

CRIMINAL JUSTICE

How a Strange, Secretive, Cult-like Company Is Waging Legal War Against Journalists

The lawsuit filed by the NXIVM company against a Vanity Fair writer and a local reporter invokes the same computer hacking law used against Aaron Swartz.

By William D. Cohan

NOVEMBER 18, 2014

By now, most Americans are familiar with the sad story of Aaron Swartz, the self-styled “hacktivist” and political organizer, and the Justice Department’s terribly ill-conceived prosecution of him, in which it claimed that Swartz repeatedly violated the federal Computer Fraud and Abuse Act in 2011 when he downloaded without authorization millions of academic articles from JSTOR, the digital library. On January 11, 2013, facing a plea bargain that would force him to spend six months in prison and plead guilty to thirteen felony charges, Swartz committed suicide in his Brooklyn apartment. He was 26 years old.

Now the Computer Fraud and Abuse Act, or CFAA, is once again at the center of an ill-advised prosecution, except this time a private corporation is using the law against working journalists and their sources.

The proceedings in this little-noticed case, which has alarming implications for press freedom, were set in motion a year ago in a federal court in Rochester, New York, when an entity known as NXIVM Corporation (pronounced nex-ee-um) filed a civil lawsuit against two journalists—Suzanna Andrews, a contributor to *Vanity Fair*, and James Odat, of the *Albany Times Union*—and a blogger, John Tighe, creator of the now-defunct “Saratoga in Decline” blog. An examination of the court filings reveals the lawsuit to be a thinly veiled attempt to retaliate against journalists for writing accurate but hard-hitting stories that were critical of NXIVM and the strange behavior of its principals. In the same lawsuit, NXIVM also sued two of their sources—Toni Foley (formerly known as Toni Natalie) and Joseph O’Hara—but did not sue either Condé Nast, Andrews’s deep-pocketed employer, or the Hearst Corporation, which owns the *Times Union*. (The conclusion that NXIVM is being retaliatory is bolstered by the fact that it also sued fifty-nine unnamed “John Does” but only named Andrews, Odat, Tighe, Foley and O’Hara.) The case remains in the procedural stage but if NXIVM prevails, an unprecedented new front will have been opened in the war against the press in this country.

NXIVM, based in Albany, is not your typical company. Founded in 1998 by Nancy Salzman and Keith Raniere as Executive Success Programs, the renamed NXIVM, according to its lawsuit,

“conducts professional success training programs for executives and other individuals concerned with developing their skills and achieving their goals.” Its seminars “provide training in areas such as internal ethics, logical analysis and problem-solving skills, and are based primarily on a patent pending system, called Rational Inquiry.” A five-day course costs around \$3,000; a 16-day course costs \$7,500.

Some people have referred to NXIVM as “a cult” that revolves around Raniere, who seems to exert a Svengali-like hold on rich, attractive and powerful women. According to Andrews’s November 2010 *Vanity Fair* article, “The Heiresses and The Cult,” among the company’s fans are Pamela Cafritz, the daughter of wealthy Washington area developers; billionaire Richard Branson; and Sara and Clare Bronfman, two heirs of the Seagram fortune and the daughters of the late billionaire, Edgar Bronfman Sr. Their half-brother, Edgar Bronfman Jr., is the billionaire former CEO of the Warner Music Group. In an October 2003 cover story, *Forbes* quoted Bronfman Sr. describing NXIVM as “a cult” and said he was worried about his daughters’ “emotional and financial” investment in it. According to Andrews’ meticulous reporting in *Vanity Fair*, the Bronfman women’s involvement with NXIVM and Raniere began more than a decade ago and is plenty sordid. Since then, according to court documents in a separate case, the Bronfman sisters allegedly used some \$150 million of their fortune to “cover Raniere’s failed bets in the commodities market” (\$66 million), “to buy real estate in Los Angeles and around Albany” (\$30 million), to purchase a 22-seat private jet (\$11 million) and “millions more to support a barrage of lawsuits across the country against NXIVM’s enemies.”

Odato, a longtime political reporter for the *Albany Times Union*, began reporting on NXIVM in 2007 after he discovered that Joseph Bruno, then the majority leader of the New York State Senate, had received more than \$30,000 in cash and another \$34,000 of in-kind donations from the two Bronfman sisters, who, he soon found, were closely tied to the Albany-based NXIVM. In more than thirty-five articles about NXIVM and its leadership, Odato traced how the Bronfman sisters funneled a huge pile of cash to Ranieri, among other revelations. In February 2012, Odato wrote a four-part series titled, “Secrets of NXIVM.”

