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Your Man in the Public Gallery – Assange Hearing Day 1

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Woolwich Crown Court is designed to impose the power of the state. Normal courts in this country are public buildings, deliberately placed by our ancestors right in the centre of towns, almost always just up a few steps from a main street. The major purpose of their positioning and of their architecture was to facilitate public access in the belief that it is vital that justice can be seen by the public.

Woolwich Crown Court, which hosts Belmarsh Magistrates Court, is built on totally the opposite principle. It is designed with no other purpose than to exclude the public. Attached to a prison on a windswept marsh far from any normal social centre, an island accessible only through navigating a maze of dual carriageways, the entire location and architecture of the building is predicated on preventing public access. It is surrounded by a continuation of the same extremely heavy duty steel paling barrier that surrounds the prison. It is the most extraordinary thing, a courthouse which is a part of the prison system itself, a place where you are already considered guilty and in jail on arrival. Woolwich Crown Court is nothing but the physical negation of the presumption of innocence, the very incarnation of injustice in unyielding steel, concrete and armoured glass. It has precisely the same relationship to the administration of justice as Guantanamo Bay or the Lubyanka. It is in truth just the sentencing wing of Belmarsh prison.

When enquiring about facilities for the public to attend the hearing, an Assange activist was told by a member of court staff that we should realise that Woolwich is a “counter-terrorism court”. That is true de facto, but in truth a “counter-terrorism court” is an institution unknown to the UK constitution. Indeed, if a single day at Woolwich Crown Court does not convince you the existence of liberal democracy is now a lie, then your mind must be very closed indeed.

Extradition hearings are not held at Belmarsh Magistrates Court inside Woolwich Crown Court. They are always held at Westminster Magistrates Court as the application is deemed to be delivered to the government at Westminster. Now get your head around this. This hearing is at Westminster Magistrates Court. It is being held by the Westminster magistrates and Westminster court staff, but located at Belmarsh Magistrates Court inside Woolwich Crown Court. All of which weird convolution is precisely so they can use the "counter-terrorist court" to limit public access and to impose the fear of the power of the state.

One consequence is that, in the courtroom itself, Julian Assange is confined at the back of the court behind a bulletproof glass screen. He made the point several times during proceedings that this makes it very difficult for him to see and hear the proceedings. The magistrate, Vanessa Baraitser, chose to interpret this with studied dishonesty as a problem caused by the very faint noise of demonstrators outside, as opposed to a problem caused by Assange being locked away from the court in a massive bulletproof glass box.

Now there is no reason at all for Assange to be in that box, designed to restrain extremely physically violent terrorists. He could sit, as a defendant at a hearing normally would, in the body of the court with his lawyers. But the cowardly and vicious Baraitser has refused repeated and persistent requests from the defence for Assange to be allowed to sit with his lawyers. Baraitser of course is but a puppet, being supervised by Chief Magistrate Lady Arbuthnot, a woman so enmeshed in the defence and security service establishment I can conceive of no way in which her involvement in this case could be more corrupt.

It does not matter to Baraitser or Arbuthnot if there is any genuine need for Assange to be incarcerated in a bulletproof box, or whether it stops him from following proceedings in court. Baraitser's intention is to humiliate Assange, and to instill in the rest of us horror at the vast crushing power of the state. The inexorable strength of the sentencing wing of the nightmarish Belmarsh Prison must be maintained. If you are here, you are guilty.

It's the Lubyanka. You may only be a remand prisoner. This may only be a hearing not a trial. You may have no history of violence and not be accused of any violence. You may have three of the country's most eminent psychiatrists submitting reports of your history of severe clinical depression and warning of suicide. But I, Vanessa Baraitser, am still going to lock you up in a box designed for the most violent of terrorists. To show what we can do to dissidents. And if you can't then follow court proceedings, all the better.

