CIA Officer Jeffrey Sterling Sentenced to Prison: The Latest Blow in the Government's War on Journalism

It's a warning shot—not only against whistleblowing, but against basic communication with journalists by government employees.

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Former CIA officer Jeffrey Sterling with his wife after being convicted of leaking classified details to a New York Times reporter (AP Photo/Kevin Wolf)

The sentencing of former CIA officer Jeffrey Sterling on May 11 for espionage ends one phase of a long ordeal and begins another. At age 47, he has received a prison term of 42 months—three and a half years—after a series of ever more improbable milestones.

The youngest of six children raised by a single mother, Sterling was the only member of his family to go to college. He graduated from law school in 1993, worked briefly at a public defender's office, and then entered the CIA, where he became one of the agency's only African-

American case officers. In August 2001, Sterling became the first one ever to file a lawsuit against the CIA for racial discrimination. (His suit, claiming that he was denied certain assignments because of his race, was ultimately tossed out of court on grounds that a trial would jeopardize government secrets.) Soon afterward, the agency fired him.

Sterling returned to his home state of Missouri and restarted his life. After struggling, he found a professional job and fell in love. But the good times were short-lived. One day in 2006, the FBI swooped in for a raid, seizing computers and papers at the small home that Sterling and his fiancée shared in a suburb of St. Louis. Slowly, during the next four years, without further action from the government, the menacing legal cloud seemed to disperse. But suddenly, a few days into 2011, Sterling was arrested for the first time in his life—charged with betraying his country.

The indictment included seven counts under the Espionage Act, the 1917 law that President Obama's Justice Department has used to prosecute more whistleblowers than all other administrations combined. The key charges accused Sterling of "unauthorized disclosure of national defense information," alleging that he gave details of a secret CIA operation to a journalist while falsely characterizing it in negative terms. The government contended that Sterling should remain in custody until trial because—with "underlying selfish and vindictive motivations"—he would try to "retaliate in the same deliberate, methodical, vindictive manner." A judge rejected that argument and released him on bond. But Sterling's arrest had triggered his immediate firing by Anthem Healthcare (where his work as a medical fraud investigator won a national award for uncovering $32 million in bogus charges), and suddenly even low-wage employment was out of reach. As a breadwinner, Sterling was toast. His wife, Holly, a social worker, continued to bring in a modest income as they waited for the trial.

The wait lasted four years. Most of the pre-trial legal maneuvers had to do with James Risen, the *New York Times* reporter whose 2006 book, *State of War*, had spurred the FBI leak investigation that ended with Sterling's arrest. The book included a chapter with classified information about Operation Merlin, a CIA program that in 2000 provided Iran with flawed design information for a nuclear weapon component. Despite subpoenas and jail threats, Risen kept refusing to identify any confidential source. The government prevailed on appeal with its claim that journalists have no right to such a refusal, but—after growing pushback from press-freedom advocates and worsening optics in the court of public opinion—the Justice Department finally gave up on forcing Risen to cooperate. (For background, see Norman Solomon and Marcy Wheeler, "The Government War Against Reporter James Risen," October 8, 2014.)

The federal courtroom in northern Virginia where Holly and Jeffrey Sterling returned for the sentencing on May 11 was the scene of a disturbing, though scantly reported, simulation of justice in late January. At the outset, covering the trial, I noted that "prospective jurors made routine references to 'three-letter agencies' and alphabet-soup categories of security clearances." Steeped in a local atmosphere of deference to mega-employers like the CIA and Pentagon along with numerous big contracting firms nearby, "the jury pool was bound to please the prosecution."

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In the government's opening statement, head prosecutor James Trump told jurors that Sterling had committed crimes of betrayal due to his "anger, bitterness, selfishness"—a theme and theory of the case that the Obama Justice Department was to reprise often with its mosaic of CIA testimony and its boffo PowerPoint closing argument: claiming that Sterling became vengeful against the agency when he failed to win his legal complaint against it for racial discrimination. The prosecution was gratified two weeks later when the nearly all-white jury, which included no African-Americans, voted guilty on all counts.

Few news reports about the verdict provided any context, but that was true of the entire trial's overall sparse coverage. During the seven days of proceedings, I rarely saw more than five other journalists in the courtroom. But the trial for *United States of America v. Jeffrey Alexander Sterling* was extraordinary, for reasons far beyond the fact that it was the first time a jury considered Espionage Act charges that a CIA employee had leaked classified information to news media.

During the first half of the trial, the prosecution was often fixated on insisting that Operation Merlin was a nearly perfect program implemented by a nearly perfect agency. The government condemned Sterling for having a very bad attitude in addition to doing a very bad thing. Hour after hour, he stood accused of wrongly disparaging the CIA's über-wise competence—legally to Senate Intelligence Committee staffers, and then illegally to the world, via Risen.

