An Interview with Chelsea Manning's Lawyer: Nancy Hollander on Human Rights and the Protection of Whistleblowers.

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Corresponding author:

Iain Munro, Newcastle University Business School, Newcastle University, 5 Barrack Road, Newcastle upon Tyne NE1 4SE, UK.

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"In the pantheon of cases involving disclosures motivated by whistleblowing, PFC Manning's is far and away the most severe [US] sentence ever adjudged. In the last five years alone, federal prosecutors have prosecuted more whistleblowers than at any time. In the last five years, three whistleblowers have been prosecuted in federal courts. None have been sentenced more harshly than PFC Manning." (Hollander et al, 2016: 183)

This article presents an edited interview with Nancy Hollander, a prominent human rights activist and criminal defense lawyer. Ms Hollander is the lead defense counsel for Chelsea Manning's appeal process and also represents clients who have been wrongly imprisoned and tortured in Guantanamo Bay prison (Slahi, 2015). The focus of the present interview is on Ms Hollander's work for Chelsea Manning who became one of the world's most acclaimed whistleblowers after leaking secret military files to WikiLeaks in 2010. These leaks became the source of numerous news stories in the mainstream media regarding the failure of the US invasions of the Middle East, and the numbers of civilian deaths and widespread human rights abuses resulting from these invasions (Amnesty International, 2013; Assange, 2011; Brevini et al., 2013). These leaks also contained materials relating to US diplomatic cables and the operations of the military prison at Camp Delta in Guantanamo Bay. A number of themes emerge from the following interview which offer important avenues for future research into the practice of whistleblowing, including i) the close links between the practice of whistleblowing and human rights activism, ii) the fact that whistleblowers are not only subject to retaliation, but are being increasingly criminalized, and iii) the creation of a broad support network for whistleblowers like Chelsea Manning. A short overview of these themes and their significance for further research into whistleblowing will now be provided.

Whistleblowing and human rights activism

Recent research in whistleblowing has begun to explore the link between whistleblowing and human rights activism (Munro, 2017). Whistleblowing can be seen as a basic human right that is protected

under the right to freedom of expression (Benkler¹, 2014; Vandekerckhove, 2016). An overview of whistleblower protection laws by Vandekerckhove (2016: 6) has argued that, “whistleblowing as a human right is always an affirmation of individual human dignity (self-expression), either directly and explicitly, or indirectly as an instrument to such affirmation...” In the present interview Hollander argues that whistleblowing is both a human right and is part of a wider culture of protest that is currently under attack in the US.

There is a fundamental relationship between whistleblowing and human rights activism as forms of protest against injustice, where Hollander observes that,

“In the US it’s becoming more and more difficult to stand up for rights. We’re becoming more of a police state... people have no choice to do what Chelsea did and break the law... And for protestors we have to be very careful because states are starting to talk about passing laws, these crazy laws, that protesting is terrorism and people aren’t allowed to protest.” (Interview)

In the interview Hollander discusses the relationship between whistleblowing and human rights, both in terms of the need to protect the rights of the whistleblower, and in terms of whistleblowing itself as a distinctive form of activism. This relationship is implicit in the support of human rights organizations such as Amnesty International and the American Civil Liberties Union for whistleblowers like Chelsea Manning. Manning’s legal appeal directly addresses the close relationship between the practice of whistleblowing and human rights activism in its challenge to the Espionage Act. Manning’s appeal brief argues that the Espionage Act is deeply flawed with respect to its “failure to provide an accused fair warning of what is or is not unlawful or its infringement on a broad swath of protected speech—speech that goes to the very core of our democratic system” (Hollander et al., 2016, p.137). Hollander warns that the Espionage Act violates due process and is being used to undermine the US Constitution and democracy itself. In the interview below Hollander explains that basic human rights are currently being threatened by the increasing criminalization of whistleblowing and the culture of protest.

Retaliation and the criminalisation of whistleblowing

Retaliation against whistleblowers has already been the subject of much existing research (Alford, 2001; Dasgupta and Kesharwami, 2010; Near and Miceli, 1996; Soeken and Soeken, 1987). Alford’s (2001: 18) study of whistleblowers goes so far as to define retaliation as the very essence of whistleblowing where one “becomes a whistleblower only when she experiences retaliation.” Retaliation is an important aspect of the Chelsea Manning’s case and her legal appeal. Chelsea Manning has been subjected to cruel and usual treatment prior to her trial, a fact noted by the UN Special

¹ Yochai Benkler testified in the court martial of Chelsea Manning in support of her defence as a whistleblower.

Rapporteur on Torture (Mendez, 2012) and by the human rights group Amnesty International (2016). Amnesty's amicus brief written in support of Manning's appeal concluded that, "The conditions of PFC Manning's pretrial confinement were not only 'arbitrary or purposeless'... but shocking, indecent, deplorable, outrageous, perverse and unconscionable." Chelsea Manning served over 7 years in prison, the longest sentence in history for a whistleblower in the US². In total Manning had been sentenced to 35 years in prison, and the excessive nature of this punishment is one of the key points of her appeal which is currently being pursued by Ms Hollander and her legal team.

