

JCT Investigation of Nixon's Tax Returns

Joseph J. Thorndike
Tax History Project, Tax Analysts
and
Northwestern University, Pritzker School of Law

February 2016

Draft prepared for the United States Capitol Historical Society's program on **The History and Role of the Joint Committee: the Joint Committee and Tax History**
Comments welcome.

JCT Investigation of Nixon's Tax Returns

Joseph J. Thorndike

DRAFT: NOT FOR QUOTATION OR DISTRIBUTION WITHOUT AUTHOR'S PERMISSION

"Make sure you pay your taxes," Richard Nixon remarked to journalist David Frost during one of their famous interviews. "Otherwise you can get in a lot of trouble."¹ Nixon had reason to know. Three years earlier, he had been forced from office by his role in the Watergate break-in and its subsequent cover-up. But Nixon had tax troubles, too – serious enough to prompt talk of resignation even before Watergate doomed his presidency.

In the summer and fall of 1973, Nixon was engulfed by a controversy over his personal taxes. An outsize charitable donation was the proximate cause, but the scandal expanded to include numerous issues with the returns Nixon had filed between 1968 and 1972. The returns were private, of course, but a series of leaks, combined with informed speculation, gave critics plenty of ammunition. Nixon, it seemed, had played fast and loose with the revenue laws, exploiting his position to minimize taxes and avoid scrutiny from the Internal Revenue Service (IRS).

Nixon's tax scandal actually prompted one of his most famous public statements, generally thought to refer to Watergate. "People have got to know whether or not their President is a crook," he told reporters in November 1973. "Well, I am not a crook."²

This claim to innocence, which came at the end of a detailed discussion of Nixon's personal finances, did little to quell the brewing tax scandal. Three weeks later, the president took a further, extraordinary step, releasing his personal taxes returns and inviting the Joint Committee on Internal Revenue Taxation (JCIRT) to examine them.

That investigation, and the story of Nixon's tax troubles more generally, has been all but forgotten in the decades since, eclipsed by the more lurid (and less technical) wrongdoing of the Watergate break-in. But the saga of Nixon's tax returns merits attention. In conjunction with the Watergate break-in, the tax scandal helped undermine faith in American political institutions, including not just the presidency but the federal tax system, too. Conversely, it also underscored the vital role of disinterested expertise in a highly politicized environment. Indeed, the JCIRT and its investigation of Nixon's tax returns provided a rare bright spot in the otherwise dispiriting history of a president's political demise.

Nixon and His Taxes

Nixon's personal taxes first came to public notice in 1952, when the 39-year old senator was running for vice president on Dwight Eisenhower's GOP ticket.³ At the time, Nixon was struggling to answer questions about a campaign fund established by his backers. The fund was not illegal, as Nixon was quick to point out, but it looked bad. "Secret Rich Men's Trust Fund Keeps Nixon in Style Far Beyond His Salary," blared a typical headline.⁴

Nixon responded with the brilliant (and cringe worthy) "Checkers Speech," named for a family pet that Nixon assigned a starring role. The televised address offered a capsule overview of Nixon's personal

Joseph J. Thorndike is director of the Tax History Project at Tax Analysts and an Adjunct Professor of Law at the Northwestern Pritzker School of Law.

¹David Frost, *Frost/Nixon* (New York: HarperCollins, 2014), 14.

²William D Samson, "President Nixon's Troublesome Tax Returns," *Tax Notes* (11 April 11 2005 2005).

³For a discussion of the episode, see Joseph J. Thorndike, "News Analysis: What Would Nixon Do? Tricky Dick's Lessons on Tax Disclosure," *Tax Notes*, 11 July 2012, ??.

⁴Edwin Battistella, "From 'Checkers' to Watergate, OUPblog, September 23rd 2014, available at <http://blog.oup.com/2014/09/checkers-watergate-apology-language/>

finances, buttressed by maudlin claims to his everyman status. "That's what we have, and that's what we owe," he told viewers. "It isn't very much. But Pat and I have the satisfaction that every dime that we've got is honestly ours."

The Checkers speech gained Nixon some breathing room, but it didn't silence his critics. The speech had included a challenge to the Democratic ticket, with Nixon daring Adlai Stevenson and his running mate, Alabama Senator John Sparkman, to make their own financial disclosures. "I would suggest that under the circumstances, both Mr. Sparkman and Mr. Stevenson should come before the American people, as I have, and make a complete financial statement as to their financial history," Nixon said. "And if they don't, it will be an admission that they have something to hide."

Stevenson and Sparkman went Nixon one better, releasing not just a financial accounting but 10 years of personal tax returns as well. The move prompted Eisenhower to release a summary of his own taxes (although not the returns themselves). Nixon, however, refused to follow suit, reviving questions about his finances, at least among Democrats.

Ultimately, the tax flap of 1952 proved short-lived – and politically inert. But it marked the first time Nixon's private tax returns had become a public issue. It would not be the last.

Presidents and Their Papers

Nixon's taxes returned to the spotlight in 1973. This time, the proximate cause was not a campaign fund but a pair of charitable donations the president made after winning his race for the White House. These donations, which involved gifts of personal and official records to the National Archives, were unremarkable, at least initially. But questions about the timing and valuation of these gifts soon created serious problems for both Nixon and the IRS.

