

Reality Winner, Daniel Ellsberg and the Espionage Act

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The Espionage Act, which was established in 1917, was originally created to deter dangerous wartime decisions (Evolution of Espionage in America, n.d.). Its range of application has extended to include more than war-related offenses and has been applied to a plethora of instances where classified information was leaked, copied or shared. In the case of Daniel Ellsberg, this involved leaking classified documents regarding the war in Vietnam; for Reality Winner the act applied to her 2017 leaking of classified documents regarding possible Russian interference with the 2016 election. These two cases, however, brought forth extremely different results.

As the United States of America became involved in World War I, it was evident to lawmakers that something needed to be developed to prevent US military data from being shared with foreign intelligence, and to encourage wartime public cooperation. After the Espionage Act was developed, it was later reinforced by the Sedition Act (HISTORY, 2009). In the initial development of both acts, the targets were, “socialists, pacifists and other anti-war activists during World War I,” (HISTORY, 2009). The evolution of the Espionage Act from wartime protection to whistleblowers began to affect not only government security, but also to encroach on what the public viewed as their right to free speech.

Between years of war in the United States, two trends began to appear, which would have an effect on public information for future generations. These two trends were on opposite ends of the free speech spectrum, being that “the press had become more successful in arguing that democracy required that it be free from all forms of government interference, [and] a growing national security state was becoming ever more anxious to maintain control over information that

it believed needed to be kept secret,” (Lebovic, 2019, p. 54). These two trends remain at war in the United States still today. The Espionage Act, however, has in some ways grown to affect the former. It’s initial design to combat sharing government information with other countries grew to include any disclosure of classified information. This is why, in the case of Daniel Ellsberg and Reality Winner, they were able to be charged with a violation of the Espionage Act.

Whistleblowers

The Story of Daniel Ellsberg

Daniel Ellsberg was born in Chicago in 1931, to Harry and Adele Ellsberg. During a family road trip in 1946, Ellsberg’s father fell asleep at the wheel; resulting in a crash in which his mother was killed instantly. In the movie *The Pentagon Papers*, Ellsberg said this incident shaped his trust in authority for the rest of his life, and influenced how he responded to the disclosure of classified documents in 1971. Before he found himself working as analyst for Secretary of Defense Robert McNamara's classified study of the war in Vietnam, Ellsberg attended Harvard on a scholarship studying economics. This was followed by three years in the Marine Corps and a later entry into the Harvard Society of Fellows; a position that would lead him to his employment at Research and Development (RAND), where he first discovered secrecy regarding the war in Vietnam (Cox, 2021, *Life & Legacy*).

Ellsberg’s decision to leak the papers was not only shaped by the loss of his mother, but also by the influential protesters he met while working for RAND. Ellsberg said, “Without young men going to prison for nonviolent protests against the draft, men that I met on their way to prison, [there would be] no Pentagon Papers,” (Davie, 2018). More than any outside influence, however, Ellsberg said his greatest motivation was that he “wanted to bring an end to what he had come to view as a criminal and unjust war,” (Cox, 2021, *Pentagon Papers, Watergate, and*

Trials). Ellsberg was deeply affected by the knowledge of injustices in the war with Vietnam, and was compelled to release the papers to inform the public of the realities of the U.S.'s involvement in Vietnam.

In 1969, Ellsberg and former RAND colleague Anthony Russo began copying Robert McNamara's classified study of the war in Vietnam, compiling a total of roughly 7,000 pages of wartime documentation — later known as the Pentagon Papers. Ellsberg's first attempt at encouraging a change for the public was not a newspaper release; it was politicians. The Washington Post stated, "before going to the press, the maverick defense analyst had spent a year and a half quietly leaking the papers to leading antiwar senators and representatives — in hopes they would publicize them, hold hearings and insert them into the Congressional Record," (Trickey, 2023). After each politician declined to involve themselves, Ellsberg decided he needed to go to the press. In the spring of 1971, Ellsberg contacted New York Times Correspondent Neil Sheehan, and asked him to release the news. Initially, Ellsberg would not give Sheehan access to the document, however after a two month period of hashing details of the document with Ellsberg and other newsroom staff, all of which took place in the Cambridge Hotel to ensure secrecy (Ehrlich & Goldsmith, 2010), the New York Times released the article regarding the Pentagon papers (Cox, 2021, Pentagon Papers, Watergate, and Trials).

