8-2020

Violence, Intimidation and Incarceration: America's War on Whistleblowers

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Recommended Citation

Howley, Kevin. "Violence, Intimidation and Incarceration: America's War on Whistleblowers." Journal for Discourse Studies, 7.3 (2019): 265-284. NOTE: Due to pandemic-related delays, this article was published in August 2020.

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Violence, Intimidation and Incarceration: America's War on Whistleblowers

Zusammenfassung: Viel wurde bereits über die autoritären Tendenzen von US-Präsident Donald Trump gesagt. Trumps hetzerische Rhetorik und drakonische Politik enthüllen die Gewalt, welche in dem aktuellen politischen Diskurs und in den gegenwärtigen Machtverhältnissen eingebettet ist. Während Trumps verbale Übergriffe auf Journalist*innen gut dokumentiert sind und weithin diskutiert werden, werden seine Bemühungen – und auch die seines unmittelbaren Vorgängers Barack Obama – Whistleblower*innen zum Schweigen zu bringen, weitaus weniger untersucht. Ausgehend von Diskurstheorie und Diskursanalyse untersucht dieser Beitrag die Erfahrung von drei prominenten Leaker*innen sowie die epistemische Gewalt, die Amerikas Krieg gegen Whistleblower untermauert.

Stichworte: Espionage Act, Diskursanalyse, Securitization, Whistleblower*innen

Abstract: Much has been made of US President Donald Trump's authoritarian tendencies. Trump's inflammatory rhetoric and draconian policies lay bare the violence embedded in contemporary political discourse and power relations. While Trump's verbal assaults on news workers are well documented and widely discussed, his efforts – and those of his immediate predecessor Barack Obama – to silence government whistleblowers receive far less scrutiny. Drawing on discourse theory and analysis, this paper explores the experience of three prominent leakers and the epistemic violence underpinning America's war on whistleblowers.

Keywords: Espionage Act, discourse analysis, securitization, whistleblowers

1 Introduction

On May 9, 2019, the US Department of Justice (DOJ) arrested Air Force veteran Daniel Hale for leaking classified documents about the drone assassination program to a reporter. The former intelligence analyst was charged with five counts under the Espionage Act: the World War I-era law prohibiting distribution of national defense information to unauthorized parties (Weiner 2019). It was the latest in a series of increasingly aggressive measures taken by the Trump administration to prosecute whistleblowers and journalists for exposing US war crimes and revealing state secrets (Goodman 2019a).

Donald Trump's animosity toward the Fourth Estate is, of course, no secret. Leading a chorus of demagogues the world over, Trump vilifies journalists as »enemies of the people,« and dismisses critical reporting as »fake news« (Remnick 2018). But for all of his authoritarian tendencies, Trump did not start America's war on whistleblowers. Rather, it was his immediate predecessor, Barack Obama, the self-proclaimed constitutional scholar, who set disturbing new precedents for criminalizing journalism under The Espi-

onage Act of 1917 (Downie, Jr./Rafsky 2013; Goldenberg 2013). Doing so, Obama turned an antiquated legal statute into a virulent form of authoritarianism – one with profound implications for press freedom and the rule of law.

Following Spivak (1988), this paper examines the exercise of »epistemic violence« – specifically the classification and denunciation of official enemies – underpinning recent use of the Espionage Act to not only prosecute, but persecute whistleblowers. Throughout, I analyze the operation of epistemic violence in two respects. First, in terms of the discursive strategies and practices government authorities employ to discipline whistleblowers for producing knowledge claims that challenge US national security orthodoxy. Labeling whistleblowers as traitorous or un-America, the security state stigmatizes opponents, effectively »Othering« critics and dissidents. Thus epistemic violence works to marginalize voices critical of a sprawling security apparatus – and the authoritarian rule it serves. Second, in relation to the decisive role whistleblowers play in revealing, often in exquisite detail, how the national security state exerts violence within and through knowledge production. In this way, whistleblowers expose the institutional structures and practices that facilitate all manner of state-sanctioned violence – physical, psychological as well as epistemic violence – conducted in the public's name, but routinely concealed from public view.

The paper proceeds with a discussion of the relationship between discursive and material practice in what I refer to as the discourse of securitization – a discursive formation manifest in the adoption, interpretation and deployment of the Espionage Act over the past century. Following this, I present three case studies in the violent »orders of discourse« (Foucault 1971) at work in the war on whistleblowers. Understood here as »the discursive practices of a community – its normal ways of using language« (Fairclough 1995, p. 55) the discursive orders of the national security state – articulated through legal statutes, institutional arrangements, classified reports and official statements – rely upon tightly circumscribed language to legitimate pervasive forms of social control, rationalize a regime of over-classification, and sanction the use of state violence. As we shall see, these violent orders of discourse have irrevocably marked the lived experience of three prominent whistleblowers: convicted Army PFC, Chelsea Manning; former NSA contractor, Edward Snowden; and imprisoned intelligence analyst, Reality Winner.

