Re: Witness Summary, Everette Howard Hunt

Thanks very much for this, Mr. McGowan. It is very helpful, it does help my understanding very much and in some areas it does increase my knowledge, as on the plans for Bennett, Hunt and Caddy to buy Mullen. I regret the need for the masking, particularly because in some cases, particularly the first, page 2, I may have already put together what might be of interest to you.

Of course, you may also have done the same thing. I don't believe that jazz about the hot stuff on Huckie Greenspun is alleged to have had and didn't. I did that writing the day I saw the testimony. I believe the attempted break-in that, as I recall it, was exactly a year before the Fielding job, was to get the Maheu papers on Hughes' notion that he could buy Nixon. Enough on this was in my files, old newspaper clippings.

There are some areas in which I find myself wondering why the staff was so much less informative than it could have been. Senators are too busy to keep up without being informed. This begins with the first item, the biography, which says much less than is public about Hunt's career, particularly where it is relevant in his CIA posts. One aspect of this I have not been able to follow and would like to if you have any suggestions or information is the Dominican fiasco of 1965. The spurious list of so-called communists used as a basis for the United States invasion and intrusion into the domestic affairs of that country is exactly the kind of thing one could expect from Hunt. It was a tragedy for the Dominican Republic and a disaster for United States foreign relations. I have a file of old clippings on this. They say the forces opposed by the United States were not communists.

This also has to be true about Mexico and about domestic intelligence, both areas I am following as best I can. I believe both are relevant to the inquiry and thus should have been in this summary.

Your letter concludes with a kind offer of more material if you have it. If it is not too much trouble, I have special interests in Hunt, Caddy and Bennett and the Mullen agency, so anything you might be able to provide that is not reproduced in the hearings I would be especially happy to have. I feel fairly confident of being able to come up with what has not yet been adduced on this. It will take time, has taken much time, but I think it will be worth the effort. When I have completed this work, I believe it may interest you and Senator Weicker.

This summary does not so indicate, but Hunt was a Mullen vice president. Based on what I have from Bennett in a civil-suit deposition, page 2 is wrong in that Bennett says he was hired as president before the purchase, which I believe he does not mention in that deposition.

Of course you should know much that I do not. However, as I read page 17 in particular I wondered if you have compared this and other matters with the Hunt and Liddy expense accounts. Two parts of this page seem to have been masked, one for sure. I have a story in which Greenspun is quoted as saying there actually was the break-in. This page says the plan was vetoed by the Hughes company. Unless Greenspun lied, somebody did break in and left proof of it.

A number of items on page 21 seem to be inadequate or inconsistent with what is publicly available. Incompleteness continues to the top of page 22. This and what follows give me more interest in the so-called Hunt blackmail letter, which I have not seen, if you can spare a copy.

If you are interested in these things and I can help you, please let me know.

Thanks for what you have done and what you may do,

Sincerely,

Memorandum for Mr. Richard McGowan on Senator Weicher's 12/12/73 Congressional Record "Nixon Papers Tax Deduction," from Harold Weisberg, 12/22/73

What I suggested in my 12/14/73 letter to Senator Weicher is supported by a hasty reading of this reprint, received late yesterday. Senator Weicher's focus is on the tax deduction and he has made a valuable addition to the record on this. However, I am more than ever convinced that the other possible Nixon interest should be considered.

The other interest I have in mind is a mechanism for suppressing his own records.

Whether or not he had this in mind, he has achieved this, with regard to all his pre-Presidential papers.

As Senator Weicher noted, only about a third of these papers are included in the "gift." But all are covered by the conveyances. This would seem to mean that until there is a final determination of what is included in this "gift," the imposed and inherently accepted conditions apply to all, the third given and the two-third not given. Could this be the reason (page 2, C.) that "The 1969 deed has never been accepted...," because until final determination of what is included it can't be? If so and if the Nixon lawyers understood the manner of making this "gift" was clouded, I wonder if the ulterior purpose mentioned in the fourth paragraph of my letter was important enough to risk clouding the tax credit claimed. In part Senator Weicher begins to address this on page 3, the paragraph beginning at the bottom of the first column and concluding, "It is impossible to relinquish physical dominion or control over something if there is no way of physically knowing what that something is." On page 5, C. quotes, "Since the papers for the most part abe not yet deeded to the United States..." Perhaps relevant also is page 6, F., "There is no explanation or reason for the differences in the 1969 deed, such as the attempt to use an agent, or the absence of a signature block for the General Services Administration." Could it not at some later date be argued that without GSA acceptance the whole deal if off? Or how to have the eaten cake.

Exhibit 1 on page 7, 1., denies access to all Nixon papers as long as he is President. So does Exhibit 3, 1. Both also give Nixon "the right and power at any time during his lifetime to modify or remove this restriction..." I suggest that if the mind if not captured by "remove" and focuses on "modify", one modification could be to extend the period of total suppression.

If I am correct, Nixon has created a machine for the total suppression of any of his pre-Presidential papers he wants suppressed and for as long as he wants this. I believe there are such papers, those he does not want seen by anyone who can use them. And from my own experience in C.A. 2569-70 in the federal district court in Washington, the federal government will undertake to press the right to suppress for the donor. In that case perjury and subornation of perjury were the federal way. Were this precedent followed, Nixon would not have to defend the case himself. The attachments in that case say the precedent is followed without deviation. There is always the glib explanation, the need to induce such priceless gifts that otherwise would not be made.

While I want to keep this short, I do ask you to consider why with all the legal talent he had and with the clear intent to use the tax-reducing potential of the law, and particularly with the pending end of that capability, there was all this fuzziness, all the possible jeopardy to the making of an easy half million dollars. I believe it can be explained by what I called "ulterior purpose" and that suppression is one purpose.

These documents are referred to as "deeds." I am not a lawyer, but I believe they are rather contracts. Thus terms can be extracted from GSA and they are not valid without GSA signature. Can you think of any good reason for them to be drafted with no provision for GSA signature aside from this?

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

Vol. 119 WASHINGTON, WEDNESDAY, DECEMBER 12, 1973 No. 195

Senate

NIXON PAPERS TAX DEDUCTION

Mr. WEICKER. Mr. President, I ask unanimous consent that certain materials, which were sent to the Internal Revenue Service on December 10, 1973, be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

COMMITTEE ON AERONAUTICS AND SPACE SCIENCES,
Washington, D.C., December 10, 1973.

Hon. DONALD C. ALEXANDER,
Commissioner, Internal Revenue Service, Washington, D.C.

DEAR MR. COMMISSIONER: During the course of my investigations as a Member of the Select Committee on Presidential Campaign Activities, certain facts came to my attention relative to an alleged gift of pre-Presidential papers to the United States by Richard M. Nixon in 1969.

The responsibility for determining the validity of the tax deduction which resulted from that alleged gift is solely within the jurisdiction of the Internal Revenue Service. For that reason, I believe the enclosed memorandum of fact and law should be brought to your attention. The very nature of its content raises questions requiring a response by the appropriate governmental authority.

I have noted that on September 5, 1973, in a Presidential News Conference, the President stated: ". . . the IRS has had a full field review or audit of my income tax returns for 1971 and 1972 . . . ." On December 8, 1973, in his financial disclosure statements, the President stated: "The examination conducted earlier this year by the Internal Revenue Service of President and Mrs. Nixon's returns for the years 1971 and 1972 included a review of the gift."

My investigation has revealed that neither the recipient of the alleged gift, the General Services Administration and the National Archives, nor the appraiser of the alleged gift. Mr. Ralph Newman, have ever been contacted by the Internal Revenue Service with reference to the gift in question. In a gift situation involving a donor, donee, and appraiser, for the IRS not to have contacted two out of three principal parties clearly raises questions about the thoroughness of such a review or audit.

When questions relating to the tax treatment of the President are raised, it is very important to the nation and to public confidence that the matter be resolved in a timely and thorough manner.

As I indicated to you by phone this evening, I will make public both this letter and its accompanying documents. This so as to avoid accusations of "leaks" being attributed to either of our offices.

With kind regards,
Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

MEMORANDUM

To: Commissioner, Internal Revenue Service.
From: Senator Lowell Weicker, Jr.
Re: Income Tax Deduction by Richard M. Nixon.

SUMMARY OF FACTS

1. In both 1968 and 1969, Richard M. Nixon claimed a tax deduction for charitable contributions of his personal papers to the United States. This had become common practice for individuals in his position. The procedure used by Lyndon B. Johnson and Mr. Nixon from 1965 to 1968 was to wait uniti the end of the year, apparently make an estimate of their tax situation, and then determine how much of a charitable deduction would be appropriate. Prior to 1965, this technique had not been followed by Presidents or ex-Presidents, who instead donated personal papers in lump sums on the occasion of their death or retirement.

2. Mr. Nixon's first donation of papers to the United States, in 1968, followed normal procedures. He executed a Chattel Deed, dated December 30, 1968 (Exhibit 1.). This deed was signed by Mr. Nixon as donor, delivered to the General Services Administration as recipient, and accepted by the signature of a General Services Administration official on December 30, 1968 on the face of the deed.

3. The papers that were the subject of the 1968 deeded gift were delivered to the National Archives, which serves as the repository for valuable papers given to the United States, on March 20, 1969. (See Exhibit 2.)

4. March 26 and 27, 1969 are dates of key significance. First, a large quantity of Mr. Nixon's papers, apparently the remainder of his pre-Presidential papers, was transferred to the National Archives for storage on those days. Second, there is in existence a Chattel Deed, dated March 27, 1969 and signed by a Deputy Counsel to the President on April 21, 1969, purporting to deed about one-third of those pre-Presidential papers to the United States. (Exhibit 3.)

5. This deed was not delivered to the United States or any representative thereof until April 10, 1970. (Exhibit 4.)

6. Returning to 1969, from April 6th to 8th, Mr. Ralph Newman, a professional appraiser, made a preliminary appraisal of the papers transferred to the Archives on March 26 and 27, 1969. (Exhibit 5.)

7. On May 12, 1969 the White House announced that a Richard M. Nixon Foundation was being formed, to include a museum and library, as a charitable non-profit corporation. (Exhibit 6.)

8. On May 27, 1969, Sherrod East, consultant to the Archives, issued a status report pertaining to the Nixon papers. (Exhibit 7.)

9. On November 3, 17, 18, 19, 20 and December 8, 1969, Mr. Ralph Newman made his appraisal of the Nixon papers. (Exhibit 5.)

10. On March 27, 1970, Mr. Newman mailed to the National Archives a completed description of the papers claimed by Mr. Nixon as a 1969 gift. (Exhibit 8.)

11. A formal appraisal was drawn up by Mr. Newman on April 6, 1970. (Exhibit 5.) This appraisal was attached to Mr. Nixon's tax return for 1969.

12. On April 10, 1970 the Chattel Deed dated March 27, 1969, was delivered to the Office of General Counsel of the General Services Administration, which administers the National Archives.

13. An additional set of significant facts relate to a specific change in the law that resulted from the Tax Reform Act of 1969. On April 21, 1969 the Treasury Department announced its proposals for the Tax Reform Act of 1969. (Exhibit 9) Included in these proposals was a provision that would prohibit the treatment of letters, memorandum, or similar property as capital assets for purposes of charitable contributions. This proposal would, in effect, eliminate the type of gift under discussion here. On May 27, 1969, the House Ways and Means Committee, which has initial responsibility for tax legislation in the Congress, issued a Press Release announcing that the legislation it was drafting would likewise include repeal of that type of gift as a deductible item. (Exhibit 10.) The May 27, 1969 announcement stated that the proposed House bill would recommend repeal effective as of the end of 1969. On July 25, 1969, the House Bill was reported out of the Ways and Means Committee, but the Committee Report contained two conflicting proposed effective dates for the provision in question. (Exhibit 11.) One reference in the Report indicated an effective date of December 31, 1969; another reference in the Report stated an effective date of July 25, 1969. This Committee bill passed the full House on August 2, 1969. (Exhibit 11.)

On November 21, 1969, the Senate Finance Committee reported out the Senate version of the Tax Reform Act of 1969, including repeal of the gift deduction in question, with a recommended effective date retroactive to December 31, 1968. (Exhibit 12.) This was also the first time a retroactive effective date had been proposed. It was not until the House bill and the Senate bill went to Conference, in December, 1969, that the different effective dates were resolved. On December 21, 1969, the compromise was announced. (Exhibit 13.) The compromise effective date that was chosen was July 25, 1969, the date the House Ways and Means Committee had announced its final bill.

14. Richard M. Nixon claimed a deductible contribution of $576,000 on his tax return for tax year 1969, based on a gift of papers in 1969, and began applying the maximum allowable portion of that deduction against his tax liability. In 1969, the law permitted a deduction up to 30 percent of his adjusted gross income, in succeeding years the law permitted a deduction up to 50 percent of adjusted gross income. Deductions have been taken on the basis of those percentages for tax years 1969 to 1972, resulting in substantial tax savings to the taxpayer.

15. In order for the $576,000 deduction to be valid, Mr. Nixon would have to have made a valid gift by deed or valid gift of $576,000 worth of personal papers, to the United States, prior to July 25, 1969.

I. THE CHATTEL DEED DATED MARCH 27, 1969, ABSOLUTELY FAILED TO EXECUTE A VALID CHARITABLE CONTRIBUTION

1. The essential legal requirements for a valid deeded gift are delivery of a deed, execution of the deed by the donor (or a legally authorized agent), acceptance of the deed by the recipient, and a legally sufficient description of the gift. The transaction in question has the additional burden of meeting these legal requirements prior to July 25, 1969. The March 27, 1969, deed fails on all counts.

A. For purposes of the deduction claimed by Mr. Nixon, the deed was not timely delivered. The Tax Reform Act of 1969 eliminated the deduction in question for gifts made after July 25, 1969. This would require delivery of the deed prior to that date, if the deduction were to be claimed on the basis of the deed. The deed was not delivered until April 10, 1970. (Exhibit 4.) This failure is, in and of itself, sufficient grounds to prevent any claim of gift based on the deed.

B. The deed was not signed by the donor. It was signed by Edward L. Morgan, Deputy Counsel to the President. A document attached to the deed states that Mr. Morgan claims he was authorized to sign the deed on behalf of Mr. Nixon. That attached document is unsigned, but is notarized by Frank DeMarco, Jr. (Ex. 3) Mr. Morgan's claim that he was authorized to sign the deed has no legal significance for the purpose of tax laws which would require under Internal Revenue Service Income Tax Regulations section 1.6061–1(a) and 1.6012–1(a)(5) that such authority be signed by Mr. Nixon.

Mr. Nixon's property was being disposed of and only a clearly evidenced delegation of authority by Mr. Nixon himself would be legally sufficient to permit Mr. Morgan to act in Mr. Nixon's behalf. A second document attached to the deed states that all the items "specifically" set forth in Schedule A of the deed were delivered to the Archives on March 27, 1969. This attached document only pertains to the issues of delivery and identity of the gift and in no way evidences Mr. Morgan's authority.

A comparison with the 1968 deed enhances the significance of Mr. Nixon's missing signature. In 1968, Mr. Nixon not only signed the deed personally, but a handwritten notation alongside his signature indicates that his signature was affixed on December 25, 1968. The signature block which appears on the 1969 deed is a duplicate of the 1968 block but contains nothing.

C. The 1969 deed has never been accepted by the recipient. The General Services Administration, which administers the National Archives, would be the appropriate recipient on behalf of the United States. The earlier 1968 deed had a signature block for the General Services Administration and a representative of that Agency signed that deed, with an accompanying handwritten notation of the date on which the signature was affixed, December 30, 1968. Inquiries to the General Services Administration have produced no explanation for the lack of official acceptance, but have confirmed the implication that the Agency does not treat the deed as accepted to this day. (Exhibits 4. and 14.)

