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Targeting the Medical Evidence: The US Challenge on Assange's Health

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The desperate attempt by the US imperium to nab Julian Assange was elevated to another level on August 11 in a preliminary hearing before the UK High Court. The central component to this gruesome affair was the continuing libel of the expert witness upon which District Justice Vanessa Baraitser placed so much emphasis in her January 4 decision not to extradite the WikiLeaks publisher.

The prosecution effort was intended to add more strings to their bow. The US had already been given leave to appeal in July on the basis that the judge erred in law by deciding that Assange's extradition would be oppressive. This particular fatuous argument assumes that Baraitser was being too presumptuous about the appalling conditions that would face the publisher. Why, they lament, did she not seek the relevant assurances from the US authorities? If she had, they would have promised that Special Administrative Measures would not be imposed on Assange in pre-trial detention or in prison. Nor would he find himself degrading in the appalling conditions of a Supermax facility.

This dubious undertaking was made alongside others, including the assurance that Assange would receive appropriate clinical and psychological treatment as recommended by the relevant clinician, and that he would qualify under the Council of Europe Convention on the Transfer of Sentenced Persons. Doing so would enable him to be transferred to Australia with the approval of the US Department of Justice. The obvious question to ask here, and one put by the defence at the time, was why the prosecution had avoided giving these assurances at the extradition trial itself.

The judges looked favourably upon the prosecutor's arguments that Professor Michael Kopelman's evidence was possibly given undue weight. Kopelman had not disclosed to the district court his knowledge of Assange's relationship with Stella Moris and the existence of their two children. Not doing so meant he had misled the court.

According to Clair Dobbin QC from the Crown Prosecution Service, Kopelman had given an undertaking to the court via a signed declaration that he would be an impartial expert witness. He had been informed about his obligation to the court not to withhold information that might colour the evidence provided. "If an expert has misled the court, he has failed in his duty." The district judge had failed to "appreciate the significance of the fact that

Kopelman was willing to mislead".

Had Dobbin bothered going through Baraitser's judgment in detail she would have found a different picture. The justice had described the concealment as "misleading and inappropriate in the context of [Kopelman's] obligations to the court, but an understandable human response." This did not prevent her accepting the neuropsychiatrist's view that "Assange suffers from recurrent depressive disorder, which was severe in December 2019, and sometimes accompanied by psychotic features (hallucinations), often with ruminative suicidal ideas." Nor had the concealment impaired Baraitser's judgment, given that she already knew of the existence of Moris and the children before reading "the medical evidence or heard evidence on the issue."

Defence counsel Edward Fitzgerald QC reiterated these points to the High Court bench. The lower court was fully apprised of the evidence in its entirety, including two psychiatric reports and personal testimony. Taken together, Kopelman could not be said to have breached his duty to the court. As Fitzgerald explained, there was no "tactical advantage being gained" in Kopelman not disclosing the existence of Moris or the children in the first report but a very serious concern about their welfare given the threat posed by UC Global. That particularly ignominious security firm was tasked by US authorities to bug the Ecuadorian embassy in London, attempted to make off with a diaper of one of Assange's children for DNA testing, and chewed over the option of abducting or poisoning the publisher.

The effect of Kopelman's concealment upon the evidence, the court found, could be raised in appeal by the prosecution. As one of the two justices presiding, Lord Justice Holroyde reasoned, "Given the importance to the administration of justice of a court being able to rely on the impartiality of an expert witness, it is in my view arguable that more details and critical consideration should have been given to why [Kopelman's] 'understandable human response' gave rise to a misleading report."

The High Court also accepted the submission by the prosecution that it could argue that the district judge had erred in assessing the medical evidence on Assange's suicide risk. Dobbin, as she did at the extradition trial, continued the rubbishing campaign against Assange's mental wellbeing. "It really requires a mental illness of a type that the ability to resist suicide has been lost. Part of the appeal will be that Assange did not have a mental illness that came close to being of that nature and degree."

Too much weight, the prosecution contended in written submissions, had been given to Kopelman and the evidence of Dr. Quinton Deeley, the latter finding that Assange could be placed at the "high functioning end" of the autism spectrum. Too little consideration had been given to the evidence from the prosecution witnesses, forensic psychiatrists Seena Fazel and Dr. Nigel Blackwood. Along the way, the prosecution did its best to misrepresent Deeley's evidence, arguing that he had prescribed the suicide risk as arising from a rational and voluntary choice. This ignored the actual court evidence which considered the combined circumstances of both Assange's autism and the conditions of his detention. When taken together, the risk of suicide risk was a high one.

The troubling feature of the High Court decision is that it facilitates an assault on a lower judge's assessment of expert evidence, something even Holroyde admitted to be exceptional. This point was forcefully made by the defence in written submissions: the

prosecution's attack on Baraitser's preference for the medical evidence furnished by the defence witnesses failed "to recognise the entitlement of the primary decision maker to reach her own decision on the weight to be attached to the expert evidence of the defence on the one hand and the prosecution experts on the other."

To assume that granting the US grounds to challenge Kopelman and the way Baraitser read the medical evidence as matters of justice are matters of farce, not fact. After the hearing, Assange reminded Fitzgerald via video link from Belmarsh Prison that the human rights dimension in the case was unavoidable: Kopelman had simply wished to protect his client's children from harm. Reference to the discovery of guns found in the home of David Morales, the director of UC Global, was made. The brand and serial numbers of the weapons had been effaced.

If justice was an appropriate consideration in this politicised case, which has featured surveillance by a superpower, privacy breaches, harassment and even suggested kidnapping or assassination of a publisher, Assange would be free. Instead, the US imperium has been given more room to wriggle.

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Featured image: Julian Assange in Belmarsh Prison in 2019 (Source: WSWS)
