THE INTERNAL REVENUE SERVICE: AN INTELLIGENCE RESOURCE AND COLLECTOR

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INTRODUCTION AND SUMMARY

The Internal Revenue Service functions as an intelligence agency in two respects. First, through its Intelligence Division, it both collects general intelligence about possible tax violators and investigates specific allegations of tax fraud to secure evidence for criminal prosecution. Second, the IRS accumulates vast amounts of information about the financial and personal affairs of American citizens from the tax returns and supporting information which Americans voluntarily submit each year. As a rich deposit of intelligence and an effective intelligence gatherer, the IRS is a powerful tool which other agencies of government, including Congress and the executive branch, have periodically sought to employ for purposes other than tax law enforcement. This report is primarily an exploration of the reasons these uses of the IRS have led to serious and illegal abuse of IRS investigative powers and to a compromise of the privacy and integrity of the tax return.

1. Intelligence Collection

The IRS Intelligence Division, with 2,800 special agents trained to gather financial data, unlimited access to tax returns, and the power to issue summonses requiring the production of financial information without probable cause to believe a crime has been committed, represents a great investigative capability. Because of this capability, Congress, the Federal Bureau of Investigation, and even the White House have sought, sometimes successfully, to direct the efforts of IRS against certain groups or individuals, many of whom would not have been investigated under normal IRS criteria. In part because of the absence of any statutes which meaningfully limit IRS authority to gather general intelligence, IRS had little basis for resisting pressure when it was applied. In any event, IRS did not always attempt to resist. In the late 1960s and early 1970s, many groups and persons were selected for investigation by the Special Service Staff essentially because of their political activism rather than because specific facts indicated tax violations were present. The evidence suggests the IRS readily acceded to the congressional and White House pressure which led to the formation of the Special Service Staff, and that the targets of the Staff's activities were, in practice, largely determined by input from the FBI for reasons unrelated to tax enforcement.

Special Service Staff is the principal instance of the use of the IRS for a fundamentally improper non-tax purpose: selective enforcement of the tax laws against dissenters. However, the use of IRS to achieve even laudable non-tax objectives has also generally resulted in serious abuse of IRS power.

The use of IRS intelligence collection capability to achieve desirable non-tax objectives has resulted in loss of control over investigative techniques, and a loss of the capacity to limit the scope and nature of information gathered to that which is related to tax enforcement. Operation Leprechaun, for example, was an effort to employ IRS investigative power to combat political corruption. The operation led to the collection of details on the personal and sexual lives of certain Florida political figures and to illegal acts on the part of IRS informants.

Abuses such as Operation Leprechaun and others discussed in this report have resulted from a combination of factors which have generally accompanied the use of the IRS for non-tax purposes. The IRS system of organization and control over investigative activities has not proved compatible with the pursuit of non-tax objectives. The IRS was decentralized in 1952 in an effort to end widespread political influence congressional investigators had discovered. Under this decentralized structure, the intelligence chief in each of the fifty-eight IRS districts largely controls and supervises investigations. The essence of decentralization is heavy reliance upon the professional, independent judgment of agents at the field level, subject to the setting of general policy by the National Office. Under these general guidelines, agents and supervisors in the field apply tax related criteria in making decisions concerning the identification of targets of investigations, and the initiation and scope of investigations. The result has generally been that investigative resources are applied to particular taxpayers or categories of taxpayers in proportion to the tax compliance problems they present, based upon the IRS experience of prior years. This system is generally known as "balanced tax enforcement."

The use of the IRS for non-tax purposes requires "unbalanced enforcement," where the target group is selected for reasons other than the significance of the tax compliance problem it presents. Unbalanced tax enforcement has given rise to a combination of elements which have produced abuse: (1) the subordination of tax criteria to achieve a concentration of enforcement resources creates an atmosphere within the IRS which encourages excessive zeal and departure from other normal criteria of IRS operation; (2) the pursuit of non-tax objectives through selective tax enforcement by the IRS Intelligence Division has historically involved the use of techniques such as paid informants, electronic surveillance, and undercover agents, all of which are prone to abuse; (3) because the IRS decentralized organizational structure is designed to achieve tax objectives and is, by design, resistant to pressure from above, in order to bring about the desired imbalance in the enforcement program, the IRS has generally found it necessary to bypass its normal organizational structure; (4) in doing so, the IRS has bypassed the normal administrative mechanisms which check excess and abuse at the lower levels.

The loss of control over investigative techniques, over the scope and nature of information gathered, and over the identification of proper targets has not proved to be a function of whether the particular non-tax objective the IRS has been called upon to pursue is right or wrong. The Committee's investigation strongly suggests that more effective oversight and new controls over IRS intelligence gathering are necessary if the IRS is to be used for any non-tax purpose.

2. IRS as an Intelligence Resource

Because the information submitted by taxpayers and gathered by the Intelligence Division is so extensive, IRS has often been viewed by other governmental intelligence and investigative agencies as a data bank on which these agencies could draw for their own purposes unrelated to enforcement of tax laws. Both the FBI and the CIA have had virtually unrestricted access to any tax information they sought for any purpose.

The dissemination of tax returns and related information ("disclosure") is governed by statutes and regulations designed to limit access to and use of the information. These restrictions, however, have often failed to protect the information, in some cases because the laws themselves were inadequate and in others because they were circumvented. Moreover, the uses to which the information was later put were often questionable. In some cases, such as the FBI's COINTELPRO, the uses were clearly illegal.

SUMMARY OF RESULTS OF INVESTIGATION

The Committee's investigation of abuses of IRS intelligence was divided into two parts: (1) a study of abuses of IRS because of the uncontrolled access which other federal intelligence agencies have had to tax returns and other tax information, and (2) a study of alleged abuses in the IRS' own intelligence gathering.

Part I. Access of Federal Intelligence Agencies to Tax Return Information

The extent to which other federal agencies should have access to tax information for non-tax purposes has been under study by several congressional committees. This Committee, however, is the only committee studying the question of disclosure which was authorized and directed to investigate all intelligence agencies and their interaction. Senate Resolution 21 specifically directed this Committee to study:

> The nature and extent to which Federal agencies cooperate and exchange intelligence information and the adequacy of any regulations or statutes which govern such cooperation and exchange of intelligence information.[1]

The committee staff reviewed every request by a federal intelligence agency for a tax return of which there is a record either in IRS or in the requesting agency. Most of these requests were from the Department of Justice on behalf of the FBI. In selected cases, the staff obtained the initiating documents from the requesting agency to determine the purpose for which the information was desired, compared this purpose with the reason or lack of reason given in the request, then traced the tax information back into the requesting agency to determine what use was actually made of it. As a result of its access to the records of other intelligence agencies, this Committee has had a unique opportunity to evaluate the problems of disclosure of tax returns to intelligence agencies.

The most important facts the staff found were:

(1) The IRS has not required either the CIA or the FBI to state the specific purpose for which it needed tax return information.

[1] Senate Resolution 21, section 2(8).

(2) In the absence of such a specific statement, the IRS could not judge whether the request met the regulatory criteria for release of the information. In effect, IRS had delegated the determination of the propriety of the request to the requesting agency.

(3) Further, in the absence of a statement of the specific reason the tax return is needed, there is no basis upon which to limit the subsequent use of the return to the purpose for which it was initially released.

(4) As a result of these weaknesses in the disclosure mechanism, the FBI has had free access to tax information for improper purposes. The FBI obtained tax returns, for example, in an effort to disrupt the lives of targets of its COINTELPRO operations, by causing tax audits. The FBI used as a weapon against the taxpayer the very information the taxpayer provided pursuant to his legal obligation to assist in tax collection and, in many cases, on the assumption that access to the information would be restricted to those concerned with revenue collection and used only for tax purposes.

Because of the importance of the disclosure problem and its potential impact on all United States citizens, the Committee culminated its investigation into the matter by holding a public hearing on October 2, 1975, calling the Commissioner of the Internal Revenue Service, Donald C. Alexander, as the witness.

Part II. Abuses in Intelligence Gathering

A. *Areas of Inquiry.*—The Committee's investigation of possible abuses of IRS' own intelligence gathering required a selective approach. First, the Committee lacked both the time and resources necessary to investigate the activities of the Intelligence Division in each of the fifty-eight districts. Second, numerous allegations of abuse appeared in the press in the early and middle portion of 1975, the very period of this Committee's active investigation into IRS. Some of these allegations were fully investigated by other congressional committees having specific oversight responsibilities over IRS, and this Committee decided not to duplicate those investigations. Others were investigated preliminarily by this Committee but determined to be unfounded, in which case they are not discussed in detail in this report.

The Committee focused most of its efforts on reviewing major projects which represented systematic rather than isolated abuses and which illustrated problems of control common to other IRS projects. The Committee therefore examined:

(1) The causes of the breakdown of controls which permitted improper electronic surveillance and other abuses of IRS intelligence gathering in the drive against organized crime (1960–1964), as documented by the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess. (1965) (the Long Committee).

(2) The origins and function of the Special Service Staff (SSS) (1969–1973) and the Ideological Organizations Audit Project of the early 1960s, whereby politically active groups were targeted for investigation.

(3) The operation of the Information Gathering and Retrieval System (IGRS) used to collect and index general intelligence (1973–1975) and, on occasion, personal information.

(4) Operation Leprechaun in the Jacksonville, Florida, district which involved improperly controlled informants who unjustifiably collected personal and sexual information on some targets (1969–1972), and committed a burglary.

(5) IRS actions, including use of undercover agents to monitor meetings, against groups known as "tax protesters" which refused to pay taxes as a form of protest against the tax system or against certain government policies.

B. *Method of Investigation.*—The Committee's investigation of intelligence gathering abuses included: (1) reviewing reports of IRS internal investigations; (2) corroborating the findings of those IRS investigations on which the Committee relied, through independent investigation; (3) intensively investigating intelligence operations in six IRS district offices, including reviewing thousands of documents relating to the Information Gathering and Retrieval System and the Special Service Staff, as well as other special projects; interviewing numerous special agents charged with intelligence-gathering functions, particularly those concerned with IGRS; interviewing most of the principals and reviewing IRS Inspection Division summaries of interviews as well as key documents in Operation Leprechaun; interviewing Audit and Collection personnel who handled Special Service Staff field referrals; reviewing tax protester intelligence files; and interviewing special agents in charge of tax protester projects in three districts.

Throughout its investigation, the Committee staff received full and willing cooperation from all IRS officials in both the National Office and the field. It had full access to all documents it requested and to all employees it wished to interview.[2]

C. *Summary of Results.*—As the criminal investigative arm of IRS, the Intelligence Division normally investigates tax fraud allegations. Because the scope of such an inquiry is self-defining, it has been practical for IRS to give the agent assigned to a case wide discretion in selecting investigative techniques and the kinds of information collected. The same inherent limitation upon the scope of the inquiry made local supervision of such investigations practical. But, as the following cases reveal, abuses inevitably arose when IRS intelligence powers were employed to collect general intelligence rather than to investigate specific tax fraud allegations, and to target groups for purposes other than "balanced enforcement" under programs directed from the National Office.

1. IRS Use of Electronic Eavesdropping Techniques—The Long Committee Findings

In 1965, the Long Committee[3] discovered a number of cases of unlawful electronic surveillance by IRS agents, mostly in the course of investigating organized crime figures under the aegis of the Nationwide Organized Crime Drive. The Long Committee hearings indicated that the normal system of control over intelligence investigations was inadequate for those which, unlike ordinary tax fraud

[2] During the course of the investigation the staff did not request or did it review any individual's tax returns or tax related information.

[3] The Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, 89th Cong., 1st Sess., 1965, Hon. Edward Long, Chairman.

investigations, involved the use of abuse-prone investigative techniques, such as electronic surveillance.

The IRS had established a National Office Coordinator for the Organized Crime Drive. In a number of the cases of improper electronic surveillance uncovered by the Long Committee, the testimony established that the agents performing the surveillance were operating either under the authority or general guidance of the Coordinator, with the knowledge of the Intelligence Division personnel in the district in which the operation was taking place. The effect of creating the Coordinator was to bypass normal administrative controls without introducing effective new controls.

2. Special Service Staff (SSS): 1969–1973

The Special Service Staff was formed in 1969 in response to congressional and White House criticism of inadequate IRS efforts against "activism" and "ideological" organizations and individuals. The critics believed IRS had a special responsibility to determine the sources of funds of large activist groups and their leaders and to assure their adherence to the tax laws.

The Special Service Staff was a special National Office organization designed to concentrate IRS attention on "activists" and "ideologies" in order to preclude criticism of the adequacy of IRS attention in that area. In part because of the probable resistance of the decentralized IRS structure to selective enforcement on a political basis, the National Office deemed it necessary to act through a National Office organization to achieve the desired imbalance in the enforcement program. The Special Service Staff, using lists of political activists, including lists supplied by the FBI and the Department of Justice, proceeded to "unbalance" the enforcement program against "dissidents" and "extremists." By deciding what cases to bring to the field's attention, it bypassed normal screening procedures and focused audit efforts on groups and individuals selected for their political activities and beliefs. In a few cases, SSS employed its position in the National Office to bypass the district's normal structure and influence the handling of individual cases.

The effect was that SSS reviewed the tax status of groups and individuals in the absence of specific evidence of tax violations because they exercised First Amendment rights. SSS targets included 8,000 individuals and 3,000 groups. Some of these groups historically had not engaged in illegal activity of any kind, much less tax violations. For example, targets included the Ford Foundation, the Head Start Program, and fifty branches of the National Urban League.

The Special Service Staff, which had operated in secrecy, was abolished by Commissioner Alexander when he learned of its existence shortly after taking office in 1973.

Although the purpose of SSS differed fundamentally from that of the Organized Crime Drive, both were efforts to employ tax weapons for essentially non-tax purposes. Both required the creation of a special National Office structure to achieve the desired emphasis in the enforcement program. While IRS participation in the Organized Crime Drive represented the pursuit of a laudable government objective, in both cases, the special structure resulted in the bypassing of normal administrative controls and permitted abuse to occur.

Ideological Organizations Audit Project

The Special Service Staff was not the first IRS effort directed at groups and individuals because of their political ideologies and actions. In 1961, the IRS initiated a test audit of right-wing organizations which had drawn stern criticism from the President. The test audit grew into a planned attempt by IRS to conduct intensive investigations of 10,000 tax-exempt organizations in order to determine whether or not they engaged in political activities, which are impermissible for tax-exempt organizations. The plan also called for investigation of non-exempt right-wing organizations through reviews of the contributors' returns for improper deductions.

While IRS efforts directed at these political action groups were not as extensive as the coverage given organizations by the Special Service Staff, the efforts did result in a significant departure by IRS from a balanced enforcement program, and a concentration of tax enforcement on certain individuals and groups because of their political beliefs. The efforts IRS directed at these ideological organizations established a foundation and precedent for the later Special Service Staff.

The Committee did not find abuses of the normal IRS functions beyond the abuse which inheres in concentration of audits on organizations and individuals selected for political reasons (and in part by the White House). The program illustrates responsiveness of the IRS to the subtle pressures of other government agencies, and demonstrates the need for close scrutiny of any IRS activities the primary purpose of which is to achieve non-tax objectives.

3. Information Gathering and Retrieval System (IGRS)

Partly as a result of its participation in the Organized Crime Drive, the IRS Intelligence Division perceived a need to improve its ability to gather and retrieve intelligence beyond the scope of investigations of specific allegations of tax fraud. The Information Gathering and Retrieval System, which IRS developed between 1963 and 1975, was an effort to increase the collection of such "general" intelligence and to index and store this intelligence efficiently. Ultimately, it included information about 465,442 persons or groups.

The gathering of general intelligence differs from the investigation of alleged tax violations in two fundamental respects: (1) there is no inherent standard of relevancy by which to determine what kinds of information to collect, and (2) there is no clear standard for deciding who should be investigated. In the absence of such standards, normal IRS reliance upon agent discretion presents dangers. Nevertheless, the creators of IGRS failed to supply any meaningful criteria for target selection or for the relevancy of the information to be gathered. The results were tremendous overbreadth and a glut of largely useless information gathered under IGRS. For example, the system contained information not only about persons suspected of ties with organized crime, but also individuals who had routine commercial business transactions, such as selling a restaurant, with these persons. In addition, in some districts, intelligence was collected about political groups. IGRS became so encumbered by irrelevant data that it was not effective for the purposes for which it was created. It was terminated in 1975.

