

Assange's Sixteenth Day at the Old Bailey: Special Administrative Measures, Unreliable Assurances and Espionage

September 29. Central Criminal Court, London.

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Global Research, September 30, 2020

Region: [Europe](#), [USA](#)

Theme: [Law and Justice](#), [Media Disinformation](#)

Julian Assange's defence team spent the day going over, reemphasising and sharpening the focus on what awaited their client should he, with the blessing of Her Majesty's Government, make his way to the United States. Not only will he confront 17 charges under the US Espionage Act and one under the Computer Fraud and Abuse Act, he faces the prospect of imprisonment for the rest of his life in conditions that risk prematurely ending his life.

Warden Baird and SAMs

The opening expert witness was Maureen Baird, who knows a thing or two about US carceral fare, having presided over the Metropolitan Correctional Centre in New York as its warden. She was in little doubt that Assange will be subjected to Special Administrative Measures (SAMs) over and above those conditions he will already face. She thought the affidavit by US Assistant Attorney Gordon Kromberg gave a good clue of that intention: the government tends to only mention SAMs if they intend using them.

While the US Attorney General will be the one to make that determination, advice will be sought from relevant security agencies. "It could be the CIA, the FBI, border control, together with the US Attorney and the Attorney General," came Baird's [reply](#) to defence barrister Edward Fitzgerald QC. Were the CIA to be involved, they would be consulted "with the office of enforcement operations at the DOJ [Department of Justice]." With the CIA's view carrying hefty weight, Fitzgerald tantalisingly floated a proposition to be revisited later in the day: that US intelligence was behind targeting Assange while he was a political asylee of the Ecuadorean Embassy in London.

Baird's [description of inmates](#) placed under SAMs was grim and similar to the testimony of Yancey Ellis delivered the day before: "solitary confinement, technically, for 24-hours a day". No communication with other inmates. "The only form of human interaction they encountered was when correctional officers opened the viewing slot during their inspection rounds of the unit, when institution staff walked through the unit during their required weekly rounds, or when meals were delivered through the secure meal slot in the door."

Inmates were allowed 30 minutes on the phone per month (one call of 30 minutes duration, or two of 15 minutes), with all calls scheduled two weeks in advance and monitored by the FBI. Mail, heavily screened, could take months to be delivered. (In this, Baird rejected the optimistic description by Kromberg that the mail service was "free-flowing" in such

facilities.)

As with other witnesses already called, including Joel Sickler of the Justice Advocacy Group, [she agreed](#) that SAMs were singularly “devastating,” “desolate and degrading”. Such measures [could lead to](#) “severe depression in isolation, anxiety, paranoia, weight loss detrimental to physical health and detrimental to mental health.” She thought them brutal and archaic, a relic of cruelty. “I am uncertain how the [US Bureau of Prisons] has been able to continue with these types of isolation units, given all the studies, reports and findings of the horrific physical and psychological effects they have on inmates.”

Challenging SAMs was also an adventurous, generally futile hope. “Mr Kromberg suggested that when an inmate has a twice a year review he can challenge SAMs with a case manager, but as a case manager myself,” Baird [explained](#) to the court, “I saw nothing is going to happen.” Case managers lacked “authority to make any changes to SAMs.” As was [further explained](#), the Bureau of Prisons “exercises no control/jurisdiction over SAMs imposed by the Attorney General. Wardens are bound to abide by the SAMs imposed on an inmate.” During her time as Warden at MCC New York, Baird had “never seen an inmate have his SAMs removed, only extended.”

The former warden [was also certain](#) that Assange, if convicted, would be destined for the ADX Florence supermax facility in Colorado. If placed under SAMs, he would be kept in a segregating housing unit at the ADX. “As someone who spent the majority of her adult life working for the BOP and as a former Designator, who decided where inmates would serve their sentences, absent a medical requirement, or a protected Witness Security Case, I am not familiar with any alternative long-term options aside from the ADX, for offenders under SAMs.”

As for the sparkling portrayal of the ADX in Colorado given by Kromberg’s affidavits, including the presence of social and therapeutic activities for inmates, Baird could only [express bemusement](#). “For anyone to suggest that an inmate assigned under SAMs would be able to participate in group counselling is baffling to me. The main premise of assigning SAMs is to restrict a person’s communication and the only way to accomplish this is through isolation.”

Medical treatment was also a scrappy, unreliable affair for SAMs prisoners. You would have to be at death’s door before being transferred to a medical facility. As for those at risk of self-harm, Baird [accepted](#) that the BOP had a robust suicide program, which was hardly a guarantee against the determined. “When you have suicidal ideation, the reliance on inmate self-reporting is pretty strong. When an inmate fails to report that, it is not noticed and the inmate commits suicide.”

In cross-examination, prosecutor Clair Dobbin played an unaccustomed role: the bleeding heart, concerned with prisoner welfare. Why had Baird not done more to ease the plight of SAMs prisoners during her time as warden? Baird [replied](#) that leading by example was her method, not that she could compel other staff to do the same. “It was not uncommon for staff not to engage with inmates.” While she had not taken the issue of treatment of SAMs prisoners up with a judge or the BOP, she rejected Dobbin’s assertions that she lacked concern for them. Baird’s [reasoning](#) was that of an instrument of state violence self-justified. “It did cause me concern, but I had to convince myself it was okay. I honestly did not believe I could do anything. It was [handled] at a higher level.”

