

The United States v Julian Assange: the implications for media freedom

Derick M. J. Luong

To cite this article: Derick M. J. Luong (17 Jul 2026): The United States v Julian Assange: the implications for media freedom, Journal of Media Law, DOI: [10.1080/17577632.2026.2704241](https://doi.org/10.1080/17577632.2026.2704241)

To link to this article: <https://doi.org/10.1080/17577632.2026.2704241>



© 2026 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 17 Jul 2026.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)

The United States v Julian Assange: the implications for media freedom

Derick M. J. Luong 

Faculty of Law, University of Technology Sydney, Sydney, Australia

ABSTRACT

The prosecution of Julian Assange under the Espionage Act of 1917 (US) and the United Kingdom (UK)'s eventual approval of his extradition to the United States (US) have been pivotal moments for national security journalism. While this article argues that Assange is not a journalist and that his publication activities should not be considered journalism, it finds that his extradition proceedings and criminal indictment nonetheless have detrimental implications for media freedom in the US and beyond. His indictment marks the first occasion on which the US Espionage Act has been deployed to prosecute the act of publishing national defence information, collapsing the long-standing distinctions between government officials who leak national defence information and the publishers who report on and publish their leaks. The decisions of the UK courts regarding the US's extradition request for Assange further illustrate the limitations of media freedom in the UK.

ARTICLE HISTORY Received 10 February 2026; Accepted 30 June 2026

KEYWORDS Media freedom; Julian Assange; National Security law; Espionage law

Introduction

In 2006, Julian Assange launched *WikiLeaks* in Sweden, with the intention that it would operate (in theory) as a highly encrypted and anonymous 'drop box' through which whistleblowers could confidentially disclose information.¹ The organisation has described itself at various times as 'an uncensorable Wikipedia for untraceable mass document leaking and analysis', 'a multi-jurisdictional public service designed to protect whistleblowers, journalists and activists', and a 'not-for-profit media organisation'.² In 2010,

CONTACT Derick M. J. Luong  derick.luong@uts.edu.au

¹Patricia Bellia, 'Wikileaks and the Institutional Framework for National Security Disclosures' (2012) 121 *Yale Law Journal* 1448, 1474.

²*ibid.*

© 2026 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

however, *WikiLeaks* would transition from a relatively obscure organisation into a globally prominent and deeply controversial entity following its publication of hundreds of thousands of classified United States (US) Government documents provided by then US Army intelligence analyst Chelsea Manning.³ Among the documents published was the notorious ‘Collateral Murder’ video: US military video footage of two US AH-64 Apache helicopters firing at civilians in Iraq and killing some of them.⁴

Nine years later, on 23 May 2019, the US Government indicted Assange under the Espionage Act of 1917 (US) in an eighteen-count superseding indictment, for his role in obtaining and publishing classified US Government information provided by Manning.⁵ Assange’s indictment marks the first time since the introduction of the Espionage Act in 1917 that US authorities have sought to deploy the Espionage Act against a publisher for *publishing* national defence information.⁶ The indictment came soon after Assange’s arrest by British police in April 2019 at the Embassy of Ecuador in London for ‘failing to surrender to the court’ for a 2012 United Kingdom (UK) warrant, after Ecuador withdrew the diplomatic asylum it had granted Assange since August 2012 and invited British police into its embassy to arrest Assange.⁷ Assange had obtained diplomatic asylum from Ecuador in 2012 to avoid extradition to Sweden for questioning in relation to two sexual assault allegations, and out of concern that he would subsequently be extradited to the US to face trial for his role in publishing US classified information while in Swedish custody.⁸

After the UK’s eventual approval of his extradition to the US, Assange signed a plea agreement with the US and pleaded guilty to one count of conspiring to breach the Espionage Act in the US District Court for the Northern Mariana Islands.⁹ He was sentenced to sixty-two months’ time served – the period he spent in prison in the UK while contesting his extradition request – before returning to his native Australia as a free man.¹⁰

³Jessica Beyer, ‘The Emergence of a Freedom of Information Movement: Anonymous, WikiLeaks, the Pirate Party, and Iceland’ (2014) 19(2) *Journal of Computer-Mediated Communication* 141, 143–144.

⁴WikiLeaks, ‘Collateral Murder’ (*WikiLeaks*, 5 April 2010) <<https://collateralmurder.wikileaks.org/>> accessed 9 February 2026.

⁵US Department of Justice, ‘WikiLeaks Founder Charged in Superseding Indictment’ (*Office of Public Affairs*, 24 June 2020) <<https://www.justice.gov/archives/opa/pr/wikileaks-founder-charged-superseding-indictment>> accessed 6 February 2026.

⁶Ethan Thompson, ‘Press Freedom and the Espionage Act: A Critical Juncture’ (2021) 66 *Washington University Journal of Law & Policy* 185, 185.

⁷*The Government of the USA v Julian Paul Assange* (Magistrates’ Court, 4 January 2021) [7].

⁸BBC, ‘Julian Assange: A timeline of Wikileaks founder’s case’ *BBC* (London, 26 June 2024) <<https://www.bbc.com/news/world-europe-11949341>> accessed 9 February 2026.

⁹US Department of Justice, ‘WikiLeaks Founder Pleads Guilty and Is Sentenced for Conspiring to Obtain and Disclose Classified National Defense Information’ (*Office of Public Affairs*, 25 June 2024) <<https://www.justice.gov/archives/opa/pr/wikileaks-founder-pleads-guilty-and-sentenced-conspiring-obtain-and-disclose-classified>> accessed 8 February 2026.

¹⁰*ibid.*

Although most of the media and academic commentary do not categorise Assange as a journalist¹¹ – and rightfully so, this article argues – at least not in the traditional sense,¹² this article argues that his indictment, the approval of his extradition, and his conviction under the Espionage Act nonetheless have direct implications for journalism and media freedom. The developments pose a threat to investigative journalists who report on national security matters, including those based at mainstream media outlets such as the *New York Times* and *The Washington Post*. The new precedent established by Assange's indictment and guilty plea – that liability under the Espionage Act is not confined to government officials who disclose national defence information, but also extends to *publishers* who *publish* national defence information – suggests that any publisher, anywhere in the world, may be liable under the Espionage Act when they publish US national defence information in a manner deemed by US authorities to be prejudicial to the US, or favourable to a foreign nation.¹³

The UK's eventual approval of Assange's extradition to the US in 2024 also carries significant implications for media freedom in the UK. The decisions of the UK courts illustrate some of the limitations of Article 10 of the European Convention on Human Rights (ECHR) as a media freedom protection in the UK.¹⁴ They demonstrate that Article 10 offers journalists and other publishers limited protection when they are accused of engaging in criminal conduct, especially when that conduct is alleged to compromise national security.¹⁵ This is especially important following the UK's overhaul of its espionage laws previously contained in the Official Secrets Act 1911, 1920, and 1939 (UK) through the National Security Act 2023 (UK). As the Official Secrets Acts have been deployed, on occasion, by UK authorities to prosecute journalists for publishing official information,¹⁶ there are fresh concerns that press freedom and national security journalism in the UK face renewed threats following the introduction of the National Security Act 2023.¹⁷ Accordingly, the implications of Assange's

¹¹ See eg the comments of the media in *The Government of the USA v Julian Paul Assange* (Magistrates' Court, 4 January 2021) [47]. See also: Elizabeth Hindman and Ryan Thomas, 'When old and new media collide: The case of WikiLeaks' (2014) 16(4) *New Media & Society* 541.

¹² See eg Tariq Ali and Margaret Kunstler, *In Defense of Julian Assange* (OR Books, 2019).

¹³ Amal Clooney and Alice Gardoll, Speech Related to National Security: Espionage and Official Secrets Law in Amal Clooney and David Neuberger, *Freedom of Speech in International Law* (OUP, 2024) 278.

¹⁴ *Julian Paul Assange v Government of the USA & Secretary of State for the Home Department* [2024] EWHC 700 (Admin); *The Government of the USA v Julian Paul Assange* [2021] EWHC 3313 (Admin); *The Government of the USA v Julian Paul Assange* (Magistrates' Court, 4 January 2021).

¹⁵ *Ibid.*

¹⁶ See eg *R v Aubrey, Berry and Campbell* [1979] Crim LR 284; *R v Cairns, Aitken and Roberts* (CCC, 4 February 1971); Richard Norton-Taylor, 'Secrets charges against Ulster spy author dropped' *The Guardian* (London, 23 December 1999) <<https://www.theguardian.com/uk/1999/dec/23/northernireland.richardnortontaylor>> accessed 8 May 2026.

¹⁷ See eg Reporters Without Borders, 'UK: National Security Bill poses alarming threats to journalism and press freedom' *RSF* (London, 7 December 2022) <<https://rsf.org/en/uk-national-security-bill-poses-alarming-threats-journalism-and-press-freedom>> accessed 30 April 2026. See also: Jonathan Hall, 'Report of the Independent Reviewer of State Threats Legislation' (*UK Home Office*, 15 January 2026)

indictment, extradition proceedings, and conviction for media freedom in the US, the UK, and the global media landscape mean it is important for these developments to be critically analysed and discussed.

This article begins with a doctrinal overview of the Espionage Act, focusing on §793, the provision most frequently deployed by US authorities in prosecutions arising from media leaks of US government information. It outlines the expansion of the Espionage Act from a wartime statute directed at espionage to a mechanism for the US Government to prosecute officials for leaking national defence information to the press. The following section examines the trials of Chelsea Manning and Julian Assange under the Espionage Act and evaluates their implications for media freedom, focusing on the precedent established by Assange's trial – that the Espionage Act applies to the act of *publishing* national security information. That section also considers whether Assange can be characterised as a journalist and whether that classification has any legal significance.

