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Mr. Leigh
[Signature]

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: January 14, 1976

SUBJECT: Minutes of Dr. Kissinger's Telephone Conversations
While at the White House

PARTICIPANTS: Carl E. Maw
Under Secretary for Security Assistance

Gordon Baldwin
Counselor on International Law

Carl Maw asked whether records of telephone conversations compiled by Dr. Kissinger's secretaries covering the period 1969, and following, while Dr. Kissinger was in the White House could properly be retained by Dr. Kissinger now. Dr. Kissinger's deposition in the Halperin case states that these records are now in the custody of Mr. Eagleburger. A newspaper reporter, I believe William Safire, has asked Mr. Maw by what authority these records could be properly removed from the White House. Mr. Maw wanted a quick answer.

1. It is arguable that these records are the personal property of Dr. Kissinger. However, the law is uncertain with regard to the property rights of government employees. It is clear, however, that Dr. Kissinger does have two interests in these papers which can justify continuing custody in the Department of State:

- a) A governmental interest in that these papers are part of his working papers, necessary to be referred to in the course of his employment; and
- b) Some literary interest in the material in the nature of a private property claim.

(Drafting Office and Officer)

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2. It is doubtful that the 1974 statute, the Presidential Recordings and Materials Preservation Act, applies. That statute covers tape recordings (which these are not) and "Presidential historical materials of Richard M. Nixon." The definition of historical materials is broad (see 44 U.S.C. 2101) but it is most doubtful if any of these memoranda constitute "materials of Richard M. Nixon." The memoranda are not of conversations with Mr. Nixon. The 1974 statute was hurriedly drafted in large measure to supersede an agreement between Mr. Nixon and the Administrator of General Services which pertained to papers then sought by Mr. Nixon. No one has claimed that these claims ever covered records of Dr. Kissinger's telephone calls. I told Mr. Maw, therefore, that I did not believe that the 1974 statute covers any of this material. I said, however, that if the Administrator for General Services disagrees, that we may have some problem in retaining custody because the statute authorizes the GSA to issue implementing regulations, provides for judicial review, as well as a legislative veto, and, therefore, could limit rights to dispose of these memoranda.

Mr. Maw and I also spoke briefly about the Secretary's refusal in the Halperin case to disclose material relating to conversations with third parties. The Justice Department urged two reasons for withholding. First, that the material was not relevant and, second, that third party privacy rights would be infringed by disclosure. I suggested a third, and I believe stronger, grounds for withholding memoranda relating to third party conversations; namely, a governmental interest in assuring the confidentiality of advice proffered to senior officials by colleagues and others. Such a privilege could not be waived by the third party because it is not a personal claim. I told Mr. Maw that I would write a memorandum on this subject.

cc: L - Mr. Leigh
T - Mr. Maw

L:GBBaldwin:cdj:1/14/76:22630