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Assange Extradition: On to the Next Hurdle

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With Julian still, for no rational reason, held in maximum security, the legal process around his extradition continues to meander its way through the overgrown bridlepaths of the UK's legal system. Today the Supreme Court refused to hear Julian's appeal, which was based on the grounds of his health and the effect upon it of incarceration in the conditions of the United States prison service. It stated his appeal had "no arguable legal grounds."

This is a setback which is, most likely, going to keep Julian in jail for at least another year.

The legal grounds which the High Court had previously ruled to be arguable, were that the USA government should not have been permitted to give at appeal new (and highly conditional) diplomatic assurances about Assange's treatment, which had not been offered at the court of first instance to be considered in the initial decision. One important argument that this should not be allowed, is that if given to the original court, the defence could argue about the value and conditionality of such assurances; evidence could be called and the matter weighed by the court.

By introducing the assurances only at the appeal stage – which is only on points of law and had no fact-finding remit – the USA had avoided any scrutiny of their validity. The Home Office have always argued that diplomatic assurances must simply be accepted without question. The Home Office is keen on this stance because it makes extradition to countries with appalling human rights records much easier.

In saying there is no arguable point of law, the Supreme Court is accepting that diplomatic assurances are not tested and are to be taken at face value – which has been a major point of controversy in recent jurisprudence. It is now settled that we will send someone back to Saudi Arabia if the Saudis give us a piece of paper promising not to chop their head off.

It interested me in particular that the Supreme Court refused to hear Julian's appeal on the basis there was "no arguable point of law". When the Supreme Court refused to hear my own appeal against imprisonment, they rather stated their alternative formulation, there

was “no arguable point of law of general public interest”. Meaning there was an arguable point of law, but it was merely an individual injustice, that did not matter to anybody except Craig Murray.

My own view is that, with the Tory government very open about their desire to clip the wings of judges and reduce the reach of the Supreme Court in particular, the Court is simply avoiding hot potatoes at present.

So the extradition now goes to Priti Patel, the Home Secretary, to decide whether to extradite. The defence has four weeks to make representations to Patel, which she must hear. There are those on the libertarian right of the Tory party who oppose the extradition on freedom of speech grounds, but Patel has not a libertarian thought in her head and appears to revel in deportation, so personally I hold out no particular hope for this stage.

Assuming Patel does authorise extradition, the matter returns to the original magistrate’s court and to Judge Baraitser for execution. That is where this process takes a remarkable twist.

The appeals process that has just concluded was the appeal initiated by the United States government, against Baraitser’s original ruling that the combination of Julian’s health and the conditions he would face in US jails, meant that he could not be extradited. The United States government succeeded in this appeal at the High Court. Julian then tried to appeal against that High Court verdict to the Supreme Court, and was refused permission.

But Julian himself has not yet appealed to the High Court, and he can do so, once the matter has been sent back to Baraitser by Patel. His appeal will be against those grounds on which Baraitser initially found in favour of the United States. These are principally:

- the misuse of the extradition treaty which specifically prohibits political extradition;
- the breach of the UNCHR Article 10 right of freedom of speech;
- the misuse of the US Espionage Act;
- the use of tainted, paid evidence from a convicted fraudster who has since publicly admitted his evidence was false;
- the lack of foundation to the hacking charge.

None of these points have yet been considered by the High Court. It seems a remarkably strange procedure that having been through the appeals process once, the whole thing starts again after Priti Patel has made her decision, but that is the crazy game of snake and ladders the law puts us through. It is fine for the political establishment, of course, because it enables them to keep Julian locked up under maximum security in Belmarsh.

The defence had asked the High Court to consider what are called the “cross-appeal” points at the same time as hearing the US appeal, but the High Court refused.

So the ray of light that was Baraitser’s ruling on health and prison conditions is now definitively snuffed out. That means that rather than the possibility of release by the Supreme Court this summer, Julian faces at least another year in Belmarsh, which must be a huge blow to him just before his wedding.

On the brighter side, it means that finally, in a senior court, the arguments that will really

matter will be heard. I have always felt ambivalent about arguments based on Julian's health, when there is so much more at stake, and I have never personally reported the health issues out of respect for his privacy. But now the High Court will have to consider whether it really wishes to extradite a journalist for publishing evidence of systematic war crimes by the state requesting his extradition.

Now that will be worth reporting.

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