

Julian Assange and the Imperium's Face: Day One of the Extradition Hearings

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If we are to believe it, Julian Assange of WikiLeaks, the man behind showing the ugliness of power, is the one responsible for having abused it. It is a running theme in the US case against this Australian publisher, who has been given the coating of common criminality hiding the obvious point: that the mission is to make journalism on official secrets, notably those covering atrocity and abuse, a crime.

The first day of full extradition hearings against Assange at Woolwich Crown Court was chocked with a predictable prosecution case, and a robust counter by the defence. Central to the prosecution's case for extradition to the US is the emphasis on the ordinariness of Assange's alleged criminality, to diminish the big picture abuses of empire and focus on the small offences of exposure. In so doing, that seemingly insurmountable problem of journalism becomes less important. If you publish pilfered material from whistleblowers, you are liable, along with those unfortunates who dared have their conscience tickled.

As James Lewis QC [advanced](#) at London's Woolwich Crown Court,

"What Mr Assange seems to defend by freedom of speech is not the publication of the classified materials but the publication of the names of the sources, the names of the people who had put themselves at risk to assist the United States and its allies."

Here, the rhetorical shift is clear: there were those who assisted the US, and Assange was being very naughty in exposing them via the State Department cables and the Iraq and Afghanistan war logs. In doing so, he had also conspired with US army intelligence analyst Chelsea Manning to hack a password and conceal his identity in accessing and downloading relevant files.

Relegating Manning to the status of wooed conspirator was a ploy convincingly swatted by defence barrister Edward Fitzgerald QC. [He merely had to consult](#) Manning's own court martial, in which she clearly stated that "the decisions I made to send documents and information to the WikiLeaks website were my own decisions and I take full responsibility for my actions."

According to Lewis, the disclosures by WikiLeaks had grave consequences. Fascinatingly enough, enough, these were not the sort identified by Pentagon studies which took a less punitive view on the subject. Unconvincingly, the prosecution argued that, "The US is aware of sources, whose redacted names and other identifying information was contained in classified documents published by WikiLeaks, who subsequently disappeared, *although the US can't prove at this point that their disappearance was the result of being outed by*

WikiLeaks” [emphasis added]. This is almost incompetent in its measure: to accuse WikiLeaks of inflicting such harm, only to suggest that proof of causation was absent.

Lewis was also keen to shrink the panoramic view of the proceedings against Assange, preferring to see it as a hearing rather than a trial on the merits of the case. He does not want broader issues of reporting or journalism to be considered, nor thinks it relevant. The only issue on that front, insisted the prosecution, was whether crimes alleged by the US would also constitute crimes in the UK, a matter surely not in dispute from the defence. Fitzgerald begged to differ on that point as the Official Secrets Act that accords with the US Espionage Act contravenes the freedom of expression and information right outlined in Article 10 of the European Convention on Human Rights.

The US Department of Justice indictment, which makes essential if grotesque reading, links journalism on national security matters to the punitive nature of the national security state, cocooned, as it were, by the US Espionage Act of 1917. Counts 15 to 17, [as was noted](#) by Gabe Rottman in *Lawfare* last year, “represent a profoundly troubling legal theory, one rarely contemplated and never successfully deployed. Under these counts, the Justice Department now seeks to punish the pure act of publication of newsworthy government secrets under the nation’s spying laws.”

The very fact that the documents in question were posted is what is central to them. They do not even lie in any conduct of inducement or seduction. For even the most reserved legal commentators, this suggests a gluttonous overreach on the part of the imperium.

The issue [was raised in questioning](#) by Judge Vanessa Baraitser. In making their remarks, the prosecution was stopped to clarify what was meant by “obtaining” classified documents. Could anybody obtaining them, even in the absence of “aiding and abetting”, be the subject of prosecution? The response, after hesitation was: Yes. Newspapers and media outlets, beware.

The defence effort was sharp and to the point. The entire prosecution against Assange, submitted Fitzgerald, was an abuse of process, constituting a “political offence” which would bar extradition under the US-UK Extradition Treaty of 2003. The judge was reminded that the alleged offences took place a decade ago, that the Obama administration had decided not to prosecute Assange, and that the decision to do so in 2017 by the Trump administration saw no adducing of any new evidence or facts. The decision by Trump to initiate a prosecution was an “effective declaration of war on leakers and journalists.” The US president’s own disparaging remarks on the Fourth Estate were cited. Assange “was the obvious symbol of all that Trump condemned.”

Trump’s own erratic behaviour – instructing US Republican Congressman Dana Rohrabacher to take a message to Assange in the embassy in 2017 – was also noted. The message was uncomplicated enough. Should Assange disclaim any Russian involvement in the 2016 Democratic National Committee leaks, he would be pardoned. Fitzgerald was cool on the president’s blanket denial that this ever took place. “He would, wouldn’t he?”

More broadly, the entire prosecution and extradition effort was based on the naked political act of state, spiced with a good deal of violent endeavour. The destruction of legal professional privilege, the principle protecting the confidences of Assange and those of his defence team, suggest that point. “We know,” submitted Fitzgerald, “that the US

intelligence agency was being provided with surveillance evidence of what was being done and said in the Ecuadorean Embassy.”

And that’s not the half of it. According to Assange’s barrister, various “extreme measures” against the long-time embassy tenant were also considered. Kidnapping or poisoning were high on the list. With such rich attitudes, it is little wonder that the defence reiterated the dangers facing Assange should he make his way across the Atlantic to face the US judicial system. In the Eastern District of Virginia, punitive sentences are all but guaranteed. Special Administrative Measures would spell mental ruin and death. The second day awaits.

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