

Trials, Taxes Tangle Nixon's

By Bob Kuttner

Washington Post Staff Writer

Picasso used to doddle on 10-franc notes, a habit that instantly kited their value a hundredfold. French monetary officials eventually persuaded him to desist, on grounds that even so eminent a private citizen shouldn't go around impetuously inflating currency.

The same Midas sensation must have occurred to appraiser Ralph Newman as he turned the dross of yellowing official papers from the Nixon vice presidency into the gold of tax deductions. Newman certified the worth of thank-you notes from the Girl Scouts and diplomatic notes from the Russians in neat demoninations of \$1, \$25, and \$250: in all, 400 cubic feet—a small roomful—of pre-presidential papers worth over \$2 million.

On that basis, the 27,000 cubic feet of papers, documents and tapes from the Nixon presidency should be worth tens of millions of dollars. While the loophole giving official papers their tax value was closed in 1969, it is widely assumed that the presidential papers are still Mr. Nixon's to keep, donate, sell or burn.

"We consider every peice of paper accumulated in the White House during the Nixon administration to be his personal property," said Richard Q. Vawter, spokesman for the General Services Administration.

But the Nixon presidential papers and tapes are currently reposing in a peculiar limbo, and until Mr. Nixon's own fate is settled and the Watergate cover-up trial concluded, it is unlikely they will be carted off to San Clemente—even though President Ford concedes they are probably Mr. Nixon's personal property.

But despite Mr. Ford's concession, the question of ownership of the papers has been referred by the White House to Attorney General William B. Saxbe for a ruling, and it is likely to crop up again.

Indeed, like so much else shaken by Watergate, the tradition that public documents can also be personal property has been twice tarnished—by Mr. Nixon's unsuccessful attempt to claim deductions on his vice presidential papers before the tax law changed, and by the unprecedented need to preserve his presidential records as possible evidence in a criminal trial.

In its report last April on Mr. Nixon's personal finances, a congressional committee on taxation observed that Presidents have customarily considered their papers to be personal property, but noted question "as to whether it is desirable for



By Ellsworth Davis—The Washington Post

ARTHUR F. SAMPSON ... GSA accepts change

Presidents of the United States to derive profit from the sale of materials that were produced while they were public servants," and the committee invited Congress to reconsider the entire matter.

At a news briefing May 7, Mr. Nixon's lawyer James D. St. Clair said he thought the White House tapes should be considered government property.

Sen. Birch Bayh (D-Ind.) has introduced legislation

requiring all elected officials to turn over to the National Archives "all papers and documents dealing with official business" within 180 days after leaving office.

Last week, a group of historians including Lewis Hanke, president of the American Historical Association, Gerald Ham, president of the Society of American Archivists, Hames MacGregor Burns and others petitioned Congress to pass a law stating explicitly that documents prepared at public expense "cannot be regarded as private property" to be "sold, concealed, or destroyed at the whim of present or former public officials acting in their personal capacity."

Washington historian M. B. Schnapper, who circulated the petition, advertised last December offering a \$1,000 reward to anyone who could point to a law permitting official documents to be taken personal property. The reward was never claimed.

Papers

The Nixon pre-presidential papers, donated in 1968 and 1969, are also the subject of new controversy. On the eve of his resignation, Mr. Nixon wrote GSA Administrator Arthur F. Sampson amending his earlier deeds, which has provided the papers would become public when Mr. Nixon left office.

The letter, dated Aug. 8, 1974, closed the papers to the public until 1985.

Sampson accepted the change, but his decision is likely to be challenged.

Robert Brandon, director of the Tax Reform Research Group, filed suit last December demanding access to the papers under the Freedom of Information Act. Brandon argues that if Mr. Nixon retains the power to change the term of the "gift," he should not have been permitted a tax deduction in 1968.

Conversely, since the 1968 gift was deemed valid for tax purposes, Brandon rea-

sons, Mr. Nixon has no right to restrict it now.

Mr. Nixon's 1968 and 1969 deeds provided that he could "modify or remove" the restrictions on access to the papers. But according to Brandon, when investigators questioned whether that provision gave Mr. Nixon as taxpayer a "future interest" in the papers and therefore negated the gift for tax purposes, they were assured by the lawyers who prepared the deed that it was only intended to permit a relaxation of the restrictions.

