

Pending Lawsuit by Ex-U.S. Aide Cited

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The Justice Department said yesterday it has not changed its position in refusing to turn over to the Senate Foreign Relations Committee FBI documents that bear on Secretary of State Henry A. Kissinger's role in the wire-tapping of government officials and newsmen.

Release of the documents, which some committee members regard as essential to confirming Kissinger's version of the events leading to the wiretaps, would prejudice a civil suit filed against the government by a

former Kissinger aide, Justice Department officials said.

But department officials did not rule out the possibility that an accommodation may still be reached between Attorney William B. Saxbe and the Senate committee, providing the committee is willing to settle for something less than unrestricted access to the classified documents.

The committee nevertheless has begun attempts to bypass the Justice Department, making a formal request yesterday of the Watergate special Prosecution Force for its copies of the wiretap orders, logs and memoranda.

Moreover, Sen. Clifford P. Case (R-N.J.), a senior member of the committee, said he would favor asking the House Judiciary Committee, if necessary, for copies of the wiretap documents to clear up apparent contradictions in Kissinger's sworn testimony at a confirmation hearing last September.

Both the special prosecutor's office and the House Judiciary Committee, which is conducting an impeachment investigation of President Nixon, have copies of the same wiretap memoranda that the Justice Department has denied the Foreign Relations Committee since February.

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recommendations for such wiretaps," Kissinger responded, "No, I did not." He said the wiretap program was decided upon between President Nixon, then-Attorney General John N. Mitchell and Hoover.

A Justice Department spokesman said yesterday that the basis of its reluctance to hand over the FBI memoranda was a lawsuit filed by Morton Halperin, a former member of the National Security Council staff, who is suing to have punitive damages assessed against the government for invasion of privacy.

"Right now, the view is that we would not want to entertain the thought of turning over documents that would affect pending litigation," the spokesman said. He added that this is consistent with what Saxbe said in a recent letter to the Foreign Relations Committee.

However, the spokesman said Saxbe might entertain a "compromise between the defendant's rights and the needs of a committee conducting serious business."

Sen. J. W. Fulbright (D-Ark.), chairman of the committee, said yesterday he thought Justice Department officials were interested in clearing up the Kissinger matter. "Ultimately, I rather think they will" release the documents, Fulbright said.

Meanwhile, powerful swell of support for Kissinger began building up in the Senate. Several GOP senators attacked the "leaks" alleging that former FBI Director Hoover had identified Kissinger in a memo as the man who initiated wiretaps in 1969 on Kissinger aides suspected of covertly talking to the press.

On the Senate floor, James B. Allen (D-Ala.) introduced a resolution to praise Kissinger, declaring that he had done a "masterful job" for peace, commending him, expressing Senate confidence in his "integrity, sincerity and veracity," and "deep gratitude" for his work for peace.

Among the initial co-sponsors were John Sparkman (D-Ala.), John Stennis (D-Miss.), Carl Curtis (R-Neb.), Henry M. Jackson (D-Wash.), Howard H. Baker (R-Tenn.), Lawton Chiles (D-Fla.), Sam Nunn (D-Ga.), Alan Bible (D-Nev.), Sam J. Ervin Jr. (D-N.C.), Robert P. Griffin (R-Mich.), Walter Huddleston (D-Ky.), John Tower (R-Tex.) and Norris H. Cotton (R-N.H.). By late afternoon, Allen had signed up co-sponsors including Majority Leader Mike Mansfield (D-Mont.).

In Senate floor speeches, Edward J. Gurney (R-Fla.) called reports that Kissinger may have ordered wiretapping of aides in an attempt to stop news leaks an "irresponsible and vicious" media attack. Strom Thurmond (R-S.C.) said "misleading innuendo" being leveled against Kissinger is "scurrilous, dangerous and damaging to our foreign policy."

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The special prosecutor's office had not responded to the Foreign Relations Committee's request by last night.

But sources said the Senate committee had previously asked Special Prosecutor Leon Jaworski's staff whether it had any evidence that Kissinger had lied about the wiretaps, and had been told that it did not.

The core of the controversy is the authorization of national security wiretaps between 1969 and 1971 involving 13 high government officials and four journalists.

Kissinger has repeatedly proclaimed that his own role in the affair was primarily to identify subordinates with access to documents that figured in four major news leaks in early 1969.

The Foreign Relations Committee, when confronted with Kissinger's threat to resign unless the allegations about his testimony are cleared up, agreed Tuesday to review the wiretapping decisions.

Last Sept. 10, according to a committee source, Case and ranking majority member John J. Sparkman (D-Ala.) were permitted to read a 30-page FBI summary of the government's wiretap actions, and were orally briefed on the decisions leading to the wiretaps.

The meeting, held in Case's Capitol Hill office, was attended by then-Attorney General Elliot L. Richardson, then-Deputy Attorney General William D. Ruckelshaus, Kissinger and committee aides.

Case said yesterday that what the Justice Department showed him and Sparkman was not a full report on the wiretaps with all supporting documents, but rather a synopsis prepared by the FBI for the Justice Department.

Case said the synopsis indicated that Kissinger had named persons to be wiretapped, but that Kissinger—as well as Richardson and Ruckelshaus—explained that the decision had already been made elsewhere in the Nixon administration to track down leaks.

"The only thing we saw was a memorandum prepared on this by the FBI, and that went back to them (Justice

officials). We never kept it," Case said.

Case said the summary he was shown at the meeting did not include a memorandum from former FBI Director J. Edgar Hoover saying that Kissinger, in a May 9, 1969, telephone conversation, had initiated the wiretaps.

The memo, the contents of which were reported in The Washington Post yesterday, appeared to contradict Kissinger's assertions that he merely supplied names for a project initiated by others.

Sparkman also said yesterday he had never seen the memo. "I've never heard of it before. No, no, no, never did I hear of such a thing," Sparkman said.

The summaries shown to Case and Sparkman included capsule reports on 17 wiretap cases, each starting off with the name of the person under surveillance and followed by a code letter indicating the name of the official who had named the object of the tap.

At least several of the capsule summaries, according to Case, indicated that the name of the person tapped had been supplied by Kissinger.

Richardson said yesterday that at the Capitol Hill meeting "it was made clear that there were discrepancies between several of the documents in the files and Dr. Kissinger's recollection."

However, Richardson added that Kissinger "explained those discrepancies to the (group's) apparent satisfaction."

Source said that Carl Marcy, then the committee chief of staff and a participant in the Sept. 10 meeting, took notes and wrote a summary of his recollection of what was said.

Subsequently a staff report prepared in April concluded that no information had been uncovered that contradicted any "major elements" in Kissinger's confirmation testimony, sources confirmed yesterday.

Last Friday, in testimony before the committee, Kissinger repeated his earlier assertions that he did not initiate or originally request the investigative process.

Asked by Sen. Edmund S. Muskie (D-Maine), "did you initiate any