

DEPARTMENT OF STATE

DPC 242

TRANSCRIPT OF DAILY NEWS BRIEFING

TUESDAY, DECEMBER 28, 1976, 12:40 P. M.

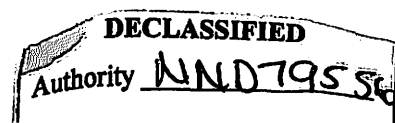
(ON THE RECORD UNLESS OTHERWISE NOTED)

MR. TRATTNER: I have no announcements other than the following, which I would like to read into the record, and it will be distributed to you by someone as I am doing it.

"Secretary Kissinger announced today that he is donating to the United States of America, for preservation at the Library of Congress, the transcribed secretarial notes of telephone conversations during his years in government.

"The notes were made as a memory aid and to insure appropriate administrative follow-up, but were not in themselves action documents. They were never circulated, and any action resulting from the conversations would be contained in the administrative follow-up.

"Nevertheless, to avoid any misinterpretation during his final days in public office, the Secretary has decided to give the notes at this time to the Library of Congress, as part of the gift to the nation of his



personal and public papers which was announced last week. The notes are being donated under a separate deed of gift, because of the significant rights of privacy that may exist for persons who were parties to the telephone conversations. This separate deed of gift incorporates the terms of the original donation. At the end of the time period specified in the original donation, any paper in this group will be available for public access. The sole difference is that if one of the parties to the conversation is still living, his consent must first be secured. A copy of the deed of gift is attached." on the special pr And I believe you also have that in what we have distributed to you now. Secretary has had time to what?

That is the end of the announcement. social privacy is Q. Where is the Washington Post?

Q Is there a list of the people with whom these conversations were held?ivist say?

A Ken, I do not know. I would have to take the question and look into it. hink, a bulletin from the GSA, a GSA bulletin Was the decision made because of the statement made by the archivist? there could be -- and I am only talki A Was the decision to donate these papers,

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these telephone notes, made? there could be no separation between person's private papers.

A Bernie, I do not think that is the right interpretation. I think the answer is that it was recognized that there were certain rights of privacy raised by the notes which were not raised by the other papers. What was clear was that the notes on the telephone conversations were not going to the Library of Congress under the initial donation, and that no decision had been reached at that time. Now the Secretary has had time to focus on the special privacy issue and has reached his decision.

Q Now that the Secretary has had time to what? original's A Has had time to focus on the special privacy issue, and has reached his decision.

Q I am confused.

Q What did the archivist say?

A That was -- it was contained in a -- one of your colleagues cited, I think, a bulletin from the GSA, a GSA bulletin written by or compiled by the National Archivist to the effect that there could be -- and I am only talking from memory, don't quote me exactly. I can't find that one for you, as well.

get it for you later -- that there could be no separation between personal and private papers.

Q No, that is not what -- no. It was that any conversations, any papers, dealing with official business, whether marked personal or not, had to be included in official papers.

Q Why not look it up.

Q But the question here is also, will the copies of the phone conversations be in the official records at the State Department, or will they only be found in the papers that will be given to the Library of Congress?

A It is my understanding that these are originals that are being given and that there are no copies. It is my understanding.

Q But these won't be available except under the 25-year rubric, or the five years after his death.

A Ken, go back to the announcement. I think the answer to your questions is covered there.

Q In other words, the Secretary will not be making any use of these papers himself in this period.

A Henry, I think probably I would have to look into that one for you, as well.

Q Will you?

A Yes.

Q He will be using them himself.

Q He is using them all.

Q Well, I am asking.

Q The sentence here at the end that if one of the parties is still living, his consent must first be secured, does that mean that Secretary Kissinger's acceptance of release on each phone conversation would have to be included as well?

A I can only quote you the statement. I think it says -- "This separate deed of gift" -- that is the one that incorporates the telephone conversations -- "incorporates the terms of the original donation." And then it says, a couple sentences later, "The sole difference is that if one of the parties to the conversation is still living, his consent must first be secured."

I do not know whether I should interpret that for you. I would read it that it is an added condition.

