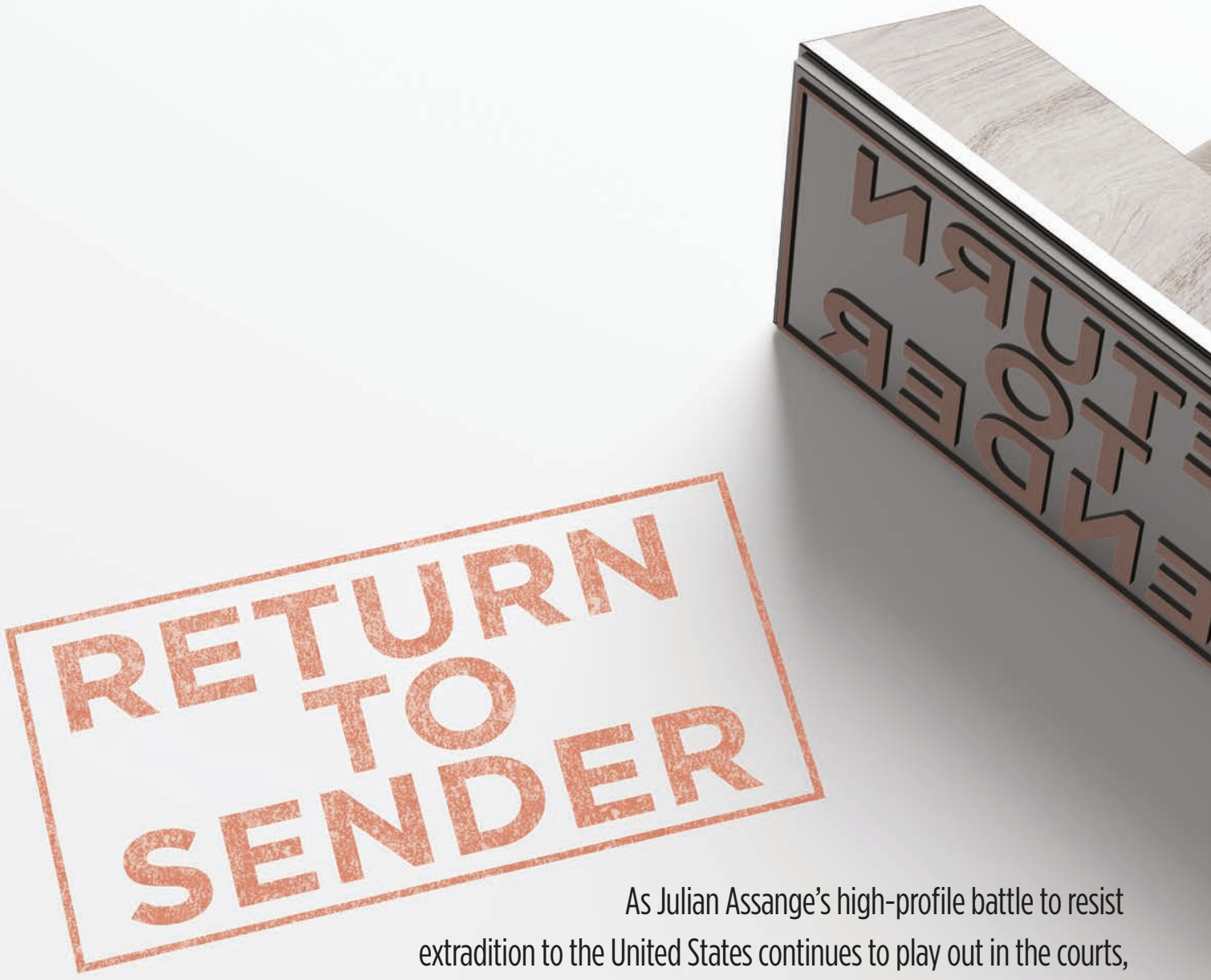

As Julian Assange's high-profile battle to resist extradition to the United States continues to play out in the courts, **Andrew Southam** brings us the long and fascinating history of transatlantic extradition

Julian Assange may shortly become the first person extradited to America on spying charges. If so, it will be only the latest twist in what has been a long and tortured story for the Australian founder of the WikiLeaks website – and will mark another chapter in more than two centuries of transatlantic cooperation on judicial matters.

