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Yet another shocking example of abuse of court procedure unfolded on Wednesday. James Lewis QC for the prosecution had been permitted gratuitously to read to two previous witnesses with zero connection to this claim, an extract from a book by Luke Harding and David Leigh in which Harding claims that at a dinner at El Moro Restaurant Julian Assange had stated he did not care if US informants were killed, because they were traitors who deserved what was coming to them.

This morning giving evidence was John Goetz, now Chief Investigations Editor of NDR (German public TV), then of Der Spiegel. Goetz was one of the four people at that dinner. He was ready and willing to testify that Julian said no such thing and Luke Harding is (not unusually) lying. Goetz was not permitted by Judge Baraitser to testify on this point, even though two witnesses who were not present had previously been asked to testify on it.

Baraitser's legal rationale was this. It was not in his written evidence statement (submitted before Lewis had raised the question with other witnesses) so Goetz was only permitted to contradict Lewis's deliberate introduction of a lie if Lewis asked him. Lewis refused to ask the one witness who was actually present what had happened, because Lewis knew the lie he is propagating would be exposed.

This is my report of Lewis putting the alleged conversation to Clive Stafford Smith, who knew nothing about it:

Lewis then took Stafford Smith to a passage in the book "Wikileaks; Inside Julian Assange's War on Secrecy", in which Luke Harding stated that he and David Leigh were most concerned to protect the names of informants, but Julian Assange had stated that Afghan informants were traitors who merited retribution. "They were informants, so if they got killed they had it coming." Lewis tried several times to draw Stafford Smith into this, but Stafford Smith repeatedly said he understood these alleged facts were under dispute and he had no personal knowledge.

This is my report of James Lewis putting the same quote to Prof Mark Feldstein, who had absolutely no connection to the event:

Lewis then read out again the same quote from the Leigh/Harding book he had put to Stafford Smith, stating that Julian Assange had said the Afghan informants would deserve their fate.

James Lewis QC knew that these witnesses had absolutely no connection to this conversation, and he put it to them purely to get the lie into the court record and into public discourse. James Lewis QC also knows that Goetz was present on the occasion described. The Harding book specifies the exact date and location of the dinner and that it included two German journalists, and Goetz was one of them.

It is plainly contrary to natural justice that a participant in an event introduced into the proceedings should not be allowed to tell the truth about it when those with no connection are, tendentiously, invited to. Whatever the rules of evidence may say, Baraitser and Lewis have here contrived between them a blatant abuse of process. It is a further example of the egregious injustices of this process.

If that does not make you angry, try this. Daniel Ellsberg was to give evidence this afternoon. Edward Fitzgerald QC applied for his videolink evidence to be heard at 3.15pm which is 07.15am in California where Dan lives. Baraitser insisted it could not be put back beyond 2.30 pm, thus forcing an 89 year old man to give evidence at 6.30am. Simply stunning.

As it happens, when Dan is 108 and on his death bed he will still be able to outwit James Lewis QC while reading Moby Dick and playing the ukelele, but the continual and cynical lack of concern for the defence just keeps punching you in the face.

John Goetz was the first witness this morning. Senior Investigations Editor at NDR since 2011, he was at Der Spiegel from 2007-11. He had published a series of articles on German involvement in the Afghan War, including one on a bombing raid on Kunduz which massacred civilians, for which he had won Germany's highest journalism award. In June 2010 he went to London to meet with Wikileaks and the Guardian to work on the Afghan War Logs.

In a series of meetings in “the bunker” at the Guardian with the NYT and the other major media partners, the partnership was formed whereby all would pool effort in researching the Afghan War Logs but each party would choose and publish his own stories. This cooperative venture between five major news organisations – normally rivals – was unique at the time.

Goetz had been struck by what seemed to him Julian Assange’s obsession with the security of the material. He insisted everything was encrypted and strict protocols were in place for handling the material. This had been new territory for the journalists. The New York Times was tasked with liaison with the White House, the Department of Defence and State Department on questions of handling the material.

Asked by Mark Summers to characterise the Afghan War Logs, Goetz said that they were fascinating first-hand material giving low level reports on actual operations. This was eye witness material which sometimes lacked the larger view. There was abundant first-hand evidence of war crimes. He had worked with Nick Davies of the Guardian on the Task Force 373 story.

