

# Leaking Against the Impossible: Whistleblower John Kiriakou, CIA Torture and Leaking

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*“What about the CIA officers who directly violated the law, who carried out interrogations that resulted in death? What about the torturers of Hassan Ghul?” – John Kiriakou, Democracy Now, Feb 10, 2014*

He was the only agent of the Central Intelligence Agency to blow the otherwise hesitant whistle on the torture program made infamous by the Bush administration. And for all that good grace, he paid with a prison sentence, having violated the covenant of the espionage service. In 2007, John Kiriakou publicly confirmed and noted the use of waterboarding by agents in dealing with terrorist suspects. And it hardly came with bells and whistles.

His CIA credentials as officer and analyst were well minted – 14 years in service, and designated head of the operation that led to the finding of al-Qaeda member Abu Zubaydah in 2002. It should be noted that Kiriakou was no angel coming late to a feast of innocence. As an agent, he had been privy to the darker sides of the supposed “war on terror”. He had also, at one point, defended waterboarding as a practice. In his own words to Scott Shane of *The New York Times*, “I think the second-guessing of 2002 decisions is unfair.”

In January 2013, he was sentenced to two-and-a-half years, pleading guilty to confirming the identity of a covert officer to Shane. Material for a second story was also provided to another reporter, which also involved disclosing the name of another agent. A plea bargain ensued, trimming a sentence, but affirming his guilt. He is currently under a house arrest term of three months.

This case reveals, as do whistleblowing cases in general, that the discloser is presumed to be guilty, the tribal member who went against the creed. The result of that disclosure – exposing an illegal program, implemented by individuals who, one would think, would be the subject of prosecution – is evaded. Twisted logic ensues: the perpetrator of abuse escapes the exposure; and the one doing the exposing received due punishment. Rules, not substance, matter.

As Assistant Director in Charge of the case, James W. McJunkin, explained after Kiriakou’s plea with an almost vulgar clarity, “Disclosing classified information, including the names of CIA officers, to unauthorized individuals is a clear violation of the law.”[1] Kiriakou, it was noted, had conceded to sign “secrecy and non-disclosure agreements” to the effect of not disclosing such material to unauthorised persons.

Some commentary on Kiriakou has been ambivalent, cutting fine distinctions as to the nature of sensitive leaks on the one hand, and their supposed effect on the other. There are generic leaks, and then, suggests Seth Mandel, writing in *Commentary* (Jan 7, 2013), there

are those naughty, destructive leaks that sink the state. "First of all, not all leaks are created equal: some are legal and others break federal law. Second, some leaks are clearly damaging to national security, and thus put Americans in unnecessary danger." [2]

Mandel seeks to draw one example out of the hat of bad leaks – the *New York Times*' decision to publish details of a successful clandestine program used by the government to monitor and track the finances behind terrorist activity. "The program was legal and constitutional, but the *Times* saw an opportunity to damage the Bush administration's national security efforts, and took it – safety to Americans be damned."

But Mandel misses the vital point: that such distinctions are artificially made when it comes to prosecuting leakers, and those connected with the process. It follows, as a rule, that any such disclosure breaks the law irrespective of the motivation of the whistleblower, or the damning quality of the material. The onus is on the whistleblower to deny or disprove his or her putative illegality, to dig deep into the legislative drawer to find viable defences.

Then come the more troubling apologies scripted by the White House. Presidential candidate Barack Obama may have expressed his concerns about torture, but President Obama wore a different, adjusted hat when in office.

In 2009, he cooled on the issue of whether to prosecute those in government who had made the program possible. In August 2014, he would show considerable latitude to the torturer whose task it was to defend the United States, despite breaching the law in cavalierly bloody fashion. "I understand why it happened. I think it's important, when we look back, to recall how afraid people were when the twin towers fell." [3] Fear justifies bestial retaliation, fuelling the engine of vengeance. The odds, in other words, lengthen for such individuals as Kiriakou, who ended up disclosing improper conduct that was looked upon favourably by excusing authorities.

Obama goes even further, using the desk defences that were dismissed at such trials as those of Adolf Eichmann. "It's important for us not to feel too sanctimonious in retrospect about the tough job those folks had." The patriotic brute of pen and action is well and truly alive – as long as the job is tough.

Assessments made as to whether a "leak" is damaging are shoddy at best, largely because they are based on the grand hypothetical that is "national security" – protective measures that seek justifications in the vaguest, most nominal of terms. Justifying the concealment of a torture program can be justified by any source keen to conserve the illusion that rights trump the security machinery of the state, even if that state is the US. We really are good chaps who tend to err in the name of goodness.

Process, in its uncritical, unthinking form, is what matters in the cult of security; the quality of the classified material – revealing, for instance, a program of abuse – is irrelevant to an establishment that simply assumes that its own secret status is threatened. This flaw in exposing abuses in governance, and in a specific sense, intelligence processes, is a defect that has been treated, less with relief than contempt. The reformers on this subject, at least, remain at bay, since the problematic assumptions still hold sway.

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- [1] <http://www.fbi.gov/washingtondc/press-releases/2012/former-cia-officer-john--kirakou-pleads-guilty-to-disclosing-classified-information-about-cia-officer>
- [2] <https://www.commentarymagazine.com/2013/01/07/secrecy-national--security-and-the-case-of-john-kiriakou/>
- [3] <http://www.msnbc.com/msnbc/obama-us-shouldnt-be-too-sanctimonious-about-torture>

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