The final section discusses Assange's extradition proceedings in the UK, focusing on their implications for journalists and media freedom, before the article concludes. The article concludes that while Assange is better characterised as a publisher than a journalist, the legal principles established through his indictment have broader implications: they collapse the long-standing distinction between government leakers and publishers, create a precedent for the future prosecution of journalists who publish national defence information, and demonstrate that Article 10 of the ECHR offers limited protection for journalists in the UK when national security is invoked as a justification to curtail press freedom.

The Espionage Act of 1917

Before examining the proceedings brought against Assange and his source, Manning, under the Espionage Act, it is necessary to first briefly outline the context and doctrinal content of the legislation. The Espionage Act was passed through Congress in 1917, shortly after the US declared war on Germany and entered World War I.¹⁸ As reflected by its short and long titles, the law's primary purpose was to counter espionage, which at the time came primarily in the form of German espionage.¹⁹ To date, the Espionage Act remains the US's principal form of legal protection against espionage.²⁰

During its drafting, however, President Woodrow Wilson advocated for a far more sweeping law, which would sanction any unauthorised disclosure of official

<<https://www.gov.uk/government/publications/report-of-the-independent-reviewer-of-state-threats-legislation/report-of-the-independent-reviewer-of-state-threats-legislation-accessible>> accessed 30 April 2026.

¹⁸Geoffrey Stone, 'The Origins of the Espionage Act of 1917: Was Judge Learned Hand's Understanding of the Act Defensible?' (2018) 50 Arizona State Law Journal 919, 921.

¹⁹David Pozen, 'The Leaky Leviathan: Why the Government Condemns and Condone Unlawful Disclosures of Information' (2013) 127(2) Harvard Law Review 512, 554.

²⁰*ibid.*

information; in essence, an American equivalent of the UK's Official Secrets Act 1911 (UK) – a statute which provided 'catch-all' prohibitions on the disclosure of *any* official information.²¹ Congress, however, would refuse to legislate such broad controls on speech, largely due to concerns that such a prohibition would be contrary to the First Amendment; instead, enacting a statute that, while broad, was framed in the language of espionage and national defence.²²

Even so, numerous Congressmen in 1917 warned of the Espionage Act's 'dangerous breadth'.²³ The majority of Congress, however, was seemingly willing to accept its breadth on the confidence that prosecutorial restraint would prevent its misuse against civil and political activity.²⁴ That confidence has proven misplaced. Despite the law being billed primarily as a means to address espionage, its scope would be expanded by successive US administrations through textualist interpretation to become much broader, including such that, at present, it captures both the primary (by officials) and secondary (by journalists and publishers, etc.) unauthorised disclosure of national defence information.²⁵

The breadth of the Espionage Act, as enacted in 1917, has therefore allowed US authorities to impugn government whistleblowers and other leakers as effective spies. As Katherine Feuer observes, the legislation 'lumps whistleblowers and spies together'.²⁶ Over time, US courts and prosecutors have privileged the plain meaning of the statutory text over the law's original legislative intent, expanding its reach to officials who leak national security information to the media, and eventually, to those who publish their leaks.²⁷ The prevailing approach to interpretation of the Espionage Act has been, as Holmes J famously put it, 'We do not inquire what the legislature meant, we ask only what the statute means'.²⁸

(a) #The §793 Offences

The Espionage Act provides eleven espionage-related offences. The offences most frequently invoked in media leak trials are the six Gathering, Transmitting, or Losing Defense Information Offences in §793, particularly the

²¹Harold Edgar and Benno Schmidt, 'The Espionage Statutes and Publication of Defense Information' (1973) 73(5) Columbia Law Review 929, 940–941, 948, 964–965. See also: *US v Truong Dinh Hung*; *US v Ronald Louis Humphrey* 629 F 2d 908, 928 (4th Cir 1980) (Winter J).

²²See eg 55 Cong Rec 827, 829 (1917).

²³Edgar and Schmidt (n 21) 969.

²⁴*ibid*.

²⁵Renita Coleman, 'Ralph Engelman and Carey Shenkman, A Century of Repression: The Espionage Act and Freedom of the Press' (2023) 17 International Journal of Communication 3888, 3888.

²⁶Katherine Feuer, 'Protecting Government Secrets: A Comparison of the Espionage Act and the Official Secrets Act' (2015) 38(91) Boston College International and Comparative Law Review 91, 93. See also: Edgar and Schmidt (n 21) 393.

²⁷*US v Morison* 844 F 2d 1057, 1074 (4th Cir 1988).

²⁸Oliver Holmes, 'The Theory of Legal Interpretation' (1899) 12(6) Harvard Law Review 417, 417–419.

offences in subsections (c), (d), and (e). These offences are notable for their breadth, even prohibiting the receipt of national defence material, provided that the accused has knowledge or reason to believe that the material was obtained in violation of the espionage provisions.²⁹

Subsections (d) and (e) are particularly comprehensive as they capture individuals who, having both lawful and unauthorised possession of national defence information, merely communicate the information ‘to a person not entitled to receive it’. Crucially, there is no need for the recipient of the information to be a foreign agent or spy; they could be another official, a journalist, or a member of the public. Nor do the provisions require authorities to prove an intent to injure the US to make out fault. As a result, in theory, nearly all unauthorised disclosures of national defence information are chargeable as espionage under §793. Whistleblowers and journalists typically do not intend to harm national security or assist foreign powers, as foreign agents or spies ordinarily do, but they are nonetheless liable for espionage, as it is not necessary for prosecutors to prove such an intent. Despite the offences in §793 being primarily understood by Congress in 1917 as a means to target ‘spying’, as reflected by the offences’ names, their breadth has enabled them to be repurposed by future governments to cover a wide range of unauthorised disclosures by civil actors.³⁰

Section 793 imposes penalties of up to ten years’ imprisonment and fines for each count of contravention.³¹ Despite the provision’s verbose and overlapping language, the key elements of §793 may be distilled as:

- (1) The defendant had possession of, access to, or control over, or was entrusted with;
- (2) Information relating to national defence;
- (3) Which the defendant intends or has reason to believe could be used to the injury of the US or the advantage of a foreign nation; and
- (4) Wilfully communicates, delivers, transmits or causes to be communicated, delivered or transmitted to a person not entitled to receive it or wilfully retains the same and fails to deliver it on demand to an officer of the US entitled to receive it.³²

(i) #National defence information

In *Gorin v US*, the US Supreme Court explained that the concept of *national defense* refers to a ‘generic concept of broad connotations, referring to the

²⁹Feuer (n 26) 116. See also: Edgar and Schmidt (n 21) 938.

³⁰55 Cong Rec 827, 829 (1917). See also: Mary-Rose Papandrea, ‘National Security Information Disclosures and the Role of Intent’ (2015) 56(4) William & Mary Law Review 1381, 1394; *US v Truong Dinh Hung*; *US v Ronald Louis Humphrey* 629 F 2d 908, 928 (4th Cir 1980) (Winter J).

³¹18 USC, §793(a)–(f).

³²*US v Kim* 808 F Supp 2d 44, 55 (DDC 2011). See also: Feuer (n 26) 116–117.

military and naval establishments and the related activities of national preparedness'.³³ To establish that information relates to national defence, it is generally sufficient for the US Government to demonstrate it has taken steps to protect its secrecy, and that its disclosure 'would be potentially damaging to the US or might be useful to the enemy of the US'.³⁴ US courts have held that classification is typically sufficient to establish this, as classification demonstrates an anticipation of harm if the information were to be disclosed without authority.³⁵ As the Court observed in *US v Kiriakou*: 'Courts have relied on the classified status of information to determine whether it is closely held by the government and harmful to the United States'.³⁶ That said, classification is not a formal prerequisite; unclassified information may fall within the scope of §793 if it otherwise relates to national defence.³⁷

(ii)#Intent or reason to believe disclosure will injure US or advantage foreign nation

As classification is typically sufficient to establish that information relates to national defence and demonstrates an anticipation of harm when disclosed without authority, it also normally allows the US to establish that the defendant has reason to believe that its disclosure could potentially injure the US or be of use to a foreign power.³⁸ Subjective intent to injure the US or to advantage a foreign power is not necessarily required, nor is actual knowledge of such injuring or advantaging.³⁹ Culpability arises when the defendant has reason to believe a disclosure would injure the US or advantage a foreign nation.⁴⁰

(iii)#Wilfulness

The requirement of 'wilfulness' provides a fault requirement, though this merely requires knowing or reckless engagement with the act of disclosure, not an intention to harm the US.⁴¹ In *US v Coplon*, the Court interpreted the wilfulness requirement to require no such specific intent of injuring the US or aiding a foreign power.⁴² Rather, it found that it merely requires the accused to obtain possession of the documents and attempt to transmit them to an individual not entitled to receive them.⁴³

³³312 US 19, 28 (1941).

³⁴*Morison* (n 27) 1071. See also: *US v Dedeyan* 584 F 2d 36, 39 (4th Cir 1978).

³⁵*ibid* 1074; *Kim* (n 32) 53.

³⁶898 F Supp 2d 921, 922 (ED Va 2012).

³⁷*Kim* (n 32) 57.

³⁸*ibid*.

³⁹*US v Morison* 604 F Supp 655, 658 (D Md 1985).

⁴⁰*ibid*.

⁴¹*ibid*. See also: *Edgar and Schmidt* (n 21) 1001.

⁴²88 F Supp 910, 911 (SDNY 1949).

⁴³*ibid*.

