

THE ASSANGE INDICTMENT AND THE RULE OF SPECIALTY

Alright
, as
most of
you
have
discove
red,
Julian
Assange



had his asylum status revoked by Ecuador, and officers of the Met (and presumably Scotland Yard too) were allowed into the Ecuadoran Embassy in London to effectuate arrest of Assange. Don't be fooled by the breathless cable news coverage, the primary arrest warrant was the UK one from Assange's 2012 jumping of bail conditions, not the extradition request by the US. In short, Assange would still be in custody right now irrespective of the US extradition request.

To flesh out the rest of Assange's status, to the extent we currently know it, I will pilfer some of the reportage of the excellent Daniel Sandford of the BBC. Assange was presented immediately to Court One at the Westminster Magistrate's Court where it was made clear that there were two warrants he was arrested on, not just the US request. Assange pled not guilty. He was NOT ordered to present evidence on his failure to surrender (which is appropriate if he declines). The judge presiding, Michael Snow nevertheless, and quite properly, found Assange guilty of the bail offense. Assange will appear in the higher level Southwark Crown Court for sentencing on the bail offense at a future date not yet specified. He will be back in the Westminster Magistrate's Court, as of now by video link from his detention facility, on May 2nd regarding the extradition matter.

With that background out of the way, let's look at the more significant US extradition case. First off, here is the EDVA indictment that was unsealed this morning. As you can see, it is for a single count of computer hacking conspiracy. I think most people expected all kinds of different counts, up to and including espionage crimes. Those were not included, nor were the issues from the Vault 7 case, that easily could have been indicted on outside of any real First Amendment issues.

So, while the indictment could have encompassed far many more charges and issues, it does not and is just this one count.

Why is that important?

Because legal commentators like Jeff Toobin on CNN are having a field day noting that there may be more charges forthcoming. And Shimon Prokupecz of CNN reports DOJ is indeed going to seek "additional charges" against Assange. And why is *that* important? Because of the Rule of Specialty.

I noted this from almost the first second on Twitter, but few other than Ken White (aka Popehat) seem to have caught on to how this doctrine will come into play in the case of Assange. It is a real issue, though we do not know how it will play out at this early stage of the extradition process.

The Doctrine of Specialty is a principle of International law that is included in most extradition treaties, whereby a person who is extradited to a country to stand trial for certain criminal offenses may be tried only for those offenses and not for any other pre-extradition offenses. Long ago and far away I argued this successfully, but that was in relation to the treaty between the US and Mexico. The Assange case obviously involves a different treaty, the US/UK Extradition treaty of 2003.

So, what does the United States of America and the United Kingdom of Great Britain and Northern

Ireland Treaty of 2003 provide? Well, that is contained in Article 18, which reads as follows:

Rule of Specialty

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

(a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense on which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

(b) any offense committed after the extradition of the person; or

(c) any offense for which the executive authority of the Requested State waives the rule of specialty and thereby consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:

(i) the executive authority of the Requested State may require the submission of the documentation called for in Article 8; and

(ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request for consent is being processed.

2. A person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition to the Requesting State unless the Requested State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of the person to a third State, if the person:

(a) leaves the territory of the Requesting State after extradition and

voluntarily returns to it; or
(b) does not leave the territory of the Requesting State within 20 days of the day on which that person is free to leave.

4. If the person sought waives extradition pursuant to Article 17, the specialty provisions in this Article shall not apply.

It is early, but Assange has specifically NOT waived extradition, and I do not expect that will change. In fact, he would be nuts to waive it. But look out for the US requesting the UK to waive the issue pursuant to Article 18(1)(c). I have no idea how the UK would treat such a request (nor whether it may have already been made). But give the UK credit, they take extradition conditions seriously and will not extradite where the death penalty is in play.

The death penalty could be an issue were Assange to be subsequently charged under 18 USC §794 (Espionage Act), which reads:

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of

death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.

Now, frankly, I think the US, through the DOJ, would have no problem whatsoever stipulating that the death penalty is off the table for Assange. It is almost a given.

The real question is what becomes of the Assange case in light of the Rule of Specialty. Suppose any superseding indictment does not go into charges outside of the "computer offenses" specified in the current indictment, but seeks to add additional computer offenses in an attempt to increase the sentencing range? Does that violate the spirit of the Rule of Specialty?

There is a lot we simply do not know yet. But this doctrine, and how the US proceeds in light of it, needs to be watched closely as the Assange extradition matter proceeds, both in the UK, and once he is remanded to US custody.