It should be noted that the lack of signed acceptance of the deed by the General Services Administration is in direct violation of their own guidelines. The GSA Handbook on Presidential Libraries, promulgated pursuant to title 44, United States Code, sections 2101–2113 and 2301–2308, containing

provisions in Chapter 3, paragraph 5 for handling the receipt of personal papers. Those provisions state:

"5. *Documentation of accessions.* The essential documents in the acquisition process are a deed of gift executed between the donor and the library and a log of all accessions kept for internal control purposes.

a. *Deed of gift.*.

(1) The major purpose of the deed of gift is to accomplish the legal transfer of the papers or other historical materials to the library.

* * * * *

(5) Deeds of gift should be signed both by the donor and by the Archivist of the United States or his designated representative. Three copies should be signed, the original to be retained by the library, one copy returned to the donor, and one kept by the NL."

D. The deed fails to identify what is being given away. The body of the 1969 deed itself claims only to have given the materials "*listed and described* in Schedule A annexed hereto . . . ." (emphasis added.) An attached document states that there was delivery, for gift purposes, only of "those materials specifically set forth in Schedule A attached hereto." The critical fact is that a specific description or list of materials constituting the alleged gift did not even exist until Mr. Ralph Newman completed his appraisal in late 1969, and could not have been attached as a Schedule A until his description was forwarded to the appropriate parties in 1970. At the time the gift, by law, had to be finalized, the subject property was not sufficiently described so as to identify the actual property that constituted the gift. A deed cannot execute the disposal of something if there is no means of determining what it is that is being disposed of. The deed would fail, in this case, for vagueness. In addition, reference in the body of the deed to a nonexistent list and description would render the deed incomplete as of July 25, 1969.

II. NO VALID GIFT OF PERSONAL PAPERS BY RICHARD M. NIXON TO THE UNITED STATES WAS ETECUTED PRIOR TO JULY 25, 1969

1. The rules of gift law require, in the absence of a deed, actual delivery of the gift property, an express intent by the donor that delivery is for purposes of a gift, and acceptance of the property as a gift by the intended recipient. In addition, it is necessary that the gift exist. The transactions and evidence prior to July 25, 1969, failed to meet these rules of law on all counts.

A. The transfer of papers to the Archives on March 26 and 27, 1969 did not satisfy the necessary legal requirements to constitute a complete delivery of a gift. There is no question that 1217 cubic feet of papers were transferred to the National Archives on March 26 and 27, 1969. The critical fact is that the alleged 1969 gift consisted of some 392 cubic feet of papers, and Richard M. Nixon did not relinquish dominion and control over any specifically identifiable 392 cubic feet of papers at that time or at any time prior to July 25, 1969. Giving up dominion and control is a necessary element of a legal delivery.

At the time of transfer, the papers were received in Room 19E–3 of the National Archives. The papers were in one group. There is no question, then or now, that the entire lot was *not* intended to be relinquished into the dominion and control of the Archives. Officials at the Archives, parties involved in the transaction, and the President himself in his recent financial disclosure message all indicate that 825 cubic feet of those papers still belong to the President. The essential point is that until the 392 cubic feet constituting the alleged gift were somehow either separated from the 825 cubic feet retained by Mr. Nixon or until the 392 cubic feet were capable of being specifically identified there was no way of knowing which pieces of physical property Mr. Nixon had relinquished control of. There would have been no basis for preventing Mr. Nixon from entering the collection and reclaiming or otherwise disposing of any individual item in the collection, including those papers that eventually were separated out as an alleged gift. It is impossible to relinquish physical dominion or control over something if there is no way of physically knowing what that something is.

Mr. Newman, the individual who selected and described the items constituting the alleged gift has stated that this selection process did not begin until November, 1969. Only when that process began were the 392 cubic feet of papers placed in a separate area within the Archives, adjacent to the main body of papers retained by Mr. Nixon. Only when that process was completed could the Archives actually exercise dominion and control of a specific piece of property.

A leading legal text, *Brown on Personal Property*, states:

"The concept of a complete relinquishment of control as a necessary incident of gift is also met with in those situations where, in spite of an expressed intent of gift and a manual tradition of the subject matter, the words or conduct of the parties indicate that it was not expected that the donor should forego entire dominion and control over the thing given, but that the intended donee should hold the same as the agent or bailee of his assumed benefactor." (*Brown* at 90.)

The transaction in question is precisely the situation where prior conduct, unrefuted by any change in conduct in 1969, would indicate that the Archives were a bailee until such time as a deed arrived indicating that a portion of the property held in bail was to be relinquished to the United States.

Brown states further:

"Until the donee reduces the subject matter of the proposed donation to his possession, the gift is inchoate and subject to revocation by the donor at his pleasure, and is ipso facto revoked by his death." (*Brown* at 92.)

The entire subject matter of the March 1969 transfer could not be reduced to possession by the Archives, since it belonged to Mr. Nixon. There was no subject matter capable of being reduced to possession until the separate subject matter of the gift existed. In fact, evidence that all the papers were in an area of the Archives reserved for "courtesy storage" would indicate that they were all in storage, possessed by Mr. Nixon. Only when the 392 cubic feet of papers were taken to a separate area in the Archives in late 1969, an area within the Archives where materials were clearly in the Archives' possession, could it be said that the Archives were exercising possession.

Significantly, there is direct evidence that the President exercised dominion and control over the subject matter of the alleged gift, the specific 392 cubic feet of papers, long after July 25, 1969. The General Services Administration has stated:

"In accordance with paragraph 1 of the Chattel Deed dated March 27, 1969, GSA, bound by the dictates of section 2107 and 2108(c) of Title 44, United States Code, has withheld general public access to the

referenced papers." (Letter from Arthur F. Sampson, Administrator of the General Services Administration, to Honorable Lowell Weicker, dated December 7, 1973.) (Exhibit 14.)

The important point is that whereas the mere existence of restrictions on a gift, even if they are placed pursuant to the donor's instructions may not be evidence of continuing dominion and control, it is quite another matter for GSA to take that action on April 10, 1970 at the instructions of Mr. Nixon. The Chattel Deed referred to by GSA did not arrive at GSA until April 10, 1970. If restrictions were placed on the papers in accordance with a provision in that deed, that constitutes evidence that a form of control was exercised over the papers by Mr. Nixon, by virtue of the *placing* of restrictions on the papers according to *his* terms or directions. This has nothing to do with the validity of the deed. Even if the deed were invalid, it still unquestionably operated to instruct GSA to take some act controlling the papers. The fact that Mr. Nixon was able to exercise this control on April 10, 1970 is positive evidence that he had not irrevocably given up all control and dominion prior to July 25, 1969.

B. There is no evidence of intent by the donor to make a gift; and, in fact, there is evidence to the contrary.

The General Services Administration has stated that "there was no express communication or indication by President Nixon personally to GSA or the National Archives between January 1, 1969 and July 25, 1969, indicating that the transfer of papers was explicitly for purposes of a gift." The circumstances of this alleged gift make the requirement of the donor's intent particularly important. The Archives have consistently served as a "warehouse" for Presidents' papers, providing what the Archives refer to as "courtesy storage." The actual experience of the Archives has been that papers so transferred during a President's lifetime have never been intended as a gift at the time of initial transfer. Likewise, mere transfer has never constituted a gift, in and of itself. So long as the Archives serve a dual function, as a warehouse and as a recipient of gifts, some expression of intent would have been necessary to clarify the transaction. Ordinarily a deed would indicate the requisite intent. Absent a deed there was no way of knowing what was intended as a gift and what was for storage.

Words by an agent of the donor, assuming the agent can provide proof of express authority as the tax regulations require, may well have indicated an intent that something within the large mass of papers was to be a gift. Nevertheless, until steps had been taken to identify the physical existence of that something, the intent was merely a promise. A promise is a future interest, and future interests are not tax deductible gifts.

On the contrary, there is evidence indicating an intent that the March 26 and 27, 1969 transfer was not intended as a gift. First, contemporaneous correspondence makes no reference to the fact that all or a part of the transfer was to be an immediate gift. Second, on May 12, 1969 the White House announced that a Richard Nixon Foundation was being formed. This Foundation, to include a library and a museum, was to be a private, charitable, non-profit corporation. That announcement would indicate, if any thing, that Mr. Nixon envisioned a private library containing his papers. Thus the announcement of a private library would be evidence that the Archives were serving as a warehouse. Third, a status report on May 27, 1969, by the Archives consultant in charge of the Nixon papers project, clearly indicates the lack of any immediate gift intent. That report states in part:

"Since the papers for the most part are not yet deeded to the United States, no appraisal of the papers for permanent retention or elimination of duplicate or extraneous material has been attempted

"As heretofore indicated, further work should await some further *clarification of White House wishes and intentions*...." (emphasis added.)

The report was written by an individual, Sherood East, in a position to know the specific intentions and facts of the transaction.

Always in the past, some document such as a letter, will or deed had served to evidence the intent of a President to make a gift of papers to the Archives. The absence of such a communication would be circumstantial evidence that an intent to make a gift did not exist prior to July 25, 1969.

C. The recipient of the alleged gift did not exercise acceptance of the gift prior to July 25, 1969.

For the same reasons as stated in subsection A of this section, it would not have been possible for the National Archives to exercise possession of the alleged gift until late 1969. Prior to that time, there was a large mass of papers from which the alleged gift could eventually be selected. So long as the larger mass of papers remained as one entity, in an area reserved for storage of the Nixon papers, the only constructive acceptance that could be inferred was acceptance for purposes of storage. Acceptance of a valid deed adequately identifying the gift would have constituted acceptance of the gift, even though the physical selection of the papers had not taken place. No deed was received before July 25, 1969, therefore strict acceptance of possession of the actual property became an absolute necessity. Nevertheless, prior to July 25, 1969, it would not have been possible for an official of the National Archives to know or indicate which property the United States owned and which property Mr. Nixon owned.

D. The corpus of the alleged gift did not legally exist prior to July 25, 1969.

An element that runs throughout the issue of whether the gift was made prior to July 25, 1969 is the fact that the gift did not take shape until Mr. Ralph Newman described or selected the papers in November and December 1969.

What existed on March 27, 1969 were raw materials. From those raw materials the corpus of a gift would take shape at a future time. It is therefore important to trace the events that took place in the process of identifying the alleged gift.

According to Mr. Newman's own statement, he had been told that Mr. Nixon would like to take a $500,000 deduction from the large quantity of papers that had arrived on March 26, and 27, 1969. In order to satisfy himself that there was sufficient material in storage to cover such a gift, Mr. Newman made a "ballpark estimate" that the material in storage contained at least $500,000 in value. He made no physical selection of papers. Nothing was separated into a different area. No specific boxes were designated as constituting $500,000 worth of papers. It should be noted that the entire 1217 cubic feet of papers delivered in March, 1969 contained valuable papers and a $500,000 deduc-

tion would be covered by only about one third of the papers. Therefore, a definite choice of papers was a necessary step in being able to identify the papers which would constitute the actual gift.

Only when Mr. Newman returned to the Archives in November 1969, did he begin the process of what he terms "describing" the gift. The method Mr. Newman used was to separate the papers, beginning in chronological order. The chronological method is used because it is preferable for a library to have a comprehensive series of papers covering a continuous period, as opposed to bits and pieces from disconnected time periods with gaps in the record.

The reason the $576,000 evaluation figure was arrived at was simply that Mr. Newman attempts to be conservative in his appraisals. If a taxpayer desires a $500,000 deduction, Mr. Newman will select a gift with slightly higher value to avoid any challenge that the materials were over-appraised. He arrived at the odd number of $576,000 because as a matter of policy he did not want to end his appraisal in the middle of some set of documents which should be logically kept together, such as continuous documents of a trip or other event. It is interesting to note that in spite of Mr. Newman's attempt to be conservative in his appraisal, Mr. Nixon claimed the full $576,000 deduction.

When Mr. Newman had completed his appraisal, the papers he had described as worth $576,000 were placed in a separate area of the Archives. Until this process was complete, there was no way to clearly identify a piece of property as being the subject of a gift. In fact, there was no way of knowing which items were to be irrevocably a gift and which would be retained by Mr. Nixon.

To demonstrate the importance of this point, it is interesting to note that in the President's financial statement of December 8, 1973, he states:

"On April 8 and 9, 1969, Mr. Ralph Newman, a recognized appraiser of documents, visited the Archives and *designated the papers.*" (emphasis added)

A letter by Mr. Frank Demarco, Jr. to Coopers and Lybrand on August 22, 1973, states:

"On or about April 6, 7, and 8, 1969, the material constituting the subject matter of the *gift was examined and segregated from other materials* by an appraiser duly appointed by the taxpayer to appraise the market value of the said papers." (emphasis added.)

Neither of these statements is true, according to the version given by the appraiser himself, who is the best witness as to what happened. Clearly the donor and his tax attorney recognize the importance of some designation or segregation prior to July 25, 1969.

It is interesting to note that a document dated March 27, 1969 gave Mr. Newman a right of access to the 1968 papers for purposes of appraisal. If the donor had intended to have his 1969 papers designated, Mr. Newman would have had to have similar access to the 1969 papers. The right of access document was made up the same day the 1969 papers were delivered. Mr. Newman could probably have made a general estimate that there were sufficient materials from which to select an eventual gift of $500,000 without having access to the individual papers. He could hardly designate the actual papers constituting the gift without such access. Nevertheless he was given access only to the 1968 gift of March 27, 1969.

Finally, it should be noted that Mr. Nixon stated on his 1969 tax return, according to the tax regulations for declaring a gift, that the date of the gift was March 27, 1969. There is no theory that would support the contention that the gifts had become identifiable as of March 27, 1969.

ADDITIONAL MATTERS

I. The investigation of the alleged gift of papers in 1969 by Richard M. Nixon has revealed a number of related facts. Since it may well be negligent not to alert appropriate authorities as to these facts, they have been set forth as follows:

A. Mr. Frank DeMarco has stated, through his secretary, that he did not keep notary records during 1969. This would be in violation of state law in California, where Mr. DeMarco is a notary public. The significance of the notary records is that they would be the best evidence as to the *date* that Mr. Morgan affixed his signature to a document attached to the deed, which document contained sworn statements that the deed was prepared on March 27, 1969 and that the delivery of papers on that date was purposes of a gift.

B. Letters between Edward L. Morgan and Dr. Daniel J. Reed, Assistant Archivist for Presidential Libraries, dated March 13, 1969, and March 27, 1969, refer to a number of details related to the transfer of papers on March 26 and 27, 1969. Nevertheless, there is no reference in this correspondence to a deed or to a gift. The 1968 Nixon papers are referred to as a "gift" in that same correspondence. (Exhibits 2 and 18.)

C. A status report by Sherrod East, National Archives consultant for pre-Presidential papers of Richard M. Nixon, stated:

"Although these papers (the 1968 Nixon papers gift) have been separately described from the main body of Nixon papers (the papers delivered on March 26 and 27, 1969) (*not yet deeded*) they will at a future time have to be integrated. . . ." (emphasis added.)

At another point in the report, Mr. East stated, with reference to both the 1968 and 1969 papers:

"Since *the papers for the most part are not yet deeded to the United States,* no appraisal of the papers for permanent retention or elimination of duplicate or extraneous material has been attempted.

"As heretofore indicated, further work should await further clarification of White House wishes and intentions. . . ." (emphasis added.)

Mr. East was in a position to know the facts of the transactions.

D. On March 27, 1969, Edward L. Morgan prepared a document entitled "Limited Right of Access." It was similar to the Chattel Deed, likewise dated March 27, 1969, in the sense that it contained a signature block for Richard M. Nixon, which remained unsigned, and a signature block for Mr. Morgan. Mr. Morgan's statement that he was authorized to sign that document is contained in an attached document. The attached document is notarized by John Joseph Ratchford in Washington, D.C., on March 27, 1969. A similar document attached to the Chattel Deed dated March 27, 1969, was not notarized by Mr. Ratchford, and was not notarized on March 27, 1969. Instead the Chattel Deed was notarized on April 21, 1969, was Mr. DeMarco, even though that document states that the deed was drawn up and signed by Mr. Morgan on March 27, 1969.

