Grand Jury Proceedings

a. Historical The Role of the Grand Jury Under United States Law

24. In January 2019, Manning was served through counsel with a subpoena to testify before a federal grand jury sitting in the United States District Court for the Eastern District of Virginia. One of the questions I have been asked to comment upon is the application of the grand jury processes in this case. Before addressing whether the grand jury process has been abused in Manning's case, a brief history of the role of the grand jury in the United States criminal justice system is necessary.

25. The grand jury is an institution that began in England in the 12th century. It was carried over into American law and incorporated into the Fifth Amendment to the United States Constitution. That provision provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury..." In theory, the Grand Jury serves as a "buffer between the government and its people."[2] Because of that historical role, grand juries operate without adherence to the technical and evidentiary rules of criminal trials.[3] Its investigatory power is, therefore, "necessarily broad".[4] It can act on

[2] *United States v. Williams*, 504 U.S. 36, 47 (1992)
[3] *Id.* at 66-67.
[4] *Branzburg v. Hayes*, 408 U.S. 665, 701 (1972)

unsubstantiated tips and rumors.[5] A subpoena to testify can be challenged on relevance grounds only if there is no reasonable "possibility" that the information sought will produce relevant information. The law "presumes" that the grand jury acts within its lawful authority.[6]

26. Over the years the traditional function of the grand jury as a "buffer" has shifted. Its broad powers have been usurped by the government and more specifically the United States Attorney Offices. The United States Attorney for each federal district acts as the grand jury's "legal advisor".[7] It is the prosecution that directs which witnesses the grand jury hears and which defendants the grand jury is asked to indict.[8] As the United States Court of Appeals for the Ninth Circuit has acknowledged,

> Currently grand jurors no longer perform any other function but to investigate crimes and screen indictments and then tend to indict on the overwhelming number of cases brought by prosecutors. Because of this, many criticize the modern grand jury as no more than a "rubber stamp" for the prosecutor. Beale et al Grand Jury Law and Practice supra § 1.1 (2d Ed. 2001) Day in and day out the grand jury affirms what the prosecutor calls upon it to affirm – investigating as it is led, ignoring what it is never advised to notice, failing to indict or indicting as the prosecutor "submits" that it should. Frankel and Naftalis, The Grand Jury: An Institution on Trial (2d Ed. 1977) at 22. Or as the Supreme Court of New York so colorfully put it, "[m]any lawyers and judges have expressed skepticism concerning the power of the grand jury. This skepticism was best summarized by the Chief Judge of [New York] State in 1985 when he

[5] *United States v. Dionisio*, 410 U.S. 1, 15 (1973)
[6] *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 300-301 (1991).
[7] *United States v. Fisher*, 225 F.Supp.3d 151, 162 (W.D.N.Y. 2016) citing United States v. Hogan 712 F.2d 757, 759 (2d Cir. 1983).
[8] *Id.*

publicly stated that a Grand Jury would indict a ham sandwich.[9]

27. The confluence of the enormous investigatory powers accorded to grand juries due to their former role as a "buffer" and the *de facto* appropriation of those powers by law enforcement has created fertile ground for prosecutorial abuse of the grand jury process. People in the United States have no obligation to cooperate with law enforcement.[10] But a prosecutor desiring to coerce a prospective witness into cooperating can simply issue a grand jury subpoena without any judicial scrutiny. While a grand jury witness may challenge the lawfulness of a subpoena on several statutory or constitutional grounds, because of the presumption of regularity that courts attach to grand jury proceedings together with its judicially recognized broad investigatory powers, it is extremely rare for a court to quash or even limit the scope of a grand jury subpoena. A few illustrations will make this clear.

Abuse of the Grand Jury Process

Prosecutorial Abuse

28. It is the "universal rule" that prosecutors cannot use the grand jury process for the purpose of gathering evidence for use at a subsequent criminal trial. Thus, where the grand jury had already returned an indictment (as it has done here with respect to Julian Assange, discussed further *infra*.) the government cannot use the grand jury to improve its case, by locking in a witness's testimony, pressuring potential

[9] *United States v. Navarro-Vargas*, 408 F.3d 1184, 1195 (9th Cir. 2005).

[10] For example, the Federal Bureau of Investigation (FBI) does not have subpoena power.

trial witnesses or getting discovery.[11] However, exceptions, including the legal standards applied by courts have all but swallowed up this "universal rule". A subpoena will be enforced, notwithstanding that an indictment has been returned, unless it is shown that the "sole or dominant purpose" of the subpoena is to prepare for trial on an already pending indictment.[12] Because of the presumption that the grand jury acts within the law, it is the witness, or the defendant, who bears the burden of showing that preparation for trial is the sole or dominant purpose of the subpoena.[13] So long as the sought-after testimony is relevant a subpoena will be deemed proper even if the government might use the information gathered as a means of discovery.[14] Needless to say, because of the secrecy that attaches to grand jury proceedings witnesses and/or already indicted defendants will ordinarily lack proof that a subpoena was issued for an improper purpose. Courts have held that absent such proof "a court has to take at face value that the dominant purpose of the grand jury is proper."[15] So long as the government simply asserts that it is investigating whether additional crimes have been committed, the subpoena will be upheld even if the information sought might also help the government's case at trial.[16]

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[11] *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016). *See also United States v. Merril*, 685 F.3d 1002, 1013 (11th Cir. 2012); *United States v. Moss*, 756 F.2d 329 (4th Cir. 1985).
[12] *United States v. Alvarado, supra*. 840 F.3d at 189.
[13] *Id.* at 189-190 citing *United States v. Dionisio*, 410 U.S. 1, 16-18 (1973) (A court should not intervene absent "compelling evidence of grand jury abuse...and burden is on the defendant to prove such abuse"); *See also United States v. Breitkreutz*, 977 F.2d 214, 217 (6th Cir. 1992); *United States v. Bin Laden*, 116 F.Supp.2d 489, 492 (S.D.N.Y. 2000) (presumption grand jury acts appropriately)
[14] *United States v. (Under Seal)*, 714 F.2d 347 (4th Cir. 1983)("even if we assume the government sought the subpoena for an improper purpose, the finding that it was also sought for a legitimate purpose renders the subpoena enforceable.").
[15] *United States v. Dardi*, 330 F.2d 316, 335 (2d Cir. 1964).
[16] *United States v Moss, supra.*, at 332 ("a good faith inquiry into other charges...is not prohibited even if it uncovers further evidence against an indicted person."); *See also United States v. Furrow*, 125 F.Supp.2d 1170, 1175 (C.D. Cal. 2000)(after indictment returned, friends and family of defendant

29. A grand jury subpoena cannot be used to discourage a witness from testifying for the defense at trial or to otherwise interfere with the defense.[17] However, this prohibition also falls under the "sole or dominant" purpose test to which the presumption of regularity attaches. The extent to which courts have sanctioned such subpoenas even in the face of overwhelming evidence of abuse is vividly illustrated by *United States v. (Under Seal)*, 714 F.2d 347 (4th Cir. 1983). In that case, the government subpoenaed family members of the indicted defendant. The witnesses asserted that they would risk being jailed for contempt rather than testifying against a loved one. The government conceded that the subpoenas would be dropped if the indicted family member pled guilty. The subpoena was quashed by the lower court. The government appealed and the Court of Appeals reversed. The appellate court held that so long as the testimony that was sought was proper it mattered not that the subpoena was otherwise being used for an improper purpose.

Violation of Prohibition of Privilege Against Self-Incrimination

30. The Fifth Amendment to the United States Constitution provides in part that "no person...shall be compelled in any criminal case to be a witness against himself...". A witness subpoenaed to testify before a grand jury may assert the Fifth Amendment's privilege against self-incrimination as a basis for resisting the

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subpoenaed to testify, court sustains subpoena ruling that grand jury may inquire into affirmative defenses).

[17] *United States v. Williams*, 205 F.3d 23, 29 (2d Cir. 2000); *United States v. Vayages*, 151 F.3d 1185, 1189 (9th Cir. 1998).

subpoena.[18] However, the government has an available tool which enables it to nullify the privilege and force compliance Once the witness asserts, or states that he or she intends to assert the privilege against self incrimination the government can make an application for an order conferring "use immunity" on the witness. Under 18 U.S.C. § 6002 and § 6003 once a judge signs an immunity order any grand jury testimony or evidence derived from that testimony cannot be used against the witness in a subsequent criminal proceeding. The Fifth Amendment can no longer be used as a basis for a refusal to comply. Notably, "use immunity" does not prevent the government from prosecuting the witness for crimes discussed during the witness's testimony. It only prohibits the use of that testimony, and evidence that may be derived from it, during a subsequent criminal trial of the defendant-witness. It also does not prohibit the witness from being charged with perjury or false statement that the government later asserts were made during the course of the grand jury testimony. The United States Supreme Court has held that "use immunity" satisfies the Fifth Amendment.[19]

Violation of Freedom of Speech, Association and the Press

31. The First Amendment to the United States Constitution provides that "Congress shall make no law...abridging freedom of speech, or of the press; or the right of the people to peaceably assemble and to petition the government for redress of

[18] *Blau v. United States*, 340 U.S. 159 (1950).
[19] *Kastigar v. United States*, 406 U.S. 441 (1972)

grievances." The United States Supreme Court has held that grand juries must operate within the parameters of the First Amendment.[20] However, to successfully challenge a subpoena on First Amendment grounds a witness must show that the infringement on First Amendment rights is the very object of the grand jury subpoena. The subpoena will therefore be upheld even if an "incidental effect" of the subpoena results in an infringement on First Amendment rights.[21]

32. The First Amendment does protect beliefs whether popular or unpopular.[22] Therefore, inquiry into the truth or falsity of one's political philosophy is prohibited.[23] However, witnesses cannot base a refusal to testify on their moral or political beliefs or their belief that the grand jury investigation is being used to disrupt legal political dissent.[24]

33. History has shown that the grand jury's broad powers and the almost unlimited discretion accorded to the government in grand jury proceedings has enabled it to become an effective tool to repress lawful political movements. As a consequence of grand jury secrecy, neither the courts, nor Congress nor, most importantly, the general public can gauge how the institution is being used – or abused.[25] Recognizing that the grand jury has often been used to gather intelligence that

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[20] *Branzburg v. Hayes*, 408 U.S. 665, 708 (1972)
[21] *Employment Div. Dept. of Human Services v. Smith*, 444 U.S. 872, 877 (1990)
[22] *Bond v. Floyd*, 385 U.S. 116 (1966)
[23] *Ealy v. Littlejohn*, 569 F.2d 219 (5th Cir. 1979).
[24] *Matter of Credido*, 759 F.2d 589 (7th Cir. 1985); In *re Sunni-Ali*, 565 F.Supp. 1035 (S.D.N.Y. 1983).
[25] Marvin E. Frankel & Gary P. Naftalis, *The Grand Jury An Institution on Trial* (1977).

would then be used to harass and disrupt political movements many activists have refused to cooperate and been jailed for contempt.

34. Historically the grand jury system was used to indict and incarcerate outspoken opponents of slavery for sedition and harass African-Americans during post-civil war Reconstruction seeking the right to vote.[26] In the mid-20th century the grand jury system was improperly used to frame labor organizers and union leaders.[27] During the administration of President Richard M. Nixon over one thousand political activists were subpoenaed to more than 100 grand juries investigating lawful anti-war, women's rights and Black activist movements.[28] In the 1970s and 1980s activists from the Puerto Rican Independence Movement were subpoenaed. Upon their refusal to cooperate on moral and political grounds many were jailed for both civil and criminal contempt.[29] In the 1980s numerous subpoenas were served upon activists in the Black liberation movement under the guise of "investigating" a series of robberies even though those activists were not suspects. When they refused to testify claiming that the investigation was an improper attempt to gather intelligence on their movement, they, too, were jailed for contempt.[30]

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[26] Richard D. Younger *The People's Panel: The Grand Jury in the United States*, 163-1974, 85-133 (1963).
[27] Michael Deutsch, *The Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists*, 75 J.Crim.L. & Criminology 1159 (1984), at 1171-73, 1175-78.
[28] *Id.* at 1179
[29] *See, e.g. United States v. Rosado* 728 F.2d 89 (2d Cir. 1984).
[30] *See e.g. Matter of Fula*, 672 F.2d 279 (2d Cir. 1982).

35. These activities continue today. For example, in 2012, the FBI issued 14 grand jury subpoenas to activists after the 2008 Republican convention in Minneapolis, MN. The activists were questioned yet no indictments were returned. That same year, a grand jury ostensibly investigating property damage at a demonstration asked an activist more than 50 questions about people's political beliefs and their relationships. No questions were posed about any alleged criminal conduct.

36. As a further example, in 2013, 23-year old Gerald Koch was summoned before a grand jury on the purported basis that he *might have* overheard a discussion about high-profile property damage that occurred in 2008. He refused to testify, asserting that the "investigation" was a political witch-hunt. His eight-month confinement for criminal contempt was recognized as casting a palpable chill over the political activities of New York City activists.

37. In sum, frequently when the United States government has shown hostility toward political activists, especially people of color and those on the left, it has attempted to utilize the grand jury system to disrupt political activities and to criminalize political movements. The unwillingness of the federal courts to intervene in grand jury matters, even in the face of overwhelming evidence of prosecutorial abuse has only served to sanction, and encourage, further violations of First Amendment protected constitutional rights.

Sanctions for Non-Compliance with Order to Testify

Civil Contempt

38. 28 U.S.C. §1826 provides that

> (a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of--
> (1) the court proceeding, or
> (2) the term of the grand jury, including extensions,
> before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

39. The confinement authorized by 18 U.S.C. § 1826 has been deemed "coercive" (which is permissible) and not punitive (which is not). Accordingly, the recalcitrant witness is not entitled to the due process protections contained in the Fifth Amendment including the right to a jury trial.[31] In addition, a court has the discretion to impose a coercive fine in addition to, or as the alternative to, incarceration.[32]

40. A witness held in civil contempt and jailed until the term of that grand jury expires can lawfully be re-subpoenaed to appear before another grand jury, asked the same questions and, upon refusal, held in contempt and re-incarcerated.[33]

Criminal Contempt

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[31] *Shillitani v. United States*, 384 U.S.264 (1966) (contemnor "has keys to their prison in their own pockets")
[32] *See, e.g. United States v. United States Mine Workers*, 330 U.S. 258 (1946)
[33] *Shillitani v. United States, supra.* at 372, n.8; *United States v. Duncan*, 456 F.2d 1401 (9th Cir. 1972).

41. The criminal contempt statute, 18 U.S.C. § 401 provides that

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as...
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or demand.

42. Should the government seek a sentence of more that six months, the witness is entitled to a jury trial and other due process protections accorded by the Fifth Amendment.[34] However, while the witness may be accorded more procedural protections than a civil contempt proceeding, the potential sanctions are more dangerous. The potential penalty faced by a recalcitrant witness has no upper limit. The absence of an upper limit does not render the statute unconstitutional.[35] Moreover, a recalcitrant witness may be charged with criminal contempt after being imprisoned for civil contempt arising out of the same refusal to testify.[36]

The Application of Grand Jury Caselaw in the Case Of Chelsea Manning.

43. On March 6, 2018 a grand jury sitting in the United States District Court for the Eastern District of Virginia issued a sealed indictment against Julian Assange. It charged him with conspiracy with Chelsea Manning to commit computer intrusion, a relatively minor crime that carries a maximum of five years imprisonment. In November 2018, the evidence of an indictment against Assange was inadvertently made public when its reference was included in a filing in an unrelated case

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[34] *Chef v. Schnackenberg*, 384 U.S. 373 (1966).
[35] *United States v. Garcia*
[36] *Yates v. United States*, 355 U.S. 66 (1957).

(**Exhibit 5**). The January 2019 subpoena to Chelsea Manning was therefore served after the government had already secured its first indictment against Assange.

44. The appearance required by the January 2019 subpoena was adjourned to March 2019. In the interim, the District Court entered a compulsion order pursuant to 18 U.S.C. § 6003 requiring Manning's testimony and conferring use and derivative use immunity on her thereby precluding Manning from arguing that compliance would violate the Fifth Amendment's privilege against self- incrimination.

45. Manning, through counsel, filed a motion to quash the subpoena on March 1, 2019 (**Exhibit 6**). In it she argued that the subpoena was improper in that it was an effort by the government to punish her for the release of the information to WikiLeaks. Manning also pointed out that the government had available to it her exhaustive sworn statement before the Military Court that was given at the time of her guilty plea and which truthfully set forth the full extent of her knowledge, including but not limited to her contacts with WikiLeaks. Manning asserted that compliance with the subpoena would also enable the government to set a "perjury trap". Should there be inconsistencies, even minor inconsistencies between her court martial testimony and grand jury testimony she could be criminally charged with committing perjury. A prosecution for perjury is permitted under the terms of the immunity order. The government filed a response opposing Chelsea Manning's motion to quash the grand jury subpoena on March 4, 2019 (**Exhibit 7**).

46. During sealed proceeding on March 5, 2019, the District Court denied Manning's motion to quash. Applying the presumption of regularity applicable to the grand jury, the court held that Manning's substantive arguments, including improper motive, were "premature and speculative".[37]

47. On March 8, 2019, following what the government has characterized as a "recalcitrant" appearance in the grand jury room, the District Court held a hearing to determine whether Manning should be adjudicated in civil contempt. The district court found that Manning was "in contempt of [its] order requiring [her] to testify before the grand jury." The court ordered that she "be committed to the custody of the Attorney General until such time as [she] either purge[s] [herself of the contempt or for the life of th[e] grand jury."[38]

48. Following the contempt adjudication, Manning was imprisoned at the Alexandria Detention Center in Alexandria, Virginia. Her subsequent court submissions filed on her behalf record that once there (**Exhibit 8**), she was placed in solitary confinement "despite the stated concerns regarding the effects of prolonged isolation [that compound[ed] the trauma I suffered from my previous time of confinement." Manning remained in isolation for 28 days, an experience that

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[37] The hearing on the motion to quash is under seal. The quoted material appears in the unsealed portion of the government's brief to the United States Court of Appeals for the Fourth Circuit in opposition to Manning's appeal of the contempt order. See Docket 19-1287, USCA Fourth Circuit, Document 20.

[38] *Id.* at p. 16

caused her "extraordinary pain"[39]. On one occasion she became nauseated during a non-contact visit and vomited on the floor. It was only through public outcry that Manning was released from solitary and placed in general population. Notwithstanding these draconian conditions Manning has stated that

> I can – without any hesitation – state that nothing will convince me to testify before this or any other grand jury for that matter. This experience so far only proves my long held belief that grand juries are simply outdated tools used by the federal government to harass and disrupt political opponents and activists in fishing expeditions. Without committing a federal crime, and after exhaustive testimony at a trial several years ago, I am again ripped from my life by a vindictive and politically motivated investigation and prosecution.
> ...
> I understand that this grand jury [is] related to my disclosures of classified and unclassified information and records in 2010. I acted alone in these disclosures. The government is still preoccupied with punishing me, despite a court martial, sentence and presidential commutation nearly two years ago...[40]

49. The term of the grand jury expired on May 9, 2019. Pursuant to the contempt order Manning was released from prison on that date. However, the day before her release, Manning was served, through counsel with a subpoena to appear before another grand jury. A new compulsion order was executed and Manning was again conferred with use and derivative use immunity.

50. On May 15, 2019 Manning filed a motion to quash the new subpoena. (**Exhibit 9**) In addition to arguments raised in the first motion, Manning now additionally

[39] Chelsea Manning Declaration in Grand Jury Subpoena, Exhibit 8, para. 3
[40] Chelsea Manning Declaration in Grand Jury Subpoena, Exhibit 8, para. 6 and 8

argued that the subpoena was abuse of the grand jury process in that it was being used to gather evidence that would be used in the trial of the already-indicted Julian Assange (having now been arrested in the United Kingdom). In response to that argument the government submitted a pleading that apparently asserted that Manning's testimony was necessary for an on-going investigation. (**Exhibit 10**) The word "apparently" is used because the government filed its pleading *ex parte*. Neither Manning nor her attorneys were permitted to see it and therefore they could not rebut any of the assertions contained in it. On May 16, 2019 the court denied Manning's motion to quash. Manning had told the court that she was refusing to testify on principle and that no imprisonment would compel her to do so. The court found Manning to be in contempt and again ordered her jailed for the life of the grand jury but in no event to exceed 18 months. Additionally, the court ordered Manning to pay $500 per day after 30 days from issuance of the order and if Manning still had not complied with the subpoena after 60 days the fine would increase to $1000 per day (**Exhibit 11**).

51. On May 23, 2019 a superseding indictment was returned against Julian Assange. The indictment included 17 new charges of violations of the Espionage Act 1917. Most of the new charges concern the receipt by Assange of information submitted to WikiLeaks by Chelsea Manning in 2010. Prompted in part by the superseding indictment of Assange, Manning filed a motion for release on May 31, 2019. (**Exhibit 12**) In it she argued, *inter alia*, that the superseding indictment rendered her grand jury testimony unnecessary. It was now clear that the "sole and dominant purpose" of her subpoena was to gather evidence for use at Assange's

trial or to otherwise interfere with Assange's defense. As Manning herself has stated "I suspect that [the government] [is] simply interested in previewing my potential testimony as a defense witness, and attempting to undermine my testimony...This justifies my theory that participating in this investigation functions simply to abuse the justice system for political ends.[41]"

52. The government opposed release. It asserted that notwithstanding the superseding indictment against Assange "Manning's testimony remains relevant and essential to an on-going investigation." (**Exhibit 13**) The government once again based that claim on the *ex parte* pleading submitted to the Judge. Relying on *United States Alvarado* and *United States v. Moss*, discussed *supra*. the government asserted that Manning's claims of abuse were "speculative" and could not overcome the presumption of regularity attached to grand jury proceedings. On August 5, 2019 the court denied Manning's motion to reconsider sanctions and for release (**Exhibit 14**). It did not specifically address her claim that Assange's superseding indictment demonstrated that the subpoena was being used to aid the government's case at Assange's trial.

53. As of the date of this report, Chelsea Manning remains incarcerated and is incurring a fine of $1000 per day.

Conclusions

[41] Chelsea Manning Declaration in Grand Jury Subpoena, Exhibit 8, para. 10

54. Under United States law, the purpose of civil contempt is to coerce a recalcitrant witness to comply with a court order. If it is clear that imprisonment and/or other sanction will not alter the witness's position the incarceration has become punitive and the civil contempt sanction must be lifted.[42]

55. Except for a few days in May 2019, Chelsea Manning has been imprisoned since March 2019 pursuant to a civil contempt adjudication arising out of her refusal to testify before a federal grand jury in the Eastern District of Virginia. She has stated that her decision is based upon political principles, i.e. that the grand jury is being used to quell lawful political dissent and to further punish her for her 2010 disclosure of classified information. Manning has maintained this position despite being imprisoned under onerous conditions and being subject to a $1000 per day fine. Notwithstanding the foregoing, the government has strenuously opposed her release and the court has sanctioned her continued confinement. It is reasonable to conclude that her continued confinement is now punitive and consequently has become an abuse of the grand jury process, which further will likely adversely affect the defense of Julian Assange. A superseding indictment has been returned that contains 18 counts, including 17 violations of the Espionage Act. The government was able to secure this indictment without Manning's testimony. The inescapable conclusion is that the Manning subpoena is being used to gather evidence for use at Assange's criminal trial and/or to get a preview of Manning's trial testimony, should she be called as a defense witness. This is a violation of

[42] *Simkiin v. United States* , 715 F.2d 34 (2d Cir. 1983); *In re Grand Jury Investigation (Braun)*, 600 F.2d 420, 428 (3d Cir. 1979).

the alleged "universal rule" that the grand jury may not be used to gather evidence for the trial of an existing indictment. However, as set forth *supra*, so long as the government simply asserts that the subpoena was issued for a proper purpose, courts will uphold the subpoena. Accordingly, should Assange file a motion alleging grand jury abuse arising from the Manning subpoena, it will almost certainly fail.

Dated the 17th **day of** December, 2019

Signed _____
ROBERT J. BOYLE

Signature witnessed by _____
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Nineteenth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Addendum

Observations on communications transmitted to Governments and replies received*

* The present document is being circulated in the languages of submission only.

United Kingdom of Great Britain and Northern Ireland

(a) UA 23/02/2011 Case No. GBR 1/2011 State reply: None to date Alleged risk of torture for asylum seeker facing deportation.

168. The Special Rapporteur regrets that the Government of the United Kingdom of Great Britain and Northern Ireland has not responded to this communication, thereby failing to cooperate with the mandate issued by the Human Rights Council. The communication referred to allegations of risk of torture for Mr. X, a homosexual man, if returned to Burundi. The Special Rapporteur reiterates that article 3 of the UN Convention against Torture . &/"0-,. *,-+&5,*,)-3*(,<-0.*//-)S3)/;-(),7(+-E()8&7/)(>`;-&(-)S,(*"',)-*- person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Based on the information received, the Special Rapporteur determines that the rights of Mr. X under the UN Convention against Torture are at risk of being violated. The Special Rapporteur calls on the Government not to extradite Mr. X until a fair assessment of his risk of torture is conducted. In this context, "'3/&9 *,'2-*007(*+2)0-"&+&,-9 ','B*,)-,.)-R&%)(+9)+,#0-&D'B*,'&+-,&()8(*'+-8(&9 -%&/*,'+B- the non-refoulement provision.

(b) JAL 11/11/2011 Case No. GBR 6/2011 State reply: 13/01/2012 26/01/2012 Concerns regarding the remit and conduct of the forthcoming United Kingdom of Great Britain and Northern Ireland (UK) Detainee Inquiry.

169. The Special Rapporteur is grateful to the Government for its responses to this communication. Given the on-going dialogue between the mandate and the Government on this case, the Special Rapporteur decides not to make observations on this case in the present report.

United States of America

(a) UA 30/12/2010 Case No. USA 20/2010 State reply: 27/01/2011 19/05/2011 Allegations of prolonged solitary confinement of a soldier charged with the unauthorized disclosure of classified information.

170. The Special Rapporteur thanks the Government of the United States of America for its response to this communication regarding the alleged prolonged solitary confinement of Mr. Bradley E. Manning, a US soldier charged with the unauthorized disclosure of classified information. According to the information received, Mr. Manning was held in solitary confinement for twenty-three hours a day following his arrest in May 2010 in Iraq, and continuing through his transfer to the brig at Marine Corps Base Quantico. His solitary confinement - lasting about eleven months - was terminated upon his transfer from Quantico to the Joint Regional Correctional Facility at Fort Leavenworth on 20 April 2011. In his report, the Special Rapporteur 0,()00)"-,. *,-10&',*(<-2&+8+)9)+,-'0-*-. *(0.-9)*07()- which may cause serious psychological and physiological adverse effects on individuals ()B*("/)00-&&-,.)'(-03)2'82-2&+"',&+0=>-C&()&%)(;-1P'Q3)+"'+B-&+-,.)-03)2'82-()*0&+-8&(- its application, conditions, length, effects and other circumstances, solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture=>(A/66/268 paras. 79 and 80) Before the transfer of Pfc Manning to Fort Leavenworth, the Special Rapporteur requested an opportunity to interview him in order to ascertain the precise conditions of his detention. The US Government authorized the visit but ascertained that it could not ensure that the conversation would not be monitored. Since a non-private conversation with an inmate would violate the terms of reference applied universally in fact-finding by Special Procedures, the Special Rapporteur had to decline the invitation. In

response to the Special Rapporteur#0-()Y7)0,-8&(-,. e reason to hold an unindicted detainee '+- 0&',*(<- 2&+8'+) 9)+,;- ,.)- B&%)(+9)+,- ()03&+")" - ,. *,- . '0- ()B'9)+- 4 *0-+&- 10&',*(<- 2&+8'+) 9)+,>-D7,-13()%)+,'&+-&8-. *(9 -4 *,2. >-D7,-"'" -+&-&88)(-"),*'/0-*D&7,-4 . *,-. *(9 -4 *0- being prevented. To the Special Rapporteur#0-()Y7)0,-8&r information on the authority to impose and the purpose of the isolation regime, the government responded that the prison rules authorized the brig commander to impose it on account of the seriousness of the offense for which he would eventually be charged. The Special Rapporteur concludes that imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of his right to physical and psychological integrity as well as of his presumption of innocence. The Special Rapporteur again renews his request for a private and unmonitored meeting with Mr. Manning to assess his conditions of detention.

(b) AL 15/06/2011 Case No. USA 8/2011 State reply: None to date Follow-up to a letter sent 13 May 2011 requesting a private unmonitored meeting with Private (Pfc.) Bradley Manning.

171. The Special Rapporteur thanks the Government of the United States of America for its response to the communication dated 13 May 2011 requesting a private unmonitored meeting with Private Bradley Manning. Regrettably, to date the Government continues to refuse to allow the Special Rapporteur to conduct private, unmonitored, and privileged communications with Private Manning, in accordance with the working methods of his mandate (E/CN.4/2006/6 paras. 20-27).

(c) JUA 19/08/2011 Case No. USA 15/2011 State reply: None to date Alleged torture and ill-treatment in immigration facilities.

172. The Special Rapporteur regrets that the Government of the United States of America to date has not responded to the communication dated 19 August 2011, regarding the allegations of torture and ill-treatment in immigration facilities. According to the information received, 16 gay and transgender individuals have allegedly been subjected to solitary confinement, torture and ill-treatment while in detention in U.S. immigration facilities. Furthermore, there was reportedly a lack of protection from persecution and respect for the principle of non-refoulement for those who risk torture if returned to their home countries on account of their sexual orientation, gender identity or HIV status. In this regard, the Special Rapporteur would like to draw the attention of the Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee, to article 7 of the Basic Principles for the Treatment of Prisoners, to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners, particularly rule 22 (2). Given the lack of any evidences to the contrary, the Special rapporteur believes that the fact reveal that there have been various violations of the provisions under the Convention against Torture, in particular breach of articles 7 and 12. The Special Rapporteur calls on the Government to undertake a prompt and impartial investigation on the conditions of detention, solitary confinement and ill-treatment of the immigrants, prosecute and punish those responsible, and ensure that the victims obtain redress, including fair and adequate compensation, ands as full rehabilitation as possible.

(d) AL 16/09/2011 Case No. USA 16/2011 State reply: 30/11/2011 Alleged widespread use of solitary confinement, including its prolonged and indefinite use and the imposition of solitary confinement on individuals with mental disabilities.

173. The Special Rapporteur is grateful that the Government of the United States of America replied to the allegation letter of 16 September 2011. Considering the on-going dialogue on the issues raised between the mandate and the Government, the Special Rapporteur decides not to make observations on this case in the present report. He encourages the Government to continue its engagement with the mandate.

ACC: Yes, Your Honor. I wrote this statement in confinement, so I'll start now. providence inquiry for my court-martial, United States v. PFC Bradley E. Manning.

Personal facts: I'm a 25 year-old Private First Class in the United States Army currently assigned to Headquarters and Headquarters Company (HHC), U.S. Army Garrison (USAG), Joint Base Myer-Henderson Hall, Fort Myer, Virginia. Prior to this assignment, I was assigned to HHC, 2nd Brigade Combat Team, 10th Mountain Division at Fort Drum, New York. My Primary Military Occupational Specialty or PMOS is 35F, Intelligence Analyst. I entered active duty status on 2 October 2007. I enlisted with the hope of obtaining both real-world experience and earning benefits under the G.I. Bill for college opportunities.

Facts regarding my position as an intelligence analyst: In order to enlist in the Army, I took the Standard Armed Services Aptitude Battery or ASVAB. My score on this battery was high enough for me to qualify for any enlisted MOS position. My recruiter informed me that I should select an MOS that complemented my interests outside the military. In response, I told him that I was interested in geopolitical matters and information technology. He suggested that I consider becoming an intelligence analyst.

After researching the intelligence analyst position, I agreed that this would be a good fit for me. In particular, I enjoyed the fact that an analyst would use information derived from a variety of sources to create work products that informed the command of its available choices for determining the best course of action or COAs. Although the MOS required a working knowledge of computers, it primarily required me to consider how raw information could be combined with other available intelligence sources in order to create products that assist in the command and its situational awareness or SA.

I assessed that my natural interest in geopolitical affairs and my computer skills would make me an excellent intelligence analyst. After enlisting, I reported to the Fort Meade Military Entrance Processing Station on 1 October 2007. I then traveled to and reported at Fort Leonard Wood, Missouri on 2 October 2007 to begin Basic Combat Training or BCT.

Once at Fort Leonard Wood, I quickly realized that I was neither physically nor mentally prepared for the requirements of basic training. My BCT experience lasted 6 months instead of the normal 10 weeks. Due to medical issues, I was placed on a hold status. A physical examination indicated that I sustained injuries to my right shoulder and left foot. Due to those injuries, I was unable to continue Basic. During medical hold, I was informed that I

may be out processed from the Army, however, I resisted being chaptered out because I felt I could overcome my medical issues and continue to serve.

On 20 January 2008, I returned to Basic Combat Training. This time, I was better prepared and I completed training on 2 April 2008. I then reported for the MOS-specific Advanced Individual Training or AIT on 7 April 2008.

AIT was an enjoyable experience for me. Unlike Basic Training where I felt different from the other Soldiers, I fit in and did well. I preferred the mental challenges of reviewing a large amount of information from various sources and trying to create useful or actionable products. I especially enjoyed the practice of analysis through the use of computer applications and methods I was familiar with.

I graduated from AIT on 16 August 2008 and reported to my first duty station, Fort Drum, New York on 28 August 2008. As an analyst, Significant Activities or SIGACTs were a frequent source of information for me to use in creating work products.

I started working extensively with SIGACTS early after my arrival at Fort Drum. My computer background allowed me to use the tools organic to the Distributed Common Ground System-Army or DCGS-A computers to create polished work products for the 2nd Brigade Combat Team chain of command.

The noncommissioned officer in charge, or NCOIC, -2 [illegible]s, recognized my skills and potential and tasked me to work on a tool abandoned by a previously assigned analyst, the incident tracker. The incident tracker was viewed as a backup to the Combined Information Data Network Exchange or CIDNE and as a unit historical reference tool.

In the months preceding my upcoming deployment, I worked on creating a new version of the incident tracker and used SIGACTS to populate it. The SIGACTs I used were from Afghanistan because, at the time, our unit was scheduled to deploy to the Logar and Wardak Provinces of Afghanistan. Later, our unit was reassigned to deploy to Eastern Baghdad, Iraq. At that point, I removed the Afghanistan SIGACTs switch to Iraq SIGACTs.

As an analyst, I viewed the SIGACTs as historical data. I believe this view is shared by other all-source analysts as well. SIGACTs give a first-look impression of a specific or isolated event. This event can be an Improvised Explosive Device attack, or IED; Small Arms Fire engagement, or SAF; engagement with a hostile force or any other event a specific unit documented and reported in real time. In my perspective, the information contained within a single SIGACT or group of SIGACTs is not very sensitive. The events encapsulated within most SIGACTs involve either enemy engagements or casualties. Most of this information is publicly reported by the

public affairs office or PAO, embedded media pools, or host nation (HN) media.

As I started working with SIGACTs, I felt they were similar to a daily journal or log that a person may keep. They capture what happens on a particular date and time. They are created immediately after the events and are potentially updated over a period of hours until a final version is published on the CIDNE -- on the Combined Information Data Network Exchange. Each unit has its own Standard Operating Procedure or SOP for reporting and recording SIGACTs. The SOP may differ between reporting in a particular deployment and reporting in garrison. In garrison, a SIGACT normally involves personnel issues such as driving under the influence or DUI incidents or an automobile involving the death or serious injury of a Soldier. The report starts at the company level and goes up to the battalion, brigade, and even up to the division level.

In a deployed environment, a unit may observe or participate in an event and a platoon leader or platoon sergeant may report the event to a SIGACT -- as a SIGACT to the company headquarters through the Radio Transmission Operator or RTO. The commander or RTO will then forward the report to the battalion battle captain or battle noncommissioned officer or NCO. Once the battalion battle captain or battle NCO receives the report, they will either, one, notify the battalion operations officer or S-3, two, conduct an

action such as launching the quick reaction force or, three, record the event and report -- and further report it up the chain of command to the brigade. The recording of each event is done by radio or over the Secret Internet Protocol Router Network or SIPRNET, normally by an assigned Soldier, usually junior-enlisted, E4 and below. Once the SIGACT is reported, the SIGACT is further sent up the chain of command. At each level, additional information can either be added or corrected as needed. Normally, within 24 to 48 hours, the updating or recording of a particular SIGACT is complete. Eventually, all reports and SIGACTs go through the chain of command from brigade to division and division to corps. At corps level, the SIGACT is finalized and published.

The CIDNE system contains a database that is used by thousands of Department of Defense (DoD) personnel, including Soldiers, civilians, and contractor support. It was the United States Central Command or CENTCOM reporting tool for operational reporting in Iraq and Afghanistan. Two separate but similar databases were maintained for each theater: CIDNE-I for Iraq and CIDNE-A for Afghanistan. Each database encompasses over 100 types of reports and other historical information for access. They contain millions of vetted and finalized records including operational intelligence reporting. CIDNE was created to collect and analyze battle space data to provide daily operational and Intelligence

Community (IC) reporting relevant to a commander's daily decision-making process. The CIDNE-I and CIDNE-A databases contain reporting and analysis fields from multiple disciplines including Human Intelligence or HUMINT Reports, Psychological Operations or PYSOP reports, engagement reports, Counter-Improvised Explosion Device or CIED reports, SIGACT reports, targeting reports, social and cultural reports, civil affairs reports, and human terrain reporting.

As an intelligence analyst, I had unlimited access to the CIDNE-I and CIDNE-A databases and the information contained within them. Although each table within the database is important, I primarily dealt with HUMINT reports, SIGACT reports, and Counter-IED reports because these reports were used to create the work product I was required to publish as any analyst.

When working on an assignment, I looked anywhere and everywhere for information. As an all-source analyst, this was something that was expected. The DCGS-A systems had databases built in and I utilized them on any daily basis. This includes the search tools available on DCGS-A systems on SIPRNET such as Query Tree, and the DOD and Intelink search engines. Primarily, I utilized the CIDNE database using the historical and HUMINT reporting to conduct my analysis and provide back-up for my end work product. I did statistical analysis on historical data including SIGACTs to backup analyses that were based on HUMINT reporting and produced charts,

graphs, and tables. I also created maps and charts to conduct predictive analysis based on statistical trends. The SIGACT reporting provided a reference point for what occurred and provided myself and other analysts with the information to conclude possible outcomes.

Although SIGACT reporting is sensitive at the time of their creation, their sensitivity normally dissipates within 48 to 72 hours as the information is either publicly released, the unit involved is no longer in the area and not in danger -- or the unit involved is no longer in the area and not in danger. It is my understanding that the SIGACT reports remain classified only because they are maintained within CIDNE because it is only accessible on SIPRNET. Everything on CIDNE-I and CIDNE-A, to include SIGACT reporting, was treated as classified information.

Facts regarding the storage of SIGACT reports. As part of my training at Fort Drum, I was instructed to ensure that I create backups of my work product. The need to create backups was particularly acute given the relative instability and reliability of the computer systems we used in the field during the deployment. These computer systems included both organic and theater-provided equipment (TPE) DCGS-A machines.

The organic DCGS-A machines we brought with us into the field on our deployment were Dell M90 laptops and the TPE DCGS-A

machines were Alienware brand laptops. The M90 DCGS-A laptops were the preferred machine to use as they were slightly faster and had fewer problems with dust and temperature than the theater-provided Alienware laptops. I used several DCGS-A machines during the deployment due to various technical problems with laptops.

With these issues, several analysts lost information, but I never lost information due to the multiple backups I created. I attempted to backup as much relevant information as possible. I would save the information so that I, or another analyst, could quickly access it whenever a machine crashed, SIPRNET connectivity was down, or I forgot where the data was stored. When backing up information, I would do one or all of the following things based on my training:

Physical backup. I tried to keep physical backup copies of information on paper so that the information could be grabbed quickly. Also, it was easier to brief from hard copies of research in HUMINT reports.

Two, local drive backup. I tried to sort out information I deemed relevant and keep complete copies of the information on each of the computers I used in the Temporary Sensitive Compartmentalized -- Compartmented Information Facility, or T-SCIF, including my primary and secondary DCGS-A machines. This was stored under my user profile on the desktop.

Share drive -- or share drive backup. Each analyst had access to a T-drive -- what we called a "T-drive" -- shared across the SIPRNET. It allowed others to access information that was stored on it; S-6 operated the T-drive.

Compact Disc-Rewritable or CD-RW back up. For larger data sets, I saved the information onto a re-writable disc, labeled the discs, and stored them in the conference room of the T-SCIF. This redundancy permitted us the ability to not worry about information loss. If a system crashed, I could easily pull the information from a secondary computer, the T-drive, or one of the CD-RWs. If another analyst wanted to access my data but I was unavailable, she could find my published products directory on the T-drive or on the CD-RWs. I sorted all of my products and research by date, time, and group and updated the information on each of the storage methods to ensure that the latest information was available to them.

During the deployment, I had several of the DCGS-A machines crash on me. Whenever a computer crashed, I usually lost information but the redundancy method ensured my ability to quickly restore old backup data and add my current information to the machine when it was repaired or replaced.

I stored the backup CD-RWs of larger data sets in the conference room of the T-SCIF or next my workstations. I marked the CD-RWs based on the classification level and its content.

