

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BILAL ABDUL KAREEM,

Plaintiff-Appellant,

v.

GINA HASPEL, Director,
Central Intelligence Agency, *et*
al.,

Defendants-
Appellees.

Case No. 19-5328

**BRIEF OF AMICUS CURIAE
RUSSIAN EXPERT PROFESSOR WILLIAM BOWRING
IN SUPPORT OF APPELLANT AND FOR REVERSAL**

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Professor William Bowring hereby files the following brief as *Amicus Curiae* in this case in support of the Appellant:

INTEREST OF AMICUS

Professor William Bowring, *amicus* here, is a citizen of the United Kingdom.

My interest in the case before this Court is the effect of United States law and practice in encouraging other states, in this case the Russian Federation, to carry out and to legalise programs of assassination at home and abroad. In other words, the general policy being publicly espoused by the U.S authorities in this case (that they have the power to assassinate anyone including American journalists), combined with the insistence that this policy should be secretive and unreviewable, makes it

impossible for governments and human rights advocates to strive to rein in the assassinations being committed by regimes such as the Kremlin and Putin in Russia.

I am a Professor of Law at Birkbeck College, University of London, and a practising Barrister of England and Wales. I have been travelling the Russia since 1983, when it was still part of the USSR, and have written many books and article on Russian law and practice. As a Barrister I have taken hundreds of cases against Russia since 2000 to the European Court of Human Rights (Russia ratified the European Convention on Human Rights in 1998), and in 2003 I was awarded €1 million by the European Commission to found the European Human Rights Advocacy Centre (EHRAC) in partnership with the leading Russian human rights organization *Memorial*. With my colleagues I have won many cases on behalf of applicants complaining of murder, torture, disappearance and other human rights violations committed by Russia against Chechens, in the context of the Second Chechen War initiated by President Putin in 1999. I am a member of the legal team representing Marina Carter (Litvinenko) in her case at the ECtHR concerning the murder of her husband Alexander Litvinenko in London in November 2006. I attach my qualifications and experience in Russia in the Annex hereto.

CONSENT OF THE PARTIES

Undersigned counsel hereby states that both parties have consented to the timely filing of this *Amicus* brief.

CERTIFICATE OF COMPLIANCE

I hereby certify that no counsel for a party authored the brief in whole or in part; that no party nor a party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person—other than amicus curiae or its counsel—contributed money that was intended to fund preparing or submitting the brief.

/S/ SANTHA SONENBERG

ARGUMENT OF AMICUS

I. THE ASSASSINATION OF INDIVIDUALLY SELECTED PEOPLE AROUND THE WORLD BY THE UNITED STATES GOVERNMENT IS AN ISSUE OF IMMENSE PUBLIC INTEREST, WITH A NEGATIVE IMPACT ON HUMAN RIGHTS WORLDWIDE, AND SHOULD NOT BE CONDUCTED WITH TOTAL SECRECY AND IMPUNITY

Difficult though it is for advocates of human rights to believe, it is well known that the U.S. conduct an assassination program.

A. The Russian legal basis for and their use of assassination conforms with and may well be influenced by the US theory and practice

Nobody would suggest that the current Russian regime only began to engage in illegal acts after the U.S. publicized its own extra-legal activities. However, by creating a rendition program, by engaging in torture (albeit called “Enhanced

Interrogation Techniques”),¹ by the supposedly law-free detention centers ranging from Guantánamo Bay to prisons dotted around foreign countries, and now by advertising its assassination program, the U.S. essentially encouraged repressive regimes to expand their own such policies. My focus in these *Amicus Curiae* observations is on Russia.

The U.S. Executive claims that such activities are rendered lawful by the 2001 *Authorization of the Use of Military Force* (AUMF),² periodically renewed. The AUMF permits the President to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on 11 September 2001, or harbored such organizations or persons."

¹ It is unfortunate that the U.S. chose to use this term, which had been coined by the German authorities prior to and during World War Two. See "*Verschärfte Vernehmung*", *The Atlantic* (May 29, 2007), at <https://www.theatlantic.com/daily-dish/archive/2007/05/-versch-auml-rfte-vernehmung/228158/> (accessed Nov. 21, 2019) (the phrase translates as enhanced interrogation, and while "the Nazis were adamant that their 'enhanced interrogation techniques' would be carefully restricted and controlled, monitored by an elite professional staff" the techniques they used were later deemed in some cases to be war crimes worthy of capital punishment).

² *The Authorization for Use of Military Force* (AUMF), Pub. L. 107-40, codified at 115 Stat. 224 and passed as S.J.Res. 23 by the United States Congress on September 14, 2001.

The Russian government followed the U.S. example in 2006. The Russian legal basis for assassination is to be found in the Federal Law of the Russian Federation of 6 March 2006 “On countering terrorism”.³ Article 22 provides:

Legitimate Infliction of Harm

The deprivation of life of a person committing a terrorist act, as well as causing harm to the health or property of such a person or other interests of the person, society or state protected by law during the suppression of a terrorist act or the implementation of other measures to combat terrorism with actions prescribed or permitted by the legislation of the Russian Federation, are lawful.

This law was soon amended to extend the powers of the Russian state to the carrying out of assassinations abroad. On 29 July 2006, on publication in the official Russian Gazette, another new law came into force, with the anodyne title “On amendments to separate legislative acts in connection with the enactment of the Federal Law “On ratification by the Russian Federation of the European Convention for the Prevention of Terrorism” and the Federal Law “On countering terrorism””⁴

³ No.35-ФЗ of 6 March 2006, at

http://www.consultant.ru/document/cons_doc_LAW_58840/

⁴ Федеральный закон "О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием Федерального закона "О ратификации конвенции совета Европы о предупреждении терроризма" и Федерального закона "О противодействии терроризму" от 27.07.2006 N 153-ФЗ (последняя редакция) Law no. FZ 153, first reading on 19 April 2006, signed by the President on 27 July 2006. http://www.consultant.ru/document/cons_doc_LAW_61802/ (Amended in 2011 and in 2016 by 06.07.2016 N 375-ФЗ).

