

# A Free Irresponsible Press:

## Wikileaks and the Battle over the Soul of the Networked Fourth Estate<sup>1</sup>

**Yochai Benkler**

Jack N. and Lillian R. Berkman Professor for Entrepreneurial Legal Studies, Harvard Law School; Faculty Co-Director, Berkman Center for Internet and Society, Harvard University

Wikileaks was born a century after President Theodore Roosevelt delivered the speech that gave muckraking journalism its name, and both hailed investigative journalism and called upon it to be undertaken responsibly. In 2010, four years after its first document release, Wikileaks became the center of an international storm surrounding the role of the individual in the networked public sphere. It forces us to ask how comfortable we are with the actual shape of democratization created by the Internet. The freedom that the Internet provides to networked individuals and cooperative associations to speak their minds and organize around their causes has been deployed over the past decade to develop new, networked models of the fourth estate. These models circumvent the social and organizational frameworks of traditional media, which played a large role in framing the balance between freedom and responsibility of the press. At the same time, the Wikileaks episode forces us to confront the fact that the members of the networked fourth estate turn out to be both more susceptible to new forms of attack than those of the old, and to possess different sources of resilience in the face of these attacks. In particular, commercial owners of the critical infrastructures of the networked environment can deny service to controversial speakers, and some appear to be willing to do so at a mere whiff of public controversy. The United States government, in turn, can use this vulnerability to bring to bear new kinds of pressure on undesired disclosures in extralegal partnership with these private infrastructure providers.

The year of Wikileaks began with the release of a video taken by a U.S. attack helicopter, showing what sounded like a trigger-happy crew killing civilians alongside their intended targets. It continued with two large-scale document releases from Iraq and Afghanistan, about which Defense Secretary Robert Gates wrote to the Senate, representing that “the review to date has not revealed any sensitive intelligence sources and methods compromised by this disclosure.” The year ended with the very careful release of a few hundred (as of this writing, it has risen to over 1900) cables from U.S. embassies in cooperation with five traditional media organizations. At the time of the embassy cable release, about two-thirds of news reports incorrectly reported that Wikileaks had simply dumped over 250,000 classified cables onto the Net. In fact, Wikileaks made that large number of cables available only privately, to the New York Times, the Guardian, Der Spiegel, Le Monde, and El Pais, and later to other media organizations. These organizations put their own teams to work to sift through the cables and selected only a few, often in redacted form, to publish. Wikileaks then published almost solely those cables selected by these traditional organizations, and only in the redacted form released by those organizations. Of this release, Secretary Gates stated: “Is this embarrassing? Yes. Is it awkward? Yes. Consequences for U.S. foreign policy? I think fairly modest.”

Despite the steadily more cautious and responsible practices Wikileaks came to adopt over the course of the year, and despite the apparent absence of evidence of

1. This article is an excerpt from a much longer article with the same title that appeared in *Harvard Civil Rights-Civil Liberties Law Review* 46 (Summer 2011): 311-397. The excerpt was made by Christian F. Rostbøll and approved by Yochai Benkler. For full documentation and references, please see the original article.

harm, the steady flow of confidential materials through an organization that was not part of the familiar “responsible press” was met by increasing levels of angry vitriol from the Administration, politicians, and media commentators. By the end of the year, U.S. Vice President Joseph Biden responded to the quite limited and careful release of the embassy cables by stating that Wikileaks founder Julian Assange is “more like a high-tech terrorist than the Pentagon Papers,” leading to predictable calls for his assassination—on the model of targeted killings of Al Qaeda and Taliban leaders in Afghanistan—by Fox News commentators and likely Republican presidential candidate Sarah Palin. The New York Times’ flagship opinion author, Thomas Friedman, declared Wikileaks one of the two major threats to a peaceful world under U.S. leadership, parallel to the threat of an ascendant China.

The rhetorical framing of Wikileaks in the socio-political frame of global threat and terrorism, in turn, facilitated and interacted with a range of responses that would have been inconceivable in the more factually appropriate frame of reference, such as what counts as responsible journalism, or how we understand the costs and benefits of the demise of more traditional models of journalistic self-regulation in the age of the networked public sphere. On the legal front, the Department of Justice responded to public calls from Senator Dianne Feinstein and others and began to explore prosecution of Julian Assange under the Espionage Act.

The sociopolitical framing makes more comprehensible the vigilante responses in other subsystems of the information environment. Responding to a call from Senate Homeland Security Committee Chairman Joe Lieberman, several commercial organizations tried to shut down Wikileaks by denial of service of the basic systems under their respective control. Wikileaks’ domain name server provider, EveryDNS, stopped pointing at the domain “wikileaks.org,” trying to make it unreachable. Amazon, whose cloud computing platform was hosting Wikileaks data, cut off hosting services for the site, and Apple pulled a Wikileaks App from its App Store. Banks and payment companies, like MasterCard, Visa, PayPal, and Bank of America, as well as the Swiss postal bank, cut off payment service to Wikileaks in an effort to put pressure on the site’s ability to raise money from supporters around the world. These private company actions likely responded to concerns about being associated publicly with “undesirables.” There is no clear evidence that these acts were done at the direction of a government official with authority to coerce them. The sole acknowledged direct action was a public appeal for and subsequent praise of these actions by Senator Joe Lieberman. In that regard, these acts represent a direct vulnerability in the

private infrastructure system and a potential pathway of public censorship. It is impossible to ignore the role that a diffuse, even if uncoordinated, set of acts by government officials. In combination, the feedback from public to private action presents the risk of a government able to circumvent normal constitutional protections to crack down on critics who use the networked public sphere. This occurs through the influence of informal systems of pressure and approval on market actors who are not themselves subject to the constitutional constraints. This extralegal public-private partnership allows an administration to achieve, through a multi-system attack on critics, results that would have been practically impossible to achieve within the bounds of the Constitution and the requirements of legality.

