

Richard Nixon Presidential Library
White House Special Files Collection
Folder List

<u>Box Number</u>	<u>Folder Number</u>	<u>Document Date</u>	<u>Document Type</u>	<u>Document Description</u>
9	1	12/06/1973	Letter	Richard Ritzel to Rose Mary Woods re: Nixon Estate Plan, accompanying complete package of pertinent documents. 4 pgs.
9	1	10/25/1973	Letter	Richard Ritzel to Rose Mary Woods re: providing copies of memos related to President's Estate Plan. Note indicating support for the President. 1 pg.
9	1	10/23/1973	Financial Records	Revision of Estate Plan to include transfer of San Clemente Property to Federal Government. 10 pgs.
9	1	10/23/1973	Financial Records	Revision of Estate Plan to include transfer of San Clemente Property to Federal Government. 8 pgs.
9	1	08/04/1972	Letter	Richard Retzel to Ehrlichman re: providing copies of documents related to President's Estate Plan. 2 pgs.

MUDGE ROSE GUTHRIE & ALEXANDER

20 BROAD STREET

NEW YORK, N.Y. 10005

212-422-6767

JOHN H. ALEXANDER
GEORGE F. ANDEREGG, JR.
BLISS ANSNER
PETER W. ASHER
ARTHUR M. BECKER
MILTON BLACK
WALTER E. BREEN
H. RIDGELY BULLOCK
WILLIAM H. CANNON
NICHOLAS J. CAPOZZOLI, JR.
J. D. CLAYTON
THOMAS S. CURRIER
JOSEPH C. DALEY
GOLDTHWAITE H. DORR
THOMAS W. EVANS
RICHARD S. FARROW
ROBERT E. FERDON
JAMES G. FRANGOS
GERRIT GILLIS
GERALD B. GREENWALD
(D.C. BAR ONLY)
RANDOLPH H. GUTHRIE
MATTHEW G. HEROLD, JR.
JOHN J. KIRBY, JR.
WILLIAM B. LANDIS
WILLIAM B. LAWLESS
FRANKLIN B. LINCOLN, JR.
WILLIAM A. MADISON
ARTHUR J. MAHON
FRANCIS X. MALONEY
RICHARD H. NICHOLLS
RICHARD S. RITZEL
MILTON C. ROSE
NORMAN M. SEGAL
HARRY G. SILLECK, JR.
HENRY ROOT STERN, JR.
JAMES P. TANNIAN
ARNOLD H. TRACY
DONALD J. ZOELLER

PERSONAL AND CONFIDENTIAL

JOHN T. TRIMBLE
COUNSEL

1701 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C.
202-298-5970

12, RUE DE LA PAIX
75002, PARIS, FRANCE
742-05-99

CABLE ADDRESS
BALUCHINS-NEW YORK

TELEX 127889

December 6, 1973

Miss Rose Mary Woods
Executive Assistant and
Personal Secretary to
the President
The White House
Washington, D. C.

Dear Rose Mary:

In connection with the President's Estate Plan and the Trust Agreements and Wills which were executed in August of 1972, I gather you have been unable to unearth the copies of many of the documents which were sent down to Washington and that there is a rather complete lack of knowledge as to the entire affair on the part of those who are presently working on the problem. While you have asked only for the copy of the memorandum dated August 4, 1972, which summarizes and outlines, in fairly full detail, the Estate Plan upon which the Trust Agreements and Wills were executed on August 8th, I thought it would be helpful if I sent you, in one package, all of the pertinent documents and, in a couple of instances, copies of certain correspondence which will pull the entire matter into focus. In that way, it seemed to me that those who are presently concerned with the matter could have everything in front of them which seems, at least to me, to be of importance. Accordingly, I am enclosing herewith the following:

(1) Copy of letter dated August 4, 1972 to John Ehrlichman listing a series of documents which were sent to him with that letter. A copy of the Final Estate Plan, which is the memorandum referred to in (1) of the letter to Ehrlichman, is also enclosed. On August 13th, I got a call from Ehrlichman in which he indicated that the President and Mrs. Nixon had been over the matter at Camp David the previous day, wanted to execute the documents on August 14th, and requested that certain changes be made in the documents referred to in (2), (3), (4), (5) and (6) of letter of August 4th. This was on a Sunday, and the changes were made on that day and John Alexander and I went to Washington on Monday with the originals of all of the documents. Minor changes were made in Washington on Monday, and the documents were executed that afternoon.

(2) Copy of the Family and Literary Properties Trust, together with the Instrument Appointing Successor Trustees referred to in (2) of the August 4th letter, as finally executed.

(3) Copy of Agreement of Trust, together with the Instrument Appointing Successor Trustee, known as the Irrevocable Literary Trust and referred to in (3) of the letter of August 4th.

(4) Copy of the Agreement of Trust, together with the Instrument Appointing Successor Trustee, known as the Patricia R. Nixon Trust and referred to in (4) of the letter of August 4th.

