

# FREEDOM = OF THE PRESS = FOUNDATION

## **Freedom of the Press Foundation's Submission to the UN Special Rapporteur on Freedom of Opinion and Expression on the Protection of Sources and Whistleblowers**

**June 22, 2015**

Freedom of the Press Foundation<sup>1</sup> thanks the UN Special Rapporteur on Freedom of Opinion and Expression for the opportunity to comment on the protection of sources and whistleblowers, and in particular, the lack of protections intelligence sources and whistleblowers receive under current law in the United States.

In this comment, we contend that whistleblowing directly to the press is vital to democracy; that the current law used to prosecute sources and whistleblowers in the United States is unjust and amounts to a serious violation of human rights; and that the United States and other countries can make common sense fixes to their laws to provide whistleblowers the protection they deserve.

Please note that while this submission primarily focuses on US law and conduct, that does not excuse or condone any other country's harsh or unjust treatment of whistleblowers. It is a global problem requiring a comprehensive solution, and we appreciate the Special Rapporteur's leadership on the issue.

### **I. Whistleblowing to the press is vital to democracy despite risks**

In his famous affidavit in the Pentagon Papers case from over forty years ago,<sup>2</sup> former New York Times Washington Bureau Chief Max Frankel summarized the importance that sources and whistleblowers who reveal "secret" information play in informing the public: Without them, he wrote, "there could be no adequate diplomatic, military and political reporting of the kind our people take for granted, either abroad or in Washington, and there could be no mature system of communication between the Government and the people."<sup>3</sup>

Over the last decade and a half, virtually every important investigation by the press of government overreach in the foreign policy or national security realm has come

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<sup>1</sup> Freedom of the Press Foundation (FPF) is a US-based non-profit organization founded in 2012 to support and defend journalism dedicated to transparency and accountability. Its founding board members include free speech and whistleblower advocates such as Daniel Ellsberg, Glenn Greenwald, Laura Poitras, John Cusack, Xeni Jardin, and John Perry Barlow. In February 2014, NSA whistleblower Edward Snowden also joined FPF's board of directors.

<sup>2</sup> Max Frankel, *Washington's Culture of Secrets, Sources, and Leaks*, PBS Frontline, Feb. 3. 2007, <http://www.pbs.org/wgbh/pages/frontline/newswar/part1/frankel.html>

<sup>3</sup> *Id.*

from a source or whistleblower who potentially faced prosecution for telling the public about conduct the government was engaged in behind closed doors.

During the George W. Bush administration, it was whistleblowers who went to the press to expose the prisoner abuses at Abu Ghraib and Guantanamo,<sup>4</sup> the Central Intelligence Agency (CIA) secret prison and torture program,<sup>5</sup> the National Security Agency (NSA) warrantless wiretapping program,<sup>6</sup> and many other important revelations. During the Barack Obama administration, sources and whistleblowers have informed the public about drone strikes that have killed scores of “others,”<sup>7</sup> expansive and unprecedented cyber-attack policies,<sup>8</sup> and further NSA surveillance revelations, all of which have been critical to the public debate.

Unfortunately, members of the intelligence community—of which there are millions—are not afforded nearly the same protections as other professions in the United States.<sup>9</sup> While some internal whistleblower protections do exist, the rules are ineffective, claims are often ignored, and in many cases the whistleblower is retaliated against by his or her superiors.

The main argument that critics make against whistleblowers speaking directly to the press is that they should instead use proper whistleblower channels inside government. However, time and again, whistleblowers who went through these “proper channels” have paid a heavy price.

The most famous case showing the dangers intelligence officials face by going through internal channels is probably that of NSA whistleblower Thomas Drake, who was an executive at the National Security Agency after September 11th. He saw what he described as massive waste and abuse at the NSA, which was spending billions of dollars on a surveillance system that both violated Americans’ civil liberties and did not work as well as another system that cost hundreds of millions of dollars less.