Parts I and II tell the story of Wikileaks, the release of the documents, and the multi-system attack on the organization, the site, and Julian Assange by both public and private actors. Part III explores the ways in which the Wikileaks case intersects with larger trends in the news industry. In particular, what we see is that the new, networked fourth estate will likely combine elements of both traditional and novel forms of news media; and that “professionalism” and “responsibility” can be found on both sides of the divide, as can unprofessionalism and irresponsibility. The traditional news industry’s treatment of Wikileaks throughout this episode can best be seen as an effort by older media to preserve their own identity against the perceived threat posed by the new, networked model. As a practical result, the traditional media in the United States effectively collaborated with parts of the Administration in painting Wikileaks and Assange in terms that made them more susceptible to both extralegal and legal attack. More systematically, this part suggests that the new, relatively more socially-politically vulnerable members of the networked fourth estate are needlessly being put at risk by the more established outlets’ efforts to denigrate the journalistic identity of the new kids on the block to preserve their own identity.

### **I. The Provocation: Wikileaks Emerges as a New Element of the Fourth Estate**

#### *2006-2009: Award-Winning Site Exposing Corruption and Abuse Around the World*

Wikileaks registered its domain name in October of 2006 and released its first set of documents in December of that year. The first two sets of documents related to Africa. In December 2006, the site released a copy of a decision by the rebel leader in Somalia to assassinate Somali government officials. In August 2007, it released another document identifying corruption by Kenyan leader Daniel Arap Moi. November of 2007 was the first

time that Wikileaks published information relating to the U.S.: a copy of Standard Operating Procedures for Camp Delta, exposing a formal source outlining the details of how the Guantanamo Bay detention camp was run. In 2008, Wikileaks released a wide range of documents related to illegal activities of public and private bodies. On the private side, these included a Swiss bank's Cayman Islands account, internal documents of the Church of Scientology, and Apple's iPhone application developer contract, which had included an agreement not to discuss the restrictive terms. On the public side, it included U.S. military rules of engagement in Iraq permitting pursuit of former members of Saddam Hussein's government across the border into Iran and Syria, an early draft of the Anti-Counterfeiting Trade Agreement ("ACTA"), emails from Sarah Palin's Yahoo! accounts while she was a candidate for Vice President, and a membership list of the far-right British National Party. Most prominently, Wikileaks released documents pertaining to extra-judicial killings and disappearances in Kenya, for which it won Amnesty International's New Media award in 2009. Wikileaks also received the Freedom of Expression Award from the British magazine Index of Censorship in the category of new media. Wikileaks' activity increased in 2009. The pattern of releasing information relating to a range of very different countries, and to potential corruption, malfeasance, or ineptitude continued, including oil-related corruption in Peru, banking abuses in Iceland, and a nuclear accident in Iran. Most prominent that year was Wikileaks' release of copies of e-mail correspondence between climate scientists, which was the basis of what right-wing U.S. media tried to turn into "Climategate." What seems fairly clear from this brief overview of activities prior to 2010 is that Wikileaks was an organization that seems to have functioned very much as it described itself: a place where documents that shed light on powerful governments or corporations anywhere in the world, or, in the case of the climate scientists' emails, on a matter of enormous global public concern, could be aired publicly.

### *March 2010: Leaking the 2008 Pentagon Report on the Threat of Wikileaks*

Things changed in 2010. In March 2010, Wikileaks released a 2008 Pentagon report arguing that Wikileaks is a threat, while recognizing the site as a source of investigative journalism critical of U.S. military procurement and its conduct in war. The New York Times, describing Wikileaks as "a tiny online source of information and documents that governments and corporations around the world would prefer to keep secret," reported that the Army confirmed the authenticity of the report. The Pentagon Report provides significant insight into what

Wikileaks was doing by 2008, and why the military was concerned about it.

Mixing its own assessments with Wikileaks self-descriptions taken at face value, the Report describes Wikileaks as founded by "Chinese dissidents, journalists, mathematicians, and technologists from the United States, China, Taiwan, Europe, Australia, and South Africa," and dedicated "to exposing unethical practices, illegal behavior, and wrongdoing within corrupt corporations and oppressive regimes in Asia, the former Soviet bloc, Sub-Saharan Africa, and the Middle East."

The recognition of the journalistic role Wikileaks plays is clear in the discussion of several examples of Wikileaks publications, which the Report repeatedly describes as "news articles" and in the description of Julian Assange as the organization's "foreign staff writer." In the process of describing what the Report's authors consider a risk of misinformation campaigns, they identify several articles that Wikileaks published that rely on leaked Pentagon documents about equipment deployed in Afghanistan and Iraq. A major part of the concern is that opponents of the U.S. could use some of this information, released in 2007, to plan attacks on U.S. troops. There is no mention of any evidence of such actual use or feasible action in the Report. Instead, the Report mentions several disclosures and arguments about weapons systems deployed in Iraq and critiques of their high expense, low effectiveness, and in the case of chemical weapons, illegality.

This characterization of the threat of excessive openness appears to be either a misunderstanding driven by the "Wiki" part of the name or deliberate mischaracterization. Promiscuous publication by anyone of anything was not the model that Wikileaks adopted, although that model was far from unheard of at the time. A contemporaneous report by the Los Angeles Times compares Wikileaks to another then-operating site, Liveleak: "LiveLeak has a simple editorial philosophy: Anyone can post anything that does not violate the site's rules. Essentially, no pornography and nothing overtly criminal." By contrast, "Wikileaks ... goes out of its way to make sure the documents it posts are authentic, saying fewer than 1% of its newly posted documents 'fail verification.'" From the vantage point of early 2011, this policy seems to have been consistently followed and remarkably successful. After over four years in operation, Wikileaks has been criticized for many faults, but none of its significant postings were found to be inauthentic.

The report concludes with a recommendation for attacking the site: cracking down very heavily on whistleblowers so as to make Wikileaks seem less safe as a point of distribution.