(b)#The use of the provisions against leakers and whistleblowers

As a result, the letter of the offences in §793 is broad enough that it captures most unauthorised disclosures of national defence information, including when officials leak such information to the press, and when journalists make onward disclosures. Despite this, US prosecutors have historically refrained from prosecuting such leaks.⁴⁴ Between 1917 and 2008, only five prosecutions under the Espionage Act were attempted against leaks involving the media, and they were largely directed at the officials who had leaked national defence information, not the journalists who published them, with only two resulting in a successful conviction.⁴⁵

One of the earliest and most noteworthy attempts to deploy the Espionage Act against a whistleblower came in 1971, in the famous trial of US defence analyst Daniel Ellsberg following his leak of the Pentagon Papers to the media.⁴⁶ The media's publication of the Pentagon Papers was seismic, demonstrating that much of the information on the Vietnam War that the US executive had provided to Congress and the public was false.⁴⁷ Ellsberg was subsequently charged with espionage under §793(c), (d) and (e) of the Espionage Act, despite having no apparent ties to a foreign power, alongside theft of government property and conspiracy.⁴⁸ President Richard Nixon would comment:

Ellsberg, whatever his intentions, gave aid and comfort to the enemy. And under those circumstances, that is inexcusable ... It had the effect, again, of making the enemy more intransigent at the conference table ... it prolonged the war, and it cost American lives ...⁴⁹

Despite the seriousness of the accusations levied against Ellsberg, the case would later collapse, with the Court dismissing the proceedings due to evidence of 'gross prosecutorial misconduct'.⁵⁰ The US's failure to successfully prosecute Ellsberg, however, would offer little protection for future

⁴⁴Heidi Kitrosser and David Schulz, 'A House Built on Sand: The Constitutional Infirmary of Espionage Act Prosecutions for Leaking to the Press' (2021) 19(2) First Amendment Law Review 153, 173–175; Pozen (n 19) 534–536.

⁴⁵Knight First Amendment Institute at Columbia University, 'Press-Related Espionage Act Prosecutions' *Knight First Amendment Institute* (New York, 25 September 2020) <<https://knightcolumbia.org/content/espionage-act-prosecutions-chart>> accessed 1 July 2026.

⁴⁶*US v Russo & Ellsberg* Crim No 9373 (WNB) (CD Cal Dec 29, 1971). See also: Melville Nimmer, 'National Security Secrets v. Free Speech: The Issues Left Undecided in the Ellsberg Case' (1974) 26(2) Stanford Law Review 311, 312.

⁴⁷David McCraw and Stephen Gikow, 'The End to an Unspoken Bargain? National Security and Leaks in a Post-Pentagon Papers World' (2013) 48 Harvard Civil Rights-Civil Liberties Law Review 473, 475.

⁴⁸*US v Russo & Ellsberg* Crim No 9373 (WNB) (CD Cal Dec 29, 1971) dismissed (CD Cal May 11, 1973).

⁴⁹Richard Nixon Foundation, 'The Vietnam War – Errors and Omissions – Episode Nine' (*Richard Nixon Foundation*, 27 September 2017) <<https://www.nixonfoundation.org/2017/09/vietnam-war-errors-episode-9/>> accessed 16 March 2025.

⁵⁰*Russo & Ellsberg* (n 46).

whistleblowers and leakers who were later charged in a similar fashion under the Espionage Act for disclosing national defence information.

Accordingly, the US's first successful prosecution of an official for leaking to the press came about in 1985 in *US v Morison*.⁵¹ Despite exhibiting no clear intent to communicate information to a foreign power, US naval intelligence officer Samuel Morison was convicted of §793(d) and (e) of the Espionage Act, and two counts of theft for selling classified satellite photographs of a Soviet naval base to the UK-based magazine *Jane's Defence Weekly*.⁵² Morison argued that his motive was to publicise the progress the Soviet Union was making in developing its naval force, which he believed would assist the US Navy in obtaining greater funding.⁵³

While Morison drew on Congressional material and amicus briefs submitted by journalists to argue that §793(d)–(e) was targeted at disclosing information to foreign intelligence operatives, not leaks to the press, the Court rejected such arguments, favouring a literal interpretation of the provisions, ruling:

To read into the statute the requirement that it apply only in 'classic espionage' cases where the disclosure is to an agent of a foreign government would be to ignore the plain language of the law.⁵⁴

The argument that the First Amendment protected Morison's disclosure was also rejected, with the Court citing *Branzburg v Hayes*, where the SCOTUS ruled:

It would be frivolous to assert ... that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws.⁵⁵

The Court also rejected the argument that Morison's actions were justified by his patriotic motives, with the Court finding that Morison had violated the statute, 'no matter how laudable his motives'.⁵⁶ Therefore, whilst Congress in 1917 intended for the Espionage Act to primarily target the theft of secret information by foreign powers, not leaks to the press, §793 was construed literally in *Morison*, extending its reach to whistleblowers and paving the way for future leaks of national defence information to be charged under §793.⁵⁷ There were obvious implications for the media arising from this case. By enabling authorities to successfully prosecute a media source under the

⁵¹ 844 F 2d 1057, 1074 (4th Cir 1988).

⁵² *ibid*.

⁵³ James Tankard, 'Samuel L. Morison and the Government Crackdown on the Leaking of Classified Information' (2019) 24(1) *Journalism History* 17, 18.

⁵⁴ *Morison* (n 39) 660.

⁵⁵ 408 US 665, 691 (1972).

⁵⁶ *Morison* (n 39) 658.

⁵⁷ 55 Cong Rec 827, 829 (1917).

Espionage Act, *Morison* would have expectedly had a chilling effect on the flow of information from government officials to the press.

Regardless, prosecutions of this kind remained rare before 2009, reflecting a broader culture of prosecutorial restraint.⁵⁸ Press leaks exposing the Central Intelligence Agency (CIA)'s use of secret prisons to interrogate those suspected of terrorism, the US Army's abuse of prisoners at Abu Ghraib prison, and other scandals involving national security leaks did not result in charges being brought against the officials who leaked the information, nor the journalists who published them.⁵⁹ The First Amendment and the cultural valorisation of press freedom and free speech in the US are obvious reasons why. As Feuer argues, leaking government information to the press is a 'longstanding American tradition widely condoned as vital to government transparency', necessary in the absence of a mechanism of parliamentary inquiry requiring the US executive to reveal its activities.⁶⁰ Leaks of government information occurred so regularly that it was sometimes described as a routine means of communicating about government,⁶¹ a safety valve allowing officials to vent and bring policy debates into the public view.⁶²

Without formally amending the law, the Obama Administration would break from the US's historical culture of prosecutorial restraint, declaring a 'war on leakers' in bringing a record eight Espionage Act prosecutions against officials during its two terms of office.⁶³ The pace of such prosecutions would be upped by the succeeding Trump Administration, which initiated five prosecutions against officials and one against a publisher – Julian Assange – in its first term, further expanding the Espionage Act's scope to where it applies to the *publication* of national defence information.⁶⁴ Despite operating against the backdrop of the First Amendment and a strong free speech culture, US authorities have steadily eroded the distinction between espionage and the unauthorised disclosure of national security information. National security whistleblowers and publishers have effectively been treated as spies under the Espionage Act.

⁵⁸Feuer (n 26) 98.

⁵⁹*ibid.*

⁶⁰*ibid* 91, 95.

⁶¹Feuer (n 26) 96. See also: William Lee, 'Deep Background: Journalists, Sources, and the Perils of Leaking' (2008) 57(5) *American University Law Review* 1453, 1461; Richard William, 'Report of the Interdepartmental Group on Unauthorized Disclosures of Classified Information' (*US Office of the Attorney General*, 31 March 1982) <<https://www.cia.gov/readingroom/docs/CIA-RDP84B00049R001102740032-7.pdf>> accessed 25 August 2025, which describes leaking as a 'daily occurrence.'

⁶²Ralph Engelman and Carey Shenkman, *A Century of Repression: The Espionage Act and Freedom of Press* (University of Illinois Press, 2022) 196–197.

⁶³Kitrosser and Schulz (n 44) 178. See also: Timothy Lee, 'Everything You Need to Know About Obama's War on Leakers in One FAQ', *Washington Post* (Washington DC, 23 May 2013) <<https://www.washingtonpost.com/news/wonk/wp/2013/05/23/everything-you-need-to-know-about-obamas-war-on-leakers-in-one-faq/>> accessed 27 August 2025.

⁶⁴*ibid.*

The trial of Chelsea Manning and Julian Assange

(a)#US v Manning

The most notorious deployment of the Espionage Act against a leak of classified information arguably arose from the Obama Administration's trial of Chelsea Manning. Chelsea Manning, then known as Bradley Manning, was an intelligence analyst in the US Army. In 2010, she leaked more than 250,000 US State Department cables and 500,000 US Army incident reports, giving them to *WikiLeaks*.⁶⁵ Amongst the information leaked was the infamous 'Collateral Murder' video: footage of the crew of two US AH-64 Apache helicopters firing at a group of civilians in New Baghdad and killing some of them, including two *Reuters* journalists.⁶⁶ These files would then be published by *WikiLeaks* alongside global media outlets such as the *New York Times* and *The Washington Post*, which had to filter through the information to frame it in a manner that their audiences worldwide could understand.⁶⁷

After being identified as the source, Manning was charged with twenty-two offences, including seven counts of espionage contrary to §793(e).⁶⁸ The most serious charge was the capital offence of Aiding the Enemy, contrary to Article 104 of the Uniform Code of Military Justice.⁶⁹ It accused Manning of 'knowingly giv[ing] intelligence to the enemy, through indirect means'.⁷⁰ In other words, the accusation was that Manning had effectively spied for al-Qaeda by disclosing the classified information to *WikiLeaks*, knowing that it would be published online, thereby effectively providing intelligence to al-Qaeda. Fundamentally, the charge proposed that publicly disclosing national defence information was effectively a virulent form of espionage that aided the state's enemies, which is not dissimilar to Nixon's accusation that Ellsberg had given 'aid and comfort' to the US's enemies by leaking the Pentagon Papers to the press.⁷¹

Manning was convicted of all charges, except for the Aiding The Enemy offence and one specification of §793(e) and was sentenced to thirty-five years' imprisonment.⁷² Her argument that the First Amendment protected her leaks was rejected, with the military court ruling:

⁶⁵Feuer (n 26) 104. See also: Tim Bakken, 'The Prosecution of Newspaper Reporters, and Sources for Disclosing Classified Information: The Government's Softening of the First Amendment' (2013) 45 *University of Toledo Law Review* 1, 16.

