

Unequal Justice: Julian Assange Is an Enemy in Trump's War on the First Amendment

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The prosecution of WikiLeaks founder Julian Assange under the Espionage Act represents a dangerous turn in President Donald Trump's war on the First Amendment. Whether you love Assange or loathe him, it is vital to understand the [eighteen-count indictment](#) filed against him on May 23 in the context of that wider conflict. In a very real sense, we are all defendants in the case against Assange.

The new charges allege that Assange collaborated with former Army Intelligence Officer [Chelsea Manning](#) from 2009 to 2011 to obtain and publish national defense information about the wars in Afghanistan and Iraq. Items supplied by Manning included more than 250,000 classified State Department cables as well as several CIA-interrogation videos. Manning also leaked the now-widely viewed [video](#) of a 2007 attack staged by U.S. military Apache helicopters in Baghdad that killed two Reuters employees and a dozen other people.

The new charges supersede an earlier [one-count indictment](#) that was filed secretly under seal in March 2018 and cited Assange for conspiring with Manning to decode a Defense Department computer password. Assange is currently in a London [jail](#), serving a fifty-week sentence for jumping bail in 2012 while facing extradition to Sweden on rape allegations. He now faces extradition to the United States as well.

That would be a horrific outcome, not only for Assange personally, but for anyone concerned with freedom of the press.

Although the prosecution of government leakers like Manning has become more common in recent decades, prosecution of a news entity for publishing leaked information is something new. As the Congressional Research Service noted in a lengthy 2017 [analysis](#):

“While courts have held that the Espionage Act and other relevant statutes allow for convictions for leaks to the press, the government has never prosecuted a traditional news organization for its receipt [and publication] of classified or other protected information.”

Indeed, the prosecution of Assange for alleged violations of the Espionage Act reopens a threat to press freedom that hasn't been seen in decades.

In the landmark “Pentagon Papers” case ([New York Times Company v. United States](#)), the Supreme Court quashed the Nixon Administration's effort to enjoin the *Times* and *The Washington Post* from publishing materials disclosed to them by former military analyst Daniel Ellsberg. By a vote of 6-3, the court held that the attempt to place “prior restraints”

on the two newspapers ran afoul of the First Amendment.

Similarly, in October 1979, a federal appeals court [dismissed](#) a complaint brought against *The Progressive* magazine on behalf of the Department of Energy to prevent publication of a feature story entitled, "[The H-Bomb Secret](#)." *The Progressive* published the H-bomb article the following month. (*Full disclosure*: My review of G. William Domhoff's book, *The Powers that Be: Processes of Ruling Class Domination in America*, appeared in the same issue.)

The Department of Justice, now run by Attorney General William Barr, no doubt will contend that WikiLeaks is not a legitimate news organization deserving of Constitutional protections. But in fact, Assange and WikiLeaks have been [honored](#) over the years with several international journalism awards.

In any event, it is unlikely that the Department of Justice will be able to draw a principled distinction between publishers that merit First Amendment safeguards and those who do not.

Notably, the Obama Administration declined to indict Assange because of what was then described as the "[New York Times problem](#)"—that if Assange were charged, the *Times*, the *Post* and the *Guardian*, among others, would also have to be prosecuted for publishing files leaked by Manning.

The Trump Administration now appears ready to evade and, if possible, eradicate the "*New York Times*" problem, arguing that although the Espionage Act has never been applied to a publisher in the past, there's a first time for everything. In making that argument, the administration will be able to point to the [text of the act](#), which prohibits both the illegal acquisition *and* the subsequent publication of classified material.

Nor would the Pentagon Papers or *The Progressive* cases preclude the prosecution of Assange, as they applied only to prior restraints on publication. Neither case held that news outlets could not be prosecuted post-publication. The Supreme Court explicitly left the question unresolved in the Pentagon Papers case.

Trump has long been fixated with the press, which he has often slandered as "[the enemy of the people](#)." In one of his first campaign speeches on the subject, delivered in Fort Worth, Texas, in February 2016, he promised to take revenge on the media if elected, [telling a cheering audience](#):

"I think the media is among the most dishonest groups of people I've ever met. They're terrible. . . If I become President, oh, do they have problems. They're going to have such problems."

Driven as always by self-interest and opportunism, Trump has now flipped from professing his "[love](#)" for WikiLeaks during the campaign to targeting Assange as part of the enemy. Conveniently, and fully consistent with the President's opportunism, the current charges lodged against Assange do not involve WikiLeaks' publication of materials hacked from the email accounts of the Democratic National Committee—an act that clearly benefited Trump.

If Assange is sent to the United States and convicted on all counts, he could be sentenced to 175 years in federal prison. While we are still a long way from that, one thing is certain: Unless and until the prosecution of Assange is dismissed, no publication will be safe from

the Trump Administration's vengeance and overreach.

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