

Julian Assange Could Face Death Penalty in US, High Court Hears

This is a synopsis of day 2

By [Assange Defense](#)

Global Research, February 26, 2024

[Assange Defense](#) 21 February 2024

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

Theme: [Law and Justice](#)

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Wikileaks founder Julian Assange could face the death penalty for a prosecution based on 'state retaliation ordered from the very top', the High Court heard today.

Assange is accused by the US government of conspiring with army intelligence analyst Chelsea Manning to leak classified military documents online between January and May 2010.

The Australian is seeking permission to appeal a 2021 decision by a UK court to approve his extradition to the US, where he faces charges under the country's 1917 Espionage Act.

The 52-year-old had initially won his fight against extradition on the grounds he was likely to kill himself if held under harsh US prison conditions.

But in December 2021 judges found the US authorities had given sufficient assurances to the UK that Assange would be treated humanely in an American prison, and overturned the decision.

Assange appealed against that ruling, but last June High Court judges upheld the decision to approve the US extradition order, which was signed by then UK Home Secretary Priti Patel in June 2022.

If he is refused permission to bring a further appeal, Assange is likely to be extradited in the coming weeks to face trial for 18 charges, 17 of which fall under the Espionage Act. The charges include conspiracy to receive, obtain, and disclose classified diplomatic and military documents.

Assange's lawyers say he faces up to 175 years in jail if convicted, but the US government claimed the sentence would probably be between four and six years. He has spent the last five years at Belmarsh maximum security prison in southeast London.

The charges against Assange relate to the 2010 release by WikiLeaks of 500,000 secret files detailing aspects of military campaigns in Afghanistan and Iraq and secret cables about Guantanamo Bay.

This included the notorious 'Collateral Murder' video, which showed the July 2007 killing by an American Apache helicopter crew of eleven civilians, including Reuters journalists Namir Noor-Eldeen, 22, and Saeed Chmagh, 40.

The video, recorded by the helicopter gunsight, showed the helicopter crew firing into a group of Iraqi civilian men in Baghdad after being given permission from a commanding officer, killing 11 men and seriously wounding two children.

Joel Smith, representing the US, disputed the claim from Assange's legal team that the sentence Assange would face in the US would be 'disproportionate' and a breach of his human rights.

He dismissed the 175-year prison sentence Assange's barristers said he would face if extradited as 'calculated by simply totting up the maximum sentence for every single offense.'

Mr Smith added that Assange's barristers had said he would face a sentence of 30-40 years.

He said:

'Other cases involving unauthorized disclosures of classified information to the media have led to significantly lower sentences.'

He gave three examples where defendants were given sentences of 42, 48, and 63 months, despite the 'maximum exposure' in these cases running to as many as 130 years.

The maximum sentence given for the same offenses Assange is facing under the Espionage Act was 63 months.

He added that sentencing would follow guidelines, and would reflect consideration of aggravating and mitigation factors.

Mr Smith said the alleged offences were 'extremely serious' and that if the sentence was a lengthy one 'that would reflect the fact his conduct had been aggravated.'

He added:

'Looked at through an American lens the offense is grave.

'Looked at through a UK lens the offence is grave. And entirely unprecedented.'

He gave a list of Assange's alleged offending, including 'the accusation of encouraging others to circumvent legal safeguards on information to provide information to WikiLeaks for

dissemination.

'The continuing pattern of illegally procuring and providing protected information to WikiLeaks for distribution to the public.

'The recruitment of Manning and other hackers, the encouragement of Manning who was subject to the American equivalent of the Official Secrets Act, assisting her to crack a password.

'The obvious point of naming sources, who were put in danger.'

He added:

'That's a sweep of offending. It's beyond the scope of anything that any of the criminal courts in this country have had to grapple with.'

Mr Smith said that given 'such grave and unprecedented criminality' it could not be said that a lengthy sentence would be disproportionate.

Responding to the US case, Edward Fitzgerald, KC, repeated that Assange was being prosecuted on political grounds and that it was not legal to extradite him on this basis.