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4. Operation Leprechaun—Collection of Personal Information: 1969–1972.

The perceived need to gather general intelligence, and thus to establish IGRS, was largely a result of IRS participation in efforts against organized crime and political corruption. Operation Leprechaun was part of a drive against political corruption and involved the worst examples of abuse of any project associated with IGRS. The evidence indicates:

(*a*) that the special agent in charge of Operation Leprechaun, operating through informants, collected an excessive amount of information on the sex and drinking habits of some of the targets of the operation;

(*b*) that he engaged in electronic surveillance contrary to IRS regulations;

(*c*) that two of his informants burglarized the office of a congressional candidate, apparently without the special agent's knowledge or consent, and stole a filing cabinet containing tax-related information, some of which they then delivered to the special agent; and

(*d*) that the special agent's string of thirty-four informants were not under effective control.

The agent's ability to gather highly personal information on the targets which was not tax related, is a reflection of the absence of meaningful written standards establishing criteria for relevancy of information gathered under IGRS. The failure was less that of the agent or of his superiors than of the creators of IGRS, who failed to recognize that reliance upon agent discretion in general intelligence gathering required more stringent, specific guidelines for relevancy than ordinary tax investigations.

Similarly, the agent's inability to control his informants represented a failure of the IRS structure within which the agent's actions took place rather than of the agent himself. IRS lacked a system under which supervisors, rather than agents, could make key decisions on recruitment and handling of informants. Instead, such decisions were left to the agents, unassisted by clear guidelines.

In 1975, after analyzing the deficiencies of IGRS and investigating the Leprechaun abuses, IRS management began to impose restrictions upon intelligence gathering designed to assure that non-tax-related information would not be gathered, that targets of information-gathering operations would not be selected by the agent's personal predilections, and that agents and management would have greater control over informants. If fully implemented, they will reduce the likelihood of recurrence of abuses such as those associated with Operation Leprechaun.

Many of the controls which are necessary to avoid a repetition of the abuses of Operation Leprechaun and IGRS might not be necessary if IRS confined its activities to a balanced tax enforcement program. Many of these necessary controls may actually impede the special agent in the performance of the normal IRS intelligence mission. The price of the continued use of the IRS for purposes such as Operation Leprechaun will either be continued abuse in the absence of stringent controls or the imposition of controls which are necessary to prevent abuse in the area of selective enforcement but may be excessive for traditional tax collection activities.

The data Americans voluntarily provide the IRS every year make it the largest potential source of information about the personal lives of Americans.[4] The raw data which IRS holds and its special capability for obtaining financially related information in addition to that which taxpayers voluntarily furnish, including the power to issue a summons for records without a showing of probable cause, constitute an intelligence resource which is of great potential usefulness to other intelligence agencies pursuing non-tax objectives.

This Committee has studied the means by which federal intelligence agencies have gained access to tax information, the stated purposes for which they have obtained the information, and the uses they have made of the information they obtained. The Committee has not attempted to develop a comprehensive set of criteria for access to tax returns, though its findings show that current regulations, as applied, have permitted access for purposes which should be excluded. The Committee has examined the current system of controls over access in light of the uses intelligence agencies have made of the information to which they have gained access under that system of controls. It has found that the mechanism through which disclosure criteria are enforced has serious weaknesses. An effective mechanism for enforcement of disclosure criteria is as crucial to protection against access for improper purposes as the criteria themselves.

Under the current system, the FBI has obtained returns for purposes for which they should not have been released even under existing, liberal standards for release of tax information.[5] The FBI was able to do so because the IRS failed to apply existing regulations to require the requesting agency to state the reason for its request so that the IRS could determine whether the purpose of the request fell within the limits for permissible disclosure. The failure to require a specific statement of purpose in the request for tax information has also resulted in an absence of effective limitations upon the uses to which the FBI could put the information it obtained.

Proposed legislation to narrow the purposes for which investigative agencies can obtain tax information will not eliminate the potential for repetition of the kinds of abuse the Committee has uncovered unless the disclosure mechanism is also overhauled to assure that those limitations are more effectively enforced than the broader limitations have been enforced in the past. The purpose of this report is to analyze those weaknesses in the present control mechanism which are responsible for the abuses which have occurred.

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[4] Testimony of Donald C. Alexander, Commissioner of the IRS, 10/2/75, hearings, Vol. 3, pp. 25, 26.

[5] Shortly after the Senate Select Committee's hearing at which the abuses which have arisen from weaknesses in the disclosure mechanism came to light, the IRS changed its practice under the current regulations. Beginning in the middle of October 1975, the IRS has required that all requests from United States Attorneys and attorneys of the Department of Justice for tax return information under 26 CFR 301.6103(a)-1(g) and (h) must include a sufficient explanation which will permit the IRS to determine that there is an actual need for all the requested information, and that it will be properly used by the requestor. This change in practice is, however, not a result of any change in the regulations, and is itself subject to change.

I. THE STATUTORY AND REGULATORY SETTING

Under section 6103 of the Internal Revenue Code, "returns made with respect to taxes . . ." are open to inspection "only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." "Returns" are not defined in the statute, but are defined by regulations [Treasury Regulation Sec. 301. 6103 (a)–1(a)(3)(i)] to include both actual returns and

> Other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to [returns].

The present regulations provide that the Department of Justice shall have access to "returns", stating:

> . . . [a] return in respect of any tax shall be open to inspection by a United States attorney or by an attorney of the Department of Justice *where necessary in the performance of his official duties.* The application for inspection shall be in writing and *shall show* . . . (4) *the* reason why inspection is desired. 26 C.F.R. § 6103(g). [Emphasis added.]

This regulation differs from those applicable to other agencies (such as the CIA), which are covered by the blanket provisions of section 6103(f):

> . . . if the head of an executive department . . . or of any other establishment of the Federal Government desires to inspect a return in respect of any tax . . . in connection with some matter officially before him, the *inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue* . . . be permitted upon written application. . . . The application shall . . . set forth . . . (4) the reason why inspection is desired. . . .[6] [Emphasis added.]

Section 6103(a)–1(a)(3)(i), *supra*, which, by defining "tax return" broadly, has the effect of broadening the information the IRS is obliged [7] to furnish to the Justice Department upon proper request to include the results of IRS audits and intelligence investigations. In the course of some of these audits and investigations, the IRS develops information through the use of strong powers given it to determine and collect the revenue (principally the power to obtain financial information by means of a summons without any showing of probable cause) which neither the Justice Department nor the FBI could legal-

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[6] Except where indicated, the regulations have been substantially as summarized above during all periods discussed in this report.

[7] On their face, the regulations seem to restrict access by the Department of Justice to cases where returns are "necessary" in connection with its official duties while heads of other agencies may obtain them when they "desire" them in connection with their official duties. As a practical matter, however, IRS has not applied the criterion of "necessity" to Department of Justice requests, so the apparent distinction has had no practical consequence.

ly obtain on its own without demonstrating probable cause. The regulations contain no requirement that the Justice Department establish probable cause to obtain this information from the IRS even where it is to be used for criminal investigatory purposes unrelated to enforcement of the tax laws.

II. IRS PRACTICE

A. Before 1968

Until 1968, the FBI obtained tax returns and other tax information directly from the IRS Intelligence Division, under a procedure which the Chief of the IRS Disclosure Branch termed "illegal" upon learning of it in 1968.[8] Under that procedure the IRS failed to exercise vigilance to determine the purposes for which the FBI obtained returns.[9]

In one case, for example, in order to develop information "discrediting or embarrassing to the United Klans of America" [10] or to a Klansman who was the subject of FBI interest, the FBI field office recommended obtaining the Klansman's returns in order to attempt to determine whether he was reporting income from the Klan as income from other sources. The recommendation was approved by FBI headquarters in November 1964. The returns were obtained from the IRS through its Intelligence Division.

One of the express purposes of this operation was, in part, to "expose [the Klansman] within the Klan organization, publicly or by furnishing information to the Internal Revenue Services." [11] Thus, the planned operation envisaged the illegal public disclosure of tax information.

On November 20, 1964, the FBI requested the returns of the Klansman for the years 1959 through 1963 and for the Klan organization for 1961 and 1963, and received the returns from IRS in January 1965.[12] Although FBI documents do not indicate whether or not the planned disruptive action was ever carried to fruition, the returns had left IRS, to be used by the FBI for whatever purpose it deemed necessary.

Because of the lapse of time and the absence of records, the precise nature of the procedure by which the FBI obtained returns before 1968 is not determinable. A review of FBI administrative files in the Bureau's Liaison Section and the testimony of the FBI agent responsible for liaison with IRS,[13] however, indicates that the essential steps in the process were as follows:

1. The FBI would decide to request a particular return or set of returns on the basis of a memorandum setting forth the reasons for the request in some detail;

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[8] Memorandum from D. O. Virdin for Harold E. Snyder, "Inspection of Returns by FBI," 5/2/68.

[9] There is little documentary evidence of the pre-1968 procedures since, according to Ms. Margaret Sampson of IRS Disclosure Branch, all IRS records of pre-1968 disclosures to the FBI were destroyed in the Disclosure Branch in a space-saving drive in about 1972 (the records having been transferred from Intelligence to Disclosure in 1968). The only records which apparently ever existed were the incoming request, in contrast to the practice in Disclosure of forwarding material (or permission to review it) by letter to the requesting agency, signed by an authorized IRS employee.

[10] Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/10/65.

[11] Memorandum, Baumgardner to W. C. Sullivan, 5/10/65.

[12] Memorandum, Midwest City Field Office, to FBI Headquarters, undated.

[13] Bernard Rachner testimony, 9/25/75 pp., 7–18.

2. The FBI would prepare a form letter for signature by the Assistant Attorney General, Internal Security Division, Department of Justice, setting forth that the returns were necessary in connection with an official investigation, but stating no specific reason;

3. The Assistant Attorney General was not given the detailed memorandum stating the reasons for the request;

4. Liaison Section (the FBI Section responsible for liaison with other agencies and the White House) delivered the signed form letter to someone in IRS Intelligence, who obtained the requested information; [14]

5. IRS Intelligence Division kept no record of the transmittal of the information; [15]

6. IRS Intelligence did not consult anyone outside the Intelligence Division (including the Disclosure Branch—which was theoretically charged with the responsibility for disclosure of this kind of tax information) regarding action on the request.[16]

B. After 1968

In 1968, the Chief of the Disclosure Branch learned that the Intelligence Division had been handling FBI requests for returns, branded the practice "illegal" in a memorandum to his superior,[17] and effected the transfer of all FBI requests to his jurisdiction.[18]

Though FBI requests for tax information were thereby regularized after 1968, there is scant indication the IRS subjected them to more meaningful scrutiny than it had while the Intelligence Division handled the requests even though the regulations arguably required such scrutiny. The regulation (26 C.F.R. § 6103(g)) requires that the return be "necessary in connection with the official duties" of the requesting attorney, and also requires that the "reason" for the request be given in writing.

After 1968, the Internal Security Division of the Department continued to obtain returns by means of a form letter which recited the conclusion that the regulatory criteria were met. It stated that the return was "necessary in connection with an official matter before this office involving the internal security . . .," *i.e.*, that it was "necessary in connection with the official duties of the requesting attorney," but contained no separate statement of a "reason" for the request.[19] On the basis of these letters,[20] the IRS could make no independent evaluation of whether the reason for the request was in fact within the official

[14] See, e.g., memorandum, Baumgardner to W. C. Sullivan, 11/18/64.

[15] See Note **, p. 25.

[16] Memorandum from D. O. Virdin for Harold Snyder, 5/2/68.

[17] *Ibid.*

[18] During this same period, the CIA was apparently obtaining returns in a manner similar to the FBI (though in much smaller numbers), yet no one in the Intelligence Division or elsewhere in the Compliance Division thought to examine that practice in light of the change being made in the practice with respect to the FBI. See testimony of Donald O. Virdin, 9/16/75, pp. 69–73.

[19] Since the request could not even be properly made unless the return was necessary in connection with the requesting attorney's official duties, it is an improbable interpretation that the statement of "reason" called for by the regulations was to be simple recitation that the return was necessary in connection with those duties. Further, in the absence of a statement of the specific reason, the IRS could not meaningfully apply the regulatory criteria to the request.

[20] A sample letter appears at note 44, p. 852.

duties of the requesting attorney, or of whether the return was "necessary". In short, the IRS delegated to the Justice Department—and in reality to the FBI—the administration of the disclosure regulations with respect to the FBI's requests. Former Deputy Assistant Commissioner (Compliance) Leon Green advised the Committee: "I do not think we ever questioned their need for a tax return." [21] Mr. Green, whose duties included broad supervisory responsibility over the Services disclosure activities testified as follows:

> A. Any of the Assistant Attorney Generals could request access to specific tax returns by name and generally they were granted access without any questioning of the background or the need for them.
>
> Q. You say without any questioning of the background?
>
> A. I do not think we ever questioned their need for a tax return. If an Assistant Attorney General signed a letter saying in the course of their own operations they required access to certain returns, they were given access . . .
>
> Q. As a general rule, what kind of a reason would the Internal Security Division give?
>
> A. I do not think they would give any reason other than to state in connection with a matter that they had under consideration the Department of Justice required access to specific returns.
>
> Q. So, in effect, the judgment as to whether the tax return was necessary was left to the Justice Department?
>
> A. The Assistant Attorney General who signed the letter, right.
>
> Q. In fact, the determination of whether the . . . need for the tax return was actually in connection with their official duties was also left to the Justice Department?
>
> A. Yes.[22]

The FBI requests and IRS responses invariably contained language to the effect that the use of the return would be limited to the purpose stated in the request. There is no specific regulation imposing such a limitation in 26 CFR 6103(g),[23] but the limitation upon use is implicit in the requirement that the "reason why inspection is desired" be stated in the application. The release of the return is predicated upon the reason given, and therefore made only for the stated purpose. This limiting language is meaningless where the reason given is simply a recitation that the regulatory criteria are met. The absence of any meaningful limitation on use of returns has led to serious abuse.[24]

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[21] Leon Green deposition, 9/12/75, p. 6.

[22] Ibid., pp. 6–8.

[23] The following subsection, 6103(h), dealing with the "use of returns in Grand Jury proceedings and in litigation," does specifically provide that any return furnished pursuant to that paragraph shall be "limited in use to the purpose for which it is furnished . . . ," but 6103(g) does not so provide.

[24] The IRS has freely disseminated tax returns to agencies of the government with no intelligence function. In 1974, more than 29,000 tax returns of more than 8,200 individuals were requested by and disseminated to governmental agencies including the Departments of Agriculture, Commerce, and Labor, Interstate Commerce Commission, Federal Home Loan Bank Board and Federal Deposit Insurance Corporation. (Alexander, 10/2/75, Hearings, Vol. 2, pp. 31, 32.)

III. FBI USE OF RETURNS IN COINTELPRO

Between 1966 and 1974, the FBI (either directly or through the Internal Security Division of the Justice Department) made approximately 200 requests to the IRS for tax returns.[25] Of the 200 requests. approximately 40 (20%) involved foreign intelligence matters; [26] 30 (15%) involved criminal matters; and 130 (65%) were for domestic intelligence or "counterintelligence" (COINTELPRO) [27] purposes. Although records are not complete, Mr. Green's belief that IRS "never questioned their need for a return" indicates that virtually all requests were honored.

The major portion of the 130 domestic intelligence requests were part of two FBI "counterintelligence" programs, one directed at the "New Left" (anti-Vietnam War) movement and the other at the so-called "Black Nationalist" movement.[28] Each of these two programs had two components:

1. Targeting of individuals in either movement for intensive intelligence-gathering activity.
2. Targeting of the same individuals for so-called COINTEL PRO operations.[29]

FBI COINTELPROs (counterintelligence programs) were designed to:

> *expose*, *disrupt* and *otherwise neutralize* the activities of [the target organizations and their leadership]. [Emphasis added.]

A. Use of Tax Returns in FBI Key Activist Program

1. *Program Purposes and Tax Returns.*—The "Key Activist" program was established in January of 1968 for the purpose of "intensive investigations" of the leaders of the New Left movement.[31] Four months later, on May 9, 1968, a COINTELPRO was recommended against the New Left and the "Key Activists" of that movement on the following basis:

> The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt

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[25] A request normally sought several returns, often of several taxpayers.