Existing research has found that retaliation against whistleblowers is likely to become more extreme when they resort to external channels to raise their concerns about organizational wrongdoing and when the wrongdoing is systemic (Mesmer-Magnus & Viswesvaran, 2005; Rothschild and Miethe, 1999), both of which apply to the Manning case. One reason for the particularly cruel treatment of Chelsea Manning might be the distinctive nature of the organisation for which she had been working when she blew the whistle - the US Army. Near and Miceli (1996: 521) have suggested that "bureaucracies would be more likely to engage in retaliation than would less bureaucratic organizations ...[because] any questioning of their decisions in essence challenged the entire authority system of the organization" (see also Weinstein, 1979). This hypothesis is clearly supported by the outrageous treatment of Chelsea Manning where her disloyalty was interpreted as being an existential threat to the US Army³. A more systematic form of retaliation against whistleblowers has begun to emerge with the increasing criminalisation of this act. Radack and McClellan (2011) trace the start of this new trend to 2009, at which point the Obama administration began to ruthlessly pursue military and intelligence whistleblowers through the courts. Chelsea Manning is one such case. The criminalization of Chelsea Manning's whistleblowing has been effected by the use of laws to prosecute her actions that were originally written to address quite different crimes. In the following interview Nancy Hollander explains how both the Espionage Act, 1917, and the Computer Fraud and Abuse Act, 1986, were used by the prosecution to criminalize Manning's actions and to grossly inflate the length of her prison sentence (see also Hollander et al., 2016). Hollander is concerned that this criminalisation is not only an attack on whistleblowers, but serves to undermine the very fabric of democracy. Future research into the process of whistleblowing needs to investigate this trend for the increasing criminalization of whistleblowers as part of a "war on leakers" (Gardner, 2016) by the US government and other powerful institutions.

Whistleblower support networks

² Note whistleblowers outside of the US have also been subject to extreme retaliation. For instance, the Israeli scientist Mordechai Vanunu spent 18 years in prison as a result of blowing the whistle on Israel's nuclear weapons programme.

³ As well as being an important case study of whistleblowing, Manning's leaks can also be understood as bearing witness to the fact that: "Organized destruction we might say is a monster adept at deceiving itself." (Bloomfield et al., 2016: 6).

A wide network of supporters has developed around Chelsea Manning in the face of the extremely harsh retaliation against her. This support network began with WikiLeaks and has grown to include numerous human rights organizations, including Amnesty International, and the ACLU (American Civil Liberties Union), as well as other support groups, such as the Courage Foundation and Fight For the Future. This wide network of support also involves prominent individuals including Daniel Ellsberg, Glenn Greenwald and Colonel Morris Davis. Morris Davis may be seen as a particularly important advocate for Manning since he was a senior insider who had previously held the position of Chief Prosecutor at Guantanamo Bay. The general public have also provided an important support base for Chelsea Manning. A petition signed by 115,000 people presented to the White House's "We the People" platform asked President Obama to commute Chelsea Manning's sentence to time served. As a result of her appeal Chelsea Manning has been granted clemency by President Obama and was released from prison on 17th May 2017. Despite her release from prison her appeal process and the work of Hollander's legal team continues in the fight to clear her of the criminal charges of which she remains convicted.

Another crucial part of the formal and informal networks of support for whistleblowers like Chelsea Manning and Edward Snowden have been human rights lawyers and related activist organizations such as Amnesty International and American Civil Liberties Union. These supportive legal professionals act as significant allies in the public presentation of whistleblowers as legitimate witnesses⁴. In the following interview, Hollander discusses the key role of lawyers in the defence of whistleblowers and in defence of ongoing attacks on basic human rights and the increasing criminalization of democratic protest. From the themes raised in this interview, future research into the process of whistleblowing could fruitfully investigate not only retaliation against whistleblowers but the development of various formal and informal support networks that function as important allies in the dissemination of their message and in the care and protection of whistleblowers themselves.

In the following interview Hollander addresses important issues concerning the mistreatment of whistleblowers and the need for more adequate legal protections. Despite the recent creation of some new whistleblower protection laws⁵, other laws have been used to aggressively prosecute whistleblowers like Chelsea Manning. Dasgupta and Kesharwami (2010:11) have already highlighted the urgent need for, "a consistent body of law governing the process of whistleblowing." A review of whistleblower protection laws within the EU conducted by Transparency International (2013: 5) has observed that there is significant variation between countries and that, "employees who believe that

⁴ My thanks to the anonymous reviewer who pointed out this fact. UK law has acknowledged that the status of the whistleblower as a legitimate witness should focus solely on the issue of its public interest and be independent of perceptions of the whistleblower's apparent character and good faith (Public Interest Disclosure Act 2013).

⁵ In the US relevant legal protections are provided by the Whistleblower Protection Act, 1989, and Section 806 of the Sarbanes Oxley Act, 2002 has provisions for whistleblower protections, as does Section 922 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 2010.

they are protected from retaliation discover after they blow the whistle that they have no legal recourse.” With specific regard to intelligence whistleblowers in the US, including Chelsea Manning’s case, Radack and McClellan (2011: 74) remarked that, “The current Whistleblower Protection Act is a sham.” Both Transparency International (2013) and Radack and McClellan (2011) have noted that even where there is legislation, this often contains loopholes which prevent its effective enforcement and some sectors, particularly the military and national security organizations, are subject to exemptions in some countries⁶. The following interview reinforces this observation by showing not only that there is no consistent body of law governing this process, but also that existing laws governing other social domains, such as computer hacking and espionage, are now being employed to criminalize whistleblowers.