Brandon argues that GSA therefore has no right to accept new restrictions on public access to the papers.

According to James E. O'Neill, deputy Archivist of the United States, it is "not atypical" for restrictions to be added once a gift of papers has been donated. But there is no other case on record of a former President's adding new restrictions to donated papers.

"Obviously, Nixon didn't contemplate leaving office suddenly," said GSA spokesman Vawter.

"It's perfectly natural that he should want more time to sort out his papers," added Vawter, who takes the position that Mr. Nixon's right to add new restrictions was so clear cut that it was not necessary to seek a legal ruling.

Privately, however, some archivists are unhappy about the decision to accept the new restriction on the pre-presidential papers, and nervous about the future of the Nixon presidential papers.

Given the incalculable historical value of the papers, Archives officials are reluctant to do anything that might ruffle the former President, lest some of the papers be sold or destroyed.

If Mr. Nixon actually were to sell some of the papers, as has been widely speculated, he would be the nation's first President to do so.

As the Joint Committee on Internal Revenue Taxation reported presidential papers have been considered personal property since George Washington took his papers home to Mt. Vernon. But the history is rather ambiguous, and few Presidents regarded their papers as property to be used for personal enrichment.

The idea that presidential documents might be worth a bundle, however, dates back to the earliest days of the Republic. One early former president with financial troubles James Monroe, was advised by Nicholas P. Trist, a diplomat and lawyer, to "avail yourself of the value of yr papers by pledging the proceeds of their future public in considn of a loan."

Monroe wrote back, "Your suggestion as to the sale of my papers, or pledge of them merits attention . . ." but Monroe ultimately used the documents only as raw material for two books, and the papers themselves were willed to heirs.

In 1782, Gen. Washington wrote that he considered his Revolutionary War papers "a species of Public property, sacred in my hands," but Washington willed his presidential papers to a nephew, Bushrod Washington, who in turn left them to his nephew, George Corbin Washington, who sold them back to the government for \$25,000 in 1834.

Throughout the early 19th Century in fact, Congress regularly appropriated funds to buy back presidential documents from heirs. The government purchased two batches of President Madison's papers from Dolly Madison in 1837 and 1848.

President Polk's papers were sold to the Library of Congress by Polk's niece in 1903 "after some higgling over price," the record reports.

But by the late 19th Century, it had become the custom for Presidents or their

heirs to donate papers to the Library of Congress and later to the National Archives, with no remuneration. The last President whose papers were sold to the government was Andrew Johnson, and the first to systematically use his papers for income tax purposes while in office was Lyndon Johnson.

Between the two Johnsons, there is no evidence of financial enrichment connected with presidential papers, although President Eisenhower could have taken tax deductions for his after leaving office. Typically, the President or his heirs simply deposited the papers with the Library of Congress, and after 1934, the Archives.

After President Wilson's widow donated his personal papers to the Library of Congress, a library official visited the White House in 1924 seeking additional material from the Wilson administration. "There I found some 70 boxes of the Wilson administrations," he wrote. "Ostensibly they were the official files, as distinguished from the personal files, which are taken away at the close of a President's term."

FDR announced in December, 1938, that he considered his papers to be the property of the American people, and he began shipping batches of documents to his library in Hyde Park, N.Y., in 1940. He died without ever deeding the papers to the United States, but a Surrogate Court declared in 1947 that his intent had been clear enough and that the documents were public property.

Similarly, a memorandum by President Kennedy's family and a ruling from the Internal Revenue Service established that JFK had intended to donate his papers to the Archives. In both cases, the heirs were spared having to pay estate taxes on the inherited papers themselves, although no additional tax deductions to offset other income resulted.

In 1969, rumors of President Johnson's innovation of deeding increments of papers for income tax purposes led Sen. John J. Williams (R-Del.) to insist that Congress close the loophole. Ironically, the main victim of the reform was not Johnson, but Mr. Nixon.

Other unintended victims have been artists and writers, who no longer get a tax advantage from donating manuscripts or paintings to museums and libraries. Sen. Frank Church (D-Idaho) has introduced a bill to reinstate partially the deduction for donations of creative works, but not for documents produced by officeholders.