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<sup>4</sup> Seymour Hersh, *Torture at Abu Ghraib*, The New Yorker, May 10, 2004, <http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>

<sup>5</sup> Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Washington Post, November 2, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

<sup>6</sup> James Risen, *Bush Lets U.S. Spy on Callers Without Courts*, The New York Times, December 16, 2005, <http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html>

<sup>7</sup> Jonathan S. Landay, *Obama’s drone war kills ‘others,’ not just al Qaida leaders*, McClatchyDC, April 9, 2013, <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html>

<sup>8</sup> David E. Sanger, *Obama Order Sped Up Wave of Cyberattacks Against Iran*, The New York Times, June 1, 2012, <http://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyberattacks-against-iran.html>

<sup>9</sup> Pema Levy, *Loopholes Exclude Intelligence Contractors Like Snowden From Whistleblower Protections*, International Business Times, June 11, 2013, <http://www.ibtimes.com/loopholes-exclude-intelligence-contractors-snowden-whistleblower-protections-1301913>

Drake went through all of the steps that the US government tells whistleblowers to take. He told the NSA general counsel and Inspector General, and he also reported his claims to the House Intelligence Committee. After all that failed, he talked to a reporter at the Baltimore Sun about the *unclassified* aspect of his complaints.<sup>10</sup>

Subsequently, Drake's house was raided by law enforcement authorities and he was indicted on Espionage Act charges. It was not until public outcry due to a New Yorker article and 60 Minutes segment that the government was forced to abandon its worst charges on the day before the trial. Nevertheless, Drake's life was ruined. He was stripped of his security clearance so he could not get a job in the profession he spent most of his life in, his family suffered, and he had to go into severe debt because of legal fees.

To this day, Drake is still involved in a legal battle with the Pentagon Inspector General, who allegedly destroyed evidence of Drake's internal complaints.<sup>11</sup>

While Drake's case may be the most famous, it is unfortunately far from the only case where a whistleblower in the intelligence community went through the "proper channels," only to see their complaints ignored and had their career derailed in the process. It happened to three other high-ranking NSA whistleblowers before Drake was prosecuted.<sup>12</sup> The Washington Post reported on several cases involving whistleblowers in the intelligence community whose lives have been turned upside down even though they initially tried to blow the whistle internally.<sup>13</sup> The Post also recently reported on a whistleblower from the CIA who was investigated for filing a Freedom of Information Act request for decades old information after he was directed to do so, alleging the CIA "ruined [his] entire career" in retaliation.<sup>14</sup>

Worse, the Espionage Act—a World War I era statute meant to prosecute spies selling information to foreign governments—has been warped into a legal weapon used by prosecutors to put sources and whistleblowers in jail, while barring them from presenting a public interest or whistleblower defense in court. In recent years,

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<sup>10</sup> Jane Mayer, *The Secret Sharer*, The New Yorker, May 23, 2011, <http://www.newyorker.com/magazine/2011/05/23/the-secret-sharer>

<sup>11</sup> Marisa Taylor, *Possible Pentagon destruction of evidence in NSA leak case probed*, McClatchy Newspapers, June 15, 2015, <http://www.mcclatchydc.com/2015/06/15/269866/possible-pentagon-destruction.html>

<sup>12</sup> Tim Shorrock, *Obama's Crackdown on Whistleblowers: The NSA Four reveal how a toxic mix of cronyism and fraud blinded the agency before 9/11*, The Nation, March 26, 2013, <http://www.thenation.com/article/173521/obamas-crackdown-whistleblowers>

<sup>13</sup> Emily Wax, *After the whistle: Revealers of government secrets share how their lives have changed*, Washington Post, July 28, 2013, [http://www.washingtonpost.com/lifestyle/style/after-the-whistle-revealers-of-government-secrets-share-how-their-lives-have-changed/2013/07/28/23d82596-f613-11e2-9434-60440856fadf\\_story.html](http://www.washingtonpost.com/lifestyle/style/after-the-whistle-revealers-of-government-secrets-share-how-their-lives-have-changed/2013/07/28/23d82596-f613-11e2-9434-60440856fadf_story.html)

<sup>14</sup> Greg Miller, *CIA employee's quest to release information 'destroyed my entire career'*, The Washington Post, July 4, 2014, [http://www.washingtonpost.com/world/national-security/cia-employees-quest-to-release-information-destroyed-my-entire-career/2014/07/04/e95f7802-0209-11e4-8572-4b1b969b6322\\_story.html](http://www.washingtonpost.com/world/national-security/cia-employees-quest-to-release-information-destroyed-my-entire-career/2014/07/04/e95f7802-0209-11e4-8572-4b1b969b6322_story.html)

the draconian law has been used against sources and whistleblowers at a record pace.

