

Halperin Hails Victory for

By Lawrence Meyer
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Morton Halperin went to work for the United States government in a difficult period.

He stayed on when Richard Nixon became President in 1969, despite his doubts about Nixon's goals, because he said he thought it was important to fight for things he believed in. And yesterday, after more than three years of litigation, he found himself victorious in a law suit that may well become a landmark in American constitutional history.

Halperin, 38, came to Washington to work for the Defense Department in 1966 as the United States was expanding its role in the war in Vietnam. Halperin came from Harvard, where he had been an assistant professor of government after earning his doctorate in international relations from Yale University.

He moved up through the bureaucracy from a special assistant to an assistant secretary of Defense to the position of deputy assistant secretary of Defense for international security affairs.

Halperin had three concerns in the closing days of the Johnson Administration—the war in Vietnam, strategic arms limitation and returning control of Okinawa to Japan. When the Democrats lost the election in 1968, Halperin worked on the transition from the Johnson to the Nixon administration and opted to stay on with the new administration because he thought he would be able to continue to work on those issues.

Within nine months after Nixon took office, however, Halperin found that his hopes would not be realized and he resigned his position as a senior staff member on the National Security Council, then under the direction of Henry Kissinger.

What Halperin did not know at the time was that from May, 1969 until about 21 months later, the FBI had a wiretap on his phone and listened to every conversation conducted over that telephone. Beyond what he called yesterday "the general Washington paranoia that we were being wiretapped," Halperin said that neither he nor his wife really believed that it was happening to them.

When he found out in 1973—as part of the disclosures flowing from the Watergate scandal—that he had been wiretapped, Halperin sued Nixon, former Attorney General John N. Mitchell, Henry Kissinger and several other government officials. The decision handed down yesterday exceeded the expectations that Halperin said he had when he filed his suit.

"I think my expectations were that after a long struggle, we would get the tap declared illegal, something the judge just assumed (in his opinion), but I did not think that we would get damages," Halperin and his lawyers believe that the decision handed down yesterday by U.S. District Judge John Lewis Smith Jr. marks the first time that a private citizen has won a suit to collect damages from a President of the United States.

Halperin discussed the case as he drove home from Dulles Airport after his return from a series of lectures at San Francisco. He was greeted at the airport by his wife, Ina, and his three sons, David, Mark and Gary, all of whom were parties to the suit because

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all their conversations had been wiretapped.

Halperin spoke about the decision without bitterness, expressing disappointment only that Kissinger had not been held responsible along with Nixon, Mitchell and White House official H. R. Haldeman.

"I remain convinced in my belief that (Kissinger) played a major part in the decision to wiretap me," Halperin said. But he added that he did not know what further action he might take against Kissinger, who is a defendant in similar suits brought by others who worked for him on the National Security Council in the early days of the Nixon administration.

From Halperin's point of view, the judge's opinion reaffirmed a basic constitutional principle.

"What it says is that even the highest officials—including the President of the United States—are bound by the Constitution in how they deal with private citizens," Halperin said. "It rejects the notion of inherent presidential power to violate the Constitution . . . The court's saying that he, like every citizen, is bound by the

Constitution and beyond that a citizen can get damages from him if the President violates the citizen's constitutional rights. So it's a sweeping reaffirmation that all public officials, including the President are strictly limited by the Constitution."

Halperin said he thinks that this suit and the others will help to bring illegal and improper government surveillance of private citizens under control.

"I'm sure that when Nixon, Haldeman, Mitchell and the others discussed this wiretap, the furthest thing from their minds was that they would have to answer in a court of law," he said.

"They believed that there were no cases to contradict them, and no court would tell a President or an attorney general that any action taken in the name of national security is illegal. Here, the judge is saying that it doesn't matter that they mumbled those magic words (national security), that they're bound by the requirements of the Fourth Amendment and they cannot simply go off on their own and do what they want."

Halperin now is director of the Project on National Security and Civil Liberties, sponsored by the American Civil Liberties Foundation and the Center for National Security Studies of the Fund for Peace.

The project he directs assists other citizens in filing suits against the government in cases in which they believe that their privacy has been illegally or improperly invaded by the government.

Halperin said he did not find the experience of working for Nixon or having been wiretapped by him so disillusioning that he would never again work for the government.

"Certainly working for someone one believes in is not at all called into question by this," Halperin said. "I think I would be reluctant to do what I did in the Nixon administration, which was to join an administration whose goals I had grave doubts about on the grounds that somebody had an obligation to go in and fight for things. I don't know whether I'd do that again, although I think I might."