E. To have anticipated a retroactive change in the law some nine months before the

change was announced, which would account for the existence of a deed dated March 27, 1969, is an indication of a high degree of care and forethought with respect to anticipated gifts of Mr. Nixon's papers. There is no explanation why lawyers demonstrating such care and forethought neglected the obvious step of delivering the deed.

F. Normal procedure would dictate that a deed drawn up on March 27, 1969, would duplicate a competent deed drawn up by other lawyers some 12 weeks earlier, in late December 1968. There is no explanation or reason for the differences in the 1969 deed, such as the attempt to use an agent, or the absence of a signature block for the General Services Administration.

G. Three significant facts, relating to the method chosen by Mr. Nixon for claiming the deduction in question, indicate that the taxpayer claimed the deduction on the basis of the Chattel Deed dated March 27, 1969.

First, the taxpayer chose $576,000 as the amount of his claimed deduction, not the $500,000 figure which had been mentioned prior to July 25, 1969. That $576,000 figure presents no problem, in and of itself, if a gift by deed is used. So long as the deed and an attached Schedule sufficiently describe the actual property chosen for gift, there is nothing to prevent an eventual dollar and cents evaluation from being incorporated by reference into the original deed. Thus, the failure to have a dollar figure prior to July 25, 1969 would not be fatal. However, if the deed is not relied upon, then the entire transaction has to be completed prior to July 25, 1969, since there is no document or anything else capable of receiving a later addition. The only gift that could have been intended prior to July 25, 1969 was a $500,000 amount. The fact that Mr. Nixon chose $576,000 clearly evidences that he was using the Schedule A forwarded by Mr. Newman in 1970 for attachment to the deed.

Second, Mr. Nixon reported on his tax return that the gift was completed on March 27, 1969. The only type of gift that could possibly have been completed by that date would have to have been by deed. No physical identity of the alleged gift had even been attempted on March 27, 1969.

No claim of any given dollar value was possible at that time. The papers had clearly not been reduced to Archives possession on that date. A deed would avoid all those problems, but to claim a gift by satisfaction of the rules of gift law without a deed would be absurd.

Third, the fact that the deed was presented to the Archives on April 10, 1970, five days before the 1969 tax return was due, and a delivery by the lawyer involved in this aspect of Mr. Nixon's tax return preparation, is circumstantial evidence that the individuals preparing Mr. Nixon's return were relating the deed to the tax return. In addition, the Schedule A from the deed was the document enclosed with Mr. Nixon's tax return as evidence of the value of the alleged gift. Again, this is circumstantial evidence that the deed was intended to be the evidentiary basis for the claimed deduction.

EXHIBIT 1

1968 DEED AND SCHEDULE SIGNED BY PRESIDENT

(Chattel Deed From Richard M. Nixon to the United States of America, Dated December 30, 1968)

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (hereinafter collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

This conveyance is made to The United States of America without any reservation to the undersigned, Richard M. Nixon, of any intervening interest or any right to the actual possession of the said Materials, it being understood that the delivery of this Chattel Deed to the General Services Administrator shall convey to The United States of America the right and power immediately to take possession of the said Materials and to hold, use and dispose of the same, subject only to the following commitments made on behalf of The United States of America by the General Services Administrator:

1. The undersigned shall have the right of access to any and all of the Materials and the right to copy or to have copied any and all of the Materials by any means of his selection, and to take and retain possession of any or all such copies for any purpose whatsoever. During such time as the undersigned shall hold the office of President of the United States, no person or persons shall have the right of access to such Materials except the undersigned and those who may be designated in writing by the undersigned, and in the case of any person or persons so designated, such right of access shall be limited to those Materials as shall be described in the instrument by which he, she, it or they shall be designated, and for the purposes specified in such instrument; and, if such instrument shall so provide, the person or persons designated therein shall have the further right to copy such of the Materials as shall be described in such instrument and to take and retain possession of such copies for such purposes as shall be specified in said instrument. The undersigned shall have the right and power at any time during his lifetime to modify or remove this restriction as to any or all of the Materials and/or to grant access to any group or groups of persons by notification in writing to the General Services Administration or other appropriate agency of The United States of America.

2. If a Presidential archival depository shall be established for the housing and preservation of the Materials pertaining to the career of the undersigned in public service, then, as soon as practicable after the establishment of such depository, the Materials shall be transferred to and thereafter housed and preserved at such Presidential archival depository. Until the establishment of such a depository, the Materials shall be housed and preserved at a place to be selected by the General Services Administrator or other appropriate agency of The United States of America.

3. None of the foregoing restrictions is intended to prevent the Materials from being used exclusively for public purposes, and in no event shall any of the said restrictions be so construed.

4. Notwithstanding the foregoing restrictions, employees specifically designated by the archivist of the National Archives and Records Service shall, in the course of performance of their necessary archival duties, have such access to the said Materials as shall be necessary for normal archival processing activities.

By the signature of his duly authorized agent below, the General Services Administrator accepts this conveyance for and on behalf of The United States of America, and confirms the commitments made by his office on behalf of The United States of America, as set forth above.

This instrument is executed in duplicate, each of which is an original, but both of which taken together shall be deemed one and the same instrument.

Dated: ————— —, 19—

RICHARD M. NIXON.

SCHEDULE A ANNEXED TO AND PART OF CHATTEL DEED FROM RICHARD M. NIXON TO THE UNITED STATES OF AMERICA DATED DECEMBER 30, 1968

The materials conveyed by the Chattel Deed of which this Schedule is a part are located in packing cases identified by roman numbers I through XXI. The column at the left identifies each packing case by reference to its number, the center column describes the materials contained in such case in general terms and the column to the right shows the approximate number of items contained in such case.

I. Children's Letters; II. Children's Letters; III. Children's Letters—9,000 items.

IV. 82nd Congress—2,500 items.

V. Campaign of 1964—3,000 items.

VI. 1965 Appearances, Trips—3,000 items.

VII. Plaques and Key (5) Whittier Year Book 1966; 8 Tapes—13 items.

VIII. Far East Trip—3,000 items.

IX. 1960 Campaign—3,000 items.

X. 1959 Speech Files (Correspondence and copies)—3,000 items.

XI. 1964 Campaign Tapes in Chronological Order—24 items.

XII. Plaques, Key, Picture—10 items.

XIII. 1960 Campaign Clippings—1,000 items.

XIV. *Six Crises* Manuscript—2,000 items.

XV. 1959 Appearances, Trips—1,250 items.

XVI. 1953 Trip—Far East Letters, Notes—2,000 items.

XVII. 1955 Central American Trip—3,000 items.

XVIII. 1956 Trip—Philippines, Pakistan, etc.—3,000 items.

XIX. 1964 Correspondence Prior to Republican Convention: Young People's Correspondence Book on 1964 Convention—1,250 items.

XX. 1954 Itineraries, Appearances Foreign Dignitaries (met by RMN)—1,250 items.

XXI. 1964 Campaign Notes (plus 2 Books and Framed Plaque)—3 items.

EXHIBIT 2

MARCH 27, 1969.

MR. EDWARD L. MORGAN,
Deputy Counsel to the President,
The White House,
Washington, D.C.

DEAR MR. MORGAN: This is in reply to your letter of March 13 and to Mr. Stuart's letter of March 14.

The records of President Nixon recently in Room 236 and inthe ground floor vault of Federal Office Building No. 7, together with two filing cabinets from Room 12, Executive Office Building, were moved into the National Archives, Stack Area 19E, on Wednesday, March 26. Our staff, assisted by Mrs. Anne Higgins when necessary, will now organize them so that they can be made available for appropriate use.

The papers which the President gave to the Government on December 30, 1968, were moved from the Federal Records Center in New York on March 20. They are now in Stack Area 14W-4. We have examined them and they are ready and available for Mr. Ralph Newman's examination. We so notified his office on March 21.

Please call upon us if we can be of further assistance.

Sincerely,

DANIEL J. REED,
Assistant Archivist for Presidential Libraries.

EXHIBIT 3

1969 DEED SIGNED BY EDWARD L. MORGAN

(Chattel Deed from Richard M. Nixon to The United States of America, Dated March 27, 1969)

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (hereinafter collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

This conveyance is made to The United States of America without any reservation to the undersigned, Richard M. Nixon, of any intervening interest or any right to the actual possession of the said Materials, it being understood that the delivery of this Chattel Deed to the General Services Administrator shall convey to The United States of America the right and power immediately to take possession of the said Materials and to hold, use and dispose of the same, provided, however:

1. The undersigned shall have the right of access to any and all of the Materials and the right to copy or to have copied any and all of the Materials by any means of his selection, and to take and retain possession of any or all such copies for any purpose whatsoever. During such time as the undersigned shall hold the office of President of the United States, no person or persons shall have the right of access to such Materials except the undersigned and those who may be designated in writing by the undersigned, and in the case of any person or persons so designated, such right of access shall be limited to those Materials as shall be described in the instrument by which he, she, it or they shall be designated, and for the purposes specified in such instrument; and, if such instrument shall so provide, the person or persons designated therein shall have the further right to copy such of the Materials as shall be described in such instrument and to take and retain possession of such copies for such purposes as shall be specified in said instrument. The undersigned shall have the right and power at any time during his lifetime to modify or remove this restriction as to any or all of the Materials and/or to grant access to any group or groups of persons by notification in writing to the General Services Administration or other appropriate agency of The United States of America.

2. If a Presidential archival depository shall be established for the housing and preservation of the Materials pertaining to the career of the undersigned in public service, then, as soon as practicable after the establishment of such depository, the Materials shall be transferred to and thereafter be housed and preserved at such Presidential archival depository. Until the establishment of such a depository, the Materials shall be housed and preserved at a place to be selected by the General Services Administrator or other appropriate agency of The United States of America.

3. Notwithstanding the foregoing restrictions, employees specifically designated by the archivist of the National Archives and Records Service shall, in the course of performance of their necessary archival duties, have such access to the said Materials as shall be necessary for normal archival processing activities.

4. None of the foregoing restrictions is intended to prevent the Materials from being used exclusively for public purposes, and in no event shall any of the said restrictions be so construed, nor are they intended to vest in the undersigned any ownership or title thereto.

This instrument may be executed in duplicate, or triplicate, each of which shall be deemed an original.

Dated: March 27, 1969.

RICHARD M. NIXON,
President of the United States of America.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On this, the 21st day of April, 1969, before me, the undersigned Notary Public, personally appeared Edward L. Morgan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is Deputy Counsel to the President of the United States and that he executed the foregoing instrument on behalf of the President, acting in his capacity as such Deputy Counsel, and that, as such Deputy Counsel, he is authorized to sign such document on behalf of the President of the United States.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

FRANK DE MARCO, JR.,
Notary Public.

AFFIDAVIT—STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Edward L. Morgan, being duly sworn, deposes and says:

That he is Deputy Counsel to Richard M. Nixon, President of the United States of America; that he was duly appointed and was acting in said capacity as such Deputy Counsel on March 27, 1969; that in said capacity he did, on behalf of, and as Deputy Counsel and agent for the said Richard M. Nixon, deposit at the National Archives Building, in the City of Washington, District of Columbia, pursuant to the express direction of the said Richard M. Nixon, all of those Materials specifically set forth in Schedule A attached hereto, being that Schedule A attached to that certain Chattel Deed from Richard M. Nixon to The United States of America dated March 27, 1969.

In witness whereof I have hereunto affixed my hand this 21st day of April, 1969.

EDWARD L. MORGAN,
Deputy Counsel to the President.

Subscribed and sworn to before me this 21st day of April, 1969.

FRANK DE MARCO, JR.,
Notary Public.

EXHIBIT 4

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., November 16, 1973.

HON. LOWELL WEICKER, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WEICKER: Thank you for your letter of October 31, 1973, regarding the transfer of personal papers by Richard M. Nixon to the National Archives in March 1969.

I am pleased to reply as follows to each of your questions:

On what date was a deed or gift received by GSA or the National Archives?

The deed was received in our Office of General Counsel on or about April 10, 1970.

What was the date of such deed or gift?

The deed is cover-dated March 27, 1969, and notarized April 21, 1969.

Who signed such deed of gift?

Edward L. Morgan, Deputy Counsel to the President.

If not signed by the President, what proof did GSA demand that the signor was empowered to act for the President?

GSA did not demand proof that the signor was empowered to act for the President, because GSA officials had previously known that Mr. Morgan had responsibility for matters related to the President's future library, including the physical control of the President's papers, and had dealt previously with him in such matters. (See Morgan's affidavit, enclosed.)

In the case of gifts of papers by prior Presidents, commencing with Franklin Roosevelt, were deeds of gifts received contemporaneous with the transfer of papers to the Archives?

If not, when were they received?

Were such prior deeds signed by the donor Presidents in all cases?

Presidents Franklin Roosevelt and John Kennedy died unexpectedly without signing such deeds of gift. Their papers and memorabilia were legally given to the Government through other legal means. It is important to note that despite the absence of a deed of gift or other formal instruments, President Roosevelt's gift of his papers to the Government, including papers still retained by him at the time of his death, was upheld in the New York courts as a valid gift inter vivos, as evidenced by Roosevelt's public announcement to the effect that he planned to donate these papers to the United States for deposit in the subsequently completed Roosevelt Library.

President Eisenhower signed a letter in 1960, to the Administrator of General Services, in which the President offered to give his papers to the Government. Title to his papers and other historical materials was formally conveyed in his will.

President Truman did not sign a deed of gift but did instead sign a letter addressed to the Administrator of General Services stating his intention to give his papers and other historical materials to the Government and specifying conditions governing access to and use of the materials. Transfer of title was made in his will.

President Johnson also gave the Administrator of General Services a letter of intent in 1965 and deeded portions of his papers to the Government annually from 1966 through 1968. Title to the balance of his historical materials was conveyed to the Government in his will.

When was the physical transfer of papers to GSA?

The physical transfers of the pre-presidential papers of Richard Nixon to the National Archives occurred on December 30, 1968, and March 27, 1969.

Was there any documentary or other evidence submitted by the donor, Richard M. Nixon, indicating that such transfer was a gift and not for purposes of temporary storage by the Archives?

In both deeds—that for 1968 and that for 1969—President Nixon made a gift of a portion of his personal papers to the Government and indicated his expectation of their eventual preservation in a Nixon Presidential Library. In addition, on May 12, 1969, the President announced the creation of the Richard Nixon Foundation to plan for a future Nixon Library.

On what date did the National Archives become aware of the specific value of the alleged gift?

As a matter of policy, GSA does not become involved in the relationships between donors and appraisers or donors and the Internal Revenue Service. We first became aware of the alleged value of the gift upon reading it in the press in June, 1973.

Has there been official acceptance of the alleged gift by GSA, and if not, why has there been no such acceptance?

There has not been a formal instrument drafted or endorsed by the General Services Administration to represent acceptance of the papers covered by the deed of March 27, 1969. This is because this particular deed was not delivered to GSA until April, 1970, and then was delivered to the GSA Office of General Counsel and not to the Office of the Archivist, where the usual procedure is to countersign the deed. Afterwards, the formality of drafting an instrument of acceptance was deemed unnecessary because of what was considered the implied acceptance of the papers represented by their delivery and processing by the Archives staff, and by the absence of any GSA regulation requiring some manner of formal acceptance of donated papers.

Was official acceptance given for prior Presidential gifts?

GSA acknowledged all letters of intent from former Presidents or countersigned their deeds of gift.

Please detail all communications from June, 1972 to date between GSA and the President and/or his agents relative to the aforesaid gift.

