



DEPARTMENT OF STATE
ACTION MEMORANDUM

S/S

leigh

LIMITED OFFICIAL USE

May 11, 1976

1

NODIS

TO: The Secretary
FROM: L - Monroe Leigh

Disposition of Your Papers
and Telephone Memoranda

2

Transcripts of your telephone conversations have, to date, been the object of three Freedom of Information Act (FOIA) requests. From a legal standpoint, we are persuaded that these papers are not subject to disclosure under the FOIA. However, we are concerned about public reaction and political consequences if the matter is given further coverage in the press.

3

The legal status of the transcripts is, however, but a part of the broader question of what disposition should be made of your papers when you leave public office. This memorandum, therefore, not only discusses your options with respect to the telephone transcripts but, more specifically, offers legal guidance on how to treat various categories of papers upon your retirement.

BACKGROUND/ANALYSIS

1. Principal Objectives

4

In deciding what papers to take upon leaving office, consideration must be given to criminal statutes that deal with the removal of government records, 18 U.S.C. 2071(b) and 18 U.S.C. 641 (Tab 1). Section 2071(b) makes it a crime for anyone having custody of papers deposited in a public office to "willfully and unlawfully" remove or destroy such papers. This statute is designed to prevent the government from being deprived of the use of its

5

LIMITED OFFICIAL USE

DECLASSIFIED
Authority ND 79556

LIMITED OFFICIAL USE

- 2 -

documents; it has been construed as not applying to the taking of copies. United States v. Rosner, 352 F.Supp. 915 (1972).

Section 641 is somewhat broader. It imposes criminal penalties on anyone who "knowingly converts" to his own use any record or thing of value belonging to the United States. The emphasis is not simply on depriving the government of a record, but also on taking and making use of that record without the requisite authority. The statute, however, has been construed as applying only where one has acted with criminal intent -- an intent to appropriate something one knows he is not entitled to have. Morisette v. United States, 342 U.S. 246 (1952).

Although these statutes have never been applied against senior officials who take papers upon retirement, one must make certain that removal of a particular category of papers does not expose one to potential liability.

The applicability of these statutes depends on two questions. First, is a particular document a government record or a private paper? If there is substantial legal authority to support a claim of private ownership of a document, then removal of that document cannot give rise to criminal liability.

Second, if a particular document is a government record, has the removal of that document, or of a copy, been authorized? If authority is given pursuant to statute or regulation, removal of the document or copy consistent with the authorization will avoid liability.

Apart from these legal questions, other objectives should be (a) to protect rights of privacy, (b) to protect sensitive foreign policy information, and (c) with respect to papers you originated or reviewed, to assure yourself an access comparable to that available to other retired senior officials.

2. Restricted Ownership: The Nixon Papers Controversy

The ownership of a public official's papers is currently being contested in litigation brought by former President Nixon. Although the ownership issues in that

LIMITED OFFICIAL USE

DECLASSIFIED
Authority UDD 79556

LIMITED OFFICIAL USE

- 3 -

case are still unresolved, the Nixon papers controversy points to a recent trend of restricting what a retiring official can take with him.

During his administration, President Nixon asserted an ownership interest in all papers generated at the White House while he was President. Upon leaving office, Nixon entered into an agreement with the GSA Administrator under 44 U.S.C. 2107 (Tab 2), in which he purported to donate to the government all White House papers from his administration (approximately 42 million items). Nixon, however, reserved the discretion to destroy any papers and tapes included in the "donation."

The agreement was made public immediately following the Nixon pardon, and added fuel to the public outcry. Thereupon, the White House decided that the United States should not go through with this donation agreement. Nixon brought suit to enforce the agreement. A lower court determined that Nixon did not own papers "generated, created, produced or kept in the administration and performance of the powers and duties of the Office of the President," but this decision is subject to further court review. Nixon v. Sampson, 389 F.Supp. 107, 145 (1975).

In 1974, Congress enacted the Presidential Recordings and Materials Preservation Act. This statute directs the GSA Administrator to take complete possession and control of the "presidential historical materials of Richard M. Nixon," irrespective of who currently owns them. The statute does provide that if the courts ultimately decide that Nixon or others own these papers, the government is to pay just compensation under the Fifth Amendment.

The 1974 Act also requires the GSA Administrator to propose regulations which will govern public access to the Nixon papers, and which will protect national security information and rights of privacy. It is contemplated that government archivists would catalog the papers and return to Nixon only those which are clearly personal.

The GSA last year did propose regulations, which were rejected by Congress -- apparently because they were too generous to Nixon. The rejected regulations

LIMITED OFFICIAL USE

DECLASSIFIED

Authority

111079556

broadly defined "presidential historical materials of Richard M. Nixon" to include all papers and materials --

"made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory duties or political activities as President and retained or appropriate for retention as evidence of or information about these duties and activities."

We expect that this definition will reappear in future regulations prepared by GSA. Indeed, it is conceivable that the GSA will contact you and others who served on Nixon's staff, and ask that you turn over various categories of papers prepared in the Nixon White House. If such a request were made, GSA may well ask for transcripts of your telephone conversations with the former President. Under the 1974 Act, GSA is not given authority to enforce its requests through court action. However, under 44 U.S.C. 3106 (see Tab 5), the head of any agency (including GSA) has the authority to bring a legal action to recover records which "have been transferred to his custody" and which have been unlawfully removed. This might be applied to papers covered by the 1974 Act.

3. National Commission on Papers of Federal Officials

In the 1974 Presidential Recordings and Materials Preservation Act, Congress directed the establishment of a National Commission to study and recommend legislation on "the control, disposition and preservation of records and documents produced by or on behalf of federal officials." The Commission has come into being, chaired by Herbert Brownell. A membership list appears at Tab 4. John Thomas is the State Department representative on the Commission.

The Commission has asked for a memorandum on the Department's policies and practices with respect to who controls papers kept in the Department. This week, we will submit a memorandum which stresses five policies: (1) the need of the Department to retain all papers that evidence the Department's decisions and business; (2) the need to protect the confidentiality of diplomatic

correspondence and of papers reflecting internal discussion of foreign policy alternatives; (3) the right of a Department official or employee to retain papers of a personal nature or those he has prepared with the expectation of privacy; (4) the right of senior Department officials to have access to their files after retirement; and (5) the rights of historians and the public to have access to appropriate papers. The latter rights are well protected by the Freedom of Information and Privacy Acts.

The Commission will not be in a position to make recommendations before the spring of 1977. It seems likely that future legislation based on the Commission's recommendations would not be retroactive -- and thus would not have a direct impact on officials who had by that time left office.

4. What Papers Have Been Deemed "Personal"

An Eisenhower Administration Cabinet Paper of 1959 provides one of the few sets of guidelines that attempt to distinguish government records from personal papers. It notes a predominant government interest in maintaining complete records on all matters of official concern, but specifically permits retiring Department and agency heads to take with them "personal work aids" such as "office diaries, logs, and memoranda of conferences and telephone calls" -- unless such papers contain confidential government information. Subject to the same limitation, removal of extra copies of other papers was also permitted.

In July 1975, OMB published guidelines on what papers are to be considered "agency records" under the Privacy Act (a recent statute that affords a citizen access to information the government and private organizations collect on him). Although the OMB guidelines are not concerned with retiring officials, they are consistent with provisions in the Eisenhower Cabinet Paper:

"Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no control or dominion (e.g., personal telephone lists) are not considered to be agency records"

LIMITED OFFICIAL USE

- 6 -

At least one court decision under the Freedom of Information Act expresses a similar view -- that where a paper is retained by its author and is not circulated within an agency, it is not an agency record. Porter County Chapter v. A.E.C., 380 F.Supp. 630 (1974).

The only statute that attempts to define what is a government record is not very precise, but seems to be consistent with what has been said so far. That statute, 44 U.S.C. 3301 (Tab 5), defines the term "record" as including all papers which both (1) were "made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business," and (2) have been "preserved or [are] appropriate for preservation...as evidence of the... policies, decisions,...or other activities of the government or because of the informational value of data contained in them."

A somewhat different approach to the personal versus government distinction appears in the State Department's regulations. Under 5 FAM 417.1 (Tab 6), it is assumed that unless a paper "in an employee's office" has been "explicitly designated or filed as personal at the time of origin or receipt," the paper is a Department record which cannot be removed without the approval of the Director of FADRC. Many of the papers you may claim as personal (appointment books, diaries, personal correspondence, telephone transcripts) have, fortunately, been designated or filed as personal in accordance with the regulation.

Some note should be made of White House procedures. Those of the Nixon Administration (Tab 7) precluded retiring staff members from treating as personal any papers "made or received in the course of official business." Those procedures ceased to be in effect after the fall of 1974. Since this was long before you left the White House staff, you cannot have violated its provisions on retiring staff members.

The Ford Administration procedures (Tab 8) permit retiring White House staff members to take personal files, but no definition is given as to what files are personal.

LIMITED OFFICIAL USE

DECLASSIFIED
Authority DD 79556

LIMITED OFFICIAL USE

- 7 -

In practice, however, we understand that White House counsel are proceeding on the assumption that any papers relating to official business are not to be treated as personal, pending a final decision in the Nixon papers litigation.

