COURAGE EDITION
To Chelsea

WeeklyLeaks

Monday 21st September 2020 *FREE*

COURAGE IS CONTAGIOUS

WikiLeaks pioneered secure submission systems for journalism *Page 4*

Follow Assange's extradition hearing coverage live at ***defend.WikiLeaks.org***

Tortured for revealing war crimes

- **Assange could die in Supermax prison in the U.S. for journalism**
- **Assange's extradition will create a precedent affecting all journalists in the U.K. and worldwide**

Editorial

What is journalism? What is journalism's duty and to whom? Who is and isn't a journalist, and who decides that? What is a political opinion and who is allowed to have one? What protects the right to inform, be informed and express one's opinion? Who decides what state and corporate secrets should be revealed to the public or remain classified? Why, when and in the interest of whom? When the laws of exception are the rule, does justice become an exception? What happens when crucial information returns to the public domain, thanks to the dedication of journalists, whistleblowers and individuals? And what if we end up living in a world where there are no such people left, to speak truth to power?

Those are some key questions at the heart of Julian Assange's extradition hearing, which resumed at the Old Bailey on September 7th, and is expected to last until October 2nd. Expert witnesses have given elements of answers to these questions through thoroughly researched, engaging testimonies – some of which can be found in this issue of WeeklyLeaks.

Hanging in the courtroom, with the fate of the WikiLeaks founder, is the fate of us all.

So stay informed and join the fight against the extradition and persecution of Julian Assange.■

Magistrate brings another pre-written judgement to Assange's hearing

Craig Murray
Historian and human rights activist, former British Ambassador

7 SEPTEMBER 2020
Our Man in the Public Gallery at the Assange extradition hearing

> **"I went to the Old Bailey expecting to be awed by the majesty of the law, and left revolted by the sordid administration of injustice.**

I went to the Old Bailey today expecting to be awed by the majesty of the law, and left revolted by the sordid administration of injustice.

There is a romance which attaches to the Old Bailey. The name of course means fortified enclosure and it occupies a millennia old footprint on the edge of London's ancient city wall. It is the site of the medieval Newgate Prison, and formal trials have taken place at the Old Bailey for at least 500 years, numbering in the hundreds of thousands. For the majority of that time, those convicted even of minor offences of theft were taken out and executed in the alleyway outside. It is believed that hundreds, perhaps thousands, lie buried under the pavements.

The hefty Gothic architecture of the current grand building dates back no further than 1905, and round the back and sides of that is wrapped some horrible cheap utility building from the 1930's. It was through a tunnelled entrance into this portion that five of us, Julian's nominated family and friends, made our nervous way this morning. We were shown to Court 10 up many stairs that seemed like the back entrance to a particularly unloved works canteen. Tiles were chipped, walls were filthy and flakes of paint hung down from crumbling ceilings. Only the security cameras watching us were new – so new, in fact, that little piles of plaster and brick dust lay under each.

Court 10 appeared to be a fairly bright and open modern box, with pleasant light woodwork, jammed as a mezzanine inside a great vault of the old building. A massive arch intruded incongruously into the space and was obviously damp, sheets of delaminating white paint drooping down from it like flags of forlorn surrender. The dock in which Julian would be held still had a bulletproof glass screen in front, like Belmarsh, but it was not boxed in. There was no top to the screen, no low ceiling, so sound could flow freely over and Julian seemed much more in the court. It also had many more and wider slits than the notorious Belmarsh Box, and Julian was able to communicate quite readily and freely through them with his lawyers, which this time he was not prevented from doing.

Rather to our surprise, nobody else was allowed into the public gallery of Court 10 but us five. Others like John Pilger and Kristin Hrafnsson, editor in chief of WikiLeaks, were shunted into the adjacent court 9 where a very small number were permitted to squint at a tiny screen, on which the sound was so inaudible John Pilger simply left. Many others who had expected to attend, such as Amnesty International and Reporters Without Borders, were simply excluded, as were MPs from the German federal parliament (both the German MPs and Reporters Without Borders at least later got access to the inadequate video following strong representations from the German Embassy).

The reason given that only five of us were allowed in the public gallery of some 40 seats was distancing; except we were allowed to all sit together in consecutive seats in the front row. The two rows behind us remained completely empty.

To finish scene setting, Julian himself looked tidy and well groomed and dressed, and appeared to have regained a little lost weight, but with a definite unhealthy puffiness about his features. In the morning

Continued on page 2

Magistrate brings another pre-written judgement to Assange's hearing

Continued from page 1

he appeared disengaged and disoriented rather as he had at Belmarsh, but in the afternoon he perked up and was very much engaged with his defence team, interacting as normally as could be expected in these circumstances.

Proceedings started with formalities related to Julian's release on the old extradition warrant and re-arrest under the new warrant, which had taken place this morning. Defence and prosecution both agreed that the points they had already argued on the ban on extradition for political offences were not affected by the superseding indictment.

Magistrate Baraitser then made a statement about access to the court by remote hearing, by which she meant online. She stated that a number of access details had been sent out by mistake by the court without her agreement. She had therefore revoked their access permissions.

As she spoke, we in the court had no idea what had happened, but outside some consternation was underway in that the online access of Amnesty International, of Reporters without Borders, of John Pilger and of 40 others had been shut down. As these people were neither permitted to attend the court nor observe online, this was causing some consternation.

Baraitser went on to say that it was important that the hearing was public, but she should only agree remote access where it was "in the interests of justice", and having considered it she had decided it was not. She explained this by stating that the public could normally observe from within the courtroom, where she could control their behaviour. But if they had remote access, she could not control their behaviour and this was not in the "interests of justice".

Baraitser did not expand on what uncontrolled behaviour she anticipated from those viewing via the internet. It is certainly true that an observer from Amnesty sitting at home might be in their underwear, might be humming the complete soundtrack to Mamma Mia, or might fart loudly. Precisely why this would damage "the interests of justice" we are still left to ponder, with no further help from the magistrate. But evidently the interests of justice were, in her view, best served if almost nobody could examine the "justice" too closely.

The next "housekeeping issue" to be addressed was how witnesses should be heard. The defence had called numerous witnesses, and each had lodged a written statement. The prosecution and Baraitser both suggested that, having given their evidence in writing, there was no need for defence witnesses to give that evidence orally in open court. It would be much quicker to go straight to cross-examination by the prosecution.

For the defence, Edward Fitzgerald QC countered that justice should be seen to be done by the public. The public should be able to hear the defence evidence before hearing the cross-examination. It would also enable Julian Assange to hear the evidence summarised, which was important for him to follow the case given his lack of extended access to legal papers while in Belmarsh prison.

Baraitser stated there could not be any need for evidence submitted to her in writing to be repeated orally. For the defence, Mark Summers QC was not prepared to drop it and tension notably rose in the court. Summers stated it was normal practice for there to be "an orderly and rational exposition of the evidence". For the prosecution, James Lewis QC denied this, saying it was not normal procedure.

> **"Immediately Summers sat down, Baraitser gave her judgement on this point. As so often in this hearing, it was a pre-written judgement. She read it from a laptop she had brought into the courtroom with her, and she had made no alterations to that document as Summers and Smith had argued the case in front of her.**

Baraitser stated she could not see why witnesses should be scheduled an one hour and 45 minutes each, which was too long. Lewis agreed. He also added that the prosecution does not accept that the defence's expert witnesses are expert witnesses. A professor of journalism telling about newspaper coverage did not count. An expert witness should only be giving evidence on a technical point the court was otherwise unqualified to consider. Lewis also objected that in giving evidence orally, defence witnesses might state new facts to which the Crown had not had time to react. Baraitser noted that the written defence statements were published online, so they were available to the public.

Edward Fitzgerald QC stood up to speak again, and Baraitser addressed him in a quite extraordinary tone of contempt. What she said exactly was: "I have given you every opportunity. Is there anything else, really, that you want to say", the word "really" being very heavily emphasised and sarcastic. Fitzgerald refused to be sat down, and he stated that the current case featured "substantial and novel issues going to fundamental questions of human rights". It was important the evidence was given in public. It also gave the witnesses a chance to emphasise the key points of their evidence and where they placed most weight.

Baraitser called a brief recess while she considered judgement on this issue, and then returned. She found against the defence witnesses giving their evidence in open court, but accepted that each witness should be allowed up to half an hour of being led by the defence lawyers, to enable them to orient themselves and reacquaint with their evidence before cross-examination.

This half hour for each witness represented something of a compromise, in that at least the basic evidence of each defence witness would be heard by the court and the public (insofar as the public was allowed to hear anything). But the idea that a standard half hour guillotine is sensible for all witnesses, whether they are testifying to a single fact or to developments over years, is plainly absurd. What came over most strongly from this question was the desire of both judge and prosecution to railroad through the extradition with as little of the case against it getting a public airing as possible.

As the judge adjourned for a short break we thought these questions had now been addressed and the rest of the day would be calmer. We could not have been more wrong.

The court resumed with a new defence application, led by Mark Summers QC, about the new charges from the US governments new superseding indictment. Summers took the court back over the history of this extradition hearing. The first indictment had been drawn up in March of 2018. In January 2019 a provisional request for extradition had been made, which had been implemented in April of 2019 on Assange's removal from the Embassy. In June 2019 this was replaced by the full request with a new, second indictment which had been the basis of these proceedings before today. A whole series of hearings had taken place on the basis of that second indictment.

The new superseding indictment dated from 20 June 2020. In February and May 2020 the US government had allowed hearings to go ahead on the basis of the second indictment, giving no warning, even though they must by that stage have known the new superseding indictment was coming. They had given neither explanation nor apology for this.

The defence had not been properly informed of the superseding indictment, and indeed had learnt of its existence only through a US government press release on 20 June. It had not finally been officially served in these proceedings until 29 July, just six weeks ago. At first, it had not been clear how the superseding indictment would affect the charges, as the US government was briefing it made no difference but just gave additional detail. But on 21 August 2020, not before, it finally became clear in new US government submissions that the charges themselves had been changed.

There were now new charges that were standalone and did not depend on the earlier allegations. Even if the 18 Manning related charges were rejected, these new allegations could still form grounds for extradition. These new allegations included encouraging the stealing of data from a bank and from the government of Iceland, passing information on tracking police vehicles, and hacking the computers both of individuals and of a security company.

"How much of this newly alleged material is criminal is anybody's guess", stated Summers, going on to explain that it was not at all clear that an Australian giving advice from outwith Iceland to someone in Iceland on how to crack a code, was actually criminal if it occurred in the UK. This was even without considering the test of dual criminality in the US also, which had to be passed before the conduct was subject to extradition.

It was unthinkable that allegations of this magnitude would be the subject of a Part 2 extradition hearing within six weeks if they were submitted as a new case. Plainly that did not give the defence time to prepare, or to line up witnesses to these new charges. Among the issues relating to these new charges the defence would wish to address, were that some were not criminal, some were out of time limitation, some had already been charged in other fora (including Southwark Crown Court and courts in the USA).

There were also important questions to be asked about the origins of some of these charges and the dubious nature of the witnesses. In particular the witness identified as "teenager" was the same person identified as "Iceland 1" in the previous indictment. That indictment had contained a "health warning" over this witness given by the US Department of Justice. This new indictment removed that warning. But the fact was, this witness is Sigurdur Thordarson, who had been convicted in Iceland in relation to these events of fraud, theft, stealing WikiLeaks money and material and impersonating Julian Assange.

The indictment did not state that the FBI had been "kicked out of Iceland for trying to use Thordarson to frame Assange", stated Summers baldly.

Summers said all these matters should be ventilated in these hearings if the new charges were to be heard, but the defence simply did not have time to prepare its answers or its witnesses in the brief six weeks it had since receiving them, even setting aside the extreme problems of contact with Assange in the conditions in which he was being held in Belmarsh prison.