You will perhaps better accept what I say about the Court when I tell you that, for a hearing being followed all round the world, they have brought it to a courtroom which had a total number of sixteen seats available to members of the public. 16. To make sure I got one of those 16 and could be your man in the gallery, I was outside that great locked iron fence queuing in the cold, wet and wind from 6am. At 8am the gate was unlocked, and I was able to

walk inside the fence to another queue before the doors of the courtroom, where despite the fact notices clearly state the court opens to the public at 8am, I had to queue outside the building again for another hour and forty minutes. Then I was processed through armoured airlock doors, through airport type security, and had to queue behind two further locked doors, before finally getting to my seat just as the court started at 10am. By which stage the intention was we should have been thoroughly cowed and intimidated, not to mention drenched and potentially hypothermic.

There was a separate media entrance and a media room with live transmission from the courtroom, and there were so many scores of media I thought I could relax and not worry as the basic facts would be widely reported. In fact, I could not have been more wrong. I followed the arguments very clearly every minute of the day, and not a single one of the most important facts and arguments today has been reported anywhere in the mainstream media. That is a bold claim, but I fear it is perfectly true. So I have much work to do to let the world know what actually happened. The mere act of being an honest witness is suddenly extremely important, when the entire media has abandoned that role.

James Lewis QC made the opening statement for the prosecution. It consisted of two parts, both equally extraordinary. The first and longest part was truly remarkable for containing no legal argument, and for being addressed not to the magistrate but to the media. It is not just that it was obvious that is where his remarks were aimed, he actually stated on two occasions during his opening statement that he was addressing the media, once repeating a sentence and saying specifically that he was repeating it again because it was important that the media got it.

I am frankly astonished that Baraitser allowed this. It is completely out of order for a counsel to address remarks not to the court but to the media, and there simply could not be any clearer evidence that this is a political show trial and that Baraitser is complicit in that. I have not the slightest doubt that the defence would have been pulled up extremely quickly had they started addressing remarks to the media. Baraitser makes zero pretence of being anything other than in thrall to the Crown, and by extension to the US Government.

The points which Lewis wished the media to know were these: it is not true that mainstream outlets like the Guardian and New York Times are also threatened by the charges against Assange, because Assange was not charged with publishing the cables but only with publishing the names of informants, and with cultivating Manning and assisting him to attempt computer hacking. Only Assange had done these things, not mainstream outlets.

Lewis then proceeded to read out a series of articles from the mainstream media attacking Assange, as evidence that the media and Assange were not in the same boat. The entire opening hour consisted of the prosecution addressing the media, attempting to drive a clear

wedge between the media and Wikileaks and thus aimed at reducing media support for Assange. It was a political address, not remotely a legal submission. At the same time, the prosecution had prepared reams of copies of this section of Lewis' address, which were handed out to the media and given them electronically so they could cut and paste.

Following an adjournment, magistrate Baraitser questioned the prosecution on the veracity of some of these claims. In particular, the claim that newspapers were not in the same position because Assange was charged not with publication, but with "aiding and abetting" Chelsea Manning in getting the material, did not seem consistent with Lewis' reading of the 1989 Official Secrets Act, which said that merely obtaining and publishing any government secret was an offence. Surely, Baraitser suggested, that meant that newspapers just publishing the Manning leaks would be guilty of an offence?

This appeared to catch Lewis entirely off guard. The last thing he had expected was any perspicacity from Baraitser, whose job was just to do what he said. Lewis hummed and hawed, put his glasses on and off several times, adjusted his microphone repeatedly and picked up a succession of pieces of paper from his brief, each of which appeared to surprise him by its contents, as he waved them haplessly in the air and said he really should have cited the Shayler case but couldn't find it. It was liking watching Columbo with none of the charm and without the killer question at the end of the process.

Suddenly Lewis appeared to come to a decision. Yes, he said much more firmly. The 1989 Official Secrets Act had been introduced by the Thatcher Government after the Ponting Case, specifically to remove the public interest defence and to make unauthorised possession of an official secret a crime of strict liability – meaning no matter how you got it, publishing and even possessing made you guilty. Therefore, under the principle of dual criminality, Assange was liable for extradition whether or not he had aided and abetted Manning. Lewis then went on to add that any journalist and any publication that printed the official secret would therefore also be committing an offence, no matter how they had obtained it, and no matter if it did or did not name informants.

