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Bio: Thomas Drake

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<https://www.whistleblower.org/print/80>

Thomas Drake is a whistleblower who has dedicated his life to safeguarding his country. A ten-year veteran of the Air Force (specializing in intelligence), he served as a CIA analyst and contractor for the National Security Agency (NSA) for 12 years before joining the Agency full time in 2001.

When Drake saw mass waste and abuse in the billions of dollars spent on Operation Stellar Wind, he took his concerns to his superiors at NSA, to Congress and to the NSA and Department of Defense Inspectors General (DoD IG). Retaliation soon followed. Management took aim at Drake's career by removing his responsibilities and shifting him to a meaningless position. He was increasingly isolated, singled-out, transferred away from projects, and marginalized. After his cooperation with DoD IG, which validated his concerns, Drake became the target of a "leak" investigation related to the infamous NSA warrantless wiretapping scandal—despite the fact that he had nothing to do with the "leak."

After reaching out to multiple proper oversight bodies, nothing changed. Finally, Drake made legal disclosures of unclassified information to a *Baltimore Sun* reporter, who wrote a series of award-winning articles that exposed the billion-dollar NSA boondoggle.

Reprisal against Drake was then ratcheted up to the maximum: criminal prosecution under the Espionage Act of 1917. The government conducted an armed raid of Drake's home, interrogated him for hours, confiscated his personal notes and computers, and threatened him with spending "the rest of his natural life behind bars." The Department of Justice (DOJ) indicted Drake under the Espionage Act with improper "retention" – not disclosure – of allegedly classified information, and Drake faced decades in prison.

Justice Department officials interrogated Drake for hours on several occasions. Knowing he had done nothing wrong, Drake cooperated with the pre-textual "leak" investigation until he realized that the purpose was to retaliate against him. The officials pressured Drake multiple times to take a plea deal, threatening him with spending the "rest of his natural life behind bars" if he didn't – but Drake "refused to plea bargain with the truth."

Drake hoped that the new Obama administration – one that had touted the importance of federal whistleblowers during the 2008 campaign – would reverse direction and cease the use of the criminal justice system to go after whistleblowers, but after being under a cloud for two and a half years, the DOJ finally indicted him in April 2010.

Charged under 10 separate counts, Drake faced 5 charges under the Espionage Act – a 1917 piece of legislation intended to be used against spies. Drake was only the *fourth case* in U.S. history where the government used the Act to go after someone for allegedly mishandling classified materials – Pentagon Papers whistleblower Daniel Ellsberg was the first.

Despite statements to the press to the contrary, the DOJ did not charge Drake with disclosing classified information to a reporter, but, rather, accused him of improper retention of classified information. Despite years investigating him, the DOJ had no evidence of improper disclosure of classified materials. Nonetheless, Drake faced the possibility of decades in prison.

Drake Turns To GAP

Though the criminal defense team for Drake was headed by the federal public defender's office in Maryland, his case drew the attention of dozens of legal experts and advocates. Among these was GAP's National Security & Human Rights team ([Jesselyn Radack \(/node/68\)](#) & [Kathleen McClellan \(/node/67\)](#)) who spoke out against the government's treatment of Drake in a *Los Angeles Times* (<http://articles.latimes.com/2010/apr/27/opinion/la-oe-radack-20100427>) op-ed (<http://articles.latimes.com/2010/apr/27/opinion/la-oe-radack-20100427>), which prompted Drake to contact and, eventually, retain the services of GAP. In addition to providing extensive legal advice on whistleblower issues and filing an amicus curie brief in his criminal case, GAP introduced him to other advocates and attorneys (some of whom helped on his defense team) and started a massive media advocacy campaign to put public pressure on the DOJ.

Mainstream media began taking notice of Drake's case and GAP's advocacy. A few [stories](#) (<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/13/AR2010071305992.html>) began trickling out over the course of several months. In March 2011, just three months before his trial was slated to begin, Drake received the [Ridenhour Prize for Truth-Telling \(http://www.ridenhour.org\)](#) – widely regarded as the

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highest honor for an American whistleblower.

GAP helped coordinate two high-profile back-to-back media pieces. In mid-May, award-winning investigative journalist Jane Mayer detailed the Drake case in an extensive **New Yorker cover story** (http://www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer) followed by a piece on *60 Minutes* less than a week later.

GAP harnessed this coverage and started an **online petition** (<http://www.change.org/petitions/demand-accountability-for-the-selective-prosecution-of-nsa-whistleblower-tom-drake>) in support of Drake. GAP's petition targeted the Attorney General and heads of the Congressional Judiciary Committees, demanding to know why the Justice Department was prosecuting Drake for protecting Americans and exposing gross waste. In just a few weeks, nearly 5,000 people signed the online petition, which GAP delivered to Congress and the Justice Department.

The Case Against Drake Collapses

In the face of mounting public support for Drake, the overwhelming media coverage, and several rulings against the DOJ in court, the case against Drake imploded just four days before the trial was set to begin. The DOJ agreed to drop the ten-count felony indictment, including all of the Espionage Act charges. Drake pled guilty to a mere misdemeanor: "exceeding authorized use of a computer." One month later, **Drake was sentenced to one year of probation and community service** (http://www.washingtonpost.com/national/national-security/ex-nsa-manager-has-reportedly-twice-rejected-plea-bargains-in-espionage-act-case/2011/06/09/AG89ZHNH_story.html), a far cry from the government's goal of putting Drake in jail for "the rest of his natural life." At sentencing, the judge sharply criticized the DOJ's handling of the case, calling it "unconscionable." Radack, who managed GAP's handling of the Drake case, stated that the resolution was "a victory for national security whistleblowers and against corruption inside our intelligence agencies."

A few weeks after the sentencing, in a remarkably rare move, former George W. Bush classification czar J. William Leonard **filed a complaint** (http://www.nytimes.com/2011/08/02/us/02secret.html?_r=2) against NSA and DOJ, seeking punishment for the officials who wrongfully classified the documents that Drake allegedly retained. Leonard, who was slated to serve as an expert on Drake's criminal defense team, **stated that the documents contained no secrets** (<http://articles.latimes.com/2011/aug/10/opinion/la-oe-leonard-classified-information-20110810>), and "should never have been classified in the first place."





In the days after his sentencing, Drake remained anything but silent. Together, he and Radack penned a **Philadelphia Inquirer op-ed** (http://articles.philly.com/2011-08-01/news/29838846_1_whistle-blowers-jesselyn-radack-obama) excoriating the Obama administration for the criminalization of whistleblowing for national security workers. About a month later, another prominent op-ed appeared, this time in the **Washington Post** (http://www.washingtonpost.com/opinions/why-are-we-subverting-the-constitution-in-the-name-of-security/2011/08/25/gIQANrheJ_story.html), explaining how his actions were driven by his oath to the Constitution.

Drake won the battle for his freedom, but the war against whistleblowers continues. Under the current system, intelligence community whistleblowers face an impossible choice. They can either risk their careers and, quite possibly their freedom, or remain silent.

(/bio-william-binney-and-j-kirk-wiebe)

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