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Marvin and Bernard Kalb began their 1974 biography of Henry Kissinger by acknowledging his assistance. They describe Kissinger as a historian as well as a statesman who "understands the critical importance of primary sourcing."¹ Like the Kalb brothers, I am grateful for Henry Kissinger's understanding of "primary sourcing." My topic today is a special group of primary sources--the records of Secretaries of State, especially Henry Kissinger's records.²

By traditional understanding, official records of government agencies are public property; personal papers of federal officials are not official records; personal papers belong to the officials and are subject to their disposition.

Families have played a major role in the preservation of personal papers of Secretaries of State, but institutions usually can provide even better care and make them available for research to all. In the 19th century, state and local historical societies began to acquire personal papers. More recently, university libraries have emerged as repositories for personal papers, especially for papers of their distinguished alumni.

When a Manuscript Department was established in the Library of Congress in 1897, it began to acquire the personal papers of Presidents and other high government officials. There were 33 Secretaries of State from Thomas Jefferson to John Sherman, and the Library of Congress has the personal papers of 19. There were 12 Secretaries of State from William Day to Cordell Hull, and the Library of Congress has the personal papers of nine.³

But what is the difference between personal papers and official records? Tyler Dennett, the first Historical Adviser in the State Department, recognized the problem of Secretaries of State who took personal papers with them when they left office. In March 1925, he addressed a memo to Secretary of State Charles Evans Hughes about the disposal of his personal papers. Dennett said that the record of American foreign policy was "extremely defective owing to the distinction which has been made between public and private papers." The result was that a "large amount of the most important diplomatic correspondence of the period was never a matter of record in the Department of State and does not now belong to its files." The problem was how to draw the line between public and private papers; he concluded that "doubtless the decision in every instance will be wholly personal with the Secretary of State." To make certain that the papers would be available for historical research, Dennett suggested that if Hughes had papers that he considered⁴ to be his private property, he turn them over to the Library of Congress.

In 1928, Dennett failed in his attempt to obtain certain papers of Secretary William H. Seward that were in the possession of Seward's grandson at

the family home in Auburn, New York.⁵ But in the following year the State Department succeeded in recovering papers that Secretary of State Robert Lansing took with him when he left office. With the cooperation of Lansing's nephew, Allen Dulles, Lansing's papers were separated into personal and official, and the official documents were returned to the State Department. Subsequently, the State Department published portions of them as a two-volume supplement to the Foreign Relations series, indexed the originals, and filed them in the central files.⁶

By 1945, the State Department still had no control over what papers Secretaries of State took with them when they left office, but it did begin to assert control over access to those papers. It used the security-classification system, not applicable to the State Department before World War II. Cordell Hull was the first Secretary of State to have copies or originals of security-classified documents among his personal papers. The State Department's rules provided that records less than 25, later 30 years old, were in the closed period and not available for research. Thus, although Secretary Hull's papers were deeded to the Library of Congress in 1952, the State Department controlled access to the papers until 1972 when they were all in the open period for research.

Secretary Edward Stettinius, when he left office in 1945, removed to his Virginia farm all of the files in his office for the entire period of his tenure as Undersecretary and Secretary of State, and later gave them to the University of Virginia. Although a University committee controlled access, the State Department insisted on reviewing researchers' notes. Access generally followed State Department rules on the open and closed periods. Among the 900 archives boxes of Stettinius papers are his diaries. Stettinius usually dictated "calendar notes," a personal summary of each day's activities, and he assigned a stenographer to listen to his telephone conversations and take shorthand notes. The verbatim transcripts of his telephone conversations, together with the calendar notes, formed the basis of a formal narrative diary that Stettinius and his aides compiled for his major diplomatic missions and for the international conferences he attended. Stettinius never will be considered in the top rank of Secretaries of State, but his papers, especially his transcripts of telephone conversations, are particularly valuable. They supplement the official documents, provide significant information which cannot be found elsewhere, and reveal a great deal about decision making in the State Department.⁷