Lewis had thus just flat out contradicted his entire opening statement to the media stating that they need not worry as the Assange charges could never be applied to them. And he did so straight after the adjournment, immediately after his team had handed out copies of the argument he had now just completely contradicted. I cannot think it has often happened in court that a senior lawyer has proven himself so absolutely and so immediately to be an unmitigated and ill-motivated liar. This was undoubtedly the most breathtaking moment in today's court hearing.

Yet remarkably I cannot find any mention anywhere in the mainstream media that this happened at all. What I can find, everywhere, is the mainstream media reporting, via cut and paste, Lewis's first part of his statement on why the prosecution of Assange is not a threat to press freedom; but nobody seems to have reported that he totally abandoned his own argument five minutes later. Were the journalists too stupid to understand the exchanges?

The explanation is very simple. The clarification coming from a question Baraitser asked Lewis, there is no printed or electronic record of Lewis' reply. His original statement was provided in cut and paste format to the media. His contradiction of it would require a journalist to listen to what was said in court, understand it and write it down. There is no significant percentage of mainstream media journalists who command that elementary ability nowadays. "Journalism" consists of cut and paste of approved sources only. Lewis could have stabbed Assange to death in the courtroom, and it would not be reported unless contained in a government press release.

I was left uncertain of Baraitser's purpose in this. Plainly she discomfited Lewis very badly on this point, and appeared rather to enjoy doing so. On the other hand the point she made is not necessarily helpful to the defence. What she was saying was essentially that Julian could be extradited under dual criminality, from the UK point of view, just for publishing, whether or not he conspired with Chelsea Manning, and that all the journalists who published could be charged too. But surely this is a point so extreme that it would be bound to be invalid under the Human Rights Act? Was she pushing Lewis to articulate a position so extreme as to be untenable – giving him enough rope to hang himself – or was she slavering at the prospect of not just extraditing Assange, but of mass prosecutions of journalists?

The reaction of one group was very interesting. The four US government lawyers seated immediately behind Lewis had the grace to look very uncomfortable indeed as Lewis baldly declared that any journalist and any newspaper or broadcast media publishing or even possessing any government secret was committing a serious offence. Their entire strategy had been to pretend not to be saying that.

Lewis then moved on to conclude the prosecution's arguments. The court had no decision to make, he stated. Assange must be extradited. The offence met the test of dual criminality as it was an offence both in the USA and UK. UK extradition law specifically barred the court from testing whether there was any evidence to back up the charges. If there had been, as the defence argued, abuse of process, the court must still extradite and then the court must pursue the abuse of process as a separate matter against the abusers. (This is a particularly specious argument as it is not possible for the court to take action against the US government due to sovereign immunity, as Lewis well knows). Finally, Lewis stated that the Human Rights Act and freedom of speech were completely irrelevant in extradition proceedings.

Edward Fitzgerald then arose to make the opening statement for the defence. He started by stating that the motive for the prosecution was entirely political, and that political offences were specifically excluded under article 4.1 of the UK/US extradition treaty. He pointed out that at the time of the Chelsea Manning Trial and again in 2013 the Obama administration had taken specific decisions not to prosecute Assange for the Manning leaks. This had been reversed by the Trump administration for reasons that were entirely political.

On abuse of process, Fitzgerald referred to evidence presented to the Spanish criminal courts that the CIA had commissioned a Spanish security company to spy on Julian Assange in the Embassy, and that this spying specifically included surveillance of Assange's privileged meetings with his lawyers to discuss extradition. For the state trying to extradite to spy on the defendant's client-lawyer consultations is in itself grounds to dismiss the case. (This point is undoubtedly true. Any decent judge would throw the case out summarily for the outrageous spying on the defence lawyers).

Fitzgerald went on to say the defence would produce evidence the CIA not only spied on Assange and his lawyers, but actively considered kidnapping or poisoning him, and that this showed there was no commitment to proper rule of law in this case.

Fitzgerald said that the prosecution's framing of the case contained deliberate misrepresentation of the facts that also amounted to abuse of process. It was not true that there was any evidence of harm to informants, and the US government had confirmed this in other fora, eg in Chelsea Manning's trial. There had been no conspiracy to hack computers, and Chelsea Manning had been acquitted on that charge at court martial. Lastly it was untrue that Wikileaks had initiated publication of unredacted names of informants, as other media organisations had been responsible for this first.

