

The Democratic National Committee lawsuit against WikiLeaks and Julian Assange: A major attack on press freedom

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In late April, the Democratic National Committee (DNC) filed a civil lawsuit in the US District Court for the Southern District of New York against the Russian government, Russian intelligence agents, Donald Trump election campaign officials and WikiLeaks and its founder, Julian Assange.

The 66-page complaint claims that Trump's presidential campaign collaborated with Russian intelligence agents who stole information from DNC email servers in the summer of 2016 and arranged for WikiLeaks to publish the information in order to undermine Democrat Hillary Clinton's candidacy and secure the election of a US president more amenable to the Kremlin.

The lawsuit is largely based on circumstantial evidence and innuendos about Trump's business ties with Russia. Salacious details about the 2013 Miss Universe pageant held in Moscow, Russian real estate deals and Florida mega-mansions sold to Russian oligarchs are offered to suggest that a criminal conspiracy *must* exist.

However, the complaint provides no new evidence. The lawsuit merely recycles the unsubstantiated allegations of "Russian meddling" contained in a January 2017 report from the office of the US director of national intelligence.

The lawsuit seeks money from the defendants as well as an injunction or court order prohibiting further release of information taken from DNC servers. Notably, it does not allege that the contents of the leaks are false or adulterated in any way.

Rather, it insists that the publication by WikiLeaks of "sensitive proprietary documents" is illegal even if WikiLeaks did not participate in the theft of the information, *and even if it was not stolen at all*. The Russian government, WikiLeaks and Julian Assange all deny hacking the DNC servers or conspiring with anyone who did so. Assange, moreover, has stated that the Russian government was not the source of the leaked emails.

The leaked emails from the DNC exposed a conspiracy on the part of Democratic Party officials to sabotage the presidential primary challenge of Bernie Sanders. The emails showed, among other things, that the DNC intended to have journalists ask Sanders if he was an atheist prior to the West Virginia primary, on the assumption that the question would damage Sanders and boost the campaign of Clinton. In the event, Sanders won the primary election in a rout.

The leaks also included dossiers the DNC kept on very wealthy campaign donors, with fawning lists of celebrity likes and dislikes, and what federal commissions and appointments might suit them.

Throughout the 2016 presidential election, powerful sections of the military/intelligence complex and the capitalist class supported

Clinton and portrayed Trump as "soft" on Russia and insufficiently committed to the US war policy in the Middle East. Since Trump's election, these forces, spearheaded by the Democratic Party and large sections of the corporate media, have placed enormous pressure on the administration to escalate the US offensive against Russia, up to and including working to destabilize the Trump White House.

Since Trump's inauguration, the Democrats have sought to channel popular opposition to what is the most reactionary government in US history along right-wing, pro-war and anti-democratic lines. This includes a campaign to censor the Internet and silence anti-war and progressive viewpoints in the name of combating "fake news."

The DNC's legal attack on Assange and WikiLeaks is the specific form that this reactionary campaign takes in the arena of civil law.

The attempt to prosecute WikiLeaks, Assange and others who publish leaked information, but who had no part in obtaining that information, is a major attack on press freedom and the ability of journalists to bring to the public's attention secrets, lies and crimes that the government or political or corporate officials want to conceal.

The general reaction of the corporate-controlled media to the DNC lawsuit has been to dismiss it as a legal curiosity or to ignore it altogether. However, a number of journalists and commentators have denounced the lawsuit as an attack on press freedom. The Committee to Protect Journalists published a May 29 statement with the headline "By suing WikiLeaks, DNC could endanger principles of press freedom."

The article stated: "On its surface, the DNC's argument seems to fly in the face of the Supreme Court's precedent in *Bartnicki v. Vopper* that publishers are not responsible for the illegal acts of their sources. It also goes against press freedom precedents going back to the Pentagon Papers and contains arguments that could make it more difficult for reporters to do their jobs or that foreign governments could use against US journalists working abroad..."

Bartnicki v. Vopper was a 2001 US Supreme Court case that considered a journalist's freedom to disseminate information that was obtained illegally. The context was a radio talk show host who broadcast a recording of a phone call between union officials. The phone call was recorded by an illegal wiretap, and the talk show host, Frederick Vopper, knew about the tape's unlawful origins when he played it on the air. In a 6-3 decision, the court ruled that Vopper's conduct was protected under the First Amendment of the US Constitution.