Unclassified CD-RWs were only labeled with content type and not marked with classification markings. Early on in the deployment, I only saved and stored the SIGACTs that were within or near our operational environment. Later, I thought it would be easier just to save all the SIGACTs on to a CD-RW. The process would not take very long to complete and so I downloaded the SIGACTs from CIDNE-I onto a -- onto a DCGS-on to a CD-RW. After finishing with CIDNE-I, I did the same with CIDNE-A. By retrieving the CIDNE-I and CIDNE-A SIGACTs, I was able to retrieve the information whenever I needed it and not rely upon the unreliable and slow SIPRNET connectivity needed to pull them. Instead, I could just find the CD-RW and open the pre-loaded spreadsheet. This process began in late December 2009 and continued through early January 2010. I could quickly export one month of the SIGACT data at a time and download in the background as I did other tasks. The process took approximately a week for each table.

After downloading the SIGACT tables, I periodically updated them by pulling only the most recent SIGACTs and simply copying them and pasting them into the database saved on the CD-RW. I never hid the fact that I had downloaded copies of both the SIGACT tables from CIDNE-I and CIDNE-A. They were stored on appropriately labeled and marked CD-RWs, stored in the open. I viewed the saved copies of the CIDNE-I and CIDNE-A SIGACT tables as being both for my use and the

use of anyone within S-2 section during the SIPRNET connectivity issues.

In addition to the SIGACT tables, I had a large repository of HUMINT reports and counter-IED reports downloaded from CIDNE-I. These contained reports that were relevant to the area in and around our operational environment in Eastern Baghdad and the Diyala Province of Iraq.

In order to compress the data to fit onto a CD-RW, I use a compression algorithm called "BZIP2." The program used to compress the data is called "WinRar." WinRar is an application that is free and can be easily downloaded from the internet via the Nonsecure Internet Relay Protocol Network, or NIPRNET. I downloaded WinRar on NIPRNET and transferred it to the DCGS-A machine user profile desktop using the CD-RW. I did not try to hide the fact that I was downloading WinRar onto my SIPRNET DCGS-A machine or computer. With the assistance of the BZIP2 compression algorithm, using the WinRar program, I was able to fit all the SIGACTs onto a single CD-RW and the relevant HUMINT and Counter-IED reports onto a separate CD-RW.

Facts regarding my knowledge of the WikiLeaks Organization or WLO: I first became vaguely aware of the WLO during my AIT at Fort Huachuca, Arizona, though I did not fully pay attention until WLO -- until the WLO released purported Short Messaging System or SMS messages from 11 September 2001 on 25 November 2009. At that time,

references to the release and the WLO website showed up in my daily Google News open-source search for information related to U.S. foreign policy. The stories were about how WLO published approximately 500,000 messages. I then reviewed the messages myself and realized that the posted messages were very likely real, given the sheer volume and detail of the content.

After this, I began conducting research on WLO. I conducted searches on both NIPRNET and SIPRNET on WLO beginning in late November 2009 and early 2000 -- early December 2009. At this time, I also began to routinely monitor the WLO website. In response to one of my searches in December 2009, I found the United States Army Counterintelligence Center or USACIC report on the WikiLeaks Organization. After reviewing the report, I believe that this report was one of the -- was possibly the one that my AIT instructor referenced in early 2008. I may or may not have saved the report on my DCGS-A workstation. I know I reviewed the document on other occasions throughout early 2010 and saved it on both my primary and secondary laptops.

After reviewing the report, I continued doing research on WLO, however, based upon my open-source collection, I discovered information that contradicted the 2008 USACIC report including information indicating that, similar to other press agencies, WLO seemed to be dedicated to exposing illegal activities and corruption.

WLO received numerous awards and recognition for its reporting activities.

Also, in reviewing the WLO website, I found information regarding U.S. military SOPs for Camp Delta at Guantánamo Bay, Cuba and information on the, then, outdated rules of engagement or ROE in Iraq for cross-border pursuits of former members of 's al-Tikiriti's government.

After seeing the information available on the WLO website, I continued following it and collecting open-source information from it. During this time period, I followed several organizations and groups including wire press agencies such as the Associated Press and Reuters and private intelligence agencies including Strategic Forecasting or STRATFOR. This practice was something I was trained to do during AIT and was something that good analysts are expected to do.

During the searches of WLO, I found several pieces of information that I found useful in my work product -- in my work as an analyst, specifically, I recall WLO publishing documents related to weapons trafficking between two nations that affected my OE. I integrated this information into one or more of my work products. In addition to visiting the WLO website, I began following WLO using and Instant Relay Chat or IRC client called "XChat" sometime in early January 2010.

IRC is a protocol for real-time Internet communications by messaging and conferencing, colloquially referred to as chat rooms or chats. The IRC chat rooms are designed for group communication discussion forums. Each IRC chat room is called a channel. Similar to a television, you can tune in or follow it -- follow a channel so long as it is open and does not require an invite. Once joining a specific IRC conversation, other users in the conversation can see that you have joined the room. On the Internet, there are millions of different IRC channels across several services. Channel topics span a range of topics covering all kinds of interests and hobbies.

The primary reason for following WLO on IRC was curiosity, particularly in regards to how and why they obtained the SMS messages referenced above. I believed that -- I believed that collecting information on the WLO would assist me in this goal.

Initially, I simply observed the IRC conversations. I wanted to know how the organization was structured and how they obtained their data. The conversations I viewed were usually technical in nature, but sometimes switched to a lively debate on issues a particular individual may have felt strongly about.

Over a period of time, I became more involved in these discussions, especially when conversations turned to geopolitical events and information topics -- information technology topics such

as networking and encryption methods. Based on these observations, I would describe the WL organization as almost academic in nature.

In addition to the WLO conversations, I participated in numerous other IRC channels across at least three different networks. The other IRC channels I participated in normally dealt with technical topics including the LINUX and Berkley Security Distribution (BSD) operating systems or OSs, networking, encryption algorithms and techniques, and other more political topics such as politics and queer rights.

I normally engaged in multiple IRC conversations simultaneously; mostly publicly but often privately. The XChat client enabled me to manage these multiple conversations across different channels and servers. The screen for XChat was often busy, but experience enabled me to see when something was interesting. I would then select conversation and either observe or participate.

I really enjoyed the IRC conversations pertaining to and involving the WLO. However, at some point in late February or early March of 2010, the WLO IRC channel was no longer accessible. Instead, the regular participants of this channel switched to using a Jabber server.

Jabber is another Internet communication tool similar, but more sophisticated than IRC. The IRC and Jabber conversations

allowed me to feel connected to others, even when alone. They helped me pass the time and keep motivated throughout the deployment.

Facts regarding the unauthorized storage and disclosure of the SIGACTs: As indicated above, I created copies of the CIDNE-I and CIDNE-A SIGACT tables as part of the process of backing up information. At the time I did so, I did not intend to use this information for any purpose other than for backup. However, I later decided to release this information publicly. At that time, I believed and still believe that these tables are two of the most significant documents of our time.

On 8 January 2010, I collected the CD-RW I stored in the conference room of the T-SCIF and placed into the cargo pocket of my ACU or Army Combat Uniform. At the end of my shift, I took the CD-RW out of the T-SCIF and brought it to my Containerized Housing Unit or CHU. I copied the data onto my personal laptop. Later, at the beginning of my shift, I returned to -- I returned the CD-RW back to the conference room of the T-SCIF.

At the time I saved the SIGACTs to my laptop, I planned to take them -- I planned to take them with me on mid-tour leave and decide what to do with them. At some point prior to my mid-tour leave, I transferred the information from my computer to a Secure Digital memory card for my digital camera. The SD card for the

camera also worked on my computer and allowed me to store the SIGACT tables in a secure manner for transport.

I began mid-tour leave on 23 January 2010, flying from Atlanta, Georgia to Reagan National Airport in Virginia. I arrived at the home of my aunt, n Potomac, Maryland and quickly got in contact with my then boyfriend, s. [redacted], then a student at Brandeis University in Waltham, Massachusetts, and I made plans to -- for me to visit him in Boston, Massachusetts area. I was excited to see and planned on talking to about where our relationship was going and about my time in Iraq. However, when arrived in the Boston area, r and I seem to become distant. He did not seem very excited about my return from Iraq. I tried talking to him about our relationship, but he refused to make any plans. I also tried raising the topic of releasing the CIDNE-I and CIDNE-A SIGACT tables to the public.

I asked hypothetical questions about what he would do if he had documents that he thought the public needed -- that the public needed access to. didn't really have a specific answer for me. He tried to answer the question and be supportive, but seemed confused by the question and its context. I then tried to be more specific, but he asked too many questions. Rather than try to explain my dilemma, I decided just to drop the conversation. After a few days in Waltham, I began feeling that I was overstaying my

welcome and I returned to Maryland. I spent the remainder of my time on leave in the Washington, D.C. area.

During this time, a blizzard bombarded the Mid-Atlantic and I spent a significant time period of time, essentially, stuck at my aunt's house in Maryland. I began to think about what I knew and the information I still had in my possession. For me, the SIGACTs represented the on-the-ground reality of both the conflicts -- both the conflicts in Iraq and Afghanistan. I felt we were risking so much for -- risking so much for people that seemed unwilling to cooperate with us leading to frustration and hatred on both sides.

I began to become depressed with the situation that we found ourselves increasingly mired in year after year. The SIGACTs documented this in great detail and provided context to what we were seeing on the ground. In attempting to conduct counterterrorism or CT and counterinsurgency (COIN) operations, we became obsessed with capturing/killing human targets on lists and on being suspicious and avoiding cooperation with our host nation partners and ignoring the second and third order effects of accomplishing short-term goals and missions.

I believe that if the general public, especially the American public, had access to the information contained within the CIDNE-I and CIDNE-A tables, this could spark a domestic debate on the role of the military and our foreign policy, in general, as well as

it related to Iraq and Afghanistan. I also believe the detailed analysis of the data over a long period of time by different sectors of society might cause society to reevaluate the need or even the desire to engage in counterterrorism and counterinsurgency operations that ignore the complex dynamics of the people living in the affected environment every day.

At my aunt's house, I debated what I should do with the SIGACTs; in particular, whether I should hold onto them or disclose them through a press agency. At this point, I decided it made sense to try and disclose the SIGACT tables to an American newspaper. I first called my local newspaper, the *Washington Post*, and spoke with a woman saying that she was a reporter. I asked her if the *Washington Post* would be interested in receiving information that would have enormous value to the American public. Although we spoke for about 5 minutes concerning the general nature of what I possessed, I do not believe she took me seriously. She informed me that the *Washington Post* would possibly be interested, but that such decisions were made only after seeing the information I was referring to and after consideration by the senior editors.

I then decided to contact the largest and most popular newspaper, the *New York Times*. I called the public editor number on the *New York Times* website. The phone rang and was answered by a machine. I went through the menu to the section for news tips and

was routed to an answering machine. I left a message stating that I had access to information about Iraq and Afghanistan that I believed was very important. However, despite leaving my Skype phone number and personal e-mail address, I never received a reply from the *New York Times*.

I also briefly considered dropping into the office for the political commentary blog, *Politico*, however, the weather conditions during my leave hampered my efforts to travel. After these failed efforts, I ultimately decided to submit the materials to the WLO. I was not sure if the WLO would actually publish the SIGACT tables or even if they would publish. I was concerned that they might -- I was also concerned that they might not be noticed by the American media. However, based upon what I read about the WLO through my research described above, they seemed to be the best medium for publishing this information to the world within my reach.

At my aunt's house, I joined in on an IRC conversation and stated I had information that needed to be shared with the world. I wrote that the information would help document the true costs of the wars in Iraq and Afghanistan. One of individuals in the IRC asked me to describe the information. However, before I could describe information, another individual pointed me to the link for the WLO website's online submission system. After ending my IRC connection,

I considered my options one more time. Ultimately, I felt that the right thing to do was to release the SIGACTs.

On 3 February 2010, I visited the WLO website on my computer and clicked on the "submit documents" link. Next, I found the "Submit Your Information Online" link and elected to submit the SIGACTs via the Onion Router or TOR (T-O-R) anonymizing network by a special link.

TOR is a system intended to provide anonymity online. Software routes Internet traffic through a network of servers and other TOR clients in order to conceal a user's location and identity. I was familiar with TOR and had it previously installed on my computer to anonymously monitor the social media websites and militia groups operating within central Iraq.

I follow the prompts and attached the compressed data files of CIDNE-I and CIDNE-A SIGACTs. I attached the text file I drafted while preparing to provide documents to the *Washington Post*. It provided rough guideline saying, "It's already been sanitized of any source-identifying information. You might need to sit on this information, perhaps 90 to 100 days, to figure out how to best release such a large amount of data and to protect the source. This is possibly one of the more significant documents of our time, removing the fog of war and revealing the true nature of 21st-century asymmetric warfare. Have a good day."

After sending this, I left the SD card in a camera case at my aunt's house in the event I needed it again in the future.

I returned from mid-tour leave on 11 February 2010. Although the information had not yet been publicly -- had not yet been published by the WLO, I felt a sense of relief by them having it. I felt I had accomplished something that allowed me to have a clear conscience based upon what I had seen and read about and knew were happening in both Iraq and Afghanistan every day.

Facts regarding the unauthorized storage and disclosure of 10 Reykjavík 13. I first became aware of the diplomatic cables during my training period in AIT. I later learned about the Department of State, or DoS, Net-Centric Diplomacy (NCD) portal from the 2/10 Brigade Combat Team S-2,

a sent a section-wide e-mail to the other analysts and officers in late December 2009 containing the SIPRNET link to the portal along with the instructions to look at the cables contained within them and to incorporate them into our work product. Shortly after this, I also noticed the diplomatic cables were being referred to in products from the corps level, U.S. Forces Iraq or USF-I. Based upon s direction to become familiar with its contents, I read virtually every published cable concerning Iraq. I also began scanning database and other -- and reading other random cables that piqued my curiosity.

It was around this time in early to mid-January 2010 that I began searching the database for information on Iceland. I became interested in Iceland due to the IRC conversations I viewed in the WLO channel discussing an issue called "Icesave." At this time, was not very familiar with the topic, but it seemed to be a big issue for those participating in the conversation. This is when I decided to investigate and conduct a few searches on Iceland and find out more.

At the time, did not find anything -- I did not find anything discussing the Icesave issue, either directly or indirectly. I then conducted an open source search for Icesave. I then learned that Iceland was involved in the dispute with the United Kingdom and the Netherlands concerning the financial collapse of one or more of Iceland's banks. According to open source reporting, much of the public controversy involved the United Kingdom's use of anti-terrorism legislation against Iceland in order to freeze Icelandic assets for payments of the guarantees for UK depositors that lost money.

Shortly after returning from mid-tour leave, I returned to the Net-Centric Diplomacy portal to search for information on Iceland and Icesave as the topic had not abated on the WLO IRC channel. To my surprise, on 14 February 2010, I found the cable 10 Reykjavík 13 which referenced the Icesave issue directly. The cable, published on 13 January 2010, was just over two pages in length. I read the cable

and quickly concluded that Iceland was, essentially, being bullied, diplomatically, by two larger European powers. It appeared to me that Iceland was out of viable options and was coming to the U.S. for assistance. Despite their quiet request for assistance, it did not appear that we were going to do anything. From my perspective, it appeared that we were not getting involved due to the lack of long-term geopolitical benefit to do so.

After digesting the contents of 10 Reykjavík 13, I debated on whether this was something I should send to the WLO. At this point, the WLO had not published nor acknowledged receipt of the CIDNE-I and CIDNE-A SIGACTs tables. Despite not knowing if the SIGACTs were a priority for the WLO, I decided the cable was something that would be important and I felt I might be able to right a wrong by having them publish this document.

I burned the document -- or I burned the information onto a CD-RW on 15 February 2010, took it to my CHU, and saved it onto my personal laptop. I navigated to the WLO website via TOR connection, like before, and uploaded the document via the secure form. Amazingly, the WLO published 10 Reykjavík 13 within hours, proving that the form worked and that they must have received the SIGACT tables.

Facts regarding the unauthorized disclosure -- unauthorized storage and disclosure of the 12 July 2007 aerial weapons team or AWT

video. During the mid-tour -- or mid-February time frame, the 2nd Brigade Combat Team, [redacted] and others discussed a video that [redacted] had found on the T-drive. The video depicted several individuals being engaged by an aerial weapons team. At first, I did not consider the video very special as I have viewed the countless other war-tore -- war war-porn type videos depicting combat. However, the recording of audio comments by the aerial weapons team and crew and the second engagement in the video of an unarmed bongo truck troubled me.

[redacted] and a few other analysts and officers in the T-SCIF commented on the video and debated whether the crew violated the rules of engagement or ROE in the second engagement. I shied away from this debate, instead conducted some research on the event. I wanted to learn about what happened and whether there was any background to the events of the day that the event occurred, 12 July 2007.

Using Google, I searched for the event by its date and general location. I found several news accounts involving two Reuters employees who were killed during the aerial weapon team's engagement. Another story explained that Reuters had requested for a video -- requested for a copy of the video under the Freedom of Information Act or FOIA. Reuters wanted to view the video in order

to be able to understand what had happened and to improve their safety practices in combat zones. A spokesperson for Reuters was quoted saying that the video might help avoid a reoccurrence of the tragedy and believed there was a compelling need for the immediate release of the video.

Despite the submission of the FOIA request, the news account explained that CENTCOM replied to Reuters stating that they could not give a timeframe for considering a FOIA request and that the video may no longer -- might no longer exist. Another story I found, written a year later, said that, even though Reuters was still pursuing their request, they still do not receive a formal response or written determination in accordance with FOIA.

The fact that neither CENTCOM nor Multi-National Forces, Iraq or MNF-I, would not voluntarily release the video troubled me further. It was clear to me that the event happened because the aerial weapons team mistakenly identified the Reuters employees as a potential threat and that the people in the bongo truck were merely attempting to assist the wounded. The people in the van were not a threat, but were merely good Samaritans.

The most alarming aspect of the video, to me, however, was the seemingly delightful bloodlust the aerial weapons -- they appeared to have. They dehumanized the individuals they were engaging and seemed to not value human life by referring to them as

"dead bastards" and congratulating each other on the ability to kill in large numbers. At one point in the video, there's an individual on the ground attempting to crawl to safety; the individual is seriously wounded. Instead of calling for medical attention to the location, one of the aerial weapons team crew members verbally asks for the wounded person to pick up a weapon so that he can have a reason to engage. For me, this seems similar to a child torturing ants with a magnifying glass.

While saddened by the aerial weapons teams crew -- or the aerial weapon teams crew's lack of concern about human life, I was disturbed by the response the discovery of injured children at the scene. In the video, you can see that the bongo truck driving up to assist the wounded individual. In response, the aerial weapons team crew assumes the individuals are a threat. They repeatedly request for authorization to fire on the bongo truck and, once granted -- and once granted, they engage the vehicle at least six times.

Shortly after the second engagement, a mechanized infantry unit arrives at the scene. Within minutes, the aerial weapons team crew learns that the children -- that children were in the van and, despite the injuries, the crew exhibits no remorse. Instead, they downplay the significance of their actions saying, "Well, it's their fault for bringing their kids into a battle." The aerial weapons team crew members sound like they lack sympathy for the children or

the parents. Later, in a particularly disturbing manner, the aerial weapons team crew verbalizes enjoyment at the sight of one of the ground vehicles driving over a body -- or one of the bodies.

As I continued my research, I found an article discussing a book, *The Good Soldiers*, written by *Washington Post* writer [redacted]. In [redacted]'s book, he writes about the aerial weapons team attack. As I read an online excerpt on Google Books, I followed [redacted]'s account of the event along with the video. I quickly realized that [redacted] was quoting, I feel, in verbatim, the audio communications of the aerial weapons team crew. It is clear to me that [redacted] obtained access and a copy of the video during his tenure as an embedded journalist.

I was aghast at [redacted]'s portrayal of the incident. Reading his account, one would believe the engagement was somehow justified as payback for an earlier attack that led to the death of a Soldier.

[redacted] ends his account of the engagement by discussing how a Soldier finds an individual still alive from the attack. He writes that the Soldier finds him and sees him gesture with his two forefingers together, a common method in the Middle East to communicate that they are friendly. However, instead of assisting him, the Soldier makes an obscene gesture extending his middle finger. The individual apparently dies shortly thereafter. Reading

this, I can only think of how this person was simply trying to help others and then quickly finds he needs help as well. To make matters worse, in the last moments of his life, he continues to express his friendly -- this -- his friendly intent, only to find himself receiving this well-known gesture of unfriendliness. For me, it's all a big mess and I'm left wondering what these things mean and how it all fits together and it burdens me emotionally.

I saved a copy of the video on my workstation. I searched for and found the rules of engagement, the rules of engagement annexes, and a flow chart from the 2007 time period as well as an unclassified rules of engagement smart card from 2006.

On 15 February 2010, I burned these documents onto a CD-RW the same time I burned the 10 Reykjavík 13 cable onto a CD-RW. At the time, I placed the video and rules of engagement information onto my personal laptop in my CHU. I planned to keep this information there until I redeployed in summer of 2010. I planned on providing this to the Reuters office in London to assist them in preventing events such as this in the future. However, after the WLO published 10 Reykjavík 13, I altered my plans. I decided to provide the video and rules of engagement to them so that the -- so that Reuters would have this information before I redeployed from Iraq.

On about 21 February 2010, as described above, I used the WLO submission form and uploaded the documents. The WLO released the

video on 5 April 2010. After the release, I was concerned about the impact of the video and how it would be perceived by the general public. I hoped that the video would be -- I hoped that the public would be as alarmed as me about the conduct of the aerial weapons team members. I wanted the American public to know that not everyone in Iraq and Afghanistan were targets that needed to be neutralized, but rather people who were struggling to live in the pressure cooker environment of what we call asymmetric warfare.

After the release, I was encouraged by the response in the media and general public who observed the aerial weapons team video. As I hoped, others were just as troubled, if not more troubled than me, by what they saw.

At this time, I began seeing reports claiming that the Department of Defense and CENTCOM could not conform -- cannot confirm the authenticity of the video. Additionally, one of my supervisors, , stated her belief that the video was not authentic. In her response, I decided to ensure that the authenticity of the video would not be questioned in the future.

On 25 February 2010, I emailed a link to the video that was on our T-drive and a copy of the video published by WLO that was collected by the open source Center so she could compare them herself.

Around this time frame, I burned a second CD-RW containing the aerial weapons team video. In order to make it appear authentic, I placed a classification sticker and wrote "Reuters FOIA REQ" on its face. I placed the CD-RW in one of my personal CD cases containing a set of "Starting Out in Arabic" CDs. I planned on mailing the CD-RW to Reuters after I redeployed so that they could have a copy that was unquestionably authentic.

Almost immediately after submitting the aerial weapons team video and the rules of engagement documents, I notified the individuals in the WLO IRC to expect an important submission. I received a response from an individual going by the handle of "Office." At first, our conversations were general in nature but over time, as our conversations progressed, I assessed this individual to be an important part of the WLO.

Due to the strict adherence of anonymity by the WLO, we never exchanged identifying information. However, I believe the individual was likely Mr. Julian Assange, Mr. Daniel Schmidt, or a proxy representative of Mr. Assange and Schmidt.

As the communications transferred from IRC to the Jabber client, I gave "Office" and later "Press Association" the name of Nathaniel Frank in my address book, after the author of -- after the author of a book I read in 2009. After a period of time, I developed what I felt was a friendly relationship with Nathaniel. Our mutual

interest in information technology and politics made our conversations enjoyable. We engaged in conversation often, sometimes as long as an hour or more. I often looked forward to my conversations with Nathaniel after work.

The anonymity that was provided by TOR, the Jabber client, and the WLO's policy allowed me to feel I could just be myself, free of the concerns of social labeling and perceptions that are often placed upon me in real life. In real life, I lacked a close friendship with the people I worked with in my section, the S-2 section, the S-2 sections in subordinate battalions, and the 2nd Brigade Combat Team as a whole. For instance, I lacked close ties to my roommate due to his discomfort regarding my perceived sexual orientation.

Over the next few months, I stayed in frequent contact with Nathaniel. We conversed on nearly a daily basis and I felt that we were developing a friendship. The conversations covered many topics and I enjoyed the ability to talk about pretty much anything and not just the publications that the WLO was working on.

In retrospect, I realize that these dynamics were artificial and were valued more by myself than Nathaniel. For me, these conversations represented an opportunity to escape from the immense pressures and anxiety that I experienced and built up throughout the deployment. It seems that as I tried harder to fit in

at work, the more I seemed to alienate my peers and lose respect, trust, and the support I needed.

Facts regarding the unauthorized disclosure -- or unauthorized storage and disclosure of documents related to the detainments by the Iraqi Federal Police or FP and the Detainee Assessment Briefs, and the USACIC -- United States Army Counterintelligence Center report. On 27 February 2010, a report was received -- a report was received from a subordinate battalion. The report described an event in which the Federal Police detained, or FP, detained 15 individuals for printing anti-Iraqi literature.

By 2 March 2010, I received instructions from an S-3 section officer in the 2nd Brigade Combat Team, 10th Mountain Division Tactical Operations Center or TOC to investigate the matter and figure out who these "bad guys" were and how significant this event was for the Federal Police.

Over the course of my research, I found that none of the individuals had previous ties to anti-Iraqi actions or suspected terrorist militia groups. A few hours later, I received several photos from the scene from the subordinate battalion. They were accidentally sent to an officer on a different team than the S-2 section and she forwarded them to me. These photos included pictures of the individuals, pallets of unprinted paper, and seized copies of the final printed material -- or printed document and a high-

resolution photo of the printed material itself. I printed a blown up copy of the high-resolution photo, I laminated it for ease of use and transfer, I then walked to the TOC, and delivered the laminated copy to our category two interpreter. She reviewed the information and, about a half an hour later, delivered a rough, written transcript in English to the S-2 section. I read the transcript and followed up with her asking her for her take on the contents. She said it was easy for her to transcribe verbatim since I blew up the photograph and laminated it. She said the general nature of the document was benign.

The documentation, as I assessed as well, was merely a scholarly critique of the, then, current Iraqi prime minister, [redacted]. It detailed corruption with the cabinet of al-Maliki's government and the financial impact of his corruption on the Iraqi people.

After discovering this discrepancy between the Federal Police's report and the interpreter's transcript, I forwarded this discovery to the TOC OIC and the Battle NCOIC. The TOC OIC and the overhearing Battle Captain informed me that they didn't want -- or that they didn't need or want to know this information any more. They told me to "drop it" and to just assist them and the Federal Police in finding out where more of these print shops creating "anti-Iraqi literature" might be. I couldn't believe what I heard -- or I

couldn't believe what I heard and I returned to the T-SCIF and complained to the other analysts and my section NCOIC about what happened. Some were sympathetic, but none wanted to do anything about it. I'm the type of person who likes to know how things work, and, as an analyst, this means I always want to figure out the truth. Unlike other analysts in my section or other sections within the 2nd Brigade Combat Team, I was not satisfied with just scratching the surface of producing canned or cookie-cutter assessments. I wanted to know why something was the way it was and what we could do to correct or mitigate a situation.

I knew that if I continue to assist the Baghdad Federal Police in identifying the political opponents of Prime Minister [redacted], those people would be arrested and in the custody of the Special Unit of the Baghdad Federal Police, very likely tortured and not seen again for a very long time, if ever.

Instead of assisting the Special Unit of the Baghdad Federal Police, I had decided to take the information and disclose it to the WLO in the hope that, before the upcoming 7 March 2010 election, they could generate some immediate press on the issue and prevent this unit of the Federal Police from continuing to crack down on political opponents of [redacted]

On 4 March 2010, I burned the report, the photos, the high-resolution copy of the pamphlet, and the interpreter's hand-written

transcript onto a CD-RW. I took the CD-RW to my CHU and copied the data onto my personal computer. Unlike the times before, instead of uploading the information through the WLO website's submission form, I made a Secure File Transfer Protocol or SFTP connection to a Cloud drop box operated by the WLO. The drop box contained a folder that allowed me to upload directly into it. Saving files into this directory allowed me -- allowed anyone with log in access to the server to view and download them. After downloading these file -- or after uploading these files to the WLO on 5 March 2010, I notified Nathaniel over Jabber.

Although sympathetic, he said that the WLO needed more information to confirm the event in order for it to be published or to gain interest in the international media. I attempted to provide these specifics, but, to my disappointment, the WLO website chose not to publish this information. At the same time, I began sifting through information from the U.S. SOUTHCOM -- or U.S. Southern Command or SOUTHCOM and Joint Task Force Guantánamo, Cuba or JTF-GTMO. The thought occurred to me, although unlikely -- that I wouldn't be surprised if the -- although unlikely -- that I wouldn't be surprised if the individuals detained by the Federal Police might be turned over back into U.S. custody and ending up in the custody of Joint Task Force Guantánamo.

As I digested -- as I digested through the information on Joint Task Force Guantánamo, I quickly found the Detainee Assessment Briefs or DABs. I previously came across these documents before in 2009 but did not think much of them. However, this time, I was more curious during this search and I found them again.

The DABs were written in standard DoD memorandum format and addressed the Commander, U.S. SOUTHCOM. Each memorandum gave basic and background information about a specific detainee held, at some point, by Joint Task Force Guantánamo. I have always been interested on the issue of the moral efficacy of our actions surrounding Joint Task Force Guantánamo. On the one hand, I've always understood the need to detain and interrogate individuals who might wish to harm the United States and our allies, however, I felt that there -- that that was -- however, I felt that's what we were doing -- what we were trying to do at Joint Task Force Guantánamo. However, the more I became educated on the topic, it seemed that we found ourselves holding an increasing number of individuals indefinitely that we believed, or knew, to be innocent, low-level foot support -- low-level foot soldiers that we didn't -- that did not have useful intelligence and would be released if they were still in theater -- if they were still held in theater.

I also recall that, in early 2009, the then newly elected president, [redacted], stated that he would close Joint Task Force

Guantánamo and that the facility compromised our standing in the world and diminished our "moral authority." After familiarizing myself with the Detainee Assessment Briefs, I agreed. Reading through the Detainee Assessment Briefs, I noticed that they were not analytical products. Instead, they contained summaries of tear-line versions of interim intelligence reports that were old or unclassified. None of the DABs contained names of sources or quotes from a Tactical Interrogation Reports or TIRs. Since the DABs were being sent to the U.S. SOUTHCOM Commander, I assessed that they were intended to provide very general background information on each detainee and not a detailed assessment.

In addition to the manner in which DABs were written, I recognized that they were at least several years old and discussed detainees that were already released from Joint Task Force Guantánamo. Based on this, I determined that the DABs were not very important from either an intelligence or national security standpoint.

On 7 March 2010, during my Jabber conversations with Nathaniel, I asked him if he thought the DABs were of any use to anyone. Nathaniel indicated, although he didn't -- did not believe that they were of political significance, he did not believe -- he did believe that they could be used to merge into the general, historical account of what occurred at Joint Task Force Guantánamo.

He also thought that the DABs might be helpful to a legal counsel of those currently and previously held at JTF-GTMO.

After this discussion, I decided to download the DABs. I used an application called Wget to download the DABs. I downloaded Wget off of the NIPRNET laptop in the T-SCIF like other programs. I saved that onto a CD-RW and placed the executable in my My Documents directory of my user profile on the DCGS-A SIPRNET workstation.

On 7 March 2010, I took the list of four link -- I took the list of links for the Detainee Assessment Briefs and Wget downloaded them sequentially. I burned the DABs onto a CD-RW and took it into my CHU and copied them to my personal computer.

On 8 March 2010, I combined the Detainee Assessment Briefs with the United States Army Counterintelligence Center Report on the -- on the WLO into a compressed zip file. Zip files contain multiple files which are compressed to reduce their size. After creating the zip file, I uploaded the file onto their Cloud drop box via Secure File Transfer Protocol. Once these were uploaded, I notified Nathaniel that the information was in the X directory which had been designated for my use.

Earlier that day, I downloaded the USACIC report on WLO. As discussed above, I previously reviewed the report on numerous occasions and, although I saved the document onto the workstation before, I could not locate it. After I found the document again, I

downloaded it to my workstation and saved it onto the same CD-RW as the Detainee Assessment Briefs described above.

Although my access included a great deal of information, I decided I had nothing else to send the WLO after sending the Detainee Assessment Briefs and the USACIC report. Up to this point, I had sent them the following: the CIDNE-I and CIDNE-A SIGACT tables; the Reykjavík 13 Department of State cable; the 12 July 2007 aerial weapons team video and the 2006-2007 rules of engagement documents; the SIGACT report and supporting documents concerning the 15 individuals detained by the Baghdad Federal Police; the U.S. SOUTHCOM and Joint Task Force Guantánamo Detainee Assessment Briefs; the USACIC report on the WikiLeaks website -- on the WikiLeaks organization and website.

Over the next -- over the next few weeks, I did not find -- or I did not send any additional information to the WLO. I considered -- I continued to converse with Nathaniel over the Jabber client and in the WLO IRC channel. Although I stopped sending documents to WLO, no one associated with the WLO pressured me into giving more information. The decisions that I made to send documents and information to the WLO and website were my own decisions and I take full responsibility for my actions.

Facts regarding the unauthorized storage and disclosure of other government documents. On 22 March 2010, I downloaded two

documents. I found these documents over the course of my normal duties as an analyst. Based on my training and the guidance of my superiors, I looked at as much information as possible. Doing so provided me with the ability to make connections others might miss. On several occasions during the month of March, I accessed information from a government entity. I read several documents from a section within this government entity. The content of two of these documents upset me greatly. I have difficulty believing what this section was doing.

On 22 March 2010, I downloaded the two documents that I found troubling, I compressed them into a zip file named "blah.zip" and burned them onto a CD-RW. I took the CD-RW to my CHU and saved the file to my personal computer. I uploaded the information to the WLO website using the designated drop box.

Facts regarding the unauthorized storage and disclosure of the Net-Centric Diplomacy Department Of State cables. In late March of 2010, I received a warning over Jabber from Nathaniel that the WLO website would be publishing the aerial weapons team video. He indicated that the WLO would very likely -- would be very busy and the frequency and intensity of our Jabber conversations decreased significantly.

During this time, I had nothing but work to distract me. I read more of the diplomatic cables published on the Department of

State Net-Centric Diplomacy server. With my insatiable curiosity and interest in geopolitics, I became fascinated with them. I read not only the cables on Iraq, but also about countries and events I found interesting. The more I read, the more I was fascinated by the way we dealt with other nations and organizations. I also began to think that they documented backdoor deals and seemingly criminal activity that didn't seem characteristic of the de facto leader of the free world.

Up to this point, during deployment, I had issues that I struggled with and difficulty at work. Of the documents released, the cables were the only ones I was not absolutely certain wouldn't -- couldn't harm the United States. I conducted research on the cables published on the net -- on Net-Centric Diplomacy, as well as how Department of State cables work in general. In particular, I wanted to know how each cable was published on SIPRNET via the Net-Centric Diplomacy.

As part of my open-source research, I found a document published by the Department of State on its official website. The document provided guidance on caption markings for individual cables and handling instructions for their distribution. I quickly learned that the caption markings clearly detailed the sensitivity level of a Department of State cable. For example, "NODIS," or "No Distribution," was used for messages of the highest sensitivity and

were only distributed to the authorized recipients. The SIPDIS or SIPRNET Distribution caption was applied only to reporting at other information messages that were deemed appropriate for a release of a wide number -- to a wide number of individuals.

According to the Department of State guidance for a cable to have the SIPDIS -- that caption, it could not include other captions that were intended to limit distribution. The SIPDIS caption was only for information that could be shared with anyone with access to SIPRNET. I was aware that thousands of military personnel, DoD, Department of State, and other civilian agencies have easy access to the cables and the fact that the SIPDIS caption was only for wide distribution made sense to me, given that the vast majority of the Net-Centric Diplomacy cables were not classified. The more I read the cables, the more I came to the conclusions that this was the type of information that should be -- that this type of information should become public. I once read and used a quote on open diplomacy written after the First World War and how the world would be a better place if states would avoid making secret pacts and deals with and against each other.

I thought these cables were a prime example of a need for a more open diplomacy. Given all the Department of State information I read, the fact that most of the cables were unclassified and that all the cables had the SIPDIS caption, I believed that the public release

of these cables would not damage the United States. However, I did believe the cables might be embarrassing, since they represented very honest opinions and assessments behind or statements behind the backs of other nations and organizations.

In many ways, these cables are a catalog of cliques and gossip. I believe exposing this information might make some within the Department of State and other government entities unhappy. On 22 March 2010, I began downloading a copy of the SIPDIS cables using the program Wget described above. I used instances of the Wget application to download the Net-Centric Diplomacy cables in the background. As I worked on my daily tasks, the Net-Centric Diplomacy cables were downloaded from 28 March 2010 to 9 April 2010. After downloading the cables, I saved them onto a CD-RW. These cables went from the earliest dates in Net-Centric Diplomacy to 28 February 2010. I took the CD-RW to my CHU on 10 April 2010. I sorted the cables on my personal computer, compressed them using the bzip2 compression algorithm described above and uploaded them to the WLO via the designated drop box described above.

On 3 May 2010, I used Wget to download an update of the cables for the months of 20 -- for the months of March 2010 and April 2010 and saved the information onto a zip file and burn it to a CD-RW. I took -- I then took the information--I then took the CD-RW to my CHU and saved them to my computer. I later found that the file

was corrupted during the transfer. Although I intended to re-save another copy of these cables, I was removed from the T-SCIF on 8 May 2010 after an altercation.

Facts regarding the unauthorized storage and disclosure of the Garani Farah Province, Afghanistan 15-6 investigation and videos. In late March 2010, I discovered a U.S. CENTCOM directory only 2009 airstrike in Afghanistan. I was searching CENTCOM for information I could use as an analyst. As described above, this was something that myself and other analysts and officers did on a frequent basis. As I reviewed the documents, I recalled the incident and what happened. The airstrike occurred in the Garani Village of the Farah Province in northwestern Afghanistan. They receive worldwide press and -- worldwide press coverage during the time as it was reported that up to 100 to 150 Afghan civilians, mostly women and children, were accidentally killed during the airstrike.

After going through the report and its annexes, I began to review the incident as being similar to the 12 July 2007 aerial weapons team engagements in Iraq. However, this event was noticeably different in that it involved a significantly higher number of individuals, larger aircraft, and much heavier munitions. Also, the conclusion of the report are even more disturbing than those of the 12 July 2007 incident. I did not see anything in the 15-6 report or its annexes that give away sensitive information. Rather, the

investigation and its conclusions help explain how this incident occurred and what those involved should have done and how to avoid an event like this from occurring again.

After investigating the report and its annexes, I downloaded the 15-6 investigation, PowerPoint presentations, and several other supporting documents to my DCGS-A workstation. I also downloaded three zip files containing the videos of the incident. I burned this information onto a CD-RW and transferred it to the personal computer in my CHU. Either later that day or the next day I uploaded the information to the WLO website, this time using a new version of the WLO website submission form. Unlike other times using the submission form above, I did not activate the TOR annonymizer.

Your Honor, this concludes my statement and facts for this providence inquiry.

Verdict

Of Charge I and its specification – Not Guilty

Of Specification 1 of Charge II – Guilty

Of specification 2 of Charge II – in accordance with your plea, Guilty, except the words and figures "15 February 2010" and "5 April 2010", substituting therefore the words and figures "14 February 2010" and "21 February 2010"; further excepting the words "information relating to the national defense, to wit:"; further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted,", substituting therefore the words "did willfully communicate"; further excepting the words and figures, "in violation of 18 U.S. Code Section 793(e),"; of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty.

Of specification 3 of Charge II, Guilty except the words and figures "22 March 2010", substituting therefore the words and figures "17 March 2010"; of the excepted words and figures, Not Guilty, of the substituted words and figures, Guilty.

Of specification 4 of Charge II, Guilty

Of specification 5 of Charge II, Guilty

Of specification 6 of Charge II, Guilty

Of specification 7 of Charge II, Guilty

Of specification 8 of Charge II, Guilty

Of specification 9 of Charge II, Guilty

Of specification 10 of Charge II, Guilty

Of specification 11 of Charge II, Not guilty

Of specification 12 of Charge II, Guilty

Of specification 13 of Charge II, Guilty

Of specification 14 of Charge II, in accordance with your plea, Guilty, except the words and figures "15 February 2010" and "18 February 2010", substituting therefore the words and figures "14 February 2010" and "15 February 2010"; further excepting the words "knowingly exceeded authorized access", substituting therefore the words "knowingly accessed"; further excepting the words "with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation, in violation of 18 U.S. Code Section 1030(a)(1)"; of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty.

Of specification 15 of Charge II, Guilty

Of specification 16 of Charge II, Guilty

Of Charge II – Guilty

Of specification 1 of Charge III, Guilty

Of specification 2 of Charge III, Guilty

Of specification 3 of Charge III, Guilty

Of specification 4 of Charge III, Guilty

Of specification 5 of Charge III, in accordance with your plea, Guilty, except the words and figures "1 November 2009", substituting therefore the words and figures "8 January 2010"; of the excepted words and figures, Not Guilty; of the substituted words and figures, Guilty.

