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Daniel Ellsberg and Jeremy Scahill of The Intercept discuss the Justice Department's decision to indict WikiLeaks founder Julian Assange on 17 charges of violating the Espionage Act for publishing U.S. military and diplomatic documents exposing U.S. war crimes. This comes as President Trump is considering Memorial Day pardons for American military members accused or convicted of war crimes, including former Blackwater contractor Nicholas Slatten, who was twice found guilty of first-degree murder in the deadly 2007 Nisoor Square massacre in Baghdad which killed 14 unarmed Iraqi civilians. He was sentenced to life in prison last December.

**AMY GOODMAN:** This is *Democracy Now!*, democracynow.org, *The War and Peace Report*. I'm Amy Goodman, as we continue to look at the Justice Department's unprecedented decision to indict WikiLeaks founder Julian Assange on 17 charges of violating the Espionage Act for publishing U.S. military and diplomatic documents exposing U.S. war crimes. Assange faces at least 170 years in a U.S. prison now.

I'd like to go back to 2017, when Secretary of State Mike Pompeo was CIA director. He talked about WikiLeaks in his first CIA address.

MIKE POMPEO: WikiLeaks walks like a hostile intelligence service and talks like a hostile intelligence service. It has encouraged his followers to find jobs at the CIA in order to obtain intelligence. It directed Chelsea Manning in her theft of specific secret information. It overwhelmingly focuses on the United States, while seeking support from anti-democratic countries and organizations. It's time to call out WikiLeaks for what it really is: a nonstate, hostile intelligence service, often abetted by state actors like Russia.

**AMY GOODMAN:** So, that was Secretary of State Mike Pompeo when he was CIA director. Julian Assange later responded to the allegation in an interview with Jeremy Scahill in his podcast,

Intercepted

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**JULIAN ASSANGE:** Pompeo has stated that WikiLeaks instructed Chelsea Manning to go after certain information. That's an interesting revelation. And then there is his statement that this, i.e.WikiLeaks and its publications, are end now. So, how does he propose to conduct this ending? He didn't say, but the CIA is only in the business of collecting information, kidnapping people and assassinating people. So, it's quite a menacing statement that he does need to clarify.

**AMY GOODMAN:** That was Julian Assange, as we continue our conversation with our two guests. Pentagon Papers whistleblower Daniel Ellsberg, in 1973, he was charged with violating the Espionage Act for leaking a top-secret report on the history of U.S. involvement in Vietnam to *The New York Times* and other publications. Here in New York, *Intercept* co-founder Jeremy Scahill, host of the podcast *Intercepted* 

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I want to put that to Dan Ellsberg, and go further, as we talked in <a href="Part 1">Part 1</a>, about the content of what it is that Julian Assange released, because now it's all spoken in shorthand, if it's covered at all in the corporate media, what it is he released, and why, Dan Ellsberg, you so identify with him, based on what motivated you to release the Pentagon Papers so many decades ago.

**DANIEL ELLSBERG:** Amy, I'd like to correct one little fact, and it'll help explain the context. You mentioned a couple times that my case was 1973. Actually, it was begun in 1971. When the *Times* began publishing my papers, they had a Supreme Court civil case, which ended with the Supreme Court saying that the injunctions against them were invalid under the First Amendment. But that was followed immediately by my criminal case in '71 for having delivered the newspapers to *The New York Times* 

Washington Post

and 17 other newspapers who had come in. So, it really was 1971. Now, the war was still waging at that time, the Vietnam War, and I knew that it was going to continue and get larger in the air, as it actually did. In '71, it had four years to go, really, including three years, essentially, of American—or two years of American ground combat, but the prospect of American air power indefinitely, if Nixon had not been forced to leave office, and largely because of crimes that he had committed against me.

Now, when Pompeo talks about WikiLeaks as having been a hostile intelligence service, he probably thinks of it that way, and because that's the way, I'm sure, he thinks of *The New York Times* or *The* 

Washington Post

. I have no doubt, by the way, that Trump, in particular, thinks of *The Washington Post* 

as a treasonous, hostile intelligence service. You can just substitute the words "critical journalist" or "investigative journalist" for those words, in their minds.

