# John McDonnell MP

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Tuesday, 07 May 2024

Dear Sir Bob Neill,

We are writing to you as a cross party group of Members of Parliament to request that the Justice Select Committee undertakes a short sharp inquiry into the evidence that has come to light about the role of the Crown Prosecution Service in relation to the inquiry by the Swedish authorities into allegations against Mr Julian Assange.

As you will know, for the last fourteen years the Crown Prosecution Service has been the key public authority in the UK in the Julian Assange case, first in the extradition request concerning the Swedish case and now in the request for extradition to the United States.

Julian Assange risks 175 years in prison for revealing classified documents that enabled the reporting of war crimes, torture and extrajudicial killings by drones. The UK's National Union of Journalists and the International Federation of Journalists, among others, have highlighted the risks to journalism posed by this extradition, which would in their judgement criminalise common journalistic practices.

The evidence that has come to light opens the CPS to allegations that it misjudged, or possibly overstepped, its role when advising the Swedish authorities on the extradition of Mr Assange to Sweden. This leads to questions about the motive behind such actions, including whether the CPS was influenced by another extradition request, r aimed to facilitate Mr Assange's subsequent extradition to the US.

Through relentless FOIA requests and litigation since 2015, the Italian investigative journalist Stefania Maurizi has obtained part of the internal correspondence between the Swedish Prosecution Authority (SPA) in Sweden and the Crown Prosecution Service (CPS) in the United Kingdom.

She has rigorously reconstructed the case in her book "Secret Power. WikiLeaks and Its Enemies", which has won, among other prizes, the European Award for Investigative and Judicial Journalism and the Alessandro Leogrande Award for Investigative Journalism in Literary Form.

Her FOIA documents provide evidence that the Crown Prosecution Service helped create the legal paralysis and diplomatic quagmire that led to what a UN body characterised as Julian Assange's arbitrary detention in London from 2010.

Internal correspondence between the SPA and CPS leads to the view that Mr. Paul Close, a lawyer with the CPS's Special Crime Division, the division responsible for prosecuting high-profile cases, provided advice to the Swedish prosecutor Marianne Ny from early on not to question Julian Assange in London.

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Mr. Assange had never refused to be questioned in relation to the Swedish allegations. What he had refused was being extradited simply for questioning. As a matter of fact, from 2014 on, with the introduction of “Section 12 A,” the United Kingdom would no longer grant extradition of a suspect solely for the purpose of questioning, as was done in the case of Assange. From then on, extradition would only be granted if the foreign judicial authority issuing the European Arrest Warrant had already charged the suspect and was therefore requesting their transfer in order to send them to trial. This was a legal argument raised repeatedly by Assange’s defense in fighting Sweden’s warrant, contending that the measure was disproportionate; the Swedish prosecutor, Marianne Ny, had requested his extradition only to question him as a suspect, not as a defendant who needed to stand trial. But WikiLeaks’ founder had lost his appeal in all of the British courts, which upheld the legality of the measure. Two years after the Supreme Court’s sentence on Assange, the United Kingdom changed its laws, but it was too late for him.

From August 20th 2010, when the Swedish investigation was first opened, to November 19th 2019, when it was dropped once and for all, after being opened and closed three times, Mr. Assange always remained under preliminary investigation. He was never charged.

Mr. Assange was convinced that extradition to Sweden could pave the way to his extradition to the United States, where he and WikiLeaks had been under investigation since 2010 for publishing classified documents. These are the very same files for which Assange has been charged with Espionage Act violations in 2019 and risks 175 years in prison.

Through his legal counsel, Mr Assange asked Marianne Ny for him to be questioned by telephone or video conference, in writing, or by an in-person interview in the Australian embassy.

All of these options were perfectly acceptable under Swedish law, but Marianne Ny rejected them all. And for six years, from 2010 to 2016, she remained adamant. Only in November 2016 did the Swedish prosecutors finally question him in London, as he had always requested.

No one understood why Marianne Ny had persisted in refusing to question Mr. Assange in London until Ms Maurizi revealed the conversations between the Swedish Prosecution Authority and the Crown Prosecution Service exposing the role played by the Crown Prosecution Service.

It is true that Ms Ny had insisted on interviewing Assange in person in Sweden from the very start but given the lack of progress in the preliminary investigation, she could have reconsidered her strategy and decided to use the legal cooperation procedures to question Julian Assange in person in London.

Unfortunately, she did not do so. She continued to insist on extradition at all costs.

