I was deeply shaken while witnessing yesterday’s events in Westminster Magistrates Court. Every decision was railroaded through over the scarcely heard arguments and objections of Assange’s legal team, by a magistrate who barely pretended to be listening.

Before I get on to the blatant lack of fair process, the first thing I must note was Julian’s condition. I was badly shocked by just how much weight my friend has lost, by the speed his hair has receded and by the appearance of premature and vastly accelerated ageing. He has a pronounced limp I have never seen before. Since his arrest he has lost over 15 kg in weight.

But his physical appearance was not as shocking as his mental deterioration. When asked to give his name and date of birth, he struggled visibly over several seconds to recall both. I will come to the important content of his statement at the end of proceedings in due course, but his difficulty in making it was very evident, it was a real struggle for him to articulate the words and focus his train of thought.

Until yesterday I had always been quietly sceptical of those who claimed that Julian’s treatment amounted to torture — even of Nils Melzer, the UN Special Rapporteur on Torture — and sceptical of those who suggested he may be subject to debilitating drug treatments. But having attended the trials in Uzbekistan of several victims of extreme torture, and having worked with survivors from Sierra Leone and elsewhere, I can tell you that yesterday changed my mind entirely and Julian exhibited exactly the symptoms of a torture victim brought blinking into the light, particularly in terms of disorientation, confusion, and the real struggle to assert free will through the fog of learned helplessness.

I had been even more sceptical of those who claimed, as a senior member of his legal team did to me on Sunday night, that they were worried that Julian might not live to the end of the extradition process. I now find myself not only believing it, but haunted by the thought. Everybody in that court yesterday saw that one of the greatest journalists and most important dissidents of our times is being tortured to death by the state, before our eyes. To see my friend, the most articulate man, the fastest thinker, I have ever known, reduced to that shambling and incoherent wreck, was unbearable. Yet the agents of the state, particularly the callous magistrate Vanessa Baraitser, were not just prepared but eager to be a part of this bloodsport. She actually told him that if he were incapable of following proceedings, then his lawyers could explain what had happened to him later. The question of why a man who, by the very charges against him, was acknowledged to be highly intelligent and competent, had been reduced by the state to somebody incapable of following court proceedings, gave her not a millisecond of concern.

The charge against Julian is very specific; conspiring with Chelsea Manning to publish the Iraq War logs, the Afghanistan war logs and the State Department cables. The charges are nothing to do with Sweden, nothing to do with sex, and nothing to do with the 2016 US election; a simple clarification the mainstream media appears incapable of understanding.

The purpose of yesterday’s hearing was case management; to determine the timetable for the extradition proceedings. The key points at issue were that Julian’s defence was requesting more time to prepare their evidence; and arguing that political offences were specifically excluded from the extradition treaty. There should, they argued, therefore be a preliminary hearing to determine whether the extradition treaty applied at all.
The reasons given by Assange's defence team for more time to prepare were both compelling and startling. They had very limited access to their client in jail and had not been permitted to hand him any documents about the case until one week ago. He had also only just been given limited computer access, and all his relevant records and materials had been seized from the Ecuadorean Embassy by the US Government; he had no access to his own materials for the purpose of preparing his defence.

Furthermore, the defence argued, they were in touch with the Spanish courts about a very important and relevant legal case in Madrid which would provide vital evidence. It showed that the CIA had been directly ordering spying on Julian in the Embassy through a Spanish company, UC Global, contracted to provide security there. Crucially this included spying on privileged conversations between Assange and his lawyers discussing his defence against these extradition proceedings, which had been in train in the USA since 2010. In any normal process, that fact would in itself be sufficient to have the extradition proceedings dismissed. Incidentally I learnt on Sunday that the Spanish material produced in court, which had been commissioned by the CIA, specifically includes high resolution video coverage of Julian and I discussing various matters.

The evidence to the Spanish court also included a CIA plot to kidnap Assange, which went to the US authorities’ attitude to lawfulness in his case and the treatment he might expect in the United States. Julian’s team explained that the Spanish legal process was happening now and the evidence from it would be extremely important, but it might not be finished and thus the evidence not fully validated and available in time for the current proposed timetable for the Assange extradition hearings.

For the prosecution, James Lewis QC stated that the government strongly opposed any delay being given for the defence to prepare, and strongly opposed any separate consideration of the question of whether the charge was a political offence excluded by the extradition treaty. Baraitser took her cue from Lewis and stated categorically that the date for the extradition hearing, 25 February, could not be changed. She was open to changes in dates for submission of evidence and responses before this, and called a ten minute recess for the prosecution and defence to agree these steps.

What happened next was very instructive. There were five representatives of the US government present (initially three, and two more arrived in the course of the hearing), seated at desks behind the lawyers in court. The prosecution lawyers immediately went into huddle with the US representatives, then went outside the courtroom with them, to decide how to respond on the dates.

After the recess the defence team stated they could not, in their professional opinion, adequately prepare if the hearing date were kept to February, but within Baraitser’s instruction to do so they nevertheless outlined a proposed timetable on delivery of evidence. In responding to this, Lewis’ junior counsel scurried to the back of the court to consult the Americans again while Lewis actually told the judge he was “taking instructions from those behind”. It is important to note that as he said this, it was not the UK Attorney-General’s office who were being consulted but the US Embassy. Lewis received his American instructions and agreed that the defence might have two months to prepare their evidence (they had said they needed an absolute minimum of three) but the February hearing date may not be moved. Baraitser gave a ruling agreeing everything Lewis had said.
At this stage it was unclear why we were sitting through this farce. The US government was dictating its instructions to Lewis, who was relaying those instructions to Baraitser, who was ruling them as her legal decision. The charade might as well have been cut and the US government simply sat on the bench to control the whole process. Nobody could sit there and believe they were in any part of a genuine legal process or that Baraitser was giving a moment’s consideration to the arguments of the defence. Her facial expressions on the few occasions she looked at the defence ranged from contempt through boredom to sarcasm. When she looked at Lewis she was attentive, open and warm.

The extradition is plainly being rushed through in accordance with a Washington dictated timetable. Apart from a desire to preempt the Spanish court providing evidence on CIA activity in sabotaging the defence, what makes the February date so important to the USA? I would welcome any thoughts.

Baraitser dismissed the defence’s request for a separate prior hearing to consider whether the extradition treaty applied at all, without bothering to give any reason why (possibly she had not properly memorised what Lewis had been instructing her to agree with). Yet this is Article 4 of the UK/US Extradition Treaty 2007 in full:

**ARTICLE 4**

**Political and Military Offences**

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

   a. an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought to or to submit the case to their competent authorities for decision as to prosecution;

   b. a murder or other violent crime against the person of a Head of State or of a member of the Head of State’s family;

   c. murder, manslaughter, malicious wounding, or inflicting grievous bodily harm;

   d. an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

   e. placing or using, or threatening to place or use, an explosive, incendiary, or destructive device or firearm capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

   f. possession of an explosive, incendiary, or destructive device capable of endangering life, of causing grievous bodily harm, or of causing substantial property damage;

   g. an attempt or a conspiracy to commit, participation in the commission of, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to any of the foregoing offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated. In the United States, the executive branch is the competent authority for the purposes of this Article.

4. The competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. In the United States, the executive branch is the competent authority for the purposes of this Article.

