

WikiLeaks, the Constitution, and the Right to Know

Natalie Marie DaRe

College Park High School

Abstract

The United States claims to be a democracy, in which the people have the power. However, when the government is hiding information from its people, this is no longer a democracy. From the beginning of time, the press has served as a sort of censorship for the government—a way to keep it honest. Lately, however, the press has been at the mercy of the government. The government has been able to regulate what information they want out available to the public and, more importantly, what information they do not want available to the public. WikiLeaks and Julian Assange have recently challenged that power. As a way to fight back, the government is doing everything it can to dismiss WikiLeaks as journalism, so that it cannot be protected by the First Amendment and the Freedom of Press. This research paper focuses on whether or not WikiLeaks can be considered journalism, and if Wikileaks or any other news source has the right to disseminate classified documents if given the opportunity.

WikiLeaks, the Constitution, and the Right to Know

Introduction

“No government ought to be without censors, and where the press is free, no one ever will.”

-Thomas Jefferson, 1792

WikiLeaks is considered an abomination by many; Julian Assange and Bradley Manning, traitors. Is this really fair? WikiLeaks is simply a website that allows anonymous sources to spread documents and files the government does not want the general public to see. It is essentially run by everyday people; if no one posted anything, the website would be insignificant. Julian Assange did nothing but create this voluntary website. Bradley Manning, an Army intelligence analyst, saw shocking information about his government’s behavior and wanted the rest of the world to see it to, so that the U.S. can ensure its behavior is fitting for that of a democratic nation. Because of this, Bradley Manning is possibly facing the death penalty, and the government is doing everything in its power to apprehend Julian Assange and destroy WikiLeaks. However, in an age where the government is hiding integral information from its people, the United States and the rest of the world need this type of transparency. WikiLeaks is a form of journalism, and as long as the information it releases does not harm anyone, they should be allowed under the First Amendment to reveal classified government information.

An editorial in *The Australian* made the argument that Julian Assange is *not* a journalist and WikiLeaks is *not* a form of journalism. It suggested that the fact that Assange handed off leaked information to a handful of prestigious newspapers is a “tacit admission” that WikiLeaks is not the “news organization” it claims to be (Conley, 2010). This is faulty logic. There are many people in the world, if not a majority of people in the world, who distrust anything published on WikiLeaks, or who will simply dismiss it as unpatriotic. And with the

government's constant insinuations that what is published on WikiLeaks is not only harmful but also forged, who can blame them? After all, WikiLeaks is only seven years old. It is new and though it has little to no reason to be discredited, it does not get the respect and credibility that comes with seniority. Publish classified documents on WikiLeaks and half the population will dismiss it as unreliable; publish it *The New York Times* or *Der Spiegel* like Assange did and suddenly you have the whole world's attention (Ellison, 2011). The simple fact that *The New York Times* has a certain universal prestige and credibility linked to it does not mean that WikiLeaks is any less reliable; it only means that a lot more people's attention and trust will be gained with an already established and internationally respected news source. Assange recognized this and that is why he went to *The New York Times* and *Der Spiegel*. He was smart and calculating. His goal was to dispense the information he received, and he knew how to efficiently accomplish that goal.

Furthermore there are many other news organizations out there that, while valid sources, would not get as much attention as a paper like *The New York Times* or *Der Spiegel*. For example, the *Contra Costa Times* is a valid paper. However, the likelihood of seeing leaked, top-secret government files on the front page of this paper is slim to none. Why is this? Because of the number of subscribers it has. The *Contra Costa Times* has 168,362 papers in circulation daily, while *The New York Times* and *Der Spiegel* have 1,120,420 and 976,000, respectively (Top 100, 2007; *Der Spiegel*, n.d.). The *Contra Costa Times*, just like WikiLeaks, does not have the same number of viewers as the more "prestigious" newspapers, and that is why Julian Assange went to them for assistance, not because WikiLeaks is not a credible news organization. However, in order to formerly conclude whether or not WikiLeaks is a true form of journalism

(and therefore protected by the First Amendment), one must understand how our society defines this term.