By advising the Swedes not to question Julian Assange in the United Kingdom, the Crown Prosecution Service helped create the legal paralysis trapping the WikiLeaks founder in Britain from 2010.

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After all options for opposing his transfer to Sweden were exhausted, Mr Assange took refuge in the Ecuadorian embassy. The legal paralysis was compounded by a diplomatic impasse involving five countries, Australia, Sweden, Britain, Ecuador and the United States. This quagmire left him in a legal limbo, under investigation for years, suspected of being a rapist but never being either charged or cleared once and for all.

There are numerous questions that should be addressed to clarify the role of the CPS in this matter, including:

Why did Mr. Paul Close advise the Swedish prosecutors against the only investigative strategy that could have brought the Swedish case to a quick resolution?

Why in 2012, after a press article had suggested that Sweden might drop the case against Assange, did the Crown Prosecution Service write to Marianne Ny: "Don't you dare get cold feet!!" ?

After Mr. Assange took refuge in the embassy, even the Swedish authorities began to have second thoughts about the dead end into which they had entered, with the encouragement and advice of the British authorities.

In October 2013, Marianne Ny wrote to the CPS: "It seems that Julian Assange is absolutely determined not to go to Sweden, whatsoever," and "the chance of the judgement to extradite Assange being enforced within a reasonable time seems [to] be small."

She therefore concluded: "There is a demand in Swedish law for coercive measures to be proportionate. The time passing, the costs and how severe the crime are to be taken into account together with the intrusion or detriment to the suspect. Against this background we have found us to be obliged to consider lifting the detention order (court order) and to withdraw the European arrest warrant. If so, this should be done in a couple of weeks. This would affect not only us but you too in a significant way."

It remains unclear why lifting the European Arrest Warrant would also have an effect on the British. Was it not a Swedish investigation?

And why did the Crown Prosecution Service reply: "I would like to consider all the angles over the weekend." What angles did the British authorities have in this Swedish case?

"I hope it didn't ruin your weekend," Marianne Ny replied. It is unclear why a Swedish prosecutor dropping an extradition attempt would ruin the weekend of Crown Prosecution Service lawyer.

Apparently not even in 2013 when the Swedish prosecutors were inquiring about the costs of the Metropolitan Police guarding the embassy day and night becoming "unreasonably high" did the Crown Prosecution Service reconsider its legal strategy.

Indeed, the Crown Prosecution Service replied that they "do not consider costs are a relevant factor in this matter". Why were they unconcerned about the expenditure of this level of taxpayers' money?

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The highly anomalous handling of the Swedish case by prosecutor Marianne Ny compounded by the Crown Prosecution Service:

- resulted in justice for no one

- contributed to the severe deterioration in Mr Assange's health

- cost British taxpayers at least £13.2 million to keep the Ecuadorian embassy under siege by Scotland Yard from 2012 to 2015

- resulted in the UN Working Group on Arbitrary Detention decision that Sweden and the United Kingdom had arbitrarily detained Mr Assange since 2010.

- resulted in an independent investigation by the UN Special Rapporteur on Torture, Nils Melzer, who publicly denounced serious violations including:

(a) A disregard for confidentiality and precaution

(b) A disregard for exculpatory evidence

(c) A proactive manipulation of evidence

(d) A disregard for conflicts of interest

(e) A disregard for the requirements of necessity and proportionality

(f) A disregard for the right to information and adequate defense

(g) A disregard for the right of appeal to the European Court of Human Rights

(h) A disregard of the Mutual Legal Assistance agreement

(i) A complacency or complicity with third party interference

(j) A refusal to guarantee non-refoulement

(k) Pervasive procedural procrastination

In its official investigation on the Assange case, the UN Special Rapporteur on Torture, Nils Melzer, explicitly referred to "third-party interference on the part of the British Crown Prosecution Service (CPS)" and wrote that the correspondence between CPS and the Swedish prosecutors quoted above "does suggest that the British CPS had strong interests, independently from those pursued by the Swedish prosecution, in discouraging Mr. Assange’s questioning in London, but also in preventing the envisaged closure of the investigation and withdrawal of the arrest warrant by Sweden.

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To this day, no British authorities have addressed the violations denounced by the UN Special Rapporteur on Torture, Nils Melzer or addressed his question that the Crown Prosecution Service should clarify its role.

In her attempt to investigate the case, Ms Maurizi tried to access the full correspondence between the Crown Prosecution Service and the Swedish Prosecution Authority. But when she asked for it, she was informed by the Crown Prosecution Service that Mr. Paul Close's account had been deleted in 2014, after Mr. Close retired, and that "all the data associated with Paul Close's account was deleted when he retired and cannot be recovered".

