

DOJ'S CAKE-EATING ON JOURNALISTS WILL BUILD SUPPORT FOR FAULTY JOURNALIST SHIELD

As many people have reported, SCOTUS today declined to take Jim Risen's appeal of the Fourth Circuit's decision requiring him to testify in Jeff Sterling's trial. As I noted at the time of the decision, this effectively guts any reporter's privilege in the circuit that matters: the Fourth Circuit governs the CIA and JSOC.

Now, Risen's team is calling on DOJ to uphold Eric Holder's promise of last week, that no journalist engaged in journalism will be prosecuted on his watch.

"As long as I'm attorney general, no reporter who is doing his job is going to go to jail. As long as I'm attorney general, someone who is doing their job is not going to get prosecuted."

As Kevin Gosztola has noted on Twitter, however, there's a difference between prosecution and jailing under contempt. So that promise is likely meaningless.

And not only does that put Holder where he wants to be: with the courts on his side, exercising the discretion to jail a journalist or not as he can convince the court.

Furthermore, consider how it creates pressure for Chuck Schumer's (Administration-backed) badly flawed press shield bill. The bill wouldn't cover me. It wouldn't cover Glenn Greenwald. And it would leave James Risen precisely where he is now, subject to a judge's ruling on the significance of the information he

has.

There was already a lot of support for this bill. But now that the Executive Branch has gained all the leverage where it matters, I imagine there'll be a greater push to Do Something – even if that just codifies an official press that gets privilege.

On the same day NYT's Adam Liptak reported this decision, he also did a profile of SCOTUSBlog's Thomas Goldstein, who – because he doesn't fit the official model of journalist, in spite of the number of people who rely on his journalism – still can't get press SCOTUS press credentials. In spite of near universal acknowledgment of the important role SCOTUSBlog plays, the traditional press hasn't budged, which has helped SCOTUS punt on the issue too.

The closer the press gets to official sanction, the worse the reporting we'll get.