

United States: Espionage Act a cudgel to silence dissent

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The FBI raid on former United States President Donald Trump's Mar-a-Lago estate in Florida resulted in the seizure of 11 sets of "classified" documents.

Media coverage of this raid has superseded coverage of Trump's crime of attempting a coup to overturn the 2020 election of President Joe Biden.

This is no cause for celebration.

The Department of Justice, which oversees the FBI, got a warrant for the raid to look into whether Trump violated the notorious and misnamed Espionage Act — a 105-year-old law passed in 1917 when the US entered World War One.



From top: Daniel Ellsberg, Edward Snowden, Julian Assange. Photos: Wikimedia Commons

Former CIA counterterrorism officer and whistle blower John Kiriakou was indicted under the Espionage Act for exposing the George W Bush administration's torture program in the "war on terror". He served 23 months in prison under the Barack Obama administration.

Following the Mar-a-Lago raid, Kiriakou wrote in [Consortium News](#) that Trump should not be charged with espionage for taking classified documents home with him when he left the White House.

"Nobody should be charged with espionage unless they are working for a foreign power and mean to harm the United States," wrote Kiriakou.

"The *Espionage Act* ... [is] rarely used now to target spies and traitors. Instead, it is used as a cudgel to silence whistle blowers, journalists, and occasionally a stupid former president."

As Kiriakou noted, under Section 794 of the Act it is “a crime punishable by life imprisonment or death to provide ‘national defense information to a foreign power’”. Under Section 793, it is a crime “punishable by up to 20 years in prison to ‘provide national defense information to any person not entitled to receive it’”.

“[N]obody ever bothered to define what ‘national defense information’ was. The law didn’t mention ‘classified information’ because the classification system wouldn’t be invented for another 40 years,” wrote Kiriakou.

“Second, there was no ‘affirmative defense’ written into the law. A defendant was forbidden from saying in court, ‘Yes, I gave national defense information to a reporter because I was revealing a crime’ or ‘I did it in the national interest’.

Sedition Act

“[T]o make matters worse, the *Sedition Act*, which was passed a year later, amended the *Espionage Act* to criminalize many forms of speech, including ‘any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the flag of the United States, or the uniform of the Army or Navy,” wrote Kiriakou.

During WWI and following the 1917 Russian Revolution, this amended version of the Act was used by Attorney General Mitchell Palmer to round up opponents of the war, anarchists, communists, socialists and other political radicals — and deport them, where possible — in what became known as the “Palmer Raids” of 1919–20.

At the time, state and local governments were purging radicals from the public service and cracking down on left-wing union organizing. Palmer’s agents targeted radicals — often immigrants — from Southern and Eastern Europe. Between November 1919 and January 1920, they arrested nearly 10,000 people and deported nearly 250, including anarchist Emma Goldman.

The FBI was formed during this campaign and became the domestic secret — and political — police.

The most famous of those prosecuted under the *Sedition Act* was Socialist Party (SP) leader Eugene Debs. Debs ran for president in 1904, 1908 and 1912 and was convicted and sentenced under the *Sedition Act* to 10 years in prison for opposing WWI.

In 1920, Debs ran for president from prison, receiving nearly one million votes.

After the *Sedition Act* had done its work in establishing the FBI and vilifying “communism” in the public mind, it was repealed.

Debs served three years, and was pardoned in 1921.

‘Pentagon Papers’

The *Espionage Act* was used again in 1970, when President Richard Nixon charged whistleblower Daniel Ellsberg with multiple counts under Section 793, for releasing the “Pentagon Papers” to the media. Ellsberg had secretly copied these while working as a military analyst for the RAND corporation, which was working for the military.

The Papers — which were published by the *New York Times* in installments — chronicled the US involvement in Vietnam from 1945–67. Nixon tried to get the *NYT* to stop publishing them, but the courts thwarted him.

The Pentagon Papers were published at the height of the anti-Vietnam-War movement and had a huge impact. They showed how the government had consistently lied to the public — from the time of supporting France’s war against the Vietnamese through to the US’ own dirty war on Vietnam.

The power of the antiwar movement — including among increasingly rebellious US troops in Vietnam — made it politically impossible to convict Ellsberg, and the charges were dropped.

Obama

The *Espionage Act* wasn’t used again until the Obama administration was elected in 2008.

