

IN THE CITY OF WESTMINSTER MAGISTRATES COURT

BETWEEN:

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

v.

JULIAN PAUL ASSANGE

Julian Assange – Opinion of Professor Paul Rogers

11 February 2020

1. I am Emeritus Professor of Peace Studies at Bradford University and I have been asked by solicitors representing Julian Assange who faces a request for his extradition to the USA on charges under the US Espionage Act 1917 and the Computer Fraud and Abuse Act to provide an opinion.
2. I hold BSc (Hons) and PhD degrees from the University of London and ARCS and DIC awards from Imperial College, London. I have lectured at Imperial College and also served as a Senior Scientific Officer with the East African Community. I am a past Chair of the British International Studies Association, have served two periods as the Head of the Department of Peace Studies at Bradford University and have published 30 books and over 150 journal articles and papers.
3. I have researched and taught in the field of international security for forty years and have also taught at the UK's senior defence colleges for 38 years. I am an Honorary Fellow at the Joint Services Command and Staff College. I have been an External Examiner for postgraduate degrees at that college and also at the Royal College of Defence Studies. I have lectured on international security at the Home Office, the Foreign and Commonwealth Office, the Ministry of Defence, the Cabinet Office, MI5 and Defence Intelligence and to senior officers of the UK Special Forces.
4. I do not have, nor have I ever sought, any government security clearance for my research.
5. I have been given material of relevance including the prosecution indictment and supporting evidence, reports of a number of expert witnesses instructed by the defence (including Professor Noam Chomsky, Professor Mark Feldstein, Jameel Jaffer of the Knight Institute, Emeritus Professor Michael Tigar, Carey Shenkman, Andy Worthington and two US legal experts Eric Lewis and Tom Durkin). I have been provided with a chronology setting out the main events in an almost ten

year history leading to the arrest of Mr Assange in 2019, following the arrest and charge of his alleged co-accused, Pte Manning in 2010. I have also been given material which provides examples of the work of Mr Assange himself and the organisation WikiLeaks.

6. I have been asked for my opinion of Mr Assange's publicly expressed views in conjunction with the record of examples of a number of his activities, which have been provided to me. That record includes publications, books and a range of articles on a broad spread of issues, as well as commentary by others on Mr Assange's work and opinions. I have been asked whether, in light of all of the above, his opinions can indeed be appropriately categorised as "political opinions" and which, might, if the view of the above defence experts is correct, place him at risk of treatment, including of a politically motivated trial, those opinions being in turn interpreted and/or disapproved of by the USA resulting in his prosecution, whereas without that underpinning (his own motivations and those of the US state in prosecuting him) he would not be being thus prosecuted.
7. I have been advised of the terms of Section 81(a) and 81(b) of the Extradition Act 2003.
8. I have read Part 19 of the Criminal Procedure Rules relating to Expert Evidence and believe that my advice is compliant with the rules.

Examples of Mr Assange's reported views and actions

The published material I have been shown includes the following propositions:

- A. In a number of essays "Conspiracy as governance" Mr Assange speaks of the collaborative secrecy induced by authoritarian regimes working to the detriment of a population quoting The Prince by Machiavelli in relation to "matters of state"
"For knowing afar off the evils that are brewing, they are easily cured. But when, for want of such knowledge, they are allowed to grow until everyone can recognise them, there is no longer any remedy to be found". He expresses the belief that bad governance should be challenged; that *"those who are repeatedly passive in the face of injustice soon find their character corroded into civility. Most witnessed acts of injustice are associated with bad governance, since when governance is good, unanswered injustice is rare".*
- B. In commenting on WikiLeaks and Assange's actions, Professor Yochai Benkler summarises the activities prior to 2010 of WikiLeaks,

“An organisation that seems to have functioned very much as it described itself; a place where documents that shed light on powerful governments or corporations anywhere in the world, or in the case of the climate scientist emails, on a matter of enormous global public concern, could be aired publicly.”

