

A “Traitor” to the American Death Machine Faces Years in Prison – While the Killing Goes On

By Chris Hedges, Published on Salon.com, July 13, 2021

Daniel Hale, an active-duty Air Force intelligence analyst, stood in the Occupy encampment in Zuccotti Park in October 2011 in his military uniform. He held up a sign that read “Free Bradley Manning,” who had not yet announced her transition. It was a singular act of conscience few in uniform had the strength to replicate. He had taken a week off from his job to join the protesters in the park. He was present at 6 a.m. on Oct. 14 when Mayor Michael Bloomberg made his first attempt to clear the park. He stood in solidarity with thousands of protesters, including many unionized transit workers, teachers, Teamsters and communications workers, who formed a ring around the park. He watched the police back down as the crowd erupted into cheers. But this act of defiance and moral courage was only the beginning.

At the time, Hale was stationed at Fort Bragg. A few months later he deployed to Afghanistan’s Bagram Air Force Base. He would later learn that that while he was in Zuccotti Park, Barack Obama ordered a drone strike some 12,000 miles away in Yemen that killed Abdulrahman Anwar al-Awlaki, the 16-year-old son of the radical cleric and U.S. citizen Anwar al-Awlaki, who had been killed by a drone strike two weeks earlier. The Obama administration claimed it was targeting the leader of al-Qaida in the Arabian Peninsula, Ibrahim al-Banna, who it believed, incorrectly, was with the boy and his cousins, all of whom were also killed in the attack. That massacre of innocents became public, but there were thousands more such

attacks that wantonly killed noncombatants that only Hale and those with top-security clearances knew about.

Starting in 2013, Hale, while working as a private contractor, leaked some 17 classified documents about the drone program to investigative reporter Jeremy Scahill, although the reporter is not named in court documents. The leaked documents, published by The Intercept on Oct. 15, 2015, exposed that between January 2012 and February 2013, U.S. special operations airstrikes killed more than 200 people. Of those, only 35 were the intended targets. For one five-month period of the operation, according to the documents, nearly 90 percent of the people killed in airstrikes were not the intended targets. The civilian dead, usually innocent bystanders, were routinely classified as "*enemies killed in action.*"

Hale was coerced by President Biden's Justice Department on March 31 to plead guilty to one count of violating the Espionage Act, a law passed in 1917 designed to prosecute those who passed on state secrets to a hostile power, not those who expose to the public government lies and crimes. Hale admitted as part of the plea deal to "*retention and transmission of national security information*" and leaking 11 classified documents to a journalist. He is being held in the Alexandria Adult Detention Center in Virginia, awaiting sentencing on July 27. If he had refused the plea deal, he could have spent 50 years in prison. He now faces up to a decade in prison.

Tragically, his case has not garnered the attention it should. When Nick Mottern, of the Ban Killer Drones campaign, accompanied artists projecting Hale's image on downtown walls in Washington, he found that everyone he spoke to was unaware of Hale's plight. Prominent human rights organizations, such as the ACLU and PEN, have largely remained silent and uninvolved. The group Stand with Daniel Hale has called on Biden to pardon Hale and end the use of the Espionage Act to

punish whistleblowers, mounted a letter-writing campaign to the judge to request leniency and is collecting donations for Hale's legal fund.

"Daniel Hale is one of the most consequential whistleblowers," Edward Snowden said on a May Day panel held at the University of Massachusetts-Amherst on the 50th anniversary of the release of the Pentagon Papers.

"He sacrificed everything – an incredibly courageous person – to tell us that the drone war, that, you know, is so obviously occurring to everyone else, but the government was still officially denying in so many ways, is here, it is happening, and 90 percent of the casualties in one five-month period were innocents or bystanders or not the target of the drone strike. We could not establish that, we could not prove that, without Daniel Hale's voice."

Speaking on Democracy Now! with host Amy Goodman a few weeks later, Daniel Ellsberg agreed that Hale *"acted very admirably, in a way that very, very few officials have ever done in showing the moral courage to separate themselves from criminal activities and wrongful activities of their own administration, and resist them, as well as exposing them."*

Because Hale was charged under the Espionage Act, he, like other whistleblowers, including Chelsea Manning, Jeffrey Sterling, Thomas Drake and John Kiriakou, who spent two and a half years in prison for exposing the routine torture of suspects held in black sites, was not permitted to explain his motivations and intent to the court. Nor could he provide evidence to the court that the drone assassination program killed and wounded large numbers of noncombatants, including children. He faced trial in the Eastern District of Virginia, much of whose population has links to the military or intelligence community, and whose courts have become notorious for their harsh sentences on behalf of the government.

