

GOVERNMENT WHISTLEBLOWERS US MILITARY

## If Donald Trump Went to Jail for Violating the Espionage Act, He'd Be an Exception

*It's only whistleblowers who do hard time. Generals and high officials typically get just a slap on the wrist.*

By James Bamford

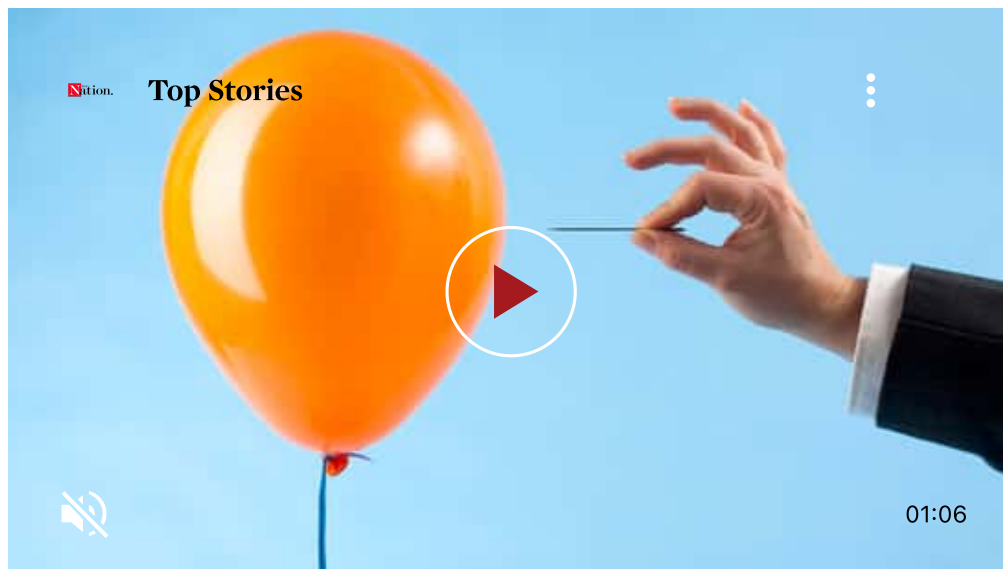
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Retired Marine Gen. James Cartwright arrives for a hearing at US District Court, October 17, 2016, in Washington, D.C. Cartwright was charged with making false statements during a federal investigation. (*Mark Wilson / Getty Images*)

Sitting in his isolation cell in United States Penitentiary Marion—a hulking edifice of cement, bars, and razor wire in Illinois built to take the place of Alcatraz—Daniel Hale could be forgiven if he felt little sympathy for Donald Trump. Unlike the former president, who flew to his arraignment in his private jet and celebrated afterward with a gala party at his New Jersey country club, Hale was brought to the courthouse in steel handcuffs and then quickly thrown in a dank jail cell. Although both faced charges related to national security, Hale was a courageous whistleblower and Trump is an egotistical politician.

There has long been an ocean-wide gap between the treatment of low-ranking national security whistleblowers and top-ranking officials charged with national security crimes. Hale served in the US Air Force as an enlisted airman assigned to the National Security Agency (NSA) in Afghanistan, where he helped identify targets for assassination. In 2014, after leaving the Air Force and taking a job as a contractor for the National Geospatial-Intelligence Agency, he leaked classified documents to *The Intercept*, including 11 labeled “secret” or “top secret.”



**The Right's War**

The resulting eight-part series, "The Drone Papers," by reporter Jeremy Scahill, described a system of remote drone assassination often operating with no more accuracy than a game of darts in a local bar. Among the revelations was Operation Haymaker, a Special Operations campaign in northeastern Afghanistan. According to the documents, US air strikes between January 2012 and February 2013 killed more than 200 people. Of those, only 35 were the intended targets. During one five-month period of the operation, nearly 90 percent of the people killed in air strikes were not the intended targets. In August 2014, FBI agents, guns drawn, raided Hale's house. He was later charged with disclosing intelligence information, along with theft of government property, and after pleading guilty was sentenced to 45 months in prison.

Three years after agents raided Hale's house, Reality Winner, another former Air Force enlisted person working as a contractor for the NSA, was arrested. She was later given the longest prison sentence ever imposed for an unauthorized leak to the media—again to *The Intercept*. Winner's leak consisted of a single document that described Russian hacking in the 2016 US elections. Her sentence was five years and three months in federal prison.