[26] Presumably, these returns would be those of individuals identified as being agents of, or working in collaboration with, hostile foreign intelligence services.

[27] See COINTELPRO Report.

[28] FBI Requests for tax returns, 1966–1975.

The following data is based on a staff review of materials in the FBI's administrative file labeled "Income Tax Returns Requested."

	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	Total
Foreign intelligence	4	7	4	6	3	3	9	1	1	1	39
Criminal investigation	0	0	1	6	4	6	10	4	0	0	31
Domestic intelligence, new left activities	0	0	36	3	0	7	0	0	0	0	46
Black extremists	0	0	24	3	0	30	10	6	1	0	74
Other	0	4	0	0	2	0	0	3	2	0	11
Total	4	11	65	18	9	46	29	14	4	1	201

[29] Memorandum from FBI Headquarters to Field Offices, 1/30/68.

[31] See e.g., Memorandum C. D. Brennan to W. C. Sullivan, 5/19/68 (New Left); memorandum F. J. Baumgardner to W. C. Sullivan 8/27/64.

> to hamper our investigation of it and to drive us off the college campuses. With this in mind, it is our recommendation that a new Counterintelligence Program be designed to *neutralize* the New Left and the Key Activists. The Key Activists are those individuals who are the moving forces behind the New Left and on whom we have intensified our investigations.[32] [Emphasis added.]

The next day the Director established the program.[34]

Two weeks later, on May 24, 1968, the FBI requested tax returns of 16 Key Activists for the years 1966 and 1967.[35] These returns were requested under the new procedure initiated in 1968 following IRS Disclosure Branch's discovery that returns had previously been furnished the FBI by the Intelligence Division. On October 24, 1968, the Key Activist program was enlarged.[36] On December 6, 1968, the FBI requested returns on 19 additional Key Activists.[37] According to the authorizing memorandum:

> As part of our overall intensive investigation designed to neutralize these individuals in the New Left movement, inquiry into their financial status has proved productive.[38]

All of these returns were requested by form letters.[39] In no case did the IRS inquire further into why the returns were necessary or for what precise purpose. The actual purpose of the requests is reflected in a February 3, 1969, Headquarters memorandum in which the Bureau reported upon the success of the return requesting effort:

> We have caused a survey to be made by Internal Revenue Service (IRS) concerning Key Activists. We have found a number where no record exists for payment of taxes in 1966, 1967. Included in this group are [names deleted], IRS has initiated appropriate investigations as a result of our inquiries. It is anticipated the IRS inquiry will cause these individuals considerable consternation, possibly jail sentences eventually. We now have sent requests on 35 Key Activists to IRS and anticipated many will have filed no returns. This action is consistent with our efforts to obtain prosecution of any kind against Key Activists to remove them from the movement.[40]

The purpose of the requests was at least in part to develop ways of using tax information as a COINTELPRO weapon.[41]

The February 3 memorandum reflects a by-product of the disclosure mechanism which enhanced its attractiveness to the Bureau. A simple request for information was in and of itself a means of directing IRS

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[32] Memorandum from FBI Headquarters to Field Offices, 1/30/68.
[34] Memorandum from FBI Headquarters to various Field Offices, 5/10/68.
[35] Memornadum from C. D. Brennan to W. C. Sullivan, 5/24/68.
[36] Memorandum from FBI Headquarters to various Field Offices, 10/24/68.
[37] Memorandum from C. D. Brennan to W. C. Sullivan, 12/6/68.
[38] Ibid.
[39] The form letter is virtually identical to that set out in note at page 38.
[40] Memorandum from C. D. Brennan to W. C. Sullivan, 2/3/69, captioned "NEW LEFT MOVEMENT, IS—MISCELLANEOUS."
[41] In addition, the returns were requested as part of an effort to determine *sources of funds*. Ibid.

attention at the COINTELPRO target, resulting in an IRS investigation if no return was found for a particular year. The FBI documents suggest that the requests for Key Activists returns were not selective, and were not predicated upon any specific information suggesting the individual Key Activitists were delinquent in their tax obligations. The IRS response was also all inclusive, and constituted unknowing IRS cooperation in the COINTELPRO effort.[42]

2. *An Example of the Use of Tax Information in a COINTELPRO Operation.*—One of the Key Activists who was the subject of a May 24, 1968, FBI request to IRS for 1966–1967 tax returns was a professor at a midwestern university who the Bureau anticipated would be a leader in demonstrations at the forthcoming Democratic National Convention in Chicago.[43] A detailed analysis of the means by which the FBI obtained his returns and the COINTELPRO use the FBI was able to make of them demonstrates a key weakness of present disclosure statutes and regulations.

The FBI presented to J. Walter Yeagley, Assistant Attorney General in the Internal Security Division, a form letter addressed to the Commissioner of the Internal Revenue Service [44] listing six Key Activists whose returns were "necessary in connection with an official

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[42] According to a June 30, 1969, IRS memorandum, there were then in progress 21 investigations or other administrative action involving individuals connected with "ideological organizations." Virtually all of these actions had resulted from FBI-originated requests for tax returns. See June 30, 1969, memorandum from Collection Division to Assistant Commissioner (Compliance); June 27, 1969, memo from Collection Division to Assistant Commissioner (Compliance); June 25, 1969, memo from Assistant Commissioner (Compliance) to all IRS Divisions; deposition of Donald Virdin at pp. 15–16; deposition of Leon Green, pp. 16–17.

[43] The Committee is aware of the professor's identity but has withheld his name for privacy reasons.

[44] Commissioner of Internal Revenue, MAY 31, 1968.
Washington, D.C.

DEAR MR. COMMISSIONER: In connection with an official matter before this office involving the internal security of the United States it is necessary to obtain the following described income tax returns and related data:

Name and address of taxpayer:	*Tax year*
John Doe	1966 and 1967
John Doe	1966 and 1967
Professor X	1966 and 1967
Jane Doe	1966 and 1967
Jane Doe	1966 and 1967
John Doe	1966 and 1967

This request is made pursuant to section 301.6103(a), Title of CFR.

Documents furnished in response to this request will be limited in use to the purpose for which they are requested and will under no condition be made public except to the extent that publicity necessarily results if they are used in litigation.

Access to these documents, on a need-to-know basis, will be limited to those attorneys or employees who are actively engaged in the investigation or subsequent litigation. Persons having access to these documents will be cautioned as to the confidentiality of the information contained therein and of the penalty provisions of section 7213 of the Internal Revenue Code and section 1905, Title 18, U.S.C., regarding the unauthorized disclosure of such information.

Sincerely,

J. WALTER YEAGLEY,
Assistant Attorney General.

matter before this office (*i.e.*, the Internal Security Division) involving the internal security of the United States." Assistant Attorney General Yeagley signed the letter. Yeagley has stated that the FBI did not advise him that a purpose of the request was to use the tax information as a tool for taking disruptive action against the subjects, and that he was unaware that any COINTELPRO program existed.[45] The FBI does not claim the contrary.[46] Yeagley apparently did not inquire into the purpose of obtaining the return, stating that he generally assumed the purpose of such a request was to develop investigative leads.[47]

This letter was forwarded to the IRS, where it was determined that the regulatory criteria were satisfied since the letter recited that the returns were "necessary in connection with the official duties" of the Assistant Attorney General. IRS inquired no further into the specific purpose for which the returns were to be used, but relied upon the Assistant Attorney General's statement that the purpose met the regulatory criteria.[48] The Assistant Attorney General, in turn, relied upon the FBI. The IRS furnished the returns.

Upon receiving the returns of Professor X, the FBI forwarded them to its local office in the city where the professor taught, for examination for COINTELPRO potential.[49] In examining the returns, the local office was acting pursuant to the memorandum establishing the Key Activist COINTELPRO program:

> The purpose of this program is to expose, disrupt, and otherwise neutralize the activities of the various New Left organizations, their leadership and adherents. It is imperative that the activities of these groups be followed on a continuous basis so we may take advantage of all opportunities for counterintelligence and also inspire action in instances where circumstances warrant. . . . In every instance, consideration should be given to disrupting the organized activity of these groups and no opportunity should be missed to capitalize upon organizational and personal conflicts of their leadership. [50]

The local office examined Professor X's returns and found some questionable deductions which "at the very least, provide a basis for questioning by IRS," and requested the authority of the FBI Director to call these questionable deductions to the attention of the local office of the IRS. The express purposes of doing so, according to the Airtel by which the request was made, were:

> 1. Due to the burden upon the taxpayer of proving deductions claimed, [Professor X] could be required to produce documentary evidence supporting his claims. This could prove to be both difficult and embarrassing particularly with respect to validating the claim for home maintenance deduc-

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[45] The signed statement of Judge Yeagley is in the Committee files.
[46] Robert Shackleford and Bernard Rachner testimony, 9/15/75, pp. 12–30.
[47] Statement of J. Walter Yeagley, September, 1975.
[48] Donald O. Virdin testimony, 9/16/75, pp. 88–91.
[49] Memorandum from FBI Headquarters to a Midwest City Field Office, 7/18/68.
[50] Memorandum from FBI Headquarters to various Field Offices, 5/10/68.

tions when, in fact, he doubtless has only the usual type of study found in many homes rather than actual office space. Validations of contributions to SNCC, SDS, and the [privacy deletion] Counseling Service may also be productive of embarrassing consequences.

2. If [Professor X] is unable to substantiate his claims in the face of detailed scrutiny by IRS, it could, of course, result in financial loss to him.

3. *Most importantly*, if IRS contact with [Professor X] can be arranged within the next two weeks their demands upon him *may be a source of distraction during the critical period when he is engaged in meetings and plans for disruption of the Democratic National Convention.* Any drain upon the time and concentration which [Professor X], a leading figure in Demcon planning, can bring to bear upon this activity can only accrue to the benefit of the Government and general public. [Emphasis added.] [51]

The recommendation was approved, and the local office supplied the information to the local IRS office, but did not advise the IRS contact that the information came from a tax return the FBI had previously obtained from IRS.[52] The FBI merely stated it "had reason to believe that Professor X had claimed deductions for contributions" to certain organizations which would not normally be deductible.[53] As a result of the information the FBI furnished, IRS initiated an audit of Professor X's return.

Because of IRS liberality in granting delays in audits to suit taxpayers' convenience, the audit of Professor X did not achieve the desired purpose of disrupting his planning for demonstrations at the Convention. The audit did result in the imposition of an additional $500 in tax liability for the two years in question, as a result the local FBI office deemed it a COINTELPRO success.[54] While taxpayers should pay taxes which are due, the fact that taxes are due does not justify use of the tax laws to harrass demonstrators.

B. Use of Tax Returns in the FBI Key Black Extremist Program

The Key Black Extremist (KBE) Program was established on December 23, 1970, because of the perceived success of the Key Activist Program. The documentary history of the establishment of the Key Black Extremist Program and inclusion of requests for tax returns as a standard technique are contained in the Committee files and described briefly in the report on COINTELPRO.

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[51] Memorandum from Midwest City Field Office to FBI Headquarters, 8/1/68.

[52] A signed statement dated 8/13/75 of the IRS Inspector who received Bureau information is in the Committee files.

[53] Memorandum from FBI headquarters to Midwest City field office, 8/6/68. One apparent reason for not disclosing the source of the information was the injunction in the memorandum initiating the Key Activist COINTELPRO: "you are cautioned that the nature of this new endeavor is such that under no circumstances should the existence of the program be made known outside the Bureau. . . ."

[54] Memoranum from Midwest City Field Office to FBI headquarters undated.

According to the Committee staff's review of FBI files, the FBI requested the returns of at least 72 of the 90 designated Key Black Extremists. As in the case of the requests for Key Activists' returns, one of the FBI's purposes in obtaining returns of Key Black Extremists was to use the returns as weapons in its campaign to "neutralize" them. All the Key Black Extremist requests were made on the same forms as the Key Activist requests. There is no evidence the IRS inquired into the specific purpose of any of the requests. All were honored.[55]

C. Disclosure of Identity of Contributors to Ideological Organizations

The IRS routinely receives from tax exempt organizations lists of their contributors either on tax returns or on exemption applications. The information is given to IRS in order to enable it to enforce the tax laws with respect to those organizations. The IRS also develops contributor lists of non-exempt organizations during audits, especially if there is reason to believe the contributors may be improperly deducting the contributions. These contributor lists are available to the FBI and other federal investigative agencies by simple request to the Internal Revenue Service, even in cases where those agencies could not legally obtain the information directly.

1. *Dr. Martin Luther King and the Southern Christian Leadership Conference.*—One of the organizations the FBI designated a "Black Nationalist-Hate Type Organization" was the Southern Christian Leadership Conference.[56] As part of an earlier intensive investigation of this organization and of its leader, Dr. Martin Luther King, the FBI, in 1964, obtained from the Internal Revenue Service "all available information" concerning Dr. King and the SCLC.[57] This information included tax returns of both Dr. King and the SCLC as well as certain IRS investigative files. The FBI studied IRS audits and investigations of both Dr. King and the SCLC, and discussed with certain IRS employees future IRS action to check on Dr. King's and SCLC's compliance with the tax laws. The information received regarding Dr. King and SCLC was forwarded to the FBI Atlanta office "for further review and coordination with the investigation relating to Dr. King himself." [58] On April 14, 1964, the Atlanta office responded with a suggestion for disruptive action against SCLC.[59]

After noting that SCLC was tax exempt in the sense that it was not subject to income taxation (though contributions to it were not deductible on the returns of the donors), and that its enjoyment of this status required it to file a petition disclosing the names of contributors,

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[55] Donald D. Virdin testimony, 9/16/75, p. 89.

[56] Memorandum from FBI Headquarters to various Field Offices, 8/25/67.

[57] The returns and other information were obtained during the period prior to 1968 when the FBI was obtaining information directly from the IRS Intelligence Division. See memorandum from Baumgardner to W. C. Sullivan, 5/6/64.

[58] Memorandum from Baumgardner to W. C. Sullivan, 3/25/64; memorandum from FBI Headquarters to Atlanta Field Office, 4/1/64.

[59] Memorandum from Atlanta Field Office to FBI Headquarters, 4/14/64. Although the suggestion (and other suggestions contained in the same letter) was a COINTELPRO-type suggestion, it was not so denominated by the FBI.

the Atlanta office recommended that the following action be taken with respect to the contributors so disclosed: [60]

> It is believed that donors and creditors of SCLC present two important areas for counterintelligence activities. In regard to the donors it is suggested that official SCLC stationary bearing King's signature, copies of which are available to the Atlanta Office and will be furnished by separate communication to the Bureau Laboratory for reproduction purposes, be utilized in advising the donors that Internal Revenue Service is currently checking tax records of SCLC and that King through this phony correspondence wants to advise the donor insuring that he reported his gifts in accordance with Internal Revenue requirements so that he will not become involved in a tax investigation. It is believed such a letter of this type from SCLC may cause considerable concern and eliminate future contributions. From available information it is apparent that many of these contributors to SCLC are doing so in order to claim tax deductions and in order to be eligible for such deductions, the contribution is being made to the (privacy deletion-name of a church), which in turn is forwarded to King or the Southern Christian Leadership Conference.[61]

The suggestion was considered by FBI Headquarters and was categorized, along with some other suggestions

> as not appearing desirable and/or feasible for direct action by the Bureau at this time. . . .[62]

2. *The Students for a Democratic Society.*—In the course of auditing would-be exempt organizations, the IRS will often seek to identify contributors to the organization in order to determine whether the contributors are deducting contributions.[63] Under current disclosure regulations, the results of such audits, including the contributor lists generated in the course of the audit, are available to other federal agencies upon request. Thus, the potential use of IRS as a source of contributor lists is not limited to exempt organizations, such as SCLC. Moreover, such lists have in fact been obtained from the IRS.

In 1968, the IRS was conducting an audit of the Students for a Democratic Society. The audit was initiated in New York, and was subsequently referred to the Chicago District of IRS. An FBI letter from Director, FBI, to SAC, Chicago, dated June 10, 1968, states:

> It is noted IRS is presently conducting an audit of SDS funds at the Bureau's request.