Based on empirical analysis of official statements and press accounts in corporate and independent news media, the balance of the paper considers the discursive structures and practices employed by the US national security to undermine whistleblowers' credibility and deny their rights to free expression and fair trials. Each case underscores the value and significance of dissident knowledge in exposing war crimes, government malfeasance, and other »truths of political importance« (Lynch 2018, p. 129). Together, they lay bare the raw exercise of state power to smear opponents and silence critics. Throughout, I contend the national security state punishes whistleblowers for individual acts of conscience – with the broader aim of stifling dissent and inhibiting press scrutiny – through a disciplinary regime predicated on violence, intimidation and incarceration. The paper concludes with some thoughts on the implications of the Trump administration's escalation of the war on whistleblowers for national security reporting at home and abroad.

2 The Discourse of Securitization

Apropos this essay's concern with violence in orders of discourse, I use the phrase securitization – with its emphasis on the *socially constructed* character of threats to national or international security – to highlight the discursive dimensions of the Espionage Act and assess its material effects in the war on whistleblowers. Introduced by the Copenhagen School of security studies, the concept of securitization overcomes an impasse in the field that understands threats as either objective and verifiable, or as subjective and indeterminate (van Munster 2012). The Copenhagen School's innovation foregrounds the »speech act« in defining and establishing an existential threat (Buzan/Waever/de Wilde 1998; Waever 1995).

In this way, the securitization model avoids altogether the question of whether or not a threat is real. Instead, the analytical focus is on the process of naming or labeling someone or something a threat. Accordingly, van Munster defines securitization as

> »a discursive process by which an actor (1) claims that a referent object is existentially threatened, (2) demands the right to take extraordinary countermeasures to deal with the threat, and (3) convinces an audience that rule breaking behavior to counter the threat is justified.«

Understood in these terms, critical discourse analysis (CDA) is well suited to interrogate securitization discourse and practice (Jensen 2012; Vezovnik 2018). Employing CDA, analysts reveal how proponents activate and mobilize increasingly expansive notions of »security« to achieve discrete policy objectives.

We can see this process at work in the manufactured crisis on the US southern border in recent years. Labeling so-called migrant caravans an »invasion,« Donald Trump claims asylum seekers fleeing poverty and persecution in their home countries of Honduras, Guatemala and El Salvador represent an existential threat to the United States' national security and territorial integrity (Fabian 2018). Under the Trump administration's xenophobic immigration policies, the Department of Homeland Security, Customs and Border Protection, and Immigration and Customs Enforcement, violate domestic and international law by turning away, separating, and detaining migrant families en masse (Fullerton 2018). Meanwhile, Trump's deployment of thousands of National Guard and active-duty troops intensifies the post-9/11 militarization of the Mexico-US border (Browne/Starr 2019). On February 15, 2019, the President formally declared a state of emergency on the southern border. With considerable success, then, Donald Trump has effectively taken a political issue, US immigration policy, and turned it into a security issue.

Conceived in the aftermath of the Cold War, securitization was an attempt to »reconceptualize the notion of security and to redefine the agenda for security studies« in the twenty-first century (Emmers 2013, p. 132). For present purposes, I employ the concept of securitization retrospectively in order to examine the Espionage Act's role in laying the foundation for an emergent national security state. Throughout, I identify orders of dis-

course at work in its deployment against labor organizers, dissidents and others a century ago. Today, in an era of perpetual war, the Espionage Act's sweeping power asserts and enforces »America's creeping authoritarianism« (Walt 2017).

3 Policing Dissent: The Espionage & Sedition Acts

In June, 1917, soon after the United States entered World War I, Congress passed the Espionage Act aimed at banning the transmission of defense information to aid foreign adversaries or otherwise undermine the war effort. Although lawmakers removed controversial press censorship provisions from the final bill, the Espionage Act empowered the Postmaster General to refuse, intercept or destroy any material deemed in violation of the law.

> »Apparently the Postmaster General was to use his own judgment as to what constituted ›willful obstruction‹ [of the war effort] and he could exclude such matter from the mail without court approval« (Johnson 1962, p. 47).

Thus Congress granted Postmaster General Albert S. Burleson unprecedented authority to regulate speakers and content throughout the postal system. In the absence of meaningful administrative and judicial oversight, Burleson »assumed the task with zealous dedication, withholding from the mails dozens of periodicals, books and other matter considered in violation of the Espionage Act« (Glende 2008, p. 5). Chief among them socialist periodicals, including the widely-circulated *Appeal to Reason* and *The Masses*, publications critical of imperialism, conscription, and war profiteering. Under the guise of national security, Burleson denied publishers second class mailing privileges, effectively delivering a deathblow to the once lively socialist press in America. Burleson's inspection regime did more than suppress socialist publications; it had a chilling effect on mainstream publishers fearful that critical reporting of the war effort might provoke government reprisal (Glende). In short, despite lawmakers' reservations about abridging press freedom, under the Espionage Act an unelected government official single-handedly established limits on what could, and could not, be distributed through the US mail.

Notwithstanding this unprecedented infringement on civil liberties, the following year Congress passed an even more restrictive law: the Sedition Act of 1918. The new legislation amended the Espionage Act by significantly broadening the scope of punishable offenses. Among them: insulting the US government, the flag or the constitution; speaking out against the war effort; and speech critical of arms manufacturers, the troops, and the draft. Effectively regulating citizens' ability to criticize their government, the Espionage and Sedition Acts constituted orders of discourse that dramatically curtailed freedom of expression – and in so doing, insinuated the federal government into the everyday lives of Americans as never before (DeWitt 2016).

