

Legal Sidebar

The Law and Leaks to the Press

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President Trump has expressed [concern](#) over leaks to the press from within the Executive Branch. Earlier administrations, particularly the [Obama](#) Administration, acted upon similar concerns to prosecute officials, employees, and contractors who leaked classified information or certain military information to the press. Officers and employees may also be subject to disciplinary action for leaks regardless of the nature of the information. However, they may claim some relief from disciplinary action under the [whistleblower](#) protection provisions. Few, if any, journalists have been prosecuted [to date](#), but they may end up in jail for refusing to divulge their sources to a [grand jury](#) investigating a leak.

Criminal Offenses

The criminal laws at issue vary somewhat according to the circumstances in a given case. *See generally* CRS Report No. [R41404](#). These are some of the charges that prosecutors have used in the past.

Disclosure of national defense information (18 U.S.C. §793(d),(e)): It is a federal crime, punishable by imprisonment for up to 10 years, to disclose national defense information to someone who is not entitled to receive it. At least one [court](#) has indicated that “national defense information” consists of “all matters that directly or may reasonably be connected with the defense of the United States against any of its enemies” that are not publicly known. In addition to the offenses discussed below, almost every press leak case involves a conviction for, or at least charges of, a violation of Section 793 of the Espionage Act. Perhaps the earliest and most famous involves Daniel [Ellsberg](#). Ellsberg was a RAND Corp. employee who in 1971 supplied the press with the “Pentagon Papers,” a classified study of U.S. decision making associated with the growingly unpopular war in Vietnam. His trial on espionage charges ended in dismissal on grounds unrelated to the scope of Section 793.

Theft of federal property (18 U.S.C. §641): It is a federal crime, punishable by imprisonment for up to 10 years, to steal U.S. governmental secrets. In one of the earlier press leak cases, Samuel [Morison](#), a naval intelligence employee, wrote an article for a British publication using information he gleaned from a classified intelligence report. He was convicted of violating Sections 641 and 793. Chief Justice Rehnquist, sitting as a circuit justice, [denied](#) Morison’s petition for bail pending appeal with the observation that the Chief Justice had no doubt of the application of Section 641. He was sentenced to 2 years in prison and was later [pardoned](#) by President Clinton. Jeffrey Sterling and Edward Snowden, whose cases are discussed below, were charged with violations of Section 641 in their press leak cases.

Disclosure of classified information relating to communications activities (18 U.S.C. §798): It is a federal crime, punishable by imprisonment for up to 10 years, to disclose classified information relating to U.S. or foreign communications intelligence activities. Edward Snowden, a National Security Agency (NSA) contractor, leaked extensive information to the press about NSA’s surveillance programs. He was [charged](#) with violating Section 798 and other offenses. He fled to Russia before the charges could be pursued.

Computer security (18 U.S.C. §1030(a)): It is a federal crime, punishable by imprisonment for up to 10 years, to acquire information by means of computer access without authorization or in excess of authorization. Thomas [Drake](#), a National Security Agency (NSA) official, [pleaded](#) guilty to a computer security offense relating to discussions he had with Baltimore Sun reporters concerning purported NSA mismanagement. The plea agreement came after the trial court

had ruled against the government concerning the admissibility of evidence relating to classified information. Drake was sentenced to probation for a year and 240 hours of community service. The same offense, with others, ended in Pvt. Manning's court martial conviction for the massive dump of classified documents to WikiLeaks. Manning was sentenced to 35 years' incarceration, served 7, and had the remainder of the sentence [commuted](#) by President Obama.

Disclosing the identity of a secret agent (50 U.S.C. §3121): It is a federal crime, punishable by imprisonment for up to 15 years, to disclose the identity of a covert government agent, directly or indirectly. John [Kiriakou](#), a CIA agent, disclosed to various journalists information relating to CIA interrogation techniques, including waterboarding. He pleaded guilty to revealing an agent's identity and was sentenced to 30 months in prison, after the trial court [rejected](#) his contention that a Section 793 conviction for espionage required proof that he intended to injure the United States or aid a foreign country.

Cover-ups: It is a federal crime to lie or otherwise obstruct a federal criminal investigation (18 U.S.C. §§[1001](#), [1623](#), [1503](#), [1512](#)). The maximum sentence for such offenses varies from 5 to 20 years. Federal officials, ensnared in a leak investigation, have often been prosecuted for lying to the FBI or a grand jury or for attempting to destroy emails or other evidence. I. Lewis "Scooter" Libby, the chief of staff for Vice President Cheney, questioned in connection with allegations of "outing" a CIA agent, was convicted of lying to FBI agents and the grand jury about leaks to a Time magazine reporter. Libby was sentenced to 30 months in prison, but President George W. Bush [commuted](#) his sentence. More recently, Jeffrey Sterling, a former CIA agent, was [indicted](#) for obstruction of a federal investigation for deleting emails in the context of leaks to a New York Times reporter regarding a purported CIA scheme to disrupt Iran's nuclear weapons program. [Sterling](#) was convicted and sentenced to 42 months in prison. His [appeal](#) is pending.

Liability of members of the media: During the Vietnam War, the Supreme Court refused to uphold a bar on publication of the [Pentagon Papers](#). Justice White pointed out in a concurring opinion that the Court's action did not mean that the newspapers and their reporters would be immune from criminal prosecution if they elected to publish the papers. Nevertheless, few, if any reporters, have ever been prosecuted for such leaks. On other hand, reporters have gone to jail for refusing to disclose the source of a leak. For example, New York Times reporter Judith Miller spent several months in jail for civil contempt because she would not identify before a [grand jury](#) her source in the case that ultimately led to the prosecution of Scooter Libby.

Whistleblowers (5 U.S.C. §2302(b)(8))

Not every leak to the press is a federal crime. Nevertheless, federal employees who leak government information may be fired or otherwise disciplined. As long as the disclosure does not involve classified information or is not otherwise a crime, federal employees are entitled to relief from any disciplinary action taken in retaliation for leaks to the press, which they reasonable believe evidences "(i) a violation of law, rule, or regulations, (ii) gross mismanagement, a gross of funds, [or] an abuse of authority,[or (iii)] a substantial and specific danger to public health or safety."

Congress has broad discretion to amend each of these provisions of law, within the limits which the Constitution sets.

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