The IRS files do not reflect a specific request from the FBI for such an audit, but do reflect considerable input from the FBI in the form

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[60] It is not entirely clear from the Atlanta Office's letter whether it already had the contributor list or was recommending that it be obtained. The point is clarified by an internal memorandum of FBI Headquarters (Baumgardner to W. C. Sullivan, 5/6/64) in response to the Atlanta suggestion which notes: "We have already obtained all available information from IRS concerning King and the SCLC."

[61] Memorandum from Atlanta Field Office to FBI Headquarters, 4/14/64, p. 8.

[62] Memorandum from Baumgardner to W. C. Sullivan, 5/6/64, p. 3.

[63] Contributions to non-exempt organizations are generally not deductible.

of reports suggesting that certain activists (including SDS members) were probable tax violators.[64] The FBI at least sought to direct IRS attention to SDS.[65]

Since the SDS exemption application had been denied, it was appropriate for IRS in the course of the audit to identify contributors to the organization, and it did so. The FBI obtained the list which IRS had developed. Later, IRS passed the list on to the White House. According to an April 8, 1970, internal IRS memordandum:

> Paul Wright of AOC[66] and Joe Hengemuhle of the FBI called to ask whether the FBI could furnish the White House the list of SDS contributors which was furnished to the FBI by IRS. The FBI has been requested by the White House to furnish a report on the funding of various militant organizations....
>
> I advised that from a disclosure standpoint, if the White House staff wanted this on behalf of the President, there was no disclosure problem; but in view of the sensitive nature of the matter and of other investigations and problems, I wanted to check this with Mr. Green to get his approval.[67]

Permission was granted and the list was furnished to the White House.

IV. DISCLOSURES TO THE CENTRAL INTELLIGENCE AGENCY

With three possible exceptions, there is no evidence the CIA has ever obtained tax return information through official disclosure channels.[68] Between 1957 and 1972, however, the CIA obtained tax return information on at least thirteen occasions through unofficial channels.

A. Means of Obtaining Returns

The CIA obtained return information informally from IRS employees in the Compliance Branch who had other CIA liaison responsibilities.[69] It has been possible to identify taxpayers on whom the CIA obtained return information, but since there are no records of these disclosures, it has not always been possible to establish which employees released which information.[70] That responsibility has been established in at least two cases. In one case, an IRS employee stated

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[64] *Eg.*, Memorandum from FBI Headquarters to Cleveland Field Office, 6/10/68; memorandum from Cleveland Field Office to FBI Headquarters, 8/1/68; memorandum from FBI Headquarters to Cleveland Field Office, 8/6/68.

[65] That the FBI sought to direct IRS attention at SDS is apparent from the statement in the June 10, 1968, memorandum to Chicago Field Office, "... IRS is presently conducting an audit of SDS funds at the Bureau's request." While this statement does not conclusively demonstrate that the Bureau was the cause of the audit, it does demonstrate that the Bureau sought to bring the audit about and believed it was responsible for it.

[66] AOC is the Activist Organization Committee, later known as Special Service Staff; Mr. Wright was its head.

[67] Memorandum for File by D. O. Virdin, dated 4/8/70. Mr. Virdin was then head of the IRS Disclosure Branch.

[68] The Committee staff reviewed IRS files of requests for tax returns and return information from intelligence agencies.

[69] These included liaison concerning audits of CIA proprietaries, a subject which will be discussed in the Committee's final report on the subject of CIA proprietaries.

[70] Because of the informal nature of CIA access to returns, no records of the disclosures were maintained by IRS.

he was authorized to release returns by his superior, but his superior can recall giving no such authority.[71] In one other case, the IRS employee stated he had disclosed return information to a CIA agent who carried the credentials of another U.S. Government agency as a cover.[72] There was no written authority for the informal disclosure of tax return information to the CIA, and, according to the IRS, there is no basis upon which any of the disclosures could be considered legal.

B. Effect of Illegality

Although the purposes of the requests varied, it is clear that all but one of the disclosures would have been legal had the CIA followed legal procedures. The bulk of the requests arose in connection with either CIA investigations of its own employees or other CIA investigations within its charter.[73] Thus, with one possible exception, the illegal practice did not result in the CIA's obtaining information it could not have obtained legally. Like the practice of the FBI prior to 1968 of obtaining returns from the Intelligence Division and bypassing official channels, the CIA's informal, illegal access to return information demonstrates not a weakness in disclosure regulations, but a failure of IRS to apply those regulations.

The atmosphere of extra-legal cooperation between intelligence agencies out of which the CIA's illegal access to returns arose did lead to at least two serious breaches of IRS responsibility for impartial, even-handed enforcement of the tax laws. In one case, the CIA obtained information from the returns of Victor Marchetti, the author of a book, publication of which the CIA sought to prevent. An unidentified IRS source, referred to in a CIA memorandum [74] as "Confidential Informant," supplied the return information on April 5, 1972, and advised the CIA that he:

> was extremely interested in the fact that [Marchetti] had authored and published a book but still only reported a total income of [amount deleted] for 1970 and 1971. In this regard, our source would be ready to conduct, *at our request*, a routine audit of [Marchetti's] income tax for the past three years. [Emphasis supplied.]

Either information the IRS possessed concerning Marchetti justified an audit or it did not. Since no formal relationship existed between the two agencies, the CIA's interest in the matter should not have affected IRS action.

The second case involved Ramparts magazine. A February 2, 1967, internal CIA memorandum of a conversation between the Assistant General Counsel of the CIA, the Assistant to the Commissioner, IRS, and two other IRS executives, including the Deputy Assistant Commissioner for Compliance, indicates a basic willingness on the part of the IRS participants to tailor their treatment of Ramparts to the

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[71] IRS Inspection Report, CIA access to tax related information.

[72] *Ibid.* p. 1.

[73] Letter from CIA General Counsel to IRS Assistant Commissioner, Inspection, 8/4/75.

[74] A copy of the memo, which was captioned "Subject: Victor Marchetti," is in the Committee's files.

desires and concerns of the Central Intelligence Agency. The memorandum [75] recites that the CIA Assistant General Counsel:

> Told them of the information and rumors we have heard about RAMPARTS' proposed exposes with particular reference to USNSA [U.S. National Student Association] and [an organization]. I impressed upon them the Director's concern and expressed our certainty that this is an attack on CIA in particular, and the administration in general, which is merely using USNSA and [an organization] as tools.

One of the IRS executives advised the CIA of the status of the USNSA application for tax exempt status. The CIA Assistant General Counsel then

> suggested that the corporate tax returns of Ramparts, Inc. be examined and that any leads to possible financial supporters be followed up by an examination of their individual tax returns. It is unlikely that such an examination will develop much worthwhile information as to the magazine's source of financial support, but it is possible that some leads will be evident. The returns can be called in for review by the Assistant Commissioner for Compliance without causing any particular notice in the respective IRS districts. The proposed examination would be made by Mr. Green who would advise if there appeared to be any information on the returns worth following up. The political sensitivity of the case is such that if we are to go further than this, it will be necessary for the agency to make a formal request for the returns under a procedure set forth in government regulations. If such a request is made, the Commissioner will not be in a position to deny our interest if questioned later by a member of congress or other competent authority.

V. ANALYSIS

The cases described in this report reveal that more than privacy is at stake in the disclosure of tax returns and tax return information to federal agencies. It is apparently necessary to devise means to prevent disclosure for improper purposes, and to prevent the subsequent misuse of returns disclosed initially for proper purposes. The Justice Department's failure to prevent FBI abuse of access to returns suggests strongly that the control device must be in the hands of the IRS, and not only in the hands of the requesting agency or of its parent agency.

The case of Professor X, in which information supplied by IRS was used in an FBI counterintelligence program, raises a fundamental question concerning the use of IRS for non-tax purposes: whether the selection of a taxpayer for audit or investigation for essentially political criteria is justified by the subsequent discovery of some tax liability. This question is fundamental, and applies whether the non-tax use

[75] The 2/2/67 CIA memorandum was captioned, "IRS Briefing on Ramparts."

is through the unwitting manipulation of the IRS because of a weakness in its disclosure laws, or whether the political motivation emanates from the IRS itself. If one underpays his taxes, one argument goes, one takes his chances. One's political opponent, disgruntled neighbor, or disenchanted employee can report the underpayment for the crassest of motives, and will be rewarded [76] for his efforts; therefore, motive is irrelevant as a matter of policy—all motives, however crass, enhance tax enforcement, and are therefore desirable springboards for audits or investigations. If violation of the tax laws inhibits one's freedom by increasing one's exposure to audit or prosecution, the result is a salutary incentive to comply with those laws.

There is an essential difference, however, between a government enforcement program along ideological lines and any individual effort to bring the IRS down upon an enemy: the government is constitutionally required to be neutral to politics; individuals are not. When the IRS responds to an allegation it receives, the motive underlying the transmission of the allegation is irrelevant. When the IRS selects taxpayers for a tax compliance review because of their politics, the government is employing its power for political purposes. Whether the IRS performs the selection, as in the case of Special Service Staff, or the FBI does, as in the case of Professor X, the fortuitous discovery of a tax liability does not justify the repression inherent in the practice.

Professor X was audited only because he was the target of a COINTELPRO operation in which the FBI, through the use of the disclosure regulations, sought to manipulate the IRS into "neutralizing" Professor X by means of a tax audit.[77] Every IRS witness questioned regarding this case has agreed that Professor X's returns would not have been knowingly disclosed for the purpose for which they were used.[78]

The law and practice of disclosure of tax returns made this operation possible. The law requires the IRS to turn over returns to the Justice Department only where they are "necessary" in connection with "official duties." However, the IRS has not, in practice, administered these two requirements, but has delegated their administration to the requesting Assistant Attorney General, who in turn has delegated it to the FBI. As a result, no one outside the FBI made any determina-

[76] Section 7623 of the Internal Revenue Code permits the Internal Revenue Service to pay a reward to anyone who provides it with information that leads to the detection and punishment of anyone guilty of violating the Internal Revenue laws.

[77] The Assistant Chief of Audit in the IRS District at the time has stated: "My best recollection is that the return was a type which would not normally be identified by the computer as having audit potential. . . . There was no routine procedure in effect at that time for manual screening of returns for questionable deductions. Therefore, without some impetus from outside the normal, routine system, Professor X's return would in all probability not have been selected for classification and audit." (Interview, 8/13/75.)

[78] See deposition of Donald Bacon former Assistant Commissioner (Compliance) with broad supervisory authority over disclosure pages 13, 14; deposition of Donald Virdin, former Chief, Disclosure Branch, pp. 78, 79.

tion of the actual reason for the request for Professor X's return, or of the compatibility of the reason with the regulatory criteria.

Even if the FBI's initial reason for requesting Professor X's return had been proper, the disclosure procedures provided no safeguard against a subsequent misuse of the return in an operation unrelated to the reason for the request. The letter requesting Professor X's return recited:

> Documents furnished in response to this request will be limited in use to the purpose for which they are requested. . . .[79]

But the "purpose" for which they were requested was stated so generally as to permit any subsequent use. IRS failure to insist upon Justice Department compliance with the requirements that the application for the return state the reason why inspection is desired permitted the FBI to legally obtain Professor X's return to later improperly use the return as a COINTELPRO weapon.

Unrestricted FBI access to contributor lists the IRS compiles in the course of enforcing the tax laws has threatened both the integrity of the tax system and the constitutional rights of the contributors. The identity of members of organizations such as SCLC and the NAACP is privileged to protect members in their right to freedom of association by forestalling the potentially chilling effect which revelation of membership could have. The same reasons justify application of this protection to the identity of contributors to such organizations except to the extent that the act of contribution itself is properly discoverable because of potential tax consequences. It is for this latter purpose that the IRS is empowered to elicit contributors' identities. Presumably, if the FBI were investigating an allegagation of criminal tax fraud to which contributors' identities were relevant, it would be entitled to the same information. There is no suggestion in any of the relevant FBI documents that the FBI sought to supplant the IRS in any investigation of the potential tax liability of SCLC contributors.[80] Rather, the FBI contemplated using the list as a means of disrupting SCLC and discouraging contributions, a purpose which constitutes a direct attack on the very interest which the right to anonymity protects, and a purpose for which the FBI could not have obtained a list of SCLC contributors from any court.

That the FBI did not implement the suggestion does not affect the basic point that FBI Headquarters furnished the tax information, including the list of contributors, to the local office in order to enable the local office to devise disruptive actions. COINTELPRO policy (as evidenced in other cases which are discussed in the report on COINTELPRO) makes it clear that the suggestion was not rejected because of concern for the legality of so using the contributor list.

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[79] Letter from Walter J. Yeagley to Commissioner, IRS, 5/31/68.

[80] The FBI generally does not conduct such investigations. They are the basic task of the IRS Audit Division.

In *NAACP* v. *Alabama*[81] the Supreme Court ruled that, even though the specific purpose of a law empowering the government to obtain the identities of members of a political group is legitimate, the court will weigh against that purpose the probability that a consequence of disclosure will be to interfere with the members' exercise of their right of freedom to associate. If the reason for disclosure is not "constitutionally sufficient" to outweigh the danger to freedom of association, the law is unconstitutional. Given the existence of a COINTELPRO policy of using all intelligence for disruptive purposes whenever feasible, disclosure to the FBI of contributor lists of target organizations violated the Constitution the moment the disclosure occurred even if, in the particular case, the FBI failed to devise a feasible means of making disruptive use of the information, and even if the FBI also had a legitimate purpose in obtaining the information.

Obtaining contributor lists for purposes of "counterintelligence" action to discourage contributions is unconstitutional under the *NAACP* v. *Alabama* rule. In *NAACP* v. *Alabama*, the state was denied access to contributors' lists because an incidental consequence of publication would be non-governmental harassment of the membership. In the case of SCLC, where the FBI sought the list in part for the purpose of developing schemes for government-sponsored disruption, the illegality of obtaining the list is apparent. The case demonstrates the importance of (1) requiring a statement of the purpose of requests for returns; and (2) limiting their use to the stated proper purpose.

The case of FBI access to an IRS list of contributors to SDS further demonstrates that inadequate IRS controls have led to its becoming an agent of a non-tax investigatory agency. It is not clear in this case whether the SDS audit was initiated because of FBI interest. It is clear that the FBI sought to direct the IRS intelligence gathering capability at SDS and then, through the disclosure mechanism, obtained information it could not legally have obtained on its own.

The case demonstrates how the disclosure procedures followed by the IRS makes it possible for an intelligence-gathering power the Congress has bestowed upon IRS for the purpose of tax collection—the power to obtain the identity of contributors—to become an investigative power of a non-tax agency, bent upon non-tax purposes. The SDS case also demonstrates that lax disclosure procedures provide an incentive for other agencies to attempt to interfere in IRS selection

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[81] *NAACP* v. *Alabama*, 357 U.S. 449, 78 S.Ct. 1163 (1957). The court held that whether membership lists are constitutionally available to the state depends upon whether the "reasons advanced" for the publication of the lists are "constitutionally sufficient to justify its possible deterrent effect" upon the freedom to associate. The Court found that the NAACP had made:

"An uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed those members to economic reprisal, loss of employment, threat of physical coercion."

and that

". . . compelled disclosure . . . is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure."

of taxpayers for audit.[82] An IRS audit is a financial vacuum cleaner. Other governmental agencies have a powerful intelligence gathering capability when they can exert influence over who the IRS selects for an audit and then have uncontrolled access to information gathered during the audit.

While it is clear that on occasion agencies performing intelligence functions will have a legitimate need for tax returns and return-related data, the need for a written record of the reasons supporting an agency's request for the information is also clearly demonstrated by the Ramparts and Marchetti cases in which the CIA informally obtained tax-related information for questionable purposes. The CIA was apparently unwilling to risk requesting tax return information with respect to Ramparts and its supporters unless, through an informal disclosure, it could first learn whether there was information on the returns that would be of interest to them in their effort to stifle Ramparts criticism of a CIA-sponsored organization.

The *Ramparts* and *Marchetti* cases demonstrate the dangers of informal exchanges of information between the IRS and other intelligence agencies. These informal exchanges both encourage illegal disclosure and provide the other intelligence agency with a lever by which to manipulate or persuade the IRS into action directed against certain taxpayers for reasons having no bearing upon compliance with the tax laws. In the Marchetti case, the unidentified IRS source offered to conduct an audit of Marchetti at the CIA's request, an offer which arose out of the atmosphere of extralegal cooperation which informal access to tax return information creates.