Ostensibly designed to secure the war effort against spies and saboteurs, in practice the Espionage Act targeted pacifists, immigrants, and trade unionists opposed to US in-

volvement in the European conflict. Although hundreds were convicted of violating the Espionage Act, not one case involved spying or sabotage. Rather, allegations of »disloyal speech,« typically in the form of anti-war rhetoric, newspaper editorials, and labor organizing, accounted for over 2000 indictments during the war years (DeWitt). Punishable with fines of up to $10,000, imprisonment for up to 20 years and, in some cases, the death penalty, the Espionage Act circumscribes permissible speech about the government, the military, and the war effort; in Foucauldian terms, establishing orders of discourse surrounding issues of national security.

After the war, the government continued mobilizing securitization discourse to suppress dissent and neutralize opponents. Most infamously, between 1919 and 1920 Attorney General A. Mitchell Palmer invoked the Espionage Act to justify his anti-Bolshevik campaign, the so-called Palmer Raids, targeting trade unionists, communists, and anarchists, primarily immigrants from Southern and Eastern Europe (Pusey 2015). Palmer's flagrant assault on civil liberties was roundly condemned at the time, and by 1921 lawmakers repealed the Sedition Act. Nevertheless, significant provisions of the Espionage Act remain on the books to this day.

Over time, increasingly expansive definitions of national security »would transform the act into a long-term tool for the national government to suppress dissent and protect the country's secrets« (DeWitt 2016, p. 121). Thus orders of discourse established under the Espionage Act – limits on free speech rights subsequently upheld by the Justice Department and the federal judiciary – were instrumental to the establishment of a nascent security state. An emerging military-industrial regime predicated on the state's authority to keep official secrets, limit government accountability, and operate outside the law.

4 Information Freedom Fighters

If the Espionage and Sedition Acts can be understood in terms of securitization discourse and practice, the whistleblowers discussed here operate at the vanguard of a militant project of *desecuritization*: the unauthorized disclosure of classified information designed to initiate and inform public debate over US national security policy. In their efforts to call critical attention to the perils and abuses of securitization these »information freedom fighters« (Schell 2014, pp. 7-14) expose the security state for what it is: a global network of paramilitary units and intelligence agencies operating with radical impunity beyond public view. Doing so, whistleblowers open discursive space for publics to consider the legal, ethical, and political implications of securitization in both public and private life – an alternative order of discourse concerned with government transparency and accountability.

The cases are organized as follows. First, I introduce each subject and detail their respective disclosures. Following this, I examine the official response to these revelations. Given my concern with epistemic violence, I highlight the enormous price these whistleblowers – de facto political prisoners – continue to pay for their acts of conscience. Throughout, I underscore the role commercial and corporate media play as »adjuncts of

government,« to borrow Noam Chomsky's (1989) useful phrase, in policing orders of discourse surrounding national security.

5 Chelsea Manning

A transwoman, Chelsea Elizabeth Manning was born Bradley Edward Manning on December 17, 1987, in Crescent, Oklahoma. She enlisted in the US Army in late 2007. During her enlistment, Manning honed her expertise as an intelligence analyst; a skill set the Army was eager to cultivate in the increasingly information-rich battlespace of America's war on terror. With access to classified databases, Manning witnessed the brutality of US counterinsurgency operations in Afghanistan and Iraq. Troubled by what she had seen and been a part of, Manning contacted the *New York Times* and the *Washington Post*, but neither paper responded to her offer of secret information on the war effort. Rebuffed by legacy news outlets, Manning approached the radical transparency organization WikiLeaks. Throughout early 2010, she uploaded a trove of classified material to the site. Actions that would make both Manning and WikiLeaks household names.

5.1 The Revelations

The most dramatic of Manning's leaks came in the form of a video documenting a 2007 Apache helicopter assault in suburban Baghdad. Edited under WikiLeaks founder Julian Assange's direct supervision, the video, published in April 2010, provides an unnerving perspective of an attack that claimed over a dozen lives, including two Reuters journalists (Khatchadourian 2010). Opening graphics indicate Reuters demanded an investigation into the attack, but the Pentagon determined the action was legal under its Rules of Engagement. Reuters' subsequent Freedom of Information Act request for a copy of the video was denied. The text reads, »The video has not been released … Until now.« Dubbed »Collateral Murder« (WikiLeaks 2010) the grainy black and white footage and the accompanying soundtrack – featuring profanity laden exchanges between the helicopter crew and command personnel – captures American forces' reckless indifference for human life. For some observers, the video offers compelling evidence of US war crimes (Morris 2012). Other revelations soon followed.

Marking a turning point in its relationship with legacy news organizations, WikiLeaks made over 90,000 classified documents, the so-called Afghan War Logs, available to three news outlets, the *Guardian*, the *New York Times*, and *Der Spiegel*, weeks ahead of their full publication to the website on July 25, 2010. The documents belie official accounts of the war effort under two US administrations, including the toll counterinsurgency operations have on the civilian population and the growing influence of Iran and Pakistan in the conflict. In October 2010, WikiLeaks again partnered with traditional news outlets to bring the Iraq War Logs to light. Among other revelations, the leaks revealed widespread prisoner abuse and routine classification of civilian casualties as enemy combatants killed

in action; a practice used in official accounts of the aforementioned helicopter assault (Davies/Steele/Leigh 2010).