The 2012 *“Living Under Drones”* report by the Stanford International Human Rights and Conflict Resolution Clinic provides a detailed documentation of the human impact of U.S. drone strikes in Pakistan. Drones often fire Hellfire missiles that are equipped with an explosive warhead of about 20 pounds. A Hellfire variant, known as the R9X, carries *“an inert warhead,”* The New York Times reported. Instead of exploding, it hurls about 100 pounds of metal through a vehicle. The missile’s other feature includes *“six long blades tucked inside,”* which deploy *“seconds before impact to slice up anything in its path”* – including, of course, people.

The numbers of civilian dead from U.S. drone strikes run into the thousands, if not tens of thousands. The Bureau of Investigative Journalism (TBIJ), an independent journalist organization, for example, reported that from June 2004 through mid-September 2012, drone strikes killed between 2,562 and 3,325 people in Pakistan, of whom an estimated 474 to 881 were civilians, including 176 children.

Drones hover 24 hours a day in the skies over Iraq, Somalia, Yemen, Afghanistan, Pakistan and Syria. Without warning, the drones, operated remotely from Air Force bases as far away as Nevada, fire ordinance that obliterates homes and vehicles or kills whole groups of people in fields or attending community gatherings, funerals and weddings. The leaked banter of the young drone operators, who often treat the killings as if they are an enhanced video game, exposes the callousness of the indiscriminate killings. Drone operators refer to child victims of drone attacks as *“fun-sized terrorists.”*

“Ever step on ants and never give it another thought?”

Michael Hass, a former drone operator for the Air Force, told The Guardian.

“That’s what you are made to think of the targets – as just black blobs on a screen. You start to do these psychological

gymnastics to make it easier to do what you have to do – they deserved it, they chose their side. You had to kill part of your conscience to keep doing your job every day – and ignore those voices telling you this wasn't right."

The ubiquitous presence of drones in the skies, and the awareness that at any moment these drones can kill you and your family, induces feelings of helplessness, anxiety and constant fear.

"Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities,"

the 2012 report reads of the drone war in Pakistan.

"Those living under drones have to face the constant worry that a deadly strike may be fired at any moment and the knowledge that they are powerless to protect themselves. These fears have affected behavior. The U.S. practice of striking one area multiple times, and evidence that it has killed rescuers, makes both community members and humanitarian workers afraid or unwilling to assist injured victims. Some community members shy away from gathering in groups, including important tribal dispute-resolution bodies, out of fear that they may attract the attention of drone operators. Some parents choose to keep their children home, and children injured or traumatized by strikes have dropped out of school."

Drones have become killing machines that mete out random death and usually permanently cripple those victims who survive.

"The missiles fired from drones kill or injure in several ways, including through incineration, shrapnel, and the release of powerful blast waves capable of crushing internal organs,"

the report reads.

“Those who do survive drone strikes often suffer disfiguring burns and shrapnel wounds, limb amputations, as well as vision and hearing loss.”

Hale, now 33, always had doubts about the war, but he enlisted in 2009 when Obama assumed office. He hoped that Obama would undo the excesses and lawlessness of the Bush administration. Instead, Obama, a few weeks after he took office, approved the deployment of an additional 17,000 troops to Afghanistan, where 36,000 U.S. troops and 32,000 NATO troops were already deployed. By the end of the year, Obama increased troop levels in Afghanistan again by 30,000, doubling U.S. casualties. He also massively expanded the drone program, raising the number of drone strikes from several dozen the year before he took office to 117 by his second year in office. By the time he left office Obama had presided over the killing of at least 3,000 suspected militants and hundreds of civilians. He authorized what are known as “signature strikes” allowing the CIA to carry out drone attacks against groups of suspected militants without getting positive identification. He spread the footprint of the drone war, establishing drone bases in Saudi Arabia, Turkey and other overseas locations to expand attacks to Syria and Yemen. The Obama administration also indicted eight whistleblowers under the Espionage Act, more than all previous administrations combined. The Biden administration, like the Trump and Obama administrations, continues to launch widespread global drone strikes.

“Before I joined the military, I was well aware that what I was about to enter was something I was against, that I disagreed with,”

Hale says in the 2016 documentary film “National Bird.”

"I joined anyway out of desperation. I was homeless. I was desperate. I had nowhere else to go. I was on my last leg. The Air Force was ready to accept me."

In the film, Hale alludes to a difficult and chaotic childhood.