(5) Copy of the President's Will, mentioned in (5) of the August 4th letter.

(6) Copy of Mrs. Nixon's Will, referred to in (6) of the August 4th letter.

(7) Copy of the memorandum describing the administrative steps relating to the execution of the above documents. This document pretty much lays out the procedure which we recommended to be followed once the Trust Agreements and Wills were executed. I have no idea as to whether the steps recommended to be taken subsequent to the execution of the Trust Agreements and Wills were ever carried out. I did, however several

times after the execution of the documents, call Dean to inquire whether he was proceeding promptly, since the job of arranging for the transfer of assets, etc., had been assigned to him. I received assurances that he was taking care of the matter but never received any details.

(8) Copy of my letter to John Dean dated September 29, 1972, enclosing four sets of copies of the President's and Mrs. Nixon's Wills and the three Trust Agreements referred to in (2), (3) and (4) above, and also indicating that the originals of all of these documents are in our Firm Vault. All of the steps mentioned in that letter were carried out except that we never did deliver one set of the copies to the attorney who acted as our California counsel in connection with the preparation of the final documents.

(9) Copy of the application for a ruling that transfers to the Irrevocable Literary Trust are deductible for income, estate and gift tax purposes.

(10) Copy of Power of Attorney given by H. R. Haldeman, as Trustee under the Irrevocable Literary Trust, to John Alexander and me in connection with the application for such ruling.

(11) Copy of letter dated September 27, 1972, from the Acting Chief, Rulings Section, Exempt Organizations Branch of the I.R.S., requesting additional information with relation to the application for a ruling.

(12) Copy of John Alexander's letter to John Dean dated October 11, 1972, suggesting a reply letter by Haldeman to the Acting Chief. We received from Dean the form of letter and sent it on to the Acting Chief.

(13) Copy of the ruling issued by the I.R.S. to the effect that transfers to the Irrevocable Literary Trust are deductible for income, estate and gift tax purposes.

(14) Copy of John Alexander's letter dated May 8, 1973, together with copy of the memorandum referred to. I might say that we have never registered the Irrevocable Literary Trust with the California Attorney General referred

Miss Rose Mary Woods

-4-

December 6, 1973

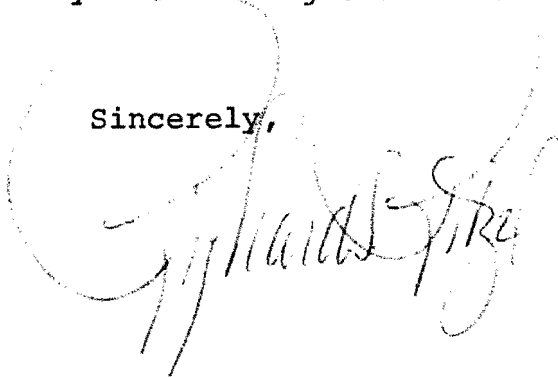
to in (b) of the memorandum sent to you in the letter of May 8, 1973.

(15) Copy of letter dated May 14, 1973 addressed to the Internal Revenue Service enclosing the Form 990 PF for the calendar year 1972 for the Irrevocable Literary Trust, together with a copy of the Form 990 PF.

(16) While I understand you have the two copies of the memorandum dated October 23, 1973, with relation to the transfer of the San Clemente property to the Government, in order to make the enclosed package complete, I am enclosing another copy of that memorandum.

The above enclosures will give to whoever is working on the matter a set of the pertinent letters, documents and other instruments which are in our files. I do not believe that there is anything else in our files which would throw any further light on what has occurred to date.

Sincerely,



RSR:BM

Enclosures

HAND DELIVERY

P. S. The enclosed volume has a tab number on each of the above referred to papers which tab numbers correspond to the numbers in this letter.

R. S. R.

Revision of Estate Plan To Include
Transfer of San Clemente Property
To Federal Government

Dated: October 23, 1973

MUDGE ROSE GUTHRIE & ALEXANDER
20 BROAD STREET, NEW YORK, N. Y.

SUMMARY

Revision of Estate Plan To Include Transfer of San Clemente Property To Federal Government

(1) Need for preservation of basic structure of plan. The present estate plan is structured to take full advantage of the interplay of the applicable rules dealing with California community property and the estate tax marital and charitable deductions. Because of this, the plan should result in a tax-free transfer of all family assets and Presidential memorabilia, papers, etc., upon the death of the first as between the President and Mrs. Nixon to die. If the plan is to be modified and the same tax result achieved, the modification should leave the basic structure of the present plan intact. Also, because questions involving California community property were involved, the present plan was reviewed and approved by California counsel. Approval of California counsel should likewise be obtained before any proposed modification of the plan is implemented.

