

NIXON IS RULED LIABLE IN HALPERIN WIRETAP

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Judge Says the Former President and 2 Aides Must Pay Damages

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WASHINGTON, Dec. 16—A Federal District Court judge ruled here today that former President Richard M. Nixon and two members of his Administration had deprived Morton Halperin and his family of their constitutional rights by having their home telephone tapped for 21 months.

In a strongly worded opinion, Judge John Lewis Smith Jr. said the surveillance of Mr. Halperin, a former White House aide, "constituted an invasion of plaintiffs' privacy and freedom of expression. For these reasons the court finds the wiretap per se unreasonable under the Fourth Amendment and unjustified by any possible exception thereto."

He ordered Mr. Nixon, John N. Mitchell, the former Attorney General, and H. R. Haldeman, Mr. Nixon's White House chief of staff, to pay damages to Mr. Halperin and his family. The amount of damages will be set by the judge after further information is supplied by the parties to the case.

It was the first time, several legal experts said, in which a former President

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Morton Halperin

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has been liable in court for official actions taken while he was in office. It was also apparently the first time that a Federal judge had ordered that money damages be paid for an invasion of privacy in a wiretapping case.

Judge Smith found that Henry A. Kissinger, Secretary of State, and Gen. Alex-

ander M. Haig Jr., though involved in arranging the wiretap, had had an "inactive role and the lack of oversight authority" and cleared them of legal liability.

Also cleared of legal liability were Robert Mardian, a former Assistant Attorney General, William Sullivan, former assistant director of the Federal Bureau of Investigation, John D. Ehrlichman, who was chief of the White House Domestic Council, the agents of the Federal Bureau of Investigation who managed the tap and the Chesapeake and Potomac Telephone Company.

Mr. Halperin, reached at an airport near Washington, said that he was "somewhat overwhelmed." He said, "I am pleased that my rights have been vindicated by the court." John Shattuck, the leader of

the team of American Civil Liberties Union lawyers who had pressed Mr. Halperin's case, said they planned to ask Judge Smith to set damages in the range provided for under the Federal wiretap law.

Judge Smith specifically ruled that Mr. Nixon's actions were not a violation of this law. The wiretap law provides that a victim of an illegal wiretap must be paid \$100 per day for each day his conversations have been intruded upon.

Since the Judge found in favor of Mr. Halperin, his wife and their three children against three separate defendants, damages based upon the wiretap formula could amount to \$800,000 to \$1 million.

Neither Mr. Nixon, Mr. Mitchell, Mr. Haldeman nor their lawyers could be reached for comment. An appeal of Judge

Smith's ruling seemed likely, several legal experts said.

Mr. Nixon was subject to prosecution in this case because it was a civil suit. The pardon granted him by President Ford applied to criminal actions committed while Mr. Nixon was President.

Nixon Subject to Civil Suits

Robert Havel, chief spokesman for the Department of Justice, said its lawyers had the opinion under study. He said that their initial impression was that Judge Smith had ruled that the damages must come from the personal funds of Mr. Nixon and his aides.

However, as former Government employees, Mr. Nixon, Mr. Mitchell and Mr. Haldeman may seek to have the Government "indemnify" their official actions and pay the claim.

One Justice Department source said that department lawyers felt the ruling was a "victory" in that Judge Smith had rejected Mr. Halperin's contention that the tap was a violation of the Federal wiretap law. The ruling thus solidifies to some extent the Government's right to conduct electronic surveillance in national security cases.

No Evaluation of Evidence

The telephones of Mr. Halperin, 12 other Government officials, and four newsmen were tapped for varying periods of time between May 9, 1969, and February 1971 as the Nixon Administration ostensibly sought to halt leaks of information about the strategic arms limitation talks and the war in Vietnam.

Judge Smith noted in his opinion that

the tap on Mr. Halperin's telephone had been the longest in duration, that "at no time" was there any attempt to evaluate whether evidence of a crime was being picked up.

He ruled against Mr. Nixon "for having initiated and overseen the program without any temporal or information limits on the surveillance..."

He found that Mr. Mitchell had "failed to carry out review and renewal obligations during the entire 21-month surveillance period" and that Mr. Haldeman had reviewed the tap over a year's time "without recommending termination and for having disseminated the material for the purposes unrelated to the tap's original justification."

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