

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION  
Presidential Libraries Withdrawal Sheet

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REASON FOR WITHDRAWAL . . . . National security restriction  
TYPE OF MATERIAL . . . . . Memorandum of Conversation  
TITLE . . . . . October 13, 1975 - Ford, Kissinger,  
Schlesinger, Levi, Lynn, Colby, Buchen,  
Marsh, Raoul-Duval, Rumsfeld  
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COLLECTION TITLE . . . . . NATIONAL SECURITY ADVISER. MEMORANDA OF  
CONVERSATIONS  
BOX NUMBER . . . . . 16  
FOLDER TITLE . . . . . October 13, 1975 - Ford, Kissinger,  
Schlesinger, Levi, Lynn, Colby, Buchen,  
Marsh, Raoul-Duval, Rumsfeld  
DATE WITHDRAWN . . . . . 02/21/2001  
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*declassified in part - portions excised*

Scowcroft 41-  
1

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

~~SECRET/NODIS~~ - XGDS

DECLASSIFIED with portions redacted  
JFK Assass. Rec. Collection Act of 1992

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NARA date 11/28/00 By dal

MEMORANDUM OF CONVERSATION

**PARTICIPANTS:**

- President Gerald R. Ford
- Dr. Henry A. Kissinger, Secretary of State and Assistant to the President for National Security Affairs
- Dr. James R. Schlesinger, Secretary of Defense
- Edward Levi, Attorney General
- James T. Lynn, Director, Office of Management and Budget
- William E. Colby, Director, CIA
- Philip W. Buchen, Counsel to the President
- John O. Marsh, Counselor to the President
- Donald Rumsfeld, Assistant to the President
- Lt. General Brent Scowcroft, Deputy Assistant to the President for National Security Affairs
- Michael Raoul-Duval, White House Staff

**DATE AND TIME:** October 13, 1975  
2:14-5:05 p.m.

**PLACE:** The Oval Office

[The meeting was underway when General Scowcroft entered.]

**Schlesinger:** The Attorney General should not be the one to approve NSA surveillance.

**President:** In the case of telephone taps [redacted] you sign each one. For [redacted] you would sign a general one that it is within the law.

**Levi:** Yes, but I think it should be periodically reviewed.

**Schlesinger:** The question is whether the Attorney General should rule on surveillance [redacted]. Also there is an issue about the Attorney General ruling on overseas surveillance.

~~SECRET/NODIS~~ - XGDS

CLASSIFIED BY Henry A. Kissinger

EXEMPT FROM GENERAL DECLASSIFICATION

SCHEDULE OF EXECUTIVE ORDER 11652

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Colby: The technology is advancing so fast that phone calls could be routed overseas for calls between Washington and Richmond.

Levi: The Second Circuit has held that overhearing an American abroad is a violation.

Rumsfeld: I would think the President would want the Attorney General involved in a periodic review so he would know what might come up in the newspapers.

Schlesinger: The articles in the newspaper today result from Presidentially-directed operations.

Kissinger: What is in the newspaper today results from us dumping vast quantities of material on the Committees. The newspaper has just said we have broken the Egyptian code -- it has been blown. I think that rather than just say the law is fixed, we should try to educate the courts to the realities of the world and our national security needs.

Levi: On the contrary, the courts are moving, but in the wrong direction. We maybe need a statute, but we have to be careful about our practices as we prepare our case.

President: I think trying to get a statute would be a disaster in today's environment. Maybe we can try to get passage of a statute in a year or so, but now we'll just have to use guidelines.

Kissinger: Does Ed want to approve every [REDACTED] operation?

Levi: I think we have to have some guidelines, perhaps as to the percent of incidental [REDACTED] traffic that can be overheard.

Schlesinger: We can work out guidelines. I am worried about the Attorney General being the highest intelligence officer for these purposes.

President: Let's have State, Defense, and CIA draw up the guidelines and then review it with the Attorney General.

Buchen: Church is ready on the assassination report. They will let us review the document for security and sensitivity, but not on the merits of the case. We don't want to get you in a position of responsibility for the report. They won't let us edit it or approve it.



President: I gave the material on the basis they would handle it as carefully as we have.

Scowcroft: If they publish a report at all, it is irresponsible.

Kissinger: If those things get put out, senior officials will stop speaking frankly and foreign governments will wonder about their ability to work with us confidentially.

Colby: Any document which officially shows American involvement in an assassination is a foreign policy disaster.

President: I think this is a more highly sensitive area than any we have had. I never assumed they had the right to publish any of this.

Levi: There is no legal way we can prevent it.

President: I don't know what the letters of transmittal were, but I said they had to handle these assassination documents as we had -- and we released none of them.

Marsh: Once they have a document, the Speech and Debate clause means there is no way we can prevent its release.