Today, it can seem hard to believe that presidents were ever permitted to claim a deduction for the gift of personal and official records to a government archive. But at the time, such gifts (and the attendant tax treatment) were considered routine. "Since the time of George Washington," the JCIRT would later explain, "it has been customary for Presidents of the United States to treat their papers as their own personal property." Congress had implicitly endorsed this view in the Presidential Libraries Act, which facilitated the private donation of public papers by American chief executives.⁵

Presidents had good reason to be generous. Prior to 1969, gifts to the government of official papers qualified as deductible charitable contributions. A sitting or former president could deduct the full, appreciated market value of his donated papers against other forms of income, including official salaries. The president, moreover, was not required at any point to treat the value of the papers as taxable income.⁶

The failure to tax the papers' value as income, combined with the value of the deduction, created an enormous incentive for presidents to make a gift of their papers to some public or non-profit archive.⁷ And as *The Washington Post* reported, several postwar presidents had availed themselves of the opportunity. "Presidents Eisenhower and Johnson and, in 1968, President-elect Nixon, had already saved hundreds of dollars in taxes by periodically giving their public papers to the country," the paper reported as the Nixon tax scandal was just breaking.⁸

⁵ United States. Congress. Senate. Joint Committee on Internal Revenue Taxation., *Examination of President Nixon's Tax Returns for 1969 through 1972, Senate Report* (Washington: U.S. G.P.O., 1974), 28. See also William Greider, "Who Owns the Papers of a President?," *The Washington Post*, 18 December 1973 1973, 2.

⁶ Ira L. Tannenbaum, "Income Tax Treatment of Donation of Nixon Pre-Presidential Papers," *Tax Notes* (30 July 1973).

⁷ *Ibid.*

⁸ Nick Kotz, "Nixon Gift Raises Questions," *The Washington Post*, 10 June 1973, 2.

Not everyone approved of the generous tax treatment afforded to presidential donors. Critics insisted that such materials were actually public property to begin with. "One of the things that bothers me about getting special tax benefits through the gift of official papers is that the parties doing this are making a profit from the 'charitable' giving of what are really official papers," complained Sen. John Williams on the Senate floor. "They were developed by government officials on government time with the aid of government staff personnel, were typed by government secretaries on government paper and were even stored in government files."⁹

Swayed by such arguments, Congress had begun developing legislation in 1969 to limit the value of official paper donations. Attorneys for both Nixon and his predecessor, Lyndon Johnson, urged lawmakers to leave the window open just a bit longer. Nixon and Johnson even discussed the pending legislation directly with one another.¹⁰ Ultimately, however, the Tax Reform Act of 1969 nearly eliminated the deduction, providing specifically that donations made after July 25, 1969 would be limited to the cost of the paper on which the documents were produced.¹¹

As Congress moved toward limiting the deduction, Johnson chose not to make a gift before the deadline. Nixon, however, did rush one through. According to "a high White House official" speaking with *The Washington Post*, the president had donated 1,176 boxes of papers on March 27, 1969. He subsequently claimed a deduction of "somewhat over \$500,000" on his 1969 tax return.¹²

The gift raised eyebrows. It came to light, initially, as part of a civil damage suit stemming from the Watergate break-in, Democratic National Committee, et al. v. James W. McCord, et al. The deposition taken in that case included reference to Nixon's gift of his papers in 1969.¹³ Reporter Nick Kotz followed up with the National Archives and began to lay out the details in a series of articles for *The Washington Post*.

In articles published on June 10 and 12, 1973, Kotz raised questions about the timing of the donation, as well as the deed of gift used to actually transfer the papers.¹⁴ Lack of access to the president's returns necessarily limited the investigation, but Kotz and other reporters were able to establish many of the details surrounding the donation and resulting deduction. On June 16, the *Post* published an interview with Nixon's personal tax attorney, Frank DeMarco, Jr., which confirmed many of the key facts, including the valuation of the collection at more than \$500,000.

Even lacking access to the president's actual tax returns, reporters could do the math: based on the value of the reported donation, the president seemed likely to have saved at least \$250,000 several years (and perhaps more than \$350,000, depending on his total income).

Seeking an Independent Auditor

⁹ Ibid.

¹⁰ In fact, Nixon later asserted that it was Johnson who gave him the idea of donating papers in the first place. See Walter Pincus, "Mr. Nixon's Papers: The Tax Question," *The Washington Post*, 7 January 1974, 1.

¹¹ Tannenbaum, "Income Tax Treatment of Donation of Nixon Pre-Presidential Papers." (Tannenbaum) The law also raised the annual ceiling on the value of the deduction from 30 percent to 50 percent of AGI, but with the drastically reduced value of the deduction, such an increase was nearly immaterial to presidential taxpayers.

Archivists, incidentally, were despondent, warning that donations would dry up entirely. And according to press reports, they did. In the four years after the law was changed, donations of official papers by members of Congress to the Library of Congress dried up almost entirely. See Greider, "Who Owns the Papers of a President?."

¹² Nick Kotz, "Nixon Gift Raises Questions." *The Washington Post*, 10 June 1973. 2.

¹³ Donald C. Alexander, "Irs Audits of High Officials," *Tax Notes* (17-Jul 1977).

¹⁴ Kotz, "Nixon Gift Raises Questions."

