


Title: CONSULAR: Cat 1: Arrest: ASSANGE, Julian Paul (RED)
MRN: s 22 1(a)(ii)
To: Canberra
Cc: RR : London, Stockholm
Ministers: Foreign Minister
From: Washington 
From File:
References: s 22 1(a)(ii)

Response: Routine, Information Only

CONFIDENTIAL

Amendments:

Cc: CHCH/DFAT/ILD/SLA/Head

--- Amended by CHCH/DFAT/IMD/ISB/OAU/David Ellis at 08/12/2011 11:50:31 AM
ZE10 ---

Summary

s 33 (a)(iii)
s 47 F(1)
s 47 E(d)

s 33 (a)(iii)
s 47 E(d)

Sent by: s 22 1(a)(ii)

DFAT – DECLASSIFIED
FILE: 12/3191
COPY ISSUED UNDER FOI Act

s 22 1(a)(ii)

Title: CONSULAR: Cat 1: Arrest: ASSANGE, Julian Paul (RED)
MRN: s 22 1(a)(ii)
To: Canberra
Cc: RR : London, Stockholm
Ministers: Foreign Minister
From: Washington
From File:
References: s 22 1(a)(ii)

Response: Routine, Information Only

CONFIDENTIAL CONSULAR-IN-CONFIDENCE

+++ Personal information about individuals contained in this cable should not be disclosed unless authorised under the Privacy Act 1988 (Cth). Any unauthorised disclosure of personal information may constitute a breach of the Privacy Act 1988 (Cth). +++

Summary

s 33 (a)(iii)
s 47 F(1)
s 47 E(d)

s 22 1(a)(ii)

s 33 (a)(iii)
s 47 F(1)
s 47 E(d)

text ends
s 22 1(a)(ii)

Title: CONSULAR: Cat 1: Arrest - ASSANGE, Julian Paul (RED)
MRN: s 22 1(a)(ii)
To: Canberra
Cc: PP : London, Stockholm
From: Washington
From File:
References: s 22 1(a)(ii)

Response: Priority, Information Only

CONFIDENTIAL

Summary
s 33 (a)(iii)

text ends

s 22 1(a)(ii)

Title: CONSULAR: Cat 1: Arrest - ASSANGE, Julian Paul (RED)
MRN: s 22 1(a)(ii)
To: Canberra
Cc: PP : London, Stockholm
From: Washington
From File:
References: s 22 1(a)(ii)

Response: Priority, Information Only

CONFIDENTIAL

Summary

Post attended the Article 32 pre-trial hearing of Private First Class Manning, accused by the US Government of leaking classified information to WikiLeaks. s 47 F(1)
s 47 G(1)

The presiding official is now reviewing the testimony and is due to deliver a non-binding recommendation on whether Manning should be court-martialled around 16 January 2012. The convening authority will then render its decision regarding a possible court-martial some time in late January or February.

From 16 to 22 December, Post s 47 F(1) attended the Article 32 pre-trial hearing at Fort Meade of Private First Class Manning, the soldier accused by the US Government of leaking classified information to WikiLeaks. Post attended all seven days of the hearings s 47 G(1)

Article 32 Hearing

2. The Article 32 trial process is the military equivalent of a US civilian grand jury indictment process or preliminary hearing. It serves dual purposes: an investigation of the charges/specifications and evidence to determine whether there is sufficient probable cause/reasonable grounds to convene a court martial, and a means of pre-trial discovery and voir dire of witnesses (questioning to uncover bias/prejudice). The military rules of evidence (similar to US federal court rules) do not apply at an Article 32 hearing. s 33 (a)(iii)

No evidence presented at the Article 32 hearing has yet been determined as fact.

References to WikiLeaks and Julian Assange

s 33 (a)(iii)

4. The prosecution argued that Manning was a bright soldier and a trained intelligence analyst trusted to use multiple intelligence systems to aid battlefield commanders. He knew that al Qaeda (AQ) was an enemy of the United States. He knew AQ collected information from the internet, and that making classified information public could help al Qaeda and other enemies. Despite that, within two weeks of arriving in Baghdad, Manning embarked on a six-month campaign to "indiscriminately and systematically harvest over 700,000 documents from SIPRnet". He spent "all his working hours" looking for confidential information, and "did so guided by WikiLeaks' list of "Most Wanted Leaks". In leaking the information, Manning allegedly gave "the enemy of the United States unfettered access to classified documents".

