

# HOW DID DOJ FIND JON KIRIAKOU?

As I've noted, former CIA officer Jon Kiriakou was charged yesterday with leaking classified material—including one covert officer's identity; the alleged leaks involve three different journalists. Since the complaint focuses on Kiriakou it's easy to forget that the investigation didn't start there: rather—it started with a filing submitted in a detainee defense case (almost certainly the 9/11 detainees) and photos found in some detainees' cells, and went through at least one journalist (called Journalist A) along the way. So how did Patrick Fitzgerald's team find Kiriakou? Did Fitzgerald obtain journalists' contacts again?

In the case of Kiriakou, I don't think so. At least not directly.

The complaint alleges there were two steps from Jon Kiriakou to the filing and the photographs.

## **Covert Officer A**

1. On August 19, 2008 Kiriakou gave Journalist A Covert Officer A's name.
2. Later the same day, Journalist A gave Covert Officer A's name to the defense investigator.
3. On January 19, 2009, the defense team submits a filing including Covert Officer A's name.

## **Deuce Martinez**

1. On November 12, 2007, Kiriakou gave Journalist A Deuce Martinez' personal

email address. On May 20, 2008, Kiriakou told Journalist A that Martinez was not trained in torture. On November 17, 2008, Kiriakou told Journalist A some details about how Martinez traveled, presumably to a Black Site.

2. On April 10, 2008, Journalist A gave a defense team investigator Martinez' home phone number.
3. The defense team had pictures taken of Martinez and gave them to detainees as part of a double blind identification effort; the pictures were found in "spring 2009."

Note, the evidence in the complaint that Kiriakou was Journalist A's source on Martinez is weaker than for Covert Officer A's identity or that he was Scott Shane's source for Martinez' phone number. The complaint shows that Journalist A provided the phone number to the defense investigator, but does not show compellingly that Journalist A's source of Martinez' phone number was Kiriakou. That weak spot in their case is one piece of evidence that Fitzgerald's team has neither interviewed Journalist A nor obtained his or her phone records to rule out other possible sources.

Now, remember, by the time DOJ started investigating this on March 19, 2009 (when the target was detainee lawyers, not their sources), and by the time Fitzgerald started investigating this on March 8, 2010, Scott Shane (who is described as Journalist B in the complaint) had already published this June 22, 2008 story,

describing Deuce Martinez' role in catching Abu Zubaydah and interrogating Khalid Sheikh Mohammed and others. It was sourced to,

The **two dozen current and former American and foreign intelligence officials** interviewed for this article offered a tantalizing but incomplete description of the C.I.A. detention program. [my emphasis]

In addition to Buzzy Krongard, Jon Kiriakou is the only on the record source. The story reveals that Kiriakou spoke with Shane in December 2007—the same month he spoke about waterboarding with ABC. But it also suggests Shane spoke with him after that, when he learned Kiriakou had been “cautioned ... not to discuss classified matters.”

John C. Kiriakou, a former C.I.A. counterterrorism officer who was the first to question Abu Zubaydah, expressed such conflicted views when he spoke publicly to ABC News and other news organizations late last year. **In a December interview with The Times, before being cautioned by the C.I.A. not to discuss classified matters,** Mr. Kiriakou, who was not present for the waterboarding but read the resulting intelligence reports, said he had been told that Abu Zubaydah became compliant after 35 seconds of the water treatment. [my emphasis]

Often, journalists include both on and off the record material from sources in the same article, meaning it is possible that Kiriakou also provided Shane information anonymously. And there are details—such as what happened to Abu Zubaydah—that Kiriakou was a likely source for. Most significantly, Shane's story includes a detail that Kiriakou included in his book proposal.

Armed with Abu Zubaydah's cellphone number, eavesdropping specialists deployed what some called the "magic box," an electronic scanner that could track any switched-on mobile phone and give its approximate location. But Abu Zubaydah was careful about security: he turned his phone on only briefly to collect messages, not long enough for his trackers to get a fix on his whereabouts.