I would go so far as to say, by the way, that the attitude shown by this administration relates to an oath that I took as a member of the U.S. government and, for earlier, the same oath as a member of the U.S. Marines. And it's the same oath that every congressperson takes. And that's an oath not to secrecy. And it's not to failure to criticize the commander-in-chief, which is criticism that this president regards as treason. It's an oath to uphold and support the Constitution of the United States against all enemies—the Constitution of the United States, including the Bill of Rights, against all enemies, foreign and domestic.

Especially after yesterday, but over the last two years, I've come to see President Trump as a domestic enemy of the American Constitution, just as I saw Vice President Cheney in that role. And I distinguish them a little bit from President Nixon, who indicted me. He violated the First Amendment, by the standards of that time and by the best legal scholars of that time. But I don't have the perception of Richard Nixon as someone who intended to change the amendments, to change the Bill of Rights, to change our form of government. He violated it when necessary. He thought of the government—the president, in particular—as above the law, which is exactly the way Donald Trump sees it. But I think Vice President Cheney and Donald Trump, while patriotic—I'm not calling them traitors—who wanted the best for this country, thought that the best was not served by the existing Constitution and Bill of Rights. And they set off, I think, very clearly in their minds, to change that, as I think John Bolton does right now, and perhaps Pompeo—I don't know enough about him. I have no doubt that Pompeo—that Bolton is impatient with any restrictions on the president by Congress, by treaties, by Constitution, by international law, anything else, in his desires for war and his contempt for Congress. So, we're dealing here, what I'm—what I would call are domestic enemies of the American Constitution, as it exists.

When Julian Assange put out his first leak from Chelsea Manning, with—the one that caught my attention and nearly everybody else's was a video showing a number of—one helicopter, actually, shooting down 17 unarmed people in Iraq.

**AMY GOODMAN:** Dan, I'm going to interrupt you, because we have that video, and we want to play a clip. In April 2010 is what you're talking about.

**DANIEL ELLSBERG:** Yeah.

**AMY GOODMAN:** WikiLeaks made international headlines when it published this video, leaked by, as you pointed out, Army whistleblower Chelsea Manning. The chilling video footage, taken from a U.S. military helicopter, shows U.S. forces indiscriminately firing on Iraqis in the New Baghdad neighborhood of Baghdad in Iraq. The dead included two employees of the Reuters news agency, the videographer, photographer Namir Noor-Eldeen, who was something like 22 years old, the up-and-coming videographer, and driver Saeed Chmagh, the father of four. It became known as the "Collateral Murder" video. This is a clip.

