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The Issue of Liberty

By ANTHONY LEWIS

ABROAD AT HOME

WASHINGTON, Oct. 8—Mrs. Kay Worden is a Weston, Mass., housewife who feels deeply about the Vietnam war. During the Republican convention she put a mildly phrased advertisement in The Miami Herald asking people to write to President Nixon about the war. She also took a room in the Hotel Fontainebleau and said in the ad that she would be there to talk to anyone interested.

Some things happened when people tried to reach Mrs. Worden at the Fontainebleau. Some were told that there was no room there in the hotel. They were asked whether they were going to disclose in the ad and told they could not be contacted unless they answered a questionnaire. Some were not even contacted at all. A hotel official, when asked about the business, spoke of "security."

Mrs. Worden has had legal advice since then and she plans shortly to bring a suit against the hotel, the Republican party and the Federal Bureau of Investigation. Her claim will be that they monitored her telephone calls and harassed the callers. When she talks about the affair, she sounds more puzzled than angry. She says she just wants to find out who was doing what. "If asking people to write to the President is a danger to so many, then somebody around here doesn't want democracy."

Officials of the Government or the Republican party were not involved in the Kay Worden episode, it would hardly be surprising. For one of the most significant qualities of the Nixon Administration is its insensitivity in matters of personal liberty.

Wiretapping is one example. The Justice Department has made a point of the small number of wiretapping authorizations it has sought and obtained from the courts—285 in the year 1971—but those are the taps under law. What is more interesting is the tapping done without any legal authority—until recently under a claim of inherent national security power that the Supreme Court unanimously rejected.

No one knows how many telephones had been tapped or how many conversations overheard in the name of security. No statistics are published. But enough of this activity surfaces from time to time in court cases to suggest that it is substantial.

On a number of occasions recently the Justice Department has chosen not to proceed with a case rather than to disclose the facts of its wiretapping. When asked to provide a list of those, the department over a week did not provide an answer. But the press has reported at least half a dozen examples in the last three months.

In July the Government dropped assault charges against a leader in 1971 antiwar demonstrations, Bradford Lyttle. Prosecutors said Lyttle had been overheard in several security surveillances that they did not want to disclose. A case against Alvin Hoffman was dismissed on similar reasons and so was one against some "white panthers."

In August the Justice Department abandoned a perjury prosecution of Leslie Barron, who had been questioned by a grand jury about the 1971 bombing of the Capitol. It did so when asked to disclose any electronic surveillance of Miss Barron.

In September the contempt charges against Bobby Seale arising out of the Chicago conspiracy trial were dropped; the U.S. attorney in Chicago explained that it would be "antithetical to our national security" to let Seale's lawyers see transcripts of electronic eavesdropping on him. And a Federal Court of Appeals dismissed contempt charges against four antiwar veterans who had refused to testify before a grand jury; the court acted, it said, when the Government failed to deny the use of illegal telephone taps on the men.

These published instances sound like the tip of an iceberg of electronic surveillance on alleged security grounds. And of course we know also that in Daniel Ellsberg's case tapping intruded in the essential privacy of the relationship between a defendant and his advisers—and that Republicans right up into the White House did not hesitate to tap and physically invade Democratic headquarters.

Wiretapping is only one area of insensitivity to the right of privacy and civil liberties generally. Another of great gravity is the Administration's attitude toward the press and publishing. The Nixon Justice Department has called reporters before grand juries, and scholars, to an extent that disturbs many sober men. It has taken the

extraordinary step of harassing the Beacon Press, a respected publishing house, for publishing a text of the Pentagon Papers after the Government Printing Office issued its version. Other examples of pressure and intimidation abound.

For all these reasons, the outlook for individual liberty in this country must be regarded as a fundamental issue in the election campaign. It is not one that is much articulated, or perhaps that can be, but many people are nevertheless aware of its implicit significance.

A President has enormous influence on the state of American liberty. He sets a tone of concern or contempt by his own discourse. Most important, he makes the appointments to the Supreme Court that will define the Constitution long after he has left office. The most disturbing prospect in a second term for Richard Nixon is his likely choice of the prosecutors to police us and the judges to expound our freedoms.