The original documents are located in Box 61, folder "State Department - General (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

November 26, 1975

MEMORANDUM FOR: JACK MARSH

FROM: PHIL BUCHEN P.

In regard to the attached, I talked to Henry Hunt. He explained the case to me and it appears that the Immigration and Naturalization Service has treated Professor Simpson fairly and in accordance with applicable procedures. He admitted that any exception in this case would create an unusual precedent. Professor Simpson is here on a visitor's visa which has expired. He has applied for immigrant status, but must return to his country of origin to await his turn to become an immigrant resident of the U. S. I did advise Mr. Hunt to check further with his Congressman's office, but he concluded there was no occasion for White House intervention to change the outcome.

Attachment

DEPARTMENT OF STATE

Washington, D.C. 20520

January 30, 1976

The Honorable
Philip Buchen
Counsel to the President
The White House

Dear Mr. Buchen:

Following up your telephone conversation this morning with Monroe Leigh, I am enclosing a copy of Gordon Baldwin's memorandum on "the Crossman Papers", as well as a copy of the recent Freedom of Information Act request by Norman Kempster from the Washington Star.

At Monroe's request, I have also included a copy of the 1959 Cabinet Paper (in three parts) relating to the removal of records. The reference to telephone conversation memoranda appears on page 6 of the main paper.

Sincerely,

Michael Sandler
Special Assistant to the
Legal Adviser

Enclosures:
As stated.

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Washington, D.C. 2...

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January 16, 1976

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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

DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM

January 29, 1976

TO: L - Monroe Leigh

FROM: L - Gordon Baldwin

SUBJECT: The Crossman Papers

Facts

While the late Richard Crossman was a member of the Labor cabinet from 1964 to 1970 he kept a personal diary intending, he frequently repeated, to publish eventually. His colleagues were aware, or should have been, of his purpose. Crossman, considered somewhat to the left of his party, never expressed much concern in what the public, generally, and party leaders, particularly, thought about him, and it was widely feared, without contradiction to this date, that his comments about colleagues and government issues would be unguarded, unrestrained and, at best, forthright.

When the Labor government fell in 1970, and Crossman left office, he obtained the assistance of the Secretary of the Cabinet to refresh his memory by reference to the pertinent cabinet papers during the time Crossman was in office. Access was allowed in conformity of the custom allowing former cabinet ministers to refresh their memory. The diary series finally edited, with professional assistance, revealed detailed accounts of cabinet meetings and conversations among members of the government, which in the opinion of government leaders should not be published even ten years after.

Hence, after Crossman died in 1974 his literary executors, including Mr. Michael Foot, anticipated lively sales for a diary considered by publishers to be witty and irreverent. Extracts of the first volume covering 1964 to 1966 were published in early 1975 by the Sunday Times of London. They confirmed Crossman as the human embodiment of Tobermory, the cat (see the short story, Tobermory, in the collected works of Saki by H.H. Monro). The Sunday Times received advice from the Secretary of the Cabinet as to what should or should not be published. Most of that advise was rejected.

With the knowledge and consent of the Prime Minister, the Attorney General thereupon sought two injunctions; the first against the publishers and the executors and the second against the Sunday Times. It was universally conceded that the diaries and materials to be published were the property of the Crossman estate. The only issue before the court was whether or not to enjoin Volume I of the diaries covering the period 1964 to 1966.

The case for the injunction was heard in July 1975 by Lord Widgery, Lord Chief Justice. His decision was rendered October 1, 1975 (London Times, 2 October 1975, page 8, column 1, copy attached.). It was reported widely in both the British and American press (N.Y. Times, 28 July 1975, p.21, c.5; 29 July 1975, p.4, c.4; 3 August 1975, Sec E, p.16, c.1; 2 October 1975, p.1, c.1; The Economist, 18 October 1975, p.18, c.1; New Statesman, 10 October 1975, p. 430).

The Decision -- Summarized

Lord Widgery refused the injunction in the circumstances presented. The ruling is a narrow one, in summary, applying a balancing test in holding that: (1) the court has to be satisfied that the public interest clearly requires as a matter of necessity that diaries should not be

published. He found no such necessity in this case; (2) If the public interest does so require, the publication of cabinet discussions can be restrained by the court under the common law. The British Official Secrets Act was not invoked because it does not explicitly provide for injunctive relief. The Lord Chief Justice relied upon two recent cases to support his finding that there might be occasions to justify a prior restraint.

Result

The rule in its broadest complication may be summarized as establishing:

> "The expression of individual opinions by cabinet members in the course of cabinet discussions are matters of confidence, the publication of which can be restrained by the court when this is clearly necessary in the public interest."

On October 9, 1975 the Attorney General announced that the government would not appeal the refusal of the injunction. The government is apparently awaiting the report of Lord Radcliffe's commission established in April which was directed to "consider the principles which should govern publication by former ministers of memoirs or other work relating to their experience as ministers." As of January 1st this committee had not reported. The Crossman Diary, Volume I, has not been issued as of this date, but is listed for near release by Holt Rinehart, the U.S. publisher.

Discussion

The Government argument:

Proceedings within the British Cabinet should not be revealed, and the publication of such proceedings should be controlled by the courts insofar as documents include:

a) disclosure of the individual views and attitudes of ministers;

b) disclosure of confidential advice from Civil Servants;

c) disclosure of confidential discussions affecting appointment and transfer of Civil Servants.

The Court agreed with the value of confidentiality -- but said that this must be balanced with other interests including the public interest in disclosure:

> "There must *** be a limit in time after which the confidential character of the information, and the duty of the court to restrain publication, will lapse. *** I have read the whole of volume 1 of the diaries. I cannot believe that the publication at this interval of anything in this volume would inhibit free discussion in the Cabinet today even though the individuals involved are often the same and the national problems have a distressing similarity with those of a decade ago *** we are dealing in this case with *** information nearly 10 years later.
>
> * * *
>
> The court should intervene only in the clearest of cases where the continuing confidentiality of the material can be demonstrated. In less clear cases reliance must be placed on the good sense and good taste of the minister or ex-minister concerned."

1. The case is a helpful precedent here to contrast with the Pentagon Papers case in showing what might justify a "prior restraint."

2. The case assumes, without argument, that personal memoirs and personal recollections contemporaneously recorded are "owned" by the author.

Attachment

The Times of London, October 2, 1975
page 8, col. 1

Law Report October 1 1975

Injunction to stop Crossman Diaries refused

Attorney General v Jonathan Cape Ltd and Others
Attorney General v Times Newspapers Ltd
Before Lord Widgery, Lord Chief Justice

The Lord Chief Justice refused to grant injunctions sought by the Attorney General to restrain the publication of volume one of Richard Crossman's *Diaries of a Cabinet Minister*, a commentary on Cabinet discussions and politi-

Mr Crossman began to collate his diaries with a view to their publication. He obtained the assistance for research purposes of Professor Janet Morgan, and he was soon in touch with the Secretary of the Cabinet in order to refresh his memory by reference to the relative Cabinet papers of the times. For many years former Cabinet ministers have been allowed the privilege of looking at

nor can they be expected to abide by a common decision if they know that the stand they have taken and the points they have surrendered will sooner rather than later become public knowledge. Since Cabinet government depends on the mutual confidence of collective responsibility, its basis can be eroded by the premature disclosure of what has passed within the confidential

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CP - 59-58/4

July 27, 1959

The White House

Washington

THE CABINET

Removal of Papers by Retiring Department and Agency Heads

The attached approved paper is circulated for the information and guidance of agency heads, and for their action now with respect to Recommendations (f), (h), and (i). For convenience, the paper is preceded by a Brief.

This paper was approved by the President at the Cabinet meeting of July 17, 1959 (RA - 59-136, Item 1). A new Recommendation (i) has been added in conformance with the President's suggestion.

The President has also directed that if any classified documents of the National Security Council are being considered for removal by retiring agency heads under Sections 3 or 4 (Recommendations (e) or (j)) of this

paper, or for access by p

of historical research under Paragraph 2 of Executive Order 10816, authorization for removal shall be obtained from the Executive Secretary of the National Security Council with respect to each such classified NSC document.

The President has further directed that if any classified or "privileged" Cabinet papers are being considered for removal under any of the sections of this paper, authorization for removal shall be obtained from the Secretary to the Cabinet with respect to each such Cabinet paper.

