Federal Cases Involving Unauthorized Disclosures to the News Media, 1844 to the Present

Introduction and Methodology

This chart attempts to comprehensively survey every federal case involving an effort by law enforcement, an executive branch agency, the courts, or Congress to formally investigate or prosecute someone for, or compel the disclosure of information about, the unauthorized disclosure of government information to the news media.

In short, it is our attempt at an exhaustive list of "leak" cases.

Please note that, in addition to the cases one would usually think of as "leaks" matters—that is, cases arising out of the disclosure of national defense information, such as those involving Daniel Ellsberg, Chelsea Manning, and Edward Snowden—we include cases where courts have ordered an investigation into grand jury leaks (e.g., BALCO, Taricani, and Walters), where Congress has formally investigated a leak (e.g., Nugent, Schorr, and Phelps/Totenberg), where the leak involved non-national security information (e.g., Agnew and Lacker), where the surveillance or targeting of reporters was conducted as part of domestic espionage activity (e.g., Project Mockingbird), and where a Privacy Act plaintiff who has had information leaked to the press about a pending investigation seeks a subpoena to uncover the source (e.g., Lee and Hatfill).

This chart excludes cases involving purely internal unauthorized disclosure inquiries within the government (such as the Raj Rajaratnam inquiry at the SEC[1]), unless they involve the formal investigation of members of the news media.

Please also note that one legal term of art that we refer to throughout—"national defense information"—is abbreviated "NDI."*

This chart was authored during the summer of 2018 by Gabe Rottman, director of the Technology and Press Freedom Project at the Reporters Committee for Freedom of the Press, and Victoria Noble, the 2018 Google Policy Fellow at the Reporters Committee and a student in the class of 2020 at Stanford Law School. We will continue to update the chart with new cases or developments. Any comments, questions, or suggestions for addition are welcome at grottman@rcfp.org.

The table of cases we summarize appears on the next page, and it includes hyperlinks from each name to its entry in the chart.

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* The Espionage Act (with the exception of a 1951 amendment, see *infra* text accompanying note 325 about 18 U.S.C. § 798) speaks in terms not of "classified information," but of material or information "relating to the national defense," which is often referred to with the shorthand "national defense information," or NDI. It's an important distinction given that the system for classifying information is a creature of the executive branch; Congress has never passed a law defining "classified information," and the creation of the classification system actually antedates the Espionage Act. Consequently, classified information does not necessarily qualify as NDI under the Espionage Act, and leaking classified information is not necessarily a violation of the Espionage Act. That said, the fact that something is classified is often a relevant factor in determining whether something is, in fact, national defense information. *See generally* Stephen P. Mulligan and Jennifer K. Elsea, Cong. Research Serv., Criminal Prohibitions on Leaks and Other Disclosures of Classified Defense Information, Mar. 7, 2017, https://fas.org/sgp/crs/secrecy/R41404.pdf.

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Sen. Ben Tappan (top)	Tyler	4/29/1844[2]	None. The Senate formed a select committee to investigate a violation of the injunction of secrecy.	From May 8 to 10, the Senate debated two resolutions, one to expel Tappan, and a substitute that called for censure.[3] On May 10, the Senate adopted the latter by a vote of 38 to 7, and a subsequent resolution that no further action would be taken against Tappan, who had apologized, by a vote of 39 to 3.[4] The Senate then passed another resolution that the disclosure of confidential Senate material would be grounds for expulsion.[5]	Resolution of censure.	The Tappan case and all of the subsequent Senate leak investigations through 1929 arose out of the Senate's practice of holding open legislative debates—the Senate press gallery was constructed in 1794—but considering treaties and nominations in closed executive session.[6] In the Tappan case, President John Tyler submitted proposed secret terms of an agreement to annex the then-independent Texas. Pro- and anti-expansion forces in Congress often fought their battles in the press, and, five days after the secret treaty was sent to the Senate, it appeared in the New York Evening Post.[7] On April 29, 1844, the chairman of the Senate Foreign Relations Committee, Sen. William S. Archer (Whig-VA), who had custody of the document, asked for a select committee to investigate the leak.[8] The committee subpoenaed William G. Boggs, the editor of the New York Evening Post. Before he could testify, however, Sen. Benjamin Tappan (D-OH) admitted to giving the material to a messenger for delivery to the newspaper.[9] Boggs and the messenger both confirmed Tappan's story in later testimony.[10] The Senate rejected a vote to expel Tappan, but voted in favor of censure and passed a separate resolution that henceforth made the disclosure "for publication" of materials "directed by the Senate to be held in confidence" grounds for expulsion.[11]
Jesse Dow and Hiram H. Robinson (top)	Polk	3/11/1846 (Washington Daily Times prints column)[12]	None.	The Senate barred Dow and Robinson from the press gallery and the Washington Daily Times ceased publication.[13]	N/A	Jesse Dow owned the Madisonian, which had been allied closely with President Tyler's administration. Dow hoped the paper would receive the Senate concession as its official printer.[14] He was unsuccessful and renamed the paper the Washington Daily Times, which he styled as a partisan Democratic publication and began to circulate to every member of Congress.[15] During the dispute with the British over the border between Oregon and the Columbia District, modern day British Columbia, the Daily Times

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						took an aggressive pro-expansion stance, and printed claims that Whigs and some anti-Polk Democrats were conspiring to negotiate a separate deal with the British.[16] A Senate investigation resulted, and Dow and his editor Hiram Robinson both identified their sources.[17] Their sources, however, denied any knowledge of a conspiracy. Dow and Robinson were banned from the Senate press gallery, and the Times stopped publication.[18]
Oregon Treaty Investigation (top)	Polk	6/5/1846 (initial "leak" in the New York Tribune)[19]	N/A	The investigating committee ended its inquiry without making any formal accusations.[20]	N/A	In early June 1846, President Polk received word that the British would accept a resolution of the Oregon boundary dispute at the 49 parallel. (British maximalists wanted to expand modern-day British Columbia to the 42 parallel whereas Polk's Democratic allies desired, under the banner of "Manifest Destiny," to set the border at the 54 parallel.)[21] The New York Tribune's Washington correspondent, William Robinson (who wrote under the pseudonym "Richelieu"), reported the possible deal and then summarized the terms of the proposed treaty.[22] Three weeks later, the Philadelphia North American published the full text.[23] The Senate convened "A Select Committee to Inquire Into the Means by which the Proceedings and Documents of Secret Sessions Have Become Public," which questioned the Washington correspondents for both the Tribune (i.e., "Richelieu") and the North American (i.e., "Independent," the pen name for James Harvey).[24] Both correspondents refused to identify their sources and the committee ended its business without identifying the source or sources.[25]
John Nugent (top)	Polk	3/26/1848 (Nugent arrested)	None. Nugent was arrested by the Senate and held for about a month.	Nugent was released after a month without disclosing his source.	N/A	Prior to its ratification by the Senate, the terms of the 1848 Treaty of Guadeloupe-Hidalgo, which ended the Mexican-American War, were leaked by an anonymous source to John Nugent, a reporter for the New York Herald.[26] The Senate initially called Nugent in for questioning, but he refused to disclose his source. The Senate then arrested him and confined him to a Senate committee

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						hearing room. His newspaper responded by publishing the names of other Senate sources.[27] During his confinement, Nugent ate with and slept at the residence of the Senate's sergeant-at-arms, and he published his regular column under the dateline "Custody of the Sergeant at Arms."[28] He never disclosed his source (who was likely Secretary of State James Buchanan, not a senator), and was released after a month for "health" reasons.[29]
Zebulon White and Hiram Ramsdell (top)	Grant	5/12/1871 (formation of select committee)[30]	Contempt of the Senate.	White and Ramsdell were released without revealing their sources.[31]	N/A	In 1871, Hiram Ramsdell, the assistant to the Washington bureau chief at the New York Tribune, purchased a copy of the Treaty of Washington, which settled claims between the United States and Great Britain arising out of the American Civil War.[32] New York Senator Roscoe Conkling, an opponent of the Tribune, ordered Ramsdell and his bureau chief, Zebulon White, to testify before a select committee about their sources. White and Ramsdell refused to divulge their sources and were ordered imprisoned until they did so.[33] White and Ramsdell were confined in the Pacific Railroad Committee room, in relative comfort, and were released shortly before the Senate was set to adjourn.[34]
The Dolph "Smelling Committee" (top)	Benjamin Harrison	2/24/1890 (committee formed)[35]	N/A	Committee disbanded without uncovering the leaker.	N/A	Prompted by the disclosure of a still-secret extradition treaty between the United States and Great Britain, and its publication in the Washington Post and the New York Tribune, the Senate convened a select committee to investigate the leak, dubbed a "smelling committee" and chaired by Sen. Joseph Dolph (R-OR).[36] Correspondents mocked Sen. Dolph's committee, noting that public interest in the Senate's secret sessions arose precisely because they were "forbidden property."[37] The committee physically investigated the press gallery for cracks through which reporters could eavesdrop on the Senate's deliberations as well as the ventilation system.[38] The smelling committee heard testimony from numerous senators, all of whom denied being the source of the leak, and from five reporters: Frank DePuy from the New York

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						Times, Max Seckendorf from the New York Tribune, George G. Bain from the United Press, A.J. Halford from the Associated Press, and Jules Guthrie of the New York Herald.[39] Dolph also surveyed various government officials seeking to identify a specific leaker, and heard testimony from Senate clerks, officials at the Department of State, the president's secretary, and another correspondent, David Barry, who served as a secretary to several senators.[40] The smelling committee disbanded after five months, and actually ended up owing the various reporters who had been called to testify $153 each because the subpoena had been active for the entire life of the committee.[41]
The Bering Sea Treaty Investigation (top)	Benjamin Harrison	2/29/1892 (signing of the treaty setting the terms of the arbitration)	N/A	The Senate's executive clerk, James Rankin Young, was summarily fired for the leak, which prompted significant backlash by the Washington press against the Senate.[42]	N/A	In March 1892, newspapers published details of secret Senate debates about a treaty to set the terms of arbitration to resolve a dispute over sealing in the Bering Sea.[43] The Senate's executive clerk was also a correspondent for the Philadelphia Evening Star, which had "quarreled editorially" with Pennsylvania's Republican senators, Don Cameron and Matthew Quay (the latter of whom was particularly powerful in national politics and had orchestrated Benjamin Harrison's nomination).[44] The New York Times reported that the leak gave Quay and Cameron the chance to make an example out of the clerk, James Rankin Young, and his paper.[45] Young was excluded from the chamber in the following executive session and was fired without a hearing or public disclosure of the allegations against him.[46] The firing prompted the Washington press corps to fight back, and correspondents went so far as to more aggressively report on the secret sessions to demonstrate that Young hadn't been the leaker.[47] In 1896, Young went on to be elected to represent Pennsylvania's fourth district in the House of Representatives.[48]

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The Irvine Lenroot Investigation (top)	Hoover	5/21/1929 (publication of Mallon article purporting to report secret roll call vote on Lenroot nomination)[49]	N/A	On June 18, 1929, the Senate amended its rules and finally abandoned the practice of considering treaties and nominations in secret executive session.	N/A	Sen. Irvine Lenroot served as a Republican senator from Wisconsin during the Harding and Calvin Coolidge administrations, and had lost the Republican nomination for vice president to Coolidge.[50] Lenroot lost his bid for reelection in 1926 and was nominated for a judgeship on the Court of Customs and Patent Appeals.[51] On May 21, 1929, United Press correspondent Paul Mallon published an article with the headline "Senate's Secret Vote on Lenroot Revealed: Nine Democrats Bolt—Breaking of Party Ties Gives Former Senator Majority of 42 to 27." (In fact, the vote had been 42 to 26 and one of the reported defectors not voting at all.)[52] The leak prompted progressive Republicans, who had long sought to abolish closed executive sessions, to push for greater transparency, but one of Lenroot's supporters, Sen. David Reed (R-PA), asked for and received a leak investigation by the Senate Rules Committee.[53] The committee proceeded to question Mallon, who refused to divulge his source.[54] The committee responded by revoking the United Press's floor privileges, but Sen. Robert LaFollette Jr. (R-WI) intervened and, in a floor speech, made a strong case for finally scrapping secret sessions, which the Senate did in June 1929.[55] The end of secret executive sessions also ended these recurring leak investigations.
Stanley Johnston (top)	Franklin D. Roosevelt	8/7/1942 (grand jury announced)	William Mitchell, the appointed special assistant to the attorney general who pursued the case, sought an indictment under then-section (d) of the Espionage Act, which applied to the unauthorized communication of	Grand jury declined to return an indictment.	N/A	On June 7, 1942, Stanley Johnston, a war correspondent with the Chicago Tribune, reported that the U.S. Navy had advance notice of Japanese fleet plans for the Battle of Midway (which the United States had decisively won four days before).[58] In his story, he included details that closely mirrored those of a classified dispatch based on intelligence from broken Japanese naval codes.[59] In particular, he revealed that the U.S. Navy knew in advance that a Japanese attack on the Aleutian Islands was a feint, intended to draw American naval forces into an ambush.[60] The article resulted in intense pressure from the Roosevelt White House and Navy Secretary Frank Knox—who also published and owned part of the

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			tangible NDI ("any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense") by anyone with lawful or unlawful access.[56] That provision has since been split into sections (d) (communication or retention by someone with lawful access) and (e) (same by someone with unauthorized access).[57]			Chicago Daily News, a competitor to the Tribune[61]—to seek an indictment against Johnston and the Tribune under the Espionage Act.[62] Attorney General Frank Biddle (who was skeptical that the case could be won) appointed William Mitchell, who had served as Herbert Hoover's attorney general, as a special assistant to pursue the case.[63] Mitchell, also a skeptic, nevertheless convened a grand jury to investigate Johnston and the Chicago Tribune, and asked the grand jury to return an indictment against the reporters and his paper under the Espionage Act—the only time in history a journalist or news outlet has been targeted under the law.[64] In part because of concern that the grand jury proceeding would itself harm national security by providing further clues to the Japanese that their codes had been broken, the Navy ultimately reneged on a promise to Biddle and Mitchell that it would make expert cryptanalysts available to the grand jury as witnesses to explain how and why Johnston's story could have harmed national security.[65] On August 19, 1942, the grand jury declined to return an indictment and the Justice Department dropped the case.[66]
Amerasia (top)	Truman	6/6/1945 (arrests)	The six defendants were arrested on charges of violations of the Espionage Act (specifically the now repealed § 31 of Title 50, the precursor to	Because authorities had used warrantless surveillance and searches in investigating the defendants, prosecutors dropped	The two defendants who pled guilty received fines of $2,500 (Jaffe, the publisher of Amerasia) and $500	Amerasia was a magazine published in New York from 1937 to 1947 with a focus on East Asia. In 1944, an analyst with the Office of Strategic Services (the precursor to the CIA) noticed that an article in Amerasia closely tracked a dispatch he had written on Thai affairs.[70] The OSS proceeded to break into Amerasia's offices, where they took samples of the government documents they found.[71] The FBI then wiretapped the suspects without a warrant,