In 2010, Assange published secrets obtained by an American intelligence soldier, Bradley, now Chelsea Manning. Britain arrested Assange that year over alleged sexual offences committed in Sweden. He jumped bail and found sanctuary in Ecuador's embassy in London in 2012, which was revoked seven years later. A judge imprisoned him in 2019 for breaching bail; Sweden dropped all charges but America then requested his extradition on spying offences over the Manning publication.

Home Secretary Priti Patel has now ordered Assange be sent to the United States after a court rejected his latest appeal in March. Her decision is not surprising; British and US governments don't usually block extradition. Two recent cases, autistic Scottish computer hacker Gary McKinnon and Anne Sacoolas, wife of an American diplomat accused of dangerous driving over the death of motorcyclist

Harry Dunn, are exceptions. London and Washington otherwise prefer their courts to decide these matters – and leave them free to continue two centuries of extradition cooperation.

This Anglo-American relationship began with the 1794 Jay peace treaty permitting extradition for murder and forgery. America's first surrender was mutineer Irishman Thomas Nash who, with other crewmen, murdered the officers aboard HMS Hermione near Puerto Rico in 1797. He was found in South Carolina masquerading as American and going by the name of Jonathan Robbins. US President John Adams directed the case judge to return Nash; he was executed in Jamaica, in 1799.

Nash's extradition changed the course of American history. The case sparked debate about the separation of powers, and whether Adams had authority without congressional approval. Thomas Jefferson's anti-British Democratic-Republicans protested about returning a supposed US citizen without legal protection and manipulated the case to help defeat Adams in 1800. Nash would be the only person surrendered before 1843.

However, as Britain continued ruling Canada until 1867, both countries still had to navigate Canadian-American boundary disputes, problems relating to the arrest of foreign nationals on either side of that border and, particularly for Britain as the colonial power, slave trading. Canada's colonial government had sheltered around 10,000 escaped slaves before returning an enslaved Arkansas valet and butler, Nelson Hackett, in 1841. The Canadian authorities argued he was a criminal, having stolen not only a horse for his escape but also a gold watch, coat, and saddle. Public opinion was enflamed, with abolitionists fearing a precedent had been struck.

"Thomas Jefferson's anti-British Democratic-Republicans protested about returning a supposed US citizen without legal protection"

Britain and America therefore negotiated the 1842 Webster-Ashburton Treaty. The new arrangement covered murder, assault with intent to commit murder, piracy, forgery, arson, and robbery. Mutiny and horse-theft were deliberately excluded.

Their first case following the treaty – which saw Scotswoman Christina Gilmour returned home from America in 1843 to face charges of murdering her husband with arsenic in Renfrew – attracted little attention.

Extraditions then settled into a pattern of processing under the respective judicial systems. Sometimes courts refused on legal points – Bow Street magistrates rejected Andrew Pollock's arrest for defrauding the Bank of America in 1843 because the treaty didn't list embezzlement.

America's civil war caused the occasional incident. A Canadian court argued that 21 Confederate soldiers raiding a Vermont bank in 1864 had committed commissioned acts of war, not robbery. Washington threatened to retaliate, which risked dragging Britain into the conflict. Canada tried prosecuting the raiders locally, which failed but led to the passage of the 1865 Canadian Neutrality Act to soothe relations.

Problems with prosecuting additional crimes required careful footwork. Britain protested over indications America was considering trying the Nottingham born smuggler Charles Lawrence, who had been returned to New York in 1875 on forgery charges, with further offences of smuggling and conspiracy.

HMS Hermione

This contravened the "specialty principle" – the presumption that a person would be tried for the extradited crime(s) alone. America argued the 1842 treaty did not mention specialty. Britain consequently blocked a pending extradition request for forger Ezra Winslow in 1876 on the grounds that America had refused a specialty assurance. Lawrence, something of a criminal mastermind once dubbed the "prince of smuggling", was ultimately prosecuted only for the extradited offences however; he pleaded guilty and was released on bail with no sentence, possibly following a deal with

prosecutors. (Winslow, who was released, had fled by the time America made a second extradition request for his return.)

