

Kissinger's Claim to Data Contradicted

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A Nov. 15 ruling by the National Archives and Records Service contradicts Secretary of State Henry A. Kissinger's claim that records of his telephone conversations while in office are his personal property.

Kissinger has made the claim based on a ruling from State Department Legal Adviser Monroe Leigh. Aides said Kissinger plans to take the extensive secretarial notes of his phone conversations into private life.

Kissinger's copies of official records of his government service are being donated to the Library of Congress, where access to them will be under his control or that of persons named by him for 25 years or five years after his death, whichever is later. However, he does not plan to send the telephone transcripts and summaries to the Library of Congress or to leave copies for government use, according to the State Department.

As matters now stand, the extensive telephone material which includes discussions on crucial matters with many foreign leaders as well as Presidents and other high U.S. officials—may never be disclosed except as Kissinger sees fit in his memoirs or other writing.

Leigh's advice, given orally to Kissinger over recent months and summarized in a Nov. 11 memorandum, was that Kissinger could claim the telephone transcripts as "personal" because he had designated and filed them as such and because "they were retained solely at your discretion" as work aids to help you recall prior conversations and events.

However, a Nov. 15, 1976, bulletin of the National Archives and Records Service—reissuing a ruling of prior

years—defined "personal papers" as "material pertaining solely to an individual's private affairs."

The bulletin, signed by Archivist James B. Rhoads and sent to all government agencies, said that "regardless of any 'confidential label,' correspondence that is 'relevant to the conduct of public business' is an official record subject to provisions of U.S. law."

Criminal penalties of up to a fine of \$10,000 and 10 years in prison are provided for the unlawful removal or destruction of official records. The bulletin said that government agency heads—such as Kissinger—are required to notify the General Services Administration, of which the Archives is a part, of any threatened unlawful removal of records in their custody.

Archivist Rhoads said in a telephone interview that, so far as he knows, the State Department has not consulted his agency about Kissinger's telephone records. Rhoads declined to say whether he believes the Kissinger phone data is a personal or an official record without further study of the matter.

State Department Legal Adviser Leigh said he was aware of the substance of the National Archives bulletin regarding "personal papers" but that he did not believe it was applicable to this case. He did not elaborate.

State Department spokesman Robert L. Funseth asserted Wednesday that a legal opinion of the Justice Department backs up the view that the notes of Kissinger's telephone calls are "personal papers." However, it developed yesterday that the Justice Department opinion covered the narrower question of a Freedom of Information Act request for certain telephone transcripts from Kissinger's service as White House adviser to President Nixon. As described in Leigh's memorandum, the Justice opinion did not address the question of whether the telephone notes are "personal papers."

Funseth said yesterday that, following Leigh's advice, officials of Kissinger's office are reviewing the telephone

transcripts to make extracts or summaries of any "significant government activity or decision." However, he said such extracts were being made only when there is no other record covering the activity or decision in the government's files.

When Henry Kissinger leaves office as Secretary of State next month, he plans to take with him word-for-word transcripts of his telephone conversations.

Kissinger spokesman Robert Funseth says that Kissinger considers the transcripts his personal property and reserves the right to use them in his memoirs. He reportedly has received offers of around \$2 million for such a book.

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