REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

Federal Cases Involving Unauthorized Disclosures to the News Media, 1778 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. We include the two cases involving U.S. submarine-based surveillance (Operations Holystone and Ivy Bells), where senior officials actively discussed using the 1950 amendment to the Espionage Act regarding the publication of communications intelligence to prosecute the outlet.

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

This chart was primarily authored by Gabe Rottman, director of the Technology and Press Freedom Project at the Reporters Committee for Freedom of the Press; with Victoria Noble, the 2018 Google Policy Fellow at the Reporters Committee and a student in the class of 2020 at Stanford Law School; Linda Moon, RCFP's 2018-2020 Stanton Foundation Free Press-National Security Legal Fellow; Daniel Jeon, the 2018-2019 Jack Nelson/Dow Jones Foundation Legal Fellow at RCFP; and Lyndsey Wajert, a 2019-2020 legal fellow with the Technology and Press Freedom Project. We will continue to update the chart with new cases or developments. Any comments, questions, or suggestions for addition are very welcome at grottman@rcfp.org.

[*] The Espionage Act (with the exception of a 1950 amendment, see *infra* text accompanying note 476 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 modern 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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Thomas Paine (top)	Continental Congress	12/14/1778 (first Paine letter in the Pennsylvania Packet)[2]	N/A	Paine resigned his position as secretary of the Committee of Foreign Affairs (known before his tenure as the Committee on Secret Correspondence). The Continental Congress then voted to remove any of its papers from Paine's possession.[3] It also voted on a resolution to fire Paine instead of accepting his resignation, but it failed on a tie vote.[4]	N/A	Often known as the Silas Deane[5] or Beaumarchais[6] affair, Thomas Paine's investigation by the second Continental Congress is the first "leak" case following the American declaration of independence, and showcases early tensions between government secrecy and transparency.[7] Indeed, Paine's defense echoes many of the same legal and policy arguments that proponents of constitutional checks on leak prosecutions assert, including the concept of a public interest defense for the leaker and a functional definition of NDI requiring a showing of harm from disclosure. Paine wrote: "My wish and my intention in all my late publications were to preserve the public from error and imposition. . . . I have betrayed no trust because I have constantly employed that trust to the public good. I have revealed no secrets because I have told nothing that was, or I conceive ought to be, a secret."[8] Paine had also previously written on the importance of transparency, and offered the view that a legitimate government with popular support would have little to fear from public visibility into its actions. In his pamphlet "Common Sense, On Financing the War," Paine called for public disclosures regarding the war budget, saying, "A government or an administration, who means and acts honestly, has nothing to fear, and consequently has nothing to conceal. . . ."[9] The Deane/Beaumarchais affair arose out of interactions between French agents and the Committee of Secret Correspondence, a committee formed by the second Continental Congress to attract foreign aid during the American Revolution.[10] In the summer of 1775, the French foreign minister sent Pierre Augustin Caron de

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						Beaumarchais, a horologist and the author of the plays The Barber of Seville and The Marriage of Figaro, to London as a secret agent.[11] While there, he met American Arthur Lee, an agent for the committee.[12] Lee convinced Beaumarchais that the Americans stood a good chance of winning the war, and Beaumarchais in turn set plans in motion to secretly provide French aid to the Americans.[13] Crucially, Lee also sent word to the committee that the aid would be a gift, not a loan.[14] Beaumarchais then set up a front corporation, Roderigue Hortalez et Cie, to launder aid from France and Spain, both of whom could not be seen supporting a republican revolution against a European monarch.[15] Hortalez would eventually sail between 12 and 40 ships from French ports to America, and, at the end of 1777, the company presented Congress with a bill for 4.5 million livres, despite Lee's earlier assurances that the aid would be free.[16] Importantly, America's commercial agent in Europe, Silas Deane, had been told by Lee and the French government that the aid was free.[17] Beaumarchais, however, who would be due a commission of 10 percent on the shipments, told Deane it was a loan.[18] Deane, who also stood to gain a five percent commission on all overseas transactions vouched for the accuracy of the Hortalez bill.[19] In 1777, Paine took over the committee, which was renamed the Committee of Foreign Affairs. In December 1777, Deane was recalled to Philadelphia, and he then testified on August 9 and 15, 1778, before Congress.[20] When asked to provide his accounting ledgers, he testified that he had left them in Paris.[21] He then

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						insisted that the Hortalez bill be paid.[22] The Deane affair split the second Continental Congress down the middle, and forced the resignation of the president, Henry Laurens, who was replaced by John Jay, a Deane ally.[23] The issue dragged on for several months until Deane published an article in the Pennsylvania Packet, the first successful daily paper in the United States, attacking Arthur Lee and the American government.[24] Paine, who had donated any profits from his bestselling pamphlet *Common Sense* to the revolutionary cause, was incensed that anyone would seek to profiteer off the revolution. He responded to Deane with a series of essays, also in the Pennsylvania Packet. The leak was his statement that, "Those who are now [our] allies, prefaced that alliance by an early and generous friendship . . . ."[25] The formal alliance with the French was, at that point, public, after having been finalized in part because of the American victory at Saratoga.[26] But Paine's comment referenced the Hortalez aid, which the French claimed was embarrassing and pilloried Paine (he was physically beaten twice by Deane supporters).[27] The French claim, and attacks by others in government, did not acknowledge that the English had known about the Hortalez shipments all along, and had in fact captured several of them.[28] Ultimately the second Continental Congress voted twice on whether to remove Paine as the head of his committee, but deadlocked both times. He ultimately resigned of his own accord.

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Sen. Ben Tappan (top)	Tyler	4/29/1844[29]	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.[30] 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.[31] The Senate then passed another resolution that the disclosure of confidential Senate material would be grounds for expulsion.[32]	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.[33] 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.[34] 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.[35] 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.[36] Boggs and the messenger both confirmed Tappan's story in later testimony.[37] 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.[38]
Jesse Dow and Hiram H. Robinson	Polk	3/11/1846 (Washington Daily Times	None.	The Senate barred Dow and Robinson from the press	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.[41] He

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(top)		prints column)[39]		gallery and the Washington Daily Times ceased publication.[40]		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.[42] During the dispute with the British over the border between Oregon and the Columbia District, modern day British Columbia, the Daily Times 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.[43] A Senate investigation resulted, and Dow and his editor Hiram Robinson both identified their sources.[44] Their sources, however, denied any knowledge of a conspiracy. Dow and Robinson were banned from the Senate press gallery, and the Times stopped publication.[45]
Oregon Treaty Investigation (top)	Polk	6/5/1846 (initial "leak" in the New York Tribune)[46]	N/A	The investigating committee ended its inquiry without making any formal accusations.[47]	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.)[48] 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.[49] Three weeks later, the Philadelphia North American published the full text.[50] 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

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						Harvey).[51] Both correspondents refused to identify their sources and the committee ended its business without identifying the source or sources.[52]
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.[53] 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 hearing room. His newspaper responded by publishing the names of other Senate sources.[54] 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."[55] 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.[56]
Zebulon White and Hiram Ramsdell (top)	Grant	5/12/1871 (formation of select committee)[57]	Contempt of the Senate.	White and Ramsdell were released without revealing their sources.[58]	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.[59] 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.[60] White and Ramsdell were confined in the

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						Pacific Railroad Committee room, in relative comfort, and were released shortly before the Senate was set to adjourn.[61]
The Dolph "Smelling Committee" (top)	Benjamin Harrison	2/24/1890 (committee formed)[62]	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).[63] Correspondents mocked Sen. Dolph's committee, noting that public interest in the Senate's secret sessions arose precisely because they were "forbidden property."[64] 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.[65] 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 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.[66] 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.[67] 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.[68]

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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.[69]	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.[70] 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).[71] 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.[72] 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.[73] 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.[74] In 1896, Young went on to be elected to represent Pennsylvania's fourth district in the House of Representatives.[75]
The Irvine Lenroot Investigation (top)	Hoover	5/21/1929 (publication of Mallon article purporting to report secret roll call vote on Lenroot nomination)[76]	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.[77] Lenroot lost his bid for reelection in 1926 and was nominated for a judgeship on the Court of Customs and Patent Appeals.[78] 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

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						42 to 26 and one of the reported defectors not voting at all.)[79] 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.[80] The committee proceeded to question Mallon, who refused to divulge his source.[81] 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.[82] The end of secret executive sessions also ended these recurring leak investigations.
Herbert O. Yardley (top)	Hoover	1933	N/A	No formal charges were brought. The seized manuscript was declassified in 1979, 46 years later. In 1932, upon learning of Yardley's completion of a second manuscript and fearing that it would disrupt relations with Japan in advance of the 1933 International Economic	N/A	Following U.S. entry into World War I, Herbert Yardley was appointed to head the Army's newly created cryptologic section of the military intelligence division, MI-8.[86] Yardley's new division was in charge of codebreaking.[87] In 1919, after the war, the government contracted with Yardley to continue his work and create a "permanent organization for code and cipher investigation and attack" in New York City.[88] Publicly, Yardley's outfit developed and sold "commercial codes" for private businesses (codes representing common business phrases used to limit characters in telegraphy).[89] Privately, Yardley ran the American "black chamber," which cracked the codes for more than 45,000 telegrams, involving codes from at least 19 countries.[90] The term "black chamber" referred to the cryptanalytic units of European monarchs dating back centuries.

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				Conference, the State Department drafted a sweeping bill, H.R. 4220, that would have prohibited press publication of decoded diplomatic communications, which the House agreed to on voice vote.[83] Once it reached the Senate, however, both the State Department and the Senate Judiciary Committee walked it back.[84] The "Yardley Act," passed in 1933, narrowly covers the disclosure of diplomatic codes and encoded or decoded communications by individuals who have access to them by virtue of government employment.[85]		The "cabinet noir" of the French court, for instance, intercepted mail, covertly opened and read it, and resealed it. In 1929, Secretary of State Henry Stimson caught wind of the black chamber and withdrew funding, famously saying, "Gentlemen do not read each other's mail."[91] Out of work during the Great Depression, Yardley wrote "The American Black Chamber," which detailed his cryptanalytic operations and published decoded diplomatic cables, particularly from the Japanese, who had emerged as the chief naval rival to the United States in the Pacific.[92] Spurred by the success of the American Black Chamber, Yardley wrote "Japanese Diplomatic Codes: 1921-22" in 1932, which included decoded Japanese cables during the Washington Naval Conference, which resulted in a series of treaties to reduce tension among the world's great naval powers at the time.[93] Stanley K. Hornbeck, the Far Eastern expert at the State Department, said, "I cannot too strongly urge that . . . every possible effort should be made to prevent the appearance of this book."[94] Government officials contemplated prosecuting Yardley but the publication of decoded cables was not expressly illegal under the Espionage Act as it then stood.[95] Instead, U.S. Marshals seized the entire manuscript and offered Yardley the option of continuing with publication and facing probable prosecution under the Espionage Act or to drop it.[96] Yardley chose to drop it.[97] The manuscript was classified until 1979. As noted, the Yardley Act passed in 1933, which narrowly criminalizes any individual who "by virtue of his employment with the United States" obtains from another or has custody of or acess