London and Washington agreed a temporary solution. Britain continued extradition without raising specialty, while reminding America that she could cancel the treaty at any time. And with the American commercial community pushing for action over criminals fleeing to Canada, Washington eventually broke the longer-term impasse by proposing a new treaty incorporating specialty. The Blaine-Pauncefote Treaty was signed in 1889.

Claims of politically-motivated extradition coloured some high-profile Irish cases in the 19th and 20th centuries. Two alleged Fenian assassins in the infamous 1882 Phoenix Park murders fled to America, where the courts refused extradition because of weak evidence based on an informant.

American courts also rejected James Lynchehaun's return for his conviction of attacking English landowner Agnes MacDonnell at Achill Island in 1894 against the background of the Irish National Land League's agitation for improved tenant conditions. Lynchehaun, an Irish Republican Brotherhood member whose case formed the basis for the play, *Playboy of the Western World,* escaped prison and was eventually caught in 1903 in Indianapolis. American courts decided his was a political crime for which the 1842 treaty prohibited extradition. They used Britain's definition of political offences, "incidental to and form part of political disturbances," to argue that Lynchehaun's actions were part of a continuing peasant rebellion against Britain and so not covered by the treaty. Extraditions otherwise continued normally.

America returned Ignaz Trebitsch-Lincoln, an alleged spy, colourful conman, former missionary and British parliamentarian who offered his services to Germany in 1914 as a double agent. His claims of politically motivated British charges were dismissed and he returned to serve three years in prison after which he was deported to his country of birth, Hungary.

Supplementary conventions were agreed to widen extradition crimes, including a 1931 extradition treaty which added dangerous drugs to the list.

Another extradition treaty was agreed in 1972, but problems remained over the use of political offences as a defence against surrender. US judges argued in the early 1980s that crimes of four alleged IRA members were political cases. President Ronald Reagan overcame Irish-American protests to correct the problem with a retrospective 1986 supplementary treaty. Violent crimes were now excluded from political offences; replacing them, extradition was now barred on the grounds of "race, religion, nationality or political opinions".

Left to right: Gary McKinnon; Julian Assange

"One-off cases, no matter how high-profile, do not generally affect Anglo-American extradition relations"

Human rights concerns strengthened during the 1980s. Britain's courts halted the return of Jens Soering , who murdered the parents of his then girlfriend in Virginia when 20 years old, in 1989 when the European Court of Human Rights ruled there were insufficient assurances against capital punishment. American prosecutors agreed they would not pursue the death penalty allowing his return and subsequent conviction. Soering was released in 2017 and deported to Germany.

Britain returned Sally Croft and Susan Hagan, former members of an Oregon-based Bhagwan Shree Rajneesh sect, after a four-year legal battle culminating in 1994. Both were accused of plotting to kill a district attorney 10 years earlier for investigating the immigration status of sect members. They also claimed the charges were politically motivated, but despite attracting headlines their many appeals failed in the courts.

Britain negotiated a new treaty in 2003, when updating extradition arrangements with a number of its international partners. America received fast track status along with Commonwealth and European Union countries, and no longer had to prove a prima facie case, which had been required since 1843. Washington now submits material providing "reasonable suspicion" and Britain enough to prove "probable cause" – a standard required under the US constitution.

In 2012, then-home secretary Theresa May angered Washington by blocking hacker McKinnon's return over fears the Asperger's sufferer might take his own life, in one of the few British government refusals since the 1870s. Washington, unusually, expressed its "disappointment" that McKinnon would not "face long overdue justice in the United States," but did not appeal.

America broke new ground itself seven years later by refusing Sacoolas' extradition; the State Department invoked the Vienna Convention on Diplomatic Immunity on the grounds she was married to a CIA spy. The Foreign Office described this as "a denial of justice" and continues to pursue the delicate matter.

Patel has so far avoided a third modern example of a government blocking extradition. Assange is expected to appeal her decision, but this seems unlikely to change her mind. If his appeal is rejected, Assange may return to the courts once more; the case has some way to run.

But whatever Assange's ultimate fate, history suggests that one-off cases, no matter how high-profile, do not generally affect Anglo-American extradition relations.

The "special relationship" is likely to remain intact – when it comes to extradition at least.