(2) The San Clemente property under the existing plan. Upon the President's death, the San Clemente property will be transferred to The Patricia R. Nixon Trust. If Mrs. Nixon survives the President, the property will be made available to her for her exclusive use. All expenses relating to the property will be paid by the trust. After the President's death, Mrs. Nixon has the absolute power to direct a retention or sale of the property and, upon a sale, the purchase of a replacement residence. Mrs. Nixon also has the power to dispose of the property by Will. If she does not exercise the latter power, or if she does not survive the President, the property or the proceeds of sale will be held in separate continuing trusts for the benefit of Patricia and Julie. A minor amendment to the plan could be made to provide that if Mrs. Nixon does not exercise her power of appointment the San Clemente property would pass to the federal government. If this were done, however, Mrs. Nixon could still exercise her power and change the intended result.

(3) Alternate dispositions to include transfer to federal government. Two alternate dispositions of the San Clemente property to include a transfer to the federal government appear possible:

(a) Transfer with retained life estate. Upon the

President's death, the San Clemente property would be transferred to the federal government, subject to Mrs. Nixon's right to the exclusive use of the property during her lifetime. Mrs. Nixon or a family trust would remain responsible for payment of all expenses related to the property. A partial reduction in real estate taxes should result from such a transfer, and the transfer should generate a personal income tax deduction for Mrs. Nixon. Mrs. Nixon would, under this arrangement, lose a great deal of flexibility in her choice of a residence, in that if she abandoned her life estate she would have to look to other family assets to purchase a replacement residence. There are, however, historical precedents for such a transfer - the Eisenhower farm, the LBJ Ranch, and the Roosevelt residence in Hyde Park were all transferred to the government subject to arrangements to allow Mrs. Eisenhower, Mrs. Johnson and Mrs. Roosevelt to live on the respective residences for the duration of their lives.

(b) Option to purchase. The federal government would be granted the right to purchase the San Clemente property upon the death of the last survivor as between the President and Mrs. Nixon, or prior thereto if it was offered for sale to anyone. The purchase price would be set at an amount equal to the family cash investment. The option would not, however, become firm until the President's death. The family cash investment would thus be subject to eventual recovery for use by family members. Also, if the government declined to exercise the option, the full fair market value of the property would become available to family members. In any event, Mrs. Nixon would, under this arrangement, be provided with some flexibility as to her choice of a residence, in that if she decided that she no longer wished to live at San Clemente she would be provided with the proceeds of sale received from the federal government or, if the option was not exercised, from others, to purchase a replacement residence.

John H. Alexander

Richard S. Ritzel

Revision of Estate Plan To Include
Transfer of San Clemente Property
To Federal Government

(1) Need for Preservation of Basic Structure of Plan

The estate plan adopted August 14, 1972 by the execution of Wills and three separate Trust Agreements creating The Family and Literary Properties Trust, The Irrevocable Literary Trust and The Patricia R. Nixon Trust is structured to take full advantage of the interplay of the rules with respect to California community property and the estate tax marital and charitable deductions. Because of this, the transfer of family assets and Presidential memorabilia, papers, etc., upon the death of the first as between the President and Mrs. Nixon to die should not be subject to federal or California estate or inheritance taxes.

The essential elements of the plan are that (1) as to community property, since a theoretical possibility exists that the surviving spouse could reject the testamentary arrangements made for his or her benefit and could claim his or her community property outright, it is the surviving spouse who is transferring his or her share of the community property in trust, (2) as to property other than community property passing to or for the benefit of the surviving spouse, the same is received either outright or in trust subject to a general testamentary power of appointment and thus qualifies for the estate tax marital deduction, and (3) as to any property not passing to or for the benefit of the surviving spouse, the same passes for charitable purposes and thus qualifies for the estate tax charitable deduction. Therefore, under the plan, the family assets and Presidential memorabilia, papers, etc., passing to or for the benefit of the surviving spouse represent the surviving spouse's share of the community property or qualify for the estate tax marital deduction and the Presidential memorabilia, papers, etc., passing for charitable purposes represent the deceased spouse's community property and the balance of his or her other property after allowance of the estate tax marital deduction.

If the same tax result is to be sought upon any modification of the present plan, the modification should be

structured so that the above described interplay of the rules with respect to California community property and the estate tax marital and charitable deductions is preserved.

Also, it should be noted that the present plan was reviewed and approved by California counsel because of the fact that questions with respect to California community property law were involved in its formulation. Any proposed modification of the plan should likewise be reviewed and approved by California counsel before that modification is implemented.

(2) The San Clemente Property under the Existing Plan

Upon the President's death, the San Clemente property, together with all other family assets except Presidential memorabilia, papers, etc., will be transferred to The Patricia R. Nixon Trust. The property so transferred, representing a portion of Mrs. Nixon's share of the community property and, possibly, assets qualifying for the estate tax marital deduction, will be made available to Mrs. Nixon for her exclusive use. All real estate taxes, insurance costs and other expenses incurred in maintaining or improving the property will be paid out of the income generated by other trust assets, and, if necessary, out of the principal of the trust.