Mr. Close was the lawyer with the Crown Prosecution Service's Special Crime Division who had advised the Swedish prosecutors not to question Mr. Assange in London on the allegations of rape in Sweden.

Why did the Crown Prosecution Service delete Mr. Paul Close's key emails while the Swedish case was still ongoing and highly controversial?

Since November 2017, when the Crown Prosecution Service informed Ms Maurizi that they had deleted Mr. Paul Close's account, the journalist, through her legal counsel, has repeatedly asked the Crown Prosecution Service to provide the information they hold to explain what they deleted, why, how and on whose instructions.

The Crown Prosecution Service insisted that the deletion of Mr. Paul Close's email account was standard operating procedure when a lawyer retired and was conducted in accordance with record management policies.

However, the Crown Prosecution Service's Records Management Manual states that general correspondence relating to a criminal case file should be retained for "5 years from the date of most recent correspondence." Yet the CPS deleted it anyway.

The Crown Prosecution Service acknowledged that the Records Management Manual did not deal with the deletion of an account but from November 2017 until the end of 2022, the Crown Prosecution Service maintained that the account was deleted according to usual operating procedure where an account would be disabled when an individual left and then deleted after three months.

Ms Maurizi asked to see any policy where this operating procedure was reflected.

The Crown Prosecution Service refused to respond properly to that request, so Ms Maurizi appealed.

The same information about the usual practice and deletion after three months of leaving was also provided to our colleague, John McDonnell MP, in December 2022, when as an MP he submitted a FOIA request to the Crown Prosecution Service after Ms Maurizi contacted him to ask for help in clarifying the destruction of key documents in the Julian Assange case.

However, things changed in January 2023.

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During a First-tier Tribunal hearing of Ms Maurizi's appeal against the Crown Prosecution Service refusing her FOIA requests, including refusing to respond properly to her request about the deleted e-mails and the relevant policy, the Crown Prosecution Service's witness stated two important facts:

First, that even the Swedish authorities at the Swedish Prosecution Authority had destroyed large part of the correspondence; and

Second, that he had seen a policy that referred to deletion of material within 30 days.

In June 2023, the First-tier Tribunal's Judge O'Connor ordered the Crown Prosecution Service to inform Ms Maurizi whether they hold any information as to when, how and why the documentation in Mr Close's account was deleted, and if they do hold it, to either release it to Ms Maurizi or clarify the grounds for their refusal.

As a result of the order from Judge O'Connor, the Crown Prosecution Service released a "leavers process policy document" for the first time and stated that the standard procedure at the time the account was deleted (13 March 2014) was to delete it thirty days after retirement, and not, as the CPS had previously stated for years, after three months from retirement.

Far from clarifying the matter, the release and the statement by the Crown Prosecution Service made things even harder to believe.

If the "leavers process policy document" was the document regulating the general working practice for disabling and deleting personal email accounts of CPS staff after they retired, how is it possible that no one at the CPS knew of this document or provided it to Ms. Maurizi considering she had been asking the CPS for clarifying the deletion of emails since 2017?

And how it is possible that from 2018 to 2022 the CPS stated that documents were deleted 3 months after Mr. Paul Close retired, whereas in June 2023, it stated they were deleted 30 days after?

It is perturbing that a public body stated something to the commissioner, from 2018 to 2022, in the strongest and clearest terms, but which it now claims was entirely wrong.

It is also suspicious that both sides of the Swedish case (both the Swedish Prosecution Authority and the Crown Prosecution Service) destroyed large parts of their correspondence about such a controversial, high profile case whilst it was ongoing.

Following an inquiry from John McDonnell MP, the Crown Prosecution Service confirmed that there is no backup system to retrieve the deleted account once it has been permanently deleted and that there is no way to know whether all relevant emails were transferred to the case file before the account was deleted.

Given the significance of the case of Julian Assange in relation to journalistic freedoms and the widespread public interest in the case, it is critically important that all the public bodies dealing with the case are seen to be acting in the public interest and acting appropriately.

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As can be seen from this body of research into the CPS's role in the Swedish investigation, there are clearly questions to be answered by the CPS.

As scrutiny of the operation and performance of the CPS falls to the Justice Select Committee it is for this reason that we write to you to request that the Select Committee investigates this matter.

Yours,

John McDonnell MP, David Davis MP, Caroline Lucas MP, Jeremy Corbyn MP