

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.

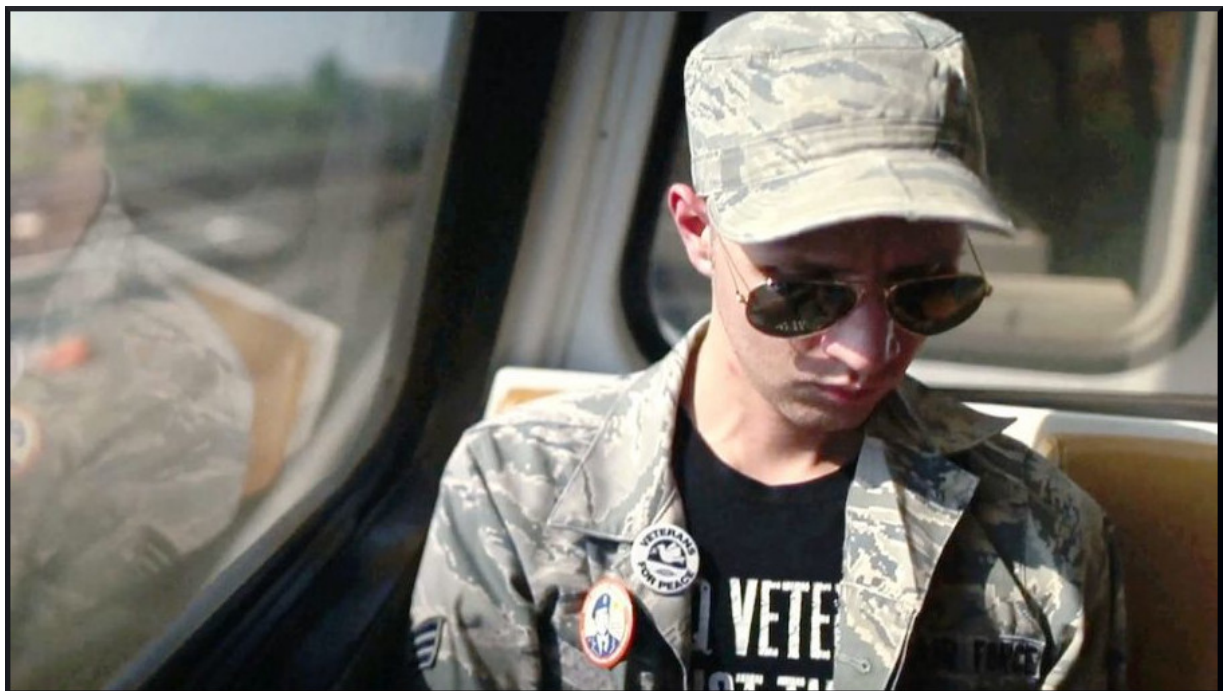
“There's No Way of Knowing” Who's Being Killed

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.*"

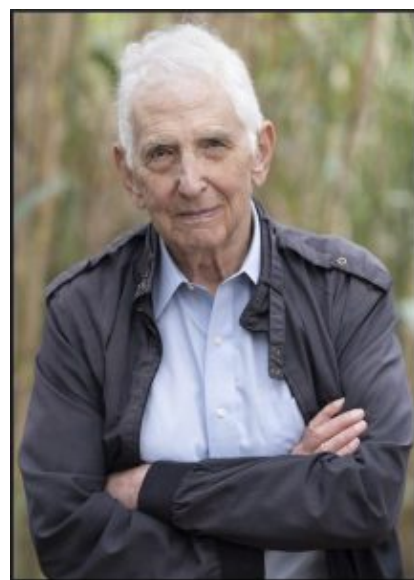
"*The Drone Papers*" featured a number of startling revelations, depicting in full detail for the first time the "*kill chain*," the bureaucratic process by which targets are selected to be summarily executed. These targets are culled from secret terror watch lists, which include US citizens. Information 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.
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***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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