The existence of informal disclosure channels is dangerous even if the only tax return information that passes along those channels is information that could have been properly disclosed under IRS regulations. The existence of such channels fosters an atmosphere in which those charged with liaison are tempted to place their desire to be cooperative above their obligation to enforce the tax laws neutrally. The unofficial character of the disclosure makes it possible to insulate these acts of improper cooperation from outside scrutiny. It is far too important that taxpayers have confidence in the confidentiality of the returns they file and in the integrity of the tax system to permit individuals within the IRS to exercise unreviewable judgment regarding the propriety of disclosing tax return information to other Federal agencies.

Selective Enforcement for Non-Tax Purposes

Introduction

Because the investigation of the Internal Revenue Service encompassed several abuses of the rights of American citizens of which some

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[82] A later case specifically shows FBI awareness of the advantages of directing IRS attention at an intelligence target. In 1969, the Special Agent in Charge in a Midwest City recommended furnishing certain information to the IRS in order to effect an audit of a local Communist Party officer. (Memorandum from Midwest City Field Office to FBI Headquarters, 1/22/69.) Authority was granted in a communication from the Director which also noted:

"After audits have been effected by the Internal Revenue Service, copies of the audits can be obtained through liaison at the Bureau. Should you desire copies, submit your request at the appropriate time." (Memorandum from FBI Headquarters to Midwest City Field Office, 3/4/69.)

details had previously been studied and revealed to the public by the Congress (e.g., Special Service Staff, Ideological Organizations Project), the staff was able to devote some of its investigation to an analytical evaluation of those abuses. This analysis revealed that many abuses of the IRS intelligence functions occurred when enforcement of the tax laws became an ancillary instead of the primary factor in determining IRS actions.

The Internal Revenue Service, since it was reorganized in 1952, has had a decentralized structure, with each of the 58 districts operating autonomously and being generally responsible for its day-to-day operations while the National Office is primarily responsible for policy decisions. When the IRS participated in an activity in which targets had been chosen on the basis of criteria which included factors in addition to those involved in routine tax law enforcement, it was often necessary for the IRS to impose centralized controls on its basic decentralized structure in order to accommodate the special requirements created by the additional criteria. This has had the practical effect of creating a new structure which has in the past been incompatible with the original decentralized IRS structure and has often resulted in abuse. The investigation revealed that this result occurred regardless of the purpose of the IRS endeavor. For example, abuses attributable to structural anomalies occurred in IRS participation in the Organized Crime Drive, a valuable effort beneficial to the well-being of the country, as well as in the Special Service Staff, where IRS improperly targeted individuals because of their political beliefs.

Part Two of this report, "Selective Enforcement for Non-Tax Purposes," reports on the historical development of the intelligence operations of the Internal Revenue Service since its reorganization in 1952 and discusses the relationship between those abuses addressed and their setting: the decentralized structure of IRS.

I. THE HISTORICAL DEVELOPMENT OF IRS INTELLIGENCE ACTIVITIES

A. Function and Structure of IRS Intelligence

1. *Introduction.*—The Intelligence Division of the Internal Revenue Service performs those criminal investigative activities the IRS must perform in order to collect the taxes, i.e., gathering that information beyond what taxpayers normally provide IRS which is necessary to determine the truth of allegations of criminal tax violations and, if necessary, to prepare evidence for prosecution of such violations. These activities are usually lumped under the IRS rubric, the "General Enforcement Program" ("GEP").

In addition to this normal function, the IRS Intelligence Division has engaged in "Special Enforcement Programs" ("SEP"), where it targets major criminal figures for general intelligence collection.

The element of targeting makes the SEP distinct in several important ways from GEP. In the General Enforcement Program, IRS does not single out a taxpayer and seek to develop a case against him, whereas the very purpose of the SEP is to develop tax cases against persons who have been classified as participants in, for example, organized crime. The purpose is a "nontax" purpose in the sense that in most cases the motivation for selecting the investigative target is not to achieve balanced tax enforcement but to seek to develop a

tax case against the target because he is believed to be a participant in other criminal activities. The GEP target is investigated because there is reason to believe he has committed a specific act of tax fraud. The SEP target may be investigated in the hope such an allegation can be developed.

This difference in targeting leads to differences in attitudes and technique. Pursuit of SEP figures requires use of many of the techniques of general law enforcement (paid, regular informants; electronic and other forms of surveillance; raids; nationally organized and coordinated enforcement efforts) which the GEP does not require to the same degree. Further, the policy of the SEP is essentially one of consciously "unbalanced" tax enforcement.[83] Balanced tax enforcement is an effort to allocate enforcement resources to achieve the highest degree of compliance with the tax laws.[84] Balanced enforcement does not imply that all classes of taxpayers will be equally subject to tax investigation, but that the criteria for resource allocation will be designed to maximize tax law enforcement. In the SEP, these criteria do not control. Resources may be allocated to SEP targets because they are perceived to be dangers to society in many ways, even though the tax compliance benefits of successful prosecution would not alone have justified allocation of investigative resources. This difference may lead to a different attitude on the part of the agents tasked to "get" the SEP target from the attitude they bring to GEP investigations, and aggravate the difficulties of controlling the agent's exercise of discretion in the field.

The organization of the IRS Intelligence Division and its devices for control of agents reflect the primacy of the "classical" IRS Intelligence function: the investigation of specific allegations of tax fraud in a balanced enforcement program. Unlike any other Federal law enforcement agency, the Internal Revenue Service's Intelligence Division is a decentralized organization. Local and regional offices make virtually all operational decisions. The National Office hierarchy is designed to be a policy-setting organization which seldom interferes with field activities—and, except in the case of major projects, is unaware of specific activities. This arrangement contrasts strikingly with the organization of the FBI, for example, which has closer control over day-to-day field operations because of its centralized structure with the chain of authority emanating from the center.

The IRS was decentralized to meet certain needs of tax collection and tax law enforcement. The high degree of local autonomy and agent discretion which accompanied decentralization have made the IRS an effective tax enforcement agency. It has, however, proved to make difficult the effective control of nontax law enforcement activities. To the extent that a nontax emphasis may serve the national interest—as with the drive against organized crime—it is apparent that effective control and oversight by the necessarily different organizations is required.

2. *Origins of Decentralization.*—The organization of IRS Intelligence parallels the organization of the rest of the IRS. Both are prod-

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[83] See Manual Supplement 14R–17, November 6, 1959, discussed at page 870, *infra.*

[84] IRS Policy Statement p. 9–18.

ucts of an effort in the early 1950s to correct widespread abuses which congressional investigators had uncovered in IRS operations. While the reorganization of 1952 did not arise primarily from abuses by the then functional equivalent of the Intelligence Division, the reasoning which underlay the changes applied equally to all areas of IRS activity.[85]

Prior to the reorganization, the IRS collected the revenue through 64 "Collectors," who were Presidential appointees. Congressional investigators found that the Collectors had been susceptible to political influence and to other forms of improper pressure. Commissioners had found they were unable to control the independently-appointed Collectors.[86]

The problem was perceived in part as one of excessive centralization, which made the IRS a powerful tool of political forces and threatened public confidence in the tax system.[87] The solution was an effort to readjust the perpetual tension between the need for central direction and the dangers of central control.

The Treasury commissioned a management consulting firm to study how to structure the IRS to insulate it from improper influence while retaining the degree of central direction it needed to perform the mushrooming task of collecting the revenue. The consulting firm's recommendations were ultimately embodied in Reorganization Plan No. 1 of 1952.[88] In broad outline, the Plan called for two changes in IRS structure which, on the surface, appear inconsistent but which were designed to work in tandem to produce greater efficiency and independence from political influence. Under the preexisting system, while the National Office in theory directed field activities, in practice, since the Collectors were Presidential appointees, the Commissioner's authority over the field was in doubt. Further, the field was susceptible to political pressure since the Collectors' job security depended upon political favor. The Reorganization Plan sought to correct both deficiencies by abolishing the Collectors' positions and creating not more than 25 district commissioners who would be civil servants, promoted according to merit, and answerable directly to the Commissioner. At the same time, however, the plan called for a decentralization of most IRS operations and a consequent reduction in National Office authority over day-to-day field operations. The introduction of professionalism into the highest levels of field organization would permit a high degree of field autonomy; the elimination of patronage appointments would create an environment in which field autonomy would not mean field politics.[89]

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[85] Statement of John B. Dunlop, Commissioner of IRS, "Meaning of Reorganization Plan No. 1 of 1952," 5/20/52.

[86] John W. Snyder, Secretary of Treasury, "The Reorganization of the Bureau of Internal Revenue," Public Administration Review, 1952, p. 221 et seq.

[87] The House Committee on Expenditures in the Executive Departments held hearings on the Plan during January 1952, pursuant to the Reorganization Plan of 1949, under which such reorganization plans were automatically ratified if not disapproved by the Congress within 90 days. For the text of the plan, see Reorganization Plan No. 1, Submitted to the Congress by the President, 1/14/52.

[88] John W. Snyder, "The Reorganization of the Bureau of Internal Revenue," p. 229.

[89] The Plan also called for the consolidation of field activities into administrative groupings according to the function being performed (Investigative—including Audit and Intelligence—Collection, Settlement, etc.) rather than according to the kind of tax being collected as a means of achieving clearer lines of responsi-

Under the plan, the primary function of the reduced National Office staff would be to advise the Commissioner on questions of broad policy. The Commissioner was to be the only political appointee in the IRS and, as such, he was not to have the bureaucratic muscle necessary to control field operations, but was to have the staff necessary to engage in those activities for which a political orientation was appropriate: setting broad policy. Congressman Cecil R. King of California, Chairman of the Subcommittee on Administration of the Internal Revenue Laws of the Ways and Means Committee, expressed the philosophy underlying the Plan:

> Political selection for positions which are primarily policy forming has obvious justification. Where the job is primarily a technical administrative post these are almost entirely lacking.[90]

The reorganization of the Intelligence Division paralleled the pattern for the Service.[91] The effect of the Plan was to increase the Commissioner's ability to exercise his general authority over intelligence activities in the field by eliminating the politically independent Collectors and streamlining the field organization while, at the same time, minimizing direct National Office control over day-to-day operations by bestowing greater autonomy upon the professional field staff.

With minor differences, the organization envisioned by the 1952 Plan is that which exists today. Intelligence activities in each district (of which there are 58) are run by a Chief, Intelligence, who reports to the Regional Commissioner who reports to the Commissioner. The Intelligence Division in the National Office is not in this chain of command and, therefore, generally has no line authority over the Chief, Intelligence, in the district. It performs its function of assisting the Commissioner in setting policy for all IRS Intelligence activities by issuing rules and guidelines which are to be implemented by the Regional Commissioners and the District Directors, in whom authority to direct actual operations reposes.[92]

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bility and authority. Previously, for example, special agents engaged in intelligence work had been divided into distinct administrative groups depending upon whether they worked on excise, income, or other taxes.

[90] Testimony of the Hon. Cecil R. King before the Committee on Expenditures in the Executive Departments, House of Representatives, 82d Cong., 2d Sess., Jan. 23, 1952, at p. 228.

[91] According to a June 23, 1961, IRS internal memorandum, at the time of the reorganization there was much discussion of whether the District Directors (local office administration) should have operational direction over intelligence operations or whether the contemplated District Commissioners (regional administrators—now called Regional Commissioners) should. The plan adopted was the former except for New York, where (presumably because of the presence of several districts in a small geographic area with cases cutting across district lines) the District Commissioner was to have operational control.

[92] See generally Internal Revenue Manual, § 9300; this discussion of IRS Organization is based in part upon interviews with many National Office and district office intelligence executives. There are some exceptions to the rule of National Office aloofness. Where problems of national scope require the application of Intelligence resources, the National Office may initiate a National Office project and coordinate it out of the National Office. Also, the Commissioner has the authority, if he wishes, to seize control of any operation; however, he lacks the bureaucratic capacity to do so on a large scale, and further, for the National Office to interfere in a case could and sometimes does, provoke objection and, thus, attention from the IRS Inspection Service.

The Plan did not call for unqualified reliance upon the professionalism of the field organization to achieve independence from influence and high performance. It called for the transfer of responsibility for investigating employee malfeasance from the Intelligence organization to a newly created inspection service which would both police impropriety and continuously audit field performance.[93] The current Inspection Service is the sole exception to the regionalized organization. It was necessary to make Inspection independent of those it would inspect. Inspection personnel in the field therefore work out of the Regional Offices and report to the Regional Inspector, who reports to the Assistant Commissioner (Inspection) in the National Office, who reports to the Commissioner. This structure makes Inspection independent of the District Directors and the Regional Commissioners.[94]

The creation of Inspection amounted to the substitution of retrospective evaluation and investigation for direct supervision of field activities. One of Inspection's key tasks is to determine the origins of impropriety or inefficiency and to recommend new systems of organization or new guidelines to eliminate these causes.[95] Its function is consistent with the idea of a decentralized system in which the National Office sets guidelines for performance and evaluates the field's adherence to the guidelines, but does not control current operations.[96]

In 1952 the main job of IRS Intelligence was its classical task of investigating allegations of tax fraud.[97] The organization which was created in 1952 promised effective and controlled intelligence operations as long as this classical intelligence function remained paramount.

Investigation of specific allegations of tax fraud inherently limits the scope of an agent's discretion because of the narrow scope of the inquiry. The inherent limitation makes it possible to rely to a high degree upon agent initiative and spontaneous cooperation at the field level with general guidance from the center when Special Agents investigate specific allegations of tax violations. The inherent controls of the classical IRS intelligence task permitted the architects of 1952 to minimize central control, and thus minimize the chances of influence through the center without risking wholesale local abuse by unrestrained special agents.

The story of abuse of the IRS Intelligence function since 1952 is largely the story of the strains which the attempt to divert IRS resources from its classical investigative function placed upon the organizational structure which had been designed for that classical function—the investigation of specific allegations of tax fraud. Every time the IRS has made a concerted effort to participate in tax law

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[93] Reorganization Plan of 1952.

[94] Interview, Warren Bates, Assistant Commissioner—Inspection, 9/75.

[95] Ibid.

[96] During its investigation the Committee found the Inspection Division to be remarkably objective in its approach to investigation of allegations of IRS wrongdoing. While the IRS system has its limitations, mainly in the mechanism for identifying areas where investigation is necessary as contrasted with conducting an impartial investigation once it is begun, the ingredients of Inspection's objectivity appear to merit study as an example of relatively successful self-investigation.

[97] IRS Organization Study, Interim Report on Internal Revenue Service's Intelligence Organization, September 1961.

enforcement activities with nontax objectives, it has found it necessary to deviate in some way from its normal organization. The resulting hybrid organizations created to participate in other than strict tax enforcement activities have been responsible for many of the abuses of which IRS Intelligence has been guilty during the last twenty-three years.

The purpose of this report is to explore how changing objectives and practices in IRS intelligence gathering have strained the Intelligence organization the IRS established in 1952. Such an assessment is a prerequisite to answering a major question facing those charged with guiding IRS: whether the objectives which dictated the 1952 reorganization remain paramount, and, if so, whether there are means of avoiding the abuses which have accompanied past efforts to reshape the IRS tool for different purposes.[98]

B. IRS Intelligence 1952–1965: The Shift Toward Organized Crime

Between 1951 and 1960, IRS intelligence stepped into and out of the fight against organized crime. In 1960, the government-wide Organized Crime Drive began. IRS was drafted into the effort. The result was the "unbalancing" of the tax enforcement effort: the key criterion for the decision whether to investigate was no longer predicated on tax-related criterion alone. In order to make certain the habits of bureaucracy would not negate this shift in emphasis, central "coordination" of the effort was superimposed on the IRS's decentralized structure. The resulting vagueness in lines of authority, the increased use of the abuse-prone intelligence gathering technique of electronic surveillance, and the accompanying atmosphere of a crusade resulted in abuses in the use of electronic surveillance between 1960 and 1965, which the Long Committee [99] exposed. These abuses appear to be a direct result of the structure created to handle the IRS activities and do not reflect on the stated desirable purpose of the IRS action: to combat the nationwide growth of organized crime.[100]

1. *1951–1960.*—Before 1951, the classical function of IRS intelligence was virtually its only function,[101] but a change began at about the same time reorganization plans were stirring. In February 1951, the Kefauver Committee [102] criticized IRS failure to enforce the tax

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[98] For a discussion of this issue see e.g., IRS Organizational Study Supplemental Report, "A Contemporary View of the Criminal Law Enforcement Function in the IRS," 1/12/70.

