

DID DOJ RATCHET UP THE CHARGES AGAINST KIRIAKOU BECAUSE OF POLAND INVESTIGATION?

When John Kiriakou was first charged with espionage, he was charged with four counts:

- Leaking Covert Officer A's identity under IIPA section B
- Leaking Deuce Martinez' identity under defense information clause of Espionage Act
- Leaking Deuce Martinez' tie to the torture program under defense information clause of Espionage Act
- Lying to the CIA's Publication Review Board; falsifying a material fact

In today's indictment, Kiriakou was charged with five counts:

- Leaking Covert Officer A's identity under IIPA section A
- Leaking Covert Officer A's tie to the torture program under defense information clause of Espionage Act
- Leaking Deuce Martinez' identity under defense information clause of

Espionage Act

- Leaking Deuce Martinez' tie to the torture program under defense information clause of Espionage Act
- Lying to the CIA's Publication Review Board; falsifying a material fact

Not only did they ratchet up the IIPA violation to one that carries a 10 year, as opposed to a 5 year, penalty, but they also added a violation of the Espionage Act tied to Covert Officer A's ties to the torture program.

This is likely designed to punish Kiriakou for refusing to accept their plea deal.

But I also wonder whether it's not a response to the reports that Poland will file charges against the officials who helped the CIA set up its torture prison in that country.

According to the complaint, the torture investigators never did anything with Covert Officer A's identity (which they got via the journalist to whom Kiriakou provided the information). The FBI officer who wrote the affidavit wrote,

Neither Journalist A nor any other journalist to my knowledge has published the name of Covert Officer A.

The IIPA violation doesn't require any intent of damage. Intentionally leaking the identity is enough. But the Espionage charge does:

Whoever, lawfully having possession of, access to, control, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national

defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; [my emphasis]

That is, to make the Espionage charge tied to Covert Officer A stick, they're going to have to prove that Kiriakou had reason to know that leaking his name (to a journalist, but ultimately, to lawyers for people who had been tortured by Covert Officer A) "could be used to the injury of the United States."

Are they really preparing to argue that helping men mount a fair defense in court injures the United States? That ensuring our legal system works the way it is supposed to work, rather than the way the kangaroo courts at Gitmo have been set up, hurts this country?

Or, alternately, are they going to build their "injury" theory on the Polish tie-on Deuce Martinez' and (possibly) Covert Officer A's involvement on Polish soil (if he was, in fact, there)?

They may well just be punishing Kiriakou for putting them to the trouble of involving journalists and CIPA and exposure of their torture program. But I wouldn't be surprised if they pointed to Poland's disinterest in cooperating in any more illegal covert activities with us as the "injury" that Kiriakou's alleged leaks have cause.