Finally, there are some court decisions which suggest the possibility that an otherwise personal paper may be deemed a government record if the paper is the only existing record of significant government activities or decisions. The current law is ambiguous on this point. But given the current trend of restricting what papers are personal, one should not discount the possibility that a court some day will hold that any paper prepared by a government official in a government office is a government document if it is the only existing record of government activities or decisions.

5. Practice of Former State Department Officials

Through the mid-1960's, senior Department officials often took large numbers of documents with them on retirement. The bulk of the papers consisted of copies of papers the officials had worked on or reviewed. These collections of copies and some originals, including substantial quantities of classified material, were often placed in private institutions after obtaining security clearances for the proposed storage areas. A list of some of these collections appears at Tab 9. Apart from the names listed, we know that Christian Herter donated copies of his papers to the Eisenhower Library.

John Foster Dulles had numerous papers microfilmed at his own expense and deposited the microfilms in an approved security area at Princeton University. (That Dulles bore the expense of microfilming may be of some consequence. During the Nixon papers controversy, the view was voiced that papers prepared at government expense should belong to the government.)

In 1967, at the instance of Dean Rusk, the Department tightened its practice on the removal of copies of Department papers. Secretary Rusk himself took no papers

LIMITED OFFICIAL USE

DECLASSIFIED
Authority DD 79556

with him which related to government business, under the theory that all such papers belonged to the government. However, his files are in a special safe in the Department and are currently available to him under a general Department practice of making such files available to retired senior officials, 5 FAM 946 (see Tab 6, p. 2).

Access to Rusk's safe is afforded to Rusk and to those he specially designates. Access is also available to senior Department officials, and also to individual bureaus, provided that our document center (FADRC) obtains advance clearance from S/S. Access will also be available to Department historians beginning approximately 20 years from a file's origination. For example, in about 1981, when a historical review is made of all Department records dating from 1961, Department historians will review Rusk's files from 1961 with a view to publishing any documents that can be declassified. Papers which cannot be declassified would be retained in the collection. The collection would then probably be transferred to the National Archives, subject to restrictions on public access, in about 1989 -- 20 years after Rusk's retirement from office. Among the files in Rusk's safe are memoranda of his telephone conversations. Also stored in the Department under similar conditions are the files of 42 other officials (see Tab 10).

As a matter of course, FADRC now recommends to all senior officials that their files be stored in the Department, under conditions similar to those governing the Rusk papers. One such recommendation was made recently to Under Secretary Sisco (see Tab 11). One problem with that recommendation is that it treats as personal only "papers of a strictly personal character pertaining only to your private affairs and not to official business." In our view, this is not an accurate statement of current law. The authority cited for this proposition, 5 FAM 432 (Tab 6, p. 2), is simply a regulation that requires one to make a separate record of portions of personal correspondence that discuss Department functions and activities.

6. Retention of Copies

Apart from personal papers, the question arises as to whether you are permitted to remove originals or copies of government records -- or must the only copies

of your files remain in the Department subject to the same privileges and restrictions as are applicable to Dean Rusk's files?

Some former officials who have taken their files with them may have relied on the so-called "extra copy" exception. Under 44 U.S.C. 3301 (Tab 5), "extra copies of documents preserved only for convenience of reference" are not considered to be government records. Although an "extra copy" of a government record may not technically be a "government record," this does not end the inquiry. One must also consider whether the retiring official has the authority to remove the extra copy -- particularly where classified information is involved. Thus, the 1959 Eisenhower Cabinet Paper on removal of papers states that "whether or not a departing officer may take extra carbons or non-record copies of records should depend largely upon whether there is any policy or legal reason why the information contained in them should be regarded as confidential."

There is no specific statute or regulation that permits retiring officials to retain extra copies. But there are regulations assuring former senior officials access to classified records, and this right of access was at one time construed as including the keeping of extra copies.

For example, the Executive Order on classification permits former officials who were appointed by the President to policy-making positions to have access to those classified papers "which the former official originated, reviewed, signed, or received while in public office" -- provided the head of the agency which originated the papers (i) determines that such access is consistent with national security, and (ii) takes steps to assure that classified information is not published or compromised. E.O. 11652, sec. 12. (The State Department has a similar regulation (5 FAM 946 -- Tab 6, p. 2), which is the basis for permitting retired officials like Dean Rusk to have special access to their files in the Department.) This right of access was construed in the 1959 Eisenhower Cabinet Paper as giving agency heads the discretion to "permit persons granted access to classified information

under [this Executive Order] to acquire or reproduce, and retain in their custody, extra copies of those classified records, if those persons arrange for the proper safeguarding thereof." 1

Moreover, the access contemplated in the executive order and regulations does not specifically preclude the storage of copies of a former official's files outside of Washington, D. C. It only requires that steps be taken to protect classified information. This means compliance with government security regulations in storing documents. These regulations would obviously be satisfied if copies of classified records were stored at a government facility, such as the USUN in New York or a regional depository under the National Archives (see Tab 12). Conceivably, approval could be obtained for storage at a private institution that had adequate security (see Tab 9). It should be noted, however, that since 1960 the only Department official to have requested and obtained approval for storage at a private institution is G. Mennen Williams. Although a particular institution may now have a classified collection, a separate security approval would have to be obtained if your papers were to be stored in that institution. 2

With respect to unclassified materials, Department regulations would appear to condition their removal on the prior approval of the Director of FADRC -- at least where the document in question was not in the public domain. The regulations state that unless a paper has been designated or filed as personal at the time of its origin or receipt, it cannot be taken by a retiring employee without the FADRC Director's approval. 5 FAM 417.1 (Tab 6). 3

7. Approval for Removing Copies

Apart from security approval for storage facilities, individual approvals should be obtained for the overall plan to remove copies. If a paper is a State Department record, approval is required from the Director of FADRC under 5 FAM 417.1 (Tab 6). If a White House record, approval would probably have to be obtained from the Counsel to the President (see Tab 8, p. 2). And if the document is an NSC record, approval would probably be needed from the Executive Secretary of the NSC. 4

If such approval is obtained, it would eliminate any question concerning possible criminal liability for the removal of copies.

With respect to White House records (as opposed to NSC records) dating from the Nixon Administration, Counsel to the President may take the view that these records are under the exclusive control of the GSA pursuant to the 1974 Presidential Recordings and Materials Preservation Act -- and that this is a decision for GSA. GSA, in turn, may consider itself precluded by the 1974 Act from allowing you to retain copies.

8. HAK Personal File in S/S-I

S/S-I maintains a separate file marked HAK Personal. The file is not part of the Department's document system. It has not been reduced to microfilm, but is retained in paper form. We have been informed that only your correspondence of a personal, non-business nature is kept in this file. Since the file is marked personal and since papers in it were placed there when they were received or originated, you are entitled to take this file when you retire (5 FAM 417.1 -- Tab 6).

9. Appointment Calendars

Your appointment calendars are placed in separate binders and designated with your initials. An individual's appointment books have traditionally been treated as personal papers, both in practice and under the 1959 Eisenhower Cabinet Paper. We believe that your appointment calendars have been designated as personal for purposes of 5 FAM 417.1, and that you may keep them when you retire.

10. Files in S

The practice in S has been to keep separate files to a minimum, and to return papers to the originating bureau. In the latter regard, S maintains two safes of current matters, whose contents turn over every week or so.

There are, however, four safes devoted to working files that are maintained for purposes of reference. Included are sensitive cables, notes, and memcons. We are advised that all or virtually all of the documents in these safes have duplicates either in the Department or at the White House.

From the general description provided to us, the documents in these safes would seem to be government records. The safes, however, should be checked to see if an occasional item of a personal nature is included.

If the files in these safes were to be physically transferred to an approved storage area outside of Washington, several steps would seem necessary. One should make certain the files contained copies and not the originals of documents. The files might have to be segregated among State, NSC and White House originated documents, so that approvals could be obtained from each of the agencies concerned.

Alternatively, one might (a) arrange to keep the actual files here at the Department, but (b) make a duplicate set of the files to be transferred to an approved storage area outside of Washington. The files might conceivably be treated as a single collection of a Secretary of State's working papers, and hence arguably Department of State records. Counsel to the President might concur in this view if assurances could be given that the White House had the originals of all White House originated documents.

11. Telephone Transcripts

Is there sufficient legal authority to support a claim that the telephone transcripts are personal papers? Factors supporting such a claim are that the transcripts were prepared and kept with the expectation that they would remain private; they have been segregated from government records and placed in files bearing your initials; they have been kept by you and your immediate assistants and have not been circulated in any government agency; they seem to contain few if any discussions of substantial government decisions or activities which are not adequately reflected in existing government records.

The only factors that might be cited against a claim of personal ownership are that the transcripts were prepared on government time and at government expense, and that they contain some discussions of government business. In view of the pendency of the Nixon papers litigation, we cannot draw a firm conclusion as to who owns the transcripts. But we do believe (1) that existing authority can support a claim that they are personal papers, and (2) that such authority is substantial enough to avoid any serious question of criminal liability if you treated the transcripts as personal.

