JUDICIARY OF
ENGLAND AND WALES

JUDGE HOWARD RIDDLE, SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)

IN THE WESTMINSTER MAGISTRATES' COURT

PROFESSOR TRICIA DAVID AND OTHER SURETIES FOR JULIAN ASSANGE

8 OCTOBER 2012

Background

In December 2010 Julian Assange surrendered to the UK authorities on a European Arrest Warrant issued in November that year by the Swedish Prosecuting Authority. At a second application for bail I granted conditional bail requiring the lodging of a security, and other conditions. The decision to grant bail was appealed and considered on 16th December 2010 by Mr Justice Ouseley in the Administrative Court. The grant of conditional bail was upheld but the conditions were varied. Among the conditions to be complied with before release was that a total of nine people were to enter into a recognizance to secure the surrender of Mr Assange at the time and place appointed. Sureties were taken in court and the defendant was released.

An order for extradition was made by this Court on 24th February 2011, and Mr Assange was bailed as before. At that time the sureties were retaken, some at a police station and some at court, and made continuous to surrender for removal. Mr Assange was required to await his extradition with a duty to surrender to the police or any court, in connection with these extradition proceedings, at such time and place as he may be notified. The sureties were made subject to an obligation to pay the court the sum specified opposite their signature if Mr Assange failed to surrender to the custody of the police at such place, on such date, at such time as he may be

notified, or to surrender to the custody of any court if directed to do so in connection with these extradition proceedings. Other conditions of bail were varied from time to time, notably the condition of residence or to relax the curfew condition on days the defendant was due in court. On each occasion the court was satisfied that the sureties were aware of, and did not object to, the variation.

The order for extradition was unsuccessfully appealed, first to the High Court and then to the Supreme Court. An application to reopen the appeal was dismissed by the Supreme Court on 14th June 2012. However the Supreme Court ordered the required period of extradition not to commence until the 14th day after that day. In other words, the 10-day period for extradition was to begin on 29th June 2012.

On Tuesday, 19th June 2012 the police received notification that Mr Assange had presented himself to the Ecuador Embassy in London where he was claiming asylum. That same evening the police also received notification that Mr Assange was absent from his bail address. It is not in dispute that Mr Assange has remained at the Ecuador Embassy since 19th June. On Thursday, 28th June Sgt Humphries wrote to Mr Assange requiring him to surrender to the custody of police on Friday 29th June 2012 at 11:30am at Belgravia Police Station for his removal to Sweden. The letter was sent by registered post to his bail address. A copy was also sent by registered post to his solicitors, Birnberg Pierce and Partners. The letter was also served upon the consul at the Ecuador Embassy in London by hand on 28th June 2012 and a further copy faxed to his solicitor. The embassy has confirmed, in a letter I have seen, that the letter was handed to Mr Assange on 28th June 2012. It is said by Sgt Humphries, who gave evidence before me on 4th September 2012, and is apparently not in dispute, that Mr Assange also gave a telephone interview to the BBC, broadcast during the evening of 28th June 2012, where he appeared to acknowledge receipt of the surrender notice from police.

Mr Assange failed to surrender to police on 29th June 2012 at Belgravia Police Station at 11:30am, as required in the letters served on him. The same day a warrant for his arrest was issued at this court by Judge Purdy.

A hearing was listed at this Court on 27th July 2012 for forfeiture of the recognizances (and also the cash security). A number of sureties contacted Mr Assange's solicitor and asked that the return date for the summons be after August, as they were out of the country until then. On 27th July 2012 the court (under section 120 of the Magistrates Court Act 1980) declared the recognizances to be forfeit. A summons was issued to each of the nine people bound by the recognizances as sureties, requiring them to appear before the court on 4th September 2012 to show cause why they should not be adjudged to pay the sum in which they were bound. [The date was chosen to accommodate those sureties who had asked the hearing not to take place during August. A full day was set aside.]

