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**As Assange’s Extradition Hearing Resumes on Labor Day, the U.S. Seeks a PR Advantage with Untimely Facts and New Threats to Press Freedoms**

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The extradition hearing for Julian Assange is set to resume at the Old Bailey on Labor Day, when the U.S. government will continue its attempt to convince the U.K. to send Assange to the United States to face criminal charges in a Virginia federal court.

While the parties will pick up more or less where they left off, Assange’s team will need to grapple with significant developments in his case on this side of the Atlantic. Assange’s defense was partially derailed on June 24, when the U.S. government sprung on him a [newly amended indictment](https://www.justice.gov/opa/press-release/file/1289641/download)—the government’s second round of amendments since 2018.

This latest version contains no new charges against Assange but significantly expands the factual allegations supporting the government’s claim that Assange violated the Espionage Act and conspired to violate the primary federal computer hacking statute, the Computer Fraud and Abuse Act (“CFAA”).

The timing of the new indictment was odd, but the amendments give us significant clues as to the prosecutors’ motivations—and as to the weaknesses of the government’s case against Assange.

The indictment significantly shifts the case’s focus. While the first two were rooted almost entirely on Assange’s relationship with Chelsea Manning, the most recent indictment adds an array of new allegations, including that:

* Assange recruited Sigurdur Thordarson to hack into Icelandic officials’ computers,
* Assange personally gained unauthorized access to a website used by the Icelandic government,
* Wikileaks paid hackers,
* Assange personally directed at least one hack,
* Assange coordinated and provided tools and targets for Anonymous- and LulzSec-affiliated hackers, including Jeremy Hammond and Hector Monsegur (“Sabu”) , and
* Former Wikileaks editor Sarah Harrison aided Edward Snowden’s flight to Russia.

In addition to bolstering its legal case, the government seeks a public relations advantage by attempting to subordinate any free-press concerns to its characterization of Assange as a cyber criminal. This is evident, just for example, in the indictment’s mention of Harrison’s assistance to Snowden, which has virtually nothing to do with the actual charges facing Assange and serves only to cast Wikileaks as a bad actor and a “hostile intelligence service,” to borrow U.S. Secretary of State Mike Pompeo’s characterization.

Many of the government’s new allegations seem to be included for a particularly concerning reason: Because the government substantially broadened the original indictment and most of the core allegations bolstering the government’s case fall outside the five-year statute of limitations to bring the hacking conspiracy charge, the government needs to avoid the inevitable argument that the allegations were brought too late and should therefore be excluded.

To sidestep this argument, U.S. prosecutors packed the newest indictment with paragraph after paragraph of allegedly conspiratorial activities of Assange and his Wikileaks associates that happened as recently as “June 2015” and are therefore arguably timely. But the supposedly conspiratorial “recruitment” activities on which the indictment depends are indistinguishable from standard journalistic practices and political expression, and they are thus not criminal at all.

These allegations should be excluded from the indictment in their entirety, along with all the new allegations supposedly supporting the hacking charge. In the meantime, their mere presence in the indictment underscores the political nature of the charges and the dangerousness of the prosecution as a whole for press freedoms.

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In March 2018, nearly eight years after Wikileaks published the Department of Defense documents leaked by Chelsea Manning and nearly six years after Assange sought asylum in the Ecuadorian embassy in London, U.S. prosecutors [indicted](https://www.justice.gov/opa/press-release/file/1153486/download) Assange on a single charge of conspiring to violate the CFAA. While most observers expected Assange to be charged, if at all, under the Espionage Act for his role in publishing the Manning documents, the CFAA conspiracy charge instead stemmed from Assange’s alleged agreement to help Manning crack a password to grant her access to a government network.

It’s far more likely that Manning, who already had access to the government network in question, simply sought Assange’s assistance downloading video games and movies onto her computer. Yet the government’s allegations remain.

