



Barack Obama's War on a Free Press

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U.S. presidents have had a long, dishonorable history of trying to undermine the First Amendment, especially freedom of the press. Woodrow Wilson's brutal suppression of critics, primarily through prosecutions under the Espionage Act of 1917, remains the most odious example, but it's hardly the only one. During the late 1930s, Franklin Delano Roosevelt harassed activists, including members of the press, who sought to keep the United States out of the war raging in Europe. Richard Nixon went to great lengths attempting to prevent the *New York Times* and *Washington Post* from publishing the Pentagon Papers because those documents exposed how US policymakers repeatedly lied to Congress and the American people about the Vietnam War.

Fortunately, the US Supreme Court rebuffed the Nixon administration's bid to legitimize prior restraint, but the ruling offered no clear prohibition against efforts to punish journalists and their sources after news stories are published using leaked classified materials. Administrations throughout the next five decades sought to exploit that loophole and undermine the Pentagon Papers precedent. One president who was especially aggressive in doing so was Barack Obama, although his machinations have never received the scope of critical scrutiny they should.

Obama's efforts to plug leaks and persecute leakers even exceeded those of George W. Bush's administration. The administration prosecuted Stephen Kim, a former State Department official, merely for discussing a classified report about North Korea with Fox News reporter James Rosen. Moreover, the report itself was subsequently described in court documents as a "nothing burger" in terms of its sensitivity. Yet, even with a coerced plea deal, Kim was given a 13-month sentence in federal prison.

CIA agent John Kiriakou and Army private Chelsea Manning, who disclosed classified information in the course of blowing the whistle on US government abuses (and in Manning's case, outright war crimes), were even bigger victims of the administration's crackdown. Kiriakou was given 30 months in federal prison, but Manning's penalty was the most shocking and draconian of all. She was sentenced to 35 years, although Obama did commute her sentence after she had served seven years. The Obama Justice Department also targeted Edward Snowden and Julian Assange, the journalist who founded WikiLeaks, for similar prosecutions.

Kiriakou offered a harsh but accurate judgment about Obama's conduct. "President Obama has been unprecedented in his use of the Espionage Act to prosecute those whose whistleblowing he wants to curtail. The purpose of an Espionage Act prosecution, however, is not to punish a

person for spying for the enemy, selling secrets for personal gain, or trying to undermine our way of life. It 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."

In addition to its vendetta against whistleblowers, Obama's administration waged a robust campaign to harass and intimidate journalists, even mainstream journalists, who utilized leaked material. In May 2013, the Justice Department seized the records of phone lines that Associated Press employees used. AP confirmed that the records were from personal home and cell phones of reporters and editors, as well as phones that AP used in the press quarters of the House of Representatives. The administration's contempt for the basic requirements of due process was alarming. As CBS reporter Sharyl Attkisson noted, such a seizure was "unheard of." Beyond the abusive display of power that those raids embodied, she was outraged that no advance notice was given to the AP about the subpoena. "Advance notice would have given AP the chance to challenge the move in court." Of course, that predictable response likely was the reason the Justice Department did not follow such a procedure.

A coalition of 50 news organizations, including ABC, CNN, the *New York Times*, the *Washington Post*, and the Committee for Freedom of the Press, submitted a letter of protest to Attorney General Eric Holder about the raid. It stated that "none of us can remember an instance where such an overreaching dragnet for newsgathering materials was deployed by the Department [of Justice], particularly without notice to the affected reporters or an opportunity to seek judicial review. The scope of this action calls into question the very integrity of the Department of Justice policies toward the press and its ability to balance, on its own, its police powers against the First Amendment rights of the news media and the public's interest in reporting on all manner of conduct, including matters touching on national security which lie at the heart of this case." Holder summarily rebuffed the protest, and there was no indication that it inhibited in the slightest the administration's crackdown on leaks and news organizations using such information.

The dragnet raid against the Associated Press was not the extent of the administration's assault on the press. Officials also conducted electronic surveillance of both *New York Times* reporter James Risen and Fox News correspondent James Rosen in an effort to identify their sources. The government even named Rosen as an "unindicted co-conspirator" in an espionage case brought against his source. Similarly, the administration asserted that it had the right to prosecute Risen, although it chose not to take that step. Those were all ominous warning signals of a government campaign to erase even the limited protections that the Pentagon Papers ruling had provided.

Critics repeatedly accused Donald Trump of waging a "war" on an independent press and even on the First Amendment itself. Trump certainly was hostile to much of the media, even accusing some portions of the press of being the "enemy of the people." The actions of the Trump Justice Department in adding 17 charges to the single criminal charge that the Obama administration had filed against Julian Assange also did not suggest much respect for the rights of journalists. But it's essential to recall that Trump's menacing behavior was not unprecedented, even in recent times. To protect his foreign policy from scrutiny, Barack Obama conducted a vindictive war against journalists and their sources. He was no friend of the First Amendment.

It's equally essential to note that the number two official in the Obama administration is now president of the United States. There is no evidence that, during his tenure as vice president, Joe Biden opposed any of the abuses. That track record does not bode well for his likely policies with respect to a free press.

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