If the income and principal of the trust does not provide adequately for Mrs. Nixon and at the same time cover the San Clemente expenses, Mrs. Nixon can direct that a sale of certain Presidential papers or memorabilia be made and that the proceeds be used for such purposes. Certain nonsensitive Presidential memorabilia, papers, etc., also representing a portion of Mrs. Nixon's share of the community property and, possibly, assets qualifying for the estate tax marital deduction, will be retained in The Family and Literary Properties Trust upon the President's death for such purposes. Such sales will, however, be limited to \$100,000 per year and to an aggregate of \$2,000,000.

Mrs. Nixon will have the exclusive power to direct the retention or sale of the San Clemente property and, if a sale is made, the purchase of a replacement residence. Mrs. Nixon can also, in her Will, dispose of the San Clemente property in any manner she may desire, including a transfer to the federal government for public purposes.

If Mrs. Nixon does not exercise her power to dispose of the San Clemente property by Will, or if she is not living at the time of the President's death, the property will either be held by the Trustee of The Patricia R. Nixon Trust or be sold, with the property or the proceeds of sale to be held in separate trusts for the benefit of Patricia and Julie and their children. Federal and California estate and inheritance taxes will be imposed on the transfer of the property upon the death of the last survivor as between the President and Mrs. Nixon.

It should be noted that by a minor amendment to the trust agreement under which The Patricia R. Nixon Trust was created, it could be directed that the San Clemente property would pass to the federal government upon Mrs. Nixon's death if she failed to exercise the general power of appointment granted to her under that agreement. If this were done, however, Mrs. Nixon could always, by exercising her power of appointment, change the intended result. If Mrs. Nixon did not exercise her power and the property did pass to the federal government, no federal or California estate or inheritance taxes would be imposed on the transfer at her death.

(3) Alternate Dispositions to Include Transfer to Federal Government

(a) Transfer with Retained Life Estate.

Basic Plan. Upon the President's death, the San Clemente property would be transferred to the federal government, subject to Mrs. Nixon's right, if she is then living, to the exclusive use of the property during her lifetime. (It is assumed that if Mrs. Nixon is the first to die, the President would want to continue to exercise exclusive control over the San Clemente property.)

Mrs. Nixon's Obligations Subsequent to the Transfer. Absent any conditions in the instrument of transfer to the contrary, Mrs. Nixon would remain responsible for payment of real property taxes, ordinary maintenance expenses, interest on any outstanding mortgage, and a "just" proportion of any extraordinary assessments. In addition, if there was a mortgage on the property which had to be satisfied by the federal government during the term of her life estate, Mrs. Nixon would probably be required to reimburse the government, either by continuing to pay

interest on the amount of the mortgage satisfied or by the payment of a lump sum based on the current value to her of having been relieved of the obligation to pay interest on the outstanding mortgage.

The instrument of transfer can provide that the federal government, as remainderman, must assume some or all of the obligations normally imposed on the life beneficiary. Obviously, however, if too many obligations are shifted to the federal government, the cost of carrying the property would exceed the value of the remainder interest in the property and the gift might be rejected.

Impact on Real Estate Taxes. The California Constitution and Revenue and Taxation Code specifically exempt federal property used for public purposes from taxation. The Revenue and Taxation Code also recognizes that less than an entire interest in real property, e.g., a life estate, can be subjected to real property taxes. Accordingly, when real property is transferred to the federal government subject to an intervening life estate, the value of the remainder interest should be exempt from local real property taxes. (At Mrs. Nixon's current age, her life estate in the property, determined actuarially, would be worth approximately 61% of its current value. A 39% reduction in real property taxes should, therefore, result if the remainder interest was vested in the federal government.) This point will ultimately have to be confirmed by California counsel.

Impact on Family. A transfer with a retained life estate would have an adverse financial and personal impact on the family. Although Mrs. Nixon would be entitled to use the property during her lifetime, she would still be required to pay real estate taxes (although possibly at a slightly reduced rate) and to maintain the property. More importantly, she would forfeit a considerable amount of flexibility with respect to her choice of a residence. If she determined that she did not wish to continue to live at San Clemente, she could, of course, abandon her life estate, but she would receive no compensation for doing so to enable her to purchase a replacement residence. Having abandoned her life estate, the property

would become the federal government's exclusively, and Mrs. Nixon would have to look to other family assets to provide her with a residence. Finally, upon Mrs. Nixon's death, full ownership of the property would pass to the federal government, and thus, no portion of the family investment in the property, nor any appreciation resulting subsequent to that investment, would ever be recovered for use by family members.

