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Panel: Margaret Ratner Kunstler (Plaintiff) ; Deborah Hrbek (Plaintiff) ; Richard Roth (Attorney); Robert Boyle (Attorney) ; Nathan Fuller (Assange Defense Committee) ; John Goetz (Journalist).

Moderator: Heidi Boghosian, NYC attorney, former Director of National Lawyers Guild

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CIA spying on Assange "illegally" swept up US lawyers, journalists: Lawsuit

By Shaun Waterman

From [Newsweek](#) | Original Article

CIA surveillance of [Wikileaks](#) founder [Julian Assange](#) while he was sheltering in the Ecuadorian Embassy in London included recording his conversations with American lawyers, journalists and doctors, and copying private data from visitors' phones and other devices, violating constitutional protections, according to a lawsuit filed Monday.

The [suit](#) – filed on behalf of four Americans who visited Assange – seeks damages personally

from then- [CIA](#) Director [Mike Pompeo](#) for violating the plaintiffs' Fourth Amendment rights against unreasonable search and seizure. The suit also seeks damages against a Spanish security firm contracted to protect the embassy, and its CEO, alleging that they abused their position to illegally spy on visitors and passed on the surveillance data they collected to the CIA, which is also named a defendant in the suit.

Legal experts, including a former senior intelligence official, told Newsweek that the allegations in the lawsuit, if proven, show the CIA crossed lines drawn to protect American citizens from surveillance by overzealous intelligence agencies.

Assange, an Australian who had repeatedly published classified U.S. documents, was "a legitimate foreign intelligence target," said Tim Edgar, a professor at Brown University and formerly the deputy privacy and civil liberties officer for the Office of Director of National Intelligence.

Targeting Americans for surveillance generally requires a warrant from the special Foreign Intelligence Surveillance Court, Edgar added. But law and policy also require U.S. intelligence agencies to weigh the intelligence value of their collection against the Americans' privacy rights they are infringing. And that applies even when the infringement takes place not as a result of targeting an American, but because he or she is caught up in the surveillance of someone else.

Each of the nation's 16 intelligence agencies interprets this obligation through rules called "U.S. person guidelines," which govern how they collect, process and distribute information about Americans swept up in their surveillance of foreign intelligence targets.

Recording the conversations foreign targets have with Americans, known as "incidental collection," is a familiar problem for U.S. intelligence agencies, Edgar said. There are well-established, if not always completely effective, procedures for "minimization" – removing private or identifying information about Americans from surveillance transcripts before they are distributed.

But copying content from visitors' phones was different, Edgar said. "That seems to me like a very excessive amount of collection. What's the expected intelligence value from that? It's a high bar to justify," Edgar said, "If it's just everyone who visited Assange, then it's not like you

have a specific reason to look at a particular phone."

"It's another example of how intrusive intelligence collection has become in the digital age," he said, noting that U.S. person guidelines for most intelligence agencies were originally developed in the 1970's, "before we put our whole lives on our phones."

The suit cites evidence gathered in a preliminary criminal inquiry by the Spanish High Court, launched after whistleblowers came forward from the Spanish firm hired to provide physical security for the embassy. The firm and its CEO are under investigation for alleged violations of Assange's privacy and the confidentiality of communications with his lawyers – both of which are guaranteed by [EU](#) law.

The plaintiffs in the [U.S. suit](#) – filed in federal District Court in New York – are two New York attorneys on the Assange international legal team and two American journalists who interviewed him. A U.S. doctor who conducted medical interviews with Assange about his mental state chose not to join the lawsuit but told Newsweek he was subjected to the same surveillance. The surveillance also swept up visits from a U.S congressman and celebrities such as model and activist Pamela Anderson.

"As a criminal attorney, I don't think that there's anything worse than your opposition listening in on what your plans are, what you intend to do, on your conversations. It's a terrible thing," said the lead plaintiff, attorney Margaret Kunstler, a member of Assange's U.S. legal team. "It's gross misconduct," she added, "I don't understand how the CIA ... could think that they could do this. It's so outrageous that it's beyond my comprehension."

New York-based attorney Richard Roth, who filed the suit, said, "This was outrageous and inappropriate conduct by the government. It violated the most profound privacy rights" of the plaintiffs and others who visited Assange in the embassy.

And the violation is worse, Roth added, because it included "conversations of an absolutely privileged and confidential nature," such as those with his lawyers, and the "theft of data" from devices owned by people such as journalists and doctors who rely on confidential relationships with their sources and patients.

"All my conversations with Julian Assange were covered by doctor-patient confidentiality," said Sean Love, a physician and faculty member at Johns Hopkins, who visited Assange twice in 2017 to conduct [a study](#) of the effects of his confinement on his physical and mental health.