You may wish to confirm these conclusions with private counsel. Indeed, if the GSA, Safire or others bring a suit for these transcripts, you might have to bear the expense of defending a claim that the transcripts are personal papers.

12. FOIA Requests for the Transcripts

There have so far been three Freedom of Information Act (FOIA) requests for transcripts. First, William Safire requested all transcripts which either mentioned him by name, or contained a discussion between you and either President Nixon, Mitchell, Haig, Hoover or other FBI officials on the subject of "leaks." On March 29, the Department denied Safire's "appeal" of our initial rejection of his request (see Tab 13). We believe that Safire will soon begin a law suit against you to obtain the transcripts he has requested.

The two other FOIA requests -- from Norman Kempster of the Washington Star (Tab 14) and Harry Rosenfeld of the Washington Post (Tab 15) -- are broader than the Safire request. Kempster is seeking the transcripts of all conversations between you and President Nixon. Rosenfeld wants all transcripts referred to in a March 29 Washington Post article (Tab 16), which appears to encompass all transcripts prepared during the Nixon Administration. We have denied the Kempster and Rosenfeld requests. Neither Kempster nor Rosenfeld has yet asked for an administrative "appeal," but their time to request an appeal has not expired.

The Department's denial of the Safire, Kempster and Rosenfeld requests is based on the following legal defenses:

LIMITED OFFICIAL USE

- 14 -

- To the extent the requests seek transcripts prepared in your former White House office, they are not subject to the FOIA. The FOIA applies only to "agency records," and the term "agency records" has been defined to exclude papers prepared by immediate assistants to the President. 1
- The transcripts should be viewed as personal papers or personal work aids, and, thus, not "agency records" within the meaning of the FOIA.
- Even if the transcripts were to be characterized as "agency records," they fall under exemption 5 of the FOIA. Exemption 5 protects papers reflecting internal deliberations in the formulation of government decisions and policies. 2
- Disclosure of many, if not all, of the memoranda would raise potential claims by third parties of invasion of privacy.

Even though the foregoing defenses will, we believe, protect the transcripts from FOIA disclosure, any litigation could focus public attention on the transcripts. Given the likelihood that William Safire will soon bring a law suit seeking some of the transcripts, we would expect to see more press coverage on this subject. 3

We raise the question whether an adverse public reaction could be averted if it were made clear that the transcripts, together with other papers, would be donated to the government subject to reasonable guarantees of your future access to them. Such a donation could be negotiated with the GSA Administrator under 44 U.S.C. 2107 (see Tab 3). 4

OPTIONS

A. Options with Respect to the Telephone Transcripts

Your options are:

- (1) to maintain that all the transcripts are personal papers belonging to you; 5

LIMITED OFFICIAL USE

DECLASSIFIED

Authority

UJD 79556

LIMITED OFFICIAL USE

- 15 -

(2) to maintain that all the transcripts are personal papers, except for those which appear to be the only existing record of significant government business or decisions;

(3) to deposit the transcripts in your State Department files, as Dean Rusk did; and

(4) to negotiate now an agreement to donate the transcripts with other papers to the National Archives upon your retirement.

(1) Maintain that all the telephone transcripts are personal papers belonging to you.

-- A principal advantage is that you would maintain actual control over the transcripts.

-- If, however, a law suit were begun, you would probably have the personal expense of defending a claim of personal ownership.

-- This course would not help avert an adverse public reaction if Safire should bring a suit and if the litigation focuses public attention on the transcripts.

-- To the extent the transcripts might include national security information, you would have to store them in a specially approved facility.

(2) Maintain that the transcripts are personal papers except for those which appear to be the only existing record of significant government business or decisions. With respect to the latter, summary memoranda could be made of their contents and included in your Department files. Making summary memoranda would be consistent with 5 FAM 432 (Tab 6, p. 2), which says that official matters discussed in personal correspondence should be "extracted" and made part of the official

LIMITED OFFICIAL USE

DECLASSIFIED

Authority UND 79556

LIMITED OFFICIAL USE

- 16 -

records. Since the transcripts are presently in "personal" files within the meaning of 5 FAM 417.1 (Tab 6, p. 1), you would have the responsibility for segregating out information to be included in Department files.

- A good-faith effort to add significant information to existing government documents would strengthen your legal position by demonstrating that you are not depriving the government of necessary records.
- This course might, however, raise questions about the contents of transcripts that were not summarized and about whether the summaries are complete.
- It would require a very substantial commitment of time and resources in order to read, evaluate and summarize these materials.

(3) Deposit the transcripts in your State Department files, as Dean Rusk did.

- This would negate any claim that you were keeping matters relating to official government business, while assuring you access to the transcripts as other officials have access to their files.
- The Department, however, would have legal control over and access to private communications included in the transcripts.
- It would give the impression that the transcripts were "agency records" subject to the FOIA.

(4) Negotiate now an agreement to donate the transcripts with other papers to the National Archives upon your retirement. Such a donation would place the transcripts in a National Archives depository (see Tab 12), subject to access by you and restrictions on

LIMITED OFFICIAL USE

DECLASSIFIED
Authority ND 79556

access by the public. The agreement could also give you custody of all transcripts of a purely personal nature, as well as a copy of all other transcripts. One might also ask the National Archives to catalog the transcripts here at the State Department while the papers are still in your custody. Cataloging would permit one to identify transcripts that may contain classifiable information or conversations that raise substantial questions of privacy. Such an agreement would be negotiated under 44 U.S.C. 2107 (Tab 2) with the GSA Administrator, who has jurisdiction over the National Archives.

- A donation agreement, if announced at the appropriate time, might avert an adverse public reaction from press coverage of future litigation by Safire. 2
- Since the donation agreement would be based on a statute permitting restrictions on disclosure, the agreement may provide an additional FOIA defense to the Safire request: Exemption 3 of the FOIA protects materials that are exempt from disclosure under other statutes. 3
- However, the donation itself might focus public attention on the transcripts and invite comparisons with the Nixon donation.
- A donation agreement will not eliminate the possibility that some of the transcripts will ultimately be determined to be subject to the Presidential Recordings and Materials Preservation Act of 1974. In fact, since the GSA Administrator is given custody of the Nixon papers under the 1974 Act, the GSA Administrator may insist that your donation agreement not extend to any portion of your transcripts which were prepared during the Nixon Administration -- and that GSA is entitled to these transcripts irrespective of any donation. 4
- The effect of a donation might also be undermined by a future determination that 5

some of the transcripts were government records. The donation agreement could be structured so that, insofar as the transcripts were deemed to be State Department records, you would be viewed as transferring them in your capacity as head of the State Department, as provided in 44 U.S.C. 2103-04 (Tab 3). But to the extent the transcripts were deemed to be White House records, the agreement might well be ineffective without the signature of the President.

B. Options with Respect to Files in S.

Your options, for assuring yourself convenient access upon your retirement to files now in S, appear to be (1) to attempt to secure the necessary approvals for a future transfer of the actual files to an approved storage facility, and (2) to leave the files as a single collection here in the Department, but attempt to secure approval for a duplicate set of this collection to be made and transferred upon your retirement to an approved storage facility.

(1) Attempt to secure the necessary approvals for a future transfer of the actual files to an approved storage facility. Before the actual files were transferred, one should probably try to make certain that they contain only copies and not originals of documents.

- This would give you convenient access to the files in the form that they are now stored in S.
- However, separate approval would probably be required from the Department, the NSC and the Counsel to the President, depending on where a particular document was originated. It may also entail the burden of cataloging the documents according to their office of origination, prior to obtaining the necessary approvals from the various offices.
- This course may be criticized both inside and outside the Department. An argument might be voiced that this would deprive the Department of the use of the working files of a Secretary of State.

LIMITED OFFICIAL USE

- 19 -

(2) Leave the files as a single collection here in the Department, but attempt to secure approval for a copy of this collection to be made and transferred upon your retirement to an approved storage facility.

- This course might make it easier to obtain the concurrence of the Counsel to the President for transferring copies of documents in the collection -- particularly if assurances could be given that the originals of any White House originated papers are stored at the White House. By characterizing the files as a Department of State collection, the approval for transferring a duplicate set of the collection may appear to be more in the nature of a State Department decision.
- You would probably have access to both the collection in the Department as well as the duplicate set stored elsewhere.
- If you personally bear the expense of making a duplicate set, it might avert public criticism -- particularly if the duplicate set was to be stored in a private institution.

RECOMMENDATIONS

1. With respect to the transcripts, I recommend that you maintain that they are personal papers. Any transcripts you keep should be stored in the same location where you would store copies of classified documents you may be authorized to retain.

2. With respect to files in S, I recommend that you leave the files as a single collection here in the Department, but authorize us to attempt to secure approval for a duplicate set of this collection to be made and transferred to an approved storage facility upon your retirement. To implement this:

- We would first take steps to make certain that the White House has original copies of any White House originated documents in the S files.