Julian Assange had been most concerned to find the names in the papers. He spent a lot of time working out technical ways to identify names in the tens of thousands of documents. Mark Summers asked if he had been looking for the names for the purpose of redaction, and Goetz confirmed it was for redaction. He had interviewed Assange on the harm minimisation programme of the operation.

On behalf of the group Eric Schmitt of the NYT had been speaking to the White House and he had sent an email identifying 15,000 documents the White House did not want published to prevent harm to individuals or to American interests. It was agreed not to publish these documents and they were not published. Summers asked Goetz if he was aware of any names that slipped through, and he replied not.

Goetz was not so involved for family reasons when the consortium went through the same process with the Iraq war logs. But he knew that when a large number of these were released in the USA under a FOIA request, it was seen that Wikileaks had redacted those they released more heavily than the Department of Defense did. Goetz recalled an email from David Leigh of the Guardian stating that publication of some stories was delayed because of the amount of time Wikileaks were devoting to the redaction process to get rid of the “bad stuff”.

Summers then turned to the investigation of Khaled el-Masri. Goetz stated that back in 2005–6 when in his first stint at NDR he had looked into what seemed at the time the extraordinary claims of German citizen el-Masri, who stated that he had been kidnapped in Skopje, flown shackled and hooded around the world, subjected to constant beatings and torture, eventually ending up in what he believed to be a US detention facility in Afghanistan. At the time his claims had seemed difficult to believe.

[If I might interject a personal note here, this is around the time I myself blew the whistle on the torture programme, as a UK ambassador. I was effectively called a liar by then Foreign Secretary Jack Straw to parliament who described the extraordinary rendition programme as a “conspiracy theory”. I know how hard it was to be believed then.]

Goetz’s investigations had shown the story to be true. Using rendition flight logs and hotel records, he had even managed to track the actual perpetrators to North Carolina, and had spoken to some of them there. Enough evidence was produced for arrest warrants against 13 American agents or soldiers to be issued in Munich. Summers asked Goetz whether they were arrested. He replied that no, to their surprise, nothing was done to deliver the arrest warrant to the USA.

Then when the Wikileaks diplomatic cables were released, they had been able to see the pressure brought on the German government not to deliver the arrest warrant. The US had told Germany that to do so would have serious repercussions for the US/German relationship.

1. (S/NF) In a February 6 discussion with German Deputy National Security Adviser Rolf Nikel, the DCM reiterated our strong concerns about the possible issuance of international arrest warrants in the al-Masri case. The DCM noted that the reports in the German media of the discussion on the issue between the Secretary and FM Steinmeier in Washington were not accurate, in that the media reports suggest the USG was not troubled by developments in the al-Masri case. The DCM emphasized that this was not the case and that issuance of international arrest warrants would have a negative impact on our bilateral relationship. He reminded Nikel of the repercussions to U.S.-Italian bilateral relations in the wake of a similar move by Italian authorities last year.

2. (S/NF) The DCM pointed out that our intention was not to threaten Germany, but rather to urge that the German Government weigh carefully at every step of the way the implications for relations with the U.S. We of course recognized the independence of the German judiciary, but noted that a decision to issue international arrest warrants or extradition requests would require the concurrence of the German Federal Government, specifically the MFA and the Ministry of Justice (MOJ). The DCM said our initial indications had been that the German federal authorities would not allow the warrants to be issued, but that subsequent contacts led us to believe this was not the case.

3. (S/NF) Nikel also underscored the independence of the German judiciary, but confirmed that the MFA and MOJ would have a procedural role to play. He said the case was subject to political, as well as judicial, scrutiny. From a judicial standpoint, the facts are clear, and the Munich prosecutor has acted correctly. Politically speaking, said Nikel, Germany would have to examine the implications for relations with the U.S. At the same time, he noted our political differences about how the global war on terrorism should be waged, for example on the appropriateness of the Guantanamo facility and the alleged use of renditions.

4. (S/NF) Nikel also cited intense pressure from the Bundestag and the German media. The German federal Government must consider the "entire political context," said Nikel. He assured the DCM that the Chancellery is well aware of the bilateral political implications of the case, but added that this case "will not be easy." The Chancellery would nonetheless try to be as constructive as possible.