In May 2019, in the wake of Assange’s [sudden arrest](https://www.nytimes.com/2019/04/11/world/europe/julian-assange-wikileaks-ecuador-embassy.html) in the Ecuadorian embassy, the U.S. government finally added seventeen counts under the Espionage Act relating to Wikileaks’ reception and publication of the Manning documents, causing an uproar in the press freedom community, which decried the indictment’s attempts to criminalize [pure publication](https://www.rcfp.org/may-2019-assange-indictment-analysis/) and other common journalistic activities.

The third indictment shifts the government’s tone and approach, reframing Assange’s actions as “recruitment” rather than “encouragement,” suggesting a coordinated and unified plan rather than isolated incidents. It also generally reframes Wikileaks as being an active participant in hacks rather than a mere passive receptor of stolen documents. In short, the government is attempting to portray Assange as the hacker mastermind of Wikileaks and to leave as little room as possible to understand his actions as journalistic.

But the indictment might have come too late.

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While the CFAA charge is only one of eighteen facing Assange and presents the shortest maximum penalty of any of the charges, in certain ways it is the most important.

The government knows that the Espionage Act charges are somewhat tenuous, both legally and politically. Assange can and will mount a strong First Amendment challenge to each of these seventeen counts, especially the ones relating to pure publication. The Obama administration famously [declined to prosecute](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) Assange because of the free-press implications of such a case, and a future Biden Department of Justice could follow suit by dismissing the Espionage Act counts even before a judge is able to rule on the First Amendment issues. Accordingly, while the espionage charges are extremely serious and represent all but one of the charges facing Assange, the government apparently believes it can’t rely on them.

The CFAA conspiracy count, on the other hand, does not bear the same free-press concerns. A journalist who directly hacks into a government computer is not shielded from criminal liability, even if the journalist was simply looking for newsworthy content, and few would argue that such activities should be protected.

Prosecution in the United States may well depend on the viability on the CFAA conspiracy charge, so the recent allegations—including those relating to the hacks of the Icelandic government—are crucial for the government’s case. The problem for the government is that Assange has a strong argument that the core allegations that would bolster the CFAA conspiracy count were brought too late and are barred by the statute of limitations.

While the Espionage Act counts are clearly within the statute’s ten-year limitations period, the default period for the CFAA conspiracy charge Assange faces is only five years, meaning that charges must generally either be brought within five years of the alleged conduct or not at all.

The government has apparently flouted the five-year period from the beginning—Assange was initially indicted on March 6, 2018, just short of eight years after Assange’s alleged agreement to crack a password for Manning between March 8–10, 2010—perhaps planning to rest on an argument that the statute of limitations period was tolled while Assange was sheltered in the Ecuadorian embassy. Regardless, if the government had simply added a few new details to the initial indictment, there would arguably be no problem—but with the third indictment, even though the government added no new charges, they present an entirely different factual basis for the charges and will rely on entirely different evidence than for the Manning facts.

Under federal law, the statute of limitations clock for conspiracy generally does not start to run until the end of the conspiracy. So, if Assange’s hacking conspiracy continued until June 2015, the government would generally have until June 2020 to bring charges. Manning’s dealings with Thordarson and Lulzsec, however, supposedly occurred between 2010 and February 2012, more than eight years before the June 2020 indictment, and so would be barred by the statute of limitations.

The government needs something else. If it can prove that something furthering the conspiracy occurred on or after June 24, 2015, *all* of the conspiratorial conduct in the indictment, including the conduct of Sigurdur Thordarson and Sabu, would fall within the limitations period.

Enter Wikileaks’ supposed recruitment efforts.

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The indictment’s new facts span from 2010 to 2015, so they collectively fit within the five-year window. But the only allegations within that timeframe are Wikileaks’ recruitment efforts in the forms of public speeches, website copy, and a tweet.

The specific allegations of “recruitment” are comical. For example, Assange is accused of telling the audience at a 2013 Chaos Computer Club meeting, among other relatively banal statements, that “I’m not saying don’t join the CIA; no, go and join the CIA. Go in there, go into the ballpark and get the ball and bring it out.” Who (if anyone) was Assange supposed to have been recruiting? For what? How did these vague encouragements further a conspiracy to unlawfully hack computers? The indictment doesn’t tell us.