5. The prosecution focused heavily on four specific pieces of evidence published by WikiLeaks: the so-called "Reykjavik 13" diplomatic cable that Manning described as a "test" document in chat logs; a 32-page classified 2008 Army counterintelligence report that discussed the potential for leaks of material to WikiLeaks that could result in an advantage to foreign enemies; the "Collateral Murder" video, depicting a 12 July 2007 Baghdad airstrike in which gunshots from US Apache helicopters killed eight people, including two Reuters photographers, and subsequent re-publication by al-Qaeda allegedly showing how US soldiers "engage suspected actors"; and the Global (email) Address List (GAL), the publication of which, the prosecution asserted, threatened the lives of service personnel.

6. The prosecution repeatedly asserted that Manning had leaked to WikiLeaks and, specifically, to Julian Assange. The prosecution took Investigating Officer Almanza through the testimony and evidence supporting all 22 charges/specifications step-by-step, making the following references to WikiLeaks and Assange during the hearing.

- Manning "indiscriminately and systematically" data-mined classified US databases using WikiLeaks' "Most Wanted List" as a guide.
- A forensic analyst testified that the files on Manning's computer and those given to WikiLeaks were an "exact match". (The defence team's cross-examination suggested that there was no conclusive forensic evidence that WikiLeaks did not obtain the files from another source, and that a further 10,000 cables stored on Manning's computer did not match any of those published by WikiLeaks. The forensic investigator said that the file containing these other cables was corrupted and would have required special tools to open.)
- Manning searched the internet on his NIPR and CIPR-connected computers (ie the US Army's Non-Secure and Secure Internet Protocol Router Networks), and his personal laptop for "WikiLeaks" 119 times and "Julian Assange" four times.
- Manning had contact details (email, phone number) for Julian Assange in Sweden saved in a file on his computer.
- A forensic "imaging" of deleted files on Manning's personal laptop had found 14-15 pages of on-line chat logs between Manning and an interlocutor, which Manning had tried, and failed, to delete from the hard drive. The chats referenced "re-sending information". The chat logs were encrypted, but forensic examiners were able to retrieve Manning's login password from the hard drive and found that the same password "TWink1492!!" was also used as the encryption key.

- Assange's name was attached to the chat handle "dawgnetwork@jabber.ccc.de" listed in Manning's buddy list in the Adium chat program on his computer. The CCC.de refers to the Chaos Computer Club, a hacker club in Germany that operates the Jabber server. The same domain name was allegedly mentioned by Manning in chat logs that FBI informant Adrian Lamo gave to authorities in 2010. In that earlier chat log, Manning was making reference to a domain that Assange was known to use.
- There was also a second handle, "pressassociation@jabber.ccc.de", which had two aliases associated with it: Julian Assange and Nathaniel Frank. s 33 (a)(iii)

- Three previously un-released excerpts of chat logs taken from Manning's personal laptop between Manning and an interlocutor using the pressassociation@jabber.ccc.de chat handle. On 8 March, 2010: Manning allegedly asked for the interlocutor's help in cracking a password so that he could log onto a classified computer anonymously. Manning: "Any good at IM-Hash cracking?" Interlocutor: "Yes ... We have rainbow tables for IM" (referring to a tool used to decipher passwords). Manning then sent a string of numbers to the interlocutor, Interlocutor: "Passed it on to our guys". Later, Manning also allegedly told the interlocutor that "I'm throwing everything I got on JTF-GTMO at you now ... Should take a while to get up though". The interlocutor replied, "OK, great ... ETA?" s 33 (a)(iii)

On 18 March, 2010, Manning allegedly told the interlocutor, that a New York Times article had cited a US Army spokesman "confirming the authenticity" of the report. The interlocutor replied "Yes?" Manning responded "Hilarious".

- In a text file/memo allegedly sent to WikiLeaks along with a cache of Iraq files, Manning suggested that they (WikiLeaks/the interlocutor), "[s]it on this information for 90 to 180 days to figure out how best to release such a large amount of data and to protect the source." To which the interlocutor allegedly replied, "OK ... great."
- Investigators found a command script on Manning's computer used to electronically obtain the global email address list (GAL) for US forces in Iraq, along with thousands of Microsoft Exchange-formatted email addresses. There was no evidence that the GAL had been released, but investigators cited a WikiLeaks tweet of 11 May, 2010, asking for people to send in .mil email addresses.
- FBI informant Adrian Lamo testified about a series of on-line chats with Manning (previously released on www.wired.com) from 21-25 May 2010, in which Manning (using the chat handle "Bradass87") introduced himself as "an army intelligence analyst, deployed to eastern Baghdad, pending discharge for "adjustment disorder" in lieu of "gender identity disorder". Manning allegedly said, "lets just say *someone* i know intimately well, has been penetrating US classified networks, mining data like the ones described ... and been transferring that data from the classified networks over the "air gap" onto a commercial network computer ... sorting the data, compressing it, encrypting it, and uploading it to a crazy white haired aussie who can't seem to stay in one country very long =L ...". Manning allegedly then added, "crazy white haired dude = Julian Assange ..." In speaking of his own

relationship with Manning, Lamo told the courtroom, "I believe that he [Manning] was reaching out for affirmation and for a like-minded individual that would act as a similar figure in their life as Julian Assange."