Recent court rulings pertaining to the Espionage Act have prevented whistleblower and source defendants from discussing all of the following information in front of a jury at trial: their intent to inform the American public (as opposed to selling information to foreign governments), whether the information at issue was overclassified, whether the information published *actually* has harmed US national security, and how the public benefited from the information.<sup>15</sup>

This leaves the whistleblower without any plausible defense to argue to a judge or jury, and all of this information can only be brought up during the sentencing phase *after* being convicted of felonies that carry decades in jail. For this reason, virtually all leak prosecutions never reach trial; the defendant has no choice but to plead guilty in exchange for a lower sentence, as all their possible defenses are ruled inadmissible before trial.

The United States should be a world leader in protecting its whistleblowers no matter whether they come from the financial sector, or are members of the intelligence community or the military. Unfortunately, a combination of ineffective and sometimes damaging internal measures, as well as harsh prosecutions under an unjust law for anyone who speaks to the press, has put the United States on the same ground as many of the world's most notorious human rights violators.

There are simple measures that the United States, along with other countries, can take to curb the worst of these abuses, and ensure that whistleblowers of all stripes are treated justly and fairly under the rule of law.

## **II. The Espionage Act is unjust and violates whistleblowers' human rights**

### **a. History**

Congress passed the series of statutes we now know as the Espionage Act in 1917, and they were later amended in 1950. Although many of the free speech-restricting provisions that were the subject of controversial Supreme Court cases in the 1910s<sup>16</sup> were repealed shortly after World War I, several provisions—most notably 18 U.S.

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<sup>15</sup> Trevor Timm, *If Snowden Returned to US For Trial, All Whistleblower Evidence Would Likely Be Inadmissible*, Freedom of the Press Foundation (blog), December 23, 2013, <https://freedom.press/blog/2013/12/if-snowden-returned-us-trial-all-whistleblower-evidence-would-likely-be-inadmissible>

<sup>16</sup> Ken White, *Three Generations of a Hackneyed Apologia for Censorship Are Enough*, Popehat, September 19, 2012, <https://popehat.com/2012/09/19/three-generations-of-a-hackneyed-apologia-for-censorship-are-enough/>

Code § 793<sup>17</sup> and 798<sup>18</sup>—remained active in order to prevent spies from selling US government secrets to foreign enemies.

Despite the clear intent of the statute to criminalize spying for foreign governments, in 1971, President Richard Nixon’s Justice Department re-interpreted the Espionage Act and became the first administration to use it in an attempt to prosecute a whistleblower. The Justice Department indicted former high-ranking State and Defense Department official Daniel Ellsberg under 18 U.S. Code § 793 and other statutes for giving the Top Secret classified Pentagon Papers to the New York Times and other newspapers for publication.<sup>19</sup>

Ellsberg’s case did not reach a verdict; it was thrown out for government misconduct. In the years since, Ellsberg is widely regarded as a hero, including by high-level officials that have served in the Obama administration.<sup>20</sup>

In the next 35 years, the statute was used only two more times to prosecute sources of the press.<sup>21</sup>

During the past eight years, however—a time that spans the last two years of the Bush administration and the entirety of the Obama administration—more whistleblowers and reporters’ sources have been prosecuted under the Espionage Act than in the previous fifty years combined—at least eight in all have faced prosecution and countless others have been investigated.<sup>22</sup> Many of the nation’s journalists have stated that this crackdown has made it near impossible to report on sensitive stories in the public interest, which has created the worst climate for journalism in a generation.<sup>23</sup>

### **b. No whistleblower or public interest exception**

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<sup>17</sup> Cornell University Law School’s Legal Information Institute, *18 U.S. Code § 793 - Gathering, transmitting or losing defense information*, <https://www.law.cornell.edu/uscode/text/18/793>