On 30th August 2012 Birnberg Pierce solicitors wrote to the court saying that they had heard from a number of the sureties that they would be unable to be present on 4th September. Mr Vaughan Smith was in Afghanistan, Phillip Knightley in Spain, and Lady Caroline Evans in Italy. Moreover "the solicitor likely to be instructed by all, Mr Nichol of TV Edwards, has himself been on leave and unable to take instructions and further is obliged to be out of the country from the 4th to the 20th September 2012". In those circumstances the solicitors asked for a later date to be fixed. This was considered by the Deputy Chief Magistrate, and refused.

The Hearings

None of the nine sureties attended the hearing on 4 September. The three mentioned above were believed still to be abroad. Lady Evans had had a bereavement. At least one of others had indicated an intention not to attend. Six of the nine (Vaughan Smith, Sarah Saunders, Tricia David, John Sulston, Caroline Michel (Lady Caroline Evans), and Tracy Worcester provided statements that were put before me.

Can I say immediately that it is entirely acceptable for the sureties not to attend. There is no requirement that they should do so. The hearing was to give them an opportunity, if they wished to take it, to make representations to show cause why their recognizance should not be estreated. Four of the sureties (Professor Tricia David, Sir John Sulston, Baroness Tracy Worcester and Phillip Knightley) had taken the trouble to instruct lawyers to attend on their behalf. Moreover the sureties

mentioned above had also taken the trouble to provide statements. This is all, as I say, entirely acceptable.

On 4th September Mr Henry Blaxland QC and Mr Hossein Zahir appeared for the four sureties who had instructed Taylor Nichol, solicitors. Counsel indicated that a number of other sureties had expressed an intention to be represented. Counsel applied for an adjournment. It was said that a number of sureties were unable to attend court. The solicitor of choice, Mr Nichol, was also unable to attend. There had been insufficient time to prepare and gather all information relevant to the issues to be decided. Moreover, on the other quite exceptional facts of this case, Julian Assange may have a defence of reasonable excuse for his failure to surrender to police, which is the event which has triggered the proceedings to forfeit the recognizances. For reasons I gave at the time I refused the application. The day had been set aside after the end of August, as requested by those sureties who had responded through solicitors. I was satisfied that ample time had been given for the preparation for the hearing. Crucially, counsel was not instructed by any of the nine sureties that they wished to attend or to give live evidence.

In the event we proceeded to hear evidence from Sgt Humphries. He adopted his statement dated 29 June 2012 in which he said, among other things, that the Supreme Court ordered that the required period for the extradition of Mr Assange should not commence until 29 June 2012. By that time Mr Assange had already presented himself to the Ecuador Embassy in London where he was claiming asylum. On Thursday, 28 June 2012 Sgt Humphries wrote to Mr Assange requiring him to surrender to custody of police on Friday, 29 June 2012 at 11:30am at Belgravia Police Station for his removal to Sweden. This letter was sent by registered post to his bail address. A letter was also sent by registered post to his solicitors and delivered by hand to the Ecuador Embassy on 28 June 2012. The embassy confirmed that this letter was handed to Mr Assange on 28 June 2012. The defendant also gave a telephone interview to the BBC, broadcast on the Newsnight programme during the evening of 28 June 2012, where he apparently acknowledged receipt of the surrender notice from police. Mr Assange failed to surrender as required. In cross-examination he was asked why the police had not entered the embassy to arrest Mr Assange. He

said he would not go into the embassy uninvited. He confirmed he did not notify the sureties of the requirement to surrender.

I heard detailed argument from counsel and then did adjourn, for the following reasons. Firstly, having heard fully from counsel, I accepted that this is an unusual situation and that, having been instructed very late in the day, it was reasonable for the lawyers to have more time to marshal any further arguments. Secondly, on reflection I thought it best to give a further opportunity for the sureties to attend court and give evidence, if they wished to do so. Thirdly, I thought it possible that a further delay would give the sureties the opportunity to make representations to Mr Assange to surrender himself, in accordance with their obligations. This was clearly contemplated by Ouseley J when he decided that there should be a specific condition on bail that sureties be provided.

