

Assange's lawyers expose US-UK persecution on first day of High Court hearing

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For the last three years, Wikileaks founder Julian Assange's appearances in court have been limited to arguments over his health and risk of suicide in the event of extradition to the United States to face charges under the Espionage Act.

This was due to District Judge Vanessa Baraitser's carefully crafted January 2021 ruling against extradition on the single point of the risk of suicide.

The *World Socialist Web Site* warned at the time: "Ruling against the extradition purely on mental health grounds, Baraitser endorsed in its entirety the prosecution's denial of free speech and freedom of the press, and its justifications of flagrant abuse of Assange's legal due process and human rights."

Baraitser's findings on the risk of suicide were overturned by the High Court in December 2021 citing "assurances" from the US government. These issues were then the focus of months of legal appeals and dragged-out rejections by the British courts.

On Tuesday at the UK's High Court, Assange's legal team finally had the opportunity to break out of this procedural straitjacket and raise the issues of rampant state criminality and denial of democratic rights which are really at the heart of this case, and which were systematically overlooked by Baraitser.

Across five hours of submissions to Mr Justice Johnson and Dame Victoria Sharp, Edward Fitzgerald KC and Mark Summers KC argued for Assange's right to make a full appeal of Baraitser's findings before the High Court. They also challenged the British Home Secretary's decision to order extradition in line with the court's recommendation.

Assange was given permission to attend the hearing in person but again could not, even by video link, due to his worsening ill health after nearly five years incarcerated in Belmarsh maximum security prison.

Assange's case against his prosecutors is devastating. It

establishes that the US government is waging a campaign of political persecution in retribution for Assange's exposure of US government crimes. In doing so, it is violating his most essential democratic rights: to life, freedom from torture and inhuman and degrading punishment, freedom of expression, and freedom from abuse of legal process and arbitrary power.

Summers delivered the most significant evidence, arguing that the US is illegally using its prosecution of Assange as a means of punishing his activity with WikiLeaks which exposed "US state-level crimes, crimes which sit at the very apex of the legal hierarchy," including "extrajudicial assassinations, renditions, torture, dark prisons, rogue killings."

What Assange's work disclosed, Summers continued, was a type of "criminality which permeates, is approved, tolerated, within the very fabric of the American government." His case therefore falls within a class of cases where "state retaliation makes use of the criminal justice system."

Summers cited as a "vivid illustration" and "paradigmatic example from history" Emile Zola's open letter condemning the French state's persecution of Alfred Dreyfus, "J'Accuse...!"

Addressing the events which led to the prosecution of Assange, he recounted, "In late 2016, the ICC [International Criminal Court] had announced that it was preparing to investigate the subject matter of these allegations," to which WikiLeaks materials were "essential".

Swiftly afterwards, a series of US officials issued denunciations of Assange and WikiLeaks, most significantly then CIA Director Mike Pompeo, who referred to WikiLeaks as a "non-state hostile intelligence agency."

"These words, with hindsight," said Summers, "authorised direct action... against Mr Assange" of the

kind revealed by a *Yahoo! News* investigation published in September 2021. “The US developed a plan to try to either kill or rendition Mr Assange to the USA... The prosecution was commenced in order to provide a framework for the proposed kidnap and rendition of Mr Assange.”

To ultimately the same end, the American government is now running roughshod over Assange’s legal rights through the British courts. The UK-US Extradition Treaty 2003 under which it is seeking his transfer to the explicitly rules out extradition for political offences—of which charges under the Espionage Act, Fitzgerald explained, are a “pure” example.

This is sidestepped on the basis of the Extradition Act 2003, passed by Tony Blair’s Labour government, which leaves out the political offences exception. As Fitzgerald explained, this leaves the US government in the position of demanding, “Pursuant to this treaty, hand over Mr Assange,’ and yet that very treaty provides a protection which is inconsistent with him being handed over.”

He summarised the point: “You cannot both rely on a treaty and repudiate it.” To do so would be an abuse of process, contrary to Article 5 of the European Convention of Human Rights (ECHR).

Assange is also being pursued for activity which he had no legal reason to expect would be prosecuted, contrary to Article 7 of the ECHR, “No punishment without law”. At the time WikiLeaks published leaked US government documents, “Journalists outside government had never before been prosecuted under the Espionage Act,” Summers explained. The case “crosses a new legal frontier.”

Baraitser’s initial ruling brushed all of these arguments aside. Regarding the malign political motivations behind the US prosecution, according to Summers, “she looked at perhaps 10 percent” of the case put forward by Assange’s team.

Most egregious was the treatment of their arguments under Article 10 of the ECHR, “Freedom of expression”. To decide whether the release of private or classified documents is protected speech, a court would have to determine whether the harm of the disclosure is outweighed by the public interest served by it.

Summer argued, “The sheer weight and monument of the public interest in this case outshines all else... It is difficult to conceive of a disclosure in the greater public interest.” Materials released by WikiLeaks have been used by the European Court and the ICC.

And yet, in Baraitser’s initial ruling, “nowhere does the

judge acknowledge the public interest.... What she does is recognise everything in the other side of the balance,” focussing on the harm the US government alleges, but has never proved, was done to its agents and informants. “It’s a glaring legal error.”

In his sharpest formulation of the point, Summers argued, “Exposing ongoing war crimes, ongoing murders, renditions, torture, all of that, at least arguably... could outweigh the disclosure of the names of some of the people that are doing all of that.”

This, Summers concluded, should hold true for the whistleblower, Chelsea Manning, let alone for the publisher of such leaked information.

As well as the courts, the role of the British government was brought more clearly into focus. By law, the Home Secretary is responsible for issuing the final order to extradite. Before they do, they are required by the Extradition Act 2003 to establish there is no risk the extradited person will face the death penalty.

Barely a pretence was made of doing so. The option is open to the US government to reformulate its charges against Assange as a capital offence. Summers told the court that Assange’s legal team had “made this complaint to the Home Secretary; her answer was gibberish.” It made the claim that the Home Secretary should only have regard to the presently formulated charges. “That’s straightforwardly contrary to this country’s position on the death penalty.”

He concluded, “What’s required in this case are death penalty assurances; it’s straightforward. And yet, they’re not forthcoming.”

Lawyers for the US and UK governments will respond to Assange’s arguments on Wednesday, in the second and final day of the hearing.



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