Tax Considerations. The transfer should be considered for tax purposes to have been made by Mrs. Nixon. Thus, Mrs. Nixon should be entitled to a current income tax deduction in the year of the transfer and, to the extent not used in that year, for five years thereafter. Also, since the transfer will theoretically be made by Mrs. Nixon, it will have no bearing on the President's estate tax return. (If a transfer was made during the joint lives of the President and Mrs. Nixon, with both of them retaining joint and survivor life estates, a federal estate tax would be payable upon the death of the first to die. For this reason, the possibility of effecting a joint transfer has been rejected.)

The amount of the income tax deduction available to Mrs. Nixon would be the actuarial value of the remainder interest passing to the federal government. Thus, it would depend upon (1) the fair market value of the property transferred, (2) Mrs. Nixon's age at the time of the transfer, (3) the amount of any outstanding mortgage affecting the property, and (4) the obligations with respect to the property assumed by Mrs. Nixon and the federal government. For example, if the property had a fair market value of \$500,000 exclusive of any mortgage, if the normal rights and obligations were assumed, and if Mrs. Nixon was 65 years of age at the time of the transfer, the current income tax charitable deduction available to her would be approximately \$221,000.

Historical Precedents. General and Mrs. Eisenhower, after he left office, transferred their Gettysburg farm to the Interior Department as a national park site. They retained the right to live on the property transferred during their joint lives and the survivor for six months after the death of the

first to die. After the transfer, no change in the day-to-day operation of the farm occurred, and General Eisenhower continued to pay all expenses of maintenance. The property was, however, removed from the local tax rolls and no further real property taxes were paid. (In light of the California law on this subject, it would appear doubtful that a similar result could be obtained for the San Clemente property.) Subsequent to General Eisenhower's death, Mrs. Eisenhower decided that she wanted to continue to live on the property, and negotiations with the Interior Department resulted in the granting of a "Use Permit" permitting her to continue to occupy the residence and some surrounding acreage. Under the terms of the Use Permit, Mrs. Eisenhower pays all ordinary expenses relating to maintaining the residence. The balance of the property is maintained by the Interior Department.

Mr. Johnson, after he left office, similarly arranged for a transfer of the LBJ Ranch for eventual use as a national park site, but with Mrs. Johnson to have the right to live on the ranch for the term of her life. The transfer of Mr. Roosevelt's Hyde Park residence also was made during Mr. Roosevelt's lifetime, with arrangements being made to permit Mrs. Roosevelt to continue to occupy a cottage on the premises for the duration of her life.

(b) Option to Purchase.

Basic Plan. The federal government would be granted the right to purchase the San Clemente property upon Mrs. Nixon's death or prior thereto, if it is offered for sale to anyone. The option would not, however, become firm until the President's death since it is assumed that if Mrs. Nixon is the first to die, the President would wish to retain exclusive control over the property during his lifetime. The purchase price to the federal government would equal the family cash investment, including the cost of improvements paid for by the family.

Impact on Family. During Mrs. Nixon's life, assuming she is the survivor, real property taxes would have to be paid and the property would have to be maintained with family assets. Mrs. Nixon would,

however, be provided with much more flexibility with respect to her choice of a personal residence after the President's death than with a transfer with a retained life estate. If she decided that she no longer wished to live at San Clemente, she could offer the property for sale, thus triggering the option. Unlike the situation with the life estate, however, the proceeds of sale would be available to purchase a replacement residence. In any event, if the government exercised its option upon Mrs. Nixon's death, the cash investment in the property would be recovered for use by family members. If the government failed to exercise its option, the entire property or its proceeds upon sale would become available for use by family members.

Impact on Real Estate Taxes. The position could possibly be taken with local tax authorities that the option price established the fair market value of the property for the family's purposes and that the real property tax assessment on the property should, accordingly, be based on that price. Since the cash investment would presumably be lower than the fair market value, a reduction, or at least a stabilization, of real property taxes should follow if this position was accepted.

Tax Considerations. The underlying testamentary instruments would make it clear that the entire San Clemente property represented a portion of Mrs. Nixon's share of the community property and that she was the one who was granting the option. Thus, the grant of the option should have no effect on the President's estate for federal estate tax purposes. In Mrs. Nixon's estate, however, the property should be subject to estate taxation, at least at the option price. The option grant should also have no effect on Mrs. Nixon's income tax liability unless she offered the property for sale during her lifetime and the option was exercised. At that time, an income tax charitable deduction should become available to her.

John H. Alexander

Richard S. Ritzel

THE PRESIDENT HAS SEEN...!c

*Amu
Personal*

Revision of Estate Plan To Include
Transfer of San Clemente Property
To Federal Government

Dated: October 23, 1973

MUDGE ROSE GUTHRIE & ALEXANDER
20 BROAD STREET, NEW YORK, N. Y.

SUMMARY

Revision of Estate Plan To Include Transfer of San Clemente Property To Federal Government

(1) Need for preservation of basic structure of plan.

