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Day X Marks the Calendar: Julian Assange's 'Final' Appeal

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Julian Assange's wife, Stella, is rarely one to be cryptic. "Day X is here," she posted on the platform formerly known as Twitter. For those who have followed her remarks, her speeches, and her activism, it was sharply clear what this meant. "It may be the final chance for the UK to stop Julian's extradition. Gather outside the court at 8.30am on both days. It's now or never."

> Day X is here.
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> The public hearing at the Royal Courts of Justice will be on 20-21 February.
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> It may be the final chance for the UK to stop Julian's extradition. Gather outside the court at 8:30am on both days. It's now or never. #DayX #FreeAssangeNOW #JournalismIsNotACrime pic.twitter.com/RL3e8FMxoJ
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> — Stella Assange #FreeAssangeNOW (@Stella_Assange) December 19, 2023

Between February 20 and 21 next year, the High Court will hear what WikiLeaks claims may be "the final chance for Julian Assange to prevent his extradition to the United States." (This is qualified by the prospect of an appeal to the European Court of Human Rights.) Were that to take place, the organisation's founder faces 18 charges, 17 of which are stealthily cobbled from the aged and oppressive US Espionage Act of 1917. Estimates of any subsequent sentence vary, the worst being 175 years.

The WikiLeaks founder remains jailed at His Majesty's pleasure at Belmarsh prison, only reserved for the most hardened of criminals. It's a true statement of both British and US justice that Assange has yet to face trial, incarcerated, without bail, for four-and-a-half years. That trial, were it to ever be allowed to take place, would employ a scandalous legal theory that will spell doom to all those who dive and dabble in the world of publishing

national security information.

Fundamentally, and irrefutably, the case against Assange remains political in its muscularity, with a gangster's legality papered over it. As Stella herself makes clear,

> "With the myriad of evidence that has come to light since the original hearing in 2018, such as the violation of legal privilege and reports that senior US officials are involved in formulating assassination plots against my husband, there is no denying that a fair trial, let alone Julian's safety on US soil, is an impossibility were he to be extradited."

In mid-2022, Assange's legal team attempted a two-pronged attempt to overturn the decision of Home Office Secretary Priti Patel to approve Assange's extradition while also broadening the appeal against grounds made in the original January 4, 2021 reasons of District Judge Vanessa Baraitser.

The former, among other matters, took issue with the acceptance by the Home Office that the extradition was not for a political offence and therefore prohibited by Article 4 of the UK-US Extradition Treaty. The defence team stressed the importance of due process, enshrined in British law since the Magna Carta of 2015, and also took issue with Patel's acceptance of "special arrangements" with the US government regarding the introduction of charges for the facts alleged which might carry the death penalty, criminal contempt proceedings, and such specialty arrangements that might protect Assange "against being dealt with for conduct outside the extradition request". History shows that such "special arrangements" can be easily, and arbitrarily abrogated.

On June 30, 2022 came the appeal against Baraitser's original reasons. While Baraitser blocked the extradition to the US, she only did so on grounds of oppression occasioned by mental health grounds and the risk posed to Assange were he to find himself in the US prison system. The US government got around this impediment by making breezy promises to the effect that Assange would not be subject to oppressive, suicide-inducing conditions, or face the death penalty. A feeble, meaningless undertaking was also made suggesting that he might serve the balance of his term in Australia – subject to approval, naturally.

What this left Assange's legal team was a decision otherwise hostile to publishing, free speech and the activities that had been undertaken by WikiLeaks. The appeal accordingly sought to address this, claiming, among other things, that Baraitser had erred in assuming that the extradition was not "unjust and oppressive by reason of the lapse of time"; that it would not be in breach of Article 3 of the European Convention on Human Rights (inhuman and degrading treatment)"; that it did not breach Article 10 of ECHR, namely the right to freedom of expression; and that it did not breach Article 7 of the ECHR (novel and unforeseeable extension of the law).

Other glaring defects in Baraitser's judgment are also worth noting, namely her failure to acknowledge the misrepresentation of facts advanced by the US government and the "ulterior political motives" streaking the prosecution. The onerous and much thicker second superseding indictment was also thrown at Assange at short notice before the extradition hearing of September 2020, suggesting that those grounds be excised "for reasons of procedural fairness."

An agonising wait of some twelve months followed, only to yield an outrageously brief decision on June 6 from High Court justice Jonathan Swift (satirists, reach for your pens and

laptops). Swift, much favoured by the Defence and Home Secretaries when a practising barrister, told *Counsel Magazine* in a 2018 interview that his "favourite clients were the security and intelligence agencies". Why? "They take preparation and evidence-gathering seriously: a real commitment to getting things right." Good grief.

In such a cosmically unattached world, Swift only took three pages to reject the appeal's arguments in a fit of premature adjudication. "An appeal under the Extradition Act 2003," he wrote with icy finality, "is not an opportunity for general rehearsal of all matters canvassed at an extradition hearing." The appeal's length – some 100 pages – was "extraordinary" and came "to no more than an attempt to re-run the extensive arguments made and rejected by the District Judge."

Thankfully, Swift's finality proved stillborn. Some doubts existed whether the High Court appellate bench would even grant the hearing. They did, though requesting that Assange's defence team trim the appeal to 20 pages.

How much of this is procedural theatre and circus judge antics remains to be seen. Anglo-American justice has done wonders in soiling itself in its treatment of Britain's most notable political prisoner. Keeping Assange in the UK in hideous conditions of confinement without bail serves the goals of Washington, albeit vicariously. For Assange, time is the enemy, and each legal brief, appeal and hearing simply weighs the ledger further against his ailing existence.

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Featured image is from Lawyers for Assange