In July 1973, Tax Analysts and Advocates, a public interest law firm, published an article in *Tax Notes* concluding that Nixon's deduction was unjustified. The organization urged the IRS to consider appointing an outside auditor. "It is obvious that Internal Revenue Service agents and their superiors throughout the Internal Revenue Service would be extremely reluctant to audit the tax returns of the President of the United States as if he were an ordinary taxpayer," wrote Ira Tannenbaum, a Tax Analysts employee. "Or even if the IRS were willing to conduct such an audit, in view of the fact that the IRS Commissioner is responsible to the President, the results of such an IRS audit would be questioned as to whether they were reached in the proper disinterested manner."¹⁵

In a letter to IRS Commissioner Donald Alexander, Tax Analysts' executive director, Thomas F. Field, echoed Tannenbaum's call for an outside auditor. "The complete facts regarding the President's 1969 transfer of papers are not in the public domain," Field acknowledged. "But, if the same facts were known in connection with an ordinary citizen as are now on the public record in connection with the President's 1969 transfer of papers, an audit would almost certainly be undertaken by the Internal Revenue Service."¹⁶

Field's point – including his reference to "an ordinary citizen" – would later guide IRS decision-making in the Nixon affair.

Conceivably, the IRS might have been able to identify errors on the Nixon returns without help from an outside auditor. But the agency's failure to date didn't bode well. "Anyone interested in maintaining public confidence in the fairness of the tax system must necessarily be concerned about the possibility that nothing will be done to audit those of the President's tax returns that are still open under the statute of limitations," Field said.¹⁷

Both Field and Tannenbaum emphasized that the stakes were much higher than any money Nixon might have saved on his own tax bill. "The value in subjecting the President's tax returns to such an audit obviously is not in merely attacking in an additional manner a man a number of whose actions currently are subject to criticism and investigation," Tanenbaum wrote. "Rather, there is an important need to make clear to the American public that income taxes of Americans in positions of power and high visibility are being assessed correctly, and that the tax laws are being applied fairly to them."¹⁸

Indeed, the entire viability of the modern tax system hinged on perceptions of fairness and shared responsibility, Tannenbaum concluded: "American taxpayers are willing to pay their fair share under our self-assessment tax system only if they believe other more visible taxpayers are also paying their legal share."¹⁹

The White House was not receptive to Tax Analysts' suggestion. "The matter has been previously raised and considered," a spokesman said of the controversy surrounding the papers donation. "The allegations are unfounded. The suggested procedure would be inappropriate."²⁰ In August, the White House went further, releasing an opinion letter from Nixon's tax attorney stating that the deduction was valid.²¹

¹⁵ Tannenbaum, "Income Tax Treatment of Donation of Nixon Pre-Presidential Papers."

¹⁶ Letter reprinted in Thomas F. Field, "Field Presents Tannenbaum's Analysis of Nixon Deductions," *Tax Notes*, 16 Jan. 2012, 320. See also Morton Mintz, "Nixon Tax Break on Papers Is Challenged by Law Group," *The Washington Post*, 31 July 1973, 1.

¹⁷ Letter reprinted in Thomas F. Field, "Field Presents Tannenbaum's Analysis of Nixon Deductions," *Tax Notes*, 16 Jan. 2012, 320. See also *ibid.*

¹⁸ Tannenbaum, "Income Tax Treatment of Donation of Nixon Pre-Presidential Papers."

¹⁹ *Ibid.*

²⁰ "Tax Returns Audit of President Asked," *New York Times* 30 July 1973, 54.

²¹ Editor's Note accompany letter to the editor by Donald Alexander, "IRS Audits of High Officials," *Tax Notes*, 17 Jul. 1977.

The IRS was slower to respond but ultimately agreed with the White House, concluding that the IRS lacked authority to appoint an outside auditor.²² James Byrne, a spokesman for Tax Analysts, insisted that the agency was wrong. But in the spirit of compromise, he offered an alternative that would prove influential: the IRS could ask the JCIRT and its staff to conduct the examination, since the committee already had access to returns.²³

The Leak

For months, the debate over Nixon's taxes remained an issue for experts (and tedium-tolerant readers of *The Washington Post*, which did its best to establish the facts of the donation without having access to Nixon's actual returns). But in early October, everything changed when someone at the IRS service center in Martinsburg, W.V. leaked key information about Nixon's returns.²⁴

On October 4, the *Providence Journal-Bulletin* published an article asserting that Nixon and his wife had paid only \$792.81 in federal income taxes for 1970 and \$878.03 in 1971, despite having a joint income of more than \$200,000 in each year. The revelation, which the White House eventually confirmed, gave a stark populist cast to the presidential tax debate. *The New York Times* observed that Nixon's payments were "about the same tax as would have been paid by a family of three with an income between \$7,500 and \$7,550 in 1970 and a family of three with an income between \$8,450 and \$8,500 in 1971."²⁵

The leaked figures were hardly surprising; journalists had been suggesting for months that Nixon's charitable deduction for his papers donation had probably wiped out his entire tax liability for 1970 and possibly 1971.²⁶ Nixon's nominal payments proved such guesses to be off the mark – but only barely.

The Providence paper acknowledged that its reporters had not seen the president's actual returns, which were stored (along with the returns of every other president dating back to Woodrow Wilson) in a safe located just outside the IRS commissioner's office.²⁷ Information from the returns would have been stored in the agency's computer systems, accessible in various locations. But as the *New York Times* observed, "any Internal Revenue employee who disclosed the information would be violating the law and subject to a jail sentence of one year and a fine of \$1,000."²⁸

Reports on the Nixon tax payments often noted that that the president had been audited by the IRS for both years in question. That information came from the president himself, who apparently hoped it would bolster his claim to being a law-abiding taxpayer. In a September 5 news conference, Nixon said the "full field review" of his returns had been comprehensive, but had specifically considered certain real estate transactions connected with his estate in San Clemente, California. Ultimately, the IRS didn't order any change to his returns, Nixon said. "This is good news for people who wonder of presidents are exempt from what the IRS does," Nixon said.²⁹

²² Cathe Wolhowe, "Irs Won't Name Nixon Auditor," *The Washington Post*, 31 Oct. 1973, 1.

