

Drone Whistleblower Gets 45 Months in Prison for Revealing Ongoing US War Crimes

by *Marjorie Cohn*, published on *Truthout*, July 28, 2021

On July 27, a federal district court judge in Alexandria, Virginia, sentenced former U.S. Air Force intelligence analyst Daniel Hale to 45 months in prison for revealing evidence of U.S. war crimes.

In 2015, Hale, whose job involved identifying targets for drone strikes, provided journalist Jeremy Scahill with secret military documents and slides that exposed shocking details about the U.S. drone program. Hale's revelations became the basis of "*The Drone Papers*," which was published on October 15, 2015, by *The Intercept*.

Although the government admitted it had no evidence that direct harm resulted from Hale's revelations, in 2019, the Trump administration charged Hale with four counts of violating the Espionage Act and one count of theft of government property. Facing up to 50 years in prison, Hale pled guilty to one count that carries a maximum sentence of 10 years.

The leaked documents disclosed the "*kill chain*" the Obama administration used to determine whom to target. Countless civilians were killed using "*signals intelligence*" in undeclared war zones: Targeting decisions were made by following cell phones that might not be carried by suspected terrorists. The Drone Papers divulged that half of the intelligence used to identify potential targets in Yemen and Somalia was based on signals intelligence.

During one five-month period during January 2012 to February 2013, nearly 90 percent of those killed by drone strikes were not the intended target, according to The Drone Papers. But civilian bystanders were nonetheless classified as *"enemies killed in action"* unless proven otherwise.

Hale said, *"It's stunning the number of instances when selectors [used to identify "terrorist" targets] are misattributed to certain people."* Calling a missile fired at a target in a group of people a *"leap of faith,"* he noted, *"it's a phenomenal gamble."* Hale added, *"Anyone caught in the vicinity is guilty by association."*

The Drone Papers reveal that reliance on drones actually undermines U.S. intelligence gathering. Drones terrorize communities, breeding resentment against Americans and making the United States more vulnerable to violence. Indeed, Hale wrote in his 11-page pre-sentencing letter, *"the war had very little to do with preventing terror from coming into the United States and a lot more to do with protecting the profits of weapons manufacturers and so-called defense contractors."*

Drone strikes shield U.S. military members from harm in order to minimize Americans' opposition to war. But drone operators who make or carry out remote targeting decisions nevertheless suffer from post-traumatic stress disorder (PTSD).

At his sentencing hearing, Hale told U.S. District Judge Liam O'Grady, *"I believe that it is wrong to kill, but it is especially wrong to kill the defenseless."* Hale said he revealed what *"was necessary to dispel the lie that drone warfare keeps us safe, that our lives are worth more than theirs."*

"You had to kill part of your conscience to keep doing your job," Hale added.

In November 2013, I participated in a panel on the illegality of drones and targeted killing at a drone summit in

Washington, D.C. Hale also spoke on a panel at that conference. He described how he located a man riding a motorcycle in the mountains who then met up with four other people and they sat around a campfire, drinking tea. Hale relayed information that resulted in a drone strike, killing all five men. He said he realized that he *“was no longer part of something moral or sane or rational.”* He had heard someone say that *“terrorists are cowards”* because they used improvised explosive devices (IEDs). *“What was different,”* Hale asked, *“between that and the little red joystick that pushes a button thousands of miles away?”*

Hale told the sentencing judge about this incident in his pre-sentencing letter, writing,

“Despite having peacefully assembled, posing no threat, the fate of the now tea drinking men had all but been fulfilled. I could only look on as I sat by and watched through a computer monitor when a sudden, terrifying flurry of hellfire missiles came crashing down, splattering purple-colored crystal guts on the side of the morning mountain.”

Hale’s revelations did not pose a threat to national security, even by traditional interpretations. Harry P. Cooper, a former senior CIA official, wrote in a declaration in Hale’s case that

“the disclosure of [the Drone Papers], at the time they were disclosed and made public, did not present any substantial risk of harm to the United States or to national security.”

Presidents George W. Bush, Barack Obama, Donald Trump and Joe Biden have used armed drones to drop bombs on other countries in violation of international law. All four administrations have killed and are still killing untold numbers of civilians.

It is estimated that U.S. military and CIA drone operations

have killed 9,000 to 17,000 people since 2004, including 2,200 children and many U.S. citizens. But those numbers are likely low because the U.S. military labels all individuals killed in those operations as presumptive "*enemies killed in action.*"

Bush authorized about 50 drone strikes that killed 296 alleged "*terrorists*" and 195 civilians in Pakistan, Yemen and Somalia. Obama vastly increased the number of people killed with drones.

Obama presided over 10 times more drone strikes than his predecessor. According to the Bureau of Investigative Journalism, during his two terms in office, Obama carried out 563 strikes – largely with drones – in Pakistan, Yemen and Somalia, killing between 384 and 807 civilians.

Obama's 18-page Presidential Policy Guidance (PPG) was made public after a Freedom of Information Act request by the ACLU and resulting court order. It purported to outline targeting procedures for the use of lethal force outside "*areas of active hostilities.*" The PPG required that a target pose a "*continuing imminent threat.*" But a secret 2011 Justice Department white paper leaked in 2013 permitted the killing of a U.S. citizen even without "*clear evidence that a specific attack on US persons and interests will take place in the immediate future.*" The bar was presumably lower for non-U.S. citizens.

Obama's PPG also mandated that there be "*near certainty that an identified HVT [high-value terrorist] or other lawful terror target*" is present before lethal force could be used against him. But the Obama administration mounted "*signature strikes*" that didn't necessarily target individuals, but rather men of military age who were present in an area of suspicious activity.

