

New US indictment of Julian Assange not served in UK courts

By Thomas Scripps
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WikiLeaks founder Julian Assange was again unable to attend a call-over hearing for his extradition case against the United States, either in person or via video link yesterday.

His legal team explained that Assange is acting on the advice of his doctors, who are concerned about the risk of infection posed by using Belmarsh prison's unventilated video booth room—used by many prisoners over the course of the day. These conditions have prevented Assange from being present during court proceedings for more than three months. He is at heightened risk of coronavirus infection due to a respiratory condition and the effects of prolonged psychological torture.

No provisions have been made both to safeguard Assange's health and allow him to participate in his own case. Instead, District Judge Vanessa Baraitser sought yesterday to pressure Assange to appear via video link. She said she had received a note from Belmarsh prison indicating “not that [Assange] is unwell, but that he will not attend” and demanded medical evidence to justify his non-appearance in the future. Defence lawyer Mark Summers QC replied that evidence would be provided.

Medical examinations of Assange by both the prosecution and the defence have now been completed via telephone.

Baraitser then raised the superseding indictment issued by the United States against Assange on Wednesday June 24. It has not been formally entered into the extradition proceedings—yet another Kafkaesque development whereby UK legal proceedings are continuing on the basis of an indictment which has been replaced and therefore has no legal force in the US.

Joel Smith, the lawyer for the prosecution, said they would not be commenting on the issue at this time. Summers stated, “To say the least, we are surprised by the timing of this development and surprised to have heard about it through the press rather than through

service [of evidence through the courts].” He said the defence would not be making a formal response unless and until the new indictment is formally served in the UK courts.

The introduction of a new indictment at such a late stage in proceedings, after the first half of the extradition hearing in the UK has already taken place, is a gross abuse of due process. At the very least, Summers pointed out, it “has the obvious capacity to derail the September date [for the next phase of the hearing]” which the defence are committed to go ahead with.

Assange's prosecutors appear to be pre-empting a “specialty” line of argument from his defence. Specialty is an extradition principle which states the defendant should only face those charges in the destination country for which they have been extradited. If the UK has reason to believe additional charges may be levelled once the accused is extradited, then this is a bar to extradition. The US has not officially unveiled new charges but has used the new indictment to significantly expand the scope of allegations contained in the existing charges.

These changes also appear to be a response to the demolition of key aspects of the prosecution's case by Assange's legal team during the first phase of the extradition hearing in February.

Under the charge of “conspiracy to commit computer intrusion”, Assange was previously accused of conspiring with famed whistleblower Chelsea Manning to gain unauthorised access to classified documents on US computer systems in 2010. This was decisively challenged by the defence in February, demonstrating that the US government was aware of the falsity of its accusations.

The superseding indictment makes more general accusations, alleging that Assange recruited hackers and incited hacking against a range of classified, official and private computers between 2009 and 2015. It also drops a

reference to the Espionage Act. This is likely an attempt to present at least one of the charges against Assange as non-political. As Edward Fitzgerald QC argued forcefully for the defence in the first week of the hearing, Assange is very clearly being targeted for “political offences,” meaning his extradition should be barred.

The new allegations depend heavily on the already discredited testimony of two FBI informants, one with a long history of fraud and the other implicated in entrapment on the FBI’s behalf. They also construe Assange’s words and actions in support of whistleblower Edward Snowden and transparency of information as soliciting the theft of classified information. Former WikiLeaks section editor Sarah Harrison and former WikiLeaks spokesperson Jacob Applebaum are targeted on the same basis. No effort is made to link their supposed recruitment efforts to actual incidents of leaking or hacking.

In addition, the charge of “unauthorized disclosure of defence information” formerly accused Assange simply of “publishing [the Afghanistan and Iraq war logs and the State Department Cables] on the internet.” This has now been expanded to include “distributing” the documents—for example to other media organisations. Again, this is likely a response to the defence having demonstrated that unredacted State Department cables did not come to be published according to WikiLeaks’s intentions.

Finally, the charge of “conspiring to obtain and disclose national defence information” has had its timeframe extended. The only specific reference is to information disclosed by Chelsea Manning, but the wording has been changed from “namely” to “including”, broadening the range of potential allegations.

WikiLeaks editor-in-chief Kristinn Hrafnsson said after the hearing, “A superseding indictment is supposed to do what it says on the tin, it’s supposed to replace the existing indictment. But the US have no new charges to bring, and they can’t even be bothered to send the court or the defence team the document. That just shows this is a glorified press release and not a new indictment at all. This shows how they are abusing due process in the UK and flaunting the legal system’s rules.”

At the same time, the new indictment deepens the assault on freedom of the press being waged by the US government.

Harrison, Applebaum and one-time WikiLeaks employee Daniel Domscheit-Berg are now also targeted as “co-conspirators.” Efforts to help a persecuted

whistleblower (Snowden) gain asylum, and even speech in defence of his actions, are criminalised, as are the most general statements in support of government transparency. One of the statements cited as an example in the indictment is Harrison saying, “from the beginning our mission has been to publish classified or in any other way censored information that is of political, historical importance.” Shifting the focus to WikiLeaks’s *distribution* of classified material, for example to partner media organisations, threatens a wide range of journalists and outlets.

At the end of yesterday’s proceedings, Baraitser announced that the next and final phase of the extradition hearing will “almost certainly” be held at London’s Central Criminal Court—the Old Bailey—from September 7.

It remains entirely unclear under what conditions these proceedings will take place. Since social distancing measures have been implemented, only a very small number of journalists have been able to gain access to Westminster Magistrates Court. The vast majority have been forced to dial in to a largely inaudible online conference room. Though the audio quality was improved for the defence team on this occasion, the judge and the prosecution remained extremely unclear. An option to tune in to the court via video link did not work.

The next call-over hearing is scheduled for 10am on Monday July 27.

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