Summers asked if Goetz was involved in working through the cables for Der Spiegel. Goetz replied he was. In addition to the main media partners, Wikileaks had brought in a second phase of local media partners in the third countries involved, who might better be able both to redact and to know what were the important stories for a local audience. This had introduced some delays which were frustrating for Goetz.

Summers asked how thorough the process of redaction was. Goetz said that the original strict protocols remained in place and he did not know of anybody who had come to any harm. The State Department was actively engaged in the process. P J Crowley and others would call and request redactions and omissions. These were made. Eventually though a decision was taken by the US Government to withdraw cooperation.

Baraitser issued a time warning.

Summers then asked about events leading to the publishing of the unredacted cables. Goetz said this was a complicated process. It started when Luke Harding and David Leigh published a book in February 2011 containing the password to the online cache of encrypted cables. This was discussed on various mirroring sites, and eventual publication of the full cache by Cryptome after Die Freitag became involved. Cryptome was at that time very well known and an important source for journalists.

Summers then asked about the breakdown of relationships between Wikileaks and the Guardian. It was at this point that Baraitser ruled that Summers was not allowed to ask about what happened at the dinner he attended at El Moro restaurant. Summers made a formal request, as Lewis had introduced the subject with other witnesses who unlike Goetz had not been there. Lewis objected, and Baraitser said no.

James Lewis QC then cross-examined for the US Government and went straight to the publication of unredacted cables by Wikileaks in August and September 2011. Goetz referred to his earlier evidence on the releasing of the password, and said that Cryptome published first. Lewis countered that on 29 August 2011 Wikileaks had released 133,877 cables together with a statement that this was done "in accordance with Wikileaks' commitment to maximising impact and making information available to all". This was two days before Cryptome published.

A rather chaotic period ensued. Julian cried out from the dock that this was a misquote. He was warned he would be excluded from court by Baraitser. It turned out it was a misquote, and what I give above is the corrected version. There was then some rather confused questioning between Goetz and Lewis, of which the upshot was that those were unclassified and/or redacted cables (a quarter of the cache). Goetz said he could not comment to Lewis's suggestion that some had names marked "strictly protect".

Lewis suggested that after the collaboration, the material was just dumped. Goetz said no. Wikileaks had invested a lot of time, money and staff resources in the programme and from detailed discussions he knew they intended it to continue to roll out for at least another year. Then Cryptome had published.

Lewis quoted from a Guardian article of 1 September in which the original media partners, including Der Spiegel, condemned the release of the unredacted documents. He asked Goetz whether the 15,000 withheld cables had also been "dumped"? Goetz replied they were not cables, they were Afghan war logs, and no, not to his knowledge.

Lewis then said there was evidence that called Assange thoughtful, humorous and energetic. Did Goetz agree? He said yes. Lewis then quoted Christine Assange on what a good father her son was, and invited Goetz to comment. Goetz replied he was in no position to know.

[It is hard to explain this somewhat sinister finishing questioning. Possibly to counter psychiatric evidence?]

In re-examination by Mark Summers, Goetz stated that while the cables redaction process was going on, no names at risk had been published. To his knowledge, nobody had ever been harmed as a result of publication. He knew from his close involvement that Assange had tried very hard to prevent the publication of the unredacted cables. He had pleaded with Die Freitag.

In the afternoon, the witness was **Dan Ellsberg**, doyen of whistleblowers. Born in Chicago in 1931, he was educated at Harvard and Cambridge. He served in the Marines from 1954–7, and from 1964–5 was Special Assistant to the US Secretary of Defence. He was then involved in the making of an official classified 47-volume report entitled History of Decision Making in Vietnam.

Ellsberg briefly explained that the report showed that the war in Vietnam had been both continued in the knowledge that it could not be won. It showed that both the public and Congress had repeatedly been lied to. He had leaked the report to lawmakers and then the public as The Pentagon Papers. This had resulted in the famous case on prior restraint on publication. There had also been a less well-known criminal case against him personally under the Espionage Act. This had been dismissed with prejudice by the court.