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						to any official diplomatic code or material prepared in code and who, "without authorization or competent authority, willfully publishes or furnishes to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States."[98]
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 tangible NDI ("any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note	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).[101] In his story, he included details that closely mirrored those of a classified dispatch based on intelligence from broken Japanese naval codes.[102] 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.[103] The article resulted in intense pressure from the Roosevelt White House and Navy Secretary Frank Knox—who also published and owned part of the Chicago Daily News, a competitor to the Tribune[104]—to seek an indictment against Johnston and the Tribune under the Espionage Act.[105] 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.[106] 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

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			relating to the national defense") by anyone with lawful or unlawful access.[99] 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).[100]			has been targeted under the law.[107] 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.[108] On August 19, 1942, the grand jury declined to return an indictment and the Justice Department dropped the case.[109]
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 18 U.S.C. § 793, which is the most commonly used Espionage Act section in the	Because authorities had used warrantless surveillance and searches in investigating the defendants, prosecutors dropped all charges against four of the defendants, and pled out the two remaining	The two defendants who pled guilty received fines of $2,500 (Jaffe, the publisher of Amerasia) and $500 (Larsen, the State Department analyst).	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.[113] The OSS proceeded to break into Amerasia's offices, where they took samples of the government documents they found.[114] The FBI then wiretapped the suspects without a warrant, and overheard the assistant secretary of the Treasury and a State Department official offer to provide diplomatic material.[115]

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			contemporary cases.[110] 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.[111]	defendants with no jail sentences (the two convicted were Jaffe, the publisher of Amerasia, and Larsen, one of his alleged sources).[112]		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.[116] 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).[117] 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.[118] 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."[119]
John Nickerson (top)	Eisenhower	1/28/1957 (indicted)[120]	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).[121]	The charges were ultimately dropped to 15 minor counts of mishandling government information, and Nickerson pled guilty at court-martial.[122] He lost his security clearance for a	Nickerson was fined $1,500, formally reprimanded and relieved of command and his security clearance for a year.[126]	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.)[127] 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

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				year.[123] During the suspension he was assigned to the Panama Canal Zone, and then, upon reinstatement, Fort Bliss, Texas.[124] He and his wife died in a car crash in New Mexico on March 1, 1964.[125]		("IRBMs").[128] Nickerson was the liaison to the Defense Department for the Army Ballistic Missile Agency ("ABMA"), which was responsible for the Jupiter project, the Army's push to develop an IRBM (led by, among others, Dr. Wernher Von Braun).[129] 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.[130] 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).[131] Secretary Wilson's order also came as rumors swirled that the Russians were close to launching a satellite into orbit.[132] 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.)[133] He also revealed classified details about the different services' missile tests.[134] 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.[135]

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						The case was widely covered in the media, though the five-day court-martial resulted in a guilty plea on lesser charges.[136] 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.[137] 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.[138] 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.[139] 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)	Kennedy	3/12/1963 (initiation of surveillance)[140]	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."[141] The operation was	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.[142] Director of Central Intelligence John McCone approved the operation "under pressure" from Attorney General Robert Kennedy.[143] It successfully identified numerous sources for the two men,

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				successful at identifying numerous anonymous sources.		including several members of Congress, White House staff, and an assistant attorney general.[144] 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.[145]
The Codebreakers (top)	Lyndon Johnson	3/4/1966 (NSA received manuscript)[146]	N/A	Author David Kahn agreed to delete several paragraphs regarding NSA's relationship with its counterpart in the United Kingdom, the Government Communications Headquarters ("GCHQ").[147]	N/A	In 1961, a Newsday reporter and amateur cryptologist David Kahn signed a contract with the Macmillan Company to write what remains the seminal popular work on cryptology, "The Codebreakers."[148] Kahn quit his day job in 1964 to work on the book full time.[149] The NSA got wind of the project and that it was to include material on the agency.[150] Concerned about the impact of the book on its work, the NSA engaged in concerted discussions on whether and how to "sandbag" the book.[151] The NSA contemplated hiring Kahn, which could trigger Espionage Act liability for the author; purchasing the copyright; surveillance against Kahn; and smearing the book in public (including through a negative review, which was drafted).[152] The NSA put Kahn's name on a watchlist and intercepted his electronic communications.[153] The matter was also brought before the United States Intelligence Board in 1964, and the CIA may have undertaken efforts to block publication of the book, the details of which remain unknown.[154] Ultimately, Macmillan agreed to submit the full manuscript to the NSA for review (Macmillan was also the publisher of Herbert Yardley's Japanese Diplomatic Secrets: 1921-22, and had done the same thing in 1932 with that manuscript).[155] In July 1966, DCI Helms, the new chairman of the United States Intelligence Board,

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						suggested NSA director Marshall Carter quietly travel to New York to meet with Macmillan, which he did.[156] Macmillan asked Kahn to excise those GCHQ paragraphs, which he "relunctantly" agreed to.[157] In 1995, the NSA made Kahn—who had gotten his doctorate at Oxford in 1974—its scholar-in-residence.[158] In 2010, Kahn donated his extensive library on cryptology to the National Cryptological Museum.[159]
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.[160]	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.[161] The surveillance was under the direct supervision of then-Director of Central Intelligence ("DCI") 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.[162] 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.[163] 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.[164]
Daniel Ellsberg	Nixon	12/29/1971 (indicted)	15-count indictment.	Case dismissed on May 11, 1973, due to	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,

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(top)			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.	government misconduct. [165]		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.[166] 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.[167] 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").[168] At the time of writing, there is a federal court case in Boston on behalf of requester Jill Lepore, a Harvard professor and writer at the New Yorker, seeking the unsealing of documents from two grand juries that were convened in 1971 to investigate the leak of the Pentagon Papers, and may have included the investigation of journalists who published excerpts of and stories on the papers.[169]

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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.[170]
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.[171]	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.[172] 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.[173] According to Anderson, the CIA interviewed more than 1,500 people to uncover his sources, ultimately without success.[174] Eschewing a wiretap (for fear Anderson would detect and report on it), the CIA began physical surveillance of Anderson's home,

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						office, and his assistants Brit Hume, Les Whitten, and Joseph Spears.[175] The overall program was codenamed Celotex II, and the physical surveillance Project Mudhen.[176] 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 of the agents), and sued the agency for privacy violations.[177] 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.[178] Celotex II ended on April 12, 1972, without having identified any sources.[179]
Victor Marchetti (Butane) (top)	Nixon	3/23/1972 (surveillance initiated)[180]	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	N/A	Marchetti was a CIA officer from 1955 until he resigned in 1969.[181] 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.[182] 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.[183] 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.[184] 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

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				material for pre-publication review.		operations."[185] 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.[186] 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.[187]
Les Whitten (top)	Nixon	11/2/1972 (AIM protesters begin to gather at the Interior Department building; occupation begins 11/3)[188]	One charge under 18 U.S.C. § 641 for the receipt of stolen government documents.[189]	Grand jury refused to indict on February 15, 1973.[190]	N/A	On November 2, 1972, activists organized by the American Indian Movement ("AIM") started to converge on Interior Department headquarters in Washington, D.C., which housed the Bureau of Indian Affairs.[191] They occupied the building the next day and stayed until November 9 when they left in a forty-car caravan under armed police escort.[192] In doing so, they took hundreds of thousands of secret BIA documents.[193] In December and early January, activists started returning the documents through a more moderate intermediary, Hank Adams.[194] On January 31, 1973, Les Whitten—one of Jack Anderson's reporters—drove to Adams's apartment to cover the return of three boxes of old land deeds. Whitten checked the contents of the boxes and they marked them with the name of the FBI agent to whom they were to be returned.[195] Adams's driver, another activist (and undercover officer working with the FBI), never showed up and Whitten offered to drive the documents to the FBI.[196] Before they could do

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						so, the FBI arrested both of them.[197] They were charged that day with receiving stolen government property.[198] On February 14, Whitten testified before the grand jury that he had no control over the BIA documents and that he had not paid for access to them.[199] Anderson also testified and surprised prosecutors by asking the government and the grand jury to indict Whitten.[200] Anderson wrote in his memoirs that, "[Whitten] was just doing his job, I said, and we were prepared to go to trial. The government doesn't own the news, I told them, adding that I didn't think any jury in the United States would disagree with that. I was ready to win a court fight that would set a precedent and make sure no one ever did this to a reporter again."[201] The following day, the grand jury refused to indict.[202]
Spiro Agnew (top)	Nixon	10/5/1973 (subpoenas served)[203]	N/A	Vice President Agnew resigned on October 10, 1973, and pled no contest to one charge of felony tax evasion.[204]	Agnew was sentenced to three years' unsupervised probation and a $10,000 fine.[205]	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.[206] 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.[207] Negotiations over a plea bargain (before indictment) continued through the summer but were ultimately called off after details turned up in the press.[208] On September 29, Vice President Agnew said he would not resign even if indicted and that he would fight the case.[209]

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						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.[210] News executives unanimously announced that they would fight the subpoenas.[211] 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.[212] Bradlee and 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.[213]
Operation Holystone	Ford	5/25/1975 (Hersh publishes	N/A	The Ford administration	N/A	On May 25, 1975, Seymour Hersh published a front-page article in the New York Times reporting that, since the late 1960s, the Navy had been using specially outfitted submarines to conduct

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(top)		initial story in the New York Times)[214]		decided not to pursue the case.[215]		electronic eavesdropping on the Soviet Union, sometimes from within the then-three-mile limit for Soviet territorial waters.[216] The program, codenamed Operation Holystone, had resulted in several accidents, and Hersh reported that critics in the government worried that the submarine surveillance posed more risk than less invasive tools like spy satellites.[217] The Hersh story cited an earlier Washington Post report by Laurence Stern, which reported that "the United States maintains a fleet of electronic eavesdropping submarines operating close to the Soviet coastline to monitor Russian submarine activity and secret military communications."[218] The Post story had disclosed the name of the operation, that the Holystone submarines were monitoring Soviet communications, and anecdotes about collisions between the submarines and Soviet vessels, but Hersh included new details of the project's scope and "difficulties encountered."[219] Hersh also wrote in detail about how his governmental sources were motivated to leak out of concern for the threat that a major Holystone incident could pose to relations between the superpowers. Additionally, the Hersh story reportedly contained direct quotations from materials under a protective order in the then-ongoing Marchetti case involving his book, The CIA and the Cult of Intelligence (see entry on Marchetti *infra*).[220] The Post's story reportedly ran without incident, but the White House took notice of and action on the 1975 Hersh piece. Then-chief of staff Donald Rumsfeld asked his deputy, Dick Cheney, to develop options for a response.[221] In doing so, the Holystone case