A cast of twenty-three CIA witnesses played their "national security" roles as agents of patriotic virtue. And Condoleezza Rice did a dramatic star turn (the press showed up for that one). Rice testified to the great importance of Operation Merlin, explaining that she carefully stuck to the talking points provided to her by the CIA when, as President George W. Bush's national security adviser, she hosted a meeting with *Times* reporter Risen and Washington bureau chief Jill Abramson—an intervention by the White House that succeeded in keeping the scoop out of the newspaper (and away from the public, until Risen's book came out more than two and a half years later). The meeting took place at the end of April 2003, just a few weeks after the invasion of Iraq.

During a trial that revolved around Washington spin about specters of nuclear weapons in the Middle East, the government was able to shield the CIA and the former secretary of state from scrutiny, even though—and precisely because—testimony in the courtroom could have illuminated their actual records of crying nuclear wolf while laying the groundwork for war. During cross examination, the government was able to nip in the bud an effort by defense lawyer Barry Pollack to provide the jury with some key background on the Bush administration that Rice served:

Q: [P]reventing working nuclear weapons from falling into the hands of rogue states is one of the most important missions of your, the administration you worked for certainly—

Rice: Yes.

Q: —and any other administration, correct?

Rice: That's correct.

Q: And certainly counter proliferation was of great interest at this particular time, correct?

Rice: That's correct.

Q: The United States had invaded Iraq the earlier month?

Prosecutor Eric Olshan: Objection.

Judge Leonie Brinkema: Well, we've heard that before. Let's just move this along, Mr. Pollack. Sustained.

And so it went, during a trial that alternately expanded and contracted its purview to accommodate prosecution needs. The scope went global, to vaguely yet emphatically assert vast harm from Sterling's alleged disclosures. Yet it narrowed to tunnel vision whenever convenient to exclude information that could explain why anyone might not defer to the judgments of an agency that had skewed its intelligence for war, or might doubt the credibility of a former Bush national security adviser who had called for the invasion of Iraq while warning, "We don't want the smoking gun to become a mushroom cloud."

On the trial's last day—in the same closing argument that insisted "this case is not about politics" and "it's not about salvaging the reputation of the CIA"—the prosecution began with a quote from Rice about the US government's grave responsibility to prevent nuclear proliferation. Three months later, in late April, the Justice Department filed a 24-page sentencing memo that began with a bold-italics quote from Rice's testimony: "I was deeply concerned because this was not just a sensitive program, but it was one of the only levers that we believed we had, that the President had, to try to disrupt the Iranian nuclear program."

Rice's superstar appearance was in sync with what one attorney called the "hocus pocus" of the trial, complete with a tall office divider that kept many of the CIA witnesses screened off from public view. For no evident reason other than to impress jurors with the sanctity and gravity of classification, the prosecution distributed to the jury a file stamped "SECRET" in big letters across the front, before the judge ordered a bailiff to take the file back only minutes later. The heavy-handed message was that top officials who knew best were operating with the kind of essential secrecy that the defendant had dangerously breached.

In a trial with twists and shadowy subplots that seemed countless, two aspects—nearly hidden in plain sight—are among those in greatest need of scrutiny. What passed for incriminating proof amounted to nothing more than circumstantial evidence in the form of metadata about e-mails and phone calls. And the government won guilty verdicts for some of the Espionage Act charges on the mere basis that Sterling "did willfully cause" Risen to disclose classified information. In effect, the cumulative ambiance in the courtroom was white noise in the service of a prosecution that not only arranged a crescendo of circumstantial evidence but also of circumstantial allegations. The government impugned Sterling's motives and character while encouraging the jurors to assume that he would have tried to steer Risen toward classified information—despite

the complete absence of evidence that the defendant had actually given him any. The circumstantial evidence, implying that Sterling had "caused" the release of such information, was enough. (Disclosure: After the guilty verdict, I used my frequent-flier miles to get plane tickets for Holly and Jeffrey Sterling so they would be able to go home to St. Louis.)

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The successful prosecution of Jeffrey Sterling has given more leverage to the information clampdown that the Obama administration continues to implement. With a multi-count Espionage Act conviction, it serves as yet another warning shot—not only against whistleblowing and disclosure of classified information, but also against basic communication with journalists by government employees and contractors.

Over decades, while interviewing sources with security clearances, hundreds of journalists have had the experience of asking questions and receiving a reply along the lines of: *I can't tell you the answer because it's classified, but I can tell you (fill in the blank).* Such responses mean that sources can be helpful to a reporter's investigative process without disclosing any classified information. But one of the evident aims of the Sterling prosecution was to strengthen government efforts to choke off such communications. The not-so-subtle gist: Telling a journalist anything that might lead to coverage of classified information could be a basis for prosecution and conviction. The Sterling case stands as a calculated warning to government employees that Espionage Act charges could result from assisting any journalist for a story that might wind up reporting classified information.

Such legal constructions fit tongue-in-groove with the agenda of the intelligence hierarchy under Obama. For years now, the administration's "Insider Threat" program has formally encouraged millions of government employees to monitor each other for—and report on—signs of ideological or attitudinal deviance. An order from National Intelligence Director James Clapper warned employees of all intelligence agencies not to give any journalist *non*-classified information without first getting authorization. Such measures are part of a calculated progression that aims—via bureaucratic edicts as well as legal harassment and criminal prosecutions—to normalize an atmosphere of fear and reflexive self-constraint, blocking the unauthorized delivery of information to the public.