⁶⁶*ibid.*

⁶⁷*Military Appellate Ct Op, US v Manning*, 78 MJ 501 (US Army Ct Crim App May 31, 2018) 6.

⁶⁸*ibid* 2.

⁶⁹*ibid.*

⁷⁰Engelman and Shenkman (n 62) 213.

⁷¹*ibid.*

⁷²*Manning* (n 67) 2.

United States courts have repeatedly held that the First Amendment does not protect unauthorized disclosures of classified information ... We squarely reject appellant's First Amendment challenge and firmly hold that a soldier who willfully communicates information relating to the national defense is not entitled to invoke the First Amendment as a shield to immunize his act of thievery.⁷³

(b)#US v Assange

Despite its unforgiving pursuit of Chelsea Manning, the Obama Administration, however, ultimately refrained from indicting Julian Assange, notwithstanding his role in receiving and publishing the leaked material from Manning, on concerns that there was 'no way to prosecute him for publishing information without the same principle being applied to journalists.'⁷⁴ Prosecuting Assange would create what *The Washington Post* dubbed a 'New York Times problem': if Assange could be prosecuted for publishing the classified material leaked by Manning, so too could the journalists at the *New York Times* and the other mainstream media organisations that reported on the same disclosures.⁷⁵ The Obama Administration's concern was that such a prosecution could be contrary to the First Amendment and would cause significant harm to media freedom.⁷⁶

The succeeding Trump Administration, however, was characterised from day one by an angry, adversarial relationship with the press.⁷⁷ On the first day of the Trump Administration, White House Press Secretary Sean Spicer angrily disputed the press's reporting of the size of the crowd that had gathered at the inauguration of Donald Trump as President of the US.⁷⁸ President Trump would also angrily denounce the media at various times as 'among the most dishonest human beings on earth',⁷⁹ 'the enemy of the American people',⁸⁰ and 'scum'.⁸¹ The notion of 'fake news' would also be repeatedly invoked by the Trump Administration to discredit the

⁷³ibid 15.

⁷⁴Sari Horwitz, 'Julian Assange unlikely to face US charges over publishing classified information' *Washington Post* (Washington DC, 25 November 2013) <https://www.washingtonpost.com/world/national-security/julian-assange-unlikely-to-face-us-charges-over-publishing-classified-documents/2013/11/25/dd27decc-55f1-11e3-8304-caf30787c0a9_story.html> accessed 18 April 2025.

⁷⁵ibid.

⁷⁶ibid.

⁷⁷Engelman and Shenkman (n 62) 258.

⁷⁸Jessica Taylor, 'Trump Administration Goes to War With The Media Over Inauguration Crowd Size' *National Public Radio* (Washington DC, 21 January 2017) <<https://www.npr.org/2017/01/21/510994742/trump-administration-goes-to-war-with-the-media-over-inauguration-crowd-size>> accessed 18 September 2025.

⁷⁹BBC, 'Trump claims media "dishonest" over crowd photos' *BBC* (London, 22 January 2017) <<https://www.bbc.com/news/world-us-canada-38707722>> accessed 18 September 2025.

⁸⁰ABC News, 'Donald Trump calls media "the enemy of the American People"' *American Broadcasting Company* (New York, 18 February 2017) <<https://abcnews.go.com/Politics/donald-trump-calls-media-enemy-american-people/story?id=45572928>> accessed 18 September 2025.

⁸¹Jeremy Diamond, 'Trump launches all-out attack on the press' *CNN* (New York, 1 June 2016) <<https://edition.cnn.com/2016/05/31/politics/donald-trump-veterans-announcement/index.html>> accessed 18 September 2025.

press;⁸² and the administration would also intensify efforts to suppress leakers, with President Donald Trump on one occasion angrily stating:

[W]ho's the person who gave the whistleblower the information? Because that's close to a spy ... You know what we used to do in the old days when we were smart? Right? The spies and treason, we used to handle it a little differently than we do now.⁸³

It was, therefore, unsurprising that the Trump Administration, unlike its predecessor, would seemingly have few qualms about the potential media freedom implications that would arise from prosecuting Assange, indicting Assange for espionage under §793(b)–(g) of the Espionage Act in 2019.⁸⁴ The invoking of espionage charges against Assange, however, was unsurprising; it was consistent with the US's previous characterisations of *WikiLeaks*. CIA Director Mike Pompeo had previously impugned *WikiLeaks* as a 'non-state hostile intelligence service often abetted by state actors like Russia', whilst US Secretary of State Hillary Clinton had dubbed *WikiLeaks* 'practically a fully owned subsidiary of Russian intelligence'.⁸⁵ President Joe Biden, while as vice president of the US, had also denounced Assange as a 'hi-tech terrorist',⁸⁶ whilst CIA officials reportedly discussed kidnapping or assassinating Assange.⁸⁷

Assange's indictment marked the first time that the act of *publishing* national defence information would be prosecuted under the Espionage Act, representing a further expansion in the statute's reach.⁸⁸ The *Washington Post* would comment:

Until now, the Justice Department distinguished between government employees who leak classified information (deemed prosecutable) and outlets that publish it (considered to have First Amendment protection). The Trump administration seeks to move the line ... The Justice Department's

⁸²Engelman and Shenkman (n 62) 258.

⁸³Shannon Pettypiece, 'Trump says those who gave info to the whistleblower are like spies, reports say' *NBC* (New York, 27 September 2019) <<https://www.nbcnews.com/politics/white-house/trump-says-our-country-stake-whistleblower-account-made-public-n1059011>> accessed 6 October 2025.

⁸⁴US Department of Justice, 'WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment' (*Department of Justice*, 23 May 2019) <<https://www.justice.gov/archives/opa/pr/wikileaks-founder-julian-assange-charged-18-count-superseding-indictment>> accessed 15 May 2025.

⁸⁵Agence France-Presse, 'CIA director brands WikiLeaks a "hostile intelligence service"' *The Guardian* (London, 14 April 2017) <<https://www.theguardian.com/us-news/2017/apr/14/cia-director-brands-wikileaks-a-hostile-intelligence-service>> accessed 2 June 2025; Sarah Ferguson, Jeanavive McGregor, and Justin Stevens, 'Hillary Clinton says Julian Assange colluded with Russia to help Donald Trump win US election' *ABC* (Sydney, 16 October 2017) <<https://www.abc.net.au/news/2017-10-16/hillary-clinton-says-julian-assange-helped-donald-trump-win/9047944>> accessed 2 June 2025.

⁸⁶Ewen MacAskill, 'Julian Assange like a hi-tech terrorist, says Joe Biden' *The Guardian* (Washington DC, 20 December 2010) <<https://www.theguardian.com/media/2010/dec/19/assange-high-tech-terrorist-biden>> accessed 4 November 2025.

⁸⁷Julian Borger, 'CIA officials under Trump discussed assassinating Julian Assange – report' *The Guardian* (Washington DC, 28 September 2021) <<https://www.theguardian.com/media/2021/sep/27/senior-cia-officials-trump-discussed-assassinating-julian-assange>> accessed 4 November 2025.

⁸⁸Clooney and Gardoll (n 13) 278.

attempt to rewrite this core constitutional protection is a threat to every person or entity who publishes information — and every American who receives it

...⁸⁹

Accordingly, the precedent created by Assange's indictment and decision to plead guilty to conspiring to obtain and disclose national defence information under §793(g) of the Espionage Act – that the Espionage Act applies to the *publication* of national defence information – *does* have media freedom implications.⁹⁰ It poses a threat to the media as it suggests that those who publish national defence information, whether they be journalists employed by mainstream media outlets or non-traditional publishers like Assange, are captured under the Espionage Act. Even if Assange may be 'no journalist', a finding that he is one would likely have no bearing on his case, as explained in the next section.⁹¹

The central threat to media freedom flowing from Assange's trial, therefore, is that a future US administration may apply the precedent established to journalists and other publishers. It is no longer a purely theoretical risk that individuals engaged in the publication of national defence information – including traditional journalists – could be indicted under the Espionage Act. While the prosecution of traditional journalists – those employed by the mainstream media – for publishing national defence information is unlikely, as attempts to crack down on the press are politically damaging and often counterproductive – in drawing more attention to the matter⁹² – it is not a far-fetched possibility, at least during the Trump Administration, which has exhibited heightened hostility towards the press. In February 2017, President Trump reportedly told the Federal Bureau of Investigation (FBI) Director James Comey that the FBI should increase its effort to prosecute journalists who publish classified information, to which Comey replied that he was 'eager to find leakers and would like to nail one to the door as a message'.⁹³

It should be noted that the use of espionage charges against a publisher is not a uniquely American phenomenon; espionage charges have been invoked against journalists who publish sensitive information in Turkey,⁹⁴

⁸⁹Elizabeth Goitein, 'The US says Julian Assange "is no journalist." Here's why that shouldn't matter' *Washington Post* (Washington DC, 25 May 2019) <<https://www.washingtonpost.com/outlook/2019/05/25/us-says-julian-assange-is-no-journalist-heres-why-that-shouldnt-matter/>> accessed 15 March 2025.