Robert Gray
Secretary to the Cabinet

CABINET PAPER

For Action

CP - 59-58/4

CABINET PAPER—PRIVILEGED

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July 27, 1959

The White House

Washington

THE CABINET

Removal of Papers by Retiring Department and Agency Heads

Brief

Problem

To set forth a consistent policy and a set of recommendations which will govern the removal of papers by retiring Department and Agency Heads.

Discussion

Documents which are truly personal and private belong to the respective agency heads, and can be removed. The removal of public documents is limited by statute, with certain discretion allowed. Many papers, however, will be found to be a mixture of private and public matters. Case by case decisions will then be required on the part of each agency head to determine whether a given paper is preponderantly personal or public. The advice and assistance of departmental and agency records officers, as well as the staff of the National Archives and Records Service, GSA, are available in making determinations of this nature.

Statutory limitations:

(a) Material classified pursuant to E. O. 10501 --

There is no provision for removal of classified material by a retiring officer, and two separate criminal statutes probably apply to any such removals; however, limited arrangements for the acquisition and retention of extra copies of classified material by persons outside the Government, including retiring officials, are allowed under the amendment added to E. O. No. 10501 by paragraph 2 of E. O. No. 10816 (See Section 3 of the attached Cabinet Paper).

(b) "Records" --

Material which falls under the statutory definition of "Records" may be disposed of only through the procedures specified in the Records Disposal Act (involving submitting of lists and schedules to the Administrator of GSA and their being resubmitted by him to the Congress for Joint Committee examination).

(c) Confidential information within the meaning of several specific statutes (e.g. involving codes, cryptographic systems, communications intelligence, income tax returns, bank examining, and certain Social Security and confidential statistical information) --

The unauthorized removal of papers falling under any of these special statutes is subject to criminal penalties.

CABINET PAPER

For Action

Area of Discretion:

(a) The determination as to what are "Records".

The statutory definition of "Records" is given on page 2 of the attached paper. The legislative history of the Records Disposal Act makes it clear that the determination of what are "Records" is a matter of limited agency head discretion. The disposal of papers judged not to be "Records", and which do not fall under the additonal limitations of "a" and "c" above, is subject to "regulations" which "the head of each department is authorized to prescribe..."

(b) The determination as to "access" to classified information.

The amendment added to E. O. No. 10501 by paragraph 2 of E. C. No. 10816 authorizes agency heads to grant access to classfied information to persons outside the Government, (including retiring officials), engaged in historical research (See Section 3 of the attached Cabinet Paper).

In making the above determinations, agency heads are referred to Section 2 of the attached paper.

(c) Use of Presidential Archival Depositories for the Control and Disposition of Personal Papers.

Although the control and ultimate disposition of personal papers removed by agency heads rests with the individual concerned, the Federal Records Act of 1950, as amended, affords in the National Archives system, with its Presidential archival depositories, excellent facilities for the preservation and eventual research use of such materials.

of similar status):

(a) No material, even though judged not to be "Records," should be withdrawn if its withdrawal will create such a gap in the files of the agency as to disrupt the proper documentation of its activities as provided for in section 506 of the Federal Records Act. Since such work-aids as office diaries, logs, memoranda of conferences and telephone calls are usually reflected in actual agency records, such work-aids ordinarily can be removed.

(b) If any documents are judged not to be "Records" but to be preponderantly personal and are to be removed, the agency head should make a record of anything contained therein relating to matters involving the official business of the agency.

CABINET PAPER

For Action

(c) Personal diaries should be considered as not "Records" but private property, providing they contain no government documents which should not be removed under the other limitations specified in this paper.

(d) Extra carbons or non-record copies of "Records" may be removed, providing:

(i) there are no legal or policy reasons for keeping the information therein confidential;

(ii) if they were produced by a second agency, that agency does not wish them kept confidential;

(iii) that the record copies, and sufficient non-record copies for the convenient transaction of business still exist in the interested agencies.

(e) Material classified under Executive Order 10501 and Restricted Data under the Atomic Energy Act of 1954, no matter what its form, should not be removed from the custody, control, or possession of any Department, agency, or person charged with its protection, and title to such material may not be transferred from the United States. However, Executive Order 10816 provides limited authority for the collection of extra copies of classified materials by private individuals, including retiring officials, for historical research purposes. Use of this authority is subject to the qualifications in the Executive Order and to the interpretation specified in Section 3 of the attached Cabinet Paper.

(f) Department and agency heads should, using this paper as a guide, consider the advisability of publishing a policy for removals by subordinate bureaus and offices in order to bring about consistent practice.

(g) Rather than make decisions in haste, retiring department and agency heads should consider having representatives of the National Archives examine and give advice on all material which is planned for removal.

(h) All agency heads should consider initiating a continuing system for segregating personal and withdrawable material from "Records", at the time of origination.

(i) Department and Agency Heads should, in file-keeping and file-cleaning under their jurisdiction, take steps to have thrown out personal or gossipy material which does not come under the definition of "Records" on page 3 of the attached Cabinet Paper.

(j) Retiring department and agency heads planning to remove papers should consider making use of the system of Presidential archival depositories (including the right of restriction on access) established by Section 507 of the Federal Records Act as amended.

CABINET PAPER

For Action

CP - 59-58/4

July 27, 1959

The White House

Washington

THE CABINET

Removal of Papers by Retiring Department and Agency Heads

The determination of what documents retiring department heads or other officers appointed by the President may remove and take with them when they leave office is complicated by the problem of ascertaining whether the documents in question are public or private in nature. Documents which are truly personal or private belong to them and may be removed. The removal of public documents is limited by statute. However, department heads and officers of similar status frequently maintain wide contacts in business, politics and other aspects of national life and undertake activities not directly related to the functions of their offices. Their correspondence often has a mixed character. Because of this, it may be difficult to determine whether correspondence or other documents containing personal material, but bearing upon the conduct of public business, must be regarded as public documents. The advise and assistance of departmental and agency records officers as well as of staff members of the National Archives and Records Service, GSA, are available in making determinations of this nature.

While all the possible situations cannot be anticipated, it would be helpful to set forth the types of material which, as a matter of law must be retained by the Government, the area in which discretion to remove exists and how the law indicates that discretion should be exercised. The applicable criminal law will also be referred to where relevant. In the light of that discussion a number of specific recommendations will be made.

(a) Classified information and Restricted Data under the Atomic Energy Act.

Executive Order 10501 of November 5, 1953 (18 F.R. 7049), as amended, contains special provisions for the safeguarding of "official information which requires protection in the interests of national defense." Only "official information" may be classified under the order, and the fact that material containing such information has been so classified indicates that it has been determined not to be private in nature. In addition, the order, as amended, contains elaborate provisions relating to access, custody, safekeeping, dissemination, accountability and disposition which indicate that it intends that, while such material remains classified, none of the Government's property rights relating to it be transferred to others, including to retiring department or agency heads. Dissemination of classified information to a former officer, even though he "may have been solely or partly responsible for its production", can be made only under conditions and through channels authorized by the head of the disseminating department or agency.

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For Action

The system established by the Executive order makes no provision for the removal by a department head or other individual of any material which comes under it (as distinguished from the acquisition and retention of extra copies thereof for historical research; see Section 3 below.) Material classified under the order may be disposed of only by burning or equally destructive methods or in accordance with procedures established by the Records Disposal Act (44 U. S. C. 366, et seq.). which does not provide for removal by a retiring officer. The fact that a document has been classified under the order would provide an argument of some force that a removal was "willful and unlawful" within the meaning of 18 U. S. C. 2071 which provides criminal penalties for the willful and unlawful removal of records, papers, documents "or other thing" deposited with any public office or officer. The statute covers unlawful removal by, among others, those "having the custody." Further, 18 U. S. C. 793 makes criminal the willful retention of, among other things, any "document, writing, *** or note relating to the national defense" and the failure to deliver it to the officer or employee of the United States entitled to receive it. This section also appears applicable to documents classified under the Executive order.

Similar conclusions follow from the special restrictions imposed on access to Restricted Data, as that term is defined in the Atomic Energy Act of 1954 (42 U. S. C. 2161-2166), and the criminal penalties imposed for the violation of this act, specifically those dealing with communication, receipt, tampering, or disclosure of Restricted Data (42 U. S. C. 2273-2277), make it clear that removal of such material by a retiring officer is prohibited.

"In addition, special provisions have been made in 18 U. S. C. 798 for the safeguarding of classified information relating to codes, ciphers, cryptographic systems and similar devices used in connection with communications intelligence."