Of Charge III, Guilty

The Washington Post
Democracy Dies in Darkness

Trump calls Chelsea Manning a 'traitor' who does not deserve freedom

By **Brian Murphy**

Jan. 26, 2017 at 1:08 p.m. GMT

President Trump on Thursday intensified his criticism of the decision to commute the sentence of military leaker Chelsea Manning, calling her a "traitor" who should remain in prison.

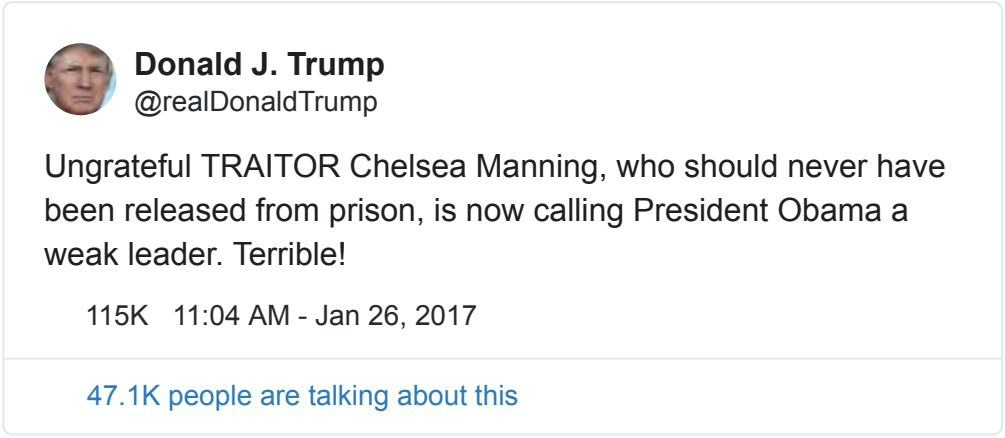
In a tweet, Trump claimed Manning had called former president Barack Obama a "weak leader" even after her 35-year sentence was commuted in the last days of the Obama administration.

Trump appeared to be referring to a column that Manning wrote in the Guardian newspaper. In the commentary, she argued that Obama's legacy will leave "few permanent accomplishments" because he often sought common ground and compromise rather than battling harder against "unparalleled resistance from his opponents."

Manning wrote: "What we need is an unapologetic progressive leader."

The use of the word "traitor" is often tossed around by political leaders and others to describe alleged acts that threaten national security. But it is rare for a president to brand someone as a traitor, and Trump's comment raised questions about whether he could try to bring further action against Manning, who is scheduled to be released in May.

"Ungrateful TRAITOR Chelsea Manning, who should never have been released from prison, is now calling President Obama a weak leader. Terrible!" Trump wrote.



Last week, days before being named White House spokesman, Sean Spicer said Trump was "troubled" by Obama's commutation of the sentence of Manning, an Army private convicted of taking troves of secret diplomatic and military documents and disclosing them to WikiLeaks.

"It's disappointing, and it sends a very troubling message when it comes to the handling of classified information and to the consequences of those who leak information that threatens the security of our nation," Spicer told reporters.

Spicer called Manning "someone who has given away this country's secrets," but he did not directly answer a question about whether Trump would take any steps to reverse or delay Obama's decision.

Obama said that the seven years Manning has served behind bars amounted to enough punishment and that she had been given an excessive sentence.

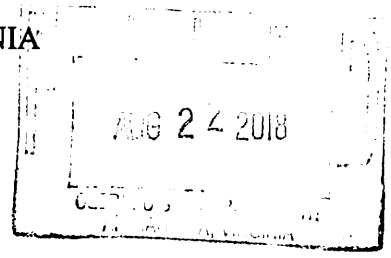
Manning, then known as Bradley Manning, was arrested in Iraq in May 2010 after trasmitting documents to WikiLeaks that came to be known as the Iraq and Afghanistan "War Logs." Manning also shared a video that showed a U.S. Apache helicopter in Baghdad opening fire on a group of people that the crew believed to be insurgents. Among the dead were two journalists who worked for the Reuters news agency. Manning also leaked documents pertaining to Guantanamo Bay prisoners, as well as 250,000 State Department cables.

Manning came out as transgender after her conviction.

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA

v.

SEITU SULAYMAN KOKAYI

Defendant.

Case No. 1:18-mj-406

GOVERNMENT'S MOTION TO SEAL CRIMINAL COMPLAINT AND SUPPORTING DOCUMENTS PURSUANT TO LOCAL RULE 49(B)

The United States, by and through undersigned counsel, pursuant to Local Rule 49(B) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, respectfully asks for an Order to Seal the criminal complaint, the supporting affidavit, and the arrest warrant in this matter, as well as this Motion to Seal and proposed Order, until further order of the Court.

I. REASONS FOR SEALING (Local Rule 49(B)(1))

1. As further described in the affidavit in support of the criminal complaint, the government is seeking a criminal complaint charging SEITU SULAYMAN KOKAYI with coercion and enticement of a minor in violation of Title 18, United States Code, Section 2242(b).

2. Premature disclosure the specific details of this ongoing investigation would jeopardize the investigation, including by allowing Mr. Kokayi the opportunity to flee, destroy evidence, or engage in acts of violence against the United States or members of the public prior to his impending arrest.

3. The United States has considered alternatives less drastic than sealing, including, for example, the possibility of redactions, and has determined that none would suffice to protect this investigation. Another procedure short of sealing will not adequately protect the needs of law enforcement at this time because, due to the sophistication of the defendant and the publicity surrounding the case, no other procedure is likely to keep confidential the fact that Assange has been charged.

II. REFERENCES TO GOVERNING CASE LAW (Local Rule 49(B)(2))

4. The Court has the inherent power to seal charging documents. See United States v. Wuagneux, 683 F.2d 1343, 1351 (11th Cir. 1982); State of Arizona v. Maypenny, 672 F.2d 761, 765 (9th Cir. 1982); Times Mirror Company v. United States, 873 F.2d 1210 (9th Cir. 1989); see also Shea v. Gabriel, 520 F.2d 879 (1st Cir. 1975); United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980); In re Braughton, 520 F.2d 765, 766 (9th Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." In re Knight Pub. Co., 743 F.2d 231, 235 (4th Cir. 1984). Sealing charging documents is appropriate where there is a substantial probability that the release of the sealed documents would compromise the government's ongoing investigation severely. See e.g. In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569, 574 (8th Cir. 1988); Matter of Eye Care Physicians of America, 100 F.3d 514, 518 (7th Cir. 1996); Matter of Flower Aviation of Kansas, Inc., 789 F.Supp. 366 (D. Kan. 1992).

III. PERIOD OF TIME GOVERNMENT SEEKS TO HAVE MATTER REMAIN UNDER SEAL (Local Rule 49(B)(3))

5. The complaint, supporting affidavit, and arrest warrant, as well as this motion and the proposed order, would need to remain sealed until Assange is arrested in connection with the charges in the criminal complaint and can therefore no longer evade or avoid arrest and extradition in this matter.

6. Upon occurrence of the event specified in paragraph 8, pursuant to Local Rule 49(B)(3), the sealed materials will be automatically unsealed and handled as such.

WHEREFORE, the United States respectfully requests that the criminal complaint, the supporting affidavit, and the arrest warrant in this matter, as well as this Motion to Seal and proposed Order, be sealed until further order of the Court.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: _____
Kellen S. Dwyer
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

UNDR SEAL

In re: Grand Jury Subpoena,)	OMNIBUS
)	MOTION TO QUASH
CHELSEA MANNING,)	GRAND JURY SUBPOENA
)	
Subpoenaed Party.)	

18-4

1:19DM3
10GJ3793

STATEMENT OF MOTION

Comes now Chelsea Manning, by and through counsel, and pursuant to the First, Fourth, and Fifth Amendments to the United States Constitution, hereby moves this court to quash the subpoena *ad testificandum* summoning her to testify before a federal grand jury in this district. For reasons set forth herein, if enforced the subpoena 1) will violate Ms. Manning's Fifth Amendment right against compelled self incrimination and Double Jeopardy, 2) will violate her First Amendment right to Freedom of Association and Freedom of Speech 3) is an abuse of the grand jury process and 4) is a product of illegal electronic surveillance.

Ms. Manning further requests disclosure of any ministerial documents relevant to the instant grand jury and any prior statements of Ms. Manning in the possession of the government.

Ms. Manning states the following in support of these requests:

STATEMENT OF FACTS

The movant Chelsea Manning has been and is recognized world-wide as a champion of the Free Press and open government. In 2013, Ms. Manning, then an all-source intelligence analyst for the U.S. military, was convicted at a United States Army court martial for disclosing classified information to the public. She was sentenced to thirty-five years imprisonment and a

dishonorable discharge. She was confined under onerous conditions, including but not limited to prolonged solitary confinement. In 2017 her sentence was commuted by then-President Barack Obama. However, her appeal from that conviction remains pending and Ms. Manning may be subject to military re-call.

Following her release Ms. Manning has continued to be outspoken in her defense of First Amendment freedoms, for the rights of transgender persons, and against some United States government policies. The current administration has made clear its views of Ms. Manning and her release. The President of the United States himself tweeted that Ms. Manning "should never have been released." The Central Intelligence Agency tweeted a letter written on CIA letterhead, in which then-CIA director, and now Secretary of State Mike Pompeo effectively convinced Harvard University to withdraw a fellowship that she had been awarded by their students. See @RealDonaldTrump tweet of January 26, 2017, and the September 14, 2017 tweet from @CIA Twitter account. Based on the explicit statements of this administration, Ms. Manning reasonably believes that the current administration is unhappy with her release, and seeks to punish her further by using any means at their disposal to incarcerate her. She reasonably fears that despite living a law-abiding life, the government is subjecting her to physical and electronic surveillance (see Declaration of Chelsea Manning) and other intrusions. The instant subpoena is part of that process.

On February 5, 2019, Chelsea Manning was served through counsel with a subpoena *ad testificandum* ordering her to appear before a grand jury empaneled in this district. The appearance is now scheduled for March 5, 2019.

Secrecy is the defining feature of grand jury proceedings, and Federal Rule of Criminal Procedure 6(e) mandates that information presented to this grand jury is protected against public disclosure[1], absent a compelling need. While the subject of this grand jury's investigation is not publicly known, it almost certainly involves a complex of people, events, and disclosures with which Ms. Manning was briefly associated, and for her involvement with which she has been held accountable.

While it is our understanding that an immunity order has been secured, the subpoena will nonetheless violate Ms. Manning's Fifth Amendment rights. The appeal of her court martial remains pending. It is unclear that the immunity order would be effective as to that proceeding, which, as a function of the military, falls outside the jurisdiction of the Department of Justice. It is likewise unclear whether the military might attempt to assert jurisdiction over her, and while she would reserve the right to resist such an assertion, the jeopardy in which she might be placed were she to cooperate with this proceeding is very real. Additionally, the threat of foreign prosecution, unaffected by an immunity order, incentivizes disobedience with even perfectly immunized testimony.

Ms. Manning possesses no material information not already disclosed to the government. Ms. Manning herself gave robust testimony about her own relationship to the 2010 public disclosures during her court martial proceeding. At that time, the military, in consultation with the Department of Justice, cross-examined her and elicited testimony from her. Following that testimony she was confined and monitored, and since her release she has gained no further personal knowledge of any relevant people or events. Moreover, this constellation of digital

[1] Unlike attorneys and grand jurors, witnesses before grand juries are less constrained by this secrecy, as it is intended largely for their own protection.

media leaks and those associated with them have been obsessively studied, reported upon, and investigated by scholars, journalists, and governments around the world since at least 2010. Indeed, it is known that the federal investigation into these disclosures has involved information-gathering, testimony both voluntary and compelled, and both overt and covert surveillance for many years. There is little doubt that the prosecutor and this grand jury have access to a great deal of both public and non-public information on these matters, including, but far exceeding Ms. Manning's prior sworn testimony.

Ms. Manning has no knowledge of or information to offer about any other federal offense, and therefore no relevant testimony to offer to any investigative grand jury. The government is seeking Ms. Manning's testimony nearly a decade later despite the fact that it has unfettered access to hundreds of thousands of pages of documentary evidence and the sworn testimony of ninety witnesses (including Ms. Manning herself) presented in 2013 and found by a military judge to constitute proof beyond a reasonable doubt of Ms. Manning's central role in the 2010 disclosures. Ms. Manning cannot give the government or this grand jury information anywhere near the quality and quantity of that presented at her court martial in 2013. The government's interest in relying on anything other than the evidence acquired closest in time to the events purportedly under investigation gives rise to a legitimate concern that the instant subpoena was not motivated by the government's desire to discover information concerning possible violations of federal law.

There is a long and well-documented history of grand jury abuse. The grand jury system is enshrouded in secrecy and is, by its very nature, susceptible to abuse and impermissible government overreach. See, e.g., Mark Kadish, *Behind the Locked Door of An American Grand*

Jury: Its History, Its Secrecy, and Its Process, 24 Fla. St. U. L. Rev. 1 (1996); Michael Deutsch, *The Improper Use of the Federal Grand July: An Instrument for the Internment of Political Activists,* 75 J. Crim. L. & Criminology 1159 (1984). As a consequence of grand jury secrecy, neither the courts, nor Congress, nor - most importantly - the public, can gauge how the institution is being used - or abused, as the case may be. Marvin E. Frankel & Gary P. Naftalis, *The Grand Jury: An Institution on Trial* 125 (1977).

Given this history, Ms. Manning has reason to believe that she will be subject to questions intended to elicit information not properly within the scope of the grand jury, and that questioning rather will focus on activities protected by the First Amendment such as news gathering and other forms of protected speech and associations. Indeed, the mere issuance of this subpoena is already serving to chill her exercise of constitutional rights.

Notwithstanding the purported legitimacy of this grand jury investigation generally, Ms. Manning fears the subpoena directed toward her may have issued in other than good faith. The exhaustive and complex testimony in the court martial proceedings to which the government has always had unrestricted access raises the inference that this subpoena has issued for the primary purpose of coercing perjury or contempt, although she vigorously disputes that she has ever been anything but truthful in her prior statements. Whether issued in violation of the first amendment or in bad faith, whether as a means of undermining her credibility, creating a perjury trap, or coercing contempt, the subpoena must be quashed.

The subpoena should also be quashed because Ms. Manning has reason to believe that she and those around her have been subject to unlawful electronic surveillance in violation of her Fourth Amendment rights and other statutory prohibitions on such surveillance. See declaration

of Chelsea Manning, attached. During her time in prison, Ms. Manning was of course subject to routine observation. Since her release, Ms. Manning has experienced all manner of intrusive surveillance, including surveillance vans parked outside her apartment, federal agents following her, and strangers attempting to goad her into an absurdly contrived conversation about selling dual-use technologies to foreign actors.

Given Ms. Manning's notoriety it is likely that the grand jurors themselves harbor a bias against her. Her name and face are widely recognizable, and are likely well-known to all in the pool of potential grand jurors for the Eastern District of Virginia, which includes people who are more than usually likely to be connected with the intelligence community of which she was once a part. Due to her political notoriety, as well as her recent gender transition, she fears she will be subject to harms stemming from the grand jurors' preconceived notions and prejudices.

Ms. Manning believes this entire subpoena has been propounded unnecessarily, possibly in retaliation for her recent release from prison, and in violation of her First, Fourth, Fifth, and Sixth Amendment rights, and other statutory rights, such as would excuse her grand jury testimony. These concerns are magnified given not only the history of grand jury abuses, but the degree to which she personally has been subject to political harassment, oppression and demonization by certain forces within the government.

Ms. Manning therefore moves this court to quash the subpoena; to direct the government to canvass federal agencies to determine whether any electronic surveillance has been conducted and either affirm or deny that such surveillance has taken place; for disclosure of ministerial documents; for the right to instruct the grand jury; for disclosure of any prior statements relevant

to the questions propounded by the prosecution, and for all other and further relief as this court deems just and proper.

ARGUMENT

A. NOTWITHSTANDING ANY IMMUNITY ORDER, THE SUBPOENA EXPOSES MS. MANNING TO JEOPARDY WITH RESPECT TO HER ONGOING MILITARY CASE AND POSSIBLE FOREIGN PROSECUTION

The grand jury subpoena should be quashed because Ms. Manning is still subject to military criminal jurisdiction. Thus any statements or testimony given in the grand jury proceeding could subject her to a court-martial, other military discipline, or prejudice her ongoing military appeal.[2] Accordingly the subpoena must be quashed as enforcement will violate her Fifth Amendment right against self incrimination.

The Fifth Amendment right against self-incrimination applies to the ongoing court-martial appeal, and obviously to any future military criminal investigations or actions. "The privilege against self-incrimination may be invoked when a 'witness has reasonable cause to apprehend danger' that he will implicate himself in a criminal offense by answering a question. *United States v. Villines*, 13 M.J. 46, 52 (C.M.A. 1982) (quoting *Hoffman v. United States*, 341 U.S. 479, 486). The *Villines* case is poignant because the military defendant in that case had been compelled to testify as a co-conspirator witness after he had already been convicted but while his appeal was pending. The court refused to compel him to testify because of the possibility that any statements he made as a witness could be used at a re-trial.

This logic holds true in Ms. Manning's case. Ms. Manning's case is presently on appeal. Depending on the outcome of the appeal the case could be sent back to the lower court for

[2] Ms. Manning reserves the right to contest an assertion of military jurisdiction.

further proceedings. In those proceedings, the military prosecutor would have access to, and likely seek to use, any testimony given by Ms. Manning before the grand jury. Alternatively, the military could drum up an entirely new prosecution since Ms. Manning may yet be subject to military jurisdiction.

The facts and circumstances of this case are unusual because of Ms. Manning's status in the military. It is well-known that Ms. Manning was convicted at an Army court-martial in 2013 for disclosing classified information the public through a number of different news sources. She was sentenced to thirty-five years imprisonment and a dishonorable discharge. In 2017 President Barack Obama commuted the sentence to time served.

Because the commutation did not affect the conviction, Ms. Manning's case is presently on appeal in the United States Court of Appeals for the Armed Forces, an Article I appellate court that hears military appeals. Under Article 76a of the Uniform Code of Military Justice (UCMJ), the military may retain jurisdiction over a servicemember while his or her appeal is pending. See 10 U.S.C. § 876a. To effectuate Article 76a, UCMJ, the military typically places servicemembers who have been punitively discharged at a court-martial (i.e., a dishonorable or bad conduct discharge) on *involuntary appellate leave* pending the conclusion of the appeal. Ms. Manning, who was dishonorably discharged, was placed on involuntary appellate leave after she was released from military prison pursuant to President Obama's commutation order.

"Although a person on involuntary appellate leave remains subject to military jurisdiction and possible recall, the individual returns to civilian life throughout the period of leave." *United States v. Pena*, 64 M.J. 259, 267 (C.A.A.F. 2007). If a servicemember violates the UCMJ while on involuntary appellate leave he or she may be court-martialed for offenses that are service-connected. See, *e.g.*, *United States v. Ray*, 24 M.J. 657 (A.F.C.M.R. 1987) (holding that a

servicemember who was on involuntary appellate leave could be prosecuted for distributing cocaine to a servicemember).

The threat of a military prosecution is real. President Obama's decision to commute Ms. Manning's sentence was not well-received by some military leaders and influencers. President Trump, in fact, tweeted on January 26, 2017 that Ms. Manning "should never have been released from prison." See https://twitter.com/realDonaldTrump/status/824573698774601729, *last visited* February 28, 2019. The prosecution has revealed very little about the nature of the grand jury or the questions Ms. Manning may be asked. At most we know that the grand jury probably relates to the 2010 disclosures, and related people and organizations. And despite repeated requests by Ms. Manning's legal team for information about the nature of the expected grand jury questions, the prosecutor has only generally revealed that he believes some of Ms. Manning's statements at the court-martial were either false or mistaken, and that the grand jury would benefit from hearing more details about Ms. Manning's contacts and communications with respect to the 2010 disclosures. Given the prosecutor's unwillingness to disclose information to Ms. Manning that would help her evaluate the risks of testifying, she must assume that the grand jury is a "perjury trap" or even worse, a subterfuge for another military prosecution.

Granting Ms. Manning immunity in the federal grand jury context will not shield her from prosecution by the military. In the military only a general court-martial convening authority (i.e., a military commander who is sufficiently high-ranking and who has command over the subject servicemember) can grant immunity from prosecution at a court-martial. See Rules for Court-Martial (RCM) 704. It would be wholly unfair to compel Ms. Manning to testify before the grand jury based on the limited protection of the grand jury immunity order.

Nor can it be argued that Ms. Manning's grand jury testimony will be kept secret from

the military. Rule 6(3)(A) of the Federal Rules of Criminal Procedure permits the disclosure of grand-jury information when a government attorney believes it is "necessary to assist in performing that attorney's duty to enforce federal criminal law." If Ms. Manning is compelled to testify in the grand jury proceeding it is foreseeable the prosecution could pass along her testimony to the military to assess whether criminal charges that are otherwise precluded from federal prosecution could be brought at a court-martial.

As a last note, Ms. Manning has reason to fear foreign prosecution, from which she is not shielded by any U.S. issued immunity agreement. United States v Balsys, 524 US 666, (1998). This exposes her to the dilemma of choosing between domestic contempt, or foreign prosecution. The failure of the law to accommodate this conundrum creates a regrettable and perverse incentive for refusal to give even immunized testimony.

For these reasons the grand jury subpoena should be quashed.

B. THE SUBPOENA WILL IMPERMISSIBLY INTRUDE UPON CONSTITUTIONALLY PROTECTED EXPRESSIVE AND ASSOCIATIONAL RIGHTS

During her court martial, Ms. Manning gave expansive testimony about her role in and knowledge of events and actors relevant to disclosing information on "asymmetric warfare" to the public. She was exhaustive and truthful in her testimony, and after her own statements, she was subject to further questioning by the government. United States v. Manning, U.S. Army 1st Judicial Circuit, Colonel Lind Presiding (2013), transcript at pp. 6705-6918; Appellate Exhibit 499, 34 page, single-spaced Statement of PFC Manning. Nothing further is to be gained by compelling her to answer yet more questions about these subjects. Ms. Manning has no undisclosed knowledge relevant or material to an investigation of any other federal offense.

In the event that the government seeks information about which she has *not* already given testimony, Ms. Manning must assume that such questions involve her own or other peoples' lawful and constitutionally protected activities, associations, and expressions. It has long been held that the First Amendment *does* apply to grand jury proceedings. Compelled disclosure "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Hispanic Leadership Fund, Inc. v Fed. Election Com'n, 897 F Supp. 2d 407, 420 (E.D. Va. 2012); Buckley v. Valeo, 424 U.S. 1, 64 (1976); Gibson v. Florida Legislative Comm., 372 U.S. 539 (1963); N.A.A.C.P. v. Button, 371 U.S. 415 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); N.A.A.C.P. v. Alabama, 357 U.S. 449 (1957). Because of the possible "chilling effect" such compelled disclosure may have on protected rights, the government's request for such disclosure must survive "exacting scrutiny." Buckley v. Valeo, *supra*, N.A.A.C.P. v. Alabama, at 463; Weiman v. Updegraff, 344 U.S. 183 (1952). In the event that a viable First Amendment claim is made, it is the government's burden to show that its interests in disclosure are both legitimate and compelling, and that there is a "relevant correlation" between the government's interest and the precise information to be disclosed. "The public's undoubted "right to every man's evidence," does not give government, for example, 'an unlimited right of access to [private parties'] papers with reference to the possible existence of [illegal] practices.'." In re Grand Jury Subpoena: Subpoena Duces Tecum, 829 F2d 1291, 1297 (4th Cir 1987) internal citations omitted; Brown v. Hartlage, 456 U.S. 45 (1982); Buckley v. Valeo, *supra*, at 64; DeGregory v. Attorney General, 383 U.S. 825 (1966); Gibson v. Florida Legislative Comm., *supra*; In re First National Bank, Englewood, Colo., 701 F.2d 115 (10th Cir. 1983) (grand jury proceedings); Smilow v.

United States, 465 F.2d 802 (2d Cir. 1973); Bursey v. United States, 466 F.2d 1059 (9th Cir. 1972).

First, there is a likelihood that this grand jury to be used expressly to disrupt the integrity of the journalistic process by exposing journalists to a kind of accessorial liability for leaks attributable to independently-acting journalistic sources. This administration has been quite publicly hostile to the press, and there is reason to believe that this grand jury may function to interfere profoundly with the operation of a free press. As the Court stated in Branzburg v. Hayes, "Official harassment of the press undertaken not for purposes of law enforcement, but to disrupt a reporter's relationship with his news sources would have no justification." 408 U.S. 665, 707-08 (1973).

In addition to concerns about the implications of this subpoena for journalism generally if Ms. Manning testifies, she fears that she may be compelled to disclose protected information about lawful First Amendment protected associations and activities. This is particularly troubling where, as here, she might be called upon to divulge names and political affiliations, despite having no information legitimately necessary for purposes of investigating crime. Ms. Manning objects on First Amendment grounds to the subpoena in its entirety, and in any event reserves the right to object to individual questions on the same grounds.

While this circuit has left the "First Amendment versus Grand Jury dilemma" for another day, the Ninth Circuit's test for objecting to potential First Amendment violations in the context of specific grand jury questions is instructive. See In re Grand Jury 87-3 Subpoena Duces Tecum, 955 F2d 229, 234 (4th Cir 1992); Bursey v. United States, *supra*. According to Bursey, where First Amendment interests are threatened by grand jury questions, the government must establish

that their interest is "immediate, substantial, and subordinating;" that there is a "substantial connection between the information it seeks... and the overriding government interest in the subject matter:" and that the use of the grand jury to compel the desired testimony is "not more drastic than necessary to forward the asserted governmental interest." Bursey at 1083.

This test will likely be relevant for Ms. Manning, in the event that the government wishes to inquire into her recent, lawful, and constitutionally protected political activities. Since her release, Ms. Manning has been an active and public participant in lawful community organizing against prosecutorial overreach, and rising neofascism, as well as running as a candidate for elected office. Ms. Manning is acutely aware that her public political activity has displeased the current government, including those holding immense executive power. She is aware that the community activities in which she has been involved have been subject to physical and electronic surveillance. She is also aware that as a result of her participation in this activity, she herself has been subject to physical and electronic surveillance. She believes one goal of this surveillance is to chill her exercise of constitutionally protected activity.

While the first amendment imposes constraints on the state's exercise of power to punish a person for their political ideals or associations, the subpoena power has in the past been used as an end run around the first amendment's promise. Gibson v. Florida Legislative Comm., *supra;* N.A.A.C.P. v. Alabama, *supra;* Bursey, *supra*, at 1084; In re Verplank, 329 F.Supp. 433 (C.D. Cal. 1971). By issuing a grand jury subpoena, the government may inquire into aspects of a witness' knowledge, life, beliefs, and associations, in ways that would not otherwise be permissible. The subpoena may not be issued in bad faith, with the primary intent to go on a "fishing expedition." A subpoena issued for purposes of gathering information about protected

activities and associations, or for purposes of discouraging protected activities and associations, is infirm, and must be quashed. Furthermore, individual questions that are clearly irrelevant to the investigation being conducted, and that infringe upon specifically political associational rights, fall afoul of the First Amendment, and must be disallowed. Ealy v. Littlejohn, 569 F.2d 219 (5th Cir. 1978), United States v (Under Seal), (stating that "practices which do not aid the grand jury in its quest for information bearing on the decision to indict are forbidden") 714 F2d 347, 349 (4th Cir. 1983).

Ms. Manning's concerns about the use of this particular Grand Jury subpoena as a mechanism for fishing into her protected political activity or simply to harass her are not the narcissistic paranoia of a naive activist. The history of the use of grand juries to gather intelligence on or quell political dissent is well-documented, and grand juries are particularly susceptible to overreach.

Almost none of the procedural protections guaranteed to defendants in criminal trials are available during grand jury proceedings, a practice that runs counter to the purpose of the grand jury to act as a check on the executive's prosecutorial power. The enormous discretion held by prosecuting authorities in the United States allows them to use the law for political and other ends. Norman Dorsen & Leon Friedman, *Disorder in the Court: Report of the Association of the Bar of the City of New York Special Committee on Courtroom Conduct,* 170 (1973). Historically, the grand jury system was used to indict outspoken opponents of slavery for sedition, and then to harass and indict black people and Reconstruction officials attempting to gain suffrage. Richard D. Younger, *The People's Panel: The Grand Jury in the United States,* 163-1974, 85-133 (1963).

In the mid-20th century, the grand jury system was improperly used to frame labor organizers and union leaders. Deutsch, *supra,* at 1171-73, 1175-78. During the Nixon

administration, over one thousand political activists were subpoenaed to more than one hundred grand juries investigating lawful anti-war, women's rights, and black activist movements. *Id.* at 1179.

In 2012, the FBI issued 14 grand jury subpoenas to activists after the 2008 Republican National Convention in Minneapolis, MN, and proceeded to question them without ever issuing any indictments. The same year, a grand jury ostensibly investigating property damage at a demonstration asked activist Katherine Olejnik more than 50 questions about people's political beliefs and their relationships. The government did not question her about criminal conduct *as they knew she had no knowledge of the crimes they were supposed to be investigating.* In 2013, 23 year old Gerald Koch was summoned before a grand jury on the purported basis that he might have overheard a discussion in 2009 about some high profile property damage that had occurred in 2008. This culminated in his eight-month confinement on civil contempt, and cast a palpable chill over the political activities of New York City activists. In 2017, anti-pipeline activist Steve Martinez was subpoenaed to appear before a grand jury in North Dakota to testify about an injury law enforcement had caused to a young activist. The prosecution asked no questions at all about unlawful conduct or the relevant injury.

The government, and especially this administration, has shown unambiguously their hostility to political dissidents, and their willingness to treat certain political beliefs and associations as functionally criminal. In sum, there is a clear and uninterrupted history of the government misusing and abusing the grand jury apparatus. From COINTELPRO to the PATRIOT ACT, and the revelations of the scope and nature of the NSA's data collection on ordinary citizens, the history of government intrusion into activities that are not only constitutionally protected, but politically *valuable*, is historically consistent, and demonstrably true. There is no reasonable dispute that this kind of targeted retaliation occurs; it is in fact so

relevant to this particular witness that to fail to raise it as a possibility would be a dereliction of counsel's professional obligations.

Ms. Manning is not simply aware of surveillance, she is in fact, and as the government well knows, uniquely equipped to identify it. There is simply no doubt that she has been the subject of keen and intrusive observation efforts by the government. Her belief that this subpoena could be used to investigate constitutionally protected activity is consistent not only with the long history of grand jury abuse detailed above, but her own experience of government surveillance and disruption.

Furthermore, such intrusion, rather than being based on a reasonable belief that Ms. Manning is engaging in unlawful conduct, is likely a retaliatory move stemming from the government's publicly expressed frustration at her release. While the government may not have any good faith belief that she has knowledge of a federal crime, they may well be interested in inquiring into whether she has any knowledge of people, relationships, and strategies relative to political and activist communities. Relief from this subpoena is therefore justified, inasmuch as it has issued with the knowledge that it will chill political speech and association among Ms. Mannings community members and intrude upon the ability of this nation to maintain a free and open press.

Investigations or individual subpoenas that concern matters of journalism and political activities and associations, are subject to First Amendment limitations. Given that Ms. Manning is not possessed of any information not already disclosed during her trial that could be of use to any federal criminal investigation, any information she is in a position to give would likely touch on first amendment protected activities and associations. Such information is protected by the

first amendment so as to excuse her from answering questions related to those subjects. The case before Your Honor is highly suspect and should be put to the utmost judicial scrutiny.

C. THE SUBPOENA IMPERMISSIBLY SEEKS TO COMPEL TESTIMONY FOR AN IMPROPER PURPOSE, AND IS AN ABUSE OF THE GRAND JURY PROCESS

The grand jury satisfies an investigative function, specifically to investigate federal crimes. While this grand jury has presumably convened to investigate a possible federal offense, Given Ms. Manning's history, discussed *supra*, she reasonably fears that the reason she specifically has been summoned falls outside the recognized boundaries of the grand jury's legitimate investigative function.

Ms. Manning, having already given thorough and truthful testimony about the subjects that might be properly investigated by this grand jury, fears that this subpoena will instead be used to compel testimony about other subjects, including subjects unrelated to any federal crime. As detailed above, there is a distinct possibility that her testimony before this grand jury could be used to harass her, intimidate her or chill her political speech and associations.

Additionally, in light of the vitriol directed at her by arguably the most powerful human being on Earth, it is not unreasonable for her to fear that this subpoena may be motivated by the government's desire to find a way to manufacture a case against her, by coercing perjury or contempt, neither of which are forestalled by an immunity order. Because she has already given exhaustive testimony, it is entirely possible that efforts at repeated questioning are intended or designed to "coax [her] into the commission of perjury or contempt, [and] such conduct would be an abuse of the grand jury process." Bursey v. United States, 466 F.2d 1059, 1080 n.10 (9th Cir. 1972); United States v. Caputo, 633 F.Supp 1479 (E.D. Pa. 1986); United States v. Simone,

627 F. Supp. 1264 (D.N.J. 1986); People v. Tyler, 413 N.Y.S.2d 295 (1978). See also Gershman, The "Perjury Trap" 192 U. Pa. L. Rev. 624 (1981).

Furthermore, it is possible that this subpoena represents an effort on the part of the FBI or another investigative agency in collaboration with government prosecutors to compel by grand jury process testimony that would otherwise be inaccessible. United States v. Ryan, 455 F.2d 728 (9th Cir. 1972). In the years leading up to the issuance of this subpoena, the intelligence community expended enormous time, energy, and resources investigating unauthorized disclosures of government information, including but not limited to those in which Ms. Manning was involved in 2010. Evidence adduced at Ms. Manning's court martial was the source of some of this information. She is of the opinion that while her testimony was truthful and complete, it did not function to corroborate the narrative proposed by the government, or to serve the government's goals. Therefore, it would be in the interest of the government to elicit more statements from her, either to discredit her, or to extract from her a set of statements that are more in line with their own theory.

The FBI attempted unsuccessfully to speak with Ms. Manning in late 2010, while she was at Quantico, despite the fact that she was represented by counsel. As her military case is ongoing, and she remains represented, they are yet unable to access and question her. The US Attorney, however, may use his power to compel her to appear, and may thus gain access otherwise unavailable to the agencies. To acquire access in this manner and for this purpose would also be an improper use of subpoena power, but by no means would it represent a unique instance of such conduct. In re September 1971 Grand Jury (Mara v. United States), 454 F.2d 580, 585 (7th

Cir. 1971) (rev'd on other grounds by United States v Mara, 410 U.S. 19 (1973)), In re Sylvia Brown, No. 14-72-H-2 (W.D. Wash., May 17, 1972).

It is axiomatic that "the grand jury is not meant to be the private tool of the prosecutor." United States v. Fisher, 455 F.2d 1101, 1105 (2d Cir. 1972), United States v (Under Seal), 714 F2d 347, 349 (4th Cir 1983). Nor is it proper for the government to use its subpoena power to conduct "a general fishing expedition," for the prosecution or any other government office. In the event that the grand jury or its subpoena power is being used in any manner that exceeds it legitimate scope, the Court must excuse Ms. Manning's testimony. As the Court stated in United States v. Dionisio, 410 U.S. 1 (1973), "The Constitution could not tolerate the transformation of the grand jury into an instrument of oppression."

In any case, the prosecution knows or should know that Ms. Manning has no further information to disclose. They know, moreover, that Ms. Manning's previous testimony at her own court martial may undercut their agenda. This suggests then that their purpose in calling her before the grand jury is not to discover further and more helpful information (which she does not have). It suggests rather that they will attempt to elicit statements that could be construed as inconsistent with her prior statements. Doing so would enable them to undermine her credibility as a potential defense witness, while also creating the possibility of a criminal case against her for perjury. To do so with this intent would constitute an absolutely improper use of the grand jury, and the court must exercise its oversight to ensure such abuse is not allowed to occur under its supervision.

While there may be a legal presumption of regularity as to grand jury proceedings, this presumption disappears once evidence of abuse has been introduced, and the prosecution bears

the burden of demonstrating regularity. Mullaney v. Wilbur, 421 U.S. 684, 702 ns. 30 and 31 (1975). Given the secrecy in which grand juries are shrouded, and the extreme discretion granted the prosecution in the exercise of subpoena power, the burden of showing this regularity must lie with the prosecution. The only information available to Ms. Manning is that the most powerful actors in the federal government are greatly displeased at her release and have made efforts to undermine and harass her. Regardless of the general purpose of this grand jury, it is completely reasonable to harbor concerns about the purpose of this particular subpoena.

D. MS. MANNING BELIEVES THE SUBPOENA WAS PROPOUNDED ON THE BASIS OF UNLAWFUL ELECTRONIC SURVEILLANCE, SUCH AS WOULD CONSTITUTE "JUST CAUSE" FOR REFUSING TO TESTIFY

Attached hereto and made a part thereof, please find Chelsea Manning's declaration, setting forth with specificity facts tending to suggest that she and others have been subjected to unlawful electronic surveillance.

These facts set forth in the Manning declaration include phone numbers and email addresses that she has reason to believe were subject to surveillance, and the range of dates on which such surveillance may have occurred; various places that may have been subject to surveillance, and the names of the lessees/licensees of those premises.

There can be little doubt that local police, federal agencies, and possibly the military have been involved in surveilling and communicating about Ms. Manning, people with whom she is lawfully associated, and the entirely lawful activities in which they engage. Likewise, there is reason to believe that non-state actors may have enabled the state to circumvent legal constraints on electronic surveillance, by surveilling Ms. Manning, and then conveying their intelligence to state actors. Unfortunately, this is not unheard of. Such a thing happened, for example, during

the prosecution of the 230 people arrested at the inauguration on January 20, 2017, where individuals from the disingenuously named Project Veritas secretly taped a community meeting and conveyed the footage to prosecutors. As Ms. Manning has encountered at least one individual who appeared to tape her while attempting to goad her into conversations about unlawful uses of technology, she reasonably fears that this or something similar is happening to her.

The information provided by Ms. Manning in her declaration constitutes at the very least a colorable basis supporting her belief that she has been subject to unlawful electronic surveillance. Such surveillance violates the Fourth Amendment, as well as her statutory rights under 18 U.S.C. §§2515 and 3504. Such surveillance constitutes a complete defense to contempt, and should trigger an obligation of the part of the government to either affirm or deny that such surveillance occurred. 28 U.S.C. §1826(a) (stating that a witness may refuse to testify for "just cause.").

Also well-documented is a history of suspicious electronic activity and widespread surveillance of Ms. Manning, her friends, political associates, professional contacts, and technologist peers. For example, technologists at riseup.net and May First/People Link have been subject to surveillance, despite never having been charged with a crime. Technologists at Boston University's BUILDS space were summoned before at least one grand jury despite having no material information about federal offenses. It would be difficult to deny that a great deal of electronic surveillance has taken place and been directed at Ms. Manning. It is likely that at least some of it was relevant to the propounding of this subpoena. Ms. Manning is not in a position to know whether any of it occurred in the absence of a warrant or other legal authority.

Finally, after Ms. Manning gave thorough, accurate, and complete testimony about the matters presumably being investigated by this grand jury, she thereafter made it a policy not to speak about the substance of those matters. In preliminary discussions, the prosecution indicated that they had reason to believe that Ms. Manning may have made statements inconsistent with her prior testimony. It is incumbent upon the court to direct the government to disclose not only electronic surveillance of Ms. Manning, but whether they intercepted communications authored and sent by third parties, as there are no such statements by Ms. Manning herself that would be at variance with her previous testimony. See Manning Dec. at Para.14. The concern here is that the subpoena as a whole is the product of unlawful - and possibly misunderstood - electronic surveillance.

This showing creates a colorable claim of electronic surveillance and requires that the government review not only the evidence gathered by their own actors and actually in the possession of the US Attorney's Office, but canvass all other agencies that may have engaged in such surveillance. They must then either issue an unequivocal and specific denial that such surveillance took place, or they must affirm that it did, in which case an expanded hearing on the issue of possible taint to the propounding of the subpoena and questions must be held. The government's representation ought to be in a sworn writing, and must be "responsive, factual, unambiguous, and unequivocal." United States v. Alter, 482 F.2d 1016 (9th Cir. 1973) note 110, at 1027; United States v Apple, 915 F2d 899, 908 (4th Cir. 1990) (finding that where "there was no question that a state wiretap was involved ... a check of only federal agencies was not an adequate response."). The government's response must furthermore include an "explicit assurance indicating that all agencies providing information relevant to the inquiry were

canvassed." In re Quinn, 525 F.2d 222 (1st Cir. 1975), United States v. Apple, *supra*, ("The government's denial ... is usually based on inquiries to the relevant government agencies ... [t]he predicate for acceptance of the government's denial is that the government official making the denial have sufficient information upon which a reasonable response can be based.").

As it is well-settled that electronic surveillance is relevant to a grand jury proceeding only where it is unlawful, and directly connected to subpoena or questions, it is not at this time necessary to request such a hearing. The Court, now, must hold the government to its minimal responsibility, simply to determine whether, and unambiguously affirm or deny, that there has been such surveillance.