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						became one of four where the government has formally considered using the Espionage Act against journalists for the act of publishing government secrets (the others are Stanley Johnson, Amerasia, and Operation Ivy Bells, discussed *infra*, which also involved the collection of communications intelligence from the Soviets). Cheney held discussions with White House counsel Philip Buchen, deputy counsel Roderick Hills, Attorney General Edward Levi and Pentagon counsel Martin Hoffman. Those discussions resulted in several notable documents. Cheney's handwritten notes from his meeting with Buchen and Levi show that the Ford administration expressly considered investigating Hersh and the New York Times for the publication.[222] The meeting notes highlight five alternatives: "(1) FBI investigation of NYT, Hersh +/or possible gov't sources. (2) Grand Jury – seek immediate indictments of NYT + Hersh. (3) Search Warrant – to go after Hersh papers in his apt. (4) Discuss informally w/ NYT. (5) Do nothing."[223] Later in his notes, Cheney lays out the options in more detail and adds the possibility of seeking a contempt citation against ex-CIA employees for violating the Marchetti protective order.[224] Cheney's notes continue to outline additional questions, including: "Crime message – recodification of criminal statutes – should this issue be addressed?" and "can we take advantage of [the case] to bolster our position on the Church committee investigation? To point out the need for limits on the scope of the investigations?"[225]

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						Cheney distilled the discussions into a May 29, 1975, memorandum for Rumsfeld that attached the Levi memorandum and noted that the attorney general's discussion "raises a number of questions about the wisdom and/or feasibility of any legal action."[226] The memo also reports the Navy's belief that operations can continue.[227] For its part, the attorney general's memorandum includes a relatively detailed legal discussion of the options on the table. Levi begins by noting, with emphasis added in the original document, that each of the options presented involves "two serious problems."[228] First, the earlier Washington Post article poses a challenge because the government would not be able to take the position that the article reported entirely new information, and would have to highlight those elements of the article that were, in fact, new.[229] Two, the government would have to admit in the course of a prosecution that Holystone did, in fact, exist.[230] Those considerations led the attorney general to recommend that the "most promising" course of action would be to discuss the leaks problem directly with the publishers.[231] As for legal options, the Levi memorandum lists two: (1) prosecutions under various provisions of the Espionage Act; and (2) a criminal contempt proceeding or the empanelment of a grand jury to investigate the source of the disclosure.[232] With respect to the Espionage Act, Levi discusses the application of Section 798(a)(3) against the Times or Hersh for the publication specifically of communications intelligence regarding the interception of signals from undersea cables.[233] He concludes that

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						a § 798 prosecution of the Times alone would be "least controversial" as it would result only in a fine, and could be based solely on the fact of publication (prosecuting Hersh, or running a grand jury investigation to force him to identify his sources, ran the risk of creating a "cause celebre").[234] Levi also includes a discussion of using subsections of section 793 to prosecute the story's sources, or the Times and/or Hersh. He notes that subsection (d), covering only those with lawful possession, would not apply to the reporter or outlet, and would require proof of three elements: (1) proof of the source of the information; (2) proof of accuracy and relation to national security; and (3) proof that the information has not been made public and that the government took steps to keep it secret.[235] Subsection (e), Levi notes, applies to unauthorized possession and therefore would be available for use against the press.[236] Finally, Levi notes the argument that Section 793 does not cover publication as it refers only to "communications," but he clarified that it is the Justice Department's position that it does, in fact, cover publication.[237] The second option, basing some action on a violation of the Marchetti protective order, includes two alternatives: a criminal contempt proceeding or a grand jury investigation into the leaks. The contempt proceeding raises four difficulties: (1) the court could refuse to issue an order in the absence of evidence that the order had been violated, (2) government counsel and court personnel had access to the documents, (3) the sources identified in the Times articles are past and current government officials,

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						and (4) anyone with access would likely take the Fifth.[238] The grand jury option poses two similar difficulties: (1) the journalist would refuse to testify, provoking a *Branzburg v. Hayes*, 408 U.S. 665 (1972), confrontation, and (2) the leaks in the Hersh story were more extensive than the information in the Marchetti case.[239] Finally Levi rejected expanding the protective order to the Times as groundless. And he noted that to restrain future publication by the Times, the government would have to get an injunction under the standard in *New York Times v. United States*, 403 U.S. 713 (1971), which Levi said was "impossible." In short, the Ford administration seriously considered and discussed prosecuting the New York Times and Seymour Hersh for publication of the Operation Holystone story, but ultimately demurred.
Daniel Schorr (top)	Ford	8/25/1976 (committee voted to subpoena Schorr)[240]	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	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 members of the intelligence community, including the CIA and FBI.[242] He then disclosed it to the Village Voice, which published it (prompting CBS to suspend Schorr).[243] 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

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				could be used to identify his source).[241] Half of the committee's 12 members said they would not support a contempt finding, ending the matter.		disclose the contents.[244] 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.[245] The committee held hearings at which Schorr and Latham testified but refused to disclose their sources.[246] 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.[247] Additionally, as reported by Emma Best at MuckRock and based on FBI documents obtained by her through FOIA, the FBI initiated a preliminary inquiry into possible Espionage Act violations in connection with the publication of the report in the Village Voice.[248] It appears, based on the documents, that the preliminary inquiry was launched the day after the publication, February 13, pursuant to a memorandum from the then-assistant attorney general in charge of the Criminal Division, Richard Thornburgh, to the director of the FBI containing the "11 questions" to determine the feasibility of an Espionage Act prosecution.[249] On June 9, 1976, an unidentified woman voluntarily contacted the FBI's Press Services Office and said that she had information about the release of the Pike Committee report and its publication in the Village Voice.[250] Two FBI special agents interviewed her

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						telephonically that afternoon.[251] According to the interview memorandum, the woman offered details about internal RCFP deliberations concerning Schorr and the Pike Committee report, and suggested that the FBI talk to two other RCFP employees.[252] On October 28, 1976, it appears that the FBI interviewed another individual associated with the Reporters Committee, who described his "employer" as "members of the Executive Committee of the Reporters Committee."[253] The individual had "second thoughts" about freely answering FBI questions because of possible issues of privilege vis-à-vis him and his employer, but said that his recollection was that the understanding of RCFP's staff was in accord with the public statement made by RCFP shortly after the Village Voice publication.[254] On October 29, 1976, it appears that the FBI interviewed another individual associated with the Reporters Committee, who had resigned following the Pike Committee publication.[255] That person stated that he had no "real firsthand information" that he could recall.[256] By memorandum on May 18, 1977, Thornburgh advised that there was no reasonable chance that a prosecution under the Espionage Act would be successful, and that the FBI need not engage in further investigation.[257]
Samuel Morison	Reagan	10/4/1984 (indicted)	Four-count indictment.	Convicted on all four counts. The Supreme	24 months (pardoned).	Morison, an intelligence analyst with the Naval Intelligence Support Center ("NISC"), was convicted of stealing and selling

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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.	Court denied cert on Oct. 17, 1988. Sentenced to two years; Morison served eight months. Pardoned by President Clinton on Jan. 20, 2001.		photographs of a Soviet aircraft carrier under construction as well as material on an explosion at a Soviet naval base to an English magazine, Jane's Defence Weekly.[258] 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.[259] The district court denied the defendant's motion to dismiss on several grounds, finding, among other things, that the statute was not unconstitutionally vague,[260] that it applied to "leaking" to the press,[261] 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,[262] that § 641 applies to the disclosure of classified information,[263] and, effectively, that classified information has "value" under that theft of government property statute.[264] 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).[265] 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

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						press, and that subsections (d) and (e) are not unconstitutionally vague or overbroad.[266] Judges Wilkinson and Philips, however, both wrote concurring opinions elaborating on the First Amendment concerns with the 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.[267] 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."[268] 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.[269] 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."[270] 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."[271] Those are that

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						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."[272] 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 applies to "information relating to the national defense" and does not create a "subjective test for the entire statute."[273] 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.[274] 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.[275] Brandt quoted from the committee's still unreleased report and included details about the committee's closed-door deliberations.[276]

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						Following broad outcry by groups including the ACLU and the Reporters Committee, the committee dropped the subpoena two weeks after issuing it.[277]
Operation Ivy Bells (top)	Reagan	5/19/1986 (NBC broadcasts the second Pelton hearing story)[278]	N/A	The White House declined to bring a case or take other action.	N/A	The Operation Ivy Bells case arose in 1985, which has become known as the "year of the spy" because of the eight separate espionage cases brought that year, including Israeli spy Jonathan Pollard and Sharon W. Scranage (who, along with John Kiriakou, is the only other person to be convicted under the Intelligence Identities Protection Act), as well as the mysterious return of double agent and fake Soviet defector Vitaly Yurchenko to the USSR.[279] Upon his defection to the United States, Yurchenko identified two Soviet spies, former NSA employee Ronald W. Pelton and fired CIA agent Edward Lee Howard.[280] Howard escaped, but Pelton was successfully prosecuted under the Espionage Act.[281] The Pelton case is interesting in and of itself as he was convicted not of transmitting tangible documents to the Soviets, but of revealing detailed intangible information (see the entry on Steven Rosen *infra* for discussion of the possible difference in the scienter requirement for intangible disclosures).[282] The Pelton trial, however, led to it being one of the four cases where high level government officials seriously considered bringing an Espionage Act case against a member of the news media (the others are the Stanley Johnson grand jury, the Amerasia arrests and prosecution, and another submarine surveillance story, Operation Holystone).

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						During a pre-trial hearing in the Pelton case, on November 27, 1985, Pelton's attorney mentioned an "Operation Ivy Bells." NBC correspondent James Polk then aired a report saying, "There are indications Ivy Bells refers to a Navy eavesdropping operation. The Navy is known to have submarines outside Soviet harbors listening to what the Russians say," which was also what had been reported by Seymour Hersh in the Operation Holystone story.[283] The CIA took no action following that initial report. During a report on jury selection in the case, six months later, NBC's Polk against brought up the disclosure, stating, "Pelton apparently gave away one of the NSA's most sensitive secrets, a project with the code name 'Ivy Bells,' believed to be a top secret underwater eavesdropping operation by American submarines inside Russian harbors."[284] Following the report in May, CIA director William Casey reportedly referred the matter to the Justice Department in the hopes that it would bring a case against NBC.[285] Casey met with the attorney general the following day, though sources told Washington Post investigative journalist George Lardner Jr. that they discussed other matters.[286] The Justice Department ultimately declined to bring charges. Additionally, the Washington Post confirmed that CIA director Casey and the head of the NSA, Lt. Gen. William Odom, also threatened the Washington Post with prosecution under 18 U.S.C. § 798, and that President Reagan personally asked then-Post publisher Katherine Graham to kill a story with additional details on Ivy Bells and other submarine based signals intelligence activity.[287] Those threats came after the Post decided it should