On the face of it, what Assange is accused of is the very definition of a political offence – if this is not, then what is? It is not covered by any of the exceptions from that list. There is every reason to consider whether this charge is excluded by the extradition treaty, and to do so before the long and very costly process of considering all the evidence should the treaty apply. But Baraitser simply dismissed the argument out of hand.

Just in case anybody was left in any doubt as to what was happening here, Lewis then stood up and suggested that the defence should not be allowed to waste the court’s time with a lot of arguments. All arguments for the substantive hearing should be given in writing in advance and a “guillotine should be applied” (his exact words) to arguments and witnesses in court, perhaps of five hours for the defence. The defence had suggested they would need more than the scheduled five days to present their case. Lewis countered that the entire hearing should be over in two days. Baraitser said this was not procedurally the correct moment to agree this but she will consider it once she had received the evidence bundles.
Baraitser then capped it all by saying the February hearing will be held, not at the comparatively open and accessible Westminster Magistrates Court where we were, but at Belmarsh Magistrates Court, the grim high security facility used for preliminary legal processing of terrorists, attached to the maximum security prison where Assange is being held. There are only six seats for the public in even the largest court at Belmarsh, and the object is plainly to evade public scrutiny and make sure that Baraitser is not exposed in public again to a genuine account of her proceedings, like this one you are reading. I will probably be unable to get in to the substantive hearing at Belmarsh.

Plainly the authorities were disconcerted by the hundreds of good people who had turned up to support Julian. They hope that far fewer will get to the much less accessible Belmarsh. I am fairly certain (and recall I had a long career as a diplomat) that the two extra American government officials who arrived halfway through proceedings were armed security personnel, brought in because of alarm at the number of protestors around a hearing in which were present senior US officials. The move to Belmarsh may be an American initiative.

Assange’s defence team objected strenuously to the move to Belmarsh, in particular on the grounds that there are no conference rooms available there to consult their client and they have very inadequate access to him in the jail. Baraitser dismissed their objection offhand and with a very definite smirk.

Finally, Baraitser turned to Julian and ordered him to stand, and asked him if he had understood the proceedings. He replied in the negative, said that he could not think, and gave every appearance of disorientation. Then he seemed to find an inner strength, drew himself up a little, and said:

> I do not understand how this process is equitable. This superpower had 10 years to prepare for this case and I can’t even access my writings. It is very difficult, where I am, to do anything. These people have unlimited resources.

The effort then seemed to become too much, his voice dropped and he became increasingly confused and incoherent. He spoke of whistleblowers and publishers being labeled enemies of the people, then spoke about his children’s DNA being stolen and of being spied on in his meetings with his psychologist. I am not suggesting at all that Julian was wrong about these points, but he could not properly frame or articulate them. He was plainly not himself, very ill and it was just horribly painful to watch. Baraitser showed neither sympathy nor the least concern. She tartly observed that if he could not understand what had happened, his lawyers could explain it to him, and she swept out of court.

The whole experience was profoundly upsetting. It was very plain that there was no genuine process of legal consideration happening here. What we had was a naked demonstration of the power of the state, and a naked dictation of proceedings by the Americans. Julian was in a box behind bulletproof glass, and I and the thirty odd other members of the public who had squeezed in were in a different box behind more bulletproof glass. I do not know if he could see me or his other friends in the court, or if he was capable of recognising anybody. He gave no indication that he did.

In Belmarsh he is kept in complete isolation for 23 hours a day. He is permitted 45 minutes exercise. If he has to be moved, they clear the corridors before he walks down them and they lock all cell doors to ensure he has no contact with any other prisoner outside the short and strictly supervised exercise period. There is no possible justification for this inhuman regime, used on major terrorists, being imposed on a publisher who is a remand prisoner.
I have been both cataloguing and protesting for years the increasingly authoritarian powers of the UK state, but that the most gross abuse could be so open and undisguised is still a shock. The campaign of demonisation and dehumanisation against Julian, based on government and media lie after government and media lie, has led to a situation where he can be slowly killed in public sight, and arraigned on a charge of publishing the truth about government wrongdoing, while receiving no assistance from "liberal" society.

Unless Julian is released shortly he will be destroyed. If the state can do this, then who is next?

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Woolwich Crown Court is designed to impose the power of the state. Normal courts in this country are public buildings, deliberately placed by our ancestors right in the centre of towns, almost always just up a few steps from a main street. The major purpose of their positioning and of their architecture was to facilitate public access in the belief that it is vital that justice can be seen by the public.

Woolwich Crown Court, which hosts Belmarsh Magistrates Court, is built on totally the opposite principle. It is designed with no other purpose than to exclude the public. Attached to a prison on a windswept marsh far from any normal social centre, an island accessible only through navigating a maze of dual carriageways, the entire location and architecture of the building is predicated on preventing public access. It is surrounded by a continuation of the same extremely heavy duty steel paling barrier that surrounds the prison. It is the most extraordinary thing, a courthouse which is a part of the prison system itself, a place where you are already considered guilty and in jail on arrival. Woolwich Crown Court is nothing but the physical negation of the presumption of innocence, the very incarnation of injustice in unyielding steel, concrete and armoured glass. It has precisely the same relationship to the administration of justice as Guantanamo Bay or the Lubyanka. It is in truth just the sentencing wing of Belmarsh prison.

When enquiring about facilities for the public to attend the hearing, an Assange activist was told by a member of court staff that we should realise that Woolwich is a “counter-terrorism court”. That is true de facto, but in truth a “counter-terrorism court” is an institution unknown to the UK constitution. Indeed, if a single day at Woolwich Crown Court does not convince you the existence of liberal democracy is now a lie, then your mind must be very closed indeed.

Extradition hearings are not held at Belmarsh Magistrates Court inside Woolwich Crown Court. They are always held at Westminster Magistrates Court as the application is deemed to be delivered to the government at Westminster. Now get your head around this. This hearing is at Westminster Magistrates Court. It is being held by the Westminster magistrates and Westminster court staff, but located at Belmarsh Magistrates Court inside Woolwich Crown Court. All of which weird convolution is precisely so they can use the “counter-terrorist court” to limit public access and to impose the fear of the power of the state.

One consequence is that, in the courtroom itself, Julian Assange is confined at the back of the court behind a bulletproof glass screen. He made the point several times during proceedings that this makes it very difficult for him to see and hear the proceedings. The magistrate, Vanessa Baraitser, chose to interpret this with studied dishonesty as a problem caused by the very faint noise of demonstrators outside, as opposed to a problem caused by Assange being locked away from the court in a massive bulletproof glass box.

Now there is no reason at all for Assange to be in that box, designed to restrain extremely physically violent terrorists. He could sit, as a defendant at a hearing normally would, in the body of the court with his lawyers. But the cowardly and vicious Baraitser has refused repeated and persistent requests from the defence for Assange to be allowed to sit with his lawyers. Baraitser of course is but a puppet, being supervised by Chief Magistrate Lady Arbuthnot, a woman so enmeshed in the defence and security service establishment I can conceive of no way in which her involvement in this case could be more corrupt.
It does not matter to Baraitser or Arbuthnot if there is any genuine need for Assange to be incarcerated in a bulletproof box, or whether it stops him from following proceedings in court. Baraitser’s intention is to humiliate Assange, and to instill in the rest of us horror at the vast crushing power of the state. The inexorable strength of the sentencing wing of the nightmarish Belmarsh Prison must be maintained. If you are here, you are guilty.