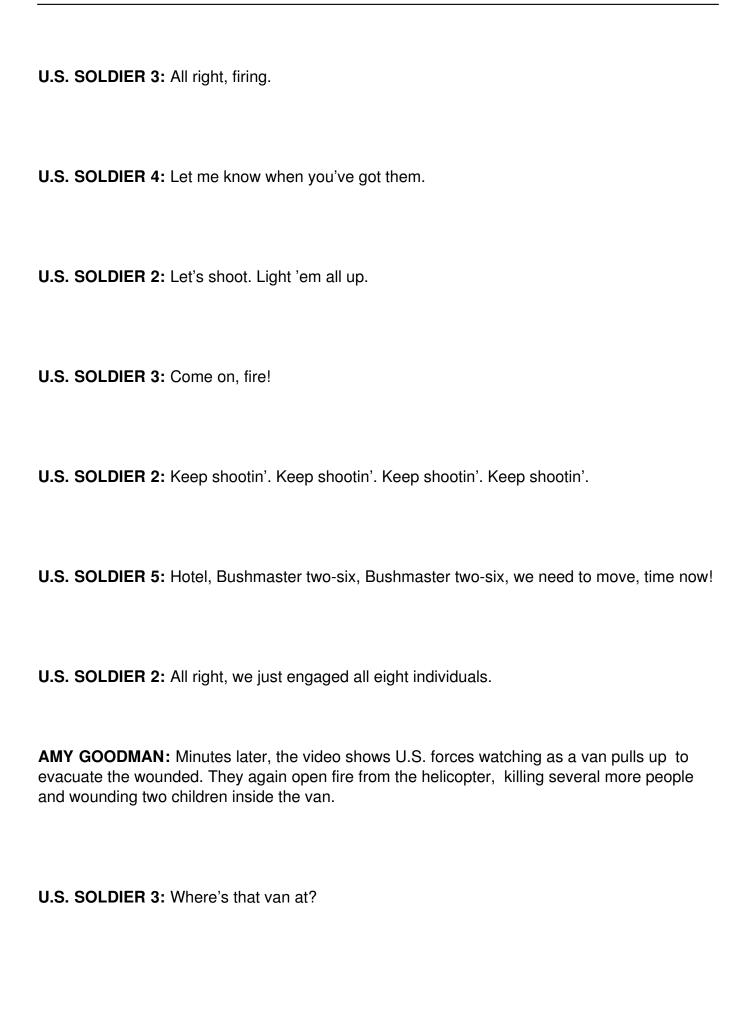
**U.S. SOLDIER 1:** There, one o'clock. Haven't seen anything since then.

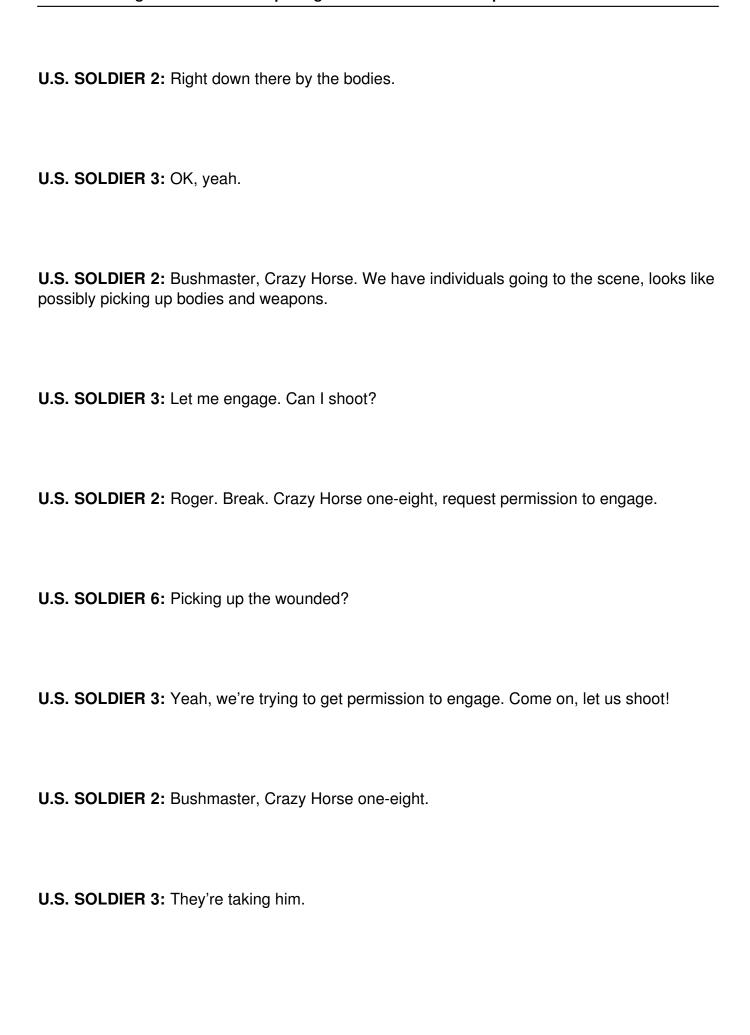
**U.S. SOLDIER 2:** Just [expletive]. Once you get on, just open up.