Observed Odato, “Keith Ranieri, a multi-level marketing businessman turned self-improvement guru, has peddled himself as a spiritual being to followers, most of them women. A close-knit group of these women has tended to him, paid his bills and shuttled him around. Several have satisfied his sexual needs. And a few have left their families behind to wrap him in their affections.” While Odato noted that Ranieri does not believe that NXIVM is “a cult,” he did cite one source comparing Ranieri to David Koresh, the leader of the infamous Branch Davidian cult whose Waco, Texas compound went up in flames after a fifty-one-day standoff with federal agents in 1993, killing some seventy-five people, including more than a dozen children.

NXIVM’s civil litigation against the reporters and their sources actually started with a *criminal* investigation, in early 2012, after NXIVM filed a “computer trespassing complaint” with the New York State Police, which began investigating the charge. In March 2013, according to court documents, at taxpayer expense, a state judge appointed a special prosecutor to “consider” NXIVM’s allegations and the results of the State Police investigation. In

October 2013, the State Police searched the homes of Tighe, O'Hara and Foley and seized their computers and other evidence. That same month, NXIVM filed its civil complaint against the five defendants, which was promptly sealed. In August 2014, it was unsealed, revealing the lengths at least one deep-pocketed corporation will go to try to silence its critics.

The lawsuit against Andrews, Odatto and Tighe does not question the accuracy of their reporting. Instead, it alleges that in violation of the Computer Fraud and Abuse Act and the Stored Communications Act, the three repeatedly used the password and username of a former NXIVM “client”—identified in court filings as Mary Jane Pinto—to access and to copy so-called confidential, proprietary information about NXIVM and its services from a “Password Protected Website.” NXIVM claims “suspicions arose” in late 2011—long after Andrews’s *Vanity Fair* story and the bulk of Odatto’s stories were published—that “unauthorized users” were getting access to the confidential corners of its website and that “an investigation” revealed “hundreds” of unauthorized breaches between 2006 and 2011, some of which led to the computer IP addresses that allegedly belonged to Andrews, Odatto and Tighe. (It seems likely that the State Police alighted at the defendants’ doorsteps only after getting cooperation from their various Internet service providers.) The lawsuit claims that Foley, a former girlfriend of Raniere’s and an on-the-record source for both Andrews and Odatto, and O’Hara, who once provided legal services to NXIVM and who also allegedly served as a source for Odatto, accessed the website with Pinto’s name and password. (O’Hara is currently serving a three-year prison sentence in Brooklyn on unrelated bribery charges.) The five defendants

“aided and abetted each other and others in engaging in this unlawful conduct,” NXIVM alleged. NXIVM has asked for at least \$1 million in damages.

At this point, the legal skirmishing between the two sides is in full force. Attorneys for the defendants claim Clare Bronfman is bankrolling the case. Just recently, the judge moved the venue of the case to Albany, from the inconvenient Rochester. Andrews’s Albany attorney, Michael Grygiel, at Greenberg Traurig, has argued in a legal filing that the lawsuit was filed after the expiration of a two-year statute of limitations and should be thrown out. Grygiel further argues that both the Computer Fraud and Abuse Act and the Stored Communications Act are meant to stop hackers from stealing information or disrupting or destroying “computer functionality.” The intent, he implies, was not to prevent working journalists from doing their jobs.

On this latter point, Grygiel has support from Cindy Cohn, the legal director of the Electronic Frontier Foundation, a San Francisco-based Internet freedom advocacy group. After reviewing the NXIVM complaint, Cohn told me, “The plaintiffs here seem to be complaining that someone who they gave credentials to use their website misused those credentials (and may have lent them to others) who gained access to their confidential materials. Essentially the claim is that you ‘break into’ someone’s computers if you use someone else’s credentials. At EFF we’ve long thought that this isn’t right. The CFAA was originally intended to cover the actual breaking into computers, but it was worded very vaguely, making it illegal to ‘exceed authorized access’ in computers. As a result, it has been stretched

into all sorts of improper situations, including here, where the problem seems to be that people who had authority to access a website may have lent their credentials to journalists. While the law is still unsettled in New York, many other courts have held that merely violating a contractual agreement is not a sufficient basis for a CFAA claim. The use of the law here to go after journalists who were trying to shine a light on improper or embarrassing behavior seems especially wrong.”

