Julian Assange checkmates the Department of Justice

It was not Julian Assange who had to come to terms, but rather the DOJ.

Patrick Boylan, *Free Assange Roma*

TAGS: Julian Assange, Department of Justice, plea deal, WikiLeaks site, Espionage Act

STORY SUMMARY: Despite the criticisms trending in social media ("Assange abjured like Galileo"), Julian obtained his freedom by simply telling the truth and abjuring nothing. His victory actually strengthens, not weakens, the fight against the use of the Espionage Act to clamp down on journalists.

"It's not every day you win a political battle -- and even less often against the world's most powerful government," wrote Reto Thumiger for Pressenza (7/26/2024); "but today we can rejoice because Julian Assange is free!" Indeed, the co-founder of the site WikiLeaks has finally put an end to his 14-year long judicial persecution by the U.S. and the U.K., thanks to the prowess of his legal team and the tenacity of his family members (wife Stella Moris, father John Shipton and brother Gabriel Shipton) but also thanks to an assist from the British High Court and the support of millions of activists around the world.

Fifty thousand people, for example, were logged onto the Flight Checker website June 25th and 26th in order to follow, on their devices, the plane taking Julian from London, where he had been held in Belmarsh prison for more than five years, to the city of Saipan in the Northern Mariana Islands for a two-day stopover and then, finally, on to Canberra airport in Australia... and freedom.

The United States had long planned a different outcome. A very different outcome, indeed. Once the British legal hurdles to extradition had been overcome, U.S. Marshals were to grab Julian inside Belmarsh prison, handcuff, diaper and hood him, then drive him to a CIA plane that had been waiting for months on the tarmac of a London military airport. From there he was to be flown directly to the District Court in Alexandria, Virginia, near Washington, D.C., the infamous tribunal that imprisons anyone who, like Assange, is arraigned under a 1917 law against spies called the Espionage Act.

But things didn't go that way. On June 25th, Julian Assange, on bail from Belmarsh prison at his request and so without handcuffs, took a comfortable executive jet paid for by Australia (Assange has promised to reimburse the cost) and showed up, of his own volition, at the Saipan Civil Courthouse – the U.S. district court farthest from Washington, DC. There, before an extremely accommodating judge, Ramona

Manglona, he accepted a previously agreed-upon **plea deal** that set him free in exchange for very minimal concessions.

In chess terminology, Julian Assange skillfully obtained, against all odds given the much greater power of his opponent, a “resignation” worth a checkmate.

What does the plea deal provide for? The U.S. had wanted to jail Assange for up to 175 years (the equivalent of two life sentences) but instead, in the end, had to settle for only five years, already served. The U.S. had wanted to charge Julian with hacking (computer intrusion): instead, the word is not even mentioned in the plea deal. The U.S. had initially charged Julian with 17 counts of espionage: in the end, only one remained, the reception and dissemination of classified documents, which is no more than what all investigative journalists do, as protected by the First Amendment.

So, in pleading “guilty” to that charge, did Julian renege his beliefs? Did he equate spying and journalism? No, he did not. He simply told the truth: “Yes, I received and transmitted classified documents” (which in fact he did). And that is practically all he said. It is the Espionage Act that, disregarding Julian’s rights as a journalist, equates these words with spying. Thus, by simply telling the truth, Julian revealed, for all to see, the unconstitutionality of the Espionage Act and the duplicity of the Justice Department in using it in such bad faith. His principled stand has served to sound the alarm in newsrooms around the world and may very well produce the boomerang effect of getting the Espionage Act abolished or restricted.

In order to get this admission from Julian – which, once again, consists of simply telling the truth – the Department of Justice had to agree to withdraw 17 of the 18 charges it had made against him. And that’s not all. The U.S. had to withdraw their current request to extradite Julian and, more importantly, pledge not to bring, in the future, any additional charges against Assange based upon his past conduct. This closes the case against him definitively.

In the process, the U.S. had to admit that Assange's revelations never actually caused harm to any individual, only the "risk" of harm. Moreover, the U.S. had to agree to waive the right to demand any financial compensation for any future damages resulting from the WikiLeaks revelations. Plus, the U.S. had to forego all fines, theoretically totaling over one hundred thousand dollars; in the end, Julian had too pay just a hundred dollar court fee. Lastly, the U.S. had to agree to a clause that would have authorized Assange to leave Saipan and travel undisturbed to Australia if the court had issued a ruling failing to include all of these agreed-upon provisions.

What a turnabout! The Justice Department had started out brandishing an iron fist, and ended up with a fistful of dust.

What did Julian have to concede?

What did Julian have to concede, in exchange for all these concessions made to him?

To begin with, as was previously said, he had to admit “guilt” for breaking an unjust law, which is therefore not guilt at all. Let us see why, briefly, and then return to the list of Julian’s other concessions.