Finally, throughout late 2010, a growing list of WikiLeaks' media partners published stories based on over 250,000 State Department cables. Among a host of revelations, the cables exposed the Obama administration's efforts to induce third countries to take in Guantanamo detainees; Secretary of State Hillary Clinton's spying on UN representatives; and the secret US drone campaign in Yemen. Collectively known as »Cablegate« the diplomatic exchanges leaked by Manning proved a major source of embarrassment and consternation, not only for the US, but for much of the global diplomatic community.

5.2 The Response

On November 1, 2019, Nils Melzer, the UN Special Rapporteur on torture, sent an official letter to the US government condemning its treatment of Chelsea Manning. Six months earlier, US District Judge Anthony Trenga imprisoned Manning for refusing to answer grand jury questions about WikiLeaks. Charging Manning with civil contempt, Trenga also imposed fines for each day she refused to testify. US authorities made Melzer's letter public just ahead of the New Year's holiday, all but ensuring limited news coverage of allegations that Manning's detention amounts to torture. »Such deprivation of liberty,« Melzer argued, »does not constitute a circumscribed sanction for specific offense, but an open-ended, progressively severe measure of coercion« (Lennard 2019).

This was not the first time UN officials leveled such accusations at American authorities over Manning's treatment. In April 2011, human rights lawyer Juan Mendez reprimanded the US government for prohibiting him from visiting Manning and assessing the conditions of her imprisonment for passing information along to WikiLeaks (MacAskill 2011). Frequently held in solitary confinement while awaiting trial, Manning's treatment drew criticism from human rights groups. Amnesty International (2011) accused the government of punishing Manning before she was convicted of any crime: »This undermines the United States' commitment to the principle of the presumption of innocence.« Manning's long ordeal at the hands of both the military and civilian justice systems reveals the epistemic violence underpinning the national security state.

First arrested in May 2010 under suspicion of transmitting classified information to unauthorized parties, Manning was held in solitary confinement for two months in a Kuwaiti jail before being transferred to the military detention facility at Quantico, VA. There she endured another nine months in isolation. Government authorities claimed Manning was held under a prevention of injury order. But in a letter released by her lawyer, Manning claimed she was placed on suicide watch after protesting her detention under abusive conditions. »I was stripped of all clothing with the exception of my underwear. My prescription eyeglasses were taken away from me and I was forced to sit in essential blindness« (Pilkington 2011). Manning's mistreatment drew more press scrutiny when P.J. Crowley, a career State Department official, resigned over the government's handling of the whistleblower. In April, 2011 amid growing concerns over abuse allegations, Man-

ning was transferred to a prison facility at Fort Leavenworth, Kansas. It would be another 22 months before she would see the inside of a court room.

At a February 28, 2013 military pretrial hearing, Manning admitted leaking classified material to WikiLeaks. In a 35-page statement – roundly ignored in US corporate and commercial media – Manning explained her actions and expressed concern over the mistreatment of Iraqi prisoners and the »seemingly delightful bloodlust« of the helicopter crew documented in the collateral murder video (Pilger 2013). Doing so, Manning took the unusual step of pleading guilty to 10 charges related to transmission of classified information and improper storage of such material under the Espionage Act and the Computer Fraud and Abuse Act respectively. She pled not guilty to another 12 charges, including the most serious allegation, aiding the enemy, which carries a sentence of life in prison.

In response to a pattern of abuse, Manning's defense team requested that those charges be thrown out. Instead, presiding judge Colonel Denise Lind reduced a possible sentence by a mere 112 days. Manning was acquitted of aiding the enemy in July 2013, but the following month Lind sentenced Manning to 35 years for passing classified material to WikiLeaks. Despite Manning's gender nonconformity, she was ordered to serve time in an all-male facility. The unprecedented sentence not only punished Manning for revealing the character and conduct of America's war on terror; in the wake of Edward Snowden's NSA revelations, it signaled the national security state's intolerance for unauthorized leaks – and served as a stark reminder of its ongoing pursuit of Julian Assange.

Her emotional and psychological health deteriorating, Manning attempted suicide in July 2016. The Army's callous response further exacerbated Manning's condition, prompting the American Civil Liberties Union (ACLU) to issue a statement condemning her confinement and claiming the whistleblower was »subjected to long stretches of solitary confinement and denied medical treatment related to her gender dysphoria« (ACLU 2016). In November, Manning petitioned President Obama for clemency. Just before leaving office, Obama commuted her sentence. On May 17, 2017, Chelsea Manning walked free after seven years imprisonment: the longest sentence ever served for disclosing classified information to the media. For Manning, it was a short lived reprieve from the government's relentless efforts to intimidate and incarcerate whistleblowers.

In March 2019, Manning was jailed for refusing to testify before a grand jury investigation of Julian Assange. Weeks later Manning was released, only to be imprisoned once again, and held in solitary confinement (Conley 2019). The Army whistleblower was finally released in March 2020. Speaking at the time of Manning's incarceration for civil contempt, Daniel Ellsberg, the Vietnam-era whistleblower indicted under the Espionage Act for leaking the Pentagon Papers – documents published by the *New York Times* and *Washington Post* – expressed outrage over Manning's ongoing persecution.

