

SPACE COWBOYS

Well, today there will be another Billionaire Blastoff. First went Sir Richard Branson and Virgin Galactic; today will come Jeff Bezos and Blue Origin. Musk will come last, but as much as he is dislikable, and he really is, he has sent a rocket into real space to the ISS. He just wasn't on it, which is okay in the Billionaire Blastoff races.

There is a lot of discussion in the social media and press as to whether these vanity flights are worth it, or whether the relative money should be spent on domestic efforts and climate change, child poverty etc. Strikes me that is a valid discussion.

It is pretty hard to argue with the "spend your cash now" on this or that. Very valid arguments. The side that, sure it is vanity by these Billionaire Blastoffers, but there is value here long term, is also right. Maybe it is not such a simple dichotomy.

I will also add, that as a former pilot, I more love the fact that actual pilots had to drive Virgin Galactictic. Bezos vehicle is the proverbial space monkeys in pre-Mercury criticisms.

There are a multitude of questions on the Billionaire Blastoffs. All, and maybe more, valid to be discussed. Personally only, I think the net good in advancement of engineering and US space capability militates in the positivities column. But that is not an easy question.

Use this thread for any launch things. Featured above is the great Steve Miller. And with plaudits to our once, and forever, Roving Reporter Rosalind.

WELCOME TO LISA MONACO'S DOJ, E JEAN CARROLL LAWSUIT EDITION

During Lisa Monaco's confirmation hearing, several people joked about how few questions she was getting. Because Vanita Gupta had been targeted by Republicans, Monaco was left for broad swaths of the hearing, a spectator to that effort.

There were some good exchanges. In addition to complaining about DOJ's refusal to respond to questions from Democratic members of Congress, Sheldon Whitehouse asked about OLC, to which Monaco provided an anodyne answer that was enough for Whitehouse, who was going to vote for Monaco one way or another. Josh Hawley asked some legitimately good questions, including about end-to-end encryption. To those questions, Monaco hewed a middle ground and an adherence to the laws on the books. John Cornyn asked the same question Republicans harped on with Merrick Garland, whether she would let John Durham finish his work, to which she responded that her job is to make sure he has the resources to do so, which (while more nuanced than it sounded) shut down that line of questioning.

It was a testament to how shallowly Republican staffers interpreted Lisa Monaco's long career that Chuck Grassley asked Monaco whether she had involvement in Crossfire Hurricane – the answer was obviously no, given her White House role at the time. But Grassley didn't ask whether her position at the nexus of Mike Flynn's efforts to obtain information from the Obama White House in advance of making calls with Sergey Kislyak that Flynn lied to hide would affect her view of the Russian investigation. Perhaps only Susan Rice was more personally betrayed by Mike Flynn's outreach to Russia, and yet Republicans seemed to not even realize that Flynn and KT McFarland

sent Tom Bossert to query Monaco in advance of Flynn's covert call with Russia, making her the Obama person most directly victimized by Flynn's underhandedness.

That blithe ignorance of how Monaco's personal history might affect her tenure extended beyond the Senate Judiciary Committee. For example, while every Assange supporter has targeted Biden and Garland for their pleas to drop the Assange prosecution, none have thought about the fact that Monaco was in charge of the response to the 2016 Russian interference campaign that led even WikiLeaks sympathizers in the Obama Administration to completely reconsider Assange's game and his longterm relationship with Russia (then again, Assange supporters, almost to a one, have convinced themselves to believe bullshit propaganda about that decision being made under Trump).

Most people have failed to ask these questions about Monaco's career experiences, even though as Deputy Attorney General, Monaco runs DOJ on a day-to-day basis and makes a lot of these decisions and serves as a key advisor to Garland where she doesn't.

As a result of the very surface approach to Monaco's career, there were a whole slew of questions in her confirmation hearing that should have been asked (and should be asked before Monaco's close associate Matt Olsen is confirmed as National Security Division head), but were not. When Lisa Monaco was Robert Mueller's top advisor in 2006, for example, what role did she play legalizing the phone dragnet aspiring to collect the phone records of all Americans under FISA's Section 215? Given her past failures to fulfill promises of transparency, specifically as it relates to FISA, what can she do to ensure she will deliver on such transparency as Deputy Attorney General? What was her role in the execution of Anwar al-Awlaki, and what does that say about her willingness to support unfettered executive authority? With the value of hindsight, does

Monaco believe that she was suckered into continuing John Brennan's permissive approach to drone strikes as White House Homeland Security Advisor, and if so what would she do to give herself the leverage to actually change bad policies baked in by her predecessors?

Don't get me wrong: Monaco has almost unparalleled qualifications to be Deputy Attorney General, she brings a lot of great qualities to the job, and I'm sure she's a lovely person. But there was almost no consideration about what affect her long tenure at DOJ and in National Security roles would have on her view towards Presidential authority and DOJ institutional precedent before she was confirmed.

Indeed, in perhaps the question that got closest to asking how she would treat initiatives from career DOJ officials already in place, Monaco explained to Amy Klobuchar that she viewed her job as to empower the people at DOJ she believed operated from an inherently unpartisan stance.

Klobuchar: After the last four years where civil servants withstood political interference, what do you see your role is as restoring the trust in the Department of Justice?

Monaco: Well Senator, as I said in my opening remarks, I think that the career men and women of the Justice Department are its backbone. They're the people that enforce the law independently, faithfully, fairly, impartially, without any consideration of improper motive. I think they simply want to do their job. They want to do their job with the resources and the tools to keep the American people safe, to prosecute violent crime, to administer justice with compassion, and with humility, as Judge Garland talked about before this committee. And they want to see equal justice under law, and they want to do the work that this Committee has done on

a bipartisan basis to administer criminal justice reform. And so I think my role is to ensure that they've got the tools and resources to do their job and to protect them from improper influence, any partisan motive, because I think they just want to do their job.

This is the belief system that leads Monaco to respond to a question about career DOJ prosecutor John Durham's clearly politicized investigation by saying that her job is to make sure he has the resources he wants to continue that investigation.

In her role at DOJ, Monaco has overseen some key wins: with the announcement yesterday that FBI had seized much of the ransomware payment that Colonial pipelines had paid Dark Side hackers, with her quiet presence on the public line listening as Paul Hodgkins made the first pure guilty plea of the January 6 investigation, with the decision – on her first full day in office – to let SDNY resume its investigation into Rudy Giuliani's foreign influence peddling.

But also under her leadership, DOJ has delayed notice to NYT about an effort to get their Internet records in a clearly politicized investigation. DOJ has moved to hide the contents of a Bill Barr memo that clearly abused his authority and the role of OLC (and with that decision, protected career employees who were making similarly dubious claims when Monaco ran the National Security Division). DOJ has defended a lot of legal stances that were obviously political on their face, most recently and egregiously by sustaining DOJ support to give Trump immunity from suit in his attack on alleged rape survivor, E. Jean Carroll. That is, as she did before with Cheney's Stellar Wind and Brennan's drone program, Monaco seems to have chosen not to make a clean break from the horrible policies of her predecessors, choosing instead to ensure the continuity of the institution.

Again, Lisa Monaco oozes intelligence and competence; she's undeniably qualified to be where she's at. But she also got where she's at by cleaning up the messes left by Stellar Wind, the torture program, and John Brennan's drone program by improving those shitty policies without demanding any accountability for the abuse of DOJ and presidential authority they entailed. Plus, as a career DOJ official, she's going to defend professionals who did stupid things on the orders of a deeply politicized boss.

Particularly in the wake of the decision to defend Trump against Carroll's suit, people are wondering how Merrick Garland could make such a horrible decision. My suspicion is they would be better asking what Lisa Monaco's role was in the decision.

INSURANCE FILE: GLENN GREENWALD'S ANGER IS OF MORE USE TO VLADIMIR PUTIN THAN EDWARD SNOWDEN'S FREEDOM

Glenn Greenwald risks making his own anger more valuable to Vladimir Putin than Edward Snowden's freedom.

When WikiLeaks helped Snowden flee Hong Kong eight years ago, both WikiLeaks and Snowden had the explicit goal of using Snowden's successful flight from prosecution to entice more leakers.

In his book, Snowden described that Sarah Harrison and Julian Assange's goal in helping him flee Hong Kong was to provide a

counterexample to the draconian sentence of Chelsea Manning.

