

# Backdating Nixon's Deed

For many Americans, Watergate is only politics—but Richard Nixon's tax returns are a scandal. And the heart of the controversy has been Mr. Nixon's donation of his Vice Presidential papers to the National Archives in 1969—a gift that yielded him a \$576,000 tax deduction. Last week, NEWSWEEK learned, two lawyers for the President admitted to government investigators that they had "backdated" the deeds and other papers involved in that transaction. The copy of the deed that was eventually sent to the Archives was signed more than a year after the date that appears on it, the two lawyers said—nearly nine months after the official cut-off date for deductible donations of that type. One of the lawyers maintained that the procedure was entirely proper, since Mr. Nixon's intention to donate the papers was clear in early 1969. But if tax officials disagree, the backdating could cost the President some \$250,000 in added taxes—and if there were proof of intent to mislead the IRS, charges of fraud could be filed.

Discovery of the backdated deeds was one of the first major breaks in the current investigation of Mr. Nixon's taxes by the Internal Revenue Service and a joint Congressional tax committee. And some White House partisans on the committee have already dispatched early warnings to Mr. Nixon that his tax problems could be serious. The IRS is also reportedly taking a closer look at the Richard Nixon Foundation, set up in 1969 to finance a Nixon library, and investigators of the special prosecutor's office and the House Judiciary Committee are known to be looking into the President's finances.

**Three Links:** Government investigators learned about the deed from two of the men most closely connected with the gift of Mr. Nixon's papers: former White House deputy counsel Edward Morgan, 35, and California attorney Frank DeMarco, 48, a law partner of Nixon fundraiser Herbert W. Kalmbach. In March of 1969, according to DeMarco, top White House aide John Ehrlichman gave Kalmbach's firm responsibility for handling the purchase of Mr. Nixon's home at San Clemente, the creation of the Nixon Foundation and the gift to the Archives, all of which were "linked with one another," DeMarco said. The firm was to work with Morgan, who had already handled the sale of Mr. Nixon's New York apartment and some stocks.

The President's intention early in 1969 to make his gift of papers to the nation seems undisputed. At the beginning of April, DeMarco said, he was ordered to have appraiser Ralph Newman (NEWSWEEK, Dec. 17) select a \$500,000 portion of the Nixon papers for the gift. A rough

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appraisal was completed by Newman in the second week of April, according to DeMarco. In apparent contradiction, government archivist Sherrod East—who was working with the documents at the time—told NEWSWEEK that Newman dropped by only once between late March and late May of 1969, to sort through a batch of papers Mr. Nixon had donated the year before.\* In any event, DeMarco says that he, Morgan and Kalmbach met in Beverly Hills on April 21, and that he later drew up a deed for the gift. But it was backdated to March 27, 1969—the day, a month earlier, when all of Mr. Nixon's Vice Presidential papers were sent to the Archives for safekeeping. Ultimately, about one-third of these papers were chosen for the gift.

**'Sensitive':** Morgan, according to one source close to the investigation, is "98 per cent sure" that he signed the original

deed on April 21, 1969, along with a declaration of his authority to sign for the President. But NEWSWEEK's Nicholas Horrock learned that two copies remained unsigned, and none was actually sent to the Archives. What the President's lawyers were waiting for was a detailed inventory by Newman. He had already advised them that "sensitive" documents from living persons might be winnowed from the gift selection, and since he specified letters from J. Edgar Hoover, Jacqueline Kennedy and Queen Elizabeth, some investigators suspected that he was really advising holding out the most marketable documents. Newman himself, however, was traveling and didn't make the selection until November or early December.

That delay put the Nixon lawyers in a bind. The planned gift of Vice Presidential papers—and the whopping deductions that went with it—was to be the cornerstone of Mr. Nixon's extraordinary tax

\*That report raised the possibility that Mr. Nixon's earlier donation—for which he took an \$80,000 deduction—was also not formally completed in the year it was reported, and government investigators have reportedly begun looking into the 1968 gift.

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shelter over the next five years (he paid a total of \$1,671 in taxes for 1970 and 1971). But while Newman was on the road, Congress was on the warpath against just such tax-deductible donations. White House aide Bryce Harlow and others lobbied for a mid-year cut-off, and Congress finally made July 25, 1969, the date by which donations had to be "completed" to qualify for deductions. Newman did not finish his detailed appraisal of the Nixon papers until April 6, 1970, but DeMarco simply worked overtime to factor the final figure—\$576,000—into the President's 1969 tax return, which Mr. Nixon signed on April 10.

On that day, too, DeMarco told investigators, Morgan finally signed the blank copies of the deed that he said was first drawn up a year before and backdated March 27, 1969 (the original "ribbon copy" was reportedly turned

over to White House Watergate lawyer Leonard Garment last fall and has not surfaced since). The copy of the deed that was finally delivered to the Archives—along with Morgan's affidavit of authority—also bore DeMarco's notary-public stamp. But that, DeMarco conceded, had been added arbitrarily—either in the fall of 1969 or early in April of 1970.

**'Problem':** DeMarco denied any implications of fraud in the backdating, both because of his confidence that Morgan had authority to arrange the donation and because of what he maintained was the clear intention of all concerned in the spring of 1969 to make the gift. Morgan, however, had misgivings; he resigned last week from his latest job as Assistant Secretary of the Treasury, saying he no longer believed he had had the authority to act for Mr. Nixon and that "I feel badly about it . . . I'm giving the President another problem."

Asked about DeMarco's story, the White House backed his argument that Mr. Nixon's intent to make the gift was clear, and said "there was no individual participation or knowledge by the Presi-

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dent" as to how it was done. Ehrlichman was to be questioned on the matter in Washington this week, NEWSWEEK learned, and the staff of the joint tax committee was expected to make a preliminary report within several days.

The committee's findings could weigh heavily in Mr. Nixon's future. But even without a definitive ruling, public suspicion about the President's personal finances has led some government officials to fear another major impact as well: a taxpayers' revolt. Bitter taxpayers have mailed several hundred letters to the joint committee protesting the President's use of loopholes, and Democratic Rep. Charles Vanik of Ohio, for one, predicted last week that the Treasury would lose billions of dollars in revenue if Americans "follow the pattern of the President" when they file their own tax returns this April 15.