James Byrnes also took his papers with him, but they consist largely of copies of official documents for his tenure as Secretary of State. Byrnes gave his papers to the Clemson University Library with a 20-year restriction on access. Although the State Department attempted to control access to the Byrnes papers for the period when he was Secretary of State, Clemson officials rejected those efforts. They contended that Byrnes had given the papers to the university and had authorized the University Librarian alone to control access. The conflict was never resolved, and it became moot after 1972 when State Department records dated 1946 were opened for research in the National Archives.⁸

George Marshall kept no personal papers and took no records with him when he left the State Department in January 1949. The collection at the Marshall Library in Lexington, Virginia, consists of xerox copies of unclassified and declassified documents from State and Defense Department files.

Dean Acheson kept extra copies of correspondence and memoranda for his tenure as Secretary of State, and after his death they were transferred to the Truman Library.

Some of the John Foster Dulles papers are at Princeton University and others are at the Eisenhower Library at Abilene, Kansas. Some materials are in both places. Dulles paid for the microfilming of documents from the official files, and the microfilm is at Princeton; Princeton has Dulles papers for the period before 1953. Dulles also donated a considerable quantity of papers to the Eisenhower Library, including 13,000 pages of telephone transcripts. The telephone transcripts are divided into two series—"phone calls general," and "phone calls with the President and other White House officials." About 95% of this material has been declassified or is unclassified and available for research. Whenever the Eisenhower Library is able to declassify Dulles material, it provides a copy of that material to Princeton.

Christian Herter also donated his personal papers to the Eisenhower Library. Dean Rusk and William Rogers left their files at the State Department when they left office.

As we have seen, in the 19th century and even into the 20th century, papers were regarded as belonging to the officer, not the office. Over the last 40 years, the long-term trend has been toward the reverse—papers belong to the office, not the officer. Although there has been some backsliding, some trickery around the edges, the general trend has been toward public ownership and control¹⁰ rather than personal ownership and special access to favorites. Congressional action has forced some of these changes.

From 1943 to the present, Congress passed three laws which drastically changed the way in which we can treat the official records and personal papers of Secretaries of State.

(1) Records Disposal Act of 1943. For the first time Congress provided a definition of federal records: "All documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value in them."

(2) Federal Records Act of 1950. For the first time, agency heads had to establish safeguards against the removal or loss of records. It also required the heads of agencies and the Administrator of GSA to cooperate in case of any actual, impending, or threatened unlawful removal, alteration, or destruction of records, and to initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed.

(3) Freedom of Information Act, as amended in 1974. It required federal agencies to make records available to requestors unless they were exempt from release under one of nine specific exemptions. If an agency denied a request or failed to respond, the law also provided for speedy action by a U.S. District Court to determine if an agency was improperly withholding records.

And now we come to Henry Kissinger, who was Assistant to the President for

National Security Affairs from 1969 to 1975 and Secretary of State from 1973 to 1977. Throughout this period of government service, Kissinger's secretaries generally monitored his telephone conversations, recorded their contents either by shorthand, or on tape, and prepared 33,000 pages of summaries or verbatim transcripts.

As Kissinger prepared to retire from public life, one of the things that must have worried him was the Freedom of Information Act and the possibility of public access to the records of his telephone conversations. The State Department had denied one FOIA request for transcripts of the 1969-71 period because then Kissinger was National Security Adviser and his records were exempt from FOIA disclosure; the same argument, however, could not be made if someone requested transcripts for the period when Kissinger was Secretary of State.

On October 29, 1976, Kissinger solved that problem by moving the telephone records from his office in the State Department to the New York estate of Nelson Rockefeller. Kissinger did not consult the State Department records office or the National Archives. The Legal Adviser of the State Department, Monroe Leigh, assured Kissinger that the telephone records were personal papers which he could take with him when he left office.