The defence would plainly need time to prepare answers to these new charges, but it would plainly be unfair to keep Assange in jail for the months that would take. The defence therefore suggested that these new charges should be excised from the conduct to be considered by the court, and they should go ahead with the evidence on criminal behaviour confined to what conduct had previously been alleged.

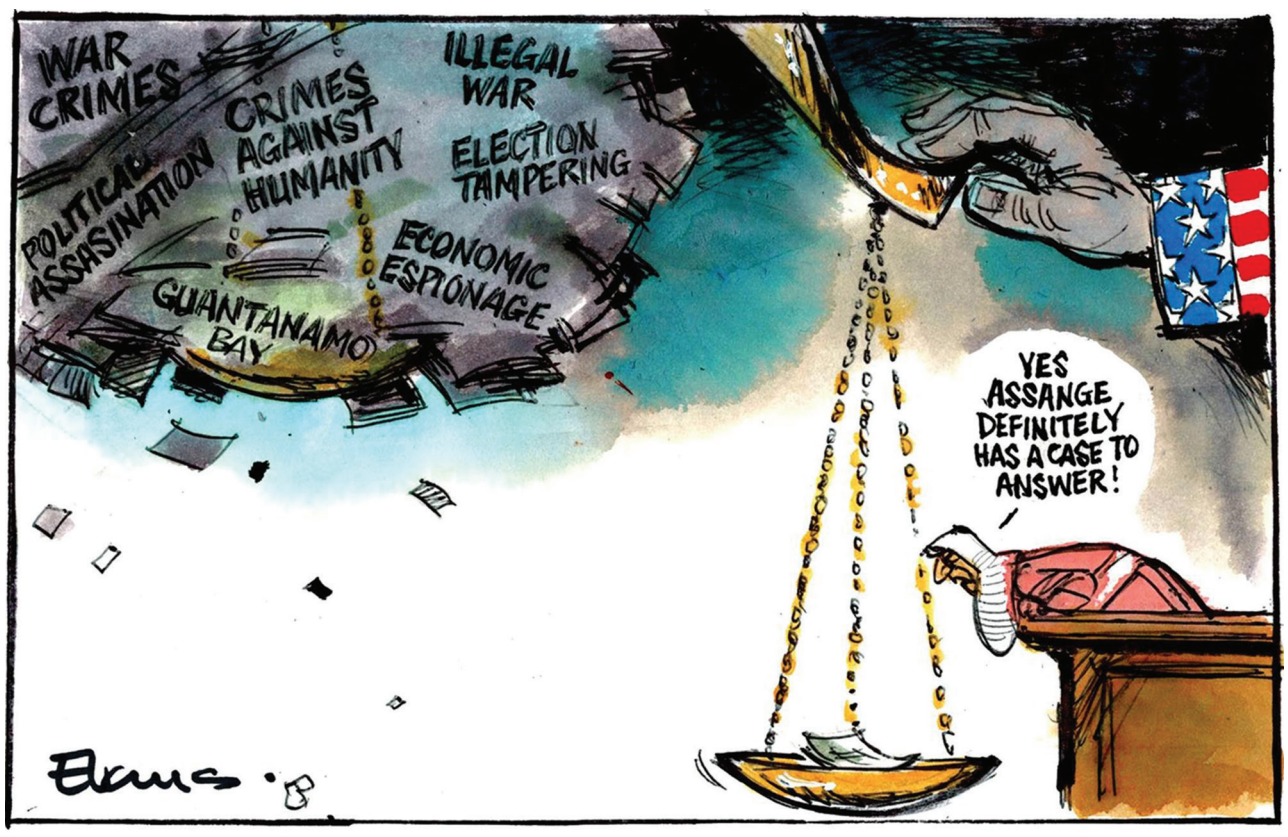
Summers argued it was "entirely unfair" to add what were in law new and separate criminal allegations, at short notice and "entirely without warning and not giving the defence time to respond to it. What is happening here is abnormal, unfair and liable to create real injustice if allowed to continue".

The arguments submitted by the prosecution now rested on these brand new allegations. For example, the prosecution now countered the arguments on the rights of

whistleblowers and the necessity of revealing war crimes by stating that there can have been no such necessity to hack into a bank in Iceland.

Summers concluded that the "case should be confined to that conduct which the American government had seen fit to allege in the eighteen months of the case" before their second new indictment.

Replying to Summers for the prosecution, Joel Smith QC replied that the judge was obliged by the statute to consider the new charges and could not excise them. "If there is nothing proper about the restitution of a new extradition request after a failed request, there is nothing improper in a superseding indictment before the first request had failed". Under the Extradition Act the court must decide only if the offence is an extraditable offence and the conduct alleged meets the dual criminality test. The court has no other role and no jurisdiction to excise part of the request.



"If you asked me to sum up today in a word, that word would undoubtedly be "railroaded". It was all about pushing through the hearing as quickly as possible and with as little public exposure as possible to what is happening. Access denied, adjournment denied, exposition of defence evidence denied, removal of superseding indictment charges denied.

Smith stated that all the authorities (precedents) were of charges being excised from a case to allow extradition to go ahead on the basis of the remaining sound charges, and those charges which had been excised were only on the basis of double jeopardy. There was no example of charges being excised to prevent an extradition. And the decision to excise charges had only ever been taken after the conduct alleged had been examined by the court. There was no example of alleged conduct not being considered by the court. The defendant could seek extra time if needed but the new allegations must be examined.

Summers replied that Smith was "wrong, wrong, wrong, and wrong". "We are not saying that you can never submit a new indictment, but you cannot do it six weeks before the substantive hearing". The impact of what Smith had said amounted to no more than "Ha ha this is what we are doing and you can't stop us". A substantive last minute change had been made with no explanation and no apology. It could not be the case, as Smith alleged, that a power existed to excise charges in fairness to the prosecution, but no power existed to excise charges in fairness to the defence.

Immediately Summers sat down, Baraitser gave her judgement on this point. As so often in this hearing, it was a pre-written judgement. She read it from a laptop she had brought into the courtroom with her, and she had made no alterations to that document as Summers and Smith had argued the case in front of her.

Baraitser stated that she had been asked as a preliminary move to excise from the case certain conduct alleged. Mr Summers had described the receipt of new allegations as extraordinary. However "I offered the defence the opportunity to adjourn the case" to give them time to prepare against the new allegations. "I considered of course that Mr Assange was in custody. I hear that Mr Summers believes this is fundamental unfairness". But "the argument that we haven't got the time, should be remedied by asking for the time".

Mr Summers had raised issues of dual criminality and abuse of process; there was nothing preventing him for raising these arguments in the context of considering the request as now presented.

Baraitser simply ignored the argument that while there was indeed "nothing to prevent" the defence from answering the new allegations as each was considered, they had been given no time adequately to prepare. Having read out her pre-prepared judgement to proceed on the basis of the new superseding indictment, Baraitser adjourned the court for lunch.

At the end of the day I had the opportunity to speak to an extremely distinguished and well-known lawyer on the subject of Baraitser bringing pre-written judgements into court, prepared before she had heard the lawyers argue the case before her. I understood she already had seen the outline written arguments, but surely this was wrong. What was the point in the lawyers arguing for hours if the judgement was pre-written? What I really wanted to know was how far this was normal practice.

The lawyer replied to me that it absolutely was not normal practice, it was totally outrageous. In a long and distinguished career, this lawyer had very occasionally seen it done, even in the High Court, but there was always some effort to disguise the fact, perhaps by inserting some reference to points made orally in the courtroom. Baraitser was just blatant. The question was, of course, whether it was her own pre-written judgement she was reading out, or something she had been given from on high.

This was a pretty shocking morning. The guillotining of defence witnesses to hustle the case through, indeed the attempt to ensure their evidence was not spoken in court except those parts which the prosecution saw fit to attack in cross-examination, had been breathtaking. The effort by the defence to excise the last minute superseding indictment had been a fundamental point disposed of summarily. Yet again, Baraitser's demeanour and very language made little attempt to disguise a hostility to the defence.

We were for the second time in the day in a break thinking that events must now calm down and get less dramatic. Again we were wrong.

Court resumed 40 minutes late after lunch as various procedural wrangles were addressed behind closed doors. As the court resumed, Mark Summers for the defence stood up with a bombshell.

Summers said that the defence "recognised" the judgement Baraitser had just made – a very careful choice of word, as opposed to "respected" which might seem more natural. As she had ruled that the remedy to lack of time was more time, the defence was applying for an adjournment to enable them to prepare the answers to the new charges. They did not do this lightly, as Mr Assange would continue in prison in very difficult conditions during the adjournment.

Summers said the defence was simply not in a position to gather the evidence to respond to the new charges in a few short weeks, a situation made even worse by Covid restrictions. It was true that on 14 August Baraitser had offered an adjournment and on 21 August they had refused the offer. But in that period of time, Mr Assange had not had access to the new charges and they had not fully realised the extent to which these were a standalone new case. To this date, Assange had still not received the new prosecution Opening Note in prison, which was a crucial document in setting out the significance of the new charges.

Baraitser pointedly asked whether the defence could speak to Assange in prison by telephone. Summers replied yes, but these were extremely short conversations. They could not phone Mr Assange; he could only call out very briefly on the prison payphone to somebody's mobile, and the rest of the team would have to try to gather round to listen. It was not possible in these very brief discussions adequately to expound complex material. Between 14 and 21 August they had been able to have only two such very short phone calls. The defence could only send documents to Mr Assange through the post to the prison; he was not always given them, or allowed to keep them.

Baraitser asked how long an adjournment was being requested. Summers replied until January.

For the US government, James Lewis QC replied that more scrutiny was needed of this request. The new matters in the indictment were purely criminal. They do not affect the arguments about the political nature of the case, or affect most of the witnesses. If more time were granted, "with the history of this case, we will just be presented with a slew of other material which will have no bearing on the small expansion of count 2".

Baraitser adjourned the court "for 10 minutes" while she went out to consider her judgement. In fact she took much longer. When she returned she looked peculiarly strained.

Baraitser ruled that on 14 August she had given the defence the opportunity to apply for an adjournment, and given them seven days to decide. On 21 August the defence had replied they did not want an adjournment. They had not replied that they had insufficient time to consider. Even today the defence had not applied to adjourn but rather had applied to excise charges. They "cannot have been surprised by my decision" against that application. Therefore they must have been prepared to proceed with the hearing. Their objections were not based on new circumstance. The conditions of Assange in Belmarsh had not changed since 21 August. They had therefore missed their chance and the motion to adjourn was refused.

The courtroom atmosphere was now highly charged. Having in the morning refused to cut out the superseding indictment on the grounds that the remedy for lack of time should be more time, Baraitser was now refusing to give more time. The defence had called her bluff; the state had apparently been confident that the effective solitary confinement in Belmarsh was so terrible that Assange would not request more time. I rather suspect that Julian was himself bluffing, and made the call at lunchtime to request more time in the full expectation that it would be refused, and the rank hypocrisy of the proceedings exposed.

I previously blogged about how the procedural trickery of the superseding indictment being used to replace the failing second indictment – as Smith said for the prosecution "before it failed" – was something that sickened the soul. Today in the courtroom you could smell the sulphur.

Well, yet again we were left with the feeling that matters must now get less exciting. This time we were right and they became instead excruciatingly banal. We finally moved on to the first witness, Professor Mark Feldstein, giving evidence to the court by videolink for the USA. It was not Professor Feldstein's fault the day finished in confused anti-climax. The court was unable to make the video technology work. For 10 broken minutes out of about 40 Feldstein was briefly able to give evidence, and even this was completely unsatisfactory as he and Mark Summers were repeatedly speaking over each other on the link.

I shall give the full account of Professor Feldstein's evidence later, but in the meantime Kevin Gosztola is producting excellent summaries of the morning and afternoon reports from James Doleman. In fact, I should be grateful if you read these, so you can see that I am neither inventing nor exaggerating the facts of these startling events.

