

Who Owns the Papers of a President?

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Presidential papers have a way of creating awkward questions about who owns them.

When President Franklin D. Roosevelt died in 1945, his heirs had to go to court to establish the answers. Who owned the FDR papers? Did anyone owe taxes on them?

When President John F. Kennedy was killed in 1963, his family was left with the same questions. They got a ruling from the Internal Revenue Service.

In both instances, the prevailing opinion was that each President had effectively given his presidential letters and documents to the American

people before his death—though no deed of gift was executed, and no provision was included in his will.

These precedents may not offer much comfort to President Nixon in his present troubles over the gift of his vice presidential papers to the National Archives. He is accused of backdating the deed of gift in order to qualify for a \$576,000 tax deduction—after the law was changed to prohibit tax benefits from such donations.

But the Roosevelt and Kennedy papers, now housed in government-run presidential libraries, do demonstrate the ambiguity which surrounds the private ownership of a man's "public papers." And the Nixon case is likely to re-open the issue.

Congress thought it was settled four years ago when it passed a law prohibiting any taxpayer from cashing in on the gift of his private letters or original manuscripts to some public repository like the National Archives or the Library of Congress or the homestate historical society. But problems remain.

For instance, though it is not widely known, a public figure like a congressman or even a President can still squeeze a financial gain through the tax laws by giving away his official papers. It takes a little arranging, but if the public official gives portions of his papers each year to members of his family—his wife or children—they can

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then make the donation and claim the full value of charity the full value of a charitable deduction on their income taxes.

In the meantime, libraries and historians, not to mention artists and authors, are upset because the 1969 loophole closer has dried up contributions. Poets and novelists are sitting on their manuscripts, hoping the law will be changed. So are congressmen and senators, who also used to take advantage of the tax break.

The Library of Congress, which used to get a steady flow of congressional donations, has not received any Capitol Hill documents since 1969, with the exception of a last installment sent by Rep. Emanuel Celler, who was defeated last year after a 40-year career.

Meanwhile, there is always the open marketplace — as Mr. Nixon has suggested. Among the experts, there is general agreement that he might very well sell his papers for as much as he gained from the tax deduction — but it would be an embarrassing spectacle. From Hoover to Johnson, all documents were donated and are now stored in government libraries. It might seem at bit crass if the future Nixon papers are offered at auction.

The disputed Nixon papers, which range over his eight years as Vice President, contain 600,000 items, many of which are trivial, the "bread and butter" letters of politics. Even so, according to one expert, collectors would probably pay a dollar or two just to get the signature on a thank-you note.

"People collect presidential signatures," explained Gabriel Austin of New York's Parke-Bernet galleries, "so any signature is worth something. Then the trick is to find real signatures—instead of a roopen's or a secretary's. Nixon's wouldn't be worth as much as some others because he's still around to do it. Nothing helps like being dead."

Historians cannot judge the scholarly value of the papers without inspecting them and, as long as he remains President, access to Mr. Nixon's papers requires written permission from him. Similar restrictions are commonly invoked when papers are first donated. According to the tax appraisal, the Nixon gift includes these categories:

Vice President Nixon's general correspondence, Aandahl through Zweing, 414,000 items. An appearance file of 87,000 items, which presumably includes speech manuscripts. Eight years of invitations and turn-downs, 27,000 items.

Foreign trip files as Vice President, 57,000 items. Plus three boxes on the visit of Nikita S. Khrushchev to the United States in 1959.

Francis L. Loewenheim, a presidential historian from Rice University, believes that, even if the Nixon papers contain little that would be useful for academic work, they would still probably find an eager market among university libraries. "A lot of universities would be interested in having them just for the prestige," he said.

When you think about it, "papers" are one of Washington's most important products—the reams of documentation, secret or otherwise, that lie behind government decisions. For Presidents, they have become America's equivalent of the crown jewels.

But the persistent question is whether any public official, including a President, has the right to walk away from office with documents produced on government time, by government employees, even on government stationery. Do the jewels belong to the king or to the people?

History seems to say that presidents, like kings, can do as they please. At least a lot of Presidents have. When Zachary Taylor died in office in 1850, his family shipped his letters home to the Taylor plantation in Louisiana. When the Union Army marched through a few years later, the Yankees burned the plantation—and the presidential papers.