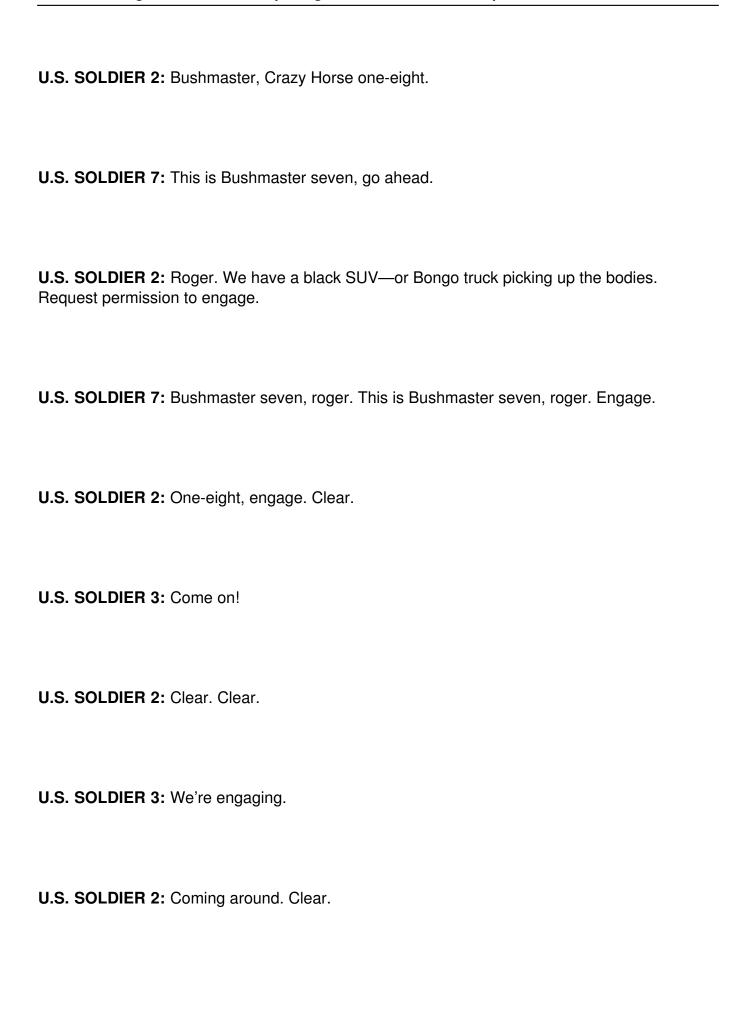
U.S. SOLDIER 3: I am.

U.S. SOLDIER 4: I see your element, got about four Humvees, out along this—

U.S. SOLDIER 2: You're clear.







U.S. SOLDIER 3: Roger. Trying to—
U.S. SOLDIER 2: Clear.
U.S. SOLDIER 3: I hear 'em—I lost 'em in the dust.
U.S. SOLDIER 6: I got 'em.
U.S. SOLDIER 2: Should have a van in the middle of the road with about 12 to 15 bodies.
U.S. SOLDIER 3: Oh, yeah, look at that. Right through the windshield! Ha ha!

AMY GOODMAN: As you can see, this is an absolutely horrifying video. The numbers vary of the number of people killed, from 12 to perhaps 18 or beyond. Two of them worked for Reuters news agency, which had tried for several years to get any evidence of what had happened to their staff, and they weren't able to, until this video was released. Again, the video taken from the Army helicopter. We're speaking with Pentagon Papers whistleblower Dan Ellsberg and Jeremy Scahill. You see the men gunned down from the helicopter. I mean, this is much longer, this video. You hear the soldiers laughing and cursing. They are not rogue. They call back to base to request permission to shoot and to open fire. Namir Noor-Eldeen is killed with the other men, but Chmagh is crawling away. And in the second attack on the people below, including the dad with his two children in the van, the children grievously injured, Chmagh, who's crawling away wounded, is blown up, as well. Jeremy?

