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Assange's Fifteenth Day at the Old Bailey: Solitary Confinement and Parlous Health Care

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Throughout the sham process formally known as the Julian Assange extradition trial, prosecutors representing the United States have been adamant: the carceral conditions awaiting him in freedom's land will be pleasant, accommodating and appropriate. Confronting 17 charges under the US Espionage Act and one under the Computer Fraud and Abuse Act, Assange and his defence team have been resolutely sceptical.

Today, the prosecution reiterated its position on the US federal prison system as one of rosy comfort and decent facilities. As has happened at several points in the extradition trial, the views of **Gordon Kromberg**, assistant US attorney for the Eastern District of Virginia, were given another airing. Stale as ever, Kromberg told the court that, "Inmates in administrative segregation are able to speak to one another through the doors and windows of their cells." How civil. "Typically," he also noted, "there are several inmates in administrative segregation." He does not tire of this canard, and makes the point one more time with robotic certitude. "Even in administrative segregation, Assange would be able to communicate with other inmates through the doors and windows of his cell."

Ellis on solitary confinement

The defence witness **Yancey Ellis**, as with others more acquainted with the bestial prison conditions of the imperium, suggested something quite different. Ellis is a former judge advocate in the US Marines. First would come the experience of being held in the Alexandria Detention Center (ADC), where Assange will be given his pre-trial blooding on US soil. Most likely, he will find himself, Ellis claimed, in X block, kept in a narrow cell each day for 22 to 23 hours, containing "a sleeping area, a small sink and a toilet", guarded by thick doors. Meals would be taken in the cell. The precious one or two hours granted to the inmate would often only be granted at "very odd hours." The time would be spent in the "common area of the ADSEG unit, which is maybe about twice the square footage." Only one inmate in the unit would be permitted out of the cell at any one time. "There is limited interaction with other ADSEG inmates because their doors and food-tray slots are closed."

Such an individual is purposely segregated from others, alienated and prevented from accessing therapeutic or other programs available at the facility. "There is no outside recreational or exercise area at the Alexandria jail and I do not recall there being any windows in the ADSEG unit," Ellis notes in his written submissions.

As with other defence testimonies, Kromberg's came in for special attention. There were "several assertions made by Mr Kromberg" that were "incorrect or incomplete". When

asked by **Edward Fitzgerald QC** for the defence whether Assange would be given the means to "associate with other prisoners", Ellis was far from convinced. "The short answer is: not really." Administrative segregation implied just that. Kromberg's assertion in his affidavit that there was no solitary confinement at ADC was dispatched. "1X ADSEG unit is essentially the same as solitary confinement."

Ellis had himself experimented with conversing through such barriers, and was discouraged by the effort. In his court statement, he suggests that it might be "technically true" to suggest that words might be exchanged. But in practice, it was "impossible. In 1X ADSEG the cell doors are made of thick steel and the 'windows' are transparent, thick plexiglass material with no slots or holes." It would be, Ellis explained, "almost impossible to speak through the door if the food tray slot is not open. It would not be possible for anyone to say that if he is familiar with the X Bloc."

Communicating with his clients through such doors proved "very difficult, even when standing several inches away. I find it implausible that inmates could really communicate in this way, unless they constantly screamed at loud volumes. I would routinely have to ask for a deputy sheriff to open the cell's food tray slot in order to be able to speak with a client."

In addition to the physical features of the facility will be Special Administrative Measures (SAMs), further limiting Assange's communication and hindering his means of mounting an adequate legal defence. While Ellis conceded to having had no experience of them, he understood them to entail further impositions on visits and communication with friends and family.

On matters of mental health, Ellis was distinctly discouraging. Provision at the facility was rudimentary. "The extent of mental health care is that a social worker or counselor comes around to check on you every once in a while to ensure basic functioning." There were no permanent doctors in residence at ADC. Part-time psychiatrists were employed instead, meaning irregular visits and consultations. Those at risk of self-harm found themselves in suits designed to prevent suicide, immobilizing "the arms away from the body, removing shoe strings and sheets, etc."

In cross-examination, James Lewis QC for the prosecution attempted to shore up the shoddy assertions in Kromberg's affidavit. Ellis, he suggested, was doing a bit of crystal ball gazing: how could he really know if Assange would be held in X Bloc? Ellis had, after all, not interviewed the warden, a psychologist or prison staff about the conditions. This was a desperate ploy; Ellis had been asked to testify on the conditions he had seen, not the totality of a policy that remained opaque. "I have requested those records [determining how inmates will be housed] before and can never get them." Triumphantly, Lewis suggested that "Kromberg's statement of how [Assange] would be assessed for housing at the ADC" was not something that could be disputed. As to whether Assange would actually find himself in administrative detention, Ellis was cautious but convinced. "I can't predict the future, but I would bet he would be put in administrative detention."

The prosecutor also attempted to lay a trap in discrediting the testimony. Had Ellis been massaged by the defence to use the words "solitary confinement" in his statement to the court? No, came the reply. The time detainees in administrative segregation are permitted outside the cramped confines of their cell was "generally equivalent to solitary

confinement." Mockingly, Lewis scrapped about definitions: an inmate could not be said to be enduring conditions of solitary confinement meeting his lawyers three hours each day. (Not much verisimilitude on the part of the prosecution, given that the application of SAMS would make such meetings a difficult, if not an impossibility.)

Lewis then focused on Assange's standing in Ellis' eyes. Did he feel that the publisher's case had garnered publicity and large public support? "I would agree with the publicity," came the reply. Public support was another matter he could not speak to. The fact that previous prominent figures such as Paul Manafort and Maria Butina had been housed at the ADC and placed in "administrative segregation" suggested that Assange would not be treated any differently.

