

## Chapter 41 -- Censorship

[NSL p. 1316. Insert the following after the carryover paragraph in lieu of the update on p. 231 of the 2022-2023 Supplement.]

After Assange was arrested in London in 2019, he spent several years fighting extradition to the United States. A court in London initially ruled in 2021 that he could not be extradited due to the state of his mental health, but that decision was overturned in December 2021. The court issued an official extradition order on April 20, 2022, clearing the way for him to be transferred to the United States. Megan Specia, *U.K. Court Brings Assange One Step Closer to Extradition*, N.Y. Times, Apr. 20, 2022. Assange appealed that decision in August 2022 to the U.K.'s high court, which will make the final decision. *Julian Assange Files Appeal Against US Extradition*, The Guardian, Aug. 26, 2022.

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[NSL p. 1323. Replace the last two paragraphs of Note 5 on pp. 232-233 of the 2022-2023 Supplement with the following.]

The new policy, codified in late 2022, bans the use of subpoenas, warrants, or court orders to seize reporters' communications records, notes, or testimony related to their newsgathering activities in order to uncover confidential sources, unless a reporter is under investigation for something unrelated to their reporting. *Policy Regarding Obtaining Information From or Records of Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media*, 87 Fed. Reg. 66239-01 (Nov. 3, 2022) (revising 28 C.F.R. §50.10). "Newsgathering" is defined to include not only passive receipt of sensitive information, but also active pursuit of such information. *Id.* at 66241. Notably, the policy applies only to the "news media," a term that is not defined. *See* Charlie Savage, *Garland Formally Bars Justice Dept. from Seizing Reporters' Records*, N.Y. Times, Oct. 26, 2022.

The new policy also provides,

In determining whether to seek . . . information from or records of members of the news media, the Department must consider several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of a free press in fostering Government accountability and an open society. [87 Fed. Reg. at 66240-66241.]

How do you think DOJ investigators should now weigh the cost of such collection — chilling both leakers and reporters alike — against the benefits? When would it be better to let leakers go unpunished rather than to violate reporter-source confidentiality? Should government officials ever decline to investigate leaks to the media of damaging national security information? How might the DOJ guidelines be enforced?

Some media targets of data requests during the Trump administration apparently were individuals Trump considered political enemies. *See, e.g.,* Barbara McQuade, Opinion, *Did DOJ Target Trump Enemies Using Improper Subpoenas? We Need to Find Out*, MSNBC, June 11, 2021. If the investigations can be shown to have been politically motivated, what is the remedy? What laws or policies could be implemented to prevent such politicization in the future?