Benkler describes WikiLeaks as

“Needing to be understood in the context of broad trends in the construction of the network fourth estate; like (other) transparency-focussed organisations, WikiLeaks is a non profit focussed on bringing to light direct, documentary evidence about government behaviour so that many others, professional and otherwise, can analyse the evidence and search for instances that justify public criticism. Like the emerging party presses, it acts out of political conviction. Unlike so many other projects on the net, it uses a combination of volunteers, global presence and decentralised action to achieve its results. As such, WikiLeaks presents an integral part of the networked fourth estate – no less than the protestors who shoot videos on the streets of Tehran, Tunis or Cairo and upload them to the Web, or the bloggers who exposed the Rather/CBS story ... The organisation and effort put forth by WikiLeaks to bring to light actual internal government documents bearing on questions of great public import is essentially a networked version of the Pentagon Papers... . An attack on WikiLeaks – legal or extra legal, technical or commercial, needs to be assessed from that perspective ...”

- C. As well as the objective of throwing light on government secrets, a particular focus of Assange’s political viewpoint can be seen to have been on war, which have been demonstrated over many years through WikiLeaks publications and his public comments.
- (i) WikiLeaks was founded during the Bush administration and many of its publications have related to the war on terror. For instance, examples of publications in 2007 and 2008 relating to the publication of information on the workings of Guantanamo Bay,
 - (ii) The publication in August 2008 by WikiLeaks of a 2006 UK military report about the war in Iraq and Operation Telic, which stated that the Iraq war “ran counter to potential Geneva obligations” and that “[l]eaders should not start an operation without thinking...it is not enough just to identify the desired end-state”. At the time of publication, Mr Assange wrote, “[t]he combined secrecy and ideology was a planning disaster that directly lead to the collapse of Iraqi society.”
 - (iii) The publication of the Afghan and Iraq War Logs in 2010. Assange, invited to speak at the UN in Geneva during the US Universal Periodic Review, called on the US to investigate alleged abuses by US troops in

Afghanistan and Iraq as evidenced in the material published by WikiLeaks.

- (iv) And/or in 2016, commenting upon Hillary Clinton, *"She lacks judgment and will push the United States into endless, stupid wars which spread terrorism. Her personality combined with her poor policy decisions have directly contributed to the rise of ISIS"*.
- (v) In 2019, Nobel Peace Prize Laureate Mairead Maguire in nominating Assange for the 2019 Nobel Peace Prize writes, *"Julian Assange and his colleagues in WikiLeaks have shown on numerous occasions that they are one of the last outlets of true democracy and their work for freedom and speech. Their work for true peace by making public governments' actions at home and abroad has enlightened us to their atrocities carried out in the name of so-called democracy around the world. This included footage of inhumanity carried out by NATO/military, the release of email correspondence revealing the plotting of regime change in Eastern Middle Countries, and the parts our elected officials played in deceiving the public. This is a huge step in our work for disarmament and non violence worldwide"*.
- (vi) And in awarding the Sydney Peace medal in January 2012, the director of the Sydney Peace Foundation states, *"Assange's work is in the Tom Paine Rights of Man and Daniel Ellsberg Pentagon Papers tradition – challenging the old order of power in politics and in journalism. Assange has championed peoples' right to know and has challenged the centuries old tradition that governments are entitled to keep the public in a stage of ignorance"*.
- (vii) On the 8th August 2011, speaking to the Stop the War Coalition Rally in Trafalgar Square Assange stated *"We must form our own networks of strength and mutual value, which can challenge those strengths and self interested values of warmongers in this country and in others, that have formed hand in hand an alliance to take money from the United States – from every NATO country, from Australia – launder it through Afghanistan; launder it through Iraq; launder it through Somalia; launder it through Yemen; launder it through Pakistan; and wash that money in peoples' blood"*. He refers to the *"information we have revealed showing the everyday squalor and barbarity of war, information such as the individual deaths of over 130,000 people in Iraq, individual deaths that were kept secret by the US military who denied that they have counted the deaths of civilians... **Instead, I want to tell you what I think is the way that wars come to be and that wars can come undone. ... It should lead us also to an understanding because if wars can be started by lies, peace can be started by truth.**"*

(The documents put forward within the defence evidence in the extradition proceedings set out a far fuller record.) I have been asked to consider, if the brief extracts above are representative of Mr Assange's documented views, whether they can be appropriately categorised as views (and actions in reflection of those views), that constitute political opinions.

