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Congress, Justice Department and trial lawyers complicit



At Boeing Headquarters in Crystal City, Virginia, family and friends hold pictures of those killed in ET302 crash, March 10, 2023

Boeing sweetheart deal: 346 dead, justice deferred

By Russell Mokhiber

On March 10, 2023, the fourth anniversary of the crash of Ethiopian Airlines Flight 302 (ET302), a brand new Boeing 737 MAX, which slammed into the ground at 500 mph outside Addis Ababa, Ethiopia, Chris Moore stood outside the Boeing headquarters on the banks of the Potomac River in Crystal City, Virginia.

Moore was standing with a group of family and friends of

the people who died in that fiery plane crash. His daughter Danielle, a 24-year-old activist on her way to an U.N. environmental conference, died in that crash.

In front of Boeing, Moore was holding a sign that read – Boeing Took Away Their Life, DOJ (Department of Justice) Their Voice.

“My daughter lost her life,” Moore told the family and reporters gathered outside the Boeing headquarters with a light rain falling. “Boeing took

away her body. The Department of Justice tried to take away her voice. But we are here today to make sure we are giving her voice back.”

What Moore was referring to was a sweetheart deal that the Trump Department of Justice struck with Boeing in January 2021 in an attempt to prematurely put a halt to a criminal investigation into Boeing and its executives that had been ongoing for months.

The facts were sufficient to investigate Boeing and its

chief executives – former CEO Dennis Muilenburg and current CEO David Calhoun – for manslaughter in the deaths of the 346 people aboard the October 2018 crash of Lion Air Flight 610 and the March 2019 crash of the Ethiopian Airlines Flight 302.

If you or I are driving down a two lane highway and, distracted by our phones or inebriated, we recklessly cross the center line and kill someone coming the other way, we will

● Continued on Page 4

Down a black hole

Congressional
hearing transcript
implosion

By Jay Waxse

Back in the day – say the 1970s and 1980s – Congress would hold a hearing. The Government Printing Office (GPO) would print the hearing transcript in a green paperback. And you could call your member of Congress and get a copy mailed by the Postal Service to your door or get it at any one of the federal depository libraries around the country.

All hearings were required to be printed and distributed to the public upon demand. And for the first few hundred copies of the committee’s printed supply, they were. If the committee ran out, you could go to the GPO and buy a copy at an affordable price.

Then the internet replaced the printing press, artificial intelligence replaced human intelligence and we were promised quicker and more complete dissemination of information that would reinvigorate democracy.

In December 2014, the Government Printing Office changed its name to the Government Publishing Office – to reflect the reality that it was

● Continued on Page 7



Hakeem Jeffries (AP Photo)

Hakeem the Dream: Both Wall St and AIPAC love him

By Citizen Staff

Nancy Pelosi was the first woman Speaker of the House.

And House Minority Leader Hakeem Jeffries (D-New York) is the first black leader of the House – and probably will become the first black

Speaker if the Democrats take the House in 2024.

But breaking through the glass ceiling doesn’t break through the power structure that controls Congress.

In the last election cycle, Jeffries was one of the top recipients in Congress of donations from Wall Street

(\$582,803) and pro-Israel groups (\$440,400). The *American Prospect* reported that Jeffries was the leading congressional recipient of hedge fund money in 2020.

“He banked \$1.1 million from the financial sector, real estate interests, and insurance

● Continued on Page 6

INSIDE

2. Police to Citizen: You can’t hand out newspaper on the Hill
8. Interview with Seymour Hersh
12. An open letter to Nancy Pelosi
20. Left-Right against the War Machine

WHY NO PROSECUTION OF GEORGE W. BUSH FOR MURDER? - PAGE 34

Why is there no manslaughter investigation of Boeing and CEOs?

● From Page 1

be prosecuted for manslaughter and sent to prison for a long time.

And periodically, even major corporations are successfully prosecuted for manslaughter. In November 2012, BP plead guilty to manslaughter in connection with the 2010 Deepwater Horizon disaster in the Gulf of Mexico that killed ten people.

