

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

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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 Odatto, 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, Odatto, 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 Ranieri, 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 Ranieri 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 Ranieri’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 Ranieri’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.