People have long ascribed selfish motives to Assange's desire to give me aid, but I believe he was genuinely invested in one thing above all—helping me evade capture. That doing so involved tweaking the US government was just a bonus for him, an ancillary benefit, not the goal. It's true that Assange can be self-interested and vain, moody, and even bullying—after a sharp disagreement just a month after our first, text-based conversation, I never communicated with him again—but he also sincerely conceives of himself as a fighter in a historic battle for the public's right to know, a battle he will do anything to win. It's for this reason that I regard it as too reductive to interpret his assistance as merely an instance of scheming or self-promotion. More important to him, I believe, was the opportunity to establish a counterexample to the case of the organization's most famous source, US Army Private Chelsea Manning, whose thirty-five-year prison sentence was historically unprecedented and a monstrous deterrent to whistleblowers everywhere. Though I never was, and never would be, a source for Assange, my situation gave him a chance to right a wrong. There was nothing he could have done to save Manning, but he seemed, through Sarah, determined to do everything he could to save me. That said, I was initially wary of Sarah's involvement. But Laura told me that she was serious, competent, and, most important, independent: one of the few at WikiLeaks who dared to openly disagree with Assange. Despite my caution, I was in a difficult position, and as Hemingway once wrote, the way to make people trustworthy is to trust

them.

[snip]

It was only once we'd entered Chinese airspace that I realized I wouldn't be able to get any rest until I asked Sarah this question explicitly: "Why are you helping me?"

She flattened out her voice, as if trying to tamp down her passions, and told me that she wanted me to have a better outcome. She never said better than what outcome or whose, and I could only take that answer as a sign of her discretion and respect.

It's not just Snowden's impression, though, that WikiLeaks intended to make an example of him. The superseding indictment against Assange cites several times when Assange invoked WikiLeaks' role in Snowden's successful escape to encourage others (including CIA Systems Administrators like Joshua Schulte, who had a ticket to Mexico when the FBI first interviewed him and seized his passports) to go do what Snowden did. British Judge Vanessa Baraitser even included one of those speeches in paragraphs distinguishing what Assange is accused of from legal journalism. And as early as 2017, public reporting said that WikiLeaks' assistance to Snowden was what changed how DOJ understood WikiLeaks and why it began to consider prosecuting Assange. It wasn't Trump that led DOJ to stop treating Assange as a journalist, it was Snowden.

According to Snowden's own words, he shared WikiLeaks' goal of setting an example to inspire others. In an email that Snowden must have sent Bart Gellman weeks before the exchange between him and Harrison above, Snowden described steps he took to give other leakers (this may be Gellman's paraphrase), "hope for a happy ending."

In the Saturday night email, Snowden spelled it out. He had chosen to risk his freedom, he wrote, but he was not resigned to life in prison or worse. He preferred to set an example for “an entire class of potential whistleblowers” who might follow his lead. Ordinary citizens would not take impossible risks. They had to have some hope for a happy ending.

To effect this, I intend to apply for asylum (preferably somewhere with strong internet and press freedoms, e.g. Iceland, though the strength of the reaction will determine how choosy I can be). Given how tightly the U.S. surveils diplomatic outposts (I should know, I used to work in our U.N. spying shop), I cannot risk this until you have already gone to press, as it would immediately tip our hand. It would also be futile without proof of my claims—they’d have me committed—and I have no desire to provide raw source material to a foreign government. Post publication, the source document and cryptographic signature will allow me to immediately substantiate both the truth of my claim and the danger I am in without having to give anything up. . . . Give me the bottom line: when do you expect to go to print?

Citizenfour also quotes Snowden describing how he hoped that proof that his “methods work[]” would encourage others to leak.

If all ends well, perhaps the demonstration that our methods worked will embolden more to come forward.

Snowden’s “methods” don’t work – they certainly

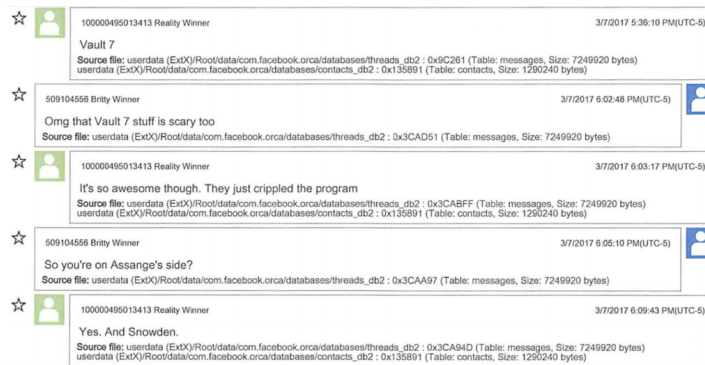
haven't for Daniel Hale, Reality Winner, or Joshua Schulte. But for each, Snowden played at least some role (there is ambiguity about how Schulte really felt about Snowden) in inspiring them to ruin their lives with magical thinking and inadequate operational security.

One of Snowden's "methods" appears to entail quitting an existing job and then picking another at an Intelligence Community contractor with the intent of obtaining documents to leak. Snowden did this at Booz Allen Hamilton, and his book at least suggests the possibility he did that with his earlier job in Hawaii.

The government justified the draconian sentence that it had negotiated with Winner's lawyers, in part, by claiming that she premeditated her leak.

Around the same time the defendant took a job with Pluribus requiring a security clearance in February 2017, she was expressing contempt for the United States, mocking compromises of our national security, and making preparations to leak intelligence information

Along with evidence Winner researched The Intercept's SecureDrop before starting at her new job, the government supported this claim by pointing to three references Winner made to Snowden as or shortly after she started at Pluribus, including texts in which Winner told her sister she was on Assange and Snowden's side the day the Vault 7 leak was revealed. That was still two months before she took the files she would send to The Intercept.



Had Hale gone to trial, the government would have shown that Hale discussed serving as a source for Jeremy Scahill by May 30, 2013, the day before he left NSA, and discussed Snowden – and hanging out with the journalists reporting on him – the day Snowden came forward on June 9. Then, on July 25, Hale sent Scahill a resume showing he was looking for counterterrorism or counterintelligence jobs. In December, Hale started the the job at Leidos where he would print out the files he sent to The Intercept.

You can think these leaks were valuable and ethical without thinking it a good idea to leave a months-long trail of evidence showing premeditation on unencrypted texts and social media.

Similarly, one of Snowden’s “methods” was to claim he had expressed concerns internally, but was ignored, a wannabe whistleblower stymied by America’s admittedly failed support for whistleblowers, especially those at contractors.

In the weeks before Snowden left NSA, he made a stink about some legal issues and NSA’s training programs (about how FISA Section 702 interacted with E0 12333) that he subsequently pointed to as his basis for claiming to be a whistleblower. The complaint was legit, and one NSA department actually did take notice, but it was not a formal complaint; indeed, it was more a complaint about US law. But his complaint had nothing to do with the vast majority of the documents that have been published based off his files, to say nothing of the far greater set of documents he took. And he made the complaint long after having prepared for months to steal

vast amounts of files.

Similarly, Joshua Schulte wrote two emails documenting purported concerns about CIA security, one to a colleague less than a month before he left, which he didn't send, and then, on his final day, one to CIA's Inspector General that he falsely claimed was unclassified, a copy of which he was seen taking with him when he packed up. In the first search warrant for Schulte's house obtained on March 13, 2017, less than a week after the initial Vault 7 release, the FBI had already found those emails and deemed Schulte's treatment of them as suspect. And when they found a copy of the classified letter to the IG stashed in his headboard, it gave them cause to seize Schulte's passports on threat of arrest. Snowden's "methods" didn't deliver Schulte a "happy ending;" they made Schulte's apprehension easier.

To the extent Schulte could be shown to be following Snowden's "methods" (again, that question was not resolved at his first trial) it would be a fairly damning indictment of those methods, since this effort to create a paper trail as a whistleblower was such an obvious attempt to retroactively invent cover for leaks for which there was abundant evidence Schulte's motivation was spite and revenge. Maybe that's why someone close to Assange explicitly asked me to stop covering Schulte's case.

Had Daniel Hale gone to trial, the government undoubtedly would have used the exhibits showing that Hale had never made any whistleblower claims in any of the series of government jobs where he had clearance as a way to push back on his claim of being a whistleblower, though Hale was outspoken about his criticisms of the drone program before he took most of the files he shared with The Intercept. Indeed, given the success of Hale's earlier anti-drone activism, his case raises real questions about whether leaking was more effective than Hale's frank, overt witness to the problems of the drone program.