*April-October 2010: Collateral Murder, Afghanistan, and Iraq*

April 2010 marked the beginning of a series of four releases of documents embarrassing to the U.S. government. All four releases are thought to originate from a single major transfer of documents, allegedly provided by a twenty-two-year-old Private First Class in the U.S. Army, Bradley Manning. The first release was a video entitled "Collateral Murder." On July 12, 2007, two Apache attack helicopters fired on a group of individuals in Iraq, killing about twelve. Among the dead were two Reuters employees: a photographer and a driver. Reuters tried to get access to the video footage from the helicopter itself, so as to investigate what had happened and whether there was indeed a threat to the helicopters that would have explained the shooting. The U.S. government successfully resisted information requests for recordings of the events. Wikileaks made available both the full, raw video and an edited version on April 5, 2010. In it, and in its soundtrack, the helicopter pilots exhibit trigger-happy behavior and sound as though they took pleasure in hunting down their targets, some of whom appear to be unarmed civilians. The video and its contents became front-page news in the major papers. The release of the video was swiftly followed by identification of Manning as the source of the leak, based on selectively-released chat messages he allegedly wrote to Adrian Lamo, a hacker convicted of felony hacking in 2004, who had longstanding contacts with a Wired Magazine reporter to whom he conveyed these chat messages. As of this writing, Manning has been in solitary confinement for over eight months, denied pillows and sheets, and locked in a cell for twenty-three hours a day. The treatment seems consistent with the Pentagon Report's emphasis on deterrence against potential sources of leaks as the core tactic to undermine Wikileaks.

The Collateral Murder video was released at a news conference in the National Press Club in Washington, D.C. This was the first move that Wikileaks made toward the cooperation with traditional media that would mark its operation in the following eight months. At that early stage, however, Wikileaks was only using the established press as a mechanism for amplifying its message.

In July 2010, Wikileaks released a new cache of documents--war logs from the field in Afghanistan. The technique here represented a completely new model. Before publication, Wikileaks teamed up with three major international news organizations: the New York Times, the Guardian, and Der Spiegel. The major organizations were then given a period to verify the contents, analyze them, and prepare them for presentation. All four organizations published on the same day: Wikileaks, a much

larger portion of the full database of documents, and the news organizations, their analysis. The reporting on these documents found nothing that, in broad terms, was not already publicly known: the degree to which the U.S. was deploying targeted assassinations against Taliban leaders, and the large number of civilian casualties caused by drone attacks and other coalition activities. The drudgery of war, low levels of trust between U.S. and Afghan officials and forces--all of this was on display. The precision and detail of the incident descriptions--such as the shooting of eight children in a school bus by French troops, or of fifteen civilians on a bus by U.S. troops--added concrete evidence and meaning to a background sense of futility and amorphous knowledge of civilian casualties. The Afghanistan war logs release initially included about 77,000 documents; another 15,000 documents later followed after they were initially held back to allow time for Wikileaks to redact names of people who might be put in danger. The release was treated with consternation by the Administration, and the New York Times' initial story quoted National Security Advisor General James Jones as saying that the U.S. strongly condemns the disclosure of classified information by individuals and organizations which could put the lives of Americans and our partners at risk, and threaten our national security.

Chairman of the Joint Chiefs of Staff, Admiral McMullen, was reported as having said that Wikileaks would have blood on its hands. Following a full review, however, and in response to a direct request from Senator Carl Levin, Chairman of the Senate Armed Services Committee, Secretary Gates later represented that "the review to date has not revealed any sensitive intelligence sources and methods compromised by the disclosure." McClatchy later quoted an unnamed Pentagon source confirming that three months later there was still no evidence that anyone had been harmed by information in the Afghan war logs released.

In October, Wikileaks added one more major release. It consisted of war logs similar to those released in July, this time pertaining to the Iraq war. Here, Wikileaks posted close to 400,000 field reports from Iraq in what the BBC described as "a heavily censored form." The New York Times framed the documents as having relatively low significance: "Like the first release, some 77,000 reports covering six years of the war in Afghanistan, the Iraq documents provide no earthshaking revelations, but they offer insight, texture and context from the people actually fighting the war." Other news organizations framed the reports quite differently. Der Spiegel entitled the reports A Protocol of Barbarity. The BBC used the headline: Huge Wikileaks release shows US 'ignored Iraq torture.' Regardless of framing differences, the organiza-

tions agreed on the core facts established by the reports: Iraqi civilian casualties were higher than previously reported; the U.S. military was well aware that Iraq's military and police were systematically torturing prisoners; and while discrete units intervened to stop such torture on the ground, there was no systematic effort to stop the practice. The Pentagon denounced the release as a "travesty" and demanded the return of the documents. Secretary of State Clinton was quoted as saying, "We should condemn in the most clear terms the disclosure."

This round of document release was also done by release to media outlets first, but one way in which this round was different was the introduction of personal attacks on Julian Assange. The day after the release, the New York Times published a derogatory profile of Assange entitled, *Wikileaks Founder on the Run, Trailed by Notoreity*.

All the elements of the profile of an untrustworthy, shifty character are presented in a breathless tone. Here perhaps is the first textual evidence of the major transition in the perception of Wikileaks in mainstream U.S. media. In March 2010, the Times had described Wikileaks as *The Little Engine That Could* of new media muckraking journalism. By mid-December, Wikileaks would come to be described by Tom Friedman on the Times' op-ed page as one of two threatening alternatives to a strong, democratic America, alongside an authoritarian China. In between these two descriptions of Wikileaks, the Times' profile of Assange marks the transition point.

### *The Last Straw: The Embassy Cables*

November 28, 2010 ushered in the next document release. This release was more careful and selective than any of the prior releases. Apparently, the caution came too late. The release of the final batch was followed by a massive escalation of attacks on Wikileaks as an organization and website and on Assange as an individual. It is the mismatch between what Wikileaks in fact did in this final round and the multi-system attack on it that drives the need for a deeper explanation.