Another important aspect of whistleblower support highlighted by Hollander in the following interview concerns the mental health of the whistleblower. In the case of Chelsea Manning this revolves around her gender dysphoria, depression and Aspergers syndrome and their influence on the events that unfolded. Her poor mental condition at the time is a key part of her appeal case, as is the bullying that she had been subjected to by her coworkers whilst working as an intelligence analyst in Iraq (Hollander et al., 2016). Chelsea Manning’s gender dysphoria is also an extremely sensitive issue where she has an appeal lawyer from the ACLU, Chase Strangio, who is wholly devoted to this aspect of her appeal. A recent study of whistleblowing has observed that, “existing literature on whistleblowers’ experiences in organizations tends to overlook the issue of mental health.” (Fotaki et al., 2015: 106). The question of mental stability has been dealt with in varying ways in the existing literature where some have noted how organizations tend to discredit whistleblowers as being mentally unstable and unreliable (Kenny, 2017; Near and Miceli, 1996), and others have argued that the act of whistleblowing itself involves a moment of madness in rejecting the prevailing social order (Contu, 2014). Kenny (2017: 19) has argued that the levels of bullying and ostracism that whistleblowers are subjected to can lead to “subjective derealization”, where the whistleblower internalises the disbelief and hostility that is directed against them. In the following interview, Nancy Hollander discusses the crucial importance of whistleblower support networks and caring for whistleblowers after their life has been destroyed as a result of their social exclusion and harsh retaliation against them.

⁶ The Council of Europe (2014: 26) has explicitly recognised problems related to the protection of military and national security whistleblowers in its adoption of the Tshwane Principles: “which are designed to give guidance to legislators and relevant officials throughout the world on the protection of whistleblowers in the context of national security.” With specific reference to the Manning case, Benkler (2014: 303) has argued that whistleblower protection laws must be strengthened to include a broader range of what he terms “accountability leaks”, which include “leaks that expose systemic illegality, incompetence, error, or malfeasance [and] challenge the system in ways that make the leakers the target of heightened enforcement.”

It is hoped that the present interview with Nancy Hollander provides insight into the protection of whistleblowing and its role in human rights activism from someone who has had first hand experience in confronting these issues⁷. Ms Hollander agreed to an interview in London on 25th April 2017. Shortly after this first interview Chelsea Manning was released from Fort Leavenworth Prison on May 17, 2017. Nancy Hollander kindly agreed to another interview on 5th June 2017 about developments with the case after Manning's release. The following interview is an edited transcript of these two interviews.

Interview with Nancy Hollander

IM: Thanks very much for agreeing to be interviewed Nancy [...] Could you say something about how you got interested in human rights?

NH: I've always been interested in human rights. My parents raised me to be interested in human rights. I went to college and found an organization the first day I got there that was concerned about student rights, civil rights. At the time it was about ending nuclear war - it was 1964 - and the civil rights movement in the South. That's the work I've always done and the only work that I think is worthwhile doing is trying to make this a better planet for all of us.

M: How did you become involved in the Chelsea Manning case?

NH: The case began for me when a lawyer called me and asked if I was interested in representing Chelsea. It was when she was still in Kuwait [under arrest]. And ultimately that didn't happen. There was no money. I talked a little bit to Julian [Assange], I talked to an army lawyer but then nothing happened and I forgot about it.

IM: When was that?

NH: It was right after she was arrested. She was in Kuwait. And then she hired David Coombs. I knew that because I followed the case like everybody did. He's a lawyer who specialises in courts martial. So after that I got a letter from her after she was given her sentence saying she wanted me to be her appellant counsel. I talked to one of my law partners, Vince Ward, who is a former JAG

⁷ The motivation to interview Nancy Hollander was driven by a research interest in the area of whistleblowing, with a particular concern for whistleblower support networks. The interview is based upon a list of semi-structured, open ended questions that focus on Ms Hollander's involvement with the Manning case and her role in whistleblower support and protection and its link with human rights activism.

officer⁸, a judge advocate lawyer who's a lawyer in the navy. I asked him if he would do it with me if we decided to do this, and he said yes. Then we had a phone call with Chelsea, and I told her that before she made a decision I thought she should meet us. It's a big decision. We should sit across from one another and make sure that we were the people that she wanted. And so we went to Leavenworth⁹. We sat down with her. She decided that she wanted us to do it and we did it. We get paid on and off. We get paid a lot by a support group, who contribute...

IM: Is that from charitable donations or something like that?

NH: It's been from charitable organizations - a group called.... I've forgotten their name... they're not doing it anymore... they're a pacivist group who represent.... they've pretty much stopped now... they started after the Vietnam War. ... And there's another group that helps raise money, The Courage Foundation, and people just send money.

IM: Is that for whistleblowers, the Courage Foundation?

