

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 27.2;

Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

STATEMENT OF ERIC L. LEWIS

Age of witness (if over 18, enter "over 18"): Over 18

This statement (consisting of 17 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. My name is Eric L. Lewis, and this statement supplements my statements of October 18, 2019, and January 17, 2020. My Statement of Qualifications are set out in my initial statement. I would add that I have lived in Washington for 37 years and am a keen observer of US politics and have written extensively on political, legal and social topics. I have donated to political candidates from both parties. I note these points which should otherwise not be relevant to my opinion because my views reflect not my partisan opinions, but rather my observation of structural changes in recent years in the United States Government that are unprecedented in my view.
2. I have been asked by solicitors for Mr Assange to opine on whether there is evidence that the prosecution of Mr Assange is politically motivated. While I do not have access to inside information, I have extensive experience in evaluating evidence adducing motive and intent. I have represented clients in criminal proceedings where there was a dispute about whether a set of facts revealed criminal intent.
3. I have also represented many clients at the intersection of law and politics here in Washington DC and abroad. My firm and I have represented Christopher Wylie, the whistleblower of Cambridge Analytica; Donna Brazile, former head of the Democratic National Committee; Abu Khatallah, the accused mastermind of the Benghazi attacks; and Bilal Abdul Kareem, a U.S. citizen and journalist who has been attacked by US drones in Syria. I have also represented Sphere Consulting, a conservative public relations firm, which had involvement in the Mueller investigation, having worked as a contractor for Michael Flynn on matters relating to issues involving relations between Turkey and the United States. I have advised sovereign governments, international charities and financial institutions. I have advised conservative publications in defamation actions brought by public officials. I have provided advice and

representation to clients on all sides of the political spectrum, domestically and globally. I have litigated against government entities under administrations of both parties.

4. Reviewing the facts available in this context, I conclude, on the basis of overwhelming evidence of the modus operandi of the current US President and senior officials in his administration, as well as statements made and actions taken with respect to Mr Assange, that this is a politically-motivated prosecution.
5. Having worked closely with and litigated against administrations of both parties, I must say that I do not accuse administrations of politically motivated use of the Department of Justice (“DOJ”) lightly. It has been a very unusual occurrence, certainly during the last half century, but the Trump Administration has taken a wholly different posture with respect to the independence of the DOJ, the investigation of political enemies, the harassment of the press and consideration of legal steps to restrict the press in matters critical of this Administration. There has been a strong practice of insulating the DOJ from political influence or the views of the President. The integrity of the system depends on the insulation of the Attorney General from partisan politics and his or her independence with respect to investigation, prosecution and sentencing decisions. The reason for this in our Constitutional system is clear: when a President pressures his Attorney General to prosecute and imprison his political enemies, the rule of law at the heart of the system is threatened. I would note that in the US system, the final decision on whether to commence an investigation, seek an indictment or recommend a sentence rests with the Attorney General. While the Attorney General certainly does not personally involve himself in all such decisions, and he often relies on the decisions of the 95 United States Attorneys and their Assistants, cases of legal significance, of political sensitivity or otherwise of importance would go the Department of Justice and go through that bureaucracy to the appropriate level for official decision-making. It is a virtual certainty that the decision to seek an indictment of Mr Assange was made by the Attorney General. The initial single count indictment was returned during the time that Jefferson Sessions was Attorney General. The 18-count indictment charging multiple violations of the Espionage Act carrying a potential for 175 years in prison was returned at the time that William Barr was Attorney General. Mr Barr continues in that position.

A. Trump Persecutes Officials Who Decline to Serve His Personal Political Interests

6. Here, much of what has occurred has occurred in plain sight, often with admissions by the President himself or his Attorney General. The President has frequently made clear that he expects his Attorneys General to pursue and implement his political agendas, to help his friends and hurt his enemies, and he has made clear that he regards the failure of any of his Cabinet Members or political appointees to march

fully in line to pursue his political agenda as disloyal and grounds for dismissal or worse. I emphasize that this is not based upon some abstruse analysis, but on public statements.