(the 2006 Law). Fifteen laws were amended, and substantial changes included the re-introduction of trials in absentia, following their abolition in 2002. The most controversial amendments related to the functions and powers of the security services.

Article 13(6.2) of the Federal Law of 1995 No 40 FZ “On the Federal Security Service” is amended by Article 3 of the 2006 Law so as to provide expressly for the execution of counter-terrorist operations beyond the borders of the Russian Federation. This has been described by commentators as a Russian “007 law”, giving the Russian secret services for the first time the right to use deadly force abroad.

Article 6(2) provides that the Russian government may:

... use special forces of the federal security service and use military equipment, weapons, special equipment adopted by the federal security service, as well as physical force against terrorists and (or) their bases outside the territory of the Russian Federation to eliminate threats to the security of the Russian Federation;

On 3 July 2006 the staff journalist Vladimir Fedosenko published an article in the official *Russian Gazette* entitled “The Russian special sub-units are ready to execute the order of the President. The right of retribution has been taken upon itself by the Russian state in the war on terrorism.”⁵ He correctly identified the issue at stake in the new law as the legitimacy of preventive actions by the special services

⁵ “Right to retribution (возмездие)” at <http://www.rg.ru/2006/07/03/pravo.html>.

outside Russia, especially in the context of President Putin's order to find and liquidate the murderers of Russian diplomats in Iraq. The deaths of the diplomats were confirmed on 26 June 2006.⁶ The men were seized in Baghdad on 3 June 2006, and the kidnappers said the executions were in revenge for "torture, killing and displacement by the infidel Russian government" in Chechnya. I doubt whether this event was the only reason for enacting the new legislation, but served as a pretext in my opinion.

To my knowledge, no senior Russian official said on record that Russia was following the US example, which is understandable enough. But there is a startling similarity in a number of areas – from the purported legal justification for assassination to the strategic leaks – which leads me and others to conclude that the Putin regime was almost certainly copying the regime supposedly adopted by the AUMF. This, he would rightly have decided, neutralizes the capacity for Western states, international organisations, and for human rights defenders to be critical of such human rights abuses.

After this, the Director of the FSB, Nikolai Patrushev, announced that the recently created National Anti-terror Committee of the Russian Federation would coordinate the work of the Russian special services for carrying out the President's

⁶ See http://news.bbc.co.uk/2/hi/middle_east/5118702.stm

order. In the words of Sergey Mironov, Speaker of the Federation Council, Russia's upper house, this initiative was consistent with Russia's right to self-defence enshrined in Article 51 of the UN Charter.

On 11 January 2007 the opposition newspaper *Novaya Gazeta* published an article, "How in Russia murders are committed in the interests of the state", describing a document which had come into their possession, apparently leaked from the FSB.⁷ According to this 70-page document, which appeared to be a secret FSB instruction, parallel structures had been created within the FSB for the purpose of carrying out "extra-judicial sentences", that is, murders. The document appeared to have been signed by Colonel Seliverstov of the FSB. When "Novaya Gazeta" approached him, his response was that he had not signed the document, but that whoever had passed it to the newspaper had committed a state crime. Former FSB members confirmed that such a document, even though signed by a colonel, would have required approval at government level.

The article discussed at length not only the notorious Litvinenko and Politkovskaya cases (Anna Politkovskaya was murdered outside her home in

⁷ <http://www.newsru.com/russia/11jan2007/ng.html>;
<https://novayagazeta.ru/articles/2007/01/11/35242-zapasnye-organy>.

Moscow on 7 October 2006)⁸, but also the unsolved murders or suspicious deaths of a large number of opposition journalists and others.

The laws cited above authorise three Russian agencies to exercise the right to conduct assassinations abroad - FSB (Federal Security Service), GRU (Main Intelligence Directorate) and SVR (Foreign Intelligence Service).

The U.S. has admitted the existence of its own assassination project, as well as such particular elements of it as “Terror Tuesday”.⁹

It therefore becomes difficult for the U.S. (or anyone else) to be critical of the Russian program, without being accused of hypocrisy.

B. These changes to the law have been followed by an increase in the alleged Russian assassinations and attempts with the murder of Alexander Litvinenko and the murder and attempted murder of others in the United Kingdom

While the U.S. might seek to distinguish assassination under the AUMF as targeted on “terrorists” in a “war zone”, the definitions are sadly rather flexible. The U.S. has adopted the “Global War on Terror” concept, meaning that the “battlefield” may be anywhere and everywhere. It is also a “war” of potentially eternal duration. In the context of Guantánamo Bay, and the legal justification for detaining people

⁸ See <http://news.bbc.co.uk/1/hi/world/europe/6035133.stm>

⁹ See, e.g., John W. Whitehead, Terror Tuesdays, Kill Lists And Drones: Has The President Become A Law Unto Himself? (June 20, 2012), at https://www.huffpost.com/entry/terror-tuesdays-kill-list_b_1606371

without trial forever, consistent with the Geneva Conventions, the Executive has represented that the “war” may go on for a century¹⁰

When Judge Thomas Hogan asked if, in the government’s view, the war could last 100 years, Justice Department attorney Ronald Wiltsie said, “Yes, we could hold them for 100 years if the conflict lasts 100 years.”

Indeed, the U.S. budget for the global “War on Terror” shows no sign of ending, and while the funds allocated in 2002 were \$59.1 billion, in 2019 the figure was \$150.8 billion.¹¹

The investigative website *Buzzfeed News* published the following on 12 June 2017:

“The Kremlin has aggressively stepped up its efforts to eliminate and silence its enemies abroad over the past couple of years – particularly in Britain,” one senior US spy told BuzzFeed News.”¹²

A few days later *Buzzfeed* continued

“The existence of American intelligence linking the 14 deaths in Britain to Russia was confirmed by four current US intelligence officials with direct knowledge of the

¹⁰ Shilpa Jindia, *As Eight Guantánamo Detainees Ask For Freedom, The Trump Administration Says It Could Hold Them For 100 Years*, *The Intercept* (July 12, 2018), <https://theintercept.com/2018/07/12/trump-guantanamo-detainees-release/>.