Worse still, Snowden's boasts about his "methods" appear to have made prosecutions more likely. An early, mostly-sealed filing in Hale's case, reveals that the government set out to investigate whether Hale was The Intercept's source because they were trying to figure out whom Snowden had "inspired" to leak.

Specifically, the FBI repeatedly characterized its investigation in this case as an attempt to identify leakers who had been "inspired" by a specific individual – one whose activity was designed to criticize the government by shedding light on perceived illegalities on the part of the Intelligence Community.

That explains why the government required Hale to allocate to being the author of an essay in a collection of Hale's leaked documents involving Snowden: by doing so, they obtained sworn proof that Hale is the person Snowden and Glenn Greenwald were discussing, while the two were sitting in Moscow, in the closing sequence of Citizenfour. In the scene, Glenn flamboyantly wrote for Snowden how this new leaker and The Intercept's journalist were communicating, what appears to be J-A-B-B-E-R. That stunt for the camera would have tipped the government off, in cinema release just two months after they had raided Hale's home, to look for and reconstruct Hale's Jabber communications with Jeremy Scahill, which they partly succeeded in doing.

Rather than being means to a "happy ending," then, prosecutors have found Snowden's "methods" useful to pursuing increasingly draconian prosecutions of people inspired by him.

And now, after Snowden and Greenwald failed to persuade Trump to pardon Snowden, Assange – and in a secondary effort – The Intercept's sources (perhaps, like Assange, they find the association with Schulte counterproductive, because they didn't even try to get him pardoned, even though Trump himself almost

bolloxed that prosecution), Snowden is left demanding pardons on Twitter for the people he set out to convince leaking could have a “happy ending.”



By associating these leaks with someone being protected by Russia so that – in Snowden’s own words – he could encourage more leaks, Snowden only puts a target on these people’s back, making a justifiable commutation of Winner’s sentence less likely (Winner is due to get out on November 23, two days before the most likely time for Joe Biden to even consider commuting her sentence).

I’m grateful for Snowden’s sacrifices to release the NSA files, but his efforts to lead others to believe that leaking would be easy was bound to, and has, ended badly.

If Vladimir Putin agreed to protect Snowden in hopes that he would inspire more leakers to release files that help Russia evade US spying (as Schulte’s leak did, at a time when the US was trying to understand the full scope of what Russia had done in 2016), the US prosecutorial focus on Snowden-related leakers undermines his value to Putin, probably by design. As that happens, Snowden might reach the moment that observers of his case have long been dreading, the moment when Putin’s utilitarian protection of Snowden will give way to some other equally utilitarian goal.

This is all happening as Putin adjusts to dealing with Joe Biden rather than someone he could manipulate by (at the very least) feeding his narcissism, Donald Trump. It is happening in the wake of new sanctions on Russia, in response to which Putin put US Ambassador John Sullivan

on a plane to deliver some message, in person, to Biden. It is happening as Biden's response to the Colonial Pipeline attack, in which ransomware criminals harbored by Putin shut down US critical infrastructure for fun and profit, includes noting that he and Putin will meet in person soon, followed by the unexplained disabling of the perpetrators in the wake of the attack.

Meanwhile, even as Snowden is of less and less use to Putin, Glenn Greenwald's utility continues to grow. Snowden, for example, continues to speak out about topics inconvenient to Putin, like privacy. The presence in Russia of someone like Snowden with his own platform and international credibility may become increasingly risky for Putin given the success of protests around Alexei Navalny.

Greenwald, by contrast, seems to have dropped all interest in surveillance and has instead turned many of his grievances – even his complaint that former NSA lawyer Susan Hennessey will get a job in DOJ's National Security Division, against whom one can make a strong case on privacy grounds – into a defense of Russia. Greenwald spends most of his time arguing that a caricature that he labels "liberals" and another caricature that he labels "the [American] Deep State," followed closely by another caricature he calls "the [non-right wing propaganda] Media," are the most malignant forces in American life. In his rush to attack "liberals," "the Deep State," and "the Media," Greenwald has coddled the political forces that Putin has found useful, including outright racists and other right wing extremists. By the end of the Trump presidency, Greenwald was excusing virtually everything Trump did, up to and including his attempted coup based on the utter denigration of democratic processes. In short, Greenwald has become a loud and important voice in support of the illiberalism Putin favors, to say nothing of Greenwald's use of a rhetoric unbound by facts.

That Greenwald spends most of his days deliberately inciting Twitter mobs is just an added benefit, to those who want to weaken America, to Greenwald's defense of fascists.

Most of us who used to know Greenwald attribute his Russian denialism and his apologies for Trump at least partly to his desire to free Snowden from exile. Yet Greenwald's tantrums, because of their value to Putin, may have the opposite effect.

Stoking Greenwald's irrational furor over what he calls "liberals" and "the Deep State" and "the Media" would actually be a huge incentive for Putin to deal Snowden to the US, in maximally symbolic fashion. There is nothing that could light up Greenwald's fury like Putin bringing Snowden to a summit with Biden, wrapped up like a present, to send back on Air Force One. (That's an exaggerated scenario, but you get my point.)

Plus, if Putin played it right, such a ceremonial delivery of Snowden might just achieve the completion of the Snowden operation, the public release of all of the files Snowden stole, not just those that one or another journalist found to have news value.

The Intelligence Community has, over the years, said a bunch of things about Snowden that were outright bullshit or, at least, for which they did not yet have evidence. But one *true* thing they've said is that Snowden took a great many files that had no imaginable privacy value. Even from a brief period working in the full archive aiming to answer three very discrete questions about FISA, I believe that to be true. While some (including Assange) pressured Snowden and others to release all these files, Snowden instead ensured that journalists would serve a vetting role, and after some initial fumbling, The Intercept did a laudable job of keeping those files safe. So up to now, the fact that Snowden took far more files than any privacy concern – even privacy concerns divorced from all question of nationality – could justify may

not have mattered.

But as far as I know there are still full copies out there and Russia would love to spin up Glenn Greenwald's fury so much he would attempt to burn down his caricature of "The Deep State" in retaliation – much like Schulte succeeded in badly damaging the CIA – by releasing his set.

I believe Russia has been trying to do this since at least 2016.

To be very clear, I'm not claiming that Greenwald is taking money from or is any way controlled by Russia. I am very much not claiming that, in part because it wouldn't be necessary. Why pay Greenwald for what you can get him to do for free?

And while I assume Greenwald would respect Snowden's stated wishes and protect the files, like Trump, Greenwald's narcissism and resentment are very, very easy buttons to push. Greenwald has been heading in this direction without pushing. It would be child's play to have people friendly to Russia's illiberal goals (people like Steve Bannon or Tucker Carlson) exacerbate Greenwald's anger at "the Deep State" to turn it into the frenzy it has become.

Meanwhile, custody of Edward Snowden would be a very enticing dangle for Putin to offer Biden as a way to reset Russia's relationship with the US. One cannot negotiate with Putin, one can only adjust the points of leverage over each other and hope to come to some stable place, and Snowden has always been at risk of becoming a bargaining chip in such a relationship. By turning Snowden over to the US to be martyred in a high profile trial, Putin might wring the last bit of value out of Snowden. All the better, from Putin's standpoint, if Greenwald were to respond by releasing the full Snowden set.

For the past four years, Greenwald seems to have believed that if he sucked up to Putin and Trump, he'd win Snowden's freedom, as if either man would ever deal in good faith. Instead, I think, that process has had the effect of making

Greenwald more useful to Russia than Snowden is anymore. And at this point, Greenwald seems to have lost sight of the likelihood that his belligerent rants may well make Snowden less safe, not more.

Update: According to the government sentencing memo for Hale, they didn't write up the statement of offense, Hale did.

Hale pled guilty without any plea agreement, and submitted his own Statement of Facts. Def.'s Statement of Facts, Dkt. 197 ("SOF").

DANIEL HALE, CITIZENFIVE

Jeremy Scahill: So if I have a confidential source who's giving me information as a whistleblower and he works within the US government and he's concerned about what he perceives as violations of the Constitution, and he gets in touch with me..

Bill Binney: From there on they would nail him and start watching everything he did, and if he started passing data, I'm sure they'd take him off the street. I mean, the way you have to do it is like Deep Throat did in the Nixon years – meet in the basement of a parking garage. Physically.

– Citizenfour

Last week, drone whistleblower Daniel Hale pled guilty. In pleading guilty, Hale admitted that he was the source behind *The Intercept's* Drone Papers package of stories that provided new details about the drone program as operated

under President Obama. He also may have made clear that Laura Poitras' film, *Citizenfour*, isn't so much about Snowden, as it has always been described, but about Hale.

