

# Attorney-General's Department drives Australian prisoner's 'trial by media'

Media sources have revealed Australia's Attorney-General's office has improperly tried to influence the media reporting of the US extradition request for former US Marine "Top Gun" pilot and Australian citizen Daniel Duggan. The alleged actions of Attorney-General Mark Dreyfus's office contradict his position that he is hands-off in relation to Duggan, and raise serious doubts about whether Duggan is being afforded due process and fair treatment.

On 21 December 2022, A-G Dreyfus formally received the US government's extradition request for Daniel Duggan, based on the US allegation that eleven years ago, Duggan trained Chinese military pilots in South Africa. Duggan emphatically denies the charges, which his lawyers and family assert are politically motivated. They believe that the veteran pilot is a victim of Washington's policy of confrontation towards China.

Washington's request for Duggan's provisional arrest was accepted by the Attorney-General's Department on 19 October 2022, which obtained an arrest warrant for Duggan on the same day. On 21 October 2022, the Australian Federal Police (AFP) arrested Duggan in his hometown of Orange, New South Wales. Since his arrest, Duggan has been held in maximum security prisons in NSW on the unproven charges of a foreign state, the United States. Duggan has never even been interviewed by the AFP or the Attorney-General's office.

## Interfering with the Court



### TALKING POINTS

Subject	§ 22(1) ; Daniel Duggan extradition request from US
Date	20 December 2022
Type	Cross-Ministerial
AGD Media: 02 6141 2500	Email: media@ag.gov.au

TALKING POINTS (updates highlighted in yellow)

For response by Attorney-General/Office/Department

The cover of the Freedom of Information release that only revealed the Attorney-General's talking points, which falsely emphasise his hands-off approach that media sources have revealed is not true. Photo: Screenshot

A-G Dreyfus has publicly given the impression of being hands-off in relation to the Duggan case, fielding media questions by stating that he will not comment on a matter which is currently before the courts. However, behind the scenes representatives of the Attorney-General's Department have engaged in highly inappropriate behaviour and are evidently attempting to prejudice the public against Duggan.

A source close to the Duggan matter has informed AAS that in numerous media briefings, representatives from the AG's office have proactively discussed the Duggan case in detail with journalists, including offering opinion about important legal issues surrounding the case.

AAS understands that on numerous occasions a senior media advisor in the AG's office has urged journalists to seek access to the US government's formal extradition request, which was filed to NSW courts in January 2023. This confidential document outlines the US government's legal arguments in support of its request for Duggan's extradition. Of great concern, this senior media advisor has referred to the US extradition request as a "Commonwealth submission", raising serious questions over Australia's independence and sovereignty in the Duggan matter. In addition, the Attorney-General's Department (AGD) has written to the NSW court clerk to ask why the courts are refusing to offer the extradition documents to journalists.

A source close to the Duggan matter attended one of the NSW court hearings on the Duggan case earlier this year and was present when a journalist read aloud a text message received from the AG's senior media advisor. This text stated that the Attorney-General would not comment on matters currently before the court, but then went on to suggest that the journalist should ask Duggan's team why they were (supposedly) blocking access to the USA's extradition request.

AAS understands that NSW courts have declined to release the confidential extradition request because it is believed this would not be in the interests of justice. Because Duggan is imprisoned with limited access to his lawyers, he is not able to properly respond to the US government's legal arguments in favour of his extradition. Moreover, as Duggan's case is currently the subject of an inquiry by the Inspector-General of Intelligence and Security, which is investigating whether Australian intelligence agencies acted illegally to help the US orchestrate Duggan's arrest, any response would

be restricted by this ongoing investigation. If the AG's office is successful in pressuring the courts via journalist proxies to release the extradition request, this would enable Duggan's "trial by media", with Duggan unable to respond to the allegations made against him.

Curiously, documents from the AGD which were recently released under a Freedom of Information request reveal that this situation was possibly orchestrated by the AGD, in collusion with the United States. When the confidential extradition request was filed to the courts on 10 January 2023, the Assistant Secretary of the AGD's International Cooperation Unit wrote to AGD officials and other redacted recipients, stating: "We note that the media may make requests for copies of the extradition request from the court file. These requests will be governed by court registry and its usual practices. *The US was made aware that the request could be made available to the public and drafted its request accordingly.* It is open to Mr Duggan to object to the request being disclosed to the press but that is a matter for Mr Duggan." (Emphasis added.)