[99] Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess., pt. 3, pp. 1126–27, Hon. Edward Long, Chairman.

[100] IRS efforts directed at organized crime have resulted in the prosecution and conviction of known criminals who successfully avoided conviction for other crimes, the most notable being Al Capone. There are, however, differing views on the question whether the concentration on organized crime figures can be justified purely from a revenue enforcement viewpoint. See e.g., testimony of Louis Obderdorfer, p. 2, and Robert Blakey, p. 25, before the Subcommittee on Administration of the Internal Revenue Code of the Senate Committee on Finance on "The Role of the Internal Revenue Service in Law Enforcement," 1/22/76.

[101] Interim Report on Internal Revenue Service's Intelligence Organization, September 9, 1961, pp. 1–3 (hereinafter referred to as "Interim Report"). Intelligence also investigated employee malfeasance, job applicants, and similar matters.

[102] Special Committee of the United States Senate to Investigate Organized Crime in Interstate Commerce, established May 3, 1950.

laws with sufficient vigor against organized crime. This and other criticism and encouragement by the Kefauver Committee led to the creation in 1951 of a racketeer program in IRS. [103]

In 1951 and 1952, the IRS assigned a large proportion of its intelligence forces to racketeer work. The peak number of investigators so assigned was 2,290 in January 1952.[104] In that year 12,879 racketeer cases were investigated.[105] On November 1, 1951, a wagering tax became effective, the purpose of which was to curb a primary source of organized crime revenue. The Intelligence Division began to enforce the tax through police-type intelligence gathering techniques. While many in the IRS, including some of the accounting oriented personnel of the Intelligence Division, resisted this work as an inappropriate use of their training,[106] for a short time between the Kefauver hearings and the beginning of the Eisenhower administration, this police work represented an increasing part of IRS intelligence work.

The shift toward the Special (Organized Crime) Enforcement Program reversed itself during the Eisenhower administration, which consistently declined to provide special funds for racketeer work.[107] As a result, from 1952 on, Intelligence increasingly concentrated on its "classical" function. In contrast to 10,041 racketeer cases investigated in FY 1953, by FY 1955 total racketeer cases developed had declined to 1,039; by FY 1960, to 125.[108]

Following the 1957 Appalachian meeting of prominent organized crime figures and the accession of Commissioner Latham in November 1958, however IRS once again began to emphasize enforcement efforts against racketeers as part of a national program mounted by the federal government against major racketeers.[109] A November 6, 1959, Manual Supplement 14R–17 stated:

> Achievement of the goal of balanced enforcement . . . does not take precedence over the recognition of investigative requirements arising from flagrant localized situations, including racketeering or other illegal activity.[110]

2. *Acceleration of IRS Intelligence Activities.*—An April 1960 Manual Supplement established a renewed special enforcement effort against racketeers.[111] The National Office was to maintain a file of all

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[103] Then called the "Bureau". Reference throughout will be the Internal Revenue Service.

[104] See Interim Report, p. 12.

[105] *Ibid.*, Table 3. During the 15-month period, April 1951 through June 1952, 430 cases were recommended for prosecution. During the same period, convictions were obtained in 133 cases involving 229 defendants. Interim Report p. 12.

[106] See Interim Report, pp. 13–14.

[107] *Ibid.*, p. 5.

[108] Interim Report, Table 3.

[109] Statement of Robert K. Lund, former Director, Intelligence Division, before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, 7/29/75.

[110] MS 14R–17, November 6, 1959.

[111] MS 94G–4, The program partially centralized IRS intelligence activities, calling for a special review of returns of major racketeers in each district and requiring either an audit or an intelligence investigation of each major racketeer at least every two years. It created a National Office Master File of racketeer figures.

information on major racketeers, even though, in theory, the National Office did not direct investigation of such figures. The reemphasis accelerated rapidly with the start of the Organized Crime Drive (OCD) in February 1961. The Commissioner ordered that all necessary manpower:

> be made available to the extent necessary to promptly and thoroughly conduct those investigations requested by the Department of Justice.[112]

The OCD was accompanied by a revamping of IRS intelligence organization which had not accompanied earlier racketeer programs. Attorney General Kennedy had expressed the view that the decentralized structure of the Intelligence Division with its layers of non-law-enforcement personnel was not apt for the intensive, nationwide program he envisioned against organized crime.[113] In response to this view, the IRS carved out a new structure for OCD intelligence work which bypassed the District Directors and created lines of authority strictly within the law enforcement branch of IRS. The National Director of the Intelligence Division assumed responsibility for "coordinating" the OCD program. He established a "coordinator" in the National Office who would work through similar "coordinators" in each region. The system would bypass the main IRS organization. The District Directors lost effective operational authority over OCD investigations (but retained administrative control over the personnel conducting the investigations and operational control over them to the extent their work fell within the GEP).

The transformed organization carried out transformed intelligence activities. Use of general law enforcement techniques of all kinds, including paid informants and electronic surveillance, increased sharply. While no separate statistics are available for each technique, the table set forth below reflects increases in the use of intelligence gathering techniques which paralleled the increased participation of the IRS in the OCD.

Expenses of securing evidence

[In thousands]

Fiscal year:		Fiscal year:	
1960 (actual)	$159	1969	479
1961	241	1970 (181)*	490
1962	432	1971 (127)*	523
1963	653	1972 (211)*	723
1964	827	1973	425
1965	819	1974	597
1966	790	1975	354
1967	751	1976 (plan)	327
1968	459		

* The majority of funds expended for intelligence gathering in the years 1970–1972 were spent by AT&F: $309,000 (1970), $396,000 (1971) and $512,000 (1972). Figures through 1972 include expenses incurred by the Division of Alcohol, Tobacco and Firearms (AT&F) when it was a part of IRS. AT&F became a separate Bureau in 1972. The figures in parentheses for FYs 1970, 1971 and 1972 indicate the amounts expended by IRS in those years, exclusive of that allocated to AT&F.

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[112] MS 14ROD–1, February 24, 1961.

[113] Statement of Robert K. Lund before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, 7/29/75.

While no further breakdown of expenses for particular techniques is available, testimony at the Long hearings supports the surmise that the sharp increase in expenditures in FY 1961–1963 reflects changes in intelligence techniques more frequently used during the period.

The reemphasis upon major crime figures also altered the personnel profile of the Intelligence Division. In 1959, in partial response to this reemphasis and the accompanying changes in the investigative skills needed to perform the work, the IRS cut in half the accounting training required of prospective special agents, reducing it from 24 to 12 semester hours.[114] The impact of this change was multiplied by a corresponding increase in hiring of Intelligence Division personnel. According to its May 1961 Long-Range Plan, the IRS anticipated increasing its intelligence field personnel from 1,998 in 1961 to 2,560 by the end of 1964, with fifty percent of the total performing some form of organized crime or racketeering work.[115]

C. Abuses in IRS Intelligence 1960–1965: The Long Hearings

Unprecedented charges of the improper use of investigative techniques resulting in the abuse of citizens' rights were made against IRS Intelligence following the first five years of the Organized Crime Drive.[116]

Senator Edward V. Long's Subcommittee on Administrative Practice and Procedure uncovered widespread abuse of electronic surveillance by IRS Intelligence—abuses the IRS had neither prevented nor discovered on its own—in a series of hearings in July and August of 1965.[117] In response to the Committee's allegations of IRS abuse of wiretap capabilities, Commissioner Cohen acknowledged the various forms of surveillance and explained their origin as follows:

> A valid starting point is the 1957 Appalachian meeting of the crime overlords which focused national concern on the cancer of organized crime. February 1961 saw the onset of a drive on organized crime unprecedented in terms of resources, intensity, and—thankfully—results. The success of this program has been reflected in a tenfold increase of convictions secured in organized crime cases.
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> Briefly, we have completed 3,130 full scale investigations in the rackets area from February 1961 through March 31, 1965. Prosecution has been recommended in 2,452 of these. So far from these cases 1,214 convictions have resulted. A number of others are still pending . We presently have 664 cases under investigation. From the Internal Revenue standpoint, taxes and penalties of more than $219 million have been recommended for assessment against OCD subjects. It is noteworthy that where criminal prosecution has been recom-

[114] Interim Report, pp. 79–83.

[115] Interim Report, p. 80.

[116] Not all of the abuses the Long hearings uncovered were products of the OCD. However, the vast majority of the abuses discussed in testimony before the Long Committee occurred in the course of OCD investigations.

[117] Long Committee hearings, pp. 126–27; Letter, Commissioner, IRS to Senator Long, 7/11/67.

mended, we have still been properly able to assess civil taxes and penalties. It seems fair to say that without the wholehearted efforts of the Internal Revenue Service there could have been no organized crime drive nearly resembling that sponsored and endorsed by the Administration and the Congress since February of 1961. Over 60 percent of the cases prosecuted in the organized crime field during this period have been developed by Internal Revenue Service investigation.

In order to effectively combat organized crime the Service recognized that the furtive, underground activities which go hand in hand with organized crime could often be uncovered only through resort to special techniques and equipment. The extraordinary nature of organized crime compelled extraordinary effort by the Service.

The Service early tooled up appropriately for its efforts. Under the impetus of the organized crime drive, the Service expended allotted funds—representing still but a minute fraction of its investigative expenditures—for the purchase of modern, miniaturized electronic transmitting and receiving equipment.

. . . . . .

With respect to the difficulty of controlling special agents once they had been furnished the investigation tools, Commissioner Cohen testified:

> Insuring adherence (to restrictions on use of the electornic devices) is not a simple matter. The Service has approximately 3,000 criminal investigators working throughout the country. They constitute an elite group. While we must temper their zeal with controlled judgment, we cannot categorically deprive them of tools and training with legitimate, exemplary uses.

For many of the abuses the Long Committee uncovered the immediate cause of the breakdown in controls may have been the confusion of lines of authority which resulted from a hybrid organizational structure, the changed structure merely reflected the underlying and unanticipated problems which accompany subordinating tax enforcement, with its inherent restraints, to a non-tax goal.

The Long hearings resulted in no change in IRS structure. The IRS did, however, issue directives expressly forbidding all wiretaps, including those considered legal. It required very high level approval of any electronic surveillance and imposed strict controls upon access to the tools of the eavesdropping trade.

D. Undercover Agent Abuses and IRS Organizational Weaknesses

The same administrative weaknesses which led to abuses of the electronic surveillance capability have also led to abuse of a second major IRS investigative tool; the undercover agent.

The Special Agent Undercover Program, which has existed in varying forms since the IRS began investigating tax fraud, intensified with the beginning of the OCD. In 1963, in a pattern which paralleled that for the entire OCD, the Undercover Agent Program.

> was centralized under the direct control of the National Office Intelligence Division. This action was taken as the result of an Intelligence Division task force study that found a centralized program would be more effective and economical than the separate undercover projects that were then operated by individual regions or district offices.[118]

The result of this action paralleled the results of the centralization of other OCD efforts; neither the Districts nor the National Office exercised control over the undercover agents.

In a major study in 1975,[119] IRS Inspection found widespread abuse in the undercover agent program, and traced the abuse to administrative anomalies remarkably similar to those which underlay the electronic surveillance abuses which the Long Committee had unearthed. An undercover agent in New York, who was to develop intelligence regarding organized crime figures, had engaged in extortion, sale of stolen property and fraudulent business schemes; an agent in Birmingham had been arrested for violations of Alabama gambling and prohibition laws; other undercover agents who had not committed any illegal acts had been largely unsupervised in their undercover careers. In the case of the New York agent, the study found that:

> National Office advised that field managers were responsible to ensure that the Manhattan Strike Force's objectives were achieved by the undercover agent. However, the Manhattan Strike Force representative (i.e., a "field manager") advised that only the National Office had authority to approve and direct the undercover agent's activities.[120]

In the case of the Birmingham agent, the study found:

> National Office and district responsibilities for direction and control of the undercover project were not clearly defined.[121]

The Committee staff also discovered instances of improper and excessive use of undercover agents. In its efforts directed at organized groups which refuse to file returns and pay taxes as a means of protesting the constitutionality of the internal revenue laws, the IRS often uses local and national office-supervised undercover agents, as well as informants, to infiltrate the groups. The undercover agents, often posing as husband and wife, attend open meetings of these protesters, identifying all individuals in attendance,[122] and in some cases become trusted members of the protest organization. One such instance was described as follows:

> After several months of getting acquainted with the movement, we decided we would attempt to infiltrate one of our

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[118] IRS Internal Audit Report of the Review of the National Office Intelligence Division Special Agent Program and Investigative Imprest Fund, 4/21/75, Attachment 2, p. 1.

[119] *Ibid.* The report covered the period 1971–1975. Because the same administrative system for undercover operations had existed since 1963, however, there is every reason to believe this period is representative of the 12-year span.

A copy of the report is in the Committee files.

[120] *Ibid*, Attachment 3, p. 4.

[121] *Ibid.*, Attachment 5, p. 1.

[122] Memorandum of telephone converation between Richard B. Worker, IRS Special Agent, Chicago, and Brian Wellesley, IRS Group Supervisor, Intelligence Division, Los Angeles, 4/3/73.

> agents into the inner circle of the [protest group]. Despite foreboding warnings from other districts that infiltration was extremely difficult, by November 1973 one of our agents had gained the trust, confidence and money of the [protest group] by being selected as treasurer. This coup also gained us the entire mailing list of the [organization].[123]

The staff also learned of instances in which the undercover operatives, because of their positions of trust within the organizations, were privy to legal strategy sessions of tax protesters who had been indicted for violations of the tax code and had legal actions pending against them in court.

In one case, a National office undercover agent who had infiltrated a tax protest organization gained access to a draft of a legal brief of a protester which had been prepared by his attorney and was to be used in the protester's defense in his trial for willful failure to file tax returns. The agent turned the brief over to his contact in the Los Angeles office, who then gave it to the U.S. Attorneys prosecuting the case.[124]

The two projects in the IRS study which were found to be the most effective and the most free of abuse were projects in which the districts simply moved into the control vacuum and assumed control of the project, directing it in the manner in which the IRS' decentralized intelligence system was designed to function. In most cases, however, the districts failed to exercise this initiative in the face of theoretical National Office responsibility for the project; loss of control and overuse resulted.

The IRS was unwilling to change its entire organization to meet the special needs of the OCD because the decentralized structure was best adapted to its classical function. A decentralized structure yielded effective audit and collection action. Since the classical intelligence function depended upon close coordination with Audit and Collection, a balanced enforcement program at the district level required that the intelligence function be similarly organized. The requirements of the intensive effort apparently necessitated a different, more centralized structure. The "coordinator" system and the centralization of the undercover program reflected these requirements. The result of these attempts to change an organizational structure designed only to control classical IRS intelligence activities into a hybrid capable of performing both classical and police-type work was loss of control.[125]

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[123] Memorandum, IRS Special Agent Neuhauser, Chicago to Assistant Regional Commissioner—Intelligence, Midwest Region, undated, p. 2.

[124] All personnel in the Los Angeles district interviewed by the staff denied turning over results of undercover work to U.S. Attorneys on any occasion. An unsigned district memorandum, however, discovered by IRS Inspection Service during its investigation of the intelligence functions of the district, praises the work of the undercover agent in gaining access to the legal brief.

[125] Senator Long also concluded there was a close connection between IRS organization and abuse. On October 5, 1966, Senator Long wrote to Commissioner Cohen:

"If control could be once again centered in the National Director of Intelligence in Washington (as is the case with IRS' Inspection Service) and if the Division could return to its normal job of checking on large tax evaders rather than bookies and numbers operators, things would be greatly improved at IRS."

II. SELECTIVE ENFORCEMENT AGAINST POLITICAL ACTIVISTS: SPECIAL SERVICE STAFF

A. Introduction

The Special Service Staff was a centralized effort to gather intelligence on a category of taxpayers defined by essentially political criteria for the purpose of developing tax cases against them. While perceptions of the program's purpose varied, many in IRS and the few outside IRS who knew (e.g., FBI, White House) of the program regard it as an attempt to suppress a group which threatened the country's security. A centralized effort was deemed necessary because the balanced enforcement programs of the districts had not led to sufficient efforts against "activists" to satisfy IRS' critics, and because the threat was nationwide and involved some national organizations.