It was also necessary to have "*near certainty that non-combatants [civilians] would not be injured or killed.*" But

the revelations of The Drone Papers call into question the Obama administration's compliance with that requirement as well. Plus, activists have emphasized that "near certainty" is a dangerous barometer when it comes to the decision of whether to take a human life.

Trump lowered the bar even further for drone strikes. His administration reduced the requisite level of confidence that a target was present in a strike zone from "*near certainty*" to "*reasonable certainty*." Under Trump, targets were not limited to "high-value terrorists" but could include foot soldiers. Whereas decisions about drone bombings had been made at the highest levels of government – with Obama having the final say about who would be targeted – Trump allowed commanders in the field to make targeting decisions. Trump gave increased authority to the Pentagon and CIA to conduct drone strikes. He weakened the targeting rules in large areas of Somalia and Yemen by designating them as "*areas of active hostilities*." And Trump eliminated the government's commitment to report on civilian casualties.

During his first two years in office, Trump launched 2,243 drone strikes, compared to 1,878 in Obama's eight years in office.

Biden Continues Drone Bombings

In March, Biden secretly set temporary limits on drone strikes outside of recognized battlefields. He has ordered a comprehensive review of whether to keep Trump's relaxed rules in place, or return to Obama-era rules, or impose some middle ground. In any event, it is doubtful that Biden would comply any better than Obama did with the tighter rules.

Meanwhile, the United States conducted a drone strike against Shabab "*militants*" in Somalia on July 20. The White House had rejected some requests by the U.S. military's Africa Command to conduct drone strikes against Shabab targets in Somalia

because they didn't meet the new rules. However, White House approval was considered unnecessary here because the Africa Command has authority to carry out strikes in support of allied forces under what the military calls "*collective self-defense.*" But that does not constitute lawful collective self-defense under the United Nations Charter.

Although Biden is withdrawing U.S. troops from Afghanistan, he is continuing to launch airstrikes, including drone strikes, there. "*We've been doing it where and when feasible, and we'll keep doing it where and when feasible,*" an official involved in operational planning said, speaking on condition of anonymity. Gen. Kenneth E. McKenzie Jr., the top U.S. general in charge of Afghanistan, refused to say whether airstrikes would continue past the cutoff date of August 31.

The Air Force is requesting \$10 billion to perpetuate the U.S. imperial footprint in South Asia and the Middle East.

On June 30, 113 organizations, including Veterans for Peace, wrote a letter to Biden, "to demand an end to the unlawful program of lethal strikes outside any recognized battlefield, including through the use of drones."

Drone Strikes Violate International Law

The UN Charter requires that international disputes be settled peacefully. It allows a country to use military force only in self-defense after an armed attack or with the consent of the UN Security Council. Neither the U.S. war in Iraq nor in Afghanistan complied with the Charter's mandates.

"Outside the context of active hostilities, the use of drones or other means for targeted killing is almost never likely to be legal," Agnès Callamard, UN special rapporteur on extrajudicial, summary or arbitrary executions, tweeted. She added that *"intentionally lethal or potentially lethal force can only be used where strictly necessary to protect against an imminent threat to life."* Thus, Callamard said, the United

States would need to demonstrate that the target “constituted an imminent threat to others.”

Targeted or political assassinations – also known as extrajudicial executions – violate international law. Willful killing is a grave breach of the Geneva Conventions and is punishable as a war crime under the U.S. War Crimes Act. Civilians must never be the target of military strikes. A targeted killing is only lawful if it is deemed necessary to protect life, and no other means – including capture or nonlethal incapacitation – is available to protect life.

Yet the Obama, Trump and Biden administrations have all prosecuted whistleblowers for revealing evidence of U.S. war crimes. In addition to Hale, those courageous folks include Chelsea Manning, Julian Assange and John Kiriakou, who revealed that CIA officials used waterboarding, which constitutes the war crime of torture.

Misuse of the Espionage Act

The Espionage Act of 1917 was enacted to prosecute foreign spies. It was never intended for use against whistleblowers. Nevertheless, Obama charged eight whistleblowers with violating the act, more than all prior presidents combined.

But although Obama refrained from indicting Assange for publishing evidence of U.S. war crimes (for fear of setting a dangerous precedent), Trump indicted Assange for 17 charges under the Espionage Act. Assange now faces 175 years in prison. A British judge denied Trump’s request that Assange be extradited to the U.S. to stand trial for those charges. But Biden has continued Trump’s appeal of the denial of extradition, notwithstanding the grave threat Assange’s prosecution poses to the First Amendment right to freedom of the press.

Hale is the first person sentenced under the Espionage Act

during the Biden administration and he probably won't be the last.

Ironically, Hale told the sentencing judge that he was a descendent of Nathan Hale, who was executed by the British for spying during the Revolutionary War. "*I have but this one life to give in service of my country,*" Hale said, quoting his ancestor.

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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.

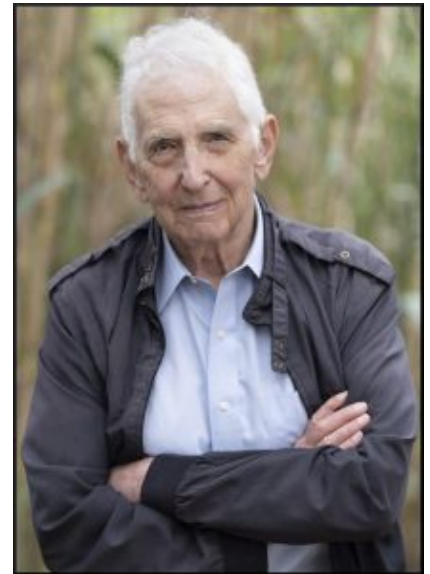
Exposing the Kill Chain

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 got 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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