On November 12, 1976, Kissinger donated his personal papers, excluding the telephone records, to the Library of Congress, an agency not covered by the Freedom of Information Act. When Kissinger's donation was announced on December 22, 1976, television and press correspondents at the State Department began to ask embarrassing questions about the telephone transcripts: "Are the transcribed notes of the Secretary's conversations with newsmen his personal property?" "There must be numerous occasions in which Secretary Kissinger has conducted official business over the phone with Ambassador Dobrynin. . . . Under what possible circumstances would these be regarded as non-official, private, personal papers?" The press spokesman suggested that the answers to those questions could be found in the opinion of the Legal Adviser, and copies were made available. The result was even more questions, because Leigh had suggested that the telephone records be reviewed to make sure that none of the conversations dealt with the decisions of the government. The spokesman's new response was that the review had not been completed.¹²

Perhaps because of the controversy, Kissinger added the telephone records to his donation to the Library of Congress on December 24, 1976. Four days later the transcripts were moved from the Rockefeller Estate to the Library of Congress, but no State Department records officer examined them; the review which the spokesman had said was not completed had not, in fact, even begun. A few weeks later, however, Laurence Eagleburger extracted certain portions of the transcripts for inclusion in the files of the National Security Council and the State Department.

On January 4, 1977, the Archivist of the United States wrote to Secretary Kissinger to request permission to examine the telephone records to see if they were State Department records and to determine whether Kissinger had authority to remove them from agency custody. Kissinger rejected the request. The Archivist renewed his request on February 11, 1977, this time to private citizen Kissinger, but received no direct reply.¹³

Eventually, lawyers concluded an arrangement for State Department and National Archives officials to make a limited inspection of the telephone

records. A senior supervisory archivist at the National Archives, Richard Jacobs, and the Director of the State Department's records office, John Pruden, did the work. Although Jacobs and Pruden looked at the same 503 transcripts, they saw them differently. Pruden believed that 49% of the transcripts were non-record, which he defined as conversations on topics unrelated to State Department business, or private topics, or insignificant matters; he believed that 51% of the transcripts were official records. Jacobs divided the transcripts into three categories--personal, mixed official and personal records, and official records. He believed that only 5%¹⁴ were personal, 7% were mixed, and 88% of the transcripts were totally official.

Kissinger retained his sense of humor during the inspection process. One day while Jacobs and Pruden were working in a small room at the Library of Congress, Kissinger walked in to watch them work and ask some questions. "You archivists," Kissinger said, "all you really want is my dirty underwear." Later Kissinger returned and asked Jacobs if the National Archives still wanted to get Kissinger's dirty underwear. Jacobs replied, "Well, Mr. Secretary, it all depends on what you have written on them. Is it a record or not?" One year later a package arrived at the Archivist's office; there was no letter or return address, but it was mailed from Paris. Inside the package was underwear with the following inscription: "Worn without stop, day and night, May 1-10, 1978." Jacobs still has the underwear; he can't decide whether it is a record or not.¹⁵

While Jacobs and Pruden inspected the transcripts, others took legal actions under the Freedom of Information Act. Various groups, including the American Historical Association, and a number of individuals collectively made FOIA requests to the State Department for Kissinger's telephone records. The State Department denied all of these requests because the telephone records were not in its custody and control at the time the requests were made, and thus they were not agency records. The appeals were also denied. The requestors filed suit in the United States District Court for the District of Columbia.

The District Court judge ruled that the telephone records made during Kissinger's period as National Security Adviser were not agency records, and the Freedom of Information Act did not apply to them. But, he concluded that the transcripts produced while Kissinger was Secretary of State were agency records, available under FOIA, and that Kissinger had wrongfully removed them by not obtaining prior approval from the Administrator of General Services. He decided that the FOIA permitted the court to use its equitable powers "to order the return of wrongfully removed agency documents where a statutory retrieval action appears unlikely." Thus, he ordered the Library of Congress to return the transcripts to the Department of State, and he ordered the State Department to review the records to see which ones were exempt from disclosure under the FOIA and then furnish the rest to the FOIA plaintiffs. Both sides appealed the decision, but the Court of Appeals affirmed the judgment of the trial court. Both sides then appealed to the Supreme Court.