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			18 U.S.C. § 793, which is the most commonly used Espionage Act section in the contemporary cases.[67] They were released on bail. A grand jury returned an indictment for only three of the six, on charges of conspiracy to steal, receive, or conceal government documents, not under the Espionage Act.[68]	all charges against four of the defendants, and pled out the two remaining defendants with no jail sentences (the two convicted were Jaffe, the publisher of Amerasia, and Larsen, one of his alleged sources).[69]	(Larsen, the State Department analyst).	and overheard the assistant secretary of the Treasury and a State Department official offer to provide diplomatic material.[72] The FBI arrested six suspects in June 1945, including Emmanuel Larsen, a former State Department Asia specialist; Andrew Roth, a naval intelligence officer; Philip Jaffe, the publisher of Amerasia; Kate Louise Mitchell, co-editor of Amerasia; Mark Julius Gayn, a magazine writer; and John Stewart Service, a foreign service officer at the State Department.[73] In August, following proceedings where all of the defendants testified, a grand jury indicted Larsen, Roth, and Jaffe on charges of stealing government documents, not the Espionage Act (though the government had cited the Espionage Act in its statement about the arrests).[74] Ultimately, the illegal searches and surveillance in the case prompted the Justice Department to seek plea deals, which they secured from Larsen and Jaffe, and to drop the case.[75] The Amerasia case figured prominently in Senator Joe McCarthy's (R-WI) claims of communist infiltration at the State Department, calling the investigation a "whitewash."[76]
John Nickerson (top)	Eisenhower	1/28/1957 (indicted)[77]	Nickerson charged with two counts, including violating 15 separate Army regulations and one count of violating the Espionage Act (via Article 134 of the Uniform Code of Military Justice).[78]	The charges were ultimately dropped to 15 minor counts of mishandling government information, and Nickerson pled guilty at court-martial.[79] He lost his security clearance for a year.[80] During the suspension he was	Nickerson was fined $1,500, formally reprimanded and relieved of command and his security clearance for a year.[83]	Col. John Nickerson was the first person to face charges for the unauthorized disclosure of classified information to the media. (The Stanley Johnston case precedes it by more than a decade, but involved potential exposure under the Espionage Act for the journalist and media outlet that received the information, and the grand jury ultimately decided not to indict.)[84] The Nickerson case arose out of an inter-service dispute between the Air Force and Army over which branch would be responsible for developing U.S. intermediate range ballistic missile technology ("IRBMs").[85] Nickerson was the liaison to the Defense Department for the Army Ballistic Missile Agency ("ABMA"), which was

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				assigned to the Panama Canal Zone, and then, upon reinstatement, Fort Bliss, Texas.[81] He and his wife died in a car crash in New Mexico on March 1, 1964.[82]		responsible for the Jupiter project, the Army's push to develop an IRBM (led by, among others, Dr. Wernher Von Braun).[86] In late 1956, the Army conducted a successful launch of a Jupiter missile, but the then-Secretary of Defense and former CEO of General Motors Charles Wilson both buried news of the launch and, two months later, issued an order barring the Army from deploying or using IRBMs.[87] Henceforth, the order said, the Jupiter project would be run by the Air Force (the implication being that ballistic missiles would be an element of American air superiority, not a replacement for conventional artillery).[88] Secretary Wilson's order also came as rumors swirled that the Russians were close to launching a satellite into orbit.[89] Nickerson took matters into his own hands. He drafted a memo criticizing the Wilson order, suggesting, among other things, that the move to the Air Force was prompted by Wilson's ties to GM. (Parts for the Air Force's missiles, codenamed "Thor," were made by GM.)[90] He also revealed classified details about the different services' missile tests.[91] Nickerson leaked the document to Drew Pearson, a syndicated political writer of the column "Washington Merry-Go-Round," who, in turn, asked the Pentagon about it. The Pentagon launched an investigation, which centered on Nickerson. A search of his home turned up other classified documents, and he was charged with mishandling those documents and the more serious Espionage Act offense.[92] The case was widely covered in the media, though the five-day court-martial resulted in a guilty plea on lesser charges.[93] Following the launch of Sputnik in October 1957, many claimed that, had Wilson not moved Jupiter from the Army to the Air Force, the United States might have won the space race. That remains disputed.[94]

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						As a final coda, the issue of over-classification featured prominently in the case and court-martial. First, Nickerson's rebuttal memorandum was actually not initially classified. But when Secretary Wilson learned that it existed, he had it sent to Pentagon censors and retroactively classified.[95] Second, Dr. Von Braun himself testified at Nickerson's court-martial that much of what Nickerson released shouldn't have been classified in the first place.[96] It was an early instance of the argument that criminal charges should not lie when the material does not qualify as NDI because its release would not pose a threat to national security.
Project Mockingbird (top)	Nixon	3/12/1963 (initiation of surveillance)[97]	N/A	Project Mockingbird was revealed as part of the collection of CIA documents that has come to be known to the CIA and historians as the "family jewels."[98] The operation was successful at identifying numerous anonymous sources.	N/A	Project Mockingbird was a CIA wiretapping program against two syndicated columnists, Paul Scott and Robert S. Allen, that ran for about three months in 1963 (from March 12 to June 15). The columnists had alarmed Defense Secretary Robert McNamara by asking questions at a news conference that included detailed information about Soviet aid to Cuba.[99] Director of Central Intelligence John McCone approved the operation "under pressure" from Attorney General Robert Kennedy.[100] It successfully identified numerous sources for the two men, including several members of Congress, White House staff, and an assistant attorney general.[101] Mockingbird was revealed when investigate reporter Seymour Hersh published a 1974 New York Times article detailing CIA surveillance and harassment of dissident groups in the United States.[102]
Michael Getler (Celotex I) (top)	Nixon	10/6/1971 (launch of physical surveillance)	N/A	Getler learned about the surveillance in 1975; the CIA reportedly never learned the identity of Getler's sources.[103]	N/A	Getler, then the Washington Post's national security reporter, was subject to physical surveillance by the CIA, codenamed "Celotex I," on three different occasions in 1971 and 1972 (October 6 to 9, 1971; October 27 to December 10, 1971; and on January 3, 1972) in efforts to identify his sources.[104] The surveillance was under the direct supervision of then-Director of Central Intelligence ("DCI")

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						Richard Helms, who ordered the surveillance after Getler reported on, among other things, secret CIA patrols deep in China and White House arms control talks.[105] Following another Getler report on the then-next generation reconnaissance satellite, the KH-11, the CIA ordered additional surveillance. The Post then discovered the investigation.[106] The Post retained a lawyer for Getler, and the two met with the CIA, which agreed to stop the surveillance under threat of legal action.[107]
Daniel Ellsberg (top)	Nixon	12/29/1971 (indicted)	15-count indictment. Charges are unlawful receipt of national defense information ("NDI") in violation of 18 U.S.C. § 793(c), unlawful transmission of NDI in violation of 18 U.S.C. § 793(d) and (e), theft of government property in violation of 18 U.S.C. § 641, and conspiracy, 18 U.S.C. § 371.	Case dismissed on May 11, 1973, due to government misconduct. [108]	N/A	Ellsberg was charged with copying and disclosing the "Pentagon Papers"—a classified history of the Vietnam War. The criminal case against Ellsberg was dismissed following revelations that, among other things, a secret investigative unit formed by the Nixon administration to identify individuals disclosing information to the press (and dubbed the "Plumbers") had broken into Ellsberg's psychiatrist's office.[109] In August 2018, freelance journalist Seth Rosenfeld reported that, as part of the Ellsberg leak inquiry, the FBI focused significant investigative effort on Washington Post reporter Ben Bagdikian, including a review of his travel, phone, financial, employment, and immigration records; interviews of associates (including one former Washington Post employee); and possible physical and electronic surveillance.[110] Neither Bagdikian and his then-fiancée Betty Medsger were questioned or subpoenaed in connection with the Ellsberg investigation, though Medsger was briefly questioned at her home about her reporting on the FBI's political surveillance and harassment initiative (known as COINTELPRO for "counter-intelligence program").[111]

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Anthony Russo (top)	Nixon	12/29/1971 (indicted)	Same.	Same.	N/A	Russo, Ellsberg's friend and colleague at the RAND Corporation, encouraged Ellsberg to release the Pentagon Papers, and helped copy the documents. He was indicted along with Ellsberg, and had his charges dismissed at the same time.[112]
Jack Anderson (Celotex II) (top)	Nixon	2/15/1972 (surveillance initiated)	N/A	Anderson filed an invasion of privacy suit against the CIA, and it dropped the investigation.[113]	N/A	Jack Anderson was a columnist syndicated by United Features Syndicate (and the protégé of Drew Pearson, author of the popular "Washington Merry-Go-Round" and the person to whom John Nickerson disclosed his observations on the Jupiter decision). Anderson was initially targeted by the "Plumbers," the White House team set up during the Nixon administration to "plug" leaks. They discovered that Anderson was friendly with a young Navy stenographer, Yeoman Charles Radford, who though never admitting to disclosing classified information to Anderson, eventually confessed to stealing documents from the White House to give to the Joint Chiefs of Staff. This episode became known as the "Moorer-Radford Affair," as Admiral Thomas Hinman Moorer was then the chairman of the Joint Chiefs.[114] Later, in January 1972, DCI Helms—alarmed by Anderson's reporting on Cambodia, the India-Pakistan War of 1971, and the CIA's MK-ULTRA mind control program, among other things—ordered a formal leak investigation by the CIA.[115] According to Anderson, the CIA interviewed more than 1,500 people to uncover his sources, ultimately without success.[116] Eschewing a wiretap (for fear Anderson would detect and report on it), the CIA began physical surveillance of Anderson's home, office, and his assistants Brit Hume, Les Whitten, and Joseph Spears.[117] The overall program was codenamed Celotex II, and the physical surveillance Project Mudhen.[118] After a month of surveillance, Anderson discovered the investigation (at one point, his teenage children blocked the CIA cars in a lot and took pictures

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						of the agents), and sued the agency for privacy violations.[119] Not only did he manage to force the CIA to disclose documents related to the operation in discovery, he successfully had DCI Helms sit for a deposition, at which Helms testified that he ordered the surveillance but also stated that he did not "recall" any instructions from the White House to target Anderson for surveillance.[120] Celotex II ended on April 12, 1972, without having identified any sources.[121]
Victor Marchetti (Butane) (top)	Nixon	3/23/1972 (surveillance initiated)[122]	N/A	Marchetti's book ultimately led to the Fourth Circuit's decision in *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972), which upheld the enforceability of secrecy agreements Marchetti had signed as a CIA employee and the requirement that he submit material for pre-publication review.	N/A	Marchetti was a CIA officer from 1955 until he resigned in 1969.[123] In 1971, he published a novel, The Rope Dancer, featuring the lightly fictionalized "National Intelligence Agency," and, in connection with the book, gave an interview critical of the CIA that was printed in U.S. News and World Report.[124] The CIA also learned that Marchetti planned to co-author a non-fiction book with a former State Department intelligence analyst that they anticipated would be even more critical of the agency.[125] DCI Helms, in an operation similar to Celotex and codenamed Project "Butane," ordered physical surveillance of Marchetti on March 23, 1972, which lasted until April 20, 1972.[126] The purpose of the surveillance was "to determine his activities and contacts both with Agency employees and other individuals in regard to his proposed book and published magazine articles exposing Agency operations."[127] On April 18, shortly before the surveillance ended, the CIA sought and received an ex parte temporary restraining order to block publication of the non-fiction book—titled "The CIA and the Cult of Intelligence"—on the grounds that Marchetti's failure to submit the book for review violated his employment agreement and a secrecy pledge he had given upon resigning.[128] That prior restraint was affirmed by the Fourth Circuit in the *Marchetti* decision in 1972, and the book was printed with the CIA's requested redactions excising passages in the text of the printed copy of the book.[129]

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Spiro Agnew (top)	Nixon	10/5/1973 (subpoenas served)[130]	N/A	Vice President Agnew resigned on October 10, 1973, and pled no contest to one charge of felony tax evasion.[131]	Agnew was sentenced to three years' unsupervised probation and a $10,000 fine.[132]	The investigation into the solicitation of bribes by Vice President Spiro Agnew while a Baltimore County official and governor of Maryland began when the IRS and the United States attorney agreed to look into kickbacks by local contractors.[133] By August 1973, details of the case had been shared with the Wall Street Journal and Agnew publicly addressed the investigation and proclaimed his innocence.[134] Negotiations over a plea bargain (before indictment) continued through the summer but were ultimately called off after details turned up in the press.[135] On September 29, Vice President Agnew said he would not resign even if indicted and that he would fight the case.[136] And, on October 3, federal district Judge Walter Hoffman in Maryland authorized the Agnew legal team to issue a broad array of subpoenas to address the leaks in the case, including eight to various reporters and two to national newsmagazines.[137] News executives unanimously announced that they would fight the subpoenas.[138] Vice President Agnew's resignation and plea on October 10, 1973, ended the showdown between the news outlets and the Agnew defense team. Had it continued, it could have been one of the most consequential confrontations between the press and government to that date. The publishers and editors of several of the subpoenaed outlets—including Katherine Graham, publisher of the Washington Post; Arthur Sulzberger Sr., publisher of the New York Times; A.M. Rosenthal, managing editor of the Times; Ben Bradlee, executive editor of the Post; and Osborn Elliott, editor of Newsweek—had all pledged personally to go to jail with their reporters before disclosing the identity of any confidential sources.[139] Bradlee and

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						Graham were planning to argue that the Post's notes in the case were Graham's property, the so-called "gray-haired grandmother defense," which would, if successful, have forced Judge Hoffman to hold Graham personally in contempt.[140]
Daniel Schorr (top)	Ford	9/8/1976 (committee voted to subpoena Schorr)[141]	N/A	Schorr appeared in front of the House ethics committee in response to a subpoena, but refused to identify his sources (he had also refused to produce several drafts of the Pike committee report, arguing that they could be used to identify his source).[142] Half of the committee's 12 members said they would not support a contempt finding, ending the matter.	N/A	Daniel Schorr, a correspondent for CBS News, obtained a copy of the Pike Report, a secret report of the House Permanent Select Committee on Intelligence, chaired by Rep. Otis G. Pike (D-NY), on illegal activities by member of the intelligence community, including the CIA and FBI.[143] He then disclosed it to the Village Voice, which published it (prompting CBS to suspend Schorr).[144] Although the House Permanent Select Committee on Intelligence—known as the Pike committee under his chairmanship—had itself voted to release the report, the full House voted to keep it secret on the basis that House leaders had agreed with the Ford administration not to disclose the contents.[145] The matter was referred to the House ethics committee, then known as the House Committee on Standards of Official Conduct, which voted to issue subpoenas on August 26, 1976, to Schorr and three other journalists, including Clay Felker, editor of New York Magazine and editor in chief of the Village Voice; Shelly Zalaznick, senior editorial director of New York Magazine; and Aaron Latham, a contributing editor for New York Magazine.[146] The committee held hearings at which Schorr and Latham testified but refused to disclose their sources.[147] The matter dropped when the House ethics committee refused to issue a contempt citation. Notably, before subpoenaing Schorr and the others, a dozen former FBI agents had reportedly interviewed about 500 persons to identify Schorr's source.[148]
Samuel Morison	Reagan	10/4/1984 (indicted)	Four-count indictment.	Convicted on all four counts. The Supreme Court denied cert on	24 months (pardoned).	Morison, an intelligence analyst with the Naval Intelligence Support Center ("NISC"), was convicted of stealing and selling photographs of a Soviet aircraft carrier under construction as well

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(top)			Charges are one count of unlawful transmission of NDI in violation of 18 U.S.C. § 793(d), one count of unlawful retention of NDI in violation of 18 U.S.C. § 793(e), and two counts of theft of government property in violation of 18 U.S.C. § 641.	Oct. 17, 1988. Sentenced to two years; Morison served eight months. Pardoned by President Clinton on Jan. 20, 2001.		as material on an explosion at a Soviet naval base to an English magazine, Jane's Defence Weekly.[149] He had been paid by the outlet in the past, and the FBI alleged that he had been hoping to secure full-time employment with Jane's.[150] The district court denied the defendant's motion to dismiss on several grounds, finding, among other things, that the statute was not unconstitutionally vague,[151] that it applied to "leaking" to the press,[152] that § 793(d) and (e) are not overbroad as long as a limiting instruction is given requiring a jury to find that the information disclosed be potentially harmful to the United States or helpful to an enemy,[153] that § 641 applies to the disclosure of classified information,[154] and, effectively, that classified information has "value" under that theft of government property statute.[155] The Fourth Circuit issued an opinion in *Morison* affirming the district court's decision, including its finding that the provisions of the Espionage Act in the indictment—§ 793(d) (transmittal or retention of national defense information by individual with *lawful* possession to person not entitled to receive it) and § 793(e) (transmittal or retention of NDI by individual with *unauthorized* possession to person not entitled to receive it)—apply more broadly to conduct beyond just, as Morison put it, "classic spying" (i.e., the transmittal of national security secrets to foreign agents for pay or out of ideological sympathy).[156] The court found that the First Amendment does not bar the application of the Espionage Act to instances where the material is disclosed to the press, and that subsections (d) and (e) are not unconstitutionally vague or overbroad.[157] Judges Wilkinson and Philips, however, both wrote concurring opinions elaborating on the First Amendment concerns with the