(b) "Records." The Records Disposal Act provides specific procedures for the disposal of "records" as that term is defined therein. The definition is set forth below. The act provides that records may be disposed of only through a procedure involving the submission by each agency head to the Administrator of the General Services Administration of lists of records which do not have sufficient "value to warrant their further preservation," and of schedules proposing the disposal after the lapse of a specified period of time of records of a specific character that have accumulated or may accumulate in the agency. The Administrator must then submit the lists and schedules to the Congress to be examined by a Joint Committee. Disposal is permitted only if the Committee so recommends or fails to make a recommendation within a period of time fixed in the act. These procedures "are exclusive and no records of the United States Government shall be alienated except in accordance" with the provisions of the act. Accordingly, if material is in fact "records" it may not be removed and removal might constitute a criminal violation under 18 U. S. C. 2071. However, as indicated below, limited discretion is conferred on agency heads to determine whether material is "records."

(c) Confidential information. There are numerous statutes which guarantee the confidential nature of certain information supplied to the United States or its officers and make it a crime to disclose such information. Without listing them all, they include income tax returns (I. R. C. 6103 (a)); information in possession of the Social Security Board (42 U. S. C. 1306); confidential statistical information (18 U. S. C. 1905); information obtained by bank examiners (18 U. S. C. 1906); and Farm Credit

Examiners (18 U. S. C. 1907). It is difficult to see how material containing information covered by statutes can be considered as anything other than official documents the removal of which would be improper.

2. Documents as to which discretionary authority for removal exists. Government owned documentary material which does not fall within the definition of records may be disposed of under R. S. § 161 (5 U. S. C. 22) which provides in part:

> "The head of each department is authorized to prescribe regulations, not inconsistent with law, for *** the custody, use, and preservation of the records, papers, and property appertaining to it."

This statute, apparently enacted under the authority of the Congress to make rules and regulations respecting the "Property of the United States" (Constitution, Art. I. Sec. 3, Cl. 2), seems to confer adequate authority upon department heads to dispose of records and papers appertaining to a department so long as such disposition is "not inconsistent with law," e. g., the Records Disposal Act, Executive Order 10501 or limitations relating to confidential information. Accordingly, if material does not fall within the definition of "records," contained in the Records Disposal Act, as, for example, extra carbons or photostats of memoranda, and is not classified or confidential removal may be authorized under R. S. § 161. Although the statute covers only the nine executive departments enumerated in 5 U. S. C. 1, the courts have tended to read parallel powers into the statutes governing the independent agencies.

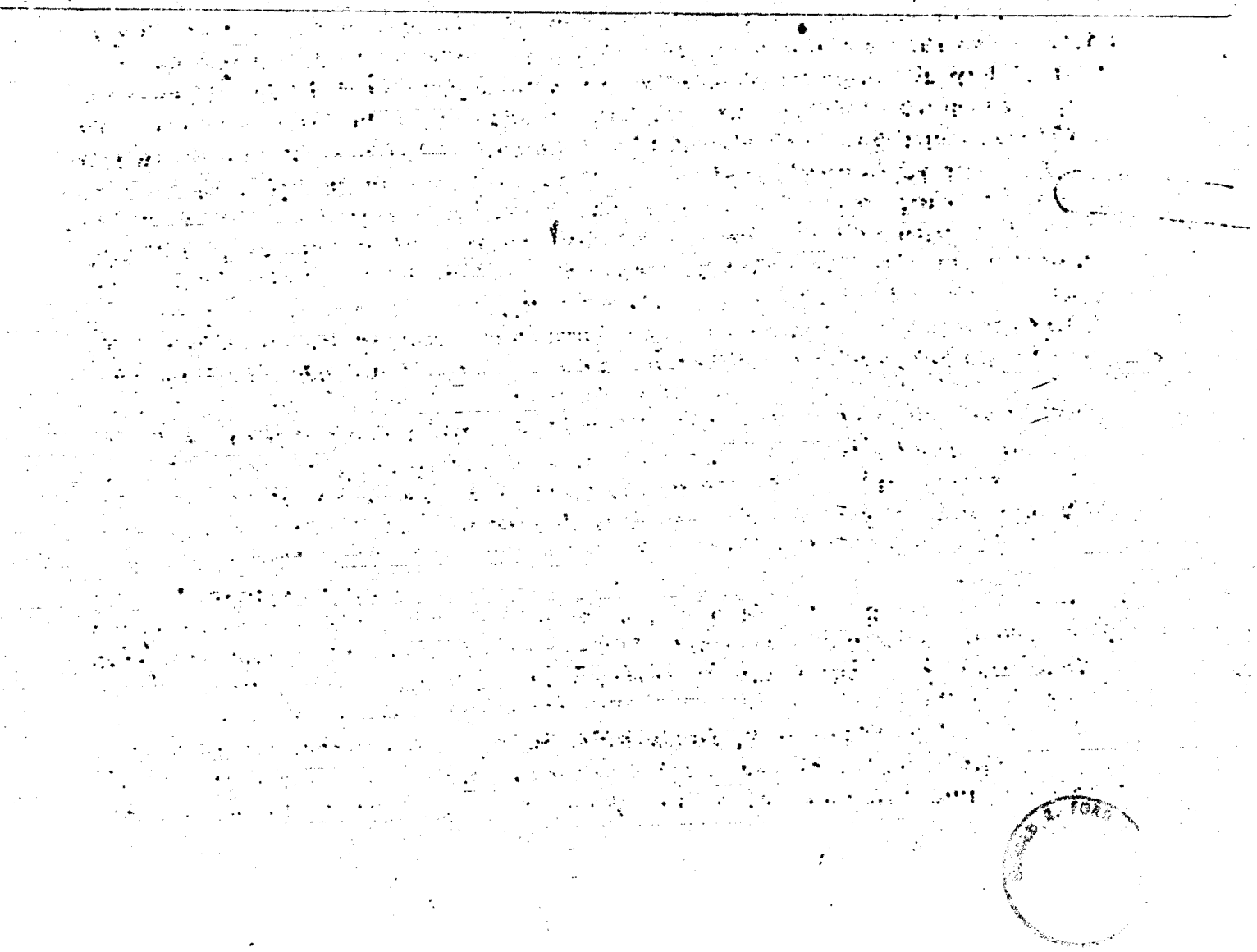
The definition of "records" contained in the Records Disposal Act (44 U. S. C. 366) includes:

> "all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of 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 contained therein. 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 within the definition of the word 'records' as used in this Act."

Further, the definition confers some discretion on agency heads to determine whether material comes under it, and the legislative history of the act indicates that some discretion was in fact intended. The definition requires that two conditions must be met. First, it must be "made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business." Second, it must either be "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 contained therein." Obviously cases may exist in which it is difficult to determine whether any particular document should be treated as a "record" in the light of these

CABINET PAPER

For Action



requirements. Special difficulty may exist with respect to the correspondence of an officer which he may tend to regard as private or personal but which also has some relation to public business. While it may be easy to determine that such correspondence should be preserved, it is sometimes difficult to conclude it has been "made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business."

Guidance as to the manner in which discretion is intended to be exercised is supplied by the emphasis placed in the Federal Records Act (44 U.S.C. 392, et. seq.) upon the making and preservation of records for the purpose of documenting policies, decisions and essential transactions of agencies and in order to protect the legal and financial rights of both the Government and persons affected by agency activities. Material necessary for such purposes is to be treated as "records" and not be removed.

The diaries or private accounts of the public activities of high officials may ordinarily be regarded as private property. R.S. § 161 is limited in its application to papers "appertaining to" a department, and it would be justifiable to conclude that a diary or private account does not so "appertain" within the meaning of the section. The definition of the term "records" does not require their inclusion under it. While conceivably the discretionary power conferred by the definition could be extended to cover them, there appears to be no reason why this should be done. Such diaries or accounts are of historical importance and ordinarily ultimately become part of the body of history available to scholars. Since they deal with matters which are usually elsewhere covered by adequate "records," officials have the choice of preparing such diaries or accounts or failing to do so. Because they often contain highly personal material, such as appraisals of associates and political speculation, any attempt to treat them as public property would probably result in their not being produced at all.