Lincoln's papers were turned over to the Library of Congress by his son, Robert Todd Lincoln, but with the stipulation that the letters would be sealed until 1947. Most of Chester A. Arthur's papers were destroyed. Warren G. Harding's disappeared mysteriously, then turned up years later in his hometown of Marion, Ohio.

M. B. Schnapper, editor of Public Affairs Press in Washington, argues that most 19th Century Presidents or their families freely turned their papers over to the government without any tax break or remuneration—which Schnapper sees as a precedent for a congressional declaration that these presidential documents belong to the American people in the first place, not to any individuals who serve temporarily in the Oval Office.

Schnapper is offering a \$1,000 reward for anyone who can find a federal statute "stating that any public official has the right to treat official documents as private property . . ."

"This is where the emperor's clothes should be exposed," said James MacGregor Burns, a scholar whose presidential studies have influenced presidents. "We've all

come to accept it. Here are papers by a man paid a government salary, done on government time, on government business. Why do these end up as personal papers?"

But Herman Kahn, archivist at Yale, insists that historical precedent is firmly on the side of private ownership. Until FDR, Kahn said, nearly all presidents "took their papers home with them." In some cases, the government later bought the collections back from presidential descendants. In other instances, the White House papers were lost or deliberately culled to remove any embarrassing correspondence.

FDR changed that. As early as 1938, he announced his intention to donate all of his presidential papers to the public for a library to be established at his home at Hyde Park, N.Y. Lots of documents were shipped to Hyde Park in preparation for that day.

Yet Roosevelt died without preparing any legal documentation of that gift. The executors of his estate felt uneasy enough about the property to go into the Dutchess County court and ask for a declaration on who owned it. The court held that FDR had "constructively" given the papers to the government by his repeated promises.

"There was an uncanny similarity between President Kennedy's death and President Roosevelt's," said archivist Kahn, who served at both the Hyde Park library and the National Archives in Washington.

Kennedy had already deposited his congressional and senatorial papers with Archives and announced plans to donate all of his presidential files as well to a future Kennedy library. Three weeks before his death, Kahn discussed the library plans with the president of Harvard.

But again, there was no piece of paper that gave the 22 million documents to the U.S. government. A legal memorandum dated Feb. 25, 1965, signed by Jacqueline Kennedy and the two brothers, Robert and Edward, donated the papers to Archives—effective Nov. 22, 1963, the day Kennedy died. The memorandum noted that JFK "had said any times both publicly and privately that it was his intention to place certain of his papers and other historical materials" in a presidential library.

An agreement was also signed between IRS and the Kennedy estate on Sept. 30, 1964, which made the same point. The document is not available but, according to one source, it stated that the Kennedy papers had no "market value" since the papers were already designated as a gift at the time

of his death. Therefore, there were no tax consequences.

It is impossible to say what that meant in terms of tax liability for the family without inspecting the tax return. Presumably it removed any possible liability for inheritance tax. On the other hand, the heirs also gave up any tax deduction they might have claimed for the charitable contribution. They passed up a chance to reduce family income taxes by the means of spreading out the deduction over a period of years, as Mr. Nixon has done.

In his case, President Nixon might also argue that he "constructively" gave his vice presidential papers to Archives in time to claim the tax deduction—except for two differences. First, he is still alive. Second, his lawyers did prepare a deed of gift. The question is whether that deed was actually prepared and the Nixon gift legally executed before July 25, 1969, the day on which the tax-deduction provision ended.

There's no question that the Nixon papers were in storage at Archives in time—but so were other Nixon documents that he has not given to the public. The deed is dated before the deadline, but it was not delivered until long afterwards. The President himself did not sign it. Neither did anyone at Archives, a customary procedure to acknowledge acceptance. The current explanation at Archives is that the deed may be crucial to tax lawyers, but it is irrelevant to archivists.

"Our position is that we have papers and we have a deed and the papers belong to us," said Richard Q. Vawter, a spokesman at the General Services Administration, the parent agency. "Obviously, this involves different viewpoints. What might be acceptable for income tax purposes is between the President and the IRS. For our purposes, it is a valid gift."