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						run the story now that Pelton was under indictment, as it had had the details before Pelton was caught but withheld publication on the understanding that the Soviets were unaware of the surveillance.[288] Following the Reagan call, the Post published the story under the bylines of Bob Woodward and Patrick Tyler but without certain operational details, what Ben Bradlee called the "wiring diagram" of the intelligence system, which, Bradlee felt, could violate the plain terms of Section 798.[289] Bradlee described the Pelton matter and the Woodward/Tyler story in great detail in an op-ed the following June.[290] The details of the Ivy Bells operation have been reported at some length in the ensuing years. In effect, the Navy used specially outfitted submarines and advanced dive techniques to physically place a wiretap on an hardline cable that ran under the Sea of Okhotsk, connecting the submarine base at Petropavlovsk on the Kamchatka peninsula with the Soviet Pacific Fleet's headquarters at Vladivostok.[291] Because of the remote location and Soviet dominion over that sea, the Soviets felt interception was improbable and communications were sent over the cable unencrypted. The Navy used a special tap to intercept them, and recorded the communications on magnetic tape for later retrieval by these specialized submarines and analysis by the NSA.
Timothy Phelps and Nina Totenberg	George H.W. Bush	2/3/1992 (subpoenas issued)[292]	N/A	The Senate declined to cite Phelps or Totenberg for contempt. Both	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

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(top)				testified before the appointed special counsel but declined to disclose information related to their source.[293]		sexually harassing her when she worked for him at the Equal Employment Opportunity Commission.[294] 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.)[295] Senate 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.[296] Both Totenberg and Phelps were deposed by the special counsel but declined to answer questions.[297] 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.[298] Fleming was unable to identify the source of the disclosures and noted that the evidence indicated multiple sources.[299]
The Starr Office of Independent Counsel ("OIC") (top)	Clinton	9/25/1998 (Judge Norma Holloway Johnson issues order for Rule 6(e) inquiry)[300]	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	The special master in the case questioned one reporter, Claire Shipman, in connection with the third news article cited in the 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.[304] 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.[305] On September 25, 1998, Judge Johnson

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			connection with 24 news articles.[301]	cause order. Shipman declined to cooperate, and the special master did not pursue the matter further.[302] The overall Rule 6(e) matter was resolved when the D.C. Circuit reversed Judge Johnson's show 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.[303]		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.[306] Judge Johnson appointed Judge John Kern III of the District of Columbia Court of Appeals as special master.[307] The only involvement of a journalist or media outlet in the special master's investigation was in relation to an NBC Nightly News 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.[308] Because Shipman specifically mentioned the OIC as her source, the special master contacted her to request her voluntary cooperation.[309] 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.[310] 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.[311] 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."[312] Van Natta reported, based on anonymous "associates" of Mr. Starr, that OIC

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						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.[313] The day after the story ran, the White House filed a motion for a show cause order.[314] The OIC denied being the source of the information in the story, but asked the FBI to provide assistance in investigating the possible disclosure.[315] Following the investigation (the results of which were sealed), the OIC withdrew its denial and took administrative action against its spokesperson.[316] 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 prima facie violation of Rule 6(e) and granted the motion for summary reversal of the district court's show cause order.[317] 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.[318]
Wen Ho Lee (top)	Clinton	12/10/1999 (indictment)	59-count indictment.[319]	Dr. Lee pled guilty on September 13, 2000, to one count of unlawful retention of	Judge James Parker in Albuquerque sentenced Lee to 278 days, one less than	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.[325] He was suspected of passing sensitive information to the Chinese

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			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).	NDI under § 793(e).[320] 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."[321] Dr. Lee was held in custody (and in solitary confinement) for 278 days before his plea agreement.[322] In 2006, Dr. Lee received a $1.6 million settlement paid by the government and, unusually, by five media organizations (see discussion in the summary).[323]	time served.[324] He was released the same day he entered his plea.	about the "W-88," an American nuclear warhead design with a particular innovation permitting greater yield at a smaller size.[326] 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.[327] 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).[328] 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).[329] 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 energy research, when done with the intent to "injure the United States" or to "secure an advantage to any foreign nation."[330] 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

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						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."[331] 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.[332] 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.[333] 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.[334] He then subpoenaed six journalists (James Risen, Josef Hebert, Bob Drogin, Pierre Thomas, Jeff Gerth, and Walter Pincus).[335] Various courts ultimately found that a qualified reporter's privilege did not apply.[336] 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—contributing $750,000 to avoid contempt sanctions against their reporters (despite *not* being defendants in the case).[337]
John Solomon (top)	George W. Bush	5/14/2001 (approval for subpoena)[338]	N/A	Solomon's source was never revealed. Sen. Chuck Grassley	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

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				(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.[339] Solomon also claims that the revelation cost him sources.[340]		organized crime figure.[341] 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.[342] Solomon was notified by letter of the seizure when he returned home from vacation in August.[343] 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.[344] 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."[345] Senator Grassley responded by letter on December 6, 2001, criticizing vague answers in the DOJ's response, and requesting greater clarity on several points.[346]
Jim Taricani (top)	George W. Bush	5/31/2001 (district court issued order appointing special prosecutor)[347]	Criminal contempt.[348]	Taricani served four months home confinement and was released two months early in April 2005.[349]	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.[350] On February 1, 2001, Jim Taricani, an investigative reporter for

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						WJAR, the NBC affiliate in Cranston, Rhode Island, aired the leaked tape.[351] The defendants then asked the district court to investigate who had violated the protective order.[352] The court agreed and appointed a private attorney as special prosecutor to investigate the leak.[353] After interviewing and deposing several individuals, the special prosecutor, Marc DeSisto, sought and received a subpoena to compel Taricani to appear at a deposition.[354] Taricani appeared but refused to answer any questions that would reveal his source, citing a "newsman's privilege."[355] DeSisto filed a motion to compel, which was granted after a hearing on October 2, 2003.[356] 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.[357] He appealed unsuccessfully to the First Circuit, and fines began on August 12, 2004, ultimately reaching $85,000, which were paid by NBC.[358] On November 22, 2004, Taricani was convicted of criminal contempt based on the earlier civil contempt finding.[359] Because of health considerations (Taricani was a heart transplant recipient), he was sentenced to six months of home confinement on December 9, 2004.[360] 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."[361] Taricani was released after four months.[362]

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						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.[363] The attorney, Joseph Bevilaqua Jr., had previously denied being the source under oath, and said that there had never been an agreement of confidentiality between the two.[364] Taricani disputed that, saying that Bevilaqua had asked him for a promise of confidentiality.[365] 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.[366]	On June 4, 2002, Randel pled guilty to one count of theft of government property under § 641.[367] He was sentenced on January 15, 2003.[368]	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.[369] 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.[370] Investigators focused on Randel because of an identity code printed on one of the documents provided to the London Times.[371] 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."[372]

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Holy Land Foundation and Global Relief Foundation (top)	George W. Bush	12/14/2001 (investigation into Shenon story commenced at some point after this date)[373]	N/A	In 2006, the Second Circuit ruled that the grand jury was entitled to compel the disclosure of Shenon's and Miller's phone records.[374]	N/A	Following the 9/11 terrorist attacks, the government took various steps to interdict financing for terrorist activities, including freezing the assets of an array of charities in the United States. Two of the most prominent were the Global Relief Foundation ("GRF"), based near Chicago, and the Holy Land Foundation ("HLF"). On October 1, 2001, New York Times reporter Judith Miller (with Kurt Eichenwald) bylined a story on the government's "financial assault," which reported that the Treasury Department was vetting a new list of organizations in advance of freezing their assets, one of which was GRF.[375] On December 3, 2001, Miller then called HLF "seeking comment on the government's intent to block HLF's assets."[376] The government raided HLF's offices the following day.[377] Less than two weeks later, on December 13, 2001, Times reporter Phil Shenon called GRF's offices seeking similar comment on that pending asset seizure.[378] Again, the government searched GRF's offices the following day.[379] The record is unclear on whether the reporters mentioned the raids. There is evidence that one of the foundations had an attorney present when agents arrived, but the two foundations had been identified repeatedly prior to the search as targets of the "financial assault."[380] At some point after the December 14 raid, Patrick Fitzgerald, the U.S. Attorney for the Northern District of Illinois, opened an investigation into the Miller and Shenon unauthorized disclosures.[381] In August 2002, Fitzgerald sought a voluntary

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						interview with Shenon and a voluntary production of his phone records for 18 days in 2001 (September 24 to October 2 and December 7 to 15).[382] The Times did not comply, invoking First Amendment protections for confidential sources.[383] Two years later, Fitzgerald renewed and expanded his request to include Miller and an additional five days (November 30 to December 4).[384] Fitzgerald warned that non-compliance by the Times would lead him to seek a subpoena for the records from the Times's third-party telephone provider.[385] On August 4, 2004, Times attorneys Floyd Abrams and Ken Starr wrote a letter to Deputy Attorney General James Comey requesting a meeting, and asking that, were the Justice Department to seek records from a third party, the Times be given advanced notice so as to be able to seek court review.[386] Comey rejected the request saying, "Having diligently pursued all reasonable alternatives out of regard for First Amendment concerns, and having adhered scrupulously to Department policy, including a thorough review of Mr. Fitzgerald's request within the Department of Justice, we are now obliged" to proceed with the subpoena.[387] On September 28, 2004, the Times filed suit in the Southern District of New York for a declaratory judgment that the telephone records were protected from disclosure by both the First Amendment and common law.[388] The government moved to dismiss the complaint on October 27, 2004. The Times opposed and moved for summary judgment.[389] Judge Sweet denied the government's motion and found for the Times, finding a qualified reporter's privilege under the First Amendment and common law,

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						that the privilege extended to records held by a third party, and that the government had failed to overcome the qualified privilege.[390] (Separately, Judge Sweet declined to find that the News Media Guidelines, 28 U.S.C. § 50.10, created any enforceable right for the Times.[391]) In a 2-to-1 decision, with Judge Sack dissenting, the Second Circuit reversed, finding that no First Amendment protection existed, and that, even if a common law privilege applied, it would be overcome given the government's interest in maintaining the secrecy of impending asset seizures.[392] The Second Circuit did hold, however, that binding precedent in that jurisdiction commanded that whatever protection the Times had over its own records would apply to records under the control of a third party.[393] It also held that the district court had not abused its discretion in exercising jurisdiction over the case.[394] Judge Sack dissented, but lauded the third-party finding of the majority and agreed that the district court had jurisdiction to decide the case.[395] Judge Sack, however, found that the government had not made the required showing under what he would have identified as the three elements of the common law reporter's privilege: (1) whether the identity of a source is "highly material and relevant, necessary or critical,"[396] (2) whether the information is "not obtainable from other available sources,"[397] and (3) whether "nondisclosure of the information would be contrary to the public interest, taking into account both the public interest in compelling disclosure and the public interest in newsgathering and maintaining a free flow of information to

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						citizens."[398] Judge Sack found that, at the very least, the government was obligated to, and failed to, demonstrate to the court's satisfaction that it had met the first two elements: necessity and exhaustion.[399] The Second Circuit agreed to a seven-day stay of its order, and the Times sought a stay of mandate at the Supreme Court to give it time to petition for certiorari. That was denied after being presented to Justice Ginsburg, who referred it to the court.[400]
Stephen Hatfill (top)	George W. Bush	8/1/2002 (Hatfill identified as person of interest)[401]	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 annuity of $150,000 for 20 years starting in 2009).[402]	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. 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.[403] 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.[404]

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						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.[405] The Justice Department exonerated Hatfill two weeks later.[406] 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.[407] 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.[408] Locy was ordered to personally pay the fines, and her employer was prohibited from reimbursing her.[409] Following the 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.[410] The court declined, but vacated the contempt citation.[411] 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.