The present estate plan is structured to take full advantage of the interplay of the applicable rules dealing with California community property and the estate tax marital and charitable deductions. Because of this, the plan should result in a tax-free transfer of all family assets and Presidential memorabilia, papers, etc., upon the death of the first as between the President and Mrs. Nixon to die. If the plan is to be modified and the same tax result achieved, the modification should leave the basic structure of the present plan intact. Also, because questions involving California community property were involved, the present plan was reviewed and approved by California counsel. Approval of California counsel should likewise be obtained before any proposed modification of the plan is implemented.

(2) The San Clemente property under the existing plan.

Upon the President's death, the San Clemente property will be transferred to The Patricia R. Nixon Trust. If Mrs. Nixon survives the President, the property will be made available to her for her exclusive use. All expenses relating to the property will be paid by the trust. After the President's death, Mrs. Nixon has the absolute power to direct a retention or sale of the property and, upon a sale, the purchase of a replacement residence. Mrs. Nixon also has the power to dispose of the property by Will. If she does not exercise the latter power, or if she does not survive the President, the property or the proceeds of sale will be held in separate continuing trusts for the benefit of Patricia and Julie. A minor amendment to the plan could be made to provide that if Mrs. Nixon does not exercise her power of appointment the San Clemente property would pass to the federal government. If this were done, however, Mrs. Nixon could still exercise her power and change the intended result.

(3) Alternate dispositions to include transfer to federal government. Two alternate dispositions of the San Clemente property to include a transfer to the federal government appear possible:

(a) Transfer with retained life estate. Upon the

President's death, the San Clemente property would be transferred to the federal government, subject to Mrs. Nixon's right to the exclusive use of the property during her lifetime. Mrs. Nixon or a family trust would remain responsible for payment of all expenses related to the property. A partial reduction in real estate taxes should result from such a transfer, and the transfer should generate a personal income tax deduction for Mrs. Nixon. Mrs. Nixon would, under this arrangement, lose a great deal of flexibility in her choice of a residence, in that if she abandoned her life estate she would have to look to other family assets to purchase a replacement residence. There are, however, historical precedents for such a transfer - the Eisenhower farm, the LBJ Ranch, and the Roosevelt residence in Hyde Park were all transferred to the government subject to arrangements to allow Mrs. Eisenhower, Mrs. Johnson and Mrs. Roosevelt to live on the respective residences for the duration of their lives.

(b) Option to purchase. The federal government would be granted the right to purchase the San Clemente property upon the death of the last survivor as between the President and Mrs. Nixon, or prior thereto if it was offered for sale to anyone. The purchase price would be set at an amount equal to the family cash investment. The option would not, however, become firm until the President's death. The family cash investment would thus be subject to eventual recovery for use by family members. Also, if the government declined to exercise the option, the full fair market value of the property would become available to family members. In any event, Mrs. Nixon would, under this arrangement, be provided with some flexibility as to her choice of a residence, in that if she decided that she no longer wished to live at San Clemente she would be provided with the proceeds of sale received from the federal government or, if the option was not exercised, from others, to purchase a replacement residence.

John H. Alexander

Richard S. Ritzel

Revision of Estate Plan To Include
Transfer of San Clemente Property
To Federal Government

(1) Need for Preservation of Basic Structure of Plan

The estate plan adopted August 14, 1972 by the execution of Wills and three separate Trust Agreements creating The Family and Literary Properties Trust, The Irrevocable Literary Trust and The Patricia R. Nixon Trust is structured to take full advantage of the interplay of the rules with respect to California community property and the estate tax marital and charitable deductions. Because of this, the transfer of family assets and Presidential memorabilia, papers, etc., upon the death of the first as between the President and Mrs. Nixon to die should not be subject to federal or California estate or inheritance taxes.

The essential elements of the plan are that (1) as to community property, since a theoretical possibility exists that the surviving spouse could reject the testamentary arrangements made for his or her benefit and could claim his or her community property outright, it is the surviving spouse who is transferring his or her share of the community property in trust, (2) as to property other than community property passing to or for the benefit of the surviving spouse, the same is received either outright or in trust subject to a general testamentary power of appointment and thus qualifies for the estate tax marital deduction, and (3) as to any property not passing to or for the benefit of the surviving spouse, the same passes for charitable purposes and thus qualifies for the estate tax charitable deduction. Therefore, under the plan, the family assets and Presidential memorabilia, papers, etc., passing to or for the benefit of the surviving spouse represent the surviving spouse's share of the community property or qualify for the estate tax marital deduction and the Presidential memorabilia, papers, etc., passing for charitable purposes represent the deceased spouse's community property and the balance of his or her other property after allowance of the estate tax marital deduction.

If the same tax result is to be sought upon any modification of the present plan, the modification should be

structured so that the above described interplay of the rules with respect to California community property and the estate tax marital and charitable deductions is preserved.

