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FOR THE SECRETARY ONLY FROM LEIGH

E.O. 11652: N/A

TAGS: SOPN

SUBJECT: PRESS GUIDANCE

A. FOLLOWING ARE Q & A'S TO BE USED BY SPOKESMAN ON AN IF ASKED BASIS: QUOTE:

Q. WHY DIDN'T THE SECRETARY SIMPLY INCLUDE THE TELE-PHONE TRANSCRIPTS WITH THE OTHER PAPERS HE DONATED TO THE LIBRARY OF CONGRESS?

A. IT WAS RECOGNIZED THAT THERE WERE CERTAIN RIGHTS OF PRIVACY RAISED BY THESE NOTES, WHICH WERE NOT RAISED BY THE OTHER PAPERS.

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Q. WHY WASN'T THE FIRST DONATION DELAYED SO THAT ALL OF THE SECRETARY'S PAPERS COULD BE DONATED AT ONCE?

A. IT WAS EASIER TO DEAL WITH THE OTHER PAPERS FIRST.
THEY DID NOT APPEAR TO RAISE THE TYPE OF PRIVACY QUESTIONS
THAT WERE POTENTIALLY RAISED BY THE NOTES ON THE TELEPHONE

CONVERSATIONS. IN VIEW OF THE INVITATION FROM THE LIBRARY OF CONGRESS TO HAVE THE SECRETARY'S PAPERS DEPOSITED THERE, THE SECRETARY DECIDED TO GO AHEAD WITH THE DONATION OF THE PAPERS

Q. LAST WEEK, IT WAS SAID THAT THE TELEPHONE NOTES WERE NOT GOING TO THE LIBRARY OF CONGRESS. ISN'T TODAY'S ANNOUNCEMENT INCONSISTENT WITH THAT STATEMENT?

A. WHAT WAS CLEAR WAS THAT THE NOTES ON THE TELE-PHONE CONVERSATIONS WERE NOT GOING TO THE LIBRARY OF CONGRESS UNDER THE INITIAL DONATION, AND THAT NO DECISION HAD BEEN REACHED WITH RESPECT TO HOW THE NOTES SHOULD BE PRESERVED, EXCEPT FOR THE VIEW THAT THEY WERE PERSONAL PAPERS. NOTHING MORE WAS INTENDED BY WHAT WAS SAID.

Q. WHY DIDN'T YOU JUST SAY LAST WEEK THAT THESE PAPERS WERE GOING TO THE LIBRARY OF CONGRESS?

A. IT WASN'T APPROPRIATE TO MAKE AN ANNOUNCEMENT UNTIL A FINAL DECISION HAD BEEN MADE AS TO WHAT ADDITIONAL RESTRICTIONS SHOULD BE ADOPTED TO PROTECT THE PRIVACY INTERESTS RAISED BY THE NOTES.

Q. ISN'T IT UNUSUAL TO SIGN A DEED OF GIFT ON CHRISTMAS EVE?

A. SECRETARY KISSINGER WAS ABOUT TO LEAVE TOWN UNTIL AFTER NEW YEAR'S. HE HAD REACHED A DECISION ON APPROPRIATE RESTRICTIONS TO PROTECT RIGHTS OF PRIVACY RAISED LIMITED OFFICIAL USE

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BY THESE PAPERS. TO AVOID FURTHER SPECULATION, ARRANGE-MENTS WERE MADE TO HAVE THE DEED OF GIFT EXECUTED BEFORE THE SECRETARY'S DEPARTURE.

Q. WHY WAS THE DECISION TAKEN NOW?

A. AS INDICATED IN THE ANNOUNCEMENT, THERE WAS GROWING SPECULATION ABOUT THE NOTES, AND IT SEEMED BEST TO REMOVE ANY POSSIBLE CLOUD AS SOON AS A DECISION COULD REASONABLY BE MADE.

Q. AREN'T THESE THE ONLY PERSONAL PAPERS GOING TO THE LIBRARY OF CONGRESS?

A. NO. THE ORIGINAL DEED OF GIFT EXTENDED BOTH TO COPIES OF GOVERNMENT PAPERS, AND TO PERSONAL PAPERS -- INCLUDING PRIVATE CORRESPONDENCE, PAPERS FROM THE SECRETARY'S YEARS AT HARVARD UNVIERSITY, AND SIMILAR PERSONAL

MATERIALS.

Q. WHEN WILL THE TELEPHONE NOTES BE DELIVERED TO THE LIBRARY OF CONGRESS?

A. ALL BUT THE MOST RECENT NOTES HAVE ALREADY BEEN DELIVERED TO THE LIBRARY.

Q. WHEN WERE THEY DELIVERED?

A. EARLIER TODAY.

Q. WHY THE HASTE IN DELIVERING THESE PAPERS TO THE LIBRARY?

A. FOR THE SAME REASONS THAT THE EARLIER DELIVERY OF PAPERS WAS PROMPTLY MADE -- NAMELY, TO COMPLETE THE GIFT, AND TO MAKE UNEQUIVOCAL THE SECRETARY'S INTENTIONS THAT LIMITED OFFICIAL USE

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THE PAPERS ARE TO BE PRESERVED AT THE LIBRARY OF CONGRESS.