"It's kind of funny, a little ironic too, because so far I'm the only adult male in my entire family, immediate and external, who had not been to prison so far," he says. "I come from a long lineage of prisoners, actually, a very proud tradition of fuck-ups who get drunk and go driving, or sell pot, or carry a gun when they shouldn't be carrying a gun, in the wrong place at the wrong time, a lot of that where I'm from."

He was assigned to the Joint Special Operations Command at Fort Bragg and underwent language and intelligence training. He worked for the National Security Agency (NSA) in Afghanistan as an intelligence analyst identifying targets for the drone program. His Top Secret/Sensitive Compartmented Information (TS/SCI) security clearance gave him access to the vast global drone war hidden from public view and Obama's huge secret "kill lists."

*"There are several such lists, used to target individuals for different reasons," he wrote in an essay titled "Why I Leaked the Watchlist Documents," originally published anonymously in the book **"The Assassination Complex: Inside the Government's Secret Drone Warfare Program"** by Jeremy Scahill and the staff of The Intercept. The book is based on the leaked documents provided by Hale that first appeared as an eight-part series called *"The Drone Papers"* published by The Intercept.*

"Some lists are closely kept; others span multiple intelligence and local law enforcement agencies,"

Hale writes in the essay.

“There are lists used to kill or capture supposed ‘high-value targets,’ and others intended to threaten, coerce, or simply monitor a person’s activity. However, all the lists, whether to kill or silence, originate from the Terrorist Identities Datamart Environment, and they are maintained by the Terrorist Screening Center at the National Counterterrorism Center. The existence of TIDE is unclassified, yet details about how it functions in our government are completely unknown to the public. In August 2013 the database reached a milestone of one million entries. Today it is thousands of entries larger and is growing faster than it has since its inception in 2003.”

The Terrorist Screening Center, he writes, not only stores names, dates of birth and other identifying information of potential targets, but also stores *“medical records, transcripts, and passport data; license plate numbers, email, and cell-phone numbers (along with the phone’s International Mobile Subscriber Identity and International Mobile Station Equipment Identity numbers); your bank account numbers and purchases; and other sensitive information, including DNA and photographs capable of identifying you using facial recognition software.”*

Data on suspects is collected and pooled by the intelligence agencies known as the Five Eyes, the intelligence alliance formed by Australia, Canada, New Zealand, the United Kingdom and the United States. Each person on the list is assigned a TIDE personal number, or TPN.

“From Osama bin Laden (TPN 1063599) to Abdulrahman Awlaki (TPN 26350617), the American son of Anwar al Awlaki, anyone who has ever been the target of a covert operation was first assigned a TPN and closely monitored by all agencies who follow that TPN long before they were eventually put on a

separate list and extrajudicially sentenced to death,”

Hale wrote.

He also exposed that the more than one million entries in the TIDE database include about 21,000 U.S. citizens.

After leaving the Air Force in July 2013, Hale was employed by the private defense contractor National Geospatial-Intelligence Agency as a political geography analyst between December 2013 and August 2014. He said he took the job, which paid \$80,000 a year, because he was in desperate need of money and hoped to go to college. But by then he was disgusted with the drone program and determined to make the public aware of its abuses and lawlessness. Inspired by the peace activist David Dellinger, he, like Dellinger, had decided to become a traitor to *“the American way of death.”* He would make amends for his complicity in the killings, even at the cost of his own security and freedom.

“When the president gets up in front of the nation and says they are doing everything they can to ensure there is near certainty there will be no civilians killed, he is saying that because he can’t say otherwise, because anytime an action is taken to finish a target there is a certain amount of guesswork in that action,”

Hale says in the film.

“It’s only in the aftermath of any kind of ordinance being dropped that you know how much actual damage was done. Oftentimes, the intelligence community is reliant, the Joint Special Operations Command, the CIA included, is reliant on intelligence coming afterwards that confirms that who they were targeting was killed in the strike, or that they weren’t killed in that strike.”

“The people who defend drones and the way they are used say they protect American lives by not putting them in harm’s way,” he says. “What they really do is embolden decision makers, because there is no threat, there is no immediate consequence. They can do this strike. They can potentially kill this person they are so desperate to eliminate because of how potentially dangerous they could be to the U.S. But if it just so happens that they don’t kill that person, or some other people involved in the strike get killed as well, there are no consequences for it. When it comes to high-value targets, every mission you go after one person at a time, but anybody else killed in that strike is assumed to be an associate of the targeted individual. So as long as they can reasonably identify that all of the people in the field view of the camera are military-aged males, meaning anybody who is believed to be age 16 or older, they are a legitimate target under the rules of engagement. If that strike occurs and kills all of them, they just say they got them all.”

Drones, he warns, make remote killing “too easy, too convenient.”

