

VOX MEDIA, WHERE YOU CAN MAKE \$15 AN HOUR TO INSINUATE FIGHT FOR \$15 IS JUST ABOUT ALLITERATION

Vox thinks if workers fight for \$15 an hour – a living wage – they’re doing it just out of poetic license. Maybe that’s why they’re only paying their fellow on race and identities \$15 an hour?

KILLER FOOTBALL IS TRASHING ITS REAL CAPITAL

So we are on to week two of Trash Talk for the nascent NFL season, and week three for the NCAA. There is a ton that could be unpacked as to the particular players, plays and whatnot but, as was the case with the first week, I have little inclination to do so anymore, at least not at great length. Maybe just a little later on, but there are more pressing matters at hand.

Football is hard to turn away from, it is great pageantry and spectacle. It is incredibly compelling sport. But the game is at a crossroad as to its deadly nature and its decimation of its real capital: the players. A stunning article came out yesterday from PBS Frontline:

A total of 87 out of 91 former NFL players have tested positive for the brain disease at the center of the debate over concussions in football, according to new figures from the

nation's largest brain bank focused on the study of traumatic head injury.

Researchers with the Department of Veterans Affairs and Boston University have now identified the degenerative disease known as chronic traumatic encephalopathy, or CTE, in 96 percent of NFL players that they've examined and in 79 percent of all football players. The disease is widely believed to stem from repetitive trauma to the head, and can lead to conditions such as memory loss, depression and dementia.

In total, the lab has found CTE in the brain tissue in 131 out of 165 individuals who, before their deaths, played football either professionally, semi-professionally, in college or in high school.

Wow. We have known for quite a while about CTE and its debilitating, and sometimes deadly, effects on football players. But the starkly presented facts portrayed in the PBS piece are really eye opening. And people are talking about it. It is in the regular news rotation at CNN this morning, and you know how much it had to pain the programmers and producers at CNN a LOT to eat into their All Trump, All The Time philosophy.

But the NFL is being a good corporate citizen and proactively protecting their players, right? No, maybe not so much. While Roger Goodell and the NFL paint a happy face on their "improvements", the real fact of the matter is that their "progress" is mostly just another Roger Goodell and NFL PR shitshow. Do take a look at the above trailer for the movie "Concussion" set to be released in December. It looks fantastic.

Again, from the PBS Frontline article we started out with:

The film, *Concussion*, starring Will Smith, traces the story of Bennet Omalu, who in 2005 shocked the football establishment with an article in the journal *Neurosurgery* detailing his discovery of CTE in the brain of former Pittsburgh Steelers center Mike Webster. At the VA lab and elsewhere, CTE has since been found in players such as Hall of Famer Junior Seau, former NFL Man of the Year Dave Duerson, and Colts tight end John Mackey, a past head of the player's union.

While the story is not a new one, for the NFL, it represents a high-profile and potentially embarrassing cinematic interpretation of a period in which the league sought to refute research suggesting football may contribute to brain disease.

From 2003 to 2009, for example, the NFL's now disbanded Mild Traumatic Brain Injury Committee concluded in a series of scientific papers that "no NFL player" had experienced chronic brain damage from repeat concussions, and that "Professional football players do not sustain frequent repetitive blows to the brain on a regular basis."

In the case of Omalu, league doctors publicly assailed his research, and in a rare move, demanded a retraction of his study. When Omalu spoke to *FRONTLINE* about the incident for the 2013 documentary, *League of Denial: The NFL's Concussion Crisis*, he said, "You can't go against the NFL. They'll squash you."

"THEY WILL SQUASH YOU". Yes, that is exactly the consistent message from the oh so "fan friendly" good 'ole NFL of Roger Goodell, and the billionaire owner baby tyrants he works for. Little different than coal mine owners, the NFL cares primarily about their bottom line. First

they look at the purse. This is why the Brady/NFLPA case is so important. And why Bountygate, Ray Rice and Adrian Peterson's cases before it, were all so important. And, yes, even the disciplinary travails of James Harrison. They all reflect the ad hoc, arbitrary and capricious, and self serving nature of the treatment of labor by owners and management in the NFL.

You may see them only as millionaire malefactor petulant football players out doing bad things and think they deserve what they get. And maybe that is true in most cases. Ray Rice absolutely assaulted his fiancé and now wife Janay. Adrian Peterson, engaged in punishment of a child that was pretty common when I was a kid, but is entirely medieval by today's standards.

Say what you will, where there is wildly disproportionate power between ownership/management and labor, and where there has been a collectively bargained agreement to protect labor, that must be jealously protected. That is exactly why Tom Brady is so critical. Brady is no gangster nor domestic abuser. He is the furthest thing from it; indeed, Brady is Mr. Clean Cut GQ All American. If Roger Goodell and the NFL he represents can arbitrarily, capriciously and imperiously take out Tom Brady – on trumped up junk with no credible evidentiary basis whatsoever – and can do so in a biased and unfair process, then all of labor loses. Not just high flying football players, but teachers, autoworkers, miners, and rank and file employees of all stripes and colors.

I digressed a little from today's CTE issue, but the labor issue is intertwined. The players need more honesty, more protection, and more complete future medical coverage from the NFL because of the disease that is CTE. That, my friends, is a labor issue, and a huge one. And Roger Goodell and the NFL are already acting in bad faith in their "settlement" efforts as to long past players. It is simply pitiful.

So, what about this week? I dunno. The Broncos

looked like toast through 7 of their first 8 quarters of the season. But, the Donks are 2-0. If Manning and Kubiak can find a mutual equilibrium, watch out, because Von Miller, Aqib Talib and the defense are some flat out ball hawks. Yak all you want about Peyton's decline and fall, and maybe it is true. But do NOT sleep on these guys.

