



Written by [Michael Tennant](#) on December 15, 2014

Holder Won't Force Reporter James Risen to Reveal His Sources

After a nearly seven-year court battle across  two administrations, it appears that *New York Times* reporter James Risen (shown) will not be forced to divulge a confidential source or go to prison for refusing to do so. A Justice Department source, speaking on condition of anonymity, has told reporters that Attorney General Eric Holder “has directed that Risen must not be required to reveal ‘information about the identity of his source,’” according to [NBC News](#).

The government was seeking Risen’s testimony in its case against former CIA official Jeffrey Sterling. Prosecutors believe Sterling gave Risen classified information concerning a 2000 Central Intelligence Agency (CIA) scheme to undermine Iran’s alleged nuclear program by secretly providing Tehran with flawed blueprints. Risen included a chapter on the operation in his 2006 book *State of War: The Secret History of the CIA and the Bush Administration*, reporting that Iranian officials quickly saw through the plot.

On the basis of that chapter, the Bush administration issued Risen a grand-jury subpoena in January 2008. Risen fought back, and the subpoena expired while his challenge wound its way through the courts. The Obama administration renewed the subpoena and issued a second one for trial, Sterling having been indicted in 2010. U.S. District Court Judge Leonie Brinkema ruled in 2011 that Risen could not be compelled to testify against Sterling, but the Fourth Circuit Court of Appeals overturned Brinkema’s ruling, and the Supreme Court rejected Risen’s appeal. Brinkema gave the government until December 16 to decide whether to try to force Risen to testify.

Holder’s decision not to compel Risen to reveal his source suggests that “the Justice Department seems to be convinced now that it can get a conviction on Sterling without Risen naming names, and faced with the embarrassing consequences of jailing a top reporter, seems content to let the matter drop,” observed [Jason Ditz](#) of Antiwar.com.

That is a further indication that the government’s pursuit of Risen’s testimony had less to do with convicting Sterling than with retaliating against a reporter who has repeatedly exposed the feds’ illegal and/or embarrassing activities. “Official enmity toward Risen had simmered for years before” he was first subpoenaed, the [Nation](#) noted in an extensive article in October. Risen and fellow *Times* reporter Eric Lichtblau won a Pulitzer Prize for a 2005 story exposing the National Security Agency’s domestic eavesdropping, a story that led then-Attorney General Alberto Gonzales to wonder aloud, in the presence of the news media, about “whether or not reporters should go to jail.” In 2004, Risen broke the story of the CIA’s use of waterboarding and [reported](#) that prior to the 2003 invasion of Iraq the agency had strong inside evidence that Saddam Hussein’s weapons-of-mass-destruction program “had been abandoned” but “failed to give that information to President Bush, even as he publicly warned of the threat posed by” said weapons. Risen’s book revealed other embarrassing CIA maneuvers.



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The government, wrote the *Nation*,

has been relentless in its pursuit of Risen in the Sterling investigation. Along with serving three subpoenas on the reporter, the DOJ obtained his credit reports, travel records, credit-card records and bank records. "One former official was asked to sign a document stating he was not a confidential source for New York Times reporter James Risen," ABC News reported in May 2006. And the government appears to have obtained Risen's phone records without alerting him, as required by DOJ guidelines. In an affidavit, Risen said that a witness who testified to the grand jury investigating the domestic wiretapping story had been shown "copies of telephone records relating to calls made to and from me."

Now, however, it appears that the Obama administration has finally thrown in the towel on the Risen matter — an interesting turn of events given the administration's predilection for prosecuting whistleblowers, but not entirely a surprise. The administration has been signaling for months now that it was disinclined to force reporters to reveal their sources. "As long as I'm attorney general," [Holder](#) told journalists, "no reporter who is doing his job is going to go to jail." [President Barack Obama](#) even ordered a review of Justice Department procedures regarding reporters, saying, "Journalists should not be at legal risk for doing their jobs."

Risen could still be asked to testify, though "it would be to confirm that he had an agreement with a confidential source and that he did write the book," the Justice Department source told NBC, adding that the government "will no longer seek what he's most concerned about revealing." Whether the journalist will cooperate even to that extent is unknown. "Risen has previously expressed a willingness to testify about such basic facts, but more recently he has said that he is not inclined to testify at all," wrote [Politico](#).

For his part, Sterling — or at least his lawyer, Ed McMahon, Jr. — is a bit peeved that it has taken so long for the government to decide not to compel Risen's testimony against Sterling.

"We are waiting for the formal response as ordered by the Court. If the result is that the Attorney General does not want to issue the subpoena that his own Department of Justice fought for all the way to the Supreme Court, then three years of Mr. Sterling's life have been wasted in litigation," McMahon said via email, according to Politico.

The [Washington Post](#) reported that another journalist has also been given a reprieve from being compelled to testify. Holder had previously approved a subpoena to be served to Richard Bonin, a producer for CBS' *60 Minutes*, "to testify in a trial of two men accused in the 1998 bombings of two U.S. embassies in East Africa by al-Qaeda," said the paper. "Bonin's potential testimony did not involve information about confidential sources and was not sparked by a leak investigation, officials said."

Holder approved the subpoena on the understanding that Bonin had indicated his willingness to testify. When that turned out not to be the case — "At no time did Richard Bonin speak to anyone from the prosecutor's office," *60 Minutes* spokesman Kevin Tedesco told the *Post* — the attorney general withdrew his approval.

Whether the administration's sudden about-face on compelling testimony from reporters is due to a genuine change of heart or simply to a desire to avoid embarrassment, it is welcome nonetheless. As the *Nation* remarked, the "deep patterns of government retaliation against recalcitrant journalists and whistleblowers ... are undermining press freedom, precluding the informed consent of the governed and hiding crucial aspects of U.S. foreign policy." Every step in the opposite direction is one step closer to



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undoing that damage and restoring liberty to America.

Photo of reporter James Risen: AP Images



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