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WikiLeaks: An Overview, Part I

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Collage of Julian Assange, by Artensoft

Julian Assange, a 39-year-old Australian with flaxen hair, is the man of the hour. In late 2006, he set up WikiLeaks as a pro-transparency group, and since then, it has published on its website an endless stream of documents—from the Guantánamo Bay detention camp manual to the private emails of then-vice presidential candidate Sarah Palin. Now, after three major releases of classified U.S. government files, Assange finds himself in the legal crosshairs of Attorney General Eric Holder.

In July, the Sweden-based group published over 90,000 documents related to the war in Afghanistan. This expose was followed-up by an even larger one on Iraq. Then, in November, WikiLeaks began the slow release of 250,000 diplomatic cables. Assange allegedly obtained his leaks from a disgruntled U.S. soldier who had gleaned them from the Secret Internet Protocol Router Network [SIPRNet], on which several agencies communicate. That soldier, Private First Class Bradley Manning, is now awaiting a court martial.

As for Assange, Senate Republican Mitch McConnell has called him "a hi-tech terrorist," and the government has pressured companies like Paypal and MasterCard to stop doing business with WikiLeaks. However, a number of mainstream newspapers continue to work with the group, combing through its files and coordinating stories. This has put the U.S. government in an awkward position. How does it legally distinguish between WikiLeaks and the traditional media? Is Assange, in fact, a journalist?

The following article will examine these two key questions.

Is WikiLeaks a News Agency?

New York University journalism professor Jay Rosen has tweeted that WikiLeaks is a news organization because "it takes in newsworthy information, processes it, and publishes it." However, the Pentagon public affairs office does much the same thing, so this one-line definition seems rather inadequate.

Also, it is unclear if WikiLeaks really considers itself a member of the Fourth Estate. True, its website now describes employees as journalists. But when a writer from *The New Yorker* met with Julian Assange and his team last March, a key member did not mince words when he declared, "We are not the press."

So what then is WikiLeaks? Cyberpunk author Bruce Sterling sees it as a revolutionary hacker outfit. Assange "aspires to his transparent crypto-utopia in the way George Bush aspired to imaginary weapons of mass destruction. And the American diplomatic corps are so many Iraqis in that crusade," Sterling wrote in an online essay.

Now, Assange was a teen hacker. In the 1980s, he and two others formed the International Subversives, which broke into computer systems belonging to the Department of Defense and the Los Alamos National Laboratory, among others. But that fact alone cannot support the Sterling thesis. People can and do change.

Or at least some do.

Around the same time he set up WikiLeaks, Assange published "Conspiracy as Governance" on his personal blog. In this 1,900-word manifesto, he argued that authoritarian regimes—which, he implied, included the U.S.—could be defeated by choking off communication between elites. This would then leave the ruling conspiracy unable "to comprehend its environment and plan robust action."

In a preface to the essay, Assange makes it clear that the freedom fighter's weapon of choice is the leak.

Interestingly, this stifling effect did, in fact, occur once the diplomatic cables started to go public in November. Vice President Joe Biden said on NBC's "Meet the Press" that foreign officials are now leery to discuss sensitive matters with American diplomats, making his own job cumbersome.

It is hard to tell whether WikiLeaks, through its many public disclosures, seeks to inform the public about newsworthy events or just make it harder for governments to conduct their affairs, or perhaps a little of both. Repeated attempts to secure an interview with a group representative have failed.

However, the language used by Assange offers some hints. Following the release of the Afghan war logs this past July, he boasted to a German reporter, "I enjoy crushing bastards."

Likewise, Jimmy Wales told BBC News of an exchange he had with Assange. When the co-founder of Wikipedia had asked why the Australian had (until recently) failed to complete the technical transfer of ownership of his WikiLeaks sites, Assange replied, "I'm busy fighting the superpowers."

Perhaps Assange is best viewed as anti-establishment activist and broker of information who cooperates with mainstream newspapers to the mutual satisfaction of both sides. The *Guardian*, *Le Monde*, etc. get their stories about secret Army units and backroom deals, and he gains access to the masses.

Can the Government Successfully Prosecute Julian Assange?

Attorney General Eric Holder has said that the government is building a legal case against Julian Assange. And one of the laws being looked at is the Espionage Act of 1917, which due to its age and ambiguity, has given rise to certain questions and misunderstandings.

Despite the name of the law, the Espionage Act doesn't only apply to spies but to anyone who discloses classified information pertaining to national defense. In that respect, it's akin to the Official Secrets Act in Britain, says Roger Alford, a law professor at Pepperdine University.

Also, unlike treason charges, one need not be a U.S. citizen to be prosecuted for its violation.

That said, it won't be easy to convict Assange for violation of this law.

First, the WWI-era statute has rarely been used. In 2005, the government did try to convict two pro-Israel lobbyists for violating the Espionage Act. (They passed along classified Pentagon information about Iran to Israel.) But the case faltered when Judge T.E. Ellis ruled that the prosecution had to prove intent to harm national security.

Second, the law applies to all publishers of the leaks—not just the first one in line. Therefore, WikiLeaks and *The New York Times* would both be culpable under the Espionage Act, noted legal expert Stephen Vladeck, while testifying at the Hearing Before the House Committee on the Judiciary, in mid-December.

Now, before he started releasing the diplomatic cables in November, Assange had asked the U.S. State Department for help in editing out potentially harmful details. However, the government refused to cooperate. Assange then wrote a second letter adding that WikiLeaks had no desire to "harm the national security of the United States."

This move might have kept him out of legal trouble. Also, there's safety in numbers. "There is little chance of the government going after *The New York Times*," says Peter Spiro, a Temple University law professor, "and going after one without the other would be an unprincipled exercise of prosecutorial discretion."

By contrast, Alford says that Assange can be prosecuted under the conspiracy parts of the law by himself, without going after anyone else. According to reports in the media, the Australian activist had been in prolonged contact with Pfc. Manning and had even gave him the encryption technology to help move the information.

That's something that the mainstream newspapers have not done.

Likewise, the Pepperdine professor believes that a convincing argument could be made that Assange, his cordial letters to State notwithstanding, really did want to hurt the U.S. After all, WikiLeaks did not seek out the government before publishing the Iraq and Afghan war logs. (Assange even revealed the social security numbers of soldiers.)

Ultimately, though, the attorney general might give up on the Espionage Act. Instead, Assange would be indicted on other charges, such as the theft of government property. In going this legal route, the U.S. government could again avoid prosecuting *The New York Times*.

In addition, a theft charge sounds far less political—and hence, less sensational—than a full-blown espionage case. "The government would prefer to get him on the least controversial law," says Spiro. "If they could get him on tax evasion like Al Capone, they would."

(Next: What impact has WikiLeaks had on Mozambique and Tunisia?)

Correction, February 28, 2011: The sentence above should read, **What impact has WikiLeaks had on Zimbabwe and Tunisia?**

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