NH: I think it started with Julian [Assange]. There are some people who just send us little cheques. We get little cheques, 25 dollars, 50 dollars, 100 dollars or something. It's been a very expensive case because the record on appeal is the largest record in military history.

IM: What does that mean?

NH: Well, the record is a written record of everything that happened in the appeal. It's 139 volumes, which are 332 pages each, plus several thousand pages of classified evidence that is stored in the court. So as her lawyer I had to read all of it.

IM: That's insane. Did they do that just to make life difficult for you?

NH: No, no. It's the argument in the case, it's the pre-trial hearings, it's exhibits. It is the record of trial.

IM: Okay, it's just a huge case.

NH: [...] Some of it's classified and in order to do an appeal we had to go to Washington and actually to Virginia, where they keep the classified evidence and read it there. Then we had to be able to talk to Chelsea about the case, which she had seen so she could see it again. But we could only do that

⁸ JAG is the Judge Advocate General's Corps, U.S. Navy.

⁹ Fort Leavenworth is a military prison in the state of Kansas in the US.

in a secure facility, a secure room. So they weren't going to take her to Fort Belvoir in Virginia where the classified information was kept. She's at Fort Leavenworth in Kansas half way across the country. So they had to build a room for us at Fort Leavenworth. It took a long time, a long time to convince them. In the army nothing happens fast. [...] That's where we met, which meant it's outside the prison, it's in another building. But we had to have our security people with us. And we had a detailed lawyer, an army captain - he's a major now. He's a lovely man, his name is David Hammond¹⁰, a terrific young lawyer. He was really, really helpful. First of all he knows how that court works. He wrote part of the brief. He read all the record, and took good notes. [...] And then Chelsea had a really good memory of the trial. We all sat down and agreed on the issues that we were going to raise. She sent some really good outlines of where she remembered the key points that were in the record which got me started. I didn't rely just on her [Chelsea Manning], but between her notes and my notes and Dave's notes, what I did was create notebooks for each issue that we were raising.

IM: What was she being prosecuted for?

NH: She was prosecuted for espionage, and the judge found her not guilty of the most serious charge, as you know¹¹. But she was convicted of some espionage charges. She was convicted of violating the statute that's known as the Fraud and Abuse Statute, the Computer Fraud and Abuse Statute. It's somewhat complicated. It's a very important issue... The lower courts have come out differently on it, and that's an issue we raised. There's also another issue that I don't usually talk about just because it's not a very sexy issue, but it's a really important one for her. One of the charges had to do with what is the information worth. The government said that if it's worth more than a thousand dollars that's a ten year violation, to steal it. Right? So if you steal government property worth more than a thousand dollars...

IM: Ten years in prison?

NH: Yes. Ten years.

IM: That seems very harsh.

NH: Our sentences are harsh [in the US]. She has five different counts of that. This was based on really one person's testimony, someone the government called as an expert¹². I don't believe that

¹⁰ Captain J. David Hammond is a defence lawyer in the US Army.

¹¹ Chelsea Manning was acquitted of "aiding the enemy".

¹² One expert witness who testified for the prosecution had expertise in the field of counterintelligence, however, he was asked to give evidence to the court on the actual value of the information that was alleged to have been stolen by Manning. Controversially, this witness had perviously testified that he had no expertise in undertaking such valuations, and in fact had never attempted such a valuation before (see Hollander et al., 2016).

he was qualified to be an expert. There was a lot of litigation in the trial arguing about whether he was qualified or not. The judge found him qualified and let him testify. His testimony was primarily classified because it talks about how much other countries had paid for certain information, and that information, that whole discussion is classified. But if he wasn't qualified to testify then those cases should have all been thrown out.[...]

IM: Is that part of the number of years served? Is it [...]

NH: Who knows? The judge how she was sentenced [.....] we don't know how many years worth of what. Another big issue on appeal was the inappropriateness of her sentence and that the government relied on.... information that it should not have relied upon in her sentence. In other words, indirect evidence of harm, maybe somebody got harmed. Well there was no evidence that anybody was harmed, so our argument was that you couldn't use any of that. Well, that argument has gone now.

IM: So who was arguing [...] did they have witnesses arguing this or was it just asserted?

NH: Both. That record... you can get the record.... it's up on the Internet. It's pretty easy to find, pretty much all the record.

IM: All 139 volumes or whatever it was? Maybe there's an executive summary? [Laughter]

NH: There's no executive summary, but you can read our brief¹³. That's what you should read - our brief and the amicus briefs. That issue's now gone [evidence of harm], because the sentence was commuted. At trial they argued for a ten year sentence, and she got less than that. So we can't very well argue that she [should] get a lesser sentence, but we can still argue that she shouldn't have been convicted in the first place. That's made complicated by the fact that she pled guilty to a number of charges.

IM: Is that because she wanted a reduced ... she wanted some hope of getting out?

NH: Yes, part of it is. They [Manning's previous defense counsel] may have thought wrongly that if she pled guilty the government would quit, which they didn't. It's also fairly common in the military to do that.

IM: Is that because the [military] lawyers give different advice or military courts are harsher?

¹³ See Hollander et al. (2016)

NH: It happens in federal court too. We recently offered to do it in another case. In any event she did. In order for us to win the most now her appeal continues. Her sentence is commuted but her appeal continues.

