

**Justice Department tactics
against reporter raise press
freedom questions in Sterling
case**

The Justice Department obtained the credit reports, credit card statements, personal bank records, travel records and telephone call information for New York Times reporter James Risen during its espionage investigation of St. Louisan Jeffrey Sterling, according to a recent court filing. The disclosure is the latest indication of the unusual tactics used by the government in the prosecution of Sterling, a former CIA agent who once accused the agency of racial discrimination and later allegedly leaked information about a botched intelligence operation directed at Iran's nuclear program.

[Justice Department rules](#) discourage the use of prosecutorial power in a way that "impairs a reporter's responsibility to cover as broadly as possible controversial public issues." The rules normally require the approval of top Justice Department officials before prosecutors obtain a reporter's personal phone records. The same requirement normally applies before prosecutors can call an attorney for a defendant such as Sterling before a grand jury. The purpose of the rules is to protect freedom of the press and the lawyer-client relationship. Yet prosecutors in the Sterling case took both steps. In addition, the prosecutors tried to call Risen before the grand jury, but a judge quashed the subpoena.

Jane Kirtley, a University of Minnesota law professor and former director of the Reporters Committee for Freedom of the Press said she "was floored when they told me that among other things they obtained his (Risen's) credit reports." Kirtley said in an interview that it "was just stunning" the amount and kind of personal information that the government obtained about Risen through "third-party subpoenas to service providers."

Third party subpoenas are easily abused, she said, because neither the reporter nor the news organization is informed when credit card companies or travel agencies turn over their records to the government. In addition, the business records turned over to prosecutors will often include private information that has nothing to do with the investigation. With a reporter like Risen, whose beat is national security, those records could include names of sources of other stories, Kirtley said.

"Human nature being what it is," she added, "the likelihood that the FBI would be interested in information about another investigation or subject is just huge."

Risen told Politico, which broke the [story about his records](#), that the government never notified him that they were seeking his phone records. But he said he got an idea in 2008 that investigators had some phone information. "We heard from several people who had been forced to testify to the grand jury that prosecutors had shown them phone records between me and those people—not the content of calls but the records of calls," he said. [The New York Times](#) quoted Risen as saying the government's tactics showed that the Justice Department has been "harassing" him.

The disclosure about Risen's records was contained in a defense filing asking the court to require the government to file a "bill of particulars" that would provide additional information and make it possible for Sterling to defend himself.

The motion says that the government had obtained "various telephone records showing calls made by the author James Risen." In addition the government provided Sterling's lawyers with credit reports from Equifax, TransUnion and Experian as well as Risen's credit card and bank records and some airline travel records. It is unclear whether the phone records came from Risen's telephone records or Sterling's. The court filing provides additional confirmation of what has been widely reported already – that Risen is Author A named in the indictment as the recipient of Sterling's leak.

The St. Louis Beacon reported last month that prosecutors had taken the unusual and controversial step of subpoenaing Sterling's lawyer to appear before a grand jury. Mark Zaid, a Washington, D.C., lawyer who handles national security cases, was subpoenaed to appear before a grand jury to discuss events surrounding his representation of Sterling in a race discrimination case he filed against the CIA.

Prosecutors questioned Zaid about Sterling's motive in leaking the classified information. The indictment alleges that Sterling leaked the information to retaliate against the CIA for its refusal to settle his race discrimination claim and to approve a memoir he was writing.

Jesselyn Radack, a lawyer with the Government Accountability Project, has strongly criticized prosecutors' tactics in the case. She suggested that the questioning of Zaid may have violated the attorney-client privilege, calling it "just another example of government overkill."

Commenting on this week's revelations about Risen, she said, this "looks like data mining, the flip side of the coin from warrantless wiretapping."

Radack said that the Justice Department's extraordinary tactics are not warranted because "everyone knew" that Sterling was the leaker of the information about the CIA operation in Iran. For that reason prosecutors could not claim they had no feasible alternative for obtaining the information or that the information was essential to the prosecution.

Radack also has questioned the involvement of Justice Department prosecutor William Welch II in the Sterling prosecution, noting that Welch is himself still under investigation for his prosecutorial tactics in a case against the late Sen. Ted Stevens of Alaska. Stevens' conviction had to be dismissed because Welch and other prosecutors withheld information that might have helped Stevens.

The Justice Department has refused to comment on the Sterling case beyond what is contained in the court record.