The authority of retiring department or agency heads to remove material necessary for the preparation of such private accounts after they have left office is governed by the general principles contained in this paper. The discretion conferred upon department and agency heads with respect to the classification of materials as records must place primary emphasis upon the importance of maintaining in the hands of the Government documentation of Government activity. However, if this purpose is effectuated, leeway remains for the treatment of papers as either private or as non-record and, therefore, subject to being removed under R.S. § 161 if otherwise proper.

3. Discretionary authority to [illegible]

material for historical research. Material classified under Executive Order No. 10501 and Restricted data under the Atomic Energy Act of 1954, no matter what its form, shall not be removed from the custody, control or possession of any department, agency, or person charged with its protection, and title to such material shall not be transferred from the United States. It should be noted, however, that a new subparagraph, entitled "Historical Research", was added to section 15 of Executive Order No. 10501 by paragraph 2 of Executive Order No. 10816 of May 7, 1959. That new subparagraph provides limited authority for the collection of extra copies of classified materials by private individuals, including retiring officials, for historical research purposes. It authorizes each agency head to permit persons outside the Executive branch who are performing functions in connection with historical research projects to

CABINET PAPER

For Action

have access to classified defense information originated within his agency if he determines that that access would be clearly consistent with the interest of the national defense and that the persons to be granted that access are trustworthy; however, the agency head involved is charged with the responsibility for taking appropriate steps to assure that the classified information involved is not published or otherwise compromised. The new subparagraph does not permit the removal of classified records from the possession of the Government, but the agency head concerned may, in his discretion, permit persons granted access to classified information under the new subparagraph to acquire or reproduce, and retain in their custody, extra copies of those classified records if those persons arrange for the proper safeguarding thereof. The agency head involved shall assure that title to the copies will remain in the United States until such time as the information contained therein has been officially declassified under the provisions of Executive Order No. 10501 and until the agency head otherwise determines that the interests of the United States permit the transfer of title to the copies to nongovernmental custodians.

4. Use of Presidential Archival Depositories for the Control and Disposition of Personal Papers. The protection, control, and ultimate dispostion of personal papers removed by retiring cabinet and agency heads is a responsibility of the individual concerned. The historical importance of such materials, however, suggests that care be exercised to prevent their loss or dispersal. Although some of the papers may contain information of a sensitive or private nature, the use of which will be restricted for a time, the collection as a whole ought, in due course, to be made available for research use.

Section 507 of the Federal Records Act (44 U. S. C. 397) establishes a system of Presidential archival depositories. Under this section the Administrator of General Services Administration may accept for deposit in either the National Archives or in such depositories Presidential papers, papers and other historical materials of officials or former officials and other papers "relating to and contemporary with any President or former President of the United States." The section specifically provides that deposits may be made "subject to such restrictions respecting their availability and use as may be specified in writing by the donors or depositors, . . . and such restrictions shall be respected for so long a period as shall have been specified, or until they are revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf . . . ." This statutory right to place restrictions on availability and use might operate effectively against either a judicial or legislative subpoena. Privately owned papers not so deposited would probably be subject to subpoena.

security to materials deposited therein, provides for their administration by a trained professiona . taff.

5. RECOMMENDATIONS. Specific recomme ndations cannot cover the whole variety of situations which may arise. However, they should provide a guide to the solution of many problems and point to the general approach to others. The recommendations relate only to department and agency heads and officials of similar status.

(a) No material should be withdrawn if its withdrawal will create such a gap in the files of the agency as to disrupt the proper documentation of its activities as provided for in section 506 of the Federal Records Act. Ordinarily, it would not be an abuse of discretion to withdraw

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For Action

personal work aids such as office diaries, logs, memoranda of conferences and telephone calls. Adequate agency records of the material referred to usually exist and withdrawal will, therefore, not cause such disruption.

(b) It is almost impossible to make a rule with respect to correspondence addressed directly to an agency or department head. Much of it relates only to department business, fully meets the definition of records contained in the Records Disposal Act, and must be treated as official records. However, much of it can be treated as personal or private and deals with either the public activities of the individual not related to his department or agency or with his purely personal activities. To the extent that material clearly falls within this category there can be no objection to the removal. However, there is undoubtedly a large body of correspondence which contains material of both types. Here, a delicate judgment as to whether it is preponderantly agency material or personal in nature must be made in each case. In the event that it is determined to be essentially personal and that it is to be removed, a record should be made of anything contained therein relating to matters involving the official business of the agency.

(c) Personal diaries should be regarded as private property. To the extent that they deal with matters of public importance of the affairs of a department or agency they ordinarily merely repeat or supplement with personal detail matters as to which records adequate to meet the statutory standards exist. To regard them as records would probably prevent their being kept at all. However, there are in existence "diaries" which, as well as containing the personal notations normally expected, are also in fact collections of Government documents. The propriety of removing such "diaries" depends upon the propriety of private possession of the documents.

(d) Whether or not a departing officer may take extra carbons or other 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. If they should be so regarded, the responsibility of keeping them confidential should be vested in the Government, not in former officers. In some cases the documents were produced in another agency. It would be appropriate to obtain the views of that agency as to the confidential status of documents before removing them. In some cases regulations may so require. Assuming there are no reasons to keep the information contained in the documents confidential and that record copies exist in the interested agencies, together with such extra non-record copies necessary for the convenient transaction of business, there should be no objection to the removal of copies.

(e) Retiring agency heads contemplating the establishment of collections of their papers, should, to the extent that those papers involve classified material be guided by section 3 of this paper.

(f) It would be appropriate for department and agency heads to publish a policy for their agencies and departments relating to what documents and material officers and employees may obtain and keep for their personal use and what must remain in the official files. While the same policies might not necessarily apply to all levels of officers and employees, it would articulate the problems and establish a practice which could at least be used as a standard.

(g) It would be appropriate for responsible employees of the agency or department, and possibly representatives of the National Archives, to examine all material intended to be removed by a retiring

agency head in order to make sure that adequate agency records exist as to any official matters referred to in the material and that no material containing security or confidential information is removed. It is understood that in a number of cases the decision has been hurriedly made by a personal assistant or secretary in the last days or hours before resignation, with the result that proper consideration has not been given to all factors involved.

(h) It would be appropriate for all agency heads to follow a system whereby personal material and records could be segregated as they are created or received, and kept separate at all times.

(i) Department and Agency Heads should, in file-keeping and file-cleaning under their jurisdiction, take steps to have thrown out personal or gossipy material which does not come under the cited definition of "Records" on page 3 of this Cabinet Paper.

(j) Presidential archival depositories provide an attractive means for centralizing private collections of materials dealing with specific Presidential administrations. In addition to affording physical security to materials deposited therein, they also provide for their proper administration and servicing for research use by a trained professional staff as a part of the archival system of the United States. Serious thought should be given by retiring or retired officials possessing such collections to the advantages of arranging for their deposit, under appropriate restrictions, in a Presidential archival depository.

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THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: State Dept.

Date: February 17, 1976 Time:

FOR ACTION: cc (for information): Marge Wicklein

Phil Buchen

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, February 18 Time: 3 P.M.

SUBJECT:

Letter from Embassy of Iran 2/13/76
forwarding decreee for the Order of Pahlavi
with Grand Cordon.

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

Central Files shows nothing on this subject.

February 18, 1976

This should be referred to the NSC Staff Secretary for transmission to the Chief of Protocol at the Department of State for appropriate action and acknowledgement.

JA Wilderotter for
Philip W. Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

EMBASSY OF IRAN

1976 FEB 13 PM 5 29
HAND DELIVERED
RECEP. AND SECURITY UNIT
THE WHITE HOUSE
WASHINGTON

IMPERIAL EMBASSY OF IRAN

February 13, 1976

The Ambassador

Dear Mr President

I have the honor and the privilege to forward to you the enclosed decree for the Order of Pahlavi with Grand Cordon which my beloved Sovereign, His Imperial Majesty the Shahanshah Aryamehr bestowed upon you during his State Visit to the United States last May.

This is Iran's highest civil decoration and is only awarded to distinguished Heads of State. A rough English translation of the decree is also provided.

May I also avail myself of this opportunity, Mr. President, to renew to you the assurances of my highest consideration and warm personal regard.

Very truly Yours
Ardeshir Zahedi

The Honorable Gerald R. Ford
President of the United States of America
The White House
Washington, D. C.

State (See Alba)

March 1, 1976

Dear Mr. Ambassador:

Thank you very much for sending me a copy of the memorandum prepared by your Minister of Foreign Affairs to Secretary Kissinger.