Love, one of three U.S. physicians who examined Assange while he was under surveillance, said he declined to join the lawsuit because he saw it as too controversial. "To maintain my objectivity as a physician, and my credibility to speak on these issues, I have decided not to join the lawsuit at this time," he said.

But Love said he supported the aims of the plaintiffs. U.S. intelligence agencies had a duty to protect the rights of Americans, even when engaging in legitimate surveillance, he told Newsweek. "Right or wrong in their justification of Julian Assange as a target, attorney-client privilege and doctor-patient confidentiality should remain sacrosanct."

"As a law-abiding American, I expect my constitutional rights to not be violated. And as a physician, I expect the confidentiality of my doctor-patient relationships not be violated without a warrant," he said.

The privacy of other American visitors not party to the lawsuit was also violated, according to copies of surveillance material turned over to the Spanish court and reviewed by Newsweek. Every visitor had their passport photocopied and most seem to have their phones photographed. Among the visitors subject to surveillance was then-California GOP Rep. Dana Rohrabacher, who was trying to negotiate a deal for a presidential pardon for Assange. Washington Post reporter Ellen Nakashima's phone was photographed and a detailed written account of her visit (revealing that she removed the battery from her phone before handing it over) was prepared by embassy security guards. Anderson's passwords for her email and other accounts were included in surveillance photographs allegedly sent to the CIA, according to disclosures by Spanish whistleblowers.

Email messages sent to Anderson's foundation requesting comment were not returned.

Apart from the constitutional violations against Americans swept up in the surveillance, the

sheer magnitude and sensitivity of the material obtained by U.S. authorities may make it impossible for Assange to get a fair trial, Roth said. In addition to the surveillance, after the Ecuadorian government allowed British police to enter the embassy and arrest Assange, it [publicly turned over](#) all his legal papers and computer equipment to the U.S. [Department of Justice](#)

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"When a federal prosecutor comes after a lawyer with a search warrant and seizes their devices, there are multiple layers of review and protection for privileged lawyer-client communications," Roth said. The court might appoint a special master – typically a retired judge or a senior attorney independent of the government – to oversee the process and ensure that privileged communications were segregated from those collected for the prosecution.

"None of that happened here. They just grabbed everything."

The CIA press office declined to comment. A U.S. intelligence official, speaking on condition of anonymity, told Newsweek, that while they couldn't comment on the specific allegations in the lawsuit, the CIA had very strict rules to protect Americans' data.

"When the CIA acquires information about Americans, it safeguards that information in accordance with [procedures](#) approved by the attorney general, which restrict the the CIA's ability to collect, retain, use and disseminate the information," the official said.

Assange went into hiding in the Ecuadorian Embassy in June 2012, fearing extradition to the U.S. on charges stemming from WikiLeaks' 2010 publication of two massive troves of diplomatic and military intelligence reports leaked by U.S Army intelligence analyst [Chelsea Manning](#). The leaks revealed acts by the [U.S. military](#) in Iraq and Afghanistan – including the [fatal shooting](#) by a helicopter gunship of two Reuters journalists in a Baghdad suburb – that many regarded as war crimes.

Ecuador sheltered Assange for almost seven years, granting him citizenship and at one point issuing a diplomatic passport for him. But after a change of government in 2017, the new administration eventually allowed British police to enter and arrest him April 11, 2019.

He has been jailed in south-east London's notorious maximum security Belmarsh prison ever since, fighting extradition to the U.S. on charges related to the Manning leaks, but his final appeal will be filed this month and barring a dramatic reversal by the U.S. or UK governments, he looks likely to be extradited later this year.

But in the early years of his confinement to the embassy - as the true extent of the disastrous U.S. military adventure in Iraq became apparent and the Islamic State declared a caliphate there in 2014 - Assange became a cause celebre. Celebrated for exposing American misdeeds, he was visited by celebrities such as fashion designer Vivienne Westwood and Anderson.

Anyone who visited was required to leave their phones and other electronic devices with security guards at the embassy, according to the lawsuit.

"Julian's visitors weren't allowed to bring their devices into the embassy, nothing that could photograph or record or connect to the Internet," WikiLeaks media attorney Deborah Hrbek, the other attorney suing, told Newsweek. "We turned them over to the security guards. We thought they were embassy personnel. We believed it was a measure to protect Julian."

In fact, the guards were contractors, working for the Spanish private security firm UnderCover Global. Engaged by the Ecuadorian government to provide security for the embassy and its long term houseguest, UC Global in 2017 began secretly also working for U.S. intelligence, according to the lawsuit, citing evidence compiled by the Audiencia Nacional, the Spanish High Court.

