

United States - Short History of the Espionage Act

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Julian Assange Faces 17 counts of violation of the Espionage Act for publishing in Wikileaks, which he founded, government documents that were given to him by Chelsea Manning that exposed U.S. war crimes and other material the military wanted to keep secret from the public about Washington's wars against Afghanistan and Iraq.

The Espionage Act was passed in 1917 as part of the war hysteria as the U.S. entered into the First World War. It was first used against the Socialist Party, which opposed the war, as well as anarchists, and the anarcho-syndicalists of the Industrial Workers of the World, who also opposed the war.

Many were charged and convicted under the Act, the most famous case being that of Eugene Debs, who gave a strong antiwar speech in Canton, Ohio, in June 1918, in which he also praised the Russian Revolution.

Debs ran for president on the SP ticket (over the objections of the party's right wing) from jail for the 1920 elections.

The Espionage Act was used in the Red Scare of 1919-20. The U.S. ruling class was terrified by the Russian Revolution, and used any and every law and other excuse to round up radicals. Whole organizations of communists and anarchists were targeted. Many people who had immigrated from Europe did not have the strict documents required today, and thousands of those swept up in the raids were deported.

The Act wasn't used much after, until 1945. The FBI raided the offices of the pro-Communist journal *Amerasia*. The journal had obtained hundreds of "secret" U.S. intelligence and State Department documents and ran articles based on them. The editors as well as their sources in the government were arrested and charged under the Act, indicating how the Act would be later used, including in the Manning-Assange case.

At the time, a Grand Jury refused to indict, because there was no evidence that the defendants had passed any document a foreign power - the common definition of "espionage."

The anti-communist witch hunt began two years later and mushroomed into what became McCarthyism. Congress passed amendments to the Act. One made it applicable to any person who learns of classified information passes it on to any other person.

In 1971, two government intelligence employees, Daniel Ellsberg and Anthony Russo, copied and sent a secret Defense [War] Department report, some 7,000 pages on the history of U.S. foreign policy from 1945 through 1967 in Vietnam, Cambodia and Laos to the *New York Times*. The Nixon administration not only arrested and brought to trial Ellsberg and Russo under the Espionage Act, it tried to indict the *Times* also under the act for publishing articles based on the *Pentagon Papers* as the report came to be known.

The antiwar movement was riding high in the U.S. by 1971. The release of the *Pentagon Papers* was a bombshell, as it exposed all the dirty dealings, crimes and lies from 1945 during the French Vietnam War up through the U.S. Vietnam War.

The indictment of Ellsberg and Russo was the first time the Espionage Act was used against people for providing information to journalists. The attempted indictment of the *Times* was the first time that the Act was used to attempt to censor a newspaper.

The antiwar political mood in the population resulted in the charges against Ellsberg and Russo being thrown out of court, and the Supreme Court ruled against Nixon in the *Times* case for the same reason.

In 1981 the Reagan administration threatened to prosecute James Bamford with the Act. Bamford was writing a book about the National Security Agency, using a Justice Department document he had legally obtained under the Freedom of Information Act. The Justice document was a report about its investigation into the NSA's possible criminal activities. The NSA claimed that the Justice Report was still classified even though it had been made public, and ordered Bamford to hand it over.

The Justice Department threatened Bamford with post-publication prosecution if he published the book, but he went ahead and published it anyway, and the prosecution never materialized.

In 1984 Samuel Morison, an intelligence analyst, had sent the British magazine *Jane's Defense Weekly* copies of satellite photos of a new Soviet aircraft carrier in 1984. He was arrested and convicted under the Espionage Act, the first time a source was convicted under the Act.

He appealed to the Fourth Circuit Court of Appeals, arguing that the Espionage Act should not apply to someone who leaked to the press and not a foreign government. That court rejected that argument in an opinion that laid the foundation for the current use of the Espionage Act against news organization's sources.