7. President Trump's first Attorney General was Jefferson Sessions, a Senator from Alabama who was the first Senator to endorse Trump during his campaign. While Sessions has embraced and defended Trump's abuses of power, Sessions recused himself from the investigation into Russian meddling in the 2016 campaign because he had been an active member of the campaign and had met with Russian officials.
8. Trump has made clear that he was, and remains livid, that Sessions recused himself so that he lost the ability to have a political ally investigate the Russian connections to his campaign. Trump also stated that his motivation for firing FBI Director Comey was to shut down the Russian investigation, including the investigation into National Security Advisor Michael Flynn's lying to the FBI about his contacts with Russian officials. Trump told the Foreign Minister of Russia Lavrov and the Russian Ambassador Kislyak, "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off." He also told the anchor of NBC News in a nationally broadcast interview, "I was going to fire Comey knowing there was no good time to do it. And in fact, when I decided to just do it, I said to myself — I said, you know, this Russia thing with Trump and Russia is a made-up story."
9. After the firing of Comey, Sessions recused himself from heading the organization and the Deputy Attorney General appointed Robert Mueller as Special Counsel to investigate issues relating to Russia, including the firing of Comey. The President berated Sessions, insisting he should un-recuse himself and take over the investigation himself. Thereafter, the President treated Sessions with contempt. The New York Times reported that the President "was soon bashing Sessions both privately (complaining to White House aides, according to Bob Woodward's book "Fear," that Sessions was "mentally retarded" and a "dumb Southerner") and publicly (tweeting to his tens of millions of followers that "Our A.G. is scared stiff and Missing in Action"). In November 2018, Trump fired Sessions, later telling NBC's "Meet the Press" that appointing him attorney general was "the biggest mistake" of his presidency.
10. Sessions tried to maintain the favor of the President by emphasizing his aggressive attention to the President's policy agenda, including deportation of immigrants, which involved children separated from parents and deporting "Dreamers" who were brought to the United States as children, aggressive drug enforcement, and as described below, a strong focus on national security, and a curious emphasis on Mr Assange in particular. On April 21, 2017, a few weeks after the Comey firing and the Sessions recusal, the Guardian reported that when Sessions was asked whether it was a priority to arrest Assange "once and for all," Sessions stated, "We are going to step up our effort and already are stepping up our efforts

on all leaks, so yes it is a priority.” This statement by Sessions is indicative of the Administration’s war on leaks and whistleblowers which he was implementing.

11. CNN reported the same day, citing unnamed officials, that “prosecutors have struggled with whether the Australian [Assange] is protected from prosecution by the First Amendment, but now they believe they have found a way forward.” The persecution of Assange represented an about-face for the president. During his campaign, Donald Trump celebrated Wikileaks by proclaiming “I love WikiLeaks”, and welcomed the benefit that came from Wikileaks’ release of the hacked Democratic National Committee emails. Trump nevertheless very much wanted to prosecute Assange because he perceived leaks and leakers as personal enemies (see below). However, I would suggest that he plainly needed a way to avoid any prosecution bringing to public view the suggestion that the assistance that the 2016 leaks Wikileaks served his personal interests. The logical way forward was to prosecute based upon leaks from 2009-10 by Chelsea Manning, which i) the-then Defense Secretary Robert Gates said did not harm national security; ii) was the basis for Chelsea Manning to be convicted and sentenced by a Court Martial; iii) Manning had said she had acted alone; and iv) the Obama Administration had reviewed and decided (up to the level of Attorney General himself, could not and should not be prosecuted with respect to Assange.
12. Despite these facts the Manning leaks appear to have been resurrected to deflect attention away from the 2016 election leaks and to attack an unpopular foreigner and try to put him in jail for the rest of his life. Sessions well knew that this was part of Trump’s agenda, as did the subsequent Attorney General William Barr who, unlike Sessions, had no particular attachment to the independence of the DOJ, and was eager to and has in fact implemented the President’s political agenda by using the DOJ to hurt the President’s enemies and to help his friends.

B. Constitutional and Prosecutorial Norms Counsel Against the Prosecution of Assange

13. This Administration’s decision to prosecute Mr Assange is entirely in keeping with its numerous decisions to implement policy on the basis of President Trump’s concerns with his own image and protecting it, through the use of the power of prosecution and imprisonment to further his agenda. His strategy makes for good politics, but it does not comport with the rule of law.
14. As noted, Mr Assange was not indicted in 2010 for the leaks that occurred that year and for which Manning was prosecuted and sentenced at that time. Rather, he was criminally charged in April 2018, after the Obama administration took the decision to commute Chelsea Manning’s sentence in 2017. The Obama administration reviewed his conduct and determined that it could not, consistent with the First

Amendment, prosecute him for the act of publishing information provided to him, as it could not draw any meaningful legal distinction between such a prosecution and the prosecution of any journalist who received a tip with classified information. US prosecutors have prosecuted government employees who take classified information without authorization, but the government has never targeted journalists since they confronted the issue in the Pentagon Papers scandal. In connection with that leak, the Supreme Court ruled that the government could not enjoin the New York Times or Washington Post from publishing classified documents revealing embarrassing and troubling national security information about the conflict in Vietnam. *New York Times Co. v. United States*, 403 U.S. 713 (1971). Although this was a civil injunction case, the same logic regarding publication by others of classified or confidential information has never been prosecuted to verdict.

