

Assange lawyers rebuff anti-democratic US government extradition arguments

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The second and concluding day of journalist Julian Assange's High Court hearing in the UK took place Wednesday. He is seeking leave to appeal his extradition to the United States to face charges under the Espionage Act for publishing leaked US government documents containing evidence of war crimes and human rights abuses.

After hearing arguments from Assange's representatives Edward Fitzgerald KC and Mark Summers KC on Tuesday, the court began with submissions from lawyers for the United States government and UK Home Secretary, followed by responses from Fitzgerald and Summers.

Clair Dobbin KC spoke for the US, presenting a series of deeply anti-democratic arguments aimed at dressing up the interests of US and British imperialism in the language of legal principles.

Speaking against the "attempt... made yesterday to try and minimise the impact" of the WikiLeaks disclosures of classified documents, she stated they had "damaged the work of security and intelligence services... thereby endangering the interests of the United States of America as well."

This had "broader consequences as regards the United States' ability to gather information" from individuals earlier described as "providing information to further peace and security," based in "countries including Iran, China and Syria." These were "profound consequences, extending beyond the real human costs and to the broader ability of the United States to gather evidence from human sources."

Assange and WikiLeaks' receiving and publication of these documents, Dobbin claimed, was activity "well outside the activities of a journalist, a responsible journalist." The power to make this distinction was asserted to rest with the US government, which "did not regard the appellant as being akin to a journalist."

Dismissing the arguments presented by Assange's lawyers that the US case is part of a politically motivated campaign of persecution, Dobbin said that the "starting position must be, as it always is in these cases, the fundamental assumption of good faith on the part of those states with which the United Kingdom has long established extradition relations," especially "the United States, as one of the most longstanding partners of the United Kingdom."

Addressing Assange's assertion of his right under the European Convention on Human Rights to freedom of expression (Article 10), Dobbin made the extraordinary claim that a "fundamental hurdle" he faced in resisting extradition on this ground was that "In equivalent circumstances in this jurisdiction, his prosecution would not be incompatible with Article 10... there is no public interest defence available... as concluded by [Regina v] Shayler."

Mr Justice Johnson was moved to ask on this point, "If, in this country, a journalist had information of very serious wrongdoing by an intelligence agency and incited an employee of that agency to provide information and information was provided and was then published in a very careful way, do you say that a prosecution would be compatible with Article 10?"

Dobbin answered, "I'm not sure that gives way to a straightforward answer," before floundering for several minutes.

Summers delivered a crushing rebuttal. He began by noting that Dobbin had "during the course of two and-half hours made no challenge whatsoever to the fact that the subject matter of these exposures is the exposure of state-level crime." It was "an impressive feat to spend two-and-a-half hours on your feet promoting the prosecution of materials disclosing war crimes without acknowledging it or even mentioning it."

Turning to her arguments, Summers explained how

Dobbin's insistence that the lead US prosecutor on the case was acting in good faith was irrelevant. "Prosecution and extradition here is a decision taken way above his head. You can't focus on the sheep and ignore the shepherd. What happened in this case is state retaliation ordered from the very top."

This was, "Part of a state-level practice of securing unlawful impunity for the very conduct Mr Assange was exposing..."

"It was then followed by demonstrably political denunciations of Mr Assange. The response to that was that President Trump praised Mr Assange, at the time—ignoring completely... that he was plotting to kill him.

"It was submitted to you that the US government has acted at all times in good faith in respect of bringing this prosecution. We simply don't understand how that submission can be advanced with a straight face in the face of evidence that the president of America was entertaining plans to kidnap, rendition and murder" Assange.

Regarding Dobbin's apparent "submission that Article 10 was off limits in this case completely because Shayler says so," Summers explained that the reason she "had such difficulty answering... Mr Justice Johnson's questions when pressed on the implications of that position for the press" was because "Shayler says nothing of the sort so far as the press is concerned." It related to a whistleblower who had signed the Official Secrets Act, rather than a journalist and publisher.

David Shayler (later Delores Kane) was an MI5 officer who was prosecuted under the Official Secrets Act and sentenced in 2002 to six months in prison for revealing to the media that MI5 was paranoid about socialists, had investigated senior Labour Party figures and had made an unsuccessful attempt to assassinate Libyan leader Colonel Muammar Gadhafi in 1996.

In the years since the Shayler case was decided, the Human Rights Act has come into force and the European Court "has unambiguously and repeatedly said that there must be an Article 10 balancing exercise in these cases," weighing the public interest served by publication against any harm caused.

"What did you hear," Summers then asked, "in relation to the balance that needs to be undertaken? With respect, not much."

If such a balance were properly undertaken, "what would be left in the scales" against Assange "would be harm to [US intelligence] sources," mitigated by the fact

that Assange and WikiLeaks made extensive efforts to redact names and were not responsible for their initial release to the public, and further caveated by the fact that there is "no proof at all that any harm actually eventuated."

"On the other side of the scales," Summers continued, "would go the horrendous penalty meted out in this case" that would "shock the conscience of every journalist around the world." Also, "the vast public interests in the exposure and prevention of harm on a titanic scale. Let's be clear about this: rendition, torture, murders, black sites, waterboarding, strappado, war crimes."

The "crimes being disclosed here were real, ongoing" and "the disclosure had the capacity of stopping that happening, and did... The war in Iraq came to an end."

He concluded that leave to appeal "could only logically be withheld in this case under Article 10" if the court concludes "that it is completely unarguable... that real harm in the form of ongoing colossal, outrageous international criminal wrongdoing outweighs the creation of a risk, ultimately unproved to have occurred, of some harm to those criminals performing or facilitating all of that criminality."

Responding to the Home Secretary's attempt to wriggle out of their duty to ensure Assange will not face the death penalty, by claiming a careful evaluation had been made of that risk, Summers answered that the relevant section of the Extradition Act "allows no room whatsoever for a risk assessment of the sort being proposed. It is mandatory. If the facts *could* be recharged as a capital offence, it is engaged. In response to questions from [Mr Justice Johnson], it was accepted that it could happen... That's the end of the inquiry, as a matter of law."

He concluded, "We don't understand why there is no usual, normal death penalty assurance in this case."

The judges said briefly at the close of the hearing that they would reserve their decision, with no indication given of a timeframe.



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