The release of the State Department embassy cables (confidential internal communications from embassies to Washington) was the most professionally-mediated, conservatively-controlled release Wikileaks had undertaken. The document set included 251,287 cables. Unlike the previous document releases, this time Wikileaks worked almost exclusively through established media organizations. It made the documents available to the Guardian, Der Spiegel, Le Monde, and El Pais; the Guardian made the documents available to the New York Times. Wikileaks also sought advice from the U.S. State Department, just as the New York Times had, to aid in redaction and

to help it avoid causing damage. Unlike the State Department's response to the traditional media organizations, Wikileaks' letter was met with a strongly-worded letter from the Department's legal advisor, Harold Koh, stating, "We will not engage in a negotiation regarding the further release or dissemination of illegally obtained U.S. Government classified materials" and demanding that Wikileaks simply not publish anything, return all documents, and destroy all copies in its possession. This, despite the fact that the date of the letter is one day before revelation, and the text of the letter explicitly states that the State Department knew of and consulted with the mainstream news organizations that were about to publish the materials, and therefore that if Wikileaks were to return all the materials, the other media entities would have the freedom and professional obligation to publish the materials. Later reports from Wikileaks' media partners support the observation that the Obama Administration treated Wikileaks as though it were in a fundamentally different category than it did the newspapers. Wikileaks then proceeded to make publicly accessible on its own website cables that had been published by at least one of these media organizations, in the redacted form that those outlets had published. Despite the actual care and coordinated release model that Wikileaks in fact practiced, over 60% of print news reports at the time explicitly stated that Wikileaks had released thousands of documents (usually over 250,000), and another 20% implied that it did so. In fact, over the course of the first month and more, the site released a few hundred documents, limited almost exclusively to those published and redacted by other organizations.

The contents of the overwhelming majority of released cables ranged from the genuinely important (e.g., Saudi and Gulf state support for a U.S. led attack on Iran to prevent proliferation; Yemeni acquiescence in U.S. bombing on its own territory; U.S. spying on UN staff; U.S. intervention in Spanish, German, and Italian prosecution processes aimed at U.S. military and CIA personnel over human rights abuses of citizens of those countries; the known corruption and ineptitude of Afghan President Hamid Karzai) to the merely titillating (Libyan leader Muammar Gaddafi's Ukrainian nurse described as "voluptuous blonde"). Although none broke ground in a way that was likely to influence U.S. policy in a fundamental way, this was not always true of other countries. The most ambitious speculations, in the New York Times and Foreign Policy, suggested that Wikileaks' cables' blunt descriptions of the corruption of Tunisian President Ben Ali helped fuel the revolution that ousted him in January 2011. Whether anything so fundamental can indeed be attributed to the embassy cables leak is doubtful, but the

sheer range of issues and countries touched, and continuous media attention for two months, make it undeniable that the Wikileaks U.S. embassy cable release was a major news event that captured headlines all over the world for weeks, providing a steady flow of small to mid-sized revelations about the U.S. in particular and the world of high diplomacy more generally. It was a major scoop, or, as the Guardian put it proudly, “the world’s biggest leak.”

Despite the generally benign character of the cables, one cable, one response to a cable, and one threat to release all raise particular concerns about potential damage. The cable that raised the greatest concern was a February 2009 cable listing “Critical Foreign Dependencies Initiative List,” which listed specific facilities whose disruption would harm U.S. interests. These ranged from a Manganese mine in Gabon and undersea communications cables in China, to a pharmaceutical plant in Melbourne, Australia and a Danish supplier of pediatric form insulin. Unlike the overwhelming majority of cables, this one appears to have been released initially by Wikileaks. The argument against this release, made at the time by the U.S. government, was that it offered a target list for terrorists seeking to disrupt critical global supplies by rendering critical dependencies transparent. The second cable, or rather response to a cable, included a reference to Zimbabwe Prime Minister Morgan Tsvangirai’s private support for sanctions against the Mugabe regime in Zimbabwe, providing an excuse for the Mugabe regime to explore prosecuting Tsvangirai for treason. It appears that this cable, like the majority of cables, was published at the same time (and likely in coordination with) the Guardian. Furthermore, it is unclear whether use of the cable as an excuse by a repressive regime to prosecute or threaten its lead opponent is equivalent to revealing names of unknown human rights workers, much less undercover operatives, who would not otherwise be known to the regime. Finally, in anticipation of the pressure, arrest, and potential threats of assassination, Julian Assange threatened to release a “poison pill,” a large cache of encrypted documents that is widely replicated around the Net and that would be decrypted, presumably with harmful consequences to the U.S., should he be arrested or assassinated. This latter of the three events is the one most foreign to the normal course of democratic investigation and publication. Depending on the contents of the file, it could be a genuinely distinct, threatening event, and publication of the decryption key may be an appropriate target for suppression consistent with First Amendment doctrine that permits constraining disclosure of “the sailing dates of transports or the number and location of troops.” It is doubtful, however, that the contents of the insurance file would fall under that category, assuming

that the entire set of cables is not fundamentally different from those that were released and recognizing that none of the cables were classified in top-secret categories.

## II. The Response: A Multi-System Attack on Wikileaks

The response to the Wikileaks embassy cable release in the United States was dramatic and sharp. The integrated, cross-system attack on Wikileaks, led by the U.S. government with support from other governments, private companies, and online vigilantes, provides an unusually crisp window into the multi-system structure of freedom and constraint in the networked environment and helps us to map the emerging networked fourth estate. The attack’s failure provides us with insight into how freedom of action is preserved primarily by bobbing and weaving between systems to avoid the constraints of those subsystems under attack and harness the affordances of those that are out of reach of the attacker. The response also highlights the challenges that a radically decentralized global networked public sphere poses for those systems of control that developed in the second half of the twentieth century to tame the fourth estate—to make the press not only “free,” but also “responsible.” Doing so allows us to understand that the threat represented by Wikileaks was not any single cable, but the fraying of the relatively loyal and safe relationship between the U.S. government and its watchdog. Nothing captures that threat more ironically than the spectacle of Judith Miller, the disgraced New York Times reporter who yoked that newspaper’s credibility to the Bush Administration’s propaganda campaign regarding Iraq’s weapons of mass destruction in the run-up to the Iraq War, using Fox News as a platform to criticize Julian Assange for neglecting the journalist’s duty of checking his sources and instead providing raw cables to the public. The criticism is particularly ironic in light of the fact that despite all the attacks on the cables’ release, the arguments were never that the cables were inauthentic.

It is important to emphasize that the myriad forms of attack on Wikileaks that I describe are unlikely to represent a single coordinated response by an all-knowing Administration bent on censorship. Mostly, they appear to represent a series of acts by agents, both public and private, that feed into each other to produce an effect that is decidedly inconsistent with the kind of freedom of the press and freedom of speech to which the United States is committed. That no distinct attack pattern that I describe clearly violates Wikileaks’ constitutional rights as against the state is no salve; indeed, it is precisely the vulnerability to destructive attacks, none of which is in itself illegal but that together effectively circumvent the

purposes of constitutionality and legality that requires our attention.