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						Espionage Act. Judge Wilkinson suggested that careful jury instructions requiring a finding that the information released was actually damaging to the United States (either through harm to national security or through aid to an *enemy*, not just a foreign nation), and that the leaker had the specific intent to violate the statute, cured what he felt were significant First Amendment concerns.[158] Judge Wilkinson also wrote: "the espionage statute has no applicability to the multitude of leaks that pose no conceivable threat to national security, but threaten only to embarrass one or another high government official."[159] Finally, the district court revisited the intent standard in a later decision granting the government's motion to exclude testimony related to the defendant's patriotism.[160] The district court squarely held that evidence of the defendant's motives in disclosing the information was irrelevant to the "willfulness" standard in 18 U.S.C. § 793(d) and (e). "The governments [sic] must show a bad purpose to break the law by delivering or retaining the items," the court said, "but a showing of an underlying *purpose* to damage the national defense is entirely unnecessary and irrelevant."[161] With respect to the photographs at issue in Morison, the district court identified just two elements that the government must prove beyond a reasonable doubt to demonstrate that the material qualifies as "relating to the national defense."[162] Those are that the "photograph and/or document would be *potentially* damaging to the United States, or might be useful to an *enemy* of the United States; the second is that those same items are 'closely held' in that the relevant government agency has sought to keep them from the public generally and that these items have not been made public and are not available to the general public."[163] The court also squarely held that the phrase "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" only

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						applies to "information relating to the national defense" and does not create a "subjective test for the entire statute."[164] Sen. Daniel Patrick Moynihan (D-NY) lobbied President Clinton for a pardon, prompted not out of personal concern for Morison, but out of fear that capricious use of the Espionage Act could chill press freedom.[165] Moynihan made his case in his capacity as chairman of the Commission on Protecting and Reducing Government Secrecy.
Thomas D. Brandt (top)	Reagan	12/7/1984 (subpoena issued)	N/A	The House ethics committee dropped the subpoena against Brandt on December 18, 1984.	N/A	Thomas Brandt covered Congress for the Washington Times, and had written a series of articles about the House ethics committee's investigation of then-Rep. Geraldine Ferraro's (D-NY) financial disclosures. (Ferraro's finances were at issue in her run as the 1984 vice-presidential candidate.) The committee, in a December 4 report, found that Rep. Ferraro had committed "technical violations" of financial disclosure laws.[166] Brandt quoted from the committee's still unreleased report and included details about the committee's closed-door deliberations.[167] Following broad outcry by groups including the ACLU and the Reporters Committee, the committee dropped the subpoena two weeks after issuing it.[168]
Timothy Phelps and Nina Totenberg (top)	George H.W. Bush	2/3/1992 (subpoenas issued)[169]	N/A	The Senate declined to cite Phelps or Totenberg for contempt. Both testified before the appointed special counsel but declined to disclose information related to their source.[170]	N/A	On October 6, 1991, Timothy Phelps of Newsday and Nina Totenberg of National Public Radio reported that Professor Anita Hill had submitted a statement to the Senate Judiciary Committee accusing then-Supreme Court nominee Clarence Thomas of sexually harassing her when she worked for him at the Equal Employment Opportunity Commission.[171] The revelation led the Senate Judiciary Committee to reopen the Thomas confirmation hearings. (The committee deadlocked 7 to 7 on his nomination, and he was eventually confirmed 52 to 48, which remains the closest vote for confirmation in well over a century.)[172] Senate

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						Republicans appointed a special counsel, Peter Fleming, to investigate the Totenberg/Phelps leak as well as unauthorized disclosures in the Senate ethics committee's inquiry into potential improper gifts by savings and loan executive Charles Keating.[173] Both Totenberg and Phelps were deposed by the special counsel but declined to answer questions.[174] The chairman and ranking member of the Senate Rules Committee, who had to approve demands to compel testimony or the production of document under the resolution authorizing the special counsel (S. Res. 202), refused an application by Fleming for an order compelling Totenberg and Phelps to testify, and for a subpoena to compel the production of their telephone toll records.[175] Fleming was unable to identify the source of the disclosures and noted that the evidence indicated multiple sources.[176]
The Starr Office of Independent Counsel ("OIC") (top)	Clinton	9/25/1998 (Judge Norma Holloway Johnson issues order for Rule 6(e) inquiry)[177]	The district judge issued an order to show cause why the OIC should not be held in contempt for prima facie violations of Rule 6(e) in connection with 24 news articles.[178]	The special master in the case questioned one reporter, Claire Shipman, in connection with the third news article cited in the show cause order. Shipman declined to cooperate, and the special master did not pursue the matter further.[179] The overall Rule 6(e) matter was resolved when the D.C. Circuit reversed Judge Johnson's show	N/A	Appointed by the D.C. Circuit in 1994 following the re-enactment of the law authorizing independent counsels, attorney Ken Starr took over the Whitewater investigation from Robert Fiske, a Reno appointee.[181] Over the course of the next five years, the Whitewater investigation grew to encompass a separate perjury investigation into President Bill Clinton regarding his relationship with Monica Lewinsky.[182] On September 25, 1998, Judge Johnson of the United States District Court for the District of Columbia ordered the OIC to show cause why it should not be held in contempt for violations of Rule 6(e) of the Federal Rules of Criminal Procedure, barring disclosures of grand jury material by government attorneys, in connection with 24 articles published between January 23, 1998, and June 2, 1998.[183] Judge Johnson appointed Judge John Kern III of the District of Columbia Court of Appeals as special master.[184] The only involvement of a journalist or media outlet in the special master's investigation was in relation to an NBC Nightly News

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				cause order and her appointment of the Justice Department to prosecute a criminal contempt proceeding against the OIC arising out of possible Rule 6(e) violations in a separate New York Times article dated January 31, 1999.[180]		report by Claire Shipman, which cited sources in the OIC's office for two points: that the OIC's office had rejected an offer of an immunity deal by Lewinsky's lawyers and that Lewinsky may have received "talking points" from the White House.[185] Because Shipman specifically mentioned the OIC as her source, the special master contacted her to request her voluntary cooperation.[186] After consulting with NBC's management, she declined to cooperate and "[g]iven the small chance of success in compelling a reporter to reveal her source," the special master did not pursue Shipman's testimony further.[187] The special master concluded his report by finding that the OIC had appropriately responded to the claims of Rule 6(e) violations, and that no further action would be required with respect to the 24 news reports at issue.[188] The Rule 6(e) proceeding continued for another year with respect to another news article, a report by Don Van Natta Jr. titled "Starr Is Weighing Whether to Indict Sitting President."[189] Van Natta reported, based on anonymous "associates" of Mr. Starr, that OIC attorneys wanted the OIC to indict President Clinton on charges of perjury and obstruction arising out of his deposition testimony in the Paula Jones case and his grand jury testimony in the OIC investigation.[190] The day after the story ran, the White House filed a motion for a show cause order.[191] The OIC denied being the source of the information in the story, but asked the FBI to provide assistance in investigating the possible disclosure.[192] Following the investigation (the results of which were sealed), the OIC withdrew its denial and took administrative action against its spokesperson.[193] The district court then issued an order appointing the Justice Department to serve as prosecutor of contempt charges against OIC and its spokesperson for violations of Rule 6(e). On appeal, the D.C. Circuit, per curiam, found that the disclosures in the New York Times article did not qualify as a

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						prima facie violation of Rule 6(e) and granted the motion for summary reversal of the district court's show cause order.[194] The Kern report was released as part of an unsealing request by Senate Judiciary Committee Democrats and American Oversight, a private advocacy group, in August 2018. The Justice Department did not oppose release of the report. Judge Royce Lamberth on the District Court for the District of Columbia issued the order, and he reviewed the report in camera prior to release.[195]
Wen Ho Lee (top)	Clinton	12/10/1999 (indictment)	59-count indictment.[196] 29 counts of unlawful removal of restricted data in violation of 42 U.S.C. § 2276; 10 counts of unlawful acquisition of restricted data in violation of 42 U.S.C. § 2275; 10 counts of unlawful receipt of NDI in violation of § 793(c); and 10 counts of unlawful retention of NDI in violation of § 793(e).	Dr. Lee pled guilty on September 13, 2000, to one count of unlawful retention of NDI under § 793(e).[197] When the court accepted his plea, the judge offered an apology to Dr. Lee, and criticized the "top decision makers in the Executive Branch . . . who have caused embarrassment by the way this case began and was handled."[198] Dr. Lee was held in custody (and in solitary confinement) for 278 days before his plea agreement.[199] In	Judge James Parker in Albuquerque sentenced Lee to 278 days, one less than time served.[201] He was released the same day he entered his plea.	Dr. Wen Ho Lee was a Taiwanese-born engineer and hydrodynamics specialist at Los Alamos National Laboratory, assigned to the "X Division," which designs nuclear bombs.[202] He was suspected of passing sensitive information to the Chinese about the "W-88," an American nuclear warhead design with a particular innovation permitting greater yield at a smaller size.[203] The investigation into a possible W-88 leaker, codenamed "Tiger Trap," centered on Dr. Lee, who was ultimately arrested, charged with 59 Espionage Act counts, and held in solitary confinement for more than nine months.[204] The first 39 counts against Dr. Lee were for violations of the Atomic Energy Act, and they refer to "restricted" data (the Department of Energy system of classification).[205] Those counts were split between two statutes, both of which carry a possible life sentence just for mishandling restricted information (29 counts under § 2276 and 10 under § 2275).[206] Section 2276, "Tampering with Restricted Data," covers merely removing, concealing, tampering with, altering, mutilating, or destroying any material incorporating restricted data that is used in connection with the production of "special nuclear material" (i.e., plutonium and certain enriched uranium isotopes) or atomic

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				2006, Dr. Lee received a $1.6 million settlement paid by the government and, unusually, by five media organizations (see discussion in the summary).[200]		energy research, when done with the intent to "injure the United States" or to "secure an advantage to any foreign nation."[207] Section 2275, "Receipt of Restricted Data," covers the acquisition or attempted acquisition of restricted data with the intent to "injure the United States" or to "secure an advantage to any foreign nation." Ultimately, the Justice Department's case against Dr. Lee in large part fell apart, and he pled guilty to one count of unlawful retention under § 793(e). On accepting the plea, the judge strongly criticized the Justice Department and the Department of Energy, saying that Dr. Lee's detention had "embarrassed our entire nation and each of us who is a citizen of it."[208] Dr. Lee's jailing had been based, in part, on secret and dire warnings of possible harm to national security were he released on bail, which the judge ultimately found to be overhyped.[209] The Lee case has an unusual coda. Like Stephen Hatfill and Richard Convertino, Dr. Lee filed a Privacy Act lawsuit against the government for disclosing personal details about him to the press.[210] As part of the lawsuit, Lee issued hundreds of written discovery requests and deposed six Energy Department officials (including Secretary Bill Richardson) to uncover the source of the leaks but was unsuccessful in doing so.[211] He then subpoenaed six journalists (James Risen, Josef Hebert, Bob Drogin, Pierre Thomas, Jeff Gerth, and Walter Pincus).[212] Various courts ultimately found that a qualified reporter's privilege did not apply.[213] In 2006, the government then settled with Dr. Lee for $1.6 million, with five media organizations—ABC, the Associated Press, the Los Angeles Times, the New York Times, and the Washington Post—

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						contributing $750,000 to avoid contempt sanctions against their reporters (despite *not* being defendants in the case).[214]
John Solomon (top)	George W. Bush	5/14/2001 (approval for subpoena)[215]	N/A	Solomon's source was never revealed. Sen. Chuck Grassley (R-IA) sent Attorney General John Ashcroft two letters requesting information on the Solomon subpoena. The DOJ responded in December with a letter listing various statistics concerning subpoenas to the press.[216] Solomon also claims that the revelation cost him sources.[217]	N/A	John Solomon of the Associated Press wrote an article on May 4, 2001, revealing that a federal wiretap had captured conversations between Sen. Robert Torricelli (D-NJ) and the relative of an organized crime figure.[218] Following its publication, the Justice Department, with the approval of new FBI director Robert Mueller, secured a delayed-notice subpoena for Solomon's home phone records from May 2 through the 7.[219] Solomon was notified by letter of the seizure when he returned home from vacation in August.[220] Senator Grassley sent letters on September 4 and 6, 2001, to the Justice Department asking for a timeline of all relevant events regarding the subpoena, all related documents, and a list of all individuals involved in the matter.[221] The Justice Department responded on November 28, 2001, with a letter including various statistics on press subpoenas in the past, including the fact that the government had issued 88 subpoenas "in connection" with a member of the news media, of which 17 sought information that could have led to the identification of a source or "implicated source material."[222] Senator Grassley responded by letter on December 6, 2001, criticizing vague answers in the DOJ's response, and requesting greater clarity on several points.[223]
Jim Taricani (top)	George W. Bush	5/31/2001 (district court issued order appointing special prosecutor)[224]	Criminal contempt.[225]	Taricani served four months home confinement and was released two months early in April 2005.[226]	Six-months home confinement.	The Taricani case arose out of "Operation Plunder Dome," an FBI investigation into corruption in Providence, Rhode Island. The investigation ultimately resulted in charges against Mayor Vincent "Buddy" Cianci Jr. At the heart of his case was an FBI videotape showing another defendant, Frank Corrente, allegedly accepting a bribe. The tape was covered by a protective order put in place to avoid compromising the Cianci grand jury, which was proceeding at the same time that the Corrente prosecution was pending.[227]

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						On February 1, 2001, Jim Taricani, an investigative reporter for WJAR, the NBC affiliate in Cranston, Rhode Island, aired the leaked tape.[228] The defendants then asked the district court to investigate who had violated the protective order.[229] The court agreed and appointed a private attorney as special prosecutor to investigate the leak.[230] After interviewing and deposing several individuals, the special prosecutor, Marc DeSisto, sought and received a subpoena to compel Taricani to appear at a deposition.[231] Taricani appeared but refused to answer any questions that would reveal his source, citing a "newsman's privilege."[232] DeSisto filed a motion to compel, which was granted after a hearing on October 2, 2003.[233] Taricani appeared at another deposition on February 13, 2004, and again refused to identify his source; following a hearing on March 16, 2004, Taricani was found in civil contempt and ordered to pay $1,000 a day until he complied.[234] He appealed unsuccessfully to the First Circuit, and fines began on August 12, 2004, ultimately reaching $85,000, which were paid by NBC.[235] On November 22, 2004, Taricani was convicted of criminal contempt based on the earlier civil contempt finding.[236] Because of health considerations (Taricani was a heart transplant recipient), he was sentenced to six months of home confinement on December 9, 2004.[237] The conditions of confinement were restrictive; he could not leave the house except to seek medical treatment, could not work, could not grant media interviews, could not access the internet, and was subject to other restrictions "designed to mirror as closely as possible the conditions in prison."[238] Taricani was released after four months.[239] Following Taricani's conviction, the attorney for the Providence tax assessor, who was a defendant in Operation Plunder Dome, admitted under oath that he had provided the tape to Taricani.[240] The attorney, Joseph Bevilaqua Jr., had previously denied being

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						the source under oath, and said that there had never been an agreement of confidentiality between the two.[241] Taricani disputed that, saying that Bevilaqua had asked him for a promise of confidentiality.[242] The admission did not impact Taricani's conviction.
Jonathan Randel (top)	George W. Bush	7/10/2001 (indicted)	Initial indictment was one count of violating the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4); superseding indictment added 17 charges, including counts for theft of government property under 18 U.S.C. § 641 and wire fraud in violation of 18 U.S.C. §§ 1343 and 1346.[243]	On June 4, 2002, Randel pled guilty to one count of theft of government property under § 641.[244] He was sentenced on January 15, 2003.[245]	12 months.	Jonathan Randel was an analyst at the Drug Enforcement Agency who shared with the London Times the fact that British billionaire Michael Ashcroft's name had been entered in a money laundering database because of his ownership of a bank in Belize.[246] Ashcroft sued the Times for libel in July 1999, but dropped the suit after the paper, owned by Rupert Murdoch, printed a statement that Ashcroft had committed no wrongdoing.[247] Investigators focused on Randel because of an identity code printed on one of the documents provided to the London Times.[248] The Randel case is notable in that the conviction under § 641 was secured even though the information provided to the London Times wasn't classified; it was merely controlled. The prosecutor pointed to the case as an example to other government employees, saying that "this was a case that went to the heart of the integrity of the justice system. . . . We took an action against someone entrusted with sensitive confidential information because it's illegal to disclose it."[249]
Stephen Hatfill (top)	George W. Bush	8/1/2002 (Hatfill identified as person of interest)[250]	N/A	On June 28, 2008, Hatfill settled a Privacy Act suit against the government for $5.82 million (almost $3 million immediately and an	N/A	A week after the 9/11 terrorist attacks, letters containing anthrax spores were mailed to several media outlets and Democratic Senators Tom Daschle (SD) and Patrick Leahy (VT), killing five people (including a photo editor for the Sun, owned by American Media Inc., the parent company of the National Enquirer; two employees at the Brentwood postal facility in Washington, D.C.; and two individuals who encountered the anthrax spores through unknown means). Seventeen others were infected.