On or about January 13, 1973, GSA employee John Nesbitt, Chief of the Nixon Records Liaison Staff, received from Mr. Pete Kinsey, then Staff Assistant, Office of Counsel to the President, the 1969 deed of gift and forwarded it to Dr. Daniel J. Reed, Assistant Archivist for Presidential Libraries, for filing. (On or about September 13, 1971, at the request of J. Dapray Muir, then Staff Assistant, Office of Counsel to the President, the 1969 deed of gift had been turned over to Mr. Muir for examination.)

In early June, 1973 (I was unable to determine the exact date of this meeting), I met at the White House with J. Fred Buzhardt, Leonard Garment, Professor Charles A. Wright, and Edward Morgan, in an attempt to gain more information as to the circumstances surrounding this gift, including the delivery of the papers, the signing and delivery of the deed, and so forth. Although this meeting did result in some clarification of an unclear factual situation, it was necessary that more information be obtained in order to determine exactly what in fact had occurred. Such additional information was requested by my General Counsel, William E. Casselman II, in a September 27, 1973, memorandum to Leonard Garment, Counsel to the President (copy enclosed). On or about September 27, Mr. Casselman met with Mr. Garment and his assistant, Mr. Parker, to discuss the memorandum. Mr. Parker's reply to this request, dated November 16, 1973 (copy enclosed), clarified the circumstances surrounding the delivery of the deed to GSA.

For your further information, I am enclosing copies of both the 1968 and 1969 deeds of gift. If you have further questions, we would be glad to respond to them.

Sincerely,

ARTHUR F. SAMPSON,
Administrator.

EXHIBIT 5

RICHARD MILHOUS NIXON, THE WHITE HOUSE, WASHINGTON, D.C.

APPRAISAL

State of Illinois, County of Cook, ss:

Ralph G. Newman being first duly sworn, upon oath deposes and states as follows:

1. He is the president and the duly authorized agent in this behalf of Abraham Lincoln Book Shop, Inc., and he makes this affidavit in its behalf and under its lawful authority. He has full personal knowledge of all the matters and things hereinafter set forth.

2. Said Abraham Lincoln Book Shop, Inc., was duly authorized and created and exists under and by virtue of the laws of the State of Illinois and it is duly authorized to and does transact business in the State of Illinois and throughout the United States.

3. Among the purposes and businesses of said Abraham Lincoln Book Shop, Inc., is the buying, selling and dealing in and general appraisals of libraries, collections of rare books, autographs, letters, documents, drawings, prints, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials.

4. Said Abraham Lincoln Book Shop, Inc., its officers, employees and agents, and its predecessor companies have been doing business as appraisers of libraries, collections of rare books, autographs, letters, documents, drawings, printing, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials since the year 1933, in Illinois and in various other states of the United States of America and have been called upon as consultants in such matters by many of the leading private collectors, libraries, museums and public and private institutions of this country.

5. The said Abraham Lincoln Book Shop, Inc., through its employees, agents and officers did, from the sixth to the eighth day of April 1969, and on Nov. 3, Nov. 17 through 20, and December 8, 1969, examine the papers of Richard Milhous Nixon, Part II, being the property of Richard Milhous Nixon, The White House, Washington, D.C. 20500, and found that the reasonable and fair and true market value thereof in money was Five Hundred Seventy-Six Thousand and no/hundredths Dollars ($576,000.00) as appears from the annexed schedule attached hereto and made a part thereof.

This deponent verily believes the said valuation to be the fair and reasonable and true market value.

RALPH G. NEWMAN.

Subscribed and sworn to before me, a Notary Public, this sixth day of April 1970.

LILLIAN JACOBS,
Notary Public of Cook County, Ill.
My commission expires September 30, 1971.

APPRAISAL

Abraham Lincoln Book Shop, Inc., an Illinois corporation having its principal place of business in Chicago, Illinois, does hereby certify that, through its officers, agents and employees, it is familiar with and has carefully examined and appraised: The papers of Richard Milhous Nixon, Part II.

This material is the property of Richard Milhous Nixon, The White House, Washington, D.C. 20500, and is listed in the schedule herewith following and attached to this statement and expressly made a part thereof. There has been recorded, together with the listing of each item, figures representing the fair and reasonable and true market value thereof, in money, as by it known, estimated and believed as of the twenty-seventh day of March 1969.

In witness whereof Abraham Lincoln Book Shop, Inc., has appended hereto the affidavit of its president, Ralph G. Newman and has caused these presents to be signed in its behalf by its president and attested by its secretary, Margaret H. April and its corporate seal to be hereunto affixed this sixth day of April 1970.

Abraham Lincoln Book Shop, Inc., an Illinois corporation:

RALPH G. NEWMAN,
President.

Attested:

MARGARET H. APRIL,
Secretary.

APPRAISAL: THE PAPERS OF RICHARD MILHOUS NIXON, PART II

Part II of The Papers of Richard Milhous Nixon was delivered to the Office of Presidential Papers of The National Archives and Records Service, Washington, D.C., March 24 to 27, 1969.

These papers were transferred from their original containers to standard archives boxes by the members of the staff of the Office of the staff of the Office of Presidential Papers. In identifying the papers our reference to boxes is to these standards archives boxes.

The papers and documents covered by this document are divided into five (5) general divisions, and are so identified.

THE PAPERS OF RICHARD MILHOUS NIXON, PART II

I. General correspondence

As Vice President, 1953–1961, Aandahl through Zweing, [National Archives Boxes # 18 through # 845], 828 boxes—414,000 items.

II. Appearance file

1948–1962, [National Archives Boxes #1 through # 173], 173 boxes—87,000 items.

III. Correspondence

Re invitations and turn-downs, 1954–1961. [In unnumbered National Archives Boxes], 56 boxes—27,000 items.

IV. Foreign trip files

As Vice President, 1953–1961, [In unnumbered National Archives Boxes] 116 boxes—57,000 items.

V. Visit of Nikita S. Khrushchev

To the United States, 1959, [In unnumbered National Archives Boxes], 3 boxes—15,000 items.

Total number of boxes; Part II, The Richard Milhous Nixon Papers—1,176.

Total number of items; Part II, The Richard Milhous Nixon Papers—600,000.

The appraised fair market value of The Richard Milhous Nixon Papers, Part II, as of the twenty seventh day of March, One Thousand Nine Hundred Sixty Nine, is Five Hundred Seventy Six Thousand and no/hundredths Dollars ($576,000).

RALPH GEOFFREY NEWMAN—QUALIFICATIONS

(See Biographical Sketch From Who's Who in America)

Ralph Geoffrey Newman has been engaged in the buying and selling, appraisal, and authentication of rare books, manuscripts, films, photographs, prints, archives, and historical and literary properties, etc. since 1933.

He has been recognized internationally as an authority in his field and has been honored for his work with degrees from James Millikin University, Lincoln College, Iowa Wesleyan College, Knox College, and Rockford College. He has also been the recipient of many honors from learned societies, universities, and other organizations including the Freedoms Foundation at Valley Forge, the Independence Hall Association, Lincoln Memorial University, Friends of American Writers, the Civil War Round Table, the Royal Society (London), Lincoln Group of Washington, the Manuscript Society, Lincoln College, and others.

He has acted as a consultant in the assemblihg of some of the major collections in the United States, both private and public. His clients include the Library of Congress, the United States Army Military History Research Collection, the National Archives, the Chicago Historical Society, Notre Dame University, the State Historical Society of Wisconsin, Yale University Library, Cornell University Library, Lincoln National Life Foundation, Oregon Historical Society, David Wolper Productions, Walt Disney Productions, the Bell and Howell Company, and many distinguished individuals, including the Presidents of the United States, members of the Supreme Court, the Senate and House of Representatives of the United States, leading industrialists, collectors, authors, and historians.

He has appraised collections for all of the above and for hundreds of others, including banks, insurance companies, attorneys, and business firms.

He has been president of the Illinois State Historical Society, the Adult Education Council of Greater Chicago, the Civil War Round Table, and is currently president of the Board of Directors of the Chicago Public Library. He is a member of the Library Council of Notre Dame University, a trustee of Lincoln College and of Lincoln Memorial University, and a director of the Abraham Lincoln Association. He served as chairman of the Illinois Commission for the New York World's Fair and as chairman of the Illinois Sesquicentennial Commission. Currently, he is a member of the Illinois Special Events Commission. He was special consultant to the Secretary of the Interior for the opening of Ford's Theatre in Washington and is chairman of the Board of Directors of the Ford's Theatre Society.

He is president of the Abraham Lincoln Book Shop, Inc. and of Ralph Geoffrey Newman, Inc. Both of these firms specialize in the buying, selling, and appraisal of rare books, manuscripts, and materials in the field of communication.

He has served as special consultant for a variety of business firms, including Encyclopaedia Britannica, Broadcast Music, Inc., WGN Continental Broadcasting Company, Automatic Retailers of America, and the Parker Pen Company. In 1969, he supervised the planning and construction of a Lincoln and American History exhibit which he took to Japan and Australia under the auspices of the United States Department of Com-

merce.

Allan Nevins, America's leading historian and twice winner of the Pulitzer Prize for history, has characterized Newman as "a national resource." The late Carl Sandberg called him a "unique and useful American."

Since 1950 his work has concentrated on the field of appraisals and he has been widely recognized as one of the most qualified persons in the field. He is a member of the American Society of Appraisers and the Appraisers Association of America. His articles on appraisals have appeared in many publications including the "Antiquarian Bookman," "Manuscripts, American Heritage," and the "Association for State and Local History Bulletin."

Newman is the author of several works including "The American Iliad, Eyewitness, the Civil War Digest, Lincoln for the Ages," and "999 Questions and Answers on American History." His articles have appeared in the country's leading publications and he has been the subject of articles in the Saturday Evening Post, Reader's Digest, Holiday, and other nationally known periodicals. He writes a weekly column for the Chicago Tribune, "Do You Remember?" which has been a popular feature for almost ten years.

At a ceremony in Washington a few years ago, when tribute was paid to Newman, Dr. David C. Mearns of the Library of Congress referred to him as "Acknowledged authority . . . preceptor of the past for the enlightenment of the future."

FROM WHO'S WHO IN AMERICA
(Volume 35, 1968–69)

Newman, Ralph Geoffrey, bookseller, pub.; b. Chgo., Nov. 3, 1911; s. Henry and Dora (Glickman) N.; Litt.D., James Milliken U. (Lincoln Coll.), 1950, also Knox College; LL.D., Ia. Wesleyan Coll.; m. Estelle Hoffman, Oct. 13, 1934 (div.), children—Maxine (Mrs. Richard G. Brandenburg), Carol (Mrs. Elwood C. Parry, III). Founder, proprietor Abraham Lincoln Book Shop, Chgo., 1933—; owner Americana House, pubs., 1947—; pres. Lincoln's New Salem Enterprises, Inc., Ralph G. Newman, Inc. Conducts a weekly column Do You Remember, Chicago Tribune, Chmn. Ill. Sesquecentennial Commn.; pres. Adult Education Council Greater Chgo. Bd. directors Chicago Public Library; member bd. of regents Lincoln Academy of Illinois; mem. bd. of trustees Lincoln Meml. U., Lincoln Coll. Served with USNR, 1944–45. Recipient diploma of honor Lincoln Meml. U., 1952; American of Year award, Independence Hall Assn., 1958. Mem. Civil War Round Table Chgo. (founder 1940), Royal Arts Soc. (London), Abraham Lincoln Assn., Ulysses S. Grant Assn. (pres.), Am., Ind., Illinois, Mississippi Valley, Minn., Wis., Tenn., Ia., Kansas, So. Chgo. hist. socs., Am. Legion, Am. Booksellers Assn., Bibliog. Soc. Am., Royal Bibliog. Soc. London, Civil War Centennial Assn. (sec., treas.), Friends of the Pub. Library of Chgo. (dir.), Lincoln Fellowship of So. Cal., Pa., Wis., Inst. of Human Relations (chmn. adv. board), Phi Alpha Theta. Clubs: Filson (Louisville); Lotos, The Players (New York City); The Arts, Caxton, The Press (Chicago). Author: (with Otto Eisenschiml) The American Iliad, 1947; 999 Questions and Answers on American History, 1966. Editor: The Diary of a Public Man, 1945; The Railsplitter, 1950; The Civil War (with Otto Eisenschiml and E. B. Long), 1956; The Abraham Lincoln Story (radio series), 1958–59; Lincoln for the Ages, 1960; Eyewitness (with Otto Eisenschiml), 1960; The Civil War Digest (with E. B. Long; 1960; Pictorial Autobiography of Abraham Lincoln, 1962. Mem. editorial bd. Civil War History 1955—, Lincoln Herald, 1964—. Homes: 1500 N. La Salle Parkwy., Chgo. 60610. Office: 18 E. Chestnut St., Chgo. 60611.

EXHIBIT 6

THE PRESIDENT'S FINANCIAL STATEMENT

ANNOUNCEMENT OF THE PRESIDENT'S REPORT ON HIS PERSONAL FINANCES, MAY 12, 1969

The President and Mrs. Nixon last made public their financial affairs on October 8, 1968. Since then they have sold their apartment and purchased other properties. The President now wishes to update that previous report. The President and Mrs. Nixon have:

(1) Agreed to sell their New York cooperative apartment at 810 Fifth Avenue. Purchasers are Mr. and Mrs. Lewis Lehrman. Gross sales price is $626,000. Escrow closing date is to be May 29, 1969, unless extended by the parties.

(2) Sold their common stock in Fisher's Island, Inc.—185,891 shares were sold to the corporation in April for $2.00 per share, totaling $371,782.

(3) Purchased the two houses at 500 and 516 Bay Lane, Key Biscayne, Fla., for a total price of $252,800. The purchases were financed with conventional mortgages. The President owns an equity of $71,800.

(4) Agreed to purchase a portion of the Cotton property at San Clemente, Calif., including the house, outbuildings and about 350 feet of oceanfront. The balance of the property will be held in trust until a suitable future use can be determined. The President's portion of the property will be purchased for approximately $340,000 (the exact amount to be determined when the total area of the tract is determined by actual survey). He will pay $100,000 down, the balance over 5 years. The President has immediate possession of the property; closing date is July 15, 1969.

The new net worth statement is as follows:

Statement of net worth

ASSETS

Cash and receivables	$571,000
Life insurance cash value	44,000
Real estate:	
Key Biscayne vacant lots	37,600
500 and 516 Bay Lane, Key Biscayne	252,800
Whittier, California lot	75,000
	980,400

LIABILITIES

Notes and loans payable to banks and others	126,000
Mortgages or contracts payable:	
Whitter property	54,400
500–516 Bay Lane, Key Biscayne	181,000
Vacant lots, Key Biscayne	22,100
Total mortgage	257,500
Total liability	383,500
Net worth	596,900
Total	980,400

EXHIBIT 7

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., May 27, 1969.

Reply to Attn of: Sherrod East, Consultant, NL.

Subject: Pre-Presidential Papers of Richard M. Nixon.

To: Assistant Archivist, NL.

On March 25, 1969, pursuant to our telephone conversation the preceding week, I reported to your office to advise you concerning appropriate handling of the President's stored records relating to his career before January 20, 1969. After talking with you and members of the staff, I proceeded alone to the Executive Office Building to see Terry Good and Mrs. Anne V. Higgins who were to show me the records then in storage areas in FOB 7. With a Secret Service escort we proceeded there to make a preliminary inspection of the records. Mrs. Higgins and the SS man returned to their respective offices after a short time while Good and I worked into the afternoon making notes and plans on the assumption that we would have to work in the very crowded FOB storage quarters with more than 500 crates, shipping cartons, and some 17 file cabinets.

That same day, however, you and Mr. E. L. Morgan of the White House staff arranged to have the stored records moved to the National Archives Building forthwith. The move was accomplished by GSA on March 26 and 27. The records were received in Room 10E–3 by me, Mr. Percy Berry, and two newly recruited archival trainees. Unpacking and shelving of the papers had to begin immediately in order to make room for all the crates and storage boxes which, nevertheless, had to be stacked 4 and 5 high in no discernible order.