¹¹ Kimberly Amadeo, *War on Terror Facts, Costs, and Timeline* (June 25, 2019), at <https://www.thebalance.com/war-on-terror-facts-costs-timeline-3306300>.

¹² Heidi Black, Jason Leipold, Jane Bradley & Alex Campbell, *Poison in the System*, *BuzzFeed* (June 12, 2017), at https://www.buzzfeed.com/heidiblake/poison-in-the-system?utm_term=.msXLxak6E3#.nxgMkPBpVz.

information the spy agencies had gathered on each case. In certain instances, they said, it was possible to say with high or moderate confidence that assassinations had been carried out on Putin's command. In others, it could not be determined with certainty whether individuals had been targeted by the Kremlin, murdered by Russian mafia figures, or deliberately driven to suicide – and they could not rule out the possibility that some of the deaths could be unconnected to Russia. But in all 14 cases, “based on what we know and intelligence gathered in the field and analysed,” one of the officials said, “you can safely say that the strongest conclusion is that circumstances suggest Russian involvement in the deaths of these men and then demand more investigation from UK.”¹³

Some further examples are:

- (i) **Alexander Perepilichny was murdered using a deadly poison fern, *Gelsemium elegans*, in Weybridge on 10th November 2012**

It is alleged that the Russian state security service carried out the murder of a fraud whistleblower, Alexander Perepilichny. He was 44 when he “died after collapsing while running near his Surrey home in November 2012. His death was originally attributed to natural causes, but traces of a chemical that can be found in the poisonous plant *gelsemium elegans* were later found in his stomach.”¹⁴

Perepilichny had provided evidence to Bill Browder's investigation into the

¹³ Heidi Black, Jason Leipold, Jane Bradley & Alex Campbell, *From Russian with Blood*, BuzzFeed (June 15, 2017), at <https://www.buzzfeed.com/heidiblake/from-russia-with-blood-14-suspected-hits-on-british-soil>.

¹⁴ <http://www.telegraph.co.uk/news/uknews/law-and-order/11880005/Russian-spies-may-have-killed-supergrass-Alexander-Perepilichny-inquest-hears.html>.

fraudulent activity of senior Russian officials that culminated in the theft of \$230 million from the Russian tax revenue. Browder's lawyer, Sergei Magnitsky, was investigating this same case when he was arrested and ultimately murdered by Russian officials. The man suspected of carrying out the assassination was arrested in Turkey, but according to *The Independent* newspaper on 10 May 2016, the Russian authorities sought to protect him:

A pre-inquest hearing was told that the suspected hit-man – Valid Lurakhmaev – has now been arrested in Turkey on an unrelated matter and it was vital for British investigators to make efforts to gain access to the 45-year-old Chechen, who is already wanted by Interpol for attempted murder and theft.

Lawyers for Hermitage Capital, the international investment firm targeted for the £150m tax fraud, told the Surrey Coroner's Court in Woking that it was possible that Mr. Lurakhmaev would be extradited to Russia and put out of the reach of British police.¹⁵

I have found no information concerning this person since 2016.

In her 2019 book *From Russia with Blood: Putin's Ruthless Killing Campaign and Secret War on the West*¹⁶ the *Buzzfeed* investigative journalist Heidi Blake devotes part of Chapter XVIII to the case of Mr. Perepilichny.¹⁷ She records that the British government remained unflinching in its insistence that there was nothing to suggest

¹⁵ <https://inews.co.uk/essentials/news/suspected-hit-man-target-list-questioned-british-police-urgently-perepilichnyy-case/>.

¹⁶ Heidi Blake *From Russia with Blood: Putin's Ruthless Killing Campaign and Secret War on the West* (London, William Collins, 2019).

¹⁷ *Id.* at 257-263.

that the murder of Mr. Perepilichny was anything other than natural. However:

The spies at Langley were infuriated. They had warned their colleagues in England that the Kremlin was aggressively stepping up its assassination program on UK soil. Now they agreed among themselves that the “incompetent” British authorities needed to be held accountable for failing to put a stop to the disturbing trend. America’s top intelligence official prepared a highly classified report for Congress “on the use of political assassination as a form of statecraft by the Russian Federation”, which listed multiple deaths in Britain. The report asserted with “high confidence” that Perepilichny had been assassinated on direct orders from Putin or people close to him, and the intelligence it outlined was passed to MI6. But the British government ignored that and other evidence connecting the Kremlin to another brazen hit on British soil. So Russia grew yet more emboldened.¹⁸

Sadly, as will be seen below, the British law enforcement authorities appear to have been less than diligent in investigating and reaching any conclusions as to the disturbing series of assassinations carried out in Britain.

(ii) Boris Berezovsky is alleged to have been murdered by hanging on 23rd March 2013 in Sunninghill

Boris Berezovsky was the subject of a number of assassination attempts, culminating in 2013. He was a Russian business oligarch, government official, engineer and mathematician. He was a member of the Russian Academy of Sciences. Berezovsky was politically opposed to the President of Russia Vladimir Putin, since Putin's election in 2000 and remained a vocal critic of Putin for the rest of his life.

¹⁸ *Id.* at 266.

Indeed, it is commonly known that it was Mr. Berezovsky who raised Mr. Putin to high office as Director of the FSB in April 1999 in order to secure the dismissal of the General Prosecutor Yury Skuratov, who was investigating President Yeltsin's corruption. Mr. Putin was then appointed Prime Minister, in which capacity he started the Second Chechen War, and on 1 January 2000 became Acting President when Mr. Yeltsin stepped down. By April 2000 Mr. Putin told Mr. Berezovsky that he was no longer beholden to him, and that Mr Berezovsky must leave Russia.

In late 2000, after the Russian Deputy Prosecutor General demanded that Berezovsky appear for questioning, he did not return from abroad and moved to the UK, which granted him political asylum in 2003. I was an expert witness in 2003 in Mr. Berezovsky's defence to a Russian request for his extradition and acted as his expert on several occasions afterwards.