If you asked me to sum up today in a word, that word would undoubtedly be "railroaded". it was all about pushing through the hearing as quickly as possible and with as little public exposure as possible to what is happening. Access denied, adjournment denied, exposition of defence evidence denied, removal of superseding indictment charges denied. The prosecution was plainly failing in that week back in Woolwich in February, which seems like an age ago. It has now been given a new boost.

How the defence will deal with the new charges we shall see. It seems impossible that they can do this without calling new witnesses to address the new facts. But the witness lists had already been finalised on the basis of the old charges. That the defence should be forced to proceed with the wrong witnesses seems crazy, but frankly, I am well past being surprised by anything in this fake process. ■

More amazing reports from the court by Craig Murray on his website:

WikiLeaks pioneered secure submission systems for journalism

Trevor Timm
Co-founder and executive director of the Freedom of the Press Foundation

Extract from his testimony at the Assange extradition hearing

The decision to indict Julian Assange on allegations of a "conspiracy" between a publisher and his source or potential sources, and for the publication of truthful information, encroaches on fundamental press freedoms.

The routine and protected activities of journalists to interact with their sources are cast as criminal.

Encryption tools and cloud storage are deemed suspicious even though journalists frequently conduct their relationships with their sources through digital means. That does not make those activities any less deserving of constitutional protection through the First Amendment.

Secure Submission Systems such as SecureDrop

WikiLeaks pioneered a secure submission system for journalistic sources prior to 2010. They developed a platform for secure communication between sources and media organisations that was unique at that time and allowed journalists to receive communications from their sources in a way that attempted to ensure that the sources' safety and security were protected.

Prior to WikiLeaks, this concept had generally not been attempted before. However, once WikiLeaks began gaining global attention at around the time of the Afghan and Iraq War Logs, mainstream news organisations took notice and started to set up their own secure systems for the same purpose.

Organisations such as the Wall Street Journal and Al Jazeera were amongst the next to create such systems for their investigative journalists, but efforts by organisations other than WikiLeaks were quite quickly criticised by security experts for their lack of cybersecurity protections and they were soon shut down. For a while, WikiLeaks was the only organisation that operated such a secure system.

At that time, I was involved in the creation of Freedom of the Press Foundation (FPF) with a number of individuals including Pentagon Papers whistleblower Daniel Ellsberg. Overclassification was running rampant in the government and was being used to cover up abuse and illegality. In response, we called whistleblowers to come forward and we encouraged news outlets to publicly report on these classified government programs.

WikiLeaks is not unique in asking for leaked documents of public importance. The idea that every single story since the dawn of time has come from documents being dropped on the doorsteps of journalists, without those journalists asking for information, or returning to the source for more information, borders on fantasy. Journalists have to develop relationships with their sources. When a claim is made, it cannot simply be printed immediately. A journalist will ask for clarification, evidence or documentation to substantiate a claim. Where there is incomplete information, making a request to a source for more is a common practice for journalists in the US and around the world. If this is a crime, thousands of journalists would be committing crimes on a daily basis.

> **"If Julian Assange is extradited, this precedent will be used against other journalists and publishers because prosecutors will be able to say that their similar journalistic activities equally did not have First Amendment protection.**

It is my view that this type of speech has historically been protected by the First Amendment. Moreover, courts in the US have explicitly and implicitly recognized that any attempt to seek criminal or civil sanctions against the press for appearing to incentivize sources to supply information on newsworthy topics faces substantial First Amendment difficulties. I would particularly like to draw attention to a law review article written by one of the country's leading and respected First Amendment attorneys that discusses compelling historical examples of news stories which may not have been published if the First Amendment had not protected journalists in this way: 'Handcuffing the Press: First Amendment Limitations on the Reach of Criminal Statutes as Applied to the Media.

In 2013, FPF adopted and began developing 'SecureDrop'[1], an open source platform for secure communication between sources and media organisations. This was in the wake of several controversies involving the US government inappropriately accessing journalists' communications records while they were speaking with their sources. In 2014, the Washington Post and the Guardian both starting using SecureDrop.

The whistleblower submission system is now available in 10 languages and used by more than 70 media organisations worldwide, including The New York Times, Wall Street Journal, Associated Press, USA Today, Bloomberg News, CBC, and The Toronto Globe and Mail. I exhibit examples of media organisations using SecureDrop.

Every organisation that uses SecureDrop has to tell the world that they have this facility. On their websites, you will find instructions on how to communicate tips and documents securely to each news organisation. FPF also has a guide for how sources can use it safely.

The "secure tip" pages published by news outlets often ask for newsworthy information and documents. Some use careful, legalistic language; others are more explicit saying "leak to us". In 2020, the use of secure messaging tools to communicate with sources is so widespread, it's generally considered negligent not to provide sources with some level of security and reassurance.

In my experience, journalists will invite people to use their secure submission systems frequently. In fact, we actively encourage them to do so, as the only way anyone will know it exists is if it is advertised.

For example, Pulitizer Prize reporter David Fahrenthold puts a link to SecureDrop in emails he sends to people he contacts in an attempt to learn more about the subjects he is covering. It is common for organisations to go further and target particular groups of individuals who might have access to sought-after information which is of interest to their publication. In fact, some news outlets have even run advertisements encouraging whistleblowers to get in touch through their SecureDrop.

Making requests from sources: Online speech and Wikis

Individual journalists often make requests for specific documents, through Twitter for example. I myself have advocated for leaks in cases where the US secrecy system is hiding abuse, corruption, or illegal acts. In 2014, I published an article specifically calling for the leak of the classified version of the Senate Committee report on CIA Torture and tweeted about it, as did others.

At that time, the government agencies that had been given responsibility for conducting the "declassification review" included the CIA themselves, the same agency accused in the report of systematically torturing detainees (an illegal act under both domestic and international law). The report also accused the CIA of subsequently lying about the program to Congress.

Just some of what we know from the unclassified Executive Summary report is that the CIA covertly developed a program of so-called "enhanced interrogation techniques" to torture detainees, made inaccurate claims about the effectiveness of such "techniques" (some of which were leaked to the press), avoided congressional oversight, impeded oversight by CIA Headquarters, the Department of Justice and the Office of the Inspector General and in doing so, led and sustained a program of grave criminality for years after the 9/11 attacks.

I called for the release of the report because I believed that the American public's right to know what had been done in our name would likely only be vindicated if someone with a conscience was brave enough to leak the full report and hold the CIA accountable for its crimes once and for all.

The full report remains classified and there have still never been any criminal prosecutions for individuals involved in the torture and abuse of prisoners. In fact, the only reason the American public ever heard about the classified torture program to begin with was because whistleblowers bravely told journalists about it, and news outlets were willing to corroborate and publish the details.

I consider this type of speech advocating for such leaks to be protected by the First Amendment, while the prosecution appear to view this as a criminal act of "actively soliciting" classified information.

Similarly, I also note in the indictments the repeated references to the "Most Wanted Leaks" of 2009 document presented as "Assange's solicitation of classified information made through the WikiLeaks website", suggested that Assange alone was encouraging and causing individuals to illegally disclose protected information including classified information to WikiLeaks in a manner contrary to the law. This is simply not correct.

WikiLeaks was originally intended to be a "wiki", and although they later evolved in a different direction, they kept that part of their name.

A wiki, which is what the Most Wanted Leaks list was, is a publicly-editable, collaborative project created by its contributors, some of whom are likely to have been journalists asking for documents of public importance.

To assist the court, I exhibit some explanations of the concept of a wiki.

I have been provided with a copy of the Most Wanted Leaks List of 2009 (already filed in these proceedings) by the instructing solicitors and I note that the title of the list is "Draft - Most Wanted Leaks of 2009", and that is described as requesting nominations for "the concealed documents or recordings most sought after by a country's journalists, activists, historians, lawyers, police, or human rights investigators".

WikiLeaks was not the only organisation involved in the development of such a list at that time. The Center for Democracy and Technology maintain a similar list and did so in 2009.

The US do not mention the crowd-sourced nature of the Most Wanted Leaks list in their indictment, instead attributing the list to Julian Assange himself.

I exhibit a recent analysis by my previous employer, the Electronic Frontier Foundation, which explains how the wiki could be edited by the public, and sets out the reason why the contributors to the Most Wanted Leaks page (whomever they were), or indeed any type of wiki like this, are in my opinion and in the opinion of many First Amendment experts, constitutionally protected: "[T]he Most Wanted Leaks page epitomises one of the most important features of WikiLeaks: that as a publisher, it served the public interest. WikiLeaks served activists, human rights defenders, scholars, reformers, journalists and other members of the public. With the Most Wanted Leaks page, it gave members of the public a platform to speak anonymously about documents they believed would further public understanding. It's an astonishingly thoughtful and democratic way for the public to educate and communicate their priorities to potential whistleblowers, those in power, and other members of the public".

Requesting more documents from a source, posting online about documents which are in the public interest, using an encrypted chat messenger, or trying to keep a source's identity anonymous are not crimes; they are vital to the journalistic process. ■

[1] *SecureDrop was created by Aaron Swartz who died in 2013 aged 26, after facing a federal prosecution under the Computer Fraud and Abuse Act for allegedly downloading academic articles from JSTOR whilst a student at MIT. A superseding indictment against him amounted to US$1 million and 50 years imprisonment as a maximum penalty. He tragically took his own life before his trial.*

See Trevor Timm's full testimony and exhibits, along with other witness statements:

A Kafkaesque farce

Angela Richter
Theatre director and columnist for the German weekly newspaper Die Welt

Excerpt translated from the German article Der Prozess, *initially published in* Die Welt

On the morning of the start of the hearing, as I arrive at London's Central Criminal Court, the Old Bailey, one to two hundred people have already gathered outside to demonstrate their support for Julian Assange. On the street along the entrance, there is chanting, singing and dancing.

It is a colourful hustle and bustle which reminds me that in the long history of this impressive judicial building, dark scenes have also taken place here. Executions by hanging, right in front of the courthouse, were a public spectacle until 1868.

The convicted were led on the "Dead Man's Walk" in front of the building , killed and then buried on the spot. Today a temporary stage stands there, from which Assange's supporters will take turns giving short speeches.

Among them are well-known faces such as British designer Vivienne Westwood, Australian journalist John Pilger, German left-wing MP Heike Hänsel and Wikileaks editor-in-chief Kristinn Hrafnsson. In the crowd–where most are wearing masks or social distancing – I come across John Shipton, Julian Assange's father, who has been traveling around the world for the past months garnering support to save his son's life. I first met Shipton eight years ago at a small Christmas party at the Ecuadorian Embassy when Assange was granted asylum.

Soon I find myself pushed aside as Shipton is surrounded by reporters, and willingly gives one interview after another. Later he tells me that he is happy for any attention, because Covid has pushed almost all other topics off the front pages in recent months.

In the meantime, another dissident has made it to the world headlines, but this one is from Russia. The political handling of the Nawalny case, in which a poison attack was carried out, stands in strong contrast to the German government's loud silence in the Assange case. Yet Assange's years of persecution by the USA are a threat to Western democracy.

Since his arrest at the Ecuadorian embassy in April 2019, Assange has been held in remand in the high-security prison of Belmarsh in London. Sixteen months have passed since then and Assange still has to spend twenty three hours a day alone in his cell. Due to the Covid measures, neither his family nor his lawyers have been allowed to visit him. The UN Special Rapporteur on Torture, Nils Melzer, and various human rights organisations have been asking for his release for months, so far to no avail.

The US prosecutors have used the Covid break to bring up new charges against Assange, with a few elements added. One of the accusations is that Assange actively tried to recruit hackers to find classified government information. Another is aiding and abetting the escape of NSA whistleblower Edward Snowden from Hong Kong.

The defence, having learned about this through a press release only a few weeks before the hearing was due to begin – and hence lacking sufficient time or direct contact with Assange – was now presented with a dilemma. Lawyer Mark Summers explained that the defence did not want to prolong Assange's excruciating imprisonment any further and therefore initially declined the offer of adjournment and filed a request for the judge to dismiss the new accusations.