It was apparent that our plan, devised the first day, for identifying series of records as unpacking, reboxing, and shelving proceeded apace was essential to achieving initial intellectual and physical control of the papers, some of which had been in storage for many years. (See the inventory worksheet and accompanying instructions for its execution as enclosure 1.) Having been taught to recognize a record series, the trainees proceeded first to place the papers in NA containers and prepare temporary labels for each recognizable series, with each container within the series being numbered in sequence. Shelving was utilized as fast as it could be erected in our champed quarters. At this stage it was not possible to predetermine any logical arrangement of series on the shelves. Our problems were further complicated by the indiscriminate mixing of all kinds of office property, memorabilia, books, mementoes, audiovisual materials, etc., with the records of a long and varied public and private career.

A further complicating factor in the overall project was presented when our trainee crew was diverted to perform priority arrangement, boxing and labeling of some 45 cubic feet of RMN papers which had been hurriedly separated from his storage files and deeded to the U.S. Government before December 31, 1968. Although these papers have been separately described from the main body of Nixon papers (not yet deeded) they will at a future time have to be integrated with the respective series or as discrete series in the main body of records.

Work has proceeded rapidly under far from ideal conditions. Improvisation has been a frequent necessity if not the rule. I have been impressed with the ability and industry of all the Presidential Library trainees. A dozen have worked on the project for varying periods, but no one trainee has been on it throughout. The average number available at one time was four. Scheduling of assignments for the trainees is being ably managed by Mrs. Mary Walton Livingston, who has also informed herself about the project so that she can supervise future work on the papers including necessary reference service with possible assistance of trainees or Terry Good from the EOB staff.

leaf books each. In Set I, Book 1, the sheets are arranged topically or according to positions held during Mr. Nixon's career up until he became President. Within each such grouping there is a chronological breakdown as appropriate or an arrangement of series from the general to the specific (sometimes from the important to the less important).

Set II, Book 1, is a more or less strict chronological arrangement of another copy of each of the series worksheets with some topical arrangement of sheets in each of several period blocks.

Book 2 in each of the sets contains special grouping of series sheets and special item lists of titles in each category. For example, a series sheet describing "Audiovisual material-Tapes" will be followed by a listing of all tapes by title by year. Another sheet will describe the category "Motion picture film" followed by an item list of film titles, etc.

The arrangement of sheets in these books is experimental and it can be altered in a variety of ways as experience or judgment of future custodians of the papers might dictate. We are talking here of Xerox copies of the original hand-written inventory worksheets prepared by the trainees assigned to the project. The original sheets are arranged according to the names of the persons preparing them.

It is recommended that the worksheets in Set I, Books 1 and 2, be edited for consistency in style and terminology and then typed in the present format so that a copy can be sent to the White House for examination and suggestions as well as to show the present level of control we have established for the records. In due course, consideration can be given to preparation of a formal NA style inventory or such additional special lists or indices as may be required.

The current labeling project should be completed. If and when the papers are removed to another stack location they should be moved and shelved in as logical a sequence of series as can be devised, presumably that established for the inventory. The inventory on the series worksheets will then have to be corrected to show new stack, row, and shelf location.

We emphasize that the work accomplished thus far is simply that preliminary to more sophisticated arrangement and description of an important collection. Since the papers for the most part are not yet deeded to the United States, no appraisal of the papers for permanent retention or elimination of duplicate or extraneous material has been attempted.

As heretofore indicated, further work should await some further clarification of White House wishes and intentions and perhaps a careful study by selected professional staff yet to be designated who will have responsibility for planning and administering the holdings of a future Richard M. Nixon Library.

I have found this assignment both strenuous and challenging. Thank you and the Archivist for the opportunity to work on this as well as the project last fall and winter.

SHERROD E. EAST.

EXHIBIT 8

ABRAHAM LINCOLN BOOK SHOP, INC.,
Chicago, Ill., March 27, 1970.

MRS. MARY LIVINGSTON,
Office of Presidential Libraries, National Archives Building, Washington, D.C.

DEAR MRS. LIVINGSTON: I enclose herewith a general description of the eleven hundred and seventy-six (1176) boxes of manuscript material which were designated as a gift by Richard Milhous Nixon in 1969.

This is being done to be certain that my records correspond with yours and that this material is being kept separated from the balance of the Nixon papers.

I have completed all of my preliminary work on this material, but will be returning soon to gather some detailed information I will be requiring. I shall advise you before coming East so that you can expect me.

Thank you again for your always spendid cooperation.

Sincerely yours,

RALPH G. NEWMAN.

THE WHITE HOUSE,
Washington, D.C.

THE PAPERS OF RICHARD MILHOUS NIXON—PART II

I. General correspondence as Vice President, 1953–1961; Aandahl through Zwieng (boxes 18 through 645)—628 boxes.

II. Appearance file, 1948–1962 (boxes 1 through 173)—173 boxes.

III. Correspondence re. invitations and turn-downs; 1954–1961 (56 boxes)—56 boxes.

IV. Foreign trip files as Vice President, 1953–1961 (116 boxes)—116 boxes.

V. Visit of Khrushchev to the United States, 1959 (3 boxes)—3 boxes.

Total number of boxes—1176.

Can this be all? Did he do nothing else

EXHIBIT 9

COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,

TAX REFORM PROPOSALS

(Contained in the Message from the President of April 21, 1969 and Presented by Representatives of the Treasury Department to the Committee on Ways and Means at Public Hearings on the subject of Tax Reform on Tuesday, April 22, 1969)

3. GIFTS OF ORDINARY INCOME PROPERTY

A. Present Law

Under present law, when property, which if retained or sold would have produced ordinary income (or short-term capital gain), is given to a charity, there is no tax on the ordinary income earned with respect thereto; in addition, a charitable contribution deduction is allowed for the fair market value of the property.

For example, a married taxpayer filing a joint return with $95,000 of income after allowing for deductions, and personal exemptions, is in the 60 percent marginal tax bracket and would have an after-tax net income of $52,820. If this individual sells an asset valued at $15,000 which would produce $12,000 of income taxable at ordinary income rates, his taxable income would be increased $107,000 and, after payment of his tax, he would be left with $60,480 of after-tax income. On the other hand, by donating the asset to charity he pays no tax on the $12,000 income and also deducts the full $15,000 value of the gift from his other income thereby reducing his taxable income to $80,000. After payment of Federal income tax he would be left with $61,660. Thus, under present law by donating the asset to charity rather than selling the asset, the taxpayer makes $1,180, the amount by which he improved his after-tax position.

B. The proposal

To prevent this unwarranted tax benefit it is recommended that section 170 be amended to provide that the allowable charitable deduction be reduced by the amount of ordinary income or net short term gain that would have resulted if the property had been sold at its fair market value rather than being donated to charity. Under this proposal, the taxpayer in the above example would be entitled to a charitable contribution deduction of $3,000 ($15,000–$12,000).

C. Effective date

The ordinary income proposals would apply to gifts made after April 22, 1969.

4. GIFTS OF THE USE OF PROPERTY

A. Present law

Under existing law a taxpayer, by granting to a charity the right to use property for a specified period, may exclude from income the amounts that would have been included in income had the property been rented to a noncharitable party; in addition, the donor claims a charitable deduction for the fair rental value of the property.

For example, an individual owning a ten story office building which is currently netting $1 million annually may donate use of one floor for a year to a charity. His economic gift is, of course, $100,000, the fair rental value of the space. * * *

EXHIBIT 10

COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,

PRESS RELEASES ANNOUNCING TENTATIVE DECISIONS ON TAX REFORM SUBJECTS

(As announced by Chairman Wilbur D. Mills on May 27, July 11, and July 25, 1969, together with Summary of Subsequent Principal Decisions)

C. TAX TREATMENT OF CHARITABLE CONTRIBUTIONS

(1) *Increase of Limit on Deduction.*—The Committee tentatively decided to increase the general limit on the charitable contribution deduction for individuals from 30 percent to 50 percent. However, the base to which this percentage would be applied (adjusted gross income) would be reduced by any non-business interest deductions claimed in excess of $5,000.

(2) *Repeal of Unlimited Deduction.*—The Committee tentatively decided to repeal the unlimited charitable contribution deduction. The repeal would become effective as of 1975 but in the interim the deduction would be limited. In 1969, the unlimited deduction could not reduce a taxpayer's income after other itemized deductions to less than 10 percent of his adjusted gross income. This percentage would increase to 20 percent in 1970 and then would increase ratably between 1971 and 1975 to 50 percent.

(3) *Appreciated Property.*—The Committee has not yet fully decided between two alternative approaches with respect to the tax treatment of charitable contributions of appreciated property. One approach would apply to all charitable contributions of appreciated property. Under this approach taxpayers at their option would either reduce the charitable contribution claimed to the amount of their cost or other basis in the property, or, if they wished to claim a deduction based on fair market value of the property, would include in income the untaxed appreciation with respect to the property involved. A transitional rule would be provided with respect to this approach. The second approach would apply the above-described rules to the following types of charitable contributions of appreciated property.

(a) All such charitable contributions to private foundations other than private operating foundations. An exception to this would apply for gifts of appreciated property to a private foundation where it within one year spends the amount for charitable purposes.

(b) All gifts of property without regard to the type of charitable organizations if the property (had it been sold) would have resulted in either ordinary income or short term capital gain.

(c) All gifts of works of art, collections of papers, and other forms of tangible personal property.

(d) In the case of so-called bargain sales—where a taxpayer sells property to a charitable organization for less than its fair market value (usually its cost to him)—the cost of the property is to be allocated between the portion of the property "sold" and the portion of the property "given" to the charity on the basis of the fair market value of each.

(4) *Repeal of Charitable Trust Rule.*—The Committee tentatively decided to repeal the two-year charitable trust rule which allows an individual to exclude from his income the income of a trust established by him to pay the income to a charity for a period of at least two years.

(5) *Limitation on Deduction Allowed Non-Exempt Trusts.*—The Committee tentatively decided to limit the deduction allowed non-exempt trusts for amounts set aside for charity to the present value of the gift to charity.

(6) *Disallowance of Deduction for Right to Use of Property.*—The Committee tentativley decided to disallow charitable deductions for contributions to a charity of the right to use property.

EXHIBIT 11

REPORT OF THE COMMITTEE ON WAYS AND MEANS

In addition, if property is sold to a charity at a price less than its fair market value—a so-called bargain sale—the proceeds of the sale are treated as a return of cost and the seller is allowed a charitable contributions deduction for the appreciation in excess of the sale price. If the sale price is above his cost basis, the taxpayer pays a tax on the difference. However, if the sale price is equal to his cost basis, the entire appreciation is taken as a deduction and no tax is paid on the gain. In either case, the taxpayer is not required to allocate the cost basis between the sale part of the transaction and the gift part of the transaction. If this were done, the taxpayer would be required to pay tax on the portion of the gain attributable to the sale part of the transaction.

The tax saving available in the case of a bargain sale of property to a charity may be illustrated by the example of a taxpayer in the 70 percent tax bracket who makes a sale of inventory with a value of $200 to a charity at its cost of $100. The taxpayer in this case would save $140 in taxes with respect to his $100 charitable gift (70 percent of the $100 gain if sold, or $70, plus 70 percent of the $100 of appreciation taken as a charitable deduction, or $70).

Your committee does not believe the charitable contributions deduction was intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold and the proceeds were retained by the taxpayer. In cases where the tax saving is so large, it is not clear how much charitable motivation actually remains. It appears that the Government, in fact, is almost the sole contributor to the charity. Moreover, an unwarranted benefit is allowed these taxpayers, who usually are in the very high income brackets. Your committee, therefore, considers it appropirate to narrow the application of the tax advantages in the case of gifts of certain appreciated property.

Explanation of provisions.—In order to remove some of the present tax advantages of gifts of appreciated property over gifts of cash, the bill provides tat taxpayers making contributions of appreciated property are to be required, at their option, either (A) to reduce their charitable contribution deduction to the amount of their cost or other basis in the property or (B) to take a charitable deduction based on the fair market value of the property but to include in their tax base the untaxed appreciation with respect to the property involved. The charitable donee's basis for the property would be the taxpayer's adjusted basis (for purposes of determining gain increased by the amount of gain recognized by the taxpayer in the contribution. This treatment, however, is to apply only to the following types of charitable contributions of appreciated property.

* * * * *

Explanation of provision.—Your committee's bill increases the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base. The 20-percent charitable contribution deduction limitation in the case of gifts to certain private foundations is not increased by the bill. Also, contributions of appreciated property (which property, if sold, would be treated as giving rise to capital gain) is to be subject to the 30-percent limitation.

Effective date.—The increase in the limit on the deductibility of contributions from 30 percent to 50 percent of a taxpayer's contribution base (subject to the special limitation for contributions of appreciated property), is to be applicable to taxable years beginning after December 31, 1969.

2. Repeal of the unlimited deduction (sec. 201(a) of the bill and sec. 170(b)(1)(C) of the code)

Present law.—Under present law, the charitable contributions deduction for individuals generally is limited to 30 percent of the taxpayer's adjusted gross income. In the case of gifts to certain private foundations not receiving a substantial part of their support from a governmental unit or the general public, the limitation is 20 percent.

An exception to this general limitation allows a taxpayer an unlimited charitable contribution deduction, if in 8 out of the 10 preceding taxable years the total of the taxpayer's charitable contributions plus income taxes (determined without regard to the tax on self-employment income) exceeded 90 percent of his taxable income (computed without regard to the charitable contributions deduction, personal exemptions, an loss carrybacks).

General reasons for change.—Your committee's attention was called to the fact that the unlimited charitable contributions deduction has allowed a small number of high-income persons to pay little or no tax on their income. It has been indicated that the unlimited deduction currently is used by about 100 taxpayers who generally have incomes well in excess of $1 million. Moreover, it appears the charitable contributions deduction is the most important itemized deduction used by high-income taxpayers, who pay little or no tax, to reuce their tax liability.

Your committee does not believe that high-income taxpayers should be allowed to minimize or avoid tax liability by means of the charitable contribution deduction. Accordingly, your committee believes that the unlimited charitable contribution deduction should be repealed. The effect of this, in combination with the increase in the general limitation on the deduction to 50 percent, is that charity can remain an equal partner with respect to an individual's income, but charitable contributions no longer will be allowed to reduce an individual's tax base by more than one-half. In view of the fact that it takes a number of years for a taxpayer to qualify for the unlimited deduction, your committee feels it is appropriate to gradually remove the unlimited deduction over a 5-year period.

Effective dates.—The amendments made by this provision relating to gifts of certain appreciated property are to apply with respect to contributions paid (or treated as paid under section 170(a)(2)) after December 31, 1969. The amendments made by this provision with respect to bargain sales to a charitable organization are to apply to sales made after May 26, 1969.

4. Repeal of a 2-year charitable trust rule (sec. 201(g) of the bill and sec. 673(b) of the code)

Present law.—Under present law, an individual may establish a trust to pay the income from his property, which he transfers to the trust, to a charity for a period of at least 2 years, after which the property is to be returned to him. Although the individual does not receive a charitable contributions deduction in such a case, the income from the trust property is not taxed to the individual. This 2-year charitable trust rule is an exception to the general rule that the income of a trust is taxable to a person who establishes the trust where he has a reversionary interest in the trust which will or may be expected to take effect within 10 years.

General reasons for change.—The effect of the special 2-year charitable trust rule is to permit charitable contributions deductions in excess of the generally applicable percentage limitations of such deductions. For example, with a 30-percent limitation, the maximum deductible contribution that could generally be made each year by an individual who had $100,000 of dividend income (but no other income) would be $30,000. However, if the individual transferred 60 percent of his stock to a trust with directions to pay the annual income ($60,000) to charity for 2 years and then return the property to him, the taxpayer excludes the $60,000 from his own income each year. In effect, the individual has received a charitable contribution deduction equal to 60 percent of his income.