None of this would have caused much of a stir except that Sen. John Williams, the Delaware Republican, now retired, had an eagle eye for tax frivolities. Williams set out in 1969 to prevent a Democratic president, Lyndon B. Johnson, from cashing in on his papers. But the compromise amendment that Congress enacted (and Mr. Nixon signed) covered everybody—not just politicians.

"It's a real crime," said Roy P. Basler, chief of manuscripts in the Library of Congress. "Of course, what happened is that old Senator Williams in his effort to get LBJ used a shotgun and shot down everybody else—including the Republican gentleman who succeeded him."

Until then, the traffic in "papers" and tax deductions was quite heavy, though hard to measure. Jerry Landauer of the Wall Street Journal did an exhaustive survey in 1969 and found many prominent figures who were doing well by doing good.

Sen. Hubert Humphrey, for instance, was making annual shipments to the Minnesota State Historical Society, a practice he has continued in recent years despite the tax-law change. His total is more than 2,000 boxes, dating back to his days as mayor of Minneapolis. Maurice Stans gave 26 boxes of his papers to the Minnesota archives in early 1969, perhaps because he is a native of Shakopee, Minn.

Elsewhere, ex-Rep. William Miller, the 1964 GOP vice residential candidate, took a \$26,000 deduction for his gift to Cornell. Supreme Court Justice William O. Douglas sent his papers to the Library of Congress. Eugene Keogh, the former Brooklyn congressman, saved himself \$7,500 by giving his stuff to Syracuse University. Pat Brown, the former governor of California, claimed \$105,000 deduction on his gift to Berkeley.

Over the years, Archives has received papers from a diverse list of presidential aides and cabinet members, though it doesn't know whether any of them claimed tax deductions. A sample list includes Rexford Guy Tugwell and Samuel Rosenman under FDR, Clark Clifford and Dean Acheson under Truman, William Rogers and James Hagerty under Eisenhower, Orville Freeman and John Kenneth Galbraith under Kennedy, Henry Fowler under Johnson.

But, aside from the politicians, the business of tax deductions was really important to literary type—poets, novelists, historians, even some journalists who made a regular thing of donating their correspondence or perhaps a first-draft manuscript.

"The gift of papers has almost dried up," said Roy Basler of the Library of Congress. "Everybody says, if they don't change the law, I'll just leave them to my widow and see what she wants to do with them. The place it hurts most is, not so much with the public figures, but with the literary figures. Poets do not make a

helluva lot of money from their poems but, if they're teaching somewhere and they can take a \$1,000 deduction from their manuscripts every year, that can make a lot of difference."

Herman Kahn at Yale agrees. "It's had a very serious and deleterious effect," he said. "People are sitting on their papers in the hope that the law will be changed. Or they are offering their papers for sale or picking out the best ones and selling them."

An effort to change that was passed by the Senate last year, but the measure died in conference. The tax amendment, sponsored again this year by Sen. Frank Church, would permit artists and writers and other creative types to deduct up to 50 per cent of a manuscript donation—but it would still bar politicians

from claiming any tax break.

Actually, according to Basler and others, there are still ways to cash in, the 1969 amendment notwithstanding. According to the Joint Committee on Internal Revenue, a public official or a novelist or anyone else is prohibited from claiming a tax deduction on "papers" that he or she originated. But nothing in the law prevents them from selling or giving away those "papers" to someone else, friends or family. That second owner could then donate the "papers" to a library and take the full tax deduction on his income-tax return.

Thus, if Mr. Nixon were serious about selling his papers, the buyer could then give the documents to the U.S. government and claim the deduction. Or if a congressman parcelled out his

papers each year to his children, the gift would be tax-free so long as it was under \$3,000 per year. Some day the kids could convert the nestegg of "papers" into tax savings for themselves.

If that sounds far-fetched, variations are already taking place. Kahn of Yale described one approach in which a public figure unloads his documents.

"Usually what happens," he explained, "is that friends of the man trying to sell the papers get up a kitty among themselves which they give to the university in order to buy the papers. Rarely does it happen that a university would make the purchase out of its own resources."

The politician gets the money. His friends get the tax deduction. The librarians get the papers. And the general public gets the tab.