LIMITED OFFICIAL USE

DECLASSIFIED
Authority UDD 79556

LIMITED OFFICIAL USE

- 20 -

- At an appropriate time, we would contact Counsel to the President and, based on our determination that the White House has the original copies of all White House originated documents, ask for his concurrence.
- After obtaining White House concurrence, we would ask our documents center (FADRC) to approve this approach.
- Before the S files are deposited with the State Department as a single collection, you should withdraw any papers of a personal nature.

3. That you designate one or two locations where you would prefer to have papers stored. We would then attempt to obtain the necessary security approvals for these locations.

Attachments:

- Tab 1 - Criminal Statutes (18 U.S.C. 641 and 2017)
- Tab 2 - Statute on Private Donations to National Archives
- Tab 3 - Statute on Transfer of Agency Records to National Archives
- Tab 4 - Membership, National Commission on Papers of Federal Officials
- Tab 5 - Statutory Definition of "Records"
- Tab 6 - State Department Regulations on Removal of Records
- Tab 7 - Nixon White House Papers Procedures
- Tab 8 - Ford White House Papers Procedures
- Tab 9 - Private Institutions with Papers of Senior Officials
- Tab 10 - State Department V.I.P. Files
- Tab 11 - FADRC Memo to Sisco
- Tab 12 - List of National Archives Depositories
- Tab 13 - Safire FOIA Appeal and Department Response
- Tab 14 - Kempster FOIA Request and Department Response
- Tab 15 - Rosenfeld FOIA Request and Department Response
- Tab 16 - Washington Post Article on Telephone Transcripts

cc: T - Mr. Maw
M - Mr. Eagleburger
Drafted: L:MDSandler:dc:be
x22149

LIMITED OFFICIAL USE

DECLASSIFIED
Authority ND 79556

§ 641. Public money, property or records.

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. (June 25, 1948, ch. 645, 62 Stat. 725.)

§ 2071. Concealment, removal, or mutilation generally.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 795.)

Tab 2

6

7

§ 2107. Material accepted for deposit.

When the Administrator of General Services considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1288.)

3

4

5

DECLASSIFIED
Authority *UWD 795576*

§ 2103. Acceptance of records for historical preservation.

When it appears to the Administrator of General Services to be in the public interest, he may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than fifty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Administrator that they must be retained in his custody for use in the conduct of the regular current business of the agency;

(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of his successor in function, if any, the transfer of records deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Administrator by section 3106 of this title.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1287.)

§ 2104. Responsibility for custody, use, and withdrawal of records.

The Administrator of General Services shall be responsible for the custody, use, and withdrawal of records transferred to him. When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of records applicable to the head of the agency from which the records were transferred or to employees of that agency are applicable to the Administrator, the Archivist of the United States, and to the employees of the General Services Administration, respectively. When the head of an agency states in writing restrictions that appear to him to be necessary or desirable in the public interest on the use or examination of records being considered for transfer from his custody to the Administrator, the Administrator shall impose the restrictions on the records so transferred, and may not remove or relax the restrictions without the concurrence in writing of the head of the agency from which the material was transferred, or of his successor in function, if any. Statutory and other restrictions referred to in this section shall remain in force until the records have been in existence for fifty years unless the Administrator by order determines as to specific bodies of records that the restrictions shall remain in force for a longer period. Restriction on the use or examination of records deposited with the National Archives of the United States imposed by section 3 of the National Archives Act, approved June 19, 1934, shall continue in force regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Administrator with the concurrence in writing of the head of the agency from which material was transferred or of his successor in function, if any. (Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1288.)

DECLASSIFIED

Authority UDD 79536

NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS
OF FEDERAL OFFICIALS

6

The Commission is composed of seventeen members as follows:

- A. One Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House:

Edward Mezvinsky, Iowa

7

- B. One Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House:

Robert J. Lagomarsino, California

- C. One Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate:

Gaylord Nelson, Wisconsin

8

- D. One Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate:

Lowell Weicker, Jr, Connecticut

- E. One Justice of the Supreme Court, appointed by the Chief Justice of the United States:

Not yet designated

9

- F. One person employed by the Executive Office of the President or the White House Office, appointed by the President:

Philip W. Buchen

5

§ 3106. Unlawful removal, destruction of records.

The head of each Federal agency shall notify the Administrator of General Services of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Administrator shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. (Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1298.)

§ 3301. Definition of records.

As used in this chapter, "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1299.)

DECLASSIFIED
Authority UDD 79556

Removal of Records

417.1 Legal Restrictions

To implement the legal restrictions against the removal of records by any employee leaving the service of a Federal agency, as set forth in the Federal Records Act of 1950, as amended (see section 411.1), the following regulations and procedures apply within the Department of State and its component elements:

- a. No papers kept in an employee's office that have not been explicitly designated or filed as personal at the time of origin or receipt may be removed from the Department or a post when the employee resigns, transfers to another Federal agency, or is otherwise separated from the Department or the Foreign Service, or at any other time, without the approval of the Director, Foreign Affairs Document and Reference Center.
- b. In the case of papers not explicitly designated as personal at the time of origin or receipt, or filed as such, that contain both personal and official matter, the Director, Foreign Affairs Document and Reference Center, may require extracts to be prepared of the official contents for incorporation in the records of the Department or post concerned.
- c. Unclassified documents relating to the performance of an employee's official duties may be copied and privately retained by an employee if approved by the Director, Foreign Affairs Document and Reference Center.

11

417.2 Responsibility of Administrative Office

The administrative section of each Departmental office or bureau and of each post has the responsibility for the following actions:

- (1) Reminding officials of the rank of assistant secretary and above, or rank of ambassador, who are about to leave the Department or the Foreign Service, of the laws and regulations pertaining to the removal of records (sections 411 and 417).
- (2) Insuring that a JF-4, Security Acknowledgment, executed by each incoming official, and a JF-3, Separation Statement, executed by each departing official, are filed in the official's personnel folder (see 3 FAM 780).
- (3) Suggesting to these departing officials the desirability of consulting with National Archives representatives about depositing personal papers that might be of historical interest in the National Archives or a Presidential archival depository, where specific restrictions may be placed on access to such papers.

7

8

9

417.3 Declassification of Papers

In addition to the normal procedure for declassification of documents contained in section 920, no papers may be declassified for the purpose of permitting their removal from the Department or a post without the consent of the Department's Executive Secretary (S/S). In passing upon such declassification requests, the Executive Secretary may seek the views of other offices within the Department and posts that may be concerned with the contents of the documents involved.

10

DECLASSIFIED
Authority UDD 79536

By custom and tradition, all White House Office papers are regarded as the personal property of the President and subject to such control and disposition as he may determine. At the close of the Administration, the entire collection of papers now being created may be expected to be deposited in a Presidential library similar to the libraries that preserve the papers of the last six Presidents. To provide the President with a complete and accurate record of his tenure in office, the White House staff must oversee the preservation of the papers it generates.

The procedures set forth in this document represent the collective thinking of many members of the staff as to how best to preserve papers and documents for the President. Compliance with these procedures is an expression of loyalty by the staff to the President. For these procedures to be effective, it will require cooperation and assistance of every staff member.

The security classification of each document prepared in the White House is determined by the individual staff member writing it in accordance with Executive Order 10501—or other applicable Executive Orders. He is responsible for insuring that the classification assigned to his work reflects the sensitivity of the material concerned, and also for making certain that this classification is not excessively restrictive.

White House Office Papers: Filing with Central Files

1. *It is requested that the maximum possible use be made of Central Files, and the procedures listed below be followed.* This will aid in the faster and more complete retrieval of current information, eliminate unnecessary duplication of files, prevent excessive xeroxing, and maximize preservation of White House papers.

2. *Each staff member shall maintain his personal files separate from any working files he may keep on official business and clearly designate them as such.* Personal files include correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders

of newspapers or magazine clippings; and copies of records of a personnel nature relating to a person's employment or service. Personal files should not include any copies, drafts or working papers that relate to official business or any documents or records, whether or not adopted, made or received in the course of official business.

3. *Each staff office shall forward regularly to Central Files three copies of all outgoing official business consisting of correspondence and memoranda. One copy of all other outgoing related materials should also be filed.*

4. *Each staff office shall forward regularly to Central Files any incoming official business from sources other than White House staff offices after action, if any, has been taken. Each staff office, if it so desires, may keep a copy of such incoming official business for its own working files.*

5. *Each staff office shall forward regularly to Central Files any originals of incoming official business from other White House staff offices after action, if any, has been taken and if such originals were not intended to be returned to the sender. If desired, a copy may be kept for the staff's working files.*

6. *Each staff office shall forward to Central Files at such times as it determines to be appropriate all working files of official business which are inactive and no longer needed. These files will be stored by office as well as listed by subject matter. They will, of course, always be available for later reference.*

7. *Each staff office at its own discretion may segregate any materials that it believes to be particularly sensitive and which should not be filed by subject matter. Such sensitive materials should be forwarded to the Staff Secretary on the same basis as outlined in paragraphs 3 through 6 in an envelope marked SENSITIVE RECORDS FOR STORAGE with the office or individual from which they are sent marked on the outside and (as appropriate) a list of inventory in general terms attached. This list of inventory should also be sent to Central Files so that notations can be made in subject files that certain material is missing from the file. These materials will be filed in locked containers and will only be made available to the in-*

DECLASSIFIED

Authority

110 79556

individual or office from whom they were received.