Cowboys, Gents or Iggles? Yeah, I have no clue there either.'Boys looked best week one, not sure I buy it. Why is RGIII still on the active roster of the Washington Professional Football Franchise? Seriously, the Washingtonians are like the Duggars of football; it is on public view, but it is all horrible. The Eagles? Hmmm, Chip Kelly's troops better show up this week or else the great hype is dead.

Aaron Rodgers is a renaissance man (this is a fantastic article). Oh, and Go Pack! against those pesky Seasquawks. This time it is at Lambeau in title town. There are other games of note too, including, of course Bill Bel and the Brays at the Wagon Circling Bills. That is shaping up to be some big fun.

So, go whoop it up and have some fun. The game goes on, even if a reckoning is necessary. The music number today is First I Look At The Purse by the J. Geils Band, and is in honor of the craven Roger Goodell and the NFL I described above.

BEYOND DEFLATEGATE: THE NFL SEASON BEGINS

Hi there! How ya doing! Because I have been oppressed with this Tom Brady porn bullshit from blog partner and sister, that Wheel person. Very ugly and unnecessary. But I am going to let it

stand for all of posterity, not to mention both of our posteriors. Still, you have to wonder when enough is enough (like when she hijacked my last post).

I used to love her, but...

So, enough about yer local riff raff, and about #Deflategate (which was bullshit from the inception) let's get on to the game at hand. That would be the Patriots versus the Steelers.

Yes, Brady has a giant chip on his shoulder. Yes the Pats are defending Superbowl champs and Big Ben and the Steelers are not. Nevertheless, this is one hell of a season opening game. In fact, it is pretty hard to imagine a better one under the circumstances. Say what you will about how any got there, there are only a precious few at the top of all time winners in the Super Bowl era. They include the Steelers and Pats. And, yes, the Steelers, for all the Pats glory in the last 15 years, are still winning that overall matchup. The 49ers, Packers, Cowboys and Gents are totally in there, but the more recent elite are pretty clear.

So, here we are. Steelers have Big Ben and...what? Ben Roethlisberger and Antonio Brown are as good a duo as you can get. But without Bell, who is suspended, in the backfield, that is going to place some extra pressure on the Steelers offense. A face Bill Belichick undoubtedly knows. By the same token, the Pats pass defense rests on a backfield without either Darrell Revis or Brandon Browner. Pretty easy to see Malcomb Butler continuing to become a stud above and beyond his one play Super Bowl XLIX heroics, but similarly hard to see there not being some early hiccups in that road. Would not want to be Butler on Antonio Brown tonight.

But will DeAngelo Williams, who will sub for Bell and Cody Wallace, who is subbing for center Maurkice Pouncey, be able to pick up the slack? Yes, I think so, but not nearly enough.

That said, the Patriots are without LeGarrette Blount, due to a one game suspension. I think

that Dion Lewis (who is potentially breakout star) and Travaris Cadet will come out of nowhere to semi-carry the load. So, both sides have some issue at running back, but, hopefully, capable backups. I'd give a slight edge to the Pats, but by a VERY slight margin.

We all know the QB's on these two respective teams. They are both great. Hard to see an edge here other than the psychological harden that Brady may have. But I am not putting that much in that, Ben will come to play too.

Comes down to defense. Call me crazy, and probably you should for this, but I think the Pats have the edge on the new, dick LeBeau-less, and untested, Steeler's defense. Troy Polamalu and Ryan Clark ain't walking through that tunnel. Especially so with the questions in the Pittsburgh offensive line. If there is a win here, that, and a pissed off Brady, are where I see it. And that is where I see it, the Steelers are good, but the Brady's come out roaring and winning tonight. don't make me regret this Deflators!

So, there you have it. #Deflategate is still a legal pile of dubious garbage manufactured, as is now even more clear, by an arbitrary and capricious, if not arrogantly craven, Roger Goddell and the NFL. We shall deal with that more later. For now, trash it up and let loose the dogs of football war.

And that is that. On top is an incredible Taiwanese animation on the latest ESPN slanted bunk trying to give cover to the NFL for #Deflategate. It's really awesome. Lower is one of my newest favorite bands, this one from down under, specifically Perth, Boom! Bap! Pow! Yeah, that is their name, and they are killer.

The real football season is upon us folks, rip this joint.

THE DOLPHIN CODE: NFL GANGSTA IN MIAMI

We are going to take a little detour in our weekly lighthearted football trash talk here at the Emptywheel Blog. I will return to the actual games at the end of this post, but for now I want to discuss a hideous and, hopefully, transformative moment in football – the abusive workplace environment to which the Miami Dolphins subjected Jonathan Martin.

As you may know by now, Jonathan Martin is the second year Miami Dolphins offensive tackle who has left the team because of harassment, primarily by fellow offensive lineman Richie Incognito, but apparently by other teammates as well.

The official statement by Martin's lawyer, David Cornwell (a fantastic attorney by the way), gives a pretty fine synopsis of the situation:

Jonathan Martin's toughness is not at issue. Jonathan has started every game with the Miami Dolphins since he was drafted in 2012. At Stanford, he was the anchor for Jim Harbaugh's "smash mouth" brand of football and he protected Andrew Luck's blind side.

The issue is Jonathan's treatment by his teammates. Jonathan endured harassment that went far beyond the traditional locker room hazing. For the entire season-and-a-half that he was with the Dolphins, he attempted to befriend the same teammates who subjected him to the abuse with the hope that doing so would end the harassment. This is a textbook reaction of victims of bullying. Despite these efforts, the taunting continued. Beyond the well-publicized voice mail with its racial epithet, Jonathan endured a malicious physical attack on him by a teammate, and daily vulgar

comments such as the quote at the bottom. These facts are not in dispute.