However I was not prepared to adjourn until such time, if any, when Mr Assange appears before the court. It is not the usual practice. The possibility that Mr Assange has a defence of reasonable cause to the allegation of failure to surrender cannot be excluded. The same applies when any defendant apparently absconds. For example it may later be discovered that the defendant had been critically injured, or perhaps kidnapped, or in some other way prevented from attending and prevented from communicating. If that happens, then any security or securities estreated would no doubt be returned. The reason for proceeding is that the defendant may never surrender, or may not surrender for many years. It cannot be right for the court not to consider the sureties' obligations if that happens. Moreover, the longer the matter is delayed the more probable it is that the personal circumstances of the sureties would change. I did ask Mr Blaxland whether he thought the court should consider issuing proceedings for failure to surrender against Mr Assange. That would raise the possibility that the point could be argued on his behalf reasonably soon. Mr Blaxland had no instructions to ask for that course. I was not attracted by it of my own motion, for a number of reasons.

On Wednesday 3 October 2012 counsel attended and told me that they were no longer formally instructed. The following sureties attended: Professor Tricia David; Lady Caroline Evans (Michel); Phillip Knightley, Vaughan Smith, Baroness Tracy

Worcester. Explanations for absence were received from: Joseph Farrell; Sarah Saunders; and Sir John Sulston. I was not asked to adjourn.

Mr Blaxland helpfully made the following points before withdrawing. The court has wide discretion. This is a unique and genuinely wholly exceptional case. Mr Assange has not absconded – he has sought asylum with a country with diplomatic relations with this country. The sureties had been surprised by the length of time these proceedings had taken to resolve.

Mr Vaughan Smith then addressed the court. He had been asked by the nine (I think he meant eight) other sureties to speak on their behalf as well as his own. I will attach the full address to this judgment. He started by saying that the sureties "appreciate that the court wants to know what the sureties may have privately or publicly done to encourage Mr Assange to submit to the British police since he entered the Ecuadorian Embassy on 19 June." He referred to the lengthy extradition challenge; the controversial circumstances; attacks by US officials on Mr Assange personally and through Wikileaks. If the sureties publicly urged Mr Assange to abandon the embassy, "it would undermine Mr Assange but we don't believe it would do anything to extract him from the Ecuadorian Embassy. It would certainly be a very public betrayal and in our view, importantly, it would also betray the public." The sureties visited Mr Assange the day before. They were told that the Ecuadorian Minister of Foreign Affairs had investigated and found that Mr Assange's fears of persecution by the United States and others were not unreasonable. He had been granted political asylum. He explained the continuing threat to him emanating from the United States. Mr Assange is convinced he faces serious risks in US custody. The securities cannot disregard that risk. They believe the Ecuadorian government is negotiating with the Swedish and British authorities, looking for a solution, and they hope that those discussions will be fruitful. Mr Vaughan Smith then described the huge amount of effort the sureties have provided over an unexpectedly long period. He ended "in this unique, and this quite exceptional case, to comply with what this court seems to expect from us; to all publicly urge Mr Assange to abandon the sanctuary that he has found in the Ecuadorian Embassy, would see us acting against a man whom we and others judge to have understandable fears about his ultimate treatment in the United States if he abandons his asylum. That would render us

mercenary and contemptible individuals of great weakness of character. It cannot be the right thing for us to do."

The other sureties present politely declined the opportunity to add to the statement of Mr Vaughan Smith, although Sarah Saunders, Tricia David, John Sulston, Caroline Michel (Lady Caroline Evans), Tracy Worcester and Phillip Knightley have each made one or more statements that I have read.