²³ Dean Mills, "Tax Law Firm Bids Irs Probe Nixon 'Gift' to U.S. Archives," *The Sun*, 31 Oct. 1973, 1.

²⁴ "Irs Aide Quits; Leaked Nixon Tax Data," *The Washington Post*, 17 Jan. 1974, 1.

²⁵ Eileen Shanahan, "White House Is Silent on a Report Nixon Paid \$1,670 Tax In '70-'71," *The New York Times*, 4 October 1973, 1. Other papers also made such comparisons, presumably in an effort to make the Nixon numbers meaningful to readers. See, for example, "Nixon Taxes Reportedly Equal to Those on \$7000," *Boston Globe (1960-1984)*, 10/05/1973 Oct 05 1973, 19.

²⁶ See, for example, Adam Clymer, "Nixon Data Hint No Taxes Owed," *The Sun*, 11 Sept. 1973, 2; Eileen Shanahan, "Nixon's Potential '70 Deductions Enough to Offset Taxable Income," *New York Times*, 12 Sept. 1973, 1.

²⁷ Shanahan, "White House Is Silent on a Report Nixon Paid \$1,670 Tax In '70-'71."

²⁸ *Ibid.*

²⁹ "President Says Irs Audited His Returns, Didn't Raise Taxes," *Wall Street Journal*, 6 Sept. 1973, 3.

After the Providence paper leaked Nixon's tax data, pressure mounted for the president to make a full disclosure of his personal tax returns. In a scathing editorial, *The New York Times* offered a litany of possible wrongdoing by the president. "Only full financial disclosure could lay these questions to rest," the editors concluded. "The release of the president's tax returns is the essential first step in this process."³⁰

The Committee Gets the Job

The White House gradually accepted the need for a public release. By late November, Nixon aides were promising an imminent disclosure of financial data, although they were vague about the president's tax returns.³¹ On December 4, they went a step further, notifying congressional leaders that Nixon would ask the JCIRT to examine his tax returns. On December 8, the White House released voluminous financial records, including tax returns for every year from 1968 to 1972.³²

In making the disclosure of his tax returns, Nixon asked the JCIRT to examine two transactions in particular: (1) his gift of official papers to the National Archives, and (2) the sale of 23 acres at the president's San Clemente estate. "In order to resolve these questions to the full satisfaction of the American people," Nixon wrote to JCIRT Chair Wilbur Mills, D-Ark, "I hereby request the Joint Committee on Internal Revenue Taxation to examine both of these transactions and to inform me whether, in its judgement, the items have been correctly reported to the Internal Revenue Service."³³

Significantly, Nixon promised that he would make good on any past deficiencies. "In the event that the committee determines what the items were incorrectly reported, I will pay whatever tax may be due," he wrote.³⁴

That promise would eventually cost Nixon about half his net worth.

The JCIRT agreed to undertake the investigation, but decided to conduct a more thorough examination of Nixon's returns. Focusing on just two items might produce a distorted assessment, the committee explained. Even more important, the two transactions identified by Nixon were hardly the only ones raising eyebrows. "So many questions have been raised about the tax returns of the President for these years," the panel explained in its final report, "that the committee believed the general public can only be satisfied by a thorough examination if the President's taxes."³⁵

Mills, for his part, was notably candid in his initial assessment of the president's tax behavior. "I think a public official who files a tax return has to be holier-than-thou," he told reporters shortly after the committee began its review. "Frankly, had I been the President's attorney, I would have advised him not to take the deduction [for his donation to the National Archives]."³⁶

³⁰ "Still a Mystery," *New York Times*, 17 Nov. 1973, 34.

³¹ Don Irwin, "Nixon to Give Data on Finances Next Week," *Los Angeles Times*, 30 Nov. 1973, 5.

³² Adam Clymer, "Nixon Puts Gift Issue up to Congress," *The Sun*, 4 Dec. 1973, 2; John Herbers, "Nixon Counsel Hints Tax Data Release," *New York Times*, 5 Dec. 1973, 28; John Herbers, "Voluminous Data," *New York Times*, 9 Dec. 1973, 1. In a statement, Nixon said the disclosure included not just his tax returns, but "a full, certified audit of our finances; a full, certified report on the real and personal property we own; an analysis of our financial transactions, including taxes, from January 1, 1969 through May 31, 1973, and other pertinent documents." See Nixon's letter to Wilbur Mills, quoted in United States. Congress. Senate. Joint Committee on Internal Revenue Taxation., *Examination of President Nixon's Tax Returns for 1969 through 1972*, 1.

³³ United States. Congress. Senate. Joint Committee on Internal Revenue Taxation., *Examination of President Nixon's Tax Returns for 1969 through 1972*, 1.

³⁴ *ibid.*

³⁵ United States. Congress. Senate. Joint Committee on Internal Revenue Taxation., *Examination of President Nixon's Tax Returns for 1969 through 1972*, 2.

³⁶ Eileen Shanahan, "Tax Panel Plans Complete Review of Nixon Returns," *New York Times*, 13 Dec. 1973, 1.