I appreciate having this information for use if and when this matter comes to the President for decision.

My best regards to you and Mrs. Alba.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Jaime Alba
Ambassador
Embassy of Spain
2700 15th Street, N. W.
Washington, D. C. 20009

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01326

Collection/Series/Folder ID	:	001900347
Reason for Withdrawal	:	DR,Donor restriction
Type of Material	:	MEM,Memo(s)
Creator's Name	:	James Lannon
Receiver's Name	:	Victor Dikeos
Description	:	re reorganization of the Law of the Sea staff at the State Department
Creation Date	:	03/09/1976
Date Withdrawn	:	06/29/1988

THE WHITE HOUSE
WASHINGTON

4/2

Mr. March
brought this
up.

~~SECRET~~

IMM
PRECEDENCE

~~SECRET~~
CLASSIFICATION

FOR COMMCENTER USE ONLY

FROM: BRENT SCOWCROFT

TO: DICK CHENEY

INFO:

DEX _____

DAC 005

GPS _____

LDX _____

PAGES 5

TTY _____

CITE _____

DTG: 262206Z

RELEASED BY: GE

TOR: 262225Z

SPECIAL INSTRUCTIONS:

TO LOS ANGELES

DELIVER UPON ARRIVAL

~~SECRET~~

~~SECRET~~

R 012139Z Feb 76
FM SECSTATE WASHDC
To All European Diplomatic Posts
SECRET State 024976
EXDIS For Ambassador
E.O. 11652: GDS
TAGS: ECON, PFOR
SUBJECT: U.S. Policy toward USSR and Eastern Europe

1. Following is a non-verbatim summary of the Counselor's discussion of this subject to the EUR Chiefs of Mission Meeting in London in mid-December. It is intended for your background guidance and that of your senior staff and is not to be used directly in your talks with host government.

2. Begin summary. We are witnessing the emergence of the Soviet Union as a super power on a global scale. This will be a long-term process. It is a process that is just beginning in global terms as the Soviets are just now breaking out of their continental mold. They are just now developing modalities for carrying out such a global policy.

3. The reason why it is possible for the United States and its Western European Allies to develop the policies that will allow us to cope with this situation is that Soviet power is developing irregularly. It is subject to flaws and to requirements which in some cases only the outside world can meet.

4. Their thrust as an imperial power comes at a time well after that period when the last imperial power, Germany, made the plunge, and it hence comes at a time when different rules and perceptions apply. The Soviets have been inept. They have not been able to bring the attractions that past imperial powers brought to their conquests. They have not brought the ideological, legal, cultural, architectural, organizational and other values and skills that characterized the British, French and German adventures.

5. In addition, there are serious underlying pressures and tensions in the Soviet system itself. The base from which imperialism asserts itself has serious problems in the economic and social sectors. There are also internal nationalist groups which are growing. Non-Russian nationalist groups in Russia are growing at a disproportionally faster rate, which will add to these tensions in the base whence springs Soviet imperialism.

~~SECRET~~

6. The Soviets have been particularly unskilled in building viable international structures. They have nothing approaching the European Community or the many other successful Western institutions. In Eastern Europe particularly, the single most important unifying force is the presence of sheer Soviet military power. There has been no development of a more viable, organic structure. If anything, the last thirty years have intensified the urges in Eastern European countries for autonomy, for identity. There has been an intensification of the desire to break out of the Soviet straitjacket. This has happened in every Eastern European country to one degree or another. There are almost no genuine friends of the Soviets left in Eastern Europe, except possibily Bulgaria.

7. The Soviets' inability to acquire loyalty in Eastern Europe is an unfortunate historical failure because Eastern Europe is within their scope and area of natural interest. It is doubly tragic that in this area of vital interest and crucial importance it has not been possible for the Soviet Union to establish roots of interest that go beyond sheer power.

8. It is, therefore, important to remember that the main, if not the only, instrument of Soviet imperialism has been power.

9. The reason we can today talk and think in terms of dealing with Soviet imperialism, outside of and in addition to simple confrontation, is precisely because Soviet power is emerging in such a flawed way. This gives us the time to develop and to react. There is no way to prevent the emergence of the Soviet Union as a superpower. What we can do is affect the way in which that power is developed and used. Not only can we balance it in the traditional sense but we can affect its usage -- and that is what detente is all about.

10. It is often asked how detente is doing. The question itself evades the central issue we are trying to pose. That is, what do you do in the face of increasing Soviet power? We will be facing this increased power if our relationship with the Russians is sweet or our relationship with the Russians is sour. The day when the U. S. could choose its preferences from two alternatives is over: that is, turning our back on the world usually behind the protection of another power like the British Navy - or changing the world. That choice no longer exists for us. There is too much power in the world for us to ignore, not just the Soviets, but other industrial powers, raw material producers, and even the combined political power of the dwarf states. Nor do we today have enough power to simply overwhelm these problems.

11. So the Soviets will be seen and heard on the world stage no matter what we do. Therefore, the question of whether or not detente is up or down at a particular moment is largely irrelevant. We Americans like to keep score cards. But the historic challenge of the Soviet Union will not go away and the problem of coping with the effects of that growing Soviet power also won't go away. We don't have any alternative except to come to grips with the various forms of power which surround us in the world. We have to get away from seeing detente as a process which appeases or propitiates Soviet power. We have to see our task as managing or domesticating this power. That is our central problem in the years ahead, not finding agreements to sign or atmospheres to improve, although those have some effect. Our challenge is how to live in a world with another super power, and anticipate the arrival of a third super power, China, in twenty years or so.

12. The debate in the United States on detente is illustrated by comments that Soviet trade is a one-way street. It seems that today you can t just get paym for the goods you sell -- you must get Jewish emigration, or arms restraint, or any number of other things.

13. Our European friends have extended considerable credit to the Soviets and Eastern European countries, while the US does not extend lines of credit but rather approves financing on the basis of each project. That feature gives us some control over the direction of Soviet economic development. The Europeans have surrendered on this point. While not falling into the trade trap, we have seen trade as a set of instrumentalities to address the set of problems we face with the Soviets. We have to find a way to develop a coherent trade strategy that goes beyond the commercial views of individual firms.

14. The grain agreement is a good but narrow example of what I am talking about. The Soviets were forced to accept that they need substantial imports from the United States. That gives us leverage, but only if it is done within a coherent framework of policies to achieve certain objectives. MFN has been considered a concession to the USSR, and in a sense it is. The Soviets don't like paying interest -- they prefer to earn their way as they go. If this is an accurate assessment, then with MFN and credit policies we can get the USSR to be competitively engaged in our US markets. If done skillfully, this forces them to meet the requirements of the sophisticated US market. MFN entry into US markets can have an impact on Soviet behavior. This is not a trivial matter.

15. It is in our long-term interests to use these strengths to break down the autarkic nature of the USSR. There are consumer choices being made in the USSR that, although more below the surface than those in the United States, can be exploited. This is just one illustration. There are many assets in the West in this area and instead of looking at them as just commercial sales, we need to be using them to draw the Soviet Union into a series of dependencies and ties with the West. It is a long-term project.

16. When we lost the MFN battle with Congress, we lost our ability to impose a degree of discipline on the Soviet Union as we were able to do in the case of the grain deal. This is the real tragedy of losing that trade issue. In the long-term, we have suffered a setback.

17. With regard to Eastern Europe, it must be in our long-term interest to influence events in this area -- because of the present unnatural relationship with the Soviet Union -- so that they will not sooner or later explode, causing WW III. This inorganic, unnatural relationship is a far greater danger to world peace than the conflict between East and West. There is one qualification to this statement. If Western Europe becomes so concerned with its economic and social problems that an imbalance develops, then perhaps the dangers to the United States' interests will be endangered by the simple change in the balance of power.

18. So, it must be our policy to strive for an evolution that makes the relationship between the Eastern Europeans and the Soviet Union an organic one. Any excess of zeal on our part is bound to produce results that could reverse the desired process for a period of time, even though the process would remain inevitable within the next 100 years. But, of course, for us that is too long a time to wait.

19. So, our policy must be a policy of responding to the clearly visible aspirations in Eastern Europe for a more autonomous existence within the context of a strong Soviet geopolitical influence. This has worked in Poland. The Poles have been able to overcome their romantic political inclinations which led to their disasters in the past. They have been skillful in developing a policy that is satisfying their needs for a national identity without arousing Soviet reactions. It is a long process.