The Supreme Court heard oral arguments on October 29, 1979, and rendered its decision on March 3, 1980. Writing for the majority, Justice William Rehnquist stated that it was not necessary for the court to decide whether the transcripts were agency records or whether they had been wrongfully removed. Since the records were not in the State Department's custody at the time of the requests, the State Department had not improperly withheld them. The trial judge had exceeded his authority in ordering relief on behalf of the

plaintiffs, and the lower court decision was reversed. Rehnquist added that if the transcripts were agency records, and if they had been improperly removed, there was nothing private parties could do about it. There is only one legal remedy for the improper removal of records from an agency: The head of an agency is required to notify the Attorney General if he determines or "has reason to believe" that records have been improperly removed from his agency; the Administrator of General Services is obligated to assist in such actions. The Attorney General then may bring suit to recover the records.

In effect, the Supreme Court chose to decide the Kissinger case narrowly in his favor, but at the same time it implicitly invited agency action to recover the documents.

Following the Supreme Court's decision, lawyers from the State Department, General Services Administration, and the Justice Department met to determine what to do. The National Archives-GSA position was that the Kissinger transcripts as Secretary of State were State Department records that should be returned from the Library of Congress to the State Department, and the Kissinger transcripts as National Security Adviser had to be transferred to the National Archives because they were Nixon presidential materials covered by the 1974 Presidential Recordings and Materials Act. Staff lawyers in the State Department and the Justice Department could not decide what, if anything, to do.

Attorney General Benjamin Civiletti, in a speech on March 13, 1980, said that the Freedom of Information Act should cover "public records maintained on public time on public paper in public buildings by public employees." He added that he wanted to prevent the defeat of that act by the improper or surreptitious removal of such records.¹⁶

But nothing happened. So on June 11, 1980, the Acting Administrator of GSA wrote to Secretary of State Edmund Muskie and suggested that they resume the interrupted inspection effort, analyze the findings, and if warranted, take legal actions to recover the transcripts for State Department custody.¹⁷

Congressman Richardson Preyer, North Carolina Democrat, also acted. Unhappy that nothing had been done regarding the Kissinger transcripts, Preyer introduced a bill to simplify the recovery procedures by giving the Archivist of the United States sole authority to take legal action.

It seemed, therefore, that action could be started to return the Kissinger transcripts to the State Department. Such was not the case. I'm reminded of the story Bob Hope told at the gala opening the Gerald Ford Museum: "Henry Kissinger was born a diplomat. When he was born the doctor raised his hand to slap him and Henry said, 'Wait a minute, have we exhausted all the alternatives?'" Kissinger's lawyers and State Department lawyers examined the alternatives and finally reached agreement on a plan that effectively excluded the National Archives.

On October 15, the plan was explained to National Archives officials. The idea was to review the 15,000 pages of telephone transcripts for Kissinger's tenure as Secretary of State in order to extract from them information having record value for the State Department. How would that be done? A simple flow chart explained it all. Kissinger's staff would divide the transcripts into three categories: (1) Notes of totally personal conversations, (2) Notes of conversations that mixed personal and official business, and (3) Notes of totally official conversations. Philip Habib, a distinguished senior Foreign

Service Officer, would verify the decisions of Kissinger's staff by reviewing the notes in categories one and two--the totally personal and the mixed personal-official. The personal notes would then be returned to Kissinger. The mixed notes, with personal information deleted, and the official notes in category three would be copied. State Department records officers would then review the copies and divide them into two new categories--those having record value and those without record value. The State Department would keep copies of the notes with record value and return copies of the notes without record value to Kissinger.

The National Archives objected to this plan. Archives officials had a different understanding of the definition of records, records law, and regulations regarding records. They believed that where federal records exist, and the Kissinger transcripts were federal records, they must be appraised by the National Archives to see if they have permanent value, and the National Archives must approve their disposition. The State Department plan had no role for the National Archives.

