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The Tax Tale Thickens

By Anthony Lewis

WASHINGTON, Dec. 19—The financial information released by President Nixon has raised one especially puzzling question among tax specialists. It relates to his $576,000 "gift" of papers, allegedly made in March, 1969, and used thereafter as the basis for large tax deductions.

Mr. Nixon had given some papers to the Government before—on June 30, 1969, in order to put forward legal way the income tax deduction for gifts of papers which, from the official of the General Services Administration signed on behalf of the Government, he could not in fact make until April 1969. What is not clear is why anyone from the G.S.A. thought that gift was made in March.

Why would anyone think that a gift to be made in December would be made in March? Was it a mistake? Was it a deliberate attempt to deceive the Internal Revenue Service? Or was it a deliberate attempt to deceive the public, through Congress, the courts and the press? Was the conduct that may have involved criminal deception amounting to criminal tax evasion?

The Cooper thesis, as it has come to be known among tax specialists, is obviously a most serious allegation. Examining it with due care requires going through some details of the 1969 papers episode.

On March 26th and 27th, 1969, boxes of Mr. Nixon's presidential papers arrived at the National Archives. No explanation was given for their delivery. They were put in an area reserved for the temporary storage of officials' papers pending the permanent collection.

On April 21, 1969, Edward L. Morgan, a White House lawyer, signed a deed purporting to give to the United States those papers "in the custody of the Archivist." Lawyers usually follow forms in preparing a second gift of similar property they would simply retype the first deed. The 1969 deed did, mostly follow the one of Dec. 30, 1968, but it entirely omitted one crucial paragraph of the earlier document, a clause calling for an official of the G.S.A. to sign and [illegible]

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What can explain the peculiarities of that deed? Professor Cooper says they must have been a response to the particular legislative situation in 1969.

From the beginning of that year, tax reform was a big issue. On April 21—the very day that Mr. Morgan signed the deed—President Nixon spoke to a reform message to Congress. Among other things, it called for change in a provision allowing taxpayers to deduct the full value of appreciated property given to charity. One exception was property, though appreciated, given to a presidential library. [illegible]

The Senate, in passing its version of the reform bill, made the change effective as of property transactive to Jan. 1, 1969. The final version, which did not emerge from a House-Senate conference until December, made that provision retroactive only to July 25, 1969.

In short, the President and his lawyers faced uncertainty about whether the value of gifts of property would be made retroactive for all or parts of 1969. Professor Cooper suggests that they did not want to make a gift of papers and then find that they got no tax benefit—even they tried to keep their options open.

They delivered some papers to the Archivist in a way that made no commitments. They wrote a deed that had provision for a U.S. A. signature and thus could be kept secret, as it was.

If Congress made the reform retroactive to Jan. 1, 1969, then they could destroy the deed. Mr. Nixon would still own the papers and in due course could just send a truck to the Archives and pick them up. But if Congress picked a later effective date for the reform, as it did, he could produce the deed and say that a gift had been made before the deadline.

That is George Cooper's explanation of the mystery. If his suspicions are correct, if such a "scheme was afoot," he argues, "then a conscious deception was involved which seems clear criminal tax evasion." Legally, that conclusion would require evidence of intent, presumably testimony from one or more of those involved.

The Joint Congressional Committee on Internal Revenue Taxation, which is now making a thorough examination of the President's returns, may well want to question Mr. Morgan and Mr. De Marco about the mystery of the 1969 deed. In any case, it is to the committee that Professor Cooper should look when he says: "There is a question of tax conniving in the Nixon record that goes beyond ordinary avoidance and deserves to be investigated [illegible] willful evasion."