⁹⁰*ibid.*

⁹¹*ibid.*

⁹²See eg *A-G v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109; *Sunday Times v UK* (No 2) (1992) 14 EHRR 229.

⁹³Engelman and Shenkman (n 62) 259. See also: Chris Cillizza, 'The time Donald Trump reportedly urged James Comey to jail journalists' *CNN* (New York, 17 May 2017) <https://edition.cnn.com/2017/05/17/politics/comey-memo-press-jailed-trump> accessed 8 February 2026.

⁹⁴Selin Girit, 'Turkish journalists charged with spying over weapons report' *BBC* (Istanbul, 26 November 2015) <<https://www.bbc.co.uk/news/world-europe-34939916/>> accessed 2 May 2025.

Russia,⁹⁵ China,⁹⁶ and the UK.⁹⁷ However, the framing of publication activity as espionage is problematic when coming from the ‘leader of the free world’,⁹⁸ one of the world’s oldest, if not the oldest, continuous democracies, with arguably ‘the strongest legal protection of freedom of speech globally.’⁹⁹ Moreover, the US’s assertion of extraterritorial reach, given Assange is an Australian citizen who published the leaks while outside the US, suggests that any publisher around the world who publishes defence information deemed injurious to the US or favourable to a foreign nation is liable under the Espionage Act.

While Assange’s case may be an isolated case or *sui generis*, and no journalists are ever charged under the Espionage Act, the use of espionage charges against Assange is still problematic, as it likely has a chilling effect on national security journalism. Assange’s indictment likely deters journalists, editors, and publishers from pursuing or publishing stories of public importance out of concern that they themselves, as opposed to just their sources, may be exposed to criminal sanction.

(c) *Is Assange a journalist – and does it matter?*

To justify its indictment of Assange, the Trump Administration sought to distinguish *WikiLeaks* from the media by framing Assange and *WikiLeaks* as operating outside the scope of journalism.¹⁰⁰ Assange’s prosecution consequently raises the question of whether Assange should be regarded as a journalist who should be entitled to the protection of media freedom. While Assange, according to US authorities, is ‘no journalist’,¹⁰¹ to some, he is an award-winning investigative journalist. His proponents argue that there is no meaningful distinction between the editorial practices of *WikiLeaks* and the traditional press.¹⁰² On their account, Assange engages in ordinary journalistic practice by obtaining and publishing information of obvious public importance, much like mainstream

⁹⁵BBC, ‘Ivan Safronov Russian reporter who rejected deal gets 22-year jail sentence’ *BBC* (London, 5 September 2022) <<https://www.bbc.co.uk/news/world-us-canada-62794169>> accessed 2 May 2025.

⁹⁶BBC, ‘China jails award-winning cyber-dissident Huang Qi’ *BBC* (London, 29 July 2019) <<https://www.bbc.co.uk/news/technology-49150906>> accessed 2 May 2025.

⁹⁷See *R v Aubrey, Berry and Campbell* [1979] Crim LR 284.

⁹⁸Monica Toft and Sidita Kushi, *Dying by the Sword: The Militarization of US Foreign Policy* (OUP, 2023) 140.

⁹⁹Katharine Gelber, ‘Norms, institutions and freedom of speech in the US, the UK and Australia’ (2019) 41(2) *Journal of Public Policy* 209, 213.

¹⁰⁰Goitein (n 89).

¹⁰¹*ibid.*

¹⁰²See eg Tony Walker, ‘Journalist or serial pest? Julian Assange’s complex case will set major precedents’ *SBS News* (Sydney, 20 December 2019) <<https://www.sbs.com.au/news/article/journalist-or-serial-pest-julian-assanges-complex-case-will-set-major-precedents/riq3qs0bf>> accessed 2 November 2025; Charlie Savage, ‘Assange Indicted Under Espionage Act, Raising First Amendment Issues’ *New York Times* (New York, 23 May 2019) <<https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html>> accessed 2 November 2025.

media outlets have long done.¹⁰³ On this, however, Peter Greste comments:

Journalism demands more than simply acquiring confidential information and releasing it unfiltered onto the internet ... It comes with responsibility. To effectively fulfil the role of journalism in a democracy, there is an obligation to seek out *what is genuinely in the public interest*.¹⁰⁴

There is no settled definition of a ‘journalist’,¹⁰⁵ but journalism does indeed entail more than merely publishing newsworthy information. It requires editorial judgement, public interest considerations, which often involve filtering and redacting certain information, verifying information received, and adhering to ethical responsibilities.¹⁰⁶ In contrast to organisations like *Belingcat* and *ProPublica*, which usually demonstrate these professional standards and are consequently widely regarded as legitimate, albeit non-mainstream, journalism groups, Assange’s methods often eschew them.¹⁰⁷

To illustrate this, *WikiLeaks* frequently publishes raw, unredacted material without the contextual framing or harm-mitigation expected of professional journalism.¹⁰⁸ Its publications sometimes expose the identities of informants and other sources.¹⁰⁹ While Assange’s actions do serve a journalistic function, in bringing newsworthy information to the public, this article argues that journalism is not defined solely by the act of gathering and publishing news, but also by the responsible curation and handling of such information.

In publishing the classified information provided by Manning, *WikiLeaks* published the entire archive of the US diplomatic cables, drawing condemnation from their media partners on both sides of the Atlantic.¹¹⁰ *The Guardian* would comment:

WikiLeaks has published its full archive of 251,000 secret US diplomatic cables without redactions, potentially exposing thousands of individuals named in the documents to detention, harm or putting their lives in danger. The move has been strongly condemned by the five previous media partners, the

¹⁰³ *ibid.*

¹⁰⁴ Peter Greste, ‘Julian Assange is No Journalist: Don’t Confuse his Arrest with Press Freedom’ *Sydney Morning Herald* (Sydney, 12 April 2019) <<https://www.smh.com.au/national/assange-is-no-journalist-don-t-confuse-his-arrest-with-press-freedom-20190412-p51di1.html>> accessed 19 April 2025.

¹⁰⁵ Damian Tambini, ‘What is Journalism? The Paradox of Media Privilege’ (2021) 5 *European Human Rights Law Review* 523, 532.

¹⁰⁶ Jingrong Tong, ‘Journalistic Legitimacy Revisited: Collapse or Revival in the Digital Age?’ (2018) 6(2) *Digital Journalism* 256, 257.

¹⁰⁷ Nina Muller and Jenny Wiik, ‘From Gatekeeper to Gate-opener: Open-Source Spaces in Investigative Journalism’ (2023) 17(2) *Journalism Practice* 189, 191.

¹⁰⁸ Karin Wahl-Jorgensen, ‘Is WikiLeaks Challenging the Paradigm of Journalism? Boundary Work and Beyond’ (2014) 8 *International Journal of Communication* 2581, 2584–2586.

¹⁰⁹ James Ball, ‘WikiLeaks Publishes Full Cache of Unredacted Cables’ *The Guardian* (London, 2 September 2011) <<https://www.theguardian.com/media/2011/sep/02/wikileaks-publishes-cache-unredacted-cables>> accessed 16 April 2025.

¹¹⁰ *The Government of the USA v Julian Paul Assange* [2021] (Magistrates’ Court, 4 January 2021), [47].

Guardian, the *New York Times*, *El Pais*, *Der Spiegel* and *Le Monde* who have worked with *WikiLeaks* publishing carefully selected and redacted documents ... We deplore the decision of *WikiLeaks* to publish the unredacted State Department cables which may put sources at risk, the organisations said in a joint statement. Our previous dealings with *WikiLeaks* were with a clear basis that we would only publish cables which had been subjected to a thorough joint edited and clearance process ... We cannot defend the needless publication of the complete data. Indeed, we are united in condemning it.¹¹¹

The *New York Times* would also comment:

The *Times* and the other news organizations agreed at the outset that we would not disclose — either in our articles or any of our online supplementary material — anything that was likely to put lives at risk or jeopardize military or antiterrorist operations. We have, for example, withheld any names of operatives in the field and informants cited in the reports. We have avoided anything that might compromise American or allied intelligence-gathering methods such as communications intercepts. We have not linked to the archives of raw material.¹¹²

Accordingly, most of the commentary, both academic and media, concludes that Assange's methods fall outside the scope of journalism, or at the very least, traditional journalism.¹¹³ On this view, Assange is more accurately characterised as a publisher, as opposed to a journalist.

Nonetheless, this distinction, strictly speaking, is of limited relevance in determining liability under the Espionage Act. As Ethan Thompson notes, even if Assange was found to be operating as a journalist, this finding would not absolve his liability for the charges contained in his 2019 superseding indictment.¹¹⁴ On paper, the Espionage Act does not distinguish between journalists and non-journalists when providing liability, nor between redacted and unredacted disclosures, nor between 'mainstream' and 'fringe' media publications.¹¹⁵ It merely prohibits the unauthorised disclosure of national defence information, making no reference to journalism or the press.¹¹⁶ On paper, the Espionage Act makes no regard for the medium being used for such communication and is indifferent to claims of journalistic purpose.¹¹⁷

¹¹¹*ibid.*

¹¹²*ibid.*

¹¹³See eg Greste (n 104); Ali and Kunstler (n 12); Aaron Patrick, 'Julian Assange never accepted the ethics of journalism' *Australian Financial Review* (Sydney, 25 June 2024) <<https://www.afr.com/policy/foreign-affairs/julian-assange-never-accepted-the-ethics-of-journalism-20240625-p5joj9>> accessed 31 October 2025. See also judicial commentary: *The Government of the USA v Julian Paul Assange* (Magistrates' Court, 4 January 2021); *Julian Paul Assange v Government of the USA & Secretary of State for the Home Department* [2024] EWHC 700 (Admin).