On Aug. 8, 2014, the FBI raided Hale’s home. It was his last day of work for the private contractor. A male and female FBI agent shoved their badges in his face when he opened the door.

“Immediately behind them came about 20 agents, basically all of them with pistols drawn, some wearing body armor,”

he says in the film.

“At this point I was extremely scared. I did not understand what was going on. Altogether, there might have been at least 30 to 50 agents in and out of the house at different points throughout the evening taking photos of every room and everything, searching for different things.”

By the time they finished his house was stripped of all electronics, including his cell phone.

For the next five years he lived with the uncertainty of his fate. He struggled to find work, fought off depression and contemplated suicide. He was barred by law from speaking about his plight, even with a therapist. In 2019, the Trump administration indicted Hale on four counts of violating the Espionage Act and one count of theft of government property.

The thousands of targeted assassinations carried out by drones, often in countries that are not at war with the United States, are an egregious violation of international law. They are turning huge swaths of the planet against us. The secret kill lists, which include U.S. citizens, have transformed the executive branch into judge, jury and executioner, obliterating the right to due process. Those that commit these killings are unaccountable. Hale sacrificed his career and his freedom to warn us. He is not a danger to the country. The danger we face comes from the secret drone program, which is spiraling out of control and ominously being adopted by domestic law enforcement agencies. If left unchecked, the terror we impose on others we will soon impose on ourselves.

**Featured Image: Unmanned Aerial Vehicle (UAV) Drone Attack (Getty Images/koto_feja)*

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Why Daniel Hale Deserve Gratitude, Not Prison

by *Kathy Kelly* published on *Countercurrents*, July 07, 2021

"Pardon Daniel Hale."

These words hung in the air on a recent Saturday evening, projected onto several Washington, D.C. buildings, above the face of a courageous whistleblower facing ten years in prison.

The artists aimed to inform the U.S. public about Daniel E. Hale, a former Air Force analyst who blew the whistle on the consequences of drone warfare. Hale will appear for sentencing before Judge Liam O'Grady on July 27th.

The U.S. Air Force had assigned Hale to work for the National Security Agency. At one point, he also served in Afghanistan, at the Bagram Air Force Base.

"In this role as a signals analyst, Hale was involved in the identifying of targets for the US drone program,"

notes Chip Gibbons, policy director for Defending Rights and Dissent, in a lengthy article about Hale's case.

*"Hale would tell the filmmakers of the 2016 documentary *National Bird* that he was disturbed by 'the uncertainty if anyone I was involved in kill[ing] or captur[ing] was a civilian or not. There's no way of knowing.'"*

Hale, thirty-three, believed the public wasn't getting crucial

information about the nature and extent of U.S. drone assassinations of civilians. Lacking that evidence, U.S. people couldn't make informed decisions. Moved by his conscience, he opted to become a truth-teller.

The U.S. government is treating him as a threat, a thief who stole documents, and an enemy. If ordinary people knew more about him, they might regard him as a hero.

Hale was charged under the Espionage Act for allegedly providing classified information to a reporter. The Espionage Act is an antiquated World War I era law, passed in 1917, designed for use against enemies of the U.S. accused of spying. The U.S. government has dusted it off, more recently, for use against whistle blowers.

Individuals charged under this law are not allowed to raise any issues regarding motivation or intent. They literally are not allowed to explain the basis for their actions.

One observer of whistleblowers' struggles with the courts was himself a whistleblower. Tried and convicted under the Espionage Act, John Kiriakou spent two and a half years in prison for exposing government wrongdoing. He says the U.S. government in these cases engages in "*charge stacking*" to ensure a lengthy prison term as well as "*venue-shopping*" to try such cases in the nation's most conservative districts.

Daniel Hale was facing trial in the Eastern District of Virginia, home to the Pentagon as well as many CIA and other federal government agents. He was facing up to 50 years in prison if found guilty on all counts.

On March 31, Hale pled guilty on one count of retention and transmission of national defense information. He now faces a maximum of ten years in prison.

At no point has he been able to raise before a judge his alarm about the Pentagon's false claims that targeted drone

assassination is precise and civilian deaths are minimal.

Hale was familiar with details of a special operations campaign in northeastern Afghanistan, Operation Haymaker. He saw evidence that between January 2012 and February 2013,

“U.S. special operations airstrikes killed more than 200 people. Of those, only 35 were the intended targets. During one five-month period of the operation, according to the documents, nearly 90 percent of the people killed in airstrikes were not the intended targets.”

Had he gone to trial, a jury of his peers might have learned more details about consequences of drone attacks. Weaponized drones are typically outfitted with Hellfire missiles, designed for use against vehicles and buildings.

