

THE “ASSANGE PRECEDENT”: THE THREAT TO THE MEDIA POSED BY TRUMP’S PROSECUTION OF JULIAN ASSANGE

March 2019

A precedent with profound implications for press freedom

New York Times - “An indictment centering on the publication of information of public interest... would create a precedent with profound implications for press freedoms.”¹ “Mr. Assange is not a traditional journalist, but what he does at WikiLeaks has also been difficult to distinguish in a legally meaningful way from what traditional news organizations, like The New York Times, do every day: seek out and publish information that officials would prefer to be kept secret, including classified national security matters.”²

David McCraw, lead lawyer for New York Times - “I think the prosecution of him [Assange] would be a very, very bad precedent for publishers. From that incident, from everything I know, he’s sort of in a classic publisher’s position and I think the law would have a very hard time drawing a distinction between The New York Times and WikiLeaks.”³

The Atlantic - “If the U.S. government can prosecute the WikiLeaks editor for publishing classified material, then every media outlet is at risk”.⁴

The Trump Administration has confirmed that it has charged WikiLeaks’ publisher Julian Assange and that it seeks his extradition from the United Kingdom.⁵ The charges relate to WikiLeaks’ 2010-2011 joint publications on war, diplomacy and rendition with a range of media organizations; these were published in Europe while Julian Assange was in Europe.⁶ In the US, Assange faces life in prison.

The alleged source, Chelsea Manning, who was granted a commutation by President Obama, was re-jailed on 8 March 2019 by the Trump administration to coerce her to testify in secret against WikiLeaks over the 2010 publications. On her jailing, she stated that “I stand by my previous public testimony”.⁷ In her 2013

trial, Manning stated that “the decisions that I made to send documents and information” to WikiLeaks “were my own”.⁸

The Trump Administration’s actions are a serious threat to freedom of expression and freedom of the media.

The case raises fundamental issues:

1. The Trump administration is seeking to use its case against WikiLeaks as an “icebreaker” to crush the rest of the press.

The Administration is seeking to end the rash of leaks about it by using the case against WikiLeaks as an “icebreaker” against the rest of the media. The Administration has been plagued by hundreds of government leaks, on everything from Trump’s conversations with the leaders of Australia and Mexico to Jared Kushner’s security clearance to an upcoming meeting with Kim Jong Un to his personal diary etc. In fact, the Trump administration has **already threatened to prosecute journalists** publishing classified leaks.⁹ The Trump administration is hostile to the press and will not stop at WikiLeaks; WikiLeaks is the desired precedent-setter to hobble the rest of the press.

2. Prosecuting WikiLeaks is a severe precedent-setting threat to press freedoms.

If the US succeeds in prosecuting the publisher and editor of WikiLeaks, for revealing information the US says is “secret”, it will open the flood gates to an extremely dangerous precedent. Not only will the US government immediately seize on the precedent to initiate further prosecutions, states the world over will follow suit and claim that their secrecy laws must apply globally too. Assange’s co-publishers at *Der Spiegel*, *Le Monde*, *New York Times*, *Espresso* and *The Guardian*, among others, will also risk immediate prosecution in (and extradition to) the US. The prosecution of Assange will have a profound chilling effect on the press and national security reporting. Publishers should not be prosecuted, in the US or elsewhere, for the “crime” of publishing truthful information.

3. The Trump administration should not be able to prosecute a journalist in the UK, operating from the UK and the rest of Europe, over claims under US laws.

The extradition and prosecution of Julian Assange would post an invitation to other states to follow suit, severely threatening the ability of journalists, publishers and human rights organizations to safely reveal information about serious international issues. If the Trump Administration can prosecute an Australian journalist in Europe for publishing material on the US, why can’t Russia prosecute an American journalist in Washington revealing secrets about Moscow? Why can’t Saudi Arabia prosecute a Turkish journalist for revealing secrets about the Khashoggi murder?

With the Assange precedent established, foreign states will have grounds to insist journalists and publishers are extradited for their reporting. Even in states that bar the extradition of their citizens, as soon as the journalist goes on holiday or on assignment, they can be arrested and extradited from a third state using the Assange precedent.

4. The Trump administration seeks to turn Europe and the rest of the world into a legal “Guantanamo bay”.

The US seeks to apply its laws to European journalists and publishers and at the same time strip them of constitutional rights, effectively turning Europe into a legal “Guantanamo bay”, where US criminal laws are asserted, but US rights are withheld. In April 2017, CIA director Mike Pompeo said that “Julian Assange has no First Amendment privileges. He is not a U.S. citizen”. He stated:

“We have to recognize that we can no longer allow Assange and his colleagues the latitude to use free speech values against us. To give them the space to crush us with misappropriated secrets is a perversion of what our great Constitution stands for. It ends now.”¹⁰

But while rejecting any rights under the first amendment, which guarantees free speech and freedom of the media under the US Constitution, the US believes it still has a right to prosecute a non-US publisher in Europe.

