

# Kate Smith Blogs from America

By Kate Smith in New York

## *Taking the Fifth Amendment out of the First?*

The chat amongst journalists in New York currently centres around one of their own, James Risen, the New York Times Security Correspondent. On 19 July, following a five-year battle, Risen was ordered to testify against former CIA officer Jeffrey Sterling who is indicted under the Espionage Act of 1917 for leaking classified information. Risen's 2006 bestseller, *State of War*, details intelligence failures in the post-9/11 Bush era. Drawn from anonymous insider sources, it describes why and how intelligence from Iraq stating that Saddam Hussein had abandoned his WMD building was dismissed by Bush. The US government's wiretapping program was also revealed by Risen.

The situation increasingly resembles 2005's 'Plamegate', when New York Times journalist Judith Miller was jailed, initially facing possibly 10 months, but only serving 85 days for contempt of court after refusing to testify before a federal Grand Jury in the investigation of the leak identifying Valerie Plame as a CIA operative. Like Miller, Risen has claimed reporter's privilege, stating that he will be incarcerated rather than be coerced into divulging any sources. Yet is the 19 July ruling the shape of things to come across all the States? After all, it does effectively mean that reporters may no longer have First Amendment privilege?

It is an issue which touches the very heart of the freedom principle. Enshrined in the First Amendment of the Constitution is the freedom of the press, the right to publish news, information and opinions without government interference, which chimes with the circumspect stance many

Americans seem to hold towards government. With the First Amendment under such duress, the current Edward Snowden stand-off, Bradley Manning's conviction, the Obama administration naming *Fox News* reporter James Rosen as a criminal "co-conspirator" in a leak case and the admission that phone records from *The Associated Press* have been collected, there is increasing pressure for Congress to act quickly on the bipartisan Shield Bill. If successful a Shield Bill would afford some Reporter's privilege. Otherwise the very job of journalism – covert newsgathering – could be criminalised.



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Which is where the debate now sits. Many call James Risen the new Woodward and Bernstein. The famous checks and balances of the American governmental system can be seen at work to protect one of the five foundational constitutional freedoms. Considering its constitutional importance and potential effects on journalism the issue itself seems under-reported. Jailing Risen could bring this issue to great prominence. It may be intended to warn off any more sources, leaks or whistleblowers waiting in the wings but Risen's resistance to succumb, to reveal his sources may be one of American journalism's finest moments. And achieve just the opposite: reassuring potential sources. Reminding us on both sides of the Atlantic that integrity, moral courage and a commitment to the truth is still, for many journalists, taken as read.

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*Herald, The Guardian and a wide range of magazines. Before that Kate ran her own international magazine publishing company with offices in Edinburgh and Moscow. Kate was nominated for a British Press award in 2008 for an article on the 2008 Global Food Crisis.*