

Obama's Abuse of 'Espionage' Act

President Obama who took office vowing "transparency" has run one of the most opaque administrations in U.S. history, hiding information that the public needs to know and destroying the lives of government officials who dare to share some secrets with the citizenry, ex-CIA officer John Kiriakou says.

By John Kiriakou

Chelsea Manning's attorneys are gearing up for a long and hard appeal of the former soldier's espionage convictions. It's not going to be easy: The Supreme Court has had several opportunities in the past to rule the Espionage Act unconstitutionally broad (which it is), but has not done so. Let's hope the Court has come to its senses. It's time for the Espionage Act to go.

The Espionage Act was written in 1917 to combat German saboteurs during World War I. And it was updated only once, in the early 1950s during the hysteria surrounding the trial of Julius and Ethel Rosenberg.

The truth of the matter is that the Espionage Act is almost never used. At least it wasn't until Barack Obama became president. You see, from 1917 until 2008, the Espionage Act was used only three times to prosecute individuals not accused of aiding a foreign country. But President Obama's Justice Department has charged nine individuals with espionage since he became president.

None of those individuals gave or sold classified information to a foreign power. None sought personal gain in any way. Instead they were charged with passing what the statute calls "national defense information" to members of the press or academia. Most of them were prosecuted for whistleblowing.

In most cases, what they did was the definition of whistleblowing: They revealed evidence of waste, fraud, abuse, or illegality. I am one of those individuals. I was charged with three counts of espionage. And for telling the press that the U.S. was torturing prisoners at black sites around the world and that torture was official U.S. government policy, I was sentenced to 30 months in prison. I served 23 months.

The Justice Department's decision to file espionage charges against Edward Snowden under the same act is another example of the Obama administration's policy of using an iron fist against human rights and civil liberties activists.

But there are other cases, too. Tom Drake, a senior executive at the National Security Agency (NSA), blew the whistle on an illegal and wasteful program to intercept the communications of American citizens. He didn't go to the press. He

went to the NSA's Inspector General, the General Counsel, the Pentagon Inspector General, and then to the Congressional Oversight Committee, just like he was supposed to. His reward was 10 espionage charges, all of which were eventually thrown out, but not until he had lost his job, his home, and his pension.

And one man, a State Department analyst named Stephen Kim, took a plea to an espionage charge after he was arrested for having a conversation with a Fox News reporter about North Korea. This was something that was a regular part of his job. And an administration official called the information that Kim was convicted of giving Fox "a nothing burger."

But that didn't stop the Justice Department from forcing Kim to take a plea to a felony that sent him to prison for a year and a half. Kim also lost his job, his home and his family. His wife left him and moved back to South Korea. And just to add insult to injury, as a part of his plea bargain, Kim had to stand before the judge and say, "I am not a whistleblower."

President Obama has used the Espionage Act to prosecute those whose whistleblowing he wants to curtail. But it's more than that. The purpose of an Espionage Act prosecution is to ruin the whistleblower personally, professionally and financially. It is meant to send a message to anybody else considering speaking truth to power: Challenge us and we will destroy you.

The effect of an Espionage Act charge on a person's life being viewed as a traitor, being shunned by family and friends, incurring massive legal bills is all a part of the plan to frighten other people from revealing governmental waste, fraud, abuse and illegality. It forces the whistleblower into personal ruin, to weaken him to the point where he will plead guilty to just about anything to make the case go away. I know. That's exactly what happened to me.

In early 2012, I was arrested and charged with three counts of espionage and one count of violating the Intelligence Identities Protection Act (IIPA). (I was only the second person in U.S. history to be charged with violating the IIPA, a law that was meant to be used against rogues like Philip Agee, who wrote a book in the 1960s that listed the names of hundreds of undercover CIA officers.)

Two of my espionage charges were the result of a conversation I had with a New York Times reporter and an ABC News reporter about torture. Specifically, the classified information I was accused of giving the reporter was this: That the CIA had a program to capture or kill members of al-Qaeda. That's right. The CIA argued in my case that the fact that we were looking for al-Qaeda fighters after the Sept. 11 attacks was Top Secret. Seriously. The CIA "declassified" the information solely for the purpose of prosecuting me.

I gave the reporter no classified information only the business card of a former CIA colleague who had never been undercover and who was then working in the private sector. The other espionage charge was for giving the same unclassified business card to a reporter for ABC News. All three espionage charges were eventually dropped, but only after I agreed to take a plea. I agreed to 30 months in prison so as not to risk the possibility of 45 years in prison that I could have gotten had I been found guilty at trial.

That's what the Justice Department does. It heaps on charges so that the person pleads guilty to something anything to make the case go away. Believe me, very, very few people risk the 45 years. That's why the government has a conviction rate of 98.2 percent.