It’s the Lubyanka. You may only be a remand prisoner. This may only be a hearing not a trial. You may have no history of violence and not be accused of any violence. You may have three of the country’s most eminent psychiatrists submitting reports of your history of severe clinical depression and warning of suicide. But I, Vanessa Baraitser, am still going to lock you up in a box designed for the most violent of terrorists. To show what we can do to dissidents. And if you can’t then follow court proceedings, all the better.

You will perhaps better accept what I say about the Court when I tell you that, for a hearing being followed all round the world, they have brought it to a courtroom which had a total number of sixteen seats available to members of the public. 16. To make sure I got one of those 16 and could be your man in the gallery, I was outside that great locked iron fence queuing in the cold, wet and wind from 6am. At 8am the gate was unlocked, and I was able to walk inside the fence to another queue before the doors of the courtroom, where despite the fact notices clearly state the court opens to the public at 8am, I had to queue outside the building again for another hour and forty minutes. Then I was processed through armoured airlock doors, through airport type security, and had to queue behind two further locked doors, before finally getting to my seat just as the court started at 10am. By which stage the intention was we should have been thoroughly cowed and intimidated, not to mention drenched and potentially hypothermic.

There was a separate media entrance and a media room with live transmission from the courtroom, and there were so many scores of media I thought I could relax and not worry as the basic facts would be widely reported. In fact, I could not have been more wrong. I followed the arguments very clearly every minute of the day, and not a single one of the most important facts and arguments today has been reported anywhere in the mainstream media. That is a bold claim, but I fear it is perfectly true. So I have much work to do to let the world know what actually happened. The mere act of being an honest witness is suddenly extremely important, when the entire media has abandoned that role.

James Lewis QC made the opening statement for the prosecution. It consisted of two parts, both equally extraordinary. The first and longest part was truly remarkable for containing no legal argument, and for being addressed not to the magistrate but to the media. It is not just that it was obvious that is where his remarks were aimed, he actually stated on two occasions during his opening statement that he was addressing the media, once repeating a sentence and saying specifically that he was repeating it again because it was important that the media got it.

I am frankly astonished that Baraitser allowed this. It is completely out of order for a counsel to address remarks not to the court but to the media, and there simply could not be any clearer evidence that this is a political show trial and that Baraitser is complicit in that. I have not the slightest doubt that the defence would have been pulled up extremely quickly had they started addressing remarks to the media. Baraitser makes zero pretence of being anything other than in thrall to the Crown, and by extension to the US Government.
The points which Lewis wished the media to know were these: it is not true that mainstream outlets like the 
Guardian and New York Times are also threatened by the charges against Assange, because Assange was not 
charged with publishing the cables but only with publishing the names of informants, and with cultivating Manning 
and assisting him to attempt computer hacking. Only Assange had done these things, not mainstream outlets.

Lewis then proceeded to read out a series of articles from the mainstream media attacking Assange, as evidence 
that the media and Assange were not in the same boat. The entire opening hour consisted of the prosecution 
addressing the media, attempting to drive a clear wedge between the media and Wikileaks and thus aimed at 
reducing media support for Assange. It was a political address, not remotely a legal submission. At the same time,
the prosecution had prepared reams of copies of this section of Lewis' address, which were handed out to the 
media and given them electronically so they could cut and paste.

Following an adjournment, magistrate Baraitser questioned the prosecution on the veracity of some of these 
claims. In particular, the claim that newspapers were not in the same position because Assange was charged not 
with publication, but with "aiding and abetting" Chelsea Manning in getting the material, did not seem consistent 
with Lewis' reading of the 1989 Official Secrets Act, which said that merely obtaining and publishing any 
government secret was an offence. Surely, Baraitser suggested, that meant that newspapers just publishing the 
Manning leaks would be guilty of an offence?

This appeared to catch Lewis entirely off guard. The last thing he had expected was any perspicacity from Baraitser, 
whose job was just to do what he said. Lewis hummed and hawed, put his glasses on and off several times, 
adjusted his microphone repeatedly and picked up a succession of pieces of paper from his brief, each of which 
appeared to surprise him by its contents, as he waved them helplessly in the air and said he really should have cited 
the Shayler case but couldn't find it. It was liking watching Columbo with none of the charm and without the killer 
question at the end of the process.

Suddenly Lewis appeared to come to a decision. Yes, he said much more firmly. The 1989 Official Secrets Act had 
been introduced by the Thatcher Government after the Ponting Case, specifically to remove the public interest 
defence and to make unauthorised possession of an official secret a crime of strict liability - meaning no matter 
how you got it, publishing and even possessing made you guilty. Therefore, under the principle of dual criminality, 
Assange was liable for extradition whether or not he had aided and abetted Manning. Lewis then went on to add 
that any journalist and any publication that printed the official secret would therefore also be committing an 
offence, no matter how they had obtained it, and no matter if it did or did not name informants.

Lewis had thus just flat out contradicted his entire opening statement to the media stating that they need not worry 
as the Assange charges could never be applied to them. And he did so straight after the adjournment, immediately 
after his team had handed out copies of the argument he had now just completely contradicted. I cannot think it 
has often happened in court that a senior lawyer has proven himself so absolutely and so immediately to be an 
unmitigated and ill-motivated liar. This was undoubtedly the most breathtaking moment in today's court hearing.

Yet remarkably I cannot find any mention anywhere in the mainstream media that this happened at all. What I can 
find, everywhere, is the mainstream media reporting, via cut and paste, Lewis's first part of his statement on why the 
prosecution of Assange is not a threat to press freedom; but nobody seems to have reported that he totally 
abandoned his own argument five minutes later. Were the journalists too stupid to understand the exchanges?
The explanation is very simple. The clarification coming from a question Baraitser asked Lewis, there is no printed or electronic record of Lewis’ reply. His original statement was provided in cut and paste format to the media. His contradiction of it would require a journalist to listen to what was said in court, understand it and write it down. There is no significant percentage of mainstream media journalists who command that elementary ability nowadays. “Journalism” consists of cut and paste of approved sources only. Lewis could have stabbed Assange to death in the courtroom, and it would not be reported unless contained in a government press release.

I was left uncertain of Baraitser’s purpose in this. Plainly she discomfited Lewis very badly on this point, and appeared rather to enjoy doing so. On the other hand the point she made is not necessarily helpful to the defence. What she was saying was essentially that Julian could be extradited under dual criminality, from the UK point of view, just for publishing, whether or not he conspired with Chelsea Manning, and that all the journalists who published could be charged too. But surely this is a point so extreme that it would be bound to be invalid under the Human Rights Act? Was she pushing Lewis to articulate a position so extreme as to be untenable — giving him enough rope to hang himself — or was she slavering at the prospect of not just extraditing Assange, but of mass prosecutions of journalists?

The reaction of one group was very interesting. The four US government lawyers seated immediately behind Lewis had the grace to look very uncomfortable indeed as Lewis baldly declared that any journalist and any newspaper or broadcast media publishing or even possessing any government secret was committing a serious offence. Their entire strategy had been to pretend not to be saying that.

Lewis then moved on to conclude the prosecution’s arguments. The court had no decision to make, he stated. Assange must be extradited. The offence met the test of dual criminality as it was an offence both in the USA and UK. UK extradition law specifically barred the court from testing whether there was any evidence to back up the charges. If there had been, as the defence argued, abuse of process, the court must still extradite and then the court must pursue the abuse of process as a separate matter against the abusers. (This is a particularly specious argument as it is not possible for the court to take action against the US government due to sovereign immunity, as Lewis well knows). Finally, Lewis stated that the Human Rights Act and freedom of speech were completely irrelevant in extradition proceedings.

