

A look at federal cases on handling classified information

January 30 2016, by Eric Tucker



In this March 5, 2015, file photo, cables are connected to a server capable of handling an email server at the Washington bureau of The Associated Press. News that Hillary Clinton's home email server contained top-secret messages brings renewed attention to the security of her mail system and to the laws and regulations that control classified information. The new disclosure, and the question of whether it exposes her to more serious legal problems, was certain to escalate political heat on the Democratic presidential candidate just days before the first ballots are cast in Iowa in the 2016 nominating process. (AP Photo/Jon Elswick, File)

News that Hillary Clinton's home email server contained top-secret messages brings renewed attention to the security of her mail system and to the laws and regulations that control classified information.

The new disclosure, and the question of whether it exposes her to more serious legal problems, was certain to escalate political heat on the Democratic presidential candidate ahead of Monday's Iowa caucuses, the first contest on the 2016 nominating calendar.

FBI Director James Comey, whose agency is looking into the setup of the server, has said only that the investigation is being conducted without regard for politics. Officials have given no public hint as to when or how the probe will be finished.

Stephen Vladeck, an American University law professor and national security law expert, said it would be a stretch, based on what's now known, to think Clinton could be charged under existing statutes for her behavior. The few relevant laws on the books almost certainly weren't written with this situation in mind.

"This is an area where the government tends not to test the margins too often," Vladeck said.

It's not uncommon for workers with access to classified material to mishandle it, and by far the bulk of those cases don't attract the attention of federal prosecutors.



In this Oct. 18, 2011, file photo, then-Secretary of State Hillary Rodham Clinton checks her BlackBerry from a desk inside a C-17 military plane upon her departure from Malta, in the Mediterranean Sea, bound for Tripoli, Libya. The Obama administration is confirming, Friday, Jan. 29, 2016, for the first time that Hillary Clinton's unsecured home server contained some closely guarded secrets, including material requiring one of the highest levels of classification. (Kevin Lamarque/Pool Photo via AP, File)

But when the Justice Department does pursue a case, it often relies on a statute that bars the unlawful removal and retention of classified documents. That low-level charge, meant for cases in which defendants improperly hold onto information that they know to be classified, carries a fine and maximum yearlong prison sentence and is reserved for people who have "really, really screwed up," Vladeck said.

Other, more serious laws make it a crime to knowingly disclose classified information to someone not authorized to receive it, and threaten punishment for anyone who through "gross negligence" allows national defense information to be removed from its proper place of custody.

Each case that's resulted in prosecution has unique facts, making comparisons difficult, but investigators invariably take into account questions of knowledge, potential damage to national security, who sent, received or stored the information, and whether the material was classified at the time of transmission.

Some examples of past cases concerning classified information:

DAVID PETRAEUS

The best-known recent prosecution involves the former CIA director who pleaded guilty last year to a misdemeanor count of unlawful removal and retention of classified materials. He was spared prison as part of his plea and was given two years' probation by a judge who faulted him for a "serious lapse in judgment."

The retired four-star Army general admitted that he loaned his biographer, Paula Broadwell, with whom he was having an affair, eight binders containing highly classified information regarding war strategy, intelligence capabilities and identities of covert officers. FBI agents seized the binders from an unlocked desk drawer at his home, instead of a secure facility that's required for handling classified material.

One critical distinction is that while Clinton has repeatedly said she didn't send or receive anything that was classified at the time—something the State Department now says it's investigating—the Petraeus plea deal makes clear that he knew the information he provided

was classified. He told Broadwell in a recording revealed by prosecutors that the binders had "code-word stuff in there."

When questioned by the FBI, he denied having given Broadwell classified information, though he avoided being charged with making a false statement.

The outcome drew accusations of a double standard for senior brass from defense lawyers who asserted that their less-influential clients wouldn't have been treated with such leniency.

JOHN DEUTCH

Deutch was CIA director from May 1995 until December 1996. He came under Justice Department investigation after his resignation when classified material was found on his home computer in Maryland.

An internal CIA investigation found that he stored and processed hundreds of files of highly classified material on unprotected home computers that he and family members also used to connect to the Internet, making the information potentially vulnerable to hackers.

A report by the Defense Department inspector general found that Deutch had failed to follow "the most basic security precautions" and faulted him for rejecting Pentagon requests that security systems be installed on his home computers.

Deutch apologized for his actions and was pardoned by President Bill Clinton before the Justice Department could file a misdemeanor plea deal for mishandling government secrets.

SANDY BERGER

Berger was the [national security](#) adviser during Bill Clinton's second term. After leaving office, he found himself in trouble for destroying classified documents.

Berger, who died in December at age 70, pleaded guilty in 2005 to illegally sneaking classified documents from the National Archives by stuffing papers in his suit. He later destroyed some of them in his office and lied about it. The materials related to terror threats in the United States during the 2000 millennium celebration.

He pleaded guilty to a misdemeanor count of unauthorized removal and retention of classified material, and though he avoided prison time, he lost access to classified material for three years.

A judge fined him \$50,000, higher than the amount recommended by prosecutors.

Berger called his actions a lapse in judgment that came as he was preparing to testify before the Sept. 11 commission that examined the events leading up to the 2001 attacks.

"I let considerations of personal convenience override clear rules of handling classified materials," he said at the time.

BRYAN NISHIMURA

Nishimura, a former Naval reservist in Afghanistan in 2007 and 2008

and a regional engineer for the U.S. military, was investigated for downloading and storing [classified information](#) on his personal electronic devices.

Prosecutors say he carried the materials with him off-base in Afghanistan and took classified Army records to his home in Folsom, California, after his deployment ended.

His lawyer, William Portanova, said Nishimura never intended to break the law but was a "pack rat" who thought nothing of warehousing Army records at home alongside personal belongings.

FBI agents who searched his home found classified military records, both in hard copy and digital form. Nishimura also admitted to investigators that he had destroyed some of the information.

Nishimura pleaded guilty in July to unauthorized removal and retention of classified materials. A judge fined him \$7,500, and he was ordered to surrender his security clearance.

The violation was a technical and unintentional one, Portanova said, but one that the Justice Department nonetheless thought it needed to punish "to make its point."

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