The Special Service Staff was not an Intelligence Division project,[126] but it was an information-gathering project in which some of the information gathered was transmitted to the field for appropriate action. The creators of SSS have uniformly testified that they did not intend that it would result in enforcement of the tax laws along ideological lines; that SSS was simply to gather information and disseminate it to the field where the normal decentralized controls of the tax system would assure that the information would result in no disproportionate enforcement effort.[127] Districts, it was presumed, would resist referrals which did not meet normal IRS criteria for tax investigations. In fact, focusing intelligence collection on ideologically-selected groups inevitably resulted in disproportionate enforcement efforts against them. Even had the decision whether to refer a particular case to the field been wholly objective, SSS targets would have shouldered a concentrated burden of tax enforcement because of the disproportionate increase in the gathering of information on them. Additionally, the structure created to accomplish the purposes of SSS were the controls normally present in district operations.

A detailed documentary and transactional history of the origins of SSS is contained in two prior Congressional reports[128] on the subject.

Its origins will merely be summarized here.[129]

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[126] Until February, 1972 SSS was under the Assistant Commissioner (Compliance), who also supervises the Intelligence and Audit Divisions.

[127] Leon Green testimony, 9/12/75, pp. 65, 66.

[128] "Investigation of the Special Service Staff of the IRS," by the Staff of the Joint Committee on Internal Revenue Taxation, June 5, 1975, hereinafter referred to as "Joint Committee Report;" "Political Intelligence in the IRS: The Special Service Staff. A Documentary Analysis Prepared by the Staff of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Ninety Third Congress, Second Session, December, 1974.

[129] The Committee has relied heavily upon the work of the Joint Committee in its inquiry into SSS. The Senate Select Committee's contribution to the problem of the origins of the Special Service Staff has been limited to that new material which came to light in depositions. In general, this Committee's investigation has corroborated the Joint Committee's findings regarding SSS origins. This Committee plowed new ground in two principal areas: (1) investigation of the criteria for referral of subjects to the intelligence agents to the Special Service Staff; (2) interviews of field personnel who handled SSS cases to determine if SSS influenced action on cases after the referral. Except where indicated, all statements regarding the origins of SSS are based upon pp. 33–44 of the Joint Committee's Report.

B. Congressional Influence

During the six months prior to the formation of SSS, staff members of the permanent Subcommittee on Investigations of the Senate Committee on Government Operations (Permanent Subcommittee) had been reviewing IRS files on activist organizations, both in the field and in Washington.[130] As a result of this review, the Permanent Subcommittee became aware of the extent of IRS activity in its area of interest, and expressed criticism that the IRS had not been more active. At a hearing on June 25, 1969, the Permanent Subcommittee "raked over the coals—organizationally, not individually"[131] Mr. Leon C. Green, Deputy Assistant Commissioner (Compliance) for the lack of IRS activity in the area of ideological or activist organizations. As Mr. Green interpreted the Committee's criticism, it related purely to the likelihood that the organizations and individuals associated with them were escaping tax liabilities.

C. White House Influence

There is evidence of a direct White House interest in SSS, as contrasted with the more generalized interest of the Permanent Subcommittee, in IRS policy toward activists.[132]

1. *White House General Criticism and Encouragement.*—Tom Charles Huston in early 1969 recommended to President Nixon that the IRS examine left-wing tax exempt organizations to be sure they were complying with the tax laws.[133] President Nixon reportedly concurred, and Dr. Arthur Burns was asked to speak with the Commissioner of Internal Revenue about the President's concern.[134] According to Commissioner Thrower's memorandum of the subsequent (June 16, 1969) conversation with Dr. Burns, the latter expressed the President's concern.

According to Commissioner Thrower, he may have expressed the President's general concern to Assistant Commissioner (Compliance) Bacon, who had responsibility for the Audit, and Intelligence Divisions, but did not recommend or discuss the establishment of an organization such as SSS.

> about enforcement in the area of exempt organizations. The President had expressed . . . great concern over the fact that tax-exempt funds may be supporting activist groups engaged in stimulating riots both on the campus and within our inner cities.[135]

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[130] The Subcommittee's authority to do so was by virtue of an Executive Order pursuant to 26 USC 6103(a).

[131] Leon C. Green Testimony, 9/12/75, p. 36.

[132] On the other hand, following the formation of SSS, the staff of the Permanent Subcommittee was quite directly involved in its work in contrast to the White House, which exhibited little interest for over eighteen months after its formation.

[133] Joint Committee Report, pp. 16, 17.

[134] For the detailed account of these transactions, including Dr. Burns' inability to recall most of what others claim occurred, see the Joint Committee Report at pp. 17–18.

[135] Memorandum [to file] from Commissioner Thrower, 6/16/69.

Four days after the meeting between Messrs. Burns and Thrower, Mr. Huston advised Roger Barth (Assistant to the Commissioner) by memorandum that the

> President is anxious to see some positive action taken against those organizations which are violating existing regulations, and I have assured him that I will keep him advised of the efforts that are presently underway.[136]

On July 1, 1969, Eddie D. Hughes, a special agent in the Alcohol, Tobacco and Firearms (AT&F) Division of IRS[137] and an expert in militant organizations, gave a briefing on militant organizations to the staff of the Assistant Commissioner (Compliance) Mr. Bacon. Mr. Hughes had been summoned to Washington, D.C., by the head of AT&F, who, according to Mr. Hughes, advised him he was to help prepare a report for the White House.[138] Following the briefing, Mr. Hughes helped Bernard Meehan, the Chief of Staff of the Assistant Commissioner (Compliance) prepare a report[139] on ideological organizations to Mr. Barth.[140] The report begins:

> In furtherance of the recent high level interest shown in the activities of ideological organizations . . .

and discusses current IRS activity in the area of ideological organizations. Mr. Huston has stated he believes he saw the memorandum and that Mr. Barth had sent it to him.

2. *Evidence of Early White House Interest in SSS.*—An early meeting of the organizers of SSS occurred on July 24, 1969. Mr. Meehan of the Compliance Division attended the meeting at the direction of Mr. Bacon, the Assistant Commissioner (Compliance), and, according to Donald Virdin (who took the minutes) ran the meeting. Mr. Virdin stated that he received a call during the afternoon of July 24 from someone in the Compliance Division directing him to hasten his preparation of the minutes, and that as a result, he had no time to correct several typing errors in the draft.[141] Mr. Virdin wrote the following memorandum regarding an early morning tele-

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[136] Memorandum from T. C. Huston to Roger Barth, 6/20/69.

According to the Joint Committee Report, Mr. Barth may have shown this memo to the Commissioner and to Mr. Bacon, but Mr. Barth cannot recall doing either for certain. (Joint Committee Report, p. 20.)

[137] Alcohol, Tobacco and Firearms was a division of IRS until 1972 when it became a separate branch of the Treasury Department.

[138] Mr. Hughes' recollection is corroborated by his expense voucher, which recites: "My presence in Washington, D.C. is necessary to assist the National Office with a report on militant organizations and the financial funding thereof, as it relates to violations of the Internal Revenue Code. The report was requested by and will be submitted to the White House." (Joint Committee Report, p. 20.)

[139] Memorandum, Assistant Commissioner, Compliance, to Roger Barth, July 1, 1969.

[140] Career IRS people questioned unanimously named Mr. Barth as a conduit to the White House of information about the inner workings of the IRS. Mr. Hughes stated he never prepared a report addressed to the White House. See Donald O. Virdin testimony, 9/16/75, pp. 31, 32. The pressure to complete the minutes is significant in view of later events indicating the minutes went to the White House. This raises the possibility someone in the Compliance Division was aware of specific White House interest in Special Service Staff.

[141] Joint Committee Report, p. 22, e.g. Leon Green testimony, pp. 20, 21.

phone conversation with Mr. Meehan (who had run the July 24 meeting for the Compliance Division) in which Mr. Meehan complained of being bypassed by the newly-appointed head of the SSS (initially called the Activist Organization Committee):

DISC "ON NEED-TO KNOW BASIS ONLY"

CP:C:D
July 31, 1969.
8:30 a.m.

Memorandum for file:
Subject: Activist Organizations Committee.

Mr. Meehan called. We were very upset because Mr. Wright [head of SSS] had discussed this matter with Mr. Green [deputy to Mr. Bacon] yesterday. Mr. Meehan said he wondered what was going on and why it was necessary for Mr. Wright to discuss this with Mr. Green.

Mr. Meehan said that the creation of this organization had been discussed with Mr. Bacon [Assistant Commissioner (Compliance) and Mr. Green's and Mr. Meehan's superior] that Mr. Meehan represented Mr. Bacon at the meetings creating this organization; and that the instructions given by Mr. Meehan were those of Mr. Bacon. The reason why Mr. Meehan sat in the meetings is because Mr. Green was absent.

Mr. Meehan's concern is that there may be conflicting instructions; thus, even though Mr. Green is thoroughly familiar with the matter, the original instructions were those of Mr. Bacon. *A copy of the minutes of the meeting which he had prepared were forwarded to Mr. Barth in the Commissioner's office, and Mr. Meehan says now they are over at the White House. Thus, he is most distressed that we might be taking some action contrary to our original commitments.* [Emphasis added.]

—D. O. VIRDIN.[143]

Mr. Huston has stated he had no discussion with Mr. Barth regarding establishing SSS.[144] There is no evidence that the White House ordered or specifically suggested its establishment. The evidence does suggest, however, that because SSS was in part a response to White House interest in the IRS' acting against ideological oragnizations, the White House was kept advised of the specific action IRS was taking and that there was some feeling within IRS that the Service had made a "commitment" to the White House to proceed with SSS.[145]

D. Establishment of SSS

Deputy Assistant Commissioner (Compliance) Leon C. Green recommended establishing the organization which became SSS on June

[143] Mr. Bacon, Mr. Green and Mr. Meehan have all testified they were unaware of any White House interest in the Special Service Staff as such. Mr. Virdin has testified:

By that time [July 31, 1969], Mr. Meehan had told me that the White House had the minutes, and the White House was interested. And he was upset, maybe because there was at that time, he knew, such a high level interest in it [i.e. SSS]. Virdin Deposition p. 62.

[144] Joint Committee Report, p. 23.

[145] D. O. Virdin, Memorandum for the File, "Activist Organizations Committee," July 31, 1969; D. O. Virdin, Memorandum to Mr. [Harold E.] Snyder, "Activist Organizations Committee," May 2. 1968.

25, 1969, immediately following his testimony before the Permanent Subcommittee, and apparently as a direct consequence of his "raking over the coals." Mr. Green's thought, shared by his superior, Mr. Bacon, was that the SSS would gather information on activist and ideological groups, analyze the information to determine if tax questions or violations were present and refer the information to the field for whatever action the field deemed appropriate.[146] The organization was to have no authority to initiate investigations or audits, but was merely to gather and disseminate information. One of the main reasons for not giving the organization line authority was the concern that the members of the organzation would develop a non-tax orientation as a result of the considerable contact it was anticipated it would have with the FBI, the Internal Security Division of the Justice Department, and other intelligence organizations concerned with subversives.

E. Administration of SSS

SSS was originally a committee [the "Activist Organizations Committee"] composed of representatives of the three IRS Compliance Divisions, Audit, Collection and Intelligence, and of Alcohol, Tobacco and Firearms (AT&F).[147] It was directly under the Assistant Commissioner (Compliance); its work was to be supervised by the staff of the Assistant Commissioner, in particular, the Deputy Assistant Commissioner (Compliance), Mr. Leon Green. In this respect, SSS administrative position was analogous to that of the OCD National Office coordinator with the exception that the National Office Coordinator was under the Director, Intelligence Division, and was thus one step further removed from the Assistant Commissioner.

F. Secrecy of SSS

The IRS decided very early to keep the existence of SSS a secret from those inside and outside of IRS who had no "need to know" of SSS. In a "talking paper" written before a meeting during the formative stages of SSS, the author commented:

> In another area we must be particularly careful. At least one or more of these organizations apparently consider themselves to be political organizations. This is an extremely delicate and sensitive area and the Chief Counsel will have to provide guidance. We certainly must not open the door to widespread notoriety that would embarrass the Administration or any elected officials. This is one of the reasons why we are not publicizing this Committee except as such publicity may be necessary within the Service.[148]

Because of the classified documents SSS handled, all its members had to have top secret clearances. While the existence of SSS was disclosed in the Internal Revenue Manual in 1972 when word regarding its operations appeared in the press,[149] the entry did not disclose its functions. The Joint Committee on Internal Revenue Taxation did not learn of SSS functions until sometime in 1973 following press stories regarding the activities.[150]

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[146] Green testimony, 9/12/75, p. 65.
[147] Memorandum for File by D. O. Virdin 7/29/69.
[148] Unsigned memorandum composed by D. O. Virdin 7/24/69. See also Memorandum of meeting by D. O. Virdin 7/24/69.
[149] Deposition of former Commissioner Walters, p. 51, 9/19/75.
[150] Interview with Joint Committee staff representative, June, 1975.

G. Operation of SSS

The Special Service Staff did not function in accordance with the limited, tax-oriented purpose for which Mr. Green and Mr. Bacon established it. In practice, Special Service Staff: (1) believed its mission included saving the country from subversives, extremists, and anti-establishment organizations and individuals; (2) reviewed for audit or collection potential organizations and individuals selected by other agencies, such as the Internal Security Division of the Justice Department and the FBI, on bases having no relation to the likelihood that such organizations or individuals had violated the tax laws; (3) after reviewing information regarding such organizations and individuals, referred cases to the field for action, some of which did not meet IRS criteria for audit or collection action; (4) at times used its status as a National Office organization in a partially successful effort to pressure the field into proceeding further with audits and collection action than the field would have done in the absence of pressure from the National Office.

Both Mr. Bacon and Mr. Green testified they recognized the danger that SSS would develop a mentality similar to that of the intelligence organizations with which it dealt on a daily basis. Mr. Green testified that he perceived that Mr. Wright soon felt he was "participating in an effort to save the country from dissidents and extremists" [151] and that Mr. Wright had a tendency to inflate the importance of the SSS function through identifying with the larger fight against extremists.[152] Mr. Green usually read Mr. Wright's bi-weekly reports, several of which contained clear indications that tax considerations were not always paramount in SSS decisions to refer cases to the field. In one such report,[153] Mr. Wright complained of one of the "very few" SSS referrals the field had rejected.

> The Detroit District has submitted a memorandum report stating they have reviewed the information submitted to them in our proposal for possible Audit action, but have concluded that enforcement action will not result in additional tax liability of "Material compliance consequence." This is one of the *very few declinations* we have received on [SSS] cases.
>
> We are not questioning the District decision or its right to make the decision, as our referral letters (see copy attached) leave broad options. However, the information available indicates the individuals involved may be underreporting their income and *they are notorious campus and anti-draft activists having arrest records under anti-riot laws. They are the principal officers in the Radical Education Project, an offshoot of the Students for Democratic Society, and have been identified as members of certain Communist front organizations.*
>
> This matter is cited in this report only for the purpose of suggesting that while revenue potential might not be large in some cases, *there are instances where enforcement against*

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[151] Leon Green testimony, p. 68, 9/12/75.

[152] *Ibid.*, p. 66. Mr. Green said one of the few serious disagreements he and Mr. Bacon ever had was over the appointment of Mr. Wright to head SSS.

[153] SSS Bi-weekly Report, 11/2/70.

flagrant law violators would have some salutary effect in this overall battle against persons bent on destruction of this government." [Emphasis added.]

Both Mr. Bacon and Mr. Green also testified that, while they made some efforts to check this tendency on the part of SSS, they relied largely upon the independence of the decentralized field organization to prevent any abuses from actually occurring.[154] The evidence is that this reliance was misplaced. On the basis of interviews of field personnel who handled some SSS referrals, the staff believes that, in practice, except in the "very few" cases referred to by Mr. Wright in his memorandum, the field honored the National Office referrals even where it believed the recommended action was not justified by the tax merits of the case.[155]

The attitude reflected in the bi-weekly report quoted above resembles the attitude of the OCD. This time, however, the targets were not major criminals. The position of the SSS in the IRS structure was as anomolous as that of the OCD Coordinator and rendered ineffective existing mechanisms for checking abuse—in this case the abuse of ideologically-motivated tax enforcement. These analogies of motive and organization were apparent to the creators of SSS. A July 2, 1969, memorandum of an SSS organizational meeting alluded to the administrative resemblance:

> The Chairman of the task force [SSS] will establish liaison with the Assistant Attorney General, Internal Security Division, Department of Justice, and will coordinate matters with that Division in the same fashion that the Intelligence Division now coordinates OCD matters with the Criminal Division of Justice.

