

The Espionage Act and Julian Assange: The US Justice Department Expands Its Case

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It seemed flimsy from the start, but the US Department of Justice is keen to get their man. What has certainly transpired of late is that Mike Pompeo was being unusually faithful to the truth when director of the CIA: every means would be found to prosecute the case against WikiLeaks and Julian Assange. His [assessment](#) of the publishing outfit in 2017 as a “non-state hostile intelligence service” finds its way into the latest Justice Department’s [indictment](#), which adds a further 18 counts.

The prosecution effort was initially focused on a charge of computer intrusion, with a stress on conspiracy. It was feeble but intentionally narrow, fit for extradition purpose. Now, a few more eggs have been added to the basket in a broader effort to capture the entire field of national security publishing. The Espionage Act of 1917, that ghoulish reminder of police state nervousness, has been brought into play. Drafted to combat spies as the United States made its way into the First World War, the act has become a blunt instrument against journalists and whistleblowers. But Assange, being no US citizen, is essentially being sought out for not abiding by the legislation. The counts range from the first, “conspiracy to receive national defense information” (s. 793(g) of the Espionage Act) to “obtaining national defense information,” to the disclosures of such information.

The first part is problematic, as prosecutors are arguing that Assange does not have to release the said “national defence” information to an unauthorised recipient. In short, as a publisher to the world at large of such material, he can be punished. The second round of charges, drawn from section 793(b) of the Act, makes the prosecution purpose even clearer. The provision, dealing with the copying, taking, making, obtaining, or attempting to do so, material connected with national defence, would suggest the punishment of the source itself. Not so, claim the prosecutors: the publisher or journalist can be caught in its web.

Section 793(c), upon which four counts rest, is intended to capture instances of soliciting the leaks in question or the recipient of that information, one who “agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this chapter.”

If there was any doubt about what the indictment does to media organisations who facilitate the means to receive confidential material or leaks, the following should allay it: “WikiLeaks’s website explicitly solicited, otherwise restricted, and until September 2010, ‘classified materials’. As the website then-stated, ‘WikiLeaks accepts *classified, censored, or otherwise restricted* material of *political, diplomatic or ethical significance*.” From the perspective of prosecutors, “Assange and WikiLeaks have repeatedly sought, obtained, and disseminated information that the United States classified due to the serious risk that

unauthorized disclosure could harm the national security of the United States.”

Seething with venom, the indictment also takes issue with instances where Assange sought to popularise the effort to obtain leaks. Assange “intended the ‘Most Wanted Leaks’ list to encourage and cause individuals to illegally obtain and disclose protected information, including classified information, to WikiLeaks contrary to law.”

The standout feature of this angle is that Chelsea Manning, the key source for WikiLeaks as former intelligence analyst for the US Army, is less important than Assange the mesmerising Svengali. It was the WikiLeaks’s publisher who convinced Manning to respond to his seductive call, a point the prosecutors insist is proved by search terms plugged into the classified network search engine, Intelink.

The response from the scribbling fraternity, and anybody who might wish to write about national security matters, has been one of bracing alarm, tinged by characteristic apologies. On the latter point, Assange the principle, and Assange the man, have proven confusing to fence sitters and traditional Fourth Estate sell outs.

Sam Vinograd shines in this regard as CNN national security analyst, an important point because such hacks previously served as advisors or agents to political masters. They can be trusted to toe the line. In Vinograd’s case, it was as senior advisor in the Obama administration.

Triumphantly, [she claims](#), Assange “knowingly endangered the lives of journalists, religious leaders, human rights advocates, and political dissidents and did incredible harm to our national security.”

No evidence is supplied for any of these assertions – the claims in the indictment will do. Obscenely, we are to take at face value that the US Justice Department is doing us, not to mention journalists, a favour. Wither analysis.

The mistake often made is that such previous experience as a national security advisor or some such will enable in-stable media figures to speak openly about topics when the opposite is true. Their goggles remain permanently blurred to the broader implications of punishing media outlets: they, after all, speak power to truth.

Those like John Pilger, one of Assange’s more tireless defenders, have been unequivocal and, thus far, accurate.

“The war on Julian Assange is now a war on all,” [he tweeted](#). “Eighteen absurd charges including espionage send a burning message to every journalist, every publisher.”

The war on Julian [#Assange](#) is now a war on all. Eighteen absurd charges including espionage send a burning message to every journalist, every publisher. The target today is [#Assange](#). Tomorrow it will be you on the New York Times, you on the BBC. Modern fascism is breaking cover.

— John Pilger (@johnpilger) [May 23, 2019](#)

WikiLeaks's current publisher-in-chief, Kristinn Hrafnsson [expressed](#) "no satisfaction in saying 'I told you so' to those who for 9 years scorned us for warning this moment would come."

The ACLU has also [made the pertinent point](#) that the charges against Assange are easily replicable across the board: do it to Assange and you might give the nod of approval to other states to do the same. They "are equally dangerous for US journalists who uncover the secrets of other nations. If the US can prosecute a foreign publisher for violating our secrecy laws, there's nothing preventing China, or Russia, from doing the same." Fairly precise, that.

Trevor Timm, Freedom of the Press Foundation executive director, did not mince his words.

"Put simply," came [his statement](#), "these unprecedented charges against Julian Assange and WikiLeaks are the most significant and terrifying threat to the First Amendment in the 21st century."

The silver lining – for even in this charred landscape of desperation, there is one – is the overzealous nature of this effort. For one thing, proving espionage requires the necessary mental state, namely the "intent or reason to believe that the [leaked] information is to be used to the injury of the United States, or to the advantage of any foreign nation." It was precisely such grounds that [failed to convince](#) Colonel Denise Lind in Manning's trial, who found that the analyst was not "aiding the enemy" in supplying material to WikiLeaks.

By larding the charge folder against Assange so heavily, the political intention of the prosecutors is clear. It reeks of overreach, an attempt to get ahead of the queue of Sweden. A sensible reading of any extradition effort now must conclude that Assange is as much a target of political interest as anything else. Not a hacker, nor a figure so personalised as to be reviled, but a symbol of publishing itself, persecuted by the only superpower on the planet. The case, [surmises](#) Edward Snowden, "will decide the future of media."

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