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Operation Disney World (I)

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WORKING our way laboriously through the transcript of President Nixon's extraordinary performance last Saturday night before the Associated Press Managing Editors at Disney World, it struck us with increasing force that on a number of specific points the President is not exactly clearing up the record on Watergate and related matters. Rather, he seems determined to add to the public's confusion at almost every turn. The President would have us believe, of course, that with Operation Candor (as the White House has called it) he is at long last setting out to sweep away public misapprehensions—that he is helping us to get to the bottom of the Watergate affair, once and for all. Yet, picking and choosing almost at random, one finds disturbing distortions of the record and misrepresentations of the facts. By way of a beginning effort to set the record straight, we would deal today with the President's misuse of two of his predecessors in office—Thomas Jefferson and Lyndon Johnson—in attempting to defend actions of his own.

Mr. Nixon's persistent use of the "Jefferson rule," as he called it in his Saturday night appearance, is startling. This is the second time in a month that the President has distorted the facts regarding the issuance of a subpoena to President Jefferson by way of justifying his own performance in the matter of the Watergate tapes. In his press conference on October 26, Mr. Nixon said that the court had subpoenaed a letter which President Jefferson had written and Mr. Jefferson had refused to comply, but rather had compromised by producing for the court a summary of the contents of the letter. Saturday night, he went further. He began his answer to a question having to do with executive privilege with the astonishing assertion that, "I, of course, voluntarily waived privilege with regard to turning over the tapes." This is a curious way to describe his ultimate decision to obey an order of the Federal District Court—an order which he first appealed to the U.S. Court of Appeals. Having lost the appeal he then tried to compromise the issue with the famous Stennis proposal which cost him the resignation of his Attorney General and his Deputy Attorney General in the course of his efforts to fire the Watergate Special Prosecutor who had originally requested the tapes. Having rewritten this recent history, the President went on to elaborate on the "Jefferson Rule" and to rewrite some more. He repeated his version of the Jefferson case which he had given us in October and went on to say that John Marshall, sitting as Chief Justice, had ruled in favor of the Jefferson "compromise."

In just about every important aspect, it simply didn't happen that way. To begin with the letter was not written *by* President Jefferson. It was written *to* him. What is more, Mr. Jefferson agreed to testify in the case under oath (although he wanted to do so in Washington, rather than journey to the court in Richmond). And he sent the entire letter—not a mere summary—to the U.S. Attorney who in turn offered it to the court and authorized the court to use those portions "which had relation to the cause." Chief Justice Marshall, moreover, never ruled in his capacity as Chief Justice on any such compromise; he ruled as a trial judge in a lower court. So much for the misuses of Mr. Jefferson.

Now for President Johnson and Mr. Nixon's taxes. The first thing to be said is that the President was offered a specific opportunity to deny published reports that on a total income of $400,000 for the years 1970 and 1971 that he paid only $1,670 in income taxes. He did not deny it, but rather admitted that he had paid "nominal" taxes for those years. He then said that the fact that his taxes were nominal was not a result of "a cattle ranch or *interest* or all of these gimmicks . . ." Perhaps so. But it would be somewhat surprising if Mr. Nixon did not deduct interest from his gross income for those years. The figures the White House has put out concerning the transactions by which he acquired his Key Biscayne and San Clemente homes indicate that he paid substantial sums in interest in those years, and it is hard to figure out any other way he could have arrived at such a "nominal" obligation.

His own explanation for that "nominal" obligation was that President Johnson told him shortly after he became President in January, 1969, that he ought to donate his vice presidential papers and take a deduction for them. There are two things puzzling about the idea that Mr. Nixon was merely taking his cue from his predecessor. One is the inference conveyed by Mr. Nixon that all this was new to him; in fact, he had made such a donation of some of his official papers in 1968, prior to taking office as President. The second, and far more important thing that is puzzling about Mr. Nixon's story is his suggestion that Mr. Johnson had established the precedent and that both men followed the same general policy in their handling of the tax aspects of their official papers. Prior to 1969, they apparently did just that. But in 1969, Mr. Johnson made a careful decision not to do what President Nixon did, for very precise reasons having to do with propriety.

The facts of this matter are that in 1969 Congress was debating a significant change in the Internal Revenue Code which might have precluded anyone from taking such a deduction from this sort of gift of papers or documents. Both Mr. Johnson and Mr. Nixon expressed their opposition to this change in the tax rules but until late in the year it was unclear which way Congress would resolve the issue—or when any change would become effective. Under the circumstances, Mr. Johnson decided that it would be unseemly for a former President to attempt to make such a gift in an effort to beat a congressional deadline and so he did not do so—reportedly at a cost of millions of dollars to his heirs. Mr. Nixon, by contrast, made a gift that year of papers valued at more than $500,000 and took what he claimed to be the appropriate deduction.

So much for the inference that Mr. Nixon was only following President Johnson's lead. Beyond that, there is an even larger question—not specifically raised by the editors and consequently ignored by Mr. Nixon on Saturday night—as to whether what he did in 1969 with respect to his gift of papers and claimed tax deduction was in accordance with the requirements of law—quite apart from its propriety in the context of the congressional debate and the likelihood of an imminent change in the rules. Speaking of his predecessor, Mr. Nixon said that Mr. Johnson "had done exactly what the law required." What remains to be seen, as we have noted repeatedly in this space, is whether Mr. Nixon, in this particular instance, can make that same claim for himself.

We do not mean to say that the President does not have a cogent defense of his tax deductions, or of his policy toward the release of his tapes—or of any of a number of other charges and allegations that have been raised in connection with his performance in the broad category of matters which come under the broad misnomer of Watergate. We would simply argue (and we will be returning to the argument in this space) that the President is unlikely to clear the air and resolve public confusion in any conclusive way by the sort of muddying of history and misrepresentation of facts which characterized so much of his appearance before the managing editors on Saturday night in Disney World.