Q Another question, the deed of gift that you have given us is dated 24 December and signed by Secretary Kissinger, and 25 December signed by Mr. Boorstin.

and you say it is announced today, 28 December, and we had, of course, a whole go-around yesterday on 27 December. Is this a case of predating or of the spokesman not being informed?

A Bernie, I am not able to answer that question. I am going to have to stick with what I have given you.

Q Well, it is a serious question in that, is the dating accurate here? Is that Kissinger's real signature, or -- ? We know he is in Acapulco since -- when? He went to Acapulco on the 25th? On the 25th?

Q Yes.

Q So, this was signed by him before he left Washington.

A I would assume so. If you would like me to check that, I will be happy to.

Q The date "24th" has been written in.

A We will have to look into it. I cannot answer you on that from here now.

Q Who wrote that in? Is that the Secretary's handwriting?

Q Do you call that handwriting?

Q Were you advised of any of this yesterday, or is this something you looked into and were given this after you looked into it?

A I was personally not advised of this yesterday.

Q You just got this today, isn't that right, John?

A Excuse me, Joe.

Q You just got this?

A I just got --

Q The exchange today, or the press statement and the copy of the letter. You were made aware of it only today?

A I was instructed on it today, correct.

Q Where are all these papers now, physically, at the White House as well as the State Department?

A The ones we are talking about now?

Q Yes.

A I think all but the most recent notes, Joe, have already been delivered to the Library. ...
Q John, I am still confused about why the Secretary changed his mind. When he first -- we had a legal memorandum from the Legal Office citing case law as well as precedent -- very firm ruling that these were private papers and they remain private -- for the Secretary to deal with them.

Why did he change his mind? I don't understand. You said he focused on the privacy aspect -- privacy of what -- just private right to them, or what?

A No, I think the statement says that the privacy considerations were rights of privacy to persons who were party, or may have been party to the telephone conversation.

Q This says: "The notes are being donated under separate deed of gift because of the significant rights of privacy that may exist. Which simply says that the

people that were first party to the phone conversations have a right in determining who gets to see them.

What made him change his mind?

A I think I said, it was recognized there were rights of privacy which were not raised by the other papers. He has now had time to focus on the issues that arise from that, and has made his decision.

I can't take you beyond that, Ken. One other legal aspect to this:

Some people have sought through the Freedom of Information Act to gain information from these telephone conversations -- whether they were mentioned in them.

Can they, now that they are being donated to the Library of Congress, can they secure what they need from these papers? Or is it officially still being recognized as "personal" papers and not Government papers, and therefore not subject to the Freedom of Information Act?

A Bernie, I would rather not try to answer you on that without looking into it. I will have to take your question, rather --

Q Right.

A -- rather than venture an incorrect.

Q The original grant listed both private and copies of official papers -- and it was a private grant by the Secretary of State.

The original documents stay in the originating agencies -- so these things are then, in effect, still private papers which he is donating to the Library of Congress -- and the original rubrics of gaining knowledge of these things still remain -- cover everything -- right?

So they are still private papers, as far as that is concerned -- he has not changed his mind on that.

A Again, I am not a legal expert, Ken. I would have to check into it and try to get you an answer. I don't --

Q What does the phrase mean: "Nevertheless, to avoid any misinterpretation?" "Misinterpretation" of what?

A Dick, let me just stick with what the statement says.

Q Well what does he say?

A "To avoid any misinterpretation during his

final days in public office."

Q -- But it would have to -- to misinterpret, it would have to misinterpret something. What is the something which is --

A -- I am just going to stay with what I have given you --

Q -- John, maybe it would be helpful if you got either Larry Eagleburger, who is dealing with this, or whatever -- legal people -- to come down and -- maybe who drafted this statement.

There are an awful lot of unanswered questions.

A -- I will look into that possibility, Ken, yes.

Q -- John, what was the volume of the telephone notes? -- In terms of --

A -- Quantity?

Q -- How many cases? Or -- how much -- how many notes are there?

A -- I do not know.

