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Objet: Archive Sues State Department Over Kissinger Telcons
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Archive Sues State Department Over Kissinger Telcons

700 Transcripts Still Withheld, Eight Years after Appeal

Threat of suit in 2001 led to recovery of Kissinger documents

Digital National Security Archive has published 15,000 to date

National Security Archive Electronic Briefing Book No. 503

Edited by William Burr

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Washington, DC, Posted March 4, 2015 -- The National Security Archive today filed suit against the State Department under the Freedom of Information Act to force release of the last 700 transcripts of former Secretary of State Henry Kissinger's telephone calls (telcons). The Archive's appeal of State's withholding dates back to 2007.

Kissinger had removed the telcons, along with his memcons and office files, from State when he left office at the end of 1976. A lawsuit by the Reporters Committee for Freedom of the Press to recover the documents failed in 1980 with a Supreme Court ruling that the plaintiffs lacked standing.

President Gerald R. Ford sitting between two bureaucratic rivals -- Secretary of State Henry Kissinger and Secretary of Defense James R. Schlesinger -- during a meeting with Congressional leaders on 29 April 1975 to discuss the collapse of Government of South Vietnam (Photo courtesy of Gerald R. Ford Library, photo number A4383-25A)

The National Security Archive in 2001 crafted a new legal complaint directed at the State Department and the National Archives for abdicating their duty under the Federal Records Act to recover the Kissinger documents, which were produced on government time with government resources. Remarkably, the State Department Legal Adviser William Howard Taft IV agreed with the Archive, asked us to hold off on our legal action, and formally notified Kissinger that he needed to return the documents or complete copies thereof.

When Kissinger did so, in August 2001, the Archive promptly filed a Freedom of Information request for the telcons, and has published 15,502 of the conversations in the Digital National Security Archive series through the online publisher ProQuest.

But the State Department withheld, starting in 2007, some 700 of the telcons, claiming they were "pre-decisional" or covered by executive privilege -- claims that should long since have expired in the case of 40-year-old records. The Archive's formal appeal of the withholding, along with repeated queries by the Archive to State and the White House Counsel's Office about the status of the telcons, have been met only with years of delay, thus making the lawsuit necessary.

The Archive is represented by expert FOIA practitioner David Sobel, a winner of the James Madison Award from the American Library Association for his open government advocacy. Posted today on the Archive web site at www.nsarchive.org are the legal complaint, an overview of the issue by Archive senior analyst William Burr (author of the critically-praised book, *The Kissinger Transcripts*), and six of the most recently released Kissinger telcons as examples of what is at stake in the lawsuit.

Check out today's posting at the National Security Archive - <http://www.nsarchive.org/NSAEBB/NSAEBB503/>

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