The criminal investigation of Boeing was ongoing in the months following the 2019 Ethiopian Airlines crash. But that investigation came to an abrupt halt in January 2021 when federal prosecutors in Ft. Worth, Texas entered into a deferred prosecution agreement with Boeing.

Boeing admitted it deceived the FAA AEG about an important aircraft part called the Maneuvering Characteristics Augmentation System (MCAS) that impacted the flight control system of the Boeing 737 MAX.

Because of their deception, a key document published by the FAA lacked information about MCAS, and in turn, airplane manuals and pilot-training materials for U.S.-based airlines lacked information about MCAS, which repeatedly pushed down the plane's nose because of erroneous sensor data, leading to the fatal crashes.

Under the agreement, Boeing paid a criminal monetary penalty of \$243.6 million, compensation payments to Boeing's 737 MAX airline customers of \$1.77 billion, and the establishment of a \$500 million crash-victim beneficiaries fund to compensate the heirs, relatives, and legal beneficiaries of the 346 passengers who died in the Boeing 737 MAX crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302.

The agreement was roundly condemned by corporate crime experts, including Columbia Law Professor John Coffee, the author of the book *Corporate Crime and Punishment: The Crisis of Underenforcement* (2020).

Coffee called the Boeing deferred prosecution "an egregious case and one of the worst deferred prosecution agreements I have seen."

"When you look where the

money went, only \$500 million out of \$2.5 billion went to victims. \$1.77 billion went to airline companies," Coffee said. "Airline companies can take care of themselves. They had commercial rights. This was imported into this settlement to inflate the amount of the settlement."

"By giving the \$1.77 billion to the Uniteds, Deltas and Americans of the world, the prosecution is serving its own interest by inflating the size of the settlement," Coffee said.

"Those airlines could have negotiated for themselves, and Boeing as a producer has to satisfy its customers. They were going to negotiate a settlement. Instead, they moved it over and made it part of the deferred prosecution agreement so they could extend the amount of the settlement and make it sound better to the press."

The agreement also included an unusual provision finding that a compliance monitor was not necessary because "the misconduct was neither pervasive across the organization, nor undertaken by a large number of employees, nor facilitated by senior mismanagement," Coffee said.

"That is without precedent," Coffee said. "I have not seen that anywhere else and I've looked at a number of deferred prosecution agreements."

Six months after the deferred prosecution agreement was cut, Boeing's law firm in the criminal case, Kirkland & Ellis, announced that they were hiring the federal prosecutor in charge of the prosecution in Ft. Worth, Texas — Erin Nealy Cox.

"There never seemed to be an adequate, or even a plausible reason for why this case was brought in Texas when Boeing had no connection whatsoever with that state,"

Professor Coffee called the deal "an egregious case and one of the worst deferred prosecution agreements I have seen"



Danielle Moore

Coffee said in response to Kirkland & Ellis hiring of Cox. "Now, the U.S. Attorney's joining the defense counsel's law firm suggests that they were both on the same wavelength about finding a quick and gentle resolution of the case that did not embarrass or injure Boeing. This is not how an adversarial system of justice normally works or should work. This is a very friendly system of criminal justice for large corporations."

During the course of the criminal investigation, the victims' family members called the Justice Department to get a read on the status and give their insights as victims.

Under the Crime Victims Rights Act, that was their right.

But remarkably, the family members were told by Justice Department officials that they were unaware of any criminal investigation of Boeing.

After the deferred prosecution was announced, the families sued the Justice Department, claiming that they were denied their right to confer with prosecutors during the criminal investigation.

Both Boeing and the Justice Department argued that no, these families were not victims under the Crime Victims Rights Act.

But a conservative Federalist Society judge in Ft. Worth, Reed O'Connor, sided with the families, ruling that "but for Boeing's criminal conspiracy to defraud the Federal Aviation Administration, 346 people would not have lost their lives in the crashes."

He later ruled that even though they were crime victims, there was no remedy. There was nothing he could do.