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						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.[412] Hatfill confirmed he was Mr. Z during a press conference.[413] 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).[414] The trial court again dismissed the suit in January 2007.[415] The Fourth Circuit upheld that ruling and the Supreme Court declined to hear Hatfill's appeal in December 2008.[416] Though the suit was dismissed, Kristof apologized in a column to Hatfill.[417]
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 ultimately dropped).[419]	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.[420]

REPORTERS COMMITTEE
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			Franklin charged under all five counts of indictment; Rosen and Weissman charged with select counts (see entries below).[418] 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 disclose *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).			

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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).[421] 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."[422] 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.[423] 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.[424] 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

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						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."[425] The key holding in the district court's decision is essentially that prosecutors must prove that defendants knew that the information they disclosed, if disclosed, would potentially harm the United States, and that defendants acted with "a bad purpose either to disobey or to disregard the law."[426] 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."[427] 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.[428] 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."[429]
Keith Weissman	George W. Bush	8/4/2005 (indicted)	Weissman charged with one count of	Charges dropped on May 1, 2009.	N/A	See Rosen entry above.

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Case	President	Date	Charges	Resolution	Sentence	Summary
(top)			conspiracy to violate unlawful disclosure provision of Espionage Act.			
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.[430] President Bush commuted Libby's 30-month sentence on July 2, 2007.[431] President Trump pardoned Libby on April 13, 2018.[432]	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.[433] 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.

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						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).[434] 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.[435] In the lead up to the trial, Libby sought to compel the production of documents from the various news organizations.[436] 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."[437] 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.[438] 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.

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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 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.[439]	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.[440]	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.[441] 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.[442] Mr. Convertino claimed that the investigation was in retaliation for his testimony before the Senate Finance Committee describing the Detroit prosecution.[443] The terrorism charges were ultimately dropped in 2004 after the government admitted that it had failed to turn over potentially exculpatory evidence to the defense.[444] 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.[445] 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

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						courts for more than a decade. Convertino initially subpoenaed both the Free Press and Gannett, its parent company.[446] He dropped the subpoena against Gannett, but pursued the subpoena against the Free Press.[447] The federal district court in Washington, D.C., limited the suit in 2005 to one claim under the Privacy Act involving the Ashenfelter story.[448] 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.[449] 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.[450] 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."[451] 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

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						found that Ashenfelter had a legitimate fear that answering Convertino's questions could constitute incrimination.[452] 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.[453]
Troy Ellerman (top)	George W. Bush	5/6/2006 (Fainaru-Wada and Williams called to testify)[454]	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. § 1623(a) for swearing under oath that he did not disclose the information; and one	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.[456] They faced up to 18 months in prison.[457] The contempt charges were dropped after	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.[462] In August 2002, federal agents began investigating BALCO, and prosecutors convened a federal grand jury in October 2003.[463] 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.[464] In June 2004, the San Francisco Chronicle published a story based on the transcripts, which Ellerman had permitted the reporters to read, revealing that Olympian Timothy Montgomery had testified that he had used performance enhancing substances.[465] 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

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			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.[455]	Ellerman pled guilty to leaking the testimony in February 2007.[458] In June 2007, Judge Jeffrey White rejected a plea deal that would have had Ellerman serving less than two years.[459] 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.[460] Ellerman was denied readmission to the California state bar in May 2018.[461]		BALCO lab).[466] 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.[467] 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.[468] 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.[469] 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.[470] 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.[471]

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Shamai Leibowitz[472] (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 documents classified as "secret" to a blogger.[473] 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.[474] 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.[475] Leibowitz was charged with a single count of violating the 1950 addition to the Espionage Act that created specific offenses for the disclosure of "communications intelligence."[476] 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.[477] 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.[478]

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Case	President	Date	Charges	Resolution	Sentence	Summary
Thomas Drake (top)	Obama[479]	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).[480] 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."[481] 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.[482] 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.[483] 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.[484]

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						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,[485] the court denied the motion, and found, among other things, that, with respect to *documents*, the government need only prove that the retention was willful, not that the individual specifically intended to harm national security.[486] 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	Obama	5/30/2010 (arrested in Iraq);[487]	Manning was initially charged in July 2011 with 12 counts under	On July 30, 2013, Manning pled guilty to three counts of	420 months[494] (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

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(top)		7/5/2010 (charged)	the Uniform Code of Military Justice ("UCMJ").[488] On March 1, 2011, prosecutors presented a second set of charges. Before sentencing, the presiding judge merged several counts.[489] 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;	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 convicted on the other 17 charges.[490] 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.[491]		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."[495] Wikileaks has been criticized by some, including some government transparency advocates, for how it curates and releases information, and for what some have called "overtly unethical" behavior.[496] 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).[497] 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.[498] 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

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			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 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)).	Manning also received a dishonorable discharge, reduction in rank to private, and forfeiture of all pay and allowances.[492] On January 17, 2017, President Obama commuted Manning's sentence to about seven years. Manning was 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.[493]		sentence was relative to other "leakers."[499] 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).[500] Several digital rights groups filed friend-of-the-court briefs on behalf of Manning challenging that conviction.[501]

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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.[502] 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.[503] 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.[504] 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 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."[505] 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

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						encouraged Mr. Kim to disclose sensitive" material and did so "by employing flattery and playing to Mr. Kim's vanity and ego."[506] 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).[507] 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."[508]

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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).[509]	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.[510]	42 months.[511]	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.[512] Sterling, a CIA operations officer in the Near East and South Asia Division of the clandestine service from 1993 to 2001,[513] was Merlin's case manager for two years.[514] 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.[515] Investigative journalist James Risen wrote about the suit for the New York Times in 2002.[516] 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.[517] 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.[518] 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.[519] Sterling was convicted largely on circumstantial evidence showing communications between him and Risen around the time Risen approached the CIA in 2003.[520]

						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 issued, during the Bush administration.[521] 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."[522] 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).[523] 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).[524] The Supreme Court denied certiorari.[525] 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.[526] During pre-trial proceedings, Risen declined to identify sources but did say he had

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						multiple such sources for the information in State of War, testimony that the trial judge permitted to be read in court.[527]
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).[528] 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.[529] 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.[530] 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.[531]
John Kiriakou (top)	Obama	4/5/2012 (indicted)	Five-count indictment. Charges are one count of disclosing the identity of a covert agent in	Kiriakou pled guilty on October 23, 2013, to one count of violating the Intelligence Identities Protection Act.[533] He served about 23	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.[535] 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

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			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 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).[532]	months in prison, and was released to three months of house arrest in February 2015.[534]		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),[536] 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.[537] Counts three and four involve the disclosure to two journalists of information concerning Deuce Martinez, a narcotics analyst and CIA officer (not undercover) who had been involved in high-level interrogations in the detention program.[538] 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.[539] 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."[540] 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).[541] Some point to the discrepancy

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						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.[542] 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 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).[543]	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.[544] Seven years supervised release.[545]	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.[546] 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

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						May 2012 search warrant in the child pornography investigation.[547] 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.[548] 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).[549] 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.[550] News media organizations and advocates strongly criticized the subpoena after the Justice Department disclosed its existence.[551] 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.

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James Hitselberger (top)	Obama	08/06/2012 (criminal complaint filed),[552] 10/26/2012 (indictment filed)[553]	Two-count indictment. Both charges are unlawful retention of NDI in violation of 18 U.S.C. § 793(e).[554]	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[555] (he had served about two months in jail following his arrest and about eight months under house arrest).[556]	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.[557] In April 2012, the government alleges that his supervisors observed Hitselberger viewing and printing situation reports ("SITREPs") for the Navy special forces units.[558] He was then allegedly seen placing the printouts in an Arabic-English dictionary, which he put in his backpack.[559] His supervisors saw him walk out of the facility, upon which they stopped him and asked to search his bag.[560] 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.[561] 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.[562] 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 markings removed found during the search of his quarters.[563] 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.[564]

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						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).[565] 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.[566] 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.[567]
Jeffrey Lacker (top)	Obama	10/3/2012 (Medley published the note)[568]	N/A	Lacker resigned as president of the Federal Reserve Bank of Richmond on April 4, 2017.[569]	N/A	In October 2012, Medley Global Advisors, a firm that publishes financial intelligence newsletters,[570] 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.[571] The Medley report was sent to subscribers the day before the Fed information was released, and could have benefited them financially (the 10-year benchmark Treasury rate rose overnight from 1.61 to 1.74).[572]

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						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.[573] 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.[574] 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.[575]
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	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[577] 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.[578] 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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			information under 18 U.S.C. § 798(a)(3).[576]			
David Petraeus (top)	Obama	3/3/2015 (criminal information and plea agreement entered)[579]	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.[580]	Two years' probation and $100,000 fine.[581]	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.[582] 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.[583] As part of his plea agreement, Petraeus also admitted he lied to FBI agents but was not charged with making false statements under § 1001.[584] 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).[585]

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Mark Boal "Serial" interviews (top)	Obama	7/20/2016 (Boal filed a lawsuit in response to receiving a draft of a subpoena)[586]	N/A	In December 2016, Boal and the government settled.[587] As part of the settlement, the government dropped the subpoena, while Boal withdrew a demand for attorney's fees.[588] Boal also agreed to, if necessary, verify the authenticity of the Bergdahl interview tapes before a court martial.[589] Finally, Boal agreed to publicly release portions of the interview tapes that had already aired or portions of the tapes that Boal summarized on the podcast.[590]	N/A	In 2015, Mark Boal interviewed U.S. Army Sgt. Bowe Bergdahl, conducting about 25 hours of recorded interviews.[591] Boal, the writer and producer of, among others, the films The Hurt Locker and Zero Dark Thirty, would use the audio from the interviews for the second season of the award-winning public radio podcast Serial.[592] Portions of the interviews were also licensed to other media outlets.[593] Bergdahl was alleged to have deserted his post in Afghanistan, after which he was captured by the Taliban and tortured.[594] In 2014, he was freed in exchange for the release of five Guantanamo Bay detainees.[595] In July 2016, Boal's counsel learned that the military prosecutor in Bergdahl's court martial proceeding planned to subpoena all of Boal's recorded, unedited conversations with Bergdahl.[596] Anticipating the formal subpoena, Boal filed a lawsuit against the government in the United States District Court for the Central District of California. Boal asked the court to enjoin the issuance and enforcement of the subpoena.[597] Per the complaint, Boal's interviews with Bergdahl contained confidential information, including references to confidential sources.[598] Boal argued that the subpoena "would invade Boal's right to gather and publish newsworthy material under the First Amendment of the United States Constitution . . . ."[599] The Reporters Committee filed an amicus brief in support of Boal, arguing the "compelled disclosure of a journalist's unpublished work product or confidential materials has a destructive effect upon the news media's ability to gather news and report on matters of public concern."[600] The

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						government argued, however, that Boal should have brought his arguments before a military court, given that his objections stemmed from a military court martial proceeding.[601] In September 2016, U.S. District Court Judge George H. King urged the parties to resolve the matter by settling.[602] In December 2016, the parties settled.[603] Boal was not required to disclose the tapes to the military prosecutors. Bergdahl eventually pled guilty to desertion and received a dishonorable discharge, which he unsuccessfully appealed.[604]
James Cartwright (top)	Obama	10/17/2016 (criminal information and plea agreement entered)[605]	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.[606] Prosecutors had sought a two-year sentence, significantly more than the guidelines range.[607]	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.[608] Cartwright had lost his security clearance in 2013 following his interviews with the FBI (in his second interview, he admitted to misleading agents during their first meeting).[609] 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.