*Sociopolitical Framing: Situating Wikileaks in the Frame of the War on Terror*

The political attack on Wikileaks as an organization and on Julian Assange as its public face was launched almost immediately upon release of the cables. Their defining feature was to frame the event not as journalism, irresponsible or otherwise, but as a dangerous, anarchic attack on the model of the super-empowered networks of terrorism out to attack the U.S. The first salvo was fired by Secretary of State Hillary Clinton, who stated, "Let's be clear: This disclosure is not just an attack on America's foreign policy interests... It is an attack on the international community--the alliances and partnerships, the conversations and negotiations, that safeguard global security and advance economic prosperity." The trope of an attack on the international community provided the backdrop for a series of comments aimed at delegitimizing Wikileaks and locating it in the same corner, in terms of threats to the United States, as global terrorism. This was the backdrop for Vice President Biden's statement that Wikileaks founder Julian Assange is "more like a high-tech terrorist than the Pentagon Papers." This assessment was not uniformly supported by the Administration. Defense Secretary Robert Gates called the public response "overwrought".

The invitation by Secretary Clinton and Vice President Biden to respond to dissemination of confidential information as an assault on our national pride and integrity, on par with terrorism, was complemented by calls to use the techniques that the U.S. has adopted in its "War on Terror" against Julian Assange or Wikileaks as a site. Bob Beckel, the Fox News commentator who had been a Deputy Assistant Secretary of State in the Carter Administration and had been campaign manager to Walter Mondale, said, "A dead man can't leak stuff ... This guy's a traitor, he's treasonous, and he has broken every law of the United States. And I'm not for the death penalty, so ... there's only one way to do it: illegally shoot the son of a bitch." This proposal was met with universal agreement by the panel on the program. Republican Representative Pete King, then-incoming Chairman of the House Homeland Security Committee, sought to have Wikileaks declared a foreign terrorist organization.

While the Obama Administration has renounced torture, it has embraced targeted killings as a legitimate part of its own war on terror, and chosen as a matter of stated policy to turn a blind eye to the illegality of the Bush Administration's torture program. As a result, these continue to be options that can be publicly proposed by

major public outlets and speakers. They remain part of the legitimate range of options for discussion.

It is unthinkable that the U.S. will in fact assassinate Assange. But the range of actions open to both government and non-government actors is in important ways constrained by our understanding of the social frame, or social context in which we find ourselves. The legal options that the Justice Department thinks about when confronted with a case of a journalist who publishes sensitive materials are fundamentally different than those it thinks about when it is developing a prosecution strategy against terrorism suspects. The pressure to cut off payment systems flows is fundamentally different when considering whether to cut off payments to a politically odious group than when considering cutting off payments to a terrorist organization. It is very difficult to understand the political and market dynamics that could have led to the decision by MasterCard and Visa to cut off payments to Wikileaks except against the background of the framing efforts that located Wikileaks in the same rubric as the Taliban, rather than the same rubric as the New York Times or the Progressive.

Traditional media outlets provided substantial support for the Administration's framing by exaggerating the number of cables and implying a careless approach to their release. A study of major print newspaper stories that mentioned the quantity of cables during the first two weeks after the November 28th release shows that a substantial majority of newspapers stated as fact that Wikileaks had "released", "published", or "posted on its site", "thousands" or "over 250,000" cables. About 20% of the stories in major newspapers were clear and accurate on the question of how many cables were released at that time and how vetted and redacted the published cables were.

*Sources of Resilience of the Networked Fourth Estate, and Their Limits*

Despite the multi-system assaults it sustained, Wikileaks continued to operate throughout the period following release of the cables, and its supporters continued to function and indeed respond to the attack along many dimensions. Just as the attacks provide insight into the ways in which human practice involves action in and through multiple intersecting systems, so, too, do the responses.

The first and most obvious feature of the operation of Wikileaks is its presence outside the jurisdiction of the affected country – the United States. Even if U.S. law were to permit shutting down the site or arresting Julian Assange, that alone would be insufficient. The fact that the actors and servers are in other countries, and in particular, in countries with strong rights protecting whistleblowers--initially Iceland and later Sweden--provided Wikileaks

with a degree of robustness against the most predictable legal attacks. The defense is, of course, only as strong as the self-imposed limits of potentially offended countries on applying extra-territorial jurisdiction, and the degree to which the host countries are, or are not, susceptible to legal process or diplomatic pressure.

Throughout the events, Assange and Wikileaks emphasized their role as journalists. Inverting the practices of those who sought to analogize Wikileaks to terrorists, some commentators and reporters emphasized the basic argument that Wikileaks is a reporting organization, fulfilling a reporting function.

Perhaps the most important strategic choice of Wikileaks in this case was to release through several established news sites in different jurisdictions and markets. This approach achieved several things. First, it provided accreditation for the materials themselves. Second, offering the materials to several organizations meant that no single organization could, acting alone, suppress the cables. Competition for the scoop drove publication. Third, it located Wikileaks squarely within the “journalist,” and even “responsible established media” rubric. This effort failed, at least in the public framing of the release, although it may yet play a role in the decision as to whether to prosecute anyone at Wikileaks. By harnessing the established fourth estate to its materials, Wikileaks received accreditation and attention, and was able to exercise power over the public sphere well beyond what it could have commanded by a single document dump on its own site, or an edited set of its own. By releasing an exclusive scoop to major outlets in different global markets, it was able to create enough exclusivity to make publication commercially valuable to each of the news organizations in their respective markets, and enough competition to prevent any organization from deciding, in the name of responsibility, not to publish at all, or, as the Times did in the case of the NSA eavesdropping report, to delay publication for a year. Doing so also solved the problem of how to sift through these vast amounts of data without having to harness a large army of volunteers, thereby defeating the purpose of releasing carefully so as not to harm innocent bystanders.