Baraitser, however, allowed the new charges, which led to the lawyers, after a brief consultation with Assange, to finally file a request for adjournment until January. It was in turn abruptly rejected by Baraitser because they had rejected her earlier offer.

"Essentially, the US has to prove that Assange would not be extradited for political reasons, since British law prohibits the extradition of politically persecuted persons.

So on the very first day, a scene occured which exposed the absurd nature of this trial: after being brought in a white van with blacked out windows from Belmarsh to court, Assange is first formally released from prison in his cell in the Old Bailey, only to be arrested again immediately afterwards.

When he is then led into the courtroom by two guards, he his seated behind a pane of bullet-proof glass, the camera panning on him for a while. For a moment he looks over at Stella Moris, his fiancée, and blows her a quick kiss with his hand. His hair is cut short, he wears a suit and a light-coloured shirt with a tie. Despite his well-groomed appearance he appears exhausted.

What exactly were the first few days of the hearing about?

The US essentially has to prove that Assange will not be extradited for political reasons, since British law prohibits the extradition of politically persecuted persons. After the first round of the hearing in February, most trial observers agreed that the evidence of the prosecution was rather thin. In a tweet on Monday, Edward Snowden called the trial a "Kafkaesque farce". He is following the trial – which is expected to last between three and four weeks – from Moscow via Twitter.

A number of witnesses for the defence, including the esteemed American linguist Noam Chomsky, intend to prove in court that this is a political case. During the first days, some witnesses of the defence were connected by video link to face a challenging cross-examination by US Attorney James Lewis. There were several technical glitches which hindered the course of the hearing.

Among the witnesses was Clive Stafford Smith, a British-American lawyer permitted to practice in Great Britain. He had been legally active against the death penalty since 1999, but after September 11, 2001 specialised in torture, illegal detention and extradition in connection with the "war on terror".

Stafford Smith stated that the publication of diplomatic cables by Wikileaks had been of great benefit to litigation in Pakistan over illegal drone attacks. The drone attacks have been gradually halted thanks to the publication of the documents. In 2019, there was no a single drone attack in Pakistan.

Another witness was Paul Rogers, an Emeritus Professor of Peace Research at Bradford University.

On the third day of the hearing, his testimony was also intended to underscore the politically motivated nature of the case, and it succeeded. Not only did he explain that the war documents from Iraq and Afghanistan revealed many more civilian casualties than previously known, but also that "they exposed the whole fiction of the success of the war; both wars went badly wrong from the start. Wikileaks is still an important archive for scholars who are trying to fathom both wars". When asked why he believes Assange is being prosecuted by the US government, he replied that "the Trump administration sees Wikileaks as a threat" and that "this is an administration that sees everything from a political standpoint". He also reminded the court that President Trump had even demanded the death penalty for Assange, if found guilty. In cross-examination, the prosecutor James Lewis attacked Professor Rogers'claim that the prosecution of Assange was political. Rogers replied that it is certainly a political question considering this prosecution is taking place now and not eight years ago, when the revelations were current. On this point Lewis conceded that the decision to "reopen the investigation" was political, and added that this was a matter of "timing".

In the end, Lewis asked Rogers why Trump should prosecute Assange, after repeatedly stating "I love Wikileaks" during the election campaign. The Professor does not attach much importance to Trump's words, saying that a major trial against an "enemy of the state" would be a great advantage for the Trump administration. He was probably alluding to the upcoming US election campaign.

That afternoon, the most exciting cross-examination of the first week so far took place. This time, the witness was Trevor Timm, a press freedom expert and founder of the Freedom of the Press Foundation. After another technical malfunction he was connected via video link from the USA.

Timm emphasised that a victory of the US government in the Assange case would "criminalise every journalist". He explained that if the charges against Assange had been raised in the 1970s, the Watergate reporters Woodward and Bernstein would have been thrown in jail, which would have had a major impact on the course of world-historical events.

Timm then defended WikiLeaks' approach by arguing that more than 80 media organisations currently use the same journalistic practices as WikiLeaks. Some even going so far as to place ads openly calling on potential whistleblowers to submit secret information. These are common practices of journalism.

Timm also pointed out that Trump had tweeted attacks on the press on more than 2200 occasions, repeatedly calling it an "enemy of the people". He added that this was the perfect opportunity for Trump to set a precedent in order to punish other media in the future. He described the charge as unconstitutional.

Later, WikiLeaks employee Joseph Farrell told me that there had indeed been an attempt to pass a law criminalising common press tactics – but that this had been rejected by the US Congress: "The Congress confirmed that these press strategies were never illegal and explicitly decided that they should remain so. The freedom of the press is thus still protected by the First Amendment of the US Constitution".

Then Lewis rose for cross-examination and noted that the US government "does not consider Julian Assange to be a journalist". Timm argued against this, that it is not up to the government to decide who is a journalist and who is not, as this is "the right of everyone" and that Assange is clearly "involved in journalistic activities". Lewis then pointed to a statement by the US Department of Justice that Assange will not be prosecuted for publishing secret documents. Timm responded that he based his conclusion "on facts and not on US government press releases".

When asked about the publication of aliases of Iraqi and US informants by WikiLeaks, Timm replied that he never claimed that WikiLeaks - and by the same token The Guardian or The New York Times - had perfect editorial judgement, and that it was not for the "US government to determine whether editorial judgement is criminal or not. The First Amendment is not a balancing act, it also covers unpopular truths and issues".

In the first week, the defence tried to use rational arguments to justify that this was indeed a politically motivated prosecution – which therefore renders it unlawful under the terms of the 2007 extradition treaty between the United Kingdom and the United States

The tactic of the prosecutions, however, is to attack and discredit the witnesses in their competence as experts, which it has largely failed to do.

On the third day, when Julian Assange's father steps out of the courthouse during the lunch break, supporters greet him with a warm "Happy Birthday". For a brief moment his face, which is marked by concern, lights up. The scenes in London deserve more attention from those who are most affected by this trial: all the journalists around the world.■

A popular history of journalism and whistleblowing

Mark Feldstein
Journalism historian and professor at the University of Maryland

Witness statement at the Assange extradition hearing

Trump's campaign against the press

Since he took office, President Donald Trump and his administration have waged a relentless campaign against individual journalists and the news media as an institution in a manner that is unprecedented in American history. He has publicly attacked journalists as "enemies of the people" or purveyors of "fake news" more than 600 times and denounced the news media as a whole as "sick", "dishonest", "crazed", "unpatriotic", "unhinged" and "totally corrupt". Trump has repeatedly baited and bullied reporters, whipping up crowds in rallies to vilify them. He has threatened to revoke government issued broadcast licenses of television stations and networks that have criticised him. He praised the physical assault of a British reporter, proposed the establishment of state television to counter mainstream news outlets, and pressed his FBI director to stop leaks by "putting reporters in jail". In the words of the non-profit organisation PEN America, "The President has declared war on all but the most fawning news organisations, exhibiting his antagonism in an almost daily barrage of tweets, press statements, and directives. Threats by the President against newspapers, networks, news sources, and individual journalists have become the norm [as] Trump shows open contempt for freedom of the press".

The Trump administration's attacks on the press have not been limited to words alone. The White House issued an executive order increasing postal rates to punish the "Fake News Washington Post" for its critical coverage after Trump reportedly said that he wanted to "fuck with" the newspaper's publisher. His administration allegedly retaliated against another journalistic bête noire, CNN, by stopping a potentially lucrative corporate merger of the news network's parent company after the president declared, "I want that deal blocked!" The White House intervened to revoke the security clearances of ex-government officials working for television networks after they criticised administration policies. The Trump administration has dramatically escalated the number of criminal investigations into journalistic leaks and indicated that reporters themselves may be prosecuted. Trump's "use of government power to punish his media critics", PEN America stated, has created "an atmosphere in which all journalists must work under the threat of government retaliation" and is a deliberate attempt to "stifle [the] exercise of the constitutional protections of free speech and a free press".

Seen in this light, the administration's prosecution of Julian Assange is part and parcel of its campaign against the news media as a whole. Indeed, Assange's criminal indictment under the US Espionage Act is arguably its most important action yet against the press, with potentially the most far reaching consequences.

Is Assange a journalist?

When the US Justice Department announced Assange's indictment under the Espionage Act, the chief of its national security division, John Demers, declared that "Julian Assange is no journalist" and thus not protected under the free press clause of the US Constitution's First Amendment.

But the First Amendment makes no such definitional demands and in fact the Constitution does not mention journalism at all; at the time it was written, journalism in its contemporary sense did not exist. A "free press" referred to the printing press as technology, the written counterpart to verbal speech; its purpose was "securing the right of every person to use communications technology and not just securing a right belonging exclusively to members of the publishing industry".

Courts have upheld this interpretation to the present day while expanding the definition to include modern technologies of communication as well. A free press offers "equal treatment for all speakers…who use mass communications technology, whether or not they are members of the press [as an] industry". Assange, in other words, is protected by the First Amendment whether he qualifies as a journalist or not. Nonetheless, because prosecutorial decision making in this case seems to have been affected by the issue of whether Assange is a "journalist", and because of the ways in which President Trump has politicised the issue of journalism, such designations are worthy of examination. "There has never been a fixed definition of who is (and is not) a journalist, in part because there has never quite been agreement on what is (and is not) journalism", two media scholars have noted. In the US, "there are no educational prerequisites of its practitioners, no entrance exam, license, or certification that deems one a journalist, and no formal credentialing body that would enforce the fidelity of such definitions".

Some view Assange as a whistleblower or source, not a journalist. Others have said he doesn't practice journalism, he does "data dumps". Still others have called him an "information broker".

These distinctions are partly a matter of semantics – the lines between them can be blur at the edges – but none of these terms accurately characterize Assange in full. But in the documents he released in this case, Assange was not the whistleblower; that role was played by Chelsea Manning, the intelligence analyst who copied the records from an Army computer and uploaded them to WikiLeaks. Whistleblowers are generally employees, or at least have firsthand knowledge about, the institutions they are blowing the whistle on; that role was not played by Assange, who did not work for the Army. Nor is Assange merely a passive data dumper; he actively engaged in editorial decision making by choosing what information to solicit and how, working with the whistleblower who had access to it, organizing the material, and then deciding what to make public and how. As for "information broker", all journalists and news media outlets are information

brokers, intermediaries providing information from their sources to the public. "Media", the plural of the Latin word "medium", means "middle ground or intermediate". The news media is an intermediary, "brokering" information from sources to the public.

It is true that Assange is not a traditional journalist who works for a profit making media corporation. He does not conduct interviews to get "both sides" of a controversy, and he publishes unfiltered documents with minimal contextualizing of information. Nonetheless, Assange has engaged in the essence of journalism: gathering and publishing newsworthy information and documents for the public. WikiLeaks lists numerous journalism awards on its website; one such prize praised Assange for producing "more scoops than most journalists can imagine…in the oldest and finest tradition of journalism". Media researchers have variously referred to WikiLeaks as an exemplar of "data journalism", a "news agency" in an expanding "media ecosystem", a "networked fourth estate", and the world's first "stateless newsroom". By prompting "new alliances between both emerging and legacy media outlets", one scholar wrote, "WikiLeaks has precipitated a game changing moment in the history of journalism". Assange does not pretend to be objective. He is in part a political provocateur and he espouses an ideology of radical transparency. He believes the US government's "surveillance state" keeps its citizens in the dark through government censorship and a supine mainstream media, and has become one of the world's greatest threats to democracy. The antidote, in his view, are massive, well publicized leaks to expose the truth.