In Russia Mr. Berezovsky was later convicted *in absentia* of fraud and embezzlement. The first charges were brought during Primakov's government in 1999. Despite an Interpol Red Notice for Berezovsky's arrest, Russia repeatedly failed to obtain the extradition of Berezovsky from Britain, which became a major point of diplomatic tension between the two countries.

Mr. Berezovsky was found dead at his home, Titness Park, at Sunninghill, near Ascot in Berkshire, on 23 March 2013. A post-mortem examination found that

his death was consistent with hanging and that there were no signs of a violent struggle. However, the coroner at the inquest into Berezovsky's death later recorded an open verdict.

In her 2019 book Heidi Blake devotes Chapter XIX to Mr. Berezovsky. She writes:

The police position was that Berezovsky had sustained his additional injuries when the scarf snapped and his body fell, and they told the coroner they were “content” that Berezovsky had taken his own life... [his daughter Elizaveta did not agree] The Kremlin had been trying for years to silence Berezovsky, and his daughter believed it had finally succeeded... With such conflicting testimony, the coroner, Dr. Peter Bedford, said he could not determine beyond all reasonable doubt how Berezovsky had died, and the inquest recorded an open verdict.

The official police position did not sit easily in all quarters at Scotland Yard. Several officers in the Specialist Protection and counterterrorism units, who had spent years monitoring the threats to Berezovsky, would always suspect that he had, finally, been murdered. They knew Russia was perfectly capable of faking a person's suicide, having slipped the victim mind-altering drugs beforehand to make it look believable.¹⁹

That is my own view, having got to know Mr. Berezovsky since 2003.

(iii) Scot Young appears to have been assassinated by the Russians

Chapter XX of Heidi Blake's book concerns the case of Scot Young,²⁰

¹⁹ *Id.* at 276.

²⁰ *Id.* at 281-293.

illustrating that the Putin Government does not merely go after “traitorous” Russians. His body, impaled on railings after falling from the fourth floor, was found on 8 December 2014. She writes:

The onetime superfixer was by then the ninth in Berezovsky’s circle of friends and business associates to die under suspicious circumstances in Britain. But when the police entered his penthouse... they didn’t even dust for fingerprints. They declared his death a suicide on the spot and closed the case.

There was more evidence which could have pointed to murder rather than suicide, but was never properly investigated. Once again the inquest into Young’s death recorded an open verdict. The coroner said “I have concluded that there is inconclusive evidence to determine his state of mind and intention when he came out of the window.” Blake concludes:

But while the police shut down the case, dismissed the Russian connection, and rebuffed their [his daughters’] concerns the spies in River House were secretly asking their American colleagues if the fixer’s risky dealings with Moscow had finally caught up with him.

The spies at Langley replied that yes, they did indeed suspect another assassination had slipped through Scotland Yard’s dragnet. Young’s death was yet another reason why US intelligence officials believed the Kremlin’s killing campaign was accelerating.²¹

²¹ *Id.* at 288.

(iv) **Gareth Williams is alleged to have been murdered by Russia**

In Chapter XVII of her book²² Heidi Blake assesses the death, in August 2010, of the British spy – a code breaker at Britain’s Government Communications Headquarters (GCHQ), but currently working in London at MI6 – Gareth Williams. After his sister was concerned at not hearing from him, police notified by GCHQ went to his flat and found his body, dead for ten days, inside a padlocked sports bag placed inside a bathtub. He could not have locked himself in the bag. Blake writes that the coroner, Dr. Fiona Wilcox

...went on to deliver a devastating verdict for MI6 and Scotland Yard’s counterterrorism command. [She] dismissed the theory that the spy had suffocated in a sex game and condemned the leaks to the media about his private life as a possible attempt “by some third party to manipulate a section of the evidence.” She ruled that Williams’s death was “unnatural and likely to have been criminally mediated,” blaming the spies and counterterrorism cops for obfuscation and failures in the handling of the evidence that made it impossible to determine exactly how he had been killed.

It turned out that Williams had been working on Russia. He had just qualified for operational deployment, and in the months before his death he had been traveling regularly to the Fort Meade headquarters of the U.S. National Security Agency (NSA), in Maryland, where he was helping to crack complex financial webs used by Kremlin-linked mafia groups to move illicit money around the globe. His work was

²² *Id.* at 239-245.

so sensitive that he had been given security clearance to visit the NSA's facility in the Utah desert, which is classified as "above top secret".

The U.S. State Department demanded that none of this should be disclosed to the inquest, and that MI6 should spread the theory that Williams had died as a result of his "unusual sexual proclivities."²³ However, "[i]ntelligence coming from US sources and listening posts suggested Williams was the victim of another Russian hit on British soil."

(v) The attempted murder of Sergei Skripal and his daughter Yulia in Salisbury

On 4 March 2018 senior officers of the Russian GRU attempted to murder the Skripals at their home in Salisbury, using weapons grade nerve agent, a *novichok*. This was not only an illegal use of force by Russia, but constituted an armed attack on the United Kingdom in international law. The UK's response was muted to say the least.

Sergei Skripal was born in Kaliningrad on June 23, 1951. He was a military officer who had been co-opted to the military intelligence (GRU). In 1995 he was supposedly recruited to British Intelligence by Pablo Miller, and given the codename Forthwith. He is alleged by Russia to have blown the cover of 300 Russian agents. In 1999, he retired at the rank of colonel, and turned to other work, before being

²³ *Id.* at 244.

arrested in 2004, and subsequently convicted of high treason for which he was sentenced to 13 years in prison. On July 9, 2010, he was part of a spy swap and he went to live in Salisbury.

Skripal's wife died of cancer in 2012, and his son died of unknown causes in Moscow in March 2017. Then, on March 4, 2018, he and his daughter were found poisoned on a bench in Salisbury.

