Assange Indicted Under Espionage Act on 17 New Counts

*WikiLeaks* founder Julian Assange was indicted on Thursday under the Espionage Act, the first time a journalist has been charged under the Act for possessing and disseminating classified information.

By **Joe Lauria**

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A journalist was indicted under the Espionage Act for the first time in U.S. history on Thursday when the Department of Justice charged *WikiLeaks* founder Julian Assange with 17 counts of violating the Act in a move that opens the way for prosecution of anyone who publishes classified information.

The 37-page **indictment** charges Assange under four sections of the Act, including Section E for possessing and disseminating classified matter. It charged him with acts common to any investigative journalist:

“(i) circumvent(ing) legal safeguards on information; (ii) provid(ing) that protected information to WikiLeaks for public dissemination; and (iii) continu(ing) the pattern of illegally procuring and providing protected information to WikiLeaks for distribution to the public.”

Assange is serving a 50-week sentence in London’s Belmarsh prison for skipping bail and seeking asylum in Ecuador’s embassy in 2012 because he feared onward extradition from
Sweden to the United States and prosecution under the Espionage Act. He was arrested on April 11 when Ecuador illegally lifted his asylum and let British police onto Ecuadorian territory to carry Assange from the embassy.

The U.S. had until June 12 to add additional charges in its extradition request to Britain. The decision on extradition rests with British Home Secretary Sajid Javid, who WikiLeaks said “is now under enormous pressure to protect the rights of the free press in the UK and elsewhere.”

**Not a Journalist**

John Demers, head of the DOJ’s National Security Division, in announcing the indictment told reporters: “Some say that Assange is a journalist and that he should be immune for prosecution for these actions. The department takes seriously the role of journalists in our democracy and we thank you for it. It is not and has never been the department’s policy to target them for reporting.”

But Demers said Assange wasn’t a journalist. “No responsible actor, journalist or otherwise, would purposefully publish the names of individuals he or she knew to be confidential human sources in a war zone, exposing them to the gravest of dangers,” he said.

Assange’s attorney in the U.S., Barry Pollack, responded:

> “Today the government charged Julian Assange under the Espionage Act for encouraging sources to provide him truthful information and for publishing that information. The fig leaf that this is merely about alleged computer hacking has been removed. These unprecedented charges
demonstrate the gravity of the threat the criminal prosecution of Julian Assange poses to all journalists in their endeavor to inform the public about actions that have taken by the U.S. government.”

Assange would face a maximum of 175 years in jail if convicted on all charges. The Espionage Act carries a potential death penalty if the publication of classified information takes place during wartime. Some of WikiLeaks’ most prominent releases related to the U.S. wars in Iraq and Afghanistan, in which prima facie evidence of U.S. war crimes was revealed.

WikiLeaks criticized in a statement the global reach of U.S. law: “The Department of Justice wants to imprison Assange for crimes allegedly committed outside of the United States. This extraterritorial application of US law is explicit throughout the indictment... thereby classifying any territory in the world as subject to US law.” A 1961 amendment to the Espionage Act extended its jurisdiction from U.S. territory to the entire world.

A key part of the indictment alleges that Assange published in the Iraq, Afghanistan and State Dept. cables releases the unredacted names of informants and other persons, putting their lives at risk. The indictment does not name this as a violation of a specific statute, however, and appears to be an attempt to win public sympathy for the new charges.

According to a WikiLeaks source, Assange was forced to reveal certain names in the Cable-gate releases in September 2011 to actually help individuals escape when two Guardian journalists in February of that year published a password to
material containing their names that only intelligence agencies could access. Assange has repeatedly said that there is no known case of harm coming to anyone whose names were revealed and the indictment only says that informants were “vulnerable” to retribution.

The indictment accuses Assange of conspiring with former Army intelligence analyst Chelsea Manning to steal classified documents. But it clearly states that Manning already had legal “access to the computers in connection with her duties as an intelligence analyst” and that Assange’s efforts to help Manning with a password was intended to help hide her identity as the source. The indictment appears to be criminalizing what is a routine act of journalism.