Eventually, Jonathan made a difficult choice. Despite his love for football, Jonathan left the Dolphins. Jonathan looks forward to getting back to playing football. In the meantime, he will cooperate fully with the NFL investigation.

Quote from teammate: "We are going to run train on your sister. . . . She loves me. I am going to f-k her without a condom and c- in her c-."

That was on top of the fact direct racial animus evidencing epithets from Incognito to Martin were already known to be in play.

"Hey, wassup, you half n— piece of s—. I saw you on Twitter, you been training 10 weeks. [I want to] s- in your f-ing mouth. [I'm going to] slap your f-ing mouth. [I'm going to] slap your real mother across the face [laughter]. F-you, you're still a rookie. I'll kill you."

This is beyond ugly conduct, and, frankly, beyond simple "harassment". Worse, it appears that it was a pattern of conduct not only encouraged, but requested by Dolphins' management. They ordered a code red on Jonathan Martin.

Jason Whitlock had a very provocative take on the effect of incarceration and thug culture in general at play, a take that rings all too, uncomfortably, true. Dave Zirin at The Nation has a fine take on what the "Bully Solidarity" of the Dolphins organization in the Martin matter means.

So, this hideous and intolerable conduct is legally actionable against Incognito (and the Dolphins via vicarious liability) by Jonathan

Martin, right? Sure, anybody can sue anybody else, and Martin can certainly bring a civil complaint here. But the chances of success are far more tenuous than you likely think (and far more difficult than ESPN's legal idiot, er expert, Lester Munson thinks).

The most common theory mentioned is workplace discrimination, presumably under a Title VII racial animus hostile work environment claim. But this statement of the elements, and discussion of a somewhat similar factual scenario in *Carpenter v. Con-Way Central Express, Inc.*, 481 F.3d 611 (8th Cir. 2007) displays the difficulty Martin faces on this theory:

To establish a Title VII race-based hostile work environment claim, a plaintiff must show (1) he is a member of a protected group, (2) he is subjected to unwelcome race-based harassment, (3) the harassment was because of his membership in the protected group, and (4) the harassment affected a term, condition, or privilege of his employment. *Singletary v. Mo. Dep't of Corr.*, 423 F.3d 886, 892 (8th Cir.2005). A hostile work environment "is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" as viewed objectively by a reasonable person. *Tademe v. Saint Cloud State Univ.*, 328 F.3d 982, 991 (8th Cir. 2003) (internal quotation omitted). "To be actionable, the conduct complained of must be extreme in nature and not merely rude or unpleasant." *Nitsche v. CEO of Osage Valley Elec. Coop.*, 446 F.3d 841, 846 (8th Cir.2006) (citations omitted). "Allegations of a few isolated or sporadic incidents will not suffice; rather, the plaintiff must demonstrate the alleged harassment was `so

intimidating, offensive, or hostile that it poisoned the work environment.'" Id. (quoting *Tuggle v. Mangan*, 348 F.3d 714, 720 (8th Cir.2003)).

Hardy's racial insults were not shown to be connected to Hardy's misloading of or placing garbage in Carpenter's trailer. Carpenter testified Hardy "was an instigator to everybody" who "would instigate problems" such as "do[ing] things . . . intentionally" to "piss a driver off" and then run down the dock telling everybody he had just done something to someone's trailer. J.A. 98. While Carpenter was a favorite target of Hardy's childish pranks, another employee testified Hardy played a practical joke on somebody "about daily." J.A. 253. This evidence does not show objectively hostile conduct. See, e.g., *Singletary*, 423 F.3d at 892-93 (finding job environs where the plaintiff had second-hand knowledge his co-workers and some managers referred to him as a "nigger" and where his vehicle had been vandalized on several occasions not objectively severe and pervasive); *Bainbridge v. Loffredo Gardens, Inc.*, 378 F.3d 756, 759 (8th Cir. 2004) (finding racial remarks, made directly to plaintiff, once a month for two years by owner and operators, was insufficient to render the workplace objectively hostile).

That is pretty common law across the various circuits from what I can tell, is generally consistent with what I have seen in the past in the 9th Circuit, and should hold in the 11th Circuit which covers Florida. It certainly does not preclude such a claim by Martin, but shows the burden he will be up against. And keep in mind the environment in *Carpenter* was far more benign and less testosterone and violence oriented than an NFL workplace, and such facts

matter in a relative consideration of the claim, and circumstances of alleged discrimination.

Another theory I have seen bandied about is intentional infliction of emotional distress, one would presume via a pendant state law claim. That too may be problematic. The elements of the intentional infliction of emotional distress cause of action in Florida are:

The wrongdoer's conduct was intentional or reckless;

The conduct was outrageous, that is, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community;

The conduct caused emotional distress; and

The emotional distress was severe.

And Florida appellate law, which would putatively control such a claim even in Federal Court, is fairly strict:

Johnson v. State Dept. of Health and Rehab. Svc's, 695 So.2d 927 (Fla. 2d DCA 1997)], quoting Dominguez v. Equitable Life Assurance Soc'y, 438 So.2d 58, 59 (Fla. 3d DCA 1983).

Only conduct, which is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community," meets the standard necessary to state a claim for IIED.

Clemente v. Horne, 707 So.2d 865, 867 (Fla. 3d DCA 1998), citing Restatement (Second) of Torts, § 46 cmt. D (1965).

"It is not enough that the intent is tortuous or criminal; it is not enough that the defendant intended to inflict emotional distress; and it is not enough if the conduct was characterized by malice or aggravation." Id. citing State

Farm Mut. Auto. Ins. Co. v. Novotny, 657 So.2d 1210, 1213 (Fla. 5th DCA 1995).