On the larger, longer-term scale, another important response during the first month following the release of the embassy cables was mutation and replication. Some former Wikileaks members announced creation of a parallel organization, OpenLeaks, intended to receive leaks and release them solely to subscribing NGOs and media organizations. A completely separate organization, Brussels Leaks, was launched to provide leaks specifically regarding the EU Commission. Both organizations plan to institutionalize in their structure the strategy that

Wikileaks rapidly evolved over the course of 2010--the dedication to release through the mediation of “legitimate” real world organizations, both media and NGOs. A month later, Al Jazeera launched (and the New York Times was considering launching) its own copy of Wikileaks, a secure platform for decentralized submission of leaked documents. Al Jazeera’s Transparency Unit was launched with the leaked “Palestine Papers.” To the extent that the campaign against Wikileaks was intended not to quash the specific documents, but to tame the beast of distributed online systems providing avenues for leaking documents outside of the traditional responsible media system, the emergence of these new sites suggests that the social and cultural phenomenon of distributed leaking is too resilient to be defeated by this type of attack. Reporting based on documents leaked securely online and using multiple overlapping systems to reach the public and evade efforts at suppressing their publication is here to stay.

#### *The Response to Wikileaks: Wrap Up.*

The response to Wikileaks was dramatic, extensive, overwrought, and ineffective. If the purpose was to stop access to the cables, it failed. If the effort was to cast a doubt on the credibility of the cables, it failed. If the purpose was to divert attention from the cables, it failed. And if the effort was to prevent the future availability of decentralized dissemination of leaked documents outside of the confines of the responsible press, it failed. Indeed, it is possible that, had Secretary Clinton adopted the same stance as Secretary Gates and shrugged off the events as embarrassing, but not fundamentally destructive, a measured response to Wikileaks could have significantly advanced the State Department’s Internet freedom agenda by allowing the United States to exhibit integrity and congruence between its public statements in support of Internet freedom and its actions. The actual response will create a visible incongruity should the State Department continue to assert Internet freedom as a major policy agenda.

### **Part III. From Mass-Mediated to Networked Fourth Estate**

The attack on Wikileaks, in particular the apparent fear of decentralization that it represents, requires us to understand the current decline of the traditional model of the press and the emergence of its new, networked form. At core, the multi-system attack on Wikileaks, including mass media coverage and framing, is an expression of anxiety about the changes that the fourth estate is undergoing. This anxiety needs to be resisted, rather than acted upon, if we are to preserve the robust, open model



of news production critical to democracy in the face of economic and technological change.

### *The Crisis of the Mass-Mediated Fourth Estate*

The American fourth estate is in the midst of a profound transformation, whose roots are in the mid-1980s, but whose rate, intensity, and direction have changed in the past decade. The first element of this transformation includes changes internal to the mass media--increasing competition for both newspapers and television channels, and the resulting lower rents to spend on newsrooms, and the fragmented markets that drove new strategies for differentiation. Many of the problems laid at the feet of the Internet--fragmentation of the audience and polarization of viewpoints, in particular--have their roots in this element of the change. The second element of transformation was the adoption of the Internet since the mid-1990s. The critical change introduced by the network was decentralized information production, including news and opinion, and the new opportunities for models based on neither markets nor the state for financing to play a new and significant role in the production of the public sphere.

The Internet rapidly shifted from being primarily a research and education platform to a core element of our communications and information environment. The defining characteristic of the Net was the decentralization of physical and human capital that it enabled. In 1999, acute observers of the digital economy saw Encarta as the primary threat to Britannica in the encyclopedia market, and the epitome of what the new rules for the digital economy required. That a radically decentralized, non-proprietary project, in which no one was paid to write or edit and that in principle anyone could edit, would compete with the major encyclopedias was simply an impossibility. And yet, ten years later, Wikipedia was one of the top six or seven sites on the net, while Encarta had closed its doors. Peer production and other forms of commons-based, non-market production became a stable and important component of the information production system. If the first Gulf War was the moment of the twenty-four-hour news channel and CNN, then the Iranian Reform movement of 2009 was the moment of amateur video reportage, as videos taken by amateurs were uploaded to YouTube, and from there became the only significant source of video footage of the demonstrations available to the major international news outlets. Most recently, the Tunisian revolt was in part aided by amateur videos of demonstrations, uploaded to a Facebook page of an activist, Lotfi Hajji, and then retransmitted around the Arab world by Al Jazeera; and video taken by protesters was mixed with that taken by professional journalists to depict the revolt in Egypt. But the networked public

sphere is constructed of much more, and more diverse, organizational forms than ad hoc bursts of fully decentralized activity.

### *The Emerging Networked Fourth Estate*

As of the end of the first decade of the twenty-first century, it seems that the networked public sphere is constructed of several intersecting models of production whose operation to some extent competes with and to some extent complements each other. One central component of the new environment is comprised of core players in the mass media environment. However, these now have a global reach and have begun to incorporate decentralized elements within their own model. It is perhaps not surprising that CNN, the New York Times, NBC News and MSNBC News, the Wall Street Journal, Fox News, the Washington Post, and the Los Angeles Times are among the top-ranked news sites on the Internet. But alongside these are major international sites. The publicly-funded BBC and the U.K. nonprofit the Guardian play a large role alongside U.S. commercial media. The Guardian's editor-in-chief claimed to have 36 or 37 million readers per month, in comparison to the paper's daily circulation of about 283,000. These major players are, in turn, complemented by the online presence of smaller traditional media platforms and sources from other countries, accessed by U.S. readers through Yahoo! and Google News, both among the top news sites in the world. The Wikileaks case presents quite well how central these large, global online news organizational players are, but it also shows how, because they are all in the same attention market, it is harder for any one of them to control access to the news. One of the strategically significant moves that Assange made was precisely to harness these global mass media to his cause by providing them with enough exclusivity in their respective national markets to provide them with economic benefits from publishing the materials, and enough competition in the global network to make sure that none of them could, if they so chose, bury the story. The global nature of the platform and the market made this strategy--by a small player with a significant scoop--both powerful and hard to suppress.