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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.[610] At issue in his appeal are leaks from an FBI agent in 2013, which his defense team contends revived flagging interest in the case.[611] 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.[612] 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.[613] A motion for an evidentiary hearing on the disclosures has been filed by Walters's defense team as part of his appeal.[614] That is before the Second Circuit.[615]
Reality Winner (top)	Trump	6/5/2017 (criminal complaint filed)[616]	Charge is one count of unauthorized disclosure of NDI in violation of 18 U.S.C. § 793(e).[617]	Winner pled guilty on June 26, 2018.[618] She was sentenced on August 23, 2018.[619]	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).[620] According to an FBI affidavit, Winner was identified as a suspect when agents were able to determine that

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						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.[621] 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.[622] 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."[623] 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).
Terry Albury (top)	Trump	3/27/2018 (criminal information filed)	Two-count information. One count of unauthorized	Albury pled guilty to both counts on April 18, 2018.[624]	Sentenced to 48 months on October 18, 2018.[625]	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

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			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).			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.[626] 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."[627] 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.[628] The affidavit alleged that Albury had accessed approximately two-thirds of them.[629] 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.[630]
Joshua Schulte (top)	Trump	6/18/2018 (superseding indictment; had been	13-count indictment. Charges include one count of illegally	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.[632] He had not been initially charged in the disclosure, though he was a suspect and his

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		charged with child pornography offenses in Aug. 2017)	"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			apartment and computers were searched in March 2017.[633] 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.[634] In November 2019, Schulte's defense counsel asked the court to grant the defendant leave to file a tardy motion to dismiss the indictment as violative of the First Amendment.

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			violation of 17 U.S.C. § 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.[631]			
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).[635]	Wolfe pled guilty on October 15, 2018, to one false-statement offense, with respect to his communications with only one of the reporters.[636]	Wolfe was sentenced to two months in prison on December 20, 2018.[637] At sentencing, Judge Jackson said, "Having an affair is not a crime, maintaining relationships with reporters is not a crime, even giving sensitive nonpublic but not classified information to a reporter is not a crime."[638]	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.[639] 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.[640] 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.[641] 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

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						Signal messages. The sentencing memorandum in the case, as discussed below, confirms that the encrypted communications were seized directly from Wolfe's personal mobile device pursuant to a warrant.[642] 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.[643] 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.[644] Law enforcement officials have said that there is no evidence that Rambo was detailed to the Wolfe investigation (or to another leak investigation).[645] As of December 2018, Rambo is under investigation internally at CBP for potential misuse of government systems.[646] In advance of Wolfe's sentencing, current Senate Intelligence Committee chair Sen. Richard Burr (R-SC) and vice chair Sen. Mark Warner (D-VA), and former chair and vice chair Sen. Dianne Feinstein (D-CA), wrote jointly to Judge Jackson urging leniency.[647] The letter emphasizes that Wolfe had not pled guilty to leaking classified information and that, to the extent he disclosed "non-public information," it was considered Committee Sensitive "and the most severe punishment for such action has already, effectively been imposed."[648]

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						Prosecutors are seeking a two-year sentence for Wolfe, which would be an upward departure from the applicable sentencing range in the federal Sentencing Guidelines. In their sentencing memorandum, prosecutors revealed two previously unreported facts. One, the FBI did not give a "duty-to-warn" notification to the Senate Intelligence Committee as it normally would when a suspect in an unauthorized disclosure investigation is an executive branch employee.[649] Instead, "given the sensitive separation of powers issue and the fact that the [Foreign Intelligence Surveillance Act] was an FBI classified equity, the FBI determined that it would first conduct substantial additional investigation and monitoring of Wolfe's activities."[650] FBI leadership also took the "extraordinary" step of limiting its initial notification of "investigative findings" to the chair and vice chair of the SSCI.[651] Two, the FBI actually obtained a delayed-notice "sneak and peek" criminal warrant to image Wolfe's mobile phone covertly while he was in the initial October meeting with FBI agents.[652] Interestingly, the sneak and peek provision requires a special and heightened showing by the government for the seizure of electronic communications.[653] Presumably that showing and court finding, of "reasonable necessity" for the seizure, was made here.

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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.[654] 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.[655] 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.[656] According to the article, McCabe responded, "Are you telling me that I need to shut down a validly predicated investigation?" to which the official responded, "Of course not."[657] 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.[658] 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.[659] On August

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						31, 2017, the Justice Department's Office of the Inspector General ("OIG") opened an investigation following a referral of the matter from the INSD.[660] 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.[661] 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.[662] 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).[663] Finally, the OIG 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

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						contents of a call with the PADAG, was not in the public interest and therefore violated DOJ media affairs policies.[664] 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.[665] 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").[666]
Natalie Edwards (top)	Trump	10/16/2018 (complaint filed)	Two-count complaint. Unauthorized disclosures and conspiracy to make unauthorized disclosures of Suspicious Activity Reports ("SARs") under 31 U.S.C. § 5322 and 18 U.S.C. §§ 2, 371.[667]	TBD	TBD	Edwards is a senior adviser at the Treasury Department's Financial Crimes Enforcement Network or "FinCEN," and was arrested on October 16, 2018 for disclosing SARs to a reporter. SARs are confidentially filed by banks and other financial institutions to alert law enforcement of potential illegal activities and maintained centrally by FinCEN.[668] The unauthorized disclosure of a SAR is an independent federal crime. Edwards is being prosecuted by the U.S. Attorney for the Southern District of New York. Although the complaint does not name the news organization to which Edwards leaked SARs, the descriptions of the relevant stories in the complaint closely match stories published by BuzzFeed (the complaint provides the dates of publication of the stories, the headlines of several articles, along with direct quotations from the relevant stories).[669] The government stated that the leaked SARs and the related articles concerned, among

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						others, Paul Manafort, Rick Gates, the Russian Embassy, Maria Butina, and Prevezon Alexander.[670] The complaint states that judicially-authorized search warrants and pen register and trap and trace orders were issued for Edwards' personal cellphone and email records.[671] Edwards' cellphone and flash drive were seized.[672]
Daniel M. Kowalski (top)	Trump	10/16/2018 (subpoena issued)	No charges. DHS/ICE issued a subpoena to Kowalski to produce records related to the source of a leaked ICE memorandum detailing DOJ's new, more restrictive interpretation of asylum law.	TBD	TBD	Kowalski is a managing partner with the Ware Immigration firm in Centennial, Colorado, and editor of Bender's Immigration Bulletin, an online LexisNexis publication.[673] Kowalski posted the leaked internal ICE memorandum from July 11, 2018, on Bender's Immigration Bulletin.[674] The July 11 memo, written by the principal legal advisor for ICE and addressed to all Office of Principal Legal Advisor attorneys, is titled "Litigating Domestic Violence-Based Persecution Claims Following Matter of A-B-."[675] It details Attorney General Session's conclusion that political asylum is not generally available for victims of domestic and gang violence and how asylum cases should be litigated in light of this new interpretation of asylum law.[676] The subpoena was sent by the special agent in charge of ICE's Office of Professional Responsibility on October 16, 2018,[677] and requests that Kowalski produce "[a]ll information related to" the July 11 Memo, including but not limited to, "(1) date of receipt, (2) method of receipt, (3) source of document, and (4) contact information for the source of the document."[678]

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						Kowalski said to the Denver Post on October 18, 2018, that he is "under no obligation" to comply with the subpoena.[679] According to the same article in the Denver Post, the ACLU had reached out to Kowalski and offered support should he need it.[680] On October 30, 2018, the Reporters Committee sent a FOIA request to ICE for records related to, among other things, Kowalski, his law firm, and Bender's Immigration Bulletin; ICE's interpretation of 19 U.S.C. § 1509; and all other subpoenas issued under 19 U.S.C. § 1509 by any individuals at ICE that attempt to identify the source of the leaked document.
John Fry (top)	Trump	2/4/2019 (complaint filed)[681]	Charged with one count of violating 31 U.S.C. § 5322(a) and accompanying regulations at 31 C.F.R. § 1020.320(a)(2).[682]	TBD	TBD	In early May of 2019, several news outlets, including the Washington Post, reported on financial records detailing Michael Cohen's use of a firm named "Essential Consultants LLC" to receive money from various sources, including a Russian oligarch and companies doing business with the Trump administration, such as AT&T and Novartis.[683] The stories were based on a "preliminary dossier" compiled by attorney Michael Avenatti.[684] On May 16, 2018, the New Yorker's Ronan Farrow wrote a story on the leak to Avenatti, and quoted the source on why he or she had come forward.[685] Farrow also revealed the launch of an investigation by the Treasury Department's inspector general.[686] Farrow reported that details on the payments to Cohen come from a single SAR, which references two others revealing even larger sums being deposited into Essential Consultant's account.[687]

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						Farrow's and Avenatti's source said that he had disclosed the one SAR he had access to out of concern that the documents were being suppressed. "I have never seen something pulled off the system," said the source, according to Farrow. "That system is a safeguard for the bank. It's a stockpile of information. When something's not there that should be, I immediately became concerned. That's why I came forward."[688] On February 4, 2019, the Justice Department filed a criminal complaint against John C. Fry, an intelligence analyst for the IRS's criminal division, for unlawfully accessing SAR databases and disclosing SARs and SAR information. The investigation by the Treasury Inspector General for Tax Administration ("TIGTA") allegedly determined that Fry had logged onto FinCEN databases and analytical tools and searched for information related to Michael Cohen.[689] After downloading a number of SARs, the complaint says Fry called Avenatti.[690] Fry allegedly continued to search for Cohen-related SARs and found that one of them was not accessible via a "quick search" on the system.[691] According to the complaint, one of the SARs that Fry had searched was designated "restricted," meaning that because of its connection to a sensitive ongoing investigation one would have to have known of its existence and to have specifically requested it from FinCEN.[692] Fry allegedly then performed additional searches while periodically talking to Avenatti. On May 12, 2018, the complaint says Fry had a 42 minute conversation with "Reporter-1," and the