Claims based solely on allegations of verbal abuse are also generally legally insufficient. De La Campa v. Grifols America Inc., 819 so.2d 940 (Fla. 3d DCA 2002) citing Ponton v. Scarfone, 468 So.2d 1009 (Fla. 2d DCA 1985) (statements made to induce employee to join sexual liason did not establish IIED).

So, to make a long story somewhat shorter, and not delve too deeply into legal minutiae when there is not even yet a complaint to analyze, the litigation chances of success are certainly far from clear cut. And the types of “hey, NFL boys will be boys” defenses were aptly shown in the “Bully Solidarity” piece by Zirin.

But the Dolphin code red run on Jonathan Martin is but a symptom of a larger problem, the disposable gladiator thug mentality showcased and lionized by the NFL. From the NFL, by far the most popular sport in America, it oozes into the fabric of society. And the NFL has already shown its craven, arrogant, scorched earth litigation tendencies by their despicable strategy in the CTE (chronic traumatic encephalopathy) case brought by former players who are increasingly shown to be decimated by the NFL lifestyle.

The NFL does not just “have” a problem, they “are” the problem. The NFL does not just condone the thug life, they encourage it and sell it for profit. The way the NFL, and the Dolphins, have responded to date to the Jonathan Martin case is deplorable. If they have an ounce of social righteousness and moral ethics, they will allow their “special investigator” Ted Wells to do a real investigation with an eye toward cleaning up the league. It is the least they can do.

But don't hold your breath. As Whitlock says:

It's now time for Roger Goodell to render a verdict on wardens Ireland and Philbin and Cell Block D leader Incognito. The world is so upside down that I half expect Goodell to suspend Martin for conduct detrimental to American idiocy.

Yep, that's about right. Especially when it comes to Roger Goodell and the NFL.

Okay,
I
promis
ed
some
actual
trash
talk.
Away
we go.
In the
bigges



t game last night, the Stanford Tree blew up the Quacks from Oregon. The nerds of Stanford showed in the post game press conference as shown to the right. The Tree deserved the win, though it undoubtedly will keep the Pac out of the BCS Championship Game yet again. Seriously, I have no idea how anybody could rate the cheap undefeated record of Ohio State over the one loss Tree. The Pac is simply a lot better conference than the B1G now and, top to bottom, may well be better than the SEC. Baylor left a mark on the Sooners and the Vikings beat the hapless Redskins (how can Shanahan still have a job after this year?).

Saturday's best game is unquestionably LSU at the Tide in Tuscaloosa. Short of a run in with Johnny Football in the SEC Championship, this is the best shot for a loss by Bama. Sorry, not happening. ASU visits the Utes of Utah, who managed a home win against Stanford earlier in

the year. The Devils are on a little roll; I am going out on a limb and predicting they take care of Utah.

For the pros on Sunday, Lions at Bears is the class of the bunch. Cutler and his groin are cleared to play. I am sure he will, but I would stick with Josh McCown were it me; Cutler is not 100% and the Man Named Suh will be chasing him. Eagles at the Pack is suddenly far more a close call without Aaron Rodgers, take the Iggles in an upset. Oakland ant the Giants ought to be a fair fight between teams that can't get out of their own way. If the Bengals beat the Ravens in Baltimore, they may take control of the division for good. But the Bengals regressed in a loss to Miami last week, so it is a toss em. It would be tempting to take Cam Newton and the Panthers over the Niners – except the game is in San Francisco. Donkos should take care of the inconsistent Bolts.

Also, why the Lions will beat da Bears: After seeing what she did to Matthew Stafford, the Kittes have signed Bridget the Cat at Defensive back.

Well, there you have it. Talk some trash people!

TODAY'S LABOR HEROES ARE WORKING TODAY

Unless there's some breaking news (like this AT&T story, which I'll get to tomorrow), I'm going to take a break from surveillance and Syria war posts today. The day is supposed to pay tribute to the great contribution organized labor has made to this country.

But I couldn't help but think that, while many Americans have a day off thanks to fights waged in the past (fights those Americans often forget), some of today's most important labor

heroes will be at work today.

Just about the bravest, most exciting labor fight being waged today is the slowly growing series of protests by fast food workers – with strikes in 60 cities last week – who are demanding the right to organize and calling for a \$15 hour wage. The fight is more than just a battle for wages, it's a battle for the principle that a job should provide a livable wage, and a battle for the principle that even laborers spread out across the country, potentially at franchises owned by small businessmen, should have some representation.

But today, many of these poorly paid workers will be at work, providing Americans a quick bite to eat as they head off to have their fun.

As you're enjoying your day, take note of all the fast food restaurants that are open today and remember how many don't even benefit from the battles won in the past.

Update: Fixed my spelling error, thanks to RTL.

IN THESE TIMES WE CAN'T BLINDLY TRUST GOVERNMENT TO RESPECT FREEDOM OF ASSOCIATION

One of my friends, who works in a strategic role at American Federation of Teachers, is Iranian-American. I asked him a few weeks ago whom he called in Iran; if I remember correctly (I've been asking a lot of Iranian-Americans whom they call in Iran) he said it was mostly his grandmother, who's not a member of the Republican Guard or even close. Still, according

to the statement that Dianne Feinstein had confirmed by NSA Director Keith Alexander, calls “related to Iran” are fair game for queries of the dragnet database of all Americans’ phone metadata.

Chances are slim that my friend’s calls to his grandmother are among the 300 identifiers the NSA queried last year, unless (as is possible) they monitored all calls to Iran. But nothing in the program seems to prohibit it, particularly given the government’s absurdly broad definitions of “related to” for issues of surveillance and its bizarre adoption of a terrorist program to surveil another nation-state. And if someone chose to query on my friend’s calls to his grandmother, using the two-degrees-of-separation query they have used in the past would give the government – not always the best friend of teachers unions – a pretty interesting picture of whom the AFT was partnering with and what it had planned.