Dobbin then suggested that SAMs inmates could alter their conditions by participating in a three phase program. They could meet in groups of four in an area outside their cell on reaching the third level. Baird [refuted](#) the suggestion: Phase one and two did give extra privileges to the prisoners, but they remained in isolation. It had nothing to do with the actual removal of SAMs. Permitting inmates to reach the third level would defeat “the whole purpose of SAMs.”

The prosecution [then drew upon](#) a statement from prosecution witness Alison Leukefeld, an employee of the US Bureau of Prisons claiming, in line with Kromberg’s affidavits, that SAMs prisoners would have chances to engage in group therapy. Baird was dismissive in reply: “I think she does not have much experience with SAMs inmates and is not out in the field.”

Lindsay Lewis, Abu Hamza and false assurances

The calling of US attorney Lindsay Lewis was important in her link to [Abu Hamza al-Masri](#) (Mostafa Kamel Mostafa), an Egyptian radical cleric and former imam of London’s Finsbury Park mosque extradited to the United States in 2012 after an eight-year legal battle. He was accused of a suit of offences ranging from attempting to establish a terrorist training camp in Bly, Oregon to supporting terrorists in Afghanistan and kidnapping 16 tourists in Yemen in 1998. Hamza also faced the SAMs regime, kept in solitary confinement for eight years and imprisoned at the ADX Florence since 2015. He has not been allowed family visits since 2012.

As Lewis [outlined](#) in her witness statement, SAMs have limited Hamza’s “contacts not just with the outside world, but also with his family, other inmates and even his attorneys.” With a Kafkaesque twist, such restrictions went so far as to hamper her own means of describing his true conditions to the court.

An example of the harsh absurdities of these administrative measures [was also given](#): Hamza was said to have breached them when he “improperly tried to convey, in a letter to one of his sons, his love to his one year old grandson”. The grandson had not been on the list of approved contacts.

Hamza’s case is gruesomely remarkable for its false assumptions. According to Lewis, assurances were given to the United Kingdom by US authorities that future prison facilities would be tailored to his fragile medical state. Were he to spent time at ADX Florence, it would only be for a short time. District Judge Timothy Workman of the Westminster Magistrates’ Court, in ruling for Hamza’s extradition in 2007, [noted](#) that a lengthy, indefinite period of detention at ADX Florence would result in “inhuman degrading treatment” in violation of Article 3 of the Convention Against Torture. He also considered ADX Florence to have conditions “offensive to my sense of propriety of dealing with prisoners”.

Nothing of the sort, [claimed](#) prosecutor Dobbin in her cross-examination of Lewis, who read a declaration by a warden that Hamza would face a medical examination and go to a medical facility if he was incapable of managing his activities of daily living (ADL). Of unflagging faith in the virtues of those she represents and the US justice system, Dobbin claimed that, “There was no way they could have found he could have managed his activities of daily living either pre-trial or post-trial.”

Such credulity was impressive. The UK authorities had [assumed](#) that it was “impossible” for a double amputee, one functional eye and suffering diabetes to pass a medical exam on his

fitness for detention at ADX Florence. “I am satisfied,” Judge Workman [declared at the time](#), “that the defendant [Hamza] would not be detained in these conditions [at ADX] indefinitely, and his undoubted ill-health and physical disabilities would be considered, and at worst, he would only be accommodated in these conditions for a relatively short period of time.” Lewis [observed](#) that Hamza, having had both forearms amputated, was a fairly obvious qualification against being sent to the ADX. “I don’t believe the US government has followed through on him receiving a full medical examination.”

Dobbin, ever the believer, wondered if Lewis was simply too trusting of Hamza. “He is a double amputee,” [came the reply](#). “He does not have daily nursing care four times a day as he had in the UK. He is placed in a handicapped cell that does not have proper shower and toilet facilities.”

In 2018, one of Hamza’s lawyers [issued a statement](#) asserting “that the conditions of his confinement violate the expectations of the European Convention on Human Rights and the promises that were made by the US government to the [British and European] courts as part of the extradition process.” By comparison, the conditions at Belmarsh, a facility Assange is well acquainted with, were notably better. Horror comes in degrees.

Anonymous witnesses, espionage and the CIA

In anticipation of Thursday’s proceedings, the court also considered whether it should grant anonymity to two witnesses from the UC Global S.L. security firm, the Spanish company charged with providing security at Ecuador’s London embassy. Their testimony, scheduled to be read that day, is intended to draw the political line between UC Global, their [espionage activities targeting Assange](#) in the London Ecuadorean Embassy, and the CIA. UC Global’s director David Morales, is alleged [in reports](#) to have travelled to Las Vegas in 2017, where he secured a contract with Las Vegas Sands of the casino mogul Sheldon Adelson, a notable financier of US President Donald Trump. It is claimed that Morales handed over audio and video recordings of meetings Assange had with his lawyers and associates while in the embassy.

Having already testified in a Spanish court case against Morales under protection, and fearing for their safety should their names be disclosed at the Old Bailey, Judge Vanessa Baraitser relented. We also await how the prosecution will deal with their potentially juicy testimony. James Lewis QC [has yet to receive instructions](#) from the DOJ on whether to mount a challenge, given the less than impervious “Chinese Wall” that supposedly exists between agencies such as the DOJ and the CIA. That comforting fiction is designed to prevent politicisation. It is one that this trial has already done a good deal to expose and scuttle.

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