Q -- You have no idea?

A -- No.

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Q But most of them, you say, are now in the Library of Congress.

A All but the most recent ones.

Q The telephone conversations that he had abroad -- he traveled widely -- and on the airplane, and so on.

But those that were at Embassies, or at Foreign Missions abroad -- what happened to those notes? Are they also part of the -- of this gift?

A Again, Joe, I would have to take the question and try to get you an answer.

Q Could we go to another subject, then?

A Is there anything else on this subject that I can, or can't, answer?

O.K., Joe.

Q Well as I said, I suppose what I say about this and your responses to my questions will have to be put on the embargo until 2:00 o'clock; because that is when this --

A There is no embargo on that.

Q Tuesday afternoon?

Oh, he delivered it at 2:00 o'clock?

Q It's been broken.

Q It's been broken, all right.

Referring to Clark Clifford's first public discussion in twenty-eight years of what the information copy here says is the "struggle between the State Department and the White House over recognition of Israel," and on page 10 of this -- of the text of the address that was given to the media, it says that the evidence includes documents that are not found in the recently published volume of Foreign Relations which the State Department put out for use on November 20th last.

Could the Department look into this and see whether or not the documents would be construed as evidence of the -- what Clifford says was "sabotage of Presidential policy?"

Is there published by the Department in some form, as an addenda to the record in the Foreign Relations volume -- that's a --

A Once we can see the text, Joe; and see exactly what Mr. Clifford is going to be saying -- I think we could probably try to check that for you, yes.

Q O.K.

Q The charge is made by Mr. Clifford that the chief of the elements in the State Department who, he said, sought to destroy these Presidential policy -- a partition of Palestine -- was Loy Henderson.

If it runs true, this, about Henderson's activities -- and yet the State Department, the Secretary of State did Mr. Henderson the honor of naming a hall in the State Department after him, as a model of Foreign Service duty to the Government and the people of the United States.

Is it the State Department's view and is it the Secretary of State's view that action of this kind by a Chief of a Bureau -- that apparently -- from Clifford's remarks and from the State Department's own report -- documentation -- indicates that Henderson sought in every possible way, as far as we could see, to block -- in Clifford's own words -- block the policy of the President on partition.

Will the Secretary have second thoughts on this?

A Joe, you are trying to make a connection between an allegation contained in what Mr. Clifford is going to be saying publicly in more than an hour from now -- and the recognition of Mr. Henderson's services to the Country and the Department over a long period of time

-- a demonstrable record which is recognized in the naming of the Conference Room.

I do not think you can make that connection -- at least here and now -- and I really cannot answer your question.

Q Well the point is that the record may not have been -- may have been overlooked.

This happened twenty-eight years ago.

A As I say, we will have to see what Mr. Clifford says, and then we will have to see whether it is contained in this volume that you think it has been omitted from.

Q O.K.

Q Thank you, John.

[Proceedings ended at 12:55 p.m.]

SECOND DEED OF GIFT
AND AGREEMENT

Henry A. Kissinger hereby donates to the United States of America, to be held and administered by the Library of Congress and its officials as part of a collection of the papers of Henry A. Kissinger, additional personal papers consisting of the transcribed secretarial notes of his telephone conversations. In implementing this gift and as conditions to its donation, Henry A. Kissinger and the Library of Congress agree to the following:

1. The terms and conditions of the Deed of Gift and Agreement executed on November 12, 1976, by Henry A. Kissinger and the Librarian of Congress ("First Deed of Gift") are hereby incorporated by reference and extended to the present gift, except as provided in paragraph 2 below.

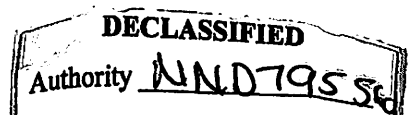
2. At the end of the period of time described in paragraph 4 of the First Deed of Gift, a paper shall be available for public access in the following manner: A committee of three, consisting of the Secretary of State or his designee and two other persons named by the President of the United States, shall decide whether public access to the particular paper is consistent with the foreign policy interests of the United States and whether such access is consistent with the rights of privacy or the protection of the reputations of persons still living. If the committee concludes that both criteria are satisfied, the paper shall be made available for public access. The committee shall consult with a representative of the Estate of Henry A. Kissinger, with respect to rights of privacy of persons still living.