Your committee does not believe that taxpayers should be allowed to avoid the limitations on the charitable contribution deduction by means of a 2-year charitable trust.

Explanation of provision.—In order to eliminate the above-described means of avoiding the generally applicable percentage limitations on the charitable contribution deduction, your committee's bill would repeal the 2-year trust provision of section 673(b)

of the Code. Accordingly, an individual no longer is to be able to exclude the income from property placed in a trust (to pay the income to a charity for a period of at least 2 years) from his income. As a result, a person who establishes a trust will be taxable on its income, whether or not the income beneficiary is a charity, where the individual has a reversionary interest which will or may be expected to take effect within 10 years from the time the income-producing property is transferred to the trust.

Effective date.—This provision is to apply with respect to transfers in trust made after April 22, 1969.

5. Charitable contributions by estates and trusts (sec. 201(f) of the bill and sec. 642(c) of the code)

* * * * *

EXHIBIT No. 12

TAX REFORM ACT OF 1969: REPORT OF THE COMMITTEE ON FINANCE

Effective date.—This provision is to apply with respect to contributions made in taxable years beginning after December 31, 1969.

3. Charitable Contributions of Appreciated Property (sec. 201(a) of the bill and sec. 170(e) of the code)

Present law.—Under present law, a taxpayer who contributes property which has appreciated in value to charity generally is allowed a charitable contributions deduction for the fair market value of the property and no tax is imposed on the appreciation in value of the property. A special rule (sec. 170(e)) applies, however, to gifts of certain property so that the amount of charitable contribution is reduced by the amount of gain which would have been treated as ordinary income under the recapture rules for certain mining property No. 617), depreciable tangible personal property (sec. 1245) and certain depreciable real property (sec. 1250), if the property contributed had been sold at its fair market value.

If property is sold to a charity at a price below its fair market value—a so-called bargain sale—the proceeds of the sale are considered to be a return of the cost and are not required to be allocated between the cost basis of the "sale" part of the transaction and the "gift" part of the transaction. The seller is allowed a charitable contributions deduction for the difference between the fair market value of the property and the selling price (often at his cost or other basis).

General reasons for change.—The combined effect, in the case of charitable gifts of appreciated property, of allowing a charitable contributions deduction for the fair market value (including the appreciation) and at the same time not taxing the appreciation, is to produce tax benefits significantly greater than those available with respect to cash contributions. The tax saving which results from not taxing the appreciation in the case of gifts of capital assets is the otherwise applicable capital gains tax which would be paid if the asset were sold. In the case of gifts of ordinary income property, however, this tax saving is at the taxpayer's top marginal income tax rate. In either case, this tax saving is combined with the tax saving of the charitable deduction at the taxpayer's top marginal rate.

Thus, in some cases it actually is possible for a taxpayer to realize a greater after-tax profit by making a gift of appreciated property than by selling the property, paying the tax on the gain, and keeping the proceeds. This is true in the case of gifts of appreciated property which would result in ordinary income if sold, when the taxpayer is at the high marginal tax brackets and the cost basis for the ordinary income property is not a substantial percentage of the fair market value. For example, a taxpayer in the 70-percent tax bracket could note a gift of $100 of inventory ($50 cost basis) and save $105 in taxes (70 percent of the $50 gain if sold, or $35, plus 70 percent of the $100 fair market value of the inventory, or $70).

The committee does not believe that the charitable contributions deduction was intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold and the proceeds were retained by the taxpayer. In cases where the tax saving is so large, it is not clear how much charitable motivation actually remains. It appears that the Government, in fact, is almost the sole contributor to the charity. Moreover, an unwarranted tax benefit is allowed these taxpayers, who usually are in the very high income brackets. The committee, therefore, considers it appropriate to narrow the application of the tax advantages in the case of gifts of certain appreciated property.

Explanation of provision.—The House bill takes appreciation into account for tax purposes in five types of situations. The committee amendments retain two of these provisions.

Both the House bill and the committee amendments provide that appreciation is to be taken into account for tax purposes in the case of gifts to a private foundation, other than an operating foundation, and other than a private foundation which within one year distributes an amount equivalent to the gift to public charitable organizations or private operating foundations. In addition, both the House bill and the committee amendments take appreciation in value into account for tax purposes in the case of property (such as inventory or works of art created by the donor) which would give rise to ordinary income if sold.

In the case where the appreciation is taken into account for tax purposes, the committee amendments provide that the charitable deduction otherwise available is to be reduced by the amount of appreciation in value in the case of assets which if sold would result in ordinary income, or in the case of assets which if sold would result in capital gain, by 50 percent (62½ percent for corporations) of the amount of this appreciation in value. The House bill would have given the taxpayer the option of reducing his charitable deduction to the amount of his cost or other basis for the property, or of including the appreciation in value of the property in his income (as ordinary income or capital gains income as the case may be) at the time of taking the charitable contribution deduction and deducting the full fair market value of the property as a charitable contribution.

Examples of the types of property giving rise to ordinary income where either some, or all, of the appreciation is to be taken into account without regard to the type of charitable recipient are gifts of inventory, "section 306 stock" (stock acquired in a nontaxable transaction which is treated as ordinary income if sold), letters, memorandums, etc., given by the person who prepared them (or by the person for whom they were prepared), and stock held for less than 6 months. Under the committee amendments, the portion of the appreciation taken into account in these cases is the amount which would be treated as ordinary income if the property were sold. This would be all of the appreciation in the case of gifts of inventory but in the case of gifts of depreciable tangible personal property used in the trade or business of the taxpayer, for example, it would be only the portion of the gain subject to recapture (under sec. 1245) since any remaining gain above this amount would still be treated as a capital gain not taken into account by this provision (unless the contribution were to certain private foundations). Under the House provision, it appears that the full appreciation would have been taken into account if any of the gain would (if sold) have been taxed as ordinary income.

* * * * *

EXHIBIT 13

TAX REFORM ACT OF 1969

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13270) to reform the income tax laws, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Tax Reform Act of 1969".

(b) TABLE OF CONTENTS.—

TITLE I—TAX EXEMPT ORGANIZATIONS

SUBTITLE A—PRIVATE FOUNDATIONS

Sec. 101. Private foundations.

SUBTITLE B—OTHER TAX EXEMPT ORGANIZATIONS

Sec. 121. Tax on unrelated business income.

TITLE II—INDIVIDUAL DEDUCTIONS

SUBTITLE A—CHARITABLE CONTRIBUTIONS

Sec. 201. Charitable contributions.

The conference substitute (sec. 201(a) of the substitute and section 170(b) of the code) follows the Senate amendment except that it provides that in the case of contributions to private nonoperating foundations, the contribution such foundations receive must be distributed to public charities or private operating foundations within 2½ months following the year of receipt if the 50 percent limitation (or the 30 percent limitation as the case may be) is to apply.

2. Repeal of the unlimited charitable deduction (secs. 170(b)(1)(C), (f)(6), and (g) of the code)

The House bill eliminates the unlimited charitable contribution deduction for years beginning after 1974. During the interim period an increasing limitation is placed on the amount by which the deduction may reduce an individual's taxable income. For taxable years beginning in 1970, the total charitable deduction (for those qualifying under this provision) is not to be allowed to reduce the individual's taxable income to less than 20 percent of his adjusted gross income. This percentage is increased by 6 percentage points a year for the years 1971 through 1974. Corresponding downward adjustments are made in the percentage of a taxpayer's income which must be given to charity (or paid in income taxes) in 8 out of the 10 preceding taxable years in order to qualify for the extra charitable deduction during the interim period.

The Senate amendment modifies the House bill to provide that two rules are not to apply in the case of a person qualifying for the extra charitable contribution deduction: (1) the 30-percent limit on gifts of appreciated property and (2) the appreciated property rule which takes the appreciation into account for tax purposes in the case of gifts of property which would give rise to a long-term capital gain is sold.

The conference substitute (sec. 201(a) of the substitute and secs. 170(b)(1)(C), (f)(6), and (g) of the code) follows the Senate amendment.

3. Charitable contributions of appreciated property (sec. 170(e) of the code)

The House bill in the case of charitable contributions of appreciated property takes this appreciation into account for tax purposes in five types of situations. These are as follows:

(1) Appreciation is taken into account in the case of gifts to a private foundation other than an operating foundation and within 1 year distributes an amount equivalent to the total amount of gifts of appreciated property;

(2) Appreciation is taken into account in the case of property (such as inventory or works of art created by the donor) which would give rise to ordinary income if sold;

(3) Appreciation is taken into account in the case of gifts of tangible personal property (such as paintings, art objects, and books not produced by the donor) which would result in capital gain if the property were sold.

(4) Appreciation is taken into account in the case of gifts of future interests in property (such as a remainder interest in trust) which would result in capital gain if the property were sold.

(5) The cost or other basis of property in the case of a so-called bargain sale to charity is allocated between the portion of the property which is "sold" to the charity and the portion which is "given" to the charity on the basis of the fair market value of each portion.

The Senate amendment deleted categories (3), (4), and (5) listed above.

The conference substitute (sec. 201(a) of the substitute and sec. 170(e) of the code) follows the House bill except that in the case of category (3), listed above, it does not take appreciation in value into account in the case of gifts of tangible personal property (which would result in capital gain if the property were sold) where the use of the property is related to the exempt function of the donee. In addition, the conference substitute does not take appreciation into account in the case of category (4) referred to above relating to gifts of future interests in property.

The House bill provides that the amendments relating to charitable contributions generally apply to contributions paid after December 31, 1969.

The Senate amendment modifies this effective date to provide that in the case of a gift of a letter or memorandum or similar property, the charitable contribution amendments are to apply to contributions paid after December 31, 1968.

The conference substitute (sec. 201(g)(1)(B) of the substitute) follows the Senate amendment except that it changes the date to July 25, 1969.

4. Two-year charitable trust (sec. 673(b) of the code)

No substantive change is made by the Senate amendment in the House bill.

5. Gifts of the use of property (sec. 170(f)(3) of the code)

The House bill provides that a charitable deduction is not to be allowed for contributions to charity of less than the taxpayer's entire interest in property.

The Senate amendment modifies the House bill by providing that:

(1) A deduction is to be allowed for contributions of a remainder interest in real property;

(2) A charitable deduction is to be allowed where an outright gift is made of an undivided interest in property;

(3) The amendments are to apply to gifts made after October 9, 1969, (the House bill applies to gifts made after April 22, 1969).

The conference substitute (sec. 201(a) of the substitute and sec. 170(f)(3) of the code) follows the Senate amendment except that in the case of the first modification referred to above the charitable deduction is allowed only for contributions of remainder interests in real property consisting of personal residences or farms.

The conferees on the part of both Houses instead that is a gift of an open space easement in gross is to be considered a gift of an undivided interest in property where the easement is in perpetuity.

6. Charitable contribution by estates and trusts (sec. 642(c) of the code)

The House bill denies nonexempt trusts a deduction for the amount of their current income set aside for charity. The House bill also denies this deduction to estates.

EXHIBIT 14

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., December 7, 1973.

Hon. LOWELL WEICKER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WEICKER: Thank you for your letters of November 21 and 28, 1973, regarding additional questions you have concerning the transfer of personal papers of Richard M. Nixon to the National Archives in March 1969.

I am pleased to reply as follows to your questions:

Do the formalities contained in paragraph 5, chapter 3, of the GSA Handbook on Presidential Libraries require an acceptance of the deed by the Archivist?

No. The formalities that you refer to from the GSA Handbook on Presidential Libraries are merely guidelines issued to establish uniformity in the procedures utilized by the several Presidential Libraries in the acceptance of donated papers. Prior to the issuance of these guidelines, each Library had employed varying methods for the acceptance of donated papers, resulting in some confusion as to the status of certain papers, and creating a serious lack of coordination of the operations of a most important segment of the work of the National Archives. These guidelines were issued to end this disparate treatment by the Libraries, and to establish a uniform procedure to be followed at the normal operational level of such activity, the Presidential Library. They were never intended to restrict the methods available to the Archivist in acceptance of gifts, but were meant to apply primarily to the Libraries themselves.

GSA has the authority, under chapter 21 of title 44, United States Code, to issue these guidelines as formal published regulations, having the force and effect of law. However, in the interest of retaining our options for receiving gifts of papers that are invaluable in constructing a documentary history of our nation, we have deliberately chosen not to issue regulations that might restrict or hinder all possible means of donation. As merely internal GSA guidelines they lack both the legal status and the intent to require the Archivist to formally accept a deed of gift.

On what date did these formal procedures go into effect?

These procedures first became effective on December 20, 1968, when the Handbook on Presidential Libraries was first issued. From 1965 to that date, informal attempts to gain uniformity were made in memoranda from the Office of Presidential Libraries at the National Archives to the several Libraries.

Was there any express communication or indication by Richard M. Nixon to GSA or the National Archives between January 1, 1969, and July 25, 1969, indicating that the 1969 transfer of papers was explicitly for purposes of a gift?

There was no express communication or indication by President Nixon personally to GSA or the National Archives between January 1, 1969, and July 25, 1969, indicating that the transfer of papers was explicitly for purposes of a gift. However, the papers were viewed by GSA personnel as having been delivered for gift purposes with a formal deed of gift to follow, and actions by GSA personnel beginning upon delivery were consistent with this view. These actions continued through the remainder of 1969 and included actions to assist Mr. Newman in his appraisal work. It should be borne in mind that it was not until December of 1969 that July 25, 1969, was finally established as the critical date.

On what date did GSA receive a letter from Edward L. Morgan to Dr. Daniel J. Reed, dated March 13, 1969?

March 14, 1969.

To what papers did this letter refer?

Mr. Morgan's letter referred to the papers donated by the deed dated December 30, 1968.

Has the public had access to the pre-Presidential papers transferred to the National Archives on March 26 and 27, 1969?

No. In accordance with paragraph 1 of the Chattel Deed dated March 27, 1969, GSA, bound by the dictates of sections 2107 and 2108(c) of Title 44, United States Code, has withheld general public access to the referenced papers.

Who has had access to these papers since their transfer to the National Archives?

Other than GSA personnel who are permitted access under the Chattel Deed to perform necessary archival work on the papers, actual access has been limited to the appraisers and members of the White House staff.

Has the Internal Revenue Service, between January 1, 1972, and the present time, contacted GSA or the National Archives and collected all the relevant details and evidence with respect to the March 26th and 27th, 1969, transfer of these papers?

No.

As you requested, I have enclosed a copy of the "Limited Right of Access from Richard Nixon to Ralph Newman", dated March 27, 1969.

Sincerely,

ARTHUR F. SAMPSON,
Administrator.

LIMITED RIGHT OF ACCESS FROM RICHARD NIXON TO RALPH NEWMAN

(Pursuant to Chattel Deed from Richard M. Nixon to the United States of America, dated December 30, 1968).

Whereas, the undersigned executed a Chattel Deed to The United States of America dated December 30, 1968, a copy of which is attached hereto as Exhibit I,

Now, therefore, pursuant to the restrictions set forth in Paragraph "1", page 2 thereof, the undersigned hereby grants to Ralph Newman a limited right of access to inspect and examine for the purpose of appraisal, but not to copy or remove, all of those documents set forth in Schedule A which is annexed to and made a part of said Chattel Morigage, Exhibit I hereof.

This limited right of access shall expire April 16, 1969.

Dated This 27th day of March, 1969.

RICHARD NIXON,
President of the United States of America.
EDWARD L. MORGAN,
Deputy Counsel to the President.

IN THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA, SS

On this, the 27th day of March, 1969, before me, the undersigned Notary Public, personally appeared Edward L. Morgan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is Deputy Counsel to the President of the United States and that he executed the foregoing instrument on behalf of the President, acting in his capacity as such Deputy Counsel, and that, as such Counsel, he is authorized to sign such document on behalf of the President of the United States.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

JOHN JOSEPH RATCHFORD,
Notary Public.
My commission expires: May 31, 1973.