IM: She wants to be found innocent.

NH: Yes.

IM: That's interesting. I didn't actually know that.

NH: If you think about it, it happens a lot that people's appeals last longer than their sentences. There are people that get probation and they appeal, and they're never in jail. Everybody thought initially, oh she's out... the appeal's over. It's not. But another big issue is the way that she was treated pre-trial. You know that when she was in Quantico. The UN high commission... the Rapporteur on torture said she was tortured¹⁴. The judge found [...] in the military there's is a specific rule that you can't use pre-trial confinement as punishment. Our argument and the argument in the trial was that she was punished. The judge agreed that she was punished.

IM: Does that help your case?

NH: Yes, but she only gave her a hundred days off her sentence. What she didn't find was that she was kept in solitary confinement, which she clearly was for eleven months. The judge's position [...]

IM: That is outrageous¹⁵.

NH: It was outrageous. You know, they acted like marines in the worst sense of the word - they'll say "Sir yes sir!" you know? "You will do this! You will do that!" They just treated her like they took advantage of her. There's an email kind of saying this, that's come out, where she got a letter from her family and they said "No, I think we won't give it to her." They were just being dicks. [...]

IM: That's foolish because it's evidence against them, I suppose?

NH: Yes. Right.

¹⁴ See Mendez (2012).

¹⁵ The description of Manning's treatment reflects the wording of the amicus brief by Amnesty International (2016).

IM: They also had her on suicide watch, I suppose, as part of the punishment... under continuous observation.

NH: Well, their psychiatrist kept saying, "Stop this, you're making things worse". The judge found that it was not solitary confinement because she could see her lawyers and she could see the guards. If we were to win on that issue, the charges that she pled guilty to would go away. That's a big issue. We wrote a brief...

IM: There must have been huge psychological pressure...

NH: It was horrible. We wrote a brief - it's 250 pages and 190 of them are public. And there were four amicus briefs. Do you know what those are?

IM: No.

NH: Those are briefs by organizations or individuals - "amicus" meaning friend - a friend of the court, a brief to take a particular issue and write a brief on the theory that this will help the court. We have one on espionage, a very good brief that the ACLU, the American Civil Liberties Union wrote. The law on espionage is really against us, so we didn't want to spend much time on the brief, arguing it, because it's a loser until you get to the US Supreme Court. The amicus brief covers what we didn't argue. We also have one on solitary confinement from Amnesty International written by lawyers in San Francisco. It's a really good brief on the full history of solitary confinement, and why it's bad. We have one on the [Computer] Fraud and Abuse Statute that really explains that statute that was written by a whole bunch of organisations jointly.

IM: Is that related to the computing aspect of it?

NH: Right. [...] The issue is, can you be convicted of violating that statute if you had authority to be in the computers? Some courts say yes and some courts say no. That's a really important issue. A group called "Fight For the Future" and who else? Anyway, the fourth one [brief] the Soros Foundation wrote and it had to do with sentences around the world for whistleblowers. There was a big chart, which would be helpful for you. All of those are available and I think they're still online at Fight for the Future. They put them all online¹⁶. That one [brief on whistleblowing] would be particularly interesting for you even though it's no longer an issue, because they have charts on what [sentences] you get for whistleblowing all over the world.

¹⁶ See <https://www.fightforthefuture.org/news/2016-05-19-chelsea-mannings-military-appeal-filed-legal/>

IM: Is the US particularly harsh?

NH: Yes. The US is harsh on everything, sentence wise. The only thing I can say is that you guys [the British] can't completely laugh at us now because of Brexit [laughter].

IM: It's a nightmare. Do you have a lot of support from other human rights lawyers, and other organizations?

NH: Yes, we have huge support from Amnesty [International], all over the world. I went to Madrid last year and spent the week in Spain with Amnesty talking about Chelsea and about my Guantanamo client because he was about to get out [of Guantanamo Bay prison]¹⁷.

IM: Was that training other lawyers?

NH: No it was [public] speaking, the press ... This year they did a big - they do a big magazine once a year - and Chelsea was featured that year. This year Vince [Ward] went to Madrid because they did another thing about Chelsea.

IM: So that's your partner - who you're doing the case with? It must be a huge amount of work because not only do you have the actual work but you have all the important social awareness stuff...

NH: Yes. It is a huge amount of work. She [Chelsea] also has another lawyer - Chase Strangio, at the ACLU. Chase is also trans [gender]. Chelsea filed a lawsuit against the army to allow her to get medical treatment and Chase handles that. In a way he's closer to her. [...] He's very excited, he's "She's going to get out and I'm going to introduce her to the whole community!" You know, he's really in charge of that whole deal. We're both going to get her out. My view is that she's my client and it's my job to protect her, just like I would any client. To make sure that she's safe. Even though some lawyers would say that it's not my responsibility, I think it is.

IM: Are there problems about when she's being released? I guess it's an extremely contentious issue?

NH: I hope not.

IM: What about with members of the public and stuff like that?

¹⁷ See Slahi (2015).