In other words, nothing in the law or the known minimization rules of the Business Records provision would seem to protect some of the AFT’s organizational secrets just because they happen to employ someone whose grandmother is in Iran. That’s not the only obvious way labor discussions might come under scrutiny; Colombian human rights organizers with tangential ties to FARC is just one other one.

When I read labor organizer Louis Nayman’s “defense of PRISM,” it became clear he’s not aware of many details of the programs he defended. Just as an example, Nayman misstated this claim:

According to NSA officials, the surveillance in question has prevented at least 50 planned terror attacks against Americans, including bombings of the New York City subway system and the New York Stock Exchange. While such assertions from government officials are difficult to verify independently, the lack of attacks during the long stretch

between 9/11 and the Boston Marathon bombings speaks for itself.

Keith Alexander didn't say NSA's use of Section 702 and Section 215 have thwarted 50 planned attacks against Americans; those 50 were in the US and overseas. He said only around 10 of those plots were in the United States. That works out to be less than 20% of the attacks thwarted in the US just between January 2009 and October 2012 (though these programs have existed for a much longer period of time, so the percentage must be even lower). And there are problems with three of the four cases publicly claimed by the government – from false positives and more important tips in the Najibullah Zazi case, missing details of the belated arrest of David Headley, to bogus claims that Khalid Ouazzan ever planned to attack NYSE. The sole story that has stood up to scrutiny is some guys who tried to send less than \$10,000 to al-Shabaab.

While that doesn't mean the NSA surveillance programs played no role, it does mean that the government's assertions of efficacy (at least as it pertains to terrorism) have proven to be overblown.

Yet from that, Nayman concludes these programs have "been effective in keeping us safe" (given Nayman's conflation of US and overseas, I wonder how families of the 166 Indians Headley had a hand in killing feel about that) and defends giving the government legal access (whether they've used it or not) to – among other things – metadata identifying the strategic partners of labor unions with little question.

And details about the success of the program are not the only statements made by top National Security officials that have proven inaccurate or overblown. That's why Nayman would be far better off relying on Mark Udall and Ron Wyden as sources for whether or not the government can read US person emails without probable cause than misstating what HBO Director David Simon has said (Simon said that entirely domestic

communications require probable cause, which is generally but not always true). And not just because the Senators are actually read into these programs. After the Senators noted that Keith Alexander had “portray[ed] protections for Americans’ privacy as being significantly stronger than they actually are” – specifically as it relates to what the government can do with US person communications collected “incidentally” to a target – Alexander withdrew his claims.

Nayman says, “As people who believe in government, we cannot simply assume that officials are abusing their lawfully granted responsibility and authority to defend our people from violence and harm.” I would respond that neither should we simply assume they’re not abusing their authority, particularly given evidence those officials have repeatedly misled us in the past.

Nayman then admits, “We should do all we can to assure proper oversight any time a surveillance program of any size and scope is launched.” But a big part of the problem with these programs is that the government has either not implemented or refused such oversight. Some holes in the oversight of the program are:

- NSA has not said whether queries of the metadata dragnet database are electronically recorded; both SWIFT and a similar phone metadata program queries have been either sometimes or always oral, making them impossible to audit
- The FISC does not itself audit this metadata access and – given Dianne Feinstein’s uncertainty

about what queries consist of – it appears neither do the Intelligence Committees; Adam Schiff recommended this practice but Keith Alexander was resistant

- The government opposed mandated Inspector General reviews of the Section 215 use in the last PATRIOT Act renewal; while DOJ's Inspector General is, on his predecessors own initiative, reviewing its use, he's only now reviewing the program as it existed four years ago
- DOJ and CIA's Inspectors General have limited ability to review what FBI and CIA do with the unminimized data they get from NSA's Section 702 collection (though DOJ's IG does have the authority to review what the NSA does)
- The government refuses to count (and doesn't appear to document) what happens with the US person information "incidentally" collected under Section 702 that is subsequently searched or read

That's just a partial list. And all that's before you get to things we know the government does with this data, like keeping encrypted communications indefinitely, treating threats to property as threats to human life, and only

respecting attorney-client privilege for indicted defendants (Note, the first two of these are some of the exceptions to Simon's assertion that entirely domestic communications require probable cause).

How does someone looking to "level[] the playing field between concentrated privilege and the rest of us" defend a program that secretly treats corporate property as human life?

Ultimately, though, Nayman seems most worried about empowering the dwindling TeaParty movement.

So, let's be very careful about doing the Tea Party's dirty work by running to the defense of every leaker with the inclination and means to poke a stick in the government's eye.

This displays another misunderstanding about who on the right really opposes these programs. While Rand Paul has – as he did earlier with the drone program – offered clown show legislation to play off worries about these programs, Justin Amash is the TeaParty figure most legitimately active in countering these programs (and he has been disempowered by his own party). Amash is joined in his efforts by progressive stalwarts like Barbara Lee and Zoe Lofgren, along with a fascinating mix of others, including paleocons. In the Senate, Mike Lee has been the most effective quiet champion of efforts to bring more oversight to the program, but he has been joined by Lisa Murkowski and Dean Heller. And often not Rand Paul.

Meanwhile, Nayman is joined in his position attacking Edward Snowden by TeaParty Caucus Chair Michele Bachmann.

One of the biggest problems with blindly trusting the government on these programs is that they've secretly breached First Amendment Freedom of Association for some, including Iranian-Americans, those who encrypt their email, and those who might threaten corporate

property. Without unfettered Freedom of Association, the power of labor unions and all others fighting for the rights of working men and women is at risk.

