Assange's Sixth Day at the Old Bailey: US Prison Conditions and Politicised Prosecutions

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*September 15. Central Criminal Court, London. Today, witnesses appearing in the extradition trial of **Julian Assange** fleshed out some points touched upon the previous day: the fate awaiting the WikiLeaks publisher in the US prison system, and the political nature of process. Before commencing, **Judge Vanessa Baraitser** was a touch peeved. She noted that one defence witness who took the stand last week, **Trevor Timm** of the Freedom of the Press Foundation, had been drinking coffee during his testimony. Such behaviour was "inappropriate" and future witnesses would be disallowed to do so while her court was in session.*

Coffee-less, defence witness and Reprieve's board president **Eric Lewis** considered the timing of the Assange indictment "significant". The Obama administration had grown cool on the subject; the Trump administration renewed interest. "The case was dormant when the Trump administration began. The evidence hasn't changed. Witnesses haven't changed."

The US Department of Justice had itself become politicised and could no longer be considered an independent arm, but rather the prosecutorial plaything of **President Donald Trump**. Both US **Attorney Generals Jeff Sessions** and **William Barr** had instituted a top-down structure condemned by former federal prosecutors for obstructing justice.

> "Jeff Sessions pressured the Eastern District of Virginia to bring the case. I'm not saying individual prosecutors are acting in bad faith, I'm saying the department is highly politicised and many Americans would agree with that sentiment."

Eric Lewis also referred to a 19-page memo authored by Barr pointing out that

> "the attorney-general and his lawyers are the president's 'hand'. It's the unitary executive theory. It's a fringe theory this attorney general has articulated that it is his job to follow the president."

Steep sentences for the Australian publisher were also suggested as probable outcomes, notably in light of the language used in the second superseding indictment. A "base level" estimate should he be convicted of the alleged offences was somewhere between eight to 10 years. His record, however, might come into play; Assange had previously pled guilty to 24 charges for hacking the Canadian telecommunications company Nortel.

Throw in matters of organisational skill and leadership "of criminal activity that involved 5 or more participants," and we were looking at a rather "expensive" ledger. As the superseding indictment from the DOJ outlines conspiracy charges, adjustments might be made to lengthen the sentence. An example was offered: that of Sigurdur "Siggi" Thordarson, remunerated by the Federal Bureau of Investigation to conduct surveillance on WikiLeaks and convicted in Iceland on multiple charges. Being both a minor at the time, and purportedly under Assange's direction, would add to the ledger.

Eric Lewis also noted that having "special abilities that help [the accused] commit the crime" would encourage a stiffer sentence. "I would think," he ventured, "that Mr Assange's technical proficiency would be adjustment." This could result in an increase of the sentence to 19 years and five months, if factoring the lower end, or 24 years and five months towards if the higher end of sentencing was applied.

Just to darken the prospects even more, the defence witness suggested that eluding the investigation of a crime and purportedly exposing the identities of intelligence sources or embassy officials both had a combined effect of a life sentence which, given the statutory maximum, would yield the grand total of 175 years.

James Lewis QC for the prosecution stayed on familiar terrain, the sort embraced by critics of WikiLeaks since its inception. His first notable, and dangerous proposition for the court, was that the First Amendment did not bar a journalist from being prosecuted for the unauthorised publication of classified information. "The right to free speech and the public's right to know are not absolutes." Unfortunately for the prosecutor, no examples of doing so could be found.

Image on the right: Claude M. Hilton

Assange facing 175 years in prison on US soil was also said to be an arithmetical exaggeration, yet another fantastic claim on the part of the defence. Eric Lewis marshalled a few salient facts to disabuse the prosecutor. Consider which judge would be conducting the trial in the US District Court for the Eastern District of Virginia: one **Claude M. Hilton**. Mercy was not his forte.

Hilton had already shown rough treatment towards **Chelsea Manning**, jailing her last year for contempt of court for refusing to testify before a grand jury investigating WikiLeaks. Doing so, as her lawyer **Moira Meltzer-Cohen** said at the time, was an act of needless

cruelty. As for her medical treatment, Judge Hilton considered US marshals more than competent to handle it.