Again, so far as I can see, while the US allegation of harm to informants is widely reported, the defence's total refutation on the facts and claim that the fabrication of facts amounts to abuse of process is not much reported at all. Fitzgerald finally referred to US prison conditions, the impossibility of a fair trial in the US, and the fact the Trump Administration has stated foreign nationals will not receive First Amendment protections, as reasons that extradition must be barred. You can read the whole defence statement, but in my view the strongest passage was on why this is a political prosecution, and thus precluded from extradition.

For the purposes of section 81(a), I next have to deal with the question of how this politically motivated prosecution satisfies the test of being directed against Julian Assange because of his political opinions. The essence of his political opinions which have provoked this prosecution are summarised in the reports of Professor Feldstein [tab 18], Professor Rogers [tab 40], Professor Noam Chomsky [tab 39] and Professor Kopelman:-
i. He is a leading proponent of an open society and of freedom of expression.
ii. He is anti-war and anti-imperialism.
iii. He is a world-renowned champion of political transparency and of the public's right to access information on issues of importance – issues such as political corruption, war crimes, torture and the mistreatment of Guantanamo detainees.
5.4.Those beliefs and those actions inevitably bring him into conflict with powerful states including the current US administration, for political reasons. Which explains why he has been denounced as a terrorist and why President Trump has in the past called for the death penalty.
5.5.But I should add his revelations are far from confined to the wrongdoings of the US. He has exposed surveillance by Russia; and published exposes of Mr Assad in Syria; and it is said that WikiLeaks revelations about corruption in Tunisia and torture in Egypt were the catalyst for the Arab Spring itself.
5.6.The US say he is no journalist. But you will see a full record of his work in Bundle M. He has been a member of the Australian journalists union since 2009, he is a member of the NUJ and the European Federation of Journalists. He has won numerous media awards including being honoured with the highest award for Australian journalists. His work has been recognised by the Economist, Amnesty International and the Council of Europe. He is the winner of the Martha Gelhorn prize and has been repeatedly nominated for the Nobel Peace Prize, including both last year and this year. You can see from the materials that he has written books, articles and documentaries. He has had articles published in the Guardian, the New York Times, the Washington Post and the New Statesman, just to name a few. Some of the very publications for which his extradition is being sought have been refereed to and relied upon in Courts throughout the world, including the UK Supreme Court and the European Court of Human Rights. In short, he has championed the cause of transparency and freedom of information throughout the world.
5.7.Professor Noam Chomsky puts it like this: – 'in courageously upholding political beliefs that most of profess to share he has performed an enormous service to all those in the world who treasure the values of freedom and democracy and who therefore demand the right to know what their elected representatives are doing' [see tab 39, paragraph 14].
So Julian Assange's positive impact on the world is undeniable. The hostility it has provoked from the Trump administration is equally undeniable.
The legal test for 'political opinions'
5.8.I am sure you are aware of the legal authorities on this issue: namely whether a request is made because of the defendant's political opinions. A broad approach has to be adopted when applying the test. In support of this we rely on the case of Re Asliturk [2002] EWHC 2326 (abuse authorities, tab 11, at paras 25 – 26) which clearly establishes that such a wide approach should be adopted to the concept of political opinions. And that will clearly cover Julian

> *Assange's ideological positions. Moreover, we also rely on cases such as Emilia Gomez v SSHD [2000] INLR 549 at tab 43 of the political offence authorities bundle. These show that the concept of "political opinions" extends to the political opinions imputed to the individual citizen by the state which prosecutes him. For that reason the characterisation of Julian Assange and WikiLeaks as a "non-state hostile intelligence agency" by Mr Pompeo makes clear that he has been targeted for his imputed political opinions. All the experts whose reports you have show that Julian Assange has been targeted because of the political position imputed to him by the Trump administration – as an enemy of America who must be brought down.*

Tomorrow the defence continue. I am genuinely uncertain what will happen as I feel at the moment far too exhausted to be there at 6am to queue to get in. But I hope somehow I will contrive another report tomorrow evening.

With grateful thanks to those who donated or subscribed to make this reporting possible.

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