Edward Fitzgerald then arose to make the opening statement for the defence. He started by stating that the motive for the prosecution was entirely political, and that political offences were specifically excluded under article 4.1 of the UK/US extradition treaty. He pointed out that at the time of the Chelsea Manning Trial and again in 2013 the Obama administration had taken specific decisions not to prosecute Assange for the Manning leaks. This had been reversed by the Trump administration for reasons that were entirely political.

On abuse of process, Fitzgerald referred to evidence presented to the Spanish criminal courts that the CIA had commissioned a Spanish security company to spy on Julian Assange in the Embassy, and that this spying specifically included surveillance of Assange’s privileged meetings with his lawyers to discuss extradition. For the state trying to extradite to spy on the defendant’s client-lawyer consultations is in itself grounds to dismiss the case. (This point is undoubtedly true. Any decent judge would throw the case out summarily for the outrageous spying on the defence lawyers).

Fitzgerald went on to say the defence would produce evidence the CIA not only spied on Assange and his lawyers, but actively considered kidnapping or poisoning him, and that this showed there was no commitment to proper rule of law in this case.
Fitzgerald said that the prosecution’s framing of the case contained deliberate misrepresentation of the facts that also amounted to abuse of process. It was not true that there was any evidence of harm to informants, and the US government had confirmed this in other fora, e.g. in Chelsea Manning’s trial. There had been no conspiracy to hack computers, and Chelsea Manning had been acquitted on that charge at court martial. Lastly it was untrue that WikiLeaks had initiated publication of unredacted names of informants, as other media organisations had been responsible for this first.

Again, so far as I can see, while the US allegation of harm to informants is widely reported, the defence’s total refutation on the facts and claim that the fabrication of facts amounts to abuse of process is not much reported at all. Fitzgerald finally referred to US prison conditions, the impossibility of a fair trial in the US, and the fact the Trump Administration has stated foreign nationals will not receive First Amendment protections, as reasons that extradition must be barred. You can read the whole defence statement, but in my view the strongest passage was on why this is a political prosecution, and thus precluded from extradition.

For the purposes of section 81(a), I next have to deal with the question of how this politically motivated prosecution satisfies the test of being directed against Julian Assange because of his political opinions. The essence of his political opinions which have provoked this prosecution are summarised in the reports of Professor Feldstein [tab 18], Professor Rogers [tab 40], Professor Noam Chomsky [tab 39] and Professor Kopelman:-

i. He is a leading proponent of an open society and of freedom of expression.

ii. He is anti-war and anti-imperialism.

iii. He is a world-renowned champion of political transparency and of the public’s right to access information on issues of importance – issues such as political corruption, war crimes, torture and the mistreatment of Guantanamo detainees.

5.4. Those beliefs and those actions inevitably bring him into conflict with powerful states including the current US administration, for political reasons. Which explains why he has been denounced as a terrorist and why President Trump has in the past called for the death penalty.

5.5. But I should add his revelations are far from confined to the wrongdoings of the US. He has exposed surveillance by Russia; and published exposes of Mr Assad in Syria; and it is said that WikiLeaks’ revelations about corruption in Tunisia and torture in Egypt were the catalyst for the Arab Spring itself.
5.6. The US say he is no journalist. But you will see a full record of his work in Bundle M. He has been a member of the Australian journalists union since 2009, he is a member of the NUJ and the European Federation of Journalists. He has won numerous media awards including being honoured with the highest award for Australian journalists. His work has been recognised by the Economist, Amnesty International and the Council of Europe. He is the winner of the Martha Gelhorn prize and has been repeatedly nominated for the Nobel Peace Prize, including both last year and this year. You can see from the materials that he has written books, articles and documentaries. He has had articles published in the Guardian, the New York Times, the Washington Post and the New Statesman, just to name a few. Some of the very publications for which his extradition is being sought have been referred to and relied upon in Courts throughout the world, including the UK Supreme Court and the European Court of Human Rights. In short, he has championed the cause of transparency and freedom of information throughout the world.

5.7. Professor Noam Chomsky puts it like this: "in courageousy upholding political beliefs that most of profess to share he has performed an enormous service to all those in the world who treasure the values of freedom and democracy and who therefore demand the right to know what their elected representatives are doing" [see tab 39, paragraph 14]. So Julian Assange’s positive impact on the world is undeniable. The hostility it has provoked from the Trump administration is equally undeniable.

5.8. I am sure you are aware of the legal authorities on this issue: namely whether a request is made because of the defendant’s political opinions. A broad approach has to be adopted when applying the test. In support of this we rely on the case of Re Asilturk [2002] EWHC 2326 (abuse authorities, tab 11, at paras 25 – 26) which clearly establishes that such a wide approach should be adopted to the concept of political opinions. And that will clearly cover Julian Assange’s ideological positions. Moreover, we also rely on cases such as Emilia Gomez v SSHD [2000] INLR 549 at tab 43 of the political offence authorities bundle. These show that the concept of “political opinions” extends to the political opinions imputed to the individual citizen by the state which prosecutes him. For that reason the characterisation of Julian Assange and WikiLeaks as a “non-state hostile intelligence agency” by Mr Pompeo makes clear that he has been targeted for his imputed political opinions. All the experts whose reports you have show that Julian Assange has been targeted because of the political position imputed to him by the Trump administration – as an enemy of America who must be brought down.

Tomorrow the defence continue. I am genuinely uncertain what will happen as I feel at the moment far too exhausted to be there at 6am to queue to get in. But I hope somehow I will contrive another report tomorrow evening.

With grateful thanks to those who donated or subscribed to make this reporting possible.

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This afternoon Julian’s Spanish lawyer, Baltasar Garzon, left court to return to Madrid. On the way out he naturally stopped to shake hands with his client, proffering his fingers through the narrow slit in the bulletproof glass cage. Assange half stood to take his lawyer’s hand. The two security guards in the cage with Assange immediately sprang up, putting hands on Julian and forcing him to sit down, preventing the handshake.

That was not by any means the worst thing today, but it is a striking image of the senseless brute force continually used against a man accused of publishing documents. That a man cannot even shake his lawyer’s hand goodbye is against the entire spirit in which the members of the legal system like to pretend the law is practised. I offer that startling moment as encapsulating yesterday’s events in court.

Day 2 proceedings had started with a statement from Edward Fitzgerald, Assange’s QC, that shook us rudely into life. He stated that yesterday, on the first day of trial, Julian had twice been stripped naked and searched, eleven times been handcuffed, and five times been locked up in different holding cells. On top of this, all of his court documents had been taken from him by the prison authorities, including privileged communications between his lawyers and himself, and he had been left with no ability to prepare to participate in today’s proceedings.

Magistrate Baraitser looked at Fitzgerald and stated, in a voice laced with disdain, that he had raised such matters before and she had always replied that she had no jurisdiction over the prison estate. He should take it up with the prison authorities. Fitzgerald remained on his feet, which drew a very definite scowl from Baraitser, and replied that of course they would do that again, but this repeated behaviour by the prison authorities threatened the ability of the defence to prepare. He added that regardless of jurisdiction, in his experience it was common practice for magistrates and judges to pass on comments and requests to the prison service where the conduct of the trial was affected, and that jails normally listened to magistrates sympathetically.