Paul Cassell, the lawyer for the victims, is appealing that ruling.

After the judge ruled last year that the families were crime victims, federal prosecutors called a meeting with the family members in early February 2023 to discuss the matter at a Justice Department office in Washington, D.C. to try and head off a re-opening of the criminal investigation.

The meeting was headed by Glenn Leon, head of the Fraud Section at the Justice Department. Sitting behind him were a group of prosecutors who were seen by the families to be fraternizing with the Boeing lawyers in the hallways of the federal courthouse in Ft. Worth.

This incensed family members in the room.

Naoise Connolly Ryan, who lives in Ireland with her two young children, lost her husband Mick Ryan in the Ethiopian crash in 2019.

"It was meant to be a meet and confer," Ryan said. "The judge mentioned this meeting. He said that we met and conferred with the Department of Justice. But excuse the French — that is bullshit. We met with the Department of Justice, but we didn't get a chance to confer with the Department of Justice because they had already filed their briefs to the court on remedies, before ever conferring with us. That is not meet and confer. They just met

with us."

"I was sitting right next to Glenn Leon in the meeting room," Ryan said. "I could hear and see everything. I could read his body language. In the beginning, I believe he wanted to portray an image of someone who was listening and open to what the families were saying."

"After a while, the families got more and more agitated in the meeting simply because it became clear that it was — I'm trying to find a better word than bullshit. The Department of Justice had already filed their brief saying we were due no remedies. Same as Boeing's brief. It was smoke and mirrors."

"As time went on, Glenn Leon went from showing impatience to talking about good faith. He said that the Department of Justice wanted to show good faith with the victims' families. We said — the Justice Department lawyers sitting in this meeting argued that we were not crime victims. If you want to show good faith, then tell them to leave this meeting, because we don't trust them. They should get up and leave."

"And the prosecutors sat glued to their chairs, staring at Glenn Leon. And Glenn Leon stuck to the party line and began huffing and puffing again. He continued as though we had never even asked this question. He didn't even say — no his prosecutors were not going to be recused. He just carried forward."

"It just comes to a point that

you are at a loss watching this unfold. And you wonder – am I sitting with the good guys or the bad guys?”

Are they the good guys or the bad guys?

The same question can be asked about the trial lawyers representing the family members in federal court in Chicago.

Instead of pushing for the bulk of their cases to go to trial, the trial lawyers representing the families are pushing for settlements.

Mirroring the systemic problem of deferred prosecution agreements to settle major corporate crime cases like the Boeing case, quick and dirty settlements on the civil side represent a systemic problem plaguing tort law.

That problem has been well documented for mass tort cases.

Elizabeth Chamblee Burch teaches law at the University of Georgia Law School and is the author of *Mass Tort Deals: Backroom Bargaining in Multidistrict Litigation* (Cambridge University Press 2019). She concludes that the system of cutting mass tort deals is unacceptable.

“The plaintiffs’ lawyers and defense lawyers encounter each other time and time again and develop these working relationships where they can exchange what benefits them the most,” Burch said.

While the Boeing tort cases are not legally a mass tort – they are individual tort claim cases brought together in one courtroom in Chicago – the same forces are at play.

Burch told the *Seattle Times* in November 2021 that it’s “relatively routine, though troublingly so, for the defendant to ask the plaintiffs’ lawyers to settle through a global deal.”

“Their idea behind doing this is to try to create an enormous pressure on the plaintiffs’ counsel, to try to twist the arms of the plaintiffs into taking a deal that they might prefer not to take,” she said.

As of last month, Boeing has settled about three-quarters of the cases pending in federal court in Chicago.

As trial dates approach, the pressure on the remaining plaintiffs to settle grows.

Some family members, like Chris Moore and Naoise Ryan, say they are planning a full out trial on the merits.