“Had Manning retrieved the full password hash and had ASSANGE and Manning successfully cracked it, Manning may have been able to log onto computers under a user name that did not belong to her,” the indictment said. “Such a measure would have made it more difficult for investigators to identify Manning as the source of disclosures of classified information.”

Manning, who is portrayed throughout the indictment as WikiLeak’s source only at Assange’s behest, (and who remains imprisoned for refusing to testify against Assange), issued this statement:

“I continue to accept full and sole responsibility for those disclosures in 2010. It’s telling that the government appears to have already obtained this
indictment before my contempt hearing last week. This administration describes the press as the opposition party and an enemy of the people. Today, they use the law as a sword, and have shown their willingness to bring the full power of the state against the very institution intended to shield us from such excesses.”

Press Freedom at Risk

The indictment under the Espionage Act demolishes a democratic pretense of freedom of the press in the U.S. and makes all news organizations —indeed any citizen — liable for prosecution for disseminating classified information.

“Notably, The New York Times, among many other news organizations, obtained precisely the same archives of documents from WikiLeaks, without authorization from the government — the act that most of the charges addressed,” the Times reported.

“Though he is not a conventional journalist, much of what Mr. Assange does at WikiLeaks is difficult to distinguish in a legally meaningful way from what traditional news organizations like The New York Times do: seek and publish information that officials want to be secret, including classified national security matters, and take steps to protect the confidentiality of sources,” the Times report on the indictment said.

In a tweet WikiLeaks called the indictment “madness.”

This is madness. It is the end of national security journalism and the first amendment. https://t.co/wlhsmsenFw
The American Civil Liberties Union tweeted:

“These charges are an extraordinary escalation of the Trump administration’s attacks on journalism, establishing a dangerous precedent that can be used to target all news organizations that hold the government accountable by publishing its secrets.

The charges against Assange are equally dangerous for US journalists who uncover the secrets of other nations. If the US can prosecute a foreign publisher for violating our secrecy laws, there’s nothing preventing China, or Russia, from doing the same.”

In a statement, WikiLeaks Editor-in-Chief Kristin Hrafnsson said:

“This is the evil of lawlessness in its purest form. With the indictment, the ‘leader of the free world’ dismisses the First Amendment — hailed as a model of press freedom around the world — and launches a blatant extraterritorial assault outside its borders, attacking basic principles of democracy in Europe and the rest of the world.”

In a tweet, Hrafnsson added that he took “no satisfaction” in having correctly warned of the Espionage Act prosecution of Assange.

I find no satisfaction in saying ‘I told you so’ to those who for 9 years have scoured us for warning this moment would come. I care for journalism. If you
share my feeling you take a stand NOW. Either you are a worthless coward or you defend Assange, WikiLeaks and Journalism. https://t.co/NkUfZWYan8

— Kristinn Hrafnsson (@khrafnsson) May 23, 2019

Former British ambassador Craig Murray tweeted that “the poison is out.”

The US espionage act charges against Julian Assange for publishing leaked classified information showing US war crimes is a massive attack on media freedoms and free speech.
The poison is out – we always knew this was what we were really fighting.

— Craig Murray (@CraigMurrayOrg) May 23, 2019

A guide to the new charges against Assange.
GUIDE TO CHARGES: 18 U.S.C. § 793(c), (d), (e) & (g) AND U.S.C. §§ 371 & 1030

Count 1: 18 U.S.C. § 793(g)
Conspiracy To Receipt National Defense Information

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

Counts 2-6: 18 U.S.C. § 793(b)
Obtaining National Defense Information

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

Counts 5-8: 18 U.S.C. § 793(c)
Obtaining National Defense Information

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

Counts 9-11: 18 U.S.C. § 793(d)
Disclosure of National Defense Information

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

Counts 12-16: 18 U.S.C. § 793(e)
Counts 15-17: 18 U.S.C. § 793(g)
Disclosure of National Defense Information

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

Count 18: 18 U.S.C. §§ 371 and 1030
Conspiracy To Commit Computer Intrusion

SUPERSEDING INDICTMENT

§371: Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

§1030: Fraud and related activity in connection with computers

(4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access ****

(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

(8) such computer is used by or for the Government of the United States [3]

**** The terms "accesses a protected computer without authorization, or exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled to obtain or alter.

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