

# Kissinger Affidavit Cited White House

Special to The New York Times

WASHINGTON, July 18—Following is the text of an affidavit given by Secretary of State Kissinger on behalf of the President in the lawsuit growing out of the burglary of the office of Dr. Daniel Ellsberg's former psychiatrist.

Henry A. Kissinger, being duly sworn, deposes and says:

1. I am the Secretary of State of the United States and am also assistant to the President for national security affairs, a position I have held since Jan. 20, 1969.

2. I submit this affidavit in connection with defendants' opposition to the plaintiffs' motion to compel discovery of the defendants in the present action, and specifically for the purpose of providing the court with a statement of the events pertinent to the electronic surveillance of Dr. Morton H. Halperin, which I understand was instituted by the Federal Bureau of Investigation on May 12, 1969, and terminated on Feb. 10, 1971.

3. The early months of this Administration were particularly sensitive times with regard to the formulation of this country's foreign policies and the establishment of our future relations with other nations. During this period, policies were being considered which would establish the fundamental approach to major foreign policy issues such as the United States' strategic posture, Strategic Arms Limitation Talks (SALT), Vietnam and many other national security issues. Because of the sensitive nature of these matters, the secrecy of each was of vital importance and the success or failure of each program turned in many instances upon the maintenance of the necessary security.

However, notwithstanding the critical need for such security during this period, we were confronted with leaks to the press of information of the greatest importance to the national security. These leaks included discussions of National Security Council deliberations, intelligence information, negotiating positions and specific military operations. In several cases, significant consequences resulted from these premature releases of internal policy deliberations. In addition, the release of such classified information had obvious benefit for potential enemies of this country. Of particular concern to the President were news leaks which occurred from early April until June of 1969, involving Vietnam policy, strategic arms and the Okinawan reversion.

4. With respect to Vietnam, where the President was determining his broad policy for dealing with the war, both

as to negotiating positions and military strategy, news leaks regarding such plans appeared frequently in the press. For example, following a meeting of the National Security Council on March 28, 1969, the President directed that studies be conducted on several subjects associated with a settlement of the war in Vietnam, including a study of alternatives for a unilateral withdrawal. The study directive was issued on April 1, 1969, and within a week thereafter an article appeared in The New York Times on April 6, 1969, by Max Frankel revealing that the Government was considering unilateral withdrawal from Vietnam. Similarly, in May of 1969 it was decided that the United States could make an initial troop withdrawal from Vietnam, and shortly thereafter articles appeared by George Sherman in the June 3, 1969, edition of The Evening Star, and by Hedrick Smith in the June 4, 1969, New York Times, forecasting this decision and announcing that it would be made public following the President's meeting with South Vietnam's President Nguyen Van Thieu on Midway Island the following Sunday.

Each of the above disclosures was extremely damaging with respect to this Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, the decision was extremely important in that it reflected a fundamental change in United States policy. For the South Vietnamese Government to hear publicly of our apparent willingness to consider unilateral withdrawals, without first discussing such an approach with them, raised a serious question as to our reliability and credibility as an ally. Similarly, though in a reverse context, these disclosures likewise impaired our ability to carry on private discussions with the North Vietnamese, because of their concern that negotiations could not, in fact, be conducted in absolute secrecy.

Militarily, a decision was made in early March of 1969 to conduct a series of B-52 bombing raids on North Vietnamese sanctuaries just inside the border of Cambodia. Because of the sensitivity associated with Cambodian neutrality and the tacit support for such action by Cambodia's Prince Norodom Sihanouk, it was extremely important for diplomatic reasons that these raids remain secret and stringent security precautions were taken to insure that this military operation was not publicly disclosed. Yet notwithstanding all such efforts to maintain the security of this operation, an article appeared in the May 9, 1969, edition of The New York Times by William Beecher, attributed to Administration sources, accurately summarizing the conduct of these raids. While there

were obvious adverse diplomatic repercussions from this disclosure, its greatest effect was to raise a serious question in the mind of the President as to the ability of the Government to maintain the necessary security required for this and other sensitive military and diplomatic operations, and whether in the future he could make critical foreign policy decisions on the basis of full and frank discussions.

5. Several other examples of critically sensitive press disclosures occurred during this period with regard to the development of our position on strategic arms in preparation for SALT negotiations with the Soviet Union.

First, on Jan. 20, 1969, the President directed that an over-all study be conducted of the United States' strategic force posture. A fundamental requirement of this study was to determine what programs should be adopted to insure the credibility of this country's deterrent capability. The study was conducted and included an analysis of five options to support strategies ranging from emphasis on offensive capabilities at one end, to heavy reliance on antiballistic missile systems at the other. Cost estimates for each of the alternative force postures were included; alternative force postures were included; strict security in the preparation and handling of this report, an article by William Beecher appeared in The New York Times on May 1, 1969—prior to consideration of the report by the National Security Council—setting forth an accurate description of the options as well as a close estimate of the range of costs involved.

#### Report on Soviet Missiles

In addition to the above study, the United States Intelligence Board (USIB), composed of representatives of the intelligence community, had been engaged for several months in an analysis of the Soviet Union's testing of missiles, and in early June of 1969 concluded their review and issued a report, which was extremely closely held, setting forth their estimate of the Soviet Union's strategic strength and possible first strike capability. Because the USIB's assessment varied in its degrees of certainty from earlier statements and reports made by other defense experts in support of the need for the Safeguard ABM System, any public disclosure of the USIB report would provide a useful signal to the Soviet Union as to the disagreement within our Government and the efficacy of our intelligence system. It would also prematurely reveal the intelligence basis on which we were developing our position for the impending strategic arms talks. On June 18, 1969, the fact of the interagency disagreement and opposing agency positions were printed

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# Concern on Leaks of Sensitive Information

in a New York Times article by Peter Grose.