15. Accordingly, when Glenn Greenwald published information stolen by Edward Snowden, revealing that the National Security Administration had implemented an illegal warrantless surveillance program, Attorney General Eric Holder announced that Mr Greenwald would not be subject to prosecution.¹ Holder declared that “any journalist who’s engaged in true journalistic activities is not going to be prosecuted by this Justice Department I certainly don’t agree with what Greenwald has done. In some ways, he blurs the line between advocate and journalist. But on the basis of what I know now, I’m not sure there is a basis for prosecution of Greenwald.”
16. First Amendment expert Marty Lederman observed that the norm of refraining from prosecuting journalists is a product of a “very different constitutional ethos, in which both the public and government officials have a more robust appreciation of the risks of starting to go down that road, and of the substantial value of leaving the press free to make its own judgments of when the public would be well-served by publication of leaked information.”²
17. Publishing illegally leaked classified information, especially if that information reveals that the government has acted illegally, can serve the public interest. Indeed, the Second Circuit Court of Appeals used the information leaked by Edward Snowden to affirm the ruling that the NSA’s warrantless surveillance program was illegal. “Although the ‘leak’ led to this litigation, our decision is not about the

¹ Sari Horwitz, *Justice is reviewing criminal cases that used surveillance evidence gathered under FISA*, Wash. Post (Nov. 15, 2013), https://www.washingtonpost.com/world/national-security/justice-reviewing-criminal-cases-that-used-evidence-gathered-under-fisa-act/2013/11/15/0aea6420-4e0d-11e3-9890-a1e0997fb0c0_print.html

² Marty Lederman, *Are Journalists in Danger of Prosecution for Espionage?*, Just Security (Sept. 25, 2013), <https://www.justsecurity.org/1138/journalists-danger-prosecution-espionage/>

Snowden disclosures themselves nor should the significance of our rather complex analysis of the statute be confused with the significance vel non of the security breach or the NSA telephone metadata program.” *Am. Civil Liberties Union v. Clapper*, 785 F.3d 787, 830 n. 7 (Sack, J., concurring) (2d Cir. 2015).

18. This background establishes the degree to which the Trump administration’s decision to seek an indictment, after the Obama Administration had eight years to consider the prosecution, and then an amended indictment, against Julian Assange in 2018, for conduct that occurred in 2010 and for which Ms. Manning had already faced prosecution, conviction, and commutation of her sentence by the president, is a radical departure from US prosecutorial norms and First Amendment jurisprudence. It is important to note that nothing changed with respect to the relevant facts or the relevant evidence from 2010 to 2018. Of course, a new DOJ can review and revise prosecution policies (and make clear that it is doing so that due notice is given), but it cannot revise the First Amendment and it cannot target individual enemies for prosecution based upon an unprecedented application of a century-old statute applied against a class of Trump enemies and one political enemy in particular. Yet that is what has occurred here as part of an increasing politicization of the Department of Justice under the Trump administration.

C. Trump Has Special Personal Vitriol Toward Leakers

19. Trump’s campaign and presidency were plagued by leaks, most significantly that Russia was behind the hacking of the DNC emails, and that those hacks were undertaken with the intent of boosting Trump’s chances of getting elected. Trump called this “fake news,” and was furious that intelligence agencies had allegedly leaked this information.³ Especially unnerving for Trump was the leak that revealed that General Michael Flynn, Trump’s chief foreign policy campaign advisor, Hillary Clinton attacker (“Lock her up”) and National Security Advisor, and had lied to the FBI about his contacts with the Russian Ambassador, forcing Trump to fire him.⁴

20. There were also leaks of an ad hominem nature. Once his presidency began, his White House began to leak like nothing ever seen before; most accounts portrayed Trump as a “clueless child.” Veteran

³ *Trump condemns spy agency ‘leak’ of ‘fake news’*, BBC (Jan. 11, 2017), <https://www.bbc.com/news/world-us-canada-38586626>

⁴ Glenn Greenwald, *The Leakers Who Exposed Gen. Flynn’s Lie Committed Serious – and Wholly Justified – Felonies*, *The Intercept* (Feb. 14, 2017), <https://theintercept.com/2017/02/14/the-leakers-who-exposed-gen-flynn-lie-committed-serious-and-wholly-justified-felonies/>

political reporter Chris Cilizza wrote: “I’ve never seen so much leaking so quickly — and with such disdain for the president — as I have in the first six days of Donald Trump’s presidency