As the complaint lays out,

In [a July 28, 2008 letter to CIA's Publican Review Board], KIRIAKOU sought permission from the PRB to include a description of the technique in the book by falsely claiming that the technique was fictional and that he had never heard of it before. Specifically, KIRIAKOU stated: "There is a reference early in this chapter to a device called a 'magic box.' I read about this so-called device in a New York Times article. The information in that article was clearly fabricated, as we used no such device. I am unaware of any [such] device . . . As it is fictionalized, I believe it is unclassified." The Draft Manuscript described the use of the technique in the Abu Zubaydah operation.

Effectively, Kiriakou pointed back to the Shane article, for which he was a named source, to claim prior publication of the (publicly accessible) "magic box" technology. Once the investigative team had the PRB letter, they could tie the "magic to Kiriakou.

But that's not the only way Fitzgerald's team may have tied Kiriakou to anonymous items in Shane's story. The complaint suggests that the FBI went through two rounds of interviews with Martinez.

... in one or more interviews conducted by agents, Officer B recalled Journalist B attempting to reach him.

Based on interviews of Officer B by other agents, I have also learned that, prior to the publication of the Article, Journalist B attempted to contact Officer B in person, by phone, and by email, among other means:

It seems possible, then, that FBI investigated the source of the Martinez story—for which Michael Hayden had tried to convince Shane not to publish Martinez' name—both in 2008, after the story came out, as well as part of this investigation into detainee lawyers.

And remember: as Jason Leopold reported, Kiriakou had been investigated after the 2007 discussion with ABC. So it would not be surprising if he were at least tentatively investigated in relation to the Martinez story.

In any case, by putting the book proposal together with the “magic box” reference in Shane's story as well as references to Abu Zubaydah's treatment that likely came from Kiriakou, I think Fitzgerald's team had probable cause to subpoena Kiriakou's emails. And from the emails, they got:

- Evidence Kiriakou provided Martinez' phone number to Shane (but, as I said, not necessarily to Journalist A)
- Clear evidence Kiriakou provided Covert Officer A's identity to Journalist A
- Solid corroboration that Kiriakou was the source for the “magic box” information in the Shane article (and that he lied to CIA's PRB

## about whether it was fictional or not)

And once they had emails showing Kiriakou providing Covert Officer A's identity to Journalist A, they could interview the defense investigator, who confirmed he received Covert Officer A's identity (as well as Martinez' phone number) from Journalist A.

The sole piece of evidence in this chain that is not completely explained is the April 10, 2008 email from Journalist A to the defense investigator. It is presented in the context of the interview with the defense investigator, so it is possible—likely even—that the defense investigator provided Fitzgerald's team with the email.

So to sum up, I suspect that the investigation into how the defense team found information about Covert Officer A and Martinez (most of which was public) was by first using the Shane article and the PRB letter to show probable cause with Kiriakou as a source for Martinez, and then with that get his emails. Between the emails and the defense investigator interview, the FBI was then able to show strong evidence that Kiriakou was the source of Covert Officer A's identity to the defense investigator.

But I do have one significant question about all this. The DOJ press release on the investigation has this detail:

Mr. Fitzgerald announced the charges with James W. McJunkin, Assistant Director in Charge of the Washington Field Office of the FBI, and they thanked the CIA for its very substantial assistance in the investigation, as well as **the Air Force Office of Special Investigations for its significant assistance.** [my emphasis]

The Air Force Office of Special Investigations has a significant counterintelligence side. But

it also boasts of its cyber capabilities—the kind of investigative work that can track Internet traffic between two nodes, which would allow you to discover who had contacted whom without subpoenaing actual email archives. In fact, the only civilian vacancy it advertises right now is for an investigator who will serve as an expert on digital evidence.

DOJ certainly could and appears to have gotten from Kiriakou to the detainee legal team without accessing journalist records directly. But that doesn't mean they didn't have help.