It is by no means settled in this circuit that a witness must do more than make a mere assertion in order to trigger the government's obligations. In re Grand Jury Subpoena (T-112), 597 F3d 189, 200 (4th Cir. 2010), finding that the government satisfied its obligation by denying that *any* electronic surveillance was conducted; Wikimedia Found. v Natl. Sec. Agency/Cent. Sec. Serv., 335 F Supp 3d 772, 786 (D.Md. 2018) (affirming that a claim of unlawful electronic surveillance automatically triggers an obligation to render a simple affirmation or denial by the government). Nevertheless, the facts recited in the annexed declaration of Ms. Manning, even by the most stringent standard, set forth a colorable claim sufficient to require that the government unequivocally either affirm or deny that such surveillance took place. Critically, because a witness is not in position to know the details of a governmental investigation, the claim need only be "colorable," and not "particularized." The existence of unlawful electronic surveillance constitutes "just cause" excusing the appearance of a witness before a grand jury. Gelbard v. U.S., 408 U.S. 41, 51, 92 (1972), see 28 U.S.C. §1826(a), which contemplates "just cause" for

refusal to testify, as well as 18 U.S.C. §2515, mandating that "no part of the contents of [unlawfully intercepted] communication and no evidence derived therefrom may be received in evidence... before any ... grand jury."

Furthermore the evidentiary prohibitions of 18 U.S.C. §2515 are not only intended to protect individuals' privacy, but to ensure that the court itself does not become a party to illegal conduct on the part of the government. Because of the heightened secrecy of the grand jury, the need for the court to forestall even the appearance of impropriety becomes yet more acute. Thus, upon a colorable claim, it is absolutely incumbent upon the court to ensure that the government satisfies its obligation to either affirm or deny the allegations, in a sufficient form, and to make all necessary disclosures. United States v. James, In re Quinn, 525 F.2d 222, 225 (1st Cir. 1975). Failure to do so will constitute a fatal defect in procedure.

Judge Learned Hand stated in United States v. Coplon, "few weapons in the arsenal of freedom are more useful than the power to compel a government to disclose the evidence on which it seeks to forfeit the liberty of its citizens." Id. 185 F.2d 629, 638 (2d Cir. 1950)., cert. denied, 342 U.S. 920 (1952). Nowhere is this so true as it is in the context of the grand jury, shrouded as it is in secrecy. If in fact Ms. Manning has been subject to the practices that Justice Holmes pointedly described as "dirty business" - and there is little doubt that she has been - the government must disclose that fact, and the Court must itself assiduously avoid complicity by insisting upon that prompt and full disclosure. In the event that the prosecution is unwilling to make the necessary disclosures, they must withdraw the subpoena, or the court must quash it.

MOTION FOR DISCLOSURE OF MINISTERIAL DOCUMENTS

Federal Rule of Criminal Procedure 6(e) makes quite clear that information about what occurs in the presence of the grand jury is protected against public disclosure, absent a compelling need. Information, however, regarding the empanelment of the grand jury, its term, and its mechanical operation, is beyond the scope of Rule 6(e)'s protections. In re Special Grand Jury(for Anchorage, Alaska), 674 F.2d 778 (9th, Cir. 1982); United States v. Alter, 482 F.2d 1016, 1028-29 (9th Cir. 1973) ("Alter was entitled to know the content of the court's charge to the grand jury. The proceedings before the grand jury are secret, but the ground rules by which the grand jury conducts those proceedings are not.") See, Judicial Conference of the United States, Administrative Office of the U.S. Courts, Handbook for Federal Grand Jurors, HB 101 Rev 4/12.

Disclosure of ministerial information does not violate the freedom and integrity of the deliberative process of the grand jurors. Furthermore, American courts have long recognized a general right of access to court records." In re Grand Jury Investigation, 903 F.2d 180, 182 (3rd Cir. 1990)(citing Nixon v. Warner Communications, Inc., 435 U.S. 589, 8 S.Ct. 1306, 55 L.Ed.2d 570 (1978)); Washington v Bruraker, 3:02-CV-00106, 2015 WL 6673177, at *1 (WD Va Mar. 29, 2015) (reiterating that the common law and the First Amendment presume a right to inspect and copy judicial records and documents); Reporters Comm. for Freedom of Press to Unseal Criminal Prosecution of Assange, 1:18-MC-37 (LMB/JFA), 2019 WL 366869, at 2 (ED Va Jan. 30, 2019), (confirming that "the public and the press share a qualified right to access civil and criminal proceedings and the judicial records filed therein.")

Orders reflecting 1) the beginning or extension of the terms of a grand jury, 2) the instructions even a grand jury upon empanelment, and 3) records setting forth the method by which the grand jury was empaneled (including the manual of forms, procedures, and checklists uses to compile the master and qualified jury wheels) are to be disclosed upon request for the reason that such records 'would not reveal the substance or essence of the grand jury proceedings," "pose no security threat to past, current, or prospective jurors," and "do not infringe upon the freedom and integrity of the deliberative process." United States v. Diaz, 236 F.R.D. 470, 477-478 (N.D. California 2006).

The ministerial records of the grand jury requested by Ms. Manning and her counsel do not in any manner violate the principle of grand jury secrecy.

Ms. Manning here requests all such ministerial information with respect to the following categories of documents be disclosed. To wit:

1) documents reflecting the commencement and termination dates of the current grand jury,

2) any orders extending the term of the current grand jury,

3) all written instructions given to the current grand jury at the time of empaneling,

4) attendance roles of each session of the current grand jury with names of the grand jurors redacted, and

5) the oath of the current grand jury, and 6) records setting forth the method by which the grand jury was empaneled (including the manual of forms, procedures, and checklists used to compile the master and qualified jury wheels but excluding any names of individuals summoned for the grand jury).

Should the Court decline to sign the attached order, counsel respectfully advises the Court that such a discovery denial is appealable by way of mandamus, prior to any contempt proceedings, and requests that all further proceedings be stayed pending interlocutory challenge.

MOTION TO INSTRUCT THE GRAND JURY

There is no question but that the grand jury is an appendage to the Court, and is not a "mere tool of the prosecutor." In re Grand Jury Subpoena to Cent. States, Se. & Sw. Areas Pension Fund, Aug. Term, 1963, 225 F. Supp. 923, 925 (N.D. Ill. 1964). Although a grand jury is a hybrid proceeding, because the possibility of civil contempt looms over Ms. Manning, certain precautions must be taken to ensure that the grand jurors understand their power and purpose. It is critical that they are made aware of the Constitutional and testimonial privileges enjoyed by the witness, in particular (a) the power and authority of the grand jury to question witnesses and hear evidence as emanating from the court;(b) the nature and extent of this power; (c) the role of the United States Attorney as an assistant to the grand jury; (d) a witness' right to assert the Fifth Amendment prior to the grant of immunity, the lack of counsel in the grand jury room, and the legal effect of an immunity grant. United States v. Alter, 482 F.2d 1016, 1029 (9th Cir. 1973). Furthermore, the grand jurors must be made aware that they are not to draw adverse inferences from the invocation of those rights and privileges. Finally, they ought to be advised of their own power to decline to continue to question the witness.

Annexed hereto, please find a set of proposed supplementary grand jury instructions. It is beyond question that the Court has the authority to instruct the grand jury as to their powers, and as to the rights of the witness. Should the Court decline to do so, and should the existing

instructions to the grand jury be found inadequate according to established law, counsel respectfully advises the Court that the inadequate instruction will be challenged.

MOTION TO DISCLOSE PRIOR STATEMENTS

When an individual is asked the same question repeatedly, there is "always the hovering possibility that inconsistency in his answer may expose him to prosecution for perjury." Bursey v. United States, 466 F.2d 1059 (9th Cir. 1972), Matter of Ferris, 512 F.Supp 91 (D. Nev. 1981). Courts have therefore ruled that transcripts of previous testimony, including secret grand jury testimony, and sometimes even 302 material produced in interviews with the FBI, should be produced even to an immunized to a witness at least 72 hours prior to their scheduled appearance. In re Sealed Motion, 880 F2d 1367, 1370-71 (D.C. Cir. 1989), (holding that "because the right to secrecy in grand jury proceedings belongs to the grand jury witness, a grand jury witness ... is entitled to a transcript of his own testimony absent a clear showing by the government that other interests outweigh the witness' right to such transcript"); In re Grand Jury, 490 F3d 978, 986 (D.C. Cir. 2007) (affirming that "federal courts have the authority under Rule 6(e)(3)(E)(i) to order disclosure to grand jury witnesses of their own transcripts.") See *also* In re: Russo, 52 F.R.D. 564 (C.D. Cal 1971); Gebhard v. United States, 422 F.2d 281 (9th Cir. 1970), United States v. Nicoletti, 310 F.2d 359 (7th Cir. 1962). Since it is unlawful for a prosecutor to ask a witness questions with the purpose of enticing them into committing perjury, providing such prior statements may go far in guarding against this possible misuse of the grand jury.

CONCLUSION

Based upon the foregoing facts, and the application of relevant law thereto, Ms. Manning brings this motion to quash on the basis that the subpoena represents an abuse of grand jury

process, may intrude upon First and Fifth Amendment protections and privileges, and if applicable, on the basis that the subpoena was propounded on the basis of unlawful electronic surveillance in violation of the Fourth, and possible Sixth Amendments, and related statutory prohibitions against warrantless electronic surveillance. Ms. Manning furthermore proffers her declaration and other evidence in support of her motion to quash on the basis of unlawful electronic surveillance, requiring here, at the very least, a thorough canvass of relevant agencies to determine whether there has been any electronic surveillance, lawful or otherwise; affirmation or denial on the part of the government, and any relevant disclosures; and if necessary, an expanded hearing on the issue.

Ms. Manning furthermore demands production of all ministerial documents related to this grand jury, suggests a set of supplemental grand jury instructions, and requests disclosure of any prior statements she has made. In all events, Ms. Manning, through counsel, requests a full stay of all proceedings until the above questions are fully resolved through any necessary litigation, including , where permissible, collateral appeals and extraordinary writs.

Respectfully Submitted,
By Counsel

Dated: March 1, 2019

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	**UNDER SEAL**
	)	(Pursuant to Local Criminal Rule 49 and
	)	Fed. R. Crim. P. 6(e))
GRAND JURY CASE NO. 10-GJ-3793	)	
	)	Case No. 1:19-DM-3
	)	
	)	GRAND JURY NO. 18-4
	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO
CHELSEA MANNING'S MOTION TO QUASH GRAND JURY SUBPOENA

A grand jury of the Eastern District of Virginia has lawfully subpoenaed Chelsea Manning to testify in connection with an ongoing criminal investigation. The Court has ordered Manning to testify in front of the grand jury. The Court and a convening authority within the Department of the Army have also granted Manning full use and derivative use immunity to ensure that her testimony cannot be used against her. After a one-month postponement at her request, Manning has been directed to appear in front of the grand jury on March 5, 2019. Four days before her scheduled appearance, she filed the pending motion to quash the subpoena, speculating that the questioning will violate her constitutional, common-law, and statutory rights.

The motion should be denied. As a general matter, it is premature. The nature of Manning's claims requires that she hear the questioning before determining whether it violates her rights. Until then, she can rely only on conjecture, which is an inadequate basis for a motion to quash. In addition to being premature, Manning's claims fail on their merits. The subpoena was lawfully issued in the normal course of the grand jury proceedings. Manning was subpoenaed because her testimony is highly relevant to an ongoing criminal investigation. Like

any other citizen, Manning must appear before the grand jury as scheduled, and she must testify fully and truthfully as this Court has ordered her to do.

BACKGROUND

Manning is a former all-source intelligence analyst in the United States Army who may remain subject to military jurisdiction, despite her dishonorable discharge, because of an ongoing appeal relating to the following. In the 2009 to 2010 timeframe, Manning illegally leaked hundreds of thousands of classified documents of the United States Government. She provided the classified documents to one or more agents of WikiLeaks for public disclosure on its website. Manning was arrested for these crimes in May 2010. She was convicted of Espionage Act and other related offenses in a military court-martial. In 2013, Manning was sentenced to 35 years of imprisonment. In January 2017, however, President Barack Obama commuted Manning's sentence so that she would be released in May 2017, after serving approximately 7 years in prison.

In January 2019, Manning was served through counsel with a subpoena to testify on February 5 before a grand jury empaneled in the Eastern District of Virginia. Manning has been further ordered to testify in front of the grand jury by this Court and a general court-martial convening authority.[1] *See* Ex. A; Ex. B. In the compulsion orders, both authorities have granted her full use and derivative use immunity. *See* Ex. A; Ex. B.

At the request of Manning's counsel, the original appearance date was moved back approximately one month. Manning is now scheduled to appear in front of the grand jury on

[1] The Court's original immunity order dated January 22, 2019, erroneously referenced "Grand Jury 19-1" in the caption. On February 25, 2019, the Court signed an identical immunity order that simply corrected the caption to reference "Grand Jury 18-4."

March 5. Manning filed the pending Motion to Quash on March 1, four days before her scheduled appearance.

DISCUSSION

The Court "may quash or modify [a] subpoena if compliance would be unreasonable or oppressive." Fed. R. Crim. P. 17(c). While the Court oversees that the grand jury uses its powers for legitimate purposes, the Court "should not intervene in the grand jury process absent a compelling reason." *United States v. (Under Seal)*, 714 F.2d 347, 350 (4th Cir. 1983). "The investigative power of the grand jury is necessarily broad if its public responsibility is to be adequately discharged." *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972). As the Fourth Circuit has explained, "in the context of a grand jury subpoena, the longstanding principle that the public has a right to each person's evidence is particularly strong." *In re Grand Jury Subpoena*, 646 F.3d 159, 164 (4th Cir. 2011) (quoting *In re Grand Jury Proceedings #5 Empanelled Jan. 28, 2004*, 401 F.3d 247, 250 (4th Cir. 2005)). "[T]he grand jury's authority to subpoena witnesses is not only historic, but essential to its task." *Branzburg*, 408 U.S. at 688.

A party faces a heavy burden in moving to quash a grand jury subpoena. "[A] grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance." *United States v. R. Enters., Inc.*, 498 U.S. 292, 301 (1991). A "presumption of regularity" attaches to the grand jury's proceedings, including its issuance of subpoenas. *See Grand Jury Subpoena*, 646 F.3d at 164. To prevail on a motion to quash, the subpoena recipient "bears the burden of rebutting th[at] 'presumption of regularity.'" *Id.* For the reasons explained below, Manning has failed to carry that burden.

I. The Grand Jury Subpoena Does Not Infringe on Manning's Fifth Amendment Rights

The Fifth Amendment right against self-incrimination applies to grand jury proceedings. *See Kastigar v. United States*, 406 U.S. 441, 444 (1972). Federal law, however, allows district courts to immunize witnesses and compel them to testify before a grand jury. *See* 18 U.S.C. § 6003(a). Under those circumstances, the witness's testimony cannot be used, or derivatively used, against the witness "in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order." *Id.* § 6002. In the military courts, the Rules for Court-Martial (R.C.M.) likewise allow a general court-martial convening authority to grant such use and derivative use immunity. *See* Manual for Courts-Martial, United States, R.C.M. 704 (2016 ed.) (Ex. C.)

It is well established that, where such immunity has been conferred, the government may compel the immunized witness to testify in front of the grand jury, even if her testimony would otherwise incriminate her. *See Kastigar*, 406 U.S. at 462. As the Supreme Court has explained, "the immunity . . . leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the Fifth Amendment privilege." *Id.* "The immunity therefore is coextensive with the privilege and suffices to supplant it." *Id.*

In light of this precedent, Manning's Fifth Amendment claim fails. Both the Court and a general court-martial convening authority have issued orders compelling her to testify before the grand jury. *See* Ex. A; Ex. B. Both orders expressly grant Manning use and derivative use immunity in connection with her testimony. *See* Ex. A; Ex. B. Under *Kastigar*, those orders eliminate any Fifth Amendment concerns.

Manning's primary argument is that she is still subject to military criminal jurisdiction, where she claims that her grand jury testimony could be used against her. *See* Mot. to Quash 7-10 (Mar. 1, 2019). But the Army's immunity order definitively resolves that issue. It explicitly extends the immunity to court-martial proceedings: "no testimony or other information given by you pursuant to this order or any information directly or indirectly derived from such testimony or other information shall be used against you in a criminal case, *to include any courts-martial*, except as permitted by 18 U.S.C. § 6002." Ex. B (emphasis added). There is no question that Manning's grand jury testimony cannot be used against her in a court-martial proceeding. Accordingly, the alleged threat of military prosecution does not present Fifth Amendment concerns.

The case relied on by Manning, *United States v. Villines*, 13 M.J. 46 (C.M.A. 1982), is distinguishable on that basis. In that case, unlike here, the court refused to immunize the potential witness. *See id.* at 50. In fact, a primary issue on appeal was whether the court erred in refusing to immunize the potential witness so he could testify without Fifth Amendment concerns. *See id.* at 54. Manning, however, has been immunized so she can testify. *Villines* is therefore inapplicable.

Manning also urges (at 3) the Court to quash the subpoena based on "the threat of foreign prosecution" that is "unaffected by an immunity order." But the Supreme Court squarely rejected this argument in *United States v. Balsys*, 524 U.S. 666 (1998). There, the defendant was administratively subpoenaed to testify "about his wartime activities between 1940 and 1944." *Id.* at 669. He refused "to answer such questions, claiming the Fifth Amendment privilege against self-incrimination, based on his fear of prosecution by a foreign nation." *Id.* In ruling that the defendant had to testify, the Supreme Court held that "concern with foreign prosecution

is beyond the scope of the Self-Incrimination Clause." *Id.* Manning's concern about potential foreign prosecution, therefore, is no defense to her obligation to comply with the grand jury subpoena. *See, e.g.*, *In re Grand Jury Proceedings of the Special April 2002 Grand Jury*, 347 F.3d 197, 208 (7th Cir. 2003) (holding that "any Fifth Amendment claim based on fear of prosecution by a foreign government would provide no defense to contempt in a grand jury proceeding"); *In re Grand Jury Investigation John Doe*, 542 F. Supp. 2d 467, 469 (E.D. Va. 2008) ("The Fourth Circuit has also held that a witness is required to testify under a grant of immunity in the United States even if that witness's testimony would result in a possible criminal conviction in a foreign country.").

In addition to being meritless, Manning's Fifth Amendment claim is premature. A person subpoenaed to testify before the grand jury may not claim the Fifth Amendment "as a blanket defense." *In re Grand Jury Subpoena*, 739 F.2d 1354, 1359 (8th Cir. 1984). "Rather, the witness must make specific objections in response to specific questions." *Id.* Because Manning has not yet appeared before the grand jury, the Fifth Amendment provides no grounds for quashing the subpoena.

II. Manning's First Amendment Claims Are Premature and Lack Merit

Even though Manning has not yet appeared before the grand jury, she asserts that the grand jury questioning will infringe upon her First Amendment rights. Specifically, Manning speculates that she may be questioned about her prior disclosures of classified information, for which she was convicted. *See* Mot. to Quash 9-10; Manning Aff. ¶ 4 (Mar. 1, 2019). Manning claims "that questioning . . . will focus on activities protected by the First Amendment such as news gathering." Mot. to Quash 5. According to Manning, such questioning would "disrupt the integrity of the journalistic process by exposing journalists to a kind of accessorial liability for

leaks attributable to independently-acting journalist sources." *Id.* at 12. In addition, Manning speculates that the grand jury may ask her questions about her political associations and activities. *See id.* at 12-13. These claims are wholly without merit.

As a threshold matter, Manning's arguments are premature, and the Court should deny the motion on that basis alone. As Justice Powell explained in *Branzburg v. Hayes*, district courts should address First Amendment concerns only after the witness appears and is subject to "improper or prejudicial questioning." 408 U.S 665, 710 n.* (1972) (Powell, J., concurring). The Fourth Circuit has adopted Justice Powell's concurrence, reaffirming "that witnesses cannot litigate the state's authority to subpoena them 'at the threshold'" based on First Amendment concerns. *In re Grand Jury 87-3 Subpoena Duces Tecum*, 955 F.2d 229, 233 (4th Cir. 1992). Manning must therefore appear before the grand jury and subject herself to questioning before challenging it on First Amendment grounds. The time for her to raise a First Amendment defense is only in response to a particular question.[2] Until that time, her First Amendment claims are premature. *See In re Grand Jury Investigation*, 431 F. Supp. 2d 584, 592 (E.D. Va. 2006) (holding that an assertion of marital privilege was "premature" and that the witness "must appear and testify, but may assert the privilege in response to specific questions").

Moreover, even assuming the grand jury were to inquire about Manning's prior disclosures of classified information, any motion to quash such inquiry would fail on its merits. Questions about those disclosures would not affect her First Amendment rights. Manning was

[2] If Manning asserts a First Amendment challenge to a particular question, the Court should reject her invitation (at 12) to adopt the "substantial relationship" test from *Bursey v. United States*, 466 F.2d 1059 (9th Cir. 1972). The Fourth Circuit previously recognized that "the Supreme Court has twice declined to apply the substantial relationship test in cases involving subpoenas challenged on First Amendment grounds." *Grand Jury 87-3 Subpoena Duces Tecum*, 955 F.2d at 232. Instead, the Fourth Circuit has adopted a simple balancing test that does not place "any special burden on the government." *Id.* at 234.

an intelligence analyst in the U.S. Army—a government insider who signed a nondisclosure agreement—when she disclosed the classified information. As such, the law is clear that Manning had no First Amendment protections in disclosing the information. *See Snepp v. United States*, 444 U.S. 507, 509 n.3 (1980); *Wilson v. CIA*, 586 F.3d 171, 183-84 (2d Cir. 2009); *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003); *United States v. Morison*, 844 F.2d 1057, 1069-70 (4th Cir. 1988); *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1370 (4th Cir. 1975); *United States v. Rosen*, 445 F. Supp. 2d 602, 635-36 (E.D. Va. 2006). Her successful prosecution at the court-martial evidences that she had no First Amendment protections. Quite simply, Manning broke the law in disclosing classified information, and therefore, the grand jury properly could inquire about that offense, just as it properly could inquire about any other potential offense that Manning committed or witnessed.

Similarly, Manning's speculation about the need for her to protect the concerns of journalists would not preclude questioning about her illegal disclosures. It is unclear how any questioning on this topic alone, within the confines of the secrecy of the grand jury proceeding, would "disrupt the integrity of the journalistic process." Mot. to Quash 12. Manning fails to explain how it would. *See Branzburg*, 408 U.S. at 693-94 (emphasizing that the asserted "inhibiting effect" that subpoenas to reporters would have in recruiting sources was "to a great extent speculative"). Regardless, Manning does not have standing to raise the First Amendment rights of journalists.

Even if Manning did have standing, her argument would fail. Reporters enjoy no special solicitude vis-à-vis the grand jury. *See id.* at 690; *United States v. Sterling*, 724 F.3d 482, 499, 505 (4th Cir. 2013). The First Amendment does not "relieve a newspaper reporter of the obligation shared by all citizens to respond to a grand jury subpoena and answer questions

relevant to a criminal investigation, even though the reporter might be required to reveal a confidential source." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991). It is "the duty of a citizen, whether reporter or informer, to respond to [a] grand jury subpoena and answer relevant questions put to him." *Branzburg*, 408 U.S at 697; *see also Citizens United v. FEC*, 558 U.S. 310, 352 (2010) ("We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers."); *Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937, 946 (7th Cir. 2015) (recognizing that "the First Amendment provides no special solicitude for members of the press"); *In re Greensboro News Co.*, 727 F.2d 1320, 1322 (4th Cir. 1984) (recognizing that "the rights of the news media . . . are co-extensive with and do not exceed those rights of members of the public in general").

Nor is the topic of newsgathering immune from criminal investigation, as Manning's argument suggests (at 5). It is well settled that journalists cannot break the law to obtain information. *See, e.g.*, *Bartnicki v. Vopper*, 532 U.S. 514, 532 n.19 (2001) ("It would be frivolous to assert—and no one does in these cases—that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news." (quoting *Branzburg*, 408 U.S. at 691)); *Dietemann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971) ("The First Amendment has never been construed to accord newsmen immunity from torts or crimes committed during the course of newsgathering. The First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another's home or office."). Criminal acts committed by citizens and journalists alike in obtaining information is a proper subject of inquiry by a grand

jury. For all of these reasons, even assuming that Manning were asked about her disclosure of classified information, the First Amendment would not preclude the inquiry.

In the end, the government is confident that its questioning will pose no legitimate First Amendment concerns. As will become clear during the questioning, Manning's testimony is highly relevant to an ongoing criminal investigation. The questioning will be properly tailored to that investigation. Under the Supreme Court's and Fourth Circuit's precedent, it will not violate Manning's First Amendment rights.

III. The Grand Jury Subpoena Is Not Improper or Abusive

In addition to her constitutional claims, Manning alleges that the grand jury subpoena was issued for improper purposes. Throughout her papers, she offers a series of theories maligning the government's motives: that the purpose of the subpoena is to harass her, to retaliate against her, to set up a perjury trap for her, or to obtain otherwise "inaccessible" information. *See* Mot. to Quash 17-20. She has no evidence, however, of any foul play at the grand jury. Her arguments are pure conjecture.

Manning's allegations fail to rebut the presumption of regularity that attaches to grand jury subpoenas. "[T]he law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority." *United States v. R. Enters., Inc.*, 498 U.S. 292, 300-01 (1991). The "recipient who seeks to avoid compliance" bears the burden of showing otherwise, *id.* at 301, and has the "initial task of demonstrating . . . some valid objection to compliance," *In re Grand Jury Matter (Special Grand Jury Narcotics December Term, 1988, Motion to Quash Subpoena)*, 926 F.2d 348, 350 (4th Cir. 1991) (quoting *R. Enters.*, 498 U.S. at 305 (Stevens, J., concurring in part and concurring in the judgment)). It is well established that mere conjecture and speculation about the government's motives do not satisfy that burden. *See*

United States v. Leung, 40 F.3d 577, 582 (2d Cir. 1994) (holding that "speculations about possible irregularities in the grand jury investigation were insufficient to overcome the presumption that this investigation was for a proper purpose"); *United States v. Bellomo*, No. 02-CR-140 (ILG), 2002 WL 1267996, at *2 (E.D.N.Y. Apr. 10, 2002) (rejecting a motion to quash a subpoena because there was no "particularized proof that the government acted arbitrarily and for an improper purpose"); *United States v. Bin Laden*, 116 F. Supp. 2d 489, 493 (S.D.N.Y. 2000) (recognizing that "speculations about the Government's motives are insufficient to overcome the presumption of regularity"); *United States v. McVeigh*, 896 F. Supp. 1549, 1557-58 (W.D. Okla. 1995) ("Such rank speculation or supposition is insufficient to overcome the presumption of regularity that attaches to the grand jury's acts or to raise a substantial factual issue as to the purpose for which the subpoena and directive were issued."). Since that is all she offers, Manning has failed to carry her burden.

On the contrary, the circumstances reflect that the issuance of the subpoena to Manning was for a legitimate purpose. Manning was validly convicted of high-profile unauthorized disclosure offenses after she committed one of the largest leaks of classified information in American history. Even assuming that Manning is correct that she will be asked about those offenses, such activity would fall squarely within the purview of a legitimate grand jury investigation.

The fact that the Department of Justice requested immunity for Manning further reinforces that the subpoena was for a legitimate purpose. The decision to grant a witness immunity is not taken lightly. Under federal law, the Department must request use and derivative use immunity before the court can grant it. *See* 18 U.S.C. § 6003(a). Such an application must be approved by statutorily designated leadership within the Department, and it

can be approved only when "the testimony or other information from such individual *may be necessary to the public interest*." *Id.* § 6003(b) (emphasis added). All of those steps were followed here. In fact, the Court's immunity order reflects that it was "satisfied that the testimony or other information from [Manning] may be necessary in the public interest." Ex. A. The solemn decision to provide Manning with immunity reflects the importance of her testimony to an ongoing investigation.

The government, moreover, offered to meet Manning in advance of the grand jury to ask the questions and obtain answers in the presence of her attorneys. This would have given Manning insight into the proper purpose of the subpoena. While Manning had the right to decline that voluntary meeting, her effort to quash the subpoena on the basis of conjectured improprieties and ulterior motives is nothing more than an attempt to unnecessarily "saddle [the] grand jury with minitrials and preliminary showings [that] would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws." *R. Enters.*, 498 U.S. at 298-99 (quoting *United States v. Dionisio*, 410 U.S. 1, 17 (1973)).

It is worth noting that Manning's primary arguments are premised on a false and misleading factual premise. In her papers, Manning suggests that she "has already given exhaustive testimony" at her court-martial proceeding. Mot. to Quash 17. Manning further represents that, "[a]t that time, the military, in consultation with the Department of Justice, cross-examined her and elicited testimony from her." *Id.* at 3.

These representations do not withstand scrutiny. During her court-martial, Manning pleaded guilty to some of the charges. In connection with her guilty plea, the military judge conducted a "providence inquiry"—"a more elaborate relative of the Rule 11 proceeding under

the Federal Rules of Criminal Procedure" that serves to "ensure that a plea is voluntary and that there is a factual basis for the plea." *Partington v. Houck*, 723 F.3d 280, 282-83 (D.C. Cir. 2013). The Rules for Courts-Marital provided that "[t]he military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is a factual basis for the plea." Manual for Courts-Martial, United States, R.C.M. 910(e) (2012 ed.) (Ex. D). As the notes to the rule explain, "[t]he accused need not describe from personal recollection all the circumstances necessary to establish a factual basis for the plea. Nevertheless the accused must be convinced of, and able to describe all the facts necessary to establish guilt." *Id.*

The government has attached the colloquy from Manning's providence inquiry. *See* Ex. E. As it reflects, Manning first read a voluntary statement providing a factual basis for her plea. *See* Ex. E, at 6739-85. That statement was also entered as an exhibit in the record. *See* Ex. F. Then, the court questioned her specifically about the factual basis for certain elements to which she was pleading guilty. *See id.* Ex. E, at 6786-916.

Thus, Manning's representation that she gave exhaustive testimony and was "cross-examined" is misleading. Manning chose what facts to admit to support her guilty pleas. And the military court engaged in a limited inquiry to ensure the factual basis for the pleas. There is no evidence that the Department of Justice was involved in the military court's questioning of her.

IV. Manning Has Failed to Demonstrate that She May Have Been Subjected to Unlawful Electronic Surveillance

Manning claims that she may have been subjected to unlawful electronic surveillance. While Manning recognizes that it is premature to request a hearing to determine whether it

affected the grand jury subpoena or any questioning, she insists that the government must affirm or deny that such surveillance occurred. *See* Mot. to Quash 21, 23. As explained below, Manning's claim is meritless.

Upon a claim of a party aggrieved by unlawful electronic surveillance under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 ("Title III"), the government is required by 18 U.S.C. § 3504(a)(1) to affirm or deny the occurrence of the alleged unlawful act. Specifically, the statute provides as follows:

> (a) In any trial, hearing, or other proceeding in or before any court [or] grand jury . . . of the United States—
>
> (1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act.

18 U.S.C. § 3504(a)(1). An "unlawful act" includes the use of electronic surveillance—as defined in Title III—in violation of the Constitution or the laws of the United States. *Id.* § 3504(b).

Under this statute, Manning must satisfy a two-part test. First, to establish standing, she must make a "claim" that there actually was electronic surveillance and that she was a party "aggrieved" by its use. *See United States v. Apple*, 915 F.2d 899, 905 (4th Cir. 1990). Second, she must show a plausible causal link between the electronic surveillance she alleges to have occurred and the evidence that the government intends to use against her in the grand jury. *See In re Grand Jury Investigation, 2003R01576*, 437 F.3d 855, 858 (9th Cir. 2006); *United States v. Robins,* 978 F.2d 881, 887 (5th Cir. 1992). Only if she satisfies both conditions may the government be required to affirm or deny any surveillance. Manning has failed to satisfy either.

A. Manning Does Not Have Standing.

As the Fourth Circuit has explained, "a party claiming to be the victim of illegal electronic surveillance must first demonstrate that his interests were affected before the government's obligation to affirm or deny is triggered." *Apple*, 915 F.2d at 905. "This 'standing' requirement is met if a definite 'claim' is made by an 'aggrieved party.'" *Id.* Manning has failed to make a definite claim or demonstrate that she is an aggrieved party.

1. Manning has not made a sufficient "claim" under § 3504.

To satisfy the "claim" requirement under § 3504, the Fourth Circuit has held that a party must make "a positive statement that illegal surveillance has taken place." *Id.* Equivocal statements are insufficient. The "mere allegation that such surveillance 'may' have occurred does not warrant any response from the government." *In re Grand Jury Proceedings*, 831 F.2d 228, 230 (11th Cir. 1987). Similarly, "a motion alleging only a 'suspicion' of such surveillance, or that the movant has 'reason to believe' that someone has eavesdropped on his conversations, does not constitute a positive representation giving rise to the government's obligation to respond." *Robins*, 978 F.2d at 886.

Manning never positively states in her papers that illegal electronic surveillance took place. Instead, Manning makes only equivocal assertions. She consistently qualifies her statements with language that she "believed" or had "reason to believe" that illegal surveillance occurred. *See, e.g.*, Mot. to Quash 5 (asserting Manning "has reason to believe" that she was subject to unlawful electronic surveillance); *id.* at 20 (asserting that the "facts tend[] to suggest that she . . . ha[s] been subjected to unlawful electronic surveillance"); *id.* (asserting a "reason to believe" she was subject to electronic surveillance); *id.* at 21 ("It would be difficult to deny that a great deal of electronic surveillance has taken place and been directed at Ms. Manning.");

Manning Aff. ¶¶ 16-17 (stating she "believ[ed]" and had "reason to believe" unlawful electronic surveillance had taken place). In the absence of a positive statement that unlawful electronic surveillance actually occurred, Manning's motion under § 3504 must be denied.

2. Manning has not sufficiently alleged that she was an aggrieved party.

The standard for establishing that she is an aggrieved party is even "more demanding" than the requirements for making a claim. *In re Grand Jury Investigation*, 431 F. Supp. 2d 584, 590 (E.D. Va. 2006). To satisfy this requirement, Manning must "make a prima facie showing that [s]he was 'aggrieved' by the surveillance; that is, that [s]he was a party to an intercepted communication, that the government's efforts were directed at [her], or that the intercepted communications took place on [her] premises." *Apple*, 915 F.2d at 905. "This critical showing may not be based on mere suspicion; it must have at least a 'colorable basis.'" *Id.*

Manning's allegations fall decidedly short of satisfying this "demanding standard." *Grand Jury Investigation*, 431 F. Supp. 2d at 591 n.14. Her allegations, at most, suggest that she was subjected to *physical* surveillance (i.e., the alleged van outside of her house and the alleged men on the Amtrak). None of the allegations provides a colorable basis that the government was intercepting her communications. In that regard, Manning has not offered anything more than "mere suspicion" to suggest that she was subjected to illegal electronic surveillance.

The Fourth Circuit's decision in *United States v. Apple* demonstrates how far short Manning's allegations fall. There, a defendant stated that he called a third party whose phone was tapped. *See Apple*, 915 F.2d at 906. The defendant specified where he called the third party—in Fluvanna County, Virginia. *See id.* The defendant approximated when he called the third party—in May, June, or July 1985. *See id.* And the defendant stated that he "spoke 'regularly' on the telephone" with the third party. *Id.* The Fourth Circuit held that this showing

was nevertheless insufficient to establish that the defendant was an aggrieved party because the defendant "never averred that he completed telephone calls to the number known to have been tapped during the period that surveillance took place." *Id.* at 907. The defendant's "failure to aver that he was involved in telephone conversations on the tapped line [was] . . . fatal to his claim." *Id.*

Manning's allegations are less compelling than the *Apple* defendant's claim. Unlike the *Apple* defendant, Manning cannot clarify when, where, and on what medium her communications were allegedly intercepted. Whereas the *Apple* defendant specified that the intercepts involved telephone communications, Manning speculates that she was intercepted on two cell phones and an email address. *See* Manning Aff. ¶ 18. Whereas the *Apple* defendant pinpointed the area in which the wiretap occurred, Manning claims that she thought she was intercepted in New York, Maryland, and San Francisco. *See id.* Whereas the *Apple* defendant specified that the intercepts occurred during a three-month timeframe, Manning broadly states that the intercepts of her various devices occurred over nine months. *See id.* Manning's kitchen-sink allegations underscore that she has no idea whether electronic surveillance occurred and, if so, whether she was subjected to it. As a result, the Court has even less of a basis to conclude that she is an aggrieved party than the Fourth Circuit had in *Apple*.

B. Manning Has Failed to Show a Connection Between the Grand Jury Proceedings and Any Intercepted Electronic Communications.

Section 3504 also contains an express requirement that there be a connection between the unlawful surveillance and the questions asked or evidence used at a grand jury proceeding. *See* 18 U.S.C. § 3504(a)(1) (requiring a "claim . . . that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful

act"). The statute, after all, is meant "to provide procedures by which a witness may attempt to demonstrate that the questions posed to him fail to comply with the mandate of section 2515," a provision that "proscribes the use in an official proceeding of evidence tainted by illegal surveillance." *In re Grand Jury Matter*, 906 F.2d 78, 91 (3d Cir. 1990). It "is not a discovery tool to be used to determine the existence or validity of wiretaps completely unrelated in time or substance to the on-going proceeding." *Id.* at 93.

The Ninth Circuit's decision in *In re Grand Jury Investigation, 2003R01576*, 437 F.3d 855 (9th Cir. 2006), is instructive. There, a district court held a grand jury witness in contempt after he refused to answer questions posed to him. *Id.* at 857. The witness asserted § 3504 as a defense, claiming that "the government did not meet its burden of proof in responding to his allegations that he ha[d] been the subject of illegal surveillance." *Id.* The Ninth Circuit disagreed. While it concluded that he sufficiently showed he was an aggrieved party, the court determined that he did not demonstrate "that the government's questions were the 'primary product' of unlawful surveillance or were 'obtained by the exploitation' of any unlawful surveillance." *Id.* at 858 (quoting § 3504(a)(1)). The Ninth Circuit emphasized that there must be at least "an arguable causal connection between the questions being posed to the grand jury witness and the alleged unlawful surveillance." *Id.* The court noted that "[t]he nature of the questions posed to [the witness] before the grand jury [was] so generic that the questions d[id] not suggest any reliance on surveillance of any sort." *Id.*

In her papers, Manning recognizes that she cannot demonstrate that the subpoena or any questioning will be based on unlawful electronic surveillance. In fact, she recognizes that "it is well-settled that electronic surveillance is relevant to a grand jury proceeding only where it is unlawful, and directly connected to [the] subpoena or questions." Mot. to Quash 23. And she

acknowledges that "it is not at this time necessary to request such a hearing." *Id.* Instead, she asks the Court to compel the government to affirm or deny any such surveillance. *Id.*

The text of the statute undermines Manning's request. Under the clear language of the statute, the government does not have to affirm or deny until Manning shows that the subpoena or questioning was a "primary product" of unlawful surveillance or "was obtained by the exploitation" of unlawful surveillance. § 3504(a)(1). She has offered nothing to suggest that the subpoena was the product of unlawful surveillance. And, given that Manning has not appeared before the grand jury, she has no basis for arguing that the questioning is a product of unlawful surveillance. In short, Manning has failed to assert a connection between the alleged unlawful surveillance and the grand jury proceedings. As a result, her motion must be denied. *See also In re Grand Jury Subpoena (T-112)*, 597 F.3d 189, 196-200 (4th Cir. 2010) (holding that a grand jury enforcement action is not the proper forum for litigating whether surveillance violated the Fourth Amendment or FISA).

V. Manning Has No Right to Disclosure of "Ministerial" Grand Jury Records

Manning is not entitled to so-called "ministerial" records of the grand jury. Federal Rule of Criminal Procedure 6(e) codifies the "long-established policy of maintaining the secrecy of grand jury proceedings." *United States v. Penrod*, 609 F.2d 1092, 1098 (4th Cir. 1979). The rule sets forth the exceptions under which the Court may "lift the veil of secrecy." *See* Fed. R. Crim. P. 6(e)(3)(E); *United States v. Loc Tien Nguyen*, 314 F. Supp. 2d 612, 615 (E.D. Va. 2004) (addressing exceptions under prior version of Rule 6(e)).

Manning does not point to any of Rule 6(e)'s exceptions as allowing for a right to the purportedly "ministerial" records she seeks. Instead, she cites (at 25) the Ninth Circuit's opinion in *In re Special Grand Jury (for Anchorage, Alasaka)*, 674 F.2d 778 (9th Cir. 1982), where the

court held that members of the public "have a right, subject to the rule of grand jury secrecy, of access to the ministerial records" of the grand jury. *Id.* at 781. Courts in this district, however, have rejected that holding. "[T]here is no rule in the Fourth Circuit that some grand jury records may be labeled as ministerial and disclosed to the public if they do not fall within the bounds of Rule 6(e) or otherwise offend the goals of the grand jury secrecy doctrine." *Nguyen*, 314 F. Supp. 2d at 618.

Manning's attempt to invoke (at 25) cases involving the public's "general right of access to court records" fares no better. Even the court in *In re Special Grand Jury* recognized that the common-law right of access to court records was "subject to the rule of grand jury secrecy." 674 F.2d at 781; *see also Douglas Oil Co. of Cal. v. Petrol Stops N.W.*, 441 U.S. 211, 218 n.9 (1979) (describing grand jury secrecy as dating to the 17th century and "imported into our federal common law" as "an integral part of our criminal justice system").