21. By February 16, 2017, furious about embarrassing leaks, Trump had asked the Department of Justice to investigate leakers. “We’re gonna find the leakers. We’re going to find the leakers. They’re going to pay a big price for leaking,” Trump said.⁵
22. There is no real question that President Trump associated Assange and Wikileaks with other “leakers” in his mind as a result of their campaign for press freedom and support of whistleblowing. On January 17, 2017, three days before he left office, President Obama announced publicly his decision to commute Chelsea Manning’s 35-year sentence for the 2009-10 leaks to the seven years already served. This raised tremendous anger in the incoming administration and led to focus on the Manning leaks from more than a decade before. Vice-President-Elect Pence stated, “To commute Pte Manning’s sentence was a mistake. Pte Manning is a traitor and should not have been turned into a martyr.”⁶ On January 26, 2017, three days into office, President Trump himself criticized Manning as a traitor, saying “She should never have been released from prison.”
23. The Trump administration resurrected Wikileaks’ association with Manning leak and thereafter used it to spearhead a campaign against Assange as a threat to national security. On April 13, 2017, Mike Pompeo, as then CIA Director (a position he was appointed to by President Trump having been a Republic Congressman), denounced Mr Assange by name, stating “We have to recognize that we can no longer allow Assange and his colleagues the latitude to use free speech values against us.” He rejected any application of the First Amendment despite the views of the Department of Justice prosecutors, stating that “WikiLeaks ‘pretended’ that America’s first amendment freedoms shield them from justice, they may have believed that but they are wrong.” He stated “to give them space to crush us with misappropriated secrets is a perversion of what our great constitution stands for ends now” and called

⁵ Meghan Keneally & Jordyn Phelps, *President Trump says he has asked the Justice Department to investigate leaks*, ABC News (Feb. 16, 2017), <https://abcnews.go.com/Politics/president-trump-asked-justice-department-investigate-leaks/story?id=45541385>

⁶ Matthew Nussbaum, *Pence slams Manning commutation*, Politico: Forty Five – A daily diary of the Trump presidency (Jan. 18, 2017), <https://www.politico.com/blogs/donald-trump-administration/2017/01/pence-slams-manning-commutation-233810>

WikiLeaks “a non-state hostile intelligence agency” who had “directed Chelsea Manning in her theft of specific secret information.”⁷ Subsequently, Pompeo stated on July 20, 2017, that “WikiLeaks will take down America any way they can” and repeated his statement that WikiLeaks was “a non-state hostile intelligence service.” He also criticized an editorial by Mr Assange which had been published by the Washington Post. In September, Pompeo cancelled an appearance at Harvard University to protest Harvard’s employment of Chelsea Manning as a Visiting Fellow, calling her a traitor and stating that “it is shameful for Harvard to place its stamp of approval upon her treasonous actions.”⁸ It appears clear Pompeo was not talking about the DNC leaks that President Trump “loved,” but about the Manning leaks from 2009 which were the target of an apparently coordinated campaign throughout the new Administration.

24. Sessions took up the mantle, supporting the agenda of Trump and Pompeo.

25. As noted above, on April 21, 2017, Attorney General Sessions publicly stated that Assange would be pursued as part of a new initiative to go after and imprison leakers of all kinds: “We are going to step up our effort and already are stepping up our efforts on all leaks. This is a matter that’s gone beyond anything I’m aware of. We have professionals that have been in the security business of the United States for many years that are shocked by the number of leaks and some of them are quite serious.” He added: “We’ve already begun to step up our efforts and whenever a case can be made, we will seek to put some people in jail.”⁹ It was not for another year that charges would be filed against Mr Assange.

26. During this time, the administration became even more aggressive about leaks. Reports referred to Trump’s “preoccupation with leaks and leakers” as a “defining theme of his presidency.”¹⁰ He repeatedly and publicly berated Attorney General Jeff Sessions to crack down on leaks. In July 2017,

⁷ Director Pompeo Delivers Remarks at CSIS (13 Apr. 2017), <https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-csis.html>.

⁸ Brandon Carter, *Pompeo cancels Harvard talk over hiring of Chelsea Manning*, The Hill (Sept. 14, 2017), <https://thehill.com/blogs/blog-briefing-room/news/350785-pompeo-cancels-harvard-talk-over-hiring-of-chelsea-manning>

⁹ David Smith, *Arresting Julian Assange is a priority, says US attorney general Jeff Sessions*, The Guardian (Apr. 20, 2017), <https://www.theguardian.com/media/2017/apr/21/arresting-julian-assange-is-a-priority-says-us-attorney-general-jeff-sessions>

¹⁰ Paul Barrett, *Trump’s Obsession With Leaks*, Bloomberg (Aug. 1, 2017), <https://www.bloomberg.com/news/articles/2017-08-01/trump-s-obsession-with-leaks>
<https://www.bloomberg.com/news/articles/2017-08-01/trump-s-obsession-with-leaks>

Trump suggested that if the Attorney General could not be tougher on leakers, then he would replace him:

I want the attorney general to be much tougher I want the leaks from intelligence agencies, which are leaking like rarely have they ever leaked before, at a very important level. These are intelligence agencies we cannot have that happen.¹¹

27. Sessions responded by tripling the number of investigations of leaks of classified information, which was “a significant devotion of resources to hunt down disclosures that have plagued the Trump administration.”¹² The New York Times noted that Sessions’ public announcement of a crackdown on leaks:

[C]ame against the backdrop of repeated pressure by Mr Trump, in public and in private, for the Justice Department and the F.B.I. to search harder for people inside the government who have been telling reporters what was happening behind closed doors.