> »This is a continuation of seven-and-a-half years of torture of Chelsea Manning, in an effort to get her to contribute to incriminating WikiLeaks, so they can bring Julian Assange or WikiLeaks to trial on charges that would not apply to the *New York Times*.« (Goodman 2019b).

Underscoring complicity between the security state, the federal judiciary and US corporate media – imprisonment for whistleblowers who leak classified documents; impunity for the establishment press that disseminates, and profits handsomely from, the publication of this material – Ellsberg's observation exposes the process of inclusion and exclusion, of regulating speakers and contents at work in America's war on whistleblowers.

6 Edward Snowden

Born on June 21, 1983, in Elizabeth City, North Carolina, Edward Snowden's formative years were spent in suburban Maryland, not far from the National Security Administration (NSA) headquarters at Fort Meade. After a brief stint in the US Army Special Forces, Snowden turned to a career in computer security. His first position was at the University of Maryland Center for Advanced Study of Language, a research facility with close ties to the intelligence community. Soon thereafter, he was hired as an IT specialist with a CIA contractor. Snowden resigned from the CIA in 2009 and began working as an NSA contractor; first, for the tech giant Dell and then with the IT consulting firm, Booz Allen Hamilton. As an infrastructure analyst, Snowden's access to classified information grew exponentially; and with it, his resolve to alert the public of the US government's global surveillance regime. On May 20, 2013, he flew Hong Kong to meet journalists Laura Poitras, Glenn Greenwald and Ewen MacAskill, where they began publishing news reports based on the largest leak of classified information in US history.

6.1 The Revelations

The trove of classified material Snowden leaked to the press revealed the scale and scope of electronic surveillance conducted by the United States and its Anglophone intelligence partners. Initial reporting centered on a secret court order requiring Verizon, one of the nation's leading telecommunication companies, to provide the NSA with telephone records of US customers on a daily basis. The blanket order issued by the Foreign Intelligence Surveillance Court compels the phone company to provide the NSA with user and location information, as well as call time duration, for every call to and from the United States over a three month period.

Another disclosure details PRISM, a program that allows both the NSA and the FBI to access the central servers of Google, Facebook, Yahoo, Apple, and Microsoft. Ostensibly targeting foreign internet traffic, PRISM routinely sweeps up information on an unspecified number of American citizens. A related datamining tool, code-named Boundless Informant, uses metadata from telephone records, email and instant messages obtained through NSA surveillance programs to record and analyze worldwide electronic communication – in apparent violation of the intelligence agency's repeated assurances to lawmakers and journalists that NSA does not store surveillance information (Lawson 2013).

On June 9, 2013, Edward Snowden revealed his identity in an exclusive video for the *Guardian*. During the interview, Snowden makes an astonishing claim: that in the course of his duties as an NSA contractor, he could »sitting at my desk, wiretap anyone, from you or your accountant, to a federal judge or even the president, if I had a personal email« (Poitras/Greenwald 2013). The intelligence community vehemently denied Snowden's assertion. Weeks later, the *Guardian* published a story detailing precisely such a tool: XKeyscore. The top-secret program allows intelligence analysts to search a massive database containing email and chat messages, as well as the internet browser histories, of millions of unsuspecting computer users. All without a search warrant. Subsequent revelations exposed the NSA's »black budget,« totaling over $52 billion in 2013, used by the spy agency to compensate tech firms for access to their networks (Gellman/Miller 2013); and embarrassing disclosures of US surveillance on close allies, including German Chancellor Angela Merkel (Ball 2013). Like Cablegate before it, the leak strained relationships between the Obama administration and world leaders.

6.2 The Response

Fearful US authorities were nearing an extradition agreement with Hong Kong, Snowden made his escape. His destination: Moscow's Sheremetyevo Airport en route to Latin America where he sought political asylum. Back in Washington, FBI Director Robert Mueller and US Attorney General Eric Holder told Congress that Snowden's leaks caused »significant harm« to US national security (Finn/Horwitz 2013). Mueller assured lawmakers that the surveillance programs Snowden revealed struck the appropriate balance between protecting national security and preserving Americans' civil liberties.

Thus began a litany of unsupported claims from intelligence chiefs in the United States and United Kingdom about the damage Snowden had done to counterterrorism operations. In widely reported Congressional hearings, NSA director Keith Alexander told lawmakers US surveillance programs thwarted over 50 terror plots – an assertion he later walked back, albeit without the equivalent news coverage (McLaughlin 2015). Months later, the heads of British intelligence took the unprecedented step of appearing together before a Parliamentary commission to discuss surveillance operations (Bryan-Low 2013). These disclosures marked the emergence of a modest, but not insignificant alternative order of discourse based on a radical project of desecuritization. The security state's response was swift and decisive.