The Story of Reality Winner

Reality Winner was born in Texas in 1991 to Billie and Ronald Winner, but raised primarily by her mother and step-father, Gary Davis, on a ranch just north of the United States, Mexican Border. (Brett & Edwards, 2017). Winner graduated in the top ten percent of her high school class, however she chose to join the military as opposed to attending college. Her motivation in this was a strong desire to make a difference in the world. In an interview, Winner

said, “I had always wondered about having a bigger impact in the world,...I was ready to be part of the world so I just called [military] recruiters and basically said ‘Hi, my name is Reality Winner, and I’m enlisting to be a linguist in Middle East or North African languages’. I just cold called them and said, ‘I’m going to be a linguist.’” (Temple-Raston, 2022). After enlisting, Winner spent two years in training where she perfected her fluency in the Middle-Eastern languages of Farsi, Dari and Pashto. Winner went on to receive the Air Force Commendation Medal in 2016, and continued her career at National Security Agency (NSA) at Fort Meade, Maryland — although the specifics of her role there are classified (Pelley, 2022).

In 2017, people were beginning to question the legitimacy of the 2016 election. CBS News stated, “The president was raising doubt that Russia attacked the 2016 election...But it was Russia and the NSA knew it. Reality Winner had seen proof in a top secret report on an in-house newsfeed,” (Pelley, 2022). Winner said she believed this was something the public needed to know about. Winner was accused of having a “deep distrust” of the administration which was established based on her social media feed as well as journal entries, however Winner’s sister claims her only motivation was her conviction and guilt in hiding crucial information from the public. Brittany Winner, Reality’s sister, said “Many people ask me why Reality leaked the document. She had everything to lose and nothing to gain. I can speculate that she thought that the American people desperately needed to know that their voting systems were targeted by Russia so that steps could be taken to make the next presidential election more secure,” (Winner, 2021).

On May 9, 2017, Winner used unauthorized software to find and print a classified intelligence report of a U.S. Government Agency created on May 5, 2017. On that same day, Winner anonymously sent a hardcopy of the five-page classified document to *The Intercept* in

hopes of it being shared with the public through said media source. On June 3, 2017, Winner was arrested on the suspicion of leaking classified government information, and just two days later on June 5, 2017, *The Intercept* published the information found in the leaked document (Cole et al., 2017).

Evidence and Trials

The Case of Daniel Ellsberg

In 1971, shortly after The New York Times wrote an article on the Pentagon Papers Ellsberg leaked, Attorney General John Mitchell called for a restraint on any further publication from the news company until the government's suit was heard. As a result, other papers such as the Washington Post and Boston Globe began publishing articles regarding the Pentagon Papers classified information. (Cox, 2021, Pentagon Papers, Watergate, and Trials). This would be the first time in United States history that the federal government attempted to halt newspaper publications, and the Court's 6-3 ruling against the restraint set a precedent in favor of free speech that highlighted the value in the public's right to knowledge about government affairs.

The case against Ellsberg was off to an unfavorable start for the plaintiff, as

“Federal espionage laws targeted most clearly those who provided foreign governments with classified information, not those who gave documents to members of Congress or the American press. Even the theft charge raised issues, as the defense would argue that Ellsberg--unlike the vast majority of "thieves"--sought no personal advantage, or advantage for any third party, from copying documents,” (Linder, 2011).

Ellsberg himself said he knew he would gain nothing from releasing the Pentagon Papers, and more than likely would risk his career and potentially serve time in prison (Ehrlich & Goldsmith, 2010), however his belief that the public had a right to know overpowered this. After

one mistrial due to wiretapping, the second trial was not started until 1973. On May 11, Judge Bryne dismissed all charges against both Ellsberg and his accomplice Anthony Russo Jr. due to “improper Government conduct shielded so long from public view,” (Arnold, 1973, 1). Ellsberg was not found guilty of espionage, nor punished or charged with committing any of the other 11 crimes he was accused of.

The Case of Reality Winner

After anonymously leaking classified documents to *The Intercept*, Winner was identified as the source of the files. On June 3, 2017, Winner came home to FBI agents at her house for a “voluntary” interrogation. In this interrogation, Winner was asked repeatedly if she released the classified documents, to which she consistently said no. Winner stated “I mean, I’m trying to deploy. I’m not trying to be a whistleblower. That’s crazy,” (Reality Winner, letter, June 3, 2017). As the questions continued, however, she admitted to having folded the classified documents in half and placed them in her pantyhose. The article published by *The Intercept* was never removed, nor was the media outlet restrained, and the documents were not sent to any other outlet.

