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The Justice Department's disclosure that it had secretly subpoenaed phone records from the Associated Press has prompted a wave of comparisons between President Obama and Richard Nixon. Four decades ago, the Nixon administration attempted to block The New York Times from publishing a secret history of the Vietnam War leaked to the newspaper by whistleblower Daniel Ellsberg. Two days after the Times first published excerpts of what became known as the "Pentagon Papers," the Nixon government asked for and received a Supreme Court injunction against the newspaper, arguing that publication of the documents posed a "grave and immediate danger to the security of the United States." We speak to James Goodale, the general counsel at The New York Times during the Pentagon Papers crackdown. Goodale is a leading legal expert on the First Amendment and has just published a new book, "Fighting for the Press: The Inside Story of the Pentagon Papers and Other Battles." Goodale said he wrote the book in part because of the work of Julian Assange of the whistleblowing website WikiLeaks, and how he is likely being targeted by the U.S. government in an ongoing grand jury probe. "My book is meant to be a clarion call to the journalist community: Wake up! There's danger out there," Goodale says. "You may not like Assange, but wake up! The First Amendment is really going to be damaged. If Obama goes forward and succeeds, he will have succeeded where Nixon failed."

JUAN GONZÁLEZ: We turn now to the growing concern over the Justice Department's secret effort to spy on Associated Press reporters as part of an investigation into a leak about a failed terrorist attack. Some analysts are drawing comparisons between the Obama administration's actions in the probe and those of the Nixon administration when it attempted to block

The New York Times

from publishing the Pentagon Papers, the secret history of the Vietnam War leaked to that paper by whistleblower Daniel Ellsberg. Two days after the

Times

first published excerpts of the Pentagon Papers, the Nixon government asked for and received a Supreme Court injunction against the newspaper, arguing that publication of the documents posed a, quote, "grave and immediate danger to the security of the United States." The link was raised Tuesday by a reporter during a briefing with White House spokesperson Jay Carney.

REPORTER: President Obama is being compared to President Nixon on this. How does he feel about that?

PRESS SECRETARY JAY CARNEY: Again, I don't have a reaction from President Obama. I can tell you that the people who make those kind of comparisons need to check their history, because, you know, what we have here with one issue in Benghazi is so clearly, as we're learning more and more, a political sideshow, a deliberate effort to politicize a tragedy. The president feels very strongly about that.

JUAN GONZÁLEZ: That was Tuesday. Well, on Wednesday, the question was raised again of whether the Obama administration's probe of the emails of Associated Press reporters and editors recalls Nixon's targeting of the press. This time the question was posed directly to President Obama.

REPORTER: I'd like to ask you about the Justice Department.

PRESIDENT BARACK OBAMA: Mm-hmm.

REPORTER: Do you believe that the seizure of phone records from Associated Press journalists this week—or before, that was announced recently this week—was an overreach? And do you still have full confidence in your attorney general? Should we interpret yesterday's renewed interest by the White House in a media shield law as a response to that? And, more broadly, how do you feel about comparisons by some of your critics of this week's scandals to those that happened under the Nixon administration?

PRESIDENT BARACK OBAMA: Well, yeah, I'll let you guys engage in those comparisons. And you can go ahead and read the history, I think, and draw your own conclusions. My concern is making sure that if there's a problem in the government, that we fix it. That's my responsibility. And that's what we're going to do.

AMY GOODMAN: Well, for more, we turn to a guest who has a rather informed opinion on whether President Obama has been worse than President Nixon in their targeting of the press for published leaked information. Joining us here in New York is James Goodale. He is the counsel—was the counsel for *The New York Times* in the Pentagon Papers case, a leading legal expert on the First Amendment, has just published a new book, *Fighting for the Press: Why the Pentagon Papers Case Still Matters*.

We welcome you to *Democracy Now!*

JAMES GOODALE: Thank you very much for having me.

AMY GOODMAN: You say that President Obama is worse than President Nixon.

