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Carey Shenkman [Become a fan](#)

First Amendment, human rights lawyer

[Email](#)

70 Years Later, Still Playing Politics With Freedom of the Press

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It is sometimes forgotten that President Franklin D. Roosevelt once wanted to order marines to occupy the *Chicago Tribune's* tower, or that Nixon famously said "subpoena all those bastards" before sending a Harvard professor to jail for refusing to testify against the *New York Times*. Every few decades, the White House takes a swing at a criminal investigation of the press, and each time gets closer to the ball. When we forget episodes like these, they are bound to repeat.

In fact, since the passage of the Espionage Act, the spy law passed in the anti-German frenzy of World War I, every espionage investigation carried out against a publisher by an administration has targeted a major political enemy of the president. In each case, the publication under investigation had openly and actively aired the president's dirty laundry. Roosevelt despised the *Chicago Tribune* -- his [feelings](#) were "long running and well known" against the paper that regularly attacked his New Deal policies. He called for a criminal investigation within days of the *Tribune's* publication of the 'Battle of Midway' story in June 1942. And Nixon ordered his administration to "destroy the *Times*" after the paper in 1972 published Daniel Ellsberg's Pentagon Papers to the embarrassment of the White House. Today we're in year four of the third spy investigation of a publisher in U.S. history. Since 2010 the Justice Department has investigated WikiLeaks, [confirmed](#) by court filings this April. Obama [called](#) the organization "deplorable" and continues to sponsor confining the organization's editor-in-chief, Julian Assange, to the Embassy of Ecuador in London. June 19th marks the two-year anniversary of Assange's entry into the Embassy. Public officials accused WikiLeaks of treason, called for Assange's assassination, and asked private companies to cut ties to the organization. Ecuador granted Assange political asylum owing to the credible risk of torture, inhumane treatment, and unfair trial he would face here. An outdated Espionage Act has enabled the Obama administration -- and the Roosevelt and Nixon administrations before it -- to play politics with freedom of the press. All three publishers were unfairly singled out and selectively investigated for doing what many others did. The *Tribune* story was carried by nearly thirty publications, including the *Chicago Daily Times* and the *New York Times*; the Pentagon Papers were in part published by the *Washington Post*; and WikiLeaks was joined by others including the *New York Times*, *Guardian*, and *Der Spiegel*.

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Things have gotten worse since 1942, when the Justice Department first tried to use the Espionage Act against the *Chicago Tribune* for running a front-page story suggesting that the US Navy had broken the Japanese naval code. *Tribune* reporter Stanley Johnston, the only reporter on the US fleet, was "good friends" with Commander Morton Seligman of the USS Lexington [according to brilliant research published this March](#).

Seligman "regularly showed classified messages to Johnston." Though the FBI and Navy had a witness, they never indicted Seligman, who claimed memory loss. His career was over, but instead of a criminal prosecution, he got a retirement pay raise.

Nixon was more aggressive than Roosevelt -- he tried to criminally prosecute the *Times* in New York after the Supreme Court said his administration couldn't stop the paper from running the Pentagon Papers. The U.S. attorney there flatly refused, saying "not in this district." Most accounts end here, but Nixon didn't give up; he took the investigation up to the antiwar community in Boston.

It was a fishing expedition. Prosecutors dragged the whole intellectual left community into court, hoping to get testimony on how the *Times'* Neil Sheehan got the Pentagon Papers story. The government wanted to indict Sheehan for complicity in a criminal conspiracy with Ellsberg. Investigators questioned Noam Chomsky, and they jailed Harvard professor Samuel Popkin for refusing to testify.

Today, Commander Seligman's slap on the wrist for leaking documents to the *Tribune* is a stark comparison to the parallel case of Private First Class Chelsea Manning, who last year was sentenced to 35 years in prison for providing documents to WikiLeaks. Those documents exposed drone programs, revealed covered-up murders of civilians, and sparked the Arab Spring revolutions. The fact that Manning was punished for this public service shows that we've taken a giant step backwards in terms of freedom of the press and government accountability.

The anti-war community refused to be a part of the attack on the press during the Nixon years, just as the hacktivist community stands behind the press now. A federal judge recently sentenced hacktivist Jeremy Hammond to ten years in prison for obtaining materials provided to WikiLeaks, and the WikiLeaks grand jury ordered for Twitter records of long-time supporter and security expert Jacob Appelbaum. In 1971 the Nixon administration called Boston anti-war activists into court. In the 2010s, the Obama administration drags hacktivists into court.

Ultimately, the *Tribune* and *Times* investigations were dropped. But these first two swings came close. As a society we are veering dangerously close to full-scale criminal prosecutions of publishers that expose government misconduct. In forty years perhaps the WikiLeaks cables will be declassified and heralded in the same way that the Pentagon Papers were a few years ago. And by then, history will recognize the two years of imprisonment in an embassy that its editor-in-chief had to face, and the investigation into WikiLeaks will be

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seen as the selective political assault that it is. Whether dissenters are Vietnam War protesters or hackers fighting for digital freedoms, history will vindicate them.

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