At her trial, Winner was charged under the Espionage Act, and plead guilty to one-count of unlawful retention and transmission of national defense information. Although whistleblowers can have protection under the law, “There’s a formal whistleblower process that includes lawyers and the legal transfer of government documents and, if it all works out, protection. Go outside that process, like Winner did, and it doesn’t really matter what you are releasing— technically, legally, you are not a whistleblower,” (Temple-Raston, 2022). Because she was not protected under the legal ‘whistleblower protocol’, Winner received a 63-month sentence, “the longest

sentence in U.S. history for releasing government information to the media,” (Thomas, 2020, p. 1)

Results and Journalistic Implications

Comparison of Ellsberg and Winner

During the 1970’s, many people in the United States were growing tired of the war with Vietnam. There were protesters and backlash, especially due to the continual loss of American lives. (Kent, 2001, pp. 2–4). With Ellsberg’s classified document leak, he was able to give the public a reason to bring the United States out of a war they opposed. Because of this, in the public’s eye, Ellsberg was seen as a hero. When his case was brought to court, there was already distaste for the government’s behaviors regarding the war — and the silencing of media networks with access to classified information. Ellsberg was not seen as guilty because the information he leaked was seen as something that helped the public, not something potentially harmful regarding foreign intelligence.

Winner, however, shared information regarding an already politically unrested election, in a time where many were unwilling to hear it. Mark Zaid, the whistleblower attorney, said “That document reveals more than anything else that we knew what was going on with the United States at the federal level, knew what the Russians were trying to do and whether they were being successful or not...and by revealing that document and telling the Russians what works and what doesn't, that was really valuable information,” (Temple-Raston, 2022). Winner not only shared potentially harmful foreign intelligence, but also sent information that had no impact on the people at that time, as Russia had not been successful in interfering in the election. Winner was heavily opposed in the eyes of the public due to her history of anti-American comments made via social media or personal journaling, such as

“notebooks filled with handwritten notes about wanting to burn down the White House and flee to the Middle East or South Asia, her fawning thoughts on Taliban leaders, instructions on how to anonymously access the dark web — where one can find phony IDs and weapons — and ways to make cell phones virtually untraceable, prosecutors allege,” (Brett & Edwards, 2017).

Due to the way Winner leaked the documents she had access to, as opposed to taking a legally acceptable route, the political unrest at the time, the possible foreign intelligence Russia could access and the lack of positive impact in the United States, the odds were stacked against Winner in her case. As a result, she received the longest sentence for leaking classified information — a 63-month sentence.

Implications for the Field of Journalism

The book *Public Relations and Whistleblowing*, states that sources should be viewed as, “performing a public service for which they were punished, while the news outlets that published their information were not. He argued that they and other sources should not bear the burden of disclosing information that news outlets felt was sufficiently in the public interest to publish with impunity,” (Greenwood, 2022, pp. 100–102). This places a greater emphasis on the media outlet’s responsibility to ensure leaked information is newsworthy and not harmful than it does on the whistleblower to know the difference. In the case of Ellsberg, journalists worked on the story from a hotel room as to ensure secrecy and enough time to decipher if the information was safe to share. The article released based on classified documents shared by Winner was released in a month, with no implication of excessive oversight. Journalists have a responsibility to monitor everything released, and to ensure it is not harmful to the public or to the United States.

Conclusion

Daniel Ellsberg is viewed as one of the first whistleblowers in United States history. The Pentagon Papers, which he released to The New York Times in 1971, were able to redirect the United State's role in the Vietnam War — something the public had long been asking for. Reality Winner, however, is not recognized as a whistleblower by many, including herself. The 5-page classified document she released did not change public opinion or action, and was not helpful regarding future action in the United States. She did not follow the accepted procedure of going to lawyers or cleared congressmen or women, and as a result received no protection under the law. Political climate and public opinion have a large role in whether whistleblowers are viewed as heroes or traitors.

Additionally, the profiles of Ellsberg and Winner were exceedingly different. Ellsberg, a Harvard graduate and veteran, was viewed as 'pro-America' by many individuals of the time (Ehrlich & Goldsmith, 2010). Winner, however, had a different reputation. Old classmates commented on her anger, and many noted the hateful nature of her political opinions shared on social media (Brett & Edwards, 2017). The light she was viewed under was much more negative than Ellsberg. Despite their differences of profiles, political unrest of the time, or the manner in which they shared documents — the different result of their cases is narrowed down to the information that was leaked. Ellsberg's Pentagon Papers in no way shared United States classified information with enemy countries, while Winner's was viewed as having information regarding the success and failure of foreign attempts to hack the United States voting system. In the case of Ellsberg, the good out-weighted the potential bad that came from the disclosed information. For Winner, the result was the opposite.