Kissinger: The new element in these investigations is the turning over of documents. During the McCarthy era, though, there was testimony, but it did not involve all the documents involved.

[More discussion on this general point.]

President: The Committee was warned about the assassination data.

Buchen: We agreed that we would object to any report but that we would review the document for the most damaging quotations. It was apparent that we wouldn't get a vote in the Committee not to publish a report.

Marsh: The Committee has requested us to pass on a series of quotations. We refused to do that except in context.

President: I think we should review it and then say it is not in the national interest to release it at all.

Scowcroft: We can send any letter we want following the review.

President: I think we should review it with a tough eye and then say the document shouldn't be released, but if they are determined, then some areas are more damaging than others.

Kissinger: I think we have a profound Constitutional issue which I think we have to face, and establish some fences around the Executive as the courts have established themselves through opinions.

Buchen: All we are fighting is official confirmation of material which is already widely known. This is not a good issue on which to go to the mat.

President: I don't want to be any part of their publishing material like this. If they want to do that, it is their responsibility.

Buchen: That is the position we have taken.

President: We have to say very strongly that we oppose a report, but that there are some parts that are more damaging than others.

Marsh: Let's get to the other issues.

Colby: Church is reviewing a lot of issues that were previously covered with a view to making them public -- for assassination. They also want to go into sensitive covert operations. [REDACTED] then the Congo, with a threat to [REDACTED] also Laos, Indonesia, [REDACTED].

Pike wants to get into [REDACTED] We, I think, have turned off [REDACTED] We briefed Pike and McClure on [REDACTED] I think we're Okay, but he has two questions: Was the decision-making really seriously done? The other is, does [REDACTED] meet the qualification of being essential to the national security?

President: I think in the national interest they should stay away from current operations.

Kissinger: If any Committee has the right to question the President's certification, we are in another hopeless situation.

Colby: The second problem is that of names. They have asked for all the records of our relations with PanAm, [REDACTED] ITT and others. If we acknowledge a relationship, we will kill these companies and our ability to place agents and get cooperation. We would propose revealing to the Committee only areas where there may be the question of improprieties.

Kissinger: We will have a monumental problem getting any company to cooperate with us in the future.

Colby: True, but if there is an allegation of impropriety, we can't very well defend that.

[More discussion of the Angola issue.]

Marsh: Henry, you are next.

Kissinger: There is one issue that is apparently peculiar to the State Department -- permitting junior personnel to testify as to policy recommendations. The dangers are that junior personnel could use this to get at their seniors who overruled them, or for the Committee to harrass them for decisions they made. To do otherwise would wreck the Foreign Service. This to me is a question of absolute principle. It is like McCarthy going against people who can't defend themselves.

Levi: Before we get into this on motives, I think we should go through the Boyatt letter and remove those parts which do contain names or policy. The Committee has a strong special charter and I think it is wrong to deceive ourselves. If it is going into litigation, I think we should see if we cannot sanitize the document.

Kissinger: The basic point of the dissent memo was to prove that the Embassy in Athens had a predilection for the junta and thus didn't listen to the desk officers.

Scowcroft: It seems to me you are denying there is a principle involved -- that is, a right of junior officers to get to the Secretary without fear of being exposed.

Levi: You have a strong public position now, but I think it will wither when the letter becomes known, because 90 percent of the document is a recitation of fact.

Lynn: The question is not one of management -- it is lousy management to let it happen -- but what is the legal handle on it. There I think we are weak.

Schlesinger: State is different. Take Interior, where the Bureau's alliance with Congress can stymie the Secretary.

Kissinger: I am concerned about the integrity of the Foreign Service. It took us 15 years to recover from McCarthy.

President: If Boyatt was up there testifying what happened day by day, what would you say?

Kissinger: I'd have no problem.

Levi: There is no doubt State and Defense have a preferred position, but I am trying to preserve it for you and that memo is a lousy one on which to do it.

President: There are two issues: One is the sanctity of the dissent channel and the other is testifying as to the facts. Henry says the latter is acceptable. Without having read the memo, I would say we strengthen our case if we cut out extraneous material in the memo.

Levi: I think it is suicide to imagine this case into what you want it to be. When the document gets printed in the paper I think you will wonder whether this is the one on which to make our case.

Marsh: The thing which worries me is the possibility that Boyatt might agree to its release.

President: From a lawyer's point of view, what do you recommend?

Levi: A review of the document to excise policy and sensitive matter and give the Committee what is left, if there is sense in the remainder. Then we are in a strong position to defend the issue.

Kissinger: What is your position about junior officers testifying on their opinions?

Levi: That's tough. I don't know how you can hold to it.

Rumsfeld: You have to defend that on political, not legal, grounds.

President: I think we have a defensible position if we send the Assistant Secretary and the junior officer up with a division of testimony.

