

PRESIDENT NIXON'S new letter on wiretapping substantially eases, though it does not end, the crisis hanging over his Secretary of State. Dr. Kissinger had threatened to resign if he were not cleared of the suspicion that he lied at his confirmation hearing last September in denying having "initiated" wiretaps to plug "national security" leaks in 1969-71. To be sure, on May 22, 1973, Mr. Nixon had accepted full personal responsibility for those taps and had described Dr. Kissinger's role—as the Secretary himself was to describe it in September and thereafter—only as helping supply the names of those who were tapped. Questions then arose, however, about both the accuracy of this version and about the extent of Mr. Nixon's continuing support for it.

First, material was leaked suggesting at first glance certain literal discrepancies between Dr. Kissinger's September testimony and FBI records of the time. Then, a White House tape was leaked in which Mr. Nixon was quoted as saying (on Feb. 28, 1973) about Dr. Kissinger's role in the taps, "he asked that it be done." Finally, when, last month in Salzburg, Dr. Kissinger threatened to resign if his word were not upheld, President Nixon conspicuously refrained from upholding it, thus raising the further question of whether the Secretary of State still enjoyed the confidence of his chief. In the unsparing atmosphere of Watergate Washington, given Mr. Nixon's understandable preoccupation with his own political survival, it was bound to be asked whether by one devious strategy or another, he was letting Dr. Kissinger go.

Well, events have moved on. The Senate Foreign Relations Committee is immersed in its inquiry into whether Secretary Kissinger told it the truth last fall. After hearing a string of FBI witnesses, Chairman J. William Fulbright (D-Ark.) has declared that the alleged Kissinger-FBI discrepancies, even if real, are "not of any great substance." No one else on the committee seems inclined to disagree. As for Mr. Nixon, he waited a long month—a delay itself raising questions—but he then did offer the committee a letter reaffirming his May 1973 statement that in the wiretaps at issue, Dr. Kissin-

ger was "operating under my specific authority" and "carrying out my express orders." So, though Dr. Kissinger himself is to testify on July 23 and General Haig on July 30, the committee now seems disposed to give the Secretary the rousing vote of confidence for which he appealed a month ago. Dr. Kissinger's status in the White House may not be entirely clear but his standing on Capitol Hill is tall. We see no substantial reason to suspect that he will not remain Secretary of State.

That hardly ends the matter of the wiretaps. If their political aspect is fading, their legal aspect is still very much alive. In leaks, Dr. Kissinger has been identified as having given the FBI the names of 13 national security officials and four journalists who were tapped. Of this number, three of his erstwhile national security aides have filed civil suits against Dr. Kissinger (and others) charging that the FBI taps on them—obtained without a warrant or court order—were illegal. The penalty is a fine of up to \$100 a day.

Since being challenged, Mr. Nixon and Dr. Kissinger have claimed that the taps at issue were legal at the time. But this is in dispute. Early on, this administration advanced a claim that, under the 1968 federal wiretap law, it could wiretap or bug without a court order in cases of domestic security or foreign intelligence. In 1972, however, the Supreme Court rejected 8 to 0 the government's contention that it did not need a warrant for domestic security taps. The three suits by former Kissinger aides challenge the contention that no warrant is needed for a foreign-intelligence tap—the kind which the government says applies here. Judge Gerhard Gesell, in his charge to the Ehrlichman jury, asserted, "Even the proper concern of the President of the United States and others in high office to prevent leaks of national security information would not have justified a warrantless search of Dr. Fielding's office without his permission"—a tap, of course, is a search. It should not be necessary to note that rulings in court, not assertions of legality by the government, will determine whether the wiretap law was being properly observed by all concerned, including the President as well as Secretary Kissinger.