He appealed to the Supreme Court, which declined to rule on the case, so the lower court's ruling was upheld and applies today.

Morison was later pardoned by Bill Clinton in the 1990s.

We come to the greatly accelerated use of the Espionage Act under Obama and now, Trump.

Shami Leibowitz, a linguist working for the FBI was charged under the Act for leaking information to blogger Richard Silverstein about the Agency's illegal wiretapping of the Israeli Embassy. He took a plea deal in 2009 and was sentenced to 20 months in prison.

Thomas Drake was a senior NSA executive. He provided unclassified documents to Sioban Gorman, a reporter for the *Baltimore Sun* in 2005. She used them for an article about how the NSA spent hundreds of millions on a spying program that infringed on American's privacy.

A Department of Justice investigation of Gorman's source unearthed that it was Drake. In 2010 he was indicted under the Espionage Act. He was never accused of providing classified information to Gorman since he didn't. Instead he was accused of taking a few classified documents home.

In pre-trial hearings the prosecution argued that it did not matter why Drake took the documents home or whether by doing so he actually did any harm. The judge ruled that Drake could not claim in his defense that he was acting in the public interest in providing Gorman with documents. That

ruling has been used ever since against whistle blowers.

Just before Drake's trial was to start in June 2011, The New Yorker magazine and the "60 Minutes" TV show highlighted the travesty of the case against Drake. The Justice Department then dropped all charges in exchange for Drake pleading guilty to a misdemeanor.

Chelsea Manning was accused under the Act of giving the classified "Afghan War Logs" and the "Iraq War Logs" to Wikileaks in 2010, which published them. She was tried before a military judge, and sentenced to 35 years in an army stockade. Shortly before leaving office, Obama commuted her sentence to time served, and she was released in May 2017.

Stephen Kim, a State Department contractor, was accused of leaking information about North Korea's nuclear program to *Fox News* reporter James Rosen in 2005. After fighting the case for years, Kim took a plea deal in 2014 and was sentenced to 13 months in jail.

Jeffrey Sterling, a former CIA agent was accused of leaking information about the CIA's botched attempts to disrupt Iran's nuclear program in 2005. It was only in 2011, as Obama ramped up its war on leakers, that he was indicted under the Espionage Act, and was convicted in 2015. He was sentenced to three and a half years.

John Kiriakou, a former CIA agent, was accused of giving the name of an undercover CIA agent to a freelance reporter in 2009. Kiriakou, who had previously spoken out about the CIA's torture at Guantanamo Bay, said he thought the agent was retired and no longer undercover. Although the reporter never published the information, Kiriakou took a plea deal. The Espionage Act charges were dropped, but he plead guilty under a different law, and was sentenced to 30 months in 2013.

Donald Sachtleben, a former CIA agent, was accused of confirming information about a foiled "terrorist plot" in Yemen to the Associated Press in 2012. The Department of Justice secretly seized two months' worth of AP reporters' work, cell and home phone records, which showed Sachtleben was the source. He pleaded guilty of violating the Espionage Act in 2013.

In 2012 Edward Snowden became the most famous person accused under the Espionage Act under Obama. The world knows about his revelations of the NSA's massive collection of phone and email data on all Americans and people in many in other countries. He was forced to seek asylum in Russia, as he knows he cannot get a fair trial in the U.S. since he would be barred from claiming what he did was in the public interest.

Continuing Obama's drive, Trump has declared he is going after all "leakers" and wants to jail the journalists who publish them.

In June 2017, Reality Winner, an NSA contractor, sent a classified document about alleged Russian attempts to hack employees of a voting machine company to *The Intercept*. Hours after the news organization published an article on the document, Winner was arrested and charged under the Espionage Act.

Now, Trump has charged Julian Assange and Wikileaks under the Act, the first time the Act has been used against a journalist and a news publisher. Even the *New York Times* denounced this as an attack on the freedom of the press in an editorial.

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