

Assange's Seventh Day at the Old Bailey: Diligent Redactions and Avoiding Harm

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September 16. Central Criminal Court, London. Proceedings today at the Old Bailey regarding Julian Assange's extradition returned to journalistic practice, redaction of source names and that ongoing obsession with alleged harm arising from WikiLeaks releases. John Goetz of Der Spiegel added his bit for the defence, making an effort to set the record straight on the events leading up to the publishing of un-redacted US diplomatic cables on September 2, 2011.

The picture that emerges from Goetz is not Assange the reckless cavalier indifferent to human life but of a more considered publisher, working with news organisations to redact the names of informants, insisting on the use of encrypted communications, cognisant of the risk of harm facing them. Goetz [noted](#) that WikiLeaks had a "very rigorous redaction process", evident in its approach to the Afghanistan files; Assange was "very concerned with the technical aspect of trying to find the names in this massive collection of documents."

Der Spiegel itself [had interviewed](#) Assange on the process in 2010, a point remarked upon by Goetz. As Assange said at the time. "We understand the importance of protecting confidential sources, and we understand why it is important to protect certain US and ISAF sources." Cases "where there may be a reasonable chance of harm occurring to the innocent" were identified. "Those records were identified and edited accordingly." The practice seemed to have paid off. Goetz noted that the trial of Chelsea Manning, based on her disclosures to WikiLeaks, revealed no cases of harm to any informant.

Mark Summers QC sensed a chance to interrogate another aspect of the prosecution case on Assange's supposed callousness about the fate of informants, captured by the alleged remark, "They're informants, they deserve to die." That now infamous dinner at London's Moro restaurant is recorded by *The Guardian* journalists David Leigh and Luke Harding in *WikiLeaks: Inside Julian Assange's War on Secrecy* (2011). It supposedly took place in early July 2010 a few weeks prior to the publication of the Afghan War Diaries. Goetz had been in attendance. Leigh, also at the dinner, [was mistaken](#): Assange had never said anything of the sort.

James Lewis QC for the prosecution spluttered in alarm at this course of questioning from the defence. Goetz had not mentioned this in his written testimony; a supplemental witness statement would have to be submitted. Judge Vanessa Baraitser agreed, amputating a potentially fruitful line of inquiry.

A picture of tussling between authorities and media outlets emerged, with WikiLeaks and partner media outlets having communications with the US government prior to publication.

Efforts were made to identify areas of sensitivity; officials were variably bemused. A delegation of *New York Times* reporters made their way to the White House ostensibly to discuss the imminent release, with Eric Schmitt informing Goetz of the conveyed message that 15,000 documents within the Afghan War Diaries would not be published. The call to assist with redactions was met with “derision”.

The bungle that led to the publication of the entire trove of un-redacted cables was also re-visited. It gave Goetz a chance to patiently point out that the password to the unencrypted file with the cables had found its way into the aforementioned book by Leigh and Harding. The magazine *Die Freitag* got wind of it, publishing the details, despite, according to Goetz, Assange’s efforts to stop it. Publishing outfits such as Cryptome capitalised with abandon. With the train set in motion, Assange and WikiLeaks [contacted](#) the State Department’s emergency phone line. The cat had scurried out of the bag; sources had been named. The response from Washington was cool, dismissive. WikiLeaks subsequently published what had already been released. During the examination of Goetz, Lewis [got muddled](#) over the Afghan War logs and diplomatic cables. The journalist was happy to correct him.

The Goetz testimony also spoke to the value of the WikiLeaks disclosures. Details had been sparse on the fate of kidnapped German national Khalid el-Masri, who had been captured by the Central Intelligence Agency in Macedonia in 2004. A search of the trove by Goetz [revealed](#) that CIA abductors had “forced el-Masri onto a military plane, sodomized him and sent him” to Afghanistan. The revelations led to the issuing of an arrest warrant by a state prosecutor based in Munich for 13 CIA agents. Another search of the cables found that pressure from Washington had been brought to bear on the prosecution to defang the process, issuing a warrant in a jurisdiction where the agents did not live.

With Goetz’s testimony done, the defence [attempted](#) to incorporate a statement by el-Masri into the court record. The prosecution took issue, claiming that he did not feature in the charges against the WikiLeaks publisher, making such evidence irrelevant and inadmissible. An agitated Lewis suggested that the defence, in reading the statement, would be wasting half-an-hour of the court’s time. Judge Baraitser was put out at the manner of the prosecutor’s objection; such an approach might mean her accepting the evidence “unchallenged”. After much discussion Lewis suggested edits. The statement seems to remain in legal limbo.