Marsh: I agree with Henry's position with respect to the oversight committees. But this is a special committee and circumstance.

President: I think we want a confrontation where in the law and with the public we can win. We ought to find a case which will give us both of these. How we handle this case ought to fall within these parameters. On witnesses I think we are on the right track and should stand. On the memo, I think we should take a look at it.

Kissinger: 200 FSO's have written letters, as have ten retired people like George Kennan, etc.

President: Let's see if we can separate the fact from opinion.

Kissinger: Except then you vitiate the dissent principle. Many dissents are based on the assertion that the Secretary doesn't know the facts.

Duval: How about responding to the document by providing a summary of it?

Levi: It might leak.

Kissinger: That I would do only in the context of saying these are all the contrary views expressed to me.

President: Let's look at all these options and see where we go.

Kissinger: If I am ordered to do it I'll do it, but I think this is a profound issue of foreign policy and the Foreign Service. We are conceding to the committee on principle and arguing only on fact.

President: But the contrary is that if you get a bad case and lose it you have done the most possible damage.

Kissinger: That is true.

President: I think we can confront them and win if we have the right case.

Rumsfeld: I think we are better off with a political confrontation than a legal one with these courts.



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TYPE OF MATERIAL . . . . . Note

DESCRIPTION . . . . . Handwritten notes for memcon

CREATION DATE . . . . . 10/13/1975

VOLUME . . . . . 8 pages

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DATE WITHDRAWN . . . . . 02/21/2001

WITHDRAWING ARCHIVIST . . . . WHM

*Declassified in part - portions excised*

S (Wty umbrella) (Argued that Atty Gen should not oppose surveillance.) NSA

P In a case of tele. taps [redacted] you sign each one. For [redacted] you would sign a general one that it is within a law

L Yes, but I think it should be periodically reviewed

S Question is whether Atty Gen should rule on surveillance. [redacted] also an issue of Atty Gen ruling on overseas surveillance.

C The technology is advancing so fast that phone calls could be tapped overseas for call bet. Wash + Rich.

L 2<sup>nd</sup> circuit has held that overhearing an Am. abroad is a violation.

R I would think Pres would want Atty Gen involved in periodic review so he would know what might come up in a paper.

S The articles in a paper today result from Presidential staff directives.

K What is in a paper today results from us dumping our guarantees of national ex. courts. The paper has just said we have human Egyptian code - it has been blown. I think rather than just say a law is fixed we should try to educate courts to a realization of a world + our national security needs.

L Once a country, a courts are moving, but in a wrong direction. We maybe need a statute but we have to be careful about our practices as we prepare case

P I think trying to get a statute could be a disaster

in today's environment. Maybe a statute in a year or so, but now will just have to use guidelines.

K Does Ed want to appear only [redacted] again.

L I think we have to have some guidelines, perhaps as % of incidental [redacted] traffic overhead.

S ~~I~~ We can work out guidelines. I am worried about a Atty Gen being the highest intel officer for these purposes.

P Let's have State, Dep, CIA draw up guidelines and then submit it w/ Atty Gen.

B Church is ready on astro report. They will let me review a document for security & sensitivity, but not on a mission case. We don't want to get you in position of resp. for a report. They won't let us edit it or approve it.

P I guess it's a matter on basis they would handle it as carefully as we have

Sc. If they publish a report at all it is irresponsible.

K If those things get put out, senior officials will stop speaking frankly and foreign govt will wonder about their ability to work w/ us confidentially -

P I think this is a more highly sensitive area than any we have had.

C Any document which officially shows US involvement in astro is a F/P disaster

P I never assumed they had a right to publish any of this.

L There is no legal way we can prevent it.

P. I don't know what the letters of transmittal were, but I said they had to handle these extra documents as we had - and we released none.

M. Once they have a document, a speech & debate clause means there is no way we can prevent its release.

K. The main element in these investigations is the turning over of documents. During the Cauty, etc, there was testimony, but it did not involve other documents involved.

(More discussion on this great point)

P. The Court was warned on a certain date

B. We agreed that we would object to any report but that we would review ~~the~~ a document for a most damaging provisions. It was apparent that we wouldn't get a vote in a vote not to publish a report.

M. The Court has requested us to pass over a suite of provisions. We refused to do that except in context.

P. I think we should review it and then say it is not in such interest to release it at all.

S. We can send any letter we want following a review.

P. I think we should review w/a tough eye and then say the document shouldn't be released, but if they determined, then some areas are more damaging than others.

K. I think we have a proposed cert. issues which I think we have to face + establish some fences around the issue as a court has let's transcribe them open.

B All we are fighting is official representation of material which is already widely known. This is not a good reason on which to go to court.

P I don't want to be any part of their publishing material into this. If they want to do that, it is their resp.

B That is position we have taken.