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				annuity of $150,000 for 20 years starting in 2009).[251]		In the first year, the FBI investigation, called "Amerithrax," focused on a U.S. Army scientist at Fort Detrick named Stephen Hatfill who had also once worked at the Army's Medical Research Institute of Infectious Diseases, or USAMRIID. In June 2002, an FBI search of his home featuring agents in biohazard suits was broadcast on national television.[252] In August 2002, Attorney General John Ashcroft publicly named Hatfill a "person of interest" and he was subjected to intensive investigation—including wiretaps and 24-hour physical surveillance—for more than two years.[253] In 2007, the FBI's focus in Amerithrax shifted to another USAMRIID scientist, Bruce Ivins. Ivins committed suicide in July 2008 as prosecutors prepared charges against him.[254] The Justice Department exonerated Hatfill two weeks later.[255] Hatfill filed two major lawsuits in connection with the case. He, like Wen Ho Lee, sued the government for Privacy Act violations in connection with the leaks about his status as a suspect. That suit settled in late June 2008 with Hatfill to receive almost $3 million immediately and an annuity of $150,000 for 20 years.[256] Unlike Lee, there was no contribution from media organizations facing subpoenas in the lawsuit. Crucially, Hatfill also sought to compel several reporters to disclose confidential sources in the case. Two ultimately faced contempt citations, including USA Today's Toni Locy. Judge Reggie Walton held Locy in contempt in February 2008, issuing an order requiring her to pay fines of $500 a day for seven days, $1000 a day for another seven days, and $5000 a day for seven days if she refused to name her sources for three articles she wrote about the case.[257] Locy was ordered to personally pay the fines, and her employer was prohibited from reimbursing her.[258] Following the

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						settlement in the case, Hatfill moved to dismiss, though Locy urged the D.C. Circuit to hear her appeal from the contempt order to settle the underlying privilege issue.[259] The court declined, but vacated the contempt citation.[260] Former CBS reporter James Stewart was also facing an order in the case to disclose his sources, but Walton never ruled on specific contempt sanctions. Finally, Hatfill also sued the New York Times and Times columnist Nicholas Kristof for defamation for a series of columns Kristof wrote suggesting that the FBI should have been investigating a "Mr. Z" more closely.[261] Hatfill confirmed he was Mr. Z during a press conference.[262] A federal judge initially dismissed the suit on the grounds that Hatfill was a public figure, but was overturned by a split Fourth Circuit panel (saying the question could go to the jury).[263] The trial court again dismissed the suit in January 2007.[264] The Fourth Circuit upheld that ruling and the Supreme Court declined to hear Hatfill's appeal in December 2008.[265] Though the suit was dismissed, Kristof apologized in a column to Hatfill.[266]
Larry Franklin (top)	George W. Bush	5/3/2005 (initial complaint filed); 8/4/2005 (superseding indictment)	Criminal complaint initially issued charging Franklin alone with violation of Espionage Act, 18 U.S.C. § 793(d). Followed by a five-count superseding indictment against Franklin and two AIPAC lobbyists, Rosen and Weissman.	Pled guilty in 2005. Initially sentenced to more than 12 years, which was reduced to probation and 10 months in community confinement after he cooperated in the case against Rosen and Weissman (against whom the charges were	151 months (reduced significantly; see "Resolution" entry).	Franklin, an analyst at the Department of Defense and an Iran expert, ultimately admitted to passing classified military information about Iran to two lobbyists for the American Israel Public Affairs Committee ("AIPAC") and an Israeli diplomat. The case is unusual in that Steven Rosen and Keith Weissman, the AIPAC lobbyists, were also charged with "leaking" despite not being government officials. Franklin, an Iran hawk, has said that he developed a relationship with the two lobbyists in the hopes that the information he passed along would find its way to the National Security Council.[269]

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			Franklin charged under all five counts of indictment; Rosen and Weissman charged with select counts (see entries below).[267] Charges are one count of conspiracy to disclose NDI in violation of 18 U.S.C. § 793(d), (e) and (g) (subsection (g) is the conspiracy provision); three counts of actual unlawful disclosure in violation of 18 U.S.C. § 793(d); and one count of conspiracy to disclosure *classified* information (not NDI) to a foreign agent in violation of 50 U.S.C. § 783 and 18 U.S.C. § 371 (the general criminal conspiracy statute).	ultimately dropped).[268]		

Steven J. Rosen (top)	George W. Bush	8/4/2005 (indicted)	Rosen charged in the same superseding indictment along with Weissman and Franklin. Rosen specifically charged with both conspiracy and a direct violation of unlawful disclosure under the Espionage Act (for helping Franklin fax a document to Rosen).	Charges dropped on May 1, 2009.	N/A	Rosen and Weissman were both charged with one count of conspiracy to violate the Espionage Act. Rosen was also charged with one count of aiding and abetting a violation of the law (for allegedly helping Franklin fax a classified document to Rosen's residence).[270] The investigation into Rosen dated to 1999 when the government alleged that Rosen told a foreign official that he had "picked up an extremely sensitive piece of intelligence."[271] The government alleged that Rosen and Weissman recruited Franklin into the conspiracy, and that Rosen and Weissman disclosed the information they gathered to AIPAC staffers, foreign officials and the media.[272] Rosen and Weissman moved to dismiss the charges on constitutional grounds. The district court found that the application of the Espionage Act to individuals accused of disclosing classified information, but who are not employed by the government, does not violate the First Amendment. To avoid First Amendment concerns, however, the court found that the government must prove both harm and intent—that is, that the information the defendants leaked is potentially harmful to national security (that it qualifies as "national defense information," which, as noted above, is defined functionally as information the disclosure of which could harm national security), and that the defendants knew as much when they disclosed it.[273] The district court also held that the fact the information here was transmitted orally did not render the statute unconstitutionally vague: "To the extent that oral transmission of information relating to the national defense makes it more difficult for defendants to know whether they are violating the statute, the statute is not thereby rendered unconstitutionally vague because the statute permits conviction only of those who 'willfully' commit the prohibited acts and do so with bad faith."[274] The key holding in the district court's decision is essentially that prosecutors must prove that defendants knew that the information they disclosed, if

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						disclosed, would potentially harm the United States, and that defendants acted with "a bad purpose either to disobey or to disregard the law."[275] The holding applies to "intangible" information, information that the discloser has "reason to believe could be used to the injury of the United States or to the advantage of any foreign nation."[276] The court did not apply this additional intent requirement to documentary material, which often will come with specific markings identifying its classification status, and therefore, the logic goes, harm can be presumed. Prosecutors ultimately dropped the charges against Rosen and Weissman following the district court's ruling, and a series of other decisions that would have required the disclosure of classified information at trial.[277] The defense would have also been allowed to call several senior Bush administration national security officials, including former national security advisor and Secretary of State Condoleeza Rice, to testify that the "leaks" were a normal part of Washington "information trading."[278]
Keith Weissman (top)	George W. Bush	8/4/2005 (indicted)	Weissman charged with one count of conspiracy to violate unlawful disclosure provision of Espionage Act.	Charges dropped on May 1, 2009.	N/A	See Rosen entry above.

I. Lewis ("Scooter") Libby (top)	George W. Bush	10/28/2005 (indicted)	Five-count indictment. Charges are one count of obstruction of justice in violation of 18 U.S.C. § 1503, two counts of making false statements to the FBI in violation of 18 U.S.C. § 1001(a)(2), and two counts of perjury for false statements in grand jury testimony in violation of 18 U.S.C. § 1623.	Convicted on four felony counts: obstruction of justice, false statements to the FBI and committing perjury twice in grand jury testimony. Acquitted on an additional false statement count.[279] President Bush commuted Libby's 30-month sentence on July 2, 2007.[280] President Trump pardoned Libby on April 13, 2018.[281]	30 months (commuted then pardoned).	The Libby case originated in a 2003 op-ed that a former ambassador, Joseph Wilson, wrote in the New York Times claiming that he had been sent to Niger to investigate what he discovered to be unfounded claims that Saddam Hussein had sought uranium "yellowcake" from the country.[282] The op-ed suggested that officials may have ignored his findings in the lead up to the Iraq War. Administration officials, potentially in an effort to discredit Wilson, then told several journalists that Wilson was sent to Niger at the behest of his wife Valerie Plame, a then-undercover CIA officer. The outing of Plame led to a criminal investigation into possible violations of the Intelligence Identities Protection Act, the same law at issue in the Kiriakou case below, though no one was ever charged for the leak itself. The charges against Libby all stem from statements made to FBI agents investigating the leak of Plame's affiliation with the CIA, which was classified, and to the grand jury about conversations he had with news reporters Tim Russert (NBC), Judith Miller (the New York Times) and Matthew Cooper (Time). On July 6, 2005, Miller was sent to jail for refusing to identify a confidential source in testimony before the grand jury. Though she hadn't written about Plame, she had conducted interviews. Cooper was slated to also go to prison but received a last-minute release from his source (it turned out that Karl Rove was Cooper's source and the "primary" leak had been from Richard Armitage at the State Department to the late columnist Robert Novak).[283] Miller was released after 85 days. She left prison in September 2005 after receiving assurances that the waiver Libby had given to permit prosecutors to question reporters about their conversations with Libby was not coerced. Libby's attorneys, however, said they were surprised to learn that her belief that the waiver may have been coerced was why she ultimately refused to testify and went to prison.[284]

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						In the lead up to the trial, Libby sought to compel the production of documents from the various news organizations.[285] Judge Walton on the D.C. district court limited what Libby could seek to the three primary reporters—Russert, Cooper and Miller—but found that the First Amendment does not protect a news reporter or that reporter's outlet from having to disclose documents pursuant to a criminal subpoena when the reporter is "personally involved in the activity that forms the predicate for the criminal offenses charged in the indictment."[286] A federal jury acquitted Libby on one count of lying about a conversation with Cooper, but convicted him on March 6, 2007, on the four other counts.[287] Judge Walton sentenced him to 30 months in prison and a $250,000 fine in June. President Bush commuted the prison sentence in July and President Trump pardoned Libby in April 2018.
Richard G. Convertino (top)	George W. Bush	3/29/2006 (Convertino indictment)	Four-count indictment. Convertino – along with co-defendant Harry Smith from the State Department – was indicted on one count of conspiracy to obstruct justice and make false declarations in violation of 18 U.S.C. § 371; one count of obstruction of justice	Convertino was acquitted of the criminal charges; his Privacy Act suit ended when the Sixth Circuit held that the reporter in the case could assert his Fifth Amendment privilege.[289]	Acquitted at trial.	Richard Convertino was the assistant United States attorney in charge of the first terrorism prosecution following the 9/11 attacks. The Justice Department secured convictions against two of the defendants for plotting terrorist attacks as a "sleeper cell." The case was based heavily on circumstantial evidence and the testimony of an informant.[290] During the course of the trial, relations between Convertino and officials at the Justice Department became strained. The department's Office of Professional Responsibility launched an internal investigation into legal and ethical misconduct by Mr. Convertino.[291] Mr. Convertino claimed that the investigation was in retaliation for his testimony before the Senate Finance Committee describing the Detroit prosecution.[292] The terrorism charges were ultimately dropped in 2004 after the government

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			under §§ 1502, 1503; one count of making a materially false declaration before a court under §§ 1622, 1623; and only Convertino was charged with one count of obstruction of justice under § 1503.[288]			admitted that it had failed to turn over potentially exculpatory evidence to the defense.[293] Convertino was prosecuted for the alleged withholding and acquitted at trial. In January 2004, the Detroit Free Press ran an article written by David Ashenfelter quoting anonymous Justice Department officials highly critical of Convertino; the article appeared to draw directly from the internal investigation, and prompted a leak investigation by the Justice Department's inspector general, which failed to identify who had spoken to the Free Press.[294] Like Wen Ho Lee and Hatfill, Convertino sued the Justice Department for Privacy Act violations in connection with the disclosures about him. The litigation wound its way through the courts for more than a decade. Convertino initially subpoenaed both the Free Press and Gannett, its parent company.[295] He dropped the subpoena against Gannett, but pursued the subpoena against the Free Press.[296] The federal district court in Washington, D.C., limited the suit in 2005 to one claim under the Privacy Act involving the Ashenfelter story.[297] The Free Press subpoena, which sought to compel testimony from Ashenfelter, was resolved in 2015 when the Sixth Circuit ruled that Ashenfelter could invoke his Fifth Amendment right against self-incrimination to resist naming his sources.[298] Crucial for the Fifth Amendment claim, Convertino had alleged that the Justice Department had leaked two specific documents to Ashenfelter, a referral letter requesting the investigation and a letter from the Office of Professional Responsibility to Convertino.[299] In order to continue pursuing his Privacy Act claim, Convertino would have had to identify who specifically disclosed the information and then prove that the disclosure was "intentional and willful."[300]

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						Convertino had challenged Ashenfelter's Fifth Amendment claims, arguing that Ashenfelter had no reasonable basis to fear incrimination. Ashenfelter cited, among other things, the same federal statutes at issue in many of the unauthorized disclosure and retention cases in this chart, including the Espionage Act and theft of government secrets under 18 U.S.C. § 641. Following deliberations and discussion with Ashenfelter's counsel on three specific questions to which Convertino sought to compel answers, including whether he had disclosed his source to his editors and who at the DOJ had leaked the information, the district court found that Ashenfelter had a legitimate fear that answering Convertino's questions could constitute incrimination.[301] Interestingly, Convertino argued in a motion for reconsideration of the district court's ruling on the Fifth Amendment question that Attorney General Holder's statement following the disclosure of the AP subpoenas and the James Rosen search warrant—that the DOJ would not "prosecute any reporter for doing his or her job"—should be enough to insulate Ashenfelter from prosecution. The district court denied the motion. As noted, the Sixth Circuit upheld the ruling in 2015, finding that the relevant test is whether prosecution is "possible" not probable.[302]
Troy Ellerman (top)	George W. Bush	5/6/2006 (Fainaru-Wada and Williams called to testify)[303]	Ellerman pled guilty to four counts. Two counts of criminal contempt in violation of 18 U.S.C. § 401 for releasing the transcripts; one count of filing a false document in violation of 18 U.S.C.	On September 21, 2006, a federal judge ordered two San Francisco Chronicle reporters, Mark Fainaru-Wada and Lance Williams, jailed for refusing to testify about who disclosed Barry Bonds' grand jury testimony.[305]	30 months and fine of $60,000.	The Ellerman case arose out of the BALCO scandal, named for the Bay Area Laboratory Co-Operative, a sports nutrition center founded by Victor Conte that supplied Barry Bonds and other athletes with performance enhancing drugs.[311] In August 2002, federal agents began investigating BALCO, and prosecutors convened a federal grand jury in October 2003.[312] On March 3, 2004, the government obtained a protective order for the grand jury testimony barring the parties from disseminating the transcripts to the press.[313] In June 2004, the San Francisco Chronicle published a story based on the transcripts, which Ellerman had permitted the reporters to read, revealing that

