

Legal experts: Assange likely faces espionage charges if extradited to US

By Oscar Grenfell
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A CNN report last week, revealing that the US Justice Department “expects to bring additional charges” against Julian Assange has underscored the immense dangers confronting the WikiLeaks founder, after he was illegally arrested by British police at Ecuador’s London embassy on April 11.

Assange was arrested on bogus bail charges to facilitate an extradition request by the US administration of President Donald Trump.

CNN cited US legal scholar Orin Kerr, who bluntly stated that the two publicly-revealed US charges against Assange—alleging he was involved in a conspiracy to gain unauthorised access to a US government computer—were “a placeholder.” Kerr said they were only “a brief indictment sufficient to get the case started, but very likely only a small part of any case against Assange.”

Peter Toren, a former computer crimes federal prosecutor, said: “The government does not limit an indictment, especially in a case like this, to a single count. It’s a better practice for the government to bring a multi-count indictment.”

Many legal experts have noted the threadbare character of the charges. They revolve around claims, from an unverified 2010 chat log allegedly documenting a conversation between Assange and US army whistleblower Chelsea Manning.

US prosecutors claim the logs demonstrate that Manning sought out Assange’s assistance in cracking a hash or password. This would have enabled her to access Defence Department computer networks on a password that was not her own, thereby helping to protect her anonymity.

There is no evidence, in the indictment against Assange, or a supporting affidavit from an FBI special agent, indicating that the password was ever broken. Moreover, as an army intelligence analyst, Manning already had authorised access to all of the material that she would provide to WikiLeaks.

James C. Goodale, who served as general counsel for the *New York Times* during the Pentagon Papers case in the 1970s, wrote in the *Hill* that the indictment of Assange was “a snare and a delusion.”

Goodale stated that it “seems to have been written with a particular purpose in mind—to extradite Assange from England. Once he is here, he will be hit, no doubt, with multiple

charges.”

Goodale and other lawyers have noted that individuals cannot be extradited from the UK to the US for “political offenses” under the existing extradition treaty between the two countries.

Espionage has historically been recognised as a political offense.

At the end of World War I, it was used to incarcerate socialist leader Eugene Debs. In 1971, the US administration of Richard Nixon unsuccessfully sought to employ provisions in the act to prevent the *New York Times* from publishing further material from the Pentagon Papers, which revealed the scope of US war crimes in Vietnam.

The government lost the case on the grounds that its demand violated the First Amendment provisions of the US Constitution.

It is likely that the initial US indictment has been narrowly limited to the computer hacking charges in order to avoid defence arguments that Assange faces prosecution in the US for “political offenses” and to ensure his speedy extradition.

The affidavit against Assange accompanying the indictment, however, incorporates language taken directly from the US Espionage Act. It states that “Manning and Assange had reason to believe that public disclosures of the Afghanistan War reports and Iraq War reports would cause injury to the United States.”

The latter phrase is featured in the Espionage Act. Significantly, the affidavit was filed by Special Agent Megan Brown, who said that she was involved in the US investigation of Assange while working for an FBI “counter-espionage squad.”

Goodale warned: “References to a conspiracy under the Espionage Act in the Assange indictment raise the question of whether the US government is going for a bait-and-switch—get Assange past the English courts and to the United States, only to charge him with espionage when he is on American soil.”

The former *New York Times* lawyer stated that under extradition law, an individual “cannot be prosecuted for any offense other than that on which the surrendering country agreed to extradite.”

There is an exemption, though, if further charges are “based on the same facts as the offense for which extradition was

granted.” In other words, espionage charges could potentially be laid against Assange in the US, if they were presented as an “upgrading” of the computer hacking offenses.

Kevin Gosztola, a US journalist, noted on *Shadow Proof* that Brown’s affidavit also contains references to WikiLeaks’ publications on Afghanistan “aiding the enemy.” It claimed that WikiLeaks publications were found in Osama Bin Laden’s Pakistani compound after a 2011 raid by US Special Forces. As he commented, this is of no greater significance than if the Al Qaeda leader had copies of the *New York Times* in his possession.

Gosztola commented, however: “The mention of the bin Laden raid is notable because it formed a key part of the ‘aiding the enemy’ case that military prosecutors put forward in the court-martial against Manning in 2013. However, Denise Lind, the military judge who presided over the trial, found Manning was not guilty of ‘aiding the enemy.’”

Last week’s CNN report stated that the Justice Department was continuing to investigate WikiLeaks. Assange’s contacts, including journalists, have reportedly been approached by representatives of the department.

There appear to be different focuses of the investigation, aimed at securing further charges against the WikiLeaks founder. They include:

- * The illegal detention of Chelsea Manning by the Trump administration, aimed at forcing her to give perjured testimony against Assange. The courageous whistleblower has refused to participate in the illegal travesty.

- * The prosecution of Joshua Schulte, a former CIA contractor. He has been charged with leaking a trove of CIA documents, known as Vault 7. They exposed the global computer hacking and espionage operations of the agency. Schulte, who was charged last June, has been held in solitary confinement for at least a year.

Protesting against the conditions imposed upon him, Schulte, according to CNN, declared before federal court this month that “time was up” and “the investigation was over.” The presiding judge said that he was wrong. Search warrants in the case are sealed, indicating possible attempts to concoct charges against Assange over Vault 7.

- * The entirely unsubstantiated claims that emails published in 2016 by WikiLeaks were “hacked” by Russian intelligence. The material exposed that the Democratic National Committee had rigged the Democratic Party primaries against self-declared “socialist” Bernie Sanders, in favour of Hillary Clinton, whose secret speeches to Wall Street banks, also published by WikiLeaks, made clear she was a handpicked representative of the corporate elite.

No evidence has ever been provided that the emails were

obtained by Russia. The allegation is repeated, however, in the Mueller report into alleged collusion between the Trump campaign and Russia, released last week.

Whatever the charges Assange faces, they will be aimed at criminalising the journalistic exposures published by WikiLeaks, and setting a precedent for preventing media organisations from reporting on government crimes and illegality.

Assange’s next court appearance, on the extradition request, is on May 2. Speaking on last weekend’s Unity4J vigil, Francis Boyle, a US professor of international law, warned: “I think Assange is on the fast-track through the British system to get extradited as soon as possible.”

Boyle said he thought the presiding UK district judge Michael Snow would rule on May 2 that Assange is extraditable. He cited Snow’s previous denunciation of Assange as a “narcissist” and the summary conviction of the WikiLeaks founder on bogus British bail charges, within hours of his arrest.

Boyle stated that if Assange is deemed extraditable, WikiLeaks lawyers would need to request permission from the High Court to appeal. Extradition would also need to be approved by the Home Secretary. The professor warned that based on their hostility to Assange, it was likely that both decisions would be made against the WikiLeaks founder.

Boyle said that the only option left to WikiLeaks lawyers, under such a scenario, would be to seek a temporary restraining order, at the European Court of Human Rights, preventing extradition. If this was unsuccessful, he said Assange would be on the “next available jet to the US.” The legal expert stated that Assange would not have anything resembling due process in the US.

The imminent dangers underscore the urgency of transforming the mass support that exists for Assange, into a political movement to prevent extradition and secure his freedom.

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