

Walter Pincus

Mr. Nixon's Papers: The Tax Question

Investigations into various aspects of President Nixon's income tax returns are now being undertaken by the Internal Revenue Service, the Joint Committee on Internal Revenue Taxation, the House Judiciary Committee (studying impeachment) and the State of California. One particular point that deserves attention is the questionable manner in which Mr. Nixon's tax deductible "gift" of vice presidential papers was made. As with almost every phase of the Watergate affair, there seem to be substantial differences between what the President and his aides say happened, and what can be pieced together using a variety of sources.

Ralph G. Newman is a respected appraiser of historic books, manuscripts and archives. Edward L. Morgan is now an assistant secretary of the Treasury but until this year he had served in the White House as a deputy counsel to President Nixon. Frank DeMarco is a California lawyer who, since 1969, has handled Mr. Nixon's taxes. Each is unknown to most Americans, but the chances are growing that as Mr. Nixon's taxes are thoroughly investigated in the coming months, these gentlemen will become as recognizable as Rose Mary Woods and J. Fred Buzhardt, whose fame spread during the inquiry into the 18-minute gap on the White House tapes. As with the tapes, Mr. Nixon's taxes and particularly the tax-deductible gift in 1969 of pre-presidential papers valued at \$576,000, require a suspension of disbelief. And as with the tape gap, there is the possibility that a criminal act was involved.

In his Nov. 17 appearance before the Associated Press managing editors, the President made one of his typical, misleading overstatements. Discussing why he paid less than \$1000 in taxes on an earned personal income of over \$250,000 in 1970 and 1971, he said it was "not because of the deductions for . . . gimmicks"; it was because Lyndon Johnson "came in to see me . . . and he told me that under the law, up until 1969, presidential and vice presidential papers given to the government were a deduction and should be taken, and could be taken as a deduction from the tax." Having credited the original idea to Johnson, Mr. Nixon went on to say he turned his papers "over to the tax people . . . They appraised them at \$500,000." So when the tax people prepared his returns, they "took that as a deduction." But as can be seen from an inspection of those returns, as well as documents placed in the Congressional Record by Sen. Lowell Weicker (who has run his own investigation) and interviews with various participants, the matter of the tax-deductible papers is far more complex than the President's words would suggest.

Sometime after his election in 1968, Mr. Nixon and then President Johnson apparently did discuss the donation of papers. Johnson had since 1965 been availing himself of this "gimmick" to lower his taxable income. It was a simple thing: a public official had papers; he offered them to an educational institution or the government; the recipient put them in order and someone was brought in to appraise their value. Then, based on the appraised value and the donor's taxable income, all the papers were turned over at once, or given over a number of years with the deduction spread out.

Many officials have used this gimmick. And so in December 1968, Mr. Nixon or one of his aides got in touch with Mr. Newman, whose place of business is in Chicago. Newman had performed similar services for President Johnson. Around Dec. 20 Mr. Newman went to New York City and reportedly identified donatable materials belonging to Mr. Nixon which were kept in the offices of Nixon's law firm and in a New York warehouse. Since the end of the tax year was fast approaching, a deed to this material was drawn up, supplemented by a list of 21 specifically identified cartons of papers, letters, books, tapes and memorabilia from various parts of Mr. Nixon's career. The deed turned the listed material over to the U.S. government but reserved to the donor, Mr. Nixon, the right to limit access to the papers during his presidency to persons specifically designated by him. On Christmas Day 1968 Mr. Nixon signed the deed. The materials were said to have been delivered to the Federal Records Center in New York City Dec. 30, 1968, and accepted in writing by an official of the General Services Administration, which operates the National Archives and the presidential libraries.

Nothing more was done about these 1968 papers until mid-March 1969, when Mr. Nixon's tax returns were being prepared and a fuller description and appraisal of the 1968 gift were needed. On March 20, 1969, the 1968 papers were brought to Washington from New York and stored in stack area 14-W4 of the National Archives Building. The next day the assistant archivist for presidential papers, Daniel Reed, informed Mr. Newman that the 1968 papers were being readied for examination by him in Washington.

That same week a retired member of the National Archives staff, Sherrod East, was asked to return as a consultant to help organize the pre-presidential Nixon papers. In the preceding

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months hundreds of cartons had been gathered together from warehouses around the country and even the garage of the President's brother, Donald. Initially they had been crowded into a room in a federal building a block from the White House. On March 25, 1969, it was decided to move the approximately 500 cartons and 17 file cabinets to stack area 19-E3 in the National Archives. The move took place over the next two days, but upon arrival at the Archives the cartons had to be stacked "four and five high, in no discernible order," according to a report Mr. East later made. "Our problems were further complicated by the indiscriminate mixing of all kinds of office property, memorabilia, books, mementos, audiovisual materials, etc., with the records of a long and varied public and private career," Mr. East added.

Before he and his staff could get to work sorting all this out, Mr. East was, he wrote, "diverted to perform priority arrangement, boxing and labeling of some 45 cubic feet of (Nixon) papers which had been hurriedly separated from his storage files and, deeded to the U.S. government before Dec. 31, 1968."

Mr. Newman arrived in Washington April 6, 1969, and stayed through April 8. In order for him to examine the

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1968 gift—which East's group had by then put in order—a special document had to be drafted by Mr. Morgan in the White House permitting "limited right to access" to Newman. Mr. East recalls escorting Newman to the 1968 material in April 1969, and either East or one of his assistants remained with him during the entire time of his inspection. "To the best of my knowledge," East said recently, "he [Newman] looked only at the 1968 material." Since the larger batch of Nixon papers were held in a different area of the building, and since East was by then trying to unpack and organize that material, he holds quite firm to his recollection.