The Trump administration has been bedeviled by leaks large and small that have brought to light information ranging from White House infighting and the president’s rancorous phone conversations with foreign leaders to what surveillance showed about contacts by Mr Trump’s associates with Russia — and even what Mr Trump said to Russian visitors in the Oval Office about his firing of James B. Comey, the former F.B.I. director.¹³

28. Reports have tied Sessions’ eagerness to demonstrate “his zeal” for prosecuting leakers directly to the indictment of Assange, revealing that he personally made the decision with respect to the indictment, which is ultimately he has the power to do, and then directed he US Attorney for the Eastern District of Virginia to indict him.

29. Thus, the decision to seek charges against Assange by the Trump DOJ served multiple clearly articulated purposes. It assuaged the frequently expressed fears of a President besieged by leakers and the decision to proceed through the crucible of the nearly decade-old Manning leaks, which insulated the Russia leaks of 2016, which would have raised the risk of a trial that required evidence of connections between the Trump campaign, WikiLeaks and others. The impact of those leaks is discussed below.

30. Importantly, leaking is not necessarily illegal; and publication of leaked documents is certainly not illegal. Trump’s campaign against leakers is a purely political decision arising out of a drive by the

¹¹ Ayesha Rascoe, et al., *Trump slams Sessions as not tough enough, assails intel leaks*, Reuters (July 25, 2017), <https://www.reuters.com/article/us-usa-sessions-trump-idUSKBN1AA2K5>

¹² Charlie Savage & Eileen Sullivan, *Leak Investigations Triple Under Trump, Sessions Says*, New York Times (Aug. 4, 2017), <https://www.nytimes.com/2017/08/04/us/politics/jeff-sessions-trump-leaks-attorney-general.html>

¹³ Id.

President to protect his image. For example, leaking that President Trump held up aid to an ally at war—Ukraine—unless Ukraine agreed to open investigations into his rivals, may be embarrassing, may be politically damaging, but it is not illegal.

D. Wikileaks Appeared to Have Helped Trump Get Elected, and This Undermined His Legitimacy

31. Rumors that Trump had been aided by foreign powers in the 2016 election were in circulation both before and after his election and have continued to be viewed by Trump as undermining the legitimacy of his presidency ever since. Among the rumors were the allegations that his campaign was deliberately boosted by Wikileaks, and worked in concert with members of Trump’s campaign, including, famously, Roger Stone, a Trump confidante and advisor, who has been convicted of lying to the FBI about his contact with Wikileaks and Assange.
32. As the risk of stating the obvious, Trump is exceedingly sensitive to criticism and scrutiny of his actions for evidence of illegality or anything less than “perfect.” Critical stories are “fake news”; those who oppose him, including those in his own party, are “weak,” “deranged” “lying” “crooked” “treasonous” and worse. Impeachment was not just “unconstitutional,” despite being called for in the Constitution, it is “bullshit.”
33. Wikileaks and Mr Assange poses a threat to the legitimacy of Trump’s campaign that he is desperate to squash by diverting attention and imprisoning Mr Assange. Wikileaks is a vulnerability for Trump because of the evidentiary links between his campaign and Wikileaks. In October 2016, Wikileaks published DNC emails to the undoubted benefit of Trump. It was unknown at the time the degree to which certain individuals in the Trump campaign—most notably Donald Trump Jr. and Roger Stone—had contact with Wikileaks during the campaign, but numerous stories were published in the press containing a range of allegations. Four days before the election, The Guardian published a report alleging that there was a link between Roger Stone and Wikileaks, and therefore that the Trump campaign had coordinated with Wikileaks.¹⁴ These widespread allegations about his election have caused President Trump political harm and in this way Wikileaks were a central actor in US politics.
34. Former deputy campaign manager for Trump, Richard Gates, testified that the cooperation was much

¹⁴ Peter Stone, *Trump adviser reveals how Assange ally warned him about leaked Clinton emails*, The Guardian (Nov. 2, 2016), <https://www.theguardian.com/us-news/2016/nov/02/trump-adviser-clinton-emails-wikileaks-roger-stone>

more extensive than initially disclosed. Roger Stone had been providing the campaign with updates on Wikileaks' plans to obtain the DNC emails as early as April 2016.¹⁵ Michael Cohen, former attorney to Trump, testified to Congress that: "Mr Stone told Mr Trump that he had just gotten off the phone with Julian Assange and that Mr Assange told Mr Stone that, within a couple of days, there would be a massive dump of emails that would damage Hillary Clinton's campaign," Cohen told Congress. "Mr Trump responded by stating to the effect of 'wouldn't that be great.'"