**JEREMY SCAHILL:** Yeah, I mean, this is very similar to when the CIA does these double-tap strikes, where they'll kill a group of people, and then they come back around and they kill the first responders. That appears to be what we witness in this video, that they're attacking

unarmed individuals, including members of the news media.

And, of course, we also have to remember that the Bush administration set the tone for the killing of journalists very early on, when the Pentagon spokesperson, Victoria Clarke, basically said, "We can't guarantee the safety of any journalists who are not with our forces." And they—

AMY GOODMAN: Who are not embedded.

**JEREMY SCAHILL:** Who are not—right, who are not embedded. And, of course, they killed Tareq Ayyoub in a direct strike, the Al Jazeera correspondent, reporting from the center of Baghdad during the initial stages of the occupation. They shelled the Palestine Hotel, killing José Couso, the Spanish cameraman, and then yet another Reuters employee, a Ukrainian cameraman.

So, the public service of leaking this video was to try to show the American public documented evidence of war crimes being committed in their names, with their tax dollars. It clearly was leaked by someone within the system who was horrified at what they witnessed. And we now know that was Chelsea Manning.

But let's talk about other documents, too. It's not just the, you know, hundreds of thousands of State Department cables. Those are very significant also, because they showed the way that the United States uses bribery, blackmail, threats, cajoling, to get pliant governments or hostile governments to do the bidding of the United States. But then, also—and I think this is the strongest parallel to Dan Ellsberg and the Pentagon Papers—is the Iraq and Afghan war logs, that were released by WikiLeaks, gave us raw historical material that painted a picture of the mass killing operations in Iraq that the United States was running; operations by its secretive kill-capture task forces; the torture of prisoners; the way that the United States set up death squads in Iraq as part of the so-called Salvador option—the idea that you were going to "Iraqicize" the U.S. occupation by training Iraqi forces to do your bidding; how the United States fanned the flames of sectarian warfare in Iraq, which is a very diverse country, split among Shia, Sunnis and Kurds. I mean, this was—if you look at the totality of what WikiLeaks and Julian Assange published on this utterly criminal war based on lies, this was an incredible public service.

And if you look at Section 36 of the indictment against Julian Assange, of these new indictments, there's this allegation that Assange and Manning, by publishing these documents, put U.S. personnel in harm. The U.S. government has not been able to come up with a single person who was killed as a result of the WikiLeaks disclosures. And, in fact, one of the interesting revelations in this indictment is that the United States has this network of informants, that include journalists and NGOs and others. That practice by the United States of using people who have legitimate reason to be in crisis zones, as aid workers or journalists or clergy or others, that they're using them as informants, is, in and of itself, a morally reprehensible practice, because it endangers the real aid workers or the real journalists who are there. It's akin to what the United States did in Pakistan with its fake polio vaccine program that they were running in an effort to confirm that Osama bin Laden was in the compound in Abbottabad. Rates plummeted of polio vaccinations in Pakistan as a result of the United States weaponizing something that is supposed to be in the public good.

And I think it's also important that we juxtapose what the Trump administration is doing, going after Daniel Hale, threatening him with 50 years in prison for allegedly blowing the whistle on the bipartisan extrajudicial killing program that was escalated—started under Bush, escalated under Obama, continued under Trump—that you juxtapose the prosecution of Daniel Hale, these 17 new espionage charges against Julian Assange, the continued imprisonment of Chelsea Manning, the locking up of Terry Albury, the five-year prison sentence handed down to Reality Winner—juxtapose that with the Trump administration's positions on actual war crimes. And Trump is trying to pardon Navy SEALs, Blackwater operatives and others who have been responsible for massacring civilians. And in the case of Nicholas Slatten, the Blackwater operative, he was one of the lead gunners in the Nisoor Square massacre on September 16, 2007, in Baghdad. And this was a guy who had made racist, derogatory comments about Iraqis and the lack of value for their humanity, and just cold-blooded gunned down people, including an infant, a 9-year-old boy named Ali Kinani. More than a dozen women and children were massacred. And these are the people that Trump is now saying that he wants to pardon.