Nayman may be comfortable with that risk so long as we have a Democratic president (though teachers unions are one of the labor groups that should not be). But one President's labor organizer may be the next President's terrorist. And with this dragnet infrastructure in place, it will be far too late at that point to reverse this power grab.

THE INTERNET DIDN'T KILL THE MIDDLE CLASS; LAXITY AND APATHY DID

In tandem with the release of his book, *Who Owns the Future?*, Jaron Lanier's interview with Salon generated a



lot of hand-wringing across social media. It seems Lanier, one of our so-called intellectual visionaries, believes that the collapse of Kodak and its 140,000 jobs, and the rise of Instagram and its 13 jobs, exemplifies the killing field of the internet. Lanier theorizes good paying jobs that once supported a thriving middle class have disappeared as internet-enabled firms replaced them. As these jobs vaporized, so did necessary benefits. Here's a key excerpt from the interview:

“Here’s a current example of the challenge we face,” he writes in the book’s prelude: “At the height of its power, the photography company Kodak employed more than 140,000 people and was worth \$28 billion. They even invented the first digital camera. But today Kodak is bankrupt, and the new face of digital photography has become Instagram. When Instagram was sold to Facebook for a billion dollars in 2012, it employed only 13 people. Where did all those jobs disappear? And what happened to the wealth that all those middle-class jobs created?”

What a crock of decade-late shit.

Where the hell was Lanier in the late 1990s and early 2000s, when the U.S. manufacturing sector nose-dived due to government policies created by corporate-acquired elected officials and appointees?

It wasn’t the internet that killed the middle class. The apathy of intellectuals and the technology elite did; too few bothered to point out the potential repercussions of NAFTA and other domestic job-depleting policies. In the absence of thought leaders, corporatists sold the public and their electeds on job creation anticipated from globalizing policies; they just didn’t tell us the jobs created wouldn’t be ours.

It wasn’t the rise of digitization that killed the middle class. It was the insufficiency of protests among U.S. brain power, including publicly-funded academics, failing to advocate for labor and home-grown innovation; their ignorance about the nature of blue collar jobs and the creative output they help realize compounded the problem.

Manufacturing has increasingly reduced man hours in tandem with productivity-increasing technological improvements. It wasn’t the

internet that killed these jobs, though technology reduced some of them. The inability to plan for the necessary shift of jobs to other fields revealed the lack of comprehensive, forward-thinking manufacturing and labor policies.

It all smells of Not-My-Problem, i.e., "I'm educated, technology-enabled, white collar; those stupid low-tech blue collar folks' jobs aren't my problem."

Until suddenly it is.

I remember having an argument with an academic in 2006 about the oncoming paradigm shift in education where intellectual property and its transference became the core product and key competency in the business model. Universities, for example, would be at risk; if information was digitized and commodified, what would happen to the brick-and-mortar campuses? Eventually they would have to rationalize their existence and differentiate themselves if everybody and anybody could obtain the same education online, no matter where students were located. The cost of education could collapse in a commodified environment.

At the time I was told that wasn't realistic, it would never happen – the academic's approach to telling me I was full of shit.

Hello, MOOCs (massive open online classes).

Now academics can finally see the threat to their careers. They couldn't give a rat's butt when blue collar workers at dirty, dangerous jobs were threatened. They're worried now, though, when the jobs of white collar folks supporting cultural creatives like themselves are threatened.

A decade-plus later, an intellectual with a background in technology, suddenly realizes that the paradigm shift is rolling onto and over his his world – oh, and there's a gaping maw where government policy should be to prevent the destruction of the world as he knows it. Nice

latency you've got there, bub, the very definition of lax.

Another industry suffering from collapse is construction – see this active timeline and note the location of job growth up to 2008 and the corresponding collapse after the fact. This was another opportunity for visionaries a decade ago to discuss the repercussions of cheap money and inadequate protections against predatory banking. While the construction industry itself didn't suffer from a shift in technology, it was the increasing use of technology combined with lax regulation and oversight in mortgages, financing, and related derivatives that caused the collapse.

Again, intellectuals and technology folks were mute as middle class jobs bound up in real estate, construction, finance industries were dramatically impacted by the economic meltdown. Safety nets were attacked when they weren't squashed altogether.

Lanier's mourning for Kodak is pathetic not only for its narrow comprehension, but its blindness. Kodak's film business model is non-competitive and obsolete, given current policies combined with globalization. The present is digital; Kodak should have seen this and been looking for an Instagram future of its own years ago. It should have envisioned a new economic ecosystem developed around digital images. Or it should have lobbied harder for policies that would have encouraged on-shoring versus offshoring of manufacturing facilities, jobs, and profits, in order to save its film-based business.

I suggest rapid development of time travel technology so that reactive eulogists like Lanier can beam themselves back to the end of the Clinton and early Bush administrations to fix the roots of these problems.

In the meantime, we should be encouraging proactive visionaries – true intellectuals who can see the big picture and imagine establishment of government policies preserving pay and benefits

while encouraging innovation.

Otherwise we would do well to imagine and plan for a near-term future in which all manufacturing and most construction around the world is replaced by 3D printers. Our kids and grandkids may be reduced to futures in direct competition with a global employment pool of poorly compensated printer designers, printer operators, and printer repairmen, where lowest cost energy as a factor in production reigns supreme.

Perhaps Lanier will write about the horror of such a future a decade later.