20. A similar process is now going on in Hungary. Janos Kadar's performance has been remarkable in finding ways which are acceptable to the Soviet Union which develop Hungarian roots and the natural aspirations of the people. He has conducted a number of experiments in the social and economic areas. To a large degree he has been able to do this because the

Soviets have four divisions in Hungary and, therefore, have not been overly concerned. He has skillfully used their presence as a security blanket for the Soviets, in a way that has been advantageous to the development of his own country.

21. The Romanian picture is different as one would expect from their different history. The Romanians have striven for autonomy but they have been less daring and innovative in their domestic systems. They remain among the most rigid countries in the internal organization of their system.

22. We seek to influence the emergence of the Soviet imperial power by making the base more natural and organic so that it will not remain founded in sheer power alone. But there is no alternative open to us other than that of influencing the way Soviet power is used.

23. Finally, on Yugoslavia. We and the Western Europeans, indeed the Eastern Europeans as well, have an interest which borders on the vital for us in continuing the independence of Yugoslovia from Soviet domination. Of course we accept that Yugoslav behavior will continue to be, as it has been in the past, influenced and constrained by Soviet power, but any shift back by Yugoslavia into the Soviet orbit would represent a major strategic set-back for the West. So we are concerned about what will happen when Tito disappears, and it is worrying us a good deal.

24. So our basic policy continues to be that which we have pursued since 1948-49, keeping Yugoslavia in a position of substantial independence from the Soviet Union. Now at the same time we would like them to be less obnoxious, and we should allow them to get away with very little. We should especially disabuse them of any notion that our interest in their relative independence is greater than their own and, therefore, they have a free ride. End summary.

DEPARTMENT OF STATE
THE LEGAL ADVISER

July 9, 1976

For: Mr. Buchen

From: Monroe Leigh

Per conversation.

DEPARTMENT OF STATE

BRIEFING MEMORANDUM

S/S

July 8, 1976.

To : The Secretary

From: L - Monroe Leigh ML

Israeli Use of U.S.-Supplied Military Equipment in the Entebbe Rescue Operation

Summary:

Israel's use of U.S.-supplied defense articles in its operation to rescue the hostages being held by terrorists at Entebbe airport in Uganda can be reconciled with the limitations governing the use of such articles under paragraph 2 of the United States-Israeli Mutual Defense Assistance Agreement of July, 1952. That agreement permits the use of U.S.-furnished equipment in self defense. The facts of this particular use fall within the authorized purpose of self defense within the meaning of the agreement. Accordingly, Israel's continued eligibility for sales, credits and guaranties under the Foreign Military Sales program is not affected. Nor is a report to Congress required under the new Arms Export Control Act. Nevertheless, a briefing of the concerned committees of Congress would be responsive to the spirit of the Act as well as to the expressed desires of the Senate Foreign Relations Committee.

Discussion:

Israel used C-130 aircraft in its Entebbe rescue operation. Such aircraft have been acquired by Israel only under the Foreign Military Sales (FMS) system, according to available records of the Departments of State and Defense. According to the standard contract form used by the Department of Defense (DD 1513), the purchaser agrees to use the

items sold "only ... for the purposes specified in the Mutual Defense Assistance Agreement, if any, between the USG and the Purchaser."

The Mutual Defense Assistance Agreement in force between Israel and the United States, effected by an exchange of notes dated July 1 and July 23, 1952 (TIAS 2675, 3 UST 4985), contains an assurance by Israel that equipment, materials or services acquired from the United States will be used by Israel "solely to maintain its internal security, its legitimate self-defense, or to permit it to participate in the defense of the area of which it is a part, or in United Nations collective security arrangements and measures, and that it will not undertake any act of aggression against any other state."

In a separate memorandum, we have provided to you our opinion that, under international law, the Israeli rescue operation was a legitimate use of force for the protection of Israeli nationals. Although it may be debated whether the protection of nationals constitutes an exercise of self-defense against armed attack within the meaning of the United Nations Charter, we believe the term "self-defense" as used in the above-quoted bilateral agreement is sufficiently broad to encompass the use of U.S.-furnished defense articles in the circumstances of this case. In this regard, various legal authorities have analyzed analogous military operations as constituting a form of self-defense. The bilateral agreement implemented provisions of the U.S. legislation limiting the purposes for which the United States is authorized to sell defense articles to foreign countries. We have found nowhere in the legislative history of the relevant statutes, any indication that Congress intended a narrow definition which would detract from our ability to characterize the rescue operation as an exercise of self-defense within the meaning of the agreement.

Because the use of U.S.-furnished equipment in the facts of this case is not in conflict with the applicable agreement, no question arises as to Israel's eligibility under U.S. law for sales, credits and guaranties.

The applicable law regarding eligibility was substantially revised by the security assistance legislation approved on June 30. According to this new legislation, which was in effect at the time of the Entebbe operation, the President is required to report to Congress promptly upon receipt of information that a substantial violation of an agreement governing the use of U.S.-furnished articles or services may have occurred. After submitting such a report, a country becomes ineligible under the law for sales, credits and guaranties only if the President so determines and reports to Congress, or if the Congress so determines by joint resolution.

On the facts of this case, the information received does not indicate that a violation may have occurred. Therefore, a report to Congress is not required under the new law. Nevertheless, the intent of this revised section was to eliminate the automatic ineligibility which had been mandated previously, and to substitute a procedure whereby Congress would be informed and could act in instances where the Executive Branch response to a possible violation was considered inadequate.

Moreover, you may recall that Senators Humphrey and Case, while not objecting to the Administration's actions following Indonesia's use of U.S. equipment in East Timor, expressed strong disappointment that the Foreign Relations Committee had not been kept informed.

In light of this legislative intent and the expressed views of the Senate Foreign Relations Committee, it would seem appropriate to volunteer a briefing of the concerned Congressional committees

as to the available facts of the Entebbe operation, the actions taken by the United States subsequent to that operation, and our legal conclusions regarding the use of U.S. equipment.

I am sending copies of this memorandum to Messrs. Maw and McCloskey for their consideration of this suggestion.

cc: T - Mr. Maw
H - Mr. McCloskey

Drafted: L:L/PM:JHMichel:edk
7/8/76, ext. 27838

Concurrences: L/NEA - Mr. Small
L - Mr. Aldrich

DEPARTMENT OF STATE

BRIEFING MEMORANDUM

S/S

July 8, 1976.

TO : The Secretary

FROM : L - Monroe Leigh by GHA

Legal Aspects of Entebbe Hijacking Incident

This memorandum considers the legal aspects of the Entebbe hijacking incident, and in particular the rights and obligations of Israel and Uganda under the UN Charter. The memorandum is based on the best information presently available, largely from the statements of the hijacked passengers. In many respects this information is incomplete, and in some respects it is contradictory; therefore the conclusions of this memorandum must be considered as tentative until more complete and reliable information is available. For your information, attached is a brief excerpt from our debriefing yesterday of Mr. Karfunkle, an American hostage who was liberated by the Israelis. You will note that he spoke to Amin and was told that he must remain with the Israelis because he was "one of Kissinger's boys".

The Facts

According to present information, although the Ugandan authorities helped secure the release of non-Jewish passengers aboard the aircraft, they otherwise actually assisted the hijackers in maintaining control over the aircraft, its crew, and the remaining passengers for the purpose of compelling the release of certain terrorists in custody in Israel and elsewhere. Apparently, the Ugandans not only took no action to overpower the hijackers, although they could have done so with minimal risk to the hostages, but instead treated the hijackers as comrades, allowed several additional Palestinians to join them in Entebbe, permitted them to receive additional arms and explosives, assisted them in negotiating with other governments, participated in guarding the

hostages, assisted the terrorists in the prolonged interrogation of one hostage, and took over sole custody of some or all of the passengers from time to time to allow the hijackers to rest. It is unclear whether the Ugandan authorities helped the hijackers in formulating demands and deciding upon which of the hostages were to be released, but there is evidence that President Amin himself decided that one American couple, who were not Israeli nationals, would have to remain with the Israeli hostages, simply because they were Americans. The passengers in general believed that the Ugandan soldiers, who were intermingled with the terrorist guards on the terrace of the terminal building and who sometimes were the only visible guards, were there to prevent the escape of any of the hostages. It seems clear that the Ugandan authorities were in a position where they could have ended the kidnapping and released the hostages with only minimal risk to the hostages.