7. s 33 (a)(iii)

The defence team's lead counsel, Iraq war veteran and retired JAG officer Lt Col David Coombs, said "[t]he sky has not fallen ... the sky is not falling, and the sky will not fall." He added, "Why are we here when all of this information is out in the public? If anything, it has helped". He then quoted former US Supreme Court Justice Brandeis' famous statement that "[s]unlight is the best disinfectant".

8. The defence team asserted on several occasions that Assange was the prosecution's real target and prosecutors were trying to "strong-arm" a guilty plea from Manning by overcharging him, with a view to pressuring Manning to testify against Assange in a separate trial. In closing, Coombs challenged Investigating Officer Almanza to deliver a "reality check" to the US prosecution. "The prosecution has overcharged in this case on order to strong-arm a plea from my client." He noted that the 22 counts against Manning would result in a sentence of 150 years in total. "But the prosecution was not satisfied. They also charged him with aiding the enemy. And even though in a benevolent gesture, apparently, they said they would not be seeking the death penalty, the death penalty is what that carries. And if not death penalty then life without parole."

9. s 33 (a)(iii)

Coombs also actively questioned the Investigating Officer over his career as a prosecutor for the Department of Justice, and called on him to recuse himself based on a conflict of interest between the Manning hearing and potential Assange proceedings, which would be led by Justice. Almanza denied this request on the basis that he worked in a different section than that which would lead a possible Assange case, and that he had limited his contact with Justice when appointed Investigating Officer.

10. Throughout the hearing, Manning's defence team presented Manning, now aged 24, as an emotionally unstable, depressed and self-diagnosed victim of Gender Identity Disorder. Manning felt added stress as a man who identified as female, had created a female alter ego ("Breanna") at the time of the alleged leaks, and had explored female facial reconstruction and hormone therapy. He said that Manning's superiors repeatedly failed to act on signs of his distress. He read an e-mail from Manning to his superior, Master Sergeant Paul Adkins, in which Manning described the effect that this had on him, ending the note with: "It makes my entire life feel like a bad dream that will not end ... I thought a career in the military would get rid of it." No action was taken, despite Adkins noting in a memo that Manning needed "extensive psychological treatment at least once or twice a week on an indefinite basis". Coombs referred to evidence of "multiple instances" where Manning's struggle with identity had led to outbursts or abnormal behaviour, including Manning curled in a ball in the SCIF next to a chair on which he had scrawled the words "I want".

11. Coombs also argued failings in the change of command and lax controls in the intelligence unit to the point of negligence. Coombs argued that security breaches went far beyond Manning, with soldiers free to listen to music, play movies and games, and often downloading unauthorised programs onto the NIPRnet and CIPRnet. "It was a lawless unit when it came to information assurance. They did not follow rules, they did not follow standards". To prosecute Manning alone "smacks in the face of justice". Coombs also pointed out that Manning was a young, idealistic man "with a strong moral compass".

s 47 F(1)

s 47 G(1)

s 47 F(1)
s 47 G(1)

Next Steps

16. Investigating Officer Almanza is now reviewing the evidence presented at the hearing, plus approximately 300,000 pages of non-testimonial evidence. He will then render a non-binding recommendation as to whether Manning should be court-martialled some time around the week ending 16 January, 2012, although there is some flexibility. The convening authority will then render its decision regarding a possible court martial some time in late January or February.

17. s 33 (a)(iii)

18. As previously reported, there are reports that a grand jury has been empanelled in Virginia to consider civilian charges against Julian Assange. By virtue of the secret nature of grand jury investigations, this cannot be confirmed on the record legally.

