

Decision on Assange's extradition set for next year

By Thomas Scripps and Laura Tiernan
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District Judge Vanessa Baraitser will give a decision on the extradition request in *USA v. Julian Assange* sometime in the new year. Final evidence will be submitted and examined by Friday next week.

The defence will then have four weeks to prepare a written closing argument (to be submitted on Oct. 30), followed by two weeks for the prosecution to prepare their own (Nov. 13) and another few days for the defence to respond on any points of law.

Baraitser had previously indicated her intention to finish proceedings sooner, despite protests from the defence that this would be “impossible.” She reiterated her preference yesterday, absurdly claiming, in a case defined by obstruction of Assange’s right to communicate with his legal representatives, that “there has been a significant amount of time made available to the defence to prepare their case.” With stunning hypocrisy, she lectured the defence, saying that she “must take into account” the unfairness of Assange remaining in custody for this extended period.

Defence lawyer Edward Fitzgerald QC replied, “If the court grants him bail that would solve that problem.” Assange has now been held on remand for a year and denied bail twice on Baraitser’s orders, even at the height of the pandemic with COVID-19 infections at Belmarsh prison.

Applying for the four-week period to prepare, Fitzgerald argued that Assange’s representatives had been “handicapped by the virus” and by the US government’s second superseding indictment having “landed on us at very short notice.” The defence needed “an opportunity to put our summary of the evidence in writing in order to discuss it with our client” and had “taken express instructions on the matter” from Assange. If necessary, they were prepared to “forgo oral submissions” to have that time. The prosecution, Fitzgerald continued, had accepted that the defence’s application was “fair and in the interests of justice.”

An exchange followed between Baraitser and Fitzgerald highlighting the explosive political circumstances underlying the case. Accepting the defence’s point that any

dramatic change in the facts surrounding the case before November 13 would have to be taken into account, Baraitser asked, “What impact on your case, say you, will the American elections have?” Fitzgerald answered that they “may have an impact” and that “supposing Trump says, ‘I’m going to execute all journalists’... then obviously we’d be entitled to draw that to the attention of the court.”

That these words can be plausibly attributed to an American president speaks to the wholesale collapse of democratic forms of rule with which Assange’s persecution is inextricably connected. As the *World Socialist Web Site* commented at the start of the September hearing:

The arbitrary and legally abusive persecution of Assange exemplifies the deepening turn to authoritarian and fascistic methods of rule by governments across the world. In the weeks leading up to Assange’s hearing, rights enshrined in the US Constitution have been torn apart as demonstrators opposing police violence and murder in cities across America have been met with rubber bullets, tear gas and baton charges. In scenes reminiscent of South American dictatorships, federal agents have bundled US citizens into unmarked cars to be taken away for questioning and protesters have been shot and killed by US police and fascist vigilantes.

Since then, the political crisis in the US has intensified, with Trump declaring he will not accept the results of the presidential election, and the Democrats making clear they will not challenge Trump’s plans for a coup d’état. By the new year, there is a very real possibility that the UK court will have to decide whether to extradite Assange to a nation ruled by a presidential dictatorship, with journalists and political opponents being rounded up by police amid mass popular opposition.

Baraitser eventually accepted Fitzgerald’s application. While a victory for the defence, the decision still leaves

Assange's lawyers unable to make their final arguments orally in court. It leaves Assange detained in Belmarsh for at least another three months, in conditions which the medical evidence has made plain are inflicting immense physical and mental suffering.

A second defence application requested that Baraitser accept into evidence two recently acquired statements—from a psychologist who formerly worked in the US Bureau of Prisons and a psychology expert who has repeatedly visited the facility where Assange would be held.

The prosecution has relied heavily on the statements of US prosecutor Gordon Kromberg and US Bureau of Prisons official Alison Leukefeld—neither of whom will be cross-examined by the defence—to assert that Assange will be detained humanely in the US. Both statements were made long after the deadline for submission of defence evidence. Fitzgerald argued, “it would be unfair to the defence” not to have an opportunity to respond with their own evidence on the subject.

Prosecution lawyer James Lewis QC reacted furiously. Speaking on behalf of the US government which served a new extradition request on the defence just weeks before the hearing was due to begin, Lewis declared, “This just simply cannot go on. This case will never end if the defence can just put in evidence whenever they like.” If the evidence were accepted, “we would wish to have an adjournment; we would wish to file rebuttal evidence and cross examine.” Fitzgerald responded that the prosecution “has no divine right to have the last word,” pointing out again that the defence have had “no right” to cross examine Kromberg and Leukefeld.

Baraitser rejected the defence request, maintaining the double-standard that has characterised the entire hearing.

The only witness examined yesterday was Patrick Eller, CEO of Metadata Forensics, a digital investigations firm. He spoke to the prosecution's allegation that Assange conspired to commit a criminal act with Chelsea Manning by helping to crack a hash code on a US government computer to gain access to a different (FTP) account. Eller confirmed the prosecution's case is based on lies and contradicts the findings of the US government's own computer forensics expert in Manning's court martial.

Based on transcripts from Manning's prosecution and his own expertise in computer security, Eller concluded that in 2010 it would not have been possible for Manning to crack the hash password as alleged by US prosecutors. Vulnerabilities identified in Microsoft's operating system, cited by the prosecution, had been solved by 1999, meaning it was “computationally infeasible for a hash code like that to be cracked.” Defence lawyer Mark Summers QC established in chief examination that “the code was never

cracked.”

Even if Manning had cracked the hash code, any benefit alleged by US prosecutors could not have been obtained. Eller stated that Manning was one of “millions” of people with authorised access to the secure network used by the US government for classified information. Before the alleged conversation with Assange about password hacking had taken place, Manning “had already downloaded 10,000 cables, amongst other things,” including the Guantanamo detainee briefs and the Iraq and Afghan war logs.

Had Manning cracked the hash code and gained access to the FTP account, her IP address would have been “traceable” to the computer she had used and the date and time of use. Therefore, the benefit alleged in the US indictment—disguising the user's identity—did not exist. In any case, Manning had already used another method of acquiring an equivalent level of anonymity, via a Linux CD.

In re-examination, Summers drew attention to the fact that it has never been established that the person(s) Manning communicated with about cracking a hash code was Assange—they used the username “Nathaniel Frank.”

A brief statement by Jakob Augstein, a journalist and publisher of the German weekly newspaper *Der Freitag*, was read into evidence. Augstein confirmed *Der Freitag's* publishing of an article in August 2010 revealing the existence of an online store of unredacted US government cables which could be accessed by anyone with the right key. He also stated that Assange had called him urging the paper not to publish the location of files, out of concern for US sources named in the document, who the prosecution allege WikiLeaks wilfully endangered.

At the end of yesterday's proceedings, Baraitser heard an application from the Press Association for the release of medical reports in the Assange case. Edward Fitzgerald QC for the defence argued that “open justice would not be advanced” by the release, and that the disclosure of sensitive medical information about Assange and his family, including his young children, was an invasion of privacy and risked causing “legitimate harm to others.” Baraitser said she would rule on the application on Monday.

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