EXHIBIT 15

INCOME TAXES: PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

§ 1221. Capital asset defined:

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

* * * * *

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

As amended Dec. 30, 1969, Pub. L. 91-172, Title V, § 514(a), 83 Stat. 643.

* * * * *

1969 Amendment. Par. (3). Pub. L. 91-172 added reference to a letter or memorandum, added subpar. (B) dealing with a letter or memorandum, and substantially redesignated former subpar. (B) as subpar. (C).

Effective Date of 1969 Amendment. Section 514(c) of Pub. L. 91-172 provided that: "The amendments made by this section [amending this section and sections 341 and 1231 of this title] shall apply to sales and other dispositions occurring after July 25, 1969."

Legislative History. For legislative history and purpose of Pub. L. 91-172, see 1969 U.S. Code Cong. and Adm. News, pp. 1645, 1800, 1992, 2233, 2432.

Supplementary Index to Notes, Gas 74a, Trademarks 105a.

1. CONSTRUCTION

Crosswhite v. U.S., 369 F.2d 989, main volume, 177 Ct.Cl. 671.

Capital gains provisions are to be read narrowly, Hansche v. C. I. R., C. A. 7, 1972, 457 F.2d 429.

This section defining capital asset for capital gain treatment must be narrowly applied and its exclusions interpreted broadly to effectuate basic congressional purpose. Lewis v. U.S., 1968, 389 F.2d 818, 182 Ct.Cl. 426.

Statutes conferring preferred treatment on taxpayers in case of sale of capital assets or sale of certain natural resources must be strictly construed. Crosby v. U.S., D.C.Miss. 1968, 292 F. Supp. 314, affirmed 414 F. 2d 822.

Provision of this section defining term "capital asset" is a relief provision and must be strictly construed. Malat v. Riddell, D.C. Cal. 1966, 275 F.Supp. 358.

3. PURPOSE

This section excluding from capital assets property held by taxpayer primarily for sale to customers in ordinary course of his trade or business was intended to differentiate between profits and losses arising from everyday operation of business and realization of appreciation in value accrued over substantial period of time. Huxford v. U.S., C.A.Fla. 1971, 411 F.2d 1371.

Concept of capital asset for tax purposes is to be construed narrowly in accordance with purpose of Congress to afford capital-gains treatment only in situations typically involving realization of appreciation in value accrued over substantial period of time. Silverstein v. U.S., D.C.Ill. 1968, 293 F.Supp. 1106, affirmed 419 F.2d 999, certiorari denied 90 S.Ct. 1362, 397 U.S. 1041, 25 L.Ed.2d 652.

4. LAW GOVERNING

Characterization of taxpayer's manner of holding land has underpinnings of question of fact but ultimate issue of whether taxpayer's holding is not primarily for sale in the ordinary course of business is inherently question of law. U.S. v. Winthrop, C.A.Fla. 1969, 417 F.2d 905.

7. CAPITAL TRANSACTIONS

Even though important purpose of taxpayer in acquiring stock of another corporation was to obtain source of raw materials necessary for taxpayer's business, presence of substantial investment purpose in the acquisition precluded taxpayer from having loss resulting from sale of acquired stock treated as loss against ordinary income rather than as a capital loss. Dearborn Co. v. U.S., 1971, 444 F. 2d 1145, 195 Ct. Cl. 219.

Where taxpayer, wholesaler of petroleum products, purchased interest in petroleum refinery at time when taxpayer was experiencing supply problems, and stock in refinery was sold when first order of purchase was received seven years after shortage ended, stock sold by taxpayer was not a "capital asset" and taxpayer was entitled to ordinary loss deduction on the sale. FS Services, Inc. v. U.S., 1969, 413 F.2d 548, 188 Ct.Cl. 874.

Basic requirement for capital gain or loss treatment for income tax purposes is that the transaction giving rise to claimed gain or loss must constitute a sale or exchange of capital asset. Jamison v. U.S., D.C.Cal. 1968, 297 F.Supp. 221, affirmed 445 F.2d 1397.

8. SUBSTANCE OF TRANSACTION

In determining whether sale of capital assets occurred, court must look to substance of and effect rather than just to form of transaction for tax purposes. Silverstein v. U.S., D.C.Ill. 1968, 283 F. Supp. 1106, affirmed 419 F. 2d 999, certiorari denied, 90 S.Ct. 1362, 397 U.S. 1041, 25 L.Ed. 2d 652.

EXHIBIT 16

(1970 "Schedule A" to 1969 deed. This schedule was substituted for an earlier schedule A which is not available.)

SCHEDULE A ANNEXED TO AND PART OF CHATTEL DEED FROM RICHARD MILHOUS NIXON TO THE UNITED STATES OF AMERICA, MARCH 27, 1969

The materials conveyed by the Chattel Deed of which this Schedule A is a part, herewith deposited and housed in the National Archives Building, Washington, D.C., constituting six hundred thousand individual items contained within 1,176 file boxes, are more particularly described as follows:

I. GENERAL CORRESPONDENCE AS VICE PRESIDENT

Boxes "Aandahl through Zwieng", Boxes 18 through 845, inclusive—828 Boxes.

II. APPEARANCE FILE 1948-62

Boxes 1 through 173—173 Boxes.

III. CORRESPONDENCE RE INVITATIONS 1954-61

56 Boxes.

IV. FOREIGN TRIP FILES AS VICE PRESIDENT

116 Boxes.

V. VISIT OF KHRUSHCHEV TO UNITED STATES

3 Boxes.

Total: 1,176 Boxes.

EXHIBIT 17

PRESIDENTIAL LIBRARIES—A GSA HANDBOOK

CHAPTER 1. GENERAL

1. *Purpose.* This handbook sets forth guidelines for the operation of Presidential libraries and provides general guidance on administrative, professional, and technical matters. It is in accord with the provisions of law (44 USC 2101-2113; 2301-2308), the Regulations for the Public Use of Records (41 CFR 105-61), and the provisions of the GSA Policy Manual, ADM P 1000.2A. At the same time it recognizes that in some of their activities the libraries must be guided by local circumstances.

2. *Definitions.* For ease of preparation and reading, the titles and terms listed below are cited in short form throughout this HB:

a. "President" means the President of the United States (or a former President) whose papers are or will be deposited in a Presidential library operated by the General Services Administration.

b. "Director" means the Director of a Presidential library.

c. "Regulations" refer to "Public Use of Records," Donated Historical Materials, and Facilities in the National Archives and Records Service" 41 CFR 105-61, or GSA Order ADM 1500.2A.

d. NA means the Executive Director, NARS.

e. NAP means the Director, Planning and Management Programs Division.

f. NAPB means the Budget and Reports Branch.

g. NAPP means the Manpower Branch.

h. NAT means the Director, Technical Services Division.

i. NATR means the Chief, Document Reproduction and Preservation Branch.

j. NL means the Assistant Archivist to Presidential Libraries.

3. *Applicability.* The provisions of this handbook are applicable to all Presidential libraries; those in operation and those being planned.

4. *Responsibilities.* It is the responsibility of NL, through the library Directors, to see that each library in operation carries out the functions set forth in the GSA Organization Manual, OFA P 5440.1, and the Delegations of Authority Manual, ADM P 5450.39 and NAR 5450.7. Planning for future libraries is primarily the responsibility of NL, in cooperation with the designated representatives of the Presidential administration involved.

5. *Background and organization.* The first Presidential library was the Franklin D. Roosevelt Library, authorized by special legislation passed in 1939, and completed at Hyde Park, N. Y., in 1940. It grew out of President Roosevelt's concern for the preservation of the many papers and gifts that were accumulating in the White House and for their eventual availability to scholars and museum visitors. The Roosevelt Library was placed under the direct supervision of the Archivist of the United States. After the formation of the General Services Administration, the Presidential Libraries Act of 1955 was passed, authorizing the Administrator to acquire the historical materials of any President if they were offered to the Government, along with related materials obtained elsewhere, and to administer them as a Presidential library. Under that legislation the Harry S. Truman Library was established at Independence, Mo., in 1957; the Dwight D. Eisenhower Library at Abilene, Kans., and the Herbert Hoover Library at West Branch, Iowa, were both established in 1962. The Directors of the first two libraries were under the direct supervision of the Archivist of the United States. The addition of the Eisenhower and Hoover libraries required additional Central Office support, and the Office of Presidential Libraries was established as a coordinating unit in 1964. The added burdens of planning for the John F. Kennedy and the Lyndon B. Johnson libraries led to an increase in the responsibility of NL, and he was designated as the supervisor of the Directors of all the libraries in 1968.

6 thru 8. Withdrawn by CHGE 3.

g. Prospective donors should be told that appraisals for tax deductions are appropriate. Library staff members do not make the appraisals; the Internal Revenue Service prohibits the making of appraisals by recipient institutions because they are not qualified to judge values that would hold on the market for sale of documents. The library may properly, however, give the donor the names of appraisers, preferably more than one.

h. Occasionally gifts of papers, or other historical materials are offered received without solicitation. If they are not pertinent to the library's field of interest and if it can be done without offending a donor, such materials should be transferred to an institution where they would be more useful.

i. In addition to personal papers the libraries may receive from the National Archives the official records of boards, commissions, and committees that were established by and reported to one President, the records of which were not taken over by a successor agency. If the records are likely to be sought by scholars in both places, microfilm copies may be sent to the library. The National Archives may at times transfer to a library records closely related to the Presidential papers.

4. *Shipment and receipt.*

a. Shipment of papers to a library should always be arranged without cost of inconvenience to the donor. For small quantities this may be done by sending several self-addressed franked labels for the donor's use in mailing the papers. In the Washington, D.C., area representatives of NL will pick up papers from donors and ship them to the library. In other parts of the country this service can be performed by representatives of the nearest NARS Regional Director's office. Shipment should be made at the expense of the library, charged to the library's accounting code.

b. Upon receipt of materials at the library the Director will see that proper distribution is made of published items, audiovisual materials, and museum objects that are with the papers and warrant special handling.

5. *Documentation of accessions.* The essential documents in the acquisition process are a deed of gift executed between the donor and the library and a log of all accessions kept for internal control purposes.

a. Deed of gift.

(1) The major purpose of the deed of gift is to accomplish the legal transition of the papers or other historical materials to the library. The deed usually applies both to the materials initially transferred and to any that may be sent to the library later. This makes it possible to open the first instalment for research, if the donor is willing, before all his papers have been acquired.

(2) The deed of gift generally used by the libraries follows a pattern approved by the General Counsel of GSA; but minor modifications may be made to suit the donor, and some options are available. The content of this document should be agreed upon with the donor, and he should sign it at the time the papers are transferred to the library or shortly thereafter. Papers should not be allowed to remain in the physical custody of the library, or of a transmitting agency, without a signed deed of gift.

(3) The deed of gift should give the donor assurance that his papers will be kept intact; stipulate any restrictions on access that the donor imposes; allow library staff members on official business to handle the papers; and state whether or not the literary property rights in the papers are transferred.

(4) It is best from the viewpoint of research use to receive papers with no limitations on access. For recent periods in which many of the participants are still living, however, it is frequently necessary to accept restrictions imposed by the donor in order to obtain the papers. The library should accede to the wish of the donor in this matter, after explaining the possibilities to him. Restrictions are best stated in terms of categories of papers, with the provision that library staff members will review them and segregate those that are to be closed at the discretion of the Director and to be opened when circumstances permit. This provision is more satisfactory than the establishment of committees for review. The stipulation of periods of years for which papers are to be closed in unduly rigid, as it does not take into account the fact that circumstances may change.

(5) Deeds of gift should be signed both by the donor and by the Archivist of the United States or his designated representative. Three copies should be signed, the original to be retained by the library, one copy returned to the donor, and one kept by NL.

b. *Accessions log.* Each library should maintain as a basic control a log, or register, of accessions of papers and related historical material. Entries should be made chronologically as materials are received, each unit or entry normally being the papers of an individual donor or organization. Entries are numbered in sequence as materials are received and should include the date of receipt, identification of the materials, their inclusive dates, and the volume. Small accretions to accessions are entered under the same numbers. Descriptions of the materials that are prepared after accessioning are referred to in this manual in chap. 5, Finding Aids.

EXHIBIT 18

THE WHITE HOUSE,
Washington, March 13, 1969.

DR. DANIEL J. REED,
Assistant Archivist for Presidential Libraries, National Archives and Records Service, Washington, D.C.

DEAR DR. REED: This will merely confirm our discussion of the other day in which I requested that someone from your organization double check and be certain that you have now received all of the Vice Presidential papers that were sent to the Archives from the President's former law firm in New York, and secondly that the indexing and cataloging of the Vice Presidential papers that were given as a gift to the Archives will be complete by April 1 in order that Mr. Neuman may complete his appraisal for tax purposes.

Should you have any questions at all in this regard, please feel free to call either me or Bud Krogh in our office.

Thank you very much.

Sincerely,

EDWARD L. MORGAN,
Deputy Counsel to the President.

EXHIBIT 19

OCTOBER 31, 1973.

MR. ARTHUR F. SAMPSON,
Administrator, General Services Administration, General Services Building, Washington, D.C.

DEAR MR. SAMPSON: With reference to the transfer of personal papers by Richard M. Nixon to the National Archives in March 1969, I would appreciate the following factual information:

On what date was a deed of gift received by GSA or the National Archives?

What was the date of such deed of gift?

Who signed such deed of gift?

If not signed by the President, what proof did GSA demand that the signor was empowered to act for the President?

In the case of gifts by prior Presidents, commencing with Franklin Roosevelt, were deeds of gifts received contemporaneous with the transfer of papers to the Archives?

If not, when were they received?

Were such prior deeds signed by the donor Presidents in all cases?

When was the physical transfer of papers to GSA?

Was there any documentary or other evidence submitted by the donor, Richard M. Nixon, indicating that such transfer was a gift and not for purposes of temporary storage by the Archives?

On what date did the National Archives become aware of the specific value of the alleged gift?

Has there been official acceptance of the alleged gift by GSA, and if not, why has there been no such acceptance?

Was official acceptance given for prior Presidential gifts?

Please detail all communications from June, 1972 to date between GSA and the President and/or his agents relative to the aforesaid gift.

If there are any questions as to these inquiries, please feel free to contact me. My thanks for your time in responding to this request.

With kind regards.

Sincerely,

LOWELL WEICKER JR.,
U.S. Senator.

MEMORANDUM FOR HON. LEONARD GARMENT,
COUNSEL TO THE PRESIDENT

SEPTEMBER, 27, 1973.

The General Services Administration has recently initiated a factual inquiry into the history of certain papers of the President, created prior to January 20, 1969, that were donated to the United States of America and were deposited at the National Archives on March 26 and 27, 1969. Our inquiry has left unanswered several important questions concerning the "Chattel Deed of Gift" that corresponds to these papers. It is our hope that White House records and/or former or present White House personnel may be able to help us fill these gaps.

The information we have been able to gather so far leads us to the following tentative conclusions as to the physical history of the deed of gift: sometime around the beginning of April 1970, an original deed of gift corresponding to these papers was delivered to the GSA Office of General Counsel (probably to Hart T. Mankin, then General Counsel); the instrument was signed, as was an accompanying affidavit, by Edward L. Deputy Counsel to the President, and notarized by Frank DeMarco, Jr., the signatures dated April 21, 1969, although the instrument was cover-dated March 27, 1969; on or about September 13, 1971, the original deed of gift was turned over to Mr. Dapray Muir, an attorney in the Office of Counsel to the President; sometime in April or May 1973, a duplicate original (xeroxed, but with original signatures) was discovered in the files of the Office of Presidential Libraries, National Archives and Records Service and was immediately placed in an appropriate vault in the National Archives Building where it remains today.

