

Who Owns the President's Papers?

President Nixon's unprecedented disclosure of his personal financial records early this month has not allayed the suspicion that he has reaped unwarranted gain while in office. Last week new controversies erupted:

► Former Internal Revenue Service Commissioner Sheldon Cohen, a Democrat, said that the President apparently violated IRS rules by improperly listing his \$50,000 annual expense account as additional salary. Counted that way, and not as an expense allowance, the sum increased not only Nixon's adjusted gross income but also the size of the maximum tax deduction he could take for charitable contributions. Tax laws limit the maximum charitable deduction to a fixed percentage of adjusted gross income. In three of the four years affecting Nixon's recent tax returns, he would be allowed charitable deductions up to 50% of that income. Thus the larger Nixon's adjusted gross income, the more quickly he could claim as a deduction all the \$576,000 valuation placed on the vice-presidential papers that he donated to the National Archives. An accountant commissioned by the *Washington Post* last week estimated that from 1969 through 1972 the President saved \$13,000 in taxes (an amount equal to 17% of the \$78,651 that he actually paid).

► There was new criticism of the Government-paid improvements on Nixon's homes at Key Biscayne, Fla., and San Clemente, Calif. Last week the General Accounting Office, the congressional watchdog agency that monitors spending, charged that some of the \$1.4 million spent at the two residences increased the value of the property but did little to protect the President. GAO officials maintain that Nixon should personally have borne at least part of the nearly \$24,000 for landscape maintenance, \$19,300 for building a private railroad crossing and cabana, \$8,400 for

property surveys, \$10,600 for driveway paving and \$3,800 for a new sewer line.

Above all, politicians, tax lawyers and historians continued to question the propriety—if not the legality—of Nixon's claiming a big tax break for donating his vice-presidential papers to the National Archives. The papers had been prepared or gathered while he was on the public payroll, primarily using public facilities and the services of other federal employees. To the non-expert, Nixon's papers might seem to contain a lode of trivia. Occupying 825 cu. ft., they include 414,000 letters, 87,000 items relating to public appearances (including speech texts), 27,000 invitations (along with acceptances and refusals) and 57,000 items relating to foreign trips. Nonetheless, this material could well be valuable to historians who one day will attempt to piece together a profile of America in the 1950s.

F. Gerald Ham, president of the Society of American Archivists, insists: "I think it is a fiction that these are private papers. The very great bulk of these papers originate from one activity only—that of serving in a public capacity. I think they should be public papers." A 1969 study for the American Historical Association put the case even more strongly. The association said that the concept that a President's papers became his property after leaving office was "a lingering vestige of the attributes of monarchy, not an appropriate or compatible concept... for the head of a democratic state."

Nixon, however, has the weight of precedent on his side. Presidents since George Washington have treated documents from their days in office as their own, taking them home with them on leaving office. In the 19th century, the Government had to pay nearly \$200,000 to get back some of the papers that were in the hands of various descendants of

Washington, the two Adamases, Jefferson, Madison and Monroe.

The heirs of Abraham Lincoln held his papers until his son Robert Todd Lincoln gave them to the Library of Congress, stipulating that they remain sealed until 1947—as they were. Thus there is even a precedent for the requirement that Nixon attached to the gift of his papers—that they be withheld from the public until after he leaves office. This stipulation, however, has led to criticism that Nixon is not entitled to claim a deduction for the papers until he relinquishes full control over the gift.

Nor is Nixon unique in affixing a price tag to his papers and taking a tax deduction. Platoons of onetime Government officials have turned over papers to historical societies and university libraries. Senator Hubert Humphrey donated more than 2,700 boxes of materials to the Minnesota Historical Society, and took tax deductions of \$199,153 for those papers dealing with his vice presidency. Former California Governor Pat Brown got a \$105,000 tax write-off for giving his papers to the University of California. Former U.S. Ambassador to India John Kenneth Galbraith gave some papers to the Kennedy Library, and took what he now feels was a "meager" deduction of \$4,500.

Some public officials have not viewed the mementos of their official days as negotiable paper. Though the record is not entirely clear, it seems that of all Presidents, only Nixon and Lyndon Johnson personally sought monetary gain from their papers. Minnesota's Governors have traditionally donated their papers to the state's historical society and have not benefited financially. Many Wisconsin officials have contributed their papers to their state's historical institutions. Adlai Stevenson gave his papers to Princeton and sought no tax advantage.

Slim Pickings. There are many officials, however, who have kept their memos, letters, speeches and other papers in their families unless given a financial incentive to part with them. Thus the rule that permitted tax deductions proved a boon for historians. But a law passed in 1969 made the historians' pickings slimmer. Congress, seeking to bar Lyndon Johnson from reaping continued tax benefits from the private papers of his political offices, abolished tax deductions for donations of papers.

The elimination of this incentive has seriously cut the flow of historical documents. Yale University Archivist Herman Kahn complains: "People are sitting on their papers in the hope that the law will be changed." Except for those donated in a spirit of patriotism or altruism, it seems, many historical documents will remain stuffed in former officials' attics and scrapbooks until those papers can again earn a tax deduction—or until a new law declares that papers produced by officials serving the public belong to the public.

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