Baraitser flat-out denied any knowledge of such a practice, and stated that Fitzgerald should present her with written arguments setting out the case law on jurisdiction over prison conditions. This was too much even for prosecution counsel James Lewis, who stood up to say the prosecution would also want Assange to have a fair hearing, and that he could confirm that what the defence were suggesting was normal practice. Even then, Baraitser still refused to intervene with the prison. She stated that if the prison conditions were so bad as to reach the very high bar of making a fair hearing impossible, the defence should bring a motion to dismiss the charges on those grounds. Otherwise they should drop it.

Both prosecution and defence seemed surprised by Baraitser’s claim that she had not heard of what they both referred to as common practice. Lewis may have been genuinely concerned at the shocking description of Assange’s prison treatment yesterday; or he may have just had warning klaxons going off in his head screaming “mistrial”. But the net result is Baraitser will attempt to do nothing to prevent Julian’s physical and mental abuse in jail nor to try to give him the ability to participate in his defence. The only realistic explanation that occurs to me is that Baraitser has been warned off, because this continual mistreatment and confiscation of documents is on senior government authority.

A last small incident for me to recount: having queued again from the early hours, I was at the final queue before the entrance to the public gallery, when the name was called out of Kristin氡afsson, editor of WikiLeaks, with whom I was talking at the time. Kristin identified himself, and was told by the court official he was barred from the public gallery.
Now I was with Kristin throughout the entire proceedings the previous day, and he had done absolutely nothing amiss – he is rather a quiet gentleman. When he was called for, it was by name and by job description – they were specifically banning the editor of Wikileaks from the trial. Kristin asked why and was told it was a decision of the Court.

At this stage John Shipton, Julian’s father, announced that in this case the family members would all leave too, and they did so, walking out of the building. They and others then started tweeting the news of the family walkout. This appeared to cause some consternation among court officials, and fifteen minutes later Kristin was re-admitted. We still have no idea what lay behind this. Later in the day journalists were being briefed by officials it was simply over queue-jumping, but that seems improbable as he was removed by staff who called him by name and title, rather than had spotted him as a queue-jumper.

None of the above goes to the official matter of the case. All of the above tells you more about the draconian nature of the political show-trial which is taking place than does the charade being enacted in the body of the court. There were moments today when I got drawn into the court process and achieved the suspension of disbelief you might do in theatre, and began thinking “Wow, this case is going well for Assange”. Then an event such as those recounted above kicks in, a coldness grips your heart, and you recall there is no jury here to be convinced. I simply do not believe that anything said or proved in the courtroom can have an impact on the final verdict of this court.

So to the actual proceedings in the case.

For the defence, Mark Summers QC stated that the USA charges were entirely dependent on three factual accusations of Assange behaviour:

1) Assange helped Manning to decode a hash key to access classified material.
   Summers stated this was a provably false allegation from the evidence of the Manning court-martial.

2) Assange solicited the material from Manning
   Summers stated this was provably wrong from information available to the public

3) Assange knowingly put lives at risk
   Summers stated this was provably wrong both from publicly available information and from specific involvement of the US government.

In summary, Summers stated the US government knew that the allegations being made were false as to fact, and they were demonstrably made in bad faith. This was therefore an abuse of process which should lead to dismissal of the extradition request. He described the above three counts as “rubbish, rubbish and rubbish”.

Summers then walked through the facts of the case. He said the charges from the USA divide the materials leaked by Manning to Wikileaks into three categories:

a) Diplomatic Cables
b) Guantanamo detainee assessment briefs
c) Iraq War rules of engagement
d) Afghan and Iraqi war logs

Summers then methodically went through a), b), c) and d) relating each in turn to alleged behaviours 1), 2) and 3), making twelve counts of explanation and exposition in all. This comprehensive account took some four hours and I shall not attempt to capture it here. I will rather give highlights, but will relate occasionally to the alleged behaviour number and/or the alleged materials letter. I hope you follow that – it took me some time to do so!
On 1) Summers at great length demonstrated conclusively that Manning had access to each material a) b) c) d) provided to Wikileaks without needing any code from Assange, and had that access before ever contacting Assange. Nor had Manning needed a code to conceal her identity as the prosecution alleged – the database for intelligence analysts Manning could access – as could thousands of others – did not require a username or password to access it from a work military computer. Summers quoted testimony of several officers from Manning’s court-martial to confirm this. Nor would breaking the systems admin code on the system give Manning access to any additional classified databases. Summers quoted evidence from the Manning court-martial, where this had been accepted, that the reason Manning wanted to get in to systems admin was to allow soldiers to put their video-games and movies on their government laptops, which in fact happened frequently.

Magistrate Baraitser twice made major interruptions. She observed that if Chelsea Manning did not know she could not be traced as the user who downloaded the databases, she might have sought Assange’s assistance to crack a code to conceal her identity from ignorance she did not need to do that, and to assist would still be an offence by Assange.

Summers pointed out that Manning knew that she did not need a username and password, because she actually accessed all the materials without one. Baraitser replied that this did not constitute proof she knew she could not be traced. Summers said in logic it made no sense to argue that she was seeking a code to conceal her user ID and password, where there was no user ID and password. Baraitser replied again he could not prove that. At this point Summers became somewhat testy and short with Baraitser, and took her through the court martial evidence again. Of which more...

Baraitser also made the point that even if Assange were helping Manning to crack an admin code, even if it did not enable Manning to access any more databases, that still was unauthorised use and would constitute the crime of aiding and abetting computer misuse, even if for an innocent purpose.

After a brief break, Baraitser came back with a real zinger. She told Summers that he had presented the findings of the US court martial of Chelsea Manning as fact. But she did not agree that her court had to treat evidence at a US court martial, even agreed or uncontested evidence or prosecution evidence, as fact. Summers replied that agreed evidence or prosecution evidence at the US court martial clearly was agreed by the US government as fact, and what was at issue at the moment was whether the US government was charging contrary to the facts it knew. Baraitser said she would return to her point once witnesses were heard.

Baraitser was now making no attempt to conceal a hostility to the defence argument, and seemed irritated they had the temerity to make it. This burst out when discussing c), the Iraq war rules of engagement. Summers argued that these had not been solicited from Manning, but had rather been provided by Manning in an accompanying file along with the Collateral Murder video that showed the murder of Reuters journalists and children. Manning’s purpose, as she stated at her court martial, was to show that the Collateral Murder actions breached the rules of engagement, even though the Department of Defense claimed otherwise. Summers stated that by not including this context, the US extradition request was deliberately misleading as it did not even mention the Collateral Murder video at all.

At this point Baraitser could not conceal her contempt. Try to imagine Lady Bracknell saying “A Handbag” or “the Brighton line”, or if your education didn’t run that way try to imagine Pritti Patel spotting a disabled immigrant. This is a literal quote:

"Are you suggesting, Mr Summers, that the authorities, the Government, should have to provide context for its charges?"
An unfazed Summers replied in the affirmative and then went on to show where the Supreme Court had said so in other extradition cases. Baraitser was showing utter confusion that anybody could claim a significant distinction between the Government and God.

The bulk of Summers’ argument went to refuting behaviour 3), putting lives at risk. This was only claimed in relation to materials a) and d). Summers described at great length the efforts of Wikileaks with media partners over more than a year to set up a massive redaction campaign on the cables. He explained that the unredacted cables only became available after Luke Harding and David Leigh of the Guardian published the password to the cache as the heading to Chapter XI of their book *Wikileaks*, published in February 2011.