Also, it should be noted that the present plan was reviewed and approved by California counsel because of the fact that questions with respect to California community property law were involved in its formulation. Any proposed modification of the plan should likewise be reviewed and approved by California counsel before that modification is implemented.

(2) The San Clemente Property under the Existing Plan

Upon the President's death, the San Clemente property, together with all other family assets except Presidential memorabilia, papers, etc., will be transferred to The Patricia R. Nixon Trust. The property so transferred, representing a portion of Mrs. Nixon's share of the community property and, possibly, assets qualifying for the estate tax marital deduction, will be made available to Mrs. Nixon for her exclusive use. All real estate taxes, insurance costs and other expenses incurred in maintaining or improving the property will be paid out of the income generated by other trust assets, and, if necessary, out of the principal of the trust.

If the income and principal of the trust does not provide adequately for Mrs. Nixon and at the same time cover the San Clemente expenses, Mrs. Nixon can direct that a sale of certain Presidential papers or memorabilia be made and that the proceeds be used for such purposes. Certain nonsensitive Presidential memorabilia, papers, etc., also representing a portion of Mrs. Nixon's share of the community property and, possibly, assets qualifying for the estate tax marital deduction, will be retained in The Family and Literary Properties Trust upon the President's death for such purposes. Such sales will, however, be limited to \$100,000 per year and to an aggregate of \$2,000,000.

Mrs. Nixon will have the exclusive power to direct the retention or sale of the San Clemente property and, if a sale is made, the purchase of a replacement residence. Mrs. Nixon can also, in her Will, dispose of the San Clemente property in any manner she may desire, including a transfer to the federal government for public purposes.

If Mrs. Nixon does not exercise her power to dispose of the San Clemente property by Will, or if she is not living at the time of the President's death, the property will either be held by the Trustee of The Patricia R. Nixon Trust or be sold, with the property or the proceeds of sale to be held in separate trusts for the benefit of Patricia and Julie and their children. Federal and California estate and inheritance taxes will be imposed on the transfer of the property upon the death of the last survivor as between the President and Mrs. Nixon.

It should be noted that by a minor amendment to the trust agreement under which The Patricia R. Nixon Trust was created, it could be directed that the San Clemente property would pass to the federal government upon Mrs. Nixon's death if she failed to exercise the general power of appointment granted to her under that agreement. If this were done, however, Mrs. Nixon could always, by exercising her power of appointment, change the intended result. If Mrs. Nixon did not exercise her power and the property did pass to the federal government, no federal or California estate or inheritance taxes would be imposed on the transfer at her death.

(3) Alternate Dispositions to Include Transfer to Federal Government

(a) Transfer with Retained Life Estate.

Basic Plan. Upon the President's death, the San Clemente property would be transferred to the federal government, subject to Mrs. Nixon's right, if she is then living, to the exclusive use of the property during her lifetime. (It is assumed that if Mrs. Nixon is the first to die, the President would want to continue to exercise exclusive control over the San Clemente property.)

Mrs. Nixon's Obligations Subsequent to the Transfer. Absent any conditions in the instrument of transfer to the contrary, Mrs. Nixon would remain responsible for payment of real property taxes, ordinary maintenance expenses, interest on any outstanding mortgage, and a "just" proportion of any extraordinary assessments. In addition, if there was a mortgage on the property which had to be satisfied by the federal government during the term of her life estate, Mrs. Nixon would probably be required to reimburse the government, either by continuing to pay

interest on the amount of the mortgage satisfied or by the payment of a lump sum based on the current value to her of having been relieved of the obligation to pay interest on the outstanding mortgage.

The instrument of transfer can provide that the federal government, as remainderman, must assume some or all of the obligations normally imposed on the life beneficiary. Obviously, however, if too many obligations are shifted to the federal government, the cost of carrying the property would exceed the value of the remainder interest in the property and the gift might be rejected.

Impact on Real Estate Taxes. The California Constitution and Revenue and Taxation Code specifically exempt federal property used for public purposes from taxation. The Revenue and Taxation Code also recognizes that less than an entire interest in real property, e.g., a life estate, can be subjected to real property taxes. Accordingly, when real property is transferred to the federal government subject to an intervening life estate, the value of the remainder interest should be exempt from local real property taxes. (At Mrs. Nixon's current age, her life estate in the property, determined actuarially, would be worth approximately 61% of its current value. A 39% reduction in real property taxes should, therefore, result if the remainder interest was vested in the federal government.) This point will ultimately have to be confirmed by California counsel.

Impact on Family. A transfer with a retained life estate would have an adverse financial and personal impact on the family. Although Mrs. Nixon would be entitled to use the property during her lifetime, she would still be required to pay real estate taxes (although possibly at a slightly reduced rate) and to maintain the property. More importantly, she would forfeit a considerable amount of flexibility with respect to her choice of a residence. If she determined that she did not wish to continue to live at San Clemente, she could, of course, abandon her life estate, but she would receive no compensation for doing so to enable her to purchase a replacement residence. Having abandoned her life estate, the property

would become the federal government's exclusively, and Mrs. Nixon would have to look to other family assets to provide her with a residence. Finally, upon Mrs. Nixon's death, full ownership of the property would pass to the federal government, and thus, no portion of the family investment in the property, nor any appreciation resulting subsequent to that investment, would ever be recovered for use by family members.