Eric Lewis also drew attention to the vengeful flavour of the US case against Assange: that the leaks by the publishing organisation were considered by officials the biggest in history, a boon for adversaries of the US. When compared to Manning's own trial – resulting in conviction for 10 counts under the Espionage Act, as against 17 for Assange, the picture was a gloomy one. The prosecution in Manning's trial had asked for 60 years; the eventual sentence was pared down to 35. Were things to go "brilliantly" for Assange, he might face a 20-year sentence.

Such comparisons irritated prosecutor Lewis. He suggested that other cases involving the Espionage Act had not resulted in heavy sentences for the whistleblowers in question. Former CIA employee **Jeffrey Sterling,** former FBI employee **Terry Albury,** and NSA contractor **Reality Winner** were cited as glittering testaments of a generous justice system. Sterling was unimpressed, tweeting that the prosecution's referral to his "travesty case to assuage sentencing fears" was more than a tad disingenuous.

> "The prosecution was incensed I received 42 months, they wanted far more. Tell the truth." For good measure, Sterling also scorned the prosecution effort to powder the US prison system with caring credentials. "My sentence was 42 months and I could have died because of conditions and horrible medical care."

In the *LA Progressive*, Sterling reiterated the "deplorable living conditions, disregard for human life, and perpetual punishment" that marked the US prison system. Only an intervention by a US senator on his behalf "to receive the health care … quite possibly saved my life." With Assange's case,

> "I fear there will be nothing reasonable with regard to any sentence to be imposed." Sterling's case should not serve as a "benchmark" of reasonable sentencing, as James Lewis argued, but "a warning about how the perverse use of the Espionage Act started by the Obama administration and continued by the Trump administration to quell and silence dissent is a threat to free speech, not only in this country, and, as the extradition proceedings demonstrate, in the entire world."

The conditions of confinement awaiting Assange was also revisited in Eric Lewis's testimony. In the pre-trial phase, he faced the euphemistically termed treatment of administrative segregation in Alexandria Detention Center, Virginia. In his view, Special Administrative Measures (SAMs) would be applied during both pre- and post-trial processes, given Assange's standing as a national security defendant. Axiomatically, it followed that the defendant would be gagged and attorney-client confidentiality nullified. Throw in the Classified Information Procedures Act (CIPA) impairing the defendant's means to inspect classified documents, and the situation would look parlous. The combination of both administrative segregation and SAMs would be akin to solitary confinement and present a danger to Assange's psychological wellbeing.

The second witness called by the defence was **Thomas Durkin**, a seasoned criminal defence attorney hailing from Chicago. "I do not think," he emphatically stated, "[Assange]

would be able to get what I would consider a fair trial in the US." Such formidable impediments as CIPA would obstruct Assange's access to classified documents necessary for his case. On this point, Durkin noted that US assistant attorney Gordon Kromberg had been in error in assuming otherwise. The testimony also served to underscore what has so far been said at this trial: that the resumption of interest by the Trump administration after the Obama administration's reluctance to pursue Assange indicated political motivation.

Durkin's testimony painted a picture of the grim world of pleadings. An incentive, known as a "trial tax", formed part of the sentencing guidelines. "You get penalized for going to trial." Guilty pleas would be encouraged to reduce sentences, and along with that, the sort of seedy cooperation with authorities amounting to betrayal (the revealing of sources, contacts and so forth). The differences could be considerable: a 24-year sentence clipped by seven years; the difference between seeing one's partner and children privately before one's death or not. Any ensuing sentence was bound to be heavy; the prosecution had taken the position that Assange was more culpable than Manning, leading Durkin to conclude that something more than the 60 years asked for Manning awaited the WikiLeaks founder.

In his written submission, Durkin affirmed the position taken by other witnesses that the US justice system was woefully unprepared in dealing with the challenges of mental health. Along with Assange's reputation for having compromising information on powerful interests, the attorney had little confidence that Assange "will be safe from harm – whether inflicted by himself or others".

Again, the sessions were plagued by issues of connectivity and clarity. The audio for Eric Lewis, for instance, was described by the tireless Kevin Gosztola as coming "from inside a wrapping paper tube." Journalists observing Judge Baraitser's demeanour were also unimpressed. All that mattered to her, for a change, was that these problems were happening to others.

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