UC Global CEO David Morales returned from a Las Vegas security convention in early 2017, telling colleagues they were now working "in the big leagues," "for the dark side," and with "our American friends," according to whistleblower testimony from former UC Global employees. The testimony says it became clear over the subsequent weeks and months that he was being paid substantial sums of money to share surveillance data with the CIA.

During the three years following the convention, Morales made more than 60 trips to the U.S., according to the lawsuit. The whistleblowers said he often hand carried hard drives, SD cards or other removable media containing recordings and other data from the surveillance.

In an email to Newsweek after publication, Morales called the allegations in the lawsuit "totally false."

"I have had nothing to do with the CIA or any exercise in spying on Mr. Assange," he said, calling the whistleblower statements "completely false and based on 'rumors.'"

The emails and other communications where he discusses "the Americans" have nothing to do with the CIA, he insisted, "It is nothing more than [a] reference to other clients with whom I worked."

The judge in the Spanish case [has said](#) that his investigation is seeking to determine the CIA's exact role in the surveillance. In June, he subpoenaed Pompeo and another former senior intelligence official to give evidence to his investigation. Pompeo has not publicly responded to the subpoena and the spokesperson for his Political Action Committee did not respond to a request for an interview or comment.

Despite the uncertainty of the Spanish judge, there is strong circumstantial evidence that U.S. prosecutors working on the case were being kept informed about what was going on inside the embassy.

As first reported by [El Pais](#) , in early December 2017, UC Global, at the behest of its new American masters, covertly replaced video-only surveillance equipment throughout Assange's living and working quarters with cameras that could record sound, and arranged for a live stream of the recording that could be accessed by U.S. intelligence, according to sworn testimony from former employees.

On December 21, 2017, according to UC Global surveillance recordings [first reported](#) by German public broadcaster ARD, Assange met with Rommy Vallejo, head of the Ecuadorian intelligence agency that had hired UC Global. They were finalizing plans for Assange, who had been awarded Ecuadorian citizenship and diplomatic status, to leave the embassy with a diplomatic passport on Christmas day and make his way to a third country.

The next day the U.S. Department of Justice issued an international arrest warrant for Assange, based on a sealed indictment filed the day before, effectively scuttling the plan.

"To us, that was clear evidence that U.S. authorities knew what was happening in the embassy," ARD reporter John Goetz, an American broadcaster in Germany who is one of the journalist plaintiffs in the New York lawsuit, told Newsweek

The other journalist plaintiff is veteran American broadcaster and author Charles Glass. Journalists such as Goetz and Glass were the subject of particular attention from Morales and his employees, according to whistleblower testimony and surveillance material.

UC Global communications collected by the Spanish court reveal that Assange took measures – installing a white noise generator, taking meetings in a women's bathroom – to counter suspected surveillance.

Assange was very concerned about possible surveillance, his friend investigative data journalist Andy Muller-Maguhn told a hacker conference in a [presentation](#) that first exposed the Spanish whistleblower testimony.

"Before I saw all this, I might have said that Julian and I were rather paranoid," Muller-Maguhn said, adding that after many hours reviewing the evidence provided by Spanish whistleblowers, "Now, I would say we had a good situational awareness."

As part of the surveillance, the phones and other devices handed to UC Global employees were

photographed, in some cases with the back removed, so that a unique barcode called the IMEI number was visible. Sim cards were removed and photographed with their numbers visible. Sim and IMEI numbers allow cellular devices to be identified on any networks that they use, and are vital for electronic surveillance targeting. Data was also downloaded from some devices and sent, along with reports about the visitors and photos of their phones and passports, to the U.S. on a regular basis, according to testimony provided to the Spanish investigation and reviewed by Newsweek.

The suit is directed against Pompeo personally because U.S. law and the Constitution make it difficult to sue executive branch agencies for damages, said Robert Boyle, a constitutional law attorney who consulted with Roth on the suit.

A 1971 [Supreme Court judgment](#) "made it possible to personally sue government officials for violations of certain constitutional rights," he said.

The CIA was named as a defendant as well, but principally so the court could order the agency to purge the surveillance material from its files, Boyle said.

The lawsuit notes that, at Pompeo's first public comments as CIA director in April 2017, he laid into Assange, calling him "a narcissist ... a fraud [and] a coward."

Pompeo's remarks followed on the heels of WikiLeaks' publication of Vault 7, a trove of documents about CIA hacking tools and a huge embarrassment for the agency. Pompeo used his comments to label Wikileaks "a non-state hostile intelligence service."

A former U.S. intelligence official told Newsweek that designation brought into play a broader array of authorities that the CIA could use against Assange and potentially his American visitors as well.

The surveillance revealed by the Spanish courts was likely "the tip of the iceberg," said lead plaintiff Kunstler.

"We happen to have discovered that. Who knows what else they were up to?"

