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To Be Let Alone

ESSAY

By William Safire

WASHINGTON—On April 27, 1966, in his only appearance before the United States Supreme Court, Attorney Richard Nixon rose to argue for the individual's right to privacy.

His clients, the Hill family, had brought suit against Life magazine regarding its review of a play, "The Desperate Hours," in which a family was terrorized by escaped convicts. The Hills had gone through the ordeal in 1952 that inspired the play; they had turned down television and magazine offers at the time and moved out of state to escape further notoriety, but the magazine put the spotlight on them again, and in a sensational and inaccurate way, so the Hills took Time, Inc. to court.

The constitutional issue that went to the Supreme Court pitted press freedom against what Louis Brandeis and Samuel Warren had called in 1890 the individual's "right to be let alone."

Mr. Nixon lost the case. In a 5-4 decision, the Court extended the power of the press and diminished the right of privacy.

Surprised observers noted that as a lawyer, Mr. Nixon had argued the case with great skill; not only was his written brief cogent, but in oral argument he more than held his own before the Court with former Judge Harold Medina, the opposing counsel.

Mr. Nixon thought he could have done better. In a lengthy memorandum written the next day to law partner Leonard Garment, Mr. Nixon critiqued his own effort, exploring in detail what other points he might have raised using the Ninth and 10th Amendments "to give redress to private citizens where they are injured by other private citizens."

Mr. Nixon, a genuinely private person, chose to represent this client in this case out of his personal conviction that Justice Brandeis was right—that there was a "right to be let alone," and that it must be vigorously asserted.

In the light of that longstanding personal conviction, how is it that in Mr. Nixon's Presidency, the right to privacy seems to have been taking such a shellacking?

One reason is that the President did not know of the plans or the coverups of burglaries or illegal wiretaps in the Watergate or the Ellsberg cases. I believe that.

Another reason is that the responsibility for protecting national security blinded some men at the top to the responsibility of protecting civil liberty. Abraham Lincoln's suspension of habeus corpus in the Civil War is the worst blot on his record; the defense of the person must go hand in hand with the defense of the people.

That is why the revelation of widespread wiretapping of National Security Council staffers and newsmen, considered legal in 1969, is such a shocker to hardened old hands. The fury over the leaks about Cambodian bombing in 1969 was understandable, since we were bombing Communist supply movements with Prince Sihanouk's silent permission; if it became a matter of public record, it was felt, he would be forced to protest and we would have had to stop, which meant war supplies would get through to kill American soldiers. To find and fire the leaker, however, should not have necessitated such unprecedented and prolonged wiretapping.

Loyalty is a two-way street. If you don't trust somebody, you don't hire him; if you do hire him to a sensitive position, you trust your own careful clearance processes. You don't hire a bunch of possible leakers and clear them after the fact with a web of wiretaps.

What can be done to recoup—what can the President do to reaffirm his past concern for the right of privacy?

We have seen how the President is ready to respond to public reaction to Watergate with proposals to Congress for far-reaching reforms of the election process. This is one of the "uses of adversity"; there is another use possible, since adversity is in such abundant supply.

Six months ago, a suggestion was made to the President for a White House conference on the right to privacy. Perhaps it never reached him, and it is easy to imagine why not, but now might be the right time to "get to the bottom of this"—not by limiting reform to the election process, but by addressing ourselves to the balance between the need for intrusion (whether called "national security" or "the public's right to know") and the right to privacy.

This is not a subject that calls for quick bills to be dropped in the hopper. A new emphasis on privacy would cut all kinds of ways: into credit-bureau and welfare snooping; into court-ordered investigation of wrongdoing; into the hubris of a triumphant press. Nobody can be quite sure in which direction one's knee should jerk.

No power center has the right to be let alone, but people do. The time has never been so ripe for a reassertion of the right to privacy, and if the President can use the current mood to increase the sum of personal freedom, he would make the desperate hours of 1973 worthwhile.