Regardless of the outcome of the lawsuit, its chilling effects have already been felt. Toni Foley, the Ranieri ex-girlfriend who was an on-the-record source for the journalists’ stories, says that fighting lawsuits that NXIVM has filed against her over the years has left her destitute and broken. She has filed for personal bankruptcy. In July, she was arraigned in a criminal court in Albany on a felony charge of computer trespass and the special prosecutor seems poised to present the case against Foley to an Albany County Grand Jury. As for the blogger, Tighe, state troopers seized his computer—which never would have happened absent the NXIVM complaint—and allegedly found on it evidence of child pornography. He was arrested in February 2014 and charged with three child-pornography felonies unrelated to the NXIVM case. He posted a \$20,000 bond and was released. He closed down his blog. On November 5, Tighe pleaded guilty to a state charge of criminal computer trespassing, acknowledging that he used Pinto’s username and password without authorization, and faces a year in prison. He is to be sentenced in January. The *Times Union*’s Odatto, meanwhile, has ceased to write regularly about NXIVM since the lawsuit was filed a year ago, and his newspaper has not written about Odatto’s involvement in the

lawsuit except briefly in an article reporting Tighe's guilty plea. And, needless to say, journalists generally have stopped writing about the strange doings at NXIVM.

As for my *Vanity Fair* colleague Suzanna Andrews, who declined to comment about the pending litigation on the understandable advice of her attorney, one can only imagine how terrifying it must be to be the focus of both a rumored criminal investigation and an actual civil lawsuit for simply doing her job as an investigative reporter. In an emailed statement to me, Grygiel wrote that Andrews, "an award-winning professional journalist, will vigorously defend the claims against her, which arise from her protected newsgathering activity and lack any merit whatsoever." He continued, "This lawsuit represents nothing more than an attempt to retaliate against Ms. Andrews for the exercise of her First Amendment rights as an investigative correspondent for *Vanity Fair*."

As far as I can tell, that is a pretty accurate description of what the NXIVM lawsuit is all about. If the First Amendment still holds sway in court, the lawsuit against Andrews and Odatto will be dismissed, with prejudice.



WILLIAM D. COHAN William D. Cohan, a former senior Wall Street investment banker and a contributing editor at *Vanity Fair*, is the author of *The Price of Silence: The Duke Lacrosse Scandal, the Power of the Elite, and the Corruption of Our Great Universities*.

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POLITICS **HATE CRIMES** **DONALD TRUMP**

Trumpismo From Boston to the Dominican Republic

It's not just rhetoric. Donald Trump's odious message is driving anti-immigrant hate crimes.

By [Greg Grandin](#)

AUGUST 21, 2015

On Wednesday, August 19, two South Boston men “inspired” by Donald Trump, pissed on and brutally beat a 58-year-old homeless Latino with a metal pole. Trump and most of the rest of the Republican candidates want to do away with “birthright” citizenship. And even before Trump began to whip up the white lumpen, “between 2011 and 2012, hate crime attacks on Hispanics increased three-fold. For every 1,000 Hispanics over age 12, two reported having been attacked.”

A day earlier, on August 18 in the Dominican Republic—which has effectively done away with birthright citizenship, and is in the middle of a not-so-slow motion pogrom against Haitians and Dominicans of Haitian descent—a Haitian man was killed by a Dominican mob with a machete after being accused of sexually assaulting a Dominican woman. His house and business were burnt to the ground. The murder took place in the community of Hatillo Palma, home until recently to about 6,000–8,000 Haitian migrants and Haitian-descended peoples. A mob then burned down a boarding house that was home to 40 Haitian agricultural workers.

There are reports that almost the entire Haitian and Haitian-descended community has left the region in fear over the last 36 hours following the murder, leaving with all their belongings in pick-up trucks, adding to the stream of tens of thousands of “self-deported” flowing into Haiti. One source says that of the 8,000 Haitian workers who had been employed on the region’s banana plantations, only 200 remain—driven away by not just this incident but similar, earlier attacks.

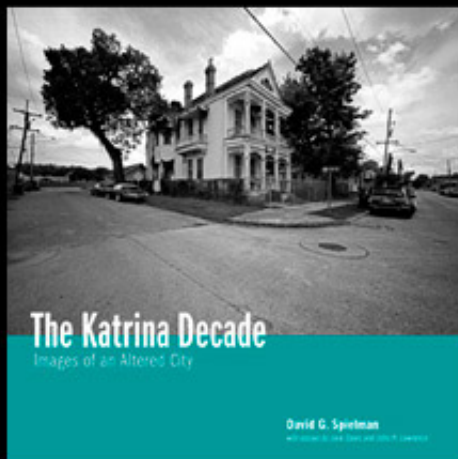
Bill O'Reilly recently got a lot of press for telling Trump that “the federal courts will never allow mass deportations without due process for each and every one. And do you envision federal police kicking in the doors in *barrios* around the country, dragging families out?” But sometimes the Republicans are right. Just let the private sector do its work. ●

0 COMMENTS

GREG GRANDIN

Greg Grandin teaches history at New York University and is the author of the forthcoming *Kissinger's Shadow*.

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"Spielman's astonishing photographs speak with a quiet but forceful eloquence—of devastation and abandonment, of perseverance and renewal."

