

Nixon Papers Gift Attorney

By Lou Cannon

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The attorney who prepared the back-dated deed for President Nixon's intended gift of pre-presidential papers faces a clouded future in the wake of a congressional report which flatly disputes his "best recollection" of the issue.

Los Angeles lawyer Frank DeMarco already is confronted with the possible loss of his notary license in California for the back-dating episode, an event that could lead to disbarment proceedings. He has recently been closely questioned by special agents of the Internal Revenue Service investigating the possibility of fraud in the preparation of President Nixon's tax returns.

And while the White House maintains that there is "no fraud whatsoever" associated with the preparation of these returns, its Wednesday night statement

in which Mr. Nixon agreed to pay \$467,000 in back taxes and interest attempted to shift the responsibility for any irregularities to the President's attorneys.

"Any errors which may have been made in the preparation of the President's tax returns were made by those to whom he delegated the responsibility for preparing his returns and were made without his knowledge and without his approval," the statement said.

For weeks, DeMarco has been saying privately that he expected the White House to try to blame him for any errors in the returns.

White House Deputy Press Secretary Gerald L. Warren did precisely that Thursday when, in response to questions at the daily White House briefing, he disputed a statement which DeMarco had given to the Joint Congressional Committee on Internal Revenue Taxation. This statement,

cited in the report, asserts that President Nixon made a cursory examination of each page of his 1969 tax return and said "that's fine" after most of the pages.

Warren said the President merely had "chatted" with DeMarco and with his since-convinced personal attorney, Herbert W. Kalmbach, and had not gone over the return page-by-page.

Informed of this account, DeMarco told the Los Angeles Times: "What we did was to go over the return, page by page."

The joint committee's staff report did not reach a conclusion on what DeMarco and Kalmbach actually did in their April 10, 1970, meeting with Mr. Nixon where they presented him with his 1969 return.

But the committee report flatly disputes one of DeMarco's key contentions in the long controversy over the tax deduction taken by Mr. Nixon for the gift of his pre-presidential papers.

DeMarco contended that he placed a telephone call to Chicago appraiser Ralph G. Newman in the first week of April 1969 asking him to begin segregation of the Nixon papers, which had been transferred the month before to the National Archives.

In an eleventh-hour plea to the joint committee staff last Sunday, DeMarco insisted on his version of events.

Instead, the committee staff accepted the accounts of Newman and of National Archives officials that the initial telephone call to the appraiser was made in October. The difference is crucial, since July 25, 1969, was the last legal date on which a tax deduction could be claimed for the papers.

If DeMarco did not even call Newman until October with a request to segregate the papers intended as a gift, there is no way that it could be a tax deductible contribution.

Faces Cloudy Future

DeMarco's account originally was based on Newman's own recollection.

Newman, however, has long since abandoned his original story. He did so, according to the staff report, because his own files indicated that he had first talked to DeMarco in October and because of the insistence of Sherrod East, a retired archivist hired by the National Archives as a consultant, that Newman had not worked on the papers on an April 8 visit to the archives.

"Mr. Newman told the staff that Sherrod East's insistence that he neither worked on nor saw the undeeded material in April caused him to doubt his belief because Mr. East is a man 'who has no ax to grind and would be truthful,'" the report said.

Subsequently, Newman produced a copy of an Oct. 31, 1969, letter to DeMarco, which said:

"It was good to have an opportunity to speak with you this morning and I look forward to seeing you in Washington, if you can make it. Otherwise, I am sure we will be having several telephone conversations after my investigation of the archives."

DeMarco, in rebuttal, provided the staff with undated handwritten notes that appeared to indicate that Newman would be at the Archives the first Monday in April. But the staff was not convinced.

"There are several reasons to suggest that Mr. Newman is correct, not Mr. DeMarco," the report said.

"First, Mr. Newman did not go to the archives on any Monday in April. . . . Second, on Nov. 3, Mr. Newman actually did those things that the notes indicate he said he would do. . . . Third, Mr. DeMarco's notes state that he was to tell Mr. Morgan to inform the National Archives that Mr.

Newman was to be there on Monday. For Mr. Newman's April 8 visit to the archives, arrangements had been made in writing. . . . No right to access was prepared for the Nov. 3 visit, which means that arrangements for Mr. Newman's access to the papers must have been made by phone."

From this analysis and other testimony the staff concluded that "there was no segregation or designation of any portion of the papers as a gift prior to July 25, 1969, and that the evidence strongly suggests that Mr. Newman was not even hired by Mr. DeMarco to begin work on the second gift until Oct. 31, 1969."

The Kalmbach-DeMarco law firm, which was asked to represent Mr. Nixon by deposed White House chief of staff H.R. (Bob) Halde- man, has been heavily involved with Mr. Nixon's financial affairs throughout his presidency. DeMarco said in a letter to the joint

committee that this involvement began in early March, 1969, "when we were advised that the President desired to find a property in the Southern California beach area to make his home upon retirement from the presidency."

DeMarco said he reviewed the title reports, surveys and physical aspects of the San Clemente property that Mr. Nixon purchased while Kalmbach, who has since pleaded guilty to secretly raising millions of dollars in an illicit White House fund-raising operation, handled negotiations with the sellers.

In an interview with the Los Angeles Times, Nixon accountant Arthur Blech said that he had wanted to advise the President to pay more taxes in 1970 and 1971 but was prevented by DeMarco from seeing the President.

This was subsequently confirmed by DeMarco.