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						two exchanged WhatsApp messages over the next several days (the TIGTA investigator secured a warrant for Fry's device).[693] On May 16, 2018, the New Yorker published an article with the same title as the article referenced above with the byline by Ronan Farrow.[694] In the story, Farrow's source said that he was concerned about his inability to locate two SARs on the system. In the complaint, the TIGTA agent states that both were placed in "restricted" status.[695] The TIGTA agent also learned that Fry "should not be handling SARs from other geographic regions, such as New York" and that everytime an intelligence analyst like Fry searches for a SAR for "official purposes," the analyst would normally have done an additional search in another database, which he did not do in this case.[696] Finally, the complaint states that the TIGTA agent and her assistant special agent in charge met with Fry on November 26, 2018, and advised him of his rights. The complaint says that Fry waived his rights and agreed to make a verbal and written statement.[697] According to the complaint, Fry stated verbally that he provided SAR information to Avenatti and sent Avenatti a screenshot of the narrative.[698] Finally, Fry allegedly stated that he spoke to Reporter-1 and verified for Reporter-1 information supplied by to Reporter-1 by Avenatti.[699] Fry pled not guilty on March 14, 2019.[700]

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Daniel Everette Hale (top)	Trump	3/7/2019 (sealed indictment filed)	Five count indictment: (1) obtaining NDI in violation of § 793(c); (2) unlawful retention and transmission in violation of § 793(e); (3) causing the communication of NDI also under § 793(e); (4) disclosure of classified COMINT in violation of § 798(a)(3); and (5) theft of government property in violation of 18 U.S.C. § 641.[701]	TBD	TBD	On May 9, 2019, the Justice Department unsealed an indictment dated March 7 charging Daniel Everette Hale, a 31-year-old intelligence analyst from Nashville, with the unauthorized disclosure of NDI and communications intelligence, and theft of government property.[702] From July 2009 through July 2013, Hale was enlisted in the Air Force and was assigned to the NSA from December 2011 to May 2013.[703] He also deployed as part of a joint special operations task force to Bagram Airfield, Afghanistan, from March 2012 to August 2012.[704] From December 2013 through August 2014, Hale was employed at defense contractor Leidos and was assigned to the National Geospatial-Intelligence Agency ("NGA") in Springfield, Virginia, where he worked as a "Political Geography Analyst."[705] The Justice Department claims that on April 29, 2013, Hale met a reporter at a Washington, D.C.-area bookstore and the next day proceeded to search for classified information "concerning individuals and issues" about which the reporter wrote.[706] In May 2013, according to the indictment, Hale sent a text to a friend stating, "[the Reporter] wants me to tell my story about working with drones at the opening screening of his documentary about the war and the use of drones."[707] The New York Times reported that the details in the indictment suggested the reporter worked with the Intercept,[708] which produced a long reporting series on "The Drone Papers."[709] Jeremy Scahill, the co-founder of the Intercept, also published a book on the government's drone warfare program.[710] The indictment states that the documents that were provided by Hale

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						to the reporter and published on the website were compiled and published in a book authored by the reporter.[711] The Justice Department alleges that on February 28, 2014, Hale printed six documents unrelated to his work at NGA, five marked secret and one marked top secret, all of which were published on the reporter's website.[712] The indictment alleges that Hale continued to print documents from his classified computer at NGA and ultimately printed 36 documents in total with four duplicates, 23 of which were unrelated to his work at NGA.[713] Of the 23 documents unrelated to his work, the indictment states that Hale provided 17 to the reporter or the reporter's website, which published them in whole or in part.[714] Eleven of the documents were classified, three as top secret.[715] The indictment also discusses evidence found at Hale's home. It alleges that Hale had two thumb drives, one with a page from Document A, a secret-level classified PowerPoint presentation on counter-terrorism operations, that Hale had attempted to delete, and the other with Tor software and the Tails operating system, which had been recommended by the reporter's website to preserve source confidentiality.[716] On or about August 8, 2014, the indictment states that Hale's cell phone contact list included the contact information for the reporter.[717] Note that the indictment includes a charge under § 798 of the Espionage Act, i.e., the unauthorized disclosure of communications intelligence information.[718] That is based on Document A, described above; Document D, described as another

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						PowerPoint presentation on counterterrorism operations marked secret; Document E, described as information gathered by NSA on specific named targets classified top secret; and Document K, described as an intelligence report on an Al-Qaeda operative classified top secret.[719]
Bryan Carmody (top)	Trump	2/23/2019 (ABC 7 aired its story based on Carmody's reporting; Carmody sold the package to three outlets, but it is unclear if others ran similar stories)[720]	TBD	TBD	TBD	Jeff Adachi, the public defender in San Francisco and the only elected public defender in California, became unresponsive at a friend's apartment on February 22, 2019, and died later at the hospital.[721] Police investigated the scene as possibly suspicious.[722] Stringer Bryan Carmody received the resulting police report from an anonymous source.[723] Carmody prepared a news package based on the report, additional footage he shot, and other material, and sold it to three news outlets.[724] ABC 7 ran its report based on the package on February 23, 2019.[725] According to Carmody, on April 11, 2019, two San Francisco Police Department officers visited Carmody at his home.[726] They asked him to identify the source of the police report and he declined.[727] They asked what Carmody would do if he "was subpoenaed by a federal grand jury."[728] He said he would not reveal his source.[729] Almost a month later, on the morning of May 10, he was awoken, after having worked the night before, by a loud banging at the door.[730] He went to the door and found men in police uniforms attempting to force open the door with a sledgehammer.[731] He let them in and was immediately surrounded by about a dozen officers who showed him a search warrant, handcuffed him and

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						sat him down as they proceeded to search the rest of the house for other people at gunpoint.[732] After about three hours, officers learned that Carmody operated his company, North Bay News, out of another office.[733] They physically took him to the office in handcuffs, secured another warrant and searched it.[734] Carmody was in handcuffs for approximately six hours and was released at about 1:55pm.[735] Ultimately, police seized sixty-eight items, including notebooks, papers, about a dozen laptops, several mobile phones, and other newsgathering equipment.[736] Carmody has had to buy all new equipment to continue his work.[737] Although this is a state case, it is included here because two individuals who identified themselves to Carmody as FBI agents took him into his home office for about five minutes, without any SFPD officers present, and repeatedly asked him to identify his source and asked whether he had paid anything for the report.[738] He declined to identify his source, denied paying anything and repeatedly asked for a lawyer.[739] They presented him with FBI credentials, and the Washington Post reported that the FBI confirmed that while agents did not participate in the execution of the warrant, they were present at the search.[740] According to Carmody, the agents said Carmody was being investigated because this was a possible case of "obstruction of justice."[741] Carmody was handcuffed during the FBI encounter and agents offered Carmody his own cell phone to make a call, but he

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						declined because he did not want to give the agents his access code.[742] The agents offered to unlock the phone for Carmody.[743] Carmody has applied to quash the search warrants and to have his material and equipment returned under California law. His case will be heard on Tuesday, May 21, 2019. The Reporters Committee, joined by almost 60 co-amici, including 19 California-based news organizations and advocates, filed a letter urging the immediate return of Carmody's work product and documentary material and newsgathering equipment.[744] The Reporters Committee, the First Amendment Coalition, and the Northern California Chapter of the Society of Professional Journalists also filed a motion to unseal the remaining search warrant materials.[745]
Edward Gallagher/ Navy Times (top)	Trump	May 2019	N/A	A military judge removed the lead prosecutor after he admitted in court to including tracking software in emails sent to Special Operations Chief Edward Gallagher's defense attorneys and to a journalist at Navy Times.[746] The judge did not base the decision on allegations of	N/A	On May 10, 2019, the lead prosecutor in a high-profile war crimes case involving a decorated Navy Seal admitted in court to including tracking devices in emails sent to defense attorneys and a journalist at Navy Times.[748] Defense attorneys for Special Operations Chief Edward "Eddie" Gallagher had accused Commander Christopher Czaplak of sending emails containing what was reported to be a tracking beacon. It appeared as though the beacon was meant to identify the recipients' IP addresses.[749] Carl Prine, an editor at Navy Times, was one of the recipients of the emails.[750] The code was embedded in an unusual American flag logo in Czaplak's signature block.

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				prosecutorial misconduct, but instead concluded that an investigation launched into the incident could create a conflict of interest in the case.[747]		The incident raised both due process and press freedom concerns. Several months prior, reporting by Navy Times had drawn negative attention to the prosecution's handling of the Gallagher case.[751] Additionally, the Navy's top spokesman confirmed to Military Times that the Navy was actively investigating the unauthorized disclosure of information regarding the case.[752] Gabe Rottman of the Reporters Committee told Military Times that, "If it is true that a government official included tracking software in an email to a reporter surreptitiously to find out who the reporter is talking to, that potentially exposes that reporter's other sources in totally unrelated cases to government scrutiny."[753] Czaplak said in a court hearing that the tracking device was only intended to record where and when the recipients opened the email messages.[754] Gallagher, who had pled not guilty to a murder count involving the 2017 death of an injured teenage militant in Iraq, was scheduled for a court-martial trial on May 28. Yet Gallagher's lawyers argued that the prosecutors should drop the charges or be removed from the case.[755] In June, a military judge removed Czaplak from the case.[756] Later that month, a military jury found Gallagher not guilty on the charges related to murder,[757] though he was convicted on the charge of posing for photos with a corpse.[758]

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Julian Assange (top)	Obama (case explored and dropped) Trump[759] (case reopened and indictment pursued)	April 11, 2019 (initial indictment, dated March 6, 2018, unsealed)[760] May 23, 2019 (superseding indictment filed)[761]	On April 11, 2019, the Justice Department released a previously sealed indictment charging Assange with one count of conspiracy to violate the Computer Fraud and Abuse Act.[762] Assange was charged with one count of "conspiracy to commit computer intrusion," in violation of the following provisions: 18 U.S.C. §§ 371 (the general federal conspiracy statute); 1030(a)(1) (hacking to access classified information); 1030(a)(2) (unauthorized access to government computer); 1030(c)(2)(B)(ii)	N/A	N/A	There is an ongoing debate among academics and commentators as to whether Wikileaks founder Julian Assange should be considered a "journalist."[766] That debate is, however, legally irrelevant to the First Amendment issues in the case, and the Assange case is a national security media "leaks" case under the methodology of this survey.[767] Indeed, it's the first time the government has ever secured an indictment based in part on the act of "pure publication" (i.e., where solicitation or receipt of the information isn't part of the criminal act). Accordingly, it is included here. When counting the post-2009 leak cases, Reporters Committee lists the Assange case separately, as it does not involve the prosecution of a journalistic source (Manning's court martial is discussed above). Accordingly, we characterize the cases since 2009 as such: 17 journalistic source prosecutions, one prosecution of a Navy linguist for providing classified documents to a public archive and the 2019 leaks prosecution of Julian Assange, founder of Wikileaks.[768] Julian Assange is an Australian citizen who founded the website WikiLeaks in 2006.[769] Per its current website, WikiLeaks "specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying and corruption."[770] In April 2010, the website garnered international attention when it posted a video it dubbed "Collateral Murder" that appeared to show a U.S. military helicopter firing upon and ultimately killing several Iraqi civilians and two journalists in 2007.[771]