Moreover, Manning has not even attempted to meet the standard required for disclosure of grand jury records under Rule 6(e)(3)(E)(i)—the only exception even potentially applicable to someone in Manning's shoes. *See* Fed. R. Crim. P. 6(e)(3)(E)(i) (allowing disclosure of grand jury matter "preliminary to or in connection with a judicial proceeding"). A party seeking to lift the veil of secrecy under that rule must make a "strong showing of a particularized need for grand jury materials." *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 443 (1983). Specifically, a party "must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed." *Douglas*, 441 U.S. at 222. Manning has not identified any other relevant judicial proceeding, or otherwise addressed any element of the *Douglas* test. *See also Nguyen*, 314 F. Supp. 2d at 616 n.6 ("Invocation of

general constitutional rights does not qualify as a particularized need justifying disclosure."). She is therefore not entitled to any records of the grand jury in this case.

VI. Manning Has No Right to Have the Court Instruct the Grand Jury as She Demands

"Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to monitor its proceedings. It deliberates in secret and may determine alone the course of its inquiry." *United States v. Calandra*, 414 U.S. 338, 343 (1974). The Fourth Circuit has thus "repeatedly recognized that district courts should refrain from intervening in the grand jury process absent compelling evidence of grand jury abuse" and in light of the "presumption of regularity" attached to grand jury proceedings. *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016). Motions to instruct the grand jury "have uniformly met with no success." *In re Balistrieri*, 503 F. Supp. 1112, 1114 (E.D. Wis. 1980); *see also United States v. Zangger*, 848 F.2d 923, 935 (8th Cir. 1988) ("The prosecutor is under no obligation to give the grand jury legal instructions.").

Despite the presumption of regularity, Manning proposes (at 27) that the Court provide a novel set of grand jury instructions related to, among other things, "the power and authority of the grand jury," Manning's purported Fifth Amendment rights, "and the legal effect of an immunity grant." Manning, however, fails to cite a single case in the Fourth Circuit that supports the Court instructing the grand jury about such matter, because no such case exists. Nor has Manning offered a shred of evidence of grand jury abuse that would rebut the presumption of regularity. *See Alvarado*, 840 F.3d at 189. Manning asserts (at 27) that her proposed instructions are necessary "because the possibility of civil contempt looms over Ms. Manning." But that possibility hangs over every grand jury witness and, therefore, does nothing to rebut the presumption of regularity or counsel in favor of Manning's proposed instructions.

Manning's sole support for her proposed instruction is the Ninth Circuit's opinion in *United States v. Alter*, 482 F.2d 1016 (9th Cir. 1973). The court in *Alter,* however, did not consider the propriety of the grand jury witness's proposed instructions. Indeed, the court stated that the proposed instructions were not even given by the district court. *See id.* at 1029 ("The record supplies no basis for us to infer that he was prejudiced . . . by the refusal to give his requested instructions to the grand jury.")

VII. Manning Has No Right to Discovery from the Government Prior to Her Grand Jury Testimony

There is no rule of criminal procedure that obligates the government to produce discovery to a grand jury witness prior to her testimony. Manning cites (at 28) out-of-circuit cases supporting the proposition that, in some circumstances, a grand jury witness may be entitled to the transcript of her grand jury testimony after she testifies. But as expressly acknowledged in the cases Manning cites, that is *not* the law in the Fourth Circuit. *See In re Grand Jury*, 490 F.3d 978, 987 (D.C. Cir. 2007) (describing circuit split and that the Fourth Circuit "held that grand jury witnesses are not entitled to obtain copies of their transcripts"). In the Fourth Circuit, witnesses are not entitled to their own grand jury transcripts absent a showing that a "particularized need" outweighs the policy of grand jury secrecy. *Bast v. United States*, 542 F.2d 893, 896-97 (4th Cir. 1976). Other than speculating that she might commit perjury if she testifies, Manning does not event attempt to make such a showing.

In any event, the out-of-circuit cases Manning cites address disclosure of a grand jury transcript *after* a witness testifies before the grand jury. Contrary to Manning's suggestion, those cases do not provide a general right to discovery of a witness's prior statements before the witness appears. *See In re Sealed Motion*, 880 F.2d 1367, 1370-73 (D.C. Cir. 1989) (finding

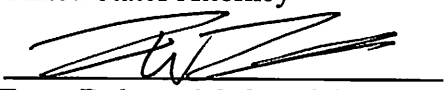
general right to transcript of a witness's own testimony absent countervailing interests); *In re Grand Jury*, 490 F.3d at 990 (grand jury witness entitled to review transcript of his own testimony "in private at the U.S. Attorney's Office or a place agreed to by the parties or designated by the district court"); *In re Russo*, 53 F.R.D. 564, 569 (C.D. Cal. 1971) ("The question . . . is the extent to which providing a witness with a transcript of his own grand jury testimony would be inconsistent with valid reasons for secrecy."); *Gebhard v. United States*, 422 F.2d 281, 289 (9th Cir. 1970) (considering whether it was error for petit jury in perjury case "to hear the complete transcript of the defendant's testimony before the grand jury"); *United States v. Nicoletti*, 310 F.2d 359 (7th Cir. 1962) (holding that the "two witness" rule was not applicable in a perjury case).

CONCLUSION

For the foregoing reasons, the Court should deny the motion to quash.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2019, I caused the foregoing document to be sent to the following via electronic mail:

Moira Meltzer-Cohen
Attorney at Law
Mo_at_Law@protonmail.com

Thomas W. Traxler
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

In re: Grand Jury Subpoena,)) CHELSEA MANNING,)) Subpoenaed Party.) _____)	**DECLARATION** **19-1287-cv**

1. My name is Chelsea Elizabeth Manning. I am competent to be a witness, and I possess personal knowledge of the facts set forth below.
2. Currently I am confined at the Alexandria Detention Center ("ADC"), in Alexandria, Virginia, following a finding of civil contempt on March 8, 2019, for refusing to cooperate in a grand jury investigation that I believe relates to events already disclosed in exhaustive testimony in 2013, including the extent of my knowledge.
3. Initially, after arriving at ADC, the jail placed me in Administrative Segregation ("adseg") status, despite the stated concerns of myself and my legal representatives regarding the effects of prolonged isolation compounding the trauma I suffered in a year of solitary confinement during my previous time in confinement. I stayed on adseg for 28 days, without any misbehavior or ill will on my or anyone else's part to rationalize such isolation. This isolation caused extraordinary pain for me.
4. While in adseg, I suffered many of the ill effects of prolonged isolation as described by former United Nations Special Rapporteur on Torture Juan Mendez. For instance, consistent with the research of former Harvard Medical School professor Stuart Grassian, I experienced difficulty keeping attention on anything, sometimes referred to as a "dissociative stupor." Thinking and concentrating get harder. Anxiety,

frustration with minor things, irritation, and a spiraling inability to tolerate each symptom take hold. At one point I started feeling ill during a short visit in a non-contact visit booth while struggling to have even a normal conversation. After weeks of under-stimulation, I became nauseated with vertigo and vomited on the floor, ending my visit prematurely. Such symptoms make up what Grassian describes as a special psychiatric syndrome caused by prolonged solitary confinement. Many of the effects last permanently after only fifteen (15) days of isolation.

5. After public outcry and pressure, the ADC released me into general population ("GP") after 28 days of isolation.
6. After two months of confinement, and using every legal mechanism available so far, I can - without any hesitation - state that nothing that will convince me to testify before this or any other grand jury for that matter. This experience so far only proves my long held belief that grand juries are simply outdated tools used by the federal government to harass and disrupt political opponents and activists in fishing expeditions. Without committing a federal crime, and after exhaustive testimony at a trial several years ago, I am again ripped from my life by a vindictive and politically-motivated investigation and prosecution. The way I am being treated proves what a corrupt and abusive tool the grand jury truly is. With each passing day my disappointment and frustration grow, but so too do my commitments to doing the right thing and continuing to refuse to submit.
7. My decision not to testify before grand juries is rooted in the study of history and philosophical principles. Many times in this nation's history, people who speak out or express dissent against the government face disproportionate repression. One of the

most common tools to silence dissent, the grand jury, attempts to sow distrust within activists' organizations and communities through secrecy and compelling exhaustive and redundant testimony aimed at identifying other members of that community.

8. I understand that this grand jury related to my disclosures of classified and unclassified but sensitive information and records in 2010. I acted alone in these disclosures. The government is still preoccupied with punishing me, despite a court-martial, sentence, and presidential commutation nearly two years ago. This can be seen in statements and actions by several administration officials, especially the current secretary of state, who threatened Harvard University over a low-paid speaking engagement in 2017, when he was Director of Central Intelligence. This speaks compellingly to my rationale for both my disclosures, for which I already served time, and my present refusal to cooperate with an increasingly frightening and untrustworthy government. Let me state clearly, again, that my actions were my own.
9. I believe my principles allow me to focus on helping others, and to challenge the use of power to coerce or manipulate people. Such coercive power forms what I define as "violence," and the "threat of violence" which powerful institutions attempt to accumulate to obtain more power.
10. I do not believe, nor do I possess any reasonable evidence to believe that participating in this grand jury could lead to any new theories of criminal liability for any person. I took responsibility for my actions over six years ago. I find it difficult to comprehend that the Department of Justice believes that my redundant testimony could actually provide any value to an investigation. Their stated reasons appear disingenuous at best and outright malicious at worst. The government's theories contradict not only

my testimony, but the forensic evidence the military possesses. Therefore, I suspect they are simply interested in previewing my potential testimony as a defense witness, and attempting to undermine my testimony without the benefit of reviewing forensic evidence. This justifies my theory that participating in this investigation functions simply to abuse the justice system for political ends.

11. I believe this grand jury seeks to undermine the integrity of public discourse with the aim of punishing those who expose any serious, ongoing, and systemic abuses of power by this government, as well as the rest of the international community. Therefore, participating in this fishing expedition - which potentially exposes other innocent people to the grand jury process - would constitute an unjustifiable and unethical action. Now, after sustaining serious psychological injury from my current confinement, I don't wish to expose any other person to the trauma and exhaustion of civil contempt or other forms of prison or coercion.
12. In jail at ADC, I try every day to maintain my physical, mental, and intellectual capacities, as well as some modicum of human dignity. I live a quiet social life in a housing unit that holds a dozen people, who rotate frequently. I try to occupy myself with crossword and sudoku puzzles in the absence of good reading material. I try to stay positive despite the aftermath of isolation and the knowledge that my life once again is put on hold for a few more years, potentially. With limited books, I read what I can, though most are books that are either already read by me or are simply bad. I am re-accustomed to the intrusion and lack of privacy of frequent searches and heavy surveillance.

13. I arrived at ADC with concerns and anxiety about my physical health, particularly so soon after gender confirmation surgery in October. My post-surgery regimen requires delicate and regular self-care at least twice daily, including the use of anti-bacterial soap and dilators. Otherwise, I risk serious medical complications, including permanent injury or deadly infections. I worry about dilating in an environment rife with poor hygiene and with limited time and no privacy. I worry about seeing medical professionals with knowledge about post-operative care if complications develop, which I have reason to think has already happened. I worry about regular access to daily hormones. Unfortunately, despite initial assurances by jail and U.S. Marshal Service ("U.S.M.S.") officials, such efforts normally come slower and are very limited. It appears that I have already developed some complications during my stay at ADC. Medical staff acknowledges they lack expertise to examine or assist me appropriately, In response, I requested outside professionals at my own expense over three weeks ago. Despite this, I remain unseen by a professional competent to treat me. Every passing day further complicates my medical care and health, exposing me to permanent, intractable complications. The intrinsic bureaucracy and formality of ADC and USMS policy risks me to permanent harm. I do not know how serious these complications are, but I may need costly reparative surgery upon my release, causing me even more permanent injury and psychological harm, not to mention the expensive medical bills.
14. In an ideal world, agreeing to cooperate would avoid this situation, however, this government abuses the grand jury process, and forces me to choose between an

unethical decision and suffering intimate and permanent consequences for doing the right thing. I am not willing to compromise for my own physical benefit.

15. This decision comes at an overwhelming cost, My physical and mental health deteriorate rapidly in conditions normally reserved for short term confinement. I am almost entirely without sunlight. My skin regularly breaks out from bacterial infections. I gain weight due to poor nutrition, currently at nearly twenty pounds since March.
16. Sleep and concentration remain difficult. Mental health access remains limited, without access to comprehensive treatment for complex post-traumatic stress — stemming in part from previous confinement conditions.
17. My business now falters, without me able to appear at speaking engagements or professional consultations. I recently laid off a valuable and trusted employee. Numerous existing contracts remain vulnerable, likely needing renegotiation or outright cancellation. My friends and colleagues suffer from the impact of my absence, causing me to worry endlessly about their health and well being. I missed the premier event of a documentary about my commutation in which dozens of my friends reunited afterward.
18. I sometimes see visitors, but only in a non-contact booth, with inches of glass between us. This makes visitation uncomfortable, surreal, and saddening.
19. I receive between dozens and several hundred letters a day. I lack the resources or time to respond to even a small fraction of these. The impact on my friends and supporters feels overwhelming and makes me feel lonely.

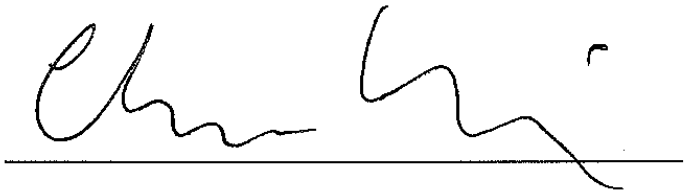
20. I receive enormous support from all around the world. My family and close friends all support me and express their pride of me. It's emotionally overwhelming sometimes to see their unwavering generosity. I receive warmth and strength from colleagues, educators, lawyers, diplomats, activists, factory workers, veterans, journalists, union leaders, store clerks, gardeners, chefs, airplane pilots, and politicians from all across the U.S. and the world at large, every class, culture, and age imaginable.
21. Despite the heartbreak and hardship, cooperation with this grand jury is simply not an option. Doing so would mean throwing away all of my principles, accomplishments, sacrifices, and erase decades of my reputation - an obvious impossibility.
22. As before, I cannot regain the lost time - which may again extend to years. Repairing the damage to my relationships and both my physical and mental health might never come to pass. Whatever one might make of my principles and decisions, I shall continue to make hard choices and sacrifices rather than relinquish my ethical positions in exchange for mere trinkets of personal gain or self-pleasure in the form of being released.
23. Over the past decade, I grappled with bouts of depression. I can think of nothing that could exacerbate those struggles more than pretending to live as someone I am not once again, and turning my back on everything I care about and fight for. Jail, and prison, exist as an archaic institution hiding the basest stream of dehumanizing and humiliating behaviors by the government — a trail of mounting loss and pain. Here, behind the event horizon, I remain certain that losing the approval, trust, and acceptance of my friends, family, and supporters would make this situation worse.

24. I wish to return home. I want to return to my work — writing, speaking, consulting, and teaching. The idea I hold the keys to my own cell is an absurd one, as I face the prospect of suffering either way due to this unnecessary and punitive subpoena: I can either go to jail or betray my principles. The latter exists as a much worse prison than the government can construct.

25. I digress a bit - but the point is, I'm not going to change my mind. Not now, not ever. So be it.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: May 5, 2019
Alexandria, VA



Chelsea Elizabeth Manning

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

In re: Grand Jury Subpoena, CHELSEA MANNING, Subpoenaed Party.	MOTION TO QUASH GRAND JURY SUBPOENA

STATEMENT OF MOTION

Comes now Chelsea Manning, by and through counsel, and pursuant to the United States Constitution and applicable statutory rights, hereby moves this court to quash a subpoena *ad testificandum* summoning her to testify before a federal grand jury in this District. For reasons set forth herein, the subpoena is an abuse of grand jury process, and must therefore be quashed.

Ms. Manning states the following in support of these requests:

PRELIMINARY STATEMENT

Chelsea Manning is a former military analyst who disclosed, in 2010, classified and unclassified but sensitive material showing the nature of modern warfare and violations of international law. As a consequence of those disclosures, she was court-martialed. At her trial, she took full responsibility for her actions, was convicted, and sentenced to 35 years in prison.

Throughout her trial and confinement, she was heralded world-wide as a champion of the free press and principled direct action; held up to illustrate the punitive excesses of solitary confinement; and more recently, lauded as an advocate for the rights of transgender people. In 2016, amidst global support, her request for commutation of her sentence to time served was granted, and she was released after serving seven years. Since her release, she has engaged civically in a number of important ways, ranging from running for office to providing support for the 230 people arrested protesting Donald Trump's inauguration, writing a book, and participating in a documentary film, which will be aired on Showtime in June, 2019.

On March 6, 2018, a grand jury sitting in the Eastern District of Virginia issued an indictment for Julian Assange, the former publisher of the organization Wikileaks to which Ms. Manning had disclosed the documents in 2010. Ms. Manning is mentioned pervasively throughout the indictment and the supporting affidavit of FBI agent Meghan Brown. See Exhibits A and B, attached. The United States has commenced extradition proceedings in the United Kingdom based on that indictment, which charges a single count of Conspiracy to Commit Computer Intrusion under 18 U.S.C. §§ 371, 1030(a)(1), 1030(a)(2), and 1030(c)(2)(B)(ii).

See Julian Assange Appears in Court for U.S. Extradition Hearing, Meghan Specia and Iliana Magra, New York Times, May 2, 2019 *available at* https://www.nytimes.com/2019/05/02/world/europe/julian-assange-us-extradition.html.

On March 6, 2019, a full year after the indictment of Mr. Assange, Chelsea Manning was summoned and appeared before the same grand jury that had issued the indictment. She was asked questions relating to her 2010 disclosures, and refused to answer, asserting various constitutional and statutory rights. On March 8, after a brief hearing, Ms. Manning was held in contempt and remanded to the custody of the Attorney General, until either she agreed to give testimony, or the term of the grand jury expired. On May 9, 2019 the grand jury expired and Ms. Manning was released.

She is now subject to a new subpoena compelling her appearance before a new grand jury on May 16, 2019. See Exhibit C.

ARGUMENT

I. THE SUBPOENA SEEKS TO COMPEL TESTIMONY FOR AN IMPROPER PURPOSE, AND IS AN ABUSE OF THE GRAND JURY PROCESS.

The grand jury's defining feature is secrecy, and the subject of this investigation has not been publicly disclosed. What is known, however, is that a

grand jury issued an indictment against Julian Assange, without testimony from Chelsea Manning. That grand jury terminated, having obtained an indictment, and satisfied its investigative function.

The government has indicated it wishes to speak to Ms. Manning about a) inconsistencies among her prior statements, and b) a time period before the disclosures of 2010 about which they claim to lack information. Each of these interests represent efforts of trial preparation and matters properly dealt with on cross examination, pretrial discovery, or in direct examination at trial.

While a presumption of regularity attaches to grand jury proceedings, the presumption is rebuttable. Although the burden of demonstrating an irregularity in such proceedings rests squarely upon the party alleging an impropriety. United States v. (Under Seal), 714 F.2d 347, 350 (4th Cir.), cert. dismissed, 464 U.S. 978, 104 S.Ct. 1019, 78 L.Ed.2d 354 (1983) Where, as here, a witness raises concrete and credible concerns about the potential impropriety of questioning, the presumption of regularity that normally attaches to grand jury proceedings is rebutted. United States v. Alvarado, 840 F.3d 184, 189 (4th Cir. 2016).

This does not mean that the grand jury may be stymied by mere speculation, but that in the face of credible concerns, the District Court must make an inquiry,

and that various remedies may be had. In re Grand Jury Subpoenas Duces Tecum, Aug. 1986, 658 F. Supp. 474, 477–78 (D. Md. 1987) (where the "government has failed to rebut this inference, by means such as the introduction of an affidavit attesting to the proper purpose of the investigation, an evidentiary hearing should be held in order to ascertain the government's true motives" *emphasis added*); see also U.S. v. Loc Tien Ngyuen, 314 F.Supp.2d 612 (E.D.Va. 2004) ("particularized and factually based grounds exist to support the proposition that irregularities in the grand jury proceedings may create a basis for dismissal of the indictment" *emphasis added*).

"The principles that the powers of the grand jury may be used only to further its investigation, and that a court may quash a subpoena used for some other purpose, are both well recognized." United States v. Moss, 756 F.2d 329, 332 (4th Cir. 1985). Thus, "practices which do not aid the grand jury in its quest for information bearing on the decision to indict are forbidden. This includes use of the grand jury by the prosecutor to harass witnesses or as a means of civil or criminal discovery." United States v. (Under Seal), 714 F.2d 347 (4th Cir. 1983).

Critically for the case at bar, "once a criminal defendant has been indicted, the Government is barred from employing the grand jury for the 'sole or dominant

purpose' of developing additional evidence against the defendant." United States v. Bros. Constr. Co. of Ohio, 219 F.3d 300 (4th Cir. 2000). The government may not "use the grand jury to improve its case in an already pending trial by preserving witness statements, locking in a witness's testimony, pressuring potential trial witnesses to testify favorably, or otherwise employing the grand jury for pretrial discovery." United States v. Alvarado, 840 F.3d 184 (4th Cir. 2016). See also United States v. Moss, *supra,* ("it is the universal rule that prosecutors cannot utilize the grand jury solely or even primarily for the purpose of gathering evidence in pending litigation").

Here, Ms. Manning was subpoenaed only after an indictment was obtained. Additionally, counsel was informed explicitly that the government wishes to inquire into alleged inconsistencies between statements Ms. Manning made to an informant in 2009, and statements made at her court martial in 2013, and further that they were interested in inquiring into Ms. Manning's activities during a certain time period, prior to her 2010 disclosures. These are matters of interest which could be inquired into, should, as expected, Ms. Manning be called at trial as a witness, by either the prosecution or the defense. The government seeks to use the power of a grand jury subpoena to prepare for a trial witness.

Because she has already given exhaustive testimony at her court martial, and given that the government has access to thousands of pages of military forensic reports, it is entirely possible that efforts at repeated questioning are intended to "coax [her] into the commission of perjury or contempt, [and] such conduct would be an abuse of the grand jury process." Bursey v. United States, 466 F.2d 1059, 1080 n.10 (9th Cir. 1972); United States v. Caputo, 633 F.Supp 1479 (E.D. Pa. 1986); United States v. Simone, 627 F. Supp. 1264 (D.N.J. 1986). See also Gershman, The "Perjury Trap" 192 U. Pa. L. Rev. 624 (1981). The government's expressed interest in inquiring after impeachment and cross-examination material, in conjunction with the post-indictment subpoena, is inconsistent with the proper investigative purpose of a grand jury.

The foregoing evidence of grand jury misuse is sufficient to require the government to meet its burden of showing grand jury regularity. In demonstrating the regularity of this subpoena, the Court might be satisfied by an affidavit or even an *in camera* recitation of the specific reasons for calling this witness and for asking the particular questions. But there *is* a minimal expectation that the government will satisfy the Court that the sole and dominant purpose of the

subpoena is not improper, and that the witness in fact is able to add something of value to the grand jury's investigation.

In certain instances, the government may represent that a grand jury investigation is "ongoing such that additional counts or additional defendants may be added." But here, the government *ought not* make any such representation, since under the Rule of Speciality, the commencement of extradition proceedings in Great Britain forecloses the addition of further charges to the indictment. ARTICLE XII, Treaty, Protocol of Signature & Exch. of Notes Signed at London June 8, 1972;, T.I.A.S. No. 8468 (Jan. 21, 1977)

CONCLUSION

The purpose in calling Ms. Manning before the grand jury is not to discover further and more helpful information, but to prepare a witness for trial in ways not contemplated or permitted by the grand jury process. The subpoena must be quashed.[1]

Respectfully Submitted,
By Counsel

[1] The Court may wish to consider holding this motion in abeyance while the government responds to, and the Court considers Ms. Manning's motion pursuant to 28 U.S.C. §3504 filed concomitantly with this motion.

Dated: May 14, 2019

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	(UNDER SEAL)
	)	
v.	)	Criminal No. 1:18cr ///
	)	
JULIAN PAUL ASSANGE,	)	Count 1: Conspiracy to Commit
	)	Computer Intrusion (18 U.S.C. §§ 371,
Defendant.	)	1030(a)(1), 1030(a)(2),
	)	1030(c)(2)(B)(ii))

March 2018 Term – at Alexandria, Virginia

INDICTMENT

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At times material to this Indictment:

1. 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.

2. 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.

3. 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. 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.

4. Julian Paul Assange was the founder and leader of the WikiLeaks website. The WikiLeaks website publicly solicited submissions of classified, censored, and other restricted information.

5. Assange, who did not possess a security clearance or need to know, was not authorized to receive classified information of the United States.

6. Between in or around January 2010 and May 2010, 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. Many of these records were classified pursuant to Executive Order No. 13526 or its predecessor orders. Manning provided the records to agents of WikiLeaks so that WikiLeaks could publicly disclose them on its website. WikiLeaks publicly released the vast majority of the classified records on its website in 2010 and 2011.

7. On or about March 8, 2010, Assange agreed to assist Manning in cracking a password 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.

8. 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.

9. The portion of the password 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.

10. Cracking the password would have allowed Manning to log onto the 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.

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

12. At the time he entered into this agreement, Assange knew that Manning was providing WikiLeaks with classified records containing national defense information of the United States. Assange was knowingly receiving such classified records from Manning for the purpose of publicly disclosing them on the WikiLeaks website.

13. For example, on March 7, 2010, Manning and Assange discussed the value of the Guantanamo Bay detainee assessment briefs, and on March 8, 2010, before entering the password cracking-agreement, Manning told Assange that she was "throwing everything [she had] on JTF GTMO at [Assange] now." Manning also said "after this upload, that's all I really have got left."

To which Assange replied, "curious eyes never run dry in my experience." Following this, between March 28, 2010, and April 9, 2010, Manning used a United States Department of Defense computer to download the U.S. Department of State cables that WikiLeaks later released publicly.

COUNT ONE

14. The general allegations set forth in paragraphs 1 through 13 are re-alleged and incorporated into this Count as though fully set forth herein.

15. 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, both dates being approximate and inclusive, 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 intentionally combine, conspire, confederate and agree with other co-conspirators known and unknown to the Grand Jury to commit an offense 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).

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

PURPOSE AND OBJECT OF THE CONSPIRACY

16. 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

17. Assange and his co-conspirators used the following ways, manners and means, among others, to carry out this purpose:

18. 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 stored on United States Department of Defense computers connected to the Secret Internet Protocol Network.

19. 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.

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

21. 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

22. In order to further the goals and purposes of the conspiracy, Assange and his co-conspirators committed overt acts, including, but not limited to, the following:

23. 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.

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

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

A TRUE BILL

3/16/18
DATE

[redacted]
FOREPERSON

Tracy Doherty-McCormick
Acting United States Attorney

By: Kellen Dwyer
Kellen S. Dwyer

Thomas W. Traxler
Assistant United States Attorneys

No. 1:18CR111

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

THE UNITED STATES OF AMERICA

vs.

JULIAN PAUL ASSANGE

INDICTMENT

In violation of Title 18 U.S.C. §§ 371, 1030(a)(1), 1030(a)(2), 1030(c)(2)(B)(ii) **Conspiracy to Commit Computer Intrusion**

s

A true bill.

[redacted]

Foreman

Filed in open court this 6th day, of March A. D. 2018

Clerk

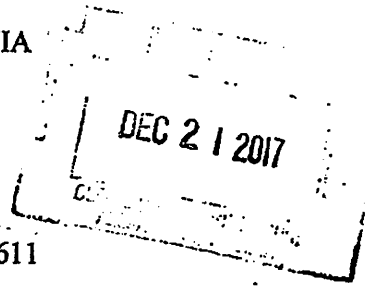
Bail, $ _____

ATTACHMENT B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA

v.

JULIAN PAUL ASSANGE,

Defendant.

Case No. 17-MJ-611

Filed Under Seal

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT AND ARREST WARRANT

1. I, Megan Brown, make this affidavit in support of a criminal complaint charging the defendant, Julian P. Assange, with violating 18 U.S.C. §371 by conspiring to (1) access a computer, without authorization and exceeding authorized access, to obtain classified national defense information in violation of 18 U.S.C. § 1030(a)(1); and (2) access a computer, without authorization and exceeding authorized access, to obtain information from a department or agency of the United States in furtherance of a criminal act in violation of 18 U.S.C. § 1030(a)(2), (c)(2)(B)(ii).

2. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed since February 2011. Since joining the FBI, I have investigated violations of federal law involving counterterrorism and counterintelligence matters, and I have gained experience through training and everyday work related to conducting these types of investigations. Since February 2017, I have been assigned to a Counterespionage squad at the Washington Field Office in Washington, D.C. In this capacity, I investigate matters involving allegations of espionage, as well as the unauthorized disclosure of classified information, and related crimes. As a Special Agent with the FBI, I have received classroom and on-the-job

training in general law enforcement and also in such specialized areas as counterintelligence, counterterrorism, and investigation of espionage-related crimes. I have participated in federal, multi-jurisdictional, and international investigations involving national security matters, conducted physical and electronic surveillance, executed search warrants, and debriefed witnesses and participants to unlawful activity related to these matters. Through my investigations, I have gained knowledge in the use of various investigative techniques including the utilization of Rule 41 search warrants, subpoenas, national security letters, physical and electronic surveillance, trash covers, and other sophisticated investigative techniques. As a federal agent, I am authorized to investigate violations of the laws of the United States. I have investigated criminal violations relating to espionage and the unauthorized disclosure of classified information, including violations related to the illegal possession, distribution, and/or receipt of classified information, and related crimes, in violation of 18 U.S.C. §§ 793, 794, 1030, and 1924. I also am authorized to execute warrants issued under the authority of the United States, and I have participated in arrest warrants and search warrants in my capacity as an FBI Special Agent.

3. The facts in this Affidavit are based on my personal observations, information obtained from other agents and witnesses, my training and experience, and my review of records, reports, articles, and websites. Unless otherwise noted, information provided to me by other law enforcement personnel does not necessarily reflect my personal observations or investigation, but rather has been passed to me by individuals with first-hand knowledge. This Affidavit does not set forth all of my knowledge about this matter, but is intended merely to establish probable cause for the criminal complaint.

4. As shown below, the conspirators took elaborate measures to conceal their communications, mask their identities, and destroy any trace of their conduct, using, for example, encryption and anonymization techniques, and erasing and wiping data. For this reason, the facts are derived in large part from forensic analysis of available computer data, remnants, or unalterable systems.

SUMMARY OF PROBABLE CAUSE

5. These charges relate to one of the largest compromises of classified information in the history of the United States. Between in or around January 2010 and May 2010, Chelsea Manning,[1] an intelligence analyst in the U.S. Army, downloaded four, nearly complete and largely classified databases with approximately 90,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activity reports, 800 Guantanamo Bay detainee assessments, and 250,000 U.S. State Department cables. Manning provided these records to WikiLeaks, a website founded and led by the defendant, Julian P. Assange. On its website, WikiLeaks expressly solicited classified information for public dissemination. WikiLeaks publicly released the vast majority of the classified records on its website in 2010 and 2011. Manning has since been tried and convicted by court-martial for her illegal acts in transmitting the information to WikiLeaks.

6. The charges in this criminal complaint focus on a specific illegal agreement that Assange and Manning reached in furtherance of Manning's illegal disclosure of classified information. As explained below, investigators have recovered Internet "chats" between

[1] Manning used the name "Bradley E. Manning" at the time of the events at issue in this Affidavit. According to a statement from Manning's attorney published on or around August 22, 2013, Manning has identified as a female since childhood and was changing her name to "Chelsea Manning." As a result, I refer to Manning using her current name and the female gender.

Assange and Manning from March 2010. The chats reflect that on March 8, 2010, Assange agreed to assist Manning in cracking a password stored on United States Department of Defense (DoD) computers connected to the classified Secret Internet Protocol Router Network (SIPRNet). Manning, who had access to the computers in connection with her duties as an intelligence analyst, was using the computers to download classified records to transmit to WikiLeaks.

7. Cracking the password would have allowed Manning to log onto the computers under a username that did not belong to her. Such a deceptive measure would have made it more difficult for investigators to determine the source of the illegal disclosures. While it remains unknown whether Manning and Assange were successful in cracking the password, a follow-up message from Assange to Manning on March 10, 2010, reflects that Assange was actively trying to crack the password pursuant to their agreement.

8. Circumstantial evidence reflects that Assange and Manning intended to crack the password to facilitate Manning's illegal disclosure of classified information. At the time they formed their illegal password-cracking agreement, Manning had already provided WikiLeaks with hundreds of thousands of classified records relating to, among other things, the wars in Afghanistan and Iraq. In the recovered chats surrounding the illegal agreement, Manning and Assange engaged in real-time discussions regarding Manning's transmission of classified records to Assange. The chats also reflect the two collaborating on the public release of the information and Assange actively encouraging Manning to provide more information. The chats, moreover, reflect that Manning actively took steps to try to conceal herself as the source of the leaks. Thus, the context of the agreement demonstrates that Assange and Manning intended to crack the

password to facilitate Manning's disclosure of classified information of the United States.

I. BACKGROUND OF CO-CONSPIRATORS

A. Defendant Julian P. Assange and WikiLeaks

9. Assange, a citizen of Australia, created the website WikiLeaks.org in 2006 to release on the Internet otherwise unavailable documents. WikiLeaks' website solicited submissions of classified, censored, or otherwise restricted information.[2]

10. Although associates and volunteers worked for WikiLeaks in various capacities, WikiLeaks was closely identified with Assange himself. As reported in an article published in *Wired* magazine in or around September 2010, Assange stated, "I am the heart and soul of this organization, its founder, philosopher, spokesperson, original coder, organizer, financier, and all the rest." As stated by Assange in a January 2010 interview during the 26th Chaos Communication Congress, WikiLeaks had a full-time staff of five and 800 "occasional helpers." Assange has also stated that he made the final decision as to whether a particular document submitted to WikiLeaks was legitimate.

11. Assange, who has never possessed a security clearance or need to know, was prohibited from receiving classified information of the United States.

B. Co-Conspirator Chelsea Manning

12. Manning, a United States citizen, enlisted in the U.S. Army in October 2007 and subsequently attended the U.S. Army Intelligence Analyst Course at Fort Huachuca, Arizona.

13. On April 7, 2008, Manning signed a Classified Information Nondisclosure Agreement. In doing so, Manning acknowledged being advised that unauthorized disclosure or

[2] At some point between September and December 2010, WikiLeaks deleted the word "classified" from a description of the kinds of material it accepted.

retention or negligent handling of classified information could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation.

14. On January 22, 2009, Manning was granted a U.S. government security clearance at the "Top Secret" level and signed a Sensitive Compartmented Information (SCI) Nondisclosure Statement. In so doing, Manning acknowledged that she would be granted access to SCI material, which involves or derives from intelligence sources or methods and is classified or in the process of being classified. She further acknowledged being advised that her unauthorized disclosure or retention or negligent handling of SCI could cause irreparable injury to the United States or be used to advantage by a foreign nation, and could constitute a federal crime.

15. Executive Order No. 13526 and its predecessor orders define the classification levels assigned to national security and national defense information. Under Executive Order No. 13526, information may be classified as "Confidential" if its unauthorized disclosure reasonably could be expected to cause damage to the national security; "Secret" if its unauthorized disclosure reasonably could be expected to cause serious damage to the national security; and "Top Secret" if its unauthorized disclosure reasonably could be expected to cause exceptionally grave damage to the national security.

C. Manning's Access To Classified Information And Computer Networks In Iraq

16. On or about October 12, 2009, Manning was deployed as a Military Occupational Specialty ("MOS") 35F – Intelligence Analyst, to Forward Operating Base ("FOB") Hammer in Iraq.

17. Manning worked as an intelligence analyst in Iraq from October 2009 to May 2010. During that time, she had access to classified national defense information through

various U.S. Army and DoD computer network systems, including SIPRNet—a network used for classified documents and communications at the Confidential and Secret levels, as designated according to Executive Order No. 13526.

18. Manning had access to multiple classified databases and websites on SIPRNet, including the following: (1) the Combined Information Data Network Exchange ("CIDNE"), a set of DoD databases containing classified reports regarding the Afghanistan and Iraq wars, many of which contained raw intelligence information such as source names and locations; (2) a U.S. Central Command ("CENTCOM") website, which included reports of investigations of civilian deaths caused by U.S. forces; (3) an Intellipedia website named "JTF-GTMO Detainee Assessments," which included documents regarding detainees at the U.S. Naval Base in Guantanamo Bay, Cuba; (4) Net Centric Diplomacy ("NCD"), a Department of State database containing classified diplomatic cables; and (5) an Intelink-S search engine, which was a web portal that provided U.S. intelligence agencies with a single point of service to search for information across various classified websites on the SIPR network.

19. At FOB Hammer, Manning worked in a Sensitive Compartmented Information Facility ("SCIF"). Under Executive Order No. 13526, Section 4.1, and Army regulations, Manning was prohibited from removing classified information from the SCIF in which she worked, from storing the information in her residential quarters, and from loading the information onto a personal computer. Further, the act of removing classified media from a SCIF and hand carrying that information was permitted only when approved by the appropriate official.

20. In the SCIF, Manning had access to several SIPRNet computers, two of which she principally used at different times. In this affidavit, I refer to these two computers as "IP1" and

"IP2."

21. Manning's use of the computers was also governed by the AR-25-2. The AR-25-2 is an Army regulation that establishes the standards, processes, and procedures for information assurance practices in the United States Army. It applies to everyone within the Army.

22. In March 2010, the AR-25-2 prohibited certain "activities . . . by any authorized user on a Government provided [information system] or connection." These prohibited activities included "[a]ttempt[ing] to . . . circumvent, or bypass network [information systems] security mechanisms." The AR-25-2 also prohibited "[s]haring personal accounts and authenticators (passwords or PINs)."

II. MANNING'S EARLY DISCLOSURES TO WIKILEAKS

23. According to Manning, she began helping WikiLeaks soon after WikiLeaks publicly released messages from the September 11, 2001 terrorist attacks on November 25, 2009.

24. As the examples in the following two sections demonstrate, Manning transmitted a large amount of classified information to WikiLeaks prior to March 2010, which was when she formed the agreement with Assange that is the subject of this complaint.

A. Classified Significant Activity Reports Relating To Iraq And Afghanistan Wars

25. During her court-martial proceedings, Manning has admitted that, prior to March 2010, she provided WikiLeaks with classified significant activity reports from the Iraq and Afghanistan wars ("Iraq War Reports" and "Afghanistan War Reports," respectively).

26. According to Manning, she downloaded the Iraq War Reports and Afghanistan War Reports from the relevant CIDNE databases in late December 2009 and early January 2010, and initially saved the records on a CD-RW that she kept in her SCIF. Manning admitted that she later took the CD-RW out of the SCIF and copied the data from the CD-RW onto her

personal laptop. Manning stated that she transferred the data from her laptop to a Secure Digital ("SD") memory card, which she took with her when she went on leave later in January 2010.

27. Investigators later recovered the SD card that Manning used to transport the Iraq War Reports and Afghanistan War Reports. Forensic analysis of the SD card revealed that it contained the CIDNE databases for Iraq (391,883 records) and Afghanistan (91,911 records). The SD card also contained a README.txt file, which contained the following message:

> Items of Historical Significance for Two Wars: Iraq and Afghanistan Significant Activities (SIGACTs) between 0000 on 01 JAN 2004 and 2359 on 31 DEC 2009 (Iraq local time, and Afghanistan local time) CSV extracts are from the Department of Defense (DoD) Combined Information and Data Exchange (CIDNE) Database. It's already been sanitized of any source identifying information. You might need to sit on this information, perhaps 90-180 days, to figure out how best to release such a large amount of data, and to protect source. This is possibly one of the more significant documents of our time, removing the fog of war, and revealing the true nature of 21st century asymmetric warfare. Have a good day.

28. According to Manning, she uploaded the Iraq War Reports, Afghanistan War Reports, and README.txt file to the WikiLeaks website on or around February 3, 2010.

29. WikiLeaks publicly released the Iraq War Reports and Afghanistan War Reports on its website later in 2010. In July 2010, WikiLeaks released approximately 76,000 of the Afghanistan War Reports. Then, in October 2010, WikiLeaks released approximately 391,832 Iraq War Reports.

30. Manning and WikiLeaks had reason to believe that public disclosure of the Afghanistan War Reports and Iraq War Reports would cause injury to the United States. Documents included in the Afghanistan War Reports contained information the disclosure of which potentially endangered U.S. troops and Afghan civilians, and aided enemies of the United States. Numerous Secret reports, for example, related to the identity and significance of local

supporters of United States and Coalition forces in Iraq and Afghanistan.

31. In fact, according to a July 30, 2010 New York Times article entitled "Taliban Study WikiLeaks to Hunt Informants," after the release of the Afghanistan War 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 will know how to punish them."

32. Moreover, on May 2, 2011, United States government officials raided the compound of Usama bin Laden in Abbottabad, Pakistan. During the raid, they collected a number of items of digital media, which included, among other things, (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, and (2) a letter from that member of al-Qaeda to Bin Laden with information from the Afghanistan War Reports released by WikiLeaks.

33. In addition, some of the Afghanistan War Reports included detailed reports of improvised explosive device ("IED") attacks on United States and Coalition forces in Afghanistan. The enemy could use these reports to plan future IED attacks because they described IED techniques, devices, and explosives, and revealed the countermeasures used by United States and Coalition forces against IED attacks and potential limitations to those countermeasures.