Each of these disclosures was of the most extreme gravity. As presentations of the Government's thinking on these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessments of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities. Perhaps more important, evidence of leaks of such closely held intelligence assessments raised serious questions as to the integrity of the USIB and created severe doubts about our ability to maintain security in deliberations on national security policy.

6. Also of serious concern during this period was a press leak involving this country's policy toward Japan and our strategy for negotiations on the reversion of Okinawa. Following a late April meeting of the National Security Council, a National Security Decision Memorandum was issued on May 28, 1969, outlining this country's policy toward Japan, and particularly our negotiating strategy with respect to the reversion of Okinawa. This memorandum set forth our desire to retain nuclear weapons on Okinawa but stated, as a fallback position, that we would be prepared to consider the withdrawal of these weapons while retaining the storage and transit rights.

Shortly after this memorandum was completed, and prior to the negotiations with the Japanese, an article by Hedrick Smith appeared in The New York Times on June 3, 1969, stating that the President had decided to remove nuclear weapons from Okinawa once an over-all plan to return the island had been agreed upon. The article noted that the President's decision had not yet been communicated formally to the Japanese Government. The consequences of this disclosure, attributed to well-placed informants, in terms of compromising negotiating tactics, prejudicing the Government's interest, and complicating our relations with Japan were obvious, and clearly pre-empted any opportunity we might have had for obtaining a more favorable outcome during our negotiations with the Japanese.

#### Asked to Submit Names

7. In early May, 1969, after the first several unauthorized disclosures of classified information had occurred, the President consulted the then Director of the Federal Bureau of Investigation, J. Edgar Hoover, and the then Attorney General of the United States, John N. Mitchell, concerning methods to be employed to deal with the problem. The President was told by Mr. Hoover that the most effective method was that

which had been followed in previous Administrations, namely the conduct of electronic surveillance in accordance with specific procedures. The President was assured by Attorney General Mitchell that such action would be in compliance with law.

My office was required by the President to submit the names of those officials who had had access to the information which had been leaked. Obviously, my office was a natural place for this information to exist; and Dr. Halperin, in his position as Chief of the National Security Council Planning Group, was unquestionably one of several persons who had had access to such information.

8. As a result of this position, which he held until Sept. 20, 1969, and as a consultant to the National Security Council until May 13, 1970, Dr. Halperin received extensive exposure to classified information, much of which remains confidential to this day.

Dr. Halperin was involved in the organization, substantive preparation and processing of National Security policy reviews, and his assignments gave him access to fundamental policy issues during the formative and crucial early months of 1969. During the period from January until May, 1969, Dr. Halperin regularly participated, in conjunction with the responsible staff area specialists, in sensitive National Security Council studies. In addition, he also frequently attended National Security Council Review Group Meetings, which I chaired, and which considered a variety of subjects, including the United States strategic posture, strategic arms negotiations, Vietnam, the Middle East and United States trade policies, to name only a few. Dr. Halperin also participated in the preparation of papers for the President's use at meetings with the National Security Council covering a wide range of issues. While performing the above responsibilities, Dr. Halperin devoted particular attention to several speciality areas, including the United States' strategic posture, the SALT negotiations and the war in Vietnam. To maintain his currency in each of these areas, Dr. Halperin regularly received cables to and from Embassies, including limited distribution cables on Vietnam and the Paris negotiations, as well as daily intelligence reports and sensitive intelligence publications.

9. Dr. Halperin's name and the names of other individuals were provided to the Federal Bureau of Investigation for their investigation. On May 13, 1969, I received a letter from Director Hoover indicating that on the basis of independent information available to him, it appeared probable that recent leaks had come "from a staff member such as Morton H. Halperin of the National

Security Council." Director Hoover further stated specifically that "we should not ignore the possibility that Halperin could be the source of a leak" and that he therefore had alerted the bureau's most sensitive sources (i.e., electronic surveillance).

10. However, notwithstanding the investigation of Dr. Halperin and others being conducted by the Federal Bureau of Investigation, and additional governmental efforts to curb the unauthorized disclosure of classified information, press leaks involving Southeast Asia, SALT, the Middle East, NATO and other national security matters continued through 1969, 1970 and 1971. Such disclosures necessitated issuing a memorandum on May 23, 1970, to several Government agencies regarding the SALT negotiations, in which I stated that:

Vital national interests are being jeopardized by leaks to the press concerning the strategic arms limitation talks. No one in the Government is authorized to divulge the United States or Soviet positions to the press or to speculate concerning United States' intentions with respect to the negotiations.

The President has directed that immediate steps be taken to insure that standing directives concerning leaks are adhered to without exception by personnel under your jurisdiction. Prompt and severe disciplinary action is to be taken in the event of violations.

Throughout this period, leaks of information which could have serious adverse effects upon our national security and our relations with our allies continued.

11. From the commencement of the electronic surveillance of Dr. Halperin in May of 1969 until May, 1970, I was provided periodic summaries of the information gained from this surveillance of his conversations which the Federal Bureau of Investigation determined to involve national security. However, in late May of 1970, it was decided that such reports would be directed to the office of Mr. H. R. Haldeman, then an assistant to the President, and that Mr. Haldeman would advise the President, General Haig, then an assistant on my staff, or myself, of information that required our attention. In addition, an informal liaison was maintained between Mr. Sullivan of the Federal Bureau of Investigation and General Haig of my staff, and if the surveillance of Dr. Halperin developed information of sufficient gravity, Mr. Sullivan would call General Haig and either inform him of that fact or call his attention to the fact that a report containing that information had been sent to Mr. Haldeman. I remember only one such event, but there may have been others.