It seems unlikely that Uganda was involved in the hijacking from the beginning, but it is clear that Uganda endorsed the aims and actions of the hijackers and assisted them in many ways. The facts strongly suggest that Uganda would not have been prepared to take any steps to terminate the hijacking except through the satisfaction of the terrorists' demands. The Government of Israel had good reason to believe that the hostages would in the end be killed and that the Government of Uganda would do nothing to prevent the massacre.

In order to rescue the hostages, shortly before the expiration of the deadline for their execution, Israel sent a small commando force to Entebbe airport. This force succeeded in rescuing the hostages and returning to Israel. The casualties included three of the hostages, one Israeli soldier, seven terrorists and 20-30 Ugandan soldiers killed. The Israeli force was on the ground for only slightly more than thirty minutes and departed for Israel as soon as the rescued hostages were aboard the aircraft.

Uganda's Actions Violate International Law

The apparent pattern of assistance and complicity by the Ugandan authorities with the hijackers in their continued detention of Israeli citizens, in their threats

against the lives of those citizens, and in their demands for the release of terrorists detained in Israel constituted a threat and use of force against the political independence of Israel and contrary to the purposes of the United Nations in violation of Article 2, paragraph 4 of the United Nations Charter. 1/ It also constituted a flagrant violation of Uganda's obligations under the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft. 2/ Certainly it could not seriously be argued that a State which captured innocent travelers of another country, whether by aircraft hijacking or by other means, and held them for ransom was acting lawfully. While the Government of Uganda in this case did not itself hijack the aircraft and capture the hostages, its assistance to the terrorists and its participation with them in holding the hostages made it effectively a co-participant in the terrorist act.

Israel's Action Was Consistent With International Law

Israel's action in rescuing the hostages clearly involved a temporary breach of the territorial integrity of Uganda. Normally such action would be impermissible under the Charter of the United Nations, however well based the grievance that gave rise to it. However, there is a well-established, if narrow, right to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the State in whose territory they are located either is

1/ See, e.g., Whiteman, Digest of International Law 737; Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, U.N. General Assembly Resolution 2625 (XXV).

2/ 22 UST 1641; TIAS 7192. Both Uganda and Israel are parties to this Convention. Under Article 9 of the Hague Convention, parties are required, in the event of an unlawful seizure of an aircraft in flight, to "take all appropriate measures to restore control of the aircraft to its lawful commander...", to "facilitate the continuation of the journey of the passengers and crew as soon as practicable..." and to "without delay return the aircraft and its cargo to the persons lawfully entitled to possession." Any party in whose territory a hijacker is found is required under Article 6 "upon being satisfied that the circumstances so warrant..." to "take him into custody or take other measures to ensure his presence...", and under Article 7 either to extradite or prosecute him.

unwilling or unable to protect them. 3/ The right, like the right of self-defense from which it flows, is limited to such use of force as is necessary and appropriate to protect the threatened nationals from injury and does not encompass acts intended to punish or exact compensation. 4/

This theory of the right to act for the protection of one's nationals was referred to by the United States in partial justification of its interventions in the Congo in 1964, in the Dominican Republic in 1965, 5/ and in Cambodia to rescue the crew of the S. S. Mayaquez in 1975.

The requirements of this right to protect nationals seem all to have been met in the Entebbe case. Israel had good reason to believe at the time it acted that Israeli nationals were in imminent danger of execution by the hijackers, and that Ugandan authorities were unwilling to take the actions necessary to release the Israeli nationals or to prevent substantial loss of Israeli lives. The Israeli military action was apparently limited to the sole objective of extricating the passengers and crew, and terminated when that objective was accomplished. The force employed seems reasonably justifiable as necessary for the rescue of the passengers and crew: the killing of the terrorists themselves for obvious reasons; the firing on Ugandan troops because they involved themselves in the conflict; and the destruction of Ugandan aircraft to eliminate the possibility of pursuit of the Israeli force.

The fact that Israel might have secured the release of its nationals by complying with the terrorists'

3/ See, e.g., 12 Whiteman, Digest of International Law 187-204; Bowett, Self-Defense in International Law (1958) 91-104; Thomas & Thomas in The Hammarskjold Forums: The Dominican Republic Crisis 1965, 11-18.

4/See Bowett, op. cit. 93-95, 102-04; Waldock, "The Regulation of the Use of Force by Individual States in International Law", 81 Recueil des Cours (1952, Vol. II) 455, 467.

5/ See, 12 Whiteman, Digest of International Law 190-203; Thomas & Thomas, op. cit. 11-18.

demands, and thus have avoided any use of force, should not alter these conclusions. No state is required to yield control over persons in lawful custody in its territory under conviction pursuant to criminal charges. Moreover, it would be a self-defeating policy to release prisoners convicted in some cases of earlier acts of terrorism in order to placate the demands of the terrorists.

It should be emphasized that this assessment of the legality of Israeli actions depends heavily on the unusual circumstances of this specific case. In particular, the strong evidence of Ugandan sympathy and complicity with the terrorists made impracticable any cooperation with or reliance on Ugandan authorities in rescuing the passengers and crew, and necessitated a surprise assault at a time when Israeli authorities had not broken off negotiations under Ugandan auspices. It is to be hoped that these unique circumstances will not arise in the future.

Attachment:

Extract of Mr. Karfunkle's Statement

Drafted by:
L:GHAldrich/L/UNA;MMatheson:lr
7/8/76 x28460

THURSDAY (EXTRACT OF KARFUNKLE's STATEMENT)

I walked over to Amin and said

"Your Excellency, I am an American citizen.

I was in Israel 11 days. I spent most of the time where I was. I was in Europe. I would like to find out if I have the right to leave.

He said "Where are you from."

I said "I am an American."

He said "you mean to say, Kissinger's boys."

I said "If you want to call me 'Kissinger's boy,' you can call me 'Kissinger's boy.'"

He said "Kissinger is an imperialist! I hate him! He is my enemy - you are part of them. You will not leave!"

I said to him "Your Excellency if you just let me go home I can carry my message from the Secretary of State. I can tell him what your opinion about him is and perhaps that might help.

He said "you are not going any place."

I just went back to my seat and I figured if additional trouble, he is liable to tell one of his cannibals go to eat him up, so mind if I go back to my seat.

AID

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

September 14, 1976

The Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

This is in regard to our August 19 discussion relating to AID's proposed $10 million grant to the Government of Mozambique. As you may know, the Senate, on Friday, September 10, passed the fiscal year 1977 Foreign Assistance Appropriation bill. Pursuant to an agreement with Senator Allen, the Senate bill was passed without a statutory provision prohibiting assistance to Mozambique in FY 1977. Senator Allen also indicated to the Senate leadership and to Secretary Kissinger that he would not object to our proposed $10 million grant to Mozambique during the transitional quarter.

We therefore intend to submit the enclosed Advice of Program Change to the Appropriation Committees of the House and Senate on September 15, 1976. It is our expectation that the Senate Committee will not raise an objection and our hope that the House Committee will also not object. We intend to obligate the $10 million by the end of the month. We will, of course, notify you immediately should we receive an objection.

Sincerely,

Gerald D. Morgan

Gerald D. Morgan, Jr.
General Counsel

Enclosure: a/s

cc: State: Mr. Michel
OMB: Mr. Ogilvie
NSC: Ms. DeSibour
Justice: Mr. Scalia

AGENCY FOR INTERNATIONAL DEVELOPMENT

ADVICE OF PROGRAM CHANGE

Country	:	Mozambique
Project Title	:	Program Assistance
Project Number	:	656-0002
Appropriation Category	:	FAA Section 496(c), utilizing Section 106
Intended Obligation	:	$10,000,000

The U.S. Government has had an offer outstanding with the Mozambique Government since January 1976 to discuss the assistance needs of this newly independent country. There was no official response until the Mozambique Government turned to the United Nations for help to enable it to overcome the economic difficulties arising from its application of economic sanctions against Southern Rhodesia. The U.S. voted for the UN Resolution which was adopted on March 17, 1976. A UN team spent 16 days in Mozambique in April and they found a severe economic situation including a critical trade deficit. Part of the trade deficit is accounted for by the need for substantial annual food imports -- a consequence of Mozambique's inherited colonial economic system. The UN team also found the direct cost to Mozambique arising from the application of sanctions to be between $139 and $165 million for the next twelve months not including $39 million for emergency projects.

