

# **USA: As an American lawyer, I don't want to see Julian Assange extradited to my country**

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**The UK should step in and save the US from its worst excesses.**

Many fear that Assange could face life imprisonment or even execution if extradited to the US ( EPA )

Julian Assange was indicted last week for 17 violations of the Espionage Act of 1917. The Espionage Act makes it a crime "to convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies when the United States is at war, to cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States." He faces up to 340 years in prison.

You don't have to like Julian Assange's politics or his personality to understand that if he is extradited to the United States, not only does he face a de facto life sentence, but every journalist who receives and publishes classified information faces such jeopardy as well. As the Knight First Amendment Institute tweeted, "The government argues that Assange violated the Espionage Act by soliciting, obtaining, and then publishing classified information. That's exactly what good national security and investigative journalists do every day."

Seymour Hersh would have been similarly liable under the Espionage Act for My Lai. The editors of the *New York Times* and the *Washington Post* would have been liable for publishing the *Pentagon Papers*. The laws are there; it took the restraint of the Nixon justice department not to try to put these people in jail. The Trump justice department has no such restraint.

The Department of Justice claims the First Amendment is not implicated because Assange was not a journalist. But the First Amendment does not distinguish who is and who is not a journalist. Journalists are not licensed by the government, nor should they be. Governments that want to restrict free speech delegitimize the publishers of information (as "enemies of the people", in some cases) by limiting what is journalism and putting those who publish it on the outside of the definition. Calling Assange a non-journalist is a slippery slope to state-controlled media.

So, Assange received classified information and he published it. His judgment in not reviewing or editing or analyzing that information may well have been poor, but there are no standards that a government can or should enforce as to what constitutes proper objective analysis before publication.

It is the government's job to protect its information. If information is hacked, that is a crime. Once that hacked information passes to a third party, it is, however, within the discretion of that third party, without criminal liability, to decide whether to publish.

The First Amendment is not self-executing and is under threat when the administration of the day holds it in contempt. That is why the United States desperately needs the help of the United Kingdom right now, its good judgment, its restraint, the spirit of Mill and Locke, to prevent this terrible assault on a fundamental freedom from happening.

Nations tend to support freedom of expression far more in theory than in practice. Article 125 of the Soviet Constitution of 1936 enacted under Stalin guaranteed freedom of speech and the press. Article 35 of the Chinese Constitution provides similar guarantees. Yet real governments show real anger when opinions are expressed that are outside acceptable parameters or when the people become aware of facts that the government would prefer remained hidden. And that anger is often channeled into punitive legal action that works around or ignores the fine words of those countries' founding documents.

The philosophical underpinnings of free expression in the United States largely came from Great Britain. Absolute parliamentary privilege dates from 1689 and the American founding fathers were heavily influenced by Mill and Locke. Indeed, it was the royal pushback against free expression with the Alien and Sedition Acts that was a main trigger of the Revolution.

Today, the United Kingdom has discretion and indeed the responsibility to refuse to extradite Assange to the United States. The extradition treaty between the US and the UK prohibits extradition for "political offenses," a common exception that prevents the extradition process from being manipulated for governments to punish people for their political activities or views. It also requires that any offense for which a person is extradited must also be an offense in the UK: the "dual criminality" principle.

### **Key moments for Julian Assange**

Would what Assange did be a crime under applicable British law, which still includes European law? I would expect it would not, but I will leave that for British lawyers. There can be no doubt, however, that Trump's use of the Espionage Act to chill investigative journalism is a political act and in breach of the political offense exception.

In a time of political upheaval in Great Britain, I would hope that whoever is making decisions for Her Majesty's Government when the Assange extradition issue is before him or her exercises the good judgment and respect for our common traditions to save the United States from its own grave current intolerance.

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### **P.S.**

- The independent.co. Tuesday 28 May 2019 19:12:  
<https://www.independent.co.uk/voices/julian-assange-wikileaks-extradite-us-rape-allegations-uk-a8933916.html>