

New England First Amendment Coalition

Board of Directors Resolution

February 28, 2014

Whereas, James Risen is a two-time Pulitzer Prize winning journalist of The New York Times that has been subject to a subpoena three times in the investigation and prosecution of former CIA employee, Jeffrey Sterling;

Whereas, press freedom has been extremely important to our society from colonial times to the present: “The freedom of the press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic governments,” wrote George Mason in the Virginia Declaration of Rights; “A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both,” wrote James Madison;” “The truth is hard to take sometimes. It isn’t always convenient. It can be disappointing. It can be ugly. But knowing—having information about ourselves and the world we live in—is part of our national identity. Our democracy relies on an informed citizenry. Thoughtful, fair, balanced, comprehensive reporting in print and in photos or video may be the best way to know what’s going on—the way to best inform ourselves. Information is what keeps us free from tyranny,” wrote Nancy Conway in Salt Lake City Tribune;

Whereas, countless stories of tremendous historical significance including: the Watergate break-in and cover up, the abuse of prisoners in Abu Ghraib, Iraq, and the systematic lack of adequate care for veterans at Walter Reed Army Medical Center would never have been written without the reporter’s ability to promise sources confidentiality and keep those promises;

Whereas, United States Supreme Court Justice Powell wrote in his concurrence in the 5-4 *Branzburg v. Hayes* decision that competing interests with regards to the reporters’ privilege should be balanced on a case-by-case basis: “the asserted claim to privilege should be judged on its facts by the striking of a proper balance between the freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct;”

Whereas, Judge Leonie Brinkema of the United States District Court in Alexandria, Virginia held that “a criminal trial is not a free pass for the government to rifle through a reporter’s notebook;”

Whereas, the Fourth Circuit Court of Appeals has strayed from the trend set by six other Circuit Courts of Appeals, which have applied the balancing test in the context of criminal investigations, by holding there is no such qualified privilege in a criminal investigation;

Whereas, President Barack Obama and Attorney General Eric H. Holder have said that they support the Free Flow of Information Act as drafted by Senator Charles E. Schumer to shield journalists from subpoenas, a development more recent than the latest subpoena of Mr. Risen;

Whereas, Vice President Joseph Biden recently encouraged China to strengthen freedom of the press there, saying “Innovation thrives where people breathe freely, speak freely, are able to challenge orthodoxy, where newspapers can report the truth without fear of consequences;”

Whereas, Mr. Risen is determined not to testify as to his source for his book *State of War*, but rather spend time in jail in contempt of court if ordered to testify; “The choice is get out of the business— give up everything I believe in—or go to jail. They’ve backed me into a corner,” said Risen to a reporter from The Boston Globe on a February 7, 2014 visit to Boston to receive the Stephen Hamblett First Amendment Award from the New England First Amendment Coalition;

Now, therefore, be it resolved that the Board of Directors of New England First Amendment Coalition requests that the United States Justice Department withdraw its subpoena of James Risen to testify at the trial of former CIA employee Jeffrey Sterling.

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