The National Archives objected to the powerful discretionary role to be played by Philip Habib. Although Habib has impressive credentials, and served as Undersecretary of State, he also was well-known for his close association with Kissinger. Habib alone could decide which notes were personal and which notes were official. Roscoe Pound described that process in an article he wrote in 1909 about judicial decisions: "Like Habib in the Arabian Nights, we wave aloft our scimitar and pronounce the talismanic word."¹⁹ The National Archives wanted, at the very least, a State Department records officer to assist Habib in making those decisions.

Finally, the National Archives objected to splitting a series of official records into two categories of information--record value and non-record value. "Record Value" is a term undefined in law or regulation. Under the State Department plan, record value was defined as important information not otherwise documented in State Department files. What is "important"? One could argue that every telephone conversation that a Secretary of State has about official business is important. Similarly, "information not documented in State Department files" depends on the definition of information. One could argue that every conversation contains information not documented in State Department files unless the exact language of the conversation is already in the file. State Department records officers, however, admitted that they thought the transcripts contain very little information that they would define as having record value.²⁰

When two agencies of the Federal government disagree about how laws should be interpreted, they must turn to the lawyer for the Federal government--the Department of Justice. In January 1981, the Justice Department concluded that the State Department-Kissinger plan met all legal requirements. First, it recognized that the notes belonged to the Federal government. Second, the State Department was authorized to decide that some notes need not be retained if the information they contained could be found in extracts or in some other document in Department files. Third, the State Department was permitted to give up its ownership of records if they did not think they were appropriate for preservation, and once relinquished, the records would become the property of the employee. Justice agreed²¹ with State--there was no role for the National Archives in the review process.

Since last January, nothing has been done. Habib was recalled to active

duty to serve as a negotiator in the Middle East, and the review has not begun.

What will happen now? More litigation is possible. The FBI case serves as an example. When the FBI proposed to destroy its field office case files, the National Archives approved the proposed retention and disposition schedules. A group of individual historians and organizations filed suit to prevent the destruction of those records, and won the case. A brief summary of the judge's decision is in order: From 1946 to 1976 the National Archives took actions on FBI records four times without once examining the records. Why? "J. Edgar Hoover was not in the habit of granting to anyone outside the FBI access to its files." Thus, "the Archivist never discharged his statutory responsibility to make independent judgments concerning the records retention and destruction practices of the Federal Bureau of Investigation." Congress never intended that records retention and disposal programs be administered by operational federal agencies acting alone, but with archival supervision and guidance. "Under the law, it is the Archivist who is charged with the responsibility for the records preservation program of the United States."²²

In the Kissinger case, by way of contrast, the State Department and the Justice Department have concluded that the Archivist can and should do nothing, and there is nothing the National Archives can do about that decision.

A second possibility is a change in the Freedom of Information Act. Last October, in testimony before a Senate Judiciary Subcommittee, the Justice Department proposed to change the definition of government records so that the Freedom of Information Act would no longer apply to "diaries, journals, telephone logs, desk calendars, or personal or research notes" that government officials often keep.

A third possibility is that the controversy over the Kissinger transcripts may be dead. Maybe that's a good thing, especially if the alternative is no record at all. Perhaps it's more important for Secretaries of State to keep good records, whether they are called official or personal, and to write memoirs. Of the memoirs of Secretaries of State, nothing can compare--in terms of quantity and quality--with White House Years and the two volumes that will follow, the autobiographical record of the primary architect of American foreign policy for a crucial eight-year period in American history. Other Secretaries of State have written memoirs, and it is good that they did. As Kissinger himself has noted, the best historian would have difficulty dealing with the millions of documents produced during a modern four-year period. Which documents guided the decision-makers, and which ones were written to provide an alibi? Dean Acheson once said the author of a memo of conversation always wins the argument. Only the decision-maker knows which documents affected reality, at least as he perceived it.²⁴

Having access to transcripts of telephone conversations of the decision-maker, in addition to official records, would help the historian enormously. Let me give only one example. The Foreign Relations volume for Africa, 1970, may include the State Department's document for the briefing that Department officials gave President Nixon ten days after the collapse of Biafra, but there is nothing in it about a million Biafrans starving to death. According to Roger Morris, who worked for Kissinger at that time, Nixon and Kissinger knew that would happen and knew the State Department's briefing was misleading. In a telephone conversation after the briefing, Nixon asked: "They're going to let them starve, aren't they Henry?" And Kissinger replied only, "Yes."²⁵

In the final analysis, the historians of the future will be thankful that Kissinger kept telephone records and wrote memoirs, and that they will be able to use the telephone records to verify the accuracy of Kissinger's memoirs. That will keep a lot of historians busy for a long time.