<sup>18</sup> Cornell University Law School’s Legal Information Institute, *18 U.S. Code § 798 - Disclosure of classified information*, <https://www.law.cornell.edu/uscode/text/18/798>

<sup>19</sup> Robert Reinhold, *Ellsberg Yields, Is Indicted; Says He Gave Data to Press*, *The New York Times*, June 29, 1971, <http://graphics8.nytimes.com/images/blogs/learning/pdf/2013/19710629ellsberg.pdf>

<sup>20</sup> Kira Brekke, *Daniel Ellsberg thinks ‘very much less’ of John Kerry for his ‘despicable’ Snowden comments*, *Huffington Post*, April 29, 2014, [http://www.huffingtonpost.com/2014/05/29/daniel-ellsberg-john-kerry-snowden\\_n\\_5412980.html](http://www.huffingtonpost.com/2014/05/29/daniel-ellsberg-john-kerry-snowden_n_5412980.html)

<sup>21</sup> Cora Currier, *Charting Obama’s Crackdown on National Security Leaks*, *ProPublica*, July 30, 2013, <https://www.propublica.org/special/sealing-loose-lips-charting-obamas-crackdown-on-national-security-leaks>

<sup>22</sup> Gabe Rottman, *On Leak Prosecutions, Obama Takes it to 11. (Or Should We Say 526?)*, *American Civil Liberties Union (blog)*, October 14, 2014, <https://www.aclu.org/blog/leak-prosecutions-obama-takes-it-11-or-should-we-say-526>

<sup>23</sup> Trevor Timm, *Nation’s Leading Journalists: Leak Investigations Chilling Our Reporting, Hurting Public’s Right-To-Know*, *Freedom of the Press Foundation (blog)*, May 19, 2013, <https://freedom.press/blog/2013/05/nations-leading-journalists-leak-investigations-chilling-our-reporting-hurting-public>

What makes the Espionage Act especially pernicious when used against the sources of reporters is its incredibly broad nature and its complete lack of legal defenses for whistleblowers. Law scholars Harold Edgar and Benno Schmidt wrote the perennial law review paper on how the Espionage Act is unconstitutionally broad decades ago,<sup>24</sup> but the issue has never reached the Supreme Court.

Essentially the Espionage Act requires that prosecutors only prove three elements to the crime: 1) Whoever, lawfully having possession of “information relating to the national defense;” 2) that the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation; 3) willfully communicates it to any person not entitled to receive it.

Because there is no *scienter* or intent requirement, the prosecution does not need to prove the defendant meant to harm US national security or commit espionage at the behest of a foreign nation. Therefore it is considered irrelevant whether a defendant gave information to a journalist for free to inform the American public rather than selling the information to a foreign government for personal gain. Judges in virtually all Espionage Act cases have ruled the defendant is not allowed to tell the jury of his or her intent.

Pentagon Papers whistleblower Daniel Ellsberg, the first newspaper source put on trial for violating the Espionage Act, wrote about his own experience in *The Guardian* of not being allowed to tell the jury about *why* he leaked the Pentagon Papers (which was to tell the American public their government was lying to them).<sup>25</sup>

*I had looked forward to offering a fuller account in my trial than I had given previously to any journalist – any Glenn Greenwald or Brian Williams of my time – as to the considerations that led me to copy and distribute thousands of pages of top-secret documents. I had saved many details until I could present them on the stand, under oath, just as a young John Kerry had delivered his strongest lines in sworn testimony.*

*But when I finally heard my lawyer ask the prearranged question in direct examination – Why did you copy the Pentagon Papers? – I was silenced before I could begin to answer. The government prosecutor objected – irrelevant – and the judge sustained. My lawyer, exasperated, said he “had never heard of a case where a defendant was not permitted to tell the jury why he did what he did.” The judge responded: well, you’re hearing one now.*

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<sup>24</sup> Harold Edgar and Benno Schmidt, *The Espionage Statutes and Publication of Defense Information*, Columbia Law Review 73, no. 5 (May 1973), 930-1087, <http://www.fas.org/sgp/library/edgar.pdf>