—JOHN BERENDT, author of *Midnight in the Garden of Good and Evil*

The Katrina Decade

Images of an Altered City

by David G. Spielman, photographer with

A new book published by The Historic New City Press on the 10-year anniversary of Hurricane Katrina

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The Lives of Others

We've built ourselves this crowd-sourced panopticon, and now we have to live in it.

By Michelle Goldberg

AUGUST 21, 2015

This was a week when a lot of people were hurt, some very badly, by the practice of doxxing, or splattering people's private information online. And it was a week when media outlets that should know better were complicit.

The right-wing media went pawing through the family records of Black Lives Matter activist Shaun King, accusing him of faking his racial background. The accusations were picked up the New York

Daily News and CNN, among others, forcing King to explain to the world why his mother, a Southern white woman who is now a senior citizen, didn't identify his black father on his birth certificate.

While this was happening, the usually righteous reproductive justice website RH Reality Check published a lurid expose about the sex life of a low-level employee at the biomedical company StemExpress, because she'd cooperated with the Center for Medical Progress, the anti-abortion group behind the Planned Parenthood stings. The piece was based on accessing the woman's online dating profiles, and the tenuous rationale for it was that she was enjoying sexual freedoms while helping to deny them to others. After an online outcry, RH Reality Check came to its senses, took the story down and apologized, but not before ceding the moral high ground on slut-shaming to a group of privacy-invading reactionaries.

Then there was the data dump from the hack of the Ashley Madison adultery site, which is ruining and perhaps even endangering lives worldwide. Though there's no way to confirm it, a person claiming to be a gay man from Saudi Arabia posted on Reddit about his terror that his government might learn of the affairs he had with men while studying in the US. "I AM ABOUT TO BE KILLED, TORTURED, OR EXILED. AND I DID NOTHING WRONG. STOP THE HACK. EVEN IF ADULTERERS DESERVE IT I DO NOT," he wrote. Even if his story isn't true, the cache of information, obtained by criminals, is widely expected to be a bonanza for blackmailers.

Nevertheless, as Glenn Greenwald wrote at the Intercept, there's a leering puritanical glee in much of the coverage. *The Washington Post* is pointing its users to sites that can help them sift through the data, which is on the so-called Dark Web and thus inaccessible to Internet users who rely on ordinary search engines and browsers. The Associated Press combed through it for government employees, justifying this on the grounds that its use "raises questions about what personal business is acceptable—and what websites are OK to visit—for US workers on taxpayer time, especially those with sensitive jobs who could face blackmail." (Incidentally, similar worries about blackmail were used to bar gay people from security clearances until 1995.) The AP didn't publish names, but it did offer a list of job titles, and given that all the information is public, it will be easy enough for interested parties to figure out who they are.

The lesson of all this is that you are a target. If you've been even tangentially connected to a political issue, if you work for the government, if you've had an affair, if your parents had secrets, then at any moment every private thing in your life might be splayed out for the delectation of a bored global public.

In some ways, there's not much we can do about this. We've built ourselves this crowd-sourced panopticon, and now we have to live in it. But that shouldn't mean that, journalistically, all bets are off. Right-wing websites like Brietbart aren't going to behave decently, but there has to be a way to demand more from those who aspire to be taken seriously. The Shaun King story, for example, blew up the way it did only because outlets outside the right-wing bubble decided to repeat the claims emerging from

within it. Yesterday, for example, the New York *Daily News* published a piece headlined, “Rachel Dolezal 2.0? Shaun King, activist for the Black Lives Matter movement, outed as a white man.” (Note the question mark in the first sentence, but not the second.) The primary source for the piece is Brietbart; it also includes photos of Shaun King’s family from his Instagram account.

King is admired in activist circles, but he is not famous; there was nothing in this story to merit this sort of invasion of privacy, particularly without confirmation. (Unlike in the Rachel Dolezal story, his family didn’t come forward of their own accord—they were dragged, unwillingly, into the public spotlight.) This should not have been breaking news on CNN, replete with Don Lemon quoting anonymous sources on air.

I get that the Internet has destroyed a lot of once-sacred journalistic standards. Rules about double sourcing, or waiting to publish a story until the relevant facts can be confirmed, even if someone else publishes it first, have disappeared and probably won’t be returning. Nevertheless, as the fiasco at Gawker over the outing of a Condé Nast executive showed, publications can be shamed into respecting at least some measure of personal privacy. It was the outpouring of public contempt that made RH Reality Check take down its sordid hit piece. Individuals rarely deserve to be shamed in public. But institutions that abjure their own values to join a public shaming do. ●

I COMMENT

MICHELLE GOLDBERG

Michelle Goldberg is a senior contributing writer at *The Nation*.

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