Alongside the broader reach of these traditional outlets in a new medium, we are seeing the emergence of other models of organization, which were either absent or weaker in the mass media environment. Remaining, for a moment, within the sites visible enough to make major Internet rankings lists, the Huffington Post, a commercial online collaborative blog, is more visible in the United States than any other news outlet except for the BBC, CNN, and the New York Times. There are, of course, other smaller scale commercial sites that operate

on advertising. These form a second element in the networked public sphere.

A third model that is emerging to take advantage of the relatively low cost of distribution, and the relatively low capital cost of production, of news is the nonprofit sector. Here, I do not mean the volunteer, radically decentralized peer-production model, but rather the ability of more traditionally organized nonprofits to leverage their capabilities in an environment where the costs of doing business are sufficiently lower than they were in the print and television era that they can sustain effective newsrooms staffed with people who, like academic faculties, are willing to sacrifice some of the bottom line in exchange for the freedom to pursue their professional values. One example is ProPublica, a foundation-supported model for an otherwise classic-style professional newsroom. A similar approach underlies the journalistic award-winning local reporting work of the Center for Independent Media, founded in 2006 and renamed in 2010 the American Independent News Network. A related model is the construction of university-based centers that can specialize in traditional media roles. A perfect example of this is FactCheck.org, based in the Annenberg Public Policy Center at the University of Pennsylvania, which plays a crucial watchdog role in checking the veracity of claims made by political figures and organizations.

Alongside these professional-journalism-focused nonprofits, we are seeing other organizations using a combination of standard nonprofit organization with peer production to achieve significant results in the public sphere. An excellent example of this model is offered by the Sunlight Foundation, which supports both new laws that require government data to be put online, and the development of web-based platforms that allow people to look at these data and explore government actions that are relevant to them. Like Wikileaks did before the most recent events, Sunlight Foundation focuses on making the raw data available for the many networked eyes to read. Unlike Wikileaks, its emphasis is on the legal and formal release of government data and the construction of technical platforms to lower the cost of analysis and construct collaborative practices, so as to make it feasible for distributed social practices and people with diverse motivational profiles, embedded in diverse organizational models, to analyze the data.

In addition to the professionals based in large-scale global media, small-scale commercial media, high-end national and local nonprofit media outlets, and other non-media nonprofits, we also see emerging a new party press culture. Over 10,000 Daily Kos contributors have strong political beliefs, and they are looking to express them and to search for information that will help their

cause. So do the contributors to Townhall.com on the right, although the left-wing of the blogosphere uses large collaborative sites at this point in history more than the right. For digging up the dirt on your opponent's corruption, political ambition and contestation is a powerful motivator, and the platforms are available to allow thousands of volunteers to work together, with the leadership and support of a tiny paid staff (paid, again, through advertising to this engaged community, or through mobilized donations, or both).

Finally, although less discretely prominent than the large collaboration platforms like Daily Kos or Newsvine, and much more decentralized than any of the other models, individuals play an absolutely critical role in this new information ecosystem. First, there is the sheer presence of millions of individuals with the ability to witness and communicate what they witnessed over systems that are woven into the normal fabric of networked life. This is the story of the Iranian reform videos, and it is of course the story of much more mundane political reporting, from John McCain singing "Bomb Iran" to the tune of a Beach Boys song to George Allen's Macaca. Second, there is the distributed force of observation and critical commentary, as we saw in the exposure of the error in the CBS/Dan Rather expose. Third, there are the experts. Collaborative websites by academics, like Balkinization or Crooked Timber, provide academics with much larger distribution platforms to communicate, expanding the scope and depth of analysis available to policy and opinion makers.

The Wikileaks events need to be understood in the context of these broad trends in the construction of the networked fourth estate. Like the Sunlight Foundation and similar transparency-focused organizations, Wikileaks is a nonprofit focused on bringing to light direct, documentary evidence about government behavior so that many others, professional and otherwise, can analyze the evidence and search for instances that justify public criticism. Like the emerging party presses, it acts out of political conviction. And like so many other projects on the Net, it uses a combination of volunteerism, global presence, and decentralized action to achieve its results. As such, Wikileaks presents an integral part of the networked fourth estate--no less than the protesters who shoot videos on the streets of Tehran, Tunis, or Cairo and upload them to the Web. Whatever one thinks about the particular actions of Wikileaks in the particular instance of the release of the embassy cables, the organization and effort put forth by Wikileaks to bring to light actual internal government documents bearing on questions of great public import is essentially a networked version of the Pentagon Papers and Roosevelt's Man with the Muck-Rake. An attack on Wikileaks--legal or extralegal,

technical or commercial--needs to be assessed from that perspective, and allows us to explore the limitations and strengths of the emerging networked fourth estate.

*Mass Media Anxiety Played out in the Wikileaks Case Endangers the Networked Fourth Estate vis-a-vis the State, and Makes Cooperative Ventures Across the Divide Challenging*

The concern that the incumbent news industry has exhibited in the past two years over the emerging competitors in the networked information environment was also on display in the way that American newspapers dealt with Wikileaks after the release of the embassy cables. This anxiety has two practical consequences. The first is that the kind of cooperative venture that Wikileaks entered into with the major newspapers was clearly difficult to manage. The cultural divide between established media players and the scrappy networked organizations that make up important parts of the networked fourth estate makes working together difficult.

The second practical consequence is that, in seeking to preserve their uniqueness and identity, the traditional media are painting their networked counterparts into a corner that exposes them to greater risk of legal and extralegal attack. From a constitutional law perspective, the way in which the traditional media respond to, and frame, Wikileaks or other actors in the networked fourth estate does not matter a great deal. But from the practical perspective of what is politically and socially feasible for a government to do, given the constraints of public opinion and the internalized norms of well-socialized elites in democratic countries, the more that newspapermen, in their effort to preserve their own identity, vilify and segregate the individuals and nontraditional components of the networked fourth estate, the more they put those elements at risk of suppression and attack through both legal and extralegal systems.

*Collaboration Between Networked and Incumbent Models of Journalism*

The events surrounding Wikileaks mark the difficulties with what will inevitably become a more broadly applicable organizational model for the fourth estate. This new model will require increased integration between decentralized networked and traditional professional models of information production, and concentration of attention.