34. I have reviewed a number of the Afghanistan War Reports and Iraq War Reports that WikiLeaks released. The reports that I reviewed contained classification markings reflecting that they were classified as "SECRET." This suggests that the versions of the Afghanistan War

Reports and Iraq War Reports that Manning transmitted to WikiLeaks clearly reflected that they were classified.

B. Classified Iceland Documents

35. As a further example, Manning also provided WikiLeaks with a number of classified documents relating to Iceland prior to March 2010.

36. According to Manning, she accessed the NCD portal on February 14, 2010, and found a cable entitled "10 Reykjavik 13," which addressed an Icelandic issue known as "Icesave." Manning admitted that she burned the information onto a CD-RW on February 15, 2010, took it to her personal housing unit, saved the document to her personal laptop, and then uploaded it to WikiLeaks.

37. WikiLeaks released this "Icesave" cable on its website on or around February 18, 2010. I have reviewed the document that WikiLeaks released on its website. It contained clear markings reflecting it was classified as "Confidential." That suggests that the version of the Icesave cable that Manning transmitted to WikiLeaks clearly reflected that it was classified.

38. In addition, on February 14, 2010, Manning, using IP1 identified to her, viewed the Intellipedia website for Iceland. From this website, Manning clicked on links to, and viewed, three files entitled "Sigurdardottir.pdf," "Skarphedinsson.pdf," and "Jonsson.pdf." A forensic examination of Manning's personal laptop computer showed that a storage device was inserted into her machine. The volume name of the CD—"100215_0621"—indicated that the CD was burned on February 15, 2010, at 6:21 a.m. The file names "Jonsson.pdf," "Sigurdardottir.pdf," and "Skarphedinsson.pdf" were burned to the CD.

39. On March 29, 2010, WikiLeaks posted on its website classified U.S. State Department biographies of three Icelandic officials: Icelandic Prime Minister Johanna

Sigurdardottir; Icelandic Minister of Foreign Affairs and External Trade Ossur Skarphedinsson; and Icelandic Ambassador to the United States Albert Jonsson. I have reviewed the three biographies released by WikiLeaks. They contained clear markings indicating that they were classified as "Confidential."

40. Thus, as the examples in these two sections demonstrate, Manning provided hundreds of thousands of classified documents to WikiLeaks prior to March 2010. WikiLeaks received and published the classified documents, despite their clear markings indicating that they were classified.

III. MANNING'S CHATS WITH ASSANGE

41. A person assigned a name with initials "NF" held a series of online chat conversations with Manning in which the pair discussed providing classified documents to WikiLeaks and the protection of Manning's identity as a source of the documents. According to the dates on the chats, they occurred between March 5, 2010, and March 18, 2010. During the chat conversations, Manning used the alias "Nobody" and the account "dawgnetwork@jabber.ccc.de," while NF used the account "pressassociation@jabber.ccc.de."

42. Those chats took place on the "Jabber" chat server. Jabber is used for real-time instant messaging. Manning and NF used a Jabber chat service hosted on jabber.ccc.de. "CCC" is a commonly used acronym for the Berlin-based Chaos Computer Club, which according to accounts on the Internet, Assange had frequented.

43. At her court-martial proceedings, Manning stated that she "engaged in conversation often" with NF, "sometimes as long as an hour or more." Forensic analysis showed that Manning deleted or removed the NF chat logs from her laptop. Nevertheless, investigators have been able to recover several portions of the chats between Manning and NF from

Manning's personal computer.

44. A complete copy of the recovered chats between Manning and NF is attached to this Affidavit as Attachment A.

A. Assange Was "NF"

45. At her court-martial proceeding, Manning claimed that she believed the individual with whom she was chatting "was likely Mr. Julian Assange, Mr. Daniel Schmidt, or a proxy representative of Mr. Assange and Schmidt."

46. As summarized below, however, the evidence demonstrates that Assange was the "NF" who communicated with Manning in the March 2010 chats.

47. Specific information provided by NF in the March 2010 chats indicates that NF was Assange. For example, when chatting with Manning on March 5, 2010, NF confided that he liked debates, and that he "[j]ust finished one on the IMMI, and crushed some wretch from the journalists union." NF told Manning that the debate was "[v]ery satisfying," and that "the husband of the wretch" had exposed a source, an IT consultant who had given NF "10Gb of banking documents."

48. "IMMI" refers to the Icelandic Modern Media Initiative, a legislative proposal of considerable public interest in Iceland at the time. According to accounts available on the Internet, on March 5, 2010, before NF's chat with Manning about a debate, the University of Iceland presented a panel that discussed media topics, including the IMMI. Assange was a member of that panel, as was the female deputy president of the Icelandic journalists association.

49. Moreover, the NF in the March 2010 chats with Manning appeared to have extensive knowledge of WikiLeaks' day-to-day operations, including knowledge of submissions of information to the organization, as well as of financial matters. During the chats, on March 8,

2010, and March 16, 2010, Manning asked NF about the financial state of WikiLeaks. On both occasions, NF responded by identifying financial difficulties that WikiLeaks had to overcome, such as losing its credit card vendor. NF also stated that WikiLeaks had raised half a million of an unspecified currency. NF thus demonstrated intimate familiarity with WikiLeaks' financial affairs and circumstances, which Assange would have.

50. Further, the NF in the chats with Manning mentioned that he planned to attend a conference on investigative journalism in Norway in late March 2010. On March 17, 2010, NF told Manning that NF would "be doing an investigative journo conf in norway this week end, so may be out of contact most of the time." In fact, on March 18, 2010, according to an article on the Internet authored by Assange, Assange traveled from Iceland eventually to Oslo, Norway, where he attended and spoke at a March 20 conference held by SKUP, an investigative-journalism organization. According to accounts on the Internet, Assange's name appeared on a list of individuals scheduled to attend the conference, and Assange was identified as a "lecturer." A review of the other names on the list revealed no other persons known to be associated with WikiLeaks, and no one named NF. Further, SKUP's website had a photo of Assange speaking at the conference.

51. In addition, NF repeatedly discussed with Manning details about a video being prepared for release, which NF referred to as "Project B." As reported in the *New Yorker* on June 7, 2010, "Project B" was the code name Assange and WikiLeaks used for the video about the 2007 Apache helicopter attack, later released under the name "Collateral Murder."

52. Also, on June 27, 2011, the FBI interviewed U.S. Person No. 1 (US1), who met Assange in December 2009 in Berlin, Germany. According to US1, Assange and US1 exchanged email addresses at this time and began communicating via email. Eventually,

Assange and US1 began using the Jabber instant messaging service to communicate. According to US1, Assange used the Jabber account pressassociation@jabber.ccc.de to communicate with US1 via Jabber. Assange used pressassociation@jabber.ccc.de until the summer of 2010 to communicate with US1. As noted, pressassociation@jabber.ccc.de was the Jabber account used by NF in the chats with Manning.

53. The evidence further reflects that Manning believed NF was Assange. In chats with U.S. Person No. 2 (US2) on May 23, 2010, Manning stated that Assange "*might*" have used the "ccc.de jabber server," the same server used in the chats between NF and Manning. And on May 22, 2010, Manning told US2 that she had communicated with Assange when explaining that she was a source for WikiLeaks. Manning stated, "im a high profile source... and i've developed a relationship with assange... but i don't know much more than what he tells me, which is very little. it took me four months to confirm that the person i was communicating was in fact assange."

54. Furthermore, a forensic examination of Manning's personal computer seized on May 28, 2010, revealed that pressassociation@jabber.ccc.de was associated with Assange in Manning's "Buddy List" configuration file (blist.xml), and that deleted versions of Manning's blist.xml file identified pressassociation@jabber.ccc.de as an alias for NF. The file had a creation date and last written date of May 28, 2010.

55. Based on this evidence, I have concluded that Manning's partner in the chats, assigned the username "NF," was in fact Assange. Accordingly, in the following discussion of the March 2010 chats, I identify Assange as the person with whom Manning communicated.

B. Nature of the Assange-Manning Chats

56. As the below examples illustrate, the recovered chats between Manning and

Assange reflect that the two collaborated on Manning's disclosure of classified information to WikiLeaks for WikiLeaks to disseminate publicly.

1. JTF-GTMO Documents

57. At her court-martial proceeding, Manning admitted that she provided WikiLeaks with Joint Task Force Guantanamo ("JTF-GTMO") Detainee Assessment Briefs ("DABs") in early March 2010.

58. In fact, Attachment A reflects discussions between Manning and Assange about the value of these documents and Manning's transmission of them to Assange.

59. On March 7, 2010, Manning asked Assange, "how valuable are JTF GTMO detention memos containing summaries, background info, capture info, etc?" Assange replied, "time period?" Manning answered, "2002-2008." Assange responded, "quite valuable to the lawyers of these guys who are trying to get them out, where those memos suggest their innocence/bad procedure...also valuable to merge into the general history. politically gitmo is mostly over though."

60. Manning has admitted that "[a]fter this discussion, [she] decided to download the DABs."

61. On March 8, 2010, Manning told Assange, "im sending one last archive of interesting stuff... should be in the x folder at some point in the next 24 hours." Assange replied, "ok. great!" Manning added, "you'll need to figure out what to do with it all..."

62. Later that day, Manning wrote to Assange, "anyway, im throwing everything i got on JTF GTMO at you now... should take awhile to get up tho...summary/history/health conditions/reasons for retaining or transfer of nearly every detainee (about 95%)." Assange replied, "ok, great! what period does it cover for each internment?" Manning replied "2002-

2009..." Assange inquired if the information included "initial medical evaluation to exit evaluation?"

63. Also on March 8, 2010, Manning updated Assange about the ongoing upload, stating that the "upload is at about 36%." Assange asked for an "ETA," to which Manning responded "11-12 hours... guessing since its been going for 6 already." Assange asked, "how many mb?" Manning replied "about 440mb" and "a lot of scanned pdf[']s."

64. Two days later, on March 10, 2010, Assange reported to Manning, "there[']s a username in the gitmo docs" and asked "i assume i should filter it out?" Manning stated that "any usernames should probably be filtered, period." Manning then recognized, "but at the same time, theres a gazillion of them."

65. Later in the chat on March 10, 2010, Manning asked, "anything useful in there?" Assange replied "no time. but have someone on it." Assange then followed up that "there surely will be" and that "these sorts of things are always motivating to other sources too." Assange noted that such disclosures provided "inspiration" for other leakers because "gitmo=bad, leakers=enemy of gitmo, leakers=good."

66. WikiLeaks ultimately released the JTF-GTMO DABs starting in April 2011. By August 2011, it had released 765 JTF-GTMO DABs.

67. As General Robert Carr testified during Manning's court martial, the release of the DABs caused problems for the United States' efforts to move detainees out of Guantanamo Bay to other countries. According to General Carr, at the time of the release of the DABs, the Department of State was negotiating with foreign governments regarding the transfer of the detainees. The release of the classified DABs threatened to conflict with those negotiations.

68. I have reviewed a number of the JTF-GTMO DABs that WikiLeaks released.

They contained clear markings indicating that they were classified as "SECRET."

2. Assange Encourages Manning To Continue Searching For Documents

69. The March 2010 chats also reveal that Assange provided Manning with encouragement to provide more information.

70. On March 8, 2010, when discussing the JTF GTMO upload, Manning told Assange, "after this upload, thats all i really have got left." Assange replied, "curious eyes never run dry in my experience."

71. In response, Manning stated, "ive already exposed quite a bit, just no-one knows yet. ill slip into darkness for a few years, let the heat die down." Manning added, "considering just how much one source has given you, i can only imagine the overl[o]ad."

72. Earlier in the same day, Assange noted that there had been "2500 articles in .is referendum in the past 15 hours, despite it being a sunday." (The domain name for Iceland is ".is.") Manning stated, "oh yeah...osc went haywire digging into .is." (Based on the context, in using the term "osc," Manning likely was referring to the CIA's open source center.) Assange responded, "yeah? that[']s something we want to mine entirely, btw."

3. Manning And Assange Discuss Concealing Source Of Documents

73. During his chats with Manning, Assange asked whether documents sent by Manning about an arrest by Iraqi police were "releasable." Manning advised Assange that certain documents could be released, but that an original incident report could not be, and that a translation of a report was "super not releasable." Assange asked that Manning "be sure to tell me these things as soon as possible," and "better yet in the submission itself," since Assange was "not the only one to process this stuff and also will forget details if publication is delayed a long time due to the flood of other things." After Manning asked if Assange was "gonna give release

a shot?," Assange opined that a lack of detail in the releasable material "may be problematic." Manning suggested that WikiLeaks could refer to a hotel located near where the arrest occurred; she "figured it would make it look more like a journalist acquired it . . . if the hotel was mentioned." Manning also advised Assange that she was "all over the place . . . clearing logs," and that she was "not logging at all . . . safe . . . . i just wanted to be certain."

74. Thus, in the quoted communications Manning and Assange discussed the form in which WikiLeaks could disclose the information about the arrest by Iraqi police, and the suppression of particular material that if released might reveal Manning's identity as the source.

75. In addition, Manning assured Assange that by "clearing logs" she was taking the proper steps to prevent discovery, by leaving no trace on her computer of their communications.

4. Assange's Knowledge That Manning Was In The U.S. Armed Forces In Iraq

76. The March 2010 chats between Manning and Assange included military jargon and references to current events in Iraq suggesting that Assange knew Manning was an American service member in Iraq.

77. For example, on March 6, 2010, Assange asked Manning, "it looks like a MiTT report?" MiTT is a military acronym for Military Transition Team, a team that trains local Iraqi troops.

78. On March 18, 2010, Manning used the military term "MI" (for Military Intelligence) in a chat with Assange. Later that day, Assange wrote to Manning, "but remember...rules are just for the grunts..." in response to a discussion about the breaking of rules by an Army Lieutenant Colonel and senior officers. "Grunts" is military slang for enlisted military personnel in general and is often specifically used for infantrymen.

79. Further, Manning made several references to specific events and places in Iraq

(including the Tigris River) that indicated Manning was then in Iraq.

IV. MANNING AND ASSANGE'S AGREEMENT TO CRACK A COMPUTER PASSWORD TO ACCESS CLASSIFIED NATIONAL SECURITY INFORMATION

80. As described below, during their March 2010 chats, Manning and Assange reached an agreement for Assange to assist Manning in cracking a password related to two computers with access to classified national security information. I understand the following through my review of the testimony of a forensic examiner in Manning's court martial, my conversations with FBI forensic examiners, and research on the Internet.

A. Background On Password Hashes

81. A computer using a Microsoft Windows operating system does not store users' passwords in plain text for security reasons. Instead, the computer stores passwords as "hash values." When a user creates a password for the relevant username, the password passes through a mathematical algorithm, which creates a "hash value" for the password. Essentially, the creation of the hash value is a form of encryption for storing the password. The hash value—not the plain text of the password—is then stored on the computer.

82. As additional security, the computer does not store the full hash value in one location. Instead, the hash value for that username is broken into two parts. One part is stored in the Security Accounts Manager (SAM) database as the SAM registry file. The SAM file in a Windows operating system keeps usernames and parts of the hash value associated with the username. The other part of the hash is stored in the "system file." To obtain the full hash value associated with the password, one needs the parts from the SAM file *and* the system file.

83. Finally, as further security, Windows locks the SAM file and system file. Only users with administrative level privileges can access the files.

84. However, even if a user does not have administrative level privileges, the user might be able to access the system file or the SAM file by using special software, such as a Linux operating system. A person, for example, can reboot a computer using a CD with the Linux operating system and view the contents of the SAM file or system file.

85. The evidence suggests that Manning did just that. Forensic analysis of Manning's personal laptop computer reflects that she burned the Linux operating system to a CD on or around March 2, 2010. Through forensic analysis, investigators have further determined that Manning therefore could have viewed the SAM file of both IP1 and IP2—the SIPRNet computers that Manning primarily used—by rebooting them with the Linux operating system that she downloaded.

B. Agreement To Crack Password

86. On March 8, 2010, at approximately 3:55 p.m., Manning asked Assange whether he was "any good at lm hash cracking."

a. At the time, Windows operating systems commonly used two methods for hashing and storing passwords, Lan Manager (LM) and New Technology Lan Manager (NTLM). Referring to an LM hash or an NTLM hash is tantamount to saying, "Windows password." Thus, in the above-described message, Manning asked Assange if he was able to crack passwords for computers running Windows operating systems.

87. In response to Manning's question, Assange answered, "yes." Assange then stated, "we have rainbow tables for lm." A "rainbow table" is a tool used to crack a hash value to determine the password associated with it.

88. After Assange claimed to have rainbow tables, Manning stated

"80[redacted]1c." Manning then stated, "i think its lm + lmnt."

a. Manning likely meant to say "lm + ntlm." The hexadecimal string of text is consistent with the format of an LM or NTLM hash. Further, on Windows operating system version Vista or newer, LM is disabled, and only NTLM is used. Manning's remark that she "thought" that the hash was "lm + lmnt" suggests that she retrieved it from a computer running a pre-Vista version of Windows.

89. A few minutes later, Manning further explained, "not even sure if thats the hash....i had to hexdump a SAM file, since i don't have the system file." Assange asked, "what makes you think [it's] lm?"[3] Assange asked, "its from a SAM?" Manning answered "yeah." Assange then stated that he "passed it onto our lm guy."

a. In the above-described chats Manning informed Assange that she had accessed the SAM file with a program and had identified this particular 16-byte hexadecimal value as a potential LM or NTLM password hash.

b. By saying she retrieved the password hash through a "hexdump," Manning likely meant that she used a software program to view the SAM file in "hexadecimal format," in which raw computer data can be viewed.

90. Two days later, at approximately 11:30 p.m. on March 10, 2010, Assange followed up on the issue. Assange messaged Manning and asked, "any more hints about this lm hash?" Assange stated, "no luck so far."

91. Investigators have not recovered a response by Manning to Assange's question, and there is no other evidence as to what Assange did, if anything, with respect to the password.

[3] The numbers provided by Manning were part of, but not the full, hash. Manning would have needed the part of the hash from the system file as well to obtain the full value.

The next chats that investigators were able to recover were dated March 16, 2010. Thus, there is approximately a six-day gap in the chats after Assange asked for further hints on the hash.

92. Nevertheless, the recovered chats described above reflect an agreement between Manning and Assange to crack the hash.

C. Password Belonged To A SIPRNet Computer

93. Forensic investigators have determined that the hash that Assange agreed to help Manning crack came from IP1 and IP2.

94. Using an image of Manning's SIPRNet computer hard drives, the forensic investigator booted it with the same Linux operating system that Manning burned to a CD on her personal computer.

95. The forensic investigator then navigated to the SAM file on the computers. Using a hex editor, the investigator was able to view and obtain the precise hash value that Manning forwarded to Assange.

96. The hash value that Manning forwarded to Assange was associated with the password for an "FTP" user on IP1 and IP2. The FTP user was not attributable to any specific person.

97. Although there is no evidence that the password to the FTP user was obtained, had Manning done so, she would have been able to take steps to procure classified information under a username that did not belong to her. Such measures would have frustrated attempts to identify the source of the disclosures to WikiLeaks.

V. ASSANGE FLEES FROM JUSTICE

98. On May 27, 2010, based on information provided by US2, Army investigators in Iraq took Manning into military custody at FOB Hammer. Manning was subsequently charged

with a variety of criminal offenses in a military court-martial related to her disclosures to WikiLeaks, including charges alleging unlawful transmission of national defense information, in violation of 18 U.S.C. § 793(e), theft of government information, in violation of 18 U.S.C. § 641, and unlawful access to a government computer, in violation of 18 U.S.C. § 1030(a)(1).

99. On July 30, 2013, Manning was convicted of most of these charges, including unlawful gathering or transmission of national defense information, computer intrusion, and theft of government property. Manning was acquitted of aiding the enemy and of one count of 18 U.S.C. § 793(e). Manning was sentenced to 35 years' imprisonment in August 2013.

100. Meanwhile, beginning as early as November 2010 and as late as April 2017, media outlets reported that the Department of Justice was investigating charges against WikiLeaks or Assange in connection with the disclosures by Manning.

101. On November 20, 2010, in connection with unrelated charges in Sweden, an international arrest warrant was issued against Assange. Following litigation between December 2010 and May 2012, the United Kingdom (U.K.) Supreme Court determined that Sweden's extradition request had been lawfully made, and the U.K. had ten days to take Assange to Sweden. Instead of appealing to the European Court of Human Rights, in June 2012, Assange fled to the Ecuadorian embassy in London. Ecuador formally granted Assange diplomatic asylum on August 16, 2012, "citing his well-founded fears of political persecution and the possibility of the death penalty were he sent to the United States." Specifically, Assange feared that "if he were to be sent to USA, he might be prosecuted and perhaps be executed by a military court in regard to his involvement in the release of stolen and leaked American documents on its crimes in Afghanistan and Iraq." *See* http://www.aalco.int/Ruling%20of%20UNWGAD%20on%20Julian%20Assange.pdf.

102. Assange has made numerous comments reflecting that he took refuge in the Ecuadorian embassy to avoid extradition and charges in the United States.

103. For example, in 2013, the WikiLeaks website posted an affidavit by Assange concerning alleged monitoring of his activities and the search and seizure of his property. In this affidavit, Assange acknowledged that he was "granted asylum after a formal assessment by the government of Ecuador in relation to the current and future risks of persecution and cruel, inhuman and degrading treatment in the United States in response to my publishing activities and my political opinions. I remain under the protection of the embassy of Ecuador in London for this reason." *See* https://wikileaks.org/IMG/html/Affidavit_of_Julian_Assange.html.

104. On May 19, 2017, in response to Sweden's decision to discontinue its investigation regarding suspected rape by Julian Assange, Assange publicly stated, "While today was an important victory and an important vindication . . . the road is far from over . . . . The war, the proper war, is just commencing. The UK has said it will arrest me regardless. Now the United States, CIA Director Pompeo, and the U.S. Attorney General have said that I and other WikiLeaks staff have no rights ... we have no first amendment rights...and my arrest and the arrest of our other staff is a priority. . . . The U.K. refuses to confirm or deny at this stage whether a U.S. extradition warrant is already in the U.K. territory. So, this is a dialogue that we want to happen. Similarly, with the United States, while there have been extremely threatening remarks made, I am always happy to engage in a dialogue with the Department of Justice about what has occurred." https://www.bloomberg.com/news/articles/2017-05-19/swedish-prosecutors-to-drop-rape-investigation-against-assange.

CONCLUSION

105. The evidence summarized in this Affidavit establishes probable cause to believe that the defendant, Julian P. Assange, committed the offense alleged in the complaint; namely, Assange violated 18 U.S.C. § 371 by conspiring to (1) access a computer, without authorization and exceeding authorized access, to obtain classified national defense information in violation of 18 U.S.C. § 1030(a)(1); and (2) access a computer, without authorization and exceeding authorized access, to obtain information from a department or agency of the United States in furtherance of a criminal act in violation of 18 U.S.C. § 1030(a)(2), (c)(2)(B)(ii).

Respectfully submitted,

Special Agent Megan Brown
Federal Bureau of Investigation

Subscribed and sworn before me this 21st day of December 2017

/s/
Theresa Carroll Buchanan
United States Magistrate Judge

United States Magistrate Judge
Alexandria, Virginia

Attachment A

Sender Account	Sender Alias	Date-Time	Message Text
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 00:56:32	5-6 hours for total upload?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 03:32:57	uploaded
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 03:33:31	no, it was like 5 minutes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 03:36:21	ping
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 03:37:36	ping
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 03:38:54	anyway... should be good to go with that...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 05:39:50	news?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 05:41:22	...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:07:12	hi
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:07:49	hiya
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:08:15	I like debates.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:09:27	Just finished one on the IMMI, and crushed some wretch from the journalists union.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:11:01	vid?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:11:24	Of this?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:11:37	yeah
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:11:56	Not videotaped, i think.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:12:04	ah
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:12:24	Very satisfying though
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:12:38	>nod<
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:12:44	Source here just gave me 10Gb of banking docs.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:13:10	lb?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:13:11	He leaked some before, was exposed by the husband of the wretch.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:13:27	cross-bank, was an it consultant.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:13:39	got arrested two weeks ago
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:13:50	Had is bank accounts frozen.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:14:02	and has been offered 15 million kroner to shut up
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:14:09	/is/his
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:14:26	mmm
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:15:04	needed to offload them so they'd stop going after him
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:17:31	>yawn<
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 21:19:26	tired?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-05 21:20:54	waking up =)
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 22:53:22	ping
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-05 23:41:17	ping
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 00:31:55	here
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 00:32:52	pong
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 00:39:19	...and zero reply status =P
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:40:54	ping
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:41:22	ping
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:41:27	pong
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:41:34	can you tell me more about these files?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:41:41	or the status of the issue?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:41:58	uhmm... no new information... everybody is focused on the election
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:07	what's the caps thing?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:42:15	caps?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:22	CAPS
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:38	who's the author?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:39	and are all these releasable?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:42:42	so much going on... ahhhh
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:46	what about the english translation?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:42:55	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:42:55	everything is notes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:43:02	minus the photos
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:43:13	the photos are releasable
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:43:29	ok, what about the incident report?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:43:52	cant release the original, but the information can be scraped from it
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:44:08	i.e. sources indicate this happened at this place at this time
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:44:17	yup
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-06 06:44:38	it looks like a MiTT report?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:44:39	translation is super not releasable

Sender Account	Sender Alias	Date-Time	Message Text
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:45:01	ok. be sure to tell me these things as soon as possible
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:45:03	yes, came from federal police into US hands
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:45:07	and better yet in the submission itself
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:45:12	yes, sorry
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:45:59	i'm not the only one to process this stuff and also will forget details if publication is delayed a long time due to the flood of other things
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:46:02	though... who knows... everybody is running around like headless chickens
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:46:28	malaki is expected to win again though?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:46:33	basically
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:46:39	lose a few seats maybe
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:46:42	but win overall
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:46:56	probably have to form a new coalition
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:48:47	blah, sorry about the craziness... gonna give release a shot?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:58:20	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:58:37	cool
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:58:40	lack of detail may be problematic, but we'll see
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:59:09	i.e "easier" stories for press to get
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:59:10	im sure you can try to confirm SOMETHING... there is a hotel called the Hotel Ishtar nearby to that location
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 06:59:36	does it have grid refs?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 06:59:46	grid references within the document, yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:00:01	that was were the arrests took place
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:00:11	morocco publishing company
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:00:24	gives coordinates (in the military report)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:01:19	i figured it would make it look more like a journalist acquired it... if the hotel was mentioned
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:01:55	[popular among gays, oddly]
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:02:38	http://travel.yahoo.com/p-hotel-2514619-hotel_ishtar-i </message>
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:02:42	haha
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:03:19	i'm surprised there are any left.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:03:25	foreign
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:03:27	that is
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:03:33	full transcript for video is now complete
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:03:43	evil work
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:03:43	iraq themed releases?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:04:08	yes, the transcripts say a lot about attitudes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:05:30	might also be known as Sheraton Ishtar
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:05:41	http://en.wikipedia.org/wiki/Sheraton_Ishtar </message>
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:06:13	its somewhere in that general area... "Morocco Publishing"... its been too crazy for me to try and find
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:07:14	anyway, gotta dash... should be back in a few hours
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:07:21	good luck
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:07:34	you too
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:07:49	um, transcripts?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:07:53	ah, yes, sorry.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:08:11	its a HUGE jumble xD
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:08:12	=P
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:08:17	plural confused me.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:08:25	muh bad

Sender Account	Sender Alias	Date-Time	Message Text
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:08:34	gotta go fo' realz =P
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:08:37	ciaoness
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:10:28	oh, it was on the EAST side of the tigris... thats important
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:11:01	the arrest location
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:11:03	that is
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-06 07:11:36	why important?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:11:46	i think hotel is on the west side
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:12:21	ah, im all over the place... clearing logs...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:12:43	not logging at all... safe
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 07:12:50	i just wanted to be certain
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 09:25:55	any more questions?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 10:59:53	i have a quick question
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 12:48:15	busy day for you ?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-06 14:37:11	ping
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:03:53	ping
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:08:29	brb, checking flights
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:11:49	k
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:14:56	I have a quick question?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:15:36	sure...lots of time pressure atm though so answer will be brief
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:16:00	how valuable are JTF GTMO detention memos containing summaries, background info, capture info, etc?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:16:18	time period?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:16:25	2002-2008
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:17:35	quite valuable to the lawyers of these guys who are trying to get them out, where those memos suggest their innocence/bad proceedure
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:18:12	also valuable to merge into the general history. politically gitmo is mostly over though
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:18:20	yeah
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:18:28	although transfers to afghanistan might rise it again
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:18:38	&gt‰PNG
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:18:43	ill get back to that later
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:19:29	depends on definition of valuable of course.. there's been a fair bit of inflation the last few months :)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:19:39	I noticed
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:19:51	BTW
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:20:12	WE won the referendum -- only 1.4% voted against.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:20:17	I saw
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:20:25	How cool is that?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:20:54	First referendum in icelandic history, ever.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:20:56	not sure how much influence you actually had... though im sure you had an impact of some kind
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:21:13	by 'we' I mean everyone working towards it
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:21:20	ah, been there before
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:21:28	im wary of referenda
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:21:51	democracy sounds good... until you realize you're a vulnerable minority...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:21:57	but quite possibly swung it.. there was lots of stuff going on behind the scenes here.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:22:09	case in point: proposition 8 in california
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:22:21	Yes. This is democracy in the negative though, which is usually great.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:22:34	indeed it is
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:22:51	i.e vetoing bills [go back and do it again!]
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:23:32	cali is bad, I agree. anyone with some $ has a syringe right into the heart of the state constitution
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:23:40	>nod<
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-07 07:23:52	bbk
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:23:58	gotta run too
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 07:23:59	ttyl
dawgnetwork@jabber.ccc.de	Nobody	2010-03-07 10:53:48	so when is the site coming back?

Sender Account	Sender Alias	Date-Time	Message Text
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:46:56	hello
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:48:43	heya!
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:48:50	how goes?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:49:22	not bad
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:52:19	vid has been enhanced and rendered now. subtitles done for english
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:52:30	nice
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:52:47	it looks good. the stills are very moving
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:53:03	the stills taken from the wide angle?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:53:31	dropped camera
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:53:42	no..
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:53:51	ah, the video stills then
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:53:52	from the video cam
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:54:14	sounds good
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:55:54	still all over the place, here
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:56:10	After the contrast enhancement, something about the lack of resolution / smoke gives a film-noir quality
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:56:16	yeah, I've heard.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:56:25	heard?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:56:29	outcome yet?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:56:43	busy few weeks
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:57:02	no... wont be for weeks... it was very quiet
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 05:57:09	expected a lot more
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:58:05	people can get worked up internally...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 05:58:59	somethings are encouraged to be said, others not, and after they flow around long enough, there's a lack of grounding.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:04:09	lalala
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:04:54	jesus
	Nobody	2010-03-08 06:05:05	mm?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:05:22	looks like we have the last 4 mothers of all audio to all phones in the .is parliament
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:05:29	s/mothers/months
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:05:46	interesting
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:06:09	*had nothing to do with this one*
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:08:49	im sending one last archive of intersting stuff... should be in the x folder at some point in the next 24 hours
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:10:08	ok. great!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:10:09	74b3*.tar.bz2
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:10:50	you'll need to figure out what to do with it all...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:11:03	a lot of odd things are happening lately
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:11:08	such as?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:11:48	it's hard to describe without going through them all
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:11:53	but there's something in the air.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:12:07	in iceland, or globally
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:12:40	this is what I'm trying to determine. people in germany say the same thing
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:12:49	and there's some evidence of that
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:13:13	such as... (i hate to inquire too much, but im benign)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:13:38	it may be more readily visible in .is due to less inertia [small economy]
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:14:09	definitely feel something odd here...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:14:38	some recent things... in denmark the main newspaper printed an entire book in afghanistan that was about to be injuncted suddenly in its sunday paper
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:14:50	to subvert the injunction
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:14:55	[about afghanistan, not in]
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:15:04	injunction came from dep of defence
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:15:25	fox news editorialized to say, give money to WL
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-08 06:15:42	.nl government just fell over afghanistan

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dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:15:49	indeed
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:16:00	german constitutional court just struck down data retention
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:16:07	yep
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:16:34	wl actions that were considered totally radical 3 years ago are now courted.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:17:06	i told you before, government/organizations cant control information... the harder they try, the more violently the information wants to get out
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:17:22	2500 articles in .is referendum in the past 15 hours, despite it being a sunday
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:17:34	you're like the first pin to pop a balloon
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:17:52	many other things like this
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:18:13	restrict supply = value increases, yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:18:21	oh yeah... osc went haywire digging into .is
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:18:37	us dod has another tact though, dump billions in free "news" content
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:18:44	yeah?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:18:56	that's something we want to mine entirely, btw
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:19:10	I had an account there, but changed ips too quickly
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:19:16	usually its pretty dull reading, one or two things on .is a day... but its like 20-25 for today alone
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:19:40	just FBIS or analysis included?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:19:54	no analysis, too early...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:20:03	24-48 hours it takes for analysis if done
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:22:01	anyway, im throwing everything i got on JTF GTMO at you now... should take awhile to get up tho
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:23:22	summary / history / health conditions / reasons for retaining or transfer of nearly every detainee (about 95%)
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:24:01	ok, great!
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:24:15	what period does it cover for each internment?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:24:48	2002-2009...
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:25:21	so initial medical evaluation to exit evaluation?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:25:37	no, just summaries...
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:25:52	but summaries of that?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:26:26	i.e from entry to exit?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:26:31	not quite
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:26:33	gaps
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:26:50	where do the gaps come from?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:26:58	Memos such asSUBJECT: Recommendation to Retain under DoD Control (DoD) for Guantanamo Detainee, ISN: US9AS-000002DP
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:27:51	i have a csv that organizes the info as much as possible
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:27:55	I hate these gitmo guys
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:28:29	OFAFBU sums up the sort of people they ended up with
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:28:48	[one flight away from being ugly] aka "gitmo cute"
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:28:56	haha
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:30:57	anyway, gotta run, have a nice day
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:31:14	you too. and take care!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:31:42	after this upload, thats all i really have got left
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:32:15	curious eyes never run dry in my experience
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:32:18	I sat on it for a bit, and figured, eh, why not
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:32:52	ive already exposed quite a bit, just no-one knows yet
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:33:34	ill slip into darkness for a few years, let the heat die down
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:34:05	won't take a few years at the present rate of change
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:34:08	true
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:34:19	almost feels like the singularity is coming there's such acceleration

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dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:34:52	yes... and considering just how much one source has given you, i can only imagine the overlad
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:35:05	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:35:15	*load
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 06:35:30	c ya
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:35:34	I just hope we can do justice to it all.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:35:57	We have the numbers, just need to figure out how to scale the management.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 06:36:04	night!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 11:13:06	hi
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 11:44:16	hot
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 11:44:27	short sleep?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 12:19:56	wasnt asleep... going to sleep soon
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 12:20:21	upload is at about 36%
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 12:21:39	ETA?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 12:22:05	11-12 hours... guessing since its been going for 6 already
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 12:22:33	how many mb?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 12:22:50	about 440mb
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 12:24:46	a lot of scanned pdf's
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 14:38:00	what are you at donation-wise?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 15:55:28	any good at lm hash cracking?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:00:29	yes
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:00:44	donations; not sure.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:00:55	something in order of .5M
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:01:30	but we lost our CC processor, so this is making matters somewhat painful.
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:02:23	we have rainbow tables for lm
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:04:14	80XXXXXXXXXXXXXXXXXXXXXXXXXXXX1c
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:05:07	i think its lm + lmnt
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:05:38	anyway...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:06:08	need sleep >yawn>
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:09:06	not even sure if thats the hash... i had to hexdump a SAM file, since i dont have the system file...
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:10:06	what makes you think it's lm?
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:10:19	its from a SAM?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:10:24	yeah
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-08 16:11:26	passed it onto our lm guy
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 16:11:40	thx
dawgnetwork@jabber.ccc.de	Nobody	2010-03-08 21:31:59	got about an hour to go on that upload
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:44:06	hi
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:45:05	did you get what i sent?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:45:11	via sftp
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:46:04	heya!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:46:24	MD5 (74b3*.tar.bz2) = c36e31ab*
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:47:39	will check
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:47:47	sweet
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:47:54	somewhat distracted with all sorts of intrigues
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:48:01	heh, lm sure
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:48:13	imma get intrigued with my hot chocolate =)
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:48:24	we now have the last 4 months of audio from telephones at the .is parliament
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:48:29	bbl
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:48:35	yes, you said earlier
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:48:51	it was a *might* before
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:48:55	somebody's bad... =)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 03:49:11	ttyl
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 03:49:16	yup. nixon tapes got nothing on us
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 04:25:37	hmm
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 04:25:42	there's a username in the gitmo docs
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 04:25:58	i assume I should filter it out?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:40:47	theres a usemame?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:42:16	any usernames should probably be filtered, period
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:42:38	but at the same time, theres a gazillion of them
pressassociation@jabber.ccc.de	Nxxxxxxx Fxxxx	2010-03-10 05:45:56	is this ordered by country?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:46:00	yes

Sender Account	Sender Alias	Date-Time	Message Text
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:46:48	... gazillion pdf's that is
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:47:15	anything useful in there?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:50:54	no time. but have someone on it
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:51:00	there surely will be
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:51:12	and these sorts of things are always motivating to other sources too
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:51:22	>nod<
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:51:33	inflation
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:51:34	=P
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:51:43	from an economic standpoint
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:52:08	heh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:52:29	I was thinking more inspiration
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:52:38	i know =)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:53:08	gitmo=bad,leakers=enemy of gitmo,leakers=good
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:54:03	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....
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:54:41	true
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:55:05	ive crossed a lot of those "danger" zones, so im comfortable
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:55:25	learned a lot from the iceland cable on my side
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:55:32	oh?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:55:55	and that is... everyone is too busy to investigate too deeply...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:56:02	or clean up the mess
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:56:03	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:56:13	unless they think there's a real promotion in it
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:56:19	indeed
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:56:35	after a few days, no one gives a damn, generally
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:56:41	yep
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:56:46	especially now with the pace of change so high
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:56:51	oh yeah
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:56:58	its nuts
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:57:28	ive given up on trying to imagine whats next
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:57:53	I predict its nothing i can predict
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:58:21	actually...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:58:29	gave an intel source here a list of things we wanted
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:58:39	1-5
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:59:06	1 was "something we have no idea of yet. hard to find, but the most likely to be important"
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 05:59:30	and they came back with the last 4 months of parliament
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:59:47	xD
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 05:59:49	hilarious
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:00:40	thats a wtf... who did this kind of moment
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:00:54	fall--out =P
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:00:55	So, that's what I think the future is like ;)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:01:15	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:01:57	now that humans are getting more and more integrated into this information society... a level of transparency never imagined or even truly desired is coming into play
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:02:18	it makes us more human if anything
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:03:13	we've created states, governments, religious institutions, corporations... all these organizations to hide behind...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:03:26	but at the end of the day, we're just guys and girls

Sender Account	Sender Alias	Date-Time	Message Text
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:04:02	WikiLeaks is looking for donations, but what itsï»¿ founders should do, is call upon script writers to make a, perhaps reality based, dramatized, thriller movie of one of the wikileaks cases, with corruption, infiltration, espionage, hitmen, sabotage, etc. and call the movie "WikiLeaks!" <span style=font-family: Helvetica; font-size: 12pt;">I see great potential for such a movie, and massive money and advertising it would generate would establish them firmly. I'd then support by seeing the movie. Hollywood would likely support."
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:04:04	haha
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:04:35	yes. its very healthy
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:04:47	but then, there is farmville...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:04:59	the masquerade ball
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:05:22	this is gonna be one hell of a decade
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:05:45	it feels like 2010 should be ending soon...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:05:50	but we just got started
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:05:51	sense deceptions to suck $ out of people
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:06:06	It's as old as lipstick and the guitar of course, but mmorpg are evil in a whole new way
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:06:39	voluntary matrix-style society?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:06:46	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:07:08	hmm
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:07:25	might be ok in the end
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:07:53	mmorpg's that have long term users are incentivised to keep them profitable
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:08:59	but I imagine they'll merge into hybrid revenue modes, where congnitive tasks and freelabor are done using sense deception incentives
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:09:48	like the "video games" from toys?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:10:12	haven't seen that
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:10:34	but it sure isn't a decade to be a gullible idiot :)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:11:24	basic gist: retired general takes over a toy company, invests in video games for kids to "play", but they're actually training to remotely use little toy sized weapons
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:11:40	former toy owner tries to stop him
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:11:52	*company
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:12:11	heh. that's the example I was going to use for mmorpg (with drones) but decided it was too grotesque
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:12:47	its not... its logical in frightening ways
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:13:04	i think like that... i dont know how it happened, but i think that way
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:13:32	i predict war will turn into a continuous spectrum of spying and violence
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:13:32	"how can I take advantage of two things that most people wouldn't think are connected"
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:15:50	with companies doing a lot of the lower end (spying/violence) for their own reasons and a totally seemless crossover (as is happening with the us) between contractors/military to the degree that its not clear who is tasking who
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:16:12	wow, dead on
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:16:57	everywhere, greater degrees of freedom, more fluidity and mixing.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:17:23	always an interesting discussion =)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 06:17:26	ttyl
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 06:17:31	night!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 20:58:03	hello
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 20:59:41	heya!
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 20:59:52	whats new?