Such political advocacy in journalism has a long and noble tradition in the US, going back to the "patriot" printing presses that urged the overthrow of British colonialism in the 1770s. In the early days of the American republic, newspapers were owned and run by political parties; their primary function was partisan advocacy, not objectivity, often characterized by ardent exhortations to voters for political support – and scurrilous invective against the opposition. Activist publications have been a staple of American journalism ever since, championing radical causes such as the abolition of slavery, women's suffrage, labor unions, pacifism, socialism and other unpopular movements. Like WikiLeaks, America's editorial activists published unfiltered documents with minimal contextualizing and rarely bothered to interview both sides. Then and now, alternative news outlets exposed and opposed government authorities. Then and now, they were scorned and vilified as threats to the established order. But they were often ahead of their time; for just as yesterday's heresy is tomorrow's orthodoxy, yesterday's radical journalist is tomorrow's distinguished publisher.

Although some traditional journalists reject the notion that Assange is a publisher or WikiLeaks a news outlet, this cramped view fails to understand historical context: journalism is ultimately dynamic not static and has evolved and expanded over the years in technology, content, format, technique, and style: from newspapers, pamphlets and magazines to radio and television to the Web; from text to audio to video; from handwritten illustrations to photographs to interactive graphics; from discursive partisan polemics to objective news dispatches to indepth narrative exposés to massive searchable databases.

Each new wave of journalistic innovation and disruption has predictably encountered disparagement from older competitors and resistance from others riled by the new order.

WikiLeaks is no exception. It is a digital publication, however unorthodox, and Assange is unmistakably its publisher. Indeed, because of the significance of what he revealed – and his pioneering use of the encrypted digital drop box to protect whistleblowers and gather secret documents all over the world – Julian Assange can accurately be described as one of the most consequential publishers of our time.

Importance of Assange's disclosures

Assange's publishing of classified records – along with his partnership with the world's leading newspapers, such as The Guardian, New York Times, Der Spiegel, Le Monde, and others – has exposed on a worldwide scale significant governmental duplicity, corruption, and abuse of power that had previously been hidden from the public. In journalistic terms, these scoops were blockbusters.

Among them:

- A disturbing videotape of American soldiers firing on a crowd from a helicopter above Baghdad, killing at least 18 people; the soldiers laughed as they targeted unarmed civilians, including two Reuters journalists.
- US officials gathered detailed and often gruesome evidence that approximately 100,000 civilians were killed after its invasion of Iraq, contrary to the public claims of President George W. Bush's administration, which downplayed the deaths and insisted that such statistics were not maintained. Approximately 15,000 of

these civilians killings had never been previously disclosed anywhere.

• American forces in Iraq routinely turned a blind eye when the US backed government there brutalized detainees, subjecting them to beatings, whippings, burnings, electric shock, and sodomy.

• After WikiLeaks published vivid accounts compiled by US diplomats of rampant corruption by Tunisian president Zine el-Abidine Ben Ali and his family, ensuing street protests forced the dictator to flee to Saudia Arabia. When the unrest in Tunisia spread to other Mideast countries, WikiLeaks was widely hailed as a key catalyst for this "Arab Spring".

• In Afghanistan, the US deployed a secret "black" unit of special forces to hunt down "high value" Taliban leaders for "kill or capture" without trial.

• The US government expanded secret intelligence collection by its diplomats at the United Nations and overseas, ordering envoys to gather credit card numbers, work schedules, and frequent flyer numbers of foreign dignitaries – eroding the distinction between foreign service officers and spies.

• Saudi Arabian King Abdullah secretly implored the US to "cut off the head of the snake" and stop Iran from developing nuclear weapons even as private Saudi donors were the number one source of funding to Sunni terrorist groups worldwide.

• Customs officials caught Afghanistan's vice president carrying $52 million in unexplained cash during a trip abroad, just one example of the endemic corruption at the highest levels of the Afghan government that the US has helped prop up.

• The US released "high risk enemy combatants" from its military prison in Guantanamo Bay, Cuba who then later turned up again in Mideast battlefields. At the same time, Guantanamo prisoners who proved harmless – such as an 89 year old Afghan villager suffering from senile dementia – were held captive for years.

• US officials listed Pakistan's intelligence service as a terrorist organisation and found that it had plotted with the Taliban to attack American soldiers in Afghanistan – even though Pakistan receives more than $1 billion annually in US aid. Pakistan's civilian president, Asif Ali Zardari, confided that he had limited control to stop this and expressed fear that his own military might "take me out".

These and other WikiLeaks revelations shocked many American citizens, who learned for the first time what their government was doing in their name with their dollars. According to Edward Wasserman, dean of the graduate school of journalism at the University of California at Berkeley, "WikiLeaks enabled spectacular disclosures of official secrets… that exposed outrageous, even murderous wrongdoing", including "war crimes, torture and atrocities on civilians". Assange "was midwife to some of the most sensational and genuinely consequential journalistic disclosures of recent years" and provided "hugely significant information to the public".

"Activist publications have been a staple of American journalism, championing radical causes such as the abolition of slavery, women's suffrage, labor unions, pacifism, socialism and other unpopular movements.

Historic ubiquity of publishing classified documents

In the US, newspapers have published excerpts of secret or classified documents ever since the nation's founding. In the 1790s, the newspaper Aurora printed verbatim the secret draft of a treaty that the US was negotiating with Britain, along with President George Washington's confidential communications to his Cabinet and private correspondence between US and French diplomats.

These secret government records were the functional equivalent of classified documents (though a formalized classification system did not exist at the time and would only be developed in the middle of the twentieth century). In any case, the unauthorised disclosures at the end of the eighteenth century set the standard that has continued ever since. Many exposed governmental deceit, illegality, or abuse of power. Most shed light on governmental decision making that furthered public knowledge and understanding of governmental policy.

Gaps in the historical record prevent a full accounting of the countless national security secrets published in the press, but the most significant cases have been documented by scholars. Among them:

• In 1844, the New York Evening Post published President John Tyler's secret proposal to annex Texas, which was then an independent country.

• In 1846, the Philadelphia North American published the full text of a secret treaty proposal between the US and Britain over a border dispute in Oregon.

• In 1848, the New York Herald published a secret draft of the Treaty of Guadeloupe-Hidalgo, which ended the Mexican-American War.

• In 1871, the New York Tribune published a secret treaty between the US and Britain settling claims arising from the American civil war.

• In 1890, the Washington Post and New York Times published a secret extradition treaty between the US and Britain.

• In 1892, newspapers published details of secret Senate debates about a proposed US-UK treaty to resolve a dispute in the Bering Sea.

• In 1944, the New York Times published verbatim the secret texts of American proposals for the international Dumbarton Oaks Conference that would give birth to the United Nations.

• In 1953, the New York Times published the entire text – more than 200,000 words – of secret minutes and other records documenting the meeting in Yalta between Winston Churchill, Franklin Roosevelt and Joseph Stalin to divide Europe into spheres of influence after World War II.

• In 1961, days before US-backed Cuban exiles invaded the Bay of Pigs, the New York Times and other American media outlets reported that an invasion to overthrow premier Fidel Castro was imminent; these detailed accounts listed locations of training and staging stations, anticipated troop levels, and other military tactics and strategy.

• In 1969, the New York Times revealed that President Richard Nixon had secretly authorised covert bombing of Cambodia, expanding the US war in Vietnam that he claimed to be winding down.

• In 1972, the Washington Post published information contained in classified FBI files about the involvement of the Nixon White House in the burglary of the Democratic party's headquarters at the Watergate building in Washington.

• In 2004, the New Yorker magazine published gruesome photos and detailed excerpts of a classified 53 page government report documenting US torture of captives at the Abu Ghraib prison in Iraq.

• In 2005, the Washington Post disclosed that the CIA had been hiding and interrogating important al Qaeda captives at secret "black sites" around the world, effectively hiding torture of prisoners.

• In 2010, the Baltimore Sun published a report about alleged government mismanagement involving a classified project code named Trailblazer, a tool for sifting digital communications.

• In 2008 and 2009, the New York Times and other news outlets reported classified information about the capture and brutal interrogation of suspected Al Qaeda member Abu Zubaydah. In 2013, the Washington Post quoted from classified intelligence documents that revealed a secret US government program code named PRISM that tracked foreign targets by using "bulk surveillance" to extract photos, emails, and video chats from Facebook, Google, Skype, Apple, Microsoft, YouTube, and other Internet companies.

• In 2014, the McClatchy news service reported that the CIA was spying on a Senate committee that was compiling a critical report on CIA torture.

• In 2015, the online news outlet The Intercept posted classified documents about the US military's use of drones to assassinate foreign targets.

• In 2017, The Intercept published excerpts of a top secret report about Russian attempts to hack US elections software.

• In 2018, The Intercept uploaded a cache of classified documents about how the US was recruiting informants in foreign countries.

• In 2018, CNBC television cited classified intelligence reports that Russia successfully tested a hypersonic weapon that the US is unable to defend against.

The frequency and volume of such classified leaks is impossible to know. A study by the Senate intelligence committee in 1986 counted 147 leaks of classified information to the nation's eight leading newspapers in just six months – an average of more than five a week. In 2005, a study by a presidential commission identified "hundreds of serious press leaks" containing classified information during the previous decade. In 2012, a Harvard University law professor tallied "hundreds of stories" that appeared in the New York Times and Washington Post that contained "self reported disclosure of classified information", plus many more "classified tidbits" that weren't advertised as such [emphasis added]. According to still another governmental study, classified leaks to the press are a "daily occurrence". In 2013, a detailed study by a Columbia University law professor found that "thousands upon thousands of national security related leaks to the media" have occurred.

In short, leaks of classified information to the press have become routinized in Washington. One veteran journalist from the New York Times, Max Frankel, famously explained how the system works:

The reporter and the official trespass regularly, customarily, easily, and unselfconsciously (even unconsciously) through what they both know to be official "secrets".

Presidents make "secret" decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputation.

The military services conduct "secret" research in weaponry only to reveal it for the purpose of enhancing their budgets…The Navy uses secret information to run down the weaponry of the Air Force. The Army passes on secret information to prove its superiority to the Marine Corps. High officials of the Government reveal secrets in the search for support of their policies, or to help sabotage the plans and policies of rival departments. Middle-rank officials of government reveal secrets so as to attract the attention of their superiors or to lobby against the orders of those superiors.…

For the vast majority of "secrets", there has developed…a rather simple rule of thumb: The Government hides what it can, pleading necessity as long as it can, and the press pries out what it can, pleading a need and a right to know. Each side in this 'game' regularly 'wins' and 'loses' a round or two. Each fights with the weapons at its command. When the Government loses a secret or two, it simply adjusts to a new reality. When the press loses a quest or two, it simply reports (or misreports) as best it can".

Government exaggerates harm from publishing national security information

US prosecutors allege in their indictment that Assange endangered confidential government informants and jeopardised America's national security. But as one legal scholar has observed, "[c]laims of dire consequences from the disclosure of classified information are easily made, but difficult to prove – or for that matter, to disprove because the details themselves are frequently shrouded in secrecy".

Official assertions about the sensitivity of national security information cannot be taken at face value because of the government's long history of exaggeration. In particular, overclassification of government records is widely acknowledged as rampant to the point of absurdity.

Continued on page 8

A popular history of journalism and whistleblowing

Continued from page 7

"[E]very government study of the issue over the last six decades has found widespread classification of information that the government had no basis to conceal", several scholars wrote. Estimates of the extent of over classification vary. "Three quarters of what I read that was classified should not have been", the head of presidential commission investigating the 9/11 attacks said. A White House national security aide testified that the figure was closer to 90%, acknowledging that only a fraction of classified information was for "legitimate protection of secrets".

As Supreme Court justice Potter Stewart observed, "when everything is classified, then nothing is classified, and the system becomes one to be....manipulated by those intent on self protection or self promotion".

According to Jack Goldsmith, assistant attorney general in the Bush administration, "the principal concern of the classifiers is not with national security, but rather governmental embarrassment of one sort or another". Indeed, the government has frequently exaggerated the harm caused by publishing classified information as a way to hide incompetence, misconduct, or even political vendettas.