¹¹⁴Thompson (n 6) 203.

¹¹⁵*ibid.*

¹¹⁶*ibid.*

¹¹⁷*ibid.*

Likewise, on the flip side, the First Amendment applies to everyone, including non-citizens and non-journalists.¹¹⁸ The US Supreme Court has clarified in *Branzburg v Hayes* that journalists do not enjoy any special protection from criminal prosecution under the First Amendment simply by virtue of their journalistic status, ruling:

It would be frivolous to assert — and no one does in these cases — that the First Amendment, in the interest of securing news or otherwise, confers a license on either the reporter or his news sources to violate valid criminal laws. Although stealing documents or private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news ... The Amendment does not reach so far as to override the interest of the public in ensuring that neither reporter nor source is invading the rights of other citizens through reprehensible conduct forbidden to all other persons.¹¹⁹

This position is reinforced, rather than undermined, by *New York Times Co v US*¹²⁰ (*Pentagon Papers Case*), decided one year before *Branzburg v Hayes*. As journalists at mainstream media outlets have yet to be indicted under the Espionage Act for publishing national defence information, the proceedings in the *Pentagon Papers Case* are arguably the closest to such a prosecution.¹²¹ Following Ellsberg's leak of the Pentagon Papers, the *New York Times* and *The Washington Post* began publishing excerpts after lengthy deliberations, cognizant that they were opening themselves to prosecution under §793(e) of the Espionage Act.¹²² The US initiated civil proceedings against the newspapers in response, seeking an injunction or prior restraint prohibiting them from further publishing the papers, on the basis that they were violating §793(e).¹²³

The US Supreme Court found 6–3 that the First Amendment protected the press from such censorship.¹²⁴ It should be noted, however, that the case was decided on the constitutionality of prior restraints, not the constitutionality of §793, with the majority providing vastly different reasons in their separate judgments for the *per curiam* opinion. Whilst self-proclaimed First Amendment absolutists Black and Douglas JJ argued that 'only a free and unrestrained press can effectively expose deception in government' and rejected the system of prior restraints in its entirety, their absolutist argument was rejected by White J and indeed, most of the majority.¹²⁵

¹¹⁸*ibid.* See also: *USAID v Alliance for Open Society* (2020) 591 US 205; *Reno v American-Arab Anti-Discrimination Committee* 525 US 471 (1999).

¹¹⁹408 US 665, 691 (1972).

¹²⁰403 US 713 (1971).

¹²¹Kurt Wimmer and Stephen Kiehl, 'Prosecution of Journalists Under the Espionage Act? Not So Fast' [2017] Communications Lawyer 24, 24.

¹²²Lackland Bloom, *Do Great Cases Make Bad Law?* (OUP, 2014) 283.

¹²³*ibid* 284.

¹²⁴*New York Times Co v US* 403 US 713, 714 (1971).

¹²⁵*ibid* 713.

Instead, White J, joined by Stewart J, found that further publication of the Pentagon Papers would ‘do substantial damage to public interests’ but refused the prior restraint sought because the US had not satisfied the heavy burden necessary to obtain one.¹²⁶

Significantly, White and Stewart JJ found that criminal punishment was available as a recourse against those who had leaked the Pentagon Papers.¹²⁷ Their decision has been criticised as a clear warning shot to whistleblowers, with some scholars arguing that it has encouraged the US to prosecute officials who leak national defence information.¹²⁸ Indeed, US Attorney-General John Mitchell, the next day, would state that the US was ‘continuing its investigation and will prosecute all those who have violated Federal criminal laws’,¹²⁹ whilst a Department of Justice press release stated that ‘all avenues of criminal prosecution have remained open’.¹³⁰ *Time* magazine was also reportedly told by authorities, ‘Anyone on the *Times*, the *Post* or the *Globe* is potentially liable to a charge of receiving stolen Government property’.¹³¹ Although no journalists were ultimately ever indicted, US authorities appeared to capitalise on concerns about the *possibility* of prosecution to control the editorial practices of the press.¹³²

Therefore, while the *Pentagon Papers Case* is a landmark press freedom victory that at the time created, as the *New York Times* puts it, ‘a largely overwhelming sense that the press cannot be either enjoined from or prosecuted for publishing national secrets’, it does not unanimously rule that the First Amendment protects whistleblowers or journalists from criminal prosecution under the Espionage Act.¹³³ Rather, White and Stewart JJ left the door open for Ellsberg and Russo to be prosecuted (and perhaps the journalists, too).¹³⁴ As later observed by the Supreme Court in the more recent case of *Bartnicki v Vopper*, the decision in the *Pentagon Papers Case*:

Raised, but did not resolve, the question ‘whether, in cases where information has been acquired unlawfully by a newspaper or by a source, government may ever punish not only the unlawful acquisition, but the ensuing publication as well’.¹³⁵

¹²⁶ibid 731.

¹²⁷ibid 733.

¹²⁸Bloom (n 122) 289.

¹²⁹Engelman and Shenkman (n 62) 135–136.

¹³⁰New York Times, ‘Mitchell Will Prosecute Law Violations in Leaks’ *New York Times* (New York, 2 July 1971) <<https://www.nytimes.com/1971/07/02/archives/mitchell-will-prosecute-law-violations-in-leaks-us-to-prosecute-any.html>> accessed 4 October 2025.

¹³¹Time, ‘The Law: What the Rap Might Be’ *Time* (New York, 26 July 1971) <<https://time.com/archive/6814736/the-law-what-the-rap-might-be/>> accessed 4 October 2025.

¹³²Engelman and Shenkman (n 62) 136.

¹³³Andrew Liptak, ‘A First Amendment Case That Made an “Incoherent State of the Law”’ *New York Times* (New York, 9 June 2021) <<https://www.nytimes.com/2021/06/09/us/supreme-court-pentagon-papers-prior-restraint.html>> accessed 12 April 2025.

¹³⁴Engelman and Shenkman (n 62) 258.

¹³⁵532 US 514, 528 (2001).

Neither does *Bartnicki v Vopper* suggest that journalists are protected from prosecution under the Espionage Act.¹³⁶ In that case, the Supreme Court ruled:

[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need ... of the highest order.¹³⁷

Whilst the decision is undoubtedly very helpful for media freedom, the information in question in *Bartnicki v Vopper* concerned collective bargaining negotiations that were obtained illicitly by an anonymous source via interception, contrary to wiretapping laws, and not national security information leaked in contravention of the Espionage Act.¹³⁸ It was not necessary for the Court to consider the public interest behind protecting national security information, meaning it is still unclear whether journalists are constitutionally protected from indictment under the Espionage Act.

Accordingly, the question of whether Assange qualifies as a journalist is legally unimportant. Journalists do not enjoy immunity from prosecution under the Espionage Act by virtue of their journalistic credentials. While it is true that the prosecution of mainstream media outlets under the Espionage Act is unlikely, due to the political fallout it would cause, *Branzburg v Hayes* indicates that the First Amendment would not protect journalists if they were to be prosecuted for publishing national defence information.¹³⁹

The second main argument invoked by the US to differentiate Assange from traditional media outlets – that Assange published the names of US human sources and partners unredacted, therefore putting their lives at risk – also, strictly speaking, has little legal significance.¹⁴⁰ While these practices form the basis of an argument that Assange is ‘no journalist’, the Espionage Act does not specify that disclosed information needs to be unredacted for it to be sanctionable. The statute merely inquires whether the information being disclosed relates to national defence. Even if Assange had redacted parts of the information he published, he would have still published national defence information and, therefore, likely violated the statute.

The distinction between journalists and non-journalists is not only legally unimportant under the Espionage Act but is also increasingly difficult to sustain as a coherent or meaningful form of classification in the contemporary media landscape.¹⁴¹ Assange’s case, perhaps more than any other, brings

¹³⁶ibid.

¹³⁷ibid 528. See also: *Smith v Daily Mail Publishing Co* 443 US 97, 102 (1979).

¹³⁸ibid 515.

¹³⁹408 US 665, 691 (1972).

¹⁴⁰Thompson (n 6) 203.

¹⁴¹See eg Michael Becker, ‘The Espionage Act & An Evolving News Media: Why Newspapers That Publish Classified Information May Face Criminal Charges as They Enter the Digital Age’ (2014) 4(2) American University National Security Law Brief 1, 16–17.

into question whether the traditional binary between journalist and non-journalist remains meaningful in the current era that has been characterised by the growing democratisation of publishing, the rise of citizen journalism, and the emergence of social media as a medium through which information is disseminated and consumed.¹⁴²

For much of the twentieth century, the production of news was concentrated among a relatively small number of institutional actors: newspapers, radio broadcasters, and later television networks.¹⁴³ These institutions served as gatekeepers, exercising significant influence and control over the flow of information to the public.¹⁴⁴ Within this framework, the journalist was, generally speaking, a readily identifiable figure – typically a person employed by one of these institutions – and the distinction between journalists and non-journalists was reasonably clear.¹⁴⁵

The growth of digital media and technology, however, has significantly disrupted this model. The internet has radically lowered the barriers to publication, enabling virtually anyone with access to the internet to disseminate information to a global audience.¹⁴⁶ The rise of blogging and social media platforms has created a vast and heterogeneous ecosystem of information producers who do not fit neatly into the traditional category of journalist, yet who routinely perform functions that were once the exclusive province of the institutional press.¹⁴⁷ For example, individual writers or ‘bloggers’ have been able to build substantial audiences on platforms such as LinkedIn, Substack, and X (formerly Twitter). Social media users sometimes also share classified information, leaked government data, and other sensitive information, without any journalistic training or intent, yet with significant consequences.