35. Trump regularly applauded Wikileaks during his campaign, remarking "I love Wikileaks."¹⁶ In 2019, however, he claimed to know nothing about Wikileaks, only that "there is something having to do with Julian Assange." His claim of ignorance is telling. If the President were my client, I would counsel him against making this statement under oath.
36. The prosecution of Julian Assange is part of Trump's efforts to distract attention from the help that WikiLeaks gave and to focus attention on the earlier leaks, which are much more politically potent for him. He wants to put Mr Assange in jail and keep him quiet.

E. Attorney General Barr Carries Out Trump's Personal Political Agenda in Violation of Ethical Norms

37. I referenced above that President Trump selected William Barr to be the successor to Mr Sessions. William Barr is a longtime Republican lawyer and former Attorney General. He has exhibited an unprecedented willingness to bend the DOJ to serve Trump's personal political agenda, and the superseding indictment is evidence of that. As Attorney General, the decision with respect to whether to supersede the original indictment (or drop it for that matter) was his to make.
38. Barr took office on February 14, 2019. Four months after Barr took office, prosecutors filed a superseding indictment, racking up the charges against Mr Assange from one count of violating the Computer Fraud and Abuse Act, attracting a total of 10 years imprisonment, to 17 additional counts of

¹⁵Harper Neidig, *Ex-Trump campaign official testifies Stone gave updates on WikiLeaks email dumps*, The Hill (Nov. 12, 2019, 11:14 AM), <https://thehill.com/regulation/court-battles/470046-former-trump-campaign-official-testifies-stone-gave-updates-on>

¹⁶Allie Malloy & Paul LeBlanc, *Trump in 2016: 'I love WikiLeaks,' Trump now: 'I know nothing about WikiLeaks'*, CNN (July 24, 2019, 4:55 PM), <https://www.cnn.com/2019/04/11/politics/wikileaks-donald-trump-julian-assange-campaign/index.html>

violations of the Espionage Act, totaling 175 years imprisonment. These charges were added over the strong objections of career federal prosecutors, including the criminal chief of the U.S. Attorney's Office for the EDVA and a prosecutor who had charged a CIA officer with leaking classified information to a journalist in 2015.¹⁷

39. Mr Barr also did the president's political bidding in numerous other unprecedented ways, including when he held up the Mueller Report and released a summary of the report that in the view of Robert Mueller and others mis-described its conclusions, allowing the American public to believe for nearly a month that the report was largely bland and exonerating of the president, when, in fact, the report identified ten potential counts of obstruction of justice committed by Mr Trump, uncharged solely because of the view that a sitting president could not be indicted. The Report specifically noted Trump's efforts to impede Mr Mueller's investigation, replace Mr Mueller, and to prevent the disclosure of relevant evidence.¹⁸ The Report also confirmed a number of occasions on which President Trump had considered offering presidential pardons to his former aides who were facing criminal prosecution.¹⁹ Once the report was released, few read it and the public shaping of its contents had been done.
40. Mr Barr has also taken an unprecedented role in trying to investigate the president's political rivals. He has pursued an investigation of the role of former Vice President Biden and his son in Ukraine, when professional US prosecutors had said there was no basis to do so. He rejected the conclusions of the Department of Justice Inspector General to that effect and has personally visited a number of countries with a prosecutor that he has appointed to go further into these allegations. President Trump also asked the President of Ukraine to call Barr to discuss these allegations.²⁰
41. He has also invited Rudolph Giuliani, the President's personal lawyer charged with trying to find "dirt"

¹⁷ Devlin Barrett, Matt Zapotosky, and Rachel Weiner, *Some federal prosecutors disagreed with decision to charge Assange under Espionage Act*, Washington Post (May 24, 2019), https://www.washingtonpost.com/world/national-security/some-federal-prosecutors-disagreed-with-decision-to-charge-assange-under-espionage-act/2019/05/24/ce9271bc-7e4d-11e9-8bb7-0fc796cf2ec0_story.html

¹⁸ Report On The Investigation Into Russian Interference In The 2016 Presidential Election, Special Counsel Robert Mueller, March 2019, Volume II, <https://www.justice.gov/storage/report.pdf>