I don't think Trump cooked any of this stuff stuff up in his "very big brain," as he talks about it. Trump is the Trojan horse for the agenda of, on the one hand, the radical, extreme, Christian supremacist right, helmed by Mike Pence at this point, but also the John Bolton-Dick Cheney-Mike Pompeo view of executive power, the idea that Oliver North and Iran-Contra was not a crime, but a model for how the United States should conduct itself. That these are the people, these are the ideas that we see being implemented, using Trump as a vehicle, as a Trojan horse, to exonerate the real criminals and indict those who blew the whistle or published information showing the war crimes, that's the society we're living in right now.

You know, I think the Obama administration wanted to hit Julian Assange with these charges, but, ultimately, at the end—

**AMY GOODMAN:** I mean, there was a sealed indictment.

JEREMY SCAHILL: There was a sealed indictment. But if you look at some of the recent comments from senior Justice Department officials who were in the Obama administration at the time, what they've been saying is that the Obama administration didn't just view it as a legal issue, they viewed it as a policy issue. And it's a great lesson, Amy, in the power of ordinary people and of news organizations speaking out. Part of the reason that former Obama people are citing for not doing this is—for not doing what Trump is now doing with Assange, is the idea that the public, the American public, would perceive this as an attack on press freedom. That wasn't because Obama had some conscience about this. It's because people were raising a ruckus.

And this is why, you know, in the <u>earlier segment</u> that we did today, I was arguing that the failure of major news organizations to recognize this threat in 2010, 2011, 2012, when it was clear that they were coming for WikiLeaks, is part of how we ended up here, that if bigger, more powerful news organizations had spoken up earlier about this or had, say, covered Chelsea Manning's trial in a drumbeat way, then maybe we wouldn't be in this position with Donald Trump. But Obama bears responsibility for this, as well, as do powerful news organizations, particularly those who published WikiLeaks material, that refused to make this a central campaign for press freedom.

**AMY GOODMAN:** You're talking about *New York Times*.

**JEREMY SCAHILL:** I'm talking about, well, *The New York Times*, but also, you know, international news organizations.

The Guardian

has been pretty relentless in its attacks on WikiLeaks and Julian Assange in some of its reporting. At the same—you know, there's other people; I don't mean to paint *The Guardian* 

as a monolith. There are other people at

The Guardian

who have been very fierce in their defense of WikiLeaks. But, in general, these news organizations, that benefited from the bravery of Chelsea Manning and the audacious bravery of Julian Assange in being willing to take on the most powerful empire in the world, it's pathetic that they did not just ring the bells from the top of the hill saying, "All of us should care about this." You know, it's fine to do an unsigned editorial the day after an indictment. Where were

you when the fight was on to try to prevent this from happening?

And that's why, I was just saying yesterday to a friend, I deeply miss Michael Ratner. You know, at a moment like this, this—Michael Ratner spent the better part of the last period of his life—

**AMY GOODMAN:** Michael Ratner, the former chair of the board of Center for Constitutional Rights, one of Julian Assange's lawyers.

JEREMY SCAHILL: Yes, and also a lawyer who, when you and I were under attack on issues of press freedom—very early on in my time at Democracy Now!, we were arrested reporting on a protest at Andrews Air Force Base, an anti-nuclear protest. And we were basically assaulted by military police, arrested, held without being able to talk to our lawyers, our tapes taken away. You know, Michael Ratner intervened in that case and got the military to return our stuff and to rescind a ban. They had banned you and I from ever entering military property.

I bring this up because we need more Michael Ratners. We needed Michael Ratner to be alive these past few years, and he hasn't been. And I think, you know, Michael would have been fighting this tooth and nail. He would have been on the front lines of it. And and it shows—prophets are not people who see the future. They're people that understand the present. And Michael Ratner was a great American prophet. He knew what the threat was, and he tried to warn us about it.