Hale pled guilty to one of five counts against him, Count 2 of the superseding indictment, 18 USC §793(e), for retaining and transmitting National Defense Information to Jeremy Scahill (Scahill was referred to as "the Reporter" in charging documents).

Before Hale pled guilty, the government released a list of exhibits it planned to use at trial. The exhibit list not only shows the government would have introduced a picture of Hale meeting publicly with Scahill at an event for the latter's *Dirty Wars*, texts Hale sent to his friend Megan describing meeting Scahill, emails between Scahill and Hale sent months before they moved their communication to Jabber (those all were mentioned in the Indictment), but it included texts Hale and Scahill exchanged between January 24 and March 7, 2014, continuing after Hale had started the process of printing off documents at the contractor where he worked which he would ultimately send to Scahill. (The exhibit list doesn't describe via what means they sent these texts and there are no correlating Verizon records prepared as exhibits covering that period, meaning they may not be telephony texts but instead could be the Jabber chats mentioned in the indictment, or maybe Signal texts). The government also would have introduced up to seven types of proof that Hale had printed each of the documents he was charged with, and badge records showing he was in his office and logged onto the relevant work computer each time those documents were printed out.

The government would also have submitted, for each of the agencies where Hale ever held clearance – NSA, DOD, a JSOC Task Force, NGA, and Air Force – a certification that the agency had no evidence that Hale had made any whistleblower complaints.

Unless those 2014 texts were from Jabber, there's nothing in the exhibit list that obviously shows that the government was intending to introduce proof of three Jabber chats the government reconstructed that Hale had with Scahill, though those were mentioned in the indictment.

At the change of plea hearing last Thursday, the government refused to dismiss the four other counts against Hale, which Hale's attorney, Todd Richman, said raised concerns that the government might revert to those charges if Judge Liam O'Grady didn't sentence Hale harshly enough. O'Grady (who seemed as concerned about the possibility Hale might harm himself between now and the July 13 sentencing as anything else) as much as said that, if the government tried that, it would still amount to the same sentence, signaling he would have sentenced Hale with a concurrent sentence for all counts, had he gone to trial.

The plea agreement has not been released yet, but pleading guilty days before the trial was to start will give Hale a slight reduction in his sentence, but he's still facing a draconian sentence for revealing details about the drone program.

That said, given what EDVA prosecutors – including Hale prosecutor Gordon Kromberg, who is the lead prosecutor on the Assange case – did to Chelsea Manning and Jeremy Hammond, I worry they might try something similar with Hale. From the start, the government has been interested in Hale for how he fit in the series of document leaks that started with Chelsea Manning and continued through Vault 7. That came up in mostly sealed filings submitted early in Hale's prosecution.

[T]he FBI repeatedly characterized its investigation in this case as an attempt to identify leakers who had been “inspired” by a specific individual – one whose activity was designed to criticize the government by shedding

light on perceived illegalities on the part of the Intelligence Community.

And the government intended to submit exchanges between Hale and Scahill about Snowden and Chelsea Manning at trial.

There are two things that appear in the Statement of Facts Hale pled guilty to that don't appear in the indictment.

First, the biographical language that explains how Hale enlisted in the Air Force, quit in May 2013, and only then got a job at a defense contractor where he had access to the files he ultimately leaked, is slightly different and generally abbreviated (leaving out, for example, that Hale was assigned to the NSA from 2011 to 2013, overlapping with Snowden). However, the Statement of Facts adds the detail that, "In July 2009, while the United States was actively engaged in two wars," Hale first enlisted. It's as if to suggest that Hale knew he would end up killing people when he signed up to join the Air Force.

Of more interest, the Statement of Facts includes an admission that Hale authored an anonymous document that prosecutors had planned to use at trial.

Mr. Hale authored an essay, attributed to "Anonymous," that became a chapter in a book published by the Reporter's online news outlet (defined as Book 2 in the Superseding Indictment).

It's a chapter in *The Assassination Complex*, a free-standing publication based on the documents Hale released.

The government first requested to use this document at trial in a sealed motion, accompanied by 6 exhibits, submitted on September 16, 2019 as part of the first wave of motions. But the judge didn't resolve that request until November 17, 2020, a month after a

hearing on that and other requests. In his order, O'Grady permitted the government to enter the chapter into evidence, but reminded them the jury gets to decide whether they believe the evidence is authentic or not.

The Court hereby ORDERS that the Government's Motion to Admit an Anonymous Writing as an Admission of the Defendant (dkt. 54) is GRANTED, as the Court stated in the October 13 hearing; the government will be permitted to present the book chapter attributed to an anonymous author. Federal Rule of Evidence 901(a) requires the proponent of a piece of evidence to authenticate it before it can be admitted. *United States v. Smith*, 918 F.2d 1501,1510 (11th Cir. 1990). The Court's role in determining whether evidence is authentic is limited to that of a gatekeeper in assessing whether the proponent has offered a satisfactory foundation." *United States v. Vidacak*, 553, F.3rd 344, 349 (4th Cir. 2009). The court finds that the government has laid satisfactory foundation for the purpose of admitting the evidence at trial. It now falls to the jury to determine whether the evidence is indeed what the government says it is: an anonymous writing that was written by Defendant admitting to the conduct of which he is accused.

At trial, it seems, the government would have treated this chapter as a confession. There are three exhibits in their trial exhibit list – stills and video of an Obama event in June 2008 – that suggest they planned to authenticate it, in part, by pointing to the anonymous author's admission that he shook then-Candidate Obama's hand in 2008 and showing pictures of the exchange.

In 2008 I shook hands with Senator Obama when he came through my town on his way

to the White House. After his inauguration he said, "Transparency and the rule of law will be the touchstones of this presidency." I firmly believe those principles are crucial to an open society, which is why I was compelled to reveal this information. If this administration lacks the courage to uphold its promises to the people, then I and others like me will do so for them.

So after having made their case that this was Hale, they then would have asked the jury to consider it a confession that he was the leaker described throughout *The Intercept's* reporting on the drones.

But with Hale's guilty plea, there's no evidentiary value to this chapter anymore. (That is, unless the government wants to argue that the specific Tide Personal Numbers Hale listed in the chapter – TPN 1063599 for Osama bin Laden and TPN 26350617 for Abdul Rahman al-Awlaki – amount to new disclosures not included in the charged releases.) Hale has already admitted, under oath, to being the anonymous source referred to by journalists throughout the rest of the book.

What the admission that he was part of the book publication does do, however, is tie Hale far more closely with Snowden, who wrote a hubristic introduction for the book. In it, he tied his leaks with Manning's and in turn his with Hale's.

[U]nlike Dan Ellsberg, I didn't have to wait forty years to witness other citizens breaking that silence with documents. Ellsberg gave the Pentagon Papers to the *New York Times* and other newspapers in 1971; Chelsea Manning provided the Iraq and Afghan War logs and the Cablegate materials to WikiLeaks in 2010. I came forward in 2013. Now here we are in 2015, and another person

of courage and conscience has made available the set of extraordinary documents that are published here.

I noted, when Snowden called for Trump to pardon Hale along with *The Intercept's* other sources, Terry Albury and Reality Winner, he effectively put a target on Hale's back, because it suggested those leaks all tied to him. All the more so, I now realize, given the way this Snowden essay suggests Hale's leaks have some tie to him.

Snowden ended the introduction by suggesting there were far more people like Manning, himself, and Hale waiting to drop huge amounts of documents than there were the "insiders at the highest levels of government" guarding the monopoly on violence.

The individuals who make these disclosures feel so strongly about what they have seen that they're willing to risk their lives and their freedom. They know that we, the people, are ultimately the strongest and most reliable check on the power of government. The insiders at the highest levels of government have extraordinary capability, extraordinary resources, tremendous access to influence, and a monopoly on violence, but in the final calculus there is but one figure that matters: the individual citizen.

And there are more of us than there are of them.

Yet the book suggests the links between Manning, Snowden, and Hale are merely inspirational.

Not so *Citizenfour*.

There's a scene of the movie, quoted above, where Bill Binney warns Jeremy Scahill that if he wanted to publish documents from a source we now know to be Hale, with whom (trial exhibits

would have shown) Scahill had already met in public, emailed, and texted during the period Hale was leaking, then (Binney instructed Scahill) he needed to do so by meeting in person, secretly.

It was probably too late for Hale by the time Binney gave Scahill this warning.