Other insiders were similarly blunt, although usually only on background. The president, said one tax lawyer speaking to the Baltimore *Sun*, had “played it close to the line for every last dime.” An unnamed congressman was even more incredulous: “how insensitive and how stupid can you get?” he fumed.³⁷

Nixon’s request to the JCIRT was a gamble. The committee had “a singular reputation for expertise and integrity,” as one newspaper observed, making any sort of preferential (or deferential) treatment unlikely.³⁸ At the same time, however, the committee’s deeply nonpartisan ethos guaranteed Nixon a fair hearing – no small thing in such a heated political environment.

Indeed, news coverage of the JCIRT investigation repeatedly stressed the committee’s professionalism and independence. The *Los Angeles Times* called the panel “the most professional and nonpartisan on Capitol Hill.” The *New York Times* made the same point in more elaborate fashion, describing the committee as “a highly unusual gear in the Congressional machinery that normally runs on politics.” Indeed, the *Times* noted, the JCIRT had the lowest of low profiles: “It’s very existence is not much known outside of Congress and those who carefully follow tax legislation.”³⁹ But that obscurity imparted a degree of independence, making the committee well-suited for a high-profile investigation of a politically charged topic.

Perhaps even more important, the politicians who actually served on the JCIRT were famously hands-off. At the start of the Nixon investigation, committee leaders had reportedly instructed their staff to work in secret, limiting disclosures even to members of the panel itself. “The reason the committee did not want to be fully informed was to insure that the investigation be as independent and non-political as possible,” reported the *Los Angeles Times*.⁴⁰

Ongoing Debate

As the JCIRT got to work, public debate over Nixon’s taxes grew even more intense. With the returns now publicly available, focus turned to the president’s role in their preparation. The White house was keen to portray the president as a passive consumer of expert advice when it came to filing his returns. But news reports suggested otherwise.

Syndicated columnist Jack Anderson reported on White House documents casting Nixon as an active participant in his tax planning.⁴¹ In a 1969 memo from Nixon aide John D. Ehrlichman to his deputy, Edward L. Morgan (signer of the disputed deed of gift), Nixon came across as anything but passive. “The President holds the view,” Ehrlichman wrote, “that a public man does very little of a personal nature. Virtually all of his entertainment and activity is related to his ‘business.’” Accordingly, Nixon was keen to identify every possible tax deduction, including such things as “wedding gifts to congressmen’s daughters, flowers at funerals, etc.”⁴² Nixon even raised the possibility of looking to history for inspiration. “He suggests that we might review the returns of one or more previous Presidents for guidance,” Ehrlichman wrote.⁴³

A variety of tax experts also weighed in on Nixon’s personal role in the tax scandal. In a highly-publicized interview, former IRS commissioner Mortimer Caplin raised doubts about the legitimacy of Nixon’s charitable deduction, as well as other aspects of his tax returns. But he emphasized the broader

³⁷ Adam Clymer, “Paying Taxes Is Hard for Nixon, Too,” *The Sun (1837-1990)*, 12/09/1973 Dec 09 1973, 2.

³⁸ *Ibid.*

³⁹ Richard L. Madden, “Committee Staff: Nonpartisan Professionals,” *New York Times*, 4 Apr. 1974, 29.

⁴⁰ Thomas J. Foley, “1970 Date Key Issue in Nixon Tax Inquiry,” *Los Angeles Times*, 21 Mar. 1974, 2-a1.

⁴¹ Jack Anderson, “Nixon Had Checked His Tax Return,” *The Washington Post*, 8 Mar. 1974, 1.

⁴² *Ibid.*

⁴³ Thomas J. Foley, “Nixon Look at Ex-Presidents’ Taxes Denied,” *Los Angeles Times*, 13 Mar. 1974, 1-a6; P. MacKenzie John, “Nixon Role Denied on Tax Memo,” *The Washington Post*, 13 March 1974, 1.

issues at stake, underscoring the dangers of aggressive tax minimization by the nation's chief executive. "A President is a moral leader," Caplin said. "He helps establish the values in our society. He's an example."⁴⁴

Some commentators mused that the president might face fraud charges, either civil or criminal. But Sen. Russell Long, D-La., who had assumed the chair of the JCIRT in January, stated several times that he did not expect the committee or its staff to address the issue. Other members of the panel, too, indicated that the nature of the investigation did not allow for consideration of fraud charges, since witnesses had not testified under oath; the committee had concluded that a staff inquiry did not have the authority to swear witnesses.⁴⁵

As the JCIRT study neared its conclusion, some officials began telegraphing its likely conclusions. Wilbur Mills, in particular, was notably forthcoming, suggesting that Nixon's tax misdeeds might force the him from office.⁴⁶ Critics assailed Mills' comment, but he stuck to his guns, arguing that the tax situation would prove bigger than Watergate. "People understand taxes," he said.⁴⁷

Damage to IRS

The JCIRT investigation prompted much discussion of the IRS and its abilities. The need for a congressional inquiry was itself a vote of no-confidence in the agency. Likewise, Nixon's repeated insistence that his returns had already been audited did little to encourage faith in the agency, especially as more details emerged about the president's returns.