Sender Account	Sender Alias	Date-Time	Message Text
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:00:22	350Gb of audio intercepts. But you knew already.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:00:30	mhmm
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:00:57	is that the only thing?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:01:22	lots of smaller scale material
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:01:28	>nod<
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:01:44	e.g bbc legal defense against trafigura which was censored
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:02:15	aljazeera doing another segment on WL
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:02:35	canadian detainee docs
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:02:43	canadian?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:03:00	some russian and chinese stuff that I can't read
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:03:08	hahaha
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:03:09	heh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:03:17	and a list of ALL the tea party volunteers
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:03:42	from glen beck's email
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:03:48	jesus fucking christ
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:04:13	whats the big deal with that? because some people take that seriously
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:04:26	an analysis of the greenhouse gas output of Australia's "earth hour" fireworks
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:04:32	(46 tonnes)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:04:57	The teaparty thing? It's weird, but it should be taken seriously
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:05:21	yeah, its one of those... grey areas between reality and entertainment and lck
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:05:33	It's the right wing overclass (fox) organization of the righwing underclass. Think of them as brown shirts.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:05:39	*stays in reality*
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:06:23	well, i dont know what posting a list from glenn beck's email will do... but hey, its transparency
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:06:37	They're important because their organized free labor.
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:06:54	And they may or may not break free of their masters.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:07:04	ah
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:07:50	is it like the entire world is uploading to you?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:08:24	some hungarian finance things
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:08:31	scientology in haiti...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:08:52	lots of german stuff I don't understand, but we have people who do
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:08:58	>nod<
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:09:08	wow...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:09:15	Im gonna leave you to work than
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:09:50	get back up and online... get immi passed... and start publishing whatever you can... =)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:10:08	heh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:10:16	aljazeera will also have a new WL doco
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:10:31	by the same producer who did IMMI piece
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:11:36	agreement between the royal mail and its union
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:11:49	oh, this one is nice
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:11:55	entire romanian police database
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:12:31	israeli's OECD application docs
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:15:45	its like you're the first "Intelligence Agency" for the general public
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:16:39	downside is you get so much stuff in a single day that its hard to prioritize
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:16:54	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:17:05	that's just a matter of growth, though
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:17:39	did you read our bulgarian shadow state doc?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:17:45	well, fuck you do everything an intel agency does... minus the anonymous sourcing
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:17:58	not really

Sender Account	Sender Alias	Date-Time	Message Text
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:18:15	The original WL about reads: "...will be the first intelligence agency of the people..."
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:18:43	might have missed that, but its absolutely true
dawgnetwork@jabber.ccc.de	Nobody	2010-03-10 21:19:31	anyway, gotta run... ttyl
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:19:47	Wikileaks described itself as "the first intelligence agency of the people. Better principled and less parochial than any governmental intelligence agency, it is able to be more accurate and relevant. It has no commercial or national interests at heart; its only interest is the revelation of the truth. Unlike the covert activities of state intelligence agencies, Wikileaks relies upon the power of overt fact to enable and empower citizens to bring feared and corrupt governments, and corporations to justice."
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 21:20:14	ok. later!
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 23:30:54	any more hints about this lm hash?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-10 23:31:03	no luck so far
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 18:23:35	hi
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 18:32:42	hol
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:29:42	whats up?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:34:13	just about to go out
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:34:14	all systems nominal
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:34:24	^_^ good to know
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:34:36	ttyl
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:35:52	:)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:35:52	take care
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:36:04	will do... donations coming in good?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:37:09	not sure
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:37:21	experience in the past is that they don't tend to in response to stories like this
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:37:28	meh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-16 22:37:32	makes people scared to donate
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:37:34	too bad
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:37:52	i would've
dawgnetwork@jabber.ccc.de	Nobody	2010-03-16 22:37:59	if i saw that
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:32:26	what'd your source say it was?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:39:49	it was very general
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:40:02	organization-wide
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:40:17	interesting
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:40:35	what was the approach and motivation?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:41:17	i wonder if this didn't stir up some internal dissent
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:41:42	must be some people not too happy about cracking down on whistleblowers and following the chinese...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:41:55	indeed
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:42:11	90% of the effort is on chinese exfiltration of documents
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:42:22	it was a blog posting
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:43:01	well, that is a genuine problem
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:43:16	israeli and russian exfiltration too
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:44:02	french as well
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:44:06	it warned about not visiting the blogs, because the document and its contents is still classified
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:44:17	gave a link the to the report through proper channels
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:44:31	although knowledge tends to be stabalizing
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:44:34	if you take a big picture perspective
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:45:17	it almost pleaded people not to send anonymous documents, mentioning courage and personal trust... and told people to go through proper channels if they have an issues
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:45:24	open skies policy was stabalizing
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:45:44	so perhaps an open net policy is called for ;)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:46:23	that's reasonable, though doesn't work in practice...

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pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:46:27	what'd they say about courage?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:46:38	i can send a copy
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:46:40	that it's contagious? ;)?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:46:53	but its non-rel
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:47:00	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:47:32	subsys is really good these days
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:48:09	please mark non-release, found on usb stick
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:48:55	k
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:49:00	outed another spy this afternoon
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:49:16	??
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:49:27	local
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:49:34	gotchya
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:49:38	police, watching one of my hotels
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:49:50	insider also confirmed
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:49:58	we have access to the fleet tracking system ;)
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:50:41	just got hold of 800 pages of interrogations docs and another 40gb of .ls privatization / banking stuff
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:50:51	this country is going to melt...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:50:55	saw the film today
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:51:04	it's looking great
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:51:31	what film?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:51:50	projectb
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:51:58	the massacre
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:52:01	gotchya
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:52:32	uploaded file
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:53:01	marked as requested
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:53:11	thanks
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:53:18	n/p
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:53:20	you're great
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:54:03	is there some way i can get a cryptophone to you?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:54:14	not at this time
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:54:40	actually...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:54:47	probably best if you just order one?
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:54:57	or rather some friend
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:55:14	bit pricy though
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:55:26	hmm
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:55:29	actually never mind
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:55:38	yes, i dont have access at present
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:56:35	these things are good for urgent contact, but it's safer to avoid due to location tracking possibilities
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:56:47	i know that very well
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:56:56	although there is a satphone module
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:57:21	forget the idea for now
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:57:45	yes. you just contact us
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:57:52	but don't disappear without saying why for an extended period or i'll get worried ;)
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:58:03	i wont
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:58:16	you'll know if something's wrong
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:58:39	ok
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:58:57	you can just tell me "all the ships came in"
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:59:09	via email or any other mechanism
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:59:15	>nod<
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 22:59:44	will be doing an investigative journo conf in norway this week end, so may be out of contact most of the time
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 22:59:55	its good
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:00:17	ok.
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:00:27	off to do some work.
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:00:43	k, but def read the reflection i sent
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:00:53	i will
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:01:01	now
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:01:03	toodles
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:12:56	heh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:13:15	i like it. free advertising to just the right market

Sender Account	Sender Alias	Date-Time	Message Text
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:23:14	>nod<
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:23:30	the tone is what interests me the most
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:23:45	yes
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:23:47	its not really a threat, its a plead
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:23:55	slight desperation
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:24:00	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:24:08	interesting approach
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:24:21	IOW, no-one knows what to do
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:24:40	threats work better with most, but perhaps they see that our sources are resistant to them anyway...
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:24:54	so pleading is the only thing left
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:25:34	im sure it was brought on by discussions that showed slight sympathy
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:27:28	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:27:46	i think your intuition is correct
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:28:32	"if we can't scare them, lets ask nicely"
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:33:39	the hackers that these governments hire, the good ones... they're the cats that can only be herded by food... but when the cat food runs out, or they get treated rough... they'd be the first to dissent
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:34:21	food meaning money, of course... and treatment being, well, treatment
dawgnetwork@jabber.ccc.de	Nobody	2010-03-17 23:34:42	weird analogy, i know... lol
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:38:21	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:38:34	that's possible
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-17 23:39:09	and there are social vales that arise out of the internet that have evolved beyond those inside the isolated military-contractor complex
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 00:04:31	its like a classroom run by an overbearing teacher... when a kid strikes back anonymously by sabotaging the desk... the other kids get a little excited and rowdy, because they wanted too, but were afraid of getting caught... the teacher is embarassed and cant control the kids, so the teacher just makes an announcement that the students should continue working quiety after they have a look at the mess on the desk that the teacher is cleaning up
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 00:05:11	i think thats a better analogy
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 00:37:17	<div>http://freedomincluded.com/index <span style="background-color: #ffffff; font-family: Helvetica; font-size: 12pt;"> <- recommend: free (as in freedom) hardware vendor"
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:39:52	wtf is wrong with LTC Packnett xD
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:40:59	you don't confirm, or even come off as possibly confirming shit...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:41:22	lol, slipped up in your favor, i guess
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:41:31	eh?
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:42:06	NYT article has LTC Packnett allegedly confirming the authenticity of the 2008 report posted on 15th
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:42:17	yes
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:42:19	hilarious
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:42:57	i dont think he's going to continue to be the MI spokesperson
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:43:04	they do break these rules though when being hammered
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:43:15	im sure
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:43:41	refusing to confirm does make them look shadowy and untrustworthy

Sender Account	Sender Alias	Date-Time	Message Text
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:43:45	i just didnt realize how little it takes for them to cave...
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:43:55	true, but... im shocked
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:44:12	yeah.. but remember.. rules are just for the grunts :P
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:44:32	like no spying on citizens at the nsa
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:44:43	which is common
dawgnetwork@jabber.ccc.de	Nobody	2010-03-18 08:45:57	"oh fuck, this might be a US citizen... shouldn't we get this checked by the FBI..." "Fuck that, FBI is slow as fuck, we'll just keep listening in, capture him, and then turn him over"
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:48:27	i prefer jen. also, too masculine looking
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:48:57	heh
pressassociation@jabber.ccc.de	Nxxxxxxxx Fxxxx	2010-03-18 08:48:59	nevermine

ATTACHMENT C

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

19-3 / 10GJ3793 / 19 - 1478

for the

Eastern District of Virginia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: **Chelsea Manning,**
formerly known as Bradley Manning

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place:	Date and Time:
U.S. District Court 401 Courthouse Square Alexandria, VA 22314	**May 14, 2019 09:30 a.m.**

You must also bring with you the following documents, electronically stored information, or objects *(blank if not applicable)*: **WITNESS ATTENDANCE.**

Date: May 08, 2019

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Gordon D. Kromberg, AUSA
Office of the United States Attorney
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314 (703) 299-3700

PROOF OF SERVICE

This subpoena for *(name of individual or organization)* _____

was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____.

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	**UNDER SEAL**
	)	(Pursuant to Local Criminal Rule 49 and
	)	Fed. R. Crim. P. 6(e))
GRAND JURY CASE NO. 10-GJ-3793	)	
	)	Case No. 1:19-DM-12
	)	
	)	GRAND JURY NO. 19-3
	)	
	)	Hearing: May 16, 2019

GOVERNMENT'S RESPONSE IN OPPOSITION TO CHELSEA MANNING'S MOTIONS TO QUASH AND FOR DISCLOSURE OF ELECTORNIC SURVEILLANCE

Chelsea Manning has publicly announced her intention to disobey this Court's order to testify in front of the grand jury. Approximately two months ago, she violated Judge Hilton's order to testify in the same investigation, and he held her in civil contempt. Manning was released from incarceration only because the term of the grand jury expired. This afternoon, the Court will hold a hearing to address Manning's continued recalcitrance.

Late yesterday afternoon, Manning filed two motions—a motion to quash and a motion seeking the Court to require the government to affirm or deny electronic surveillance of her. As explained below, both motions are wholly without merit and serve simply as an attempt to delay the matter. The Court should deny the motions, hold Manning in civil contempt, and return her to incarceration until she complies with its order or the term of this grand jury expires.

1. Manning's first argument is that the government is improperly using the grand jury to obtain discovery on an indicted defendant, Julian Assange. As the government explained in its bench memorandum, this argument has no merit. *See* Gov't's Bench Mem. 15-16 (May 15, 2019). The Fourth Circuit precedent is clear: even after returning an indictment, the grand jury

may continue investigating new charges or targets that are related to the pending indictment. *See United States v. Alvarado*, 840 F.3d 184, 189-90 (4th Cir. 2016); *United States v. Bros. Constr. Co. of Ohio*, 219 F.3d 300, 314 (4th Cir. 2000); *United States v. Moss*, 756 F.2d 329, 332 (4th Cir. 1985). To demonstrate that it is seeking Manning's testimony for proper purposes, the government has provided the Court with an ex parte submission that shows her testimony is directly relevant and important to an ongoing investigation into charges or targets that are not included in the pending indictment. *See* Gov't's Ex Parte Submission Regarding Nature of Grand-Jury Investigation (May 15, 2019). As that submission reflects, the government is not using the "grand jury proceedings for the 'sole or dominant purpose' of preparing for trial on an already pending indictment." *Alvarado*, 840 F.3d at 189 (4th Cir. 2016) (quoting *Moss*, 756 F.2d at 332). The Court should therefore deny Manning's motion to quash.

2. Manning's second argument fares no better. Pursuant to 18 U.S.C. § 3504, Manning moves for the Court to require the government to affirm or deny whether she was subjected to electronic surveillance. Manning raised this exact issue in front of Judge Hilton in March, and he properly denied it. Gov't's Bench Mem., Ex. A, at 23-27, 46-52, 318-19; *id.*, Ex. B, at 373, 385. Manning appealed Judge Hilton's ruling, the parties extensively briefed the issue, and the Fourth Circuit affirmed Judge Hilton. *See* Ex. C, at 11-19; Ex. D, at 20-35; Ex. E, at 5-12; Ex. H, at 2. In front of a new judge, Manning now seeks to relitigate the issue by adding a few new claims to her declaration. *See* Ex. 1 (reflecting the declaration that Manning submitted to Judge Hilton). The Court should deny Manning a second bite of the apple.

In any event, Manning's motion fails on its merits now for the same reasons that it failed previously. First, and most importantly, the text of § 3504 requires the moving party to show a connection between the alleged electronic surveillance and the questions asked or evidence used

at the grand jury (i.e., that the questioning or evidence was the "primary product" or "obtained by the exploitation of" unlawful electronic surveillance). *See* 18 U.S.C. § 3504(a)(1); *United States v. Shelton*, 30 F.3d 702, 707-08 (6th Cir. 1994); *United States v. Robins,* 978 F.2d 881, 887 (5th Cir. 1992); *United States v. Nabors*, 707 F.2d 1294, 1302 (9th Cir. 1983); *In re Baker*, 680 F.2d 721, 722 (11th Cir. 1982). The statute "is not a discovery tool to be used to determine the existence or validity of wiretaps completely unrelated in time or substance to the on-going proceeding." *In re Grand Jury Matter*, 906 F.2d 78, 93 (3d Cir. 1990). As the government explained on appeal, Manning did not show that the questions she was previously asked in the grand jury had any connection whatsoever to electronic surveillance. *See* Gov't's Bench Mem., Ex. C, at 29-34. In fact, on their face, the questions reflect that they had no basis in electronic surveillance. Manning now refuses to answer those exact same questions again. Because Manning cannot satisfy the threshold requirement that the questions propounded in the grand jury had a connection to the alleged electronic surveillance, the Court should deny the motion outright.

Second, under *United States v. Apple*, 915 F.2d 899 (4th Cir. 1990), Manning cannot show that she was a "party aggrieved," as the text of the statute requires. *Id.* at 905. To satisfy this threshold requirement, Manning must "make a prima facie showing that . . . [s]he was a party to an intercepted communication, that the government's efforts were directed at [her], or that the intercepted communications took place on [her] premises." *Id.* "This critical showing may not be based on mere suspicion; it must have at least a 'colorable basis.'" *Id.* (quoting *United States v. Pacella*, 622 F.2d 640, 643 (2d Cir. 1980)). The allegations in Manning's declaration amount to nothing more than mere suspicion that the government electronically surveilled her. Because she cannot demonstrate that she was an aggrieved party, the government

is not required to affirm or deny any electronic surveillance. *See* Gov't's Bench Mem., Ex. C, at 25-29 (explaining why Manning's prior declaration did not satisfy this standard).

Even though Manning cannot satisfy the threshold requirements of § 3504, the government wishes to put this issue to rest. The government thus notifies the Court and defense counsel of the following:

> Chelsea Manning was not and is not a subject of electronic surveillance pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522. That being said, she is not entitled to notification of any other type of surveillance before complying with the grand jury subpoena requiring her testimony. Moreover, even assuming that she *was* the subject of some other type of surveillance, she could not contest the legality of such surveillance at the grand jury stage.

Ex. 2 (redacted).[1]

The government has used this same language in responding to a similar motion brought under § 3504(a)(1). The Fourth Circuit held that this language satisfied any obligation to affirm or deny under § 3504(a)(1). *In re Grand Jury Subpoena (T-112)*, 597 F.3d 189, 200 (4th Cir. 2010). This notice, therefore, should end the matter.

*****

As outlined in the government's bench memorandum, the Court should hold Manning in civil contempt and order her incarceration until she purges herself of her contempt or for the life of the grand jury.

[1] The government has redacted the names of the clients involved in the letter. At the hearing, the government will bring an unredacted version, which it can furnish for the Court to review in camera, if necessary.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: _____
Tracy Doherty-McCormick
First Assistant United States Attorney

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Kellen S. Dwyer
Thomas W. Traxler
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2019, I caused the foregoing document to be sent to the following via electronic mail:

Moira Meltzer-Cohen
Attorney at Law
Mo_at_Law@protonmail.com

Christopher Leibig
Attorney at Law
Chris@chrisleibiglaw.com

Thomas W. Traxler
Assistant United States Attorney

EXHIBIT 2

FILED UNDER SEAL

U.S. Department of Justice

United States Attorney
Eastern District of Virginia

2100 Jamieson Avenue
Alexandria, Virginia 22314
(703)299-3700

March 27, 2006

Via Telefax to (202) 223-2085

Nancy Luque, Esq.
Piper Rudnick Gray Cary
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412

Re: Grand Jury Subpoenas for [redacted]

Dear Ms. Luque:

I have received your letter of March 16, 2006, in which you state that your clients will not produce documents responsive to the grand jury subpoenas until the government advises you whether your clients were or still are the subject of electronic surveillance under Title III, FISA, an NSA program, or any other yet to be disclosed program.

Your clients [redacted] were not and are not a subject of electronic surveillance pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522. That being said, they are not entitled to notification of any other type of surveillance before responding to the subpoenas. Moreover, even assuming that they *were* the subject of some other type of surveillance, they could not contest the legality of such surveillance at the grand jury stage.

Sincerely,

Chuck Rosenberg
United States Attorney

By: _____
Steven Ward
Special Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
JOHN DOE 2010R03793	)	Case No. 1:19-dm-12-AJT-2
	)	
	)	

ORDER

By Order dated May 6, 2019, the Court ordered Chelsea Manning to testify and provide other information in the above-captioned grand jury proceeding. [Doc. 2]. Ms. Manning subsequently stipulated that she would refuse to comply with the Court's Order. On May 16, 2019, the Court held a closed hearing on Ms. Manning's motions to preclude her testifying before the Grand Jury; and after denying those motions, determined that Ms. Manning refused to comply with the Court's Order to testify, that she would persist in that refusal, and that she did not have just cause not to testify as ordered; and found Ms. Manning in civil contempt. The Court then reconvened in open session to consider the appropriate sanction, if any, for her contempt; and upon consideration of the arguments of counsel, and the statements of Ms. Manning, determined that a coercive sanction was appropriate.

Upon consideration of the arguments and representations of counsel and Ms. Manning, the motions, the memoranda in support thereof and in opposition thereto, and for the reasons stated in closed and open court at the May 16, 2019 hearing, it is hereby

ORDERED that Chelsea Manning be, and she hereby is declared, in civil contempt of court for refusing to testify before the Grand Jury, as ordered; and it is further

ORDERED that Chelsea Manning be REMANDED to the custody of the Attorney General until such time as she purges herself of contempt or for the life of the grand jury, but in no event longer than 18 months; and it is further

ORDERED that if Chelsea Manning does not purge herself of contempt within thirty days of this Order, she shall incur a conditional fine of $500 per day until such time as she purges herself of contempt; and if she fails to purge herself of contempt within sixty (60) days after the date of the issuance of this Order, a conditional fine of $1,000 per day until such time as she purges herself of contempt or for the life of the grand jury.

The Clerk is directed to forward a copy of this Order to all counsel of record.

/s/
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
May 16, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

In re: Grand Jury Subpoena, CHELSEA MANNING, Movant.	**MOTION TO RECONSIDER SANCTIONS** **1-19-dm-00012-AJT**

STATEMENT OF MOTION

Comes now Chelsea Manning, by and through counsel, and pursuant to 28 U.S.C. §1826 and applicable law, moves this Court to reconsider and appropriately modify the sanctions imposed upon her, such that the remaining sanctions, if any, do not exceed their lawful civil function as coercive, and not punitive sanctions.

Ms. Manning states the following in support of this request:

PRELIMINARY STATEMENT

On March 6, 2018, a grand jury sitting in the Eastern District of Virginia issued an indictment against Julian Assange, the founder of Wikileaks, a website devoted to radical transparency. The indictment was a one-count indictment charging Conspiracy to Commit Computer Intrusion. Ms. Manning was summoned to appear on March 6, ***2019***, exactly one year later, before a grand jury sitting in

the Eastern District of Virginia. After litigation and denial of various motions, she was brought before the grand jury, and refused to give testimony. Finding no "just cause" for her refusal, District Court Judge Hilton found her in contempt, and remanded her to the Alexandria Detention Center.

On April 11, 2019 the indictment against Mr. Assange, in which Ms. Manning is named throughout as an alleged coconspirator, was made public, demonstrating that the grand jury had obtained this indictment without the benefit of or apparent need for Ms. Manning's testimony.

On May 9, the term of the first grand jury expired and she was released, however, on May 8, Ms. Manning was subpoenaed to appear before a new grand jury on May 16th.

Some time between May 14 and May 16, 2019, Julian Assange was charged in a superseding indictment with 17 Counts relating to offenses under the Espionage Act. This indictment was also obtained without the benefit of or apparent need for Ms. Manning's testimony.

On May 16, without knowledge of the already-obtained superseding indictment, Ms. Manning appeared before this Court, and moved to quash the new

subpoena. When this Court denied Ms. Manning's motions, she reiterated her refusal to give testimony before any grand jury.

The Court found no just cause for her refusal, held her in contempt, ordered her confined once again, and in addition, imposed fines to be assessed at a rate of $500.00 per day after 30 days, and $1000.00 per day after 60 days.

ARGUMENT

I. Civil contempt sanctions may only be coercive. Ms. Manning's confinement is not coercive, and must be terminated.

As argued during the May 16 contempt hearing, confining Ms. Manning at all exceeds the lawful scope of the contempt sanction as codified in 28 U.S.C. §1826. This is because confinement (and any other sanction) may only be lawfully imposed if it is likely to exert any coercive effect on Ms. Manning's determination not to testify. Ms. Manning has strong objections to the grand jury process, and she also has the courage of her convictions. As she is incoercible, confinement will not serve its sole lawful purpose to coerce compliance; it will only serve to punish her. Ms. Manning's confinement must therefore be terminated.

The civil contempt sanction is one that may be imposed without the protections afforded criminal defendants. This is because the confinement is conditioned upon the contemnor's own conduct. Shillitani v. U.S., 86 S.Ct. 1531

(1966). Thus, under both the common law governing the court's traditional contempt powers, and its codification in 28 U.S.C. §1826, civil confinement is intended *only* to be coercive. "If a judge orders continued confinement without regard to its coercive effect upon the contemnor, or as a warning to others who might be tempted to violate their testimonial obligations, he has converted the civil remedy into a criminal penalty." Simkin v. U.S., 715 F.2d 34 (2d Cir. 1983) at 38. That is, civil sanctions may not, under any circumstances, be used as a deterrent to other potentially recalcitrant witnesses. In the event that there is no possibility of purging contempt, either because the grand jury has ended, or because the witness is incoercible, then the confinement serves no further lawful purpose, and the witness must be released. 28 U.S.C. §1826, Shillitani v. United States, 384 U.S. 364 (1966); Armstrong v. Guccione, 470 F.3d 89, 111 (2d Cir. 2006).

Turning directly to the legislative history of the recalcitrant witness statute, we see in fact that "[a] court is free to conclude at any time that further incarceration of a recalcitrant witness will not cause the witness to relent and testify, and, upon such grounds, to release the witness from confinement." Grand Jury Reform: Hearings on H.R. 94 Before the Subcomm. On Immigration, Citizenship, and International Law of the House

Comm on the Judiciary, 95th Cong., 1st Sess. 713 n. 1 (1977) (statement of Asst. Atty. Gen. Civiletti). While the district judge retains "virtually unreviewable discretion" as to determinations on a witness' intransigence, all relevant rulings have made clear that such deference can be extended "only if it appears that the judge has assessed the likelihood of a coercive effect upon the particular contemnor. *There must be an individualized decision, rather than application of a policy…*" Simkin at 37, emphasis added. *See also* In re Cocilovo, 618 F.Supp. 1378 (S.D.N.Y. 1985); In re Papadakis, 613 F.Supp. 109 (S.D.N.Y. 1985); U.S.v. Buck, U.S. v. Shakur, 1987 WL 15520 (S.D.N.Y. 1987); United States v. Whitehorn, 808 F.2d 836 (4th Cir. 1986); In re Cueto, 443 F. Supp. 857 (S.D.N.Y. 1978).

Several factors play into the individualized determination of a witness's intransigence. These include the length of confinement, the witness's connection with the activity under investigation, the continued need for the witness's unique evidence, the articulated moral basis for the refusal, the witness's perception of community support, and the witness's conduct and demeanor. In re Dorie Clay, 1985 WL 1977 (S.D.N.Y. 1985); In re Grand Jury Proceedings, 994 F. Supp. 2d 510, 515 (S.D.N.Y. 2014). These

are factors that have been used as the basis for judges' individualized assessments, although the weight, or even the presence of each factor in any given inquiry appears to be entirely at the discretion of the judge.

Typically, motions such as this focus on demonstrating the intransigence of the witness, because the legitimacy of the government's need for that witness's testimony tends not to be in doubt. Clay, supra, at 4, (Intransigent contemnor released *despite* the need for her unique and relevant testimony); see also In re Thomas, 614 F.Supp. 983 (S.D.N.Y. 1985); In re Grand Jury Proceedings, *supra* (contemnor released on basis that there existed no reasonable possibility that he would agree to testify). However, where the need for a witness' unique evidence is diminished or is in question, a new and somewhat differently-focused inquiry is warranted into whether a sanction is coercive or punitive. In re Dohrn, 560 F.Supp. 179 (S.D.N.Y. 1983) (Witness released despite Judge's antipathy, based on not only the intransigence of her beliefs *but also the diminished need for her cooperation*).

Such is the case at bar. Ms. Manning has publicly articulated the moral basis for her refusal to comply with the grand jury subpoena, in

statements to the press, in open court, and most recently, in a letter addressed to this Court. See Exhibit A. She is suffering physically and psychologically, and is at the time of this writing in the process of losing her home as a result of her present confinement. She has made clear she prefers to become homeless rather than betray her principles. Her intransigence, at this point, is not reasonably in question. What is in doubt, however, is the government's need for her testimony.

The government has now indicted Mr. Assange on 18 very serious counts, without the benefit of or apparent need for Ms. Manning's testimony. The government's extradition packet must be submitted in finalized form very soon. Any investigation of him after that point will be nugatory. United States v. Moss, 756 F.2d 329, 331-32 (4th Cir. 1985), see also United States v. Kirschner, 823 F. Supp. 2d 665, 667 (E.D. Mich. 2010)(finding that post-indictment questioning about the same conduct but *different* charges than those in the indictment was permissible, but questioning leading only to further information about the same charges would be impermissible). Any further investigation of unindicted targets will likewise be futile, as charges would be time-barred, and in any case, it is perfectly understood that Ms.

Manning has no useful information about any parties other than the person behind the online handle "pressassociation." She is not possessed of any that is not equally available to them, and in any case, her absence has posed no obstacle to indictment and superseding indictment.

Ms. Manning's convictions are no longer seriously in question. What remains to be seen is whether the government can claim with a straight face to have an ongoing need for her testimony. After the submission of the extradition packet, the need for Ms. Manning's testimony will diminish so precipitously that it will be difficult to characterize her ongoing refusal to testify as contumacious.

Ms. Manning is sincere and intractable in her refusal. Moreover, she reasonably believes that the government does not actually require her testimony, and therefore any effort on her part to purge her contempt would be meaningless. There is no incarceratory sanction that will coerce her, and no jail term that she will not endure, even at great harm to herself. The incarceration sanction currently imposed, therefore, is merely punitive, and must be terminated. The Court implicitly recognized the sincerity and intractability of her beliefs, and therefore sought to impose a financial

penalty based on their understanding that the jail sanction is not coercive. If the Court recognizes the futility of further confinement, and wishes instead to try a new tactic, it must terminate the sanction already determined to have been unsuccessful.

II. Civil contempt sanctions may only be coercive, and any civil sanction imposed must be reasonably calculated to exert a coercive impact without being punitive.

Ms. Manning has now been exposed not only to incarceration, but to fines. As with any civil sanction, a fine must be reasonably calculated to exert a coercive but not a punitive effect, lest it outgrow its lawful bounds. At the contempt hearing on May 16, this Court, after inquiring whether monetary fines were within its traditional contempt powers, imposed fines on Ms. Manning of $500 per day after 30 days, and $1000 per day after 60 days. The total amount of fines to be assessed after Ms. Manning persists in her refusal for the next 16 months, is over $440,000.00.

A. Fines must be individually calculated with respect to a contemnor's financial capacity.

In order to confirm that a fine will be coercive and not punitive, courts must weigh the fine against the individual financial capacity of the contemnor. The Court did no such assessment.

Should this Court wish to enforce a fine, it must conduct an inquiry into Ms. Manning's current worth, and what she may earn during the time she is to be held in contempt. The Supreme Court has suggested that when imposing a fine, the courts must consider (1)"the character and magnitude of the harm threatened by continued contumacy"; (2)"the probable effectiveness of any suggested sanction in bringing about the result desired"; and (3)"the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant." United States v. United Mine Workers of Am., 330 U.S. 258, 304, 67 S. Ct. 677, 701, 91 L. Ed. 884 (1947). Courts have relied on this case for the proposition that they have nearly unlimited powers to imposed civil contempt fines. However, because part of the calculus must involve the determination that a civil fine remains only coercive, the individualized assessment of a civil financial burden must be even more carefully figured by the court.

To fine Ms. Manning more than she can actually pay under her own steam is *per se* punitive. It is axiomatic that a fine would be improper were the contemnor be "financially unable to make such payments." See Federal Home Loan Mortg. Corp. v. Berbod Realty Assocs., L.P., (S.D.N.Y. 1994).

Just as a court should not impose a contempt on a party when compliance with a court order is impossible, neither should they impose sanctions a contemnor is unable to satisfy. United States v. Rylander, 460 U.S. 752, 757, (1983). Although the burden rests with the contemnor to show inability to comply, they must have an opportunity to show that they cannot, and to demonstrate the degree to which they could comply. A hearing should be ordered by the court.

B. Fines assessed against individuals, where the underlying contempt does not involve financial contempt, may be *per se* punitive.

Furthermore, while imposing fines does lie within the traditional contempt powers of the court, it is generally reserved for corporations, which cannot be confined, and which have the capacity to absorb a fine without suffering, for example, homelessness. Rarely, individuals are fined, but counsel can find no case in which fines were assessed as to an individual other than where the individual was a sophisticated financial actor and the underlying contempt involved disobedience of a court order directing the management of a large amount of money. Schutter v. Herskowitz, No. 07-3823, 2008 U.S. Dist. LEXIS 91424, at *2 (E.D. Pa. Nov. 6, 2008) (the dispute involves an escrow fund of over $100,000.00); Carpenters Health &

Welfare Fund of Phila. & Vicinity v. Special Servs. for Bus. & Educ., Inc., No. 09-CV-4701, 2011 U.S. Dist. LEXIS 58771, at *2-3 (E.D. Pa. May 31, 2011) (defendant company fined for refusing to account for delinquent contributions due and owing to Plaintiffs); New York State Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1351 (2d Cir. 1989) (the director of Operation Rescue was fined in his individual capacity, but was profiting as a direct result of his contumacious conduct).

In fact, while the contemporary use of the fine as "a conditional penalty designed to coerce compliance" is an accepted type of sanction, its recent common use has been described as "a modern novelty." CONTEMPT SANCTIONS AND THE EXCESSIVE FINES CLAUSE, 76 N.C.L. Rev. 407, 438. As noted, such fines are almost exclusively applied to corporations, their officers, or individuals whose contempt is directly related to contumacious financial malfeasance. The purposes of these fines are to coerce compliance, to compensate any pecuniary loss caused by the contemnor, and/or to divest them of gains acquired as a result of the contempt. This suggests that fines imposed upon individual contemnors, who are not either the representatives of a corporation or the trustees of a

substantial sum, are disfavored. That is, it appears that courts have intuitively recognized that assessing fees against contemnors in their capacity as individual human beings may be *per se* punitive. There is no doubt that courts have shied away from imposing overly steep civil fines, in light of the Eighth Amendment prohibition against excessive fines, which applies as equally to coercive as to criminal fines. Austin v. United States, 509 U.S. 602, 607-11, 113 S. Ct. 2801, 2804-06 (1993).

C. Concurrent use of fines and confinement is almost always *per se* punitive.

The issue of whether the fines are punitive is further complicated by the fact that Ms. Manning is concurrently also confined under the contempt sanction. Other courts agree that while fines and confinement may be used alternatively or successively, they may not be imposed simultaneously. Some courts, for example, have fashioned a coercive penalty of accruing fines limited in duration by the possible imposition of incarceration. Acosta v. N & B Lundy Corp., No. 4:16-MC-00396, 2017 U.S. Dist. LEXIS 67262, at *8 (M.D. Pa. May 3, 2017). Other courts have held that fines and incarceration are simply not to be used concurrently, as to do so is *per se* punitive. In re

Grand Jury, 529 F.2d at 551 (fines or imprisonment in civil contempt should be used interchangeably or successively but not simultaneously in the absence of findings supported by the record showing the necessity for such severe actions).

Conclusion

As Ms. Manning's resolve not to testify has been unwavering, and as the government's legitimate need for is called into question, there is no appropriately coercive sanction, and she must be released from jail and relieved of all fines. In the alternative, she must be released from detention, and/or fines must be calculated according to her individual financial capacity; in any event, she must not be subject simultaneously to both confinement and fines, and an inquiry must be conducted to determine and curb the potential punitive impact of fines. For those reasons, the motion should be granted.

Respectfully Submitted,
By Counsel

Dated: May 30, 2019

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The Honorable Anthony Trenga
Justice of the Eastern District of Virginia, Alexandria Division
Albert V. Bryan U.S. Courthouse
401 Courthouse Square
Alexandria, VA 22314

May 28, 2019

Dear Judge Trenga,

During the contempt hearing on May 16, 2019, this Honorable Court directed me to take the opportunity during my confinement to reflect on my principles with respect to the institution of grand juries in the United States. This letter responds to that directive.

During the hearing, you stated that there exists "no dishonor" in providing evidence to a grand jury. You suggested that codification of grand juries in the text of the U.S. Constitution provided ample justification for this institution. In response to my suggestion of "preliminary" or "committal" hearings, you expressed skepticism over whether such publicly held hearings served the same purpose without damaging innocent people accused of crimes.

These arguments are raised frequently in discussions about the problems with grand juries. They are certainly not novel to me. Over the last decade, I frequently considered these and many other arguments while forming my opinions about the grand jury process. After spending the last two weeks reflecting on my decision not to testify before this grand jury, I wish to present my position in a more careful and complete manner than an impromptu colloquy can provide. After working with lawyers and researchers, I can also now cite specific sources that support my position.

First, I shall compare grand juries in their earliest form, including the ideals and practical problems they sought to address, to grand juries as they currently operate. Second I want to clarify that while my objection to grand juries emphasizes their historical use against activists, I also view grand juries as an institution that now undermines due process even when used as intended.

The drafters of the U.S. Constitution, despite their many flaws, possessed a sophisticated understanding of modern political theory. The framers did not set out to short-circuit due process protections. Obviously, to a contemporary reader, we now understand the many flaws and compromises in the Constitution, and see some as inherently cruel and indefensible: legal human slavery; the legalizing of subordinate civil status for women; segregation; and the disenfranchisement of those who did not own land come to mind.

Some such practices might have struck contemporaries of the Constitution as "normal" or "necessary," but with the passage of time, and through the tireless work of millions of people taking bold and dangerous action, they are now obsolete. I am certainly not alone in thinking that the grand jury process, which at one time acted as an independent body of citizens along the lines

of a civilian police review board, slowly transitioned into the unbridled arm of the police and prosecution in ways that run contrary to the grand jury's originally intended purposes.[1]

The 5th Amendment provides many of our most cherished procedural safeguards, concepts foundational to our criminal legal system, including 'due process,' a prohibition on double jeopardy, and the right against compelled self-incrimination. The grand jury is also enshrined in the fifth amendment, however, prior to the recent publicity surrounding the Mueller investigation, most Americans only knew two things about the grand jury.

First, people hear that a grand jury could indict a ham sandwich. Early grand juries acted independently, as investigations by citizens. Now, the grand jury process means the prosecutor decides what the grand jurors see – and what they don't see. The grand jury imagined by the drafters of the fifth amendment – which did not involve a prosecutor – bears no resemblance to what we see today, where more than 99.9% of indictments sought are granted.

Second, we learn another, more sinister thing about grand juries: they don't indict law enforcement. For example, in Dallas over a stretch of several years, more than 80 police shootings came before grand juries. Only one returned an indictment.[2] Grand juries have protected police officers since the slave patrols. They were used to indict abolitionists, but not people capturing and reenslaving people seeking freedom from bondage. They were used to indict reconstructionists, while actively protecting lynch mobs. Both the 'ham sandwich' statement and selective indictment happen because of grand jury secrecy.

Also, a prosecutor's presentation of a case is shaped by their own ideas and goals. There does not need to be any misconduct or bad intent on the part of a prosecutor to influence the grand jurors in a way that destroys their independence. If you look at legal scholarship about the history of the grand jury, you can see how today's grand juries are unrecognizable from English and early American ones. The original grand jury was more than an investigator; they were supposed to protect citizens not just from unjust indictments *but from unjust laws*. In England, grand jurors who even allowed a prosecutor to come into the grand jury room were seen as having violated their oath.[3]

I am positive that the founders never intended the grand jury to function like those we see today. If grand juries were actually independent bodies that nullified unjust laws or their unjust application, to determine whether it was really in the public interest to decide who should be made "infamous" under the law, I would feel differently. Reading the history of grand juries, I have read of how during the American Revolutionary war, grand jurors refused to indict tax resisters against the crown, because while it was technically illegal, the grand jurors recognized

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[1] District Judge Edward Becker concluded, without chagrin, that it is true, generally, that "the grand jury is essentially controlled by the United States Attorney and is his prosecutorial tool" Robert Hawthorne, Inc. v. Dir. of Internal Revenue, 406 F. Supp. 1098, 1119 (E.D. Pa. 1975)

[2] *A grand jury could 'indict a ham sandwich', but apparently not a white police officer* – The Guardian, Tuesday 25 November 2014

[3] Roots, Roger, PhD, (2010) Grand Juries Gone Wrong

that what made it a criminal act was a law imposed by an authority that most of them by that time did not recognize[4]. Nonetheless, the grand jury once provided a modicum of due process, at least to the class of people to whom due process was made available.

In 2019, the federal grand jury exists as a mockery of the institution that once stood against the whims of monarchs. It undermines the Fourth Amendment's protections against unreasonable search and seizure, and the Fifth Amendment's guarantees of due process. Today's grand juries do not safeguard such fundamental rights, and they are easily subject to abuse.

Secret proceedings lend unearned legitimacy to prosecutorial decisions that protect the powerful against accountability and over-punish the marginalized. It is not surprising that members of the defense bar are generally unsupportive of grand jury proceedings. Even the Department of Justice released a report acknowledging that "grand juries are notorious for being 'rubber stamps' for the prosecutor for virtually all routine criminal matters."[5] Moreover, because prosecutors can compel people to show up and testify or produce documents to the grand jury without having to show probable cause, their unmonitored subpoena power functions to let them side-step the Fourth Amendment's protections against unreasonable searches and seizures.

Imagine a world in which you were not a judge and were not connected to judges and prosecutors personally. If you or a loved one has charges brought before a grand jury, charges of which you or they were innocent, would you believe for one moment that the grand jury might not indict? What rights, specifically, would you consider safeguarded by the fifth amendment's provision for a grand jury? Consider that it is more than six times as likely that you will be struck by lightning than that a federal grand jury will decline to indict.

I object to grand juries even when used in the ways that are typically understood to be legitimate. The ability of grand juries to be abused or used for political ends is entrenched and perpetuated by the fact that jeopardy doesn't attach with a grand jury, so prosecutors can repeatedly bring the same charges. Even though there are some laws that say prosecutors must either show they have new evidence or that it is in the public interest to extend or reconvene a grand jury, this is hardly an obstacle. For instance, Thomas Jefferson had to convene three separate grand juries in order to indict Aaron Burr for sedition - but he was able to continue to convene those grand juries until he obtained that indictment. Additionally, in the Antebellum South, grand juries routinely indicted anti-slavery activists for sedition, while those in the North sometimes refused -- but charges would re-presented to new grand juries until they stuck. In 1968, a San Francisco Grand Jury was asked by Mayor Alioto to investigate the Black Panther Party. They refused, and the foreman gave a press conference about political overreach. Unfortunately, in 1969, a new grand jury began an investigation.