This raises the questions: Is an independent blogger who produces regular investigative reporting a journalist? Is a podcaster who interviews whistleblowers and discloses official information? Or is a social media user who curates and disseminates leaked government documents with commentary? Because of the developments in digital technology, the boundaries of journalism have become increasingly porous, and the category of journalist

¹⁴²See eg Margaret Simons, ‘Debating whether Julian Assange is a journalist is irrelevant. He changed journalism forever’ *The Guardian* (Sydney, 29 June 2024) <<https://www.theguardian.com/commentisfree/article/2024/jun/29/the-emergence-of-julian-assange-has-posed-one-of-the-great-questions-of-our-time>> accessed 4 May 2026.

¹⁴³C.W. Anderson, Emily Bell, and Clay Shirky, ‘Post-Industrial Journalism: Adapting to the Present’ (2015) 7(2) *Geopolitics, History, and International Relations* 32, 97.

¹⁴⁴Ashutosh Bhagwat, ‘The New Gatekeepers? Social Media and the “Search for Truth”’ in Kyle Langvardt and Justin Hurwitz, *Media and Society After Technological Disruption* (CUP, 2024) 35.

¹⁴⁵Anderson, Bell, and Shirky (n 143) 97.

¹⁴⁶Derek Wilding and others, ‘The Impact of Digital Platforms on News and Journalistic Content’ (University of Technology Sydney Centre for Media Transition, 2018) <<https://www.uts.edu.au/globalassets/sites/default/files/2018-12/cmt-news-report.pdf>> 17.

¹⁴⁷*ibid.*

offers an increasingly tenuous basis upon which to allocate legal protections and responsibilities in the contemporary information environment.

Rather than asking *who* is a journalist, the more appropriate inquiry is *what* constitutes journalism – that is, whether the activity in question serves the public interest functions traditionally associated with journalism, such as informing the public of an important issue, facilitating government accountability, and contributing to democratic deliberation.¹⁴⁸ This functional approach finds support in international human rights jurisprudence. In *Toktakunov v Kyrgyzstan*, the UN Human Rights Committee found that the realisation of the functions of the press and media – in creating forums for public debate and the forming of public and individual opinions on public matters – was not limited to the media or professional journalists but could also be exercised by public associations or private individuals.¹⁴⁹ Citing *S.B. v Kyrgyzstan*,¹⁵⁰ the Committee accordingly found that the author in their present case, a legal consultant of a human rights public association, could be seen as having the ‘special “watchdog” functions’ of the media on issues of public interest.¹⁵¹

Likewise, the European Court of Human Rights (ECtHR) has extended the protections of Article 10 to a range of actors beyond traditional journalists, including non-governmental organisations,¹⁵² academic researchers,¹⁵³ and bloggers,¹⁵⁴ on the basis that they contribute to public debate on matters of public interest, as the press does. In *Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina*, the Court reiterated that the protections associated with Article 10 of the ECHR are not limited to the institutional media but extend to all those who contribute to public debate.¹⁵⁵

In short, while this article concludes that Assange is not a journalist, that conclusion is unlikely to have a significant bearing on his liability under the Espionage Act. The statute does not distinguish between journalists and non-journalists; §793 merely inquires whether the accused has disclosed national defence information to a person unauthorised to receive it. Moreover, the growing democratisation of publishing and newsgathering – where it can be carried out by virtually anyone with access to the internet – renders traditional distinctions between journalists and non-journalists increasingly

¹⁴⁸For the public interest functions of the media, see eg Giles Moss and Lee Edwards, ‘Public Deliberation and The Justification of Public Service Media’ (2024) 31(3) *International Journal of Cultural Policy* 322.

¹⁴⁹(Communication No. 1470/2006, 28 March 2011) 8.

¹⁵⁰(Communication No. 1877/2009) Inadmissibility decision adopted on 30 July 2009.

¹⁵¹*Toktakunov v Kyrgyzstan* (Communication No. 1470/2006, 28 March 2011) 8.

¹⁵²See eg *Steel and Morris v UK* [2005] EMLR 314.

¹⁵³See eg *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (8 November 2016).

¹⁵⁴*ibid.* See also: *Cengiz and Others v Turkey* App no 48226/10 and 14027/11 (1 December 2015) 52–54; Ellen Hovlid, Paul Bjerke, and Birgitte Fonn, ‘Is the ECtHR Supporting a Journalistic Colonization of Other Fields? On the Application of the “Ethics of Journalism”’ (2025) 43(2) *Nordic Journal of Human Rights* 127, 133–134.

¹⁵⁵App no 17224/11 (27 June 2017) 86–87.

incoherent as a basis for allocating legal protections.¹⁵⁶ The protections associated with press freedom should attach to the *activity* of publication in the public interest, not to the *status* of the publisher.

The extradition of Assange and Article 10 of the ECHR

The UK's approval of Assange's extradition to the US also has important implications for media freedom in the UK. The decisions of the UK courts illustrate, with clarity, the limits of Article 10 as a form of media freedom protection. This is particularly important, following the UK's recent introduction of the National Security Act 2023 (UK), which overhauls the espionage offences previously contained in the Official Secrets Act 1911, 1920, and 1939 (UK). As there are cases suggesting that the Official Secrets Acts (including its espionage offences) are broad enough to capture the media when they disclose official information,¹⁵⁷ there have been fresh concerns that the National Security Act may pose a threat to media freedom in the UK, as the letter of some of its offences suggests that they have the capacity to capture journalists in certain circumstances.¹⁵⁸

Following its incorporation into domestic UK law through section 12 of the Human Rights Act 1998 (UK), Article 10 of the ECHR constitutes the principal form of rights-based protection for the media in the UK.¹⁵⁹ Article 10 guarantees a right to free expression but permits state-imposed restrictions on the right on several grounds, including 'national security, territorial integrity, or public safety', 'prevention of disorder or crime', and 'preventing the disclosure of information received in confidence.'¹⁶⁰

Unlike the First Amendment, which, when interpreted literally, suggests that freedom of speech and the press are absolute, the right to freedom of expression guaranteed by Article 10 of the ECHR is expressly subject to a detailed list of possible exceptions.¹⁶¹ While the UK's incorporation of Article 10 through the Human Rights Act has introduced into UK law the concept of freedom of expression as an individual right, the national security exceptions to Article 10 render it a weak safeguard when national security is invoked as a justification for the State to interfere with expression. Journalists typically cannot successfully invoke Article 10 as a defence to prosecution when they unlawfully disclose official information.

¹⁵⁶See eg Becker (n 141) 16–17.

¹⁵⁷See eg *R v Aubrey, Berry and Campbell* [1979] Crim LR 284; *R v Cairns, Aitken and Roberts* (CCC, 4 February 1971).

¹⁵⁸See eg Hall (n 17). See also: Reporters Without Borders (n 17).

¹⁵⁹Gelber (n 99) 218.

¹⁶⁰ECtHR, 'Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression' <https://www.echr.coe.int/documents/d/echr/guide_art_10_eng> accessed 29 April 2025.

¹⁶¹David Rolph, Matt Vitins, and Judith Bannister, *Media Law* (OUP, 2010) 31.

Government of the USA v Assange illustrates this with particular clarity.¹⁶² Following Assange's arrest in April 2019 at the Embassy of Ecuador in London, the US indicted Assange through a new superseding eighteen-count indictment under the Espionage Act and formally sought his extradition from the UK.¹⁶³ The Westminster Magistrates' Court heard the first of the hearings regarding the US's extradition request. The Magistrates' Court discharged the extradition request, accepting that extradition would be oppressive under s 91 of the Extradition Act 2003 (UK) due to the substantial risk that Assange would commit suicide while in US custody.¹⁶⁴

However, the Court rejected Assange's argument that his extradition to the US and the criminalisation of 'the gathering of information ... offends the core notion of Article 10' – for two main reasons.¹⁶⁵ Applying the test established in *R(Ullah) v Special Adjudicator*,¹⁶⁶ the trial judge, Baraitser J, held that Assange must demonstrate that his extradition would result in a 'flagrant denial or gross violation of Mr. Assange's Article 10 rights, such that they would be completely denied or nullified in the United States.'¹⁶⁷ On this, the Court found that the First Amendment provides similar protections to Article 10, and that Assange had not demonstrated that he would be denied First Amendment protections if extradited to the US, citing the US Supreme Court decision in *USAID v Alliance for Open Society* as an authority for the proposition that foreign nationals are not excluded from US constitutional protections when prosecuted in US courts.¹⁶⁸ The Court also expressed confidence that a US Court would 'properly consider Mr. Assange's right to free speech and determine any constitutional challenges to their equivalent legislation.'¹⁶⁹

Second, the Court also found that the extradition of Assange to the US would be compatible with Article 10 because a hypothetical prosecution of Assange, and also his source, Chelsea Manning, in the UK under its equivalent counterespionage legislation, would be compatible with Article 10.¹⁷⁰ Drawing on *R v Shayler*,¹⁷¹ the Magistrates' Court rejected Assange's argument that the US's trial of Manning was contrary to Article 10, and that his position, as publisher as opposed to primary discloser, was a *fortiori*.¹⁷² Instead, the Court found that Manning's conduct could amount to offences contrary to s 1 of the Official Secrets Act 1911 (UK) – the UK's

¹⁶²(Magistrates' Court, 4 January 2021).