(As an aside, when Saddam Hussein got 98 percent of the vote in his last presidential election, we screamed to the international community that it was rigged. When the Justice Department wins 98 percent, we say they're all geniuses.)

So, why charge a whistleblower with a crime in the first place? Leaks happen all the time in Washington. But the leaks that make the government look good are never prosecuted. Former Defense Secretary and CIA Director Leon Panetta boastfully revealed the identity of the Seal Team member who killed Osama bin Laden in a speech to an audience that included uncleared individuals.

That's a violation of the Intelligence Identities Protection Act. Panetta also shared his memoir with his publisher before it was cleared by the CIA's Publications Review Board. That is exactly this administration's definition of espionage: Sharing national defense information with a person not entitled to receive it.

Former CIA director General David Petraeus gave classified information to his girlfriend, including the names of undercover officers. He then lied to the FBI about it. But he was allowed to plead guilty to a misdemeanor. There was no Espionage Act charge for him.

The Obama administration's so-called "cybersecurity czar," General James "Hoss" Cartwright, allegedly told The New York Times that the White House was behind the release of the Stuxnet virus, which attacked computers being used in the Iranian nuclear program. That, too, is the definition of espionage.

But why wasn't Cartwright prosecuted? In addition to being known in the press as President Obama's favorite general, the Cartwright leak made the White House look good, tough and active against Iran. So there were no charges.

In my case, prosecution was my punishment for blowing the whistle on the CIA's

torture program and for confirming to the press, despite government protestations to the contrary, that the U.S. government was, indeed, in the business of torture.

Obama declared a war on whistleblowers virtually as soon as he assumed office. Some of the investigations began during the Bush administration, as was the case with Tom Drake, but Espionage Act cases have been prosecuted only under Obama. Indeed, former Attorney General Eric Holder said just before he left office in early 2015 that he wished he had prosecuted more leak cases.

This policy decision to target whistleblowers smacks of modern-day McCarthyism. Washington has always needed an “ism” to fight against, an idea against which it could rally its citizens like lemmings. First, it was anarchism, then socialism, then communism. Now, it’s terrorism. Any whistleblower who goes public in the name of protecting human rights or civil liberties is accused of helping the terrorists.

That the whistleblower has the support of groups like Amnesty International, Human Rights Watch or the American Civil Liberties Union doesn’t matter. The administration simply presses forward with wild accusations against the whistleblower: “He’s aiding the enemy!” “He put our soldiers’ lives in danger!” “He has blood on his hands!” Then, when it comes time for trial, the espionage charges invariably are either dropped or thrown out.

Yet another problem with the Espionage Act is that it has never been applied uniformly. Immediately after its passage in 1917, American socialist leader Eugene V. Debs was arrested and imprisoned under the Espionage Act simply for criticizing the U.S. decision to enter the First World War. He ran for president from his prison cell.

Nearly a century later, when the deputy director for national intelligence revealed the amount of the highly-classified intelligence budget in an ill-conceived speech, she was not even sent a letter of reprimand despite the fact that the Russians, Chinese and others had sought the figure for decades. When the disclosure was reported in the press, the CIA simply fluffed it off as an “accident.”

When a White House scheduling secretary in 2012 released the name of the senior CIA officer in Afghanistan to an email list of hundreds of reporters, the White House called it “inadvertent” and moved on.

The Obama administration’s espionage prosecutions are political actions for political reasons, and are carried out by political appointees. The only way to end this or any administration’s abuse of the Espionage Act is to rewrite the

law. It is so antiquated that it doesn't even mention classified information; the classification system hadn't yet been invented. The law is still so broad and so vague that many legal scholars argue that it is unconstitutional.

The only hope of ending this travesty of justice is to scrap the Espionage Act and to enact new legislation that would protect whistleblowers while allowing the government to prosecute traitors and spies. This would require Congressional leadership, however, and that is something that is very difficult to come by.

Giants like the late Senators Daniel Patrick Moynihan and Frank Church, and the late Rep. Otis Pike, who boldly took on and reformed the intelligence community in the 1970s, are long-gone. Until someone on Capitol Hill begins to understand the concept of justice for national security whistleblowers, very little is likely to change.

The press also has a role to play, one that, so far, it has largely ignored. That role is to report on and investigate the whistleblower's revelations of illegality, not on the kind of car he drives, the brand of eyeglasses he wears, where he went to college, or what his next door neighbor has to say about his childhood.

The attacks on our civil liberties that the whistleblower reports are far too important to move off-message into trivialities. After all, the government is spying on all of us. That should be the story. If Congress can't or won't right this wrong, the Supreme Court must.

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