First of all, from a legal standpoint, Julian’s admission of “guilt” by no means criminalizes per se investigative journalism, as numerous commentators have wrongly claimed. This is because it does not constitute a legal precedent and therefore cannot be used before courts in the future. Ben Witzner (Edward Snowden's lawyer) made this point in the transmission "Flight to Freedom" streamed by WikiLeaks on June 26th. Plea bargains are simply "understandings between the parties" -- private arrangements, so to speak, that the two parties enter into precisely to avoid a lengthy and uncertain trial. Whereas only rulings issued by a court, after a regular trial, count as legal precedents. Thus, judge Manglona in Saipan did not examine the merits of the Assange case put before her; she merely took note of what had been privately agreed upon between Julian and the Department of Justice to settle the case.

Of course, from a psychological standpoint, the alarm expressed by many commentators is perfectly understandable: the plea deal approved last Wednesday is, without a doubt, a blatant attempt to intimidate, and thus gag, not only Julian but also the entire category of journalists in the future. But – as we have just pointed out – it is all show. The plea bargain, in fact, has no teeth and, by making the government’s bad-faith use of the Espionage Act clear for all to see, it may very well spark a campaign to abolish or modify the Act. Let us examine this second point more closely.

Because of the circumstances of his case, Julian was unable to make two important claims that, in theory, could have exonerated him:
(1.) the claim that the 1971 U.S. Supreme Court ruling, which approves revealing classified documents if done in the public interest (New York Times Co. v. United States), applies to indictments under the Espionage Act and

(2.) the claim that the First Amendment is, in fact, universally applicable and thus applies to U.S. or non-U.S. citizens (Julian has Australian nationality) who invoke it to justify publishing classified documents.

Actually, Julian did mention these two claims briefly to the judge in Saipan while, at the same time, acknowledging that he could not ask the court to decide whether they were valid, since the hearing was not a regular trial but simply a plea acceptance. However – and here’s the point – nothing will keep investigative journalists or editors, on trial in the future for having violated the Espionage Act, from making these claims in order to justify their disclosures. While these claims may very well be dismissed by a lower court, the indicted journalists or editors will still have the

opportunity of taking their case all the way up to the U.S. Supreme Court in the hope of getting the Espionage Act declared unconstitutional. Julian was not in a position to do so. Had he tried to, during the Saipan hearing, he would have been ruled out of order and the plea deal would have been scuppered.

In conclusion, Julian's plea bargain has not prejudiced anything per se. Julian has simply postponed, until a later date and more favorable conditions, the debate on the constitutionality of the Espionage Act. If and when that Act is declared unconstitutional, it will then become immediately evident to all that Julian's admission of "guilt" for breaking an unjust law was in fact not an admission of guilt at all: it was the law that was at fault (as well as the government's bad-faith use of that law).

One last consideration: by accepting to enter into a plea deal, Julian avoided having to stand trial in an East Virginia lower court (where his two claims would surely be rejected, given the precedents), and then before an appeals court and finally before the Supreme Court in the hope of finally being acquitted. All that could take decades and, in the meantime, Julian would be kept in "precautionary detention" in a U.S. SuperMax prison. Given his age (53), it is likely that he would die behind bars while waiting for his case to be decided.

What other concessions did Julian have to make?

Now let us return to the question we previously asked. Besides accepting one of the 18 counts, what else did Julian have to concede in order to obtain the plea deal and, with it, a series of concessions that were absolutely unthinkable a year ago – first and foremost, his freedom?

(1.) Assange had to forgo asking for compensation from the U.S. government for his years of persecution. This is, admittedly, a genuine concession. But it is the only one. The remaining concessions are, in fact, purely symbolic and inconsequential;

(2.) Julian had to agree to leave the territory of the United States immediately (something he was only too eager to do);

(3.) he had to agree to forgo using the Freedom of Information Act (FOIA) to get hold of the documents on which the DOJ based its allegations (but nothing keeps his supporters, such as the investigative journalist Stefania Maurizi, from obtaining those documents for him);

(4.) he had to agree to destroy all remaining, **unpublished** files on the WikiLeaks server. This last concession is utterly surreal since Julian has already sent encrypted copies of his files – both published and unpublished – to other computer sites, some of which he has no direct control over. Therefore, after having instructed his staff to delete all unpublished files on the WikiLeaks server, in accordance with the plea deal,

Julian has now only to request that the owners of the backup sites send him copies of the old files or, alternatively, release them directly to the public. In the world of computing, in fact, one cannot delete a file permanently except by deleting the only remaining copy. And computer professionals always have backups.

Not only, but, under the plea deal, all the really important files (the ones that have created scandals, such as the Afghan War Logs or the Guantanamo regulations) can now legally **remain** on the WikiLeaks site, with the blessing the U.S. government.

What is even more astonishing is that Julian did not have to promise not to create, in the future, new files with new revelations furnished by a new generation of whistleblowers. This omission is incredible and opens the door to a revived WikiLeaks site.

And that's it. There are no other concessions imposed on Julian by the plea deal agreed upon in Saipan. Just these four, three of which are without any consequences.

How did Julian manage to pull off this feat?

How is it possible that the U.S. government has given away so much to Julian in exchange for so little? An explanation is in order.