NH: We have a plan for her release - it's not public, it won't be public - to get her out of there, to get her out of Kansas, to get her to a safe location. I'll stay with her as long as I need to, to make sure that she's okay. There are all the other issues... when someone has been in prison for so long, getting out is really traumatic. I've just been through it with Mohamedou [Mohamedou Ould Slahi], who got out [of Guantanamo Bay prison] in October after fifteen years. And I had another client that got out after 19 years, and another one who got out after 10. So I know a little bit about what happens. One of the things that people don't realise about prison is that you don't have to do anything - somebody provides you with breakfast, lunch and dinner. If your clothes get dirty you hand them in and they get cleaned. You don't work. You walk down the hall to your room, you sleep a lot. That's what happens in prisons. You then have to figure out how to put gas in your car, you have to figure out how to get to work.

IM: You become useless somehow.

NH: That's part of being institutionalized. You rely on the people to do everything, and then all of a sudden you have to do it all. People come out and they are exhausted. Just exhausted. I've warned Chelsea and I'll warn her again when I talk to her next week. You're just going to be tired. [...] Anyway, that's where we are. We wrote our brief in May. The government has yet to respond. We have a status conference, a hearing for it on this on May 24th that Vince [Ward] is going to, to see when they are going to write their brief, then we will do a reply brief, and then there will be more argument in the court of appeals for the army and that's in a military court. [...] If we lose there, or if the government loses there, then either side can petition to the US Supreme Court. So the appeal case can go on for very long.

IM: What do you think your chances are?

NH: It's tea leaves?

IM: Tea leaves?

NH: It's all tea leaves. We shouldn't have a very good chance, but who knows? We didn't think we'd have any chance for clemency. [...] I remember when we decided to do it thinking that there's really no chance but it's important, it keeps your case alive, her supporters want you to do it, it would be the right thing to do. But what are the chances he [Obama] is ever going to do it? Plus each president creates their own clemency package as a parting package. It's totally discretionary. On the [clemency] website it had to be people who'd been in prison for 10 years, you had to be out for 5 years, it had to be non-violent crime... she didn't need any complications. Plus there was something on the [clemency] site that said that if you had come from a court marital you had to get your clemency from

the Secretary of the Army. The Secretary of the Army has rules, and she [Chelsea Manning] didn't meet any of those qualifications - she was still in and she hadn't served enough time. So we did it anyway [filed the appeal brief]. They required three character letters. It was hard to find character letters from people who actually knew her, who had any clout. We got Glenn Greenwald to write one because he had met Chelsea before and met her in prison¹⁸. Nobody can go to see Chelsea in prison except for her lawyers, [inaudible] and people who knew her from before. No journalists. So he went in as a friend to see her. He wrote a letter. Daniel Ellsberg of the Pentagon Papers fame wrote a letter actually. I helped him draft a letter. And then the third letter was from a retired colonel who... I've forgotten his name, I'll get it in a minute... he was the former Chief Prosecutor in Guantanamo Bay. He has really become a friend because he believes that what was happening in Guantanamo was wrong, and that the use of torture to get evidence was wrong. He also testified at Chelsea's trial that the Guantanamo stuff that she exposed was really worthless [intelligence]. [...] Mo Davis. He's all over the internet. Anyway, he was the Chief Prosecutor [at Guantanamo] and he complained when he was there about "command influence". The Pentagon was telling them at the very beginning, "Get some lawyers, make sure that they are military lawyers, make sure that they know what they are supposed to do, they'll make these guys plead guilty." And he said, "I don't think that's right." And he quit. Then they were going to use torture evidence and he's very important to my other client too, to Mohamedou [Mohamedou Ould Slahi]. He figures in his case also. So he and I have become friends.

IM: That's an odd turn around, going from Chief Prosecutor at Guantanamo to testifying on behalf of people in Guantanamo? I hadn't realized.

NH: Well, he didn't testify, but he wrote a letter so that Mohamedou [Ould Slahi] could get out. He didn't testify in the court case... There's a proceeding that they had, which is how Mohamedou got out, it's a military proceeding. Mo [Colonel Morris Davis] testified... wrote a letter for that and he's been very supportive of Mohamedou. He says that we tortured him, but he was never guilty of anything at all. We owe him. And he was very supportive of Chelsea, saying that yes, she disclosed this stuff [about Guantanamo] but it was worthless raw intelligence anyway. So we submitted those three letters. We got a letter from the pardon attorney of the President saying that "We don't handle courts martials. We're sending your whole packet - our appeal brief - a whole big packet - to the army." Of course we'd already sent it to the army. And then about a week later we decided "You're going to screw us anyway", the pardon attorney and the army, but the President can do this even though it doesn't meet any of their qualifications. He can do this because he wants to as the President, or because he wants to as her Commander in Chief. So we wrote to the President's counsel and sent the whole packet to him. [inaudible.]

¹⁸ Greenwald is a Pulitzer Prize winning journalist who works on issues related to national security. He previously worked for The Guardian newspaper and currently works for The Intercept.

IM: Is the clemency a result of these letters and this package?