9. I note the view expressed by the defence legal experts of the trajectory of Mr Assange's prosecution and the many other factors they comment as strongly suggesting a prosecution being brought as a result of political motivation. I note also the view of the defence Journalism and First Amendment scholars, commenting upon the personal attacks levelled against Mr Assange by senior members of the current US administration, as evidencing political motivation both in respect of Mr Assange, and the wider targets of the press and whistleblowers more generally.
10. My comments below consider the separate but linked question of the ways in which the body of Mr Assange's recorded views and work (of which the earlier citations are examples), represent political views which, if the assessments of the defence experts above are correct, have made him the subject of targeting for those very opinions.
11. The political objective of seeking to achieve greater transparency in the workings of governments is clearly both the motivation and the modus operandi for the work of Mr Assange and the organisation WikiLeaks. Its manifestation, as is set out in the study by Professor Benkler, has constituted a wholesale alteration of accessing and making available for public information, the secrets that governments wish to remain unknown to their general populations. The subject matter of the charges Mr Assange currently faces involve strong examples of the clash of these positions both in their content and scope, and in the reaction of government. I note from the views expressed by the defence experts Professor Feldstein, Jameel Jaffer and Michael Tigar that although the reaction by the Obama administration at the time of the publications (in partnership with mainstream media worldwide) was wholly adverse and that was serious consideration of finding a way to prosecute Mr Assange, nevertheless it was restrained by the parallel consideration that would also involve the prosecution of WikiLeaks mainstream media partners. The philosophy and practice of exposing government secrets (which included sensitive State Department cables as well as evidence of war crimes hitherto unknown, had provoked the response of government. The incoming Trump administration in 2017 however, expressed an overt hostility to Mr Assange and a determination to revisit the potential for prosecuting him, describing him as "trying to steal American secrets for the sole purpose of undermining the United States and democracy." The chronology of

the subsequent progression of prosecutorial actions in relation to Mr Assange, suggests that it paralleled the overt expression of hostility by President Trump to the press generally as enemies, and the reporting of accurate news being dismissed as “fake news” and of whistleblowers as “traitors”, widening the gulf between reporting of state actions and the desire of government for preserving secrets.

12. Thus the opinions and views of Mr Assange, demonstrated in his words and actions with the organisation WikiLeaks over many years, can be seen as very clearly placing him in the crosshairs of dispute with the philosophy of the Trump administration.
13. I comment upon the evidence of particular changing attitudes within United States politics over the past two decades which can be seen as relating closely to the current view of Julian Assange by the Trump administration as a political enemy and to the wider picture hostility to the discovery and publication of government secrets in particular which involve government criminality or malpractice.
14. Considering the subject matter of the charges that he now faces, I note the different aspects, including the holding of prisoners at Guantanamo, the publication of a video constituting a war crime, described on its publication as “Collateral Murder” and the publication of US State Department diplomatic cables. The release of such information, intended to be secret, would and clearly did present a conflict between the philosophy and actions of those exposing the secrets, and those attempting to preserve them whose reaction included the potential of prosecuting those who had made the revelations.
15. In order to focus upon the nature of those two opposing positions, I here proffer an analysis of the implications of two of the categories of publications – those in connection with US military actions in Afghanistan and Iraq.
16. Since the 9/11 attacks, opposition to US security policies has been a major political matter for the United States itself, and circumstances before and since the attacks mean that individuals such as Assange who have opposed those wars have been regarded much more forcefully as political enemies. The extradition demand should be seen in part in this light, with Assange’s own political motivation in exposure generally, but of military issues in relation to those conflicts being a core aspect. Furthermore, the attitude of the Trump administration is particularly antagonistic, as it was also during the two-term administration of President George W Bush.