JAMES GOODALE: Well, more precisely, I say that if in fact he goes ahead and prosecutes Julian Assange, he will pass Nixon. He's close to Nixon now. The AP example is a good example of something that Obama has done but Nixon never did. So I have him presently in second place, behind Nixon and ahead of Bush II. And he's moving up fast. And if he goes ahead against Assange, he'll at least be even, and we'll have to see how that prosecution, if it takes place, comes out, because maybe he'll pass him.

AMY GOODMAN: I wanted to go back to the Pentagon Papers. We have a clip from a documentary that was made about Daniel Ellsberg. The documentary is called *Daniel Ellsberg: The Most Dangerous Man in America*. Daniel Ellsberg's leak of the Pentagon Papers directly contributed to the end of the Nixon presidency. His story is chronicled in the 2009 documentary. This is a clip.

DANIEL ELLSBERG: It was the evening of October 1st, 1969, when I first smuggled several hundred pages of top-secret documents out of my safe at the RAND Corporation. The study contained 47 volumes, 7,000 pages. My plan was to Xerox the study and reveal the secret history of the Vietnam War to the American people.

NEWSCASTER: The FBI was trying to find out who gave *The New York Times* a copy of a Pentagon secret study.

MIKE GRAVEL: Pow!, like a thunderclap, you get *The New York Times* publishing the Pentagon Papers, and the country is panicking.

HENRY KISSINGER: This is an attack on the whole integrity of government. If whole file cabinets can be stolen and then made available to the press, you can't have orderly government anymore.

WALTER CRONKITE: A name has now come out as the possible source of the *Times* Pentagon documents. It is that of Daniel Ellsberg, a top policy analyst for the Defense and State Departments.

PRESIDENT RICHARD NIXON: I think it is time in this country to quit making national heroes out of those who steal secrets and publish them in the newspaper.

PATRICIA ELLSBERG: In the first year of marriage, we're talking about him going to prison for the rest of his life.

REPORTER: Dr. Ellsberg, do you have any concern about the possibility of going to prison for this?

DANIEL ELLSBERG: Wouldn't you go to prison to help end this war?

EGIL "BUD" KROGH JR.: We felt so strongly that we were dealing with a national security crisis. Henry Kissinger said that Dr. Daniel Ellsberg was "the most dangerous man in America" and he had to be stopped.

AMY GOODMAN: And this is another clip of *Daniel Ellsberg: The Most Dangerous Man in America*, where he focuses on how the Nixon White House responded to Daniel Ellsberg's leak of the Pentagon Papers. It begins with John Dean, former White House counsel to President Nixon.

JOHN DEAN: I think that there is probably some good justification for the strong feelings Nixon had. He would make a decision in the National Security Council and the next day read it on the front page of *The New York Times* or some other newspaper. This makes it virtually impossible to govern.

PRESIDENT RICHARD NIXON: Just because some guy is going to be a martyr, we can't be in a position of allowing the fellow to get away with this kind of wholesale thievery, or otherwise it's going to happen all over the government. I just say that we've got to keep our eye on the main ball. The main ball is Ellsberg. We've got to get this son of a [bleep].

JOHN DEAN: The leak of the Pentagon Papers changed the Nixon White House. It really is what some of us have called the beginning of the dark period. I mean, it was rough and tumble before, but it got down and dirty. So it's really a defining event for the Nixon presidency.

AMY GOODMAN: That was John Dean and, before that, Richard Nixon. James Goodale, how *The New York Times* came into this story and the decisions it had to make at the time, when Nixon tried to stop *New York Times* from publishing?

JAMES GOODALE: How did *The New York Times* come into it? Well, because he brought *The New York Times* into it. What the Pentagon Papers case is about is censorship. And lawyers call it "prior restraint." And after publishing for three days, all of a sudden we were in court. And several days later, really, we were in the Supreme Court. So the *Times* came into it, because I believed and those at the *Times* believed that this was an outrage and that the First Amendment protected us and that the government had no ability to come in and tell us not what we shouldn't print—sorry for the double negative—or what we should print. And we put our troops together and beat him.