P We have to say very strongly we oppose a report, but that there are some more damaging than others.

M Let's get to the other issues.

C Church is reviewing a lot of under preliminary covered info with a view to making them public - for dissemination. They also want to go into sensitive current ops.

[redacted] Croy, w/ Christ to [redacted] Laos, Indonesia, [redacted]

Pete wants to get into [redacted]. We think have covered off [redacted] We [redacted] Pete + the blue on [redacted]. I think we do but he has 2 questions - was a decision making really seriously done. The other is [redacted] meet a participation presented to a [redacted] security.

P I think in a [redacted] interest they should stay away from current ops.

R If any Centre has a right to present a Pres' certification, we are in a rather high level situation.

C The same [redacted] is [redacted] of [redacted] they have [redacted]



for all records from relation of Pan Am, [redacted]  
ITT & If we acknowledge relationship, we will  
kill the company's own ability to place agents & get  
copy. We would prefer avoiding the courts only areas  
where there may be a question of propriety.

K We will have a monumental job getting any company to  
drop w/ us in a future.

C True, but if an allegation of impropriety, we can't say  
we'll defend that.

M (More discussion of - Angola issue)  
Henry, you are right.

K There is one issue apparently pertinent to State-  
promoting junior personnel to testify as to policy  
recommendations. The danger is that juniors will  
use this to get at their seniors who attended them as  
face units & harasses them for decisions  
they made. To do otherwise would work a F.S.

This to me is a question of absolute principle. It is  
like the Earth against people <sup>let's</sup> not depend themselves.

K Before we get into this on emotion, I think we should  
go thru a Bergart letter & remove those parts which  
do contain names or policy. The letter has a  
strong special charter & I think it is wrong to  
decide ourselves. If it is going into litigation, I think  
we should see if we cannot sanitize a document.

K The basic point of dissent was to place a embargo  
in which had a predilection for a flatter & thus didn't  
have history to a dish officers.

S. Seems to me you are denying there is a principle  
involved - that is, a right of junior officers to get

to a Secy w/o fear of being eff'ed.

L You have a strong public position now, but I think it will wither when the letter becomes known, because 90% of a document is a recitation of fact.

Hyman The question is not one of urgency - it is longer urgent to let it happen - but what is a legal handle on it. I have a strong view on it.

S State is deep. Take Britain, where a bureau in alliance w/ Coxy can stop a Secy.

K I am concerned about the integrity of the F.S. It took us 15 yrs. to recover from the Century

P If Boyatt was just testifying what happened day by day, what would you say?

K I'd have no problem.

L ~~There~~ There is no doubt State & Def have prepared position, but I'm trying to preserve it for you & that means a long one can which takes it.

P There are 2 issues: one is the sanctity of a dissent channel & ~~second~~ another is testifying as to a fact. Henry says a letter is acceptable. W/o having made a record, I would say we strengthen our case if we cut out extraneous material in a memo.

L I think it is suicide to imagine this case into what you want it to be. When a document gets printed in a paper I think you will wonder whether this is a case which to make an case.

W ~~thing~~ ~~which~~ ~~would~~ ~~me~~ ~~it~~ ~~possibly~~ ~~that~~ ~~Boyatt~~



wright agree to release.

P From lawyer point of view, what do you recommend

L Review of document to exercise parking & sensitive matter & give a note what is left, if there is sensitive information. Then we are in a strong position to defend the issue

K What is your position about junior officer testifying on opinion

L# What tough. Don't know how you can hold it.

R You have to defend that on political not legal ground.

P I think we have a defensible position if we send a report saying a junior officer is a division of testimony.

M I agree w/ strong position ~~on~~ w/ respect to oversight committees. But this is a special case & circumstances

P I think we want a representation where we can lawfully put in our own view. We ought to find a case which will give us both of those. How we handle this case <sup>ought</sup> to fall w/ in those parameters. On witnesses I think we are a right track & should stand. On a memo, I think we should take a better.

K 200 F-50's have written letters, as have 10 retired people like George Keenan, etc.

P Let's see if we can separate fact from opinion

K Except from your initiative & dissent principle.

Many dissents are based on a ~~single~~ ~~single~~

assertion that a Secy doesn't believe facts.

(over)

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David Harwood depending to a document by  
providing a summary file?

H. Might be.

K. That I would do only in context of saying  
these are all the contrary views expressed to  
me.

P. Let's look at all three options & see where we  
go.

K. If I am asked to do it I'll do it, but I  
think this is a profound issue of foreign  
policy & a foreign travel. We are exceedingly  
to a certain point & arguing only on  
fact.

P. But contrary is that if you get a bad case  
& lose it you have done <sup>considerable</sup> damage

K. That is true.

P. I think we can confront them & win if  
we have the right case.

R. I think we better offer a political cooperation  
than a legal one. (a) / (b) as matters