

Judge Emma Arbuthnot refuses to recuse herself in show trial of Julian Assange

By Thomas Scripps
11 July 2019

Judge Emma Arbuthnot has refused to recuse herself from WikiLeaks founder Julian Assange's US extradition hearings. This is what "class justice" looks like.

Arbuthnot, Chief Magistrate and Senior District Judge for England and Wales, is flouting fundamental legal principles to ensure that she presides over a show trial against Assange, due to resume at Westminster Magistrates Court on February 25. If extradited, Assange faces charges under the Espionage Act, carrying a 175-year prison sentence. Further charges are pending, which could include the death penalty.

The "Guide to Judicial Conduct" in England and Wales, published in 2018, states that, "Judicial independence is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary must be seen to be independent of the legislative and executive arms of government both as individuals and as a whole."

Arbuthnot should have automatically recused herself on this basis.

Her husband, James Norwich Arbuthnot, is a Conservative member of the House of Lords. He is intimately connected with the British armed forces and security services, whose criminal operations were exposed by WikiLeaks.

As a Tory MP, Lord Arbuthnot was between 2005 and 2014 the chair of the Defence Select Committee, the body overseeing the Ministry of Defence and Britain's armed forces. His watch covered ongoing military operations in Afghanistan and Iraq, as well as the wars for regime change in Libya and Syria.

He is currently co-chair of the UK advisory board for defence manufacturer Thales and is an advisory board member of the Royal United Services Institute for Defence and Security Studies (RUSI). Lord Arbuthnot is also a former director at security and intelligence consultancy firm SC Strategy, where he worked for two years alongside co-directors Lord Carlile and Sir John Scarlett.

Carlile is a prominent defender of MI5 who supported the Investigatory Powers Act 2016 (nicknamed the Snoopers' Charter) enabling the British state to access internet connection records without a warrant. He argued that Edward Snowden's exposures of illegal mass state surveillance "amounted to a criminal act." He oversaw the implementation of anti-terror legislation and reviewed national security procedures in Northern Ireland.

Scarlett is former head of MI6 and chair of the government's Joint Intelligence Committee (JIC). He oversaw the production of a report arguing for the right of the secret services to "collect bulk communications data" and was responsible for compiling the "dodgy dossier" on Weapons of Mass Destruction in Iraq.

The activities of Lord Arbuthnot and his colleagues were the subject of thousands of WikiLeaks disclosures. There are almost 2,000 references in the WikiLeaks' database to Thales and nearly 450 to RUSI. Lord Arbuthnot himself can be found in over 50 entries.

As Assange's legal team and UN Rapporteur on Torture Nils Melzer have argued, this "strong conflict of interest" requires Lady Arbuthnot to stand down from Assange's case. Her husband's entire political life has been dedicated to crushing the sort of transparency and accountability advocated by WikiLeaks.

The "Guide to Judicial Conduct" explicitly states, "Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process and should act accordingly."

Furthermore, "personal animosity towards a party is also a compelling reason for disqualification."

Arbuthnot's animosity toward Assange is on public record. When the publisher and journalist appeared before her for sentencing on April 11, just hours after his seizure from the Ecuadorian embassy, she attacked him as a "narcissist"—an impression she could not have formed in the course of legal proceedings and which was blatantly prejudicial. She also falsely claimed he had been "charged" with rape in Sweden—with Assange forced to interject that he had never been charged.

During last year's appeal against an outstanding UK arrest warrant for Assange (over then discontinued preliminary investigations in Sweden), Arbuthnot ridiculed the UN's 2015 ruling that Assange was the victim of "illegal" and "arbitrary detention." She maliciously claimed he had access to "sunlight" and an "open balcony"—neither of which was true.

No legal argument will convince Arbuthnot to recuse herself. Her connections via her family to the security services are the very reason she has been selected to oversee this case. The British ruling class requires an official to rubber stamp Assange's transfer to the US, in what amounts to an extraordinary rendition.

Two previous instances of judges recusing themselves from

English court cases provide a stark contrast to the WikiLeaks founder's case.

The first involves Arbuthnot herself. In August 2018, she was obliged to stand down from a case against Uber after the *Observer* revealed that her husband had a business interest in the ride hailing company via SC Strategy and its client, the Qatar Investment Authority. A judicial spokesman said "as soon as this link was pointed out to her, she assigned the case to a fellow judge. It is essential that judges not only are, but are seen to be, absolutely impartial."

No such concerns are evident in the case of Assange. Not one article in the mainstream media has reported on the glaring contradiction between Arbuthnot's actions in 2018 versus today.

The second instance is of a judge failing to recuse himself in 1998 during the attempt to extradite former Chilean dictator, torturer and executioner Augusto Pinochet to face criminal charges in Spain.

Lord Hoffmann was savaged for failing to make clear his connections with the human rights group Amnesty International, which was a party to the case. He was chair of the charity's fundraising department in a voluntary capacity. Hoffmann had been one of three Law Lords out of five to vote to overturn a High Court decision affirming Pinochet's claimed immunity from prosecution due to his being a head of state at the time of his crimes. In an unprecedented move, the House of Lords' verdict against Pinochet (involving Hoffmann) was scrapped by five law lords and only re-confirmed a year later—with significant qualifications invalidating most of the charges against Pinochet.

The Law Lords, led by Lord Browne-Wilkinson, developed arguments which would absolutely require Arbuthnot to recuse herself from the Assange case. Previously, whether a judge was *automatically* disqualified from a case depended on having a financial interest in its outcome. Lord Browne-Wilkinson's decision extended the principle of automatic disqualification to apply to the much looser categories of non-financial "interests" or support for "causes."

The overturn verdict accepted Pinochet's claim that he had been denied the right to a fair trial under Article 6 of the European Convention on Human Rights, which states, "Any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw."

Denunciations of Hoffmann were brutal. The *Guardian* reported January 16, 1999 that five law lords had "criticised Lord Hoffmann for flouting the basic principle that 'justice must not only be done but must be seen to be done.' The devastating criticism cast doubt over Lord Hoffmann's future as a law lord."

The *Guardian* continued, "The judges accuse Lord Hoffmann of ignoring a basic judicial tenet learned by every student in the first year of law school. So well-known is the rule, said Lord Hope, that no civil court in the United Kingdom has had a judgment set aside for a breach of it this century... 'Judges are well aware they should not sit in a case where they have even the slightest personal interest in it, either as defendant or as prosecutor,' Lord Hope said.

"Lord Hutton said public confidence in the integrity of the administration of justice would be shaken if Lord Hoffmann's

deciding vote that General Pinochet could be prosecuted was allowed to stand."

In January 2000, the Blair Labour government's Home Secretary Jack Straw intervened to protect the mass murderer, overruling the House of Lords and insisting that extradition proceedings should be halted on the grounds of Pinochet's supposed ill-health. Pinochet arrived back in Chile on March 3, landing at Santiago Airport where he rose from his wheelchair to the cheers of his fascist supporters.

Clearly, "judicial impartiality" means one thing when it comes to defending a vicious dictator and long-time ally of US and British imperialism. It means another when it amounts to persecuting a world-renowned journalist who has exposed the crimes of the ruling class.

Assange's scalp must be taken at all costs to further imperialism's colonial-style wars of conquest and the global assault on the social and democratic rights of the working class. To silence him forever, not only the judiciary but the entire state apparatus and its defenders in the media are shedding all democratic and liberal pretensions.

The Socialist Equality Party backs the demands being raised by Assange's supporters that Arbuthnot recuse herself. But we warn that the sole force capable of freeing Assange is the international working class mobilized in a collective political struggle against the ruling class and its legal apparatus.

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