



Written by [Bob Adelman](#) on February 17, 2011

Bill of Rights Slows Government Probe of WikiLeaks

On Tuesday, the quiet subterranean fishing expedition by the government into the WikiLeaks document disclosures last fall came to light for the first time in the courtroom of U. S. Magistrate Judge Theresa Carroll Buchanan in Alexandria, Virginia. In its search for incriminating evidence, the government demanded that Twitter release information about three suspects linked to WikiLeaks' founder Julian Assange: Birgitta Jonsdottir (a former WikiLeaks "activist"), and Rop Gonggrijp and Jacob Applebaum, two computer programmers.



All the government wanted from Twitter was the screen names, mailing addresses, telephone numbers, credit card and bank account information, and Internet protocol (IP) addresses of the three suspects. The lawyers claimed that all of this was routine and necessary in the ongoing investigation.

No charges have been filed against the three and so this is just a hearing. Even Assange himself hasn't been charged with anything related to the November disclosures. But lawyers for the three weren't buying any of it, claiming that their clients' rights were being violated under the Bill of Rights: their right to free speech under the First: "Congress shall make no law...abridging the freedom of speech...", and their right to privacy under the Fourth: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

The battle between individual rights and government's claimed necessity has been going on since the founding of the Republic. Harvard Law Professor John Palfrey said the government is using 18th-century arguments with 21st-century technology: "These are not new arguments, but they're being used in a really interesting and important way that has a twist to them in light of [the new] social media." John Keener, an attorney defending one of the three, said that if Twitter released the information requested by the government, it would give the government "a roadmap of people tied to WikiLeaks and essentially halt free speech online. "

The government lawyers made the case that since their requests were routine and are "a standard investigative measure used in criminal investigations every day of the year all over the country," their requests from Twitter should be granted. Government attorney John Davis said, "This is not about association rights. It is not about politics. It is about facts and evidence."

Twitter itself is staying out of the fray, making no comment on the investigation, but instead referring to a statement on its website: "[The Company's] position on freedom of expression carries with it a mandate to protect our user's right to speak freely..."

The case is only the first step in what is likely to a long, drawn out and potentially contentious public examination of rights of individuals to enjoy freedom of speech and privacy. The core issue in the WikiLeaks case boils down to whether a publisher of information can be held liable for its content, or not.



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Back in [July 2010](#), the U. S. Army charged an intelligence analyst, Pfc. Bradley Manning, in connection with the leak of a [controversial video](#) along with thousands of classified State Department cables through WikiLeaks. At the time, Defense Secretary Robert Gates said that such leaks would not be tolerated and would be prosecuted. Thus began the fishing expedition that was publicly exposed on Tuesday.

Any attempt to come down hard on Manning might have some unintended consequences. Steven Aftergood of the Federation of American Scientists said that other “potential whistleblowers may judge that the risks of revealing classified information are too high,” and would refrain from exposing government criminal activities to the light of day. Said Aftergood, “When real misconduct is involved, that would be...unfortunate...Many of the most important violations of law and policy, from warrantless wiretapping to torture of detainees, have become public through unauthorized disclosures of classified information. ”

Aftergood needn't be worried. Sister sites, such as OpenLeaks.org, are springing up like dandelions all over the internet, faster than government fumigators can find them and exterminate them.

In the meantime, Manning is suffering the punishment of the innocent. According to [Wikipedia](#) (no relation to WikiLeaks), Manning was held without being charged for six weeks in Kuwait and then moved in July, 2010 after being charged with “unauthorized disclosure of classified information”, to a small cell in Quantico, Virginia. He is doing hard time in solitary confinement 23 hours a day and has been “regularly administered anti-depressants by the brig’s medical personnel. ” A light is kept on in his cell while he tries to sleep, and one of his guards is required to check on him every five minutes, poking him into wakefulness if he fails to respond. His trial is tentatively set for May, when it will be determined if he should be tried in a courts martial.

Julian Assange, on the other hand, has so far given the government investigators the slip. Attorney General Eric Holder said in November that the Justice Department was conducting “an active, ongoing, criminal investigation” into the matter, but no charges have been filed. When pressed about the extremely unlikely chance that Assange would be charged under the [Espionage Act of 1917](#). Holder responded in typical lawyerese:

Let me be very clear. It is not saber rattling. To the extent there are gaps in our laws, we will move to close those gaps, which is not to say...that anybody at this point, because of their citizenship or their residence, is not a target or a subject of an investigation that’s ongoing.

Translation: We don't care what the law says about the Espionage Act only applying to American citizens (Assange is not an American citizen), we are going after this guy and will bring him to justice.

And there it is: the key issue emanating from a small court room in Alexandria, Virginia: The Constitution’s guarantee of citizens’ rights to speak freely and live securely in their own private lives versus the government’s claim of necessity to violate those rights, all in the interest of “truth, justice, and the American way. ”

Photo: Julian Assange against Bill of Rights background



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