



Assange indictment: Free press advocates see peril for journalism

Alex Johnson

May 23, 2019

The indictment charging Wikileaks co-founder Julian Assange with obtaining and publishing classified material represents a grave threat to all Americans' First Amendment rights, advocates across the political spectrum said Thursday.

The superseding indictment adds 17 counts of violating the Espionage Act of 1917 to a single previous count of conspiracy to commit computer intrusion that was revealed last month. Specifically, it accuses Assange, 47, of having illegally induced Army Pfc. Chelsea Manning to send him classified documents, some of which he published without redacting the names of confidential sources who provided information to U.S. diplomats.

Advocates and legal scholars said the indictment seeks to criminalize activity engaged in by journalists every day — publishing news of vital interest that they receive from someone who shouldn't have given it to them.

"For the first time in the history of our country, the government has brought criminal charges against a publisher for the publication of truthful information," said Ben Wizner, director of the Speech, Privacy and Technology Project of the American Civil Liberties Union.

"This is an extraordinary escalation of the Trump administration's attacks on journalism, and a direct assault on the First Amendment," Wizner said in a statement.

Jameel Jaffer, executive director of the Knight First Amendment Institute at Columbia University in New York, said the new charges weren't unexpected, noting that the Espionage Act was cited in Assange's original hacking charge last month.

But the added charges break frightening new ground, Jaffer said, because all previous cases under the Espionage Act targeted the government officials doing the leaking — not the publishers of their leaks.

"This is really what free speech and free press advocates have been worrying about," Jaffer said in an interview on MSNBC's "All In With Chris Hayes."

"It really does cross a new frontier," he said.

"You had the Bush administration begin prosecuting leakers as spies, and then you had the Obama administration prosecute more Espionage Act cases than all previous administrations

combined," he said. "But none of those prosecutions involved a publisher. Now we have a publisher."

Regardless of whether Assange is ever tried, "the indictment itself is going to send a very chilling message," he said.

In an analysis of the indictment on Thursday, the nonprofit Reporters Committee for Freedom of the Press argued that "the parallels between what a member of the news media does on a daily basis ought to be obvious."

"Reporters and sources regularly use encrypted communications applications to 'conspire' and to pass information back and forth (as well they should)," it said.

US charges Wikileaks founder Julian Assange with 17 counts under Espionage Act

"The indictment of Julian Assange under the Espionage Act for publishing classified information is an attack on the First Amendment and a threat to all journalists everywhere who publish information that governments would like to keep secret." [@Joelcpj](https://cpj.org/2019/05/julian-assange-charged-espionage-wikileaks.php...pic.twitter.com/dhtpa9yUyZ)

John Demers, the assistant attorney general for national security, told reporters on Thursday that the Justice Department "takes seriously the role of journalists in our democracy" but that department officials didn't consider Assange to be a journalist.

"No responsible actor, journalist or otherwise, would purposefully publish the names of individuals he or she knew to be confidential human sources in a war zone, exposing them to the gravest of dangers," Demers said.

But Bruce Brown, executive director of the Reporters Committee for Freedom of the Press, said in a statement: "Any government use of the Espionage Act to criminalize the receipt and publication of classified information poses a dire threat to journalists seeking to publish such information in the public interest, irrespective of the Justice Department's assertion that Assange is not a journalist."

Criticism of the indictment crossed political lines, as several prominent conservative and libertarian commentators sounded similar warnings.

Julian Sanchez, a senior fellow at the nonprofit Cato Institute, a libertarian advocacy group, said the debate about whether Assange was a journalist was both "tedious" and irrelevant. (The answer, he agreed on Twitter, was "no" — Assange isn't a journalist.)

The whole point of the First Amendment, he said, "is, in significant part, to avoid making particularized governmental determinations about who is a 'real journalist.'"

Meanwhile, Scott Horton, director of the nonprofit Libertarian Institute, bluntly called the indictment "garbage."

"It begins by citing public requests by Wikileaks for classified documents from a number of governments," Horton wrote Thursday on the institute's blog, "as though this is different from what any investigative reporter might do."

Similarly, Eli Lake, a neoconservative columnist for Bloomberg Opinion, said the indictment "represents a profound danger to any reporter who has published state secrets."

While it can be debated whether Assange is a journalist and whether Wikileaks is a news organization, "this debate is irrelevant," Lake, who has long denounced the leaking of information from counterintelligence investigations, wrote Thursday.

"Assange is under no obligation to keep the U.S. government's secrets," he wrote. "If Assange can be charged with receiving classified information, then what is to stop the government from bringing similar charges against the New York Times or Bloomberg News?"

Advocates' criticism found support among current and former government officials, as well.

David A. Kaye, the United Nations' special rapporteur on the protection of freedom of opinion and expression, said on Twitter that "regardless of what you think about Wikileaks or Julian Assange, an Espionage Act prosecution can only turn out badly for press freedom in this country."

And Matthew Miller, a justice analyst for MSNBC, pointed out that the Justice Department declined to charge Assange for just that reason during the administration of former President Barack Obama, when he was its chief spokesman.

"This is nonsense," Miller said on Twitter, arguing that there was a "pretty clear difference between charging government employees who have sworn to protect classified info and people outside government who publish it."

"As I've been saying for several years, there are very good reasons we didn't charge this theory," he said. "And it's not like we had a record reporters loved on these issues."