Asked by Edward Fitzgerald to comment on the Wikileaks/Manning publication on Afghanistan, Ellsberg replied that he saw extremely strong parallels with his own case. These papers had the capability of informing the public of the progress of the war and the limited possibility that it could be brought to a successful conclusion at all. The Afghan War Logs showed operational-level information not a wider view, but the effect was similar. He strongly identified with both the source and the process of publication.

Fitzgerald then asked Ellsberg whether Assange held political opinions relevant to this publication. Ellsberg said it was absurd for the prosecution to argue otherwise. He had himself been motivated by his political views in his publication and Assange's views were very similar. He had held very interesting discussions with Assange and felt a great affinity with him. They both believed that there was a great lack of transparency to the public over government decisions. The public were fed much information that was false.

When the public had so little genuine information and were fed so much false information, real democracy was not possible. An example was the Iraq War, clearly an illegal war of aggression in breach of the UN charter, sold on lies to the public.

The Afghan War Logs were similar to low-level reports Ellsberg had himself written in Vietnam. It was the same thing; the invasion and occupation of a foreign country against the wishes of the majority of its population. That could only bring defeat or endless conflict: 19

years so far. The war logs had exposed a pattern of war crimes: torture, assassination and death squads. The one thing that had changed since Vietnam was that these things were now so normalised they were classified below Top Secret.

All the Pentagon Papers were Top Secret. None of the Wikileaks documents were. They were not just below Top Secret, they had no restricted distribution classifications. This meant that by definition there should be nothing genuinely sensitive, and certainly not life-endangering, in papers of this classification.

Fitzgerald asked him about the Collateral Murder video. Ellsberg stated that it definitely showed murder, including the deliberate machine gunning of a wounded and unarmed civilian. That it was murder was undoubted. The dubious word was "collateral", which implies accidental. What was truly shocking about it was the Pentagon reaction that these war crimes were within the Rules of Engagement. Which permitted murder.

Edward Fitzgerald asked whether Ellsberg was allowed to put forward the question of intention at his trial. He replied no, the distribution of classified material outside those designated to receive it was an offence of strict liability under the 1917 Espionage Act. This was absolutely inappropriate to trials of whistleblowers. "I did not get a fair trial and nor have recent whistleblowers in the USA. Julian Assange could not get a fair trial."

Cross-examining for the US Government, James Lewis QC asked Ellsberg to confirm that at the time he copied the Pentagon Papers he was working for the Rand Corporation. He said yes. Lewis said that Assange was not being prosecuted for publication of the Collateral Murder video. Ellsberg said that the Collateral Murder video was essential to an understanding of the Rules of Engagement. Lewis countered that Assange was not being charged for publication of the Rules of Engagement. He was only being charged for publication of unredacted names of those who might come to harm.

Ellsberg replied that he had read the superseding indictment and that Assange was being charged with obtaining, receiving and possession of material including the Rules of Engagement and the Collateral Murder video, and all the documents. On publishing, he was only charged with the names. Lewis said the other charges related to conspiracy with Chelsea Manning. Ellsberg replied "Yes. They are still charges."

Ellsberg quoted US Assistant Attorney Gordon Kromberg stating that prosecution was for documents up to Secret level containing the names of those "who risked their lives and freedom while helping the USA". Lewis contrasted this with Ellsberg "when you published the Pentagon Papers you were very careful what you gave to the media". Ellsberg replied that he withheld three or four volumes not to cause difficulties to diplomatic efforts to end the war.

Lewis suggested he was protecting individuals. Ellsberg said no; if he released those documents, the US government might have used it as an excuse to exit diplomacy and continue the war. Lewis asked if there were names in the Pentagon Papers that would risk harm to them. Ellsberg replied yes. In one case, a clandestine CIA agent was named, involved in the CIA assassination of a major Vietnamese politician. He was a personal friend of Ellsberg and Ellsberg had thought hard about it, but had left him in.

Lewis Asked Ellsberg whether he had read the article “Why Wikileaks is Not the Pentagon Papers” by Floyd Abrams, who had represented the New York Times in the Pentagon Papers case. Ellsberg replied he had read several articles like this by Abrams. He did not know Abrams. He had only been involved in the civil case, not the criminal one. He had seen him once, at an awards ceremony long after.