For example, in 1942, the Chicago Tribune reported that the US Navy had advance warning of Japanese tactics before a key battle during World War II, suggesting that Americans had cracked enemy codes. President Franklin Roosevelt, who had a long running feud with the newspaper's publisher, wanted to send troops to occupy the Tribune Tower and charge him with treason. But the Japanese continued using the same codes anyway; there is no evidence that the leak harmed the US – or even that the Japanese knew about it.

A similar case of "crying wolf" occurred in 1971, when syndicated columnist Jack Anderson published excerpts of top secret government documents revealing that the Nixon administration had secretly armed Pakistan in its war with India, even though Nixon publicly proclaimed American neutrality in the war. White House national security advisor Henry Kissinger branded the leak "a serious security risk to our government". President Nixon asserted that "from the point of view of national security, it was intolerable". But top Pentagon officials admitted that it "primarily affected diplomatic sensitivity [not] military security" and no evidence ever emerged of any genuine damage – except to the administration's credibility.

In 2005, the New York Times published details of a classified government program revealing that President George W. Bush had illegally authorised the US National Security Agency to monitor phone calls and emails in the US and abroad. Bush denounced the leak as "disgraceful" and said it could alert potential terrorists that they were under scrutiny. If there was another terrorist attack on American soil, the president told Times executives, "You'll have blood on your hands".

No evidence has emerged that the story led to bloodshed, but revelation of the government spying did lead to public outrage, lawsuits, congressional hearings, and a judicial ruling that the surveillance was unconstitutional.

According to one scholar who has studied the history of journalistic leaking, "there is scant evidence that national security has been harmed in any significant way by the disclosure of government secrets".

The most famous example of the government invoking national security to cover up its mistakes involves the Pentagon Papers, a classified 7000 page study of the origins of the Vietnam War that revealed how the government had systematically lied to Congress and the public about the failing American intervention in the war. In 1971, the New York Times began publishing the first of several articles containing extensive excerpts of the top secret documents. President Nixon was enraged and dispatched federal prosecutors to warn the newspaper that continuing to publish more top secret documents would violate the US Espionage Act and "will cause irreparable damage to the defense interests of the United States".

The ominous but vague accusation was almost impossible to refute. "Nixon's lawyers knew assertions of damage to national security could not be challenged effectively, or at all", Times lawyer James Goodale said. "The government could assert whatever it wanted, and there was no way to disprove it". In court, the administration claimed that further publication could expose US military plans, identify CIA agents and activities, and even prolong the Vietnam War. The head of the NSA, Admiral Noel Gayner, testified that publication could reveal secret American eavesdropping and cited as proof a US radio intercept of a North Vietnamese transistor – even though the intercept turned out to have already been made public in a Senate report more than three years earlier. Still, Nixon's solicitor general, Erwin Griswold, asked the Supreme Court to stop the press from further publication, saying it could cause "immediate and irreparable harm to the security of the United States".

> **"Official assertions about the sensitivity of national security information cannot be taken at face value because of the government's long history of exaggeration. In particular, over-classification of government records is widely acknowledged as rampant to the point of absurdity.**

This was at best a gross exaggeration and arguably a deliberate falsehood that attempted to exploit judicial and public ignorance and fear. Eighteen years later, Griswold admitted that, contrary to his assertions in court about the documents, he had "never seen any trace of a threat to the national security from the publication. Indeed, I have never seen it even suggested that there was such an actual threat".

Nearly 50 years after the Pentagon Papers were published, the Defense Department official in charge of the project confessed that military staff had thought it "too much work" to go through the study "page by page" to see what should be classified so instead stamped everything in the files top secret", including newspaper articles, as a kind of joke". There has not been "a scintilla of proof that any of the 7,000 pages damaged national security", attorney Goodale wrote in 2013. "It's time to admit that the claims of breach of national security made in this case turned out to be hot air".

Only after Nixon left office did the full truth emerge about the case, thanks to the fluke that his staff had secretly recorded audiotapes capturing the President's hidden motive: to punish the New York Times for its critical coverage of him. "This is a bunch of goddamn leftwingers trying to destroy" his administration, Nixon fumed on tape. He ordered his staff to do "everything we can do destroy the Times" because "they're our enemies". Nixon instructed his attorney general to "use some really high flown adjectives" with "strong language, like 'a massive breach of security" to describe the dangers of unleashing the classified documents. The "main thing to do is to cast it in terms of [the New York Times] doing something disloyal to the country" that "risks our men" and gives "aid and comfort to the enemy".

Leaking double standard

Although government officials denounce national security leaks that they find embarrassing, they leak classified information with abandon when it serves their needs.

For example, while President Bush warned the New York Times that it might have "blood on its hands" for revealing his illegal NSA spying program, his advisors leaked similarly classified information to advance its political agenda. In 2003, the New York Times published a series of articles based on classified information leaked by administration officials that asserted (erroneously) that Saddam Hussein's regime had acquired weapons of mass destruction. Instead of condemning the articles as a breach of security, the White House trumpeted them publicly because they buttressed its case for war with Iraq. When a former ambassador publicly questioned the evidence, officials retaliated by once again leaking classified information to the press: the fact that the ambassador's wife worked for the CIA, a deliberate outing of an intelligence officer's identity that was said to put her and others at great risk. These leaks elicited no denunciations from the White House.

A double standard about leaking was not limited to the Bush administration. President Barack Obama said that "anyone who leaks classified information is committing espionage". But in 2011, in the aftermath of a US counterterrorism operation that killed Osama bin Laden, the New Yorker magazine published a wealth of classified secrets based on interviews with military and intelligence officials about the successful raid: how national security advisors considered tunneling into bin Laden's compound but couldn't because the soil was too wet; how the US dumped his body at sea after Saudi Arabia declined to take the corpse; how the key to success was an ingenious fake vaccination drive that the CIA set up to get DNA from the bin Laden family. One US senator criticised the administration's "flurry of anonymous boasting" but no such criticism came from the White House.

Similarly, in 2012, the New York Times published an article based on classified information that seemed designed to help Obama's re-election campaign; the article reported that the White House maintained a "kill list" of potential terrorist targets and detailed at length how Obama himself painstakingly but resolutely signed off on all major drone strikes. Six weeks later, the Times revealed a classified US government project code named Operation Olympic Games that unleashed a computer virus nicknamed Stuxnet in a damaging cyberattack against Iran that disabled 1,000 centrifuges at its Natanz nuclear facility. "They're intentionally leaking information to enhance President Obama's image as a tough guy for the [upcoming] elections", one senior senator observed.

Reporter Bob Woodward has long been Washington's champion recipient of national security leaks. His books, based on government insiders, have revealed highly classified CIA and NSA programs, including code names, the existence of clandestine paramilitary army in Afghanistan run by the CIA, and details of China's secret cyber-penetration of computers used by US presidential candidates. Woodward's books "are filled with classified information that he could only have received from the top of the government", observed Jack Goldsmith, a Harvard law professor who served in the Bush Justice Department. This "puts in a bad light the secrecy system that presidents can turn on or off at will, not always obviously in the national interest".

Failed efforts to prosecute publishers of national security information

Since World War I, the US government has convicted a number of government employees who leaked national security information but never any of the media outlets that published them.

This distinction between leaker and leakee – the "source/distributor divide", as one scholar has termed it – has been consistently upheld over the years, primarily because the government feared running afoul of the free press clause of the First Amendment.

In a handful of highly politicised cases, presidents have exerted heavy pressure on their Justice Department appointees to file criminal charges against journalists, though none were ultimately successful.

For example, during World War II, President Franklin D. Roosevelt pressured his attorney general, Francis Biddle, to indict Robert McCormick, the Chicago Tribune publisher and longtime FDR critic whose newspaper effectively revealed that the US had broken Japanese military codes.

The president and his advisors had no evidence that the newspaper story had harmed national security. Biddle tried to dissuade FDR from his vendetta but he wouldn't take no for answer. The attorney general reluctantly appointed a special prosecutor but the grand jury voted against bringing any charges against the Tribune publisher or his staff. The Japanese continued using the same military codes and there is no evidence that the leak harmed the US or even that the Japanese knew about it.

Similarly, President Nixon wanted to prosecute his longtime journalistic bête noire, columnist Jack Anderson, after he published classified documents revealing the government's secret arming of Pakistan. "Goddamnit", Nixon told his attorney general John Mitchell, "we've got to do something with this son of a bitch". Mitchell agreed that we should "get ahold of this Anderson and hang him", but explained that publishing classified documents wasn't illegal. Prosecutors never filed criminal charges against Anderson.

In the Pentagon Papers case, too, Nixon wanted to prosecute the press for publishing classified documents, especially the reporter who first obtained them, Neal Sheehan of the New York Times, whom Nixon privately called a "cocksucker" and "left-wing Communist son of a bitch". FBI agents conducted an extensive investigation of Sheehan and of reporters for the Washington Post and Boston Globe; agents used false identities to question their friends and neighbors, issued subpoenas, and poured through their bank statements, credit cards purchases, phone calls, and travel receipts.

In Boston, federal prosecutors convened a grand jury, a fact that the government quickly leaked to the press. "Jury Weighs Indictment of the New York Times", one headline read. Another stated: "US Said to Be Planning to Seek Indictment of a Times Reporter".

But it was unclear what crime the newspapers had committed. "There had never been a court decision concerning the publication of classified information", Times lawyer Goodale realised. "However, just because there were no laws that were directly applicable did not mean that in its war against the press, the Nixon administration couldn't stretch existing laws to fill the void". Federal prosecutors tried to prove that the press took part in a conspiracy to violate the Espionage Act but Goodale was skeptical of this theory: "The Times did not intend to commit the crime of espionage. It was trying to inform the public. Espionage required delivery of secret information to an enemy with the intent to harm the United States....[B]ecause the law was written to apply to espionage and not publishing, it seemed too vague to fit our situation". In particular, Goodale wrote, section 793 of the Espionage Act outlawed communicating national security information, not publishing it: "Congress was quite careful not to use the word 'publish' in the Espionage Act. It chose communication not publication to cover espionage....If lawmakers wanted to control publication they had to say so specifically". According to Goodale, this is an important distinction: "Communication has a much larger meaning that publication. It includes conversations, broadcasting and the like....For example, every publication in New York State is required to publish a list of its officers and directors. The law says that, particularly. It does not say every publication in New York must communicate to the public who its officers and directors are". Federal prosecutors dismissed the Boston grand jury without bringing charges. They decided to focus on prosecuting the whistleblower who leaked the classified documents, Daniel Ellsberg, not the newspapers that published them. Once again, the "source/distributor divide" was upheld.

The Assange prosecution

Forty years later, in the summer of 2010, the Obama administration began an aggressive criminal investigation of both Julian Assange and Chelsea Manning, who leaked the classified documents to WikiLeaks. FBI and CIA officials argued that Assange was an "information broker" not a journalist and should be indicted, but senior Justice Department officials reportedly "expressed reluctance" to do on First Amendment grounds. The FBI and CIA officials pressed for a meeting with the president to make their case that Assange was not a journalist therefore was subject to prosecution; but the meeting with Obama never took place. By 2013, after a three-year probe and months of internal debate, the Justice Department had decided to follow established precedent and not bring charges against Assange or any of the newspapers that published the documents. "The problem the department has always had in investigating Julian Assange is there is no way to prosecute him for publishing information without the same theory being applied to journalists", said Matthew Miller, former spokesman for the Obama Justice Department. "And if you're not going to prosecute journalists for publishing classified information, which the department is not, then there is no way to prosecute Assange". Prosecutors called it the "New York Times problem"– that if it indicted Assange for publishing the documents Manning leaked, it would also have to also indict the New York Times for doing the same. In all of these politically charged cases, the government's desire to prosecute the journalists who published classified records foundered on First Amendment grounds and the long-standing precedent that publishing secret records is not a crime.

