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Assange's Third Day at the Old Bailey: Bias, Politics and Wars on Journalism

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The third day of extradition proceedings against Julian Assange at the Old Bailey resumed on the point of politics. Assange as a figure of political beliefs; Assange as a target of the Trump administration precisely for having them. The man sketching the portrait was Paul Rogers, Emeritus Professor of Peace Studies at Bradford University.

It is no mean feat trying to pin down Assange's political system. Leftward, rightward, with resistance to the centre? Lashings of libertarianism; heavy doses of anti-war and holding the powerful to account? Such figures tend to be sui generis. In his submitted statement to the court, Rogers suggests a uniform theme.

> "The political objective of seeking to achieve greater transparency in the workings of governments is clearly both the motivation and the modus operandi of Mr Assange and the organisation WikiLeaks."

On the stand, Rogers described the Assange method of influence and disruption: the release of the war logs, their influence on public opinion regarding the US imperium's engagements in Iraq and Afghanistan, the revelations of 15,000 unaccounted civilian casualties. The butcher's bill of the imperium, in other words, was laid bare by the WikiLeaks' releases.

For Rogers, this approach jarred with various US administrations, but none more so than that of Trump's. Assange's entire approach and "what he stands for represents a threat to normal political endeavour."

James Lewis QC for the prosecution made his effort to narrow, clip and sharpen the focus on Assange, questioning the expanse of political belief being attributed by Rogers. At times, the prosecution seemed suspended in a time capsule, suggesting, for instance, that political opinions were only applicable to governments and leaders. Rogers preferred a more complex picture: the evolving nature of what political opinion might constitute (for instance, it could include "transnational elites" and attitudes towards corporations). The issue of publishing an item or not could also constitute a form of political opinion.

Lewis then went on the attack, grumpy at the length of Rogers' responses and suggesting that his testimony was biased towards the defence. Why had he omitted the views of such individuals as US assistant attorney Gordon Kromberg, who argued that prosecuting Assange had been a criminal rather than political matter? Again, Rogers took preferred the broad approach. Prosecutors of a certain rank tend to mimic the views of their superiors – that is their due. What mattered were those higher-ups who had initiated a change in policy regarding WikiLeaks to instigate a "politically motivated prosecution". This could be

demonstrated with some plausibility by considering the wider political context of different administrations. The Obama administration had set its heart on not prosecuting Assange; those in the Trump administration had warmed to the idea.

Not quite getting his pound of flesh, Lewis moved on to targeting the reasons why the Obama administration had gone cold on prosecuting Assange. Like many black letter lawyers on this point, the issue of Assange being confined in the Ecuadorean embassy has them in knots. "What would be the point [of arresting Assange] if he's hiding in the embassy?" posed Lewis. Rogers, rather sensibly, suggested that this would constitute a pressuring move. "It would have made very good sense to bring it at that time, to show a standing attempt to bring Mr Assange to justice." Lewis had also made a specious point. As investigative journalist Stefania Maurizi points out, individuals such as Edward Snowden have been duly charged despite fleeing the jurisdiction. Practical custody was hardly a necessary precondition to getting that paperwork ready.

Lewis proceeded to till the same ground as that covered in the testimony of Mark Feldstein, attempting to push the suggestion that the case against Assange might yield future charges, at least as believed by himself and his defence team. Rogers offered similar parrying: the Trump administration's approach to Assange was distinct, its attitudes conveyed through the hostile remarks of former CIA director Mike Pompeo and the then hungry Attorney General Jeff Sessions. A difference in approach might be gathered from President Barack Obama's commutation of Chelsea Manning's sentence. This was Trump's possible counter.

Post-lunch interest then turned to Trevor Timm, Director of Freedom of the Press Foundation. As he points out in the submitted statement, "The decision to indict Julian Assange on allegations of a 'conspiracy' between a publisher and his source or potential sources, and for the publication of truthful information, encroaches on fundamental freedoms." WikiLeaks was a pioneer in secure submission systems such as SecureDrop, one that had been emulated by media outlets such as the Wall Street Journal and Al Jazeera.

It was incumbent upon journalists that they "develop relationships with their sources" and attempts to punish publishing activity arising from the use of "leaked documents of public importance" would face First Amendment difficulties.

The Trump administration, however, had proved bolder than its predecessors. The Espionage Act had been previously floated at such journalists as James Bamford, Ben Bradlee, Seymour Hersh and Neil Sheehan. It took Assange's arrest and charging in 2019 to break with tradition.

The indictment, particularly in alleging that Assange had engaged in a conspiracy with Chelsea Manning to crack a military computer passport for reasons of remaining anonymous, would criminalise a common news practice and the whole pursuit of national security journalism. Were the prosecution permitted "to go forward, dozens of reporters at the *New York Times*, *Washington Post* and elsewhere would also be in danger."

Lewis took umbrage at Timm's claim, outlined in his statement, that Trump had engaged in an enthusiastic "war on journalism". The FPF director was unsparing, suggesting that the indictment of the WikiLeaks publisher was part of this war, "and it is no exaggeration to say the First Amendment itself is at risk." To Lewis, Timm replied with a salient reminder that

Trump had tweeted 2,200 times about the press, describing them at stages as the “enemy of the people”. It was “very telling that Trump’s is the first one to try to bring a case like this since the Nixon administration.”

The prosecution preferred returning to that exhausted nag of an idea: that Assange could not be seen as a journalist. A form of fallacious logic came into play: the US Department of Justice had no interest in prosecuting journalists and would be breaching their own prosecutorial guidelines in doing so; Assange was not a journalist, therefore showing appropriate discrimination.

Timm had an appropriate response to this nonsensical approach. “In the US, the First Amendment protects everyone. Whether you consider Assange a journalist doesn’t matter; he was engaging in journalistic activity.” And if the DOJ was in breach of federal rules, it should follow that they be held accountable.

Timm also refused to ingest the prosecution line that the indictment was sufficiently narrow to only cover the publication of documents that had revealed the names of informants working for the US. Other charges in the indictment focused on criminalising the act of possessing the documents. That every claim would implicate journalists across the spectrum, as would “the mere thought of obtaining these documents”. A sinister, dangerous implication.

The prosecution was also caught up in what a “responsible journalist” might do. While the issue of unnecessarily publishing the name of a third party thereby endangering that person might raise matters of ethical responsibility, that, suggested Timm, was a separate question “from what is illegal or legal conduct.” A previous attempt to criminalise publishing the name of a US intelligence source had been made, by Senator Joseph Lieberman among others, in 2010 as a direct response to the WikiLeaks disclosures. But the Securing Human Intelligence and Enforcing Lawful Dissemination (SHIELD) Act never became law.

As for whether WikiLeaks had behaved appropriately or not in publishing the entire tranche of uncensored US diplomatic cables, despite it not being responsible for leaking the password to the relevant encrypted file containing the documents, Timm was firm. Governments should not have a hand in making such editorial judgments; the question centred on illegality, something which WikiLeaks could not be accused of.

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