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The Espionage Act: Why Tom Drake was indicted

Nearly two years before 9/11, America's largest intelligence agency had recordings of three of the al Qaeda hijackers plotting an attack. But the information, obtained by the National Security Agency, wasn't analyzed in a way that could uncover the plot.

Inside the super-secret NSA, several analysts and managers believed the agency had a powerful tool that might have had a chance to head off 9/11. But it wasn't used.

One of those agency insiders was Thomas Drake, who thought taxpayer money was being wasted on useless intelligence gathering projects while promising technology was ignored.

Drake tried to get the word out. But now, as a result, he has been charged under the Espionage Act of 1917 and if convicted of all charges could spend the next 35 years of his life in prison. The government says he betrayed his country.

Drake says the only thing he betrayed was NSA mismanagement that undermined national security.

After a long career in U.S. intelligence, Drake never imagined he'd be labeled an enemy of the United States. As a young airman, he flew spy missions in the Cold War; in the Navy, he analyzed intelligence for the joint chiefs at the Pentagon.

Later, he worked for defense contractors in the highly technical world of electronic eavesdropping. He became an expert in sophisticated, top secret computer software programs and ultimately rose, in 2001, to a senior executive job at the NSA.

Drake told correspondent Scott Pelley his first day on the job was Sept. 11, 2001.

"NSA went into immediate crisis management mode. We had failed to protect the United States of America," he told Pelley.

Asked if he felt that was a failure of the NSA, Drake told Pelley, "The entire national security establishment - it was a failure, a fundamental systemic breakdown."

Extra: Spies and whistleblowers

Extra: Eavesdropping on the world

Extra: The anonymous source

Part of the failure at the NSA, the largest U.S. intelligence agency, was in its old technology. The agency eavesdrops on the communications of the world. But in the 1990s it was becoming ineffective, overwhelmed by the explosion of digital data.

"Vast volumes of data streaming across all kinds of different networks, wired, wireless, phones, computers, you name it," Drake explained.

"And what does that look like to NSA? Coming into building in Maryland?" Pelley asked.

"Choking on it," Drake said. "Just incredible amounts. Even just storing it was becoming a challenge."

Most of what the agency collected went unanalyzed, including clues pointing to 9/11. Kirk Wiebe and Bill Binney were career NSA intelligence analysts who were working on the problem.

"We were greatly saddened and shocked by 9/11, but it didn't come as a total surprise. We knew there was a vulnerability, a lack of understanding of the data that put NSA in a weak position," Wiebe said.

Recognizing that vulnerability in the late 1990s, Binney, a legendary NSA mathematician, led development of a revolutionary computer system to collect, isolate and connect important information like phone calls and financial transactions. Its code name was "Thin Thread."

"Thin Thread was fundamentally dedicated to collecting and processing and ultimately analyzing the vast reams of digital data. It was a breakthrough solution," Drake explained.

Produced Glenn Silber and Graham Messick Binney was pushing to use it before the attack on America. "We proposed it for January of 2001," he recalled.

"Nine months before 9/11?" Pelley asked.

"Right," Binney replied.

"Now, there is no answer to this next question, 'cause we'll never know. But if Thin Thread had been deployed worldwide at the point that it was ready, is there a chance that information could've been picked up that might have headed off 9/11?" Pelley asked.

"Indeed," Wiebe said.

"Absolutely," Binney added. "We had planned on going after all the appropriate targets at the time."

"Al Qaeda, Osama bin Laden? Ayman al-Zawahari, these were targets that you intended to focus thin thread on, is that correct?" Pelley asked.

"Yes. Well, I mean, the whole terrorist network, yeah," Binney said.

"And if you had been able to do that?" Pelley asked.

"Well, we would've gotten the data. Whatever that was there," Binney said.

"I believe it's very likely that, at least from the NSA perspective, the critical intelligence related to al Qaeda associated movements would've been detected and reported," Drake told Pelley.

Asked if there was a chance Thin Thread could have detected the 9/11 plot, Drake said, "It's one of the great tragedies in the history of NSA what could've been."

After 9/11, Drake felt America was threatened as long as Thin Thread was confined to the lab. But others at NSA doubted Thin Thread was up to the job.

One of them was Lieutenant General Michael Hayden, the head of the agency: he wanted to transform the agency and launched a massive modernization program, code named: "Trailblazer." It was supposed to do what Thin Thread did, and more.

Trailblazer would be the NSA's biggest project. Hayden's philosophy was to let private industry do the job. Enormous deals were signed with defense contractors. Binney's Thin Thread program cost \$3 million; Trailblazer would run more than \$1 billion and take years to develop.

"Do you have any idea why General Hayden decided to go with Trailblazer as opposed to Thin Thread, which already existed?" Pelley asked.

"I believe he was convinced by others that going with a large-scale, industrial strength solution was the approach that NSA needed to take. You can't really understand why they would make that kind of a decision without understanding the culture of NSA," Drake said.

Asked to elaborate, Drake said, "Careers are built on projects and programs. The bigger, the better their career."



This might be just another Washington tale of competing defense projects and disgruntled losers - except the winner in this case, Trailblazer, was in deep trouble from the start. Contractors burned

through hundreds of millions of dollars and still couldn't give the NSA the solution it urgently needed.

As cost overruns soared and deadlines were broken, Drake complained to his superiors. Then, privately, he informed the intelligence committees on Capitol Hill. He sought out Diane Roark, the top Republican staffer on the House Intelligence Committee who was responsible for overseeing the NSA.

