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Protect the Source or Solve the Crime: A right-versus-right dilemma

by Rushworth M. Kidder

When a federal grand jury last week subpoenaed journalists Tim Russert of NBC and Matthew Cooper of **Time** magazine -- trying to get them to reveal their sources -- it raised one of democracy's most fundamental right-versus-right dilemmas.

The jury wanted to know who leaked the information involving Valerie Plame, the wife of former ambassador Joseph Wilson IV. Last summer, Plame was exposed as an undercover CIA agent by a conservative media commentator -- a subject covered in Mr. Wilson's new book, *The Politics of Truth: Inside the Lies that Led to War and Betrayed My Wife's CIA Identity.*

More on that couple later. First, two questions:

1. How important is a free press in the political arena? The question invites a knee-jerk response. It's widely agreed that reporters must be free to report, and publishers to publish, whatever they learn from confidential sources.

2. How important is the keeping of political confidences? That question also taps a geyser of reaction. Enormous damage can be done by high-level leaks -- though trying to plug the leaks may cause more damage than the leaks themselves.

The ethical dilemma facing a democracy lies in the fact that both of these questions are important. The public needs a spirited, unhampered press producing well-sourced stories. But public officials also need the freedom to act in confidence, below the radar, as they negotiate domestic and foreign policy. It's right to let journalists dig and report. It's also right to stamp out leaks.

Which brings us back to Ms. Plame. When conservative syndicated columnist Robert Novak outed her last July, he did not reveal the source of his information. But his piece followed hot upon an op-ed piece by her husband in the **New York Times**. In it, Mr. Wilson challenged President Bush's assertion during the 2003 State of the Union speech that Iraq had sought uranium from Africa for making nuclear weapons. Mr. Wilson had a strong basis for his opinion: He had been sent by the Bush administration to Niger in 2002 to investigate the Iraqi uranium story, and found nothing to it.

Was this just a maelstrom in the mocha java? No, this was serious stuff. Revealing the identity of a covert agent is a criminal offense. And revealing a flaw in the principal argument for going to war with Iraq -- that Saddam had weapons of mass destruction -- could greatly weaken the president's position. Small wonder, then, that someone in the administration apparently lashed out at Mr. Wilson by compromising his wife's career.

A quick inventory reveals a thicket of ethically dubious issues here:

- Can you build a sound moral case for attacking your adversary by seeking to destroy his family? Hardly.

- Is it right to break the law by blowing an agent's cover? It's hard to see the ethics of any sort of lawbreaking, especially by those sworn to uphold the Constitution, and particularly when the illegal revelation does nothing to refute Mr. Wilson's arguments or question his judgment.
- Was it right for a commentator to publish that information? Possible motives include gossipy sensationalism, revenge for attacking the administration, or an effort to squelch potential leakers by exhibiting the ferocity of the punishment -- none of which serves any high moral or national purpose.

That brings us back to one true right-versus-right dilemma in this story: the subpoena of the journalists. On one hand, the need to ferret out lawbreakers is clear. Someone has illegally divulged a name. Let's find out who it was and punish the criminals, thereby sending a signal that the law can't be broken even in high places. That has the ring of true moral purpose.

But so does another argument: the need for journalists to protect their sources. If no journalist can promise that the confidentiality of a conversation won't be compromised, some important sources -- those most highly placed and with the most at stake -- will fade away. The result will be a self-censoring media, too cowed by the courts to do anything but parrot back what the government says.

So which side of this individual-versus-community, short-term-versus-long-term dilemma is right? That depends on what resolution principle you choose. If ethics means "greatest good for the greatest number" -- right now, in the short term -- it's right to force these individual journalists to reveal their sources. That way, a crime gets solved and the community benefits, even though a few individual journalists and sources are punished.

But if ethics means "standing by a high moral principle" and elevating that principle as a universal rule that extends through time, it's right not to make journalists divulge their sources -- not now, not ever, not for any reason. In the long term, the risk that constitutional malfeasance will grow when sources are silenced outweighs the danger of not catching *this* criminal in *this* case.

Where do I stand? I'm a journalist. I also feel strongly that the long-term needs of the community outweigh the short-term needs of individuals. I'm for protecting the sources and the journalism they support. But I only say that knowing that my position is not *the* ethical one, but *an* ethical one.