Living Under Drones, the most complete documentation of the human impact of U.S. drone attacks yet produced, reports:

“The most immediate consequence of drone strikes is, of course, death and injury to those targeted or near a strike. The missiles fired from drones kill or injure in several ways, including through incineration, shrapnel, and the release of powerful blast waves capable of crushing internal organs. Those who do survive drone strikes often suffer disfiguring burns and shrapnel wounds, limb amputations, as well as vision and hearing loss.”

A new variation of this missile can hurl about 100 pounds of metal through the top of a vehicle or building; the missiles also deploy, just before impact, six long, whirring blades intended to slice up any person or object in the missile's path.

Any drone operator or analyst should be aghast, as Daniel Hale was, at the possibility of killing and maiming civilians through such grotesque means. But Daniel Hale's ordeal may be

intended to send a chilling message to other U.S. government and military analysts: keep quiet.

Nick Mottern, of the Ban Killer Drones campaign, accompanied artists projecting Hale's image on various walls in D.C. He engaged people who were passing by, asking if they knew of Daniel Hale's case. Not a single person he spoke with had. Nor did anyone know anything about drone warfare.

Now imprisoned at the Alexandria (VA) Adult Detention Center, Hale awaits sentencing.

Supporters urge people to "*stand with Daniel Hale.*" One solidarity action involves writing Judge O'Grady to express gratitude that Hale told the truth about the U.S. use of drones to kill innocent people.

At a time when drone sales and usage are proliferating worldwide and causing increasingly gruesome damage, President Joe Biden continues to launch killer drone attacks around the world, albeit with some new restrictions.

Hale's honesty, courage, and exemplary readiness to act in accord with his conscience are critically needed. Instead, the U.S. government has done its best to silence him.

A version of this article appeared in The Progressive Magazine.

Kathy Kelly (Kathy.vcnv@gmail.com) is a peace activist and author who helps coordinate a campaign seeking an international treaty to ban weaponized drones (bankillerdrones.org)

***Featured Image:** Projection on a wall in DC, ~Nick Mottern

Daniel Hale is a Hero, Not a Criminal

by *Chip Gibbons*, published on *The Jacobin*, April 10, 2021

Former intelligence analyst Daniel Hale is being prosecuted for blowing the whistle on America's drone program. It's the latest in the topsy-turvy world of national security whistleblowers, who reveal illegal and immoral conduct by the US military yet face prison time as if they committed the real crimes.

On Wednesday, March 31, Daniel Hale pled guilty to one count of violating the Espionage Act. On its face, the Espionage Act may sound like a law dealing with spies and saboteurs who injure the United States by furnishing military secrets to foreign enemies. But, from its inception, the act has been principally used to silence dissent. In recent decades, the law has become the government's go-to weapon against whistleblowers and journalists who challenge the US national security state.

Hale conceded to giving documents about the US drone program to an investigative journalist (unnamed in court documents, but clearly Jeremy Scahill of the *Intercept*) and anonymously authoring a chapter in *The Assassination Complex: Inside the Government's Secret Drone Warfare Program*. Far from a spy, Hale is a whistleblower – and a courageous one at that – whose actions have given us key insights into the unjust nature of US imperial power in the twenty-first century.