Consideration

I say immediately that I have real respect for the way that the sureties have conducted themselves in difficult circumstances. I am satisfied that what they have said and written accurately reflects their genuine views. In declining to publicly (or as far as I know privately) urge Mr Assange to surrender himself they have acted against self-interest. They have acted on their beliefs and principles throughout. In what is sometimes considered to be a selfish age, that is admirable.

A surety undertakes to forfeit a sum of money if the defendant fails to surrender as required. Considerable care is taken to explain that obligation and the consequences before a surety is taken. This system, in one form or another, has great antiquity. It is immensely valuable. A court concerned that a defendant will fail to surrender will not normally know that defendant personally, nor indeed much about him. When members of the community who do know the defendant say they trust him to surrender and are prepared to stake their own money on that trust, that can have a powerful influence on the decision of the court as to whether or not to grant bail. There are two important side-effects. The first is that the sureties will keep an eye on the defendant, and report to the authorities if there is a concern that he will abscond. In those circumstances, the security can withdraw. In granting bail I understand that Ouseley J expressly referred to this advantage of sureties. The second is that a defendant will be deterred from absconding by the knowledge that if he does so then his family and friends who provided the sureties will lose their money. In the experience of this court, it is comparatively rare for a defendant to fail to surrender when meaningful sureties are in place.

[At this stage I should mention that Lady Evans was not one of the persons named in the High Court order granting bail. Her husband, Lord Matthew Evans, was. This was explored before me when I accepted her as a surety. No point was taken then. It avoided Mr Assange spending a further period in custody while a named surety was located. To her very great credit Lady Evans has not argued this, nor has she even referred to it. I am satisfied that if I made a mistake in accepting her in the first place, nevertheless she accepted full responsibility as a surety and is personally liable in the sum of £20,000.]

The law has been helpfully summarized for me by counsel in written submissions dated 3 September 2012. I am satisfied that the court has discretion to forfeit the whole sum, part only of the sum, or to remit the sum. All factors should be taken into account. The presence or absence of culpability is a factor, but is not in itself a reason to reduce or set aside the obligations entered into by the surety. The means of a surety, and in particular changed means, are relevant.

There is clearly an important point of public policy involved. If a person accepts the responsibility of a surety, and the defendant fails to surrender as required, then the starting point must be that the surety is forfeited in full. It would be unfortunate if this valuable method of allowing a defendant to remain at liberty were undermined. Courts would have less confidence in the efficacy of sureties. It would be particularly unfortunate if it became established that a defendant who absconded without in any way forewarning his sureties thereby releases them from some or all of their responsibilities. In this case Mr Assange told the sureties that "he did not tell us of his decision because to do so would have placed us in legal difficulty" (see the statement to the court of Mr Vaughan Smith). In short, even if a surety does his best, he remains liable for the full amount, except at the discretion of the court.

Various points have been made by or on the behalf of the sureties. The first is that the sureties were not notified by Sgt Humphreys of his letter requiring Mr Assange to surrender to Belgravia police station. In my view there is no obligation on the police to do so. In some cases it may be an important factor in assessing culpability. However in this case all sureties clearly followed the case with considerable care. They knew the outcome. They knew that extradition arrangements were imminent.

Before the first date when extradition could take place Mr Assange entered into the embassy and has remained there. All the evidence is that even had they known of the specific letter requiring him to surrender, it would have made absolutely no difference.