On 9 December 2022, the same day that Washington submitted a formal request to the Australian government for Duggan's extradition, the US Department of Justice unsealed a secret 2017 grand jury indictment against Duggan. This indictment, which Duggan's team assert is replete with



Dan Duggan's children who got to visit him for the first time since he was jailed.

misrepresentations, irrelevant material, and references to Duggan's business activities in China which are unrelated to the case but are intended to imply Duggan's guilt by association, occurred during the ratcheting up of anti-China hostility in both the USA and Australia. Referring to the Duggan matter, Greens Senator David Shoebridge told Sydney Criminal Lawyers on 15 March 2023: "There is a saying in the United States justice system, that a grand jury would indict a ham sandwich.... It's a very low threshold. And it's particularly low if there has been a politicised prosecutor driving the indictment." The unsealing of the indictment on the same day that the US government formally submitted Duggan's extradition request allowed the two to be conflated in the resulting flurry of media reporting.

The 12 February 2023 *Sydney Morning Herald* reported that in a handwritten letter to a friend sent from prison, Duggan wrote: "I have been locked away in maximum security segregated conditions, with extreme and restricted access to my legal team and family with hardly any reasonable way to defend myself ... It is very frustrating to hear on TV news total inaccuracies and falsehoods and being unable to defend myself!!"

### **AGD 'talking points' indicate bias against Duggan**

The "key message" of the AGD's official talking points in relation to the Duggan case, revealed in documents which were recently released under FOI, was that "it is not appropriate to provide detailed commentary on a matter which is currently before the courts". However, on 16 December 2022 senior AGD staff proactively updated the Department's official talking points with the information that Duggan was "wanted for prosecution for money laundering and offences under the US *Arms Export Control Act*". The AGD's rationale for including the charges against Duggan was that these were "already in the public domain in the US", as a result of the US Department of Justice's unsealing of the 2017 indictment against Duggan a week prior.

Similarly, although the AGD's representative Sarah Chidgey, Deputy Secretary of the National Security and Criminal Justice Group, confirmed in Senate Estimates on 13 February 2023 that the AGD considers "dual criminality" when considering extradition matters (which is the requirement that the alleged offence must be a crime in both countries), she declined to answer Greens Senator David

Shoebridge's question as to what Australian law Duggan was alleged to have broken. The AGD's subsequent answer to Shoebridge's question, which was taken on notice, was that NSW courts would consider the matter of dual criminality, finishing: "As the matter is before a magistrate, it would not be appropriate to comment further." By contrast, the AGD's official talking points, recently released under FOI, instructed Departmental officials to respond to the question: "Is it against Australian law to train Chinese pilots?" with a dissembling answer which implied that Duggan may have broken the law. However, Duggan resolutely maintains that he has not broken any Australian laws. If Duggan's case does not meet the "dual criminality" requirement, Duggan is not eligible for extradition.

*By Melissa Harrison, Australian Alert Service, 28 June 2023*

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**Statement by Greens Senator David Shoebridge:**

## **Can Australian citizens really be locked up indefinitely at the request of a foreign power?**

*On 22 June 2023, Greens Senator David Shoebridge spoke in Parliament on Daniel Duggan's case.*

Daniel Duggan has now spent eight months and one day in prison, facing extradition to the United States. He was arrested on 21 October 2022 and since then has been in solitary confinement. In the last few weeks, he has seen the sky only a handful



Greens Senator David Shoebridge with Dan Duggan's wife Saffrine. Photo: Twitter

of times but has otherwise been locked up completely alone. There are grave concerns for Dan's wellbeing—concerns that I share. His case raises the question: can Australian citizens really be locked up indefinitely at the request of a foreign power?

There are some big red flags around Dan's prosecution by the US. The timing of the indictment by US authorities in 2017 was exactly when the United States started talking about China as a strategic challenge. It's clear to many that this is a politicised extradition and prosecution, with the dual aim of making an example of China, and Australia placating our AUKUS allies. Did ASIO conspire to lure Dan back to Australia for the underhanded purpose of the US extradition? How can he be extradited for something that isn't even an offence in Australia and therefore fails the dual criminality test?

But at the heart of this matter is Dan—a husband, a father and an Australian citizen. I recognise now in the gallery the presence of Dan's wife, Saffrine, and his advocate, Warwick Ponder. They're fighting for Dan to be released on bail to be with his family, including his six wonderful children. They're fighting for the Australian government to protect this Australian citizen, and I am with them, as are all my Greens colleagues.