

By Anthony Lewis

BOSTON, Dec. 19—The financial information released by President Nixon has raised one especially puzzling question among tax specialists. It relates to his \$576,000 "gift" of papers, allegedly made in March, 1969, and used thereafter as the basis for large tax deductions.

Mr. Nixon had given some papers to the Government before—on Dec. 30, 1968—in a straightforward, legal way. He signed a deed, and an official of the General Services Administration signed to indicate acceptance. Yet a few months later he made the 1969 "gift" with a deed that neither he nor anyone from the G.S.A. signed and that was not even shown to the G.S.A. for another year: a gift of questionable validity.

Why should lawyers who knew how to make a proper gift in December get it so wrong in March? That is the mystery.

One tax expert, Prof. George Cooper of Columbia Law School, thinks the curious character of the 1969 "gift" was deliberate—an attempt to deal with uncertainties in a tax law then going through Congress. He charges that the conduct may have involved "conscious deception" amounting to "criminal tax evasion."

The Cooper thesis, as it has come to be known among some tax specialists, is obviously a most serious allegation. Examining it with due care requires going through some details of the 1969 papers episode.

On March 26th and 27th, 1969, boxes of Mr. Nixon's pre-presidential papers arrived at the National Archives. No explanation was given for their delivery. They were kept in an area reserved for "courtesy storage" of officials' papers, not with the permanent collection.

On April 21, 1969, Edward L. Morgan, a White House counsel, signed a deed purporting to give a portion of those papers to the United States. Lawyers usually follow forms; in preparing a second gift of similar property they would simply retype the first deed. The 1969 deed did mostly follow the one of Dec. 30, 1968, verbatim. But it entirely omitted one crucial paragraph of the earlier documents—a clause calling for an official of the G.S.A. to sign and thus accept "this conveyance for and on behalf of the United States."

The other curious thing about the 1969 deed was its delayed delivery. It was notarized on April 21 by a California lawyer for Mr. Nixon, Frank De Marco Jr., and kept thereafter in Mr. De Marco's office in California. No one at the G.S.A. knew of its existence until a copy arrived there on April 10, 1970.

ABROAD AT HOME

What can explain the peculiarities of that deed? Professor Cooper says they must have been a response to the particular legislative situation in 1969.

From the beginning of that year, tax reform was a big issue. On April 21—the very day that Mr. Morgan signed the deed—President Nixon sent a tax reform message to Congress. Among other things, it called for change in a provision allowing taxpayers to deduct the full value of appreciated property given to charity. One example of such property, though it was not singled out for mention, was personal papers.

The Senate, in passing its version of the reform bill, made that change on gifts of property retroactive to Jan. 1, 1969. The final version, which did not come out of a House-Senate conference until December, made that provision retroactive only to July 25, 1969.

In short, the President and his lawyers faced uncertainty about whether the reform of gifts of property would be made retroactive to all or part of 1969. Professor Cooper suggests that they did not want to make a gift of papers and then find that they got no tax benefits—so they tried to keep their options open.

They delivered some papers to the Archives in a way that made no commitments. They wrote a deed that had no place for a G. S. A. signature and thus could be kept secret, as it was.

If Congress made the reform retroactive to Jan. 1, 1969, then they could destroy the deed; Mr. Nixon would still own the papers and in due course could just send a truck to the Archives and pick them up. But if Congress picked a later effective date for the reform, as it did, he could produce the deed and say that a gift had been made before the deadline.

That is George Cooper's explanation of the mystery. If his suspicions are correct, if such a "scheme was afoot," he argues, "then a conscious deception was involved which seems clear criminal tax evasion." Legally, that conclusion would require evidence of intent, presumably testimony from one or more of those involved.

The Joint Congressional Committee on Internal Revenue Taxation, which is now making a thorough examination of the President's returns, might well want to question Mr. Morgan and Mr. De Marco about the mystery of the 1969 deed. In any case, it is to the committee that Professor Cooper must look when he says: "There is a level of tax conniving in the Nixon returns that goes beyond ordinary avoidance and deserves to be investigated for willful evasion."