The American Heritage Dictionary provides many definitions of journalism. The first states that journalism is “the collecting, writing, editing, and publishing of news or news articles through newspapers or magazines” (Devine, 1982). By this description, WikiLeaks would not be considered journalism. However, this definition was written in 1982, more than 30 years ago. Since then there have been many technological advances. The internet, in particular, has widened and blurred what is and what is not journalism. One must then come to the conclusion that with all the media outlets, journalism cannot be so strictly defined. Now many people turn to the internet for the latest news instead of grabbing a newspaper or magazine. Thus, it is necessary to look at the next definition of journalism to better reflect today’s society.

The next definition offered by the American Heritage Dictionary suggests that journalism is “the style of writing characteristic of material in newspapers and magazines, consisting of the direct presentation of facts or occurrences with little attempt at analysis or interpretation” (Devine, 1982). This provides a bit more leg room. By this definition, WikiLeaks would have a good shot at gaining official journalism status. Indeed, WikiLeaks provides direct facts, with the straightforward style that is *characteristic* of that in newspapers and magazines. WikiLeaks *does* offer its analysis of what is published, however, and that may be where it gets in trouble. However, Assange has argued that analysis is okay considering WikiLeaks always publishes the source material (Khatchadourian, 2010). This is a sound argument. Though online news sources such as *nytimes.com* do not offer their own analyses of what they publish, there is always a comments section full of interpretations from people all over the world. How is WikiLeaks’ offered analysis any different than these comment sections? An interpretation is offered (next to

the cold, hard facts), and the reader is free to agree or disagree with their conclusion. Assange has commented on his determination to supply these cold, hard facts:

I want to set up a new standard: ‘scientific journalism.’ If you publish a paper on DNA, you are required, by all the good biological journals, to submit the data that has informed your research—the idea being that people will replicate it, check it, verify it. So this is something that needs to be done for journalism as well. There is an immediate power imbalance, in that readers are unable to verify what they are being told, and that leads to abuse. (Khatchadourian, 2010)

He recognizes that people are entitled to their own opinions, and thus has no problem providing source material. This is what real journalism should be about.

The last definition of journalism, and by far the most liberal, states that journalism is “written material of current interest or wide appeal” (Devine, 1982). This encompasses not only the cold hard facts as journalism, but the analyses of these facts as well. By this definition, WikiLeaks is irrefutably journalism, and Assange irrefutably a journalist. In fact, in 2011 Julian Assange was awarded the Martha Gellhorn journalism prize for his work with WikiLeaks. The judges commented: “WikiLeaks has been portrayed as a phenomenon of the hi-tech age, which it is. But it's much more. Its goal of justice through transparency is in the oldest and finest tradition of journalism” (Deans, 2011).

Assange’s idea of scientific journalism agrees with the fundamental principles of the democratic society that the United States was founded upon. If the U.S. is truly a democratic government, then its people are entitled to know what their government is doing and how it is doing it. After all, the definition of democracy is “a form of government in which the supreme authority rests with the people” (McClenaghan, 2006). How do the people have “supreme

authority” if they do not know what their government is really doing? In that case, the authority does not actually lie with “the people”, but with a small group, and this is known as a dictatorship, not a democracy. Therefore, if the United States is truly the democratic government it claims to be, it cannot and should not be afraid of transparency with its people. As one scholar, a Professor of History at West Chester University, pointed out:

This is not about who is or who is not a “real” journalist. It is about the status and future of what is supposed to be an “open” society wherein people are accurately informed about their decisions and policies that actually or potentially impact their lives. It is about the right to know and the right not to be misled (Davidson, 2010).

Transparency between a government and its people is crucial to sustaining a democratic government. Therefore the government should not only allow journalism such as WikiLeaks, but should encourage and protect it.

