

# PEARLSTINE'S OFF THE RECORD

I've been wavering about how much attention to give this book. In it, Norm Pearlstine, who was the editor in chief of Time Inc. when it fought Fitzgerald's subpoena of Matt Cooper, describes the whole process of fighting the leak. Most interestingly, Pearlstine describes how he came to believe that Time had to turn over Cooper's notes, not least because Time had no business defying an order of SCOTUS.

I'll just make a few points about the book:

- It has an astounding number of incorrect facts. Some of the errors include: claiming the Jayson Blair scandal broke in July 2003 (Blair resigned on May 1); stating that Judy testified about her June 23 meeting with Libby at her first grand jury appearance; claiming that Woodward told Downie of his leak from Armitage, "in October 2005, a few weeks after Libby was indicted" (he told Downie before the indictment, which was October 28, far too late in October for anything to happen a few weeks later in the same month); and explaining that Fitzgerald "called a second grand jury" after the Libby indictment. I recognize these are

largely nit-picky errors. But still—in a book about journalism published by a big press, can't you pay for a fact-checker?

- Pearlstine sounds an important call for journalists to consider themselves bound by the same rule-of-law as other citizens. "How, I asked, could we, as journalists, criticize others who ignored the courts if we did so ourselves?"
- In spite of Pearlstine's call for journalists to attend to the rule of law, he twice takes it upon himself to declare that there was no violation of the IIPA statute (or any other statute). "The leaks about Valerie Plame ... weren't against the law." I can understand presenting one or another opinion on this issue. But declaring, as a fact, that the leaks weren't against the law sort of undermines Pearlstine's argument elsewhere that the press should be subject to the judgments of the courts. While this doesn't surprise me, it does suggest Pearlstine doesn't fully

understand what the implications of his larger argument are.

That's the general overview. But the real reason I decided to do a post on the book, at all, is this little oddity. According to Pearlstine, Time stipulated to Fitzgerald that no Time journalists aside from Cooper had any confidential sources on the Plame story.

On May 21, 2004, Cooper received a subpoena ordering him to appear before the grand jury. Although Calabresi and Dickerson had shared the byline with Matt on the Time.com story, they weren't served since Fitzgerald had accepted our stipulating that they had not dealt with confidential sources on the Plame part of the story.

Now, Ari testified that he wasn't sure whether the Dickerson conversation was on the record or background; Dickerson said it was on background. But in any case, Ari certainly didn't believe he was speaking confidentially (he testified he was more worried that Dickerson or Gregory would repeat the word "crap" that Ari had used). I'm curious about the content of this stipulation, though, not least because Dickerson whined later about not getting a subpoena. Did Dickerson know that Time had stipulated he had no confidential source? Did Time say he got nothing on Plame?

And just importantly, if both Dickerson and Ari understood that conversation to be on background, then why won't David Gregory talk about it?