Then there's the film's widely discussed closing scene, showing a meeting where Glenn Greenwald flew to Moscow to update Snowden about "the new source" that has come to *The Intercept*. Apparently believing he's using rockstar operational security, he's writing down – on camera!!! – how *The Intercept* is communicating with this new source, bragging (still writing on camera about a source that had first reached out to Scahill via email and in person) that "they're very careful." One of the things he seems to write down is "Jabber," chats from which the government obtained and might have released at Hale's trial. In the scene, Greenwald continues to sketch out the contents of several of the documents – including one of the first ones to be published – that Hale just admitted he shared with *The Intercept*.

~~But in retrospect, the most important part of this sequence is where – against video footage showing Snowden and Lindsey in Moscow together – Poitras reads an email, dated April 2013 (a month before Hale quit the Air Force and NSA within days after Snowden fled to Hong Kong). She offers no explanation, not even naming the recipient of the email.~~

~~Let's disassociate our metadata one last time, so we don't have a clear record of your true name and our final communication chain. This is obviously not to say you can't claim your involvement. But as every trick in the book is likely to be used in looking into this, I believe it's better that that particular disclosure come on your own terms. Thank you again for all you've done. So sorry again for the~~

~~multiple delays but we've been in uncharted territory with no model to benefit from. If all ends well, perhaps the demonstration that our methods worked will embolden more to come forward.~~

~~That email has received far less attention than Greenwald's confident descriptions to Snowden of how someone inspired by his actions has come forward. But I remember when first viewing *Citizenfour* (which I watched long after it first came out), I had the feeling that Snowden was only feigning surprise when Greenwald told him of this new source and described the signals intercepts for the drone program going through Ramstein Air Base in Germany.~~

~~That is, that unexplained email may suggest that Hale met Snowden while both were at the NSA, and that days before the first Snowden releases, Hale quit, reached out to a close associate of Greenwald, then (months later) found a new job in the intelligence community where he could get files that would expose certain details of the drone program. The government had planned to introduce other movies at Hale's trial. But *Citizenfour* was not on the exhibit list.~~

Update: PseudonymousInDenver has persuaded me this is a reference to Poitras, not to someone else.

That's a detail I hadn't realized before: Hale reached out to Scahill, then quit the Air Force and NSA, and only then got a new job that gave him access to files he ended up leaking.

I have no idea what the government intends to do, now that it has Hale admitting that he participated in this book in which Snowden promised a legion of similar leakers. I have always been concerned the government would go after Scahill. But now I think this is about Snowden.

Since last year, the government has explicitly argued that WikiLeaks considered its help to

Snowden as part of a recruiting effort for further leakers (a detail of Julian Assange's most recent superseding indictment that literally every one of Snowden's closest associates has studiously avoided mentioning). They're not making that up. It's something Snowden admitted in his own book, and Bart Gellman described that Snowden was thinking the same as he leaked to Gellman. As noted, the government appears to have made a similar argument in sealed filings with Hale.

But one thing they seem to have demanded before they let Hale plead out before trial was a further admission, one that makes the Snowden tie more explicit.

Update: On Twitter, Hale corrected me that that TPN is for Awlaki's son, not for Awlaki himself.

THE GOVERNMENT ARGUES THAT EDWARD SNOWDEN IS A RECRUITING TOOL

As I noted in my post on the superseding indictment against Julian Assange, the government stretched the timeline of the Conspiracy to Hack count to 2015 by describing how WikiLeaks helped Edward Snowden flee to Russia. DOJ seems to be conceiving of WikiLeaks' role in helping Snowden as part of a continuing conspiracy designed to recruit more leakers.

Let me make clear from the onset: I am not endorsing this view, I am observing where I believe DOJ not only intends to head with this, but has already headed with it.

Using Snowden as a recruitment tool

After laying out how Chelsea Manning obtained and leaked files that were listed in the WikiLeaks Most Wanted list (the Iraq Rules of Engagement and Gitmo files, explicitly, and large databases more generally; here's one version of the list as entered into evidence at Manning's trial), then describing Assange's links to LulzSec, the superseding Assange indictment lays out WikiLeaks' overt post-leak ties and claimed ties to Edward Snowden.

83. In June 2013, media outlets reported that Edward J. Snowden had leaked numerous documents taken from the NSA and was located in Hong Kong. Later that month, an arrest warrant was issued in the United States District Court for the Eastern District of Virginia, for the arrest of Snowden, on charges involving the theft of information from the United States government.

84. To encourage leakers and hackers to provide stolen materials to WikiLeaks in the future, ASSANGE and others at WikiLeaks openly displayed their attempts to assist Snowden in evading arrest.

85. In June 2013, a WikiLeaks association [Sarah Harrison, described as WLA-4 in the indictment] traveled with Snowden from Hong Kong to Moscow.

86. On December 31, 2013, at the annual conference of the Chaos Computer Club ("CCC") in Germany, ASSANGE, [Jacob Appelbaum] and [Harrison] gave a presentation titled "Sysadmins of the World, Unite! A Call to Resistance." On its website, the CCC promoted the presentation by writing, "[t]here has never been a higher demand for a politically-engaged hackerdom" and that

ASSANGE and [Appelbaum] would “discuss what needs to be done if we re going to win.” ASSANGE told the audience that “the famous leaks that WikiLeaks has done or the recent Edward Snowden revelations” showed that “it was possible now for even a single system administrator to ... not merely wreck[] or disabl[e] [organizations] ... but rather shift[] information from an information apartheid system ... into the knowledge commons.” ASSANGE exhorted the audience to join the CIA in order to steal and provide information to WikiLeaks, stating, “I’m not saying doing join the CIA; no, go and join the CIA. Go in there, go into the ballpark and get the ball and bring it out.”

87. At the same presentation, in responding to the audience’s question as to what they could do, [Appelbaum] said “Edward Snowden did not save himself. ... Specifically for source protection [Harrison] took actions to protect [Snowden] ... [i]f we can succeed in saving Edward Snowden’s life and to keep him free, then the next Edward Snowden will have that to look forward to. And if look also to what has happened to Chelsea Manning, we see additionally that Snowden has clearly learned...”

The following section describes how, “ASSANGE and WikiLeaks Continue to Recruit,” including two more paragraphs about the Most Wanted Leaks:

89. On May 15, 2015, WikiLeaks tweeted a request for nominations for the 2015 “Most Wanted Leaks” list, and as an example, linked to one of the posts of a “Most Wanted Leaks” list from 2009 that remained on WikiLeaks’s website.

[snip]

92. In June 2015, to continue to

encourage individuals to hack into computers and/or illegally obtain and disclose classified information to WikiLeaks, WikiLeaks maintained on its website a list of “The Most Wanted Leaks of 2009,” which stated that documents or materials nominated to the list must “[b]e likely to have political, diplomatic, ethical or historical impact on release ... and be plausibly obtainable to a well-motivated insider or outsider,” and must be “described in enough detail so that ... a visiting outsider not already familiar with the material or its subject matter may be able to quickly locate it, and will be motivated to do so.”

Effectively, Snowden is included in this indictment not because the government is alleging any ties between Snowden and WikiLeaks in advance of his leaks (Snowden’s own book lays out reasons to think there was more contact between him and Appelbaum than is publicly known, but the superseding Assange indictment makes no mention of any contacts before Snowden’s first publications), but because WikiLeaks used their success at helping Snowden to flee as a recruiting pitch.

Snowden admits Harrison got involved to optimize his fate

This is something that Snowden lays out in his book. First, he addresses insinuations that Assange only helped Snowden out of selfish reasons.

People have long ascribed selfish motives to Assange’s desire to give me aid, but I believe he was genuinely invested in one thing above all—helping me evade capture. That doing so involved

tweaking the US government was just a bonus for him, an ancillary benefit, not the goal. It's true that Assange can be self-interested and vain, moody, and even bullying—after a sharp disagreement just a month after our first, text-based conversation, I never communicated with him again—but he also sincerely conceives of himself as a fighter in a historic battle for the public's right to know, a battle he will do anything to win. It's for this reason that I regard it as too reductive to interpret his assistance as merely an instance of scheming or self-promotion. More important to him, I believe, was the opportunity to establish a counterexample to the case of the organization's most famous source, US Army Private Chelsea Manning, whose thirty-five-year prison sentence was historically unprecedented and a monstrous deterrent to whistleblowers everywhere. Though I never was, and never would be, a source for Assange, my situation gave him a chance to right a wrong. There was nothing he could have done to save Manning, but he seemed, through Sarah, determined to do everything he could to save me.