But if Burch is right, lawyers for Boeing, lawyers for the families and the judge have aligned interests and they will continue to pressure the plaintiffs to go to media-



An Ethiopian relative of a crash victim throws dirt in her own face, as she mourns at the scene where the Ethiopian Airlines Boeing 737 Max 8 crashed shortly after takeoff killing all 157 on board, near Bishoftu, south-east of Addis Ababa, Ethiopia, on March 14, 2019 (AP Photo)

tion with an eye toward settlement and not go to trial. Most of the trial lawyers in the case did not seek to add Muilenburg and Calhoun as defendants and entered into a stipulation that ceased further depositions and discovery.

Trial lawyers say that even for families professing wanting to see a trial, as the cases get closer to a trial date, Boeing will offer “stupid money” to prevent any trial from happening. One reason Boeing doesn’t want a trial – Boeing’s executives would be put under oath before a jury in open court. Another reason – the gag order would be lifted, allowing incriminating evidence to see the light of day.

And for families who have been living a nightmare existence seeking justice for four years now, “stupid money” to put everything to rest might be irresistible.

For Boeing, the reputational risks of going to trial are enormous.

Boeing attorney Dan Webb, a partner at Winston & Strawn, last month filed a motion in federal court in Chicago seeking to prohibit plaintiffs lawyers from introducing their expert’s opinion about

The prosecutors and Boeing both wanted to find a quick and gentle resolution that did not embarrass or injure Boeing

the passengers on Flight ET 302 being “torn apart, into small segments and tissue” because it was “likely to cause unfair prejudice and confuse the jury,” Webb wrote.

Similarly Webb argued that jurors should not be allowed to hear evidence of the terror that passengers might have felt in the six minutes during the flight before the plane crashed at 500 miles per hour into the field.

“The thought of a loved one experiencing psychological distress in the moments before their death would likely trigger an emotional reaction in the jurors,” Webb wrote. “That reaction would unfairly prejudice Boeing by inducing the jury to (knowingly or not) award more damages than the evidence and law allow. Jurors may sympathize with the passengers’ alleged fear of impending death, imagine themselves on the plane, and then, animated by emotion, quite possibly award damages greater than those for which plaintiffs have proven the legal prerequisites.”

Families are under a gag order not to reveal potentially incriminating information revealed during discovery in the civil cases. The families did ask the Justice Department to seek such information from the ongoing tort cases federal court in Chicago as part of a renewed criminal investigation, but Glenn Leon and other prosecutors showed no interest.

“We did ask the Department of Justice to support us in removing this gag order,” Ryan told *Corporate Crime Reporter* in an interview earlier this year. “Their first answer was – we can’t interfere with civil cases. Our reply was – we are not asking you to interfere with a civil case, we are asking you to seek to remove the seal.”

“Then Glenn Leon said the Justice Department would look into it,” Ryan said. “But we have not received an answer. We have received no support and no answer.”

What was shocking to the families is the fact that Boeing’s lawyers and the prosecutors were on the same page when it came to the criminal prosecution, the deferred prosecution agreement and the fact that the families were not victims under the Crimes Victims Rights Act.

What they are now realizing is that, to a lesser but still troubling degree, their own lawyers in the civil cases are on the same page of Boeing’s lawyers when it comes to coming to a quick resolution of their cases.

Boeing and its lawyers want to write a check with minimal publicity and public disclosure.

Trial lawyers have put in many hours and want a relatively quick payout. Mediation is the answer for both Boeing and the trial bar. With mediation, they don’t have to do the hard work of a trial. They can mediate, get a decision and move on to the next series of tort cases.

Most families say they want justice. In a civil court, that means a trial to verdict. Trial to verdict terrifies most trial lawyers. And that’s why you rarely see a trial to verdict in these big tort cases.

Congress too is more aligned with Boeing than with the families.

Most recently, late last year, as Congress was coming to a close, Senator Maria Cantwell (D-Washington) had been meeting with family members who lost their 346 loved ones in the two Boeing 737 crashes.

The families wanted Senator Cantwell, chair of the Senate Commerce Committee, and her Democratic colleagues in the Congress to leave in place an end of the year deadline requiring Boeing to upgrade its crew alert system on Boeing MAX airplanes.

