

THE CRUX OF THE CISCO-US GOVERNMENT COLLABORATION

As I said in this comment, we're going to have to wait until the Canadian court releases more details on the failed extradition of Peter Alfred Adekeye to get a better sense of what the government did to piss off the court so badly. But this is my attempt to the crux of the matter.

The Adekeye deposition in Canada was set up in April 2010 for a several day time period in May. On May 19 at the deposition, Adekeye admitted to accessing Cisco's website perhaps five times, though he said a Cisco employee had offered him that access. That part of his deposition was streamed back to Northern California. That same day—May 19—the arrest warrant was signed in the US (making it possible that Adekeye's deposition served to establish the probable cause to arrest him). And the Magistrate who signed the US arrest warrant was the same Magistrate overseeing discovery in this case. By the time Adekeye was arrested on May 20, his lawyers had not yet had an opportunity to question Adekeye. In effect, Cisco had gotten 14 hours of unrebutted deposition from Adekeye, after which he became unavailable to his lawyers.

In response, his lawyers requested that the civil procedure be stayed and that the judge order an accelerated discovery from Cisco with regards to its involvement in getting Adekeye extradited. As they described in their motion for a stay,

Mr. Adekeye's deposition commenced in Vancouver, Canada on May 18, 2010. After Cisco spent nearly fourteen (14) full hours deposing Mr. Adekeye, the proceedings were interrupted by the Royal Canadian Mounted Police, who were accompanied by additional uniformed

Vancouver Police Officers. The Mounted Police informed counsel and the Special Master appointed by the Court to oversee Mr. Adekeye's deposition, that they were there in order to effectuate the arrest of Mr. Adekeye. The Mounted Police presented to counsel and the Special Master a "Warrant For Provisional Arrest" issued pursuant to Section 13 of the Extradition Act, wherein the Honourable Mr. Justice Leask had executed a provisional arrest warrant for Mr. Adekeye. Attached to this provisional arrest warrant was a bench warrant issued by the Honorable Howard R. Lloyd—the assigned Magistrate Judge to this matter—for the arrest of Mr. Adekeye.

[snip]

At no point during these entire proceedings was there any mention to Mr. Adekeye or to his attorneys of a criminal investigation relating to the exact same facts underlying the instant civil lawsuit. Instead, Cisco insisted that the Court order Mr. Adekeye to be deposed, and proceeded to depose Mr. Adekeye for fourteen (14) hours. Despite having over three (3) days to do so, Cisco did not finish its questioning of Mr. Adekeye prior to his arrest. Mr. Adekeye's attorneys, moreover, were entirely unable to question their client in order to clarify or develop Mr. Adekeye's responses further. Because Mr. Adekeye is currently detained in Canada, without bail, he has not been able to review his testimony pursuant to Fed. R. Civ. P. 30, nor has he been able to otherwise summarize his testimony or prepare an affidavit to the Court requesting an extension of time to further brief the Underlying Motions.

In addition to the very real Fifth

Amendment issues now a part of this case, Multiven fears that in the event the Court does not vacate or continue the supplemental briefing deadline and the June 7 hearing, Cisco will present, as evidence in support of its Underlying Motion, incomplete deposition testimony of a party witness. Such incomplete, one-sided and out of context evidence is entirely prejudicial to Multiven, and the Court should not consider it.

The judge denied both motions, largely because in the interim both parties had submitted briefs based on Adekeye's deposition.

So in effect, the timing of the arrest accomplished two things. It gave Cisco an advantage in the civil case (insofar as Adekeye's lawyers didn't have a chance to depose him). But it also likely elicited evidence that supported Adekeye's arrest warrant.

Within 2 months of the arrest, the judge ruled on the summary judgments, basically ruling against Adekeye. Here's the logic he used to justify the claim that Adekeye got unauthorized access to Cisco's computers.

Multiven admit that on one occasion Adekeye accessed secure areas of the Cisco network. They contend however, that a Cisco employee, Wes Olson, supplied Adekeye with his login and password, thus authorizing Adekeye to access the restricted website. (Multiven's Opposition at 7-12.) It is undisputed that Wes Olson provided Adekeye with his login and "external" password. Olsen declares that the password was given to Adekeye "to give him access to Cisco's network on one occasion, for a specific purpose."¹⁰ However, it is also undisputed that an employee's giving his login and password to Adekeye was a violation of Cisco's policies, and thus Olson's providing

access to Adekeye in this manner did not constitute a valid authorization.

And here's how he dismissed the Fifth Amendment concerns about the deposition.

On June 8, 2010, Multiven filed a Motion to Stay Counterclaims. (hereafter, "Motion to Stay," Docket Item No. 234.) Multiven contend that further litigation of the counterclaims will jeopardize Adekeye's Fifth Amendment privileges in parallel criminal proceedings arising out of the same factual circumstances. (Motion to Stay at 5-7.)

[snip]

Here, Adekeye has already voluntarily submitted declarations in support of Multiven's briefs regarding the parties' cross-motions for summary judgment and has been deposed extensively, including fourteen hours of deposition testimony that he voluntarily provided in Vancouver, Canada prior to his arrest. Without deciding whether Adekeye was sufficiently aware of the likelihood of criminal prosecution for his declarations and deposition testimony to effect a waiver of his Fifth Amendment rights,²¹ the Court finds that continuing the litigation will only minimally implicate Adekeye's Fifth Amendment rights, given the extensive testimony he has already provided in this case.

So that's the real background to the settlement: Cisco had largely already won on their substantive claim, using evidence from Adekeye's partial deposition. Which left Adekeye with the risk that continuing his anti-trust claim would expose him to ongoing risk on the criminal claims.

Now it does seem like Adekeye is vulnerable in the computer fraud charges (though presumably 5 of them, not 97). But at the same time, it does seem clear that the government used the deposition to set up—and probably collect evidence for—the arrest and with it the criminal case.