On 12 March 2018, the Russian Ambassador, Alexander Yakovenko, was summoned by Foreign Secretary, Boris Johnson. The Foreign Secretary said that the nerve agent used against Sergei and Yulia had been identified as "A-234". He invited Russia to respond, before the end of the next day, whether this was a direct act by the Russian State or acknowledge that the Russian government had lost control of this nerve agent. He also demanded Russia to provide full and complete disclosure of its chemical weapons programme to the Organisation for the Prohibition of Chemical Weapons (OPCW). Later that day Prime Minister Theresa May made a statement in Parliament:

It is now clear that Mr. Skripal and his daughter were poisoned with a military-grade nerve agent of a type developed by Russia. It is part of a group of nerve agents known as Novichok. Based on the positive identification of this chemical agent by world-leading experts at the Defence Science and Technology Laboratory at Porton Down, our knowledge that Russia has previously produced this agent and would still be capable of doing so, Russia's record of conducting state-sponsored assassinations and our assessment that Russia views some

defectors as legitimate targets for assassinations, the Government have concluded that it is highly likely that Russia was responsible for the act against Sergei and Yulia Skripal. There are, therefore, only two plausible explanations for what happened in Salisbury on 4 March: either this was a direct act by the Russian state against our country; or the Russian Government lost control of their potentially catastrophically damaging nerve agent and allowed it to get into the hands of others. This action has happened against a backdrop of a well-established pattern of Russian state aggression”.

She added: “Should there be no credible response, we will conclude that this action amounts to an unlawful use of force by the Russian state against the United Kingdom, and I will come back to this House to set out the full range of measures that we will take in response”.²⁴

The Skripals were saved only by the fact that they lived so close to Porton Down. An unfortunate woman who found the discarded container used by the GRU officers, a perfume flask, died.

CONCLUSION

Buzzfeed referred to 14 deaths in Britain which have raised questions as to Russian involvement. I have concentrated on five leading examples, in 2010, 2012, 2013, 2014 and 2018, where there is strong evidence of murder and attempted

²⁴ See Ashley Cowburn, *Theresa May Says It's 'Highly Likely That Russia Was Responsible' For Poisoning Spy Sergei Skripal*, Independent (March 12, 2018), at <https://www.independent.co.uk/news/uk/politics/theresa-may-russia-poisoning-spy-nerve-agent-sergei-skripal-salisbury-elections-crimea-a8252381.html> and <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-12-march-2018>

murder by the Russian authorities and their agents. These have all followed the dramatic changes in the law of 2006.

It would appear that Russia has followed and been encouraged by the behaviour of the United States. This may be a reason why the response of UK law enforcement and government has been weak and at times incompetent.

PRAYER FOR RELIEF

Amicus respectfully requests that the Court reverse the lower court and reinstate Appellant's complaint, with guidance as to how best to assess the legal rights of an American citizen facing potential assassination by his or her own government.

Dated: 17 March, 2020

/S/ SANTHA SONENBERG

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief has been served electronically upon the parties through their lawyers, Eric Lewis (Eric.Lewis@LBKMLAW.com) & Tara Plochocki (Tara.Plochocki@LBKMLAW.com) for Appellant, and Bradley Hinshelwood (Bradley.A.Hinshelwood@usdoj.gov) for Appellee this 17th day of March, 2020.

/S/ SANTHA SONENBERG

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

this brief contains **4,247** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word in 14 point Times New Roman font.

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Appendix 1

Amicus' Experience in Russia

- 1 I am fluent in Russian, and have since 1983 visited Russia and other countries of the former USSR regularly, and have studied the Russian language, history, and Soviet and Russian law and practice. I have published over 100 books, articles and book chapters on these and related subjects.²⁵
- 2 From 1997 to the end of 2003 I was the contracted Adviser to the UK Government's Department for International Development on "Human Rights in Russia", and for the latter three years on "Access to Justice and Rights Issues in Russia." In this capacity I initiated and monitored large projects in the Russian Federation in the field of judicial reform, reform of the penitentiary system, human rights monitoring, and alternative dispute resolution. This work took me to all parts of Russia, and allowed me to meet official and civil society actors at all levels.
- 3 The projects included the £1.2m Judicial Support Project working with the Courts of General Jurisdiction and Arbitrazh Courts in Russia, the £600,000 Independent Monitoring Project enabling NGOs to monitor human rights in Russia; and two large projects in the penitentiary system - the Alternatives to Imprisonment Project (with Penal Reform International) introducing community services orders across Russia, and the Prisons Partnership Project (with the International Centre for Prison Studies), twinning Moscow remand prisons with UK prisons.
- 4 In the course of these projects I became one of a relatively small number of Western experts in Russian law and practice, in all fields of law, especially in relation to the administration of justice and judicial reform. I have intimate knowledge of courts administration and practice, the drafting and implementation of judicial procedural laws, and the actuality of the judicial system in Moscow, St Petersburg and many regions of Russia.

²⁵ A full list of my publications is to be found at my Birbeck web-site, <http://www.bbk.ac.uk/law/our-staff/department-of-law/academic-staff/bowring>

- 5 The Russian government and Supreme Court (through its Judicial Department, responsible for administration and training) have on a number of occasions called on me to carry out training for senior judges and court administrators. Two examples are: first, training for senior judges of the Southern Federal District in 2005, when my two fellow trainers were the former Russian Agent (representative) at Strasbourg, Pavel Laptev, and the head of the Russian prison system, Yuri Kalinin; and second, in November 2007, when I trained senior judges of Astrakhan Oblast in the south of Russia. I also became closely acquainted with a wide range of Russian interlocutors, including senior judges, officials, and policy-makers, as appears below.
- 6 I am regularly called upon to assist and advise the Foreign and Commonwealth Office and other UK Government departments, and am also invited to give papers and take part in discussions at the Royal Institute for International Affairs (Chatham House).
- 7 I have also regularly acted and continue to act as an expert on Russian and other post-Soviet law and practice for the Council of Europe, European Union, Organisation on Security and Cooperation in Europe (OSCE), the US Department of Justice, and other national and international organisations.
- 8 I was one of the three experts nominated by the Council of Europe to work with senior Russian officials on the new Criminal Procedural Code which came into force on 1 July 2002. I worked closely with Dmitrii Kozak, formerly in charge of President Putin's judicial reform programme, as well as senior figures from the courts, Ministry of the Interior (Police), Federal Security Service (FSB), and the parliament.
- 9 I was also nominated by the Council of Europe to work on the World Bank's "Diagnostic Project" on the Russian judicial system in early 2002. I presently act regularly as expert and consultant with the European Union and the Council of Europe on human rights and minority rights issues.
- 10 I have worked in an expert capacity for EU projects since 1994, in the fields of reform of social welfare, reform of local government, and presently the establishment of a system of administrative courts in Russia. In October 2004 I hosted a week-long visit to London by the First Deputy Chairmen of the Supreme Court and Higher Arbitrazh Court of the Russian

Federation, together with leading parliamentarians and members of the executive branch of government.