On June 22, 2013, the DOJ unsealed charges against Snowden: two counts under the Espionage Act and a single count for theft of government property. The same day, the State Department rescinded Snowden's passport. Effectively rendered stateless, the fugitive spent five weeks in a transit zone of Sheremetyevo airport as American authorities sought to cut off his travel options. Posting to WikiLeaks, Snowden (2013) denounced the White House's use of »tools of political aggression« to deny his asylum rights. But Obama's pressure campaign extended far beyond Moscow's international airport. During Snowden's five week stay in legal limbo, Secretary of State John Kerry petitioned his col-

leagues to turn over the whistleblower, lest the United States withdraw assistance from Russian counterterrorism efforts. And when the administration learned Ecuador was Snowden's preferred destination, Vice President Joe Biden threatened to withhold economic assistance if President Rafael Correa granted Snowden's request (Te-Ping/Brown 2013).

More dramatically, an international controversy erupted when Bolivian President Evo Morales' private plane was grounded, at the behest of the US government, on suspicion that Snowden was on board. Amid conflicting reports, several European countries were implicated in the US plot when they denied Morales' plane entry to their airspace (Lally/Forero 2013). Days earlier, Morales said he would consider Snowden's asylum request. His remarks were sufficient cause for the US to pressure European allies to impede Morales' return home and, upon landing in Vienna, compel local authorities to search the plane for the former NSA contractor turned international fugitive.

With few options remaining, Snowden formally requested asylum in Russia. Anxious to stave off such a move, and quell Kremlin concerns over Snowden's fate should Moscow agree to turn him over to US authorities, Attorney General Eric Holder sent an extraordinary letter to the Russian Justice Ministry (Horwitz/Birnbaum 2013). Holder assured Russian officials that the United States would not seek the death penalty – in 1953 the US government executed Julius and Ethel Rosenberg under the Espionage Act for allegedly turning over nuclear secrets to the Soviet Union. Holder futher promised that Snowden would not be tortured: a subtle but unmistakable acknowledgment of the use of »enhanced interrogation« in America's war on terror. Holder's tacit admission of violent orders of discourse underwriting the US national security establishment failed to persuade the Russian Justice Ministry

On August 1, 2013, the Kremlin granted Snowden political asylum for one year. His asylum has since been extended to 2020. In the wake of his disclosures, Snowden is alternatively lionized for his patriotism or demonized for his disloyalty. The recipient of numerous prizes, including the Sam Adams and Right Livelihood Awards, he lives with his wife, Lindsay Mills, in Moscow, where he continues to speak out against the state-corporate surveillance nexus that threatens individual privacy and undermines civil liberties. For detractors, Snowden's flight to Russia is proof of his treachery; a media narrative with bi-partisan support – and unmistakable Cold War overtones – that willfully ignores the role the State Department played in stranding the former intelligence analyst in Russia (Mayer 2014).

Despite the Obama administration's best efforts to apprehend Snowden, including making him eligible for a »limited validity passport« – essentially a one way ticket from Russia to the United States – the White House began considering other options. In January 2014, journalists seized on reports that clemency or a plea deal was in the works. Praising Snowden's public service, the *New York Times* noted »the enormous value of the information he has revealed, and the abuses he has exposed,« adding, »he deserves better than a life of permanent exile, fear and flight« (Editorial Board 2014). All the same, the *Times* concluded that Snowden should return home to face trial. A rather disingenuous sentiment expressed in newsrooms that benefited from Snowden's blockbuster revelations.

Such talk provoked outrage and contempt from intelligence officials. Reflecting on Snowden's nomination for a European human rights award, former NSA Director Michael Hayden joked, »I must admit, in my darker moments … I'd also thought of nominating Mr. Snowden, but for a different list.« The veiled allusion to the government's secretive kill list was not lost on attendees of a cybersecurity sponsored by the *Washington Post*. »I can help you with that,« replied House Intelligence Committee Chair Mike Rogers (Sasso 2013). More ominously, published reports reveal widespread animus toward Snowden within the intelligence community. A former Special Operations officer told *BuzzFeed*, »I'd love to put a bullet in his head. … he is single-handedly the greatest traitor in American history« (Johnson 2014).

As the Snowden saga continued, Obama reminded government transparency groups and press freedom advocates of his Executive Order assuring whistleblowers protection from reprisal or imprisonment. But the President studiously avoided an inconvenient truth: the order applied only to government employees, not contractors like Ed Snowden. The administration's pledge that Snowden would receive a fair trial – echoed and amplified in US news coverage – were equally disingenuous. Jesselyn Radack (2014), director of the Whistleblower and Source Protection Program, argues that such claims are »a fantasy.« In the orders of discourse surrounding the Espionage Act, defendants are prohibited from challenging the legitimacy of government classification. Likewise, they are barred from discussing their motives and intentions, regardless of the public interest value of their revelations. Nowhere are these violent orders of discourse more apparent than in the trial of another NSA contractor turned whistleblower.

7 Reality Winner

Reality Leigh Winner was born on December 4, 1991, in Alice, Texas. In 2010, Winner began training as an Air Force linguist specializing in Dari, Farsi, and Pashto – languages targeted for American mass surveillance across the Muslim world. Following another year of intelligence training, Winner reported for duty with the 94th Intelligence Squadron at Fort Meade. In 2016, Winner received the Air Force Commendation Medal for meritorious service as a cryptolinguist in the drone assassination program. Later that year, Winner secured an honorable discharge and took a position with Pluribus International, an NSA contractor. It was at Pluribus, where she spent her time translating material on the Iranian aerospace industry, that she gained access to a secret NSA report detailing Russian efforts to hack the US election system. According to the Justice Department, Winner smuggled the document out of her secure workspace before sending the classified material to an unnamed news outlet.