Nobody had put 2 and 2 together on this password until the German publication Der Freitag had done so and announced it had the unredacted cables in August 2011. Summers then gave the most powerful arguments of the day.

The US government had been actively participating in the redaction exercise on the cables. They therefore knew the allegations of reckless publication to be untrue.

Once Der Freitag announced they had the unredacted materials, Julian Assange and Sara Harrison instantly telephoned the White House, State Department and US Embassy to warn them named sources may be put at risk. Summers read from the transcripts of telephone conversations as Assange and Harrison attempted to convince US officials of the urgency of enabling source protection procedures – and expressed their bafflement as officials stonewalled them. This evidence utterly undermined the US government’s case and proved bad faith in omitting extremely relevant fact. It was a very striking moment.

With relation to the same behaviour 3) on materials d), Summers showed that the Manning court martial had accepted these materials contained no endangered source names, but showed that Wikileaks had activated a redaction exercise anyway as a “belt and braces” approach.

There was much more from the defence. For the prosecution, James Lewis indicated he would reply in depth later in proceedings, but wished to state that the prosecution does not accept the court martial evidence as fact, and particularly does not accept any of the “self-serving” testimony of Chelsea Manning, whom he portrayed as a convicted criminal falsely claiming noble motives. The prosecution generally rejected any notion that this court should consider the truth or otherwise of any of the facts; those could only be decided at trial in the USA.

Then, to wrap up proceedings, Baraitser dropped a massive bombshell. She stated that although Article 4.1 of the US/UK Extradition Treaty forbade political extraditions, this was only in the Treaty. That exemption does not appear in the UK Extradition Act. On the face of it therefore political extradition is not illegal in the UK, as the Treaty has no legal force on the Court. She invited the defence to address this argument in the morning.

It is now 06.35am and I am late to start queuing...

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In yesterday’s proceedings in court, the prosecution adopted arguments so stark and apparently unreasonable I have been fretting on how to write them up in a way that does not seem like caricature or unfair exaggeration on my part. What has been happening in this court has long moved beyond caricature. All I can do is give you my personal assurance that what I recount actually is what happened.

As usual, I shall deal with procedural matters and Julian's treatment first, before getting in to a clear account of the legal arguments made.

Vanessa Baraitser is under a clear instruction to mimic concern by asking, near the end of every session just before we break anyway, if Julian is feeling well and whether he would like a break. She then routinely ignores his response. Yesterday he replied at some length he could not hear properly in his glass box and could not communicate with his lawyers (at some point yesterday they had started preventing him passing notes to his counsel, which I learn was the background to the aggressive prevention of his shaking Garzon's hand goodbye).

Baraitser insisted he might only be heard through his counsel, which given he was prevented from instructing them was a bit rich. This being pointed out, we had a ten minute adjournment while Julian and his counsel were allowed to talk down in the cells – presumably where they could be more conveniently bugged yet again.

On return, Edward Fitzgerald made a formal application for Julian to be allowed to sit beside his lawyers in the court. Julian was “a gentle, intellectual man” and not a terrorist. Baraitser replied that releasing Assange from the dock into the body of the court would mean he was released from custody. To achieve that would require an application for bail.

Again, the prosecution counsel James Lewis intervened on the side of the defence to try to make Julian’s treatment less extreme. He was not, he suggested dffidently, quite sure that it was correct that it required bail for Julian to be in the body of the court, or that being in the body of the court accompanied by security officers meant that a prisoner was no longer in custody. Prisoners, even the most dangerous of terrorists, gave evidence from the witness box in the body of the court next to the lawyers and magistrate. In the High Court prisoners frequently sat with their lawyers in extradition hearings, in extreme cases of violent criminals handcuffed to a security officer.

Baraitser replied that Assange might pose a danger to the public. It was a question of health and safety. How did Fitzgerald and Lewis think that she had the ability to carry out the necessary risk assessment? It would have to be up to Group 4 to decide if this was possible.

Yes, she really did say that. Group 4 would have to decide.

Baraitser started to throw out jargon like a Dalek when it spins out of control. “Risk assessment” and “health and safety” featured a lot. She started to resemble something worse than a Dalek, a particularly stupid local government officer of a very low grade. “No jurisdiction” – “Up to Group 4”. Recovering slightly, she stated firmly that delivery to custody can only mean delivery to the dock of the court, nowhere else in the room. If the defence wanted him in the courtroom where he could hear proceedings better, they could only apply for bail and his release from custody in general. She then peered at both barristers in the hope this would have sat them down, but both were still on their feet.
In his diffident manner (which I confess is growing on me) Lewis said “the prosecution is neutral on this request, of course but, err, I really don’t think that’s right”. He looked at her like a kindly uncle whose favourite niece has just started drinking tequila from the bottle at a family party.

Baraitser concluded the matter by stating that the Defence should submit written arguments by 10am tomorrow on this point, and she would then hold a separate hearing into the question of Julian’s position in the court.

The day had begun with a very angry Magistrate Baraitser addressing the public gallery. Yesterday, she said, a photo had been taken inside the courtroom. It was a criminal offence to take or attempt to take photographs inside the courtroom. Vanessa Baraitser looked at this point very keen to lock someone up. She also seemed in her anger to be making the unfounded assumption that whoever took the photo from the public gallery on Tuesday was still there on Wednesday; I suspect not. Being angry at the public at random must be very stressful for her. I suspect she shouts a lot on trains.

Ms Baraitser is not fond of photography – she appears to be the only public figure in Western Europe with no photo on the internet. Indeed the average proprietor of a rural car wash has left more evidence of their existence and life history on the internet than Vanessa Baraitser. Which is no crime on her part, but I suspect the expunging is not achieved without considerable effort. Somebody suggested to me she might be a hologram, but I think not. Holograms have more empathy.

I was amused by the criminal offence of attempting to take photos in the courtroom. How incompetent would you need to be to attempt to take a photo and fail to do so? And if no photo was taken, how do they prove you were attempting to take one, as opposed to texting your mum? I suppose “attempting to take a photo” is a crime that could catch somebody arriving with a large SLR, tripod and several mounted lighting boxes, but none of those appeared to have made it into the public gallery.

Baraitser did not state whether it was a criminal offence to publish a photograph taken in a courtroom (or indeed to attempt to publish a photograph taken in a courtroom). I suspect it is. Anyway Le Grand Soir has published a translation of my report yesterday, and there you can see a photo of Julian in his bulletproof glass anti-terrorist cage. Not, I hasten to add, taken by me.

We now come to the consideration of yesterday’s legal arguments on the extradition request itself. Fortunately, these are basically fairly simple to summarise, because although we had five hours of legal disquisition, it largely consisted of both sides competing in citing scores of “authorities”, e.g. dead judges, to endorse their point of view, and thus repeating the same points continually with little value from exegesis of the innumerable quotes.

As prefigured yesterday by magistrate Baraitser, the prosecution is arguing that Article 4.1 of the UK/US extradition treaty has no force in law.
The UK and US Governments say that the court enforces domestic law, not international law, and therefore the treaty has no standing. This argument has been made to the court in written form to which I do not have access. But from discussion in court it was plain that the prosecution argue that the Extradition Act of 2003, under which the court is operating, makes no exception for political offences. All previous Extradition Acts had excluded extradition for political offences, so it must be the intention of the sovereign parliament that political offenders can now be extradited.