From a legal standpoint, the DNC complaint urges the trial court to undercut the main constitutional protection for journalists who publish

leaked information, known as the *New York Times* defense, which holds that it is not illegal for a journalist to publish information that was obtained by illegal means as long as the journalist did not participate in those illegal means. The defense refers to the 1971 Pentagon Papers case (*New York Times Co. v. US*) which protected *Times* reporters who published internal White House documents on the Vietnam War.

The DNC lawsuit seeks to undermine the *New York Times* defense in three ways. First, it casts WikiLeaks as a co-conspirator with Russian officials and the Trump election campaign, saying it collaborated with Russian intelligence agents who illegally hacked DNC servers. As co-conspirators to the hacking, WikiLeaks and Assange would be unable to invoke the *New York Times* defense.

Second, the complaint borrows a doctrine from corporate and intellectual property law: trade secrets. According to this novel application of trade secrets law, the content of what was leaked enjoys protection from disclosure in the same way that a private corporation's new invention or patented industrial process would. References to "sensitive proprietary documents" and "economic espionage," which belong in the field of corporate litigation, abound in the DNC complaint.

This far-fetched and contorted legal gambit has far-reaching and dire implications for freedom of the press and free speech. By advancing a trade secrets/intellectual property argument, the Democratic Party is advocating for a huge expansion of censorship.

Under this new theory, a government or corporation would own not just documents, images, emails and so on. It would also own the information contained in them, i.e., the facts and details of its conduct *as an idea*, in the same way that a company or individual can own a trademark on its logo or a copyright on a screenplay. The DNC argues that its crimes and misdeeds are its intellectual property.

What is particularly anti-democratic about the trade secrets argument is that it makes no distinction as to whether leaked material was legally or illegally obtained, and whether the journalist participated in any illegality, which the *New York Times Co.* line of cases considers a key issue. The DNC's trade secrets argument would allow the government or other entity to sue the publisher of leaked information even if a reporter had no role in obtaining the information, and even if the reporter accidentally obtained the information.

The practical effect would be to ban the reporting and publication of virtually any information the government or other powerful individuals or organizations wanted concealed from the public. The implications are totalitarian.

Third, the DNC complaint argues that WikiLeaks and the other defendants should be liable under several criminal statutes, including the Racketeer Influenced and Corrupt Organizations Act (RICO), which was originally enacted to prosecute the Mafia. In other counts of the complaint, the defendants are accused of federal wire fraud and Virginia-based computer crimes. Aside from the crude attempt to suggest that the defendants are gangsters, the RICO and wire fraud arguments are noteworthy in another regard: there is no *civil* remedy in these *criminal* statutes, and so their invocation lacks any basis in legal precedent.

The DNC complaint offers a potted history of the 2016 presidential election and subsequent allegations that the Russian government interfered "with our democracy." Specifically, the complaint states that in 2015 and 2016, "Russian intelligence services hacked into the DNC's computers, penetrated its phone systems, and exfiltrated tens of thousands of documents and emails... Russia then used this stolen

information to advance its own interests: destabilizing the US political environment, denigrating the Democratic presidential nominee, and supporting the campaign of Donald J. Trump, whose policies would benefit the Kremlin."

(In a curious admission, the complaint cites "foreign allies" gathering intelligence on the Trump campaign's communications with Russia in 2015, and Australian assistance in particular. Are not Australia and these other allies likewise guilty of influencing a US election?)

While the DNC complaint could hardly be surpassed for its cynicism, the more pressing issue is the effort by the Democratic leadership to have a court of law criminalize the publication of leaks. Should the DNC prevail, journalists could face criminal prosecution and civil damages any time they reported on unlawful government or corporate activity. This is in keeping with the ruling class' attitude toward WikiLeaks, Julian Assange, Chelsea Manning and Edward Snowden—that those who expose war crimes and other illegal government activity are the real criminals.

The Democratic Party's attempt to criminalize the publication of leaks is not new. The Barack Obama administration aggressively prosecuted suspected leakers and the journalists who received the leaked information. This included the Department of Justice's seizure of records for 21 phone lines registered to the Associated Press. The Obama Justice Department also alleged that Fox News journalist James Rosen committed a crime when he published documents leaked by a government weapons expert in 2010. The FBI tapped Rosen's phone and his parents' phone, confiscated his emails and followed his movements.

The DNC's lawsuit should serve as a warning. Notwithstanding the specious character of its legal arguments and its fanciful allegations, the lawsuit is not some minor episode. Decisions of the magnitude of this lawsuit do not merely slip through the cracks of a major bourgeois political party. Rather, they express the orientation to authoritarian forms of rule no less than the attorneys for Donald Trump do when they argue that he could shoot former FBI director James Comey and then use the presidential pardon power to escape any legal consequences.



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