Clearly, public pressure played a significant role, as WikiLeaks' current editor Kristinn Hrafnsson pointed out repeatedly during the previously mentioned transmission "Flight to Freedom." Even the British High Court judges took notice of the immense mobilization worldwide; in their **March 26th sentence**, they mentioned the "exceptional level of national and international interest" around the Assange case (page 2, paragraph 4).

We must also give credit to Julian's great skill and tenacity and that of his legal team in negotiating with the U.S. Department of Justice and British authorities for over a year. We can, in fact, date the start of negotiations with Julian's **Letter to King Charles** on May 5, 2023. We don't know how the negotiations actually proceeded over the course of time but it is likely that the U.S. started off demanding a great deal (admission of guilt for all 18 counts, fines for hundreds of thousands of dollars, a pledge to shut down WikiLeaks completely, etc.) and that Julian held fast, in spite of repeated threats of extradition, chipping away at the original demands and reducing them to a shadow of what they were.

He got a helping hand from political events. The U.S. Presidential election was drawing nearer and so Julian's extradition and trial in the District Court of East Virginia was becoming increasingly risky: it could spark a war over press freedom that would divide the country and disrupt the Democrats' campaign. In addition, President Biden probably felt the need to do something to recuperate his progressive wing, after having alienated it by supporting the Israeli massacre in Gaza. Finally, the

British general election was also approaching and the highly probable (now ascertained) victory for Labour could give their brothers in the Australian Labour party, staunchly pro-Assange, the chance to pressure UK institutions directly for Julian's unconditional release. Seeing Julian walk free with no obligations would be a major blow to Washington hawks: it would torpedo their plans for vengeance against Julian. Rather than that, a plea deal – any plea deal – would be much better.

But the straw that really broke the camel's back was probably the May 20 sentence by British magistrates who, after years of legal hassling, finally allowed Julian to appeal against the order for his extradition to the United States. Their sentence visibly shook the U.S. attorneys present in the courtroom that day: they seemed thunderstruck. And their dismay surely redoubled when, a few days later, the same judges, Sharp and Johnson, scheduled the appeal hearings for July 9 and 10! In other words, instead of dallying as in the past, they convened the parties almost immediately -- a signal that they were seriously considering rejecting outright the U.S. request for extradition. Such a rejection would automatically trigger the immediate, unconditional release of Julian from Belmarsh prison.

Let us put ourselves for a moment in the shoes of these U.S. lawyers. They started out seeking to impose the equivalent of two life sentences on Julian; now they see on the horizon the concrete possibility of a total defeat. Thus the need to save what could be saved with a plea bargain. How much were they able to salvage? Not much, as we have seen. The hawkish Mike Pence, vice president under Trump, called the plea deal signed in Saipan a sell-out and a "**miscarriage of justice**". Indeed, we have seen how three out of four concessions made by Julian have zero practical effect, while his acceptance of "guilt" may actually have a boomerang effect. But appearances count and, in a bid to save face at least minimally, the Justice Department signed the deal.

If this reconstruction is actually what happened, then we must pay tribute to the fundamental integrity of the British judiciary. Despite its flaws (and there are many, as we saw when Justice Swift trashed Julian's initial appeal after scarcely reading it), there are, at the same time, British magistrates who dare to stand up to the wrath of that bully across the pond. Chapeau, indeed.

One last question. If it is true that Julian had a good chance of being released by British magistrates on July 10th, wouldn't it therefore have been better for him to continue to reject the plea deal and trust in a judicial victory? This would mean walking free having made zero concessions. Wouldn't this have been preferable?

Absolutely not. First, the U.S. would have appealed the High Court's rejection of their request for extradition and Julian would have to spend other years in Belmarsh while the appeals (and counter-appeals) dragged on. More importantly, even if Julian was finally set free, he would only be free from immediate extradition to the United States. He would not be free of the charges against him because British Courts cannot decide on those charges: only the U.S. District Court in East Virginia can. Thus, with

18 indictments still hanging over his head, Julian would be continually exposed to new requests for extradition (and thus more precautionary detention in jail) by the Department of Justice, for the rest of his life. In conclusion, the only way to be completely free of entanglements was to lay the 18 indictments to rest, accepting one and getting the others withdrawn. Which is exactly what Julian did.

What can we do now for Julian and for press freedom?

Now, what is there left for ***us*** to do?

Stella Moris has already pointed the way in various video messages posted on her Instagram profile:

1. ask President Biden for a **pardon for Julian** in order to clear his record (the plea deal left Julian a felon);

2. contribute to the **crowdfunding campaign** to pay for the private plane Julian used for his Flight to Freedom (British authorities had banned the use of a commercial line so Julian had no other choice);

3. demand new legislative measures to protect journalists, who are currently extremely vulnerable on the job. This means new legislative measures that would:

(a.) break up the concentration of media ownership – greater diversity of ownership and thus of editorial policies would give journalists greater freedom of expression;

(b.) strengthen source protection legislation, in particular for military whistleblowers;

(c.) curb lawfare against journalists making it a criminal offense;

(d.) enable unions to prevent retaliatory firing and mobbing more effectively;

(e.) abolish the Espionage Act or amend it to include a First Amendment or “public interest” defense.

Julian Assange is free. But journalism still remains on trial.