¹⁶³*ibid* [7].

¹⁶⁴*ibid* [363].

¹⁶⁵*ibid* [115].

¹⁶⁶[2004] 2 AC 323.

¹⁶⁷*The Government of the USA v Julian Paul Assange* (Magistrates' Court, 4 January 2021) [267].

¹⁶⁸*ibid* [272]. See also: *USAID v Alliance for Open Society* (2020) 591 US 205.

¹⁶⁹*ibid* [275].

¹⁷⁰*ibid* [273].

¹⁷¹[2002] UKHL 11.

¹⁷²*The Government of the USA v Julian Paul Assange* (Magistrates' Court, 4 January 2021) [110]–[118].

classic ‘spying’ offence – and ss 1(1), 1(3), and 2 of the Official Secrets Act 1989 (UK) – offences pertaining to unauthorised disclosures of official information made by Crown servants.¹⁷³ It further held that Assange’s alleged offending could also amount to assisting or encouraging Manning in the commission of these offences, or conspiracy to commit the same.¹⁷⁴

The US was also successful in arguing that Assange’s conduct, which included allegedly conspiring with Manning in stealing classified information, could not be characterised as legitimate journalism.¹⁷⁵ Accordingly, Baraitser J, citing *Brambilla and others v Italy*¹⁷⁶ – where three journalists had been convicted after intercepting carabinieri radio communications to obtain newsworthy information – found that a journalist, notwithstanding the vital role they played in a democratic society, could not claim immunity from criminal liability for the sole reason that their conduct was for the purpose of gathering news.¹⁷⁷ It should, however, be noted that the Article 10 issue could have been approached differently at the Magistrates’ Court if the issue of complicity was absent, with Baraitser J finding:

Had Mr. Assange decided not to assist Ms. Manning to take the information in the various ways described above, and merely received it from her, then the Article 10 considerations would be different.¹⁷⁸

The Magistrates’ Court was also critical of Assange’s “dumps” of vast amounts of data onto the internet’, finding such practices could not be classified as ‘responsible journalism’, ruling:

To illustrate this point, in stark contrast to Mr. Assange’s final, indiscriminate disclosure of all of the data, newspapers who had worked with him from both sides of the Atlantic condemned his decision. These traditional news media outlets contrasted their own careful editorial decisions not to publish these names, with what they describe as a ‘data dump’ carried out by Mr. Assange.¹⁷⁹

Thus, while Assange was able to thwart the first of the US’s extradition requests on well-being grounds, the decision of the Westminster Magistrates’ Court nonetheless highlights that Article 10 does not protect journalists and other publishers when they contravene criminal laws, such as the Official Secrets Act 1989 or the National Security Act. Nor is Assange considered to be a ‘journalist’ in the eyes of Baraitser J. The US responded by appealing the decision to the High Court of England and Wales (EWHC), which subsequently overturned the Westminster Magistrates’ Court decision, quashing

¹⁷³ibid [34]–[37].

¹⁷⁴ibid.

¹⁷⁵ibid [108].

¹⁷⁶ECtHR [2016] 22567/09.

¹⁷⁷*The Government of the USA v Julian Paul Assange* (Magistrates’ Court, 4 January 2021) [117].

¹⁷⁸ibid [118].

¹⁷⁹ibid [131]–[132].

the order discharging Assange and remitting the case to the Magistrates' Court with an order that it send the matter to the Home Secretary to decide on the extradition.¹⁸⁰ Assange responded by appealing to the UK Supreme Court, which refused Assange leave to appeal on the basis that he had failed to 'raise an arguable point of law'.¹⁸¹ UK Home Secretary Priti Patel would subsequently approve Assange's extradition to the US, finding 'no grounds to prohibit the order being made' as 'the UK courts have not found that it would be oppressive, unjust or an abuse of process to extradite Mr Assange'.¹⁸²

Assange responded by appealing the Home Secretary's decision to the EWHC, again invoking Article 10.¹⁸³ At the EWHC, he argued again that Manning was a whistleblower whose disclosures would have been justified under Article 10 and fastened to the ECtHR's decision in *Halet v Luxembourg*.¹⁸⁴ Assange also contended that Baraitser J had failed to refer to the 'overwhelming public interest in exposing the wrongdoing that was revealed by the material published by him'.¹⁸⁵ The EWHC, however, found that there was 'no strong public interest in the publication or revelation of the names; and strong countervailing interests in protecting them',¹⁸⁶ stressing the importance of 'balanc[ing] the public interest in publication against the legitimate aims pursued by legislation that is intended to protect national security'.¹⁸⁷ Moreover, the EWHC also ruled that the prosecution of journalists is compatible with Article 10 in certain situations, for example, when they solicit officials for information, citing *R v France*¹⁸⁸ and *R v Chapman, Gaffey and Panton*¹⁸⁹ as authorities.

The key insight from the proceedings in Assange's matter is the Court's emphasis on the limits of media freedom when national security is invoked as a competing interest. Media freedom is not absolute, and Assange's extradition hearings in the UK illustrate that Article 10 provides little protection for whistleblowers and publishers in the UK when they are accused of criminal behaviour, especially if that behaviour is alleged to prejudice national security.

¹⁸⁰*Government of the USA v Assange* [2021] EWHC 3313 (Admin) [98]–[99].

¹⁸¹Victoria Lindrea, 'Julian Assange denied permission to appeal against extradition' BBC (London, 14 March 2022) <<https://www.bbc.co.uk/news/uk-60743322>> accessed 3 July 2025.

¹⁸²UK Home Office, 'Julian Assange statement and extradition factsheet' (*Home Office*, 17 June 2022) <<https://homeofficemedia.blog.gov.uk/2022/06/17/julian-assange-statement-and-extradition-factsheet/>> accessed 17 June 2025.

¹⁸³*Julian Paul Assange v Government of the USA & Secretary of State for the Home Department* [2024] EWHC 700 (Admin) [9].

¹⁸⁴*ibid* [139]. See also: *Halet v Luxembourg* (2023) 55 BHRC 348.

¹⁸⁵*ibid* [157].

¹⁸⁶*ibid* [149].

¹⁸⁷*ibid* [140].

¹⁸⁸[2016] EWCA Crim 1588; [2016] 4 WLR 175.

¹⁸⁹[2015] EWCA Crim 539.

Conclusion

In conclusion, the US's legal proceedings against Julian Assange – his indictment under the Espionage Act and extradition request – have significant implications for media freedom. Although Assange is better characterised as a publisher rather than a journalist, as his methods often fall outside the ethical and professional norms associated with journalism, the legal principles established through his indictment and sentencing extend far beyond his individual case. The indictment of Assange collapses the long-standing distinction between government leakers (deemed prosecutable) and publishers (deemed protected by the First Amendment) in the US, exposing the act of *publishing* national defence information by those who sit outside of government to liability under the Espionage Act.

While commentators often debate whether Assange can be characterised as a journalist, the Espionage Act's indifference to the accused's motive or journalistic status renders the question of whether Assange is a journalist irrelevant, strictly speaking, for the purposes of determining liability under the Espionage Act. In addition, the growing democratisation of publishing and newsgathering in the digital age – whereby virtually any individual with internet access may disseminate information to a global audience – means that the conventional distinction between journalists and non-journalists is increasingly unhelpful as a foundation upon which to confer legal protections. As a result, the safeguards associated with press freedom ought to be grounded in the nature of the activity – namely, publication in the public interest – rather than in the formal status or credentials of the publisher.

Assange's indictment, reinforced by his guilty plea, ultimately creates a precedent for the future prosecution of journalists and other publishers who publish national defence information, even when that information reveals serious governmental wrongdoing or is of significant public interest. Assange's prosecution, therefore, carries a potential chilling effect on media freedom by potentially deterring national security journalists from reporting on matters of public importance. The fact that such liability has been asserted extraterritorially further amplifies the potential chilling effect, to where it may affect investigative journalism worldwide.

Moreover, the decisions of the UK courts regarding his extradition to the US demonstrate that Article 10 of the ECHR offers limited protection for journalists in the UK when national security is invoked as a justification for state interference with expression, and journalistic activity is characterised as criminal conduct. The Court's analogy of Assange's alleged conduct to offences under the UK's Official Secrets Acts, and willingness to accept that the UK's espionage and unauthorised disclosure offences may encompass both whistleblowers and journalists, further underscores

the limitations of Article 10 as a protection for national security journalists in the UK when they are charged with secrecy offences such as those found in the Official Secrets Act 1989 (UK). In short, the outcome of Assange's extradition proceedings illustrates that Article 10 does not operate as a robust protection for UK-based journalists facing prosecution for publishing official information.

In summary, the significance of the *US v Assange* lies in the precedents the case establishes. If the publication of national defence information can be constitutionally prosecuted under the Espionage Act, then media freedom is rendered contingent on prosecutorial restraint rather than legal protection. For democratic societies that rely on a free press to scrutinise the State and report on matters of public importance, that contingency is a real, significant problem.

Acknowledgements

I thank Professor Jacob Rowbottom for his invaluable comments on earlier drafts of this article. Any mistakes are my own.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributor

Derick M. J. Luong is a Lecturer in Law at the University of Technology Sydney, specialising in media, constitutional, and criminal law. D.Phil. M.Phil. (Oxford); GDLPP (UNSW); LL.B. (Hons I) B.Bus. (Dist) (UTS).

ORCID

Derick M. J. Luong  <http://orcid.org/0000-0002-5511-0376>