**AMY GOODMAN:** As we wrap up, Dan Ellsberg, you are the legendary whistleblower who released the Pentagon Papers, the history of the U.S. involvement in Vietnam. You faced, yourself, over a hundred years in prison. The trial started in 1973, the actual trial. Explain what happened, why ultimately you went free. But also, we are here on this day where two things have taken place. You've got the espionage charges that have been leveled against Julian Assange, who's currently in a British prison, and you have this escalating tension that the U.S. is creating with Iran, another issue that you have so deeply cared about over the years, begging for whistleblowers inside the Pentagon or other places to release information about the United States' relationship with Iran. But your final thoughts?

**DANIEL ELLSBERG:** Amy, I'm at a rare moment for me, that I see a hopeful thing in this very ominous—very ominous moment. And I agree with everything Jeremy Scahill said during the main program and just now, absolutely. But I see an explanation that may suggest that we're at a turning point. He's asked over and again, very rightly: Where were the press, and where were lawyers and others defending the press, over these last 40 years, 10 years, 12 years? They really haven't been there. There's no question about that.

The New York Times

there for me, let me tell you—that's a longer story—in 1971. I was a source, and they felt no real commitment to share briefs from the Supreme Court with my defense people, to help our funding effort in any way, even by admitting the fact that we had a defense funding effort. And that was what I warned Julian about and others: Don't expect help from the press.

Why not? Well, the famous Pastor Niemöller, the Lutheran pastor of Berlin who spent the war in Dachau, famous, was, afterwards for explaining the attitudes of the Germans, to some degree including himself, at the beginning, in the late '30s. And he said—in Germany of the '30s, under Hitler. And he said, "First they came for the socialists, and I said nothing, because I was not a socialist. Then they came for the communists, etc. I was not a communist. Then they came for the Jews. I was not a Jew. And when they came for me, there was no one left to speak."

Well, the analogy here would be: When they came, 48 years ago, for Daniel Ellsberg, he was a former official. He had raised his hand, or he promised to keep secrets. He asked for what he's getting, and so forth. Thirty-nine years go before somebody else releases as much. It's Chelsea Manning, a young person. What did she have to do as a writer—another source, by the way, not a journalist. She's transgender. We can't identify with her. Let's pass by. Edward Snowden, he seeks—he seeks refuge in Russia. We can't sympathize with him. What's happened to—and Julian Assange, he was like Fox News in 2016. Write him off. I myself think seven years in one room in the Ecuadorean Embassy was not good for his judgment. I don't think it would be good for mine. So I write him a lot of slack when I disagree with him in recent years, as I do with his politics, having visited him there, later. But right now this one finally puts the crosshairs on us, on Niemöller when they came for him. The journalists can't miss the point, with this latest indictment, that this could apply to any one of them.

So there is reason to hope that for the first time they will rise up and see several very specific things about it, by the way. For one thing, they're now subject to the Espionage Act. That's new as of yesterday. They should recognize then that the Espionage Act was meant for spies, and it does not apply either to whistleblowers or journalists, fairly, under the First Amendment. You can't get a fair trial. Neither a journalist nor a whistleblower can argue their motive, so the role they play in society. They can't answer the question: Why did you do what you did? I was not able to answer that question in my trial, facing 115 years in prison. "Objection, irrelevant." And

that's been true with all the later whistleblowers, meaning they had nothing like a fair trial. As I've said, I've met nearly all of them, except the most recent ones, whom I hope to meet. But that's true for the journalists, as well.

Several editorials I was very happy to see last night, with the *Pittsburgh Post-Gazette*, for example, drawing the lesson, even before yesterday, on the basis of Chelsea Manning's new imprisonment and on the basis of Reality Winner, who's been mentioned, and Daniel Hale and others: There must be an alternative to the Espionage Act. It should be rescinded for use against anybody but spies, who don't have a good reason for saying why they did what they did, who can't explain what it was meant to do for the public. There should be a public interest defense, the ability to explain what the impact was, why it was intended, what the damage was, if any, and what was hoped for from this. Can't be done under the Espionage Act now. That's very important.

