

# Espionage case against US government whistleblower collapses

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The prosecution of a government whistleblower on charges of violating the Espionage Act collapsed this week, with Justice Department officials agreeing to dismiss all 10 felony counts against Thomas A. Drake and allow him to plead guilty to a single misdemeanor count.

Drake filed a guilty plea Friday on one count of “exceeding the authorized use of a computer,” through improper access to information on the classified NSANet system, and it was accepted by Federal District Court Judge Richard A. Bennett. Sentencing is set for July 15, but the Justice Department said it would support a “non-custodial” sentence, i.e., no jail time.

The previous week, Judge Bennett dealt a devastating blow to the prosecution case, ruling that the government could not submit unclassified summaries about certain technologies in use at the National Security Agency, the US intelligence agency that monitors most worldwide telecommunications and Internet traffic.

Drake was a career NSA employee who repeatedly sought to alert top officials at the agency about gross mismanagement of the purchase of new technology for communications intercepts. He eventually assisted a reporter for the *Baltimore Sun*, Siobhan Gorman, in a series of articles exposing the Trailblazer system, which cost the NSA over \$1 billion, never worked, and was scrapped in 2006.

The prosecution of Drake, the outcome of a four-year investigation begun under the Bush administration, was partly motivated by the belief on the part of security officials that Drake had played a role in exposing the widespread illegal monitoring of the communications of US citizens, first reported in 2005 by the *New York Times*.

Drake learned of the monitoring program and objected to it, filing internal complaints with the inspector general and general counsel of the NSA, and with the inspector general of the Department of Defense. He has not actually been charged with disclosing the existence of the program to the press.

Judge Bennett ruled last week that the issue of the Terrorist Surveillance Program, as the warrantless wiretapping campaign was known, was “irrelevant” to Drake’s case, since no charges had been brought, and that the issue couldn’t be raised in the courtroom. The effect of this ruling was to protect the TSP or its successor programs from any public scrutiny.

The 54-year-old Drake faced up to 35 years in prison if convicted on all 10 counts under the Espionage Act, a 1917 law aimed against foreign spies that has been used, albeit rarely, against government employees who leak classified information to expose wrongdoing or mismanagement by the intelligence agencies.

According to press accounts of the Drake case, the NSA official discussed the problems of mismanagement and faulty software with Gorman, but never divulged any classified information. The felony charges brought against him were for allegedly possessing classified documents at home, not delivering them to anyone outside the government.

Judge Bennett ruled that the government would have to show some of this material to the jury, rather than summaries, and prosecutors withdrew four documents from evidence and restricted distribution of two others.

The most famous prosecution of a government leaker under the Espionage Act was the case against Daniel Ellsberg, the intelligence analyst who leaked the Pentagon Papers to the *New York Times*. The charges were eventually dismissed.

The Obama administration has greatly intensified the use of the Espionage Act against leakers, conducting five such cases simultaneously, more than all previous administrations combined going back to 1917.

In addition to Drake, the NSA official, cases have been brought against employees or former employees of the FBI, the CIA, the State Department and military intelligence.

The military case is the prosecution of Bradley Manning, the Army private charged with leaking hundreds of thousands of documents, providing evidence of US war crimes in Iraq and Afghanistan, to the WikiLeaks web site.

In the other cases, an FBI translator, Shamai Leibowitz, has been sentenced to 20 months after pleading guilty to leaking classified documents to a blogger; a State Department official, Stephen Kim, is charged with revealing information on North Korea to Fox News; and former CIA officer Jeffrey Sterling is charged with supplying classified information about US operations against Iran to *New York Times* reporter James Risen.

Risen must file legal arguments June 21 with a federal court in Alexandria, Virginia, in his challenge to a subpoena compelling him to testify against Sterling in his upcoming trial.



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