The recent events with WikiLeaks are not the first time the United States government has had confidential information disseminated to the public; in 1971 a man by the name of Daniel Ellsberg released 43 volumes of the Pentagon Papers, which contained embarrassing information concerning the Vietnam War. These papers documented the government’s intent to lie about its involvement in Vietnam. The backlash from the government was unprecedented, and Ellsberg would have been facing 115 years in prison if found guilty of the 12 federal felony counts he was charged with. However, Ellsberg’s charges were dismissed on the grounds that the government had acted in a way that “offends a sense of justice”, as expressed by the presiding trial judge (Mulrine, 2011).

Now the government is going not only after Bradley Manning, but Julian Assange as well. Unfortunately, Bradley Manning will most likely see jail time. There are many ways the

courts could go after Manning without restricting his First Amendment rights, including stretching the ruling in *Snepp v. United States*. In this case, an ex-CIA agent wrote a book about his time in the CIA, and though he did not release any classified information, he did not clear his manuscript with the CIA before publication. The court ruled against him saying that as a former intelligence agent, he is required to receive approval before publishing anything that could be detrimental to government interests. Therefore, as stated by one analyst:

It seems reasonable to assume that a public employee who discloses to a journalist or other disseminator classified information, the disclosure of which could appreciably harm the national security, has violated his position of trust, and ordinarily may be discharged and/or criminally punished without violating the First Amendment (Stone, 2011).

Bradley Manning, though he should be commended as a patriot for wanting what is best for his country, will be punished in one way or another due to his position in the military at the time he released this confidential information.

In order to prosecute Julian Assange, on the other hand, the government will have to work much harder. Julian Assange was not a government employee. He did not steal any classified information. He was simply given files that he then disseminated to the general public. The only way he could be prosecuted is if the government can prove that he assisted Manning in the seizure of these classified documents. So though this is the only way Assange could legally be held accountable for this and all other information posted on WikiLeaks, one must ask whether Assange is morally guilty of any crime. The short answer is no.

People have argued that WikiLeaks poses a potential threat to the United States. Secretary of State Hillary Clinton summed up these anti-WikiLeaks arguments when she said that WikiLeaks “puts people’s lives in danger, threatens our national security and undermines

our efforts to work with other countries to solve shared problems” (Garamone & Daniel, 2010). This is a solid argument; however, there are easily-made counterarguments to everything in her statement.

First of all, nothing posted on WikiLeaks has been proven to have put anyone’s life in danger. The possibility of such a threat has become a major point for anti-WikiLeaks-ers, but so far there has nothing to back up this claim. The same goes for “threatening our national security”. WikiLeaks has published no documents that enemies of the United States could use to seriously harm its citizens. There have been no email exchanges with text like, “Gee, I really hope *insert enemy country* does not attack *insert vulnerable location* because we have no security there!” Assange and his fellow WikiLeaks-workers have been very careful to omit or change information that could put individuals or the country at risk (Keller, 2013).

Lastly, the government should not be doing or saying anything that could compromise its relationship with other countries in the first place. If government officials do not want WikiLeaks or another media outlet to publish conversations in which they insult an international official, then they should not be calling them names in the first place. This is not high school; this is the *United States government*. If they want to be seen in a cordial light then they should act in a cordial manner, even behind closed doors.

Nevertheless, it is crucial that WikiLeaks does everything in its power to keep the identities and locations of covert agents classified. The second an agent or anyone else is killed as a result of something posted on WikiLeaks, it is game over. And this is not limited to WikiLeaks; the second any news source publishes classified documents that lead to the deaths of anyone anywhere, the issue of transparency goes right out the window. People do have the right to know what their government is doing, but when the cost of that knowledge becomes human

lives, the issue becomes much more complicated. Not only will the government crackdown on all media outlets, but national support will be with the government. Though people have the right to know, no one should be harmed because of it, even if the government is not always honest.

Conclusion

People in the United States are inclined to swallow anything the government tells them. The government recognizes this and has consequently lied to or intentionally misled its citizens with little to no upset. WikiLeaks, however, is doing its part to stop this deceitful nature of not only the United States government, but governments all over the world. It is providing the people with a real glimpse into how their governments operate, and the truth is not always pretty. However, it is these ugly truths that need to be revealed, for the government must be kept in check if it is to continue to run as a democratic nation.