<sup>25</sup> Daniel Ellsberg, *Snowden would not get a fair trial - and Kerry is wrong*, The Guardian, May 30, 2014, <http://www.theguardian.com/commentisfree/2014/may/30/daniel-ellsberg-snowden-fair-trial-kerry-espionage-act>

*And so it has been with every subsequent whistleblower under indictment, and so it would be if Edward Snowden was on trial in an American courtroom now.*

Former CIA officer John Kiriakou, the first former government official to discuss waterboarding with the press on the record, pled guilty in his Espionage Act case largely because of a pre-trial ruling that he was not allowed to talk about his intent at trial.<sup>26</sup>

The phrase “information related to the national defense” is also dangerously overbroad. It could not only include *any* information that was considered classified, but also whole categories of information that isn’t classified at all. Because the government need not prove that the information is properly classified, or a true state secret, the defendant cannot argue the information should have been public to begin with.

Before the prosecution’s case fell apart against NSA whistleblower Thomas Drake, the government filed pre-trial briefs arguing that Mr. Drake should not be allowed to tell the jury that the information he was alleged to have told a reporter was overclassified,<sup>27</sup> and he should not be allowed to even mention the word “whistleblowing” to the jury.<sup>28</sup>

Likewise, lower court judges have ruled the government does not need to prove any of the information disclosed by the defendant *actually* harmed the US, only that there is reason to believe it *could* be used to injure the nation or help a foreign nation. And even this standard has been lowered in a recent leak case. Former State Department official Stephen Kim pled guilty without going to trial after the judge, as described by Steven Aftergood, “ruled that the prosecution in the pending case of former State Department contractor Stephen Kim need not show that the information he allegedly leaked could damage U.S. national security or benefit a foreign power, even potentially.”<sup>29</sup>

While the above examples apply to USC § 793, the same principles apply to 18 USC § 798, which specifically deals with signals intelligence and could potentially be used against anyone who may have disclosed information related to the NSA or surveillance in general. There is no intent requirement, there is no public interest

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<sup>26</sup> Steven Aftergood, *Kiriakou Not Allowed to Argue Lack of Intent to Harm U.S.*, Federation of American Scientists (blog), October 15, 2012, [http://fas.org/blogs/secrecy/2012/10/kiriakou\\_intent/](http://fas.org/blogs/secrecy/2012/10/kiriakou_intent/)

<sup>27</sup> Steven Aftergood, *Court Hears Pre-Trial Motions in Thomas Drake Leak Case*, Federation of American Scientists (blog), April 7, 2011, [http://fas.org/blogs/secrecy/2011/04/drake\\_pre-trial/](http://fas.org/blogs/secrecy/2011/04/drake_pre-trial/)

<sup>28</sup> Jesselyn Radack, *Why Edward Snowden Wouldn’t Get a Fair Trial*, Wall Street Journal, January 21, 2014, <http://www.wsj.com/articles/SB10001424052702303595404579318884005698684>

<sup>29</sup> Steven Aftergood, *Court eases prosecutor’s burden in leak cases*, Federation of American Scientists (blog), July 29, 2013, <http://fas.org/blogs/secrecy/2013/07/prosecutors-burden/>

defense, and subsection 3 criminalizes virtually any disclosure dealing with surveillance capabilities at all—no matter how vague.

### **III. How to make sure whistleblowers are protected in court**

Many whistleblower advocates would prefer the relevant sections of the Espionage Act be repealed, but given the stigma almost certain to be attached to any member of Congress voting for a repeal of a statute originally meant to punish spies that contains the word “Espionage,” such a bill has a slim chance of passing.

However, barring a judge striking the law down as unconstitutional, reforming the Espionage Act—to make clear that *if* the government wishes to use the law against reporters’ sources and whistleblowers, as opposed to actual spies, the government must prove additional elements of the crime—is possible and could be done quite easily.

Chelsea Manning, regarded by many around the world as a courageous whistleblower, recently wrote an amendment to the Espionage Act while serving her 35-year jail sentence for convictions under that same statute.<sup>30</sup> The bill would merely add an “intent to harm” requirement to the Espionage Act, so that it could still be used to prosecute spies, while providing some protection to whistleblowers.