11 I have also advised professional clients on many occasions on questions of Soviet and Russian law, as well as conflict of laws (English and Russian) in civil cases. Details of these cases are given on my Chambers website.²⁶

12 In March 2005 I gave written and oral expert evidence to the Bow Street Magistrates' Court in the extradition application *Russian Federation v Chernysheva and Maruev*. On 18 March 2005 Senior District Judge Timothy Workman, referring to my evidence and that of other witnesses, held that the extradition proceedings were barred by virtue of section 81 of the Extradition Act 2003.

13 On 25 October 2005 I gave written and oral expert evidence in the Bow Street Magistrates Court in the further extradition case of *Russian Federation v Temerko*. Aleksandr Temerko was second in command to Mikhail Khodorkovsky in YUKOS. On that day there was time only for my evidence in chief, and the hearing was adjourned to 15 December 2005 for cross-examination.

14 On 15 November 2005, before my return to the court for cross-examination, I arrived at Moscow Airport at 0500 am and was detained at Passport Control and held for six hours. I was then deported from Russia, and my multi-entry visa was cancelled. On 23 December 2005, Judge Workman made a similar finding to that in *Russian Federation v Chernysheva and Maruev*, based to a large extent on my evidence, and refused extradition.

15 In his judgment of 23 December 2005, Judge Workman considered the circumstances of my deportation from Russia, and held:

In absence of any explanation I have concluded that it is more likely than not that the actions of the Russian authorities [by deporting me - WB] were directly associated with the fact that Professor Bowring had given evidence to this Court.

16 In January and February 2006 I also gave written and oral evidence for the Larnaca District Court, Cyprus, in the YUKOS-related extradition case of *Russian Federation v Kolesnikov*. The court refused extradition in that case,

²⁶ <http://fieldcourt.co.uk/barrister/bill-bowring/>

but for the reason that Russia had failed to comply with a number of the requirements of the 1957 European Extradition Convention (Article 12).

- 17 I have acted as expert witness in a number of extradition cases before the English and Cypriot courts. In the period immediately before Christmas 2007 the City of Westminster Magistrates Court (District Judge Nicholas Evans) refused extradition in the case of *Russian Federation v Azarov*, for which I also provided evidence for the defendant. I also gave evidence in late December 2007 in the extradition request against Vladislav Kartashov in the District Court of Nicosia, and was cross-examined on my expert report for six hours.
- 18 In 2008 I gave evidence in London in further extradition cases concerning the Russian Federation. On 8 December 2008 Senior District Judge Workman gave judgment in the case of *Russian Federation v Nikitin and Skarga*. The defendants in that case were not connected with YUKOS but with shipping interests. On the basis of my evidence and that of Professor Richard Sakwa, Judge Workman held that the prosecution was “mounted of political and economic reasons” and was barred. On the question of diplomatic assurances submitted by the Russian Government, he concluded on the basis of my evidence that “because I find that the charges preferred in this case are politically motivated I have concluded that it is more likely than not that the assurances offered will not be met.” He further held “By virtue of the influences which can be exerted both over the court and over the rights of defence advocates, I am satisfied that there is a strong likelihood of breach of Article 6 of the European Convention on Human Rights.”
- 19 On 22 December 2008 Judge Workman delivered his judgment in the case of *Russian Federation v Izmaylov and Mikhaylyuk* and reached very similar conclusions. He said as follows:

“16. The evidence of both Professor Bowring and Professor Sakwa is authoritative and compelling. It is, in my view, based on sound foundation based upon the historical evidence of the YUKOS and other cases. On that basis of that unrebutted evidence, I am satisfied that it is more likely than not that the request for their extradition has been made for the purpose of prosecuting them or punishing them on account of their political opinions.

17. For the same reasons I am satisfied that the defendants might, if

returned, be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their political opinions.”

- 20 In early 2009 I gave evidence before Judge Workman once more in the case of *Russian Federation v Makhlay and Makarov*. On 8 May 2009 Judge Workman discharged both defendants referring to my “clear, balanced and well informed evidence” and accepting the conclusion I reached. He found that their prosecutions were politically inspired and that there was a risk of prejudice at trial on account of their political opinions.

“On the uncontested evidence before me, I am satisfied that these extradition proceedings are brought for the purpose of prosecuting or punishing the defendants for their political opinions and that they will be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their political opinions. Both defendants extradition is therefore barred by reason of extraneous considerations under Section 81(a) and (b).”