FOOTNOTES

¹Marvin Kalb and Bernard Kalb, Kissinger (Boston and Toronto: Little, Brown and Company, 1974), vii.

²A good deal of information about the papers of former Secretaries of State and recordkeeping practices in federal agencies can be found among the records of the Public Documents Commission, Record Group 220, National Archives; hereafter cited as PDC, RG 220, NA.

Following the notorious Nixon-Sampson agreement of September 8, 1974, Congress quickly passed the Presidential Recordings and Materials Act in order to nullify that agreement and take control over President Nixon's White House tapes and other papers. Title II of that Act established a National Study Commission on Records and Documents of Federal Officials--the Public Documents Commission. Although the Commission has been called a disaster from beginning to end, one surprising result of its work was the Presidential Records Act of 1978; now the papers of the President are public property. See Anna K. Nelson, "Whatever Became of the Public Documents Commission?," unpublished paper for MARAC Conference, May 16, 1980.

The Office of the Historian, Department of State, also was able to provide a great deal of information about the papers of former Secretaries of State to the Public Documents Commission; see David F. Trask to Dori Dressander, August 19, 1976, PDC, RG 220, NA.

See also, Anna K. Nelson, "Foreign Policy Records and Papers: A Case Study of the Preservation and Accessibility of One Group of Documents," 54-69, Ibid.

³For example, the papers of Timothy Pickering, John Quincy Adams, and Edward Everett are in the Massachusetts Historical Society; the Historical Society of Pennsylvania has James Buchanan's papers; and the Minnesota State Historical Society has the papers of Frank Kellogg. The William Seward papers are at the University of Rochester Library; Clemson has the papers of John C. Calhoun and James F. Byrnes; Yale has the Henry Stimson papers; the University of Virginia has the Edward Stettinius papers; and Princeton has the John Foster Dulles papers. Besides the papers of the 19th century Secretaries of State, the Library of Congress has the following since 1898: William Day, 15,000 items; John Hay, 11,000; Elihu Root, 66,000; Philander Knox, 8,500; William Jennings Bryan, 18,000; Robert Lansing, 12,000; Bainbridge Colby, 3,500; Charles Evans Hughes, 61,000; and Cordell Hull, 70,000. Memorandum, Library of Congress File, Ibid.

⁴Tyler Dennett to Charles Evans Hughes, March 3, 1925, Interoffice Memorandums Not Included in the Central Files, General Records of the Department of State, Record Group 59, National Archives; hereafter cited as RG 59, NA.

⁵Decimal File 116/165, RG 59, NA.

⁶Decimal File 116/174A-174D, RG 59, NA.

⁷Thomas M. Campbell and George C. Herring, editors, The Diaries of Edward R. Stettinius, Jr., 1943-1946 (New York: New Viewpoints, 1975), xxvi-xxviii.

⁸State Department records officers knew even less than the Historical Office about the Byrnes papers. In their submission to the Public Documents Commission, "Records of Former Senior Officials in the Possession of Private Institutions," they listed Clemson as having the papers of "Sec. Burns." Memorandum to the National Study Commission on Records and Documents of Federal Officials, no date, State Department File, PDC, RG 220, NA.

⁹William Clark, Anthony Eden's press secretary at the time of the Suez crisis, recently noted that the motives and actions of Dulles are made clearer by Donald Neff's new book, Warriors at Suez. Neff's "publication of the transcripts of Dulles' telephone conversations with senators and cabinet colleagues" makes it "possible to understand (as those of us working in 10 Downing Street at the time never did) what lay behind his shifts and turns during the three-month crisis." See "Meddling in the Middle East," Washington Post Book World, October 18, 1981, 4.