This passage is written to suggest Snowden believed these things at the time, describing what “seemed” to be true at the time. But it's impossible to separate it from Appelbaum's explicit comparison of Manning and Snowden at CCC in December 2013.

Snowden then describes what he thinks Harrison's motive was.

By her own account, she was motivated to support me out of loyalty to her conscience more than to the ideological demands of her employer. Certainly her politics seemed shaped less by Assange's feral opposition to central power than

by her own conviction that too much of what passed for contemporary journalism served government interests rather than challenged them.

Again, this is written to suggest Snowden believed it at the time, though it's likely what he has come to believe since.

Then Snowden describes believing, at that time, that Harrison might ask for something in exchange for her help – some endorsement of WikiLeaks or something.

As we hurtled to the airport, as we checked in, as we cleared passport control for the first of what should have been three flights, I kept waiting for her to ask me for something—anything, even just for me to make a statement on Assange's, or the organization's, behalf. But she never did, although she did cheerfully share her opinion that I was a fool for trusting media conglomerates to fairly guard the gate between the public and the truth. For that instance of straight talk, and for many others, I'll always admire Sarah's honesty.

Finally, though, Snowden describes – once the plane entered into Chinese airspace and so narratively at a time when there was no escaping whatever fate WikiLeaks had helped him pursue – asking Harrison why she was helping. He describes that she provided a version of the story that WikiLeaks would offer that December in Germany: WikiLeaks needed to be able to provide a better outcome than the one that Manning suffered.

It was only once we'd entered Chinese airspace that I realized I wouldn't be able to get any rest until I asked Sarah this question explicitly: "Why are you helping me?" She flattened out her

voice, as if trying to tamp down her passions, and told me that she wanted me to have a better outcome. She never said better than what outcome or whose, and I could only take that answer as a sign of her discretion and respect.

Whatever has been filtered through time and (novelist-assisted) narrative, Snowden effectively says the same thing the superseding indictment does: Assange and Harrison went to great lengths to help Snowden get out of Hong Kong to make it easier to encourage others to leak or hack documents to share with WikiLeaks. I wouldn't be surprised if these excerpts from Snowden's book show up in any Assange trial, if it ever happens.

Snowden's own attempt to optimize outcomes

Curiously, Snowden did not say anything in his book about his own efforts to optimize his outcome, which is probably the most interesting new information in Bart Gellman's new book, *Dark Mirror* (the book is a useful summary of some of the most important Snowden disclosures and a chilling description of how aggressively he and Askhan Soltani were targeted by foreign governments as they were reporting the stories). *WaPo* included the incident in an excerpt, though the excerpt below is from the book.

Early on in the process, Snowden had asked Gellman to publish the first PRISM document with a key, without specifying what key it was. When *WaPo*'s editors asked why Gellman's source wanted them to publish a key, Gellman finally asked.

After meeting with the Post editors, I remembered that I could do an elementary check of the signature on my own. The result was disappointing. I was slow to grasp what it implied.

gpg --verify PRISM.pptx.sig PRISM.pptx

**gpg: Signature made Mon May 20 14:31:57
2013 EDT**

using RSA key ID □□□□□□□□

gpg: Good signature from "Verax"

Now I knew that Snowden, using his Verax alter ego, had signed the PowerPoint file himself. If I published the signature, all it would prove to a tech-savvy few was that a pseudonymous source had vouched for his own leak. What good would that do anyone?

In the Saturday night email, Snowden spelled it out. He had chosen to risk his freedom, he wrote, but he was not resigned to life in prison or worse. He preferred to set an example for "an entire class of potential whistleblowers" who might follow his lead. Ordinary citizens would not take impossible risks. They had to have some hope for a happy ending.

To effect this, I intend to apply for asylum (preferably somewhere with strong Internet and press freedoms, e.g. Iceland, though the strength of the reaction will determine how choosy I can be). Given how tightly the U.S. surveils diplomatic outposts (I should know, I used to work in our U.N. spying shop), I cannot risk this until you have already gone to press, as it would immediately tip our hand. It would also be futile without proof of my claims—they'd have me committed—and I have no desire to provide raw source material to a foreign government. Post publication, the source document and cryptographic signature will allow me to immediately substantiate both the truth of my claim and the danger I am in without having to give anything up. . . . Give me the bottom line: when do you expect to go to print?

Alarm gave way to vertigo. I forced myself to reread the passage slowly. Snowden planned to seek the protection of a foreign government. He would canvass diplomatic posts on an island under Chinese sovereign control. He might not have very good choices. The signature's purpose, its only purpose, was to help him through the gates.

How could I have missed this? Poitras and I did not need the signature to know who sent us the PRISM file. Snowden wanted to prove his role in the story to someone else. That thought had never occurred to me. Confidential sources, in my experience, did not implicate themselves—irrevocably, mathematically—in a classified leak. As soon as Snowden laid it out, the strategic logic was obvious. If we did as he asked, Snowden could demonstrate that our copy of the NSA document came from him. His plea for asylum would assert a “well-founded fear of being persecuted” for an act of political dissent. The U.S. government would maintain that Snowden's actions were criminal, not political. Under international law each nation could make that judgment for itself. The fulcrum of Snowden's entire plan was the signature file, a few hundred characters of cryptographic text, about the length of this paragraph. And I was the one he expected to place it online for his use.

Gellman, Poitras, and the Post recognized this would make them complicit in Snowden's flight and go beyond any journalistic role.

After some advice from WaPo's lawyers, Gellman made it clear to Snowden he could not publish the key (and would not have, in any case, because the slide deck included information on legitimate targets he and the WaPo had no intent of publishing).

We hated the replies we sent to Snowden on May 26. We had lawyered up and it showed. “You were clear with me and I want to be equally clear with you,” I wrote. “There are a number of unwarranted assumptions in your email. My intentions and objectives are purely journalistic, and I will not tie them or time them to any other goal.” I was working hard and intended to publish, but “I cannot give you the bottom line you want.”

This led Snowden to withdraw his offer of exclusivity which – as Gellman tells the story – is what led Snowden to renew his efforts to work with Glenn Greenwald. The aftermath of that decision led to a very interesting spat between Gellman and Greenwald – to read that, you should buy the book.

To be clear, I don’t blame Snowden for planning his first releases in such a way as to optimize the chances he wouldn’t spend the rest of his life in prison. But his silence on the topic in his own account, even while he adopted the WikiLeaks line about their goal of optimizing his outcome, raises questions about any link between Harrison’s plans and Snowden’s.

The government is using Snowden as inspiration in other cases

The superseding Assange indictment is the first place I know of where the government has specifically argued that WikiLeaks’ assistance to Snowden amounted to part of a criminal conspiracy (though it is totally unsurprising and I argued that it was clear the government was going there based on what they had argued in the Joshua Schulte case).

But it’s not the first place they have argued a tie between Snowden as inspiration and further

leaks.

The indictment for Daniel Everette Hale, the guy accused of sharing documents on the drone program with Jeremy Scahill, makes it clear how Hale's relationship with Scahill blossomed just as the Snowden leaks were coming out (and this detail makes it clear he's the one referred to in Citizenfour as another source coming forward).

15. On or about June 9, 2013, the Reporter sent HALE an email with a link to an article about Edward Snowden in an online publication. That same day, Hale texted a friend that the previous night he had been hanging out with journalists who were focused on his story. Hale wrote that the evening's events might provide him with "life long connections with people who publish work like this."

Hale launched a fairly aggressive (and if it weren't in EDVA, potentially an interesting) challenge to the Espionage Act charges against him. It included (but was not limited to) a Constitutional motion to dismiss as well as a motion to dismiss for selective prosecution. After his first motions, however, both the government's response and Hale's reply on selective prosecution were (and remain, nine months later) sealed.

But Hale's reply on the Constitutional motion to dismiss was not sealed. In it, he makes reference to what remains sealed in the selective prosecution filings. That reference makes it clear that the government described searching for leakers who had been inspired "by a specific individual" who – given the mention of Snowden in Hale's indictment – has to be Snowden.