Our questions are as follows:

1. Where was the deed in the period between April 1969, and April 1970;
2. Who transmitted the original deed at Mr. Mankin (and how);
3. Were any duplicate originals transmitted at that time;
4. Who transmitted the duplicate original to the Office of Presidential Libraries and where had it been; and
5. Where is the original deed of gift now?

We would be most appreciative of any assistance you can provide, so that our own inquiry can be satisfactorily completed.

WILLIAM E. CASSELMAN II,
General Counsel.

EXHIBIT 20

THE WHITE HOUSE,
Washington, November 16, 1973.

Memorandum for William E. Casselman,
General Counsel.
General Services Administration.
From Douglas M. Parker.
Subject: Deed of Gift.

In response to your memorandum to Leonard Garment, dated September 27, 1973, I can advise you as follows:

The deed of gift was executed with a ribbon copy and a duplicate original (Xerox but with original signatures). Both the ribbon copy and the duplicate original remained in the office of Frank DeMarco until April 1970. In April 1970, Mr. DeMarco mailed the duplicate original to Edward L. Morgan, Deputy Counsel to the President, who, we believe, delivered it to Hart T. Mankin, General Counsel of GSA. The ribbon copy remained in Mr. DeMarco's office until October 10, 1973, when it was transmitted to the Office of the Counsel to the President where it presently remains.

The duplicate original was turned over by GSA to Mr. Dapray Muir, an attorney in the Office of Counsel to the President on or about September 13, 1971. Subsequently, Mr. Roy E. Kinsey of that office turned the deed over to John Nesbitt who is in charge of the National Archives Office located in the Executive Office Building. Mr. Nesbitt in turn returned the deed to the National Archives, Office of Presidential Libraries under a cover memorandum dated January 13, 1973.

EXHIBIT 21

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C. November 21, 1973.

MR. ARTHUR F. SAMPSON,
Administrator, General Services Administration, General Services Building, Washing, D.C.

DEAR MR. SAMPSON: Thank you for your letter of November 16, 1973, responding to my inquiries as to the transfer of certain papers by Richard M. Nixon to the National Archives.

The information you provided was most helpful and complete. Nevertheless, there are a few additional questions to which I would appreciate your response.

On page 4 of your November 16 reply, you noted that one of the reasons there had been no official acceptance by GSA of the 1969 deed was the "absence of any GSA regulation requiring some manner of formal acceptance of donated paper." My research indicates the following information in Paragraph 5, Chapter 3, of the GSA Handbook on Presidential Libraries:

"5. *Documentation of accessions.* The essential documents in the acquisition process are a deed of gift executed between the donor and the library and the library and a log of all accessions kept for internal control purposes.

a. *Deed of gift.* (1) The major purpose of the deed of gift is to accomplish the legal transfer of the papers or other historical materials to the library.

* * * * *

(5) Deeds of gift should be signed both by the donor and by the Archivist of the United States or his designated representative. Three copies should be signed, the original to be retained by the library, one copy returned to the donor, and one kept by the NL".

My question is whether the above requirements would necessitate an acceptance of the deed by the Archivist, and if not, why not?

I note that on page 2, in response to my inquiry into the procedures followed by prior Presidents, you indicate that either a letter or transfer of title by will were the methods used until 1965. I further note that the requirements referred to above, from the Handbook on Presidential Libraries, are dated December 20, 1968. My question is whether GSA procedures first required a deed of gift as of 1965, or 1968, and if not, when were the procedures referred to above first promulgated?

On page 3, in response to my request for evidence submitted by the donor, Richard M. Nixon, indicating that the transfer of papers was intended to be a gift, when referred to the 1968 and 1969 deeds, and a May 12, 1969 Presidential announcement relative to the Richard Nixon Foundation. To clarify my question, with reference only to the 1969 transfer was there any express communication or indication by Richard M. Nixon to GSA or the National Archives between January 1, 1969 and July 25, 1969 indicating that the 1969 transfer of papers was explicitly for purposes of a gift?

Is GSA in receipt of a letter from Edward L. Morgan to Dr. Daniel J. Reed, dated March 13, 1969, and if so, on what date was that letter actually received by Dr. Reed or the National Archives? Further, can you confirm whether the papers referred to in that letter are the 1968 gift received by GSA on March 20, 1969, or the March 26 and 27, 1969, transfer of papers?

A letter dated March 27, 1969, from Daniel J. Reed to Edward L. Morgan contains a handwritten P.S. which makes reference to "the document: 'Limited Right of Access' from RMN to Ralph Newman, dated March 27, 1969". If you could forward a copy of this document, it would be helpful to our investigation.

Finally, from March 26, 1969 to the present time has the public had access, in limited or unlimited form, to the papers transferred on March 26 and 27, 1969? If access has been limited, who specifically has had access during that period of time?

I would hope your response to these questions would satisfy my inquiries, and again my thanks for your time in this matter.

With kind regards,

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

EXHIBIT 22

THE PRESIDENT'S NEWS CONFERENCE OF SEPTEMBER 5, 1973

STATEMENT ON LEGISLATIVE GOALS

THE PRESIDENT. Ladies and gentlemen, before going to your questions, I have a brief announcement that I think will be of interest not only to our listeners and to you but also to the Congress.

The Congress is returning today from its August recess, as I am, and as I look over the record of accomplishment this year, I find it is very disappointing in terms of the Administration initiatives, those initiatives that I believe are bipartisan in character and of vital importance to all of the American people.

Consequently, I will be sending what is in effect a new State of the Union message, one which will concentrate on the measures presently before the Congress which have not been acted upon and which I consider urgent to be acted upon before the end of this year.

I am not trying to present to the Congress an impossible task; consequently, I will not cover the whole waterfront, but it is important that in several areas that action be taken, or it will be too late to act for the interests of the people.

In my statement today, I will cover four or five areas that will be included in that message, which will be distributed to you on Sunday night and delivered to the Congress Monday at the time of the opening of business.

THE PRESIDENT'S PROPERTIES AND FINANCES

Q. Mr. President, there have been some conflicting reports about your real estate dealings in California, and I would like to ask about that. Several different versions have been released by the White House, both as to your own personal financial involvement and as to the Government's expenditures in San Clemente and at Key Biscayne, and your auditors. I understand from news reports, say that the entire audit has not been released on your financial dealings out there.

I would like to ask why we have had so many conflicting reports to start with, and second, one of the questions that is raised by the only partial release of the audit is have you paid the taxes on the gain realized in the sale of the land to Rebozo and Abplanalp at San Clemente?

THE PRESIDENT. Any other questions you want to go into?

Of course, whatever a President does in the field of his property is public knowledge, and questions of that sort I do not resent at all. I do resent, I might say, the implications, however, first, that whether at Key Biscayne or in San Clemente my private property was enriched because of what the Government did.

As a matter of fact, what the Government did at San Clemente reduced the value of the property. If you see three Secret Service gazebos and if you see some of the other fences that block out the rather beautiful view to the hills and the mountains that I like, you would realize that what I say is quite true; it reduces its value as far as a residential property is concerned.

The second point is this: At rather considerable expense, and a great deal of time on my part, I ordered an audit, an audit by a firm highly respected, Coopers & Lybrand of New York. That audit has been completed. It covered at my request not simply the last year, but it covered the years 1969, 1970, 1971, and 1972.

The audit has been completed, and the audit gave the lie to the reports that were carried usually in eight-column heads in most of the papers of this country—and, incidentally, the retractions ended up back with the corset ads for the most part—but on the other hand, it gave the lie to the charge that there was $1 million worth of campaign funds, that that is how I acquired the property in San Clemente.

It also gave the lie to any other charges that, as far as my acquisitions in Florida are concerned, or in California, that there was any money there except my own.

Now, I would make two or three other points briefly about it that I think all laymen could understand. I borrowed the money to acquire the property, and I still owe it. I own no stocks and no bonds—I think I am the first President in this office since Harry Truman—I don't own a stock or a bond. I sold everything before I came into office.

All that I have are the two pieces of property in Florida which adjoin each other, the piece of property in San Clemente with which you are familiar, and a house on Whittier Boulevard in which my mother once lived. I have no other property, and I owe money on all of them.

Third, as far as the capital gain matter, which is a technical matter that you have mentioned, I should point out—and maybe this is good news for people who wonder if Presidents are exempt from what the IRS does—the IRS has had a full field review or audit of my income tax returns for 1971 and 1972, and included in its audit the transaction which you refer to, in which some argue there was a capital gain and some argue that there was not. It is a matter of difference between accountants.

The IRS, after its audit, did not order any change. If it had, I would have paid the tax. It did not order a change.

Now, with regard to the audit itself is concerned, the results of that audit insofar as the acquisition of the property have been put out. That is all that is going to be put out because I think that is a full disclosure.

I would simply say, finally, that in this particular case I realize that naturally there is a suspicion that a President, because he has the great power of this office and because he has the benefit of Secret Service, GSA, and all the rest to protect him, that he some way or other is going to profit from all of that security that is provided for him.

As I pointed out in my press conference 2 weeks ago, I'd far less rather have the security than have my privacy, but that just can't be done.

EXHIBIT 23

TELEGRAM

RALPH G. NEWMAN,
President, Abraham Lincoln Book Shop, Inc., Chicago, Ill.

I would appreciate your response to the following inquiries:

Has the IRS ever contacted you with respect to Mr. Nixon's alleged gift of papers to the United States in 1969?

On what date did you complete your description of that alleged gift?

What is your understanding of the papers delivered on March 26 and 27, 1969, that were not included in the gift description?

What was the selection criteria, and were the unincluded papers of the same quality as those in the alleged gift?

LOWELL WEICKER, Jr.,
U.S. Senator.

EXHIBIT 24

U.S. SENATE,
COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES,
Washington, D.C., November 28, 1973.

MR. ARTHUR F. SAMPSON,
Administrator, General Services Administration, Washington, D.C.

DEAR MR. SAMPSON: I would appreciate your responding to one additional matter with respect to the transfer of personal papers to the Archives by Richard M. Nixon in 1969.

Has the Internal Revenue Service, between January 1, 1972 and the present time, contacted GSA or the National Archives and collected all the relevant details and evidence wtih respect to the March 26th and 27th, 1969 transfer of these papers?

Thank you again for your time and attention in responding to my inquiries.

With kind regards.

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

EXHIBIT 25

KALMBACH, DEMARCO, KNAPP & CHILLINGWORTH,
Los Angeles, Calif., August 22, 1973.

COOPERS AND LYBRAND,
New York, N.Y.

GENTLEMEN: In connection with your engagement to examine and report on the statement of assets and liabilities as of May 31, 1973 of our clients Richard M. Nixon and Patricia R. Nixon, you have requested our opinion respecting the gift of certain pre-Presidential private papers of Richard M. Nixon to the United States of America on March 27, 1969 and the treatment of such contribution as a deductible item for income tax purposes as claimed on the Federal income tax returns filed by the clients for the years 1969 through 1972.

In connection therewith, we have made a factual examination of the circumstances of the transaction, the law applicable thereto and such other and futher matters as we have deemed pertinent to the inquiry and to the delivering of this opinion, and based upon such examination and the applicable law, it is our opinion that on March 27, 1969, the client made a valid gift to the United States of America of certain of his personal private papers having at the date of such gift a fair market value of $576,000; that deductions claimed by the said taxpayer on his Federal income tax returns for the calendar year 1969 were in all respects proper and valid; that the facts and circumstances of the gift were fully disclosed in the 1969 return as filed; that subsequent deductions for those allocable portions of the market value of the gift claimed by the taxpayer in subsequent federal income tax returns filed for the calendar years 1970, 1971 and 1972 were and are proper and valid deductions against income.

Our examination of the facts and circumstances of the transaction show that immediately prior to March 27, 1969, the taxpayer declared an intention to make a gift of the subject private papers to the people of the United States and that at his direction, his personal counsel, Edward L. Morgan, directed and supervised the removal of such private papers from the taxpayer's personal dominion and control at the Executive Office Building, Washington, D.C., and caused the same to be delivered to the National Archives in Washington, D.C. on said date where said materials have remained for an uninterrupted period. At all times subsequent to March 27, 1969, the materials constituting the subject matter of the gift were under the exclusive dominion and control of the National Archives. On or about April 6, 7, and 8, 1969, the material constituting the subject matter of the gift was examined and segregated from other materials by an appraiser duly appointed by the taxpayer to appraise the market value of the said papers, and the same thereafter were maintained, cataloged, segregated, sorted and identified by members of the staff of the National Archives in accordance with filing and cataloging procedures established by the National Archives and as to which the taxpayer had no element of control. The materials constituting the gift thereafter were, after a period of time extending from April 6, 1969 through March 27, 1970, individually itemized and appraised by the appraiser, and as a result of said appraisal, the market value ascribed to the gift was certified to by an affidavit executed by said appraiser on April 6, 1970.

While, in our opinion, the law is clear that an instrument of deed is not a necessary requisite to a gift of personal property, the duly appointed and constituted attorney-in-fact and agent of the taxpayer did on April 21, 1969 execute an instrument of gift reciting and declaring the intent of the donor to make such gift; that said gift had in fact

been made on March 27, 1969 and the subject matter thereof delivered to the National Archives. The instrument contained a clause reserving to the donor only a right of access to himself to inspect and copy the materials. In our opinion, the law is clear that the reservation of such right of access for inspection and copying by the donor did not constitute a sufficient retention of ownership in the material to anyway vitiate the gift.

Very truly yours,

FRANK DE MARCO, JR.

EXHIBIT 26

PRESIDENT'S FINANCIAL DISCLOSURE MESSAGE, DECEMBER 8, 1973

GIFT OF PAPERS

In 1969, President Nixon directed his lawyers to take all necessary steps to make a gift of part of his papers to the United States of America through the National Archives. On March 27, 1969, large crates of his papers were delivered to the Archives. Included were a large volume of paper, books and other memorabilia of his career prior to becoming President, including many of his Vice Presidential papers. On April 8 and 9, 1969, Mr. Ralph Newman, a recognized appraiser of documents, visited the Archives and designated the papers. He also pointed out the items he believed the President should retain. Mr. Newman returned later to the Archives and made a final appraisal of a fair market value of the papers comprising the gift, setting the value at $576,000.

In making the gift, President Nixon was following the tradition of his six predecessors—Hoover, Roosevelt, Truman, Eisenhower, Kennedy and Johnson—all of whom made a gift of their papers to the United States.

A question has arisen in the case of President Nixon, however, because in December, 1969, an amendment was passed retroactive to July 25, 1969, disallowing such deductions and some critics question whether technical requirements relating to the intended gift were sufficiently completed before the expiration date.

President Nixon was and is advised by his attorneys that the gift met the deductibility requirements of the law. Accordingly, in the tax years 1969–1972, he has taken deductions totaling approximately $482,019. As the gift is valued at $576,000, he is still entitled to additional deductions of $93,981.

The examination conducted earlier this year by the Internal Revenue Service of President and Mrs. Nixon's return for the years 1971 and 1972 included a review of the gift. Upon completing this review, the IRS raised no questions about the deductions taken. Nevertheless, because questions have been raised about the procedures followed in making the gift of the papers to the United States, the President is asking the Joint Committee on Internal Revenue Taxation to review those procedures and to pass upon the validity of his tax deductions. The President will abide by the decision of that Committee.

Additional details relating to the gift transaction can be found in the following documents being released today:

Appraisal by Ralph G. Newman, President of Abraham Lincoln Book Shop of Chicago, Illinois, of papers of Richard Milhous Nixon, consisting of 600,000 items, as of March 27, 1969 at a valuation of $576,000, supported by Newman affidavit and statement of his qualifications as an authority in the field of such appraisals.

Letter from Kalmbach, DeMarco, Knapp & Chillingworth to Coopers & Lybrand stating their opinion regarding the deductibility for tax purposes of the President's gift of pre-Presidential papers.