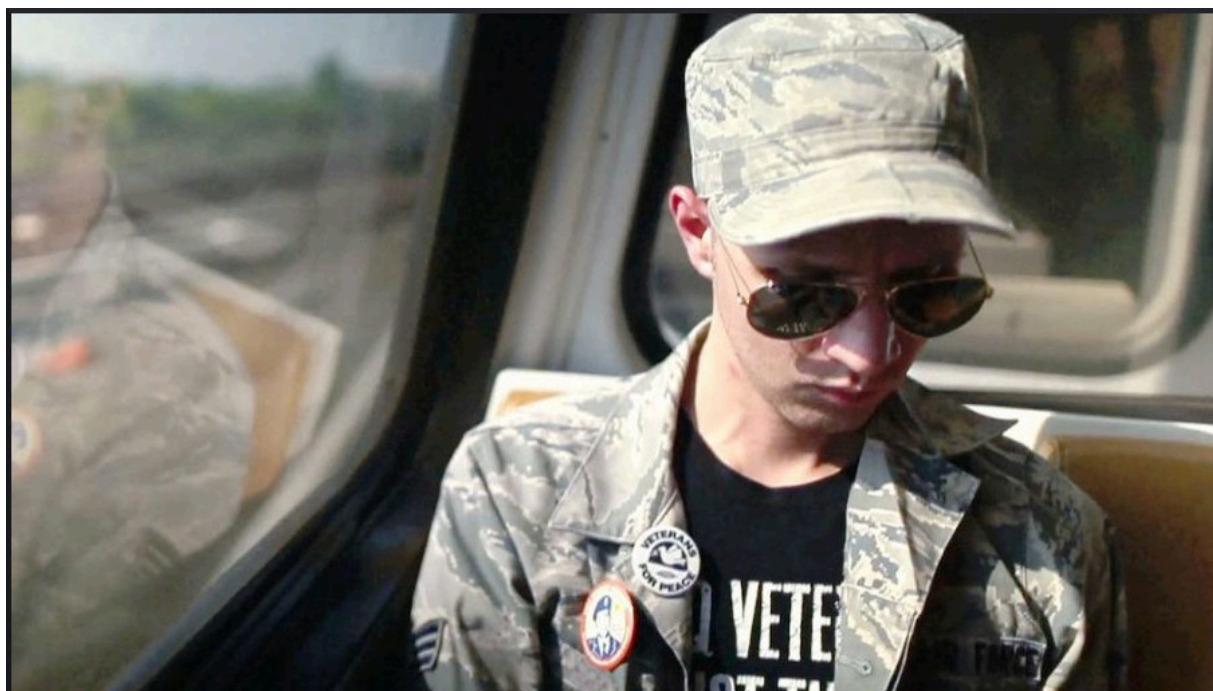
“There's No Way of Knowing” Who's Being Killed

From 2009 to 2013, Hale served in the US Air Force as an intelligence analyst. His motivations for enlisting were not based on an ideological affinity for US foreign policy. By Hale's own admission, he was deeply critical of it, but he was

suffering from homelessness and had few other options. While in the Air Force, Hale was assigned to work with the National Security Agency (NSA) and was even stationed at Bagram air force base in Afghanistan as part of the Department of Defense's Joint Special Operations Task Force.

In this role as a signals analyst, Hale was involved in the identifying of targets for the US drone program. Hale would tell the filmmakers of the 2016 documentary *National Bird* that he was disturbed by *"the uncertainty if anyone I was involved in kill[ing] or captur[ing] was a civilian or not. There's no way of knowing."*

After leaving the military, Hale would work as a contractor with the National Geospatial-Intelligence Agency. He also began speaking out against US drone policy. In 2013, he met journalist Jeremy Scahill at a bookstore in Washington, DC, where Scahill was talking about his book *Dirty Wars: The World Is A Battlefield*. Later that year, Hale appeared on stage alongside Scahill at another book event.



Daniel Hale in the 2016 documentary *National Bird*.
(Independent Lens / PBS)

Hale shows up alongside a number of other drone whistleblowers in *National Bird*. Throughout the film, his politics are on full display. Hale wears a button in support of whistleblower Chelsea Manning, a Black Panther Party poster can be seen adorning his home, and he is pictured attending an antiwar protest wearing pins for the group Veterans for Peace.

During filming in 2014, Hale's home was raided by the FBI in connection to an Espionage Act investigation. The early fallout of the raid is depicted in the film, showing yet another pitfall national security whistleblowers face. Hale explained that he thought he was being targeted in part for being a former intelligence analyst now involved in political activism.

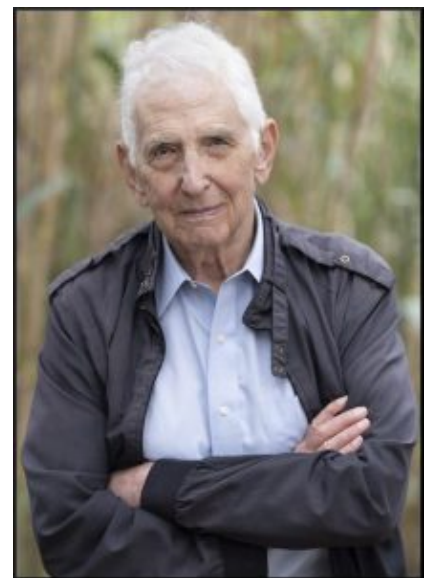
Exposing the Kill Chain

In 2015, one year after the search, the *Intercept* published an eight-part series titled "*The Drone Papers*," a groundbreaking exposé based on "*a cache of secret documents detailing the inner workings of the U.S. military's assassination program in Afghanistan, Yemen, and Somalia.*"

"*The Drone Papers*" featured a number of startling revelations, depicting in full detail for the first time the "*kill chain*," the bureaucratic process by which targets are selected to be summarily executed. These targets are culled from secret terror watch lists, which include US citizens. Information about potential targets is transformed into "*baseball cards*" given to the president, who then has the option to sign what is essentially a death warrant. If the president signs off, the military has sixty days to carry out a lethal strike against the target.