JOHN GALT OUTSOURCES DEATH TO BANGLADESH TO SAVE PENNIES ON FIFTY DOLLAR T-SHIRT

In a tale of unimaginable sorrow that is made all the worse by the unconscionable greed that brought it about, at least 194 are now known to be dead in the collapse of a building in Bangladesh. But this was not just any building that collapsed, it was a building that housed multiple garment manufacturers. And in a pattern that has been repeated many times before, we see death brought about by the craven actions of the managers of the production companies while US retailers profess grief and claim no direct connection to the particular factories affected. Over time, once attention dies down a bit, those connections will become clear due to what appears to be a system designed to distance the retailers from the sweat shops via multiple subcontracting arrangements.

From today's New York Times:

Search crews on Thursday clawed through the wreckage of a collapsed building that housed several factories making clothing for European and American consumers, with the death toll rising to at least 194 with many others still unaccounted for.

/snip/

The Bangladeshi news media reported that inspection teams had discovered cracks in the structure of Rana Plaza on Tuesday. Shops and a bank branch on the lower floors immediately closed. But the owners of the garment factories on the upper floors ordered employees to work on Wednesday, despite the safety risks.

Labor activists combed the wreckage on Wednesday afternoon and discovered labels and production records suggesting that the factories were producing garments for major European and American brands. Labels were discovered for the Spanish brand Mango, and for the low-cost British chain Primark.

Activists said the factories also had produced clothing for Walmart, the Dutch retailer C & A, Benetton and Cato Fashions, according to customs records, factory Web sites and documents discovered in the collapsed building.

The drive to save pennies on garments is directly behind this and similar tragedies:

"The front-line responsibility is the government's, but the real power lies with Western brands and retailers, beginning with the biggest players: Walmart, H & M, Inditex, Gap and others," said Scott Nova, executive director of Worker Rights Consortium, a labor rights organization. "The price

pressure these buyers put on factories undermines any prospect that factories will undertake the costly repairs and renovations that are necessary to make these buildings safe.”

These sorts of tragedies happen with alarming regularity. Last September, at least 258 people died in a fire in a Karachi garment factory that had escaped safety inspections.

And note that although governments are cited in these tragedies for failing to provide adequate regulation and inspections, it is the tremendous pressure applied by US retailers to reduce production costs that drives many of the decisions that put workers at risk of death.

But these retailers are chasing very tiny cost reductions in the overall retail prices of garments. The graphic above is taken from a Tumblr post by retailer Everlane (they are touting their own business model of removing wholesalers, so they do have a particular point of view in promulgating the numbers). In this version of the industry, we see \$1.35 going to the workers who sew a shirt and thirty five cents to the worker who cuts the fabric. The overall direct costs in this case come to \$6.70. The second half of the graphic in the Tumblr post shows that the t-shirt is then sold to a wholesaler for \$15 and the retailer then sells to a consumer for \$50.

At least when it comes to designer t-shirts retailing for \$50 (okay, that leaves out WalMart but from these stories it looks as though at least some high end retailers and the low price retailers share many of the same garment factories) the wages paid to garment workers are only a few percent of the overall retail price. And yet the companies apply huge pressure to the owners of the garment factories because John Galt tells them that the “job creators” at these name-brand labels deserve huge profits while governments must stay out of the way of the engines of wealth.

The concept of the fifty dollar designer t-shirt is getting some popular culture push-back. From the lyrics of "Thrift Shop", by Macklemore and Ryan Lewis:

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I hit the party and they stop in that
motherfucker
They be like "Oh that Gucci, that's
hella tight"
I'm like "Yo, that's fifty dollars for a
t-shirt"
Limited edition, let's do some simple
addition
Fifty dollars for a t-shirt, that's just
some ignorant bitch shit
I call that getting swindled and pimped,
shit
I call that getting tricked by business
That shirt's hella dough
And having the same one as six other
people in this club is a hella don't
Peep game, come take a look through my
telescope
Trying to get girls from a brand?
Man you hella won't, man you hella won't
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Rejecting artificial demand created by a name brand label that exploits low wage garment workers would be wonderful first step toward improving the situation. However, this move needs to be followed by actively embracing the concept of living wages and safe working conditions if the evils of the current situation are to be addressed fully.

And, well, because it's fucking awesome:

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[youtuber
youtube='http://www.youtube.com/watch?v=QK8mJJJv
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JOHN GALT KILLS TEXANS IN MASSIVE FERTILIZER PLANT EXPLOSION

Who needs pesky safety regulations or zoning laws when there is money to be made running a fertilizer plant? Sadly, the small Texas town of West, which is just north of Waco, is suffering the consequences of unregulated free enterprise today, as a massive explosion at West Fertilizer has leveled much of the town. Perhaps the only remotely fortunate aspect of this tragedy is that it occurred at 8 pm local time and so West Middle School, which burned after the explosion, was not full of children.

A look at the satellite image above shows the folly of putting “free enterprise” ahead of sensible zoning laws. At almost 20 miles north of Waco, Texas, one thing that is in abundance in the region is open space (I’ve driven past this spot several times in the last two or three years—it’s desolate), and yet this fertilizer plant is immediately adjacent to a large apartment building (see the photo at the top of this article for how that building fared in the explosion) and very close to a middle school. There is no reason at all for any other building to be within two or three miles of a facility that produces material that is so explosive.

The Texas tradition of low taxes is also having an impact on this tragedy. Note this passage in the New York Times account of the disaster:

It began with a smaller fire at the plant, West Fertilizer, just off Interstate 35, about 20 miles north of Waco that was attended by local volunteer firefighters, said United States Representative Bill Flores. “The fire spread and hit some of these tanks that contain chemicals to treat the

fertilizer," Mr. Flores said, "and there was an explosion which caused wide damage."

