

THE THREE THEORIES OF PROSECUTION FOR JULIAN ASSANGE

In this post, I laid out what the 17 new charges against Julian Assange are. In this, I'll look more closely at three theories of criminalization here:

- Theory One: Charging Assange for causing Chelsea Manning to leak classified information by soliciting it generally or specifically (and/or discussing its value before she obtained it)
- Theory Two: Charging Assange for offering to help crack a password and attempting to obtain the documents that would have been available using it
- Theory Three: Charging Assange for leaking the identities of US government informants in three different databases

Theory One: Obtaining and disclosing documents that were solicited (Counts 2-4 and 6-14)

Effectively, for three sets of documents, they've charged Assange for causing Chelsea Manning to obtain (Charges 2 through 4), Assange

obtaining himself (Charges 6 through 8), causing Manning to disclose documents she did not have authorized possession of (Charges 9 through 11), and causing Manning to disclose legally obtained documents (Charges 12 through 13) for three sets of documents: The Gitmo Detainee Assessment Briefs, the State Department Cables, and the Iraq Rules of Engagement.

Assange is not being charged for publishing anything under this theory (that's not true under Theory Three). He's being charged with causing Manning to obtain and disclose them to him.

To accuse Assange of causing Manning to do these things, they show how a Most Wanted Leaks list posted on WikiLeaks until September 2010 resembles what Manning looked for on DOD's networks and what she sent to Assange.

In addition, they show that Manning and Assange discussed some of these leaks before she obtained them.

For example, on March 7, 2010, Manning asked ASSANGE how valuable the Guantanamo Bay detainee assessment briefs would be. After confirming that ASSANGE thought they had value, on March 8, 2010, Manning told ASSANGE that she was "throwing everything [she had] on JTF GTMO [Joint Task Force, Guantanamo] at [Assange] now." ASSANGE responded, "ok, great!"

[snip]

Manning later told ASSANGE in reference to the Guantanamo Bay detainee assessment briefs that "after this upload, that's all i really have got left." I

It argued that Manning downloaded the State Department cables in response to the request for bulk databases on the Wish List.

Further, following ASSANGE's "curious eyes never run dry" comment, and consistent with WikiLeaks's solicitation of bulk databases and classified materials of diplomatic significance, as described in paragraphs 2,4-5, between on or about March 28, 2010, and April 9, 2010, Manning used a United States Department of Defense computer to download over 250,000 U.S. Department of State cables, which were classified up to the SECRET level. Manning subsequently uploaded these cables to ASSANGE and WikiLeaks through an SFTP connection to a cloud drop box operated by WikiLeaks, with an X directory that WikiLeaks had designated for Manning's use. ASSANGE and WikiLeaks later disclosed them to the public.

And it showed that the Iraq Rules of Engagement were on the Wish List.

As of November 2009, WikiLeaks's "Most Wanted Leaks" for the United States included the following:

[snip]

b. "Military and Intelligence" documents, including documents that the list described as classified up to the SECRET level, for example, "Iraq and Afghanistan Rules of Engagement 2007-2009 (SECRET);"

[snip]

Following ASSANGE's "curious eyes never run dry" comment, on or about March 22, 2010, consistent with WikiLeaks's "Most Wanted Leaks" solicitation of "Iraq and Afghanistan US Army Rules of Engagement 2007-2009 (SECRET)," as described in paragraphs 4-5, Manning downloaded multiple Iraq rules of engagement files from her Secret Internet Protocol Network computer and

burned these files to a CD, and provided them to ASSANGE and WikiLeaks.

Thus, for each of these, the government is saying that soliciting specific classified (or protected) materials amounts to Espionage. This is the theory of prosecution I argued would criminalize people like Jason Leopold, who was clearly engaged in journalism when he specifically asked about a specific Suspicious Activity Report from a source.

Theory Two: Attempted hacking to attempt to obtain the documents available via the hack (Counts 5 and 18)

For one vaguely defined set of documents, DOJ has charged Assange for attempting to help Manning crack a password (which was the single previous charge, which is now Charge 18) in order to attempt to obtain unidentified documents on SIPRNet.

15. In furtherance of this scheme, ASSANGE agreed to assist Manning in cracking a password hash stored on United States Department of Defense computers connected to the Secret Internet Protocol Network, a United States government network used for classified documents and communications, as designated according to Executive Order No. 13526 or its predecessor orders.

I believe (though am not certain) that that's what the documents charged in Count 5 are about.

Between in or about November 2009 and in or about May 2010, in an offense begun and committed outside of the

jurisdiction of any particular state or district of the United States, the defendant, JULIAN PAUL ASSANGE, who will be first brought to the Eastern District of Virginia, and others unknown to the Grand Jury, knowingly and unlawfully attempted to receive and obtain documents, writings, and notes connected with the national defense—namely, information stored on the Secret Internet Protocol Network classified up to the SECRET level— for the purpose of obtaining information respecting the national defense, knowing and having reason to believe, at the time that he attempted to receive and obtain them, that such materials would be obtained, taken, made, and disposed of by a person contrary to the provisions of Chapter 37 of Title 18 of the United States Code.

This theory also doesn't charge Assange with publishing information. Rather than charging him for soliciting leaks (Theory One), it charges him with helping to obtain documents Manning was not authorized to obtain by attempting to crack a password to get Administrators privileges.

Releasing the names of informants (Counts 15-17)

For each of three sets of US government informants, there's also a charge tied to the informants' identities disclosed in bulk databases.

35. Also following Manning's arrest, during 2010 and 2011, ASSANGE published via the WikiLeaks website the documents classified up to the SECRET level that he had obtained from Manning, as described in paragraphs 12, 21, and 27, including approximately 75,000

Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activities reports, 800 Guantanamo Bay detainee assessment briefs, find 250,000 U.S. Department of State cables.

36. The significant activity reports from the Afghanistan and Iraq wars that ASSANGE published included names of local Afghans and Iraqis who had provided information to U.S. and coalition forces. The State Department cables that WikiLeaks published included names of persons throughout the world who provided information to the U.S. government in circumstances in which they could reasonably expect that their identities would be kept confidential. These sources included journalists, religious leaders, human rights advocates, and political dissidents who were living in repressive regimes and reported to the United States the abuses of their own government, and the political conditions within their countries, at great risk to their own safety. By publishing these documents without redacting the human sources' names or other identifying information, ASSANGE created a grave and imminent risk that the innocent people he named would suffer serious physical harm and/or arbitrary detention.

For each database, the indictment looks at several instances of the individuals whose identities were released. It then lays out evidence that Assange knew and did not care that by publishing these identities he would be endangering people.

This is the theory of prosecution that does criminalize the publication of true information. And it criminalizes something that journalists do, at times, do.

The government often tries to classify identities that should not be (as they did with Gina Haspel, to hide her role in torture, for example). When journalists learn these identities they sometimes do choose to ignore admonitions against publication, for good reason. That's what Assange is accused of doing here, but only on a mass scale. But if this is successful, there's nothing that will prevent the government from charging people for disclosing classified identities at a smaller scale.

I'm also not sure how, as a foreign citizen, this doesn't invite retaliation against the US for identifying classified identities of other countries.