8. No defense material classified under Executive Order No. 10501 with a classification of TOP SECRET or Restricted Data under the Atomic Energy Act of 1954 should be forwarded to Central Files. All such material should be forwarded to the Staff Secretary for storage.

9. No exceptions to the above shall be made without the express consent of the Counsel to the President. Additional advice on the operation of Central Files may be obtained from Frank Matthews, Chief of Central Files (Ext. 2240).

White House Office Papers: Disposition of Papers Upon Leaving Staff

1. Upon termination of employment with the staff, each staff member will turn over his entire files to Central Files with the exception of any personal files he might have maintained.

2. Personal files include: correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders of newspaper or magazine clippings; and copies of records of a personal nature relating to a person's employment or service. Personal files should not include any copies, drafts, or working papers that relate to official business; or any documents or records, whether or not adopted, made or received in the course of official business. The White House Office of Presidential Papers, staffed by representatives of the National Archives, is available to assist staff members in the determination of what are personal files. Any question in this regard should be resolved with their assistance by contacting John Nesbitt, supervisory archivist of the Office of Presidential Papers (Ext. 2545).

3. A staff member, upon termination of employment, in his discretion make copies for his personal use of a carefully chosen selection of the following types of documents within his files:

(A) Documents which embody original intellectual thought contributed by the staff member, such as research work and draftsmanship of speeches and legislation.

(B) Documents which might be needed in future related work by the individual.

4. No staff members shall make copies as permitted in paragraph three of any documents which contain defense material classified as CONFIDENTIAL, SECRET OR TOP SECRET under Executive Order No. 10501, Restricted Data under the Atomic Energy Act of 1954, or information supplied to the government under statutes which make the disclosure of such information a crime.

5. Each staff member who decides to make copies of such documents described in paragraph three shall leave a list of all such documents copied with Central Files. This will enable retrieval of a document in the event that all other copies of it and the original should be later lost.

6. The discretionary authority granted in paragraph three is expected to be exercised sparingly and not abused. All White House Office papers, including copies thereof, are the personal property of the President and should be respected as such. Any copies retained by a staff member should be stored in a secure manner and maintained confidentially.

7. All confidential and sensitive materials will be protected from premature disclosure by specific provisions of the Presidential Libraries Act of 1955 (44 U.S.C. 2108).

DECLASSIFIED

Authority

110 79536

(Ford Administration Procedures)

White House Office Papers: Classification and Declassification

The security classification and declassification of each document prepared in the White House is governed by Executive Order 11652 and other applicable Executive Orders. The number of persons authorized to originally classify information is limited. Should an employee originate information which he believes to require classification, he shall protect that information with appropriate safeguards, and shall seek the guidance of the Counsel to the President (Ext. 2293), who will provide a determination as to whether classification is necessary and the required level of any classification.

White House Office Papers: Filing with Central Files

1. *It is requested that the maximum possible use be made of Central Files, and the procedures listed below be followed.* This will aid in the faster and more complete retrieval of current information, eliminate unnecessary duplication of files, prevent excessive xeroxing, and maximize preservation of White House papers.

2. *Each staff member shall maintain his personal files separate from any working files he may keep on official business and clearly designate them as such.* Personal files include correspondence unrelated to any official duties performed by the staff member; personal books, pamphlets and periodicals; daily appointment books or log books; folders of newspapers or magazine clippings; and copies of records of a personnel nature relating to a person's employment or service. Personal files should not include any copies, drafts or working papers that relate to official business or any documents or records, whether or not adopted, made or received in the course of official business. For further discussion of personal files, see the following subsection on "Disposition of Papers Upon Leaving Staff."

3. *Each staff office shall forward regularly to Central Files three copies of all outgoing official*

business consisting of correspondence and memoranda. One copy of all other outgoing related materials should also be filed.

4. *Each staff office shall forward regularly to Central Files any incoming official business from sources other than White House staff offices after action, if any, has been taken.* Each staff office, if it so desires, may keep a copy of such incoming official business for its own working files.

5. *Each staff office shall forward regularly to Central Files any originals of incoming official business from other White House staff offices after action, if any, has been taken and if such originals were not intended to be returned to the sender.* If desired, a copy may be kept for the staff's working files.

6. *Each staff office shall forward to Central Files at such times as it determines to be appropriate all working files of official business which are inactive and no longer needed.* These files will be stored by office as well as listed by subject matter. They will, of course, always be available for later reference.

7. *Each staff office at its own discretion may segregate any materials that it believes to be particularly sensitive and which should not be filed by subject matter.* Such sensitive materials should be forwarded to the Staff Secretary on the same basis as outlined in paragraphs 3 through 6 in an envelope marked SENSITIVE RECORDS FOR STORAGE with the office or individual from which they are sent marked on the outside and (as appropriate) a list of inventory in general terms attached. This list of inventory should also be sent to Central Files so that notations can be made in subject files that certain material is missing from the file. These materials will be filed in locked containers and will only be made available to the individual or office from whom they were received.

8. *No defense material classified under Executive Order No. 11652 with a classification of TOP SECRET or Restricted Data under the Atomic Energy Act of 1954 should be forwarded to Central Files.* All such material should be forwarded to the Staff Secretary for storage.

9. *No exceptions to the above shall be made without the express consent of the Counsel to the*

President. Additional advice on the operation of Central Files may be obtained from Frank Matthews, Chief of Central Files (Ext. 2240).

White House Office Papers: Disposition of Papers Upon Leaving Staff

Upon termination of employment with the staff, each staff member will turn over his entire files to Central Files with the exception of any personal files he might have maintained. At the time of this writing, the question of ownership of White House papers and related materials is the subject of litigation in the Federal courts. In

addition, a recently enacted Federal law (P.L. 93-526) which also affects the issue of ownership, as well as control, disposition and preservation of White House papers, is being tested in the courts. Therefore, no definition as to what constitutes the "personal files" of a staff member can be specifically provided here. However, guidelines are being developed to aid staff members in determining what files and copies of documents may be removed from the White House upon termination of their employment. Representatives of the National Archives, and the Counsel to the President, are available to assist staff members with such determinations. Advice may be initially obtained from Frank Matthews, Chief of Central Files (Ext. 2240).

Records of Former Senior Officials in the Possession of
Private Institutions

Hoover Institute for War and Revolution
Stanford, California

Princeton University
Dulles, Stevenson

Delaware University
Messersmith

University of Virginia
Stettinius

University of Michigan
G. Williams (thru FADRC)

Library of Congress
C. Hull

Harvard University
Grew

Clemson University
Sec. Burns

43

Dean Rusk	72 D 192
George Ball	2 Safes 10200 and 53
Nickolas deB. Katzenbach	2 Safes 24
Graham Martin	1 Safe & 3 Bar-Locked Cabinets
S/S "NODIS"	5 Bar-Locked Cabinets
Charles E. Bohlen	72 D 182 (3 Safes) & 71 F 132
Carlton Savage	71 D 293
Ernest K. Lindley	71 D 273
Amb. Sargent Schriver	71 F 133
G. Mennon Williams	65 D 226, 66 D 146, 68 D 4 --- 8, and 69 D 118
Amb. Harlan Cleveland	65 D 398, 69 F 117, and 69 F 145
Leonard C. Meeker, Legal Adviser	69 D 306
Amb. Karl L. Rankin	66 D 84
Amb. Robert W. Komer	69 D 303
Amb. Loy Henderson	67 D 44
Amb. John N. Irwin	68 D 127
Amb. Ellsworth Bunker	67 D 291
Dean Acheson	1, 53 D 444, and 56 D 459
Amb. George McGhee	53 D 468, 63 D 179, and 68 F 132
U. Alexis Johnson	54 D 278 and 58 D 529
Amb. David K. E. Bruce	64 D 327
Amb. J. Lampton Berry	62 D 292
Thomas L. Hughes (INR)	70 D 98
Amb. Philip Jessup	53 D 470
John Foster Dulles	71 D 325
Amb. Robert Ellsworth	71 F 155
Amb. Joseph C. Satterthwaite	72 D 232
Armin H. Meyer	72 F 68
William Rogers	10708 & 73D387
Richard Pedersen	2325
William Macomber	10560 and 10571

DECLASSIFIED
Authority: *ND 79556*

VIP FILES

Amb. Kenneth B. Keating	73 F 88
Amb. John W. Middendorf	73 F 98 (TIFD TO UNDER SECY. OF NA 5/21/77 - Enclt EXD19)
Amb. J. Wesley Jones	73 F 100
Robert C. Brewster	73 D 62 & 73 D 359
John N. Irwin	73 D 427
Amb. Kenneth Rush	72 F 81
Min. Stanley M. Cleveland	74 F 18
George S. Springsteen	74 D 113
Joseph J. Sisco	74 D 131
Amb. Robert S. Smith	74 D 152
Amb. Edwin M. Martin	74 D 135
Barbara M. Watson	74 D 176
Harrison M. Symmes	74 D 217



DEPARTMENT OF STATE

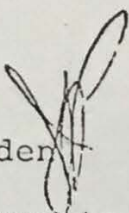
Washington, D.C. 20520

Tab 11

May 5, 1976

MEMORANDUM

TO: P - Joseph J. Sisco

FROM: O/FADRC - John S. Pruden 

SUBJECT: Storage of and Access to Records of
Under Secretary Sisco

As a follow-up to my recent discussions with Mr. Wisner I am summarizing for you the policies and procedures which the Foreign Affairs Document and Reference Center (FADRC) will follow in storing and granting you access to the records collected during your tenure in the Department of State. A copy of 5 FAM 400 is also attached for your reference. The records to which I refer are those you are presently maintaining and using in your capacity as Under Secretary for Political Affairs and those which originated in the period from 1963 to 1974, particularly during your term as Assistant Secretary for International Organizations and Near Eastern Affairs. This latter contingent of records, designated in the attached form, is already being stored for safekeeping in a secured area in FADRC. Your other official records will be sent to FADRC upon your departure from the Department.