¹⁰Conversation with William Franklin, former Director of the Historical Office, Department of State, October 26, 1981.

¹¹Marvin Kalb, "What Will Henry Do for an Encore," New York Times Magazine, April 16, 1978, IV, 29. See also, Supreme Court of the United States, Kissinger v. Reporters Committee for Freedom of the Press et al., No. 78-1088.

¹²Press interest in the Kissinger transcripts is shown by the number of pages devoted to the controversy in the Daily News Briefings: December 22, 11 pages; December 23, 19 pages; December 27, four pages; December 28, 16 pages; and December 29, six pages. Press Office, Department of State.

¹³James B. Rhoads (Archivist of the United States) to Henry A. Kissinger (Secretary of State), January 4, 1977; Kissinger to Rhoads, January 18, 1977; Rhoads to Kissinger, February 11, 1977; Diplomatic Branch files, National Archives.

¹⁴Memorandum, "Inspection of Kissinger Transcripts," Diplomatic Branch Files, National Archives.

¹⁵Conversation with Richard Jacobs, July 28, 1981.

¹⁶"Secret Use of Memoirs Faces Curb," Washington Post, March 13, 1980.

¹⁷Ray Kline (Acting Administrator, GSA) to Edmund S. Muskie (Secretary of State), June 11, 1980, Diplomatic Branch files, National Archives.

¹⁸Edmund S. Muskie to R. G. Freeman III (Administrator, GSA), September 19, 1980, Diplomatic Branch files, National Archives.

¹⁹Columbia Law Review, 8 (December 1908), 621. For a different use of the same quotation, see Elizabeth Hamer Keegan's comment in the final report of the PDC.

²⁰Even before there was a controversy over the Kissinger transcripts, John Pruden, the State Department records officer, had expressed the peculiar interpretation that some documents in an official records series may not be official records: "If I write a memorandum to the file, put it in the file and it never gets disseminated to anyone else, then you get into definitional problems--is that an official record or not? If you base some action on it, it certainly is of historic interest but is it an official record? This is the tough question. Whether Secretary Kissinger, for example, if he has made transcripts of a large number of conversations but he only did that for his own bemusement. Is that a record or is that not a record?" Transcript of a meeting at the Department of State, June 14, 1976, State Department File, PDC, RG 220, NA.

²¹John M. Harmon (Assistant Attorney General, Office of Legal Counsel, Department of Justice) to Allie B. Latimer (General Counsel, GSA), January 13, 1981, Diplomatic Branch files, National Archives.

Under Title 44 of the U.S. Code, responsibility for records management is shared by the Administrator of GSA and the heads of Federal agencies. Before 1976, the heading for section 2910 of Title 44 was "Final authority of Administrator in records practices," and it provided that the Administrator of GSA was the final authority in matters involving the conduct of surveys of Government records, and records creation, maintenance, management and disposal practices in Federal agencies, and the implementation of recommendations based on surveys. In 1976, however, that section of the law was eliminated. As amended, the new law clearly provides that records management in Federal agencies is the responsibility of the heads of Federal agencies, not the Administrator of GSA.

²²United States District Court for the District of Columbia, American Friends Service Committee, et al. v. William H. Webster, et al., Civil Action No. 79-1655.

Following Judge Harold Greene's decision, the National Archives created a task force of 17 senior archivists who spent nine months examining 300,000 cubic feet of FBI case files in order to develop a records retention plan and disposal schedule for FBI case files. Normal operations of the National Archives were disrupted.

²³George Lardner, Jr., "Administration Calls FOIA 'Overrated,' Seeks Wide-Ranging Restrictions On It," Washington Post, October 16, 1981.

²⁴Henry Kissinger, White House Years (Boston and Toronto: Little, Brown and Company, 1979), xxii.

²⁵Roger Morris, Uncertain Greatness: Henry Kissinger and American Foreign Policy (New York: Harper & Row, 1977), 129.