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			§ 1623(a) for swearing under oath that he did not disclose the information; and one count of obstruction of justice in violation of 18 U.S.C. § 1503 for seeking the dismissal of the case on grounds that he created by leaking the testimony.[304]	They faced up to 18 months in prison.[306] The contempt charges were dropped after Ellerman pled guilty to leaking the testimony in February 2007.[307] In June 2007, Judge Jeffrey White rejected a plea deal that would have had Ellerman serving less than two years.[308] Ellerman agreed to the maximum sentence of two years and 9 months in July 2007 (though his fine was reduced from $250,000 to $60,000), and the judge sentenced him to two-and-a-half years.[309] Ellerman was denied readmission to the California state bar in May 2018.[310]		Olympian Timothy Montgomery had testified that he had used performance enhancing substances.[314] On June 25, 2004, the court held an emergency hearing to discuss the disclosures (at which Ellerman expressed anger about the disclosures, which he would later allege came from his then-client, the co-head of the BALCO lab).[315] The court ordered an investigation. While the investigation was ongoing, the Chronicle reporters wrote another story, on December 2, 2004, reporting that New York Yankees player Jason Giambi had testified at the grand jury that he had used steroids sourced from Greg Anderson, Bonds's trainer.[316] Giambi had denied taking steroids publicly. In May 2006, the reporters were subpoenaed by the grand jury in an effort to force them to reveal their source.[317] They refused and, in October 2006, were sentenced to prison for the remainder of the grand jury term—18 months. They remained out of prison on appeal.[318] Finally, an informant told the FBI that Ellerman had leaked the transcripts. Following an initial denial, Elllerman admitted he had done so in December 2006, and pled guilty to a four-charge indictment, including one count of obstruction of justice for his initial efforts to get the case against his client dismissed because of the leaks.[319] Judge Jeffrey White, who had issued the initial order, vacated the contempt finding against the two reporters on March 2, 2007, a month after Ellerman pled guilty.[320]

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Shamai Leibowitz[321] (top)	Obama	12/4/2009 (indicted)	One-count information. Charge is violating the prohibition on transmitting "communications intelligence" material, 18 U.S.C. 798(a) (i.e., this is not an NDI case).	Leibowitz pled guilty before trial.	20 months.	While employed as an FBI linguist, Leibowitz was charged with transmitting five FBI document classified as "secret" to a blogger.[322] Following Leibowitz's guilty plea, the blogger revealed himself to be Richard Silverstein (who writes a blog, "Tikun Olam," on Israeli-American relations) and that the information disclosed included FBI transcripts of wiretapped conversations at the Israeli embassy.[323] Silverstein removed the blog posts, but was able to retrieve three for the New York Times, which reported that those three posts described, respectively, regular written briefings from the Israeli embassy to President-elect Obama, calls among Israeli officials on the views of members of Congress with respect to Israel and a call between a Jewish activist in Minnesota and the embassy about Rep. Keith Ellison's (D-MN) planned trip to Gaza.[324] Leibowitz was charged with a single count of violating the 1951 addition to the Espionage Act that created specific offenses for the disclosure of "communications intelligence."[325] That statute refers to "classified" information, in contrast with the rest of the Espionage Act's focus on NDI (see the footnote on the first page of this chart for a more detailed explanation of the difference between NDI and classified information). During the sentencing hearing, the presiding judge noted that even he did not know what had been disclosed. "The court is in the dark as to the kind of documents" that Leibowitz leaked.[326] Nonetheless, the judge said he was "reasonably satisfied" the 20-month sentence was fair given the seriousness of the felony charge against Leibowitz, which would have carried a sentence under federal guidelines of up to almost 60 months.[327]

Thomas Drake (top)	Obama[328]	4/14/2010 (indicted)	10-count indictment. Charges are five counts (counts 1-5) of unlawful retention of NDI (note not transmission) in violation of 18 U.S.C. § 793(e), one count (count 6) of obstruction of justice in violation of 18 U.S.C. § 1519, and four counts (counts 7-10) of false statements to the FBI in violation of 18 U.S.C. § 1001(a)(2).	Prosecutors ultimately dropped almost all charges. Drake pled guilty to one count of exceeding the authorized use of a government computer under the Computer Fraud and Abuse Act, 18 U.S.C. 1030(a)(3), a misdemeanor.	One year of probation and 240 hours of community service.	Drake had worked at the National Security Agency for 12 years as an outside contractor, and was hired on full time as the Chief of the Change Leadership and Communications Office in the Signals Intelligence Directorate at the NSA in August 2001 (his first physical day on the job was 9/11).[329] He was involved in an internal dispute at the NSA over two data-mining and surveillance programs, ThinThread and Trailblazer, which were intended to grapple with the problem of information overload at the NSA. He agreed to serve as a witness in an NSA inspector general investigation into the decision to pursue Trailblazer over ThinThread, the latter of which was "more viable and cost-effective."[330] Details of the Trailblazer/ThinThread dispute appeared in articles by Baltimore Sun reporter Siobhan Gorman. In December 2005, the New York Times published a story that it had held for a year on the Stellarwind warrantless wiretapping program at the NSA.[331] The investigation seeking the identities of the sources for that story ultimately homed in on the Sun reporting about the ThinThread dispute and Gorman's source. In November 2007, FBI agents raided Drake's home and questioned him about the leak. Drake denied leaking anything to the Times. He admitted that he had been in contact with Gorman, but denied giving her any classified material.[332] The government agreed to a plea deal following court rulings that would have permitted the defense to present classified information about the surveillance programs to the jury.[333] In the lead up to trial, the district court denied defendant's motion to dismiss, which had argued, in part, that § 793(e) of the Espionage Act is unconstitutional. Relying on *Morison* and the Supreme Court's 1941 *Gorin* decision, which looked at the intent requirement in the statute,[334] the court denied the motion, and found, among other things, that, with respect to *documents*, the

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						government need only prove that the retention was willful, not that the individual specifically intended to harm national security.[335] The Drake and Rosen cases highlight the distinction courts have identified in the statute between intangible "information," which, because of the modifying clause in the statute ("which information the possessor has reason to believe could be used to the injury of the United States or the advantage of any foreign nation"), carries an additional intent requirement, and "documents" or other tangible material, which the government just has to show qualifies as NDI. Also, please note that the Reporters Committee has successfully petitioned to have various search warrant and electronic surveillance records unsealed in Drake's case as part of a series of records requests the organization has litigated in several of the Obama era leaks cases. More information on that and the other cases can be found at: https://www.rcfp.org/litigation.
Chelsea Manning (top)	Obama	5/30/2010 (arrested in Iraq);[336] 7/5/2010 (charged)	Manning was initially charged in July 2011 with 12 counts under the Uniform Code of Military Justice ("UCMJ").[337] On March 1, 2011, prosecutors presented a second set of charges. Before sentencing, the presiding judge merged several counts.[338]	On July 30, 2013, Manning pled guilty to three counts of violating Army regulations. She was acquitted on the most serious charge of aiding the enemy and one Espionage Act charge in connection with leaking a video of a U.S. airstrike in Afghanistan, but was	420 months[343] (commuted).	Manning joined the Army as an intelligence analyst in 2007. In 2009, she was assigned in that role to a forward operating base in Iraq. Manning's job involved downloading and organizing intelligence reports from the field (called significant activity reports, or "SIGACTs") for her superiors. In addition to the repositories for SIGACTs, she also had access to several military computer networks. While stationed in Iraq, Manning started visiting Wikileaks, a then-three-year-old website that collected and posted government and private sector documents for public review. Wikileaks's founder, Julian Assange, has described the controversial website as "a giant library of the world's most persecuted documents. We give asylum to these documents, we analyze them, we promote them and we obtain more."[344] Wikileaks has been criticized by some, including some government transparency advocates, for how it curates and releases

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			Ultimately, there were 22 separate counts. They are: One count of aiding the enemy under Article 104 of the UCMJ; Sixteen counts under the catch-all Article 134 of the UCMJ, which can incorporate federal civilian crimes (one general violation; eight violations of the Espionage Act, 18 U.S.C. 793(e); five violations of the theft of government property statute, 18 U.S.C. 641; and two violations of the Computer Fraud and Abuse Act, 18 U.S.C. 1030(a)(1)); And five counts of violating Army regulations under Article 92 of the	convicted on the other 17 charges.[339] Manning was sentenced on August 21, 2013, to 35 years, the longest sentence ever in a case involving unauthorized disclosures to the media. Manning faced up to 90 years if convicted on all charges, and prosecutors had sought a 60-year sentence.[340] Manning also received a dishonorable discharge, reduction in rank to private, and forfeiture of all pay and allowances.[341] On January 17, 2017, President Obama commuted Manning's sentence to about seven years. Manning was		information, and for what some have called "overtly unethical" behavior.[345] Wikileaks has also been criticized for failing to protect the privacy of personal information in the documents it releases (especially that of non-public figures).[346] Starting in January 2010 through to May, Manning uploaded to Wikileaks a cache of SIGACTs, State Department cables, an aerial video of a U.S. helicopter airstrike, a United States Central Command report on Wikileaks itself, and several hundred memoranda concerning Guantanamo Bay detainees.[347] In May 2010, Manning revealed her identity to the late Adrian Lamo, a computer hacker, who reported her to authorities. Manning was arrested in Iraq on May 20, 2010. She was convicted and sentenced in 2013. Shortly before leaving office, President Obama commuted her sentence to time-served plus 120 days. In doing so, he commented on how disproportionate Manning's sentence was relative to other "leakers."[348] She was released on May 17, 2017. In addition to the length of Manning's sentence, there are two other notable legal elements to the case. One, Manning was charged with "aiding the enemy," a death penalty offense, the first and only time that has ever been alleged in an unauthorized disclosure case. And, two, Manning was convicted on one count of violating the Computer Fraud and Abuse Act, or "CFAA," an anti-hacking law, despite never having circumvented any technical access control (colloquially, she didn't "hack" anything).[349] Several digital rights groups filed friend-of-the-court briefs on behalf of Manning challenging that conviction.[350]

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			UCMJ, (one violation of Army Reg. 25-2, ¶ 4-5(a)(4); one violation of Army Reg. 380-5, ¶ 7-4; and three violations of Army Reg. 25-2, ¶ 4-5(a)(3)).	released from military prison on May 17, 2017. On May 31, 2018, Manning's conviction (with one minor modification) was upheld on an automatic appeal to the Army Court of Criminal Appeals.[342]		
Stephen Jin-Woo Kim (top)	Obama	8/19/2010 (charged); 8/27/2010 (arraigned)	Two-count indictment. Count one is unlawful disclosure of NDI in violation of 18 U.S.C. § 793(d). Count two is making a false statement to the FBI in violation of 18 U.S.C. § 1001(a)(2).	Kim pled guilty on February 7, 2014, to the § 793(d) charge; prosecutors dropped the separate false statement charge. Sentenced on April 2, 2014.	13 months.	The charges against Kim stem from a June 11, 2009, article published by Fox News reporting that North Korea would respond United Nations Security Council resolution condemning recent nuclear and ballistic tests with another test.[351] Kim, a senior advisor at the State Department and a Koreas expert, pled guilty to disclosing the contents of an intelligence report, classified as "top secret/sensitive compartmented information," to the reporter, James Rosen.[352] His plea agreement followed almost four years of pre-trial litigation. The district court denied a motion to dismiss, finding, in part, that the treason clause in the Constitution does not preclude a prosecution for unauthorized disclosure under the Espionage Act (Kim had argued that the framers intended treason to be the sole avenue for prosecuting "political offenses" against the United States) and that the Espionage Act claims did not violate his due process or First Amendment rights.[353] The Kim case is significant in that, as part of its investigation, the FBI swore out an affidavit for a search warrant for Rosen's Gmail

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						that stated, "there is probable cause to believe that the Reporter [Rosen] has committed a violation of 18 U.S.C. § 793 (Unauthorized Disclosure of National Defense information), at the very least, either as an aider, abettor and/or co-conspirator of Mr. Kim."[354] As support for that claim, the affidavit stated that Rosen operated "much like an intelligence officer would run an [sic] clandestine intelligence source, the Reporter instructed Mr. Kim on a covert communications plan," and that Rosen "solicited and encouraged Mr. Kim to disclose sensitive" material and did so "by employing flattery and playing to Mr. Kim's vanity and ego."[355] Revelations of the Rosen search, along with the AP subpoena in the Sachtleben case, prompted outcry among press freedom advocates and led to a series of revisions to the Justice Department's guidelines governing the issuance of subpoenas, court orders and search warrants to the news media or third party communications providers, 28 C.F.R. § 50.10 (2018).[356] Finally, the Kim case includes a notable memorandum opinion from Judge Colleen Kollar-Kotelly declining to adopt the construction of "national defense information" in the *Morison* trial court. Specifically, the Kim court found that the government need *not* show that national defense information would be "potentially damaging" or helpful to an *enemy* of the United States. The opinion appears to adopt what the judge calls the Supreme Court's "broad" construction in *Gorin*: "a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness."[357]

Jeffrey Sterling (top)	Obama	12/22/2010 (indicted)	10-count indictment. Charges are seven counts of Espionage Act violations (i.e., three counts of unauthorized disclosure of NDI under 18 U.S.C. § 793(d), three counts of unauthorized disclosure under 18 U.S.C. § 793(e), and one count of unlawful retention under 18 U.S.C. § 793(e)), as well as one count of mail fraud under 18 U.S.C. § 1341, one count of theft of government property under 18 U.S.C. § 641, and one count of obstruction of justice under 18 U.S.C. § 1512(c)(1).[358]	Convicted on nine counts (the district court dismissed the mail fraud charge after close of evidence). Served two years in prison; released to a halfway house in January 2018.[359]	42 months.[360]	The Sterling case began with "Operation Merlin," a Clinton administration covert plan to disrupt the Iranian nuclear program by passing along schematics (which contained subtle flaws that would, the plan went, make the ultimate machine malfunction) through a Russian scientist.[361] Sterling, a CIA operations officer in the Near East and South Asia Division of the clandestine service from 1993 to 2001,[362] was Merlin's case manager for two years.[363] Sterling's involvement with the program ended in May 2000. Shortly thereafter, he filed an equal employment opportunity lawsuit against the CIA, alleging racial discrimination. The CIA successfully invoked the state secrets privilege to have that suit dismissed in 2005.[364] Investigative journalist James Risen wrote about the suit for the New York Times in 2002.[365] In 2003, Risen had written a story about Merlin and asked the CIA for comment. The CIA successfully persuaded the New York Times not to run the story.[366] Risen then reported on the operation in chapter nine of his 2006 book State of War, where he reported that there were concerns that the flaws in the schematics were actually easy to detect and remove from the finished product, which would potentially *help* the Iranian nuclear program.[367] The investigation into Risen's sources for the story began in April 2003 following his initial overture to the agency, and eventually settled on Sterling.[368] Sterling was convicted largely on circumstantial evidence showing communications between him and Risen around the time Risen approached the CIA in 2003.[369] The Sterling case is particularly notable for the subpoena the government served on James Risen, compelling him to testify as to his sources for State of War. (It's important to note that the Merlin investigation was initiated, and the first Risen subpoena

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						issued, during the Bush administration.[370] Sterling is often counted as an Obama case, but its origins predate President Obama's administration.) The trial court judge, recognizing a qualified First Amendment reporters' privilege in the case, granted Risen's motion to quash the subpoena except "to the extent that Risen [would] be required to provide testimony that authenticates the accuracy of his journalism, subject to a protective order."[371] The court held that the privilege could be invoked when a subpoena seeks information about a confidential source *or* when used to harass the reporter, and could only be overcome by the government by meeting the three-part test applicable in civil cases (that is, a showing of relevance, inability to acquire the information elsewhere and a compelling interest).[372] The Fourth Circuit reversed, refusing to recognize a qualified First Amendment or common law reporters' privilege in a criminal case (and finding that, absent a showing of harassment, bad faith or other improper motive, a reporter could be compelled to testify about criminal conduct the reporter personally witnessed or participated in).[373] The Supreme Court denied certiorari.[374] Ultimately, however, the government decided not to call Risen to testify and the parties stipulated that, were he to testify, he would have refused to disclose his sources.[375] During pre-trial proceedings, Risen declined to identify sources but did say he had multiple such sources for the information in State of War, testimony that the trial judge permitted to be read in court.[376]

