

JANUARY 23

When the other shoe drops

Ever since the disclosure of Valerie Plame's identity as an undercover CIA operative in July 2003, prominent Democrats have denounced that leak — often with some kind of rhetoric about the sanctity of classified information. But reverence for keeping such information secret is dangerous. And so is the claim that sometimes the government should put journalists in jail to ferret out leakers.

With the vice president's former top aide Lewis Libby under indictment and Karl Rove still in the special counsel's sights, the Bush administration is eager to go on the offensive about classified leaks. Loyal Republicans now claim higher moral ground as they decry the leak of classified information about the National Security Agency's domestic spying that surfaced on the New York Times front page in mid-December.

"Thank goodness the Justice Department is investigating to find out who has been endangering our national security by leaking this information so that our enemies now have a greater sense of what our techniques are in going after terrorists," the GOP's Sen. Mitch McConnell said on national television as this year began. He was on message with a bogus assertion.

Whoever spilled the beans about the NSA's domestic spying did not endanger U.S. national security any more than Daniel Ellsberg did when he leaked the Pentagon Papers to the press 35 years ago. In both cases, the leaks endangered official mendacity and served the interests of democratic accountability.

But the president's defenders want to divert outrage, away from the domestic snooping and toward the leaking that revealed the snooping. So, McConnell declared that "the national security was not endangered" by the Plame leak — and he added that the probe of the NSA leak is "a much more important investigation and should go forward."

Bush loyalists (or is that royalists?) are correct that the NSA leak is of enormous importance, but not for the reasons they claim. In truth, U.S. citizens have a profound right to know about a program that fundamentally jeopardizes civil liberties.

But protracted overblown horror at disclosure of Plame's identity has made it easi-

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er for the Bush administration to now set off on a witch hunt — not only against whistleblowers in government but also potentially against journalists.

True, the "outing" of Plame was a sordid act of political payback against her husband, a diplomat who had criticized the Bush administration for false claims related to weapons of mass destruction and Iraq. But that doesn't justify poking holes in protection of confidentiality for journalists' sources.

Some customary defenders of press freedom were not noticeably bothered by the jailing of New York Times reporter Judith Miller in the Plame leak investigation; some even applauded her incarceration. A factor was animosity that Miller earned due to her prewar record of reporting false claims about Iraqi WMDs as if they were highly credible. But the political precedent set by putting Miller in jail is likely to make it more difficult to protect other journalists, who could be swept up in the investigation of the NSA leak.

One person's whistleblower is another's score settler or traitor. And efforts to draw sharp distinctions — between virtuous and nefarious leaks — is fraught with subjectivity. The motivations of leakers, while important for journalists and the public to understand, should not determine whether a legal shield for confidentiality remains in place.

At an informal Jan. 20 hearing on domestic surveillance, chaired by Rep. John Conyers and attended by eight Democrats on the House Judiciary Committee, one of the most illuminating witnesses was legal scholar Jonathan Turley. He noted that President Bush "already stated quite clearly that he believes he can violate federal law. That, for our system, is the equivalent of a declaration of war on the separation of powers."

Turley, a professor of Constitutional law at George Washington University, added: "But one thing I would encourage you to think about as a collateral matter is how important it is for Congress to pass a shield law for journalists. This is a great example of why journalists need to have a federal shield law. The fact that the administration's first act was to pursue the whistleblower and potentially threaten these journalists shows how vital it is for us to have a statutory protection supporting the First Amendment."

The White House has launched its own anti-leak bandwagon with a vengeance, Turley explained: "If the administration continues the way it's going, it's going to significantly diminish the ability of journalists to hear from whistleblowers. I'm referring to the fact that this administration has used a waiver that's given to all officials in a particular office — and they're all asked to sign and to waive confidentiality, so that if you don't, you self-identify; but if you sign it, you're signing something false unless you

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actually did waive. We're in a very precarious position unless we get a shield law so that these types of abuses can be disclosed."

Yes, the Bush administration was in a defensive crouch when investigators put the squeeze on leakers and journalists in the Plame case. But the same administration is now eager to put the squeeze on leakers and journalists in the NSA domestic-spying case.

For that matter, even in the Plame battle, the White House has moved to further normalize the idea of legal actions against journalists. On Jan. 20, lawyers for Dick Cheney's ex-assistant Lewis Libby notified a federal court of their intention to issue subpoenas to journalists and news organizations in a quest to obtain documents for Libby's upcoming trial.

In the long run, efforts to drag reporters into legal proceedings are apt to let the journalistic profession — or culpable administration officials — off the hook. The focus can easily become the merits of a journalist's legal position rather than the substance of the reporting.

Judith Miller's credibility as a reporter was sinking in the post-invasion aftermath of her prewar stories that beat the drum about supposed WMDs in Iraq. Since then, Miller has been more successful in the martyr-tinged role of jailed reporter than in the journalistic role of defending her odious reportorial work.

It's very important to assess whether a journalist has been serving as a watchdog or a flunky for powerful government officials. But prosecutors and judges are not the ones who should decide. Such assessments — and their consequences — should be journalistic and political.

Norman Solomon's latest book is "War Made Easy: How Presidents and Pundits Keep Spinning Us to Death." For information, go to: www.WarMadeEasy.com