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When does press freedom cross the line?

The case was about two good things: the First Amendment’s guarantee of press freedom and a citizen’s right to privacy. It’s a tension that resonates strongly even now, in a charged political atmosphere full of debate about truth, lies and the role of the media.

But this decision came half a century ago. *Time Inc. v. Hill*, decided in 1967, was the first U.S. Supreme Court case to try to define a balance between privacy and free-press rights. In a case in which the plaintiff was represented before the court by Richard Nixon, the publishing giant won a 6–3 decision.

In a new book, *Newsworthy: The Supreme Court’s Battle Over Privacy and Freedom of the Press* (Stanford University Press), Professor Samantha Barbas looks at the case, its sensational beginnings and the broader cultural movements behind it.

“It was a very interesting clash of worldviews over the credibility of the media and how much of a pass we should give the press to publish freely,” says Barbas, a legal historian who has written extensively on libel and privacy laws.

“And it came at this historical moment when privacy had emerged as a major concern. The first computers were being used, and there were concerns about data collection and aggregation, marketing, mailing lists. You had a public that was really sympathetic to the idea of privacy. But it was also a time when Americans saw press freedom as something to be proud of, a distinction we had during the Cold War. So these two very powerful forces were in conflict.”

From Newsworthy:

Nixon prepared obsessively for his performance. He memorized the trial record, relevant precedents, and dozens of law review articles. As the oral argument neared, he set up “skull sessions” – question-and-answer sessions with his colleagues simulating court argument. As Nixon recalled, “I locked myself up in my office for two weeks. No phone calls. No interruptions. It [took] a tremendous amount of concentration.” His colleague Goldthwaite Dorr commented, “He did his homework. A lot of them don’t, you know. But he made it his own, digested everything. Didn’t care if he exposed his own ignorance to learn a thing. He had to know it.” According to a profile in Harper’s magazine, Nixon “lived, breathed, talked, and thought sixteen hours a day about the case... he was to argue before the Supreme Court.” Nixon was driven to give the best possible performance in his return to the public stage; whether or not he admitted it, he was also enacting his vendetta against the press.

The case was brought by a Pennsylvania family that had been thrust into the spotlight when three escaped convicts took them hostage in their home, holding them for 19 hours before fleeing. Intense media coverage was later followed by a best-selling novel, a play, a movie starring Humphrey Bogart and a spread in Life magazine.

The Hills never wanted the attention – even more so after the various accounts introduced fictionalized details into their story. They sued the publisher Time Inc. under a right-to-privacy law in New York State.

Among the interesting aspects of the research, Barbas adds, was examining Nixon’s voluminous handwritten notes, hand-written on yellow legal pads. (He took the case during the so-called “wilderness years” between his defeat in the California governor’s race in 1962 and his successful run for president.)

Barbas also found, in the Library of Congress, memos between the justices showing that the decision almost went the other way. At the last minute, she explains that Justice Hugo Black was able to persuade his colleagues that a ruling for the Hills would cripple press freedom, and in the end the ruling went in favor of Time Inc. “That was the most fascinating part,” she says, “to see how the personal politics on the court affected the decision.”

She notes that the decision didn’t establish a definitive guideline. “The court has never really drawn the line firmly as to when freedom of press has to cede to privacy,” Barbas says. “We’re in a very pro-privacy moment in the culture now. On the other hand, we can see how imperiled freedom of the press is as well.”