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Mike Levine (top)	Obama	1/2011 (Levine subpoena)	N/A	Prosecutors dropped the subpoena after Levine refused to comply and fought the demand.	N/A	The Levine case is the second subpoena issued directly to a reporter in a leaks case of the Obama administration (after James Risen in the Sterling case).[377] While working for Fox News, Levine wrote a story about sealed grand jury proceedings against eight defendants who were accused of various terrorism offenses related to al-Shabaab, a designated foreign terrorist organization in Somalia.[378] The story cited confidential law enforcement sources, and the Justice Department launched a leak investigation. Court documents ultimately revealed that lawyers for Mr. Levine, who reported the subpoena publicly in May 2014 while at ABC News, fought to quash the subpoena in sealed proceedings.[379] Part of the government's argument in issuing the subpoena was that, after reviewing more than 1,000 emails from government accounts and reviewing a year of phone calls, the vast number of cleared personnel who would have been privy to the sealed grand jury indictments made it impossible to locate the leaker without going to the reporter.[380]
John Kiriakou (top)	Obama	4/5/2012 (indicted)	Five-count indictment. Charges are one count of disclosing the identity of a covert agent in violation of the Intelligence Identities Protection Act, 50 U.S.C. § 421(a); three counts of unlawful disclosure of NDI in violation of 18 U.S.C. § 793(d); and one	Kiriakou pled guilty on October 23, 2013, to one count of violating the Intelligence Identities Protection Act.[382] He served about 23 months in prison, and was released to three months of house arrest in February 2015.[383]	30 months.	Kiriakou worked for the CIA between 1990 and 2004 and is credited with being the first CIA officer to speak out publicly about waterboarding, which he called torture during an ABC News interview in the mid-2000s.[384] He was accused of disclosing several items of classified information to two journalists in 2007 and 2008. Specifically, count one of his indictment accuses him of disclosing the identity of a covert CIA officer to a journalist, in violation of the rarely used Intelligence Identities Protection Act, the same law at issue initially in the Libby-Plame case (though ultimately the only criminal charges in that case were related to false statements),[385] and count two alleged that he disclosed that the officer had been involved in the post-9/11 detention program as the branch chief at a particular CIA station, in violation of the Espionage Act.[386] Counts three and four involve the disclosure to two journalists of information concerning Deuce Martinez, a

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			count of making a false statement to the CIA Publication Review Board in connection with Kiriakou's memoirs in violation of 18 U.S.C. § 1001(a)(1).[381]			narcotics analyst and CIA officer (not undercover) who had been involved in high-level interrogations in the detention program.[387] Count five alleged a violation of the "trick or scheme" subsection of the general false statements statute, namely that Kiriakou had lied to the CIA Publications Review Board in saying that parts of his memoirs about a "classified investigative technique" were fictionalized.[388] When Kiriakou pled guilty in October 2013, David Petraeus, then-CIA director, issued a statement reading, in part, "[o]aths do matter and there are indeed consequences for those who believe they are above the laws that protect our fellow officers and enable American intelligence agencies to operate with the requisite degree of secrecy."[389] As discussed below, Petraeus resigned less than three weeks later after FBI agents in an investigation under federal cyber-stalking laws discovered that he had released classified information his biographer with whom he was having an extra-marital affair (the discovery of which during the cyber-stalking investigation prompted his resignation).[390] Some point to the discrepancy between the Petraeus and Kiriakou cases (Petraeus pled guilty to a misdemeanor despite having disclosed a comparatively larger amount of highly sensitive classified information) as evidence of selective enforcement of unauthorized disclosure laws, where higher ranking officials are permitted to "leak" with relative impunity while lower ranking personnel are punished severely.[391] Also, please note that the Reporters Committee successfully petitioned to have various search warrant and electronic surveillance records unsealed in Kiriakou's case as part of a series of records requests we litigated in several of the Obama era leaks

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						cases. More information on that and the other cases can be found at: https://www.rcfp.org/litigation.
Donald Sachtleben (top)	Obama	5/11/2012 (arrested on child pornography charges)	Charges in the leak case are one count of unauthorized disclosure of NDI in violation of 18 U.S.C. § 793(d), and one count of unauthorized possession and retention of NDI in violation of 18 U.S.C. § 793(e).[392]	On September 23, 2013, Sachtleben pled guilty to the two national security charges and to separate child pornography charges. In November 2013, the court accepted Sachtleben's plea in both cases.	43 months for each Espionage Act count, served concurrently, and 97 months on the child pornography charges.[393] Seven years supervised release.[394]	Sachtleben was arrested on child pornography charges in Indiana in May 2012. Following that arrest, he became the subject in the separate national security investigation. The government alleged that he had had communications with an Associated Press reporter and disclosed classified information in connection with the foiled "underwear" bomb plot.[395] Those communications took place on May 2, 2012 (shortly before his arrest in the unrelated child pornography investigation). The government also charged Sachtleben with a separate § 793(e) unauthorized retention offense, claiming that he possessed and retained classified material at his home in Carmel, Indiana. One of these documents, a CIA report classified as "secret," was, according to the government, uncovered during the execution of a May 2012 search warrant in the child pornography investigation.[396] A year after his initial arrest, the Justice Department revealed in a letter to the Associated Press that the FBI had used subpoenas to secure the telephone toll records for 20 lines used by more than 100 AP reporters.[397] The AP received the letter on May 10, 2013, so the actual return from the subpoena would have been within 90 days before that date, which would be February 9, 2013 (the guidelines permit delay of up to 90 days from when the records are produced).[398] The records were seized without notice to the AP, which precluded it from challenging the subpoena. The Justice Department said in the statement announcing the guilty plea that the toll records led to Sachtleben's identification as a suspect, and that it had conducted more than 500 interviews before issuing the subpoena for the AP records.[399]

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Case	President	Date	Charges	Resolution	Sentence	Summary
						News media organizations and advocates strongly criticized the subpoena after the Justice Department disclosed its existence.[400] Also, please note that the Reporters Committee successfully petitioned to have various search warrant and electronic surveillance records unsealed in Sachtleben's case as part of a series of records requests we litigated in several of the concluded Obama era leaks cases. More information on that and the other cases can be found at: https://www.rcfp.org/litigation.
James Hitselberger (top)	Obama	08/06/2012 (criminal complaint filed),[401] 10/26/2012 (indictment filed)[402]	Two-count indictment. Both charges are unlawful retention of NDI in violation of 18 U.S.C. § 793(e).[403]	Hitselberger pled guilty to one count of unauthorized removal and retention of classified documents in violation of 18 U.S.C. 1924, a misdemeanor.	Sentenced to time served[404] (he had served about two months in jail following his arrest and about eight months under house arrest).[405]	Hitselberger was a Navy contract linguist assigned to a naval base in Bahrain (he was 55 at the time of his arrest). While in Bahrain, he was assigned to support the joint special forces task force for the region, which includes units of Navy Seals.[406] In April 2012, the government alleges that his supervisors observed Hitselberger viewing and printing situation reports ("SITREPs") for the Navy special forces units.[407] He was then allegedly seen placing the printouts in an Arabic-English dictionary, which he put in his backpack.[408] His supervisors saw him walk out of the facility, upon which they stopped him and asked to search his bag.[409] The two documents in the dictionary were a SITREP and a Navy Central Command ("NAVCENT") regional analysis that allegedly included details on U.S. intelligence gaps in Bahrain.[410] Following the incident, the Naval Criminal Investigative Service ("NCIS") searched Hitselberger's apartment. The complaint alleges that NCIS investigators found one classified document with the markings removed, which upon review turned out to be another SITREP.[411] NCIS investigators interviewed Hitselberger soon thereafter and he denied intentionally removing and retaining classified information though, according to the complaint, he could "not defend himself" with respect to the SITREP with the

Case	President	Date	Charges	Resolution	Sentence	Summary
						markings removed found during the search of his quarters.[412] Hitselberger was removed from his position by his employer. During his trip home, he changed plans and traveled in Europe for several months. He was arrested upon arriving in Kuwait to collect his belongings and extradited to the United States.[413] Hitselberger's case enters the annals of possible "leaks" to the news media because, during his interview with NCIS, he revealed that he had established an archive at the Stanford's Hoover Institute. The collection, with documents collected by him dating to shortly before the revolution in Iran, was found to contain four classified documents (among more than a dozen boxes worth).[414] The defense and prosecution agreed to a plea deal to resolve the case, with the prosecution not objecting to a sentence of time served, which the judge imposed. Mr. Hitselberger agreed as well never to seek a security clearance again.[415] In its reply to the government's sentencing memorandum, the defense argued that the disparity between the felony counts in the indictment and the ultimate misdemeanor plea suggested that the case had been "overcharged" and that the potential harm from disclosure of the documents was not clear on the face of the material.[416]
Jeffrey Lacker (top)	Obama	10/3/2012 (Medley published the note)[417]	N/A	Lacker resigned as president of the Federal Reserve Bank of Richmond on April 4, 2017.[418]	N/A	In October 2012, Medley Global Advisors, a firm that publishes financial intelligence newsletters,[419] released a customer note with confidential information about Federal Reserve deliberations, including the fact that the Fed would begin to purchase Treasury bonds in December of that year and would not raise interest rates until certain economic metrics had been met.[420] The Medley report was sent to subscribers the day before the Fed information was released, and could have benefited them financially (the 10-

Case	President	Date	Charges	Resolution	Sentence	Summary
						year benchmark Treasury rate rose overnight from 1.61 to 1.74).[421] The Fed launched an investigation following the disclosure, followed by an insider trading probe by the Southern District of New York and the Commodity Futures Trading Commission.[422] Medley Global argued that it qualified as a news media organization during the investigation, and the Justice Department never issued a subpoena against the group.[423] The investigation stalled for several years but concluded in 2017 after Mr. Lacker resigned from his position as the president of the Richmond Federal Reserve Bank. No charges were brought. Mr. Lacker said that he spoke to the author of the Medley report. She already had the Fed information from another source and asked him to comment, he said, but he failed to make clear he could not.[424]
Edward Snowden (top)	Obama	6/14/2013 (complaint filed)	Three-count complaint. Charges are one count of theft of government property in violation of 18 U.S.C. § 641, one count of unauthorized disclosure under 18 U.S.C. § 793(d), and one count disclosure of communications intelligence information under 18 U.S.C. § 798(a)(3).[425]	Snowden remains under indictment.	N/A	Snowden is a former CIA employee and NSA contractor (with Booz Allen Hamilton) who revealed the existence of several classified bulk surveillance programs at the NSA, including a program based on the "business records" provision of the Foreign Intelligence Surveillance Act[426] under which the Justice Department and NSA had claimed the legal authority to collect phone metadata from all Americans without individualized suspicion. Snowden also released documents showing how the NSA collected communications content directly from providers and as it transited U.S.-based provider infrastructure.[427] The Snowden revelations sparked a global debate over national security surveillance policies. Snowden currently lives in Russia, and remains under indictment in the United States.

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David Petraeus (top)	Obama	3/3/2015 (criminal information and plea agreement entered)[428]	Charge is one count of mishandling classified information in violation of 18 U.S.C. § 1924.	Petraeus pled guilty to that one count, a misdemeanor, and the government agreed not to oppose his request for a non-custodial sentence.[429]	Two years' probation and $100,000 fine.[430]	Petraeus, the former director of the CIA, was in a personal relationship with Paula Broadwell, who was writing a biography on his storied career as a general (including his time as the commander of U.S. forces in Afghanistan). Broadwell sent a series of emails to another acquaintance of Petraeus's, who, believing they could be a threat, shared them with a friend at the FBI. In the course of an investigation of possible violations of federal online harassment laws, the FBI discovered the relationship.[431] Petraeus resigned as director of the CIA and investigators determined that he had shared highly classified notebooks containing information regarding "the identities of covert officers, war strategy, intelligence capabilities and mechanisms, diplomatic discussions, quotes and deliberative discussions from high-level National Security Council meetings, and [Petraeus's] discussions with the President of the United States of America" with the biographer.[432] As part of his plea agreement, Petraeus also admitted he lied to FBI agents but was not charged with making false statements under § 1001.[433] Prosecutors also sought to reference, in the plea's factual recitation, the public statement Petraeus made as CIA director following the Kiriakou conviction ("Oaths do matter . . .") but ultimately did not (see the Kiriakou entry above).[434]
James Cartwright (top)	Obama	10/17/2016 (criminal information and plea agreement entered)[435]	Charge is one count of making false statements to FBI agents in violation of 18 U.S.C. § 1001(a)(1).	Cartwright pled guilty and was pardoned by President Obama before sentencing.[436] Prosecutors had sought a two-year sentence, significantly more	Pardoned before sentencing.	Cartwright, a retired Marine Corps general and the former vice chairman of the Joint Chiefs of Staff, settled a four-year leaks investigation by pleading guilty to one count of false statements shortly before the end of President Obama's second term. The false statements were made during interviews in the investigation into public disclosures about the Stuxnet computer virus, which was used to destroy Iranian nuclear centrifuges.[438] Cartwright had lost his security clearance in 2013 following his interviews with the

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				than the guidelines range.[437]		FBI (in his second interview, he admitted to misleading agents during their first meeting).[439] Also, please note that the Reporters Committee successfully petitioned to have various search warrant and electronic surveillance records unsealed in Cartwright's case as part of a series of records requests we litigated in several of the Obama era leaks cases. More information on that and the other cases can be found at: https://www.rcfp.org/litigation.
The Billy Walters Case (top)	Obama	11/17/2016 (SDNY orders leak inquiry)	None yet.	TBD.	TBD.	William "Billy" Walters is a professional gambler, often considered one of the best sports gamblers in the country, who was convicted of securities fraud in 2017 for trading Dean Foods Co. stock based on inside tips from the former chairman.[440] At issue in his appeal are leaks from an FBI agent in 2013, which his defense team contends revived flagging interest in the case.[441] In 2016, Judge Castel on the Southern District of New York ordered the U.S. attorney to undertake an investigation of the leaks, which ultimately centered on an FBI supervisory special agent, Daniel Chaves, who admitted during questioning that he disclosed confidential information.[442] The leaks came to light when reporters from the Wall Street Journal and New York Times approached the government to confirm information that had been disclosed.[443] A motion for an evidentiary hearing on the disclosures has been filed by Walters's defense team as part of his appeal.[444] That is before the Second Circuit.[445]

Reality Winner (top)	Trump	6/5/2017 (criminal complaint filed)[446]	Charge is one count of unauthorized disclosure of NDI in violation of 18 U.S.C. § 793(e).[447]	Winner pled guilty on June 26, 2018.[448] She was sentenced on August 23, 2018.[449]	63 months.	Reality Leigh Winner, an N.S.A. contractor and former Air Force linguist, was the first person charged by the Trump administration with the unauthorized disclosure of classified material. She has pled guilty to transmitting a classified report about Russian attempts to hack elections software and systems to the Intercept. Winner has agreed to a sentence of 63 months, which would be the longest sentence handed down by a civilian court in an unauthorized disclosure case. And, she is also the only "leaker" ever held without bail (save Chelsea Manning, who was held in military custody).[450] According to an FBI affidavit, Winner was identified as a suspect when agents were able to determine that the document the news outlet showed the government to confirm its authenticity had been physically printed out, and that Winner had both printed the document and had email contact with the outlet.[451] The magistrate judge in the Winner case made a number of rulings that impaired Winner's ability to mount a defense that the release of the document in her case would not have posed a threat to national security and/or was not actually non-public information and was therefore not closely held.[452] The magistrate ruled that the 40-odd subpoenas the defense team sought to issue—which would have gone to various government agencies, state governments and cybersecurity firms—constituted a "fishing expedition."[453] Winner was sentenced to 63 months—more than five years—in prison on the one Espionage Act count. It is the longest sentence to date in an NDI disclosure case in federal court (Sachtelben and Sterling are second and third longest, with 43 and 42 month sentences respectively; Franklin was initially sentenced to 151 months, but the sentence was reduced when he cooperated with prosecutors).

