



Judge Delivers Rebuke to Prosecutors in Sentencing NSA Official

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The recent sentencing of a government intelligence official saw a dramatic and unusual rebuke of the U.S. Department of Justice by a federal judge. Four years after searching the home of National Security Agency official Thomas Drake, who was suspected of illegally leaking classified information to a reporter, and more than year after actually indicting him on 10 felony counts, the government dismissed those charges on the eve of trial in June 2011 and agreed to a single misdemeanor count of exceeding authorized use of a government computer.

At Drake's July 15 sentencing, U.S. District Judge Richard D. Bennett in the District of Maryland was rightfully outraged at the delay in both bringing the charges and ultimately dropping the case, calling the four-year period "unconscionable." Judge Bennett continued:

It is at the very root of what this country was founded on against general warrants of the British. It was one of the most fundamental things in the Bill of Rights that this country was not to be exposed to people knocking on the door with government authority and coming into their homes. And when it happens, it should be resolved pretty quickly, and it sure as heck shouldn't take two and a half years before someone's charged after that event.

Drake was investigated after he had spoken to an undisclosed newspaper, identified in news outlets as the Baltimore Sun, about the perceived waste of \$1.2 billion of government money on a failed computer system called TrailBlazer which was designed to capture wiretapped data obtained without warrants. Drake considered himself a whistleblower exposing government waste, but the government chose to view the disclosure as a potential breach of national security. Following an Obama administration directive to crack down on security leaks, federal prosecutors charged Drake under the Espionage Act of 1917 — even though he was not accused of spying and the act is widely regarded as vague and overly broad.

This appears to be a case of whistleblower retaliation. The government was displeased that Drake exposed questionable management practices at the NSA and tried to make him pay by pursuing charges that could have brought a 35-year sentence. Although the prosecutor, William M. Welch, asked for a \$50,000 fine, the judge declined to impose any fine, instead sentencing Drake to probation and 240 hours of community service. Judge Bennett stated, "There has been financial devastation wrought upon this defendant that far exceeds any fine that can be imposed by me. And I'm not going to add to that in any way."

The Drake prosecution was seriously flawed in a number of respects. No American should have to wait for years after a serious invasion such as a search of a home while the prosecution tries to piece together a case against him. This is a breach of one of the central tenets on which this nation was founded. This case also exemplifies the problem of prosecutorial overreaching. The prosecution seemed to overlook the facts in order to obtain a desired result in a hot-button case. We hope the government learns that such breaches of citizens' rights will not be rewarded, and that it should not pursue a headline conviction at the expense of justice.

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