Signals intelligence and metadata taken from phone intercepts played a heavy role in targeting. Yet the *Intercept's* reporting reveals that such methods were far from reliable and led to the killing of civilians. The source, now known to be Hale, was quoted as saying, "*It requires an enormous amount of*

faith in the technology that you're using. There's countless instances where I've come across intelligence that was faulty." And while these assassinations are often referred to by governments as "*targeted killings*," during one five-month period, more than 90 percent of those killed by US airstrikes were not the intended targets. Yet even when the US government killed unintended targets, it labeled them as "*enemies killed in action*" unless proven otherwise. Then in 2019, a full five years after the initial FBI raid and four years after the publishing of "*The Drone Papers*," the US Department of Justice indicted Hale on four counts of violating the Espionage Act and one count of theft of government property. Similar charges had historically been brought against Pentagon papers whistleblower Daniel Ellsberg and more recently Chelsea Manning, Edward Snowden, and Reality Winner. **An Act to Quash Dissent** The Espionage Act has a loathsome history. Passed during World War I and used to criminalize opposition to the war, the act was most infamously used to jail socialist standard-bearer Eugene Debs, as well as members of the Socialist Party and Industrial Workers of the World.



Daniel Ellsberg, who leaked the Pentagon papers, in 2002. (Christopher Michel)

When Daniel Ellsberg and Anthony Russo liberated the US government's secret history of the Vietnam War, the Pentagon

papers, the Nixon administration, seeking to make an example of leakers, charged them under the Espionage Act. Given the flagrant misconduct of the Nixon administration (Richard Nixon's "plumbers" had burglarized Ellsberg's psychiatrist hoping to find salacious evidence to use to discredit Ellsberg), the charges were dismissed.

When it came to journalists and their sources, the Espionage Act was occasionally invoked as a threat, but lay largely dormant until the twenty-first century. One exception was the Reagan-era prosecution of Samuel L. Morison for giving information to *Jane's Defense Weekly*. Yet the case was considered such an anomaly that Bill Clinton granted a full and unconditional pardon to Morison.

This changed with the Obama administration, which normalized the practice of indicting journalists' sources under the Espionage Act. Obama's Department of Justice chose to continue or, in some cases, reopen Bush-era cases against national security whistleblowers, bringing an unprecedented number of Espionage Act indictments. These included indictments against NSA whistleblower Thomas Drake and CIA whistleblower John Kiriakou.

Drake had raised concerns internally about NSA mass surveillance before later going to a *Baltimore Sun* reporter with unclassified information about waste, fraud, and abuse. The government dropped the Espionage Act charges against him on the eve of the trial as its case unraveled.

Kiriakou exposed CIA torture by bringing information to journalists, and was indicted under the Espionage Act. He pled guilty to violating the Intelligence Identities Protection Act, and was sentenced to thirty months in prison – making him, perversely, the only person to go to jail over CIA torture. While both of these cases had their origins in the Bush era, when Chelsea Manning exposed US war crimes and Edward Snowden revealed the NSA's illegal surveillance, they

both were indicted by the Obama Department of Justice under the Espionage Act.

These were not the only victims of Obama's war on whistleblowers. By the end of his administration, Obama had indicted more whistleblowers under the Espionage Act than all previous administrations combined.

Trump picked up the baton Obama handed him, escalating the use of the Espionage Act and seeking longer and harsher sentences, including in the cases of FBI whistleblower Terry Albury and NSA whistleblower Reality Winner. Trump's Department of Justice also went a step beyond Obama, and, in the case of Australian journalist Julian Assange, indicted a publisher of truthful information for the first time. It was under the Trump presidency that Hale was at last indicted.

Prosecuted for Criticism

A whistleblower indicted under the Espionage Act has virtually zero chance at a fair defense. The law allows for no public interest defense. More disturbingly, whistleblowers are gagged from explaining their actions. Defense attorneys are barred from uttering the words "*whistleblower*" or "*First Amendment*" within earshot of the jury. Since all that matters for sustaining a conviction is that a defendant gave classified information to someone not entitled to receive it, that's all the jury is allowed to hear.

In the run-up to the potential trial, Hale's defense made a number of arguments as to why the indictment should be dismissed. Hale's attorney argued that the intelligence analyst turned antiwar activist was the victim of a prosecution both vindictive and selective. Government officials leak information about the US drone program all the time without prosecution. The difference is that they are feeding information to gullible reporters about the program's efficiency, whereas Hale's disclosures exposed the

government's official claims as false.