The proposed obligation would provide urgent balance of payments assistance on a cash transfer basis with the counterpart generated to be used for local costs of development projects in the agricultural and potable water supply sectors. The authorization to provide such assistance is contained in Section 496(c) of the Foreign Assistance Act of 1961, as amended, which authorized the President to use up to $30 million of the funds made available for development assistance in accordance with Chapter 1 or relief and rehabilitation assistance in accordance with Chapter 9 to countries in Africa which were, prior to April 25, 1974, colonies of Portugal.

Attachment: Grant Activity Data

Country: Mozambique

GRANT ACTIVITY DATA

TABLE III

TITLE	FUNDS	PROPOSED OBLIGATION ($000)	
Program Assistance	FAA Section 496(c), utilizing Section 106	FY 76 --	5th Q. 10,000
NUMBER 656-0002	PRIOR REFERENCE None	INITIAL OBLIGATION FY: T.Q.	SCHEDULED FINAL OBLIGATION FY: T.Q.

Project Target and Course of Action: The purpose of this project is to strengthen the capacity of Mozambique's economy to maintain viability in the short-term and to mount agricultural and other development programs despite the severe reduction of foreign exchange earnings and budgetary receipts, partially caused by the effects of sanctions. This assistance, which will be carried out within a multilateral context coordinated by the United Nations, provides (1) balance of payments assistance on a cash transfer basis in order to provide the increased availability of foreign exchange, (2) local currency generation for development projects in the agricultural and potable water supply sectors and (3) some employment through the distribution and processing of commodities.

Mozambique became independent on June 25, 1975 following almost 500 years of colonial rule. The economy was closely tied to imports from the exports to Portugal and was managed largely by Portuguese, many of whom left Mozambique with independence. Considerable foreign exchange and budgetary receipts were obtained from railroad and port transit operations from South Africa and Southern Rhodesia to the sea.

Prior to independence, the Transitional Government had expressed interest in receiving economic assistance from the United States. However, it was not until after Mozambique imposed sanctions against Southern Rhodesia that the Mozambique Government appealed to the U.N. Security Council for economic assistance in accordance with Article 50 of the United Nations Charter. On March 17, 1976, the Security Council adopted Resolution 386 which appealed to all States to provide assistance to Mozambique so that Mozambique can carry out its economic development program normally and enhance its capacity to implement sanctions.

To date 14 other donors, including the U.K., the Netherlands, and the Scandinavian countries have pledged over $60 million in 1976/77 and $19 million to be made available later. These contributions are in various forms and include food assistance. The United Nations established an office to coordinate UN inputs and assist other donors who wish to contribute on a multilateral basis.

In April 1976, the Government of Mozambique requested balance of payments and food assistance from the U.S. on an urgent bilateral basis. The program discussed would consist of a $10 million grant and a PL-480 Title II program of 21,800 tons in wheat which would generate around $2.5 million equivalent of local currency (U.S. cost including transportation of approximately $4.8 million).

Transition Quarter: AID is requesting $10,000,000 in grant funds as a cash transfer which will be disbursed in two tranches, one as soon as possible after grant signature and the second approximately six months later. Local currency generated will be used through joint agreement for development projects in the agriculture sector and potable water supply projects in rural areas.

U.S. DOLLAR COST (In Thousands)

	Obligations	Expenditures	Unliquidated
Through 6/30/74	-	-	-
Estimated FY 75	-	-	-
Estimated through 6/30/75	-	-	-
Proposed FY 76	-	Future Year Obligations	Estimated Total Cost
Proposed 5th Quarter	10,000	-	10,000

Cost Components	OBLIGATIONS								
	Estimated FY 1975			Proposed FY 76			Proposed 5th Q.		
	Direct AID	Contract/ Other Agency	Total	Direct AID	Contract/ Other Agency	Total	Direct AID	Contract/ Other Agency	Total
U.S. Technicians ..	-	-	-	-	-	-	-	-	-
Participants	-	-	-	-	-	-	-	-	-
Commodities	-	-	-	-	-	-	-	-	-
Other Costs	-	-	-	-	-	-	10,000	-	10,000
Total Obligations ..	-	-	-	-	-	-	10,000	-	10,000

PRINCIPAL CONTRACT AGENCIES

DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

September 17, 1976

Dear Phil:

Further to our conversation this morning, I enclose a copy of the joint U.S.-Mexico press release on the discussions on the proposed transfer of sanctions treaty.

I will be meeting with the Justice Department again early next week.

Sincerely,

Monroe

Monroe Leigh

Enclosure - As stated.

The Honorable,
Philip W. Buchen
Counsel to the President.

JOINT UNITED STATES-MEXICO COMMUNIQUE ON PROPOSED TRANSFER OF SANCTIONS

September 16, 1976

Representatives of the Government of Mexico and the Government of the United States of America met September 14 at the Secretariat of Foreign Relations to continue discussions of technical aspects of a proposed treaty between the two countries providing that nationals convicted in one country might serve their sentences in their country of origin. The purpose of such treaty is to facilitate the rehabilitation of such persons. Since both countries operate under federal constitutions, the interest of the states of the parties within their national constitutional framework must be taken into account.

The purpose of the meeting was to further clarify the technical legal details which will be involved. At the conclusion of the meetings the participants agreed on a schedule for the negotiation of a treaty which would be presented for approval to the respective Senates. It was understood by both parties that implementation of such a treaty would require legislative action by the respective Congresses.

Specifically, the representatives agreed that no later than the first week in October the parties would exchange proposed texts of a treaty and that during the second half of October they would meet again to reconcile textual provisions of the drafts and negotiate an ad referendum draft for consideration by the interested governmental agencies. Although this schedule may require modification, in the light of the on-going discussions, it was agreed that the objective would be to complete negotiation of an ad referendum draft treaty during November.

The participants in the discussions were: For the Government of Mexico: Ambassador Rosenzweig Diaz, Consejero Juridico, Secretaria de Relaciones Exteriores Lic. Socrates Huerta, Director Juridico Y Consultivo de la Procuraduria General de la Republica; Senor Jorge Aguilar, Director General del Servicio Consular de la Secretaria de Relaciones Exteriores.

For the Government of the United States of America:

Mr. Monroe Leigh, Legal Adviser to the Department of State;
Mr. Vernon D. McAninch, Counselor for Consular Affairs, American Embassy; Professor Detlev Vagts, Harvard Law School, presently serving as Counselor in International Law to the Office of the Legal Adviser to the Department of State;
Mr. H. Rowan Gaither, Legal Adviser to the American Embassy.

Called Kelley to say I've had no recent calls from Gillies. J.

Tuesday 10/19/76

12:15 Bill Kelley called from the Portugese Desk 632-0719
at the State Department.

He said they had a telegram from Lisbon talking about a meeting to take place between the President of the United States and Moto Amaral, the head of ... the Azores. They have had no prior information about such a meeting. And the only possible chance would have been if you had had a discussion with someone. Their information is that about a year and a half ago you had had some discussions with Donald Gillies, and he thought he'd take a chance and ask if you might have had some recent discussions with Mr. Gillies. I told him I was quite sure you had not -- but would ask you and call back.

(Attached is a copy of what I had on my Gillies' card)

GILLIES, DONALD (804) 288-2632
Richmond, Va.

3/29/75 - at the request of George Shields, scheduled an appt. for Donald Gillies on 3/31/75.

Edward Rowell, called to ask if Mr. B was the person who referred Gillies to Mr. Hartman; I told him there had been a call from Hartman's office saying Kissinger wanted him to call Gillies; Gillies called him; Mr. Buchen talked with Hartman. Mr. Buchen didn't want information of this meeting to be given out. Said it was O.K. that we had given the info to Rowell

State Dept

THE WHITE HOUSE

WASHINGTON

November 3, 1976

MEMORANDUM FOR: JEANNE DAVIS

FROM: PHILIP BUCHEN P.W.B.

Barry Roth of my staff has met with Peter Rodman and Edward Roberts of the NSC staff who identified to him the personal papers of Secretary Kissinger which are stored in the Vault in Room 207 of the Executive Office Building. Because these papers antedate Secretary Kissinger's government service, which began in 1969, it is appropriate to remove these papers from the EOB.

Accordingly, I approve the request to move the six two-drawer file cabinets, twenty-three file boxes and four regular boxes of Secretary Kissinger's personal materials to the State Department.

cc: Robert Snow