That's right. This fertilizer plant and other businesses in West apparently don't pay enough in local taxes to support a municipal fire department, and so the first responders to a fire at a fertilizer plant were volunteer firefighters. Sadly, several of these volunteers are now missing:

The town's volunteer firefighters responded to a call at the plant about 6 p.m., said Waco police Sgt. William Patrick Swanton. Muska was among them, and he and his colleagues were working to evacuate the area around the plant when the blast followed about 50 minutes later. Muska said it knocked off his fire helmet and blew out the doors and windows of his nearby home.

Five or six volunteer firefighters were at the plant fire when the explosion happened, Muska said, and not all have been accounted for.

Ammonium nitrate, one of the most commonly used fertilizers is also highly explosive. It was the primary component of Timothy McVeigh's bomb that destroyed the Murrah Building in Oklahoma City. Texas, especially, should know of the dangers inherent in fertilizer plants, as this disaster occurs very near the anniversary of the Texas City disaster:

One of the worst disasters in Texas history occurred on April 16, 1947, when the ship *SS Grandcamp* exploded at 9:12 A.M. at the docks in Texas City. The French-owned vessel, carrying explosive ammonium nitrate produced during wartime for explosives and later recycled as fertilizer, caught fire early in the morning, and while attempts were being

made to extinguish the fire, the ship exploded. The entire dock area was destroyed, along with the nearby Monsanto Chemical Company, other smaller companies, grain warehouses, and numerous oil and chemical storage tanks. Smaller explosions and fires were ignited by flying debris, not only along the industrial area, but throughout the city. Fragments of iron, parts of the ship's cargo, and dock equipment were hurled into businesses, houses, and public buildings. A fifteen-foot tidal wave caused by the force swept the dock area. The concussion of the explosion, felt as far away as Port Arthur, damaged or destroyed at least 1,000 residences and buildings throughout Texas City. The ship *SS High Flyer*, in dock for repairs and also carrying ammonium nitrate, was ignited by the first explosion; it was towed 100 feet from the docks before it exploded about sixteen hours later, at 1:10 A.M. on April 17. The first explosion had killed twenty-six Texas City firemen and destroyed all of the city's fire-fighting equipment, including four trucks, leaving the city helpless in the wake of the second explosion. No central disaster organization had been established by the city, but most of the chemical and oil plants had disaster plans that were quickly activated. Although power and water were cut off, hundreds of local volunteers began fighting the fires and doing rescue work. Red Cross personnel and other volunteers from surrounding cities responded with assistance until almost 4,000 workers were operating; temporary hospitals, morgues, and shelters were set up.

Probably the exact number of people killed will never be known, although the ship's anchor monument records 576 persons known dead, 398 of whom were

identified, and 178 listed as missing. All records of personnel and payrolls of the Monsanto Company were destroyed, and many of the dock workers were itinerants and thus difficult to identify. Almost all persons in the dock area—firemen, ships' crews, and spectators—were killed, and most of the bodies were never recovered; sixty-three bodies were buried unidentified.

It would appear that Texas has learned very little from that disaster and still chooses to sacrifice volunteer first responders at the ~~alter~~ altar of free enterprise.

Special FREEDOM bonus: Did you notice the name of the street to the west of the middle school? It's North Reagan Street, because, well, freedom.

RICK SNYDER: ONE UNPOPULAR NERD

Q18 Do you consider Rick Snyder to be 'one tough nerd', or not?

<i>He is</i>	32%
<i>He is not</i>	41%
<i>Not sure</i>	27%

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Policy Polling decided to see what Michiganders thought of the radical measures the ALEC Ducks passed last week.

They're none too happy with it.

In addition to supporting unions 52-33 and opposing the so-called Right to Work law passed last week 41-51, Michiganders' view of Rick Snyder has soured considerably.

ust last month when we took a

first look at the 2014 landscape we talked about how much Rick Snyder had improved his popularity during his second year in office and how he led a generic Democrat for reelection by 6 points, even as Barack Obama won the state comfortably.

Last week he threw all that out the window.

We now find Snyder as one of the most unpopular Governors in the country. Only 38% of voters approve of him to 56% who disapprove. There are only 2 other sitting Governors we've polled on who have a worse net approval rating than Snyder's -18. He's dropped a net 28 points from our last poll on him, the weekend before the election, when he was at a +10 spread (47/37).

[snip]

Snyder trails every Democrat we tested against him in a hypothetical match up. He's down 49/38 to 2010 opponent Virg Bernero, 47/39 to Congressman Gary Peters, 46/38 to State Senator Gretchen Whitmer, and 44/39 to former Congressman Mark Schauer. The Bernero numbers are what's most striking there. Snyder defeated Bernero by 18 points in 2010, so Bernero's 11 point advantage represents a 29 point reversal. The Democrats all lead Snyder despite having very little name recognition- only 44% of voters are familiar with Bernero, 36% with Peters, 28% with Schauer, and 27% with Whitmer.

And the Republican crazies in the legislature are even more unpopular.

The Republicans in the legislature are even more unpopular than Snyder after their spate of last minute legislation.

Only 31% of voters have a favorable opinion of them to 58% with an unfavorable one. Democrats lead the generic legislative ballot in the state by an amazing 56/32 margin, one of the most lopsided generic ballots we've ever seen in any state.

Which makes now the time to turn this radical agenda to an anvil on this party, even as they try to consolidate their power.

Unfortunately, PPP polled neither voters' understanding about this legislation, measuring whether it has been influenced by Dick DeVos' campaign to brand low wages as "freedom," nor the gun bill, from which Snyder is (thankfully) backing away from.

So we don't yet have a complete picture of how to best pile on this unpopular group of radicals.

But pile on we must.

Update: A number of hours after PPP released this poll, Snyder vetoed the guns-in-schools bill, citing concerns that schools could not opt out. While I'm sure that's partly because of Newtown, I suspect he also noted his tumbling approval ratings.