COMMONWEALTH OF PENNSYLVANIA :

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COUNTY OF PHILADELPHIA :

AFFIDAVIT

Kenneth W. Gemmill and H. Chapman Rose, being first duly sworn, depose and say:

1. That in July, 1973, the President instructed them as his personal counsel to develop a program for verifying and publicizing the transactions, and the source of the funds used, in his acquisition of his residences at Key Biscayne and San Clemente; that pursuant to this instruction, affiants retained the accounting firm of Coopers and Lybrand, which performed a detailed audit, in accordance with accepted accounting practice, of the financial affairs of President and Mrs. Nixon and, based thereon, furnished a report dated August 20, 1973, detailing these acquisitions and the funds used, which report was made public on August 27, 1973; that, beginning in the summer of 1973, questions had been publicly raised concerning the correctness of the federal income tax returns filed by the President and Mrs. Nixon, with respect to the deduction in 1969 of the appraised value of a gift of Pre-presidential papers to the United States and with respect to the tax treatment of the sale in 1970 of a portion of his San Clemente property;

2. That on or about December 1, 1973, the President communicated to the affiants his decision to make public the report of the Coopers and Lybrand audit; that on December 3, 1973, affiants consulted with the President as to the best procedure to follow with respect to the above-described tax questions, the

alternatives being (a) to await events, (b) to request the Commissioner of Internal Revenue to assess a deficiency, looking toward an ultimate judicial determination, or (c) to submit these tax questions for determination by the Joint Congressional Committee on Internal Revenue; that, at the President's suggestion, affiants met on the afternoon of December 3, 1973, with the Republican leadership of the Senate and the House, including Vice-President Ford, Senators Scott of Pennsylvania, Griffin, Cotton and Tower and Representatives Arends, Rhodes and Anderson, to review the audit report and the contents of the tax returns of the President and Mrs. Nixon for the years 1969-1972, and to obtain their advice on the foregoing alternatives; that the consensus of this meeting, with which affiants concurred, was to submit the tax questions to the Joint Congressional Committee in order to obtain a prompt decision in circumstances which would rebut any suggestion that the President could control or influence the result; that the President, for this reason, immediately accepted this advice and by his letter (Exhibit A attached) dated December 8, 1973, to Representative Wilbur Mills, then Chairman of the Joint Congressional Committee, transmitted this request to the Committee; that on December 7 and 8, 1973, affiant Gemmill conducted several briefing sessions on the Coopers and Lybrand audit report and the tax returns for members of Congress and the press; and that a letter from the Director of the Baltimore District of the Internal Revenue Service to the President and Mrs. Nixon, dated December 7, 1973, announcing an intention to reaudit their tax returns for the years 1971 and 1972, did not come to the attention of the affiants, nor, as far as they are aware, to the attention of the President, until after the announcement, during these briefings, of the President's request to the Committee; and that the President received from Chairman Mills a letter dated December 13, 1973, expressing

the willingness of the Joint Congressional Committee to undertake an examination of all questions relating to the tax returns of President and Mrs. Nixon for the years 1969-1972.

3. That on December 19, 1973, affiants met with the Commissioner of Internal Revenue, the Chief of Staff of the Joint Congressional Committee on Internal Revenue, and a number of their representatives and agreed initially on cooperating in a program of developing the facts relating to the tax questions above described, and any others raised by the President's returns; that affiants met on many subsequent occasions with representatives of the Commissioner and with the staff of the Committee, provided material requested by them, and with the three minor exceptions noted at p.3 of the published report of the Committee staff, complied with all their very wide-ranging requests for information; that the published report of the Committee staff expresses, with only the minor reservations noted above, its satisfaction with the cooperation received from affiants and other representatives of the President (see pp. 2-3 of that report); that, however, shortly after the beginning of the cooperative investigation, the Chief of Staff expressed the preference of his Staff for separate rather than joint examination of witnesses, with the understanding that the affiants were to be furnished promptly memoranda containing the substance of such interviews; that such memoranda of Committee interviews, although frequently promised, were not furnished to affiants, except for the delivery to the affiants on Saturday, March 30, 1974, of more than a hundred pages of a partial draft, marked "Not final -- Subject to revision" of the Committee Staff's report four days before its publication on Wednesday, April 3, 1974; and that affiants remain convinced that, as a result of this method

of developing oral testimony almost exclusively ex parte, the President's case was not brought before the Staff or the Internal Revenue Service as strongly or as adequately as would have been possible had each side developed its direct testimony in the presence of the other, subject to cross-examination.

4. That, in the opinion of affiants, the foregoing procedure is in substantial part responsible for the two differing views (the one expressed in our tentative memorandum dated February 19, 1974, delivered to the Committee staff and printed at pages A-13 et seq. of the Staff report,* and the other expressed in the report published by the Committee staff on April 3, 1974) of the facts relating to the question whether the actions taken with regard to the Nixon Pre-Presidential papers in 1969 prior to the statutory cut-off date of July 25, 1969, were sufficient to constitute a deductible gift; that affiants remain of the view stated in their April 1, 1974 memorandum that the facts support deductions taken for the fair market value of the 1969 gift under applicable legal principles; and that there is a substantial likelihood that in litigation conducted in the traditional manner, with evidence presented by each side in the presence of the other, and subject to cross-examination by the other and with full opportunity for briefs and argument, a court would so hold.

5. That there were two additional questions which, taken together with the disallowance of the deductions for the gift of the Nixon Pre-Presidential papers, account for a high

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* A revision of this memorandum dated April 1, 1974, the intended presentation of which to the Committee never took place by reason of the publication on April 3, 1974, of the Staff's conclusions, is hereto attached as Exhibit B.

percentage of the total deficiency found: (a) the disallowance of the deferral of the capital gain on the sale of the President's New York apartment in 1969, based on his purchase within a year of the property at San Clemente as his intended principal residence, and (b) the assessment of a capital gain tax on the sale in 1970 of a portion of the San Clemente acreage;

That, as to (a), for the reasons stated in their memorandum dated February 19, 1974, furnished to the Committee staff and attached hereto as Exhibit C, the affiants remain of the view that there is a substantial likelihood that a court would hold that the capital gain was deferrable;

That as to (b), the Staff Report agrees that the question whether there was a capital gain from the sale of a part of the property depends upon an allocation of the total cost of the whole property between what is sold and what is retained, based on the relative fair market values of the properties sold and retained (p. 99), and that fair market value is a factual issue (p. 101); that several independent appraisers stated widely varying views as to valuation, again without direct or cross-examination in the presence of the parties; that the latest of these opinions (those of Hugh Drumm dated March 22, 1974 and April 4, 1974, attached hereto as Exhibits D and E, the first of which was furnished to the Staff of the Committee but not included in the printed report) are the most favorable to the view that no capital gain was realized; and that affiants remain of the view that there is a substantial likelihood that a court would hold that no capital gain was realized.

Further, affiants sayeth not.

Kenneth W. Gemmill

H. Chapman Rose

Subscribed and sworn to before me this 26th day of June, 1974.

Notary Public
ANTOINETTE GORDON
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 10, 1978