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The Julian Assange Extradition Verdict

"It's not as bad as Iwo Jima, I suppose"

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The barrister-brewed humour of ***Edward Fitzgerald QC,*** *one of the solid and stout figures defending a certain Julian Assange of WikiLeaks at the Old Bailey in London, was understandable. Time had worn and wearied the parties, none more so than his client. Fitzgerald had asked for water, but then mused that its absence could hardly have been as bad as the horrors of war in the Battle of Iwo Jima. What mattered was the decision on extradition.*

Kevin Gosztola of *Shadowproof* also gave us a sense of the scene.

> "I see a bench of a glass container, where Assange will be isolated during the announcement of his extradition decision. This has been standard practice during this case, even after he complained about how it infringed upon his ability to participate in his defense."

As it transpired, District Justice Vanessa Baraitser went against her near perfect streak of granting extraditions by blocking the request by the US government for 17 charges based on the Espionage Act of 1917 and one of conspiracy to commit computer intrusion. Crudely put, she accepted the grounds of poor mental health, evidence that Assange was a suicide risk, and that his conditions of detention in a US supermax prison facility might well accentuate it. She also noted a "real risk that … Assange will be subject to restrictive special administrative measures [SAMs]."

Should the publisher be "subjected to the extreme conditions of SAMs, [his] mental health will deteriorate to the point where he will commit suicide with the 'single minded determination' described by Dr [Quinton] Deeley." She was further "satisfied that Mr Assange's suicidal impulses will come from his psychiatric diagnoses rather than his own voluntary act." Accordingly, "it would be oppressive to extradite [Assange] to the United States of America."

But for those unwilling to digest the headline act and specious highlights, the decision of Justice Baraitser was also an expansive effort to salvage the credibility of state-sanctioned persecution while dishing it out to the defendant. Central to her judgment was reasoning crafted to deny the exceptional, political nature of the Assange case and its threat to journalism.

She did not accept, for instance, that Assange would be treated differently – in other words, "be subject to harsh detention conditions on the basis of his political opinions or nationality." She further failed to accept that the case against Assange might be "manipulated for political purposes at the behest of the executive or the CIA."

The mountain of evidence submitted by defence witnesses demonstrating the markedly politicised nature of the Department of Justice's actions, left little impression. As Reprieve's board president Eric Lewis statedduring the trial, individual prosecutors might well be acting in good faith but "the [DOJ] is highly politicised and many Americans would agree with that sentiment." Baraitser's response: "there is no credible evidence" to reach a conclusion "that federal prosecutors have improper motives for bringing these charges or to find they have acted contrary to their obligations and responsibilities of impartiality and fairness." Things remain perennially micro with some judicial minds.

Baraitser pays homage to state power and dirties the role played by WikiLeaks and whistleblowers. The defence had argued Assange engaged in activities as an investigative journalist, and that such conduct would be protected by Article 10 of the European Charter of Human Rights providing the right to freedom of expression and information.

But the judge evidently had different ideas uncritically focusing on the alleged conspiracy to commit computer intrusion between Chelsea Manning and Assange. In doing so, there was little engagement with the defence's demonstration that the hacking allegation is deeply flawed and speculative, both in terms of attributable identity and on the matter of execution. The testimony from Patrick Eller, formerly of the US Army Criminal Investigation Command headquarters at Quantico, was particularly damning. Manning, Eller revealed on September 25, 2020, "already had legitimate access to all the databases from which she downloaded the data." To have logged "into another user account would not have provided her with more access than she already possessed."

Baraitser merely accepted the prosecution submission that Assange had "agreed to use the rainbow tools, which he had for the purpose of cracking Microsoft password hashes, to decipher an alphanumeric code [Manning] had given him." The code was tailored for "an encrypted password hash stored on a Department of Defence computer connected to the SIPRNet [Secret Internet Protocol Router Network]." But Eller's testimony, referring to Manning's court martial records, makes the point that she never supplied the two files essential in generating the decryption key for the password hash. "At the time, it would not have been possible to crack an encrypted password hash, such as the one Manning obtained." In any case, Manning already had access, making any conspiracy needless.