There is then the question of culpability. I accept that the sureties all acted in good faith. I accept that they trusted Mr Assange to surrender himself as required. I accept that they followed the proceedings and made necessary arrangements to remain in contact with him. However, they failed in their basic duty, to ensure his surrender. They must have understood the risk and the concerns of the courts. Both this court and the High Court assessed that there were substantial grounds to believe the defendant would abscond, and that the risk could only be met by stringent conditions including the sureties. They have also, for reasons I have heard and understand, declined to exert such influence as they may have on Mr Assange to surrender. Heavy reliance has been placed on Mr Assange's strongly held fears of being removed to the United States. That fear was held, and publicly expressed, right from the very beginning. Indeed, in the early days there was a widely expressed view that extradition to Sweden was a masquerade for the real intention of the Swedish authorities to forward Mr Assange to the United States and even Guantánamo Bay. The theory was expressed in a number of ways, including openly in court, but there can have been no doubt that this was a fear operating on the mind of the defendant in the extradition proceedings. Admittedly the point was not taken in the extradition hearing itself, although I did refer to it briefly in my judgment. In short it is not new and should have been taken into account by the sureties when entering into and maintaining their obligations.

I have considerable sympathy for the point made that these proceedings lasted longer than expected. However the defence said again publicly, comparatively early and in open court if not elsewhere, that the extradition proceedings would be contested to the end, including the Supreme Court and the European Court if necessary. The sureties were kept informed and would have known, or could have discovered, that they could withdraw.

Initially a point was taken that the police were aware that Julian Assange was staying in the embassy, but they failed to arrest him as they had power to do. However that point was not pursued after hearing the evidence of Sgt Humphreys.

What is undoubtedly unique is that the defendant sought, and has apparently been granted, asylum by Ecuador. It was suggested that the defendant is simply seeking an alternative legal process. However in principle I see no difference between seeking refuge in the Ecuadorian embassy, and taking flight to that country. In extradition cases in particular there is not infrequently a possibility that a defendant might seek refuge in a state friendly to him. I am simply unimpressed by the parallel legal process argument. Mr Assange has an obligation to comply with the legal requirements of this country to surrender to the bail granted on terms originally set by the High Court.

Nevertheless, although there is no difference in principle, there are two practical differences of significance. The first is that the act of taking shelter in an embassy is physically far easier to achieve and far harder for a surety to anticipate than taking a flight or a boat. While one might assume that there had been some prior preparation, nevertheless this could take place without the need for travel documents, advanced flight arrangements and so on. Secondly, there remains the hope, expressed by all the sureties, that discussions between the relevant governments will lead to a solution, and in particular the solution of Mr Assange surrendering to the police here. That may be a more likely solution than would have been the case if the defendant was physically in Ecuador. I will proceed on the basis that there is a realistic possibility he will be arrested leaving the embassy.

I also take account of means. Professor David is a pensioner and the sum of £20,000 comprises a substantial portion of her savings jointly with her husband. Sarah Saunders has also provided details of her financial position and I am satisfied that she is of comparatively limited means. Mr Vaughan Smith tells me that if he forfeits the £20,000 surety it will have a significant impact on the welfare of his family and his employees. He provided further details. None of the other sureties has provided me with details of their financial circumstances.

Having seen and heard from the sureties, I cannot avoid taking some account of their integrity.

I approach this decision on the basis that I should forfeit no more than is necessary, in public policy, to maintain the integrity and confidence of the system of taking sureties so that a person may be released on bail.

Decision

I find that this is a case in which recognizances have been conditioned for the appearance of Mr Assange and that he has failed to appear in accordance with the conditions of his bail.

Exercising the power under section 120 (3) MCA 1980 I adjudge each of the sureties is to pay part only of the sum originally pledged, as follows:

1. Tricia David £10,000
2. Caroline Evans £15,000
3. Joseph Farrell £3500
4. Sarah Harrison £3500
5. Phillip Knightley £15,000
6. Sarah Saunders £12,000
7. Vaughan Smith £12,000
8. John Sulston £15,000
9. Tracy Worcester £7500

Those amounts must be paid in full by Tuesday, 6 November 2012. If any amount is outstanding the person in default must appear in front of me on that day (6 November) at 2pm for enforcement measures to be considered. The person may be required to show cause why he/she not be committed to custody for non-payment.

Howard Riddle
Senior District Judge (Chief Magistrate)
8th October 2012