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Terry Albury (top)	Trump	3/27/2018 (criminal information filed)	Two-count information. One count of unauthorized disclosure of NDI under 18 U.S.C. § 793(e), and one count of unlawful retention of NDI also in violation of 18 U.S.C. § 793(e).	Albury pled guilty to both counts on April 18, 2018.[454]	Sentenced to 48 months on October 18, 2018.	Albury is the second individual charged by the Trump administration in connection with unauthorized disclosures to the media. He was a special agent with the FBI in the FBI's Minneapolis Field Office and was assigned as an airport liaison at the Minneapolis/St. Paul International Airport. Albury pled guilty to sharing two documents. The first detailed how the FBI evaluated potential sources and the second reportedly concerned "threats posed by certain individuals from a particular Middle Eastern country." The Associated Press reported that the subject matter of the documents corresponded with a January 31, 2017, story in the Intercept.[455] Also notable in the case, a search warrant affidavit filed by the FBI asserted that an individual from the online news outlet to which the documents had been disclosed filed two FOIA requests for documents that "contained specific information identifying the names of the particular documents that had not been released to the public."[456] It is unclear whether the FOIA request led the FBI to survey government documents posted on the outlet's website, but the same paragraph in the affidavit says that investigators ultimately conducted that survey and identified 27 FBI documents, 17 of which were marked classified.[457] The affidavit alleged that Albury had accessed approximately two-thirds of them.[458] If the outlet's FOIA request did not lead to this investigative step, it is unclear why the government would have mentioned it in the affidavit. And, if it did, government transparency advocates have raised concerns that this would chill public information requests.[459]

Joshua Schulte (top)	Trump	6/18/2018 (superseding indictment; had been charged with child pornography offenses in Aug. 2017)	13-count indictment. Charges include one count of illegally "gathering" NDI in violation of 18 U.S.C. § 793(b); one count of unlawful disclosure of NDI in violation of 18 U.S.C. § 793(d); one count of unlawful disclosure of NDI in violation of 18 U.S.C. § 793(e); three counts of violating the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; one count of theft of government property in violation of 18 U.S.C. § 641; one count of making false statements in violation of 18 U.S.C. § 1001(a)(2); one count of obstruction of justice in violation of 18 U.S.C. § 1503; one count of criminal copyright infringement in violation of 17 U.S.C.	Case pending.	N/A	Schulte, a computer engineer and former CIA employee, is accused of providing Wikileaks with the "Vault 7" archive, which, if authentic, details CIA hacking operations.[461] He had not been initially charged in the disclosure, though he was a suspect and his apartment and computers were searched in March 2017.[462] In August 2017, he was charged with possessing child pornography, and prosecutors filed the superseding indictment in June 2018. Schulte's charges are notable in that he is the first individual charged with unauthorized disclosure to a non-foreign agent to have had a charge of illegal "gathering" under § 793(b) levied against him. His indictment also includes a charge for criminal copyright infringement, another first. Following his initial arrest in August 2017, Schulte was held in jail for several weeks, but granted bail in September 2017. His bail was revoked in December 2017 when prosecutors presented evidence of a possible sexual assault and after, prosecutors said, he had been using a computer in violation of his release conditions.[463]

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			§ 506(a)(1)(a) and 18 U.S.C. § 2319(b)(1); and three child pornography counts, in violation of various provisions of 18 U.S.C. § 2252A.[460]			
James Wolfe (top)	Trump	6/7/2018 (indicted)	Three-count indictment. Charges are three separate counts of making false statements to FBI investigators in violation of 18 U.S.C. § 1001(a)(2).[464]	Wolfe pled guilty on October 15, 2018.	TBD.	Wolfe, the former security director for the Senate Select Committee on Intelligence ("SSCI"), was arrested in June 2018 on charges of making false statements to the FBI regarding contacts he had had with four reporters.[465] During the investigation into Wolfe, the FBI seized years of phone and email records from one of the reporters, Ali Watkins, with whom Wolfe had had a romantic relationship. The seizure marks the first time (that we are aware of) where the Trump administration sought records from a reporter or from a reporter's third-party communications provider. Watkins's records were seized without prior notice.[466] Though it does not charge a violation of the Espionage Act, the indictment appears to imply that Wolfe was the source of a piece of classified information—namely that the "MALE-1" in a 2013 court transcript was former Trump campaign advisor Carter Page—in an article bylined by Watkins in April 2017.[467] It also details contacts between Wolfe and three other reporters, and alleges that Wolfe lied about these as well. The indictment notably includes verbatim quotations from Wolfe's encrypted Signal messages meaning that investigators either had direct access to his phone through a consent search or with a search warrant, or were able to access these communications some other way. Reporters commonly use Signal for secure communications with confidential sources.

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						The case is also significant in that, in June 2017, a Customs and Border Protection Agent named Jeffrey Rambo contacted Watkins, and asked for a meeting.[468] When they met, however, Rambo quizzed her about a story she had written that day on Russian espionage, and asked for her help identifying leakers. He presented her with dates and locations for overseas travel she'd taken with Wolfe, and reportedly said that it would "turn her world upside down" were that information to appear in the Washington Post, which she took as a threat.[469] Law enforcement officials have said that there is no evidence that Rambo was detailed to the Wolfe investigation (or to another leak investigation).[470] As of July 2018, Rambo is under investigation internally at CBP for potential misuse of government systems.[471]
Andrew McCabe (top)	Trump	Sometime "months" before 9/2018 (grand jury investigation initiated)	N/A	N/A	N/A	On October 30, 2016, Wall Street Journal reporter Devlin Barrett, now at the Washington Post, published an article online titled "FBI in Internal Feud Over Hillary Clinton Probe," which also ran in the print edition the following day under a shortened title.[472] The article described how the disclosure that the FBI had uncovered emails on a laptop used by former Rep. Anthony Weiner (D-NY) and his then-wife, Huma Abedin, a close aide to Democratic candidate Hillary Clinton, which could have been sent to or from Clinton's personal server, "laid bare" internal FBI conflicts and conflicts with the Justice Department over how to pursue the investigation into the Clinton emails and a separate inquiry in the Clinton family's philanthropy.[473] The article included details from anonymous sources "close to" Deputy Director Andrew McCabe at the FBI on how he had handled requests regarding those internal tensions, including a conversation with a Justice Department official who asked why the FBI was pursuing the Clinton Foundation case in the middle of an election season.[474] According to the article, McCabe responded, "Are you telling me that I need to shut down a validly predicated investigation?" to which the

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						official responded, "Of course not."[475] The article reported, however, that FBI agents further down the chain of command say they received a "stand down" order, which they took to be from McCabe. Other anonymous sources "familiar with the matter" denied that was the case.[476] Following the publication of the article, in May 2017, the FBI's Inspection Division ("INSD") opened an unauthorized disclosure investigation to determine whether the disclosures in the article were authorized, and where they had come from.[477] On August 31, 2017, the Justice Department's Office of the Inspector General ("OIG") opened an investigation following a referral of the matter from the INSD.[478] The OIG found that the disclosure at issue was authorized by McCabe, and was made on a telephone call (which McCabe was not on) with the Wall Street Journal reporter Barrett, an FBI special counsel, and the FBI's senior spokesperson.[479] Specifically, the special counsel and the spokesperson disclosed the contents of a phone call McCabe had with a principal associate deputy attorney general ("PADAG"), referenced above.[480] The OIG's report found that Deputy Director McCabe had violated the FBI Offense Code § 2.5 for lack of candor not under oath (for allegedly telling Director Comey that he had not authorized the disclosure and did not know who did); § 2.6 for lack of candor under oath (for allegedly not admitting to the INSD he authorized the disclosure); § 2.6 for lack of candor under oath (for not admitting he authorized the special counsel to talk to reporters in questioning by the OIG); § 2.6 for lack of candor under oath (for statements to OIG that he did tell Director Comey about his authorizing the special counsel to talk to Barrett, that he did not deny authorizing the disclosure in questioning by INSD, and in asserting that INSD's questioning about the October 30 article came at the end of an unrelated meeting).[481] Finally, the OIG

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						found that, while McCabe may have been authorized to disclose the existence of the Clinton Foundation investigation under the "public interest" exception in applicable DOJ and FBI policies generally prohibiting the disclosure of the existence of an ongoing investigation, McCabe's alleged decision to do so through an anonymous source, and where he authorized the disclosure of the contents of a call with the PADAG, was not in the public interest and therefore violated DOJ media affairs policies.[482] Those findings were referred to federal prosecutors, who are using a grand jury to investigate the matter and have reportedly summoned more than one witness.[483] The grand jury inquiry appears to have been active for more than a month before its existence leaked in the Washington Post in September 2018 (the article says prosecutors have been using the grand jury "for months").[484]

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1 Kara Scannell, *Lawyer Says DOJ, SEC to Probe Leaks in Rajaratnam Case*, Wall Street J., May 26, 2010, https://www.wsj.com/articles/SB10001424052748704026204575266651304143066.

2 *The Censure Case of Benjamin Tappan of Ohio (1844)*, U.S. Senate [hereinafter *Censure Case*], https://www.senate.gov/artandhistory/history/common/censure_cases/018BenjaminTappan.htm.

3 *Id.*

4 *Id.*

5 *Id.*

6 Donald A. Ritchie, Press Gallery: Congress and the Washington Correspondents 9-10 (1991).

7 *Censure Case*, *supra* note 2.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 Ritchie, *supra* note 6, at 27, 237 n.52.

[13] *Id.* at 27.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 40, 240 n.13.
[20] *Id.* at 41.
[21] *Id.* at 40.
[22] *Id.*
[23] *Id.* at 40, 240 n.14.
[24] *Id.* at 40, 240 n.15.
[25] *Id.* at 41.
[26] *Senate Stories: The Senate Arrests a Reporter*, U.S. Senate, https://www.senate.gov/artandhistory/history/minute/The_Senate_Arrests_A_Reporter.htm.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] S. Journal, 56th Cong., 2d Sess. 87-88 (1901).
[31] Ritchie, *supra* note 6, at 90.
[32] *Id.*
[33] *Id.*
[34] *Id.*; *see also* 2 Robert Byrd, Senate 1789-1989: Addresses on the History of the United States Senate 439 (1991).
[35] *Oregon, States in the Senate*, U.S. Senate, http://www.senate.gov/states/OR/timeline.htm.
[36] Ritchie, *supra* note 6, at 167.
[37] *Id.*
[38] *Id.*
[39] *Id.* at 168.
[40] *Id.*; *see also Dolph's Amusing Farce*, N.Y. Times, Mar. 10, 1890, at 5, https://www.nytimes.com/1890/03/11/archives/dolphs-amusing-farce-the-smelling-committee-still-on-the-boards.html.
[41] Ritchie, *supra* note 6, at 168.
[42] *Id.* at 173.
[43] *Id.* at 174-75.
[44] *Id.*; *Senate Stories: Matthew Quay and the 1888 Presidential Election*, U.S. Senate, https://www.senate.gov/artandhistory/history/minute/Quay_1888PresidentialElection.htm.
[45] Ritchie, *supra* note 6, at 173, 264 n.25.

[46] *Id.* at 173.
[47] *Id.* at 174-75.
[48] *Id.* at 175.
[49] 71 Cong. Rec. 2218 (1929), https://www.gpo.gov/fdsys/pkg/GPO-CRECB-1929-pt2-v71/pdf/GPO-CRECB-1929-pt2-v71-16-1.pdf.
[50] *Harding Nominated for President on the Tenth Ballot at Chicago; Coolidge Chose for Vice President*, N.Y. Times, June 13, 1920, https://archive.nytimes.com/www.nytimes.com/library/politics/camp/200613convention-gop-ra.html.
[51] Ritchie, *supra* note 6, at 175.
[52] *Id.*
[53] *Id.* at 176.
[54] *Id.*
[55] *Id.* at 176-78; 71 Cong. Rec. 3055 (1929), https://www.govinfo.gov/content/pkg/GPO-CRECB-1929-pt3-v71/pdf/GPO-CRECB-1929-pt3-v71.pdf.
[56] *See* Elliot Carlson, Stanley Johnston's Blunder 125 (2017); *see also See* Harold Edgar and Benno C. Schmidt, Jr., *The Espionage Statutes and Publication of Defense Information*, 73 Columbia L. Rev. 929, 1008-21 (1973), https://fas.org/sgp/library/edgar.pdf.
[57] Edgar and Benno, *supra* note 56, at 1021.
[58] *Carlson*, *supra* note 56, at 1-3.
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[149] *See* United States v. Morison, 604 F. Supp. 655 (D. Md. 1985), *aff'd*, 844 F.2d 1057 (4th Cir. 1988), *cert. denied*, 488 U.S. 908 (1988).

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[151] *Morison*, 604 F. Supp. at 659.

[152] *Id.* at 659-60.

[153] *Id.* at 660-63 (applying the jury instruction approved of in *United States v. Dedeyan*, 584 F.2d 36, 39 (4th Cir. 1978), namely that the government must prove that for the information to "relat[e] to the national defense" under § 793(d) or (e) that the disclosure of it "would be potentially damaging to the national defense, or that information in the document disclosed might be useful to an enemy of the United States" and that the information was closely held).

[154] *Id.* at 664-65.

[155] *Id.*

[156] *Morison*, 844 F.2d at 1063-70.

[157] *Id.* at 1070-73.

[158] *Id.* at 1083.

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184 *Id.*
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186 *Id.* at 29.
187 *Id.*
188 *Id.* at 62. The D.C. Circuit has a procedure in place to handle Rule 6(e) complaints. First, Judge Holloway Johnson had to find that the 24 news reports contained prima facie violations of Rule 6(e), which she did. The burden then fell on the OIC to rebut the prima facie case, which the special master found that it successfully did by, among other things, submitting sworn affidavits denying that OIC personnel were the source of the information, showing that the information was inaccurate in some way and therefore was unlikely to have come from a government source with actual knowledge of the matter, or presenting evidence as to the actual source. *Id.* at 8-9.
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194 *Id.* at 996-97, 1003-05 ("We acknowledge, as did OIC, that such statements are troubling . . . . But bare statements that some assistant prosecutors in OIC wish to seek an indictment do not implicate the grand jury; the prosecutors may not even be basing their opinion on information presented to a grand jury."); *see also* Bill Miller, *Starr Leaks Not Illegal, Appeals Court Rules*, Wash. Post, Sept. 14, 1999, https://www.washingtonpost.com/archive/politics/1999/09/14/starr-leaks-not-illegal-appeals-court-rules/140b5f1b-5057-4666-9eeb-616ef51d4df8.
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202 *See generally* Matthew Purdy, *The Making of a Suspect: The Case of Wen Ho Lee*, N.Y. Times, Feb. 4, 2001, https://www.nytimes.com/2001/02/04/us/the-making-of-a-suspect-the-case-of-wen-ho-lee.html. The Purdy story is part of extensive coverage the New York Times undertook following the collapse of the government's case, and the concomitant criticism of the Times's coverage and reliance on leaks from government sources about the evidence against Dr. Lee. The New York Times also released an unusual statement on the case saying that, in retrospect, it

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[204] *Id.*

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[206] *Id.*

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[265] David Stout, *Justices Reject Appeal in Anthrax Libel Suit*, N.Y. Times, Dec. 15, 2008, https://www.nytimes.com/2008/12/15/washington/15web-hatfill.html.

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[273] *Id.* at 639-40.

[274] *Id.* at 627.

[275] *Id.* at 625 (quoting United States v. Morison, 844 F.2d 1057, 1071 (4th Cir. 1988)).

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[287] Carol D. Leonig and Amy Goldstein, *Libby Found Guilty in CIA Leak Case*, Wash. Post, Mar. 7, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/03/06/AR2007030600648.html.

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[295] *See* Kristen Rasmussen, *Detroit Free Press Reporter's Subpoena Battle with Former Terrorism Prosecutor Nears End*, Reporters Comm. for Freedom of the Press, Media and the Law, Spring 2011, at 21, https://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-spring-2011/detroit-free-press-reporter.

