

THE JULIAN ASSANGE QUESTION: TRUE CLAIMS ABOUT PRISON CONDITIONS OR LIES IN SERVICE OF MARTYRDOM?

Today and tomorrow, the United States will appeal Judge Vanessa Baraitser's decision in the Julian Assange case that American prisons are too inhumane to house someone with suicidal tendencies safely. The US will argue several things about the decision, including that Baraitser had wrongly credited testimony of an expert that, like that of several others presented in Julian Assange's extradition defense, was obviously misleading.

On Wednesday, judges said the weight given to a misleading report from Assange's psychiatric expert that was submitted at the original hearing in January could form part of Washington's full appeal in October.

Sitting in London, Lord Justice Holroyde said he believed it was arguable that Judge Vanessa Baraitser had attached too much weight to the evidence of Prof Michael Kopelman when deciding not to allow the US's appeal.

[snip]

Delivering the latest decision, Holroyde said it was "very unusual" for an appeal court to have to consider evidence from an expert that had been accepted by a lower court, but also found to have been misleading – even if the expert's actions had been deemed an "understandable human response" designed to protect the privacy of Assange's

partner and children.

The judge said that, in those circumstances, it was “at least arguable” that Baraitser erred in basing her conclusions on the professor’s evidence.

“Given the importance to the administration of justice of a court being able to rely on the impartiality of an expert witness, it is in my view arguable that more detailed and critical consideration should have been given to why [the professor’s] ‘understandable human response’ gave rise to a misleading report.”

The US government had previously been allowed to appeal against Baraitser’s decision on three grounds – including that it was wrong in law. Assange’s legal team had described the grounds as “narrow” and “technical”. The two allowed on Wednesday were additional.

One key issue is whether assurances the US offered to the UK that Assange won’t be held under Special Administrative Measures are worth the paper they were written on (they’re probably not).

The summary of the decision to accept the appeal said that the United States had “provided the United Kingdom with a package of assurances which are responsive to the district judge’s specific findings in this case.”

Specifically, it said, Mr. Assange would not be subjected to measures that curtail a prisoner’s contact with the outside world and can amount to solitary confinement, and would not be imprisoned at the supermax prison in Florence, Colo., unless he later did something “that meets the test” for imposing such harsh steps.

"The United States has also provided an assurance that the United States will consent to Mr. Assange being transferred to Australia to serve any custodial sentence imposed on him," the summary said.

While the basis for refusing extradition – expanding on a precedent established with Lauri Love, whose Aspergers was far more severe and better established than Assange's depression – may be controversial, the severe conditions in American prisons are not.

And that's why the focus of Assange's team over the past nine months and in the next few days will be so telling.

Assange's team would need to look no further than Joshua Schulte – the accused source for the stolen CIA hacking tools who has been held under draconian Special Administrative Measures (which sharply curtail Schulte's ability to communicate with anyone besides his lawyers and immediate family) for over three years – to demonstrate how WikiLeaks associates have been treated in US jails. Judge Paul Crotty recently rejected Schulte's latest bid to end the SAMs before the case got reassigned – with no public explanation – to Judge Jesse Furman (Crotty must be getting close to going senior status, but Schulte also asked Crotty to recuse). In his order affirming the SAMs on Schulte, Crotty noted that the former CIA developer, "intentionally disclosed information he knows to be classified—including in a recently filed motion seeking declassification of that very information," and prosecutors just warned that Schulte may face additional consequences for doing so.

In recent weeks, the defendant has, through standby counsel, attempted to file several documents on ECF that appear to contain classified information. Section 5 notices are particularly likely to contain classified information, since the

statute requires the defendant to “include a brief description of the classified information” at issue, and prohibits the defendant from “disclos[ing] any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection” and the United States has had an opportunity to seek a CIPA § 6 hearing and, if applicable, an appeal from the Court’s determination under § 7. Should the defendant knowingly and intentionally publicly file or attempt to publicly file information “known or believed to be classified,” including as part of a § 5 notice, he could be subject to penalties.

Likewise Assange’s team could point to the case of Daniel Hale, who was jailed prior to sentencing *because* it was feared he would harm himself, but then was placed in the Marion Communications Management Unit, a less harsh regime restricting prisoners’ communications than SAMs, but nevertheless not something known to be justified by anything Hale did during pre-trial release, and something that exacerbates Hale’s isolation in prison.

Rather than focusing on these very uncontroversial issues, Assange’s team has spent the last nine months spinning wildly about topics other than US prison conditions. They did so, first, by falsely claiming that an article in which Siggi Thordarson reaffirmed one of the most damning things he said about Assange would doom the case against Assange, even though as a co-conspirator, Siggi is unlikely to be called as a witness. More recently, Assange’s team has embraced an article showing that CIA Director Mike Pompeo was unable to pursue a variety of measures to attempt to thwart the release of (still substantially unreleased) stolen hacking tools, even though the article proves that Assange lied wildly in his extradition hearing

about when and why the US government changed its understanding of his actions and further shows that the US didn't charge Assange in the face of Pompeo's pressure, but only did so when Russia attempted to exfiltrate Assange.

Assange has a really good case to make about US jail and prison conditions.

Instead, Assange has spent the last nine months telling wild stories in an effort to make a man credibly accused of conspiring to hack US targets a martyr of journalism.