According to the [Freedom of the Press Foundation](#) (FPF), National Security Agency (NSA) whistleblower Thomas Drake was charged under the *Espionage Act* in 2010 for providing a journalist, “with unclassified documents for a story detailing how the NSA wasted hundreds of millions of dollars on a spying program that infringed on Americans’ privacy”. Media and public attention to the case led the Justice Department to drop all charges in exchange for Drake pleading guilty to a misdemeanor.

FBI employee Shamai Leibowitz was charged under the Act in the same year, according to the FPF, for leaking information to blogger Richard Silverstein about alleged “illegal acts” by the FBI. Leibowitz took a plea deal, and was sentenced to 20 months in prison.

Chelsea Manning, an Army intelligence analyst in Iraq, was charged with giving classified files to *Wikileaks*, including the infamous “Collateral Murder” video of an Apache helicopter firing on Reuters journalists and civilians in Iraq, according to the FPF. A military judge convicted her of charges under the Act, and she was sentenced in August 2013 to 35 years in prison. Shortly before leaving office, Obama commuted her sentence to seven years (including time served), and she was released from prison in May 2017.

Manning was [re-arrested](#) by the Trump administration in 2019 and jailed for refusing to testify against *Wikileaks* founder Julian Assange. She was [freed from prison](#) in March 2020.

Former FBI agent, Donald Sachtleben, was accused of confirming information about a foiled terrorist plot in Yemen to Associated Press journalists in 2012, according to the FPF. He pleaded guilty to violating the Act and was sentenced to 43 months in prison. During their investigation, the FBI secretly seized AP journalists’ work phone and home phone records. News outlets and journalism groups condemned this, and the Obama administration promised reforms.

NSA contractor Edward Snowden was accused in 2013 of providing journalists with electronic copies of tens of thousands of classified documents about the NSA’s secret programs, including collecting information about US citizens’ and some foreign leaders’ telephone and internet communications.

Snowden’s case received extensive media coverage, including his eventual flight to Russia, where he was granted asylum. He remains in Russia, but has offered to return to the US for trial, on the condition that he defend why he told the truth — ie has access to ‘affirmative defense’ — which isn’t allowed under the *Espionage Act*.

Trump

Trump continued Obama's crackdown on whistleblowers and upped the ante, declaring *Wikileaks* a foreign intelligence agency and issuing an arrest warrant for Assange.

Assange sought asylum in the Ecuadorian embassy in London in June 2012, as he feared being extradited to the US and charged under the *Espionage Act*. Ecuador had a left-wing government at the time, and granted him asylum. When a right-wing pro-US government took power in 2019, Ecuador expelled him into the arms of British authorities.

Assange is being held in a British prison, and is fighting his extradition. Biden has made no moves to revoke the arrest warrant or extradition request.

In a recent article in *The Intercept*, journalist Micah Lee wrote that as President, Trump used the *Espionage Act* — now being used against him — many times, including against National Security Advisor Reality Winner, who “leaked” an NSA document to *The Intercept* in 2017 about Russian cyber attacks in support of Trump's 2016 election campaign. The NSA never informed election officials about the attacks.

In 2018, Trump's Justice Department charged and convicted former FBI Special Agent Terry Albury under the Act, for leaking confidential FBI guidelines “from an internal FBI whistleblower, including details about controversial tactics for [investigating minorities](#) and [spying on journalists](#)”, wrote Lee. He was the only Black FBI agent in the Minneapolis field office and “often observed or experienced racism and discrimination within the Bureau” according to court documents.

“In early 2017, WikiLeaks began publishing a series of documents and hacking tools detailing the CIA's offensive cyber capabilities, collectively known as Vault 7 — the single largest leak of classified information in CIA history,” wrote Lee.

“In 2018, the [disgruntled](#) CIA software developer Joshua Schulte, who worked on programming the hacking tools that WikiLeaks published, was charged under the *Espionage Act* for leaking the Vault 7 documents to WikiLeaks.”

Schulte was convicted by a jury on nine *Espionage Act* counts last month and faces up to 80 years in prison.

Libertarian Republican congressperson Rand Paul is the only representative in the Senate or House who is calling for the repeal of the *Espionage Act*. Democrats and Republicans have supported this travesty since 1917, and both ruling class parties have used it to cover up their crimes.

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P.S.

• Green Left Weekly, Issue 1359, August 30, 2022:
<https://www.greenleft.org.au/content/united-states-espionage-act-cudgel-silence-dissent>