- 21 It is worth referring to an extract from his judgement which illustrates the clear evidence of political interference in the judicial process:

“Judge Valyavina is a Judge of the Supreme Arbitration Court in Russia. In May 2008, she gave evidence before a Russian Court in relation to a defamation case. In the transcript of those proceedings, she said:- "At the beginning of my work in the summer of 2005, I received a case from the Presiding Judge of the Second Judicial Bench with the message that other Judges did not want to examine it because they feared being pressured, and so the only person that could examine the case was myself. The case was connected with the Tolyatti Azot Corporation. I undertook the supervision of this case I then issued a ruling to request the case file and immediately afterwards a call came from Boyev, then he came for a meeting. I thought this was connected with Human Resources and did not expect the conversation to turn out the way it did. It was a long conversation and he spoke in length about state interests, adding that I was probably failing to understand them correctly, and when we began to speak of this particular case, I reminded him that I was the Judge in this case and that he had no right to give me instructions. He was asking me to annul my determinations in this case. We did not discuss the details of the case, on the contrary, he said "Eleanor Valyavina, you still have to be reappointed!" Deputy Presiding Judges are appointed for six years and have a right to work

for two six-year terms in a row Boyev is present as the representative of the Presidential Administration and can gather material and voice his opinion including a negative opinion. The speed with which Judges are appointed depends on objections from people like him and Judges are afraid that they will not get what they should or what they have earned, if they take such principled positions." This unchallenged evidence clearly implicates officials from the Presidential Administration in an attempt to influence a Judges decision in respect of the TOAZ Corporation."

22 I also acted as an expert witness in *Cherney v. Deripaska* [2008] EWHC 1530 (Comm)²⁷ on the issue of *forum non conveniens*, whether Mr. Cherney would have the prospect of a fair trial against Mr. Deripaska in Russia, or whether he should have a trial in England. At para 202 Christopher Clarke J said at para 202:

"Mr. Cherney instructed Professor Bowring, the Professor of Law at Birkbeck College. He is a fluent Russian speaker with a particular interest in the independence of the Russian judiciary. It is apparent from his *curriculum vitae* that he is well qualified to give such a report, having extensive experience of the workings of the Russian legal system, having advised UK Government departments and European and other bodies on the Russian legal system and on access to justice in Russia, and having carried out training for senior Russian judges and administrators and worked with senior figures in the system. He has given expert evidence in a number of extradition cases. I am satisfied that he has an open minded attitude to the system, of which, as it happens he appears to have been both the victim and the beneficiary."

23 In his judgment Christopher Clarke J concluded:

"264. Taking all those considerations into account, I am persuaded that the risks inherent in a trial in Russia (assassination, arrest on trumped up charges and lack of a fair trial) are sufficient to make England the forum in which the case can most suitably be tried in the interests of both parties and the ends of justice and, accordingly, the proper place for the determination of this claim.

265 I shall, therefore, give permission for the claim form to be served

²⁷ <http://www.bailii.org/ew/cases/EWHC/Comm/2008/1530.html>

outside the jurisdiction.”

24 The judgment of Christopher Clarke J was upheld in the Court of Appeal.

25 In May 2010 I gave evidence in London before Judge Workman in the case of *Russian Federation v Yuri Shefler*. On 8th June 2010 he discharged the defendant, finding that the prosecution and extradition request were politically motivated, that the defendant would be prejudiced on his return on account of his imputed political opinions, and that his rights under the European Convention on Human Rights would be violated. My evidence to that effect was therefore accepted. Judge Workman said this at para 34 of his judgment:

“Both Professor Bowring and Professor Sakwa gave evidence to me about the independence of the Judiciary in Moscow. Both Professors have given evidence to me in the past and contrary to the assertions of the Russian Federation in their response to the defence evidence, they both have an extensive knowledge and expertise and both have been extremely careful to see that their view is balanced and objective. It is clear that their misgivings about the independence of the Judiciary are specific and well documented.”

26 Judge Workman said the following as to political motivation:

“31. I note that the Russian Federation has (with one exception) been unsuccessful in recovering in civil proceedings the international trademarks vested in the defendant's company. I conclude that the Government now has only limited opportunities to take control of these trademarks and it would appear that one effective way to succeed with their political aims would be to secure the defendant's return to Russia and incarceration.

32. I have therefore concluded that there are substantial grounds for thinking that this extradition request is made for the purpose of prosecuting or punishing the defendant on account of his political opinions.”

27 Following a successful application in the Russian courts for judicial review of the decision to exclude me, the circumstances of which are set out above, I have returned to Russia on many occasions.

- 28 In February 2007 I acted, with the late Lord Slynn of Hadley and others, as one of the judges in the Russian round of the Philip C. Jessup international law moot court competition (the Jessup Competition). I returned in September 2007 to chair the International Steering Group of EHRAC in Moscow, and to train advocates from Chechnya and other regions of Russia in Pyatigorsk. In November 2007, as noted above, I travelled to Astrakhan on the Caspian Sea at the invitation of the Judicial Department of the Supreme Court of the Russian Federation in order to train judges of the district and appeal (Oblast) courts.
- 29 In February 2008 I returned once more to judge the Jessup Competition. I was a key speaker at a conference at the Moscow State Institute of International Relations (MGIMO) in March 2008. In June 2008, at the invitation of the Federal Service for Execution of Sentences (FSIN) of the Russian Federation, I took part as lead expert for Directorate General of Human Rights and Legal Affairs of the Council of Europe, at the Conference in Pskov, Russia: “The penitentiary system of the Russian Federation in the light of European standards”. In September 2008 I chaired the International Steering Group of the European Human Rights Advocacy Centre (EHRAC) in Moscow and carried out training of the project’s Russian lawyers from Chechnya and other regions.
- 30 I was invited in March 2009 by the Ministry of Foreign Affairs of the Russian Federation to accompany the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe (OSCE) as his expert to investigate the situation of the Ukrainian minority in Russia (we returned to Ukraine with respect to the Russian minority in April 2009). We visited Moscow, Ufa (the capital of Bashkortostan) where we met the President of Bashkortostan, and Voronezh Oblast, on the border with Ukraine.
- 31 I returned to Russia twice in September 2009. I was a key speaker at a seminar marking the start of a joint Council of Europe and European Union project on minority rights in Russia, on the invitation of the Ministry of Regional Development. Later that month, I chaired once again the International Steering Group of EHRAC, and took part in training activities. I returned again for the minority rights project in November 2009 and February 2010. Also in February 2010 I acted once more as a judge of the Jessup Competition. I returned to Russia to take part in a seminar at the Moscow State Institute of International Relations (connected to the Russian Ministry of Foreign Affairs) in May 2010.