References

Arnold, M. (1973, May 12). Pentagon Papers charges are dismissed; Judge Byrne frees Ellsberg and Russo, assails ‘improper government conduct.’ The New York Times, 1.

<https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/big/0511.html>

Brett, J., & Edwards, J. (2017, June 9). Leak suspect Reality Winner: Quiet demeanor masked fierce competitor. The Atlantic Journal-Constitution.

<https://www.ajc.com/news/national-govt--politics/leak-suspect-reality-winner-quiet-demeanor-masked-fierce-competitor/plzQloDn0jE3Wb3OQOH0PP/>

Cole, M., Esposito, R., Biddle, S., & Grim, R. (2017, June 5). Top-secret NSA report details Russian hacking effort days before 2016 election. The Intercept.

<https://theintercept.com/2017/06/05/top-secret-nsa-report-details-russian-hacking-effort-days-before-2016-election/>

Cox, R. (2021). Life & Legacy. UMassAmherst The Ellsberg Archive Project; University of Massachusetts Amherst. <https://www.umass.edu/ellsberg/featured-documents/life-legacy/>

Davie, D. (2018, January 18). Daniel Ellsberg Explains Why He Leaked The Pentagon Papers. NPR; NPR.

<https://www.npr.org/2018/01/19/579101965/daniel-ellsberg-explains-why-he-leaked-the-pentagon-papers>

Ehrlich, J., & Goldsmith, R. (directors). (2010, February 5). The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers.

Evolution of Espionage in America. (n.d.). Evolution of Espionage in America. INTEL.gov; Office of the Director of National Intelligence. Retrieved October 3, 2023, from

<https://www.intelligence.gov/evolution-of-espionage/world-war-1/america-declares-war/espionage-act>

Greenwood, C. (2022). Public relations and whistleblowing: golden handcuffs in corporate wrongdoing (1st ed.). Taylor & Francis Group. <https://doi.org/10.4324/9781315231891>

Kent, S. (2001). From Slogans to Mantras: Social Protest and Religious Conversion in the Late Vietnam War Era (Religion and Politics) (Illustrated). Syracuse University Press.

Lebovic, S. (2019). 2. FROM CENSORSHIP TO CLASSIFICATION: The Evolution of the Espionage Act. Whistleblowing Nation, 45–68. <https://doi.org/10.7312/mist19416-004>

Linder, D. (2011). The Pentagon Papers (Daniel Ellsberg) Trial: An Account. UMCK Law; UMCK Law. <http://law2.umkc.edu/faculty/projects/frtrial/ellsberg/ellsbergaccount.html>

Pelley, S. (2022, July 24). “I am not a traitor”: Reality Winner explains why she leaked a classified document. CBS NEWS.

<https://www.cbsnews.com/news/reality-winner-60-minutes-2022-07-24/>

Reality Winner. (2017, June 3). Reality Winner Interrogation Transcript (J. Garrick/FBI & W. Taylor/FBI) [Letter].

Temple-Raston, D. (2022, February 21). In touch with Reality Winner. The Record.; The Record from Recorded Future News. <https://therecord.media/in-touch-with-reality-winner>

The U.S. congress passed the Espionage Act. (2009, November 5). The U.S. congress passed the Espionage Act. HISTORY; A&E Television Network.

<https://www.history.com/this-day-in-history/u-s-congress-passes-espionage-act>

Thomas, C. (2020). The Case of Reality Winner. The Texas Orator, 1–4. <https://repositories.lib.utexas.edu/bitstream/handle/2152/116352/The%20Case%20of%20Reality%20Winner%20%E2%80%93%20The%20Texas%20Orator.pdf?sequence=2>

Trickey, E. (2023, June 23). Daniel Ellsberg leaked his Vietnam secrets to senators first. They balked. The Washington Post.
<https://www.washingtonpost.com/history/2023/06/23/daniel-ellsberg-leaking-pentagon-papers-vietnam-war/>

Unlawful Retention and Transmission of National Defense Information (pp. 1–2). (n.d).
Unlawful Retention and Transmission of National Defense Information (pp. 1–2). Center for Development of Security and Excellence.

Winner, B. (2021). Speaking for my silenced sister. *Index on Censorship*, 50(2), 48–50.
<https://journals.sagepub.com/doi/10.1177/03064220211033789>