

Jury Convicts Former CIA Officer Jeffrey Sterling of Leaking to Journalist and Violating Espionage Act

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Former CIA officer Jeffrey Sterling, left, leaves the Alexandria Federal Courthouse on Jan. 26 with his wife Holly, center, and attorney Barry Pollack, after being convicted on all nine counts he faced of leaking classified information to a reporter. (Photo: Kevin Wolf/AP)

Former CIA officer Jeffrey Sterling has been convicted by a jury in Alexandria, Virginia, of charges brought against him because the government argued he leaked classified information about a top secret CIA operation in Iran to New York Times reporter James Risen.

Sterling's case was the first case involving an alleged leak to the press to proceed to a full trial in thirty years. The last case involved Samuel L. Morison, a Navy civilian analyst who was charged under President Ronald Reagan for leaking photographs of Soviet ships to alert America to what he perceived as a new threat.

Notably, Morison's case was one of the first cases where the Justice Department used the Espionage Act to criminalize a leak. (Morison was later pardoned by President Bill Clinton.)

He was initially charged with committing ten felonies, seven of which fall under the Espionage Act. The other charges were mail fraud and obstruction of justice. The mail fraud charge was dismissed by the judge last week before deliberation.

As the Associated Press [reported](#), "On the third day of deliberations, the jurors told the judge that they could not reach a unanimous verdict." However, hours later, the jury returned with "guilty verdicts" after the judge had "urged them to keep talking."

Jesselyn Radack, a Justice Department whistleblower, attorney and director of the Government Accountability Project's National Security and Human Rights Division, reacted, "It is a new low in the war in whistleblowers and government hypocrisy that CIA whistleblower Jeffrey Sterling was convicted in a purely circumstantial case of 'leaking.' It shows how far an embarrassed government will go to punish those who dare to commit the truth."

There were very few communications between Risen and Sterling presented in court. No emails presented showed the two had ever had communications about classified information or "Operation Merlin," the top secret CIA operation the government alleged he exposed.

Questions about whether the crimes alleged even occurred in Virginia were raised

throughout the trial, since Sterling had been living in O'Fallon, Missouri.

Prosecutors [presented documents](#) from 1987 about calling into the CIA from rotary phones, which had been found in Sterling's home in Missouri, and claimed the retroactively classified documents had been moved from Virginia.

The government also called an FBI investigating officer's hairdresser to testify about how she had read Risen's book, *State of War, containing the alleged leak from Sterling*. *Essentially, prosecutors wanted the jury to believe Sterling had conspired to have books with his leak sold in Virginia.*

Journalist Marcy Wheeler reported that the issue of venue was one the jury [asked](#) Judge Leonie Brinkema about. They wanted to know if obstruction of justice could have taken place in Missouri and if the document at issue in one of the counts could have been stored in his residence. The government had to prove for each offense that the offenses had been committed in the Eastern District of Virginia.

Altogether, these are the offenses that Sterling was convicted of committing, according to Wheeler:

One: Unauthorized disclosure of national defense information — by getting James Risen to publish a book about Merlin and Operation Merlin

Two: Unauthorized disclosure of national defense information — by sharing a letter Merlin sent to the Iranians with James Risen

Three: Unlawful retention of national defense information — by willfully retaining the letter Merlin sent to the Iranians

Four: Unauthorized disclosure of national defense information — by giving Risen the information on Merlin and Operation Merlin

Five: Unauthorized disclosure of national defense information — by giving Risen the letter Merlin sent to the Iranians

Six: Unauthorized disclosure of national defense information — by attempting to get Risen to publish an article on Merlin and Operation Merlin

Seven: Unauthorized disclosure of national defense information — by attempting to get Risen to write a NYT story on the letter Merlin sent to the Iranians

Nine: Unauthorized conveyance of government property — by conveying classified information worth over \$1,000 about Merlin and Operation Merlin to the public

Ten: Obstruction of justice — by deleting a March 10, 2003 email to James Risen with a link to a CNN article on Iran's nukes sometime between April and July 2006, possibly after being subpoenaed in this case in June 2006 (Sterling was in Missouri at this point)

Sterling will remain free on bond until his sentencing, which is scheduled for April 24. His defense [plans](#) to "seek to have the verdict thrown out" and, if that does not happen, they will appeal.

Operation Merlin involved a Russian asset providing flawed nuclear blueprints to Iran. It was an operation that Sterling himself is known to have blown the whistle on internally when he met with two Senate intelligence committee staffers in March 2003.

The defense's story during the trial was that the leak had probably come from someone on the Senate intelligence committee. The committee apparently refused to cooperate with an investigation into the leak.

Under President Barack Obama, the Justice Department has convicted four individuals of violating the Espionage Act by leaking to the press. Former FBI linguist Shamai Leibowitz, former State Department employee Stephen Kim and former FBI agent Donald Sachtleben pled guilty and were sentenced to prison. US military whistleblower Chelsea Manning was convicted after a military trial of several Espionage Act violations.

It has prosecuted more cases accusing government employees of Espionage Act violations than all previous presidents combined. Many of the individuals pursued were involved in acts of whistleblowing before they became targets of a criminal investigation.

Sterling, an African-American, brought a racial claim against the CIA before he was accused of leaking. He appealed his case all the way to the Supreme Court in 2005, however, the government successfully had the case thrown out by invoking the "state secrets" privilege.

His own performance reviews were considered "state secrets." Stuningly, Wheeler [reported](#) that in the trial the government was using these exact same performance reviews to convict Sterling and the jury was not permitted to know about this fact.

The government used Sterling's loss in his lawsuit against the CIA to argue that he disclosed "Operation Merlin" in revenge.

What will likely be most remembered about Sterling's case is how the government [relentlessly pursued](#) Risen for about seven years before buckling under pressure and deciding they would not force him to testify against his alleged source.

Collateral damage was done to journalism in the process of the government's leak prosecution. The government collected records from Risen's personal and professional communications, which significantly impacted his ability to do his job as a reporter.

The prosecution of Sterling once more solidified the government's ability to wield the Espionage Act as a sledgehammer to come down hard on government employees, who dare to challenge the government's intelligence or "national security" programs by disclosing information to the press.

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