It is up to WikiLeaks and other press organizations to spread this information. Under the First Amendment's right of freedom to the press, all journalistic organizations (including WikiLeaks) have a legal right and a moral obligation to publish such classified information, unless it puts individuals at risk. Only then must caution be aired.

References

- Abrams, F. (2010, December 29). Why WikiLeaks is unlike the Pentagon Papers. *The Wall Street Journal*. Retrieved March 27, 2013 from <http://online.wsj.com/article/SB10001424052970204527804576044020396601528.html>
- Conley, D. (2010, December 17). Is WikiLeaks journalism? *The Australian*. Retrieved March 25, 2013 from <http://www.theaustralian.com/au/media/is-wikileaks-journalism/story-e6frg996-1225972790493>
- Davidson, L. (2010, September 6). WikiLeaks and shield laws. *Counterpunch*. Retrieved March 25, 2013 from <http://www.counterpunch.org/2010/09/06/wikileaks-and-shield-laws/print>
- Deans, J. (2011, June 2). Julian Assange wins Martha Gellhorn journalism prize. *The Guardian*. Retrieved March 26, 2013 from <http://www.guardian.co.uk/media/2011/jun/02/julian-assange-martha-gellhorn-prize>
- Der Spiegel. (n.d.) Retrieved March 27, 2013 from <http://www.presseurop.eu/en/content/source-profile/543-der-spiegel>
- Devine, P. (Ed.) (1982). *The American heritage dictionary*. (2nd ed.) Boston, MA: Houghton Mifflin Company.
- Ellison, S. (2011, February). The man who spilled the secrets. *Vanity Fair*. Retrieved March 26, 2013 from <http://www.vanityfair.com/politics/features/2011/02/the-guardian-201102>
- Freedom of the Press. (n.d.). Retrieved March 28, 2013 from <http://www.famguardian.org/Subjects/Politics/ThomasJefferson/jeff1600.htm>
- Garamone, J. & Daniel, L. (2010, November 29). Clinton: WikiLeaks' release attacks international community. *U.S. Department of Defense*. Retrieved March 3, 2013 from <http://www.defense.gov/News/NewsArticle.aspx?ID=61876>

- Keller, B. (2013, March 10). Private Manning's confidant. *The New York Times*. Retrieved March 28, 2013 from http://www.nytimes.com/2013/03/11/opinion/keller-private-mannings-confidant.html?pagewanted=all&_r=0
- Khatchadourian, R. (2010, June 7). No secrets: Julian Assange's mission for total transparency. *The New Yorker*. Retrieved March 25, 2013 from http://www.newyorker.com/reporting/2010/06/07/100607fa_fact_khatchadourian?currentPage=all
- Lindengerger, M. (2010, December 9). The U.S.'s weak legal case against WikiLeaks. *TIME*. Retrieved March 7, 2013 from <http://www.time.com/time/nation/article/0,8599,2035994,00.html>
- McClenaghan, W.A. (2006). *American Government*. New Jersey: Prentice Hall.
- Mulrine, A. (2011, June 13). Pentagon Papers vs. WikiLeaks: is Bradley Manning the new Ellsberg? *The Christian Science Monitor*. Retrieved March 27, 2013 from <http://www.csmonitor.com/USA/Military/2011/0613/Pentagon-Papers-vs.-WikiLeaks-Is-Bradley-Manning-the-new-Ellsberg>
- Schoenfeld, G. (2010, July 26). WikiLeaks vs. democracy. *The Corner*. Retrieved March 3, 2013 from <http://www.nationalreview.com/blogs/print/233594>
- Stone, G. (2011, June 15). Wikileaks, the proposed SHIELD Act, and the First Amendment. *Journal of National Security Law & Policy*. Retrieved March 28, 2013 from http://jnsplp.com/wp-content/uploads/2011/06/02_Stone.pdf
- Top 100 US daily newspapers. (2007). Retrieved March 27, 2013 from http://www.burrellesluce.com/top100/2007_Top_100List.pdf