Opening his argument, Edward Fitzgerald QC argued that the Extradition Act of 2003 alone is not enough to make an actual extradition. The extradition requires two things in place; the general Extradition Act and the Extradition Treaty with the country or countries concerned. “No Treaty, No Extradition” was an unbreakable rule. The Treaty was the very basis of the request. So to say that the extradition was not governed by the terms of the very treaty under which it was made, was to create a legal absurdity and thus an abuse of process. He cited examples of judgements made by the House of Lords and Privy Council where treaty rights were deemed enforceable despite the lack of incorporation into domestic legislation, particularly in order to stop people being extradited to potential execution from British colonies.

Fitzgerald pointed out that while the Extradition Act of 2003 did not contain a bar on extraditions for political offences, it did not state there could not be such a bar in extradition treaties. And the extradition treaty of 2007 was ratified after the 2003 extradition act.
At this stage Baraitser interrupted that it was plain the intention of parliament was that there could be extradition for political offences. Otherwise they would not have removed the bar in previous legislation. Fitzgerald declined to agree, saying the Act did not say extradition for political offences could not be banned by the treaty enabling extradition.

Fitzgerald then continued to say that international jurisprudence had accepted for a century or more that you did not extradite political offenders. No political extradition was in the European Convention on Extradition, the Model United Nations Extradition Treaty and the Interpol Convention on Extradition. It was in every single one of the United States’ extradition treaties with other countries, and had been for over a century, at the insistence of the United States. For both the UK and US Governments to say it did not apply was astonishing and would set a terrible precedent that would endanger dissidents and potential political prisoners from China, Russia and regimes all over the world who had escaped to third countries.

Fitzgerald stated that all major authorities agreed there were two types of political offence. The pure political offence and the relative political offence. A “pure” political offence was defined as treason, espionage or sedition. A “relative” political offence was an act which was normally criminal, like assault or vandalism, conducted with a political motive. Every one of the charges against Assange was a “pure” political offence. All but one were espionage charges, and the computer misuse charge had been compared by the prosecution to breach of the official secrets act to meet the dual criminality test. The overriding accusation that Assange was seeking to harm the political and military interests of the United States was in the very definition of a political offence in all the authorities.

In reply Lewis stated that a treaty could not be binding in English law unless specifically incorporated in English law by Parliament. This was a necessary democratic defence. Treaties were made by the executive which could not make law. This went to the sovereignty of Parliament. Lewis quoted many judgements stating that international treaties signed and ratified by the UK could not be enforced in British courts. “It may come as a surprise to other countries that their treaties with the British government can have no legal force” he joked.

Lewis said there was no abuse of process here and thus no rights were invoked under the European Convention. It was just the normal operation of the law that the treaty provision on no extradition for political offences had no legal standing.

Lewis said that the US government disputes that Assange’s offences are political. In the UK/Australia/US there was a different definition of political offence to the rest of the world. We viewed the “pure” political offences of treason, espionage and sedition as not political offences. Only “relative” political offences – ordinary crimes committed with a political motive – were viewed as political offences in our tradition. In this tradition, the definition of “political” was also limited to supporting a contending political party in a state. Lewis will continue with this argument tomorrow.

That concludes my account of proceedings. I have some important commentary to make on this and will try to do another posting later today. Now rushing to court.

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Please try this experiment for me.
Try asking this question out loud, in a tone of intellectual interest and engagement: “Are you suggesting that the two have the same effect?”.

Now try asking this question out loud, in a tone of hostility and incredulity bordering on sarcasm: “Are you suggesting that the two have the same effect?”.

Firstly, congratulations on your acting skills; you take direction very well. Secondly, is it not fascinating how precisely the same words can convey the opposite meaning dependent on modulation of stress, pitch, and volume?

Yesterday the prosecution continued its argument that the provision in the 2007 UK/US Extradition Treaty that bars extradition for political offences is a dead letter, and that Julian Assange’s objectives are not political in any event. James Lewis QC for the prosecution spoke for about an hour, and Edward Fitzgerald QC replied for the defence for about the same time. During Lewis’s presentation, he was interrupted by Judge Baraitser precisely once. During Fitzgerald’s reply, Baraitser interjected seventeen times.

In the transcript, those interruptions will not look unreasonable:
“Could you clarify that for me Mr Fitzgerald...”
“So how do you cope with Mr Lewis’s point that...”
“But surely that’s a circular argument...”
“But it’s not incorporated, is it?...”

All these and the other dozen interruptions were designed to appear to show the judge attempting to clarify the defence’s argument in a spirit of intellectual testing. But if you heard the tone of Baraitser’s voice, saw her body language and facial expressions, it was anything but.

The false picture a transcript might give is exacerbated by the courtly Fitzgerald’s continually replying to each obvious harassment with “Thank you Madam, that is very helpful”, which again if you were there, plainly meant the opposite. But what a transcript will helpfully nevertheless show was the bully pulpit of Baraitser’s tactic in interrupting Fitzgerald again and again and again, belittling his points and very deliberately indeed preventing him from getting into the flow of his argument. The contrast in every way with her treatment of Lewis could not be more pronounced.
So now to report the legal arguments themselves.

James Lewis for the prosecution, continuing his arguments from the day before, said that Parliament had not included a bar on extradition for political offences in the 2003 Act. It could therefore not be reintroduced into law by a treaty. “To introduce a Political Offences bar by the back door would be to subvert the intention of Parliament.”

Lewis also argued that these were not political offences. The definition of a political offence was in the UK limited to behaviour intended “to overturn or change a government or induce it to change its policy.” Furthermore the aim must be to change government or policy in the short term, not the indeterminate future.

Lewis stated that further the term “political offence” could only be applied to offences committed within the territory where it was attempted to make the change. So to be classified as political offences, Assange would have had to commit them within the territory of the USA, but he did not.

If Baraitser did decide the bar on political offences applied, the court would have to determine the meaning of “political offence” in the UK/US Extradition Treaty and construe the meaning of paragraphs 4.1 and 4.2 of the Treaty. To construe the terms of an international treaty was beyond the powers of the court.

Lewis perorated that the conduct of Julian Assange cannot possibly be classified as a political offence. “It is impossible to place Julian Assange in the position of a political refugee”. The activity in which Wikileaks was engaged was not in its proper meaning political opposition to the US Administration or an attempt to overthrow that administration. Therefore the offence was not political.

For the defence Edward Fitzgerald replied that the 2003 Extradition Act was an enabling act under which treaties could operate. Parliament had been concerned to remove any threat of abuse of the political offence bar to cover terrorist acts of violence against innocent civilians. But there remained a clear protection, accepted worldwide, for peaceful political dissent. This was reflected in the Extradition Treaty on the basis of which the court was acting.

Baraitser interrupted that the UK/US Extradition Treaty was not incorporated into English Law.

Fitzgerald replied that the entire extradition request is on the basis of the treaty. It is an abuse of process for the authorities to rely on the treaty for the application but then to claim that its provisions do not apply.

“On the face of it, it is a very bizarre argument that a treaty which gives rise to the extradition, on which the extradition is founded, can be disregarded in its provisions. It is on the face of it absurd.” Edward Fitzgerald QC for the Defence

Fitzgerald added that English Courts construe treaties all the time. He gave examples.

