

Ralph Engelman and Carey Shenkman, **A Century of Repression: The Espionage Act and Freedom of the Press**, Urbana: University of Illinois Press, 2022, 327 pp., \$125.00 (hardcover), \$24.95 (paperback), \$14.95 (ebook).

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A Century of Repression: The Espionage Act and Freedom of the Press by Ralph Engelman and Carey Shenkman offers an exhaustive look at a law purported to catch spies, showing how it has been used against the press, government employees, and other U.S. citizens with dissenting opinions from the government. For those in journalism, the threats to the First Amendment are especially eye-opening.

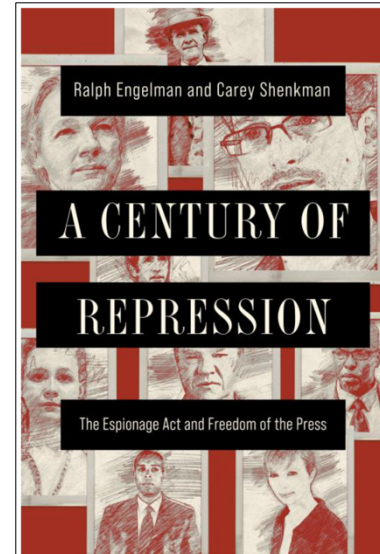
The book traces the more than 100-year history of a misnamed law. Billed as a way to curb spying, the Espionage Act has always, but less publicly, been used to limit the press and free speech. First enacted in 1917 during World War I, the Espionage Act, as the name implies, aimed to keep U.S. secrets out of the hands of foreign enemies during times of war. But really, its scope was much broader.

This book is not a dry, objective history lesson. The authors' stated purpose is to argue the need to balance national security against the First Amendment's rights of free speech and press. They say, "Let this volume stand as a contribution to the growing debate about the future of the Espionage Act of 1917 and freedom of information in the United States" (p. 10).

The authors have the chops to make their persuasive claim. Ralph Engelman is senior professor emeritus of journalism and communication studies at Long Island University and faculty coordinator of the George Polk Awards. He has written numerous books and papers on journalism history. Carey Shenkman is a First Amendment lawyer in New York, specializing in human rights and constitutional law. Shenkman also served on the litigation team on behalf of the press in the court-martial of Chelsea Manning.

Not unlike these authors, others had concerns early on that wartime did not have a special exception carved out in the First Amendment that allowed for limits on freedom of speech and the press. Despite that, the act's reach has consistently grown to become a law protecting government secrecy.

The first instance of its use was against a media production rather than a spy. Makers of the film *The Spirit of '76* were charged with attempting to harm the U.S. effort in World War I by portraying Great Britain, the U.S. ally, in a negative light (p. 32). A man in Iowa was convicted and sentenced to a year in jail for applauding.



Next up was also not a spy. The labor union International Workers of the World had added an antiwar plank to its platform. Its leader, Bill Haywood, and 100 others were convicted and given long sentences. Haywood jumped bail and fled to Moscow, previewing the saga of Edward Snowden. It was becoming clear that President Woodrow Wilson aimed to also control information and public opinion in war, not just espionage.

One year after the law was enacted, an amendment gave it even broader powers—this time wielded against the Black press and socialists. Its censorship ability was craftily enforced under the jurisdiction of the U.S. Postal Service—at the time, publications that could not be mailed could not survive. Nearly 80 publications were banned from the mail by the end of World War I.

Instances of the act enforced against the Black press abound. The editor of the *San Antonio Inquirer* was convicted for criticizing military hangings of Black soldiers in 1917. Marcus Garvey's weekly *Negro World* was destroyed. Even W. E. B. DuBois self-censored the *Crisis*.

Perhaps the best-known use of the Espionage Act was the prosecution of labor leader and socialist Eugene V. Debs for a speech. Debs was sentenced to 10 years in prison in a decision that the book says, "eviscerated the First Amendment" (p. 36). The mainstream press supported the decision. But it was a former newspaper editor—President Warren G. Harding—who commuted Debs' sentence.