7.1 The Revelations

Unlike the trove of classified material leaked by Manning and Snowden, Winner's disclosures stem from a single five-page document. As first reported by *The Intercept*, a news outlet specializing in national security, the NSA determined Russian military intelligence was responsible for cyberattacks targeting local and state voting systems ahead of the 2016 election. *The Intercept* maintains the leak came from an anonymous source, nonetheless, the news site's parent company, First Look Media, contributes to Reality Winner's legal defense fund.

Dated May 5, 2018, the secret report details two operations. The first, launched in August 2016, targeted VR Systems, a Florida-based software vendor. Although the NSA does not mention the vendor by name, the analysis makes reference to voter registration software sold by VR Systems in nine states. In late October and early November, a second operation used a bogus VR Systems account to launch a spear phishing attack that sent email attachments »invisibly tainted with potent malware« to upwards of 100 unsuspecting election officials (Cole et al., 2017). Once opened, attachments purportedly containing software updates instead activated malware giving Russian hackers control over the infected computers.

The NSA report failed to draw definitive conclusions as to whether and to what extent the hacking operation affected the election outcome – registration software is not used to tabulate votes. Nonetheless, the report identified for the first time the Russian General Staff Main Intelligence Division (GRU), as the source of cyberattacks targeting the US election infrastructure: a major development in ongoing investigations into the so-called Russiagate scandal. Prior to this disclosure, legal inquires and investigative reporting focused primarily on alleged collusion between Russian operatives and the Trump campaign to undermine Hillary Clinton's presidential bid.

7.2 The Response

Within hours of *The Intercept* posting its story on the leaked NSA document, the DOJ announced Reality Winner's arrest. Charged with violating the Espionage Act for sending classified material to a news outlet, Winner's arrest marked the first leak case pursued by the Trump administration (Savage 2017). From the start, the Justice Department's handling of the case made clear the administration's dual aim: prosecute Winner to the full extent of the law and intimidate would-be whistleblowers who might take inspiration from her actions.

Winner returned home from shopping one day to find a dozen FBI agents at her door. The agents informed Winner they wanted to question her about possible »mishandling of classified information.« At no time during what investigators described as a »noncustodial interrogation« did they mention the Espionage Act, let alone the possibility of a ten year prison sentence (Maass 2017). Moreover, agents failed to read Winner her Miranda Rights, an official notification detailing a suspect's right to remain silent and secure legal

representation before answering any questions. The FBI claims she was never detained, but in court Winner testified she felt she was not free to leave or end the interview at any time.

Noncustodial interrogations are not unique to the FBI; law enforcement frequently use this technique to cajole suspects into making self-incriminating statements. What makes Winner's case distinct are the extraordinary measures taken by the government to preclude a fair trial. Days ahead of Winner's pretrial hearing, the FBI uncharacteristically released a transcript of the interrogation.

> »It provides a verbatim example – and a rare example – of how FBI agents ingratiate themselves with unsuspecting suspects and intimidate them into saying things that bring doom upon them« (Maass).

Not only were Winner's statements used as an admission of guilt, they had significant repercussions during bail hearings when prosecutors argued Winner remained a threat to national security. Despite the government's admission that it made misleading statements during the initial pretrial release hearing, the court twice denied Winner bail (Timm 2017).

Coupled with release of an FBI affidavit detailing the charges against her, publication of the interrogation transcript was part of a broader strategy to malign Winner's character. Painting a damning portrait of the whistleblower, the prosecution convinced a district court judge to impose extreme secrecy rules, effectively barring Winner's attorneys from challenging the government narrative in and outside of court. Turning her intelligence expertise into a liability, prosecutors highlighted Winner's internet security habits, intimating that she was knowingly engaged in espionage (Timm 2017). Likewise, prosecutors weaponized Winner's social media activity, arguing Winner's posts critical of Donald Trump, and those in support of Edward Snowden and Julian Assange, made her a flight risk.

The DOJ's handling of Winner's case offers a stark contrast to that of more high profile figures (Risen 2019). Consider the leniency afforded General David Petraeus, the onetime CIA director, who shared classified material with his biographer and lover, and then lied about it to the FBI. Petraeus received a suspended sentence and paid a $100,000 fine. Likewise, former Trump campaign chief Paul Manafort, a central figure in Special Counsel Robert Mueller's investigation into Russian election interference, was released on bail, despite facing multiple felonies allegations (Winner-Davis 2018). Meanwhile, with her trial date pushed back repeatedly, the government detained Winner for more than a year.

Throughout the proceedings, the government erected formidable obstacles to Winner's defense. As noted above, espionage defendants are prohibited from mounting a public interest defense. Winner's intention to alert the American people of Russian cyberattacks on US election systems was inadmissible (Timm 2017). Invoking the Classified Information Protection Act, prosecutors further hampered the defense's ability to introduce evidence – including published accounts of the leaked report in both the *New York Times*

and the *Washington Post*. Winner was also prohibited from meeting with defense attorneys to review the prosecution's evidence. When she was permitted to meet with lawyers, Winner was shackled about the waist; part of a larger pattern of abuse including gratuitous strip searches, denial of nutritional and mental health needs, and severe visitor restrictions (Gosztola 2018).