Departmental policy and precedent require all departing senior officials to deposit their official records in the custody of the Foreign Affairs Document and Reference Center for safekeeping. Our access procedures allow the official to use the records at any time during Departmental office hours. Numerous officials in the past have operated under this system, including Secretaries Rusk, Acheson, and Dulles and 43 other high-ranking Departmental officials. We feel this policy clearly satisfies the Department's regulations

DECLASSIFIED
Authority UND 79536

for safeguarding sensitive materials while allowing access by former Presidential appointees and career officers to classified information which they originated, reviewed, signed or received while in public office (5 FAM 946).

You are encouraged to deposit all your papers with the Department, but you may take your personal papers with you if you so desire. These are papers of a strictly personal character pertaining only to your private affairs and not to official business (5 FAM 432). For example, such records would be those written or approved by you during your pre-State Department years or which are unrelated to foreign policy and official business. They should have been clearly designated as personal at the time of their origin or receipt and separated from your official documents. If they were not so designated, they may be removed from the Department with my concurrence as the Director of FADRC (5 FAM 417.1). This follows the interpretation that records not previously designated as personal when originated or received ultimately belong to the Department. If your personal papers contain discussions of any policy matters, the portions pertaining to official functions of the Department should be extracted and placed in the official records and FADRC may request you to do so (5 FAM 432).

As you are no doubt well aware, you may not remove original copies of documents or classified material. However, upon your request, the Department will screen for declassification and removal from the Department documents which are no longer sensitive. S/S makes the final determination in this regard based upon the recommendations from the Directors of FADRC and PA/HO. At every step of screening and declassifying your files, officers in FADRC and PA/HO will offer detailed technical assistance. They will also be able to advise you on the procedures for eventually depositing papers of historical importance in the National Archives or a Presidential library (5 FAM 417.2).

When your official papers are sent to FADRC, they will be stored in room 1239 at the Main Department of State building. When you first begin your research, you will be assigned a research cubicle in room 1239 in which you will have access to your records between 9 am and 5:00 pm on any official working day, Monday through Friday. You may either make prior arrangements with Mr. Machak's office to come or you may simply arrive during these work hours. A researcher

from the Retrieval Branch will be assigned to assist you with any of your research needs. If alerted beforehand of your impending arrival, the researcher will have the boxes containing your records ready for use.

In sum, FADRC will make every attempt to ensure the security and integrity of your records while offering you as much flexibility of access as is allowed by regulation and policy precedents.

If you have any questions concerning the above procedures, please feel free to contact me at any time.

Attachments:
As stated

TRANSFER OF RECORDS

(Prepare in Quadrant 1a)

DATE

7/10/74

RSC LOT NUMBER

761-131

Records Services Division
Records Service Center (RSC)

DISPOSITION

2. BUREAU OR POST Bureau of Near Eastern
and South Asian Affairs

4. VOLUME (No. of Boxes)

8

OFFICE of Assistant Secretary

5. SECURITY CLASSIFICATION (Indicate highest)

Top Secret Secret Other (Specify)

DIVISION

6. RECORDS CONTROL SCHEDULE NUMBER

BRANCH

7. ACTIVITY OF RECORDS

Semi-Active Inactive

3. LOCATION OF RECORDS

ROOM 6242

8. RECOMMENDATION FOR DISPOSITION

PERSON IN CHARGE OF RECORDS

Storage until _____

NAME

Teresa Beach

EXTENSION

29589

Other: As determined by JJS when he leaves Department.

9. GENERAL DESCRIPTION OF RECORDS (including dates)

Files maintained for use of Mr. Sisco when he was Asst. Secy of State for NEA, prior to his moving to Under Secretary for Political Affairs. These files should be looked at only by Mr. Sisco, unless Mr. Sisco himself approves someone else looking at them. Files ~~what~~ should be kept for as long as Mr. Sisco is with the Department of State and then disposal checked with him.

1963-1974

10. BOX LISTING

OFFICE OR POST BOX NUMBER	RSC BOX NUMBER (For RM Use Only)	BOX CONTENTS (including dates)
		<u>LETTERS FILES - A - to Z inclusive</u>
1	14881	Box # 1 - A-H
2	14882	Box # 2 - I - P
3	14883	Box # 3 - Q-T
4	14884	Box # 4 - T-Z
5	14885	IO FILES - BOX #5 - Plus Calendar Books
6-8	14886-14888	MISC. OFFICE FILES - Boxes 6-8
		One envelope containing TOP SECRET covered by Receipt #1325091 # 33A

APPROVED BY

in Charge/Post Administrative Officer

EXTENSION

DATE

Records Liaison Officer/Communications and Records Supervisor

EXTENSION

DATE

DECLASSIFIED

Authority DD 79556

Federal Archives and Records Center*

1. San Francisco, California
2. Los Angeles, California
3. Seattle, Washington
4. Denver, Colorado
5. Kansas City, Missouri
6. Fort Worth, Texas
7. Chicago, Illinois
8. Atlanta, Georgia
9. Philadelphia, Pennsylvania
10. New York, New York
11. Boston, Massachusetts

Federal Records Center**

1. Dayton, Ohio
2. Mechanicsburg, Pennsylvania
3. Washington National Records Center
4. National Personnel Records Center, St. Louis, Missouri

These Centers handle Federal Records for their regions.

*Records being held indefinitely because of historical value, and for eventual use by researchers and historians.

**Depository for inactive records, i.e., personnel files, military service records, etc.

Six Presidential Libraries

Herbert Hoover, Library - West Branch, Iowa

Franklin D. Roosevelt, Library - High Park, New York

Harry S. Truman, Library - Independence, Missouri

Dwight D. Eisenhower, Library - Abilene, Kansas

John F. Kennedy, Library - Waltham, Massachusetts

Lyndon B. Johnson, Library - Austin, Texas

DECLASSIFIED
Authority ND 79556



DEPARTMENT OF STATE

Washington, D.C. 20520

Tab 13

March 29, 1976

Dear Mr. Safire:

This response is with respect to your letter of February 24, 1976, in which you "appeal the denial of [your] request for information from transcripts of telephone conversations now in the custody of Mr. Lawrence S. Eagleburger of the State Department."

Your original Freedom of Information Act request of January 14, 1976, seeks two categories of materials from telephone conversations that Dr. Kissinger participated in between January 21, 1969, and February 12, 1971:

1. "All transcripts (including rough drafts, if such exist) in which my name appears."
2. "All transcripts (including rough drafts, if such exist) of conversations between Mr. Kissinger and General Haig, or Mr. Kissinger and Attorney General John Mitchell, or Mr. Kissinger and J. Edgar Hoover, or Mr. Kissinger and any other official of the FBI, or Mr. Kissinger and President Richard M. Nixon in which the subject of 'leaks' of information was discussed."

Mr. William Safire
New York Times Bureau,
1920 L Street, N.W.,
Washington, D.C.

DECLASSIFIED
Authority *ND 79556*

In the Department's letters of February 11 and March 2, it was indicated to you that since the documents encompassed by your request were not "agency records" within the meaning of the Freedom of Information Act, you were not technically entitled to an appeal under the Department of State's regulations. 22 C.F.R. 6.8. Although we are still of the view that you are not entitled to an appeal, we have employed the same procedures to your request as would be applicable to an appeal.

Your letter of February 24 raises the following points concerning the legal status of the documents encompassed by your request:

1. Your letter asserts that the documents encompassed by your request must be agency records of the Department of State, because they are physically located at the Department of State in the custody of the Executive Assistant to the Secretary who is also a Department of State employee. The Department's Office of the Legal Adviser, however, advises us that the law is clear that the current location of a document does not control the document's status under the Freedom of Information Act, and that documents which are originated in a White House office by a member of the President's immediate staff, such as the President's Special Assistant for National Security Affairs, are not subject to the Act. Senate Report No. 93-1200, at 15 (1974). It should also be noted that the memoranda of telephone conversations have not been preserved as evidence of Department of State business. As indicated in the Department's earlier letter, the Department's Office of the Legal Adviser determined that the documents you seek are not "agency records" within the meaning of the Freedom of Information Act. The Office of the Legal Adviser has again reviewed this issue and has reaffirmed its original view.