But Donald Trump's election changed the calculus. The month after his inauguration, the president met with FBI director James Comey and brought up the issue of plugging leaks. Comey suggested "putting a head on a pike as a message" and Trump recommended "putting reporters in jail". Three days later, he instructed his attorney general to investigate "criminal leaks" of "fake" news reports that had embarrassed the White House.

According to press accounts, the new administration soon "unleashed an aggressive campaign" against Assange. CIA director Mike Pompeo publicly attacked WikiLeaks as a "hostile intelligence service" that uses the First Amendment to "shield" himself from "justice". In private, he briefed members of Congress on a bold counterintelligence operation the agency was conducting that included the possible use of informants, penetrating overseas computers, and even trying to directly "disrupt" WiliLeaks, a move that made some lawmakers uncomfortable. A week later, Attorney General Jeff Sessions said at a news conference that journalists "cannot place lives at risk with impunity", that prosecuting Assange was a "priority" for the new administration, and that if "a case can be made, we will seek to put some people in jail". The new leaders at the Justice Department dismissed their predecessors' interpretation that Assange was legally indistinguishable from a journalist and reportedly began "pressuring" their prosecutors to outline an array of potential criminal charges against him, including espionage. Once again, career professionals were said to be "skeptical" because of the First Amendment issues involved and a "vigorous debate" ensued. Two prosecutors involved in the case, James Trump and Daniel Grooms, reportedly argued against charging Assange. But in April of 2019, Assange was arrested in London – even though "the Justice Department did not have significant evidence or facts beyond what the Obama era officials had when they reviewed the case".

Assange's indictment triggered an outcry not only from human rights and civil liberties organisations but most of all from journalists – not because of affection for Assange but because, as one wrote, "it characterizes everyday journalistic practices as part of a criminal conspiracy". Indeed, Trump administration has charged Assange with 17 counts of violating the Espionage Act not for spying or conducting espionage on behalf of a foreign power but for soliciting receiving, and publishing national defense information. Specifically, Assange faces three counts of "unauthorised Obtaining" of this information; four counts of "unauthorised Obtaining and Receiving" it; nine counts of "unauthorised disclosure" of it; and one count of "Conspiracy to Obtain, Receive and Disclose" it.

From a journalistic standpoint, these activities boil down to news-gathering (soliciting and receiving documents), publishing them, and protecting the source who provided them. Specifically:

a) Soliciting documents:

According to the indictment, Assange "encourage[d] those with access to protected information, including classified information, to

Continued on page 10

From the WikiLeaks archives

WikiLeaks Public Library of US Diplomacy

"Investigative journalism has never been this effective!" *Publico*

The WikiLeaks Public Library of US Diplomacy (PlusD) holds the world's largest searchable collection of United States confidential, or formerly confidential, diplomatic communications. As of April 8, 2013 it holds 2 million records comprising approximately 1 billion words. The collection covers US involvements in, and diplomatic or intelligence reporting on, every country on earth. It is the single most significant body of geopolitical material ever published.

The PlusD collection, built and curated by WikiLeaks, is updated from a variety of sources, including leaks, documents released under the Freedom of Information Act (FOIA) and documents released by the US State Department systematic declassification review.

We are also preparing the processed PlusD collection for standalone distribution. If you are interested in obtaining a copy, please email: plusd@WikiLeaks.org and put 'Request' in the subject line.

If you have unclassified or declassified US diplomatic documents to add to the PlusD collection please contact: plusd@WikiLeaks.org and put 'Submission' in the subject line. Please note that for inclusion in the PlusD Library we are generally unable to consider submissions of less than 1,000 documents at a time.

search.WikiLeaks.org/plusd

"NGOs have had extreme difficulties accessing the proceedings, in fact the court has refused to accommodate us as NGO observers. This is insufficient for open justice, so we call again on the court to reconsider.

This case is of tremendous public interest and must be open to scrutiny by NGO observers, members of the public, and the media. *Reporters Without Borders* will continue to monitor, continue to get in, in person, when we can. And we call again for Julian Assange to be released, for the charges against him to be dropped, and for him not to be extradited to the United States.

Rebecca Vincent
Director of International Campaigns
Reporters Without Borders

A popular history of journalism and whistleblowing

Continued from page 9

provide it to WikiLeaks for public disclosure" and "explicitly solicited... restricted material of political, diplomatic or ethical significance ...precisely because of the value of that information". He further "posted a detailed list" of his 'Most Wanted Leaks" in order to receive these documents through the WikiLeaks drop box and "encouraged...aided, abetted, counseled, induced" and "conspired with" Manning in texts, offering direction, encouraging her to "continue" digging, and complimenting her efforts: "ok great!"

These actions – encouraging sources to focus on valued information of political, diplomatic or ethical significance in order to disclose it to the public – are not only consistent with standard journalistic practice, they are its lifeblood, especially for investigative or national security reporters.

When I was a journalist, I personally solicited sources for confidential or restricted information, on more occasions than I can count. So has every investigative reporter in the US. I teach journalism students how to cultivate sources to provide information, including about sensitive or secret topics.

So does every journalism school worthy of the name. I have both solicited and received information from restricted and classified documents, sometimes directly, sometimes with a nod and a wink. So have countless other journalists. (And yes, I complimented and flattered sources to elicit information, too.)

Like Assange, all reporters prize information with the highest "value". Learning to distinguish between what is newsworthy and what is not is a standard part of the journalism school curriculum. When I was a reporter, I let sources know what kind of information or documentation I was looking for and would often (politely) direct them to go back and get more. Innumerable other journalists do this, too. In this sense, I and other investigative reporters have counseled, induced, conspired with, and aided and abetted whistleblowing sources. So have the world's greatest journalists. After all, good investigative reporters are not mere stenographers who passively accept whatever information falls in their lap. The reporter-source relationship is a constant back-and-forth between parties, even a kind of dance – sometimes led by one party, sometimes the other; but it always takes two to tango.

As for drop boxes, they are routinely used by leading news outlets in the US to solicit anonymous leaks of sensitive records, classified or not. They are just the latest technological innovation of the digital age used to dig up and document evidence of governmental wrongdoing, an extension of the traditional news tip hotline that has been commonplace in newsrooms for decades. These drop boxes are now a journalistic staple, employed by leading outlets around the world, including the New York Times, Guardian, Washington Post, Wall Street Journal and others. Similarly, Assange's publicly posted "Most Wanted" list of documents may be a bolder and more imaginative form of newsgathering, but it differs only in degree from the kind of solicitations for information that journalists routinely post on social media sites.

b) Receiving documents

According to the indictment, not only did Assange solicit restricted documents, he was also successful in "obtaining" it, the basis for three of the Espionage Acts against him. As the indictment put it, "Assange was knowingly receiving such classified records from Manning for the purpose of publicly disclosing them on the WikiLeaks website". "Obtaining" or "receiving" information is the whole point. Soliciting isn't enough, you have to actually get the information before you can publish it. Again, this is what news outlets have been doing for more than two centuries.

c) Publishing documents

Nine of the counts against Assange – more than half of the indictment – are purely for the act of publishing, or as the indictment calls it "disclosure". According to the indictment, Assange's "objective" was to "publicly disseminate" these records and he "conspired" to "obtain documents, writing and notes", to "willfully communicate" and "disclose that information to the public and inspire others with access to do the same".

What the indictment calls disclosure and public dissemination is what reporters call publishing. It is the fundamental purpose of journalism, the means by which reporters and editors inform the public; it is, as it were, the whole enchilada. It is also explicitly protected by the free press clause of the First Amendment.

As for trying to inspire other sources who have access to secrets to leak them, that's what I and other journalists always hope will happen. That's why a television station I worked for created a graphic that ran on the air with my contact information right after my stories were broadcast. Sometimes it worked.

d) Protecting confidential sources

The indictment states that Assange took "measures to prevent the discovery of Manning as [his] source, such as clearing logs and use of a cryptophone; and a code phrase to use if something went wrong".

This kind of protection of confidential sources is not only standard practice but a crucial professional and moral responsibility for reporters, instilled in journalism schools and celebrated in books, movies, and other avenues of popular culture. It is as sacred to journalists as the doctor-patient relationship is to physicians or the attorney-client privilege is to lawyers. Whistleblowers often take enormous personal risks to supply sensitive information to the public, and reporters have gone to jail rather than betray a source to whom confidentiality has been promised. Indeed, whistleblowers are the lynchpin of investigative reporting; without them, the press would be crippled in its ability to serve as an effective check on governmental or corporate wrongdoing.

Journalists protect confidential sources in a variety of ways: granting anonymity; using code words; encrypting electronic communication; removing digital fingerprints or identifying details from documents; misdirecting suspicion away from sensitive sources to other people; coaching them in how to safely answer suspicious questions; and yes, providing technical advice on how to navigate dropboxes and transmit information without detection. Journalistic organisations and workshops train reporters in these techniques. As a journalist, I used most of these tactics myself.

So have countless journalists.

The Justice Department portrays standard journalistic tradecraft as nefarious, akin to espionage. In fact, the crimes for which Assange is charged are legally indistinguishable from what news outlets do everyday. "We all think there's a difference between the New York Times and Assange from a practical point of view, but from a constitutional point of view, it's hard to find that difference", said Alan Dershowitz, professor emeritus at Harvard law school and a defender of President Trump. "They're both publishing classified, stolen material". The old "New York Times problem" that blocked the Obama administration from bringing charges against Assange – and that has kept presidents from prosecuting the press for the past century – is now being overturned by the Trump administration. According to Gabe Rottman, attorney for the Reporter's Committee for Freedom of the Press, the Justice Department is now propounding "a profoundly troubling legal theory, one rarely contemplated and never successfully deployed...to punish the pure act of publication of newsworthy government secrets under the nation's spying laws". Furthermore, he says the indictment is so broadly crafted that it "would permit prosecution even if Assange had received the material anonymously in the mail" without any solicitation whatsoever.

Prosecuting Assange purely for publishing has ramifications beyond the US. According to the director of the Committee to Protect Journalists, "the United States is asserting extraterritorial jurisdiction in a publishing case, a practice usually reserved for terrorism or piracy. Under this rubric, anyone anywhere in the world who published information that the US government deems to be classified could be prosecuted for espionage".

> **"Julian Assange faces lifetime imprisonment for publishing truthful information about government criminality and abuse of power.**

Political dimensions of case

Why did the Trump administration decide to bring these recent charges against Assange for what he published nine years earlier? No new "significant evidence" in the case has emerged since the Obama administration rejected such prosecution. The indictment breaks all legal precedents. No publisher has ever been prosecuted for disclosing national secrets since the founding of the nation more than two centuries ago – despite the "thousands upon thousands" of national security leaks to press. The only previous attempts to do so were highly politicised efforts by presidents seeking to punish their enemies, and in the end the First Amendment forced them to back down, too.

The political dimensions of this case are inescapable. The "indictment seems to have been tailored in a way that will do a lot of collateral damage, if not the maximum possible amount", wrote Gabriel Schoenfeld, a conservative scholar. "The Espionage Act has always been...a loaded gun pointed at the press. That gun is now in the process of being fired". The Justice Department could have tailored its indictment more narrowly to minimize the First Amendment concerns but it didn't. The charges against him were "obviously framed to mirror what journalists do", wrote Jack Goldsmith, an assistant attorney general in the Bush administration who handled national security matters. "I do not think this is an accident". Julian Assange is the perfect defendant for a prosecutor because he is so widely reviled. He has faced "a relentless and unrestrained campaign of public mobbing, intimidation and defamation", the UN special rapporteur on torture said. Prominent US politicians have urged that Assange be "hunted down" and "assassinated". Secretary of State Mike Pompeo, the ex-CIA director, has publicly attacked Assange as "a fraud" and "a coward hiding behind a screen". Even journalists who oppose

his prosecution have called him "odious", "reprehensible", and "a narcissist". "Picking unsympathetic defendants to establish bad precedents is a timeworn legal strategy", one journalist has pointed out, and convicting Assange for publishing national security documents is far more likely to be successful than convicting the publisher of the New York Times – even as it opens the door to doing just that.