17. US attitudes arose originally from two elements, the political environment in the months before 9/11 and the severity and sheer shock of the massacres themselves. Prior to the attacks the election of President George W Bush in November 2000 resulted in an unusually strong combination of neoconservatism and assertive realism that dominated security and foreign policy. The *Project for the New American Century* in particular was prominent in directing the political narrative. As its *Statement of Principles* (3 June 1997) declared:

As the 20th century draws to a close, the United States stands as the world's preeminent power. Having led the West to victory in the Cold War, America faces an opportunity and a challenge: Does the United States have the vision to build upon the achievements of past decades? Does the United States have the resolve to shape a new century favourable to American principles and interests?

18. The 9/11 attacks themselves had a markedly visceral impact on the US political environment, given this expectation of dominance, being far worse than Pearl Harbour in December 1941 and ensuring a very strong military response with the confident expectation by the political leadership of minimal domestic opposition.

19. Thus, the termination of the Taliban regime in Kabul appeared to be fully achieved in less than three months by early December 2001, and the Saddam Hussein regime in Iraq was terminated within three weeks in March-April 2003. Throughout the following decade, but especially during the Bush administration, the governmental stance was one of military success and this was the overwhelming attitude of the mass media in the United States.

20. In reality, the security situation was far more complex, with major problems evolving right from the start but persistently covered up. Two examples of official stance and reality are appropriate to examine here in the context of the relevance of the greater transparency that arose largely from the Wikileaks project at the end of the decade.

Afghanistan

21. Following rapid regime termination in Kabul, President Bush was able to give a hugely positive *State of the Union Address* to the Joint Houses of Congress in January 2002. In this address he greatly extended the war on terror to encompass an “axis of evil”:

“States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave threat and growing danger. They could provide these

arms to terrorists giving them the means to match their hatred. They could attack our allies or threaten to blackmail the United States. In any of these cases the price of indifference would be catastrophic.”

and:

“We’ll be deliberate, yet time is not on our side. I will not wait on events, while dangers gather. I will not stand, by while perils draw closer and closer. The United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most dangerous weapons”.

www.whitehouse.gov/stateoftheunion2002/

22. He further developed this position in his *Graduation Address* to the West Point Military Academy four months later which was notable for spelling out in more detail the problem and the required response

“Enemies in the past needed great armies and great industrial capabilities to endanger the American people and our nation. The attacks of September the 11th required a few hundred thousand dollars in the hands of a few dozen evil and deluded men. All the chaos and suffering they caused came at much less than the cost of a single tank. The dangers have not passed. This government and the American people are on watch, we are ready, because we know the terrorists have more money and more men and more plans.”

and:

“...the war on terror will not be won on the defensive. We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act.”

www.whitehouse.gov/news/releases/2002/06/20020601-3.html.

23. In reality, the presumed victory in Afghanistan was already transitioning into a bitter insurgency which has so far lasted more than 18 years. Indeed, even between the time of the *State of the Union Address* and the *West Point Graduation Address* the US Army was experiencing serious reversals, even though these were hardly covered in the US print and broadcast media. One rare exception was coverage of *Operation Anaconda* against the Taliban and al-Qaida near Gardez in eastern Afghanistan, where the *Washington Post* (6 March, 2002) reported on an unexpected outcome:

An opening advance on Saturday by Afghan and US Special Forces, intended to flush out suspected al Qaeda fighters in the town of Sirkanel, was thwarted when enemy gunfire kept coalition troops pinned down for hours. Elements of the 10th

Mountain Division also were reported stopped in their tracks Saturday in a 12-hour battle outside the town of Marzak. Mortar rounds and rocket-propelled grenades landed as close as 15 yards to their position, and 13 American soldiers were wounded.

24. As the conflict developed, US capabilities had to be reinforced by five Cobra attack helicopters and two UH-53 transport helicopters flown in from an amphibious support ship, the *Bon Homme Richard*, in the Arabian Sea.
25. Right through to the time of the Wikileaks revelations, the US government maintained a fiction of success in Afghanistan, with the conspicuous lack of transparency consistently militating against informed political discourse and recognition of the grievous long-term human costs of the conflict.

Iraq

26. This applied even more strongly to Iraq, where the presumed regime termination within three weeks in March/April 2003 was followed within a further three weeks by President Bush's "Mission Accomplished" 1 May speech delivered from the flight deck of the aircraft carrier the USS *Abraham Lincoln* and commencing with a confident and unchallenged assertion:

"Admiral Kelly, Captain Card, officers and sailors of the USS Abraham Lincoln, and my fellow Americans. Major combat operations in Iraq have ended. In the battle of Iraq, the United States and our allies have prevailed. And now our coalition is engaged in securing and reconstructing that country."