Still another NSA worker turned whistleblower was Thomas Drake. In 2010, he was charged with five counts under Section 793(e) of the Espionage Act: willful retention of national defense information. Other charges included obstruction of justice and making a false statement. Drake allegedly leaked to *The Baltimore Sun* details revealing massive amounts of fraud and waste surrounding a program known as Trailblazer, as well as other NSA programs. In all,

Drake faced 35 years in prison. But it was all a sham. Hired as a consultant by Drake's federal public defenders, James Wyda and Deborah Boardman, I was able to show that all the alleged "secret" information was in fact unclassified. Thus, after four years, the case was dropped and Drake pleaded guilty to a simple misdemeanor. Finally, in open court, the judge excoriated the prosecution for bringing the case in the first place, and putting Drake through hell for nearly half a decade.

I had also been a target. In 1982, as I was working on my first book about the NSA, *The Puzzle Palace*, the Reagan Justice Department threatened me with prosecution under the same section of the Espionage Act that Trump and others were charged with: willful retention of national defense information. The documents in question dealt with a secret Justice Department criminal investigation of the NSA for illegal domestic eavesdropping. Although they were originally classified Top Secret Umbra, a codeword for high-level NSA secrets, the Justice Department had declassified them—with some redactions—during the Carter administration and released them to me under the Freedom of Information Act.

But a few months later, Ronald Reagan moved into the White House, and now Justice demanded that I give them back. Hoping to protect the NSA from embarrassment, they *reclassified* them as Top Secret Umbra. I refused to return them, arguing that they showed decades of illegal domestic spying operations by the NSA. The Justice Department then threatened me with years in prison under the Espionage Act. In my defense, I cited an executive order on secrecy that stipulates that once a document has been declassified, it *can't*

be reclassified. Reagan then changed the executive order to say that documents *can* be reclassified, but I still refused to return them and included the material in my book. In the end, the Justice Department gave up. Instead, it raided a private library I had used in my research and ordered that unclassified documents mentioned in my book that dealt with NSA be classified and removed.

The Obama/Biden administration brought criminal-leak-related cases against 10 individuals—more than twice as many cases as were brought under all previous presidents combined. But while most low-level whistleblowers faced years behind bars, high-ranking officials who leaked for their own benefit were usually given a pass.

Around the same time that the government was going after whistleblowers Hale, Winner, Drake, and others, retired four-star Marine general James E. “Hoss” Cartwright—a former vice chairman of the Joint Chiefs of Staff—was also leaking top secret national security information to the press. But rather than revealing sloppy targeting practices that left hundreds of innocent civilians dead, or Russian cyber attacks, or fraud and waste at the NSA, Cartwright was disclosing highly secret details about a top secret joint US/Israeli cyberwar attack on Iran—information that could have led to a violent retaliatory assault by Tehran. And rather than blowing a whistle, he was simply blowing the Obama administration’s horn, boasting of the government’s success to reporters for *The New York Times* and *Newsweek* for partisan political benefit.

When questioned about the leaks by the FBI, Cartwright simply lied and denied the charges. However, after he was confronted with e-mail exchanges that proved he had been lying to the agents, Cartwright suddenly “began shaking [and] losing color in his face,” according to the court filing. “His speech became slurred and he subsequently slumped over in this chair and lost consciousness.”

In the end, Cartwright—who was known as “Obama’s favorite general”—was given a pass on the leaking and charged only with lying to the FBI, a charge to which he pleaded guilty, expecting a sentence ranging from a \$500 fine to six months in prison. He was therefore stunned when the prosecution asked for confinement of two years, even though the maximum sentence was five years. But barely a week later, Obama came to his rescue with a full pardon, something that “stunned many national security lawyers,” according to *Yahoo! News*.

Cartwright was not alone. Around the same time, Obama’s CIA director, David Petraeus, a retired US Army general, was also leaking extremely secret information for his own personal gain, as part of an illicit affair. According to court documents, when Petraeus returned from Afghanistan, where he was commander of the multinational military mission, he secretly and illegally kept in his possession “Black Books” containing numerous highly classified documents. These documents included “the identities of covert officers, war strategy, intelligence capabilities and mechanisms,” as well as “national defense information, including Top Secret/SCI and code word information.” Petraeus then illegally gave them to his paramour, Paula Broadwell, to be used as source material for his biography,

which she was writing, titled *All In: The Education of General David Petraeus*. In other words, the purpose of the leak was personal ego-boosting rather than courageous whistleblowing.

Before long, Petraeus's leaking was discovered and, when asked by the FBI if he had ever provided classified information to Broadwell, Petraeus, like Cartwright, simply lied to the agents. Nevertheless, unlike many of the whistleblowers arrested under Obama, Petraeus was never even charged with making false statements to the Bureau. Eventually, he reached a sweetheart deal with Justice whereby he was allowed to plead guilty to one misdemeanor count of unauthorized removal and retention of classified material. He then got off with probation, a \$100,000 fine, and no jail time.

Only time will tell whether Donald Trump will end up on the chow line in federal prison alongside whistleblowers like Daniel Hale—or back in the White House, signing his own pardon and avoiding jail like other top officials.

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