JUAN GONZÁLEZ: Well, in your book, it's a really gripping account of the inside story of what happened, but you actually start with what happened a year earlier with Earl Caldwell and the Nixon administration coming after Earl Caldwell at *The New York Times*, as well, to seek information from him.

JAMES GOODALE: You know, I'm so glad you asked me that, because the subtitle of the book is "Other Battles." And the other battles are the reporter's—what we call "reporter's privilege" battles. That is to say, the ability of the reporter to keep sources from being disclosed. And, hey, where are we today, where AP—it's the very same thing as Earl Caldwell, who was a black reporter who tried to keep his information secret from Nixon. And it started right there.

JUAN GONZÁLEZ: And Earl had been writing articles about the Black Panther Party that the—

JAMES GOODALE: Yeah.

JUAN GONZÁLEZ: —Nixon administration wanted his notes on, right, as well?

JAMES GOODALE: He was virtually the only black reporter at *The New York Times* at that time. He gained access, I would think perhaps because he was into the Black Panther

headquarters, and he gained their trust. So it was very important for the public to have someone who would explain the Black Panthers to the public. And his position was that if he had to say what he saw and tell what he knew, his credibility would be ruined.

Now, what's interesting about this case, and also its parallel to the Pentagon Papers case, is, when it went to the Supreme Court, where he—I say he won, but other people say he lost—sort of a tie—but he had to be taken back to court. Guess what? Nixon forgot about him. So why did Nixon bring it in the first place? You know why: because it was a political case and wasn't a real case. And I would suggest the Pentagon Papers case is not a real case; it's a political case.

When I—I've got one message, basic message, in the Pentagon Papers part of the book, which is: When you look back at the so-called secrets, which the audience heard about in the clips, it's all a bunch of malarkey. There are no secrets. The case with the Pentagon Papers was a bunch of—bunch of hot air. So, therefore, when we hear today the attorney general saying, "This is the worst secret I have ever seen disclosed," you know, beware, because, invariably, these secrets turn out to be non-secrets. They are the ability of the government to protect themselves and their own information and their own political power.

JUAN GONZÁLEZ: Well, one of the things that you raise also in the comparisons to today with the Julian Assange case and Bradley Manning is the government not only went after Ellsberg, but it went after the reporter to whom Ellsberg leaked the information, just as now the government is trying to go not only after Manning, the leaker, but after Assange, the receiver of the leaks.

JAMES GOODALE: After the Pentagon Papers ended, which was a case about censorship, Mitchell, who was Nixon's attorney general, got very excited about prosecuting *The New York Times*. People have forgotten about that. So he convened a grand jury in Boston, because there was some evidence that the Pentagon Papers had been circulated in the antiwar community before they were published by *The New York Times*. And the theory was that the *New York Times* reporter conspired with those antiwar protesters, and he was going to indict them for conspiracy.

So, now, fast-forward. What is Obama doing? He's convened a grand jury. We haven't heard about it; I think it's still there. I think it may have even indicted Assange in secrecy. But what's the charge? Conspiracy. Well, we don't expect our listeners to be lawyers and jump up and down when they hear the word "conspiracy." I just want to tell you in the audience, it's very easy to prove conspiracy, very hard to prove espionage under the Espionage Act. So what Obama is doing is doing an end run and trying to get an easy case against Assange, after he's convicted Manning. It's easy to convict Manning, OK? So that easy conviction then becomes the basis for the agreement for Assange.

So, my book is meant to be a clarion call to the journalist community: Wake up! There's danger out there. You may not like Assange, but wake up! The First Amendment is really going to be damaged, if Obama goes forward. And as I said at the beginning of the show, if he does and succeeds, he will have succeeded where Nixon failed.

AMY GOODMAN: Let's play a clip from WikiLeaks founder [Julian Assange](#) when he was on *Democracy Now!*

last November. He warns about the consequences of the Espionage Act being reinterpreted.