Q. THE LEGAL ADVISER'S OPINION IN NUMBERED PARA-GRAPH 3 STATES THAT DEPARTMENT REGULATIONS REQUIRE EXTRACTS. WILL EXTRACTS STILL BE PREPARED?

A. YES. EXTRACTS WILL BE PREPARED BEFORE JANUARY 20 OF ANY SIGNIFICANT GOVERNMENTAL ACTIVITY ON DECISIONS WHICH DO NOT APPEAR TO BE CONTAINED IN EXISTING GOVERNMENT RECORDS. THE EXTRACTS WILL BE PLACED IN THE APPROPRIATE GOVERNMENT RECORD FILES.

Q. DOES THIS MEAN ALL SIGNIFICANT GOVERNMENT ACTIVITIES AND DECISIONS WILL BE EXTRACTED, OR ONLY THOSE NOT REFLECTED IN EXISTING GOVERNMENT RECORDS?

A. ONLY THE LATTER. HOWEVER, IF THERE IS ANY DOUBT AN EXTRACT WILL BE MADE.

Q. REGARDING THE STATUS OF SECRETARY KISSINGER'S TRANSCRIBED TELEPHONE CALLS, HAS THE DEPARTMENT OF JUSTICE GIVEN THE DEPARTMENT OF STATE ANY OPINION REGARDING THE STATUS OF THE SECRETARY'S TRANSCRIBED CALLS OTHER THAN THAT CITED BY LEGAL ADVISER MONROE LEIGH IN HIS NOVEMBER LL, L976 MEMORANDUM?

A. NO. BUT IT SHOULD BE EMPHASIZED THAT ONE OF THE BASES FOR JUSTICE'S POSITION IS THAT THE PAPERS ARE PERSONAL.

Q. WHEN THE SECRETARY HAS TALKED WITH DIPLOMATS,
HAS THERE GENERALLY BEEN MEMORANDA OF CONVERSATION PREPARED FOR THE DEPARTMENT'S RECORDS, THAT IS, OTHER THAN
THOSE TRANSCRIBED FOR THE SECRETARY?

A. NOT MEMORANDA OF CONVERSATION. BUT WHEN MATTERS LIMITED OFFICIAL USE

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DISCUSSED OVER THE TELEPHONE ARE IMPLEMENTED OR COMMUNICATED TO OTHERS WITHIN THE GOVERNMENT, THERE ARE GOVERNMENT RECORDS PREPARED

Q. WITH REFERENCE TO MR. LEIGH'S STATEMENT (NOVEMBER 11 MEMORANDUM) THAT "I HAVE ON SEVERAL OCCASIONS DISCUSSED WITH YOU MY VIEW THAT YOU WOULD BE ENTITLED TO RETAIN THE TRANSCRIBED NOTES OF YOUR TELEPHONE CONVERSATIONS WHEN YOU LEAVE OFFICE," DID MR. LEIGH CONVEY THIS OPINION IN WRITING OR WAS IT PURELY ORAL IN FORM?

A. ORAL, BUT CONSISTENT WITH CONTEMPORANEOUS WRITTEN ADVICE GIVEN TO DEPARTMENT OFFICIALS IN CONNECTION WITH IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT.

Q. ISN'T MR. LEIGH'S OPINION, THAT THE TELEPHONE NOTES ARE PERSONAL, INCONSISTENT WITH THE GSA BULLETIN FPMR B-65, SIGNED BY THE ARCHIVIST OF THE UNITED STATES?

A. THE GSA BULLETIN PURPORTS TO BE A SUMMARY OF EXISTING LAW. SIGNIFICANTLY, HOWEVER, ALL OF THE PARAGRAPHS OF THE GSA BULLETIN ARE SUPPORTED BY A STATUTORY CITATION, EXCEPT FOR ONE -- THAT IS THE PARAGRAPH THAT ATTEMPTS TO DRAW A LINE BETWEEN PERSONAL AND OFFICIAL PAPERS. THIS PARAGRAPH OF THE GSA BULLETIN IS INCONSISTENT WITH DEPARTMENT REGULATIONS THAT HAVE BEEN IN EFFECT SINCE 1967. ALSO, LANGUAGE SIMILAR TO THIS PARAGRAPH WAS PROPOSED BY THE GSA IN THE FORM OF A REGULATION UNDER THE PRESIDENTIAL MATERIALS PRESERVATION ACT, AND IT WAS TWICE REJECTED BY THE CONGRESS. END QUOTE.

B. NOTE I HAVE CHANGED ANSWER TO THE QUESTION ON EXTRACTS SO THAT INSTEAD OF REFERRING TO EXTRACTING OF "DECISIONS" WE REFER TO EXTRACTING "SIGNIFICANT GOVERNMENTAL ACTIVITY OR DECISIONS." ON RECONSIDERATION, I STRONGLY RECOMMEND THIS CHANGE IN ORDER TO PRESERVE LIMITED OFFICIAL USE

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CONSISTENCY WITH EARLIER LEGAL OPINION AND DEPARTMENTAL REGULATIONS. I AM CONVINCED WE GAIN MORE FLEXIBILITY FROM USE OF WORD "SIGNIFICANT" IN DECIDING WHAT TO EXTRACT. IN ADDITION, ANY CHANGE FROM LANGUAGE OF LEGAL OPINION WILL I FEAR BE TREATED BY PRESS WITH SUSPICION. ROBINSON

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