Perhaps most embarrassing, Nixon's December financial release included a slightly obsequious note from IRS Baltimore district director William D. Walters to the president. "Our examination of your income tax returns for the year 1971 and 1972 reveal that they are correct, he wrote in June 1973. "Accordingly, these returns are accepted as filed. I want to compliment you on the care shown in the preparation of the returns."⁴⁸

IRS critics viewed the JCIRT study as a useful prod. "When the President turned to the Joint Committee, the IRS roused itself at last and decided to have another look at those returns," one editorial stated. "It realized, belatedly, that more than Mr. Nixon's net worth was at stake. The crucial question here was the integrity of the IRS itself."⁴⁹

But according to then-Commissioner Donald Alexander, the service had begun a new audit even before Nixon turned to the JCIRT. "On November 28, 1973, before the Joint Committee commenced its audit, I told George Shultz, then Secretary of the Treasury, that we were going to reopen the audit of former President Nixon's 1971 and 1972 returns," he later recalled. Apparently, Alexander had been moved to action by the same "I am not a crook" press conference that had sparked so much public debate earlier in the month.⁵⁰

As related above, Alexander was also on the receiving end of repeated suggestions by Tax Analysts and Advocates that he find some way to effectively audit the president. Indeed, when he later explained to the House Judiciary Committee why he had initiated the second audit, Alexander used wording lifted almost verbatim from Thomas Field's letter to the IRS in July. As the Judiciary Committee reported Alexander's testimony: "He said he decided to have the IRS examine the President's tax returns because

⁴⁴ "Nixon's Taxes: An Interview with Mortimer Caplin," *The Washington Post*, 16 Dec. 1973, 2.

⁴⁵ Eileen Shanahan, "Joint Tax Panel Expected to Ask What Nixon Knew a Bout Claims," *New York Times*, 6 Mar. 1974, 22.

⁴⁶ Foley, "1970 Date Key Issue in Nixon Tax Inquiry." Rep. James A. Burke, D-Mass., another member of the committee, backed Mills in this assessment of the seriousness.

⁴⁷ See, for example, "Mr. Mills on Mr. Nixon," *New York Times*, 12 Mar. 1974, 36. Foley, "Nixon Look at Ex-Presidents' Taxes Denied."

⁴⁸ ??

⁴⁹ "Mr. Nixon's Taxes," *The Washington Post*, 4 Apr. 1974, 1.

⁵⁰ Alexander, "Irs Audits of High Officials."

the information which had been reported would have caused the examination of the returns of any other taxpayer.”⁵¹

Alexander looked over Nixon’s returns personally on December 3, five days before Nixon sent copies to the JCIRT, along with Deputy Commissioner Raymond F. Harless. The following day, Alexander met with a full in-house audit team and the Baltimore district director, and on December 7, the IRS hand-delivered letters to the White House notifying Nixon of the new audit for his 1970, 1971, and 1972 returns.⁵² In January 1974, the agency made a public announcement of its new audit; while generally unable to comment on matters involving a particular taxpayer, the agency had been authorized by President Nixon to confirm the existence of the audit.⁵³

Critics welcomed the IRS move, but it did little to soothe complaints that the agency had been too credulous during its first examination. Indeed, Alexander himself reportedly agreed with that assessment. “Insiders say the commissioner believes the agency goofed the first time around,” noted the *Wall Street Journal*.⁵⁴

More broadly, the IRS failure to effectively audit Nixon’s returns contributed to a broader crisis at the agency. “Not since the early 1950s when major scandals engulfed the IRS and a former commissioner was imprisoned for fraud has the agency fallen under such a cloud of distrust,” concluded one reporter.⁵⁵ The JCIRT investigation was a response to this concern. But it was also served to underscore the agency’s failures.

The Investigation and Report

JCIRT had hoped to complete the review of Nixon’s returns quickly, but it took four months for the panel to issue its final report. The process was thorough and time consuming, involving approximately 30 interviews with people involved in preparing Nixon’s returns. Committee staff also travelled to both California and New York to investigate transactions reported on the returns.

The resulting document, released on April 4, 1974, was more than a 1,000 pages long, including appendices. It considered numerous issues surrounding Nixon’s returns, some large, others quite small. It would be fair to describe the report as exhaustive but the committee preferred call it simply “extensive.”

Either way, the report’s central finding was reasonably succinct: Nixon owed the government \$476,431 in unpaid taxes and accrued interest.⁵⁶ The committee emphasized that its finding did not constitute a demand for payment of taxes, since JCIRT had no such authority. But given Nixon’s promise to accept the committee’s findings, the proposed adjustment carried substantial weight, both political and moral.

⁵¹ Reprinted in *ibid*.

⁵² *Ibid*.

⁵³ Paul Houston, "Irs Checking Two Nixon Tax Returns It Praised Last June," *Los Angeles Times (1923-Current File)*, 01/03/1974 Jan 03 1974, 2-3a.

⁵⁴ Timothy D. Schellhardt, "Taxing Job," *Wall Street Journal*, 24 Jan. 1974, 1.

⁵⁵ *Ibid*.

⁵⁶ The sum included a deficiency of \$171,055 for 1969; technically, Nixon was not obligated to pay this amount, since the 1969 tax year was already closed. As a result, the committee did not include interest on his amount in its recommended adjustment to the president’s taxes.

Proposed Deficiencies in President Nixon's Tax Payments			
Year	Proposed Deficiency	Interest	Deficiency Plus Interest
1969	\$171,055	*	\$171,055
1970	93,410	\$16,638	110,048
1971	89,667	10,547	100,214
1972	89,890	5,224	95,114
Total	\$444,022	\$32,409	\$47,6431
<i>* The committee did not include interest for the 1969 deficiency since it was a closed tax year and any payment by the president would have been purely voluntary.</i>			

The shortfall in Nixon's tax payments stemmed from several issues, but three stood out: his charitable deduction for the donation of papers to the National Archives; his failure to report a capital gain on the sale of acreage at San Clemente; the deferral of his capital gain recognition on the sale of his New York City apartment.