(<https://www.cbsnews.com/news/text-of-bush-speech-01-05-2003/>)

27. Once again, this was hugely over-optimistic, with violent opposition developing and civilian casualties rising rapidly even as US troops moved to occupy Baghdad. On 6 April, even before Bush's speech *International Herald Tribune* reported on an incident involving a US Marines patrol:

"Caught in the crossfire, according to a chilling account by an *Associated Press* reporter, were a number of pedestrians, including an old man with a cane, looking confused. When he failed to heed three warning shots by the Marines, they killed him. A red van and an orange-and-white taxi were also riddled with bullets after they failed to heed warning shots." (*International Herald Tribune* 7 April 2003)

28. Even more indicative was a story filed by one of the most experienced of US war reporters, Pamela Constable, embedded with a Marine Corp unit outside the city of Fallujah a year later. Following an ambush of a Marines patrol which suffered injuries but no deaths, Constable reported that:

“Just before dawn, Wednesday... AC-130 gunships launched a devastating punitive raid over a six-bloc area around the spot where the convoy was attacked, firing dozens of artillery shells that shook the city and lit up the sky. Marine officials said the area was virtually destroyed and that no further insurgency has been seen there.” (*Washington Post*, 15 April 2004.)

29. Note that this was a sudden “punitive raid” that destroyed a city district, a very long way from a convincing victory in a conflict that has now lasted seventeen years and has killed, at the most recent count, 288,000 people including at least 185,000 civilians. (<https://www.iraqbodycount.org/>, 11 February 2020).
30. It is a matter of public knowledge, that the vast amount of Iraq-related data revealed by the WikiLeaks publications which are the subject matter of this indictment, allowed for the first time, the above proper appreciation of the numbers of civilians who had been killed in the Iraq conflict. Any true assessment of government claims had been impossible before that data was revealed. I am aware that it has been further reported that the WikiLeaks publications played a part in bringing a formal end to US military involvement in Iraq, bringing to light in an irrefutable way, particular criminal acts on the part of US military previously deliberately covered up.
31. The three historic reports in the mainstream media I cite above in relation to Afghanistan and Iraq had constituted the very few that gave a radically different account of the US government view of supposedly successful wars, a misleading presentation that has persisted for nearly two decades. It was most sustained in the first decade and did much to constrain debate and accountability, with the great majority of the media coverage in the United State persistently more positive to the conduct of the wars throughout. The shift in public knowledge has been brought about in significant part only by unauthorised exposures of which whistleblowers and publications, in particular of the “Manning” disclosures, have played an exceptionally important part.
32. Given the entirely conflicting positions on transparency in the actions of governments, and in particular in relation to the waging of war, buttressed by government claims for secrecy on the grounds of national security, the danger of a politically motivated prosecution for those who expose such secrets, is very clearly present. In the case of Mr Assange, the very public statements of senior members of the current US administration which are contained in defence evidence before the Court in these proceedings, demonstrates the mindset of the current administration towards Mr Assange culminating in a decision, changed from that of the previous administration, to prosecute him.

33. During the Obama presidency there was a greater recognition of the problems and less pressure on those presenting conflicting evidence, but since the election of President Trump there has been a vigorous denigration of the Obama era, a return to the outlook of the Bush administration and even more bitter opposition to those perceived as dissenters, especially those involved in communicating unwelcome information such as Mr Assange.

Opinion

34. In my opinion Mr Assange's expressed views, opinions and activities demonstrate very clearly "political opinions". The clash of those opinions with those of successive US administrations, but in particular the present administration which has moved to prosecute him for publications made almost a decade ago, suggest that he is regarded primarily as a political opponent who must experience the full wrath of government, even with suggestions of punishment by death made by senior officials including the current President.

A handwritten signature in black ink, appearing to read 'P. Rogers', with a stylized flourish at the end.

Signed:

Dated: 12th February 2020