In addition, simple language could be added to the statute to require prosecutors prove *actual* harm to the United States’ national security, and that the information disclosed was properly classified.

In the alternative, the Espionage Act could be modified to merely allow the whistleblower defendant invoke an affirmative defense<sup>31</sup> that allows the defendant to argue his or her disclosures benefited the public, even if all the other criminal elements are met. In a forthcoming paper in the Harvard Law Review, Professor Yochai Benkler proposes a general “Public Accountability” defense be added to the federal criminal code’s recognized affirmative defenses.<sup>32</sup> Professor Benkler writes:

*The defendant must establish that (a) the disclosed actions were reasonably seen as illegal or constituted systemic error, incompetence, or malfeasance, (b)*

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<sup>30</sup> Chelsea Manning, *National Integrity and Free Speech Protection Act (NIFSPA)—Proposed Bill for U.S. Congress*, The Chelsea Manning Support Network, April 27, 2015, [http://www.chelseamanning.org/wp-content/uploads/2015/05/Bill\\_050815.2.pdf](http://www.chelseamanning.org/wp-content/uploads/2015/05/Bill_050815.2.pdf)

<sup>31</sup> Defined as: “A defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts. Self-defense, entrapment, insanity, and necessity are some examples of affirmative defenses.” [https://www.law.cornell.edu/wex/affirmative\\_defense](https://www.law.cornell.edu/wex/affirmative_defense)

<sup>32</sup> Yochai Benkler, *A Public Accountability Defense for National Security Leakers and Whistleblowers*, 8(2) Harvard Law & Policy Review 281 (July 2014), [http://benkler.org/Benkler\\_Whistleblowerdefense\\_Prepub.pdf](http://benkler.org/Benkler_Whistleblowerdefense_Prepub.pdf)



*the disclosure used reasonable means to mitigate harms from the disclosure, and (c) disclosure is to a channel reasonably aimed at public disclosure.*

*Once the defendant shows that the disclosed actions are reasonably characterized as violations, and that disclosure was reasonably designed to mitigate the harms, the burden shifts to the government to show by clear and convincing evidence that the harm is (a) specific, imminent, and substantial, and (b) outweighs reasonably expected benefits from the disclosure. The burden shifting recognizes that the government is more likely to possess the relevant facts about harm. The heightened burden reflects recognition that officials have tended to make broad claims of harm that do not withstand scrutiny.*

Congress could also take an even simpler route and limit this affirmative defense or a similar version to Espionage Act and similar cases involving sources of journalists. Other jurisdictions around the world could enact similar laws that give whistleblowers some protections for going to the press if their countries' internal whistleblowing mechanisms are inadequate or place them at risk of retaliation.

Additionally, because of recognition that the current law is not sufficient to protect sources, journalists and sources are now adopting encryption tools at an increasing rate, especially in the realm of national security reporting.<sup>33</sup> We agree with the Special Rapporteur that encryption and anonymity are absolutely essential, and that free and open source encryption tools can provide some cover for journalists to communicate safely with sources.<sup>34</sup> However, it is vital that the law catch up with technology and provide important legal protections to sources and whistleblowers that have been lacking for so long in the courts.

#### **IV. Conclusion**

To properly protect the rights of whistleblowers, as well as press freedom and the principles of free expression, our laws must provide a robust mechanism to allow concerned government employees to get important information to the public through the the media.

The inherent risk involved in whistleblowing, combined with the recent crackdown on sources and the increased ability of governments to identify sources through

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<sup>33</sup> Tom Lowenthal, *Surveillance forces journalists to think and act like spies*, Committee to Protect Journalists (blog), April 27, 2015, <https://cpj.org/2015/04/attacks-on-the-press-surveillance-forces-journalists-to-think-act-like-spies.php>

<sup>34</sup> David Kaye, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Human Rights Council, May 22, 2015, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32\\_AEV.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc)

mass surveillance, has made this even more imperative. In particular, the public interest in the United States and other countries would be best served by amending the Espionage Act and other similar laws so that these draconian tools can't be used to punish sources and whistleblowers who enrich democracy around the world.

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