The other blazing feature of today’s proceedings was the appearance of Daniel Ellsberg, the aged whistleblower of Pentagon Papers fame. Over the years, he has become a grandfatherly presence in the debates on disclosing classified material for public consumption and debate. The documents he passed on to the *New York Times* in 1971 [shed light](#) on the futility of US involvement in the Vietnam War while revealing habitual public mendacity on the part of various administrations. “My own actions in relation to the Pentagon papers and the consequences of their publication have been acknowledged to have performed such a radical change of understanding. I view the WikiLeaks publications of 2010 and 2011 to be of comparable importance.”

Before the court, Ellsberg attested to the common beliefs he shared with Assange: opposing wars, holding to those cardinal principles of keeping the powerful accountable and the state transparent. Common ground was also shared about the invasion of Iraq (a “crime” and “aggressive war”); and Afghanistan, a modern Vietnam redux of infinite stalemate. Over time, attitudes had changed to documents discussing such behaviour in war. The killings,

abuses and war crimes in Afghanistan and Iraq had been buried in “low-level field reports” so as to be banal. The Pentagon Papers had been seen as the palace jewels of secrecy; the Iraq and Afghan war logs were merely classified as “secret”.

Such leaks as the Collateral Murder video, the infamous portrayal of a war crime committed by an US Army Apache helicopter in New Baghdad, shed light on this culture of lethal normalisation. Murder it was, but “the problematic word in the title was ‘Collateral’, implying that it was unintended.” Chelsea Manning was also [to be praised](#) for “willing to risk her liberty and even her life to make this information public. It was the first time in 40 years I saw someone else doing that, and I felt kinship towards her.”

The Espionage Act, Ellsberg reflected, discouraged such acts of informing disclosure. He found this much to his chagrin during his 1973 trial, in which motivation was dismissed as irrelevant.

“The Espionage Act,” [rued](#) Ellsberg, “does not allow for whistleblowing, to allow you to say you were informing the polity. So I did not have a fair trial, no one since me had a fair trial on these charges, and Julian Assange cannot remotely get a fair trial under those charges if he were tried.”

In cross-examination, the prosecution brought up the straw man argument used by critics of WikiLeaks, including Floyd Abrams, an attorney who represented the *New York Times* in the Pentagon Papers case. The argument seeks to distinguish Ellsberg’s conduct and the right of the paper to publish, as distinct from that of Assange. Ellsberg found such views ignorant of motive, whether of his or Assange’s. Abrams had not troubled himself to go through the entirety of the Pentagon papers, nor discuss motivations with him.

From this distinction arose the idea of the noble, ennobled Ellsberg, and the wicked, fallen Assange. Exempting him from criticism while criticising Edward Snowden, Manning and Assange [involved](#) “a distinction which in my view is entirely misleading.” Apart from “the computer aspects which didn’t exist back then, I see no difference between the charges against me and the charges against Assange.” He also challenged the distinction (white Ellsberg, dark Assange) by suggesting he [had not done](#) as Assange had in terms of care: redacted names, withheld 15,000 sensitive documents, or approached the Pentagon and State Department for assistance in making further redactions. The refusal to accept such offers from WikiLeaks might have been purposely done, suggested Ellsberg, to enable a future prosecution.

Ellsberg attempted to set Lewis straight in his contention that withholding four volumes of the Pentagon Papers at the time was a saintly gesture to prevent harm to the US. The whistleblower disagreed. The move was intended to prevent a disruption to ongoing peace talks. “I want to get in the way of the war, I don’t want to get in the way of the negotiations.” To have redacted the papers would have risked compromising their accuracy.

The prosecution, desperate to nab their quarry, insisted on pushing Ellsberg on the issue of harm that the disclosures might have had. Lewis [seemed](#) incredulous that any witness could claim that “there is no evidence that WikiLeaks put anyone in danger.” He also read the contents of Assistant US Attorney General Gordon Kromberg’s affidavit at some length, a crude recycling of many of the claims made at the Manning trial that failed to stick on the

charge of “aiding the enemy”. Ellsberg snorted, [claiming](#) such assertions to be the mark of high cynicism. “Am I right in that none of these people actually suffered physical harm?” Lewis tartly responded: “The rules are that you do not get to ask the questions.”

Ellsberg, however had decent answers. He could also point to the findings of the US Defense Department that no demonstrable harm had arisen from the releases. At the Manning court martial, the prosecutors [similarly conceded](#) that not a single death could be identified as a result, a point made by Brigadier General Robert Carr under cross-examination.

Ellsberg also suggested that US authorities had done little by way of assisting the concealing of informant identities when approached by WikiLeaks. US wars in the Middle East over the last two decades, the sort that Assange had tried to end, had caused a million deaths and 37 million refugees.

This did not prevent Lewis from [speculating](#) about those who had disappeared in Iraq, Afghanistan and Syria. It was “common sense” to suggest that they had either been murdered or forced to flee. “I’m sorry sir,” [came the reply](#), “but it doesn’t seem to be at all obvious that this small fraction of people that have been murdered in course of both sides of the conflicts can be attributed to WikiLeaks disclosures.” A truly palpable hit.

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