"First he tried internally trying to get things changed. He went to Congress. He went to the Senate as well as the House," Roark remembered.

Asked if Drake went "by the book," Roark said, "He went by the book internally."

But Roark says in the years after 9/11, congressional committees were reluctant to kill any intelligence program, even one as mismanaged as Trailblazer. So, Roark, Bill Binney and Kirk Wiebe took an extraordinary step: they filed a confidential complaint with the Department of Defense's inspector general, calling for an investigation of Trailblazer and Thin Thread.

Drake volunteered to be a witness.

"Why did we launch the IG complaint? Out of total abject frustration. Knowing that we had something so important to share, and thought we had witnessed wrongdoing that needed to be addressed," Wiebe explained.

For two years, Drake was the most important witness for the inspector general. But in the end, the Department of Defense investigation was stamped "classified," which hid the Trailblazer debacle from public view.

As his frustration grew, Drake says he was shocked to learn about something else happening at the agency post 9/11: he learned of a

top secret NSA program that became known as "warrantless wiretapping."

"It was no longer necessary to follow the law. A huge Pandora's Box had been opened up," Drake said.



On orders from the White House, the NSA was listening in on people in the United States, without a warrant from a judge.

"And this is where I began to have grave concerns about the decisions that were made to bypass the Constitution, willfully and deliberately, as a result of 9/11. I took my grave concerns up with the general counsel at NSA. I spoke with one of their lead attorneys. He said, 'Don't worry about it, Tom. It's all legal,'" Drake told Pelley.

"It was legal because the White House said it was legal?" Pelley asked.

"Yes," Drake said.

After four years of reporting through proper channels, Drake noticed that the Baltimore Sun newspaper had begun a series of articles about trouble at the NSA.

"There's one final step that could be taken. But it was fraught with significant risk," Drake remembered.

Anonymously, Drake contacted Sun reporter Siobhan Gorman and became an unnamed source for her, starting with an article about Thin Thread, headlined "NSA Shelved Better Program That Sifted Calls." Another article told readers that mismanagement at the NSA continued years after 9/11.

Drake denies he ever communicated classified information to Siobhan Gorman. "Not once ever. That was one of the fundamental rules. Whether it was oral communication, whether it was written, electronic or later on, even in hard copy. It was all unclassified. Period," he told Pelley.

But after the articles, the FBI raided the homes of all the people who had filed that confidential complaint with the Defense of Department inspector general asking for the Trailblazer investigation - Kirk Wiebe, Bill Binney and Diane Roark.

"They came busting in. I was in the shower at the time. And one of them came running up and was pointed a gun at my eyeballs. And pulled me out of the shower," Binney remembered.

But only Drake was charged. He is being advised by the Government Accountability Project, a Washington legal organization that defends whistleblowers. Drake told us that he knew he had violated a confidentiality agreement with the NSA and he thought he might lose his job, but the prosecutors charged him under the Espionage Act - not for divulging classified information, but for taking classified papers home without permission. He faces up to 35 years.

"How does a man see 9/11 happened, know that some part of it is due to corruption and mismanagement and sleep at night. How does a man do that? He obviously couldn't," Wiebe told Pelley.

Prosecutors declined to talk to "60 Minutes" citing the pending case against Drake.

So we asked Washington attorney Abbe Lowell, who is not connected to the Drake case but is one of the most experienced lawyers on the Espionage Act, what the prosecution is trying to prove.

"From the government and prosecution's point of view, it's an important case to state that if you're a government person and you signed a confidentiality agreement and you've got a security clearance based on your promise to keep our secrets secret, that you don't get the right as an individual to decide when that secret should be kept or not because you've decided that the government is right or wrong about something it wants to do," Lowell explained.

"To the people who are saying this is basically clamping down on information that the public has a right to know about whistle blowing, it's important because it will see whether or not if a person has the right motives, has the right intent, whether that is a defense that will work to prevent what is a very, very harsh statute with very harsh penalties if he were to be convicted," he added.

"Some people watching this interview are thinking to themselves in this moment, 'Look, he knew what he was doing. He'd been trained, he'd been in the Air Force, he'd been in the Navy, he'd had a top security clearance for many, many years. He knew reaching out to a reporter was wrong under any rules, under any circumstances. And he deserves what he's getting,'" Pelley pointed out to Drake.

"Some have said that," Drake acknowledged. "On the other hand, I was an employee with the U.S. government, charged with supporting defending the Constitution, ensuring that the best of America was put in the fight, ensuring that we did so legally, responsibly, and accountably."

* Ultimately, the Trailblazer project chewed through more than \$1.2 billion and then was cancelled. The NSA and its former head, Lt. Gen. Hayden declined to comment.

Hayden retired, but in 2006, the day the Baltimore Sun ran one of its articles, he said this to Congress: "A lot of the failure in the Trailblazer Program was in the fact that we were trying to overachieve. And that a lot of the failure was that we were trying to do too much all at once."

After the Trailblazer fiasco, Congress revoked the NSA's authority to manage large projects for the next five years.

Drake goes on trial in federal court next month.

"Why do you think you were charged under the Espionage Act? That's pretty rare," Pelley pointed out.

"To send a chilling message," Drake asked.

"To whom?" Pelley asked.

"To other whistleblowers, to others in the government, not to speak up or speak out. Do not tell truth to power. We'll hammer you," Drake said.

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