He said the absence of any mention of the political offense exception in the 2003 Extradition Act did not amount to disapplying it from individual treaties that include it.

He said:

'The act is silent. You can't read into that act a deliberate omission. You cannot say the act disappplies a provision that's in every treaty we sign with other countries.

'You can't say the silence means it expressly disappplies its appearance in a treaty.'

He said the political offenses exception was included in almost every treaty the UK had signed, and that US, UN, and Interpol treaties always include this provision.

'In what sense can it be properly said this [exception] is out of date? It's not out of date.'

He also said that as a non-US citizen, Assange risked being denied rights available to a US citizen.

He said:

'Mr [Mike] Pompeo said Assange wouldn't have these rights because he's a foreigner, and that's evidence he might be prejudiced in the USA.'

This included, he said, US constitutional rights, including the First Amendment right which guarantees freedom of the press, which US citizens are entitled to.

He continued:

'So there is a real risk, said to be 15 percent, he may well be prejudiced by that approach and put in a position where he's discriminated against because of his status

and loses his right that US citizens would have.'

Mark Summers, KC, another member of Assange's legal team said there had been no reference to the fact the material he published exposed war crimes.

The barrister said this was 'the exposure of a state-level crime'.

He said the barristers for the US authorities were dodging the issue when they accused Assange of questioning the probity of US prosecutor Gordon Kromberg when they alleged the extradition was politically motivated.

He said:

'We don't suggest that Mr Kromberg is a lying individual or that he's personally not carrying out his prosecutorial duties in good faith.

'We say that the prosecution and extradition is a decision taken way above his head. You can't focus on the sheep and ignore the shepherd.

'What happened is state retaliation ordered from the very top.'

Mr Summers said this was reflected in the fact Assange had been denounced at senior government level, and then-president Trump was drawing up plans to assassinate him.

He said:

'It was submitted to you that the US government has acted at all times in good faith in bringing this prosecution.

'We don't understand how that can be advanced with a straight face in the face of evidence the president was planning on kidnapping and killing him.'

He also reiterated that Assange had gone to 'extraordinary' lengths in the year prior to publication to redact names from the documents and that he could not be held responsible for their eventual publication.

The barrister said the eventual publication of the names by third parties who gained access to the encrypted files was 'Unintended, unforeseen and unwanted.

'At best Mr Assange could be alleged to have been reckless in the provision of the key to Mr Lee. It would be an absurd allegation to make but that's the highest anyone could place it.'

He added that there was 'no proof at all that any harm actually eventuated' to any of the people named in the leaked documents.

Mr Summers also returned to what he described as the 'horrendous punishment' awaiting Assange were he to be extradited to the US.

He said Assange would be imprisoned for the rest of his natural life, a punishment, he said, 'that would shock the conscience of every journalist around the world.'

He said the courts in the UK should have carried out a balancing exercise on Assange's

actions to determine the public interest in the disclosures.

He noted that the Strasbourg court deemed 'exposure of state-level crimes as the very highest level of public interest.'

'The crimes being discussed here were real and ongoing and were happening then to real people. And the disclosures had the capacity and capability of stopping that happening, and they did.

'Drone killings in Pakistan came to an end, the war in Iraq came to an end'.

He said that in a balancing exercise on whether the disclosures were in the public interest 'colossal, ongoing, real criminal wrongdoing outweighs the risk of some harm to some of the criminals performing or facilitating the criminality.'

Judge Dame Victoria Sharp challenged him on whether all the people named in the leaked documents were criminals.

Mr Summers replied that 'their names are in there because they have engaged in the criminality that's been exposed.

'The fact is there's context to these names. They are the names of people who have facilitated America doing what the disclosures reveal them to have been doing.'

He added that even if they were innocent, the fact the disclosures protected people against practices like rendition and war crimes would outweigh the potential harm to them.

Mr Summers said there was no guarantee the US would not subject Assange to the death penalty in the event of his extradition.

He said:

'We don't understand why there is no usual death penalty assurance in this case.'

'The consequences of it are that discharge must follow if they continue to decline to give it.'

The judges have reserved their decision.

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