NH: Yes, because if we hadn't filed anything there wouldn't be any. Chelsea wrote a long thing and Vince [Ward] went and met with her at Leavenworth. We wrote a letter and put together this whole packet, and sent it to all three places. That was in November and we didn't hear anything. Then in January David Coombs¹⁹ sent me an email saying, "I'm going to be on the Today Show. You should watch it." [...] He cares about her [Chelsea] and he's always cared a lot about her. He was really helpful during the appeal. If I couldn't find something I would call him. He knows I could have accused him of 'ineffective assistance' if I found it, and it would be my job to do that and he knows that. There are some lawyers who are hostile and he wasn't. He is really stand up, really good and I know that he really cares about Chelsea. He went on "Democracy Now!" and said that the President should commute her sentence. She's served way longer than any other whistleblower, which I am sure you know. It's wrong, she shouldn't be there [Leavenworth prison]. We heard that and then we started getting excited. I talked to Chelsea and said "We don't know what this means anyway. It may not be true and it may not mean anything so don't get your hopes up." I started getting worried about her. She's fragile. She had tried to kill herself. I didn't want her to think that she was going to get out and suddenly have this defeat. So I started getting worried about her, and then there was a press conference with Josh Earnest, who is President Obama's press guy, who had the same position as this idiot Sean Spicer - the holocaust denier. There was a press conference, it must have been on Monday and he announced that on May 17th she would be released. [...]

[The following is edited from a subsequent interview with Nancy Hollander shortly following Chelsea Manning's release from military prison]

IM: What do you see as the big issues facing a lawyer like yourself at the moment?

NH: [...] In the US it's becoming more and more difficult to protest. It's becoming more and more difficult to stand up for rights. We're becoming more of a police state. We're becoming more of an insular country - going backwards - we see it day by day in what Mr Trump is saying. And fortunately that is creating resistance that we have not seen in this country for many many years, and it's happening now. I hate to think that the only way that you get resistance is to push people into a corner, but in fact that's what's happening. People are feeling that they are getting pushed into all kinds of corners and people are uniting and resisting and that's a good thing but it's also going to lead to more criminal cases unfortunately and it's going to be more work for lawyers. It's going to be harder for lawyers because lawyers are going to be accused of creating the atmosphere that allows people to resist - I don't believe that's true - but it happens, it's a perception.

¹⁹ Manning's defense lawyer at her original trial.

IM: What do you mean by that? How do lawyers create an atmosphere where...

NH: Lawyers get accused of being as bad as their clients. If you stand up for someone who, like Chelsea Manning, the government thinks has done terrible things - I don't think that Chelsea did anything terrible, I think that she was very courageous and I wish I was as courageous as she is but I'm not. I'm not willing to stand up and say this is what I think the United States government is hiding from the American people. But fortunately there are people like Chelsea, and Snowden and Daniel Ellsberg and a few others who have been willing to stand up. And those people are going to get the brunt of everything the US government has to throw at them, and fortunately still have lawyers to defend them. If we lose these lawyers then we've really lost all of our rights.

IM: Can I ask in terms of resistance, in the case of whistleblowers like Chelsea Manning, can you recommend anything specifically to help protect protesters or whistleblowers? What would you see as an advance or something that would help protect whistleblowers or protect protestors?

NH: For whistleblowers there are two things that would help. One would be to not use laws like the Espionage Act, which were never intended to be used against whistleblowers. If it's going to be used then have a defense for disclosing information in the public interest, which it [the Espionage Act] doesn't have. Another thing that would assist whistleblowers in the national security area would be a legitimate way to go up through the channels and to have someone you can talk to and say "look this is what the United States is doing and this is wrong", without running the risk of either getting prosecuted or being fired. And one of those two things is what is happening now [being fired or prosecuted] or losing your security clearance. Nobody successfully ever goes up the channels, that's why people have no choice but to do what Chelsea did and break the law. You have to change the environment and make it okay for whistleblowers and you have to change the law. And for protestors we have to be very careful because states are starting to talk about passing laws, these crazy laws, that protesting is terrorism and people aren't allowed to protest. If we lose what we call the First Amendment - free speech and the right of free assembly - we've lost the fundamental values of this country. It won't be the same country.

IM: So it's protecting free speech essentially?

NH: It's really about protecting free speech and freedom of assembly. That's the big issue.

IM: The previous time we met it was the week before Chelsea's release and you were obviously quite excited about that. How has that gone?

NH: It was really wonderful. I was there to get her out [of Fort Leavenworth Prison]. I don't want to go into all the details of that we did but we were there with our other lawyer from the ACLU [Chase Strangio], we were on the base, we got her out. We were able to hug her for the first time, because in the military combat base the rule when you visit a client is that you can only shake hands once at the end of the visit. So in the three years since I've known Chelsea, I've never been able to give her a hug. We did that. We got out. Things went really smoothly. We went to a secure location. We stayed there for several days. I was with her for almost 10 days just to help her get adjusted and have some room to be quiet and you know, walk in the grass, eat a home cooked meal, just to start to live a normal life. It went really well.

IM That's great. Can I ask what's next for Chelsea?