The families were supported in their demand by Captain Chesley “Sully” Sullenberger, famed for successfully landing an Airbus A320-214 on the Hudson River in New York in 2009 with no loss of human life. He agrees with the families.

“As someone who has been in the left seat of an airliner when very suddenly faced with an extreme emergency of a lifetime, I can tell you from firsthand experience that the startle effect is real and it is huge,” Sullenberger said earlier last year. “That means that the airliners we fly must have the most effective and state of the art crew alerting systems so that pilots can quickly determine the nature and severity of emergencies and act rapidly and correctly to keep safe everyone on board – passengers and crew alike.”

Cantwell and her Democratic Party colleagues listened, indicated they would side with the families and Sullenberger, but then sided with Boeing. The end of the year deadline Boeing faced was repealed.

Michael Stumo, standing in the light rain outside of the Boeing headquarters on the fourth anniversary of the crash that took his 24-year-old daughter Samya Rose Stumo, told reporters “we’ve been fighting to get aircraft safety – instead we get lip service.”

“Last year, Boeing’s top lobbying priority in Congress was to loosen rules to modernize their flight crew alert system – a flight crew alert system that had already caused eight crashes. It also contributed to the crash ET302,” Stumo said. “As a result (of the Congressional action), the 737

● Continued on Page 6

Prosecutors and Boeing on the same page

● From Page 5

MAX will be allowed to fly with 1977 crew alerting rules.”

In short, the entire accountability system from the Justice Department, to the tort bar, to Congress, is rigged in favor of Boeing.

The interests of the prosecutors are more aligned with Boeing than with the families.

The interests of Congress are more aligned with Boeing than with the families.

And the interests of the trial bar should be far more aligned with the families than with Boeing's demands.

It was the most deadly corporate crime in recent memory. And yet, four years later, the families await an elusive justice.

Appearing at the Justice Department before going over the Boeing headquarters last month, family members called on the Senate Judiciary Committee, chaired by Richard Durbin (D-Illinois), to hold strict comprehensive oversight hearings into the sweetheart corporate crime deal with Boeing.

Standing outside the Boeing headquarters after the press briefing, Chris Moore looked up at the big Boeing sign sitting atop its headquarters.

“We can understand why Boeing is doing this,” Moore said. “It’s for their shareholders, for their board of directors, for their CEOs and top executives. If they can minimize this as much as possible, there is more money for them. It gets rid of the criminal prosecution.”

“But you don’t expect this from the Justice Department. You expect a higher standard of transparency. You expect them to do what’s right.”

“The Justice Department is in cahoots with Boeing,” Moore said. “Everything I learn points to that. It almost seems as though they are Boeing’s lawyers, they are acting on their behalf. If they can’t understand that we are victims under the law, they have a problem.”

“The whole idea of a prosecution is to deliver justice to the victim and prosecute the criminal and to ensure that crimes do not happen again,” Moore said.

“But everything they have done has been to support this big corporation – not the public or the victims.”

CHC



Hakeem Jeffries at AIPAC convention, March 2020, Washington, D.C.

“Back in New York, we consider Jerusalem to be the sixth borough”

● From Page 1

industry in the 2019–2020 cycle,” the *Prospect* reported. “Everyone from JPMorgan Chase to Goldman Sachs to Blackstone contributed. Zimmer Partners, a hedge fund, is one of Jeffries’s top donors in 2021.”

Although a member of the House Progressive Caucus, Jeffries is progressive in name only. In August 2021, he told *The Atlantic* – “There will never be a moment where I bend the knee to hard-left democratic socialism.”

Jeffries did not say “There will never be a moment when I bend the knee to Wall Street and hard-right corporatism.”

Jeffries graduated from NYU Law School. He then spent five years at the corporate law firm Paul Weiss and then went on to be associate general counsel for CBS, one of Paul Weiss’s clients.

Jeffries and Congressman Josh Gottheimer (D-New Jersey) are the driving forces behind Team Blue PAC, a corporate-funded operation deployed against progressive candidates seeking to oust corporate Democrats.