The government casts Assange as a criminal and a threat to the state but his real offense is political. In the words of one student of national security law: "Espionage is generally considered a political offense and the [US-UK] treaty forbids extraditing someone charged with political offenses".

> **"My own actions in relation to the Pentagon Papers and the consequences of their publication have been acknowledged to have performed such a radical change of understanding. I view the WikiLeaks publications of 2010 and 2011 to be of comparable importance.**
>
> ***Daniel Ellsberg***
> ***Pentagon Papers whistleblower***

Those very clear legal propositions raise the questions of why the Justice Department brought the charges at all. His indictment may be "more symbolic statement" than "genuine charging document" designed "to deter future WikiLeaks-like activities or to intimidate traditional journalists". Such an explanation is fully plausible in the context of the Trump administration's attacks on journalistic "enemies of the people".

Conclusion

Assange's deep unpopularity is all the more reason why he needs to be defended. The true test of a society's commitment to freedom of speech and press is not publishing facts or opinions that are widely accepted but publishing those that are not.

No matter how unorthodox, Assange as a publisher is protected by the free speech and free press clauses of the American constitution. He has published truthful information in the public interest that exposed illegal and unethical actions by the US government. Disclosures of classified secrets have a long history in the US, going back to George Washington's presidency. Government officials routinely leak national security information when it is in their interest, even as they exaggerate the harm from leaks that are not in their interest. Yet no administration has ever before indicted a journalist for publishing national security secrets.

The belated decision to disregard this 230 year old precedent and charge Assange criminally for espionage was not an evidentiary decision but a political one. The Obama administration had already thoroughly investigated bringing such charges and concluded – like all previous presidents – that the First Amendment protected public disclosure of government secrets. Trump's Justice Department had no new information, just a political agenda radically different from its predecessors. Prosecuting Assange for the act of publishing is perhaps the administration's most menacing move yet in its battle with the press, with potentially the most far reaching consequences of all.

The administration has already won a partial victory. Even if the espionage charges against Assange are ultimately dismissed, this politicised prosecution will still produce dividends whenever reporters hesitate for fear of getting into hot water, whenever publishers pull their punches to avoid angering authorities, whenever Americans start viewing journalists as criminals and spies who belong in prison – as "enemies of the people"..

Julian Assange faces lifetime imprisonment for publishing truthful information about governmental criminality and abuse of power, precisely what the First Amendment was written to protect. In the end, however, this case is about more than Assange or journalism. It is about the right of citizens to have the information they need to participate in a democracy. A free society depends on democratic decision making by an informed public. And an informed public depends on a free and independent press that can serve as a check on governmental abuse of power – the kinds of abuses that WikiLeaks made public. "In a free society, we are supposed to know the truth", a US congressman said when WikiLeaks first began publishing this batch of documents. "In a society where truth becomes treason, we are in trouble". ■

Full statement by Mark Feldstein, including numerous footnotes:

Assange and WikiLeaks' awards and recognition

- **Gary Webb Freedom of the Press Award** *February 2020*
- **The Press Project – Person of the Year Julian Assange** *January 2020*
- **Gavin MacFadyen Award for Whistleblowers** *September 2019*
- **The Danny Schechter Global Vision Award for Journalism Activism** *2019*
- **The Willy Brandt Award for Political Courage – Sarah Harrison** *October 2015*
- **Global Exchange Human Rights Award, People's Choice** *2015*
- **The Kazakstan Union of Journalists Top Prize** *June 2014*
- **The Brazilian Press Association Human Rights Award** *2013*
- **New York Festivals World's Best TV and Films Silver World Medal** *2013*
- **Yoko Ono Lennon Courage Award for the Arts** *2013*
- **Big Brother Award – Italy "Hero of Privacy"** *2012*
- **Voltaire Award for Free Speech** *2011*
- **Walkely Award for Most Outstanding Contribution to Journalism** *2011*
- **Martha Gellhorn Prize for Journalism** *2011*
- **Sydney Peace Prize – Gold Medal** *2011*
- **Free Dacia Award** *2011*
- **Le Monde Readers' Choice Award for Person of the Year** *2010*
- **Sam Adams Award** *2010*
- **Time Magazine – Person of the Year, Reader's Choice** *2010*
- **Amnesty International UK Media Awards** *2009*
- **The Economist New Media Award** *2008*

Precedent will be used against journalists around the world

Jen Robinson
Lawyer for Julian Assange

9 SEPTEMBER 2020
Extracts from an interview with Democracy Now!

"We saw Julian for the first time in six months as a result of the COVID shutdown. He hasn't had any social or legal visits since the pandemic broke out, which has left him incredibly isolated in prison. And it was surprising to us to see that he has lost a lot of weight. And we, of course, have continuing concerns about his health, given the long-term impacts of being both inside the embassy and now in a high-security prison in these circumstances.

Of course we now have had not one, but two superseding indictments. He [Assange] was arrested on a second superseding indictment on Monday that the Department of Justice issued in June. We were first told that it made no substantive difference, and we're now told that those new allegations, which include allegations related to providing assistance to the NSA whistleblower Edward Snowden, now are part of the case and could form part of separate criminal allegations if he is returned to the United States.

This is part of what we say the U.S. government is trying to shift the goalposts, as it were. We heard from our defense counsel in court on Monday that, of course, this is perhaps in response to the strength of our case that the U.S. government is now shifting and changing its case, almost 18 months after they started and after the closing and submission of evidence from both parties. It is a very unusual and highly irregular process in any kind of extradition case, and certainly one as unprecedented as this.

Adding these additional "hacking" allegations, which are general and questionable and, of course, are denied by Mr. Assange, I think is the Department of Justice's attempt to try and shift the case away from the Manning disclosures and, of course, the evidence that we've heard this week and seen in the publications around the world, evidence of war crimes, human rights abuse, corruption the world over. It is a clear press freedom case. And the attempts by the Department of Justice to somehow create this as a hacking case, when there is absolutely no evidence of any hacking by Mr. Assange, I think, demonstrates their desire to move away from the important issues on press freedom.

We've heard already in the evidence this case – in the evidence this week from Clive Stafford Smith, the founder of Reprieve, about the importance of WikiLeaks' disclosures about U.S. extraordinary rendition, torture, and, importantly, drone strikes and extrajudicial killings in Pakistan, and how those disclosures have been essential in his work, both in terms of holding the U.S. government accountable for those actions in Pakistan, but also with respect to his Guantánamo litigation in the United States.

Professor Feldstein explained at some length the importance of the First Amendment and how it protects every American citizen and any person within U.S. jurisdiction, their ability to – their free speech. And, of course, it protects the media's ability to communicate with sources, receive information and publish it in the public interest.

What we're seeing – what he pointed out about the danger of this particular case is the breakdown of the distinction between sources and journalists. So, we've often seen that sources who make unlawful or unauthorised disclosures are prosecuted and can face criminal prosecution as a result of their disclosures. But historically, that has never been directed at the media. The First Amendment is understood to protect the media in receiving and publishing that information in the public interest, which is exactly what WikiLeaks did. And in this case, what the Trump administration is alleging is that Julian Assange, by virtue of having communications with Chelsea Manning, receiving information from Chelsea Manning and publishing that information, is somehow conspiring and is conspiring in the underlying criminal act.

> **"Each day Julian is woken at 5am, handcuffed, put in holding cells, stripped naked and X-rayed. He's transported one and a half hours each way in what feels like a vertical coffin in a claustrophobic van. He's in a glass box at the back of court from where he can't consult his lawyers properly.**
>
> ***Stella Moris, partner of Julian Assange***

And we've seen this same prosecution strategy now rolled out in Brazil by President Bolsonaro against Glenn Greenwald. That's why this is so dangerous, because this is the kind of activity that journalists engage in all day, every day, across the United States and elsewhere around the world, which is why The New York Times and The Washington Post have both, in their editorials, said that this is criminalizing public interest journalism and news gathering practices that have been used for decades.

Julian has been charged under the Espionage Act, the first time in the history of the United States, for receiving, publishing – receiving and publishing classified U.S. information. That includes the "Collateral Murder" publication, the Iraq rules of engagement, which demonstrates war crimes in Iraq. It includes the Iraq and Afghan war logs, which demonstrated that the United States government was not sharing the truth about what was actually happening in those conflicts, including the killing of more than 15,000 civilians in the context of the Iraq War. And he's also being prosecuted in relation to the State Department cables and the publication of those cables, which revealed human rights abuse and corruption the world over.

These are incredibly important publications, for which he was nominated for the Nobel Peace Prize, the Sydney Peace Prize, won the Walkley Award for Most Outstanding Contribution to Journalism. And he faces 175 years in prison for doing his job as a journalist and as a publisher. That's why this case is so dangerous.

And as you'll be hearing, the evidence that will be heard over the next four weeks is from journalists, from NGOs, such as Reprieve – is what we heard from yesterday – talking about the importance of these leaks, how they've been used in terms of political movements, in terms of human rights litigation, in terms of holding governments to account for their wrongdoing, and more evidence also about the prison conditions that Julian will face if he is in fact returned to the United States to face prosecution...

...This is part of, we say, the Trump administration's attack on journalism, and war on whistleblowers and journalism. And it is a precedent that will be used against journalists not just in the United States, but journalists around the world, because the most dangerous thing about this – and a position that the United States attorney has made clear in his evidence before this court – is that not only is the U.S. government seeking to exercise jurisdiction over journalists and publishers outside of the United States for publishing information about the United States, they are also saying that they will exercise that jurisdiction, but at the same time foreign publishers and journalists will not benefit and should not benefit from First Amendment protections. And that should be very concerning for journalists everywhere around the world. ■

Watch the full interview:

The U.S. Against Julian Assange

Documentary – 1 hour (2020)

Brilliantly researched documentary by the first public German TV channel (Das Erste, ARD), available with English subtitles.

10 years of WikiLeaks, Julian Assange – and their persecution by the US, UK, Sweden and Ecuador.

Contains exclusive quotes of critical importance, including Leon Panetta (CIA director 2009-2011) declaring his desire that the US: "take action against those that were involved in revealing that information so you can send a message to others not to do the same thing".

Collateral Mixtape 2020 by RADIO FREE ASSANGE

"Look at these dead bastards!"

"It's their fault for bringing their kids into a battle".

Like an earworm, the words and the laughter from the *Collateral Murder* video, released by WikiLeaks on April 5th 2010, fill our heads and never leave. Those sentences pronounced over radio by the crew of an Apache combat helicopter and their command, full of contempt for human life, revealed to the world the banality of horrors of the US "wars we don't see" in Iraq and Afghanistan, where war crimes are being carried out as if in a video game. By releasing this video, WikiLeaks used the engaging power of moving images to imprint in our collective memory the cold-blooded murders of a dozen civilians (including 2 Reuters journalists) in July 2007, giving this video document an undeniable historical importance.

***Collateral Mixtape 2020* is a musical mix, a collection of songs, remixes, and numerous other contextual and historical documents, all inspired by the release of the original video and its aftermath. It resonates as a wake-up call for everyone to join the fight against lies, corruption and endless wars.**

This mixtape is a tribute to WikiLeaks, to fierce, non-compromising and risk-taking journalism, and to the victims of these gruesome murders.

Over 10 years after the war crimes have been committed, none of their perpetrators have been held accountable or prosecuted, while Julian Assange, Chelsea Manning and many other whistleblowers have been persecuted by the US government.

***Collateral Mixtape 2020* should thus also be heard as a call to freedom for Julian Assange, currently being imprisoned for his work as a journalist and facing extradition and 175 years in a max-security prison in the US, where he will not get a fair trial.**