And the press, as a whole, should take this attack on the new press as an attack on the freedom of press, in general. And I have to say, humanly, it's kind of understanding why they laid back on that one, as long as it wasn't about them personally. It was about their sources. Well, when I urged the point, you've got to recognize that this law is subject to abuse—let me tell you one little thing. Read the law, 18 U.S.C. 793, paragraphs D and E, especially E, and you'll see something that almost nobody mentions. The words not only apply to journalists, not just to officials; they apply to readers, who are not authorized to read this stuff. Anyone who's not authorized to have it, obtain it or pass it on to their spouse is a reader of *The New York Times*Now, as

long as that wasn't being applied to journalists, or journalists, their attitude, and the lawyers', was "Let sleeping dogs lie. Don't raise the issue. We may get an unfavorable ruling." Well, that time is past. The sleeping dog, which is the antagonist to a free press, is not sleeping anymore. It's throwing itself at their throats.

**AMY GOODMAN:** Well, I want to end by asking Jeremy Scahill about how the Democratic presidential candidates have addressed the growing war on press freedom. In 2010, Joe Biden called Assange a "high-tech terrorist." Earlier this year, the mayor, Pete Buttigieg, told CBS

he was "troubled" by clemency for Chelsea Manning. Meanwhile, Hawaii Congressmember Tulsi Gabbard has called for criminal charges to be dropped against Julian Assange and Edward Snowden. Jeremy, as we wrap up, looking forward.

**JEREMY SCAHILL:** Yeah, and I'd be very curious to hear Elizabeth Warren's thoughts on this, as well as Bernie Sanders'. I mean, one of the points that Dan Ellsberg has made throughout

his career, and that I've been making more recently about this, is that it's not just the sins of commission, where you're saying, "Oh, Julian Assange should rot in prison," or "I don't like Julian Assange because of 2016, so I don't care what happens to him."

**AMY GOODMAN:** And just, again, clarify 2016.

JEREMY SCAHILL: So, Julian Assange and WikiLeaks published all of these emails, from John Podesta, from the DNC, that Hillary Clinton and her supporters and some intelligence entities within the U.S. government have alleged were obtained by Russia originally through hacking. You know, that has not been definitively proven. That may or may not be who originally got the documents. The question then is: Was Assange in on it? Did he know? I mean, I did an interview with Assange where I tried to ask him some of these questions, you know, and he's a bit circumspect about it. But there's a lot of allegations about Russia working with WikiLeaks, and there's pretty thin or, at best, circumstantial evidence that we have about this—you know, the tweets with Roger Stone and the Don Jr. direct messages—but, you know, those aren't proof that Russia gave these to Julian Assange. It may well be the case.

But the point I'm making is that it's not just the people that are saying, "I don't care about Chelsea Manning," or "I question her clemency," or "I don't care what happens to Julian Assange." Silence is complicity—the sins of omission, not saying anything. And I think that's what we—the lesson that should be learned here is that when you don't speak up, then it gets to this extreme point, when people don't stand together, even when people they don't like are being attacked. You know, I always say that your real conscience is tested when someone that you voted for or liked is in power. You know, it's easy to be against Donald Trump doing this right now. Where were these voices when Mr. Nobel Peace Prize Winner Constitutional Law Scholar was gutting press freedoms and attacking journalistic sources by using an act intended to catch spies? Where was the outcry at the time that this was happening? Because it laid the groundwork. It normalized this so that Trump can say, "Huh, you know, Obama, he did it more than any—all presidents in U.S. history combined."

And don't think for one second that Trump cares anything about the actual content of this stuff. This is all about threatening people who even think of leaking about him. That's what—that's how I think that they sold him on it. They drew some cartoons for Donald, you know, with bullet points mentioning his name, to make sure that he said, "Yeah, let's do it." I mean, the guy said, "I love WikiLeaks," constantly talking about how he loves WikiLeaks. He's a pathological liar. I really think they sold him on the idea: This is the way to prevent leaks, is throw the book at everyone.