Fitzgerald went on that the defence did not accept that treason, espionage and sedition were not regarded as political offences in England. But even if one did accept Lewis’s too narrow definition of political offence, Assange’s behaviour still met the test. What on earth could be the motive of publishing evidence of government war crimes and corruption, other than to change the policy of the government? Indeed, the evidence would prove that Wikileaks had effectively changed the policy of the US government, particularly on Iraq.
Baraitser interjected that to expose government wrongdoing was not the same thing as to try to change government policy. Fitzgerald asked her, finally in some exasperation after umpteen interruptions, what other point could there be in exposing government wrongdoing other than to induce a change in government policy?

That concluded opening arguments for the prosecution and defence.

**MY PERSONAL COMMENTARY**

Let me put this as neutrally as possible. If you could fairly state that Lewis’s argument was much more logical, rational and intuitive than Fitzgerald’s, you could understand why Lewis did not need an interruption while Fitzgerald had to be continually interrupted for “clarification”. But in fact it was Lewis who was making out the case that the provisions of the very treaty under which the extradition is being made, do not in fact apply, a logical step which I suggest the man on the Clapham omnibus might reason to need rather more testing than Fitzgerald’s assertion to the contrary. Baraitser’s comparative harassment of Fitzgerald when he had the prosecution on the ropes was straight out of the Stalin show trial playbook.

The defence did not mention it, and I do not know if it features in their written arguments, but I thought Lewis’s point that these could not be political offences, because Julian Assange was not in the USA when he committed them, was breathtakingly dishonest. The USA claims universal jurisdiction. Assange is being charged with crimes of publishing committed while he was outside the USA. The USA claims the right to charge anyone of any nationality, anywhere in the world, who harms US interests. They also in addition here claim that as the materials could be seen on the internet in the USA, there was an offence in the USA. At the same time to claim this could not be a political offence as the crime was committed outside the USA is, as Edward Fitzgerald might say, on the face of it absurd. Which curiously Baraitser did not pick up on.

Lewis’s argument that the Treaty does not have any standing in English law is not something he just made up. Nigel Farage did not materialise from nowhere. There is in truth a long tradition in English law that even a treaty signed and ratified with some bloody Johnny Foreigner country, can in no way bind an English court. Lewis could and did spout reams and reams of judgements from old beetroot faced judges holding forth to say exactly that in the House of Lords, before going off to shoot grouse and spank the footman’s son. Lewis was especially fond of the Tin Council case.

There is of course a contrary and more enlightened tradition, and a number of judgements that say the exact opposite, mostly more recent. This is why there was so much repetitive argument as each side piled up more and more volumes of “authorities” on their side of the case.

The difficulty for Lewis — and for Baraitser — is that this case is not analogous to me buying a Mars bar and then going to court because an International Treaty on Mars Bars says mine is too small.

Rather the 2003 Extradition Act is an Enabling Act on which extradition treaties then depend. You can’t thus extradite under the 2003 Act without the Treaty. So the Extradition Treaty of 2007 in a very real sense becomes an executive instrument legally required to authorise the extradition. For the executing authorities to breach the terms of the necessary executive instrument under which they are acting, simply has to be an abuse of process. So the Extradition Treaty owing to its type and its necessity for legal action, is in fact incorporated in English Law by the Extradition Act of 2003 on which it depends.
The Extradition Treaty is a necessary precondition of the extradition, whereas a Mars Bar Treaty is not a necessary precondition to buying the Mars Bar.

That is as plain as I can put it. I do hope that is comprehensible.

It is of course difficult for Lewis that on the same day the Court of Appeal was ruling against the construction of the Heathrow Third Runway, partly because of its incompatibility with the Paris Agreement of 2016, despite the latter not being fully incorporated into English law by the Climate Change Act of 2008.

VITAL PERSONAL EXPERIENCE

It is intensely embarrassing for the Foreign and Commonwealth Office (FCO) when an English court repudiates the application of a treaty the UK has ratified with one or more foreign states. For that reason, in the modern world, very serious procedures and precautions have been put into place to make certain that this cannot happen. Therefore the prosecution’s argument that all the provisions of the UK/US Extradition Treaty of 2007 are not able to be implemented under the Extradition Act of 2003, ought to be impossible.

I need to explain I have myself negotiated and overseen the entry into force of treaties within the FCO. The last one in which I personally tied the ribbon and applied the sealing wax (literally) was the Anglo-Belgian Continental Shelf Treaty of 1991, but I was involved in negotiating others and the system I am going to describe was still in place when I left the FCO as an Ambassador in 2005, and I believe is unchanged today (and remember the Extradition Act was 2003 and the US/UK Extradition Treaty ratified 2007, so my knowledge is not outdated). Departmental nomenclatures change from time to time and so does structural organisation. But the offices and functions I will describe remain, even if names may be different.

All international treaties have a two stage process. First they are signed to show the government agrees to the treaty. Then, after a delay, they are ratified. This second stage takes place when the government has enabled the legislation and other required agency to implement the treaty. This is the answer to Lewis’s observation about the roles of the executive and legislature. The ratification stage only takes place after any required legislative action. That is the whole point.

This is how it happens in the FCO. Officials negotiate the extradition treaty. It is signed for the UK. The signed treaty then gets returned to FCO Legal Advisers, Nationality and Treaty Department, Consular Department, North American Department and others and is sent on to Treasury/Cabinet Office Solicitors and to Home Office, Parliament and to any other Government Department whose area is impacted by the individual treaty.

The Treaty is extensively vetted to check that it can be fully implemented in all the jurisdictions of the UK. If it cannot, then amendments to the law have to be made so that it can. These amendments can be made by Act of Parliament or more generally by secondary legislation using powers conferred on the Secretary of State by an act. If there is already an Act of Parliament under which the Treaty can be implemented, then no enabling legislation needs to be passed. International Agreements are not all individually incorporated into English or Scottish laws by specific new legislation.
This is a very careful step by step process, carried out by lawyers and officials in the FCO, Treasury, Cabinet Office, Home Office, Parliament and elsewhere. Each will in parallel look at every clause of the Treaty and check that it can be applied. All changes needed to give effect to the treaty then have to be made — amending legislation, and necessary administrative steps. Only when all hurdles have been cleared, including legislation, and Parliamentary officials, Treasury, Cabinet Office, Home Office and FCO all certify that the Treaty is capable of having effect in the UK, will the FCO Legal Advisers give the go ahead for the Treaty to be ratified. You absolutely cannot ratify the treaty before FCO Legal Advisers have given this clearance.

This is a serious process. That is why the US/UK Extradition Treaty was signed in 2003 and ratified in 2007. That is not an abnormal delay.

So I know for certain that ALL the relevant British Government legal departments MUST have agreed that Article 4.1 of the UK/US Extradition Treaty was capable of being given effect under the 2003 Extradition Act. That certification has to have happened or the Treaty could never have been ratified.

It follows of necessity that the UK Government, in seeking to argue now that Article 4.1 is incompatible with the 2003 Act, is knowingly lying. There could not be a more gross abuse of process.

I have been keen for the hearing on this particular point to conclude so that I could give you the benefit of my experience. I shall rest there for now, but later today hope to post further on yesterday's row in court over releasing Julian from the anti-terrorist armoured dock.

With grateful thanks to those who donated or subscribed to make this reporting possible. I wish to stress again that I absolutely do not want anybody to give anything if it causes them the slightest possibility of financial strain.

This article is entirely free to reproduce and publish, including in translation, and I very much hope people will do so actively. Truth shall set us free.

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