

Assange's Eighteenth Day at the Old Bailey: Abuse of Power, Breaching Attorney-Client Privilege and Adjournment

October 1, 2020. Central Criminal Court, London.

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Global Research, October 02, 2020

Region: [Europe, USA](#)

Theme: [Law and Justice, Media Disinformation](#)

The Old Bailey has been the venue for a trial that should never have taken place. But during the course of these extradition proceedings against Julian Assange, the WikiLeaks founder accused by the US Department of Justice for violating the US Espionage Act (17 charges) and one under the Computer Fraud and Abuse Act, an impressive battalion of defence witnesses has been called upon. They have assisted Assange's legal team to build a picture of obscene politicisation, imperial overreach and wanton callousness.

A picture of the detention facilities awaiting the publisher was painted with fine strokes: the alienating brutality of solitary confinement; likely special administrative measures restraining the detainee's access to legal representation and family; inadequate health facilities both physical and mental for those at risk of self-harm. Then came the chilling realisation, made clear on the seventeenth day: that the US intelligence services, through the Spanish security firm UC Global SL, had conducted surveillance of the Ecuadorean Embassy in London, and proposed kidnapping or poisoning a political asylee.

Peirce and violations of attorney-client privilege

In the court on Thursday, attention turned to written submissions from human rights activist Gareth Peirce, Assange's solicitor, who described brazen breaches of attorney-client privilege. Trial observers [noted](#) how "extraordinarily difficult" it had been to follow Peirce's statements, largely because of Judge Vanessa Baraitser's penchant for preventing a full reading in the court.

Despite such stints of constipation, the point of Peirce's submissions was clear enough. Legally privileged documents were seized from the Ecuadorean Embassy in London. The Ecuadorean intelligence service was complicit. Two diplomatic pouches with USB sticks were placed in a diplomatic bag, sent to Ecuador, then onwards to the United States.

Peirce [claimed](#) that, between 2017 and 2018, three legally privileged meetings were subjected to surveillance without her knowledge. Assange's Spanish lawyer Aitor Martínez was also the subject of such intrusion, his legal file photographed when absent in a meeting with his client. The legal team representing Assange had a nagging sense that their gatherings might be monitored. While not knowing the full extent of such intrusions, "an exceptionally high level of anxiety" was present during those meetings.

Martínez also [furnished the court](#) with an update on the criminal investigation against UC Global SL director David Morales, being conducted by Spain's High Court, the Audiencia Nacional. Morales's part in this sordid matter was much in evidence the day before, when his role in facilitating surveillance of Assange and his embassy meetings, at the behest of his "American friends", was given a generous airing by former employees of his company. The outcome of that case may well shed light upon an already troubling bridge linking UC Global with the Central Intelligence Agency and Las Vegas Sands, owned by Trump supporter and Republican donor, Sheldon Adelson.

Tigar's testimony and abuse of power

Testimony from Professor Michael Tigar of Duke Law School was read, drawing parallels between the abuses of power perpetrated by the Nixon administration in 1971 and those of the Trump administration vis-à-vis Assange.

The first case centred on the outcome of President Richard Nixon's attempts to prosecute the Pentagon Papers whistleblower Daniel Ellsberg. After the publication of the papers, Nixon's staffers formed a covert unit known as the "White House Plumbers," a blunt outfit that proceeded to commit crimes with abandon for the unforgettable Committee for the Re-Election of the President (CREEP). Ellsberg's psychiatrist's office was burgled by the Plumbers in an effort to pilfer his medical files; Nixon ordered the illegal wiretapping of Ellsberg; the government then claimed to have mislaid those wiretaps when asked to produce them at trial. And just to spice things further, US District Court Judge William M. Byrne, Jr., presiding over Ellsberg's trial, [was also approached](#) by Nixon and his assistant for domestic affairs, John D. Ehrlichman, about the possibility of becoming the FBI's next director. Judge Byrne could only [conclude](#) that the government's actions had "offended a sense of justice," leading him to declare "a mistrial and grant the motion for dismissal."

