

# New York Times reporter subpoenaed in leak case

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Federal prosecutors issued a subpoena Monday requiring *New York Times* reporter James Risen to testify about classified documents allegedly leaked by a former CIA employee who now faces criminal charges over the disclosure.

The action was revealed in a court filing in federal district court in Alexandria, Virginia. As required under Justice Department rules, Attorney General Eric Holder gave his personal approval to the effort to compel testimony from a journalist.

Risen has refused to cooperate with federal efforts to prosecute the former CIA operative, Jeffrey Sterling, who is accused of providing him classified documents about CIA activities in Iran for his book *State of War: The Secret History of the CIA and the Bush Administration*.

The subpoena compels Risen to appear at federal district court in Alexandria, before Judge Leonie M. Brinkema, on September 12. If Risen fails to appear or refuses to testify, he could face contempt of court charges and imprisonment.

Risen told the *Times* that he would ask Judge Brinkema to quash the subpoena. She quashed an earlier subpoena during the grand jury phase of the case against Sterling. "I am going to fight this subpoena," he said. "I will always protect my sources, and I think this is a fight about the First Amendment and the freedom of the press."

The newspaper's relation to the Risen case is more than a little conflicted, however. Risen and Eric Lichtblau won the Pulitzer Prize for a 2005 report in the *Times* that exposed secret and illegal surveillance and wiretapping by the National Security Agency. Executive editor Bill Keller delayed the story for more than a year, under pressure from the Bush administration, postponing its

publication until well after the 2004 presidential election.

In the case of the documents on Iran, the *Times* blocked any publication at all. Risen worked in 2003 on an article about CIA efforts to disrupt Iran's nuclear research program, which he characterized as a failure and even counterproductive. According to an article in the *Times* this week, "the newspaper decided not to publish it after government officials told editors that such a disclosure would jeopardize national security." The material ultimately appeared as a chapter in Risen's 2006 book.

In the court filing, the Justice Department prosecutors argued that reporters had no special privilege to avoid testifying and that Risen's testimony was vital to prosecuting Sterling for unauthorized disclosures of classified documents. "Mr. Risen is an eyewitness to those crimes," they wrote. "Mr. Risen's testimony, like that of any other citizen in his situation, should therefore be admitted to permit the jury to carry out its truth-seeking function."

At a pretrial hearing in April, a federal prosecutor told Judge Brinkema that the case might not even go to trial unless what he called "witness problems" could be overcome. He was presumably referring to the difficulty of convicting Sterling without Risen's testimony.

Another pretrial filing revealed that federal investigators had obtained records of Risen's phone calls, travel history and personal finances in preparing the case.

Risen had a relationship with Sterling as a source prior to the alleged disclosure of documents on Iran. The former CIA agent, who is black, had filed a racial discrimination suit with the agency's Equal Opportunity office in 2000, and filed several federal lawsuits over his

treatment at the agency, which became the subject of articles by Risen.

Sterling is not charged with being a source of the articles by Risen and Lichtblau on illegal NSA spying, but another former intelligence official, Thomas Drake, was publicly identified as a suspect in the Justice Department investigation of that leak.

Drake goes on trial in June on separate charges of providing classified information to the *Baltimore Sun* about cost overruns and mismanagement at the agency. Drake says he was acting as a whistleblower and exposing government corruption in the purchase of complex technology used by the NSA to monitor electronic communications worldwide.

Since Obama took office as president, having campaigned against the anti-democratic methods of the Bush administration on the pretext of the “war on terror,” the US government has actually intensified its efforts to plug leaks and prosecute anyone engaged in the exposure of illegal activities by the military-intelligence apparatus.

Five separate criminal prosecutions are under way against alleged leakers, more than the number of cases brought by all previous administrations. This includes, most prominently, the prosecution of Bradley Manning, the army private charged with leaking vast numbers of military and diplomatic documents to the web site WikiLeaks.

This material has provided overwhelming evidence of US war crimes in Iraq and Afghanistan, and of anti-democratic political conspiracies in dozens of countries around the world.



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