By the end of World War I, 2,100 people had been indicted and 1,000 convicted—none for the kind of espionage known as spying.

J. Edgar Hoover, head of the FBI, was the architect of efforts to keep the Black press in line under the reasoning that protests against racism would undermine support for the war in Black communities. The *Chicago Defender* and Baltimore *African-American*, among others, tempered their coverage.

By World War II, minority news outlets were stronger and better organized, and no Black newspapers were prosecuted.

The Espionage Act was agnostic about which ideology it targeted—in World War I it was used primarily against the left, in World War II, mainly against the right. Likewise, liberal and conservative leaders were prone to its use. It was Franklin Delano Roosevelt who first attempted to use the act against the mainstream press—the *Chicago Tribune*—and threatened the Black press.

After World War II, the espionage act did not quietly fade away but morphed into a tool for controlling leaks of government information. The first case involved the small academic journal *Amerasia*. Six government employees had leaked military documents to the publication, not a foreign power. It was the first time the espionage act was used after a war against government insiders. A new era of information control had begun.

During the Cold War, use of the espionage act was expanded to control leaked information, theft of government property, and publication of images of military installations. Enter the era of prosecuting government employees who gave information to the press. It marked a turning point in the government's willingness to prosecute journalists, scholars, and others involved in releasing classified government documents.

The Espionage Act went dormant for nearly 15 years but awakened during President Richard Nixon's administration. Student groups who opposed the Vietnam War and the Black Panthers were the primary targets.

Defense analyst Daniel Ellsberg was charged for releasing the Pentagon Papers—a history of how the public was misled about the Vietnam War. He was the first to be tried for disclosing to the press classified government documents. The Supreme Court decision to allow the *New York Times* and *Washington Post* to publish the papers was considered be a First Amendment victory, but in reality the decision was much more limited. It was prosecutorial misconduct—government break-ins into Ellsberg's psychiatrist's office—that got the case dismissed.

After the attacks on September 11, 2001, the Espionage Act was reinvigorated, with new curbs on civil liberties for a new type of warfare.

The book tells tales of scores of journalists and news outlets that came into the crosshairs of the Espionage Act, including the *Beacon Press*, the *Village Voice*, and muckraking syndicated columnist Jack Anderson. Journalism and state secrets became enmeshed early on in cases where whistleblowers like Ellsberg, Chelsea Manning, Edward Snowden, and others used the press to get information to the public.

The cast of characters and chronologies are long and complicated, so expect to get lost in the details. But the gist of the story comes through, even as I wished for a timeline. And the storytelling is riveting.

I was most surprised when told how President Barack Obama's administration employed the most use of the act—eight cases of confidential sources given to the media—more than the total of all other cases combined, including Manning and Snowden. The book declares that "expanded use of the Espionage Act was a defining legacy of the Obama administration" (p. 197).

Throughout the book, we are told of the misgivings that various actors had over the sweeping powers of the act and the need to balance national security against First Amendment rights. Some fears were heeded, others not. There was no consideration for altruistic motives, whether the information was classified appropriately, or how consequential it was to foreign policy.

Reporters' ability to protect the identity of their sources came under fire, reviving efforts for federal shield laws. Julian Assange was the first publisher ever charged. His Wikileaks had followed the precedent of the Pentagon Papers. Another case involved secrets being given to a blogger. Government employee Reality Winner was convicted of disclosing secrets to the press—a single NSA document that showed Russian interference in the 2020 election.

This book could not be more timely, with the recent release of secret documents on the Ukraine war by a young National Guardsman. The threat of this misnamed law to journalistic independence and the ability to protect news sources is only likely to grow. This comprehensive look at its history is an enlightening read for students of journalism history, and, in fact, anyone who wants to understand what is at stake as the government creeps closer to the line for journalists.