Lewis said that Abrams had written that Ellsberg had withheld four volumes, whereas “can anyone doubt” that Assange would have published all of them? Ellsberg replied he disagreed, Abrams had never had one minute of discussion with him or Assange. “He does not understand my motives at all in his article”. The position he outlines is widely held by those who want to criticise Julian Assange, Chelsea Manning and Edward Snowden while pretending to be liberal.

What he writes is simply untrue. Julian Assange withheld 15,000 files. He went through a long, hard process of redaction. He requested help from both the State Department and Department of Defence on redaction. I have no doubt Julian would have removed the volumes as I did, in my place. He had no intention to name names.

Ten years later, the US Government has still not been able to name one single individual who was actually harmed by the Wikileaks releases. I was shocked that Kromberg should make that allegation while offering no evidence. As nobody was hurt, clearly the risk was never as high as they claimed – as indeed the document classification would tell you.

They said exactly the same of me. They said CIA agents and those helping the USA would be hurt. “They said I would have blood on my hands.”

There now followed an extraordinary “question” from James Lewis QC who was permitted to read out about 11 paragraphs from various locations in one of Kromberg’s rambling affidavits, in which Kromberg said that as a result of Wikileaks publication, some US sources had had to leave their homeland, go into hiding, or change their names, in a number of countries, including Afghanistan, Iraq, Iran, Syria, Libya, China and Ethiopia. Some individuals in Afghanistan and Iraq had subsequently disappeared. The Taliban were on record as saying that those who cooperated with US forces would be killed. One Ethiopian journalist was forced to flee Ethiopia after being named as a US source. The US Embassy in China reported threats had been made against some of their named Chinese sources. Wikileaks material

was found in the possessions of Osama Bin Laden after he was shot. Lewis asked in a furious voice "How can you possibly, honestly say that nobody was harmed?"

Ellsberg With all these people who felt they were in danger, of course I am sorry it was inconvenient for them, and that is regrettable. But was any one of them actually physically harmed? Did one of them actually suffer the claimed physical consequences?

Lewis You call it regrettable that people were put at risk. Is it your position that there was absolutely no harm caused by the publication of the names of these individuals?

Ellsberg Assange's actions are absolutely antithetical to the notion that he deliberately published these names. Had hundreds been harmed, that would count against the great good done by publication of the information. No evidence is produced that any actual harm came to them. But his has to be put in the context of the policies which Assange was trying to change, invasions that led to 37 million refugees and 1 million deaths. Of course some people could not be located again in a war that killed a million people and displaced 37 million. The government is extremely hypocritical to pretend a concern for them against their general contempt for Middle Eastern lives. They had even refused to help redact the names. This is a pretence at concern.

Lewis What about the disappeared? Is it not common sense that some had been forced to disappear or flee under another name?

Ellsberg It does not seem to me that that small percentage of those named who may have been murdered or fled, can necessarily be attributed as a result of Wikileaks, when they are in among more than 1 million who have been murdered and 37 million who have fled.

Lewis then asked Ellsberg if it was true he had held an encrypted back up copy of the Manning material for Assange. Ellsberg replied it was; it had subsequently been physically destroyed.

In re-examination, Fitzgerald took Ellsberg to a passage in the Kromberg affidavit which stated that the US Government could not positively attribute any death to the Wikileaks material. Ellsberg said that was his understanding, and had been said at the Manning trial. He was shocked. It was just like Iraqi WMD. He had at first been inclined to believe the government on Iraqi WMD, just as he had first been inclined to believe the government on deaths caused by Wikileaks releases. In both cases it had proved they were making it up.

COMMENT

The court heard a great deal more truth than it could handle today, and great effort was put into excluding more truth. The US Government succeeded in preventing John Goetz eyewitness contradicting their promulgation of Luke Harding's lie about what Assange said at El Moro. The US Government also objected, successfully so far, to Khaled el-Masri's giving evidence on the grounds that he will allege he was tortured in the USA. Given that the

European Court of Human Rights and the German courts had both found el-Masri's story to be true, only in the wacky world of Lewis and Baraitser could it be considered wrong for him to tell the truth in court.

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