

Judge Rules That Government Is Owner

Kissinger Loses Round on Transcripts

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By Timothy S. Robinson
Washington Post Staff Writer

Transcripts of former Secretary of State Henry A. Kissinger's telephone calls during his eight years as the nation's top foreign affairs adviser belong to the federal government instead of to him, a federal judge ruled here yesterday.

The 33,000 pages of transcripts of those calls—secretly typed by secretaries who listened in on Kissinger's telephone conversations with persons ranging from personal friends to heads of states and two U.S. Presidents—were "wrongfully removed" by Kissinger when he left office, the judge said.

U.S. District Court Judge John

Lewis Smith Jr.'s ruling does not mean immediate public access to the material, but only that the government, and not Kissinger, can control access to them. The documents must be returned to the State Department, the judge said.

Kissinger's attorney, David Ginsburg, said he had contacted his client after the ruling and that it would be appealed.

The papers were sought under the Freedom of Information Act by several groups, including the Reporters Committee for Freedom of the Press, the American Political Science Association and the American Historical Association.

A spokesman for the reporters com-

mittee, Jack Landau, said the decision "is a major victory for the underlying principles of the Freedom of Information Act—that agency documents amassed by government officials, no matter how exalted their office, belong to the people and are not, as Mr. Kissinger claimed, private property."

Kissinger said he began his practice of having secretaries monitor his telephone calls while he was a national security affairs advisor at the White House under President Nixon and continued the practice as Secretary of State under Nixon and President Ford.

According to an affidavit he filed

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during the suit, Kissinger said the purpose of the monitoring "was to create a rough record of those of my daily telephone conversations to which I or my immediate staff might wish to refer in order to follow up on matters discussed orally."

When he left office, he asked the State Department legal office whether

he could take the notes with him, and that office said he could. He then took the material to a vault at then-vice President Rockefeller's estate in New York.

In December 1976, Kissinger deeded the material to the United States and arranged to have the document transferred to the Library of Congress. However, the terms of the deed limited access to the papers to Kissinger

or his researchers for the next 25 years or until five years after his death.

An attorney for Kissinger said the major purpose of the postponement was to protect the privacy of persons with whom Kissinger talked.

Kissinger's attorneys argued during the suit that the FOI act did not apply to the Library of Congress, and that the documents are Kissinger's "per-

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sonal working papers" and not agency records subject to FOI requests.

Judge Smith rejected that argument, saying that the papers were the property of the State Department, and thus were subject to the FOI Act, and that Kissinger had improperly removed them from State.

Smith pointed out in his opinion that the State Department requires its secretary to keep records of policy

discussions and that the telephone monitoring could be conducted legally only if it was "absolutely essential to the conduct of business."

"The records in dispute here were produced not only in accordance with department regulations but also on government time and with the aid of department employees, equipment, materials and other public resources," Smith said.

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