

(This case study was prepared by University of Georgia student Michael Foo for JOUR 5170, Advanced Studies in Journalism, based on sources listed below)

James Risen: The Danger of National Secrets - Part A

In 2000, the Clinton Administration allegedly authorized a CIA covert action that entailed giving flawed blueprints of nuclear technology to Iranian officials in an effort to infiltrate the Iranian nuclear program. By watching what the Iranians did with the flawed blueprints, the United States could find out valuable information about their nuclear program, which was shrouded in secrecy up until then.

The Bush Administration supposedly carried out the covert action by using a defected Russian nuclear engineer to deliver the blueprints to Iranians, in what is known as Operation Merlin. But before the Iranians received the information, the Russian agent noticed the flaws and pointed them out to Iran – the operation was effectively botched. Iran likely could have made progress on developing a nuclear bomb when Operation Merlin was designed to keep them from creating one.

Discussion:

- Is this a story that, if true, you think should be revealed to the public?
- What sort of journalistic concerns are raised by reporting on a story like this? Ethical concerns? Legal concerns?
- How might reporting on government secrets be more difficult than reporting on any other story? Could it be easier?

James Risen: The Danger of National Secrets – Part B

Pulitzer Prize-winning New York Times author James Risen publishes a book in 2006 titled *State of War: The Secret History of the CIA and the Bush Administration*. One chapter of the book asserts that the covert action detailed in Part A actually occurred. Based on intercepted emails, the US government is led to believe that Jeffrey Sterling, a former CIA agent, is Mr. Risen's source for information in that chapter. Mr. Risen is subpoenaed in February 2008 for testimony about his sources for the book, but Risen and his lawyers say that he intends to honor his "commitment to the of his sources" and that they "intend to fight this subpoena."

Discussion:

- Do you think Risen should have published the book? Explain.
- Should Risen testify in front of a grand jury and give information regarding the identity of his source or sources? Explain
- What might the threat of jail time, as a result of being in contempt of the court, do to a journalist who has secret sources?
- What might happen to Risen if he decides to reveal his source?

James Risen: The Danger of National Secrets – Part C

The Bush Administration's 2008 subpoena calling Risen to testify expires in the summer of 2009. But Attorney General Eric Holder, under the Obama Administration, reauthorizes the subpoena in 2010, calling again for Risen to testify to the identity of his source or sources. Any evidence (including the traced emails between Sterling and Risen) is "largely circumstantial," and Risen's testimony is needed to convict Sterling of passing classified information. The reauthorization makes the case involving Risen and Jeffrey Sterling just one of eight leaking cases pursued by the Obama Administration alone – more than all leaking cases in prior administrations combined.

Discussion:

- Given that the subpoena was reauthorized under a different administration, should Risen answer the second subpoena and testify on his sources?
- Does the Obama Administration's reauthorization give any more weight to the subpoena or to the case in general? Explain.
- What does the large number of other whistleblowing cases say about the Obama Administration's "war on whistleblowers?"
- What does this mean for journalists who interact with the whistleblowers?

James Risen: The Danger of National Secrets – Conclusion

Despite having appealed to the Supreme Court, Risen is forced to take the witness stand in a federal hearing in response to the Obama Administration's subpoena. In his testimony, which is meant to serve only as a preview of what Risen may say in the actual trial, he continues to refuse to reveal the identity of his sources or offer any details on how he got the information in the incriminating chapter. Risen says, "I am not going to provide the government with information that they seem to want to use to create a mosaic to prove or disprove certain facts." At the time, it becomes unclear whether prosecutors will call Risen to testify against Mr. Sterling.

But Attorney General Eric Holder ultimately says that Risen would not be called to reveal his sources, meaning Risen is free from having to testify in Sterling's trial. "Mr. Risen's under-oath testimony has now laid to rest any doubt concerning whether he will ever disclose his source or sources.... He will not," prosecutors wrote in court filings. "As a result, the government does not intend to call him as a witness at trial." Risen's testimony is effectively abandoned.

This move by Holder is considered to be a change in policy in the Obama Administration, as Holder then adjusted the Justice Department's guidelines on subpoenaing reporters. Holder also later admitted that the Administration's crackdown on reporters "had, at times, gone too far." But Risen's lawyer says that, despite the fact that the reporter did not testify, the entire battle has set an example.

"I worry about future administrations," says Joel Kurtzberg. "Now there's bad precedent, and not every executive branch in the future will exercise their discretion the way this one did. It didn't have to go this way."

Discussion

- Do you think Risen would have complied if Attorney General Holder decided to force his testimony?
- Do you agree with Kurtzberg's statement that bad precedent may be set for future administrations?
- What precedents have been set for journalists who deal with classified information?
- What changes, if any, are there to journalistic integrity when national security is involved?
- Should there be a federal shield law protecting journalists' right to keep confidential sources? Explain

Sources

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