This line of questioning stirred Judge Vanessa Baraitser, who went on to probe Ellis on how the US Bureau of Prisons would handle Assange's case. In the United Kingdom, "Assange has been in custody in this jurisdiction for 18 months," housed in the general wing. "Other than his being a public figure, any reason you think he'll be held in administrative detention?" The "primary reason", suggested Ellis, would be his notoriety, though mental health might be a factor officials would consider. But as the mental health unit was located in the general population, a decision might still be made to place him in "administrative segregation". "The mere fact you are high-profile dictates conditions?" inquired Baraitser. Generally, came the reply, the ADC preferred segregating "these types of defendants" to "maintain a secure and safe environment" though he could not say why. "I am just speaking from experience."

Sickler on health care

Veteran prison advocate and founder of the Justice Advocacy Group in Virginia, **Joel Sickler**, followed for the defence. Much of his testimony seemed reiterative and supplementary to that of Ellis, though it also moved into discussion about the ADX Florence supermax facility, a nightmare Assange may face after softening at the ADC. He suggested that Assange would have "no meaningful reaction" at the ADC, kept in his parking-space sized cell. It was "ridiculous" to assert, as Kromberg had done, that credible communication between inmates in administrative segregation in the facility could take place. "You're twiddling your thumbs. You'll have access to reading material, but your whole world is the four corners of that room." There was also "significant sensory deprivation comparable to isolation in a cell. There is little natural light as well as access to fresh air."

While Assange's attorneys would be permitted "to meet with him at any time during professional visiting hours" finding yourself "in the ADSEG unit at the ADC could compromise Mr Assange's ability to focus on and assist his attorneys in his defence – for reasons related to how debilitating the experience may be for a prisoner."

There was also a real risk of SAMSs being applied by the Attorney-General in the event of conviction. Challenging them would pose almost insuperable challenges. "It's a well-known fact here that even the most minor administrative appeals by inmates are denied." Sickler claimed to have filed over a thousand appeals, "winning a dozen at most."

Sickler's testimony also covered the issue of health care at the ADC. "Mr Assange should expect to receive only the most limited medical service at the ADC. Any suggestion to this Court that he will be fully evaluated and assessed for medical or mental health conditions is misleading."

Holding the flame for the prosecution was Clair Dobbin, who attempted to create a world of textual reality rather than grounded fact. Policies of the US Bureau of Prisons were discussed; staffing and health care provisions were canvassed, including ADX facilities where inmates might be able to labour and improve their conditions. This would present a good case to the authorities to have their SAMs removed. Sickler suggested that what the BOP was claiming was different from practice.

While the prosecution smelled blood in suggesting that Sickler was actually unexperienced on the actual operations of X Bloc and the application of SAMs, Sickler rallied on the issue of how medical care would be supplied in such prison facilities. Dobbin made the assumption that he had no access to prison medical records. Not so, came the correcting reply. Dobbin then moved on to limiting the value of such knowledge gained: it was specific to Sickler's clients; not of the same order as an academic or research account on medical care in the prison system. As for whether SAMs would be applied or not, this was up to the US Attorney General, who would determine the case on the basis of whether the prisoner had classified information threatening to "national security".

Dobbin then engaged in what could only be described as a tidying up effort for one of the most notorious facilities in the US. ADX Florence was hardly atrocious, she insisted. Prisoners, she noted from a report, had claimed to form close personal relations with the staff. "If it's such a great place," Sickler retorted, "why are so many prisoners trying to get out?" Finding the report "incredulous," he also suggested that institutionalisation brings with it fears of change. Under re-examination, he noted that a client of his at ADX was "begging to get out."

On Sickler's own example of the darker side of the US penal system – an individual who suffered a mental breakdown at the Metropolitan Detention Center in Brooklyn, New York, "severely beaten by correctional officers" and "thrown in the hole naked" – Dobbin was bizarrely disingenuous. Initial calls by Sickler that the individual suffered psychiatric illness might have been callously ignored; and it took a federal court to grant the individual bail and eventually receive a writ for treatment at the Bellevue psychiatric center, but "judicial oversight" had prevailed.

The prosecutor also referred to the case of *Cunningham v BOP* to illustrate that things, even if they had been dire, must have improved. The case involved ADX inmates, described as "five seriously mentally ill men", along with six other ADX prisoners ("interested parties") with "serious mental illnesses" suing the Bureau of Prisons in 2012 for violating BOP policy and the Eighth Amendment.

The class action argued that the authorities had failed to adequately diagnose and treat prisoners at ADX with grave mental illness. This eventually led to an approved settlement covering, amongst other things, a range of improved measures for screening and diagnosis for mental illness and the provision of mental health care and suicide prevention. Dobbin was being selective. As Sickler noted in his statement, "that same Court would find that the health care in ADX failed to meet basic standards of care for inmates."

Dobbin, continuing her train of dissimulation, submitted another, deeply flawed example. ADX Florence had permitted a convicted terrorist known as the "Underwear Bomber", Umar Farouk Abdulmutallab, time to see family members during his time at the facility. This belied an inconvenient reality: Abdulmutallab sued the Justice Department in October 2017 claiming that prison officials had held him in "long-term solitary confinement", restricted his

communication with relatives and force-fed him during hunger protests and fasting sessions. Abdulmutallab had also been the subject of SAMs, and incarcerated in the infamous H-Unit of ADX. Not exactly a paragon of US prison treatment, and not one of the prosecution's better examples.

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