

# U.S. Urges Private Perusal

Justice Department attorneys asked a federal judge yesterday to examine privately information concerning a wiretap on the home of former National Security Council staff member Morton Halperin.

That information will demonstrate that the wiretaps were legal based on the President's power to order such taps in the name of "national security," the attorneys said.

The request came in a 30-page brief the government filed in a suit brought by Halperin.

Halperin is claiming that the 21-month-long tap on his phone was illegal, and is suing several top former and present government officials under a statute that orders pay-

ment of \$100 a day to a person who is illegally wiretapped.

A similar attempt by the same Justice Department attorneys for a private submission of wiretap information to a judge in a civil case was rejected Friday by U.S. District Court Judge Aubrey E. Robinson Jr. That marked the first time the government had been ordered to disclose wiretap information a civil suit, according to one attorney familiar with such cases.

In trying the strategy again yesterday, the Justice Department cited an earlier ruling by a federal judge here accepting such a private submission in a civil case. The Halperin case is assigned to yet a third judge, U.S. District

Court Judge John Lewis Smith Jr.

Halperin's phone was ordered tapped in May, 1969, upon orders by the President to determine the source of news leaks concerning foreign policy. Halperin's name was submitted to the FBI for investigation by Henry A. Kissinger.

In support of the President's power to order such wiretaps, the Justice Department outlined three distinct problems it said were presented to the administration by the news leaks. These problems were:

- The leaks "created a severe difficulty for the President in seeking to make foreign policy decisions based upon full and frank discussions among all his advisors

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within the government, for few if any discussions or recommendations . . . appeared truly protected from the possibility of subsequent disclosure in the news media."

- ". . . Serious adverse consequences were precipitated on many occasions by the untimely and premature disclosure in the press of confidential foreign policy deliberations."

- Last, and no doubt the most detrimental, was the obvious benefit the disclosure of such information provided the potential enemies of our country, who, for the price of a daily newspaper, could become privy to the innermost deliberations of the Executive."

The Justice Department

asked that a judge examine material concerning the wiretap now so that it does not have to disclose any information to Halperin and his attorneys until a judge has found whether "official misconduct" actually exists.

Such a decision by a judge would protect the "sanctity of the government's files" by preventing "needless rummaging of the government's files where no valid of misconduct is present," the government said.

Justice Department attorneys added that if they are forced to turn over the material to Halperin and his attorney, a claim of executive privilege may be made by some of the official named in the suit.