Archivist official Reed also has no personal knowledge of Newman's visiting the stack area where the newly arrived Nixon material was stored. And he has no access letter that would have permitted Newman to examine material other than that in the 1968 gift.

In discussing his April 1969 trip to Washington with recent questioners, Mr. Newman has been vague about whether he actually saw anything other than the 1968 gift. He has recalled that a Nixon aide or lawyer, perhaps DeMarco, told him that a \$500,000 gift was being considered, so that the President would be able to carry forward a deduction of some \$100,000 from his taxes for the coming five years. Newman has said he may have made a "ballpark estimate" of the value of the newly gathered material, based on a description of the amount involved. Mr. East, who was working on the new material, says that in April 1969, when Newman was there, most of it was in unidentified cartons and packing cases; no description of contents was possible. It was East's job over the next two months to put the papers and material in order so that Newman or someone else could see what papers were there and decide what was to be done with them. As far as Mr. East knew, the Nixon material he was working on in stack area 19 was to be organized "for reference and accessioning purposes." He and his associates then proceeded to identify the series of papers contained within the boxes.

While this was going on, Congress (and the Nixon administration) was working to close the tax loophole that allowed for the donating of deductible papers. No one expected the law to be changed prior to Dec. 31, 1969.

East's work was done by the end of May, and in November 1969 Mr. Newman returned to stack 19 of the Archives to work on what was to become the 1969 gift. In that month he reportedly separated out 1,176 National Archives boxes that he valued—for tax purposes—at \$576,000. Of the material

placed in the Archives on March 26, there remained at least 16 steel file cabinets, 64 boxes of sound tapes, 47 boxes of motion picture film, 28 boxes of memorabilia and hundreds of other Nixon document boxes that have not been deeded.

In late December the Congress closed the loophole: No deductions would be permitted on 1969 income taxes for material that had not been donated prior to July 25, 1969. The President's 1969 tax plans included about \$100,000 to be deducted for donated papers. If he did not get it, he would be in a tax bind. His income that year had been inflated by \$92,445 in capital gains from the sale of his Fisher's Island stock. Without the papers deduction the President probably would have had to pay \$10,000 or more additional tax. As it was, he took a deduction of \$95,298 for the papers and wound up with a tax refund of \$35,301.

The manner in which the gift of the Nixon papers was accomplished has become the focus of investigation. On April 6, 1970, nine days before taxes were due, Mr. Newman drew up his appraisal of the 1969 gift. He said among other things that "from the sixth to the eighth day of April 1969," he or his employees did "examine the papers of Richard Milhous Nixon Part II." These were the papers which East and Reed now say Newman, to their knowledge, did not see at that time. Shortly thereafter on April 10, 1970, what purports to be a deed to the 1969 gift was delivered to the general counsel of GSA, parent agency to the Archives. That deed was dated March 27, 1969, the day the disorganized material arrived in stack area 19. The deed supposedly carried with it a list of the specific papers that made up the gift. The supposed original March 27 list is missing, and a 1970 replacement identifies the 1,176 boxes in the Newman appraisal. But as Mr. East recently noted, those 1,176 boxes did not exist as of March 27, 1969; on that date the material in them was scattered among 500 cartons and assorted file cabinets. Furthermore Mr. Newman did not segregate that material until November 1969.

Of particular interest to investigators—looking into the possibility that this deed was drawn up well after the July 25 gift deadline—is the fact that Deputy Counsel Morgan signed it on behalf of the President. The President did not himself sign it as he had for the 1968 gift. No power of attorney document from the President accompanied the deed. There is only an affidavit that Nixon lawyer DeMarco notarized. As a notary under California law, DeMarco should have kept a record book establishing the date this document was signed, irrespective of the date it carries. DeMarco had no such record.

The outlines of the impending tax investigations are clear. Newman will be questioned on what he did in April 1969 about the 1969 gift. Lawyer DeMarco and the White House have claimed that Newman at that time examined, designated and segregated the gift. The man who was then working directly with the papers says no such work was done. Newman may also be questioned on the basis for his appraisal. Of the 1968 gift, 9,000 items were classified as "children's letters," 1,000 were clippings from the 1960 campaign, and 8,000 were from overseas trips taken by the Vice President. Of the 1969 gift 57,000 items were listed as foreign trips by the Vice President, the bulk of the material—414,000 of a total of 600,000 items—being general correspondence between 1953 and 1961.

DeMarco and Morgan almost certainly will be questioned on the long delayed deed to the 1969 gift. Secretaries and typists who drafted the pertinent documents will also be questioned.

On his tax returns for four years—1969 through 1972—Mr. Nixon deducted \$482,019.87 as charitable contributions (i.e., the gift of his papers). Add to that the \$60,000 to \$80,000 he claimed as a deduction for the earlier gift of papers in 1968 and the \$94,300 on his '69 gift which he may still claim against his 1973 taxes, and you come up with a possible deduction of \$640,000.

In a practical sense, the papers deduction will have saved Mr. Nixon from paying an additional \$300,000 or more in taxes. Put another way, the papers "deal" helped Mr. Nixon on his way to becoming a millionaire as much as any other financial venture he undertook.

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