Moreover, as argued in more detail in Defendant's Reply in support of his Motion to Dismiss for Selective or Vindictive Prosecution (filed

provisionally as classified), it appears that arbitrary enforcement – one of the risks of a vague criminal prohibition – is exactly what occurred here. Specifically, the FBI repeatedly characterized its investigation in this case as an attempt to identify leakers who had been “inspired” by a specific individual – one whose activity was designed to criticize the government by shedding light on perceived illegalities on the part of the Intelligence Community. In approximately the same timeframe, other leakers reportedly divulged classified information to make the government look good – by, for example, unlawfully divulging classified information about the search for Osama Bin Laden to the makers of the film Zero Dark Thirty, resulting in two separate Inspector General investigations.³ Yet the investigation in this case was not described as a search for leakers generally, or as a search for leakers who tried to glorify the work of the Intelligence Community. Rather, it was described as a search for those who disclosed classified information because they had been “inspired” to divulge improprieties in the intelligence community.

Hale argued, then, that the only reason he got prosecuted after some delay was because the FBI had a theory about Snowden’s role in inspiring further leaks.

Judge Liam O’Grady denied both those motions (and most of Hale’s other motions), though without further reference to Snowden as an inspiration. But I’m fairly sure this is not the only case where they’re making this argument.

TWENTY YEARS OF CONTINUITY

Last night, the US killed Qassem Suleimani in a targeted killing on Iraqi soil. DOD claimed they killed him in a “defensive” move to stop his plotting against US diplomats. Nancy Pelosi already made clear that Trump did not properly brief Congress (though Lindsey Graham says he got briefed while golfing at Mar a Lago).

Most experts fear this will escalate (indeed, recent events resemble a Colin Kahl think piece about how the US and Iran could escalate into a war without meaning to). That’d be bad enough under a sane president, with competent advisors. But Trump has fired most of the experts in his White House and has been pardoning war criminals (and is thinking of pardoning more). Which means we may well be mobilizing service members to fight for a Commander in Chief they can’t expect to think through the use of force, but who has already demanded that his subordinates violate norms and laws partly because he has a temper problem and partly because he doesn’t understand how slow negotiation and strategy works.

But I also feel like this moment has been coming for twenty years, enabled by people who disdain Trump but nevertheless get treated as sane.

There’s our response to 9/11, which people on both sides of the aisles believed was license to break all the rules the US had claimed to adhere to since World War II. We embraced torture because some of the most experienced policy makers ever claimed to be at a loss to know how to respond to a threat they had been warned about. Yet those policy makers knew how to work the system, to have in-house lawyers write up OLC memos excusing the crimes in advance.

Then there’s the Iraq War, the forever stain. Those same experienced policy makers used the opportunity of 9/11 to launch a war of a choice, and then bungle it, in part out of the same

impatience and imperiousness policy elites now criticize Trump for, in part by putting incompetent ideologues in charge of cleaning up the mess.

Along the way, we used tools meant to fight terrorism as a way to villainize Iran, in part because the Neocons wanted to avoid political negotiation with Iran at all costs and in part because figuring out a way to deal with Iran's willingness to use proxies was too difficult otherwise.

It didn't really get better with Obama. When faced with the challenge of an American citizen inciting attacks, Anwar al-Awlaki, he carried out a sustained effort to kill him using the same kind of targeted kill that Trump just used, excused by yet more shoddy OLC memos.

It seemed so easy, he did it again to take out Osama bin Laden, in a made-for-campaign-season strike that didn't do much to address terrorism but did expand our claims to operate on other countries' sovereign territory.

Then there was Libya, where the US made certain agreements to limit the action against Qaddafi, only to violate them and leave the country in chaos.

The Republicans' cynical sustained response to Benghazi, yet another made-for-campaign-season event, made it their party line stance that any attack on the US must be met by a show of dick-wagging and force, regardless of the efficacy. Trump even made that stance a key part of his nominating convention. Benghazi-palooza made a response like yesterday's targeted killing inevitable, even though a bunch of the same Republicans recognize that Trump doesn't understand the fire he's playing with.

Behind it all is a belief that the most powerful nation in the world shouldn't have to tolerate any resistance to its power, and may break rules and norms – to say nothing of causing untold chaos in other places – to quash it. Purportedly sane mainstream politicians set the precedent

that it was okay to commit war crimes as a misguided shortcut in defending America. A Nobel Prize winner normalized assassination. And both parties have enabled events and legal arguments that leave Trump with few restraints.

And yet the chattering classes will pretend this is something new with Trump.

ON THE CURIOUS TIMING OF DANIEL EVERETTE HALE'S ARREST

By all appearances, the FBI executed a search on the home of Daniel Everette Hale, an intelligence analyst the government has accused of being Jeremy Scahill's source for his Drone Papers reporting, on August 8, 2014. In the search, they found a thumb drive with a PowerPoint on drone operations that he had printed off at work over five months earlier.

By that time, Hale had already printed out all 23 documents, unrelated to his work at Leidos, that are charged in his indictment. He also had an unclassified document he printed off at work on his home computer. He had a separate thumb drive with Tails on it, the operating system that the Intercept recommended users use to share files. Somewhere along the way, the government obtained Hale's location data.

The August 2014 search was done a month after the Intercept published – in July 2014 – the first of the documents Hale printed out, and fourteen months before the Intercept first published that drone war PowerPoint, in October 2015. So the entire time the Intercept was publishing these documents, the government had solid evidence on who their suspected source was.

By the time FBI did that search, Hale had been in contact with Scahill – in largely unsecure form – for fifteen months. Even before Hale left the Air Force in July 2013, Hale had done a Google search on the NSA unclassified computer assigned to him for details on Scahill's Dirty Wars book tour. He attended an event at Politics and Prose that month, and told a "confidant" he had met Scahill, who wanted to tell his story. Hale played a public role in some of Scahill's events about the US war on terror. They emailed (including about Edward Snowden) through the summer and spoke at least once on the phone.

It wasn't until September 2013 that Scahill and Hale switched to Jabber (but even there, the government has evidence of at least three of their Jabber chats before Hale started printing off files from work), perhaps because Hale at least once texted Scahill about getting on Jabber, apparently the day before he printed out a bunch of drone war documents.

All that suggests that, as soon as a month after the Intercept first published documents from Hale, the government had all the same evidence they've shown in this indictment substantiating the very strong case that Hale was Scahill's source.

That was almost five years ago (the statute of limitations for the 793 Espionage Act crimes with which they've charged Hale is 10 years).

Just as curious, the government indicted Hale (in EDVA, based off work Maryland FBI Agents did) on March 7, apparently with a newly installed grand jury. The indictment has been sealed since then, waiting for Hale's arrest in Nashville.

It is not at all surprising that the government indicted Hale. Even under the Obama Administration's aggressive prosecutions of whistleblowing leakers, the case would be among the type they prosecuted (even though the drone documents he allegedly leaked exposed really damning details about a dysfunctional side of

our war on terror, so the prosecution might have embarrassed Obama). The Trump Administration has gotten even more aggressive with journalists.

According to his criminal cover sheet, Hale is represented by Abbe Lowell who, along with being Jared Kushner's lawyer, is also one of the best lawyers in the country on defending leak cases.

10 YEARS OF EMPTYWHEEL: KEY NON- SURVEILLANCE POSTS 2013-2015

Happy Birthday to me! To us! To the emptywheel community!

On December 3, 2007, emptywheel first posted as a distinct website. That makes us, me, we, ten today.

To celebrate, over the next few days, the emptywheel team will be sharing some of our favorite work from the last decade. I'll be doing 4 posts featuring some of my most important or – in my opinion – resilient non-surveillance posts, plus a separate post bringing together some of my most important surveillance work. I think everyone else is teeing up their favorites, too.

Putting together these posts has been a remarkable experience to see where we've been and the breadth of what we've covered, on top of mainstays like surveillance. I'm really proud of the work I've done, and proud of the community we've maintained over the years.

For years, we've done this content ad free, relying on donations and me doing freelance work for others to fund the stuff you read here. I would make far more if I worked for some free-

standing outlet, but I wouldn't be able to do the weedy, iterative work that I do here, which would amount to not being able to do my best work.

If you've found this work valuable – if you'd like to ensure it remains available for the next ten years – please consider supporting the site.

2013

What a Targeted Killing in the US Would Look Like

Amid now-abandoned discussions about using the FISA court to review targeted killing, I pointed out that a targeted killing in the US would look just like the October 28, 2009 killing of Imam Luqman Abdullah.

Article II or AUMF? “A High Level Official” (AKA John Brennan) Says CIA Can Murder You

When the second memo (as opposed to the first 7-page version) used to authorize the killing of Anwar al-Awlaki, it became clear that OLC never really decided whether the killing was done under Article II or the AUMF. That's important because if it's the latter, it suggests the President can order anyone killed.