On the production side, even looking narrowly at the question of leaks, whatever else happens, spinoffs from Wikileaks--OpenLeaks or BrusselsLeaks, efforts by established news organizations like Al-Jazeera and the New York Times to create their own versions of secure, online leaked document repositories--mark a transition away from the

model of the leak to one trusted journalist employed by a well-established news organization. The advantages of this model to the person leaking the documents are obvious. A leak to one responsible organization may lead to non-publication and suppression of the story. Wikileaks has shown that by leaking to an international networked organization able to deliver the documents to several outlets in parallel, whistleblowers can reduce the concern that the personal risk they take in leaking the document will be in vain. Major news organizations that want to receive these leaks will have to learn to partner with organizations that, like Wikileaks, can perform that function.

Leaking is, of course, but one of many ways in which news reporting can benefit from the same distributed economics that drive open source development or Wikipedia. The user-created images from the London Underground bombing in 2005 broke ground for this model. They were the only source of images. During the Iranian reform movement protests in 2009, videos and images created by users on the ground became the sole video feed for international news outlets, and by the time of the Tunisian and Egyptian uprisings in early 2011, the integration of these feeds into mainline reporting had become all but standard. Just as in open source software "given enough eyeballs, all bugs are shallow," a distributed population armed with cameras and video recorders, and a distributed population of experts and insiders who can bring more expertise and direct experience to bear on the substance of any given story, will provide tremendous benefits of quality, depth, and context to any story.

But the benefits are very clearly not only on the side of traditional media integrating distributed inputs into their own model. Looking specifically at Wikileaks and the embassy cables shows that responsible disclosure was the problem created by these documents that was uniquely difficult to solve in an open networked model. The problem was not how to release them indiscriminately; that is trivial to do in the network. The problem was not how to construct a system for sifting through these documents and identifying useful insights. Protestations of the professional press that simply sifting through thousands of documents and identifying interesting stories cannot be done by amateurs sound largely like protestations from Britannica editors that Wikipedia will never be an acceptable substitute for Britannica. At this stage of our understanding of the networked information economy, we know full well that distributed solutions can solve complex information production problems. It was the decision to preserve confidentiality that made the usual approach to achieving large-scale tasks in the networked environment--peer production, large-scale distributed collaboration--unavailable. One cannot harness thou-

sands of volunteers on an open networked platform to identify what information needs to be kept secret. To get around that problem, Wikileaks needed the partnership with major players in the incumbent media system, however rocky and difficult to sustain it turned out to be.

Another central aspect of the partnership between Wikileaks and its media partners was achieving salience and attention. There is little doubt that mass media continues to be the major pathway to public attention in the United States, even as the role of Internet news consumption rises. Debates continue as to the extent to which the agenda set through those organizations can, or cannot, be more broadly influenced today through non-mainstream media action. However important a subject, if it cannot ultimately make its way to mainstream media, it will remain peripheral to the mainstream of public discourse, at least for the intermediate future. Networked organizations need a partnership model with traditional organizations in large part to achieve salience.

As more mature sectors in which collaboration across the boundary between traditional organizational models and new networked models show, creating these collaborations is feasible but not trivial. Open source software is the most mature of these, and it shows both the feasibility and complexity of the interface between more hierarchical and tightly structured models and flat, networked, informal structures. The informality of loose networks and the safety of incumbent organizations draw different people, with different personalities and values; working across these differences is not always easy. In looking at the Wikileaks case, it is difficult to separate out how much of the difficulties in the interface were systemic and how much a function of interpersonal antipathy, Assange's personality, and the Times' ambivalence about working with Wikileaks. In thinking of the events as a case study, it is important not to allow these factors to obscure the basic insights: collaboration is necessary, it is mutually beneficial, and it is hard.

The networked fourth estate will be made up of such interaction and collaboration, however difficult it may be initially. The major incumbents will continue to play an important role as highly visible, relatively closed organizations capable of delivering much wider attention to any given revelation, and to carry on their operations under relatively controlled conditions. The networked entrants, not individually, but as a network of diverse individuals and organizations, will have an agility, scope, and diversity of sources and pathways such that they will, collectively, be able to collect and capture information on a global scale that would be impossible for any single traditional organization to replicate by itself. Established news outlets find this partnership difficult to adjust to.

Bloggers have been complaining for years that journalists pick up their stories or ideas without giving the kind of attribution they would normally give to journalists in other established organizations. But just as software companies had to learn to collaborate with open source software developers, so too will this industry have to develop its interactions. We already see outlets like the Guardian well ahead of the curve, integrating what are effective expert blogs into their online platform as part of their menu of offerings. We see the BBC successfully integrating requests for photographs and stories from people on the ground in fast-moving news situations--although not quite yet solving the problem of giving the sources a personality and voice of a collaborative contributor. One would assume that the networked components of the fourth estate will follow the same arc that Wikipedia has followed: from something that simply isn't acknowledged, to a joke, to a threat, to an indispensable part of life.

## Conclusion

A study of the events surrounding the Wikileaks document releases in 2010 provides a rich set of insights about the weaknesses and sources of resilience of the emerging networked fourth estate. It marks the emergence of a new model of watchdog function, one that is neither purely networked nor purely traditional, but is rather a mutualistic interaction between the two. It identifies the peculiar risks to, and sources of resilience of, the networked fourth estate in a multidimensional system of expression and restraint, and suggests the need to resolve a major potential vulnerability--the ability of private infrastructure companies to restrict speech without being bound by the constraints of legality, and the possibility that government actors will take advantage of this affordance in an extralegal public-private partnership for censorship. Finally, it offers a richly detailed event study of the complexity of the emerging networked fourth estate, and the interaction, both constructive and destructive, between the surviving elements of the traditional model and the emerging elements of the new. It teaches us that the traditional, managerial-professional sources of responsibility in a free press function imperfectly under present market conditions, while the distributed models of mutual criticism and universal skeptical reading, so typical of the Net, are far from powerless to deliver effective criticism and self-correction where necessary. The future likely is, as the Guardian put it, "a new model of co-operation" between surviving elements of the traditional, mass-mediated fourth estate, and its emerging networked models. The transition to this new model will likely be anything but smooth.