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			(sentence enhancement to five years as offense committed in furtherance of Espionage Act violation by Manning).[763] On May 23, 2019, a federal grand jury in the Eastern District of Virginia returned a superseding indictment against Wikileaks founder Julian Assange, adding 17 counts under the Espionage Act.[764] Under the superseding indictment, Assange was charged with violating, or conspiring to violate, the following			Later that year, Wikileaks began posting hundreds of thousands of classified documents on its website relating to the wars in Afghanistan and Iraq.[772] Assange shared these documents with Le Monde, El País, Der Spiegel, the Guardian and the New York Times.[773] These outlets separately edited and published revelations from the documents.[774] In May 2010, Chelsea Manning, a 25-year old soldier and intelligence analyst, was arrested and charged with passing to WikiLeaks the "Collateral Murder" footage, as well as the 250,000 State Department cables and 470,000 Iraq and Afghanistan battlefield logs.[775] Manning was also accused of sharing files about Guantanamo Bay detainees. In July 2013, Manning was sentenced to 35 years in prison after being found guilty of 20 counts (six of which were under the Espionage Act), although she was acquitted of "aiding the enemy."[776] In January 2017, President Obama commuted Manning's sentence to time served plus 120 days.[777] Officials in the Obama administration debated over whether to prosecute Assange in connection with the Manning disclosures.[778] The Obama Justice Department ultimately determined that bringing charges against Assange could threaten press freedom.[779] Ultimately, in 2017, then-Attorney General Jeff Sessions asked the U.S. Attorney for the Eastern District of Virginia to revisit the case against Assange.[780] On April 11, 2019, British police arrested Assange at the Ecuadorian embassy in London, in part based on an extradition

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			statutes: 18 U.S.C. § 2; § 793 (b)-(g).[765]			request by the United States. The Justice Department then released a previously sealed indictment that charged Assange with one count of conspiracy to violate the Computer Fraud and Abuse Act ("CFAA"). As explained in a Reporters Committee analysis, the indictment included an allegation that Assange agreed to help Chelsea Manning "crack" a password to a Defense Department computer.[781] The indictment stated that Assange agreed to assist Manning in cracking a password; that Manning sent Assange a "hash" value for someone else's password; and that Assange said that he tried to crack the password and asked for more information about the password.[782] The Reporters Committee noted at the time that conspiring to crack a password to a Pentagon computer generally is not something that a newsroom lawyer would counsel a reporter to do.[783] However, any prosecution under the CFAA, which imposes liability for accessing a computer "without authorization," still could raise concerns. Indeed, in unrelated cases, the courts and the government have interpreted the CFAA to include conduct such as consensual password sharing or web scraping by data journalists.[784] Although the initial CFAA count was relatively limited, on May 23, the Justice Department filed a federal grand jury superseding indictment in the Eastern District of Virginia against Assange.[785] The indictment added 17 counts under the Espionage Act to the one count of conspiring to violate the CFAA.[786]

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						As the Reporters Committee noted in a subsequent analysis, this is only the third time the U.S. government has brought Espionage Act charges against a non-government third party.[787] Counts two through 14 in the indictment stem from allegations that Assange coordinated with Manning on the receipt and publication of classified documents. Assange allegedly violated several parts of § 793 of the Espionage Act along with a violation of 18 U.S.C. § 2.[788] Per these laws, someone who aids, abets, counsels, commands, induces, or procures, or "willfully causes," an offense to be committed can be punished as the principal offender.[789] Further, counts 15 through 17 charge that Assange directly violated the Espionage Act when he "communicated" reports from the Afghanistan and Iraq wars, and the State Department cables, "by publishing [the documents] on the internet." As the Reporters Committee observed, "This is the first time the Justice Department has ever successfully obtained an indictment from a grand jury with Espionage Act charges based exclusively on the act of publication. . ."[790] The analysis noted that "pure publication" is "distinct from either conspiring with a source or aiding and abetting the illegal acquisition of classified information."[791] The superseding indictment prompted widespread concern among members of the news media and press freedom advocates.[792] The Reporters Committee called the theory of the case a "dire threat" to newsgathering and the "pure publication" counts a "direct threat to news reporting."[793]

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						Finally, the extradition element of this case also could raise concerns. In June 2019, Sajid Javid, the United Kingdom's home secretary, approved the United States' extradition request.[794] Though the matter is now before a London court, if extradited, Assange would be brought to the United States to face criminal charges.[795] The U.S.-U.K. extradition treaty, however, does not permit extradition for "political offenses."[796] Had the United States charged Assange with an "ordinary crime" like theft or straight hacking, were it found to not be politically motivated, such an offense would likely qualify for extradition. Spying and treason are widely understood, however, to constitute "political offenses." The concern here is that other countries could overlook a clear exception for "political offenses," and pressure the United States to extradite political dissidents or journalists who have been critical of hostile regimes. Such a practice would severely threaten press freedom around the world.
Henry Kyle Frese (top)	Trump	10/8/19 (indictment filed; arrested on 10/9/19)[797]	Two counts of willful transmission of national defense information in violation of § 793(d).[798]	Pending		On October 9, 2019, officials arrested 30-year-old Henry Kyle Frese, a counterterrorism analyst at the Defense Intelligence Agency, charging him with leaking classified information to two journalists for NBC and CNBC.[799] Frese is charged with two counts under the "insider" provision in the Espionage Act, 18 U.S.C. § 793(d).[800] This provision covers individuals with lawful access to national defense information who communicate, deliver, or transmit such information to an unauthorized person.

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						According to the indictment, in mid-April to early May 2018, Frese allegedly accessed a classified intelligence report "unrelated to his job duties."[801] The report contained national defense information classified at the "Top Secrecy/SCI" level, relating to a foreign country's weapon systems.[802] Various media outlets reported that the information pertained to Chinese weapons systems and missile tests.[803] The indictment also states that a week after accessing the report, Frese received a direct message from one of the journalists on Twitter, asking whether he would be willing to be speak to another journalist about the information.[804] Though the journalists are not named in the court documents, the Wall Street Journal reported that the two journalists were "identifiable" as a national security reporter at CNBC and a more senior national security reporter for NBC.[805] According to the indictment, Frese was at one point also personally involved with one of the journalists.[806] As indicated by the indictment, investigators were likely able to obtain the contents of the Twitter direct messages pursuant to the Stored Communications Act, 18 U.S.C. § 2703.[807] It is also likely that officials were able to obtain metadata from Frese's phone provider, given that the indictment states that Frese contacted both journalists via telephone.[808] After one of the journalists published a story with information from the report, the FBI sought and the judge approved a telephonic wiretap of Frese's phone,[809] marking, to our knowledge, the first use of a telephonic wiretap in an unauthorized disclosure case. The government was thereafter able to intercept certain portions of Frese's text messages and calls. Then, in September 2019, Frese allegedly accessed two other reports containing classified information.[810] The FBI intercepted

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						additional communications in which Frese allegedly provided information to the second journalist.[811] Frese was arrested on October 9 at the DIA in Reston, Virginia, as he arrived for work.[812] The Justice Department unsealed the indictment and announced the charges the same day. In announcing the indictment, Assistant Attorney General John Demers said, "This is one of six unauthorized disclosure cases the department has charged in just over two years, and we will continue in our efforts to punish and deter this behavior."[813] Additionally, Zachary Terwilliger, the U.S. attorney for the Eastern District of Virginia, expressly said these prosecutions are meant to send a message to "leakers."[814] Frese was released on bond on October 11, 2019.[815] Per the Washington Post, "Frese is barred from contacting any potential witnesses or co-defendants in the case. The government has declined to say whether they intend to prosecute the two reporters."[816]

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 Calvin C. Jillson and Rick K. Wilson, Congressional Dynamics: Structure, Coordination, and Choice in the First American Congress app. D, at 324 (1994).

3 *Id.*

4 *Id.*

5 Craig Nelson, Thomas Paine: Enlightment, Revolution, and the Birth of Modern Nations 126 (2006).

6 *See* Gabriel Schoenfeld, Necessary Secrets: National Security, the Media, and the Rule of Law 74 (2010).

[7] For a comprehensive study of government secrecy in the founding era, see Daniel N. Hoffman, Governmental Secrecy and the Founding Fathers: A Study in Constitutional Controls (1981). Hoffman contends that the Federalist period, 1787-1800, involing "an earnest and only partially successful effort to bring secrecy behavior under the control of constitutional norms and mechanisms," and that while the separation of powers was intended and established to prevent "arbitrary and excessive secrecy," the actual system was affected by the growth of American political parties and the foreign policy crises at the end of the 18th century. *Id.* at 9-10. The latter two phenomena "discouraged" Congress from acting as an effective check on executive secrecy, though, as Hoffman says, "Party competition and public opinion were increasingly effective forces for publicity over time." *Id.* at 10.

[8] Letter from Thomas Paine to the Congress of the United States (Jan. 8, 1779), https://perma.cc/7W4M-7EGE.

[9] Thomas Paine, Collected Writings 307 (Eric Foner ed., Library of America 1995) (10th printing).

[10] *See generally* Continental Congress Committee of Secret Correspondence, 1775-78, Extracts from Foreign Affairs Journal, Volume 1, Library of Congress, https://www.loc.gov/item/mtjbib000136/.

[11] Nelson, *supra* note 5, at 126.

[12] *Id.*

[13] *Id.* at 127-28.

[14] *Id.* at 128.

[15] *Id.*

[16] *Id.* at 129.

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[311] *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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[483] *See generally* Jane Mayer, *The Secret Sharer*, New Yorker, May 23, 2011, https://www.newyorker.com/magazine/2011/05/23/the-secret-sharer.

[484] *See Ex-Official for N.S.A. Accepts Deal in Leak Case*, N.Y. Times, June 10, 2011, https://www.nytimes.com/2011/06/11/us/11justice.html.

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

[486] 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.").

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

[488] 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).

[489] 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.

[490] Julie Tate and Ernesto Londono, *Judge Finds Manning Not Guilty of Aiding the Enemy, Guilty of Espionage*, Wash. Post, July 30, 2013, https://www.washingtonpost.com/world/national-security/2013/07/29/e894a75c-f897-11e2-afc1-c850c6ee5af8_story.html?utm_term=.ec4feb5116fc.

[491] 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.

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

[493] *Id.* at 520.

[494] Savage and Huetteman, *supra* note 491.

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

[496] *See* Stephen Aftergood, *Wikileaks Fails "Due Diligence" Review*, Fed'n Of Am. Scientists, June 28, 2010, https://fas.org/blogs/secrecy/2010/06/wikileaks_review/.

[497] *See, e.g.*, Glenn Greenwald, *Is Disclosure of Podesta's Emails a Step too Far? A Conversation with Naomi Klein*, The Intercept, Oct. 19, 2016, https://theintercept.com/2016/10/19/is-disclosure-of-podestas-emails-a-step-too-far-a-conversation-with-naomi-klein/.

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

[499] 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.

[500] 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.

[501] *Id.*

[502] 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.

[503] *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.

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

[505] 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/.

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[507] *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.

[508] 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.

[509] 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).

[510] 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/.

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

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

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

[514] 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).

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

[516] 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.

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

[518] Risen, *supra* note 516, at 193-216.

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

[520] *See id.* at 240.

[521] 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.

[522] *Id.*

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

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

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

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[527] 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.

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[529] 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.

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

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[546] *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.

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