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U.S. Pressing Its Crackdown Against Leaks

By SCOTT SHANE

WASHINGTON — Stephen J. Kim, an arms expert who immigrated from South Korea as a child, spent a decade briefing top government officials on the dangers posed by North Korea. Then last August he was charged with violating the Espionage Act — not by aiding some foreign adversary, but by revealing classified information to a Fox News reporter.

Mr. Kim’s case is next in line in the Obama administration’s unprecedented crackdown on leaks, after the crumbling last week of the case against a former National Security Agency official, Thomas A. Drake. Accused of giving secrets to The Baltimore Sun, Mr. Drake pleaded guilty to a minor charge and will serve no prison time and pay no fine.

The Justice Department shows no sign of rethinking its campaign to punish unauthorized disclosures to the news media, with five criminal cases so far under President Obama, compared with three under all previous presidents combined. This week, a grand jury in Virginia heard testimony in a continuing investigation of WikiLeaks, the antisecrecy group, a rare effort to prosecute those who publish secrets, rather than those who leak them.

The string of cases reflects a broad belief across two administrations and in both parties in Congress that leaks have gotten out of hand, endangering intelligence agents and exposing American spying methods.

But Steven Aftergood, director of the project on government secrecy at the Federation of American Scientists, said the fizzling of the Drake prosecution “ought to be a signal to the government to rethink its approach to these cases.” He said the government had many options for punishing leaks: stripping an official’s security clearance, firing him or pursuing a misdemeanor charge. Instead, it “has been leaping to the most extreme response, felony charges,” he said.

In particular, critics of the leak prosecutions question the appropriateness of using the Espionage Act, a World War I-era statute first applied to leaks in the Pentagon Papers case.
in 1971. They say it is misleading and unfair to lump the likes of Mr. Drake and Mr. Kim with traitors like Aldrich Ames or Robert P. Hanssen, who sold secrets to the Soviet Union.

Few have taken a tougher public line against leaks than Gabriel Schoenfeld, whose 2010 book “Necessary Secrets” argues that the news media are far too cavalier about publishing classified information. But he, too, called the espionage label unfortunate.

“You're accusing someone who's doing something irresponsible and wrong,” said Mr. Schoenfeld, of the Hudson Institute in Washington. “But he might be a well-intentioned civil servant and he's not trying to betray his country.”

Stephen I. Vladeck, a law professor at American University, said the best option would be a new statute tailored to fit leaks to the media, perhaps allowing defendants to argue that information disclosed should never have been classified in the first place. But he said no such law could pass in the current climate.

The problems of perception that plagued the government’s pursuit of Mr. Drake, who claimed to be a whistle-blower exposing a costly National Security Agency boondoggle, may crop up again with Mr. Kim. His personal story as a brainy, up-by-the-bootstraps immigrant is compelling, even if the government is able to prove that he was far too candid in talking to a reporter about intelligence in 2009 and then lied to F.B.I. agents about the episode.

Arriving with his family from Seoul and settling in the Bronx at the age of 8, Mr. Kim excelled academically, earning degrees from Georgetown and Harvard and a doctorate from Yale. He worked for Lawrence Livermore National Laboratory, the Defense Department and the State Department, focusing on North Korea’s weapons programs and briefing then-Vice President Dick Cheney, among others.

“I had the highest regard for him,” said Paula A. DeSutter, Mr. Kim’s boss when she was an assistant secretary of state in the Bush administration. “He had native Korean language and he’d been doing this work forever.”

Mr. Kim rarely spoke with reporters and sometimes expressed alarm about leaks, colleagues say. But in March 2009, a State Department press officer asked Mr. Kim to speak about North Korea to a Fox News reporter, James Rosen, and the two began to talk and exchange e-mails. Mr. Kim sent some e-mails under an online pseudonym, “Leo Grace.”

On June 11, 2009, Mr. Rosen reported that “the Central Intelligence Agency has learned, through sources inside North Korea,” that Pyongyang was likely to respond to a United Nations resolution condemning its nuclear and missile tests with more tests and other
measures. The news was no surprise, but C.I.A. officials were furious that a top-secret analysis had been leaked almost instantly, according to a former government official. (A Fox News spokesman said Mr. Rosen declined to comment.)

When F.B.I. agents questioned Mr. Kim, he claimed he had spoken to Mr. Rosen only once. He admitted to more contacts only after agents confronted him with evidence, according to court filings. His trial is probably months away; if convicted, Mr. Kim, 43, could be sentenced to 15 years in prison.

If there were any doubts inside the administration about proceeding with the leak crackdown, they appear to have evaporated with the rise to prominence last year of WikiLeaks, which invites disclosures by the terabyte. The group’s efforts have only hardened officials’ conviction that leaks must be deterred with the threat of prison.

Lisa O. Monaco, a Justice Department official awaiting Senate confirmation as head of the department’s national security division, testified last month that “it would be my priority to continue the aggressive pursuit of these investigations” because leaks do “tremendous damage.” She noted that “twice as many” cases had been pursued in 18 months than in all previous administrations. No committee member questioned the effort.

For Mr. Kim’s sister, Yuri Lustenberger-Kim, a corporate lawyer, the charges against her brother are bitter recompense for his long service to American national security, and the espionage label is especially painful.

“My brother has spent all of his professional life trying to be a help to his country,” she said. “The idea that the prosecutors would think he would do, or did do, anything to hurt the United States is the farthest thing from reality they could charge.”

No matter what happens, she said, the charges already have been devastating for Mr. Kim, who has an 11-year-old son, and the rest of his proud immigrant family.

“This has sent my parents into deep sadness and anxiety, put more strains on Stephen’s marriage than a couple can bear, and ruined all he has worked for over his life,” she said.