19. On 20 December, Reuters reported that an internal debate continued within the Obama Administration as to whether charges should be brought against Assange. Some believe charges should be brought to deter leakers and people who entice them to leak, and the Justice Department is under political pressure to do so. Others have argued that it will be legally problematic, if not impossible, to distinguish Assange's actions in receiving US secrets from those of a journalist who does likewise. (In the margins of the Manning hearing, journalists commented that their employers remained concerned about possible implications for media outlets who reported leaked government information.) PJ Crowley, who resigned as Secretary of State Hillary Clinton's spokesman after publicly questioning harsh conditions under which the Army was imprisoning Manning, told Reuters that "[a] prosecution of Julian Assange would come at a tremendous cost to the interests and values that (Americans) hold dear" and "carry some very serious reputational costs" for the US Government's image around the world.

text ends

s 22 1(a)(ii)

s 22 1(a)(ii)

Title: United States: PFC Manning - legal process
MRN: s 22 1(a)(ii)
To: Canberra
Cc: RR : London, Stockholm, UN New York
Ministers: Foreign Minister
From: Washington
From File: s 22 1(a)(ii)
References:

The cable has the following attachment/s -
wikileaksassgordcaaf.pdf

Response: Routine, Information Only

UNCLASSIFIED

Summary

Media has reported that the investigating officer who presided over PFC Bradley Manning's Article 32 pre-trial hearing has recommended that all 22 charges against him be referred to a general court martial. Media has also reported that the U.S. Court of Appeals for the Armed Forces has denied a petition by the Center for Constitutional Rights (on behalf of Mr Assange and WikiLeaks) to give their lawyers guaranteed access to the Article 32 pre-trial hearing. Media comments have noted that, while these proceedings are now concluded, the same issue could arise again at a court martial hearing.

US and international media has reported that Lieutenant Colonel (Lt Col) Paul Almanza, the investigating officer who presided over Private First Class (PFC) Bradley Manning's Article 32 pre-trial hearing, has recommended that all 22 charges against Manning be referred to a general court martial on the basis that "reasonable grounds exist to believe that the accused committed the offences alleged".

2. The recommendation has reportedly been submitted to Colonel Clark Coffman, the Special Court-Martial convening authority, who will determine if the charges should be heard at his level or forwarded to Major General Linnington, the General Court Martial Convening Authority.
3. An Army spokeswoman has said that a copy of Lt Col Almanza's recommendation is "not releasable during the ongoing legal proceedings and will not be eligible for Freedom of Information Act (FOIA) until the [General Court-Martial Convening Authority] takes final action on the case."
4. Manning faces 22 charges, including: aiding the enemy; wrongfully causing intelligence to be published on the Internet, knowing that it was accessible to the enemy; theft of public records; transmitting defence information; adding unauthorized software to the secret computer system to extract classified information; and computer fraud.
5. Media has also reported that the U.S. Court of Appeals for the Armed Forces (CAAF) has denied a petition by the Center for Constitutional Rights (on behalf of

Mr Assange and WikiLeaks) to give their lawyers guaranteed access to the Article 32 legal proceedings against PFC Manning. The petition reportedly also sought to have a lawyer with a security clearance sit on classified sessions the public was excluded from. The plea had previously been rejected by the investigating officer, Lt Col Almanza, and by an intermediate appeals court on the grounds that there was no basis for according special status just because Mr Assange 'might' be charged in the future. The only further avenue of review would be the U.S. Supreme Court. It was noted that in practice, lawyers for Mr Assange had been able to gain access to general public seating in the courtroom. Media commentary also noted that, while the Article 32 process has concluded, the same issue could arise again at a court martial hearing.

6. A copy of CAAF's order is attached.

text ends

s 22 1(a)(ii)

United States Court of Appeals
for the Armed Forces
Washington, D.C.

Julian)	USCA Dkt. No. 12-8008/AR
ASSANGE,)	Crim.App. No. 20111146
)	
and)	
)	
WIKILEAKS,)	
)	
Appellants)	
)	
v.)	<u>ORDER</u>
)	
)	
UNITED STATES OF AMERICA)	
)	
and)	
)	
Lieutenant Colonel Paul)	
ALMANZA,)	
)	
Appellees)	

On consideration of the writ-appeal petition; the motion filed by Baher Azmy, Esq., to appear pro hac vice; Appellant's motion to supplement the record; the motion for leave to file a joint appendix; and Appellee's motion to attach affidavit, it is, by the Court, this 11th day of January 2012,

ORDERED:

That said motions are hereby granted; and

That said writ-appeal petition is hereby denied.

For the Court,

/s/ William A. DeCicco
Clerk of the Court

cc: The Judge Advocate General of the Army
Appellants' Counsel (AZMY)
Appellees' Government Counsel (FISHER)