JULIAN ASSANGE: Now, the new interpretation of the Espionage Act that the Pentagon is trying to hammer in to the legal system, and which the Department of Justice is complicit in, would mean the end of national security journalism in the United States, and not only the United States, because the Pentagon is trying to apply this extraterritorially. Why would it be the end of national security journalism? Because the interpretation is that if any document that the U.S. government claims to be classified is given to a journalist, who then makes any part of it public, that journalist has committed espionage, and the person who gave them the material has committed the crime, communicating with the enemy.

AMY GOODMAN: Julian Assange was speaking to us from the Ecuadorean embassy in London, where he is holed up. He got political asylum in Ecuador, but the British government won't allow him to come out of the embassy to make his way to Ecuador. They say they will arrest him and extradite him to Sweden. He is concerned about then being extradited to the United States, where, as you say, you think that there is a sealed indictment against him. We know there's a secret grand jury against him.

JAMES GOODALE: Better than 50 percent. I don't know, because it's secret, yeah. But that's

why he's holed up. His lawyers are convinced, one step out, he's into Sweden, and he's right through Sweden over here.

And he's quite right about talking about the threat to journalism with respect to the way Obama is going about prosecuting him. What lawyers like to say is that if in fact the prosecution goes forward, as Julian Assange has said, it criminalizes news gathering, because I talk to you and ask you to give me a secret, or anything, but in fact that anything may be classified; we're all both going to go off to the hoosegow. And, you know, Obama has classified, I think, seven million—in one year, classified seven million documents. Everything is classified. So that would give the government the ability to control all its information on the theory that it's classified. And if anybody asks for it and gets it, they're complicit, and they're going to go to jail. So that criminalizes the process, and it means that the dissemination of information, which is inevitable, out of the classified sources of that information will be stopped.

JUAN GONZÁLEZ: What about the—

JAMES GOODALE: It's very dangerous. That's why I'm—I get excited when I talk about it.

JUAN GONZÁLEZ: What about the irony of the Obama administration, after the news of their surveillance of the AP comes out, then going to Chuck Schumer and saying, "We need a stronger shield law"?

JAMES GOODALE: I mean, that—I have this whole history in my book. And I just thought that was quite ridiculous, because the bill that Obama asked Schumer to put into the House has an exception for national security. In other words, if you're a reporter and you're talking about national security, the law doesn't apply. But what is the whole controversy about today with respect to AP? It's about a national security exception to the privilege that you would think reporters would otherwise have. So, Obama puts it out, thinking the public doesn't know what I know, and I'm really going to be good to reporters, but it doesn't protect them at all in the AP situation.

AMY GOODMAN: Bill Keller, the former executive editor of *The New York Times*, who partnered with WikiLeaks founder Julian Assange on several major releases, has since written critical columns about Assange. One of his columns ended with the line, quote, "The most

palpable legacy of the WikiLeaks campaign for transparency is that the U.S. government is more secretive than ever." You were the general counsel for
The New York Times

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JAMES GOODALE: Well, you know, we've gone the full secret—we've gone the full circle. When the Pentagon Papers came out, all the journalists and publishers said it's a new era. The government isn't going to be able to keep the secrets anymore—which they aren't secrets, anyway, in my humble opinion. They're not going to be able to hold back the information. We've had this great victory.

But now we are X years later, and we've got Obama, who indicted six journalists. I said that's terrible, in my book. But look what we're talking about in the AP situation. He's trying to find a source who he can indict who will be the seventh. The secrecy has increased during the Obama administration. We have gone nowhere in terms of that.

But we do have a very good precedent that Obama can't stop the press before printing. That was good. But let's face it. In the digital age, no one cares about that anymore. In the digital age, the action is what the government will do after publication, after Assange has published. What are the rules there? So, this is a new chapter in the history of the Pentagon Papers.

AMY GOODMAN: We want to thank you, James Goodale, very much for being with us.

JAMES GOODALE: You're entirely welcome.

AMY GOODMAN: *Fighting for the Press: The Inside Story of the Pentagon Papers and Other Battles*. James C. Goodale is the former general counsel of *The New York Times*, when President Nixon tried to stop the *Times* from publishing the Pentagon Papers.