

DID NYT'S EDITORS ALERT THE GOVERNMENT TO RISEN'S SOURCE?

Let me start by pointing to two data points about the case of Jeffrey Alexander Sterling—the apparent (and alleged) source for James Risen's reporting on MERLIN.

First, as DOJ's press release alleges, Sterling first contacted Risen in February or March of 2003. The press release later reveals he first became aware that the FBI was investigating him for leaking classified information in June 2003.

The indictment alleges that beginning a few weeks later, in February and March 2003, Sterling made various telephone calls to the author's residence, and e-mailed the author a newspaper article about the weapons capabilities of Country A. According to the indictment, while the possible newspaper article containing the classified information Sterling allegedly provided ultimately was not published in 2003, Sterling and the author remained in touch from December 2003 through November 2005 via telephone and e-mail.

[snip]

According to the indictment, Sterling was aware by June 2003 of an FBI investigation into his disclosure of national defense information, and was aware of a grand jury investigation into the matter by June 2006, when he was served a grand jury subpoena for documents relating to the author's book.

In other words, Sterling allegedly contacted Risen in early 2003, the NYT never published an

article at that point (which would have been just as the Iraq war was starting). But by June 2003, the FBI was already investigating the alleged leak.

Couple that information with the battle between Risen and the NYT over the contents of his book (which I first noted back in 2006).

Through several months in late 2005, Mr. Risen and bureau chief Phil Taubman had clashed over whether *Times* editors would get a preview of the book's closely guarded contents, sources said. It was not until Dec. 27—11 days after the wiretapping story had run—that Mr. Risen relented and allowed Mr. Taubman to see the manuscript. Mr. Risen insisted that senior editors who viewed the pre-publication copy sign nondisclosure agreements and agree not to discuss the book's contents.

[snip]

A *Times* spokesperson responded to questions about the Risen book by deferring to the paper's *Ethical Journalism Guidebook*, which says reporters "must notify The Times in advance" when writing books related to their beats, "so The Times can decide whether to make a competitive bid to publish the work."

[snip]

In October 2004, Mr. Risen first presented editors with a story about the secret N.S.A. wiretapping program, the sources said. Late that same year, Mr. Risen also proposed writing a piece about an alleged foiled C.I.A. plot to deliver bogus atomic-bomb plans to Iran—another story that appears in *State of War*.

Mr. Risen left on book leave in January 2005. According to multiple sources, he

told editors he was writing a book about former C.I.A. chief George Tenet—and did not reveal that he would be using previously reported *Times* material about the N.S.A. wiretapping in the book. [my emphasis]

So, according to DOJ, Risen first tried to publish a story on MERLIN in 2003. He tried again in late 2004 (after, it should be said, the NYT started protecting Dick Cheney and Scooter Libby in the Plame case). After that didn't work, he went on book leave, saying he was writing about George Tenet and refusing to tell them it included the NSA story and the MERLIN story. His editors only found out what was included in the book on December 27.

But Risen demanded his editors sign a non-disclosure agreement before he would let them see the book.

Now, according to the NY Observer story, such non-disclosure agreements are routine for his publisher, Free Press.

A spokesperson for Mr. Risen's publisher, Free Press, would not comment on who had viewed advance copies of the book, but said that the publishing house routinely asks for signed agreements under such circumstances. "In cases where the book is being considered for excerpting or the content of the book is sensitive and news-breaking, we will ask select media to sign a nondisclosure agreement," the spokesperson said.

But that doesn't explain the animosity over the book, starting at least from the time in 2004 when he first tried to publish the NSA wiretap and the MERLIN story.

Furthermore, we know that the NYT conducted extensive discussions with the government about publishing the NSA story from the first time they considered publishing it in October 2004.

We should assume that they also conducted such discussions on the MERLIN story.

Which, DOJ tells us, would have been just months before the FBI started investigating this alleged leak.

Now, I'm not trying, in any way, to say that the NYT is responsible for the investigation into Sterling. As far as we know, they simply contacted the government for their view on the story (as they are doing, it should be said, on all the Wikileaks cables).

But do you honestly think the Bush White House would honor any agreement they might have with the NYT to not pursue the story?

There is one other possible explanation, of course: that the CIA learned of the story (either through the White House or other means), and not least because they were in a suit against Sterling and because getting him arrested for a leak would absolve them of any settlement with him, they alerted the FBI of a leak of classified information themselves.

Nevertheless, I can't help but wonder whether NYT's courtesy of letting the government respond to potential stories is what first launched the FBI investigation into him.

Update: Risen's lawyer makes it clear that Risen didn't burn his source.

Risen's attorney, Joel Kurtzberg of Cahill Gordon in New York, would not confirm that Sterling was a source for Risen. However, Kurtzberg was emphatic that Risen did not disclose any of his confidential sources to the government in connection with its investigation. Kurtzberg also disclosed that Risen, who was known to be fighting grand jury subpoenas from prosecutors, prevailed late last year in his effort to nix the summons.

"Mr. Risen was served with grand jury

subpoenas seeking the identity of his confidential source or sources in connection with Chapter 9 of his book. We fought the subpoena, moved to quash and the motion to quash was granted in November, before the indictment issued," Kurtzberg told POLITICO Thursday. "We argued that his testimony was not necessary."

"Jim has not provided any testimony or cooperation of any kind to the government in connection with their investigation about the confidential source or sources of Chapter 9," Kurtzberg added. That chapter of Risen's book dealt with failures in a CIA-led effort to disrupt Iran's nuclear weapons program.