2. Having reviewed the documents covered by your request, the Department's Council on Classification Policy has determined that, in the event the documents you seek should be deemed to be agency records, exemption 5 under the Freedom of Information Act would be clearly applicable. It is the

DECLASSIFIED

Authority

JDD 79556

Council's view that these documents would be regarded as inter-agency or intra-agency memoranda describing candid working discussions of government officials and others, leading to the formulation of government decisions and policies.

3. Your letter asserts that "an additional claim of invasion of privacy, especially in those matters concerning this appellant [i.e., yourself], is in error." The Department's Office of the Legal Adviser advises, however, that yours are not the only privacy interests which may be at stake. For example, if a memorandum of conversation mentioned the names of several persons, including yours, privacy interests might be at stake for all of the persons mentioned, as well as for the actual parties to the conversation. If your Freedom of Information Act request turned on the privacy interests of others besides yourself, these interests could not be ignored.

4. Your letter suggests a government official circumvents the Privacy Act "simply by refraining from indexing material that ought to be available to citizens." The Department's Office of the Legal Adviser has indicated to us that the Privacy Act does not require indexing; that it would be incongruous for legislation designed to protect privacy to require government officials to index all documents in their custody, and thereby arm themselves with greater access to information about individual citizens; and that since the documents covered by your request are not contained in any file which is retrievable or indexed by any name or identifying symbol or code, they are not subject to disclosure under the Privacy Act.

In summary, having reviewed your letter of February 24, the Department has concluded that the documents you seek are not subject to disclosure under the Freedom of Information Act because they are not agency records. Even if they were deemed to be agency records, the Council on Classification Policy has determined that exemption 5 under the Freedom of Information Act would clearly exempt these documents from disclosure.

Sincerely,

John E. Reinhardt

John Reinhardt

Chairman

Council on Classification Policy

DECLASSIFIED

Authority

ND 79556

DEPARTMENT OF STATE
The New York Times
WASHINGTON BUREAU
1201 STREET, N.W.
WASHINGTON, D.C. 20036
(202) 293-3100
MAR 1
BUSINESS AFFAIRS
PUBLIC AFFAIRS
FREEDOM OF INFO. STAFF

WILLIAM SAFIRE

February 24, 1976

Assistant Secretary of State for Public Affairs
Chairman, Council on Classification Policy
Department of State
Washington, D. C. 20520

Case No. 610050

Sir:

This is to appeal the denial of my request for information from transcripts of telephone conversations now in the custody of Mr. Lawrence S. Eagleburger of the State Department.

In the State Department denial dated Feb. 11, 1976, in paragraph one of page two, it is stated: "The documents are in rough draft form and have never been reviewed for accuracy." That statement is false. I know from personal observation that in some instances, Henry A. Kissinger reviewed the rough draft of what purported to be a verbatim transcript of a telephone conversation, made changes, and ordered the document retyped. I request the names of those members of the Office of Legal Adviser and other personnel of the State Department who were responsible for the preparation of the February 11 letter, as well as the names of those who prepare the answer to this appeal.

In paragraph 2 of page two, it is stated: "The documents are not subject to the Freedom of Information Act. Both because of the nature of the documents and because of Dr. Kissinger's position at the time the

DECLASSIFIED
Authority ND 79556

Assistant Secretary of State for Public Affairs

documents were made, they are not records of the Department of State or of any other 'agency' and, thus, are not 'agency records' within the meaning of the Freedom of Information Act."

If the documents are not those of any agency, what are they? Does Secretary Kissinger claim that they are his personal property and not that of the U. S. Government? Or does he claim that these are "White House papers"? If they are White House papers, why were they taken from the White House? The White House, which is aware of the existence of these papers, has made no claim to recover them. The only set of these papers exists at the State Department, with a State Department custodian, and it is ludicrous to pretend that they are the only White House papers not at the White House.

In paragraph 3. of the denial, the Department says: "Even if the documents in question were considered to be 'agency records' within the meaning of the Act, they would appear to fall clearly within Exemption 5 of that Act. In addition, other specific statutory exemptions, notably Exemption 1, would be applicable, as would claims of invasion of privacy."

"They would appear to fall clearly" is nonsense. "They would appear" is tentative and conditional; "clearly" is certain and unconditional. Exemption 5 centers on the formulation of policy. The policy on leaks was adopted early in 1969; discussions of leaks and complaints thereof following that time did not deal with the formulation of policy. The Department's claim of exemption 5 to conceal discussions about leaks which took place after the policy was laid down is without merit: an additional claim of invasion of privacy, especially in those matters concerning this appellant, is in error.

DECLASSIFIED

Authority

111079556

Assistant Secretary of State for Public Affairs

As to Exemption 1: Undoubtedly, some classified information exists in those documents, but I have not requested classified information. I have requested all transcripts of conversations "in which the subject of 'leaks' of information was discussed." Such discussions cannot be said to be classified. The material I have requested can be separated from the documents, as is frequently done with many Freedom of Information requests.

Since you have claimed Exemption 1, would you please inform me if these documents have been "properly classified pursuant to such executive order."

In paragraph 4 of the denial, the Department states: "Beside falling outside the purview of the Freedom of Information Act, the documents are not contained in any file which is retrievable or indexed by any name or identifying symbol or code; therefore, they are not subject to disclosure under the Privacy Act, 5 U.S.C. 552a."

If this were true, then the Privacy Act, 5 U.S.C. 552a, could be circumvented simply by refraining from indexing material that ought to be available to citizens.

In your reply to this appeal, please describe the method by which these documents are kept. All in a jumbled-up pile, or in file cabinets; no order, or in chronological order; in illegible form, or in typed sheets; any cross-referencing or number of subject headings. Can file clerks, going through the documents in chronological order, find the information requested without leaving a single location?

The final paragraph of your denial of these records asserts that "this letter is not a denial of a 'record'" as defined in your regulations.

DECLASSIFIED

Authority

79536

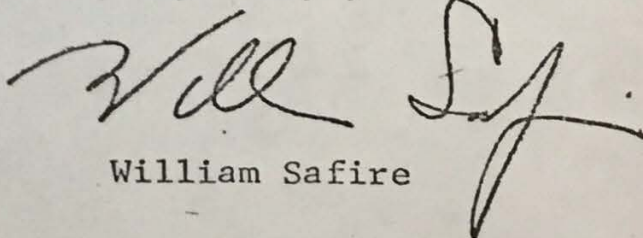
Assistant Secretary of State for Public Affairs

A record cannot exist in some kind of bureaucratic limbo; a record must have a home.

These records, made on government time by government personnel on government material, are located at the State Department and no place else. These records have been publicly described, rightly or wrongly, by the State Department custodian as "working papers" of the Secretary of State. To hold that they are not State Department papers is to make a claim that defies reason and the law.

Accordingly, I demand that you make available to me those portions of those documents previously requested as soon as diligent application of clerical help makes feasible.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Will Safire', written in a cursive style.

William Safire

DECLASSIFIED

Authority

ND 79556



DEPARTMENT OF STATE

Washington, D.C. 20520

Tab 14

26 FEB 1976

Mr. Norman Kempster
The Washington Star
225 Virginia Avenue, S.E.
Washington, D. C. 20061

Case No. 610139

Dear Mr. Kempster:

This is to respond to your letter to Secretary Kissinger of January 16, 1976, in which you request under the Freedom of Information Act "all transcripts and summaries now in files of the Department of State of your telephone conversations with President Richard M. Nixon."

We have consulted with the Office of the Legal Adviser concerning your letter. That office has been authorized to review the documents that appear to be covered by your request, for the purpose of determining whether such documents are subject to the Freedom of Information Act. It has advised us of the following:

1. Although your request describes some of the documents as "transcripts," this description is not entirely accurate. The documents range from brief and incomplete summaries to detailed or paraphrased accounts of telephone conversations. The documents are in rough draft form and have not been reviewed for accuracy. Your request has been treated as referring to this group of documents.
2. The documents are not subject to the Freedom of Information Act. Both because of the nature of the documents and because of Dr. Kissinger's position at the time the documents were made,

DECLASSIFIED

Authority

11D 79556

they are not records of the Department of State or of any other "agency" and, thus, are not "agency records" within the meaning of the Freedom of Information Act.

3. Even if the documents in question were considered to be "agency records" within the meaning of the Act, they would appear to fall clearly within Exemption 5 of that Act. In addition, other specific statutory exemptions, notably Exemption 1, would be applicable, as would claims of invasion of privacy.

4. Beside falling outside the purview of the Freedom of Information Act, the documents are not contained in any file which is retrievable or indexed by any name or identifying symbol or code; therefore, they are not subject to disclosure under the Privacy Act, 5 U.S.C. 552a.

5. Since this letter is not a denial of a "record" under section 6.6(b) of the Department of State's Freedom of Information regulations (copy attached), the appeal provisions of those regulations (section 6.8) are not technically applicable. However, if you wish to bring additional considerations to the Department's attention or to have a further review made of your request, you may address a letter to the Assistant Secretary of State for Public Affairs, Chairman, Council on Classification Policy, Department of State, Washington, D. C. 20520. Matters presented in such a letter would be given prompt and complete consideration.

