

Faulty Assurances: The Judicial Torture of Assange Continues

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Only this month, the near comatose US President, Joe Biden, made a casual, castaway remark that his administration was "considering" the request by Australia that the case against Julian Assange be concluded.

The WikiLeaks founder has already spent five gruelling years in London's Belmarsh prison, where he continues a remarkable, if draining campaign against the US extradition request on 18 charges, 17 incongruously and outrageously based on the US Espionage Act of 1917.

Like readings of coffee grinds, his defenders took the remark as a sign of progress. Jennifer Robinson, a longtime member of Assange's legal team, [told](#) Sky News Australia that Biden's "response, this is what we have been asking for over five years. Since 2010 we've been saying this is a dangerous precedent that's being set. So, we certainly hope it was a serious remark and the US will act on it." WikiLeaks editor-in-chief Kristinn Hrafnsson [found](#) the mumbled comment from the president "extraordinary", hoping "to see in the coming days" whether "clarification of what this means" would be offered by the powerful.

"This is a case that should have never been brought in the first place."

Editor-in-Chief of WikiLeaks [@khrafnsson](#) speaks to [@SkyYaldaHakim](#) about the US 'considering' dropping its prosecution of Julian Assange <https://t.co/7SFIJHNX39>

☐ Sky 501, Virgin 602 and YouTube pic.twitter.com/TFQckbQDB1

— Sky News (@SkyNews) [April 10, 2024](#)

On April 14, the *Wall Street Journal* [reported](#) that Canberra had asked their US counterparts whether a felony plea deal could be reached, enabling the publisher to return to Australia. “Prosecutors and a lawyer for Assange have discussed a range of potential deals, including those that include pleading guilty to a felony under the espionage law under which he was indicted, and those of conspiring to mishandle classified information, which would be a misdemeanor, people familiar with the matter have said.”

Last month, the UK High Court [gave](#) what can only be regarded as an absurd prescription to the prosecution should they wish to succeed. Extradition would be unlikely to be refused if Assange was availed of protections offered by the First Amendment (though rejecting claims that he was a legitimate journalist), was guaranteed not to be prejudiced, both during the trial and in sentence on account of his nationality, and not be subject to the death penalty. That such directions were even countenanced shows the somewhat delusionary nature of British justices towards their US counterparts.

On April 16, Assange’s supporters received confirmation that the extradition battle, far from ending, would continue in its tormenting grind. Not wishing to see the prospect of a full hearing of Assange’s already hobbled arguments, the US State Department, almost to the hour, filed the assurances in a diplomatic note to the Crown Prosecution Service (CPS). “Assange,” the US Embassy in London [claimed](#) with aping fidelity to the formula proposed by the High Court, “will not be prejudiced by reason of nationality with respect to which defenses he may seek to raise at trial and at sentencing.”

Were he to be extradited, “Assange will have the ability to raise and seek to rely upon at trial (which includes any sentencing hearing) the rights and protections given under the First Amendment of the Constitution of the United States.” An obvious caveat, and one that should be observed with wary consideration by the High Court judges, followed. “A decision as to the applicability of the First Amendment is exclusively within the purview of the US Courts.”

The US embassy also promised that,

“A sentence of death will neither be sought nor imposed on Assange. The United States is able to provide such assurance as Assange is not charged with a death-penalty eligible offense, and the United States assures that he will not be tried for a death-eligible offense.”

This undertaking does not dispel the threat of Assange being charged with additional offences such as traditional espionage, let alone aiding or abetting treason, which *would* carry the death penalty.

In 2020, Gordon Kromberg, the chief Department of Justice prosecutor behind the case, [told](#) the Central Criminal Court of England and Wales that the US “could argue that foreign nationals are not entitled to protections under the First Amendment, at least as it concerns national defense information.” There was also the likelihood that Assange, in allegedly revealing the names of US intelligence sources thereby putting them at risk of harm, would also preclude the possibility of him relying on such protections.

That the zealous Kromberg will be fronting matters should Assange reach US shores is more than troubling. Lawyers and civil rights activists [have accused](#) him of using the Eastern District Court of Virginia for selective and malicious prosecutions. As Murtaza Hussain of

The Intercept [observed](#) with bleak accuracy in July 2021, “[r]ather than being pushed into obscurity by these efforts, today he is serving as a key figure in one of the most important civil liberties cases in the world.”

The High Court also acknowledged Kromberg’s views at trial regarding the possibility that the First Amendment did not cover foreign nationals.

“It can fairly be assumed that [Kromberg] would not have said that the prosecution ‘could argue that foreign nationals are not entitled to protections under the First Amendment’ unless that was a tenable argument that the prosecution was entitled to deploy with real prospect of success.”

These latest assurances do nothing to change that fact.

A post from Assange’s wife, Stella, [provided](#) a neat and damning summary of the embassy note.

“The United States has issued a non-assurance in relation to the First Amendment, and a standard assurance in relation to the death penalty. It makes no undertaking to withdraw the prosecution’s previous assertion that Julian has no First Amendment rights because he is not a US citizen. Instead, the US has limited itself to blatant weasel words claiming that Julian can ‘seek to raise’ the First Amendment if extradited.”

BREAKING:

“The United States has issued a non-assurance in relation to the First Amendment, and a standard assurance in relation to the death penalty. It makes no undertaking to withdraw the prosecution's previous assertion that Julian has no First Amendment rights because he...
pic.twitter.com/lu7bkw0M5u

— Stella Assange #FreeAssangeNOW (@Stella_Assange) [April 16, 2024](#)

Whether the justices are duly satisfied by the latest diplomatic manoeuvre, one non-binding in any tangible or true sense on prosecutors and judges in the US, awaits testing in the hearing on May 20. For Assange, the wheels of judicial torture have been prolonged.

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