

Judge: Nixon Must Testify On Wiretap

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In an unprecedented decision, former President Richard M. Nixon was ordered yesterday by a U.S. judge here to answer questions under oath about his role in authorizing a so-called national security wiretap on a former White House aide.

The decision by U.S. District Court Judge John Lewis Smith Jr. is the first time a federal court has directed a former President to testify as a witness in a civil suit.

In rendering the decision, Smith specifically rejected Mr. Nixon's contention that he had blanket privilege against testifying about acts that occurred during his administration.

The judge wrote in part that because the tapes began six years ago, "disclosure will not impede the executive decision-making process, embarrass participants in the decision or deter frank discussions by government officials."

Nixon's attorneys had opposed the questioning, claiming the former President had a blanket privilege of confidentiality that barred his being asked about his acts while in office.

A similar Nixon claim in the Watergate criminal investigations was rejected by the Supreme Court, a decision that resulted in the release of the Watergate tapes.

Judge Smith's decision came in a suit filed by former national security council aide Morton Halperin, whose home telephone was tapped for 21 months on President Nixon's orders.

The tap was part of a program to stop suspected leaks of classified information.

Mr. Nixon has claimed the wiretap, one of 17 he ordered placed on newsmen and government officials as part of the campaign against suspected news leaks, was a legitimate exercise of his function to protect the national security. Halperin is claiming in his suit that the taps were used to gather political information and were illegal.

See HALPERIN, A14, Col. 1

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HALPERIN, From A1

Judge Smith said in his ruling yesterday that even if a former president could claim a privilege against testifying in some law suits about his presidential acts, Mr. Nixon's general claim cannot be allowed in this specific case.

Smith said in his ruling yesterday that "it is questionable" whether a President can invoke a claim of presidential privilege after he has become a private citizen.

Mr. Nixon, Secretary of State Henry Kissinger, and former White House aides John Ehrlichman and H. R. (Bob) Halperin are among the defendants being sued by Halperin.

Halperin's attorneys, John Shattuck and Walter Slocombe, said they intend to question Mr. Nixon in four specific areas—his reasons for beginning the tap on Halperin, the distribution and use of information received from the taps, his reasons for continuing the tap, and his attempts to conceal records after the wiretap ended.

The deposition is scheduled to be taken in California, where Mr. Nixon lives on his San Clemente estate.

Mr. Nixon's attorneys could not be reached for comment yesterday concerning a possible appeal of Judge Smith's ruling.