A July 22, 1969 memorandum alluded to the analogy of purpose:

> In effect, what we will attempt to do is to gather intelligence data on the organizations in which we are interested and to use a strike force concept whereby all Compliance Divisions and all other service functions will participate in a joint effort in our common objective.

While it is contended by those who established SSS that it was not intended that activists receive any more attention than normal tax compliance criteria would dictate, the creation of a special National Office bureaucracy to focus on activists is inconsistent with this view. SSS was created because the application of normal enforcement criteria by the field was not yielding enough results to satisfy congressional and White House critics. What began as a bureaucratic effort to still criticism by focusing special attention on the problem became, in the minds of the SSS group, a crusade against alleged threats to the national security.

1. *Special Service Staff Target Selection Criteria.*—The basic modus operandi of SSS was; 1) to establish files on individuals and organizations falling within its purview; 2) to engage in a routine examination of a variety of sources of information to determine the likelihood

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[154] Leon Green testimony, p. 65; Donald Bacon testimony, pp. 98–102.
[155] *See*, e.g., Discussion of Meikeljohn Civil Liberties Library, pp. 887–889.

that any of the organizations or individuals were not in compliance with the tax laws.[156] In a very general sense, this procedure parallels "compliance" programs the IRS engaged in regularly. An IRS district will often identify an area of probable non-compliance and engage in an intensive investigations of taxpayers falling within the category. On occasion, the IRS initiates random compliance programs, such as conducting mass interviews of all employees in a certain business district to see whether employers are complying with withholding laws, or checking whether all attorneys in a particular area are filing tax returns. The element which distinguishes all these programs from the SSS program is that the criteria for selecting the targets in normal compliance programs are related to enforcement of the tax laws. Even in the cases of random checks, the taxpayers selected are generally those with high incomes where nonfiling of returns can lead to a significant revenue loss.[157] The Selection criteria of SSS were neither random nor directly tax related.[158]

Most individuals and organizations that became targets of SSS did so by virtue of becoming targets of one of the agencies from which SSS obtained information.[159] The reason for this selection of tax enforcement targets by non-tax agencies was set forth in the following passage from the minutes of an early SSS organizational meeting.

> Since the Department of Justice Internal Security Division has a primary responsibility of determining what organizations might fall in this category (ideological organizations), it will be necessary to determine from that Department additional information as needed.[160]

It is apparent that the IRS had doubts about its competence to determine what an ideological organization was, and would largely leave that determination and thus the determination of the targets of its enforcement program to agencies with greater expertise. This feeling of inadequacy on the part of IRS is a direct reflection of the absence of a relationship between the selection criteria and tax issues.[161]

The FBI was the largest source of SSS targets. While still in its formative days, SSS was placed on the FBI's distribution list in re-

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[156] See Joint Committee Report, p. 7.

[157] Leon Green testimony 9/12/75, pp. 58, 59.

[158] Some SSS selections were directly tax-related. To the extent SSS examined exempt organizations which were engaging in political action; or inquired into the deductibility of contributions to non-exempt organizations; or reviewed the possible unreported siphoning of funds of activist organizations by their leaders, its activities were tax-oriented and reflected the legitimate concerns the White House and the Congress had expressed. However, SSS Activities went far beyond these inquiries, as the discussion below will demonstrate.

[159] "Q: Was the identity of the organizations and individuals that came to the attention of the Special Service Staff for review pretty much determined by the nature of the input that they received from the FBI and the Justice Department?

Mr. Green: No question. (Deposition of Leon C. Green, p. 56.)

[160] D. O. Virdin, Memorandum for Files, "Ideological Organizations," 7/2/69.

[161] The IRS did not wholly rely upon other agencies, but it did so to an unprecedented degree in comparison to other IRS compliance programs in which target selection is based solely upon tax compliance criteria in which the IRS is expert. SSS reviewed the tax compliance of persons and organizations about which its critical information was simply that their names appeared on material supplied by other agencies in response to an IRS request for help on identifying "dissidents" or "extremists". See note 166.

sponse to a request from Assistant Commissioner (Compliance) Bacon for information regarding

> various organizations of predominantly dissident or extremist nature and/or people prominently identified with those organizations.[162]

The FBI, perceiving that SSS would "deal a blow to dissident elements" [163] decided to supply reports relating to the category of individuals and organizations identified by Mr. Bacon.

SSS felt that it had no authority to destroy FBI reports.[164] It had nowhere to keep them except in files, so it established files on the subjects of the FBI reports. Once a file was established routine SSS procedures swung into effect and, except for those which were not checked because of shortage of manpower, the files were reviewed; IRS master files were checked to determine if the subjects had filed returns; if they had not, investigations were initiated in the field; if they had, the returns were reviewed for audit potential.[165] The FBI did not select the reports it forwarded on the basis of the presence of a probable tax violation, but on the basis of the criteria Mr. Bacon had supplied; yet the furnishing of the report resulted in establishment of an SSS file and, subject to resource limitations, to a review of possible tax liability.

Among the other lists of "extremists," "subversives" and dissidents SSS received was a list of 2,300 organizations the FBI categorized as "Old Left," "New Left," and "Right Wing". The bi-weekly report for the week of June 15, 1970, describes SSS plans for this list:

> Through the cooperation of the FBI we have received a listing of 2300 organizations categorized as "Old Left," "New Left," and "Right Wing." Many of these have tax exempt status. We propose to screen the entire list against the Exempt Organization Master File and the Business Master File and establish files on these organizations where non-compliance with filing requirements is indicated.

The SSS also received the printouts of the Inter-Divisional Information Unit (IDIU) of the Department of Justice, which varied between 10,000 and 16,000 names.[166] In the August 29, 1969 bi-weekly report acknowledging receipt of the printout, Paul Wright stated:

> As a major assist in this Committee's effort, we received on August 26, 1969, subject data sheets (hard copy computer printout) containing about ten thousand names of officers, members and affiliates of activist, extremist and revolutionary organizations.

By the time SSS was disbanded in 1973, it had reviewed more than half the lists and established files on those persons on whom it did not yet have a file. In addition to containing the names of known activists, the IDIU printouts also contained the names of many prominent

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[162] Memorandum from D. W. Bacon to Director, FBI 8/8/69.
[163] Memorandum from D. J. Brennan, Jr., to W. C. Sullivan 8/15/69.
[164] Joint Committee Report, p. 58.
[165] *SSS Bi-weekly Reports*, 6/15/70; Donald Bacon testimony, pp. 91–95, 9/16/75.
[166] SSS Bi-weekly Report, August 29, 1969.

citizens whom the Justice Department thought could be of assistance in quelling a civil disturbance in a particular locality should one occur.[167] SSS personnel were unaware that the IDIU printout contained the names of these persons and indiscriminately established files on them.

Under the above procedures, even if SSS had adhered strictly to established IRS criteria for determining whether audit or collection action was justified, SSS subjected its targets to a systematic, disproportionate degree of tax enforcement. The criteria which determined the targets of this special enforcement effort were not tax-related IRS criteria, but the criteria of the FBI and the Internal Security Division of the Department of Justice. The special enforcement effort was applied to the "dissidents" on whom Assistant Commissioner (Compliance) Bacon had requested FBI reports, on the "Old Left", "New Left" and "Right Wing" organizations the ISD chose to list, and to the subjects of the IDIU printout. The criteria the FBI applied in selecting reports for dissemination to SSS are indicated by the reason for which the FBI decided to comply with Assistant Commissioner Bacon's request: that SSS would "deal a blow to dissident elements"; the criteria were not related to probable noncompliance with tax laws. They were selected because of their political and ideological beliefs and activities. Since SSS routinely reviewed the names on the lists for tax compliance, politics became the criteria for an IRS tax review.

The routine procedures of SSS thus focused a unique enforcement effort on a category of organizations and individuals defined by political criteria. Whether the criteria were blind to the particular political stripe of the organization or individual is not as important as the concentration of tax enforcement efforts against dissidents as a group.

The result was to employ the enormous power of IRS attention to dissent on both sides of center. That SSS knew what it was doing and intended to accomplish non-tax goals through the application of the tax laws is apparent from the writings of its Chief, Mr. Wright:

> There appears to be high acclaim that the charter of this committee will lead to enforcement actions needed to help control an insidious threat to the internal security of this country. Obviously, we will receive excellent field cooperation and assistance now that our mission is understood.[168]
>
> Review is underway on this organization [It] . . . produces and distributed motion pictures relevant to individuals engaged in movements advocating radical change in American Society. Organizations with which they do business include the Black Panther Party and the Students for Democratic Society.[169]
>
> We assisted Inspection (Internal Security Division) by providing information about war tax resistance organizations and Federal employee peace action groups.[170]

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[167] Memorandum from Attorney General Clark to Assistant Attorneys General John Doar, Fred Vinson, Roger W. Wilkins, and J. Walter Yeagley, 12/28/67.
[168] Biweekly report of August 22, 1969.
[169] Biweekly report of December 15, 1969.
[170] Biweekly report of April 19, 1971.

> We have received from the FBI a listing of all known underground newspapers in the United States and also a list of known editors. We are currently checking these lists against (Business Master File and Individual Master File) registers for possible tax violations. The first case checked out (Free Press of Louisville) will become a field collection referral for delinquent employment taxes. We anticipate the total list will develop a substantial number of similar referrals.[171]
>
> Last week we noticed that on an "official only" bulletin board in this building a notice appeared from the Institute for Policy Studies inviting individuals to apply for a new PhD program . . . Since IPS has been described by the media as a "Radical New-Left Think Tank" and the Baltimore District will soon propose revocation of its exempt status, we brought the matter of this notice appearing on an official IRS bulletin board to the attention of Internal Security.[172]

2. *SSS Field Referrals.*—SSS activity went beyond gathering information on subjects selected for reasons not strictly related to tax enforcement. SSS referred some cases to the field for action which did not qualify for referral according to normal IRS criteria, and used its National Office position to effect field action in these cases. Messrs. Green and Bacon believed the decentralized, independent field organization would check any such tendency on the part of SSS. Mr. Green testified that some cases referred to the field "would not have qualified for a referral but for the ideological category in which they fell," [173] that he was relying on the field to reject the file referrals which were not justified on tax merits and to use the same criteria for determining its course of action in the referred cases as it would in determining whether to investigate any other case.[174] Green also stated that while the field closed out many cases referred to it because of the lack of tax grounds upon which action could be initiated, the fact that cases were referred from the National Office sanctioned by the Special Service Staff probably did result in some cases being examined despite the lack of adequate grounds.[175]

Interviews with field employees who handled SSS referrals indicate that SSS' position, as an adjunct of the Assistant Commissioner's office, sometimes effectively negated the built-in check of decentralized field operations. As in the case of the OCD, the IRS had established an extraordinary National Office entity with sufficient authority to short-circuit normal organizational controls without establishing extraordinary controls to replace the normal ones.

The case discussed below is an example of an SSS field referral which appeared to lack an adequate tax basis upon which any IRS action could be based. This judgment was confirmed by the field agent

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[171] Biweekly report of June 28, 1971.
[172] Biweekly report of November 15, 1971.
[173] Leon Green testimony, p. 65.
[174] *Ibid.*, pp. 65, 66.
[175] *Ibid.*, pp. 73–75.

who was asked to handle the case. Yet the field took the action SSS sought to achieve.[176]

a. Meikeljohn Civil Liberties Library

The Meikeljohn Civil Liberties Library was a San Francisco based organization which provided legal materials to attorneys involved in civil liberties cases. It was a tax exempt organization. SSS received FBI reports [177] indicating that the Library was to sponsor the "Thomas Paine Summer Law School", which in 1970 had given instruction to leftist lawyers. The FBI documents also indicated that three of the instructors at the school would be individuals formerly associated with the National Lawyers Guild and the Communist Party. On the basis of these reports, SSS referred the case to the field on March 16, 1971,[178] recommending that an audit be conducted:

> It appears that this organization may be supporting various causes not related to tax exempt purposes. It may be advocating an action which is not allowable, or engaging in paid services to specific lawyers rather than acting as a library.[179]

The referral also stated with respect to the instructors at the Thomas Paine Law School which MCLL was allegedly to sponsor:

> [One instructor] was on May 3, 1967, a member of the National Lawyers Guild. [The SSS referral to the field was dated March 16, 1971.] The House Committee on Un-American Activities . . . cites the National Lawyers Guild as a Communist front which . . . has failed to rally to the legal defense of the CP and individual members thereof. . . .
>
> During April 1969 the President of the NLG spoke at an NLG banquet held in New York City stating that the NLG has organized young people to work in a radical movement which is seeking to destroy a corrupt violent society and replace it with one which will benefit all. He also stated that the purpose of the NLG is to advance the "social revolution" taking place in this country. . . .
>
> [Name deleted] is listed as President of MCLL. She was issued "Daily Worker" Press Club subscription 2825 on January 2, 1948.
>
> Press Club subscriptions . . . were only issued to CP members at that time.

Section 501(c)(3) of the Internal Revenue Code governs the exempt status of organizations. An organization can lose its exempt status by engaging in political activity, or advocating one side of an issue. It cannot lose exempt status by reason of the political leanings of its members if those leanings are not reflected in political action by the organization. In the case of MCLL, the SSS referral stated

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[176] The Committee was unable to determine the number or percentage of all SSS referrals which resulted in investigation even though the facts referred did not establish a tax related basis for investigation.

[177] The FBI documents were discovered in the Meikeljohn Civil Liberties Library file in the Special Service Staff vault at IRS.

[178] Letter, Paul Wright, Director of SSS, to Chief, Audit Division, March 16, 1971.

[179] The latter statement appears to be without any basis in the file.

that certain MCLL personnel had had communist affiliations in the past; that MCLL was sponsoring a school some of whose instructors were also affiliated with the National Lawyers Guild, which engaged in political activities. None of these statements established that MCLL was involved in any political activity.

An interview with the auditor who handled the MCLL referral indicates that he conducted the audit even though he believed the information provided by SSS was not an adequate basis for an audit:

> The purpose of the Meikeljohn Civil Liberties Library was to make an index of legal materials on civil liberties cases. Some but not all of the information provided by Special Service Staff in its referral was that one or more of the principals of the organization was a Communist. That allegation standing alone would not be sufficient to trigger an audit.[180]

The auditor also said:

> In this case, however, even if the referral had contained no allegations, an audit *might* nonetheless have been conducted because no one in the exempt organization branch had ever heard of MCLL.[181]

This reaction demonstrates that dissident groups which attracted the attention of SSS were subject to being audited merely because of that attention, notwithstanding the lack of tax-related criteria upon which an audit is normally based.

In this case, the field conducted the audit of MCLL despite the failure of the allegations in the referral to establish or suggest noncompliance. The result of the audit was a determination that there was no evidence MCLL had had any relationship with the Thomas Paine Summer Law School or engaged in any other activity which would jeopardize its exemption.[182]

b. Collection Referrals

In the face of collection referrals, the field reaction was completely submissive. Collection personnel often treated SSS referrals as orders. A revenue officer in Los Angeles described his reaction to an SSS collection referral on a taxpayer who had filed no returns for several years but had earned only a small income subject to a withholding more than adequate to meet his tax obligation:[183]

> The SSS had a report from an unidentified organization that [taxpayer] had been employed in 1969 and 1970, and had earned from $2,000 to $3,000 in both years *subject to withholding*, and the individual master file showed no returns from him in those years. A compliance check was requested. [I] . . . found that in 1968 [taxpayer] was a student and had no income, in 1969 and 1970, he had income, but filed no re-

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[180] Statement of Auditor, San Francisco District, 7/30/75, p. 1.
[181] *Ibid.*
[182] *Ibid.*
[183] Statement of Revenue Agent, Collection Division, Los Angeles District, 8/75.

turns, but had he filed returns, he would have been entitled to a refund. [Emphasis added.]

There is no element of discretion on the part of the Revenue Officer on whether to conduct a compliance check once one is requested by the proper Form 