These examples run to the political, but grand jury shopping is something that can be done with any kind of case. Grand juries can also be used to coerce defendants to give up their

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[4] *The Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists*, Michael E. Deutsch, 1984 Northwestern School of Law

[5] *Plea Bargaining: Critical Issues and Common Practices*, by William F. McDonald, (U.S. DOJ, National Institute of Justice, 1985)

trial rights and take pleas, both by threatening to indict for more severe charges than are warranted (which we know can be done easily), or by threatening to call a defendant's loved ones before a grand jury as witnesses. The very threat of the secret proceeding is in itself terrifying to people. The secrecy of grand jury proceedings fuel paranoia and fear, running contrary to our ideals of open courts and stoking our disdain for secret testimony. I find, when I explain the secrecy of grand juries, people are often truly shocked that they are constitutional, and frequently compare them to the Court of Star Chamber.

The Court of the Star Chamber existed in England from the 15th to 17th centuries. This court lacked the same procedures as normal courts, and often pursued political and religious dissidents, and others who "sinned" against the crown. It lacked evidentiary standards and proceeded on rumor and hearsay. It imposed all kinds of arbitrary punishments, except the death penalty. In 1641, Parliament abolished the Court of Star Chamber as a dangerous relic of the past for its brutality and capriciousness. The grand jury was once a progressive and protective replacement for things like the Star Chamber, but in its current incarnation it bears far more resemblance to the Court of the Star Chamber than to its intended role as a bulwark against arbitrary state power. Apart from the fact that the grand jury itself does not impose punishments, the biggest difference between the grand jury and the Court of the Star Chamber is that Star Chamber proceedings were in fact largely open to the public.

I am not alone in objecting to the grand jury as a dangerous relic that has evolved in ways that increase its power without increasing its protections. This is not even a partisan issue. For instance, even the Cato Institute has made statements critical of the grand jury:

> Prosecutors defend their actions by reminding everyone that legislators have approved the procedures. Legislators defend what they have done by reminding everyone that the courts have approved the procedures. Judges defend what they have done by reminding everyone that prosecutors and legislators are free to do otherwise—and that the people seem content since they have not revolted against the elected officials who run the system. Citizens, in turn, too often assume that someone in the government is looking out for their welfare, including their constitutional rights. No one takes responsibility for the fact that constitutional rights are slipping away.[6]

During the hearing on the 16th, you pointedly asked me whether I had taken an oath to uphold the constitution. What is more important than my willingness to blindly follow that document is my commitment to its general principles of due process and fundamental rights. I refuse to participate in a process that has clearly transformed into something that violates the spirit if not the letter of the law. Since I reject the grand jury process, I am totally ready to propose alternatives to it and point out that such alternatives already exist.

Only two common law systems of justice use the grand jury: the United States and Liberia. Even within the United States, half of the states have dispensed with the use of grand juries. While they reliably end with indictments, they do not reliably end with justice. While the

[6] W. Thomas Dillard, Stephen R. Johnson, and Timothy Lynch, *A Grand Façade How the Grand Jury Was Captured by Government*, Policy Analysis 1–18 (2003).

grand jury is anomalous in the world, other countries are nevertheless able to prosecute people, demonstrating that there are alternatives to the grand jury.

While the United States is one of two countries to maintain a grand jury system, countries that used to have grand juries include England, Scotland, Ireland, Canada, Australia, New Zealand, South Africa, France, Belgium, Japan and Sierra Leone. In those countries, grand jury proceedings have been replaced by an open and adversarial "preliminary" or "committal" hearing system. Additionally, the United States military, through the Uniform Code of Military Justice, 10 U.S.C. §801 et seq, sets forth procedures for preliminary hearings, rather than grand juries, providing servicemembers with significantly more protections than the average person.

Preliminary hearings throw open the doors to the best of all disinfectants: sunshine. Nearly every country that used grand juries replaced it with these hearings, which save time and expense, don't criminalize refusal to comply with prosecutorial whims, and better equip all parties to prepare for fairer and more balanced inquiries into the truth of matters. There exists no shortage of due process and nothing prevents a witness who wishes to remain anonymous from speaking to law enforcement or the prosecution. A common justification for grand jury secrecy is to preserve the reputation of those investigated. First of all, as noted, almost nobody investigated by a grand jury is not indicted. Moreover, in countries that have preliminary hearings, people have an opportunity to defend themselves, and simply being investigated does not end in ruin.

Now, I want to address my specific concerns about the ways in which grand juries can be used politically.

Across the world and throughout history, it has been common practice to incarcerate or even kill dissidents and political rivals on the mere suspicion of being a member of an opposition group. While in the United States we are perhaps less overt in our persecution of dissidents most of the time, the grand jury subpoena combined with compulsory immunity gives unrestrained powers to U.S. prosecutors to oppress activists and their communities. Generally, people have no obligation to cooperate with law enforcement investigations. But in the context of a grand jury subpoena, people who refuse to talk about their first amendment beliefs and associations can be locked away via contempt.

During the McCarthy era, when people were publicly interrogated about their beliefs and associations, the public was eventually outraged, and the McCarthy hearings are widely seen as a disgraceful episode of modern history. This kind of questioning, however, routinely happens under the grand jury system. Due to the secrecy of grand juries, the public is less aware of it, and less outraged, and therefore, it continues without interruption. However, this is because they are unaware it is happening and cannot feel its effects.

The investigative grand jury as we know it was developed in the wake of McCarthy, during the Nixon years. It was developed purportedly to battle organized crime, but was promptly used to subpoena members of anti-war groups, the women's movement, and black liberation groups. Prosecutors issued subpoenas in conjunction with grants of immunity, in order to compel testimony, and routinely had resistant activists imprisoned for contempt. For instance, while federal agencies were investigating the Puerto Rican independence movement, several

community organizers refused to comply out of solidarity with their communities. They were arrested *at gunpoint* for contempt of court.

Senator Ted Kennedy was not shy about expressing his alarm:

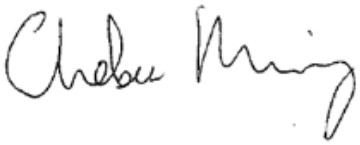
> "Over the past four years, under the present administration, we have witnessed the birth of a new breed of political animal — the kangaroo grand jury — spawned in a dark corner of the Department of Justice, nourished by an administration bent on twisting law enforcement to serve its own political ends, a dangerous modern form of Star Chamber secret inquisition that is trampling the rights of American citizens from coast to coast." [7]

The tradition of using political grand juries to jail political dissidents and activists is long. The concept of a grand jury in which prosecutors subpoena activists and jail them for refusing to comply with the subpoena stands in stark contrast to the institution contemplated in the Constitution.

The foregoing is intended to give you a better and more nuanced understanding of my conscientious objection to the grand jury. I understand the idea that as a civil contemnor, I hold the key to my cell – that I can free myself by talking to the grand jury. While I may hold the key to my cell, it is held in the beating heart of all I believe. To retrieve that key and do what you are asking of me, your honor, I would have to cut the key out, which would mean killing everything that I hold dear, and the beliefs that have defined my path.

Each person must make the world we want to live in around us where we stand. I believe in due process, freedom of the press, and a transparent court system. I object to the use of grand juries as tools to tear apart vulnerable communities. I object to this grand jury *in particular* as an effort to frighten journalists and publishers, who serve a crucial public good. I have had these values since I was a child, and I've had years of confinement to reflect on them. For much of that time, I depended for survival on my values, my decisions, and my conscience. I will not abandon them now.

Sincerely,



Chelsea E. Manning

[7] Washington Post, March 14, 1972, at 2, col. 3

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	Case No. 1:19-DM-12
GRAND JURY CASE NO. 10-GJ-3793	)	GRAND JURY NO. 19-3

GOVERNMENT'S RESPONSE IN OPPOSITION TO
CHELSEA MANNING'S MOTION TO RECONSIDER SANCTIONS

Chelsea Manning has moved for the Court to reconsider the coercive sanctions that it imposed last month after she refused to comply with its order to testify in front of the grand jury. Manning, of course, can easily avoid the sanctions by doing what the Court has ordered her to do—by testifying in front of the grand jury. Providing such testimony is "a basic obligation that every citizen owes [her] Government." *United States v. Calandra*, 414 U.S. 338, 345 (1974). In that respect, Manning holds the keys to the jailhouse door and "has it in [her] power to avoid any penalty." *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 633 (1988) (quoting *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947)) (internal quotation marks omitted). Rather than complying with the Court's order, however, Manning seeks to avoid the sanctions by challenging the legal bases for them. As explained in this memorandum, Manning's arguments have no merit.

The Court has broad discretion in fashioning sanctions to coerce contemnors into complying with its orders, *see United States v. Darwin Constr. Co.*, 873 F.2d 750, 756 (4th Cir. 1989), and it appropriately exercised that discretion here. As the Court is aware, Manning's testimony remains highly relevant and essential to an ongoing grand-jury investigation of national importance. The Court properly fashioned a combination of sanctions tailored to coerce her into testifying, starting with only confinement and then adding and increasing conditional

fines over time. In doing so, the Court imposed the sanctions in a manner that gradually increased the coercive pressure on Manning to testify. Such a measured approach was consistent with the case law and well within the Court's discretion.

The government, however, does not object to Manning's request for further fact-finding regarding her financial resources. Manning's ability to pay is a relevant consideration in imposing the coercive fines, but she bears the burden of proving that she lacks the financial resources to pay them. Manning has produced no such evidence to date. The government requests that the Court hold Manning to her burden and order that she produce evidence of her current assets, income (present and future), and earning capacity. Only then can the Court meaningfully consider the issue. The government has attached a proposed order that requires the production of such evidence.

BACKGROUND

In January 2019, Manning was served through counsel with a subpoena to testify before a grand jury empaneled in the Eastern District of Virginia. Judge Hilton entered an order directing Manning to testify in front of the grand jury and, along with a general court-martial convening authority of the Department of the Army, granted her full use and derivative use immunity. At the request of Manning's counsel, the original appearance date was moved back approximately one month—to March 5, 2019.

After an unsuccessful attempt to quash the subpoena, Manning appeared before the grand jury but refused to answer questions posed to her. Judge Hilton therefore conducted a show-cause hearing on March 8. At the hearing, he found that Manning did not have just cause to refuse to answer the questions posed to her. Judge Hilton held Manning in civil contempt and

ordered that she be incarcerated until she purged herself of the contempt or for the life of the grand jury. The Fourth Circuit subsequently affirmed Judge Hilton's contempt order.

The term of the grand jury expired on May 9, 2019. Pursuant to the terms of Judge Hilton's contempt order, Manning was released from incarceration on that date. The day before, however, Manning was served through counsel with a subpoena to appear before another grand jury empaneled in the Eastern District of Virginia. The return date of that subpoena was May 14, 2019. At Manning's request, the government agreed to postpone her appearance to May 16 to facilitate a medical appointment.

In connection with the new subpoena, Manning again received full use and derivative use immunity that covers her testimony. The Court entered a compulsion order on May 6, 2019, directing that Manning "testify fully, completely and truthfully" before the grand jury and granting her use and derivative use immunity. Likewise, a general court-martial convening authority again entered an order that granted Manning use and derivative use immunity in connection with her testimony.

Nevertheless, Manning publicly announced that she would not testify in front of the grand jury. *See* Chelsea Manning's Statement on Release from Jail and Second Grand Jury Subpoena, YouTube (May 10, 2019) ("When I arrive at the courthouse this coming Thursday, what happened last time will occur again. I will not cooperate with this or any other grand jury."), *available at* https://www.youtube.com/watch?v=TDZGRRk4MnM (last visited June 12, 2019). Manning also informed the government, through counsel, that she would refuse to answer the same questions posed to her in her prior grand-jury appearance. *See* Order 1 (May 16, 2019) (Dkt. No. 9). The government therefore scheduled a hearing with the Court on May 16, 2019, to address Manning's recalcitrance.

The day before the hearing, Manning filed two motions—a Motion for Disclosure of Electronic Evidence (Dkt. No. 6) and a Motion to Quash (Dkt. No. 7). As relevant here, Manning sought to quash the grand-jury subpoena on the ground that the government was improperly using the grand-jury proceedings to prepare for trial on an already indicted defendant, Julian Assange. At that time, Assange had been indicted on one count of conspiracy to commit computer intrusion. *See* Indictment, *United States v. Julian Paul Assange*, No. 1:18-cr-111 (E.D. Va. Mar. 6, 2018) (Dkt. No. 8). To refute those concerns while also maintaining grand-jury secrecy, the government submitted an ex parte pleading that demonstrated Manning's testimony was directly relevant to an ongoing investigation into charges or targets that were not included in the pending indictment. *See* Gov't's Ex Parte Submission Regarding Nature of Grand-Jury Investigation (May 15, 2019).

At the hearing on May 16, the Court heard argument on the motions and denied both of them. *See* Order 1 (May 16, 2019). The Court then questioned Manning directly to determine whether she would testify in front of the grand jury. *See id.* Manning clearly and unequivocally stated that she would not testify in front of the grand jury, despite the Court's order that she do so. *See* Ex. A, at 3:9-11. Manning claimed that she objected on principle to the grand-jury system and that imprisonment would not compel her to testify. *See id.* at 3:16-20. The Court found that Manning did not have just cause to refuse to testify and held her in civil contempt. *See id.* at 3:12-15.

After hearing argument on the appropriate sanction, the Court ordered that Manning be incarcerated until she purges herself of her contempt or for the life of the grand jury, but in no event to exceed 18 months.[1] *See* Order 2 (May 16, 2019). The Court also directed that Manning

[1] Per the Court's order, both parties have filed pleadings addressing whether the two months that Manning spent incarcerated on Judge Hilton's order should be included in calculating the 18-

pay a conditional fine of $500 per day after 30 days from the issuance of its order, if she still had not complied by that time. *See id.* The Court further directed that, if Manning still had not complied within 60 days of the order, the fine would increase to $1000 per day. *See id.*

Two weeks later, Manning filed the pending motion. *See* Motion to Reconsider Sanctions (May 31, 2019) (Dkt. No. 14). *First*, she argues that the Court's sanctions have become punitive for essentially two reasons: (1) they will never coerce her into testifying in light of her objection to the grand-jury system, and (2) the superseding indictment returned against Julian Assange on May 23, 2019, has eliminated the need for her testimony. *See id.* at 3-9. *Second*, she argues that the Court cannot impose coercive fines against individuals for civil contempt unless the underlying contempt involves financial misconduct. *See id.* at 11-13. *Third*, she claims that the Court cannot impose fines and imprisonment concurrently as a coercive sanction. *See id.* at 13-14. *Fourth*, she argues that the Court erred in imposing the fines without considering her financial resources. *See id.* at 9-11. As explained below, all of Manning's arguments are without merit and should be rejected.

DISCUSSION

In a civil-contempt proceeding, the Court may impose "penalties designed to compel future compliance with a court order." *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). Civil-contempt sanctions must "be coercive and avoidable through obedience." *Id.* The Court has "broad discretion to fashion an appropriate coercive remedy in a case of civil contempt, based on the nature of the harm and the probable effect of alternative

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month limit. *See* Gov't's Mem. Regarding Calculation of 18-Month Limit on Imprisonment (May 29, 2019) (Dkt. No. 12); Chelsea Manning's Bench Br.: Reiterated Contempt (May 29, 2019) (Dkt. No. 13). The United States noted that it has no objection to including the two months in the calculation. *See* Gov't's Mem. Regarding Calculation of 18-Month Limit on Imprisonment, at 1.

sanctions." *United States v. Darwin Constr. Co.*, 873 F.2d 750, 756 (4th Cir. 1989) (quoting *N.A. Sales Co. v. Chapman Indus. Corp.*, 736 F.2d 854, 857 (2d Cir. 1984)) (internal quotation marks omitted).

The "paradigmatic coercive, civil contempt sanction" involves confinement. *Bagwell*, 512 U.S. at 828. "Where contempt consists of a refusal to obey a court order to testify at any stage in judicial proceedings, the witness may be confined until compliance."[2] *Shillitani v. United States*, 384 U.S. 364, 370 (1966). "In these circumstances, the contemnor is able to purge the contempt and obtain [her] release by committing an affirmative act, and thus carries the keys of [her] prison in [her] own pocket." *Bagwell*, 512 U.S. at 828 (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442 (1911)) (internal quotation marks omitted).

In addition, the Court may impose a conditional fine as a coercive sanction for civil contempt. *See id.* at 829; William C. Bryson et al., Grand Jury Law & Practice § 11:17 (2d ed. Dec. 2018 update). "A coercive, nonpunitive fine payable to the clerk of the court is an appropriate tool in civil contempt cases." *In re Dinnan*, 625 F.2d 1146, 1149 (5th Cir. 1980). An example of a permissible coercive fine is "a per diem fine imposed for each day a contemnor fails to comply with an affirmative court order." *Bagwell*, 512 U.S. at 829. "Like civil imprisonment, such fines exert a constant coercive pressure, and once the jural command is obeyed, the future, indefinite, daily fines are purged." *Id.* Under those circumstances, the contemnor "has it in [her] power to avoid any penalty" by complying with the Court's order.

[2] There are limits on how long a recalcitrant witness can be confined for civil contempt. The "period of . . . confinement" cannot "exceed the life of . . . the term of the grand jury, including extensions," and "in no event shall such confinement exceed eighteen months." 28 U.S.C. § 1826(a).

Hicks ex rel. Feiock v. Feiock, 485 U.S. 624, 633 (1988) (quoting *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947)) (internal quotation marks omitted).

I. THE COURT'S SANCTIONS STILL SERVE A COERCIVE PURPOSE.

Manning first challenges (at 3-9) the sanctions on the ground that they no longer serve a coercive purpose but instead have become impermissibly punitive. She maintains that, in light of her "strong objections to the grand jury process," she is "incoercible" and therefore "confinement . . . will only serve to punish her." Mot. to Reconsider Sanctions 3. She also speculates that her testimony is no longer necessary in light of the intervening superseding indictment against Julian Assange, which was returned after the May 16 hearing.[3] Both arguments are meritless.

Manning's self-serving objections to the grand-jury system are insufficient to demonstrate that the Court's sanctions will not have a coercive effect. Her argument based on those objections has already been addressed and rejected. At the May 16 contempt hearing, Manning raised her objections to the grand-jury system. *See* Ex. A, at 3:16-20, 10:13 – 13:3. The government explained at length why the argument lacks merit, *see* Gov't's Bench Mem. 16-24 (May 15, 2019) (Dkt. No. 4), and the Court ruled against Manning on the issue, *see* Ex. A, at 23:7 – 25:10. For the same reasons, the Court should reject Manning's attempt to relitigate its ruling here.

Nor does the recent superseding indictment against Assange render the sanctions punitive. Even after returning an indictment, the grand jury may continue investigating new

[3] Manning claims that Assange was charged in the superseding indictment at some point "between May 14 and May 16, 2019." Mot. to Reconsider Sanctions 2. That representation is inaccurate. The face of the indictment reflects that it was returned in open court on May 23, 2019, and the signature page bears the same date. *See* Superseding Indictment, *United States v. Julian Paul Assange*, No. 1:18-cr-111-CMH (E.D. Va. May 23, 2019) (Dkt. No. 31) (Exhibit B).

charges or targets that are related to the pending indictment. *See United States v. Alvarado*, 840 F.3d 184, 189-90 (4th Cir. 2016); *United States v. Bros. Constr. Co. of Ohio*, 219 F.3d 300, 314 (4th Cir. 2000); *United States v. Moss*, 756 F.2d 329, 332 (4th Cir. 1985). As the government's ex parte submissions reflect, Manning's testimony remains relevant and essential to an ongoing investigation into charges or targets that are not included in the superseding indictment. *See* Gov't's Ex Parte Mem. (May 23, 2019). The offenses that remain under investigation are not time barred, *see id.*, and the submission of the government's extradition request in the Assange case does not preclude future charges based on those offenses, *see* Gov't's Supplement to Ex Parte Mem. (June 14, 2019). Manning's speculations about the direction of the grand-jury investigation, the purpose of her testimony, and the need for it are insufficient to show otherwise.

II. THE COURT HAD THE DISCRETION TO IMPOSE A FINE EVEN WHEN THE UNDERLYING CONTEMPT DID NOT INVOLVE FINANCIAL MISCONDUCT.

Manning also suggests that there is a per se rule against imposing a coercive fine on an individual unless the underlying contempt involves financial misconduct, such as "disobedience of a court order directing the management of a large amount of money." Mot. to Reconsider Sanctions 11. None of the cases that Manning cites (at 11-12), however, suggests that a coercive fine is appropriate only under those circumstances. That is because no such per se rule exists.

On the contrary, it is well settled that district courts may impose a fine as a coercive sanction where, as here, an individual refuses to comply with a grand-jury subpoena. *See, e.g.*, *In re Grand Jury Proceedings*, 280 F.3d 1103, 1109-10 (7th Cir. 2002) (affirming imposition of a fine of $1,500 per day as a coercive sanction for failing to produce documents pursuant to grand-jury subpoena); *United States v. Mongelli*, 2 F.3d 29, 30 (2d Cir. 1993) (affirming imposition of a fine of $10,000 per business day on contemnors who refused to comply with a court order to testify in front of the grand jury); *In re Grand Jury Witness*, 835 F.2d 437, 443 (2d

Cir. 1987) (affirming order imposing a $50,000 fine if a contemnor did not appear to testify before the grand jury before a particular date and thereafter requiring the contemnor to pay $5,000 each day that he did not appear); *In re Dickinson*, 763 F.2d 84, 86 (2d Cir. 1985) (affirming imposition of a $1500 per day fine on a contemnor for refusing to testify in front of the grand jury); *In re Grand Jury Impaneled Jan. 21, 1975*, 529 F.2d 543, 551 (3d Cir. 1976) (recognizing that the "district court has power to impose upon a civil contemnor a coercive monetary fine" for failing to produce documents pursuant to a grand-jury subpoena). As these cases demonstrate, the Court may impose coercive fines even when the underlying contempt does not involve financial misconduct. That is consistent with the broad discretion afforded to district courts in fashioning sanctions to coerce compliance with their orders. *See Darwin Constr.*, 873 F.2d at 756.

Manning suggests (at 13) that the Excessive Fines Clause of the Eighth Amendment limits the Court's discretion, but that provision is inapplicable in the civil-contempt context. *See Grand Jury Proceedings*, 280 F.3d at 1110 ("[A] fine assessed for civil contempt does not implicate the Excessive Fines Clause."). "The purpose of the Eighth Amendment . . . was to limit the government's power to punish," *Austin v. United States*, 509 U.S. 602, 609 (1993), and therefore, "a defendant must make a threshold showing of 'punishment' before [the Excessive Fines Clause's] protections will attach," *Mongelli*, 2 F.3d at 30. Because coercive fines imposed for civil contempt "are not punitive in nature, they do not implicate the protection of the . . . excessive fine clause[]." *Id.*

III. THE COURT HAD THE DISCRETION TO IMPOSE A FINE IN ADDITION TO ORDERING MANNING'S CONFINEMENT.

Manning also argues (at 13) that the Court could not order her to pay a fine while she was confined because the concurrent use of these sanctions is "almost always *per se* punitive." But

she does not cite to any authority that imposes such an arbitrary restriction on the Court's discretion. Instead, the case law demonstrates that such a per se rule does not exist.

Multiple courts of appeals have recognized that fines may be imposed in addition to confinement as a coercive sanction for civil contempt. *See Grand Jury Witness*, 835 F.2d at 440 (recognizing that, along with confinement, "[f]ines are an additional or alternative sanction that may be imposed" on a recalcitrant witness); *Dinnan*, 625 F.2d at 1150 (recognizing that "a finding of civil contempt permits the coercive combination of both fine and imprisonment"); Bryson et al., *supra*, § 11:17 (recognizing that a court has the discretion to impose "a coercive fine in lieu of, or in addition to, the order of confinement"). In fact, the Seventh Circuit has squarely approved the concurrent imposition of both a fine and confinement as a coercive sanction. *See Grand Jury Proceedings*, 280 F.3d at 1109-10 (affirming the district court's contempt order imposing a concurrent $1500 per day fine and incarceration when the contemnor failed to comply with the court's order to produce documents pursuant to a grand-jury subpoena).

Manning primarily relies on the Third Circuit's decision in *In re Grand Jury Impaneled January 21, 1975*, but that case further demonstrates that there is no per se rule against concurrent sanctions. There, the district court held a contemnor in civil contempt for failing to comply with its order to produce documents pursuant to a grand-jury subpoena. *See* 529 F.2d at 546. The district court simultaneously ordered his incarceration and imposed "a coercive fine of $1500 per day until such time as he complied." *Id.* at 546-47. The contemnor appealed, arguing, among other things, "that in a civil contempt proceeding the court may not impose a coercive monetary fine." *Id.* at 547. The Third Circuit rejected this argument, "conclud[ing] that the district court has power to impose upon a civil contemnor a coercive monetary fine." *Id.* at 551.

The Third Circuit expressed concern that the district court simultaneously imposed both a fine and imprisonment without explaining why such a severe sanction was necessary. As the Third Circuit explained, the district court should apply "the degree of coercion minimally necessary to gain compliance with its orders" and not "visit Draconian punishment upon the civil contemnor." *Id.* The Third Circuit stated that "a district court may use these civil sanctions interchangeably or successively, but not simultaneously *in the absence of findings supported by the record showing the necessity for such severe action*." *Id.* (emphasis added). As the italicized language clarifies, the Third Circuit did not hold that it is "*per se* punitive" to impose a fine and incarceration concurrently, as Manning suggests (at 13) it did.

Rather, the Third Circuit's concern was that the district court should have taken a more measured approach in imposing sanctions for the civil contempt. The district court had immediately and simultaneously imposed both confinement and a conditional fine, without explaining why both were necessary at the outset. *See id.* at 546-47. In that context, the Third Circuit cautioned that it did "not believe that the *simultaneous imposition* of monetary and jail sanctions necessarily add[ed] to the in terrorem effect of a properly devised solitary sanction." *Id.* at 551 (emphasis added). The Third Circuit instead instructed that district courts should initially "apply the least coercive sanction (e.g., a monetary penalty) reasonably calculated to win compliance" and then increase the initial penalty or choose a new penalty "[i]f compliance is not forthcoming." *Id.*

That is exactly the type of measured approach that the Court adopted here. Unlike the contemnor before the Third Circuit, Manning was not immediately subjected to imprisonment and a conditional fine after being found in civil contempt. Instead, Judge Hilton initially imposed only imprisonment—the "paradigmatic coercive, civil contempt sanction." *Bagwell*,

512 U.S. at 828. Manning had served two months of imprisonment on that civil-contempt order by the time she appeared before this Court. Upon appearing before the Court, she remained recalcitrant, proclaiming that imprisonment would never cause her to testify. Under these circumstances, the Court appropriately increased the coercive pressure by imposing a conditional fine on top of confinement. Even then, the Court's fines increased the coercive pressure gradually, starting at $500 per day after 30 days and increasing to $1000 per day after 60 days. The Court's measured approach in imposing these penalties falls directly in line with the approach contemplated by the Third Circuit.

The Court, moreover, had ample justification to impose the coercive fines on top of—rather than in lieu of—imprisonment. A fine alone would not have been sufficiently coercive. Manning likely could have raised the money from sympathizers to pay the fines—a well-justified concern. Manning and her supporters have used social media to raise money to pay her lawyers.[4] News reports also indicate that supporters raised more than $150,000 for Manning when she was released in 2017. *See* Sandhya Somashekhar, *Chelsea Manning, Who Gave Trove of U.S. Secrets to WikiLeaks, Leaves Prison*, Washington Post (May 17, 2017) (Exhibit C).

Furthermore, Manning could have used the media attention generated by her contempt to obtain more speaking engagements and pursue other financial opportunities to offset the fines. *See infra* pp. 16-17. By defying the court orders to testify, Manning has returned to the news cycle at a time when she is promoting an upcoming memoir, starring in a Showtime

[4] *See, e.g.*, Chelsea Resists (@ResistsChelsea), Twitter (May 16, 2019, 4:05 PM) ("This is almost unbelievable. Please donate if you can & organize benefit shows for Chelsea. #WeGotThis") (Exhibit D); Chelsea E. Manning (@xychelsea), Twitter (Apr. 11, 2019, 12:39 PM) ("Reminder: Chelsea is still in need of funds for her legal expenses. Please donate if you can, and help spread the word so she can have a soft landing when she is finally released.") (Exhibit E); Chelsea E. Manning (@xychelsea), Twitter (Mar. 8, 2019, 11:10 AM) ("[F]or further updates on her grand jury resistance, follow her support committee at @ResistsChelsea and please donate to her legal fund.") (Exhibit F).

documentary, and seeking speaking engagements. *See id.* The unfortunate reality is that Manning's recalcitrance, and specifically the publicity it has generated, could benefit her financially. Confinement is therefore necessary not only to coerce Manning, but also to help ensure the fines imposed by the Court serve their coercive purpose.

Finally, to support her argument that the Court could impose only one sanction at a time, Manning cites *Acosta v. N & B Lundy Corp.*, No. 4:16-MC-00396, 2017 WL 1709438 (M.D. Pa. May 3, 2017), for the proposition that "[s]ome courts . . . have fashioned a coercive penalty of accruing fines limited in duration by the possible imposition of incarceration." Mot. to Reconsider Sanctions 13. That proposition is true but irrelevant. The fact that, under certain circumstances, it makes sense to impose successive sanctions does not preclude courts, in other circumstances, from imposing concurrent sanctions. The Court's "responsibility [is] to make an 'individualized decision' in assessing the most effective coercive remedy." *Dickinson*, 763 F.2d at 87-88 (quoting *Simkin v. United States*, 715 F.2d 34, 38 (2d Cir. 1983)). As described above, the unique circumstances of this case warranted the measured approach that the Court took in imposing concurrent sanctions. Manning does not cite any case that suggests otherwise.

IV. MANNING HAS FAILED TO DEMONSTRATE THAT SHE LACKS THE FINANCIAL RESOURCES TO PAY THE FINES.

Manning contends (at 9-11) that the Court should have considered whether she had the financial resources to pay the fines. She does not argue that she lacks the financial resources to pay the fines, much less provide any evidence to that effect. Instead, she requests that the Court hold a hearing to inquire into her financial resources. As explained below, the government does not oppose such a hearing, but the Court should first order Manning to produce evidence of her financial resources. Only then can the Court meaningfully address the issue at a hearing. The government has attached a proposed order requiring the production of such information.

A. Manning Has Not Carried Her Burden of Proving an Inability to Pay the Fines.

Courts are to consider several factors when imposing a fine as a coercive sanction. These factors include (1) "the character and magnitude of the harm threatened by continued contumacy"; (2) "the probable effectiveness of any suggested sanction in bringing about the result desired"; and (3) "the amount of [the contemnor's] financial resources and the consequent seriousness of the burden to that particular [contemnor]." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947). The purpose of weighing the contemnor's financial resources is "to decide whether the sanctions appropriately compel obedience to the order." *Grand Jury Witness*, 835 F.2d at 443.

As Manning acknowledges (at 11), the contemnor bears the burden of proving that she lacks the ability to pay the fines. *See Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 658 (7th Cir. 2004); *Grand Jury Proceedings*, 280 F.3d at 1109; *Grand Jury Witness*, 835 F.2d at 443. The contemnor cannot choose "to remain silent" on the issue and then raise it on appeal. *Grand Jury Witness*, 835 F.2d at 443. Even when the contemnor claims that she "is without any funds," she must present evidence that she cannot pay. *Dickinson*, 763 F.2d at 88. "A contemnor's failure to provide financial information upon which the burden of a sanction may be evaluated may not . . . result in a holding that the district court abused its discretion in imposing the sanction." *Paramedics*, 369 F.3d at 658 (quoting *New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1353 (2d Cir. 1989)) (internal quotation marks omitted).

Manning has failed to carry her burden of showing that she lacks the financial resources to pay the fines. When the Court imposed the fines at the contempt hearing, Manning did not suggest that she lacked the financial resources to pay them. Instead, after the Court imposed the sanctions, she simply argued that her prior period of confinement under Judge Hilton's contempt

order should count in calculating the 18-month limit on her confinement. *See* Ex. A, at 27:2 – 28:2. She stayed silent on the issue of the fines. *See id.* Even in her current motion, Manning does not argue, much less produce any evidence to demonstrate, that she lacks the financial resources to pay the fines. Manning makes only a passing comment that she is "in the process of losing her home as a result of her present confinement." Mot. to Reconsider Sanctions 7. But that cryptic statement is insufficient to prove that she lacks the resources to pay the fines.

B. The Court Should Require Manning to Produce Financial Information Concerning Her Present and Future Ability to Pay the Fines.

Rather than producing any evidence of an inability to pay, Manning requests that the Court order a hearing to address her financial resources. The government does not oppose such a hearing. In advance of the hearing, however, the government requests that the Court order Manning to produce the financial information necessary to assess her ability to pay. Aside from the information it reads in news reports and other open sources, the government lacks evidence of Manning's financial resources. The Court needs, in advance, information about Manning's financial resources to allow for a meaningful hearing on the issue.

To satisfy her burden, Manning must produce information about more than just her "current worth." Mot. to Reconsider Sanctions 10. She must also produce information concerning her ability to pay the fines over time. As the Second Circuit has held, even if a contemnor "is without assets and is unable to render payment out of current funds, the pressure of having to pay in the future would be presently felt and could have a coercive effect." *Dickinson*, 763 F.2d at 88. Thus, in addition to providing information about her current assets, the Court should require Manning to produce information that is relevant to determining her earning capacity and sources of future income. *See id.* at 86 ("[W]e hold that, even if [the contemnor] is financially unable to pay the fine as it accrues daily, the knowledge that he will

eventually have to pay may presently coerc[e] him to testify, and, as such, the fine is not punitive in nature.").

There is reason to believe that Manning has, or in the future will have, the resources to pay the fines. Manning has stated that she makes a business out of speaking engagements, consulting, and writing. *See* Ex. G, ¶¶ 17, 24. In fact, one booking agency publicly promotes Manning and offers information on how to book her as a speaker. *See* Evil Twin Booking Agency, Chelsea Manning, *available at* https://eviltwinbooking.org/speakers/chelsea-manning/ (last visited June 12, 2019) (Exhibit H). Manning's recent recalcitrance has raised her profile and returned her to the news cycle, which could increase the demand for her as a speaker after her release. Indeed, Manning has actively sought publicity through the current proceedings—for example, by holding a press conference in front of the courthouse before the contempt hearing and publicly posting messages on Twitter. *See* Chelsea E. Manning (@xychelsea), Twitter, *available at* https://twitter.com/xychelsea?lang=en (last visited June 12, 2019) (sample posts attached as Exhibit I); Aaron Navarro, *Chelsea Manning Ordered Back to Jail for Refusing to Testify Before Grand Jury*, CBS News (May 16, 2019), *available at* https://www.cbsnews.com/news/chelsea-manning-says-she-will-refuse-to-testify-before-grand-jury/ (last visited June 12, 2019). When Manning was released on Judge Hilton's civil-contempt order, she promptly appeared on CNN to give an interview. *See* Devan Cole, *Chelsea Manning Says She Doesn't Know if She'll Be Jailed Again After Refusing to Testify About WikiLeaks*, CNN (May 12, 2019), *available at* https://www.cnn.com/2019/05/12/politics/chelsea-manning-jail-subpoena-wikileaks-cnntv/index.html (last visited June 12, 2019). Given Manning's return to the news cycle, she is likely to experience an increase in demand for her business after her release, which could provide her with the income pay the fines.

Manning, moreover, has also alluded to "[n]umerous" outstanding contracts that she has, which may also provide her with sources of income. Ex. G, ¶ 17. The recent news about Manning's book deal serves as an example. Within days after Manning was released from incarceration on Judge Hilton's contempt order, a publisher announced that it had signed a book deal with Manning. *See* Charlie Savage, *'I'm Really Opening Myself Up': Chelsea Manning Signs Book Deal*, N.Y. Times (May 13, 2019) (Exhibit J). In connection with the announcement, Manning gave an interview to the *New York Times*. *See id.* According to the publisher's website, the book is projected to be released in March 2020 and to sell for $26.00. *See* Macmillan Publishers, Untitled Chelsea Manning Memoir, *available at* https://us.macmillan.com/books/9780374279271 (last visited June 12, 2019) (Exhibit K). Manning's book deal could provide her with the proceeds to pay the coercive fines, either now or in the future.

As another example, Manning is also the subject of a recent documentary by Showtime. According to Showtime's website, the documentary, which was publicly released on June 7, 2019, was "[s]hot over two years and featur[es] exclusive interviews and behind-the-scenes verité with Manning." Showtime, XY Chelsea, *available at* https://www.sho.com/titles/3456427/xy-chelsea (last visited June 12, 2019) (Exhibit L). As with the book deal, the Court needs information about any payments Manning has received or will receive for the documentary to determine whether she has the ability to pay the fines.

C. The Court Should Enter the Proposed Order Requiring Manning to Produce the Necessary Financial Information.

The government has attached a proposed order that requires Manning to produce the necessary information about her current assets, income (present and future), and earning capacity. Specifically, the proposed order seeks three categories of information.

The first category requires Manning to complete the financial affidavit that the Court uses for indigent defendants—CJA Form 23. *See* Ex. M. This court-approved financial affidavit requires Manning to provide basic information about her current financial situation and assets. That information is critical to determining Manning's present ability to pay the fines.

The second and third categories in the proposed order seek information related to Manning's ability to pay the fines over time. The second category requires the production of all of Manning's financial account statements since she was released from imprisonment on May 17, 2017. Such statements are necessary to determine her sources of income and to project her earning capacity. The third category requires the production of all agreements that provide or could provide Manning with a source of income or assets, including but not limited to any agreements with her book publisher and the makers or producers of the documentary. Such documents are likewise necessary to determine her future income and earning capacity.

CONCLUSION

Manning has failed to demonstrate a meritorious ground for reconsidering her sanctions. In advance of any hearing on her motion, the Court should enter the proposed order requiring Manning to produce the financial information set forth therein. After Manning has produced the information, the parties will notice a hearing to address her financial resources and the other issues raised in her motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

/s/
Thomas W. Traxler
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:19-dm-12-AJT-2
	)	
JOHN DOE 2010R03793	)	
	)	
	)	

ORDER

By Order dated May 16, 2019, the Court held Chelsea Manning in civil contempt for refusing to testify before a federal grand jury, ordered her, until such time as she purges herself of her contempt, to be confined for the lesser of 18 months or the life of the grand jury, and assessed fines in the amount of $500 per day after 30 days and $1,000 per day after 60 days. *See* [Doc. 9]. She has filed a motion to reconsider the Court's previously imposed sanctions on the ground that those sanctions are punitive, rather than coercive. *See* [Doc. 14] ("the Motion").

As to Ms. Manning's detention, there are only three recognized grounds for granting a motion for reconsideration[1]: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). Ms. Manning has not presented any new evidence, arguments, or legal authorities not previously raised in the briefing or hearing prior to the Court's order of confinement and has not shown that the Court clearly erred in imposing detention.

[1] Although the Federal Rules of Criminal Procedure, which apply to grand jury proceedings, do not address motions for reconsideration, the Court is guided by the same standard outlined in the Federal Rules of Civil Procedure. *See United States v. Dickerson*, 971 F. Supp. 2d 1023, 1024 (E.D. Va. 1997). A district court has "considerable discretion in deciding whether to modify or amend a judgment." *Gagliano v. Reliance Standard Life Ins. Co.*, 547 F.3d 230, 231 n. 8 (4th Cir. 2008).

Fines may be imposed as an alternative to confinement or as an additional sanction to coerce compliance. *See In re Grand Jury Witness*, 835 F.2d 437, 440 (2d Cir. 1987). "[I]n fixing the amount of a fine to be imposed," the Court must "consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant." Specifically, "when the civil contempt order imposes a fine, the contemnor's financial resources must be weighed in order to decide whether the sanctions appropriately compel obedience to the order." *Id.* at 443. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947). "A contemnor may be excused from the burden of a civil contempt sanction if it lacks the financial capacity to comply; but the contemnor bears the burden of production in raising such a defense." *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 658 (2d Cir. 2004).

In support of the Motion, Ms. Manning has proffered a substantial number of financial records documenting her assets, liabilities, and current and future earnings. The Court has reviewed these records and concludes, based on the evidence proffered, that Ms. Manning has the ability to comply with the Court's financial sanctions or will have the ability after her release from confinement.[2] Therefore, the imposed fines of $500 per day after 30 days and $1,000 per day after 60 days is not so excessive as to relieve her of those sanctions or to constitute punishment rather than a coercive measure.

Accordingly, it is hereby

ORDERED that Chelsea Manning's motion for reconsideration [Doc. 14] be, and the same hereby is, DENIED.

[2] The Court also finds, based upon the nature and volume of documents proffered, that a hearing would not aid the decisional process and therefore decides the Motion without a hearing.

The Clerk is directed to forward a copy of this Order to all counsel of record.

/s/
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
August 5, 2019