¹⁹ Erick Trickey, *'The President himself may be guilty': Why pardons were hotly debated by the Founding Fathers*, Wash. Post (Apr. 21, 2019), <https://www.washingtonpost.com/history/2019/04/21/the-president-himself-may-be-guilty-why-pardons-were-hotly-debated-by-founding-fathers/>

²⁰ Greg Sargent, Wash. Post (Oct. 1, 2019), <https://www.washingtonpost.com/opinions/2019/10/01/barrs-enabling-trumps-corruption-just-got-more-dangerous>

on Vice President Biden, to share his conclusions with the Department of Justice, Giuliani having met with a number of prosecutors in Ukraine widely viewed as corrupt by the US Ambassador, whom Giuliani was in turn instrumental in removing.²¹ Giuliani is at the same time under federal investigation by the Southern District of New York, although Barr this week stated that he must personally approve any investigation that are politically sensitive, including any presidential candidate or campaign. Thus, he has sole and final power to decide who is and is not prosecuted where there are political issues involved. Again, this is unprecedented. This week's withdrawal of the DOJ's Stone sentencing memorandum makes clear that he intends to use this power for partisan political ends.²²

42. Mr Barr has also claimed “spying” on Trump’s campaign occurred, feeding Trump’s favorite conspiracy theory of a “deep state” plot to block him from getting elected. He has since opened a sprawling investigation into the Russia investigation, ordered by Trump himself.²³ The goal now appears to be to use the government’s investigative machinery to create the impression that the real crime was not Russian interference, for which numerous Russians were indicted, but rather the investigation itself — perpetrated by U.S. law enforcement.
43. Barr has also been willing to upend prosecutorial norms and intervene directly to help Trump’s personal and political friends. On February 10, 2020, the professional prosecutors of the DOJ submitted a sentencing memo to the United States District Court calling Roger Stone’s lying egregious and requesting that a 7- to 9-year sentence to be imposed, the sentence called for by the U.S. Sentencing Guidelines,. On February 11, 2020, senior political appointees in the Department of Justice publicly withdrew that memorandum and stated that the recommendation was “unfair” and “excessive.”²⁴ This

²¹ Ryan Lucas, Barr: Door is Open to Giuliani Tips on Ukraine, Though They’d Be Scrutinized, NPR (Feb. 10, 2020), <https://www.npr.org/2020/02/10/804518735/barr-door-is-open-to-giuliani-tips-on-ukraine-though-they-d-be-scrutinized>

²² Ryan Lucas, *Attorney General Barr Issues New Rules For Politically Sensitive Investigations*, NPR (Feb. 6, 2020, 5:05 PM), <https://www.npr.org/2020/02/06/803506238/attorney-general-barr-issues-new-rules-for-politically-sensitive-investigations>

²³ Mike Memoli, New details of Barr’s far-reaching probe into ‘spying’ on Trump 2016 campaign, NBC News (June 10, 2019), <https://www.nbcnews.com/politics/justice-department/new-details-barr-far-reaching-probe-spying-trump-2016-campaign-n1015871>

²⁴ Matt Zapposky, et al., *Justice Dept. to reduce sentencing recommendation for Trump associate Roger Stone, official says, after president calls it ‘unfair’*, Wash. Post (Feb. 11, 2020), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html

came hours after President Trump tweeted “This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!” I have never seen anything like this—the transparent political overruling of the DOJ’s sentencing recommendation of a political friend of a US President. All four of the prosecutors in the Stone case—who represent the cream of the crop at the DOJ—filed to withdraw from the case hours later, a remarkable move signaling their protest over the administration interfering with justice to do a favor for Trump’s political ally. Thereafter, the President attacked the judge and thanked Mr Barr.²⁵

44. As a former senior Justice Department official stated: The overall rule that Barr has repeatedly broken isn’t found in so many words in the Code of Federal Regulations or the Department of Justice Manual. But it’s the first rule for any attorney general: the rule of sound judgment and impartial apolitical administration of justice.²⁶
45. Professors Rebecca Roiphe and Bruce Green argue in their recent article, *May Federal Prosecutors Take Direction From the President?*,²⁷ that following the president’s orders to prosecute an individual would violate ethical rules and professional norms, as well as violate the separation of powers principles that are the defining feature of the US Constitution, since it is the courts and Congress who dictate prosecutorial obligations. Trump’s insistence on the prosecution of leakers and of a publisher like Assange further violates norms because it is motivated not by the “values, policies, and practices of federal prosecutors,” as is evident from reports of deeply-felt objections to prosecuting Assange under the Espionage Act, but rather is based on “partisan political considerations” because that is how the President make decisions.