Witnessed and agreed to, this ____ day of December, 1976.

Henry A. Kissinger

Accepted and agreed to on behalf of the Library of Congress, this ____ day of December, 1976.

Daniel J. Boorstin
Librarian of Congress

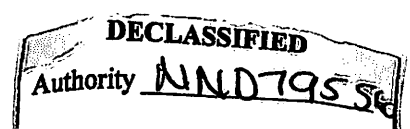


FOR THE SECRETARY:

The attached is a format for signature in case you decide to adopt the last alternative which we discussed on the telephone.

LW McKeelane (Operations Center)
for
Monroe Leigh (dictated)

cc: Mr. Leigh
Mr. Aherne



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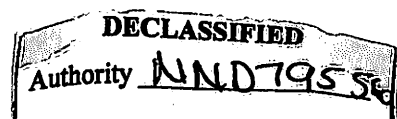
1. The terms and conditions of the Deed of Gift and Agreement executed on November 12, 1976 by Henry A. Kissinger and the Librarian of Congress ("First Deed of Gift") are hereby incorporated by reference and extended to the present gift, except as provided in paragraph 2 below.
2. At the end of the period of time described in paragraph 4 of the First Deed of Gift, any paper included in this Second Deed of Gift shall become available for public access unless one of the parties to the telephone conversation is still living in which case such a paper shall become available for public access only with his consent or upon his death.

Witnessed and agreed to, this day of December, 1976.

Henry A. Kissinger

Accepted and agreed to on behalf of the Library of Congress, this day of December, 1976.

Daniel J. Boorstin
Librarian of Congress



I am today placing all the records and materials listed below ("the Materials") in the custody of the Library of Congress ("the Library") under the following agreement.

I.

1. The Library will be responsible for the preservation and protection of the Materials. I and agents designated by me shall have access to the Materials and shall have the right to obtain photographic reproductions of any documentary materials.

2. The Library will retain custody of the Materials until December 31, 1980. If during that time any legal proceeding commenced in a United States Court concerning the custody, ownership, or disposition of the Materials (whether or not I am a party to such proceeding, and whether such proceeding is a separate action or a part of the litigation concerning the Presidential

historical materials of the Nixon Administration), the Materials will be retained by the Library until all such proceedings are finally determined, and the Materials shall throughout such period be subject to the order of the courts. If no judicial proceeding concerning the custody, ownership, or disposition of the Materials commences on or before December 31, 1980, the Library shall on my request return the Materials to me.

3. The Library will not allow any other party to have access to the Materials without my consent, except in accordance with the order of a court of competent jurisdiction.

4. The Library will at all times control access to the area in which the Materials are stored and work areas in which they may be located during access as provided below. A record will be kept of all persons having access to the Materials, including the time each such access begins and ends and the name of the individual having access. Stringent safeguards will be maintained by the Library to insure that no portion of the Materials is

injured or removed. Such safeguards shall include, as a minimum, binding of all transcripts and documents in large volumes, and thorough inspection of all materials, documents, and carrying cases carried by any person having access to the Materials at the end of each such access.

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2. At the end of the period of time described in paragraph 4 of the First Deed of Gift, a paper shall be available for public access only if such access is approved by a committee comprised of the then Secretary of State or his designate, the Archivist of the United States or his designate, and a representative of the estate of Henry A. Kissinger. In deciding questions of access, the committee shall consider the effect public access would have on the conduct of foreign policy and on the privacy and reputations of persons still living. If the substance of a particular transcript is wholly personal, that transcript shall be withheld from public access.

Witnessed and agreed to, this ____ day of December, 1976.

Henry A. Kissinger

Accepted and agreed to on behalf of the Library of Congress, this ____ day of December, 1976.

Daniel J. Boorstin
Librarian of Congress