For prospective whistleblowers, the Sterling case is yet more proof that they can "go through channels" to express concerns only at their peril. Particularly in security-state realms—as the experiences of NSA whistleblowers William Binney, Thomas Drake, Edward Loomis and Kirk Wiebe have shown—using the much-ballyhooed official channels to report concerns is a flag that draws official retribution. During Sterling's trial, the prosecution repeatedly used against him—as supposed indications of hostility toward the agency and motive for wrongdoing—the fact that he had gone through legal channels to file suit alleging racial bias and to report his concerns about Operation Merlin to Senate Intelligence Committee staffers.

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While defending the rights of journalists, some press-freedom advocates haven't seemed to mind much when a whistleblower goes to prison. Others, even more disturbingly, seemed to express satisfaction at the Sterling verdict, as proof that the government had been wrong in its claims in prior years that it needed Risen's testimony to gain a conviction. This theme was sounded by Attorney General Eric Holder right after Sterling's conviction, when he issued a statement that crowed: "As this verdict proves, it is possible to fully prosecute unauthorized disclosures that inflict harm upon our national security without interfering with journalists' ability to do their jobs." This attitude is a wedge being driven between journalists and whistleblowers—shorn of euphemisms, it often amounts to *journalists good, whistleblowers not*. But to support journalists and not the whistleblowers who provide them with information is akin to cheering only the last baton-holder in a relay race.

In an essay that went to press while the Sterling trial was under way, veteran journalist Steve Coll explained that "the Obama administration's resort to the draconian provisions of the Espionage Act against Sterling was just one case in a series of overreaching prosecutions of journalistic sources carried out by Eric Holder's Justice Department." Coll added: "In more than one instance, the Justice Department took positions that came close to criminalizing the act of professional reporting on classified subjects. In a pretrial filing in the Sterling matter, for example, prosecutors in the US Attorney's office for the Eastern District of Virginia argued vehemently that Risen was an important eyewitness to a felony because the reporter had allegedly interviewed Sterling, who had given him classified information."

Supporters of press freedom who denounce the government's threats against journalists should fight just as hard against efforts to imprison the whistleblowers whom journalists depend on—that, after all, is how the flow of vital information reaches the public. But so far, overall, the media establishment has failed to defend the whistleblowers who make possible the "professional reporting on classified subjects."

The Justice Department's legal siege of Sterling, which has spanned two administrations and 10 years, can be understood as part of a regimen that winks and nods, or wrist-slaps, when classified information is leaked from on high—often to manipulate public opinion—while fiercely prosecuting alleged leakers who expose government officials or policies as inept, destructive or mendacious. The Senate Intelligence Committee's recent report on torture documented that the CIA press office itself gave classified material to favorite journalists to make the agency look good. Even when major leaks from powerful officials are unauthorized, the penalties are nonexistent or tiny—as exemplified by the April 23 sentencing of former CIA Director David Petraeus, who gave briefing books with highly classified information to his journalist paramour and then lied to the FBI about it. Petraeus received no jail time after a cozy plea deal with the Justice Department. The same Justice Department declared that an appropriate prison sentence for Sterling would be in a range of 19-24 years.

There was grim symbolism in the eleventh-hour postponement of Sterling's sentencing until May 11, rather than the long-scheduled date of April 24. The original date—just one day after Petraeus's sentencing—would have provided an especially stark contrast.

The Petraeus plea deal has provoked criticism and even outrage from some newspaper editorial boards. In an understated editorial titled "Gen. Petraeus's Light Punishment," *The New York Times* observed that "top officials, who often seek to advance self-serving political agendas in their dealings with the press, appear to enjoy significant leeway in disclosing classified information"—while, "in sharp contrast, the government has been unsparing in its prosecution of lower ranking officials who have shared sensitive information for more defensible reasons." *The Los Angeles Times* editorialized that "the whiff of a double standard is overwhelming" and concluded, "That may be the way of the world, but it's not justice."

A more caustic response came from New Jersey's largest newspaper, the *Star-Ledger*, under a headline that summarized the status quo this way: "Whistleblowers wacked, all-star generals walk." Noting the sweet deal that Obama's Justice Department had gifted to Petraeus, the *Star-Ledger* editorial said: "What makes it galling is how Petraeus compares to men like Jeffrey Sterling**,** who was convicted by a jury for being the main source of James Risen's book about a CIA op designed to sabotage Iran's nuclear program. There were nearly 100 people who could have been the source, but Sterling was convicted on circumstantial evidence because the DOJ likes to go after whistleblowers**.**"

Such clarity from big media remains unusual. But similar assessments are becoming more frequent and vehement—as more people recognize the grim injustices for whistleblowers and the dire consequences for democracy.

Amid all the convoluted doublespeak from the Obama administration, Jeffrey Sterling is paying a tragic price.

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