The government decided to target Hale not because he leaked information on the drone program, which is a standard course of action in official Washington, but because he criticized the drone program. The defense urged the judge to order prosecutors to release its reasons for initiating the prosecution, and whether any initial decision not to prosecute had been made and reversed. After all, this prosecution was brought half a decade after the investigation started and four years after the publication of *"The Drone Papers."* Such information could show whether the delayed prosecution was the result of a new administration's vindictiveness toward press freedom.

Additionally, Hale's attorneys brought First Amendment challenges to the indictment. They argued that the conduct central to the government's accusations against Hale, assisting a journalist in newsgathering, touched on core First Amendment protected freedoms. The defense pointed out that the Espionage Act was passed before the courts adopted their contemporary expansive interpretation of First Amendment press freedoms. They also argued that the record showed that Congress never intended the act to criminalize giving information to the public. While an appellate court had dealt with similar issues in the 1980s, the defense reasoned that as that case predated the government's widespread use of the Espionage Act to stifle newsgathering, the situation had changed. Hale was supported in this motion by a brief filed by Reporters Committee for Freedom of the Press.



Daniel Hale in the documentary National Bird. (Independent Lens / PBS)

The government made its own pretrial motions, urging a judge to preemptively bar the defense from making a wide range of arguments – for example, to challenge whether the documents were misclassified, arguing that such classification was the sole authority of the executive branch and therefore could not be challenged. They even went so far as to argue that whether the information was improperly classified was irrelevant, as an Espionage Act prosecution did not require the information to be properly classified, just classified. Classification, which postdates the Espionage Act, is supposed to be used to protect legitimate secrets, not conceal information that casts the government in a negative light. “*Overclassification*,” classifying information that should not be kept from the public, is a growing problem within the executive branch.

The government also moved to have the defense barred from mentioning the “*good motives*” of the defendant (i.e., his entire reasoning for making the disclosure) and argued that other government officials routinely leak information. The government even sought to bar the defense from arguing that an “*alternative perpetrator committed the charged crimes, absent some non-speculative evidence of that individual’s (a) connection to a particular reporter, and (b) knowledge of, or*

access to the documents at issue."

Faced with a limited ability to present any meaningful defense, Hale did what most whistleblowers indicted under the Espionage Act do after realizing how stacked the deck is against them: he pled guilty a week before the trial was to begin, pleading to one count – unlawful "retention and transmission of national defense information." But the government has not dismissed the remaining four charges, instead merely asking for the trial to be postponed. This has raised concerns that the government could, if it feels the judge has given Hale too lenient a sentence, seek a trial on the remaining charges.

Official American Drone Policy Is Criminal

Speaking anonymously to Scahill at the time *"The Drone Papers"* were published, Hale explained why he chose to go to the American people with information its government had kept from them. *"This outrageous explosion of watch-listing – of monitoring people and racking and stacking them on lists, assigning them numbers, assigning them 'baseball cards,' assigning them death sentences without notice, on a worldwide battlefield – it was, from the very first instance, wrong."*

Drone strikes are a form of extrajudicial execution that is illegal under international law. They are a moral travesty. These assassinations are also part of larger foreign policy that is itself troubling. Enemies of whistleblowers often prattle on about the need to go through *"official channels."* But when the crime itself is official policy, what better check exists than the democratic process itself?

Yet from the Pentagon papers to *"The Drone Papers,"* the US government has worked to conceal the realities of its war-making from the US public, obfuscating our ability to use our democratic process to rebuke the government. This is a pernicious conspiracy against our ability to democratically

decide our foreign policy. Presidents from both parties have helped to carry it out. Congress and the courts are both complicit.

These antidemocratic impulses of the national security state are what's actually harmful to our country – not a whistleblower who seeks to empower us to make democratic decisions about the crimes our government carries out in our name.

Hale's actions are both heroic and laudable. The fact that the government once again seeks to destroy a truth teller who exposed its crimes highlights the immorality of the system that Hale and others have exposed.

*Please go to the website "Stand with Daniel Hale" to get more information on Daniel's status and how you can help him.
[jb]*

***Featured Image:** JANUARY 07: A U.S. Air Force MQ-1B Predator unmanned aerial vehicle (UAV), carrying a Hellfire air-to-surface missile lands at a secret air base in the Persian Gulf region on January 7, 2016. The U.S. military and coalition forces use the base, located in an undisclosed location, to launch airstrikes against ISIL in Iraq and Syria. (Photo by John Moore/Getty Images)

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