[296] *Id.*

[297] Convertino v. U.S. Dep't of Justice, 393 F. Supp. 2d 42 (D.D.C. 2005).

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[322] Scott Shane, *Leak Offers Look at Efforts by U.S. to Spy on Israel*, N.Y. Times, Sept. 5, 2011, https://www.nytimes.com/2011/09/06/us/06leak.html; Laura Rozen and Josh Gerstein, *FBI Leaker Should Have Raised Flags*, Politico, Dec. 21, 2009, https://www.politico.com/story/2009/12/fbi-leaker-should-have-raised-flags-030888.

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[329] United States v. Drake, 818 F. Supp. 2d 909, 910 (D. Md. 2011).

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[331] James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005, https://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html. For the history of the evolution of Stellarwind, see Charlie Savage, Power Wars: The Relentless Rise of Presidential Authority and Secrecy 180-87 (2017).

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[334] Gorin v. United States, 312 U.S. 19 (1941).

[335] United States v. Drake, 818 F. Supp. 2d 909, 918 (D. Md. 2011) ("Thus, in a case such as this one that involves solely the willful retention of classified *documents*, not intangible *information*, there is no heightened mens rea requirement.").

[336] United States v. Manning, 78 M.J. 501, 510 (A. Ct. Crim. App. May 31, 2018).

[337] Manning was originally charged with 12 counts. Those break down into four counts for failure to obey Army regulations under Article 92 of the UCMJ (three counts under Army Reg. 25-2, ¶ 4-6(k); and one count under Army Reg. 25-2, ¶ 4-5(a)(3)), and eight counts under Article 134 of the UCMJ, a catch-all provision that includes other offenses, including violations of federal criminal law that are not specifically included in the UCMJ (those eight are one count under the Espionage Act, 18 U.S.C. § 793(e); three counts under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(1); and four counts under Army Reg. 380-5, ¶ 7-4).

[338] United States v. Manning, ARMY 20130739 (1st Jud. Cir. Aug. 6, 2013) (ruling on defense motion to merge charges), http://www.documentcloud.org/documents/748540-ruling-defense-motion-to-merge-charges.html.

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[340] Charlie Savage and Emmarie Huetteman, *Manning Sentenced to 35 Years for a Pivotal Leak of U.S. Files*, N.Y. Times, Aug. 21, 2013, https://www.nytimes.com/2013/08/22/us/manning-sentenced-for-leaking-government-secrets.html.

[341] United States v. Manning, 78 M.J. 501, 506 (A. Ct. Crim. App. May 31, 2018).

[342] *Id.* at 520.

[343] Savage and Huetteman, *supra* note 340.

[344] What is Wikileaks, Wikileaks, Nov. 3, 2015, https://wikileaks.org/What-is-Wikileaks.html.

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[347] *See* United States v. Manning, 78 M.J. 501, 507-9 (A. Ct. Crim. App. May 31, 2018).

[348] Bill Chappell, *Chelsea Manning, One Sentenced to 35 Years, Walks Free After 7 Years*, Nat'l Pub. Radio, May 17, 2017, https://www.npr.org/sections/thetwo-way/2017/05/17/528731790/after-serving-7-years-of-a-35-year-sentence-chelsea-manning-to-walk-free.

[349] Brief of Amici Curiae Electronic Frontier Foundation et al. in Support of Appellant, United States v. Manning, 78 M.J. 501 (A. Ct. Crim. App. May 31, 2018), https://www.eff.org/document/us-v-chelsea-manning-eff-amicus-brief.

[350] *Id.*

[351] James Rosen, *North Korea Intends to Match U.N. Resolution with New Nuclear Test*, Fox News Politics, June 11, 2009, http://www.foxnews.com/politics/2009/06/11/north-korea-intends-match-resolution-new-nuclear-test.html. Please note that, at the time of publication, the article erroneously online lists the date of publication as December 24, 2015, but it was published in June 2009. *See* Spencer S. Hsu, *State Dept. Contractor Charged in Leak to News Organization,* Wash. Post, Aug. 28, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/08/27/AR2010082704602.html.

[352] *See* Government's Memorandum in Aid of Sentence, United States v. Kim, No. 10-cr-225 (CKK) (D.D.C. filed Mar. 24, 2014), ECF No. 285, https://fas.org/sgp/jud/kim/032414-sent.pdf.

[353] *See* United States v. Kim, 808 F.Supp.2d 44, 49, 55, 57 (D.D.C. 2011).

[354] Affidavit in Support of Application for Search Warrant, , In re Email Acct. [REDACTED]@gmail.com on Computer Servers Operated by Google, Inc., 1600 Amphitheatre Parkway, Mountain View, Cal. ¶ 40, No. 10-291 (D.D.C. filed Nov. 7, 2011), ECF No. 20-1, https://www.washingtonpost.com/apps/g/page/local/affidavit-for-search-warrant/162/.

[355] *Id.* ¶ 38.

[356] *See* Ann E. Marimow, *Justice Department's Scrutiny of Fox News Reporter James Rosen in Leak Case Draws Fire*, Wash. Post, May 20, 2013, https://www.washingtonpost.com/local/justice-departments-scrutiny-of-fox-news-reporter-james-rosen-in-leak-case-draws-fire/2013/05/20/c6289eba-c162-11e2-8bd8-2788030e6b44_story.html?utm_term=.5e4901cdf662.

[357] United States v. Kim, No. 10-225 (CKK), at 6 (D.D.C. May 30, 2013), ECF No. 137, https://fas.org/sgp/jud/kim/072413-opinion3.pdf (order granting in part and denying in part defendant's third motion to compel), https://fas.org/sgp/jud/kim/072413-opinion3.pdf. The court declined to adopt the Morison construction of "national defense information" for five reasons. One, the *Morison* court adopted the trial court's instruction to avoid potential overbreadth concerns; Kim had not brought an overbreadth challenge, just vagueness in a prior motion. *Id.* at 7. Two, with respect to whether the information would aid an *enemy*, the court noted that the statute uses the term "advantage of any foreign nation," and that the plain language suggests the foreign nation need not be an adversary. *Id.* at 8. Three, in cases like Kim's that involve the disclosure of classified information, adoption of the *Morison* construction would require the jury to "second guess" the classification and would convert the trial into one of the classifying entity. *Id.* at 9. Four, the court could not find a single case in the Fourth Circuit adopting the *Morison* construction, and the two courts that have addressed the issue (at that point *Rosen* and *Kiriakou*) interpret *Morison* to require that the government show that the information is "the type" that, if disclosed, could harm the United States. *Id.* at 9-10. Finally, five, the court was unable to find any authority outside the Fourth Circuit adopting the *Morison* construction. *Id.* at 10.

[358] United States v. Sterling, 818 F. Supp. 2d. 945, 950 (E.D. Va. 2011), *aff'd in part*, *rev'd in part*, 724 F.3d 482 (4th Cir. 2013), *cert. denied*, 134 S.Ct. 2696 (2014).

[359] Peter Maass, *Jeffrey Sterling, Convicted of Leaking About Botched CIA Program, Has Been Released from Prison*, Intercept, January 19, 2018, https://theintercept.com/2018/01/19/jeffrey-sterling-cia-leaking-prison/.

[360] *See* United States v. Sterling, No. 10-cr-485-001, 2015 WL 2208448, *1 (E.D. Va. May 11, 2015) (trial court judgment).

[361] James Risen, State of War 197 (2006).

[362] Sterling v. Tenet, 416 F.3d 338, 341 (4th Cir. 2005).

[363] United States v. Sterling, 860 F.3d 233, 239 (4th Cir. 2017) (affirming defendant's conviction, with one exception regarding venue for a charge of unauthorized disclosure of NDI).

[364] *Sterling*, 416 F.3d at 347.

[365] James Risen, *Fired by C.I.A., He Says Agency Practiced Bias*, N.Y. Times, Mar. 2, 2002, https://www.nytimes.com/2002/03/02/us/fired-by-cia-he-says-agency-practiced-bias.html.

[366] *See* United States v. Sterling, 724 F.3d 482, 489 (4th Cir. 2013).

[367] Risen, *supra* note 365, at 193-216.

[368] *Sterling*, 860 F.3d at 239.

[369] *See id.* at 240.

[370] United States v. Sterling, 818 F. Supp. 2d 945, 947 (E.D. Va. 2013), *rev'd by*, United States v. Sterling, 724 F.3d 482 (4th Cir. 2013). The investigation into the Operation Merlin disclosures began in March 2006 and the first subpoena was issued to Risen on January 28, 2008.

[371] *Id.*

[372] *Id.* at 951; *see also* LaRouche v. Nat'l Broad. Co., 780 F.2d 1134, 1139 (4th Cir. 2003).

[373] *Sterling*, 724 F.3d at 492, 499.

[374] Risen v. United States, 134 S. Ct. 2696 (2014).

[375] United States v. Sterling, 860 F.3d 233, 240 (4th Cir. 2017).

[376] Josh Gerstein, *Risen Finally Off the Hook in Leak Trial*, Politico, Jan. 12, 2015, https://www.politico.com/blogs/under-the-radar/2015/01/risen-finally-off-hook-in-leak-trial-200952.

[377] Charlie Savage, *Amid Moves on Shield Laws, Journalist Tells of a 2011 Subpoena Fight*, N.Y. Times, May 30, 2014, https://www.nytimes.com/2014/05/31/us/politics/amid-moves-on-shield-laws-a-journalist-tells-of-2011-subpoena-fight.html.

[378] Mike Levine, *Somali-Americans Accused of Al-Qaeda Ties Indicted on Terror Charges, Sources Say*, Fox News, July 2, 2009, http://www.foxnews.com/story/2009/07/02/somali-americans-accused-al-qaeda-ties-indicted-on-terror-charges-sources-say.html (please note that, at the time of publication, the date listed online appears to be wrong); Press Release, Dep't of Justice, Terror Charges Unsealed in Minneapolis Against Eight Men (Nov. 23, 2009), https://www.justice.gov/opa/pr/terror-charges-unsealed-minneapolis-against-eight-men-justice-department-announces.

[379] Matt Apuzzo, *Fox News Reporter Fought Subpoena in Justice Dept. Leak*, N.Y. Times, Oct. 9, 2014, https://www.nytimes.com/2014/10/10/us/fox-news-reporter-fought-subpoena-in-leak-inquiry.html.

[380] *Id.*

[381] United States v. Kiriakou, No. 12-cr-127 (LMB), 2012 WL 3263854, *1 (E.D. Va. Aug. 8, 2012).

[382] Scott Shane, *Ex-Officer is First From C.I.A. to Face Prison for a Leak*, N.Y. Times, Jan. 5, 2013, https://www.nytimes.com/2013/01/06/us/former-cia-officer-is-the-first-to-face-prison-for-a-classified-leak.html.

[383] Scott Shane, *Former C.I.A. Officer Released After Nearly Two Years in Prison for Leak Case*, N.Y. Times, Feb. 9, 2015, https://www.nytimes.com/2015/02/10/us/former-cia-officer-released-after-nearly-two-years-in-prison-for-leak-case.html.

[384] *See* Scott Shane, *C.I.A. Agents Sense Shifting Support for Methods*, N.Y. Times, Dec. 13, 2007, https://www.nytimes.com/2007/12/13/washington/13inquire.html.

[385] There have only been two successful uses of the Intelligence Identities Protection Act, Pub. L. No. 97-200, 96 Stat. 122 (1982): the prosecutions of Kiriakou and Sharon Scranage, a CIA secretary in Ghana. Interestingly, of the four senators who voted against the law, one was Daniel Patrick Moynihan (D-NY), who sought a pardon for Samuel Morison out of concern for the impact of "leaks" prosecutions on journalists, and another was future Vice President Joe Biden (D-DE), who wrote an op-ed expressing concern at the unintended consequences of the law on legitimate journalism. He posited a case where a journalist learns that a CIA agent has been turned by a foreign government, but who would face criminal prosecution for disclosing that fact. *See* Joseph R. Biden Jr., *A Spy Law That Harms National Security*, Christian Sci. Monitor, Apr. 6, 1982, https://www.csmonitor.com/1982/0406/040622.html.

[386] *Kiriakou*, No. 12-cr-127 (LMB), 2012 WL 3263854, *2.

[387] *Id.*; *See* Scott Shane, *Inside a 9/11 Mastermind's Interrogation*, N.Y. Times, June 22, 2008, https://www.nytimes.com/2008/06/22/washington/22ksm.html.

[388] United States v. Kiriakou, No. 12-cr-127 (LMB), 2012 WL 3263854, *1 n.2 (E.D. Va. Aug. 8, 2012).

[389] Press Release, CIA, Message from the Director: Former Officer Convicted in Leak Case (Oct. 23, 2012), https://www.cia.gov/news-information/press-releases-statements/2012-press-releasese-statements/statement--former-officer-convicted.html.

[390] Greg Miller and Sari Horwitz, *David Petraeus Resigns as CIA Director*, Wash. Post, Nov. 9, 2012, https://www.washingtonpost.com/world/national-security/david-petraeus-resigns-as-cia-director/2012/11/09/636d204e-2aa8-11e2-bab2-eda299503684_story.html?utm_term=.f00bfbce4b1f.

[391] Editorial, *A Double-Standard on Government Secrets for David Petraeus*, L.A. Times, Mar. 5, 2015, http://www.latimes.com/opinion/editorials/la-ed-0305-petraeus-20150305-story.html.

[392] *See* Plea Agreement, United States v. Sachtleben, No. 13-cr-0200-WTL-TAB (S.D. Ind. Sept. 23, 2013), http://www.emptywheel.net/wp-content/uploads/2013/09/130923-Leak-Plea-Agreement.pdf.

[393] Government's Combined Sentencing Memorandum, United States v. Sachtleben, Nos. 12-cr-0127 WTL-KPF, 13-cr-0200 WTL-TAB, 2013 WL 5744234 (S.D. Ind. Oct. 21, 2013) [hereinafter *Combined Sentencing Memorandum*].

[394] Letter from James Wyda, Office of the Federal Public Defender District of Maryland, to the Honorable A. David Copperthite, Ex. A (Oct. 20, 2016) (listing recent cases involving allegations of theft of government property and unauthorized retention of classified materials).

[395] *See generally* Memorandum of Points and Authorities in Support of the Application of the Reporters Committee for Freedom of the Press for Public Access to Certain Sealed Court Records, In re the Application of Reporters Committee for Freedom of the Press for Access to Certain Sealed Court Records, Misc. Action No. 17-mc-8 (S.D. Ind. filed Jan. 31, 2017), https://www.rcfp.org/sites/default/files/litigation/inreapplic_2017-02-01_memorandum_of_points_and_authorities__sa.pdf.

[396] *See Combined Sentencing Memorandum*, *supra* note 393.

[397] Kim Zetter, *Obama Administration Secretly Obtains Phone Records of AP Journalists*, Wired, May 13, 2013, https://www.wired.com/2013/05/doj-got-reporter-phone-records/ ("More than 100 AP journalists are known to routinely use some of the numbers that were covered under the subpoena.").

[398] *See* Letter from James M. Cole, Deputy Attorney Gen., Dep't of Justice, to Gary B. Pruitt, President and CEO, Associated Press (May 14, 2013), https://www.washingtonpost.com/apps/g/page/politics/justice-department-letter-to-the-associated-press/147/.

[399] Press Release, Dep't of Justice, Former Federal Contractor Petitions to Plead Guilty to Unlawfully Disclosing National Defense Information and Distributing Child Pornography (Sept. 23, 2013), https://www.justice.gov/opa/pr/former-federal-contractor-petitions-plead-guilty-unlawfullly-disclosing-national-defense.

[400] Letter from Reporters Comm. for Freedom of the Press and 51 news organizations to Eric Holder, Attorney Gen., and James Cole, Deputy Attorney Gen., Dep't of Justice (May 14, 2013), https://www.rcfp.org/sites/default/files/Media%20coalition%20letter%20re%20AP%20subpoena.pdf.

[401] Criminal Complaint, United States v. Hitselberger, No. 12-cr-231 (RC) (D.D.C. Aug. 6, 2012) [hereinafter *Hitselberger Complaint*], https://fas.org/sgp/jud/hitsel/complaint.pdf.

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