

# Kissinger to Appeal Ruling His Phone Notes Are Public

By Tom House

Washington Star Staff Writer

Former Secretary of State Henry Kissinger will appeal a court decision which says that records of his official telephone conversations are available to the public.

His attorney said yesterday that Kissinger, who deeded the transcripts to the United States under certain restrictions when he left office, requested the appeal as a matter of principle.

He will seek a stay of an order that the papers be turned over to the State Department.

"Dr. Kissinger believes people who spoke to him under the assumption of privacy should not now have their conversations revealed," David Ginsburg, the attorney, said.

**DURING HIS** eight-year tenure in the Nixon and Ford administrations, first as national security adviser and then as secretary of state, Kissinger always had a stenographer listen in on an extension and make notes on his telephone conversations, even many of those involving family and friends.

Under the provisions of the deed, only Kissinger or his appointees had access to the transcripts for 25 years or for five years after Kissinger's

death, whichever was later. After that, access was to be allowed only with the consent or upon the death of the other party to the conversation.

The 33,000 pages of transcripts — which include conversations with both Ford and Nixon as well as foreign heads of state, other Cabinet members, diplomats and legislators — are considered a gold mine for historians and journalists.

The Reporters' Committee for Freedom of the Press and 11 other plaintiffs sought access to the transcripts under the Freedom of Information Act early this year, but were told by the State Department it no longer had the documents, so they did not fall under provisions of the act.

Judge John Lewis Smith, however, ruled yesterday that the transcripts, made by government employes on government time with government equipment, were government property and fell under the act. In his nine-page opinion, he also ruled the papers were "wrongfully removed" from the State Department and ordered their return.

Smith said that Kissinger by his own departmental policy had placed the transcripts in the act's domain. Departmental policy dictated that monitoring of telephone conversations was prohibited except when

"absolutely essential to the conduct of business."

**EVEN IF KISSINGER** should lose his appeal, Smith's opinion by no means guarantees total public access to the transcripts. What Smith did was place them within the purview of the act. Once they are returned, it will be up to the State Department to determine if any of the documents fall within the national security or the privacy exceptions to the information act.

Jack Landau, executive director of the reporters' committee, said the task of his group and the others now is to determine how to most efficiently gain access to the papers without another court suit. Under their suit, the plaintiffs made a number of requests for transcripts dealing with specific events, such as the decision to bomb Cambodia or the final days of the Vietnam War.

Landau said the committee will probably select one small topic for its first request under the act to get the process going.

Landau said the reporters' committee, which was instrumental in getting Congress to retain the Nixon papers as government property, selected the Kissinger transcripts as a freedom of information test case on the applicability of the act to

Cabinet-level papers considered private by their authors. The issue, Landau said, was the apparent ease with which "people in exalted places treated public documents like private papers."

Other plaintiffs in the case in addition to the reporters' committee were the American Historical Association, the American Political Science Association, the Military Audit Project and nine authors and journalists.

**IN HIS AFFIDAVITS** filed in the suit, Kissinger said he had the transcripts made to create a "rough record" of his daily telephone conversations, which he or his staff might refer to in order to follow up on subjects discussed. He said he actually never read them himself, but kept them as a diary.

The transcripts were stored in Kissinger's office, apart from his official agency files, then in late October 1976 removed to a vault at the estate of Vice President Nelson Rockefeller in Pocantico Hills, N.Y. On Dec. 28, 1976, nearly a year ago, the transcripts were transferred to the Library of Congress.

In his ruling, Smith made no distinction between Kissinger's conversations on official topics and private matters, but attorneys said the latter would fall under the privacy provisions of the information act.