

The dispute over President Nixon's large and legally questionable tax deduction for the donation of his Vice-Presidential papers to the National Archives raises once again the unresolved issue of the ownership of the papers of Presidents and other public servants.

Such papers are of inherent interest and therefore of taxable value only because the individual involved held public office for which he was paid a salary out of public funds. In the case of Presidents and many lesser officials, these papers are not personal in any true sense because they were generated by the flow of public business and were prepared in Government offices with the help of publicly paid secretaries and assistants.

Yet neither law nor custom is clear on what is proper practice. George Washington and most of the other early Presidents took their papers with them when they left office. Some of these letters and documents were subsequently donated to libraries and historical societies, a few were purchased by the Government from heirs, and still others became scattered and lost.

Beginning with Andrew Jackson, however, a dozen Presidents or their heirs gave their papers to the Library of Congress without receiving any financial compensation. That is the policy that all Presidents and public officials ought to follow and that Congress ought to mandate by law.

Herbert Hoover began the modern practice of conveying Presidential papers to a special library when Stanford University and later the Hoover Library at West Branch, Iowa, became the depository for his papers. But this practice is inconclusive on the question of establishing personal ownership of Presidential papers or obtaining a tax break for donating them. Thus, when Franklin D. Roosevelt planned his library at Hyde Park, he treated his papers as the property of the United States and, after his death, the Surrogate Court of Dutchess County upheld that interpretation. Nevertheless, Presidents Eisenhower, Johnson and Nixon—as well as Supreme Court justices, members of Congress, and others—have taken sizable tax deductions for the "gift" of papers that, strictly speaking, were public documents.

The change in the 1969 tax law made it impossible for any taxpayer, not just a public official, to claim a charitable deduction for the gift of papers on which he holds a common law copyright. That change is unjust to private citizens, notably authors and artists, whose papers may have considerable value and who produced these papers by their own efforts—not on Government time or with the assistance of Government employees. As so often happens, the tax-writing committees of Congress created a new injustice by refusing to face up squarely to an old injustice—in this instance, the perversion of public documents by public officials for private pecuniary advantage.

Clearly, there is need for a law expressly establishing the Government's proprietary right to speeches, letters, memoranda and other documents compiled by public officials on Government time and at public expense.