None of this mattered a jot. "This is the conduct which most obviously demonstrates Mr Assange's complicity in Ms Manning's theft of the information, and separates his activity from that of the ordinary investigative journalist." Assange had also allegedly engaged in conduct that would amount to offences in English law, not only with Manning, but with "computer hackers Teenager, Laurelai, Kayla, Jeremy Hammond, Sabu and Topiary to gain unauthorised access to a computer".

The judge also took a withering view to the publisher's "wider scheme, to work with computer hackers and whistle blowers to obtain information for WikiLeaks." She latched onto the US prosecution's keenness to target Assange's philosophy, citing the "Hacking at Random" conference held in August 2009 and the "Hack in the Box Security Conference" in October that year. "Notwithstanding the vital role played by the press in a democratic society, journalists have the same duty as everyone else to obey the ordinary criminal law." The right to freedom of expression was mediated by imposed responsibilities and the "technical means" used in gathering information.

Clearly keeping in mind the deterrent function of such stifling instruments as The Official Secrets Act of 1989, Baraitser remained staunchly establishment in relegating journalism to the lowest pegs of significance. Motivation is irrelevant, the public interest merely a construction best left to the paternally learned. Those with secrets had to be prevented from disclosing them; the role of whether information should be made available for public consumption had to be left to "trusted people in a position to make an objective assessment of the public interest".

The credulous acceptance of most of the evidence by Assistant US attorney in the Eastern District of Virginia, Gordon Kromberg, boggles. Kromberg made a good go of convincing Baraitser that the case against Assange was far from "unprecedented" and would not attract the free speech protections of the US First Amendment. Criminalising the intentional disclosure of names of intelligence agents and sources, by way of example, was still consistent with First Amendment rights. Weakly, the judge claimed that, "Cases which raise novel issues of law are not so uncommon."

Untroubled by any potential desecration of press freedoms, Baraitser resorted to vague hypotheticals. Whether the prosecution would raise the issue of excluding Assange from the protections of the First Amendment for publishing national defence information or otherwise did not raise "a real risk that a court would find that Mr Assange will not be protected by the US Constitution in general or by the due process clause of the Fifth Amendment in particular." Convoluted understatement chokes the dangerous implication.

The "harm" thesis – that Assange's publishing activities supposedly put people at risk – was seen as credible. Little stock is put in his redaction efforts, many of which were extensively documented at the trial. Instead, an opportunistic, careless figure emerges, one who endangered "well over one hundred people" and caused "quantifiable" harm – loss of employment, the freezing of assets. Even if Assange had been "acting within the parameters of responsible journalism" he had no vested "right to make the decision to sacrifice the safety of these few individuals, knowing of their circumstances or the dangers they faced, in the name of free speech."

The reasoning of the judge on the US-UK Treaty would have also caused shudders across the fourth estate. Extradition treaties, she affirmed, confirmed no enforceable rights. And Parliament, in its wisdom, had taken "the decision to remove the political offences bar which had previously been available to those facing extradition." She accepted, in whole, the US submission that the regime upon which extradition would be dealt with obligated the court to follow a set of "imperative steps" which did not "include a consideration of the political character of the offence".

For human rights organisations and those defending press freedom, the judgment remains rewarding in terms of outcome, unsatisfactory in terms of reasoning. It leaves the appalling treatment of Assange, at the hands of UK authorities guided by US instruction, unaccounted for. As Amnesty International described it, the verdict "does not absolve the UK from having engaged in this politically-motivated process at the behest of the USA and putting media freedom and freedom of expression on trial." WikiLeaks editor-in-chief Kristinn Hrafnsson was characteristically blunt in his assessment. "It is a win for Julian Assange – but it is not a win for journalism."

The US Department of Justice, keen to prolong Assange's suffering, promises to appeal, though the grounds on mental health will prove hard to impeach. A bail application is due to

be submitted by the defence in a few days.

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