

# Assange faces life imprisonment in politically motivated trial, witnesses argue

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The Assange hearing heard from two expert witnesses yesterday. US attorney Eric Lewis's questioning continued from the previous day's proceedings and was followed by the testimony of Thomas Durkin, another experienced US attorney and a faculty member at the University of Chicago. Durkin has experience in multiple high-profile national security, domestic terrorism and civil rights cases.

Both witnesses focussed on the sentence Assange, a journalist, publisher and the founder of WikiLeaks, is likely to face if extradited to and convicted in the United States, and on the politically motivated nature of his prosecution.

The US government and its allies have attempted to dismiss the warning given by WikiLeaks and Assange's defence team that he faces a 175-year sentence. Prosecution lawyer James Lewis QC referred to the figure in the court as a "soundbite" and claimed the judge in Assange's case would be guided by recent sentences for national security offences of between 42 and 63 months.

Eric Lewis rejected this argument. He explained that sentencing guidelines in the US are based on an offence level table—the higher rating a crime is given on the table, the longer a sentence it attracts. The base level for charges under the Espionage Act that do not relate to top secret information (the highest classification) is 30. At that base level, the US sentencing guidelines indicate that Assange could be sentenced to between 8 years and one month and 10 years and one month per count.

This base level can be extended by specified adjustments. Lewis explained, "I have gone through all of the adjustments. It is very common for there to be adjustments. The government asks for adjustments in many cases... I do believe that some of the adjustments

come in quite clearly under the second superseding indictment."

These include, firstly, "if the defendant was the organiser or leader of a criminal activity that involved five or more participants or was otherwise extensive." Lewis noted that under the new indictment, "you now have many other people who are included," referring for example to former WikiLeaks associates Sarah Harrison, Jacob Applebaum and Daniel Domscheit-Berg, who are listed in the new indictment as co-conspirators. This adjustment would take the offence level to 34.

Secondly, the additional conduct contained in the new indictment that relates to Assange's alleged involvement with "Teenager" is "relevant in that you add two levels if a minor under the age of 18 is involved in the offence." This additional conduct could take the offence level to 36, or up to 19 years and 7 months.

Thirdly, an adjustment is available if the crime "involve[s] a special skill... I should think Mr Assange's technological proficiency ... would add to the offence level and take us up to 38."

"There are two other enhancements that could arguably apply," Lewis continued. "One is obstruction and obstruction includes steps being taken to inhibit the investigation of a crime... there is the suggestion that the attempt to prevent the identification of Chelsea Manning might be seen as qualifying for obstruction which would add two points."

And finally, regarding "the disclosures of state department cables that disclose the identity not only of sources on the ground... but also of US officials which would include people in the embassy... There is an enhancement that says that if the victims of disclosure of information is a government employee that adds

three levels.”

In total, this amounts to an offence level of 43, equating to life imprisonment, which would exceed the statutory maximum for the charges and be “reduced” to 175 years. Lewis added that “A court can exceed guidelines.”

Thomas Durkin gave the same assessment, describing an effective life sentence for Assange as “a very likely possibility.” He added: “based upon my experience of the guidelines and these types of national security cases, I’m comfortable in saying that the rate [offence level] could be between 38 and 43... I think he does face the risk of a sentence in the range of thirty years to forty years.” Assange is 49 years old.

Fitzgerald asked if it was true that the court could take into account relevant conduct of which Assange is not actually convicted, but which is nonetheless alleged by the government in deciding on a sentence. Durkin said this was correct. Even “conduct that he’s actually been acquitted of” could be “used as an aggravation.” The US court, said Durkin, “has almost unfettered discretion in determining what information it will hear and rely on in sentencing.”

Durkin also explained that any plea bargain that might limit Assange’s sentence would be dependent on full cooperation with the authorities. This would “absolutely” include the revelation of sources of information—namely, WikiLeaks sources.

Both witnesses shared the view that the prosecution of Assange is politically motivated—which, if found to be true, would bar his extradition—focussing on the fact that the Trump administration brought charges when the Obama administration had not.

Lewis referred to a statement from Matthew Miller, a former Department of Justice spokesperson, cited in a *Washington Post* article published in November 2013, which read, “The problem the department has always had in investigating Julian Assange is there is no way to prosecute him for publishing information without the same theory being applied to journalists. And if you are not going to prosecute journalists for publishing classified information, which the Department is not, then there is no way to prosecute Assange.”

The article goes on to refer to quotes from current (in 2013) justice officials who say that they looked hard at Assange but realised they had what they described as “the *New York Times* problem.”

In his testimony, Durkin stated that he felt this account was credible evidence of a decision against prosecution for the reasons given, noting that he “didn’t see any report contradicting it,” and that the story was not “corrected” by the Justice Department.

The move to prosecute so long after charges had been initially considered, Lewis said, was the result of “politically extraneous influence.” All of the facts relied upon by the indictments were “out and of record by 2010-2011, maybe some in 2012... The evidence hasn’t changed, the witnesses haven’t changed, the First Amendment hasn’t changed, the Espionage Act having never been used against a publisher hasn’t been changed.”

Describing the Department of Justice under Trump, Lewis said that “things have changed in a way that they can bring a prosecution because the president tells the attorney general to do so.” He referred to an article in the *New York Times* in April 2017, which reported that “senior justice department officials had been pressuring prosecutors in the Eastern District of Virginia to outline an array of charges [against Assange].”

Lewis also noted that “President Trump has said ‘I can do whatever I want with the justice department’” and that “Attorney General Barr has written a 19-page memo ... in which he has said that all prosecutorial discretion rests directly in the president.”

He concluded, “If Mr Assange is extradited, he will be prosecuted by an agency led by an attorney general who has repeatedly ordered prosecutors to follow Trump’s personal and political preferences.”

Durkin likewise stated that it was “More likely than not that there were political considerations that influenced the decision to charge [Assange].”

The hearing continues today.



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