Papers Donation

On his 1969 return, Nixon had claimed a deduction for the charitable contribution of his personal papers to the National Archives. The president claimed to have made the gift on March 27, 1969, nearly four months before the July 25, 1969 effective date set by the Tax Reform Act of 1969 for new, less generous treatment of such donations. The gift was valued by an independent appraiser at \$576,000, and the return indicated that there "were no restrictions on the gift and that the gift was free and clear, with no rights remaining in the taxpayer."

A deed of gift, dated March 27, 1969, had been delivered to the General Services Administration (parent agency of the National Archives) "shortly after" April 10, 1970. The deed was signed by Edward L. Morgan, deputy counsel to the president, rather than Nixon himself.

As a result of this gift, Nixon had claimed a deduction of \$95,298 on his 1969 return, consistent with limits on the annual deduction relative to income. In subsequent years, Nixon carried over the remainder, taking deductions of \$123, 959 (1970), \$128,668 (1971) and \$134,093 (1972); \$93,982 was still available for later deductions.

After an extensive review of this donation – including numerous interviews with Nixon's aides, lawyers, and accountants – JCIRT staff concluded that the president had not made a valid gift before the July 25, 1969 deadline. The committee identified numerous problems with the deed of gift – dated March 27, 1969, signed by presidential assistant Edward Morgan, and delivered to the Archives in April 1970. In fact, the deed had not been signed by all parties until April 10, 1970 and was not delivered to the National Archives until after that date. Since delivery of the deed was necessary to convey title, the gift had been made after July 25, 1969.

In addition, Morgan did not appear to have authorization to sign the deed on the president's behalf. The deed also imposed numerous restrictions on the gift, rendering it (in the committee's judgment) a gift of future interest in tangible property, which would only be deductible once the restrictions had expired.⁵⁷

San Clemente Real Estate Sale

⁵⁷ The report also concluded that a similar gift of papers made in 1968 imposed the same restrictions, making the charitable deduction in Nixon's 1968 return also improper and barring the possibility of carrying over any portion of the deduction to future tax years.

The JCIRT found that Nixon had failed to report a capital gain of \$117,836 on the sale of land included in his San Clemente estate. The committee rejected Nixon's assertion that he had made no profit on the sale, suggesting that he had erroneously allocated costs and depreciation between various parcels. A capital gain of \$117,836 should have been reported on the president's 1970 return.

Sale of New York Apartment

The committee found that Nixon had improperly deferred the reporting of his capital gain on the sale of his New York cooperative apartment. Nixon had claimed that deferral was justified, since he had reinvested the gain in the purchase of a new principal residence (San Clemente), but the JCIRT concluded that Nixon's actual principal residence was not the San Clemente estate but the White House.

Staff concluded that the president owed tax on a capital gain of \$142,912. They also contended that Nixon's cost basis in the apartment should be reduced by the depreciation and amortization allowable on the apartment for its use as a place of business. That adjustment would increase the total gain to \$151,848, which should have been reported on Nixon's 1969 tax return.

Reaction to the JCIRT Report

Notably, the JCIRT staff report declined to consider the possibility of fraud or negligence on the part of either Nixon or his aides. The pending impeachment investigation by the House Judiciary Committee might eventually require JCIRT members to pass judgment on various charges, including fraud. "The staff believes that neither the House nor the Senate members of the Joint Committee would want to have pre-judged any issue which might be brought in any such proceedings," the report explained.

Members of the joint committee endorsed the staff report by a vote of 9-1, with only Sen. Carl T. Curtis, R-Neb., in dissent. The members released it, along with all supporting documents, on April 4 – the same day that the IRS announced it had concluded its second audit of Nixon's tax returns.

Although the figures were not disclosed at the time, the IRS had found that Nixon owed a similar but smaller amount than the one suggested by the JCIRT: \$432,787. Nixon agreed quickly to pay the IRS figure but chose not to pay interest on his 1969 deficiency, arguing (as the JCIRT had itself suggested) that the payment was voluntary since the statute of limitations had run out on the 1969 return. (For the same reason, Nixon might also have avoided paying any part of the 1969 deficiency.)⁵⁸

JCIRT members commended Nixon for agreeing to pay so readily. But not everyone was impressed with Nixon's willingness to pay. In comments to the *New York Times*, Tax Analysts and Advocates pointed out that any payment on Nixon's 1969 taxes would be deductible on his 1974 tax return as a charitable contribution to the federal government.⁵⁹ Editors at *The Washington Post*, meanwhile, observed that Nixon really had no choice, at least regarding his 1970 and 1971 returns. "Is it necessary to point out that, under American law, paying income taxes is not a voluntary matter?" the paper asked.⁶⁰

For its part, the White House was not exactly gracious. Presidential aides complained that the JCIRT had released its report before allowing the president's lawyers to respond. They insisted that Nixon's original positions were still "valid and compelling," and pre-release news reports had suggested that Nixon might challenge the JCIRT findings. Ultimately, however, Nixon was bound, at least politically, by his promise in December to abide by the committee's findings.

Administration officials were at pains to point out that neither the JCIRT nor the IRS had leveled fraud charges against the president. In fact, the IRS had announced that it "did not believe any such

⁵⁸ Eileen Shanahan, "Nixon Tax Inquiry Is Closed by I.R.S. And Congress Unit," *New York Times*, 5 Apr. 1974, 1.