John Brennan Sworn in as CIA Director Using Constitution Lacking

Bill of Rights

I know in the Trump era we're supposed to forget that John Brennan sponsored a whole lot of drone killing and surveillance. But I spent a good deal of the Obama Administration pointing that out. Including by pointing out that the Constitution he swore to protect and defend didn't have the First, Fourth, Fifth, and Sixth amendment in it.

2014

The Day After Government Catalogs Data NSA Collected on Tsarnaevs, DOJ Refuses to Give Dzhokhar Notice

I actually think it's unreasonable to expect the government's dragnets to prevent all attacks. But over and over (including with 9/11), NSA gets a pass when we do reviews of why an attack was missed. This post lays out how that happened in the Boston Marathon case. A follow-up continued that analysis.

A Guide to John Rizzo's Lies, For Lazy Journalists

Former CIA General Counsel John Rizzo lies, a lot. But that doesn't seem to lead journalists to treat his claims skeptically, nor did it prevent them from taking his memoir as a statement of fact. In this post I summarized all the lies he told in the first 10 pages of it.

Obama to Release OLC Memo after Only 24 Congressional Requests from 31 Members of Congress

Over the year and a half when one after another member of Congress asked for the OLC memos that authorized the drone execution of Anwar al-Awlaki, I tracked all those requests. This was the last post, summarizing all of them.

The West's Ideological Vacuum

With the rise of Trump and the success of Russia intervening in US and European politics, I've been talking about how the failures of US neoliberal ideology created a vacuum to allow those things to happen. But I've been talking about the failures of our ideology for longer than that, here in a post on ISIS.

KSM Had the CIA Believing in Black Muslim Convert Jihadist Arsonists in Montana for 3 Months

There weren't a huge number of huge surprises in the SSCI Torture Report for me (indeed, its scope left out some details about the involvement of the White House I had previously covered). But it did include a lot of details that really illustrate the stupidity of the torture program. None was more pathetic than the revelation that KSM had the CIA convinced that he was recruiting black Muslim converts to use arson in Montana.

2015

The Jeffrey Sterling Trial: Merlin Meets Curveball

A big part of the Jeffrey Sterling trial was CIA theater, with far more rigorous protection for 10 year old sources and methods than given to 4 year old Presidential Daily Briefs in the Scooter Libby trial. Both sides seemed aware that the theater was part of an attempt, in part, to help the CIA gets its reputation back after the Iraq War debacle. Except that the actual evidence presented at trial showed CIA was up to the same old tricks. That didn't help Sterling at all. But neither did it help CIA as much as government prosecutors claimed.

The Real Story Behind 2014 Indictment of Chinese Hackers: Ben Rhodes Moves the IP Theft Goal Posts

I've written a lot about the first indictment of nation-state hackers – People's Liberation Army hackers who compromised some mostly Pittsburgh located entities, including the US Steel Workers. Contrary to virtually all the reporting on the indictment, the indictment pertained to things we nation-state hack for too: predominantly, spying on negotiations. The sole exception involves the theft of some nuclear technology from Westinghouse that might have otherwise been dealt to China as part of a technology transfer arrangement.

Obama's Terrorism Cancer Speech, Carter's Malaise Speech

In response to a horrible Obama speech capitulating to Republican demands he treat the San Bernardino attack specially, as Islamic terrorism, I compared the speech to Jimmy Carter's malaise speech. Along the way, I noted that Carter signed the finding to train the mujahadeen at almost the exactly moment he gave the malaise speech. The trajectory of America has never been the same since.

Other Key Posts Threads

10 Years of emptywheel: Key Non-Surveillance Posts 2008-2010

10 Years of emptywheel: Key Non-Surveillance Posts 2011-2012

THE RIGHT TO BEAR DRONES

The Trump Administration has a plan to infringe on Americans' right to bear drones.

It has submitted language carving out an exception in surveillance and hacking laws such that it can track and destroy drones. The idea is a government agent (military or civilian) will be able to track and destroy *any* drone over a covered facility or operation, with no legal recourse for the owner of the drone.

Covered facilities are basically any stationary structure an agency wants to designate. The legislative language describes the following as

covered operations:

(A) any operation that is conducted in the United States by a member of the Armed Forces or a Federal officer, employee, agent, or contractor, that is important to public safety, law enforcement, or national or homeland security, and is designated by the head of a department or agency, consistent with the Federal Government-wide policy issued pursuant to subsection (d); and

(B) may include, but is not limited to, search and rescue operations; medical evacuations; wildland firefighting; patrol and detection monitoring of the United States border; a National Security Special Event or Special Event Assessment Ratings event; a fugitive apprehension operation or law enforcement investigation; a prisoner detention, correctional, or related operation; securing an authorized vessel, whether moored or underway; authorized protection of a person; transportation of special nuclear materials; or a security, emergency response, or military training, testing, or operation.

At one level, I'm sympathetic to the need. There have definitely been cases where drones have disrupted the work of firefighters and drones flying over sporting events (which might be classified as a National Security Special Event) certainly could pose a terrorist threat. And while I'm not aware of any public descriptions of drones being used to spy on military facilities or training, its inclusion here suggests it has happened (which also might explain the seeming urgency). Also, given the emphasis in the language on *detecting* drones, it's clear that there are drones going unnoticed that are surveilling facilities and operations.

Still, there are a whole bunch of activities in

this list that also rightly deserve oversight, at least from the press. And this language would give the Federal government the ability to blow any press drone out of the air with impunity.

So while I recognize the need to limit drone overflights of certain kinds of activities, this also seems like the completely wrong way to go about infringing on citizens' right to bear drones. At the very least, the language should include some kind of requirement for notice and appeal, such that the government can't just arbitrarily decide that it should be immune from the surveillance (literally, "over-sight") of citizens.

YAH, THESE ARE THE DROIDS WE HAVE BEEN LOOKING FOR AND FEARING

I did not always write about it so much here, but I got fairly deep into



"Deflategate" analysis and law when it was going on. Because it was fascinating. I met so many lawyers, professors and others, it was bonkers. Have remained friends with many, if not most, of all of them. One is Alexandra J. Roberts, which is kind of funny because she was not necessarily

one of the major players. Yet, she is one of the enduring benefits I have come to love from the bigger picture.

Today, Ms Roberts advises of some R2D2 like cop robots. I “might” have engaged in some frivolity in response. But, really, it is a pretty notable moment.

Police droids on the ground? Police drones in the air? You think *Kyllo* will protect you from a Supreme Court with Neil Gorsuch on it? Hell, you think Merrick Garland would not have done what he has done all of his life and sign off on ever greater law enforcement collection and oppression? Not a chance in hell. Neither Gorsuch, nor Garland, would ever have penned what Scalia did in *Kyllo*:

It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology. For example, as the cases discussed above make clear, the technology enabling human flight has exposed to public view (and hence, we have said, to official observation) uncovered portions of the house and its curtilage that once were private. See *Ciraolo*, supra, at 215. The question we confront today is what limits there are upon this power of technology to shrink the realm of guaranteed privacy.

So, with no further adieu, here, via the Bo Globe, is the deal:

There’s a new security officer in town. But this one runs on batteries, not Dunkin’ Donuts.

Next time you’re visiting the Prudential Center, don’t be alarmed if you bump into a large, rolling robot as it travels the corridors where shoppers pop in and out of stores.

No, it's not an oversized Roomba on the loose. It's the "Knightscope K5," an egg-shaped autonomous machine equipped with real-time monitoring and detection technology that allows it to keep tabs on what's happening nearby.

Marvelous! R2D2 is making us all safer!

Nope. Sorry. Safe streets, broken windows, and "cop on the beat" policing cannot be accomplished by a tin can.

Just Say No to this idiotic and lazy policing bullshit. The next thing you know, the tin can will be probable cause. And Neil Gorsuch will help further that craven "good faith" reliance opinion in a heartbeat.

Parting Shot: Holy hell, we have our first reference to hate crimes for anti-cop robot violence! See [here](#).

Frankly, having been in the field for three decades, I think the thought that cops are proper "hate crime" victims is absurd. Honestly, all "hate crimes" laws are completely absurd as they create different and more, and less, valuable classes of human crime victims. This may sound lovely to you in the safety of your perch, where you want to lash out at the evil others.

But if the "all men are created equal" language in the Declaration of Independence is to be given the meaning that so many demagogues over American history assign to it, then the "hate crimes" segregation and preference of one set of human victims over others, is total unfathomable bullshit.

That is just as to humans. Let's not even go to the "victim's rights" of squeaky ass little R2D2 tin cans.