Alan Rusbridger, former editor of the *Guardian*: “Journalists - whatever they think of Julian Assange - should defend his First Amendment rights”.¹¹

James Goodale, the lawyer representing the *New York Times* in the Pentagon Papers case, put it succinctly:

“... the prosecution of Assange goes a step further. He’s not a source, he is a publisher who received information from sources. The danger to journalists can’t be overstated... As a matter of fact, a charge against Assange for ‘conspiring’ with a source is the most dangerous charge that I can think of with respect to the First Amendment in almost all my years representing media organizations. The reason is that one who is gathering/writing/distributing the news, as the law stands now, is free and clear under the First Amendment. If the government is able to say a person who is exempt under the First Amendment then *loses* that exemption because that person has “conspired” with a source who is subject to the Espionage Act or other law, then the government has succeeded in applying the standard to all news-gathering. That will mean that the press’ ability to get newsworthy classified information from government sources will be severely curtailed, because every story that is based on leaked info will theoretically be subject to legal action by the government. It will be up to the person with the information to prove that they got it without violating the Espionage Act. This would

be, in my view, the worst thing to happen to the First Amendment — almost ever.”¹²

Which other publishers and journalists are also in the frame?

Wikileaks co-published the Afghanistan and Iraq files in 2010 with a range of media organizations. The co-publishers of the Afghanistan material were **Der Spiegel, The New York Times, The Guardian, and Espresso**. The co-publishers of the Iraq material were **Der Spiegel, The Guardian, The New York Times, Al Jazeera, Le Monde, the Bureau of Investigative Journalism, Channel 4's Dispatches, the Iraq Body Count project, RUV (Iceland) and SVT (Sweden)**. The individual journalists reporting the Afghanistan and Iraq material are identified below.

Co-publishers with WikiLeaks of the Afghanistan war logs	Journalists who reported the material
Espresso	Gianluca Di Feo, Stefania Maurizi ¹³
Guardian	Nick Davies, David Leigh, Declan Walsh, Simon Tisdall, Richard Norton-Taylor, Rob Evans ¹⁴
New York Times	Mark Mazzetti, Jane Perlez, Eric Schmitt, Andrew W. Lehren, C. J. Chivers, Carlotta Gall, Jacob Harris, Alan McLean ¹⁵
Der Spiegel	Matthias Gebauer; John Goetz; Hans Hoyng; Susanne Koelbl; Marcel Rosenbach; Gregor Peter Schmitz ¹⁶
Co-publishers with WikiLeaks of the Iraq war logs	
Bureau of Investigative Journalism	Writers not named ¹⁷
Channel 4 (UK TV)	Anna Doble, Kris Jepson ¹⁸
The Guardian	Nick Davies, Jonathan Steele, David Leigh, James Meek, Jamie Doward, Mark Townsend, Maggie O'Kane ¹⁹
Iraq Body Count	Writers not named ²⁰
Al Jazeera	Gregg Carlstrom ²¹
Le Monde	Patrice Claude, Yves Eudes, Rémy Ourdan, Damien Leloup, Frédéric Bobin ²²
New York Times	Michael R. Gordon, Andrew W. Lehren, Sabrina Tavernise, James Glanz ²³
RUV (Icelandic state TV)	Kristinn Hrafnsson
Der Spiegel	Writers not named ²⁴
SVT (Swedish state TV)	Susan Ritzén, Örjan Magnusson ²⁵

The Guardian published hundreds of documents in full, in various sets, often using those exposes as major headlines, as did the other papers.²⁶ The New York Times published WikiLeaks “war logs”, as: “An archive of classified military documents offers views of the wars in Iraq and Afghanistan”.²⁷

Re-reported coverage of WikiLeaks files by other media organizations is of course even more extensive. Hundreds of outlets reported on the files, often quoting from them extensively. Some of these news organizations published dozens of files in full, with interactive maps and facilities to search the documents, such as The Telegraph in the UK.²⁸

All major newspapers prominently covered the WikiLeaks publication of thousands of CIA files in March 2017, the biggest leak in the history of the CIA and the stimulus for the Trump Administration to shut down WikiLeaks.