NH: Well, she still has her appeal. We're waiting for the government's brief. There was a hearing in Fort Belvoir that my co-counsel Vince Ward went to on May 24th and we're waiting for the court to issue them an order to tell them exactly... we're hoping they'll give them a deadline for when their brief is actually due [the government's response to Manning's appeal]. They haven't given them that deadline yet. Then we will write a reply brief. Then the court will submit an oral argument and then there will be a decision at some time from that court. Depending upon where we are at that point, either side can petition to the Court of Appeals for the Armed Forces and go up to the next court. So in terms of her appeal it's still a long process. But now the difference is of course huge in that her [prison] sentence is over. But she's still fighting to clear her name.

IM: Brilliant. [...] Really that's it. I'd like to say that after meeting you, you are very inspirational ... and you've been very kind. Thanks very much.

Postscript

Since leaving prison Chelsea Manning has been an active speaker at events to promote issues relating to human rights, LGBT rights, and an advocate for increased whistleblowing protection laws. She has been a contributor to newspapers including the New York Times and the Guardian and has a growing following in the social media including over 322,000 followers on Twitter. She is also involved in the making of a documentary about her actions as a whistleblower. The appeal process being led by Nancy Hollander to clear Chelsea Manning of the criminal charges against her continues.

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References

- Alford, C.(2001). *Whistleblowers: Broken lives and organisational power*. Ithaca, NY: Cornell University Press.
- Amnesty International (2013) *Iraq: A Decade of Abuses*, <https://www.amnesty.org/en/documents/mde14/001/2013/en/>
- Amnesty International (2016) *Brief of Amicus Curiae Amnesty International Ltd. In Support Of Private First Class Chelsea Manning*, https://www.amnestyusa.org/files/filed-amnesty_int271_brief.pdf
- Assange, J. (2011) *Julian Assange: The Unauthorized Autobiography*. Edinburgh: Canongate Books Ltd.
- Benkler, Y. (2014) A Public Accountability Defense for National Security Leakers and Whistleblowers 8(2): *Harvard Law & Policy Review*, 281
- Bloomfield, B. Burrell, G. and Vurdubakis, T. (2016) Licence to Kill? On the organization of destruction in the 21st Century, *Organization*, onlinefirst
- Brevini, B. Hintz, A. and McCurdy, P. (eds) (2013) *Beyond WikiLeaks: Implications for the Future of Communications, Journalism and Society*. Basingstoke: Palgrave MacMillan.
- Contu, A. (2014) Rationality and relationality in the process of whistleblowing: Recasting whistleblowing through readings of Antigone. *Journal of Management Inquiry* 23(4): 393–406.
- Dasgupta S and Kesharwami A (2010) Whistleblowing: A survey of the literature. *The IUP Journal of Corporate Governance* 9(4): 57–70.
- Fotaki, M., Kenny, K. and Scriver, S. (2015) Whistleblowing And Mental Health: A New Weapon For Retaliation? in Lewis, D. & Vandekerckhove, W. (2015). *Developments in whistleblowing research* 2015, pp. 106-121
- Gardner, L. (2016) *War on Leakers: National Security and American Democracy from Eugene V. Debs to Edward Snowden*, The New Press
- Hollander, N., Ward, V., Potter, J., Hammond, J.D. (2016) *Appeal Brief United States v Private First Class, Chelsea E. Manning, United States Army*, <https://s3.fightforthefuture.org/manning-appeal.pdf>
- Kenny, K. (2017) Censored: Whistleblowers and impossible speech, *Human Relations*, onlinefirst
- Mendez, J. (2012) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Human Rights Council, United Nations
- Mesmer-Magnus, J. R. & Viswesvaran, C. (2005). Whistleblowing in organizations: An examination of correlates of whistleblowing intentions, actions, and retaliation. *Journal of Business Ethics*, 62(3): 277 -297.

- Munro I. (2017) An Interview with Snowden's Lawyer: Robert Tibbo on Whistleblowing, Mass Surveillance and Human Rights Activism, *Organization*, onlinefirst.
- Near J and Miceli M (1996) Whistle-blowing: Myth and reality. *Journal of Management* 22(3): 507–526.
- Radack, J. and McClellan, K. (2011) The Criminalization of Whistleblowing, *The Labor and Employment Law Reform*, 2(1): 57-77
- Rothschild, J. and Miethe, T. (1999) Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information about Organization Corruption, *Work and Occupations*, 26; 107-128
- Slahi, M. (2015) *Guantánamo Diary*, Canongate Books, London
- Soeken K and Soeken D (1987) *A Survey of Whistleblowers: Their Stressors and Coping Strategies*. Laurel, MD: Association of Mental Health Specialties.
- The Council of Europe (2014) *Protection of Whistleblowers*, <https://www.coe.int/en/web/cdcj/activities/protecting-whistleblowers>
- Transparency International (2013) *Whistle-blowing in Europe: Legal Protections for Whistleblowers in the EU*, www.transparency.org/whatwedo/pub/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_EU
- Vandekerckhove, W. (2016) Freedom of expression as the “broken promise” of whistleblower protection, *La Revue des droits de l'homme*, 10: 1-17
- Weinstein, D. (1979). *Bureaucratic Opposition*. Elmsford, NY: Pergamon.

Author's biography

Iain Munro is engaged in research in the fields of organization theory, information warfare, whistleblowing and business ethics. He has written a research monograph *Information Warfare in Business: Strategies of Control and Resistance in the Network Society* (Routledge).