The US intelligence effort against Assange in the Ecuadorean Embassy in London, perpetrated through UC Global's installation of surveillance facilities, threw up richly disturbing similarities. Confidential files had been accessed; privileged conversations with lawyers had been recorded; over eager proposals for kidnapping or poisoning Assange expressed. For Ellsberg, [this was certainly damning](#). "That's essentially the same information that ended my case and confronted Nixon with impeachment, leading to his resignation."

Baraitser's exclusions

Patience on the bench, and among the prosecution team, began to wear thin. The prosecution, led by James Lewis QC, argued that the defence had run out of time. Objections mounted, temperatures rose. Material was excluded. Judge Baraitser decided to exclude one of Peirce's witness statements addressing the new allegations made in the second superseding indictment served in July. The statement, [argued the defence](#), was only appropriate to address "fresh and different" allegations the prosecution only saw fit to include at a later date.

She also batted away the defence's effort to submit a [statement](#) made by US Attorney General William Barr on September 15, outlining his belief that the executive branch had "virtually unchecked discretion" in deciding whether or not to initiate prosecutions. "The power to execute and enforce the law is an executive function altogether," Barr stated.

“That means discretion is invested in the executive to determine when to exercise prosecutorial power.”

Readying the ground

The ground, then, is being readied for closing arguments by the defence. Three areas [promise to feature](#). The first is the heavy air of political motivation in the prosecution of Assange. Outlets that had published the unredacted cables prior to WikiLeaks doing so on September 2, 2011, and left unmolested by the DOJ and law enforcement, suggest distinct targeting. To this can be added the manoeuvrings in the Trump administration, noted in the testimony of Cassandra Fairbanks, about the decision to arrest Assange. A clear change of heart had manifested in the matter, given the loss of interest shown by the Obama administration in pursuing the publisher. Coupled with the theory of executive power endorsed by the Attorney General Barr – that such an officer should defer to the views of the presidential office in determining prosecutions – add to claims that this is a politically driven endeavour.

The second focuses on an abuse of power, sharply drawn in the testimony of two anonymous former employees of UC Global. The third: that Assange, should he be extradited, will face cruel and inhumane treatment. Frail health and appalling prison conditions at both the pre-trial Alexandria Detention Center, and the post-trial ADX Florence supermax in Colorado, promise to be a debilitating, even lethal mix.

With the evidence now in her possession, Baraitser will have much to get through. Unfortunately, we are none the wiser about what items of evidence her judicial mind will accept or reject. The jaw dropping accounts of embassy espionage, suggested poisoning and proposed kidnapping of Assange may be deemed, as the prosecutors insist, irrelevant to the charges at hand.

A date for judgment was also set. “Unless any further application for bail is made, and between now and the 4th of January, you will remain in custody for the same reasons as you have been before,” Baraitser explained to Assange.

After the adjournment, Assange’s fiancée Stella Moris [spoke](#) of the highest of stakes, of this being not merely a fight for life but press freedom and truth. “This case is already chilling press freedom. It is a frontal assault on journalism, on the public’s right to know and our ability to hold governments, domestic and foreign, to account.”

Moris noted, with pertinence, the prosecution’s admission, under oath “that it has no evidence that a single person has ever come to any physical harm because of these publications. Let me repeat that: there is no evidence that a single person has ever come to any physical harm because of these publications.” Assange was in prison for informing “you of actual crimes and atrocities being committed by a foreign power. That foreign power has ripped away his freedom and torn our family apart.” It was a power determined “to put him in incommunicado detention in the deepest darkest hole of its prison system for the rest of his life.”

Assange will continue spending time at Belmarsh Prison, one of Britain’s most notorious facilities reserved for only the most hardened species of criminal. He will put in court appearances every 28 days via videolink. The defence will submit closing arguments on November 16; the prosecution will then make its final pitch to convince the court two weeks

later. The legions of press members, writers and scribblers should now ruminate, along with Judge Baraitser, about the consequences of this entire process. Moris is clear about one of them. "The US administration won't stop with him. The US says that it can put any journalist, anywhere in the world, on trial in the US if it doesn't like what they are publishing."

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