⁵⁹ *Ibid.*

⁶⁰ "Taxes, Morality and Mr. Nixon," *The Washington Post*, 7 Apr 1974, 1.

assertion was warranted.”⁶¹ The House Judiciary Committee, however, did consider tax fraud during its impeachment proceedings, including an article of impeachment stating that Nixon “knowingly and fraudulently failed to report certain income and claimed deductions in the year 1969, 1970, 1971, and 1972 on his Federal income tax returns which were not authorized by law.” Eventually, the committee rejected that article.

Meanwhile, White House officials worked feverishly to shift blame for Nixon’s tax troubles from the president to his subordinates. “Any errors which may have been made in the preparation of the President’s returns were made by those to whom he delegated the responsibility for preparing his return and we made without his knowledge and without his approval,” the White House announced.⁶²

The Washington Post felt compelled to challenge that statement, even in its news coverage. “A person who signs a tax return is responsible for it regardless of who else works on it,” the paper noted in its coverage of the White House statement.⁶³ The editorial page was even more scathing. “We have never had a President who confessed himself so sublimely unaware of the activities of his closest associates,” the paper argued. “Citizens are left to reflect that, whatever the pressures of their own business, they are required by law to take responsibility for the tax returns that they sign.”⁶⁴

Conclusion

Nixon’s tax scandal is barely a footnote in most historical treatments of his presidency. Watergate was so lurid as to obscure more pedestrian (and more tedious) misdeeds, like the papers donation. To the extent that the episode is remembered at all, the outrage is usually directed at the notion that a president would try to claim a deduction for donating his official papers to a government archive in the first place. But of course, such donations and associated deductions were perfectly legal – and entirely routine – until the middle of 1969.

Nixon’s tax wrongdoing, on the other hand, was anything but legal or routine. The president and his advisers had filed returns based on various falsehoods, especially surrounding the timing of key events. In fact, several of those involved in preparing the returns were indicted or convicted for their roles in the episode. Edward L. Morgan, who played a key role, served four months after pleading guilty to falsifying documents related to the papers donation.⁶⁵

At the time, the tax scandal was headline news, and Wilbur Mills, among others, thought it would prove the president’s undoing. After interviewing the Ways and Means chair about the tax scandal, *People* magazine passed along his prediction: “When an analysis of the President’s returns is made public, Mills said, Mr. Nixon will surely resign.”⁶⁶

The issue, in the eyes of Mills and many others, was the message that Nixon’s tax avoidance sent to American taxpayers. “There are many, many people with a lot less income that have paid more taxes during these four years than he has, and it galls them a lot,” Mills said. “A lot of people say they’d already be in the penitentiary had they paid no more on their incomes than he barely paid on his.”⁶⁷

⁶¹ Shanahan, “Nixon Tax Inquiry Is Closed by I.R.S. And Congress Unit.”

⁶² “White House Statement on Nixon Taxes,” *The Sun*, 4 Apr. 1974, 1.

⁶³ Shanahan, “Nixon Tax Inquiry Is Closed by I.R.S. And Congress Unit.”

⁶⁴ “Mr. Nixon’s Taxes.”

⁶⁵ Samson, “President Nixon’s Troublesome Tax Returns.”

⁶⁶ Mills finished off with a caveat. “But that’s just their opinions,” he said. “No facts to go by yet.” See Clare Crawford, “Wilbur Mills: Taxes Will Be Nixon’s Downfall,” *People*, April 15, 1974, available at <http://www.people.com/people/archive/article/0,,20063956,00.html>.

⁶⁷ Mills finished off with a caveat. “But that’s just their opinions,” he said. “No facts to go by yet.” See Clare Crawford, “Wilbur Mills: Taxes Will Be Nixon’s Downfall,” *People*, April 15, 1974, available at <http://www.people.com/people/archive/article/0,,20063956,00.html>.

Indeed, many close observers considered the tax scandal an existential threat to the nation's revenue system. For a system so heavily dependent on self-assessment, Nixon's willingness to play fast and loose with the law was deeply threatening.

The failure of the IRS to catch the president was even more worrisome. Since its creation during the Civil War, the agency has been the focus of recurring complaints about its honesty, integrity, and capacity. But the Nixon episode posed a particularly serious threat to the agency – and by extension the tax system that it administered. By underscoring the agency's susceptibility to political influence, the Nixon tax crisis threatened the functioning of the tax system writ large.

Into this dangerous situation stepped the JCIRT. In the fall of 1973, Tax Analysts had suggested the committee as an alternative to the IRS when it called for a new audit of the president's returns. The panel's reputation for honest, non-partisan, and deeply expert analysis seemed perfect for the moment. Eventually, the Nixon administration came to agree; seeking absolution, the president believed a committee-led investigation offered the possibility (if not, perhaps, the likelihood) of absolution. At the very least, its report could bring an end to the scandal.

Still, not everyone liked the idea of putting JCIRT in the role of presidential auditor. Former IRS Commissioner Mortimer Caplin told the *Washington Post* that the committee's temporary role might be justifiable in the current, exceptional situation. "But in the future this is not a very good practice," he warned. "I think it places an extreme burden on the Committee, which does not usually involve itself in specific administrative acts."⁶⁸

Ultimately, the JCIRT's investigation did what observers (other than the president) hoped that it would do. Its report contained relatively few surprises; for the most part, it confirmed the rumors, speculation, and leaked information that had been swirling around the president's tax returns for nearly a year. But that confirmation was crucial, precisely because the JCIRT was so widely trusted as an even-handed arbiter.

Such bodies were not easy to find in 1973 – or any other period.

⁶⁸ "Nixon's Taxes: An Interview with Mortimer Caplin."