

Nixon, Aides Lose Suit On Wiretap

Judge Rules Rights Of Halperin Were Violated by Action

12-17-76
By Timothy S. Robinson
Washington Post Staff Writer

Former President Nixon, his White House chief of staff, H.R. Haldeman, and former Attorney General John N. Mitchell violated the constitutional rights of a former National Security Council aide by allowing a wiretap to remain on his home telephone for 21 months, a federal judge ruled here yesterday.

The former NSC aide, Morton Halperin, elated at learning the ruling by U.S. District Court Judge John Lewis Smith Jr., said he believes it marks the first time a private citizen has won a lawsuit against the conduct of a sitting President.

The ruling also marks the first time that a federal court has found that Nixon—who was pardoned for any criminal violations that might have occurred during his administration—personally committed illegal acts that specifically violated the U.S. Constitution.

The judge held that Nixon, Mitchell and Haldeman must pay monetary damages to Halperin for the violations of his right to privacy and freedom of expression. The amount will be determined later by the judge.

By their actions and inactions, the three most powerful persons in the Nixon administration allowed the taps—originally placed in an attempt to seek alleged leaks of classified information to the press—to develop into a “dragnet which lacked temporal and spatial limitations,” Smith said.

“The evidence here reflects a 21-month wiretap continuance without fruits or evidence of wrongdoing, a failure to renew or evaluate the material obtained, a lack of records and procedural compliance, a seemingly political motive for the later surveillance and dissemination of reports, and an apparent effort to conceal the

wiretap documents,” Smith said.

However, Smith ruled at the same time that Secretary of State Henry Kissinger and several other government officials also sued by Halperin did not violate Halperin's constitutional rights in connection with the same wiretap.

Smith found that Kissinger's role was “inactive” although Kissinger had initially named Halperin as a tap possibility and had a “lack of oversight authority” in the tap program.

Kissinger said yesterday he would not comment on the decision except

See WIRETAP, A4, Col. 1

WIRETAP, From A1

to say, “I am gratified by the decision regarding my role.”

The ruling by Smith climaxed three years of litigation that pitted Halperin—who left the National Security Council after his disenchantment with the Nixon administration's position on the Vietnam War—against the numerous high-level officials involved in the wiretap that had been placed on his telephone.

The evidence amassed during the case has provided the most detailed public look ever at the manner in which the nation's law enforcement



By Ken Felt—The Washington Post

Mrs. Morton Halperin, right, and son Mark, 11, wait with court papers for Halperin to emerge from a mobile lounge after his arrival at Dulles Airport.

machinery operates in the murky area of so-called "national security" wiretaps.

Persons have testified in the case about the endless hours that FBI agents spend listening to personal telephone calls of "national security suspects" and how, for decades, handwritten records were kept by a telephone company official in a locked desk drawer to keep track of the "national security" requested by the government.

But more particularly, the case has outlined the unusual procedures in which the FBI and other government officials handled the 17 wiretaps of newsmen and government officials who were suspected by former President Nixon of leaking allegedly classified material to the press.

Smith's 16-page opinion spelled out the atmosphere that existed in the early Nixon administration months in 1969:

"Between February and April of 1969, Nixon administration officials grew increasingly concerned about leaks to the press of certain foreign policy documents and classified information.

"The leaks related to United States policies in Vietnam, China, the Soviet Union, Europe and the Mideast."

Nixon, Kissinger, Mitchell and then FBI director J. Edgar Hoover met to discuss the problem of leaks and the use of wiretaps to seek the source of such leaks, Smith recalled. On May 9, a New York Times article reported the secret bombing of Cambodia by the U.S. Air Force, and the tap program was instituted that same day.

Halperin was one of the first four persons tapped, with his lines being monitored by 6 p.m. on May 9. Mitchell did not give his official authorization for the tap until three days later, the government admitted.

Ultimately, a total of 17 such wiretaps were placed.

The tap on Halperin's telephone remained until Feb. 10, 1971, despite objections from some FBI officials that the tap was a waste of manpower. Subsequently, files concerning the wiretaps were removed from the FBI's custody and kept in a safe in the White House office of domestic affairs adviser John D. Ehrlichman.

The government's failure to produce the documents concerning the wiretap led to the dismissal of the criminal case involving antiwar activist Daniel Ellsberg's release of the Pentagon Papers, because Ellsberg had been picked up on the undisclosed tap on Halperin's telephone.

Halperin filed his suit in June, 1973, on constitutional grounds, as well as on the grounds that the wiretap was in violation of a 1968 federal wiretap criminal statute. Under the wiretap statute, Halperin asked for damages of \$100 a day for the duration of the tap.

The defendants contended, however,

that prior court interpretations of the law held them immune from liability.

Smith agreed, saying they "should not be held to have acted at their peril in this vacuum. In view of the confused state of the law and the 30-year history of similar executive actions, . . . (the decision by government officials that the 1968 law was) inapplicable to the Halperin wiretap was reasonable."

But, Smith continued, the

"compatibility of the wiretap with the Fourth Amendment is a different matter."

Although the President and his aides might have felt the initial reasoning for the tap was legal, Smith said, it became illegal when it stayed on Halperin's telephone for a long period of time without proper oversight.

The lengthy tap "represents the antithesis" of the Fourth Amendment to the Constitution, Smith continued. "For these reasons . . . the court finds the wiretap per se (on its face) unreasonable under the Fourth Amendment and unjustified by any possible exception thereto."

Smith said Nixon was specifically liable for damages because he initiated and oversaw the program without any specific limits on the length or breadth of the monitoring. Mitchell was found liable because he failed to review the need for the wiretaps regularly, and Haldeman was found liable because he read the material gathered from the wiretap for more than a year without recommending that the tap should end and used information gathered from it for political purposes.

"Regardless of intention," Smith ruled, "they violated plaintiffs' basic constitutional right to freedom from unreasonable search and seizure. Like any other citizen, these officials are charged with knowledge of established law and must be held accountable for personal misconduct."

Smith dismissed charges against the following defendants:

- Former White House Chief of Staff Alexander Haig, who was an assistant to Kissinger when the taps were placed.

As with Kissinger, charges were dis-

missed because his role was "inactive" after the initial supplying of names to the FBI as possible tap targets.

- Former FBI assistant director William C. Sullivan. Smith said his actions "appear to have been both reasonable and grounded in good faith." Smith noted that Sullivan recommended on several occasions that the tap be removed.

- Former Assistant Attorney General Robert C. Mardian. Smith said he concealed wiretap records after-the-fact by aiding in their removal from the FBI and this does "not constitute a fresh violation" of Halperin's rights. Smith described Mardian's actions, however, as "reprehensible."

- Former White House aide Ehrlichman, Smith said there was no proof he had any responsibility for the initiation, continuation or termination of the tap.

- The C&P Telephone Company. Smith said the company "argues persuasively" that it merely acted in a limited technical role at the direct request of the highest government officials by placing the taps.

The Watergate special prosecutor's office investigated the Nixon tap program, but found that no criminal violations had occurred.

Javits Calls for Steps To Protect the Pound

Associated Press

Sen. Jacob K. Javits (R-N.Y.) said yesterday that the United States, West Germany and Japan should prepare to underwrite loans to Great Britain to guard against a collapse of the pound.