F. The Rohrabacher Visit Raises Serious Questions About Politically-Motivated Prosecution

46. Here I must point to two other allegations of which I have been informed. I cannot verify that they are true, but I have no reason to doubt them. If they are true, it is my view that the politicization of the Trump Administration is even beyond current imagining and suggests that the power to prosecute or not

²⁵ Eileen Sullivan, *Trump Praises Attorney General for Intervening in Stone Case*, NY Times (Feb. 12, 2020), <https://www.nytimes.com/2020/02/12/us/politics/trump-barr-stone.html>

²⁶ Harry Litman, *Did William Barr Break Any rules? Only the Most Important One*, Wash. Post (Oct. 1, 2019), <https://www.washingtonpost.com/opinions/2019/10/01/did-william-barr-break-any-rules-only-most-important-one/>

²⁷ Bruce A. Green and Rebecca Roiphe, *May Federal Prosecutors Take Direction From the President?*, 87 FORDHAM L. REV. 1817 (2019), <https://ir.lawnet.fordham.edu/flr/vol87/iss5/3>

prosecute, as well as the power to gather information through unauthorized surveillance, are as much a political tools as anything else in the Trump arsenal and will be deployed as such.

47. Mr Assange was visited on August 16, 2017 by then-Congressman Dana Rohrabacher of California, Chair at that time of the House Foreign Affairs Subcommittee on Eurasia Policy. He was widely viewed as the closest friend of the Russian regime in the United States Congress at that time.²⁸ Indeed, fellow Republican Kevin McCarthy of California, then the Majority Leader of the House of Representatives and now the Minority Leader, stated in 2016 that he thought Rohrabacher and Trump were on the Russian payroll. He later claimed to be joking.
48. I am informed that during the meeting, the possibility of a pardon for Mr Assange was raised on the condition that Mr Assange would make it clear publicly that Russia was not involved in the hacking and leaking of emails from the Democratic National Committee. It was suggested during the meeting that the pardon being offered in exchange was authorized by the President himself. This despite the fact that Mr Assange was at that time not under indictment. Mr Rohrabacher was accompanied by a conservative political operation, Charles Johnson, who was the Trump campaign liaison to WikiLeaks and stated to Mr Assange and his counsel that this offer was made with the authority of the President. It is significant that at the time of this meeting, Mr Assange was not under indictment, but it was clear that he would be if the offer was not taken up, which indeed occurred a few months later.
49. As noted above, I do not know whether the description of the authorized offer is true but it certainly should be the subject of thorough examination. If confirmed, a United States Congressman (and a political operative) would in effect be acting as an agent of the President to offer a pardon (and of course Mr Assange would never have been indicted) in exchange for political advantage, and in doing so has used the prospect of a potential indictment to coerce Mr Assange. In my view, this would be as egregious, if not worse, than the acts for which President Trump was impeached.
50. Mr Assange was indicted initially on March 6, 2018, (after a provisional arrest warrant was issued in December 2017) on one count of computer intrusion days. The week before, the President of Ecuador had met with the Under Secretary of State. A few weeks after that, Mr Assange's communications were suspended. In June 2018, Vice President Pence visited Ecuador and the next month it was reported that Mr Assange's asylum would be withdrawn.

²⁸ Lisa Hagen, *Rohrabacher under fire over Russia ties*, The Hill (Mar. 8, 2018, 6:00 AM), <https://thehill.com/homenews/campaign/377302-rohrabacher-under-fire-over-russia-ties>

51. I raise the Ecuadorian developments to provide background for a second area of concern regarding the targeting of Mr Assange by the US Government. I am advised that throughout the latter period of Mr Assange's residence at the Embassy in London, he and his lawyers were subject to surveillance video, audio and wiretapping by a commercial enterprise called UC Global. The director of UC Global was employed and paid by Sheldon Adelson, the largest funder of the Republican Party and Las Vegas casino billionaire, who recently pledged \$100 million to Trump's re-election. I am informed that Adelson's director of security received the surveillance product and that this material is in the hands of the Trump Administration in the United States. It is possible that the Rohrabacher meeting was captured on that surveillance, but in any event, it suggests strongly that there was unauthorized and secret surveillance by individuals and entities working with Trump supporters, raising a further significant issue regarding political cooperation.

Eric L. Lewis
Lewis Baach Kaufmann Middlemiss pllc
1101 New York Avenue NW
Suite 1000
Washington DC 20005
Tel. +1 202 833 8900
Eric.lewis@lbkmlaw.com



Signed: (witness)

Date: ...February 12, 2020.....

(To be completed if applicable: being unable to read the above statement I,of, read it to him/her before he/she signed it.

Signed: **Date:**)

N