At trial, the DOJ continued to coerce and intimidate the defendant. When prosecutors introduced the interrogation transcript into evidence, government information was carefully redacted. Conversely, the transcript contained Winner's personal information, including her date of birth, social security number, and computer password. Only after journalists questioned prosecutors about this discrepancy was the transcript redacted and resubmitted (Gerstein 2017). In short, from the moment she was arrested to the day she was convicted on a single felony count, the US government imposed violent orders of discourse that denied Reality Winner a fair trial.

On June 26, 2018, the campaign to silence and discredit Winner succeeded when she accepted a plea deal. Later that month, she was sentenced to five years and three months in prison: one of the longest sentences ever imposed for transmitting classified information to the news media. At the sentencing hearing, US Attorney Bobby Christine claimed Winner »caused grave damage to US national security« and described the former intelligence analyst as »the quintessential example of an insider threat« (Philipps 2018). Widely circulated in US news media, Christine's comments were meant to intimidate government employees and contractors who, like Winner, might be compelled disclose classified information in the public interest. Increasingly, this sort of government intimidation is directed at journalists as well as whistleblowers. The media blackout of Winner's case is an object lesson in stifling dissent and deterring press scrutiny: a primer on violence in orders of discourse surrounding US national security.

Of the many ironies in Winner's case is the one dimensional character of news coverage about Russian election meddling. Amid years of media hysteria over allegations the Trump campaign colluded with Russian operatives, Winner's role in exposing election system vulnerabilities barely gets a mention, despite subsequent investigations corroborating *The Intercept's* reporting and contradicting prosecutors' claims that Winner revealed intelligence gathering sources and methods (Risen 2018; Timm 2018). Likewise, allegations that prison officials routinely deny Winner media interviews fail to gain traction in commercial and corporate news outlets – despite the relevance of her case to the national interest and the Fourth Estate (McDonald 2019).

8. Conclusion: The Assange Effect

On April 11, 2019, London Metropolitan Police forcibly removed Julian Assange from the Ecuadorean Embassy, where he had been living since 2012, in a bid to avoid extradition to Sweden on sexual misconduct charges. Accusations, since discredited, designed to smear his character, undermine his credibility, and expedite his extradition to the United States for violating the Espionage Act (Johnstone 2019a; Grenfell 2019; McGovern 2020).

Following a visit to Assange at London's high-security Belmarsh prison – popularly known as the UK's Guantanamo – Nils Melzer, the UN Special Rapporteur on torture, expressed alarm over the »concerted and sustained« abuse Assange endures. Melzer went on to denounce British and American authorities for »the collective persecution« of the WikiLeaks publisher (OHCHR 2019).

A central figure in the radical project of desecuritization discussed throughout this paper, Assange inspired figures like Manning, Snowden and Winner to act on their conscience and expose a system of over-classification meant to conceal state crimes and government malfeasance. Official misconduct frequently conducted by, and at the behest of, a secretive and unaccountable security apparatus operating with radical impunity. In theoretical terms, the whistleblowers profiled here exposed, and were subsequently disciplined through, the violent orders of discourse surrounding the national security state. A discursive formation legitimated by antiquated legal statutes, policed by global surveillance programs, and predicated on the maintenance of US imperial hegemony.

All of which underscores this paper's main contention: that whistleblowers operate on the frontlines of a discursive struggle over the meanings – and the consequences – of securitization. A struggle which, as Emmers contends, is »especially relevant in a post-9/11 context and the growing articulation of issues as existential threats« (p. 43). Viewed in this light, the implications of this struggle between orders of discourse surrounding national security and discursive orders associated with government transparency and accountability come into sharp relief: the eclipse of the rule of law and the ascent of authoritarian rule. As we have seen, this tendency is most pronounced in the United States, where then-Central Intelligence Director Mike Pompeo referred to WikiLeaks as »nonstate hostile intelligence service« (CIA 2017). Nevertheless, with growing fervor and intensity, other so-called democratic states have identified national security reporting as such a threat.

In the wake of Assange's espionage indictment, law enforcement and intelligence services around the world stepped up their attacks on investigative journalism and press freedom more generally (Lauria 2019). Most dramatically, in June 2019, the Australian Federal Police (AFP) searched the offices of the Australian public broadcasting service. Authorized to seize electronic equipment and copy, alter and delete any digital content they might find, the AFP targeted journalists for reporting based on leaked documents exposing potential war crimes committed by Australian special forces in Afghanistan. The unprecedented raid prompted WikiLeaks to issue a statement which read, in part, »The criminalization and crack down on national security journalism is spreading like a virus. The Assange precedent is already having effect« (Johnstone 2019b). The case studies presented here reveal the discursive strategies and practices underpinning the Assange Effect: a virulent strain of epistemic violence targeting journalists, whistleblowers and dissidents for resisting an authoritarian surveillance state that makes a mockery of the freedom and security it purports to defend.

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