

Opinions

Dana Milbank: In AP, Rosen investigations, government makes criminals of reporters



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By **Dana Milbank** Opinion writer May 21, 2013

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There are various reasons you might not care about the [Obama administration's spying on journalist James Rosen](#) and [labeling him](#) a “co-conspirator and/or aider and abettor” in an espionage case.

Liberals may not be particularly bothered because the targeted journalist works for Fox News. Conservatives may not be concerned because of their antipathy toward the news media generally. And the general public certainly doesn't have much patience for journalists' whining.

But here's why you should care — and why this case,

Dana Milbank
writes about

along with the administration's broad snooping into [Associated Press phone](#)

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writes about political theater in the nation's capital. He joined the Post as a political reporter in 2000. [View Archive](#)

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[Viewing this Associated Press photo records](#), is more serious than the other supposed Obama administration scandals regarding Benghazi and the Internal Revenue Service. The Rosen affair is as flagrant an assault on civil liberties as anything done by George W. Bush's administration, and it uses technology to silence critics in a way Richard Nixon could only have dreamed of.

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To treat a reporter as a criminal for doing his job — seeking out information the government doesn't want made public — deprives Americans of the First Amendment freedom on which all other constitutional rights are based. Guns? Privacy? Due process? Equal protection? If you can't speak out, you can't defend those rights, either.

Beyond that, the administration's actions shatter the president's credibility and discourage allies who would otherwise defend the administration against bogus accusations such as those involving the Benghazi "talking points." If the administration is spying on reporters and accusing them of criminality just for asking questions — well, who knows what else this crowd is capable of doing?

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When Rosen and I covered the Bush White House together a decade ago, I knew him as a scrappy reporter who had a fascination with [Watergate](#) trivia. He later wrote a sympathetic [biography](#) of John Mitchell, Nixon's disgraced attorney general. Now he's learning just how abusive a Justice Department can be, from an administration that has launched more leak prosecutions than all previous administrations combined.

My Post colleague [Ann E. Marimow](#), who [broke the Rosen story](#), obtained the affidavit by FBI agent Reginald Reyes seeking access to Rosen's private e-mails. In the affidavit, Reyes stated that "there is probable cause to believe that the reporter has committed or is committing a violation" of the law against national security leaks. The [affidavit detailed](#) how the FBI had monitored Rosen's comings and goings from the State Department and tracked his various phone calls with the suspected leaker, analyst Stephen Jin-Woo Kim.

The administration snoops had spied on Rosen enough to know of his Watergate hobby: his Gmail address named

for the Nixon aide who installed the secret taping system, and Rosen's "clandestine communications plan" (a modern-day version of Bob Woodward's fabled flowerpot) in which an e-mail containing one asterisk meant Rosen should contact Kim.

Rosen's supposed crime? Reyes got his evidence from an e-mail from the reporter: "I want to report authoritatively, and ahead of my competitors, on new initiatives or shifts in U.S. policy, events on the ground in [North Korea], what intelligence is picking up, etc. ... I'd love to see some internal State Department analyses. ... In short: Let's break some news, and expose muddle-headed policy when we see it, or force the administration's hand to go in the right direction, if possible."

That is indeed compelling evidence — of good journalism.

And how did Rosen commit this crime? Kim told investigators Rosen is a "very convincing, persistent person" who "would tell me I was brilliant and it is possible I succumbed to flattery."

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Only in this Justice Department could flattery get you a prison term.

President Obama's spokesman, [Jay Carney](#), told reporters that there must be a "balance" between a free press and leaks that "can endanger the lives of men and women in uniform and other Americans serving overseas."

True, but the 2009 reports that prompted the probe confirmed what was already conventional wisdom, that [Kim Jong Un was likely to replace his father](#), Kim Jong Il, as North Korea's leader, and that there were worries that North Korea would respond to new sanctions by launching a third nuclear test. As it happens, the intelligence was wrong, and Pyongyang didn't launch another test at the time.

Carney told the White House press corps Tuesday that [Obama doesn't think "journalists should be prosecuted for doing their jobs"](#) (perhaps he could remind the FBI of that), and the administration has renewed its support for a media shield law (a welcome but suspicious gesture, because the White House thwarted a previous attempt to pass the bill).

If Obama really is "a fierce defender of the First Amendment," as his spokesman would have it, he will move quickly to fix this. Otherwise, Obama is establishing an ominous precedent for future leaders whose fondness for the First Amendment may not be so fierce.

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