Sincerely,

Barbara Ennis
Director
Freedom of Information Staff
Bureau of Public Affairs

Attachment:
As stated.

L:MDSandler:dc

Clearance: L:MLEigh

DECLASSIFIED

Authority

79556

P760 014 0612

The Washington Star

DEPARTMENT OF STATE
JAN 23 3 47 PM '76

225 Virginia Avenue, S.E.

Washington, D.C. 20061

BUREAU OF
PUBLIC AFFAIRS
FREEDOM OF INFO. STAFF

Re 610139

37

January 16, 1976

S

ACTION
is assigned to

PA/FOI

Dr. Henry A. Kissinger
Secretary of State
State Department
Washington, D. C. 20520

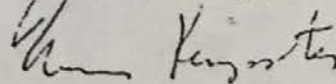
Dear Dr. Kissinger:

This is a request under the Freedom of Information Act for all transcripts and summaries now in files of the Department of State of your telephone conversations with President Richard M. Nixon.

It is my understanding that these transcripts and summaries are now in the custody of Mr. Lawrence Eagleburger.

This is of current news interest, so please reply as soon as possible. This is in the public interest so I request that the documents be provided without charge.

Yours truly,



Norman Kempster

DECLASSIFIED AUTHORITY

DECLASSIFIED
Authority DD 79556



DEPARTMENT OF STATE

Washington, D.C. 20520

April 26, 1976

Mr. Harry M. Rosenfeld
Assistant Managing Editor
The Washington Post
1150 15th Street, N.W.
Washington, D.C. 20071

Dear Mr. Rosenfeld:

This is in response to your letter of April 6, 1976, in which you request disclosure under the Freedom of Information Act of "transcriptions of all Secretary of State Henry A. Kissinger's telephone calls, as testified to by Lawrence S. Eagleburger, Deputy Under Secretary of State, as quoted in The Washington Post, March 27, 1976, page A7."

The Department's Office of the Legal Adviser has reviewed your request, and has advised us of the following:

1. The Department of State has consistently taken the position that the documents encompassed by this request are not "agency records" within the meaning of the Freedom of Information Act. Nor are they records that have been preserved as evidence of the business of the Department of State or of any other "agency" as defined in the Act. Since they are not "agency records," they need not be disclosed under the Freedom of Information Act.

2. Even if the documents you request were considered to be "agency records" within the meaning of the Act, they would be subject to specific

DECLASSIFIED
Authority ND 79556

exemptions under the Act -- particularly Exemption 5. In addition, disclosure of the documents would give rise to potential invasion of privacy claims.

3. Since this letter is not a denial of an "agency record" under Section 6.6(b) of the Department of State's Freedom of Information regulations (copy attached), the appeal provisions of those regulations (Section 6.8) are not technically applicable. However, if you wish to bring additional considerations to the Department's attention or to have a further review made of your request, you may address a letter to the Assistant Secretary of State for Public Affairs, Chairman, Council on Classification Policy, Department of State, Washington, D.C. 20520. Matters presented in such a letter would be given prompt and complete consideration.

Sincerely,

Barbara Ennis
Director, Freedom of
Information Staff
Bureau of Public Affairs

Attachment:
Department of State Freedom of
Information Regulations

DECLASSIFIED

Authority

111 79556

The Washington Post

1150 APR 3 2 04 PM '76
WASHINGTON, D. C. 20071
BUREAU OF
(202) 223-6000 AFFAIRS
FREEDOM OF INFO. STAFF

HARRY M. ROSENFELD
ASSISTANT MANAGING EDITOR
NATIONAL

April 6, 1976

FOI# 620082

Ms. Barbara Ennis,
Freedom of Information Office,
Bureau of Public Affairs,
Department of State, Room 2811,
Washington, D.C., 20520.

Dear Ms. Ennis:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, I hereby request disclosure of the following records for inspection and possible copying:

Transcriptions of all Secretary of State Henry A. Kissinger's telephone calls, as testified to by Lawrence S. Eagleburger, deputy under secretary of state, as quoted in The Washington Post, March 27, 1976, page A7.

If you regard any records in the foregoing list as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless.

I further request that you disclose the listed documents as they become available to you, without waiting until all the documents have been assembled.

I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area and throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. § 552 (a)(4)(A), you waive all fees in the public interest because the furnishing of the information sought by this request will primarily benefit the public. If, however, you

DECLASSIFIED

Authority

ND 79556

(Ltr to Ms. Ennis, FIO,
Dept. of State)

April 6, 1976

-2-

decline to waive all fees, I am prepared to pay your normal search fees (and copying fees if I decide to copy any records), but I request that you notify me if you expect your search fees to exceed \$200.

I look forward to hearing from you promptly.

Sincerely,

Harry M. Rosenfeld

HARRY M. ROSENFELD
Assistant Managing Editor,
National

HMR:clg

DECLASSIFIED

Authority

100 79556

Kissinger Says Nixon Knew of Phone Taping

By Robert G. Kaiser and Warren Brown
Washington Post Staff Writers

Secretary of State Henry A. Kissinger confirmed yesterday that with President Nixon's knowledge he had recorded telephone conversations with the former president, but said other aspects of a new book on Nixon's downfall were inaccurate.

An aide to Kissinger authorized to comment for him on the book, "The Final Days" by Bob Woodward and Carl Bernstein, said: "There are so many inaccuracies and significant untruths in this that he [Kissinger] is not going to comment on it."

David Eisenhower, the former President's son-in-law, denied yesterday that the Nixon family was ever worried that Nixon might kill himself. The book says aides and relatives, including David, worried that Nixon might take his own life.

Eisenhower said rumors that Nixon might kill himself were "logical," but added that "there was never any talk of suicide, never any fears expressed by the family, as far as I know."

"A lot of people in the White House (during Watergate) had a tendency to overdramatize," Eisenhower said.

Lawrence S. Eagleburger, deputy under secretary of state, was the Kissinger aide authorized to speak for him yesterday. Regarding the taping of Kissinger's conversations with Nixon, Eagleburger said:

It is true that the conversations were tran-

scribed. The President knew that there was someone on the line to take them down.

"The reason for this was that there would be follow-up needed as a result of phone conversations, and this was a way to assure that the follow-up was carried out. These same procedures applied to all of Kissinger's business arrangements. There was no special procedure for the President's calls.

"On the occasions when they and other conversations were taped, the tapes were destroyed as soon as the secretaries had a chance to transcribe them. The purpose of the system of taping was simply to handle the load for the secretaries."

John Ehrlichman, Nixon's former chief of domestic policy affairs, refused to comment on any aspect of the new Woodward-Bernstein book.

"I don't know anything about it," Ehrlichman said in response to questions about the telephone monitoring and Kissinger's alleged remarks that he, Ehrlichman, was a "Nazi."

"I have no comment at all—no response," said Ehrlichman, who was reached by telephone in Santa Fe, N.M.

Another Kissinger associate who worked with him at the National Security Council in the first Nixon administration, William G. Hyland, said yesterday he doubted the story that Kissinger recorded his phone conversations. Now the No. 2 man in the NSC staff, Hyland said: "I suspect that it's probably not true at all... that it's a real canard."

Eagleburger also con-

WP
3/22
This section was read to Eagleburger by a reporter yesterday. He listened and then said he would have no comment.

Several former associates of Kissinger said in interviews yesterday that the transcribing of telephone calls was routine in his office. All of them asked not to be identified by name.

Several of these persons said they thought it was routine for senior government officials to ask their secretaries to listen in on phone calls and make notes for the record.

One former Kissinger associate said tape recording equipment was installed in early 1972 to record calls. The plan to start using the equipment then was cleared through White House chief of staff H. R. (Bob) Halde-man in a memorandum which this associate remembered seeing at the time, he said.

The book says tape recordings of phone calls began in 1970, but this associate said he thought it was later.

Another former Kissinger associate said he had listened in on some of the telephone conversations between Kissinger and Nixon. "It was frightening," this man said. "Some of the younger Kissinger aides couldn't take it... I think Nixon was one of the most unbalanced personalities that has ever been in the presidency."

David Eisenhower was asked yesterday about references in the book to heavy drinking by President Nixon. "I didn't see a lot of it, particularly," he said.

Asked about the book's description of the relationship between Mr. and Mrs. Nixon as strained, Eisenhower said that was "a general characterization of the relationship."

firming that Kissinger had kept some of his papers at Vice President Rockefeller's estate in New York "for a couple of months in 1973."

According to Woodward and Bernstein, Kissinger moved papers there out of concern over security in the White House. Later, according to the book, he was advised that it was illegal to store classified documents outside government facilities, and Kissinger moved them back to Washington.

Eagleburger himself appears in an excerpt from the book describing a meeting between President Nixon and Kissinger the day before Nixon announced his resignation. The book says Nixon sobbed and struck his fists on the carpet of the Lincoln Sitting Room during the meeting.

It also says Eagleburger was listening on an extension phone right after that meeting when Nixon called Kissinger and said in part: "Betty, please don't ever tell anyone that I cried and that I was not strong."