According to a report from David Moore at *Truth Out* last year, over half of the \$152,000 Team Blue raised in the second half of 2021 came from corporate PACs, largely in donations of the legal maximum of \$5,000 from NextEra Energy, Comcast, UBS Americas, UPS and New York Life Insurance Company, among others. And many of Team Blue PAC’s individual donors work at D.C. lobbying firms.

Back home last year, New York State Senator Jabari Brisport ripped into Jeffries corporate connections, his duplicity in claiming he’s a progressive, and said he shouldn’t become Minority Leader.

“In 2021, Hakeem Jeffries started the Team Blue PAC ‘to defend incumbents facing primary challenges,’” Brisport said. “In 2022, he used the PAC to tip the scales in an open primary (Maloney v. Biggi), and also decided to endorse against

a sitting progressive State Senator (Robert Jackson). Democrats who lie about their intentions in order to attack the left wing of the party should not be confirmed to lead it.”

AIPAC and the pro-Israel lobbies could not have asked for a more sympathetic future Speaker of the House.

Jeffries attended an AIPAC conference in Washington, D.C. in 2021.

“Someone said to me – Hakeem, you are going to Israel a fifth time?” Jeffries recalled. “I said listen. I’m from New York City. And back home in New York City, we consider Jerusalem to be the sixth borough. So, I’m just trying to catch up with my constituents.”

“Jeffries is arguably even more pro-Israel than Pelosi,” says Michael Arria of Mondoweiss. “He’s backed by AIPAC and DMFI. He takes money from lobby groups like Pro-Israel America. He attends AIPAC delegations to the region, where he’s met and posed for pictures with Prime Minister Benjamin Netanyahu. He refers to Jerusalem as New York City’s sixth borough. He opposes the BDS movement and any attempt to condition U.S. military aid to Israel.”

New York State Assembly Member Zohran Kwame Mamdani said that after at least 2,251 Palestinians were killed over the course of July 2014, Hakeem Jeffries got on stage at a rally in New York City and echoed George Wallace.

“Israel today, Israel tomorrow, Israel forever,” Jeffries said.

“If Jeffries is considered a progressive, the term has lost all meaning,” Mamdani said.

Despite his corporate and pro-Israel credentials, Jeffries’ colleagues in the Congressional Progressive Caucus can’t find the courage to stand up to him.

“Hakeem Jeffries has made a career of attacking the left,” wrote former Bernie

Sanders for President spokesperson Briahna Joy Gray earlier this year during the House vote for Speaker. “But despite all of this, progressives are clapping, tweeting, giggling and eating popcorn enthusiastically for Hakeem Jeffries during the House speaker proceeding with no sense of irony.”

“Congressman Jamaal Bowman tweeted ‘McCarthy must be as red as a tomato right now from the embarrassment of getting fewer votes than Jeffries,’ but aren’t you embarrassed to be uncritically supportive of a man who had worked so assiduously to undermine your colleagues?” Gray asked via Twitter.

“Jeffries wouldn’t have been elected by his colleagues to the Minority Leader position if he hadn’t passed muster with Democratic Party leadership and the kleptocrats whom they serve,” said Margaret Kimberly of Black Agenda Report.

“The Black political class serves its own cowardly ends while appearing to be defenders of their constituents,” Kimberly said. “Jeffries loves the theater as much as the rest of his colleagues. Taking a knee at all appropriate photo opportunities while serving the interests of police or the Israeli state or railroad barons made him the perfect candidate for a leadership position.”

“Nancy Pelosi’s time was up,” Kimberly said. “A new face was needed, a younger face, and yes a Black one from a big city. Who better to give the impression that change was afoot when it actually wasn’t. Jeffries will be ready the next time his services are needed to crush workers or do something else that the ruling class requires of him. The Black first is all too often a person who is co-opted or who is simply ambitious and knows how to play the game.”

(We reached out to Congressman Jeffries for an interview and have not heard back. We hope to publish an interview with the Congressman in a future issue.)

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