The allegations extend to Wikileaks associates and Assange’s supposed co-conspirators. Sarah Harrison allegedly attempted to recruit hackers at the 2014 re:publica conference by explaining to the audience that “[f]rom the beginning our mission has been to publish classified or in any other way censored information that is of political, historical importance.” This reads like a benign mission statement that could apply to plenty of law-abiding press outlets, not like evidence of a criminal conspiracy.

Additionally, Harrison and former Wikileaks volunteer Jacob Appelbaum supposedly attempted to recruit hackers at a June 2015 event sponsored by the Rosa Luxemburg Foundation in Germany, by promising their audience that WikiLeaks would publish any information obtained by anyone in the audience who could infiltrate organizations supporting the military, find the right “informational way to strike,” and emulate Edward Snowden.

Finally, the indictment alleges that Wikileaks recruited hackers through its website, where the organization maintained a list of “The Most Wanted Leaks of 2009,” and that the Wikileaks Twitter account tweeted a link to the list.

There are numerous problems with the government’s reliance on these allegations to prove its conspiracy charges against Assange. First, the government would need to prove that the recruitment efforts furthered the conspiracy to access a computer without authorization, which seems far-fetched if not preposterous.

The core requirement of any conspiracy charge is an agreement between two or more people to violate the law—assuming the Wikileaks staff made some unalleged and unspecified agreement with each other, what do vague, public presentations about Wikileaks’ past activities and future outlook have to do with the Manning, LulzSec, or other supposedly conspired hacks?

Most concerningly, the government’s reliance on Wikileaks’ supposed recruitment efforts to prove its conspiracy effectively criminalizes constitutionally protected speech, including standard journalistic and expressive activities, encompassing even statements of general political viewpoint and descriptions of routine journalistic process.

In order to perform their core function, journalists of all sorts must have the latitude and flexibility to undertake the types of actions that the government now alleges amount to criminal conspiracy, at least in combination. These actions include associating with sources, communicating with sources, issuing broad invitations for sources to provide newsworthy information (including and especially classified information), telling potential sources what types of information would likely be newsworthy, promising to publish newsworthy content, receiving newsworthy information from sources, and publishing such information.

It remains to be proven whether Assange went beyond protected activities by actively taking part in hacking, either by agreeing to help Manning crack a password or in dealings with hackers. But even if he did and the government can prove it, the government should not be permitted to bootstrap constitutionally protected journalistic conduct onto non-protected criminal conduct in order to meet its burden of proof. Core press freedoms—to investigate, write, and publish—do not evaporate even if a person happens to break laws in obtaining a scoop.

Journalists cannot be expected to merely sit on their hands and wait for documents to fall on their desks, and the First Amendment does not demand such passivity. As it stands, the Assange indictment fails to distinguish between the legal significance of helping hackers infiltrate a computer and giving vague speeches about the virtues of publishing classified material, as Assange, Harrison, and Appelbaum allegedly did.

Ultimately, the common debates about whether Assange is himself a journalist and whether the First Amendment even applies to Assange (a non-citizen and non-resident of the United States who was not present in the United States when he committed the acts in question) miss the point. Many of the actions of which Assange is accused—and that supposedly further a criminal conspiracy—are the types of actions that legitimate journalists undertake every day. If the freedoms of press and expression rest on the nationality of the editor or on the degree to which a publisher edits content before publication, such freedoms are weak indeed.

U.S. Secretary of State Mike Pompeo foreshadowed the government’s current approach to Assange and its hostility to press freedoms in his [first public statement](https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-csis.html) as CIA Director in 2017, declaring that “we can no longer allow Assange and his colleagues the latitude to use free speech values against us.” Whatever transpires in London with the extradition hearing or in Virginia with an eventual criminal trial, the government’s approach in the most recent indictment against Assange stands as fair warning to advocates of a free press.

*This is an amended version of an article published by MLRC on September 3, 2020. It reflects the fact the statute of limitations for a conspiracy to violate the CFAA is five years and the statute of limitations for violations of the CFAA itself is eight years.*

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