

HARD FACTS BAD POLICY?

By: Jack Greiner on May 28, 2019 on graydon.law

[The decision to charge Julian Assange with violating the Espionage Act](#) creates a conundrum. On the one hand, Assange is a tough guy to care about. So there's a tendency to say "who cares?"

And more than that, if the information Assange leaked put anyone's life in danger it's easy to sympathize with the decision to charge him.

But on the other hand, this is a momentous decision. In our country we have traditionally not criminally charged journalists for doing their jobs. The bad guy in this scenario has been the leaker not the publisher. Otherwise the temptation to selectively enforce it would be overwhelming.

Any administration could use the law to punish publications they don't like. Not a great situation in a country that values robust debate on matters of public interest.

And it's not very comforting to assume Assange and Wikileaks aren't journalists. That seems like an invitation to some serious hair splitting. What's the criteria exactly? Is Assange a journalist because he discloses information? Or is he not a journalist because he doesn't write commentary about the data? Does it matter?

Right now the law is relatively clear. If the journalists help in any way with the theft of the data, they can be prosecuted. If they merely receive it and publish it, they can't.

It's not perfect, but it works. So, having said that, don't fix it.