- 32 In 2010 I travelled to St Petersburg to speak at a conference “Higher Education and Civil Society: A New Social Mission of the University” organised by Smolny College. It is now a Faculty of St Petersburg State University, the most prestigious university in Russia. In November 2010 I returned first to take part once again in a Working Group meeting of the joint Council of Europe, European Union and the Russian Federation programme “Minorities in Russia: Developing Languages, Culture, Media and Civil Society”, and I gave a paper at the annual conference of the Russian Association of Political Science (RAPN) in Moscow.
- 33 I returned in January 2011, and January 2012 again as a judge in the Jessup Competition, and in March 2011 and March 2012 I taught a course in the human rights law of the European Union at the Moscow State Institute for International Relations (MGIMO), one of the three leading universities of Russia, connected to the Ministry of Foreign Affairs of the Russian Federation.
- 34 In 2012 I taught at the universities at Novgorod Velikiy and Kaliningrad, and in 2013 returned for the 10th anniversary of my EHRAC litigation project²⁸. I also travelled to Moscow with Sir Henry Brooke (formerly Lord Justice Brooke) for meetings connected with projects of the Slynn Foundation.
- 35 In January 2014 I was again in Moscow judging the Jessup Competition. My fellow judges included leading Russian lawyers and also Russian Court Registry lawyers at the European Court of Human Rights. I returned to Russia at the end of February 2014 as an expert in a project on constitutional litigation at the Constitutional Court of the Russian Federation, and in May 2014, to teach once again at the Mari State University in Yoshkar-Ola. I also met, in Kazan (the capital of Tatarstan) the founder of the leading Russian NGO “Agora”, Pavel Chikov, and his wife, the advocate Irina Khrunova, who represents one of the “Pussy Riot” defendants. “Agora” has now been placed against its will on the “Foreign Agents” list.
- 36 In October 2014 I took part as a project expert in a round table meeting in Moscow at the Institute of Law and Public Policy for the project on litigation at the Constitutional Court, with Tamara Morshchakov, the former Deputy Chairman of the Constitutional Court and now an outspoken

²⁸ <http://www.ehrac.org.uk/>

critic of the regime's legal and judicial policy, and Anatoly Kovler, until recently the Russian judge at the European Court of Human Rights.

- 37 In November 2014 I was invited by the former Minister of Finance, Mr. Kudrin, to take part in the II All-Russia Civil Forum, with 700 NGO representatives from all over Russia. I returned in December 2014 to teach for the fourth time in Yoshkar-Ola, and to meet in Kazan two clients in an ongoing case (of confession obtained by torture) at the European Court of Human Rights. I once again acted as a judge in the Jessup Competition in Moscow in January 2015.
- 38 In April 2015 I lectured at the conference "Problems of the reform of the penitentiary system of Russia", organised in Yekaterinburg by Sutyazhnik, the Yekaterinburg human rights NGO founded 20 years ago. I worked with them since 1997. Participants in the conference were members of ONK, Public Independent NGO Prison Monitoring Commissions, from all over Russia.
- 39 In June 2015 I visited once again Yoshkar-Ola, in the Republic of Marii El, Russia, to work with the Law Faculty at the State University. I also had two meetings with the local human rights NGO "Chelovek i Zakon" (Person and Law), which has been placed on Register of Foreign Agents under President Putin's Law on Foreign Agents, and is taking a case to the European Court of Human Rights. I also visited Kazan, the capital of the Republic of Tatarstan, and met once again with Pavel Chikov the founder and head of the "Agora" and his wife Irina Khrunova, an advocate who is taking many cases to Strasbourg.
- 40 In July 2015 I participated in a Workshop at the Institute for Law and Public Policy (ILPP) in Moscow on effective litigation at the Constitutional Court of the Russian Federation.
- 41 In November 2015 I was invited to participate in the III All-Russian Civic Forum in Moscow by the former Minister of Finance, Mr Kudrin, whose acquaintance I made there. The Forum was attended by 1,200 delegates from all over Russia, including many leading judges and lawyers who are well known to me.
- 42 In February 2016 I once again acted as a judge in the Jessup Competition, and delivered lectures in events at Moscow State University and the National Research University – Higher School of Economics.

- 43 I returned to Moscow at the end of June 2016 to take part in events at ILPP. During that visit I met colleagues in order to discuss the applicability of transitional justice in Russia – I am a founder and on the Advisory Board of the Transitional Justice Institute at Ulster University in Belfast – and unknown to us we were filmed in the café where we met by the FSB, and this was then used as part of a scandalous programme on NTV, known to be the “voice of the FSB”, smearing the opposition for the forthcoming parliamentary elections. My presence was supposed to indicate that the Russian opposition is sponsored by the United Kingdom’s intelligence services. A photograph of me was used to publicise the programme.²⁹
- 44 Notwithstanding this unwanted fame, I was again granted visas to visit Russia, in November 2016 to participate once again at the invitation of Mr. Kudrin, the former Minister of Finance, in the All-Russian Civic Forum, and then to judge, for the 15th time, the Jessup Competition in Moscow, in February 2017. The Russian team I judged went on to win the world International finals – 90 countries – in Washington D.C. The team members are now carrying out very important law reform work in Russia.
- 45 I returned in August 2017 to Russia to carry out human rights training and to lecture in Yekaterinburg, and met in Moscow with the leading human rights defender and prison reformed Lev Ponomaryov. I returned to Russia to present a paper in St. Petersburg in October 2017, and to Yekaterinburg to teach at the end of October.
- 46 In 2018 I again acted as a judge in the Jessup Competition in Moscow and took part in academic conferences in Moscow and St. Petersburg. I returned to participate in conferences in Moscow and St. Petersburg in May 2018.
- 47 I visited Russia several times in 2019, for the Jessup competition, at which I had the honour to preside as President of the court in the Russian National Final, and also for academic conferences. My most recent visit was again for the Jessup competition in January-February 2020.
- 48 In all these visits I renew my acquaintance with legal practitioners, judges, and human rights activists.

²⁹ <http://www.ntv.ru/video/1308544/>