The fact that media freedom under threat is recognized by a raft of organizations

Dinah PoKempner, General Counsel, Human Rights Watch:

“No one should be prosecuted under the antiquated Espionage Act for publishing leaked government documents. That 1917 statute was designed to punish people who leaked secrets to a foreign government, not to the media, and allows no defense or mitigation of punishment on the basis that public interest served by some leaks may outweigh any harm to national security.”²⁹

David Kaye: UN special rapporteur on freedom of opinion and expression:

“Prosecuting Assange would be dangerously problematic from the perspective of press freedom... and should be strongly opposed”³⁰

Kenneth Roth, Director of Human Rights Watch:

“Deeply troubling if the Trump administration, which has shown little regard for media freedom, would charge Assange for receiving from a government official and publishing classified information—exactly what journalists do all the time.”³¹

David Bralow, an attorney with The Intercept:

"It's hard to see many of WikiLeaks' activities as being different than other news organizations' actions when it receives important information, talks to sources and decides what to publish. The First Amendment protects all speakers, not simply a special class of speaker."³²

Alexandra Ellerbeck, Committee to Protect Journalists, North America program coordinator:

"We would be concerned by a prosecution that construes publishing government documents as a crime. This would set a dangerous precedent that could harm all journalists, whether inside or outside the United States."³³

Trevor Timm, director of Freedom of the Press Foundation:

“Any charges brought against WikiLeaks for their publishing activities pose a profound and incredibly dangerous threat to press freedom”.³⁴

Bruce Shapiro, contributing editor to The Nation:

“The notion of sealed charges against a publisher of leaked documents ought to have warning sirens screaming in every news organization, think tank, research service, university, and civil-liberties lobby.... The still-secret Assange charges, if unchallenged, could burn down the scaffolding of American investigative reporting”.³⁵

Ben Wizner, ACLU:

“Any prosecution of Mr Assange for WikiLeaks’ publishing operations would be unprecedented and unconstitutional and would open the door to criminal investigations of other news organizations”.³⁶

High ranking Trump Administration officials have issued a **series of threats** against Assange and WikiLeaks to “take down” the organization, asserting that “Julian Assange has no First Amendment privileges. He is not a US citizen” (then CIA director Mike Pompeo³⁷) and stating that arresting Assange is a “priority” for the US (then US Attorney General Jeff Sessions³⁸).

The key reason for this approach is WikiLeaks’ release of **thousands of files on the CIA in 2017** - which revealed the CIA’s efforts to infest computers, smartphones, TVs, routers and even vehicles with CIA viruses and malware. The US government arrested a young US intelligence officer as WikiLeaks’ source who now faces 160 years in prison and is being held in harsh conditions. The media reported in 2017, just after the Vault 7 publications, that the US was expanding the investigation against Assange and had prepared charges against him.³⁹ All the while, it has never been questioned that WikiLeaks simply published truthful information.

Julian Assange’s contribution to journalism

Julian Assange and WikiLeaks have won numerous major journalism prizes, including Australia’s highest journalistic honour (equivalent to the Pulitzer), the Walkley prize for “The Most Outstanding Contribution to Journalism”, The Martha Gellhorn Prize for Journalism (UK), the Index on Censorship and The Economist’s New Media Award, the Amnesty International New Media Award, and has been nominated for the UN Mandela Prize (2015) and the 2019 Nobel Peace Prize (nominated by Nobel Laureate Mairead Maguire). WikiLeaks has been repeatedly found by courts to be a media organization.⁴⁰

WikiLeaks receives censored and restricted documents anonymously after Julian Assange invented the first anonymous secure online submission system for documents from journalistic sources. For years it was the only such system of its kind, but secure anonymous dropboxes are now seen as essential for many major news and human rights organizations.

WikiLeaks publications have been cited in tens of thousands of articles and academic papers and have been used in numerous court cases promoting human rights and human rights defenders. For example, documents published by WikiLeaks were recently successfully used in the International Court of Justice

over the UK's illegal depopulation of the Chagos Islands, which were cleared to make way for a giant US military base at the largest Island, Diego Garcia. The Islanders have been fighting for decades for recognition.

Julian Assange pioneered large international collaborations to secure maximum spread and contextual analysis of large whistleblower leaks. For "Cablegate", WikiLeaks entered into partnerships with 110 different media organizations and continues to establish partnerships in its publications. This model has since been replicated in other international media collaborations with significant successes, such as the Panama Papers.

Conclusion

All media organizations and journalists must recognize the threat to their freedom and ability to work posed by the Trump administration's prosecution of Assange. They should join human rights organizations, the United Nations and many others in opposing Assange's extradition. They should do so out of their own self-interest given that their ability to safely publish is under serious threat.

For more information, contact: courage.contact@couragefound.org

The Courage Foundation – www.couragefound.org - is an international organization that supports those who risk life or liberty to make significant contributions to the historical record. It campaigns and fundraises for the legal and public defence of specific individuals such as Julian Assange who are subject to serious prosecution or persecution.

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