Tax Considerations. The transfer should be considered for tax purposes to have been made by Mrs. Nixon. Thus, Mrs. Nixon should be entitled to a current income tax deduction in the year of the transfer and, to the extent not used in that year, for five years thereafter. Also, since the transfer will theoretically be made by Mrs. Nixon, it will have no bearing on the President's estate tax return. (If a transfer was made during the joint lives of the President and Mrs. Nixon, with both of them retaining joint and survivor life estates, a federal estate tax would be payable upon the death of the first to die. For this reason, the possibility of effecting a joint transfer has been rejected.)

The amount of the income tax deduction available to Mrs. Nixon would be the actuarial value of the remainder interest passing to the federal government. Thus, it would depend upon (1) the fair market value of the property transferred, (2) Mrs. Nixon's age at the time of the transfer, (3) the amount of any outstanding mortgage affecting the property, and (4) the obligations with respect to the property assumed by Mrs. Nixon and the federal government. For example, if the property had a fair market value of \$500,000 exclusive of any mortgage, if the normal rights and obligations were assumed, and if Mrs. Nixon was 65 years of age at the time of the transfer, the current income tax charitable deduction available to her would be approximately \$221,000.

Historical Precedents. General and Mrs. Eisenhower, after he left office, transferred their Gettysburg farm to the Interior Department as a national park site. They retained the right to live on the property transferred during their joint lives and the survivor for six months after the death of the

first to die. After the transfer, no change in the day-to-day operation of the farm occurred, and General Eisenhower continued to pay all expenses of maintenance. The property was, however, removed from the local tax rolls and no further real property taxes were paid. (In light of the California law on this subject, it would appear doubtful that a similar result could be obtained for the San Clemente property.) Subsequent to General Eisenhower's death, Mrs. Eisenhower decided that she wanted to continue to live on the property, and negotiations with the Interior Department resulted in the granting of a "Use Permit" permitting her to continue to occupy the residence and some surrounding acreage. Under the terms of the Use Permit, Mrs. Eisenhower pays all ordinary expenses relating to maintaining the residence. The balance of the property is maintained by the Interior Department.

Mr. Johnson, after he left office, similarly arranged for a transfer of the LBJ Ranch for eventual use as a national park site, but with Mrs. Johnson to have the right to live on the ranch for the term of her life. The transfer of Mr. Roosevelt's Hyde Park residence also was made during Mr. Roosevelt's lifetime, with arrangements being made to permit Mrs. Roosevelt to continue to occupy a cottage on the premises for the duration of her life.

(b) Option to Purchase.

Basic Plan. The federal government would be granted the right to purchase the San Clemente property upon Mrs. Nixon's death or prior thereto, if it is offered for sale to anyone. The option would not, however, become firm until the President's death since it is assumed that if Mrs. Nixon is the first to die, the President would wish to retain exclusive control over the property during his lifetime. The purchase price to the federal government would equal the family cash investment, including the cost of improvements paid for by the family.

Impact on Family. During Mrs. Nixon's life, assuming she is the survivor, real property taxes would have to be paid and the property would have to be maintained with family assets. Mrs. Nixon would,

however, be provided with much more flexibility with respect to her choice of a personal residence after the President's death than with a transfer with a retained life estate. If she decided that she no longer wished to live at San Clemente, she could offer the property for sale, thus triggering the option. Unlike the situation with the life estate, however, the proceeds of sale would be available to purchase a replacement residence. In any event, if the government exercised its option upon Mrs. Nixon's death, the cash investment in the property would be recovered for use by family members. If the government failed to exercise its option, the entire property or its proceeds upon sale would become available for use by family members.

Impact on Real Estate Taxes. The position could possibly be taken with local tax authorities that the option price established the fair market value of the property for the family's purposes and that the real property tax assessment on the property should, accordingly, be based on that price. Since the cash investment would presumably be lower than the fair market value, a reduction, or at least a stabilization, of real property taxes should follow if this position was accepted.

Tax Considerations. The underlying testamentary instruments would make it clear that the entire San Clemente property represented a portion of Mrs. Nixon's share of the community property and that she was the one who was granting the option. Thus, the grant of the option should have no effect on the President's estate for federal estate tax purposes. In Mrs. Nixon's estate, however, the property should be subject to estate taxation, at least at the option price. The option grant should also have no effect on Mrs. Nixon's income tax liability unless she offered the property for sale during her lifetime and the option was exercised. At that time, an income tax charitable deduction should become available to her.

John H. Alexander

Richard S. Ritzel