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"I will not live in silence," said Thomas A. Drake, in Washington, D.C. in May. He was charged with retaining national defense information. (Brendan Hoffman / Prime)

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Leaks and the Law: The Story of Thomas Drake

The former NSA official reached a plea deal with the government, but the case still raises questions about the public's right to know

By **David Wise**

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Editor's Note: This article was updated from the version in the July/August 2011 issue of the printed magazine to reflect Thomas Drake's June 9 plea agreement and his July 15 sentencing.

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Thomas A. Drake was a senior executive at the National Security Agency for seven years. When his efforts to alert his superiors and Congress to what he saw as illegal activities, waste and mismanagement at the NSA led nowhere, he decided to take his

allegations to the press. Although he was cautious—using encrypted e-mail to communicate with a reporter—his leak was discovered. Last year the government indicted Drake under the Espionage Act. If convicted, he would have faced up to 35 years in prison.

The Drake case loomed as the biggest leak prosecution since the trial of Daniel Ellsberg four decades ago. The indictment against him included not only five counts of violating the Espionage Act, but also one charge of obstruction of justice and four counts of making false statements to the FBI while he was under investigation. Drake, who resigned from the NSA under pressure in 2008, has been working in recent months at an Apple computer store outside Washington, D.C., answering questions from customers about iPhones and iPads.

He was to be tried in Baltimore on June 13, but the trial was averted four days earlier. After key rulings on classified evidence went against the prosecutors, they struck a plea agreement: in exchange for Drake's pleading guilty to one count of exceeding the authorized use of a government computer, they dropped all the original charges and agreed not to call for prison time. On July 15, he was sentenced to one year of probation and 240 hours of community service.

Despite that outcome, the Drake case will have broad implications for the relationship between the government and the press. And it did not settle the broader question that overshadowed the proceedings: Are employees of sensitive agencies like the NSA, the CIA and the FBI who leak information to the news media patriotic whistleblowers who expose government abuses—or lawbreakers who should be punished for endangering national security? The question is becoming only more complicated in an age marked by unprecedented flows of information and the threat of terrorism.

As president-elect, Barack Obama took the position that whistleblowing by government employees was an act “of courage and patriotism” that “should be encouraged rather than stifled.” But Drake's indictment was only one in an extraordinary string of leak investigations, arrests and prosecutions undertaken by the Obama administration.

In May 2010, Pfc. Bradley Manning was arrested and charged with leaking more than 250,000 State Department cables and thousands of intelligence reports to WikiLeaks founder Julian Assange. Manning, a 23-year-old Army intelligence analyst, is in military custody, charged with aiding the enemy, publishing intelligence on the Internet, multiple theft of public records and fraud. Although aiding the enemy is a capital offense, Army prosecutors have said they will not recommend the death penalty. If convicted, Manning could be sent to prison for life. His trial has not been scheduled.

Also in May 2010, Shamai K. Leibowitz of Silver Spring, Maryland, a 39-year-old Israeli-American who worked on contract for the FBI as a Hebrew linguist, was sentenced to 20 months in prison after pleading guilty to leaking classified documents to a blogger.

Last August, Stephen Jin-Woo Kim, 43, a senior adviser for intelligence on contract to the State Department, was charged with leaking defense data. Although the indictment did not spell out any details, news media reported that Kim had provided information to Fox News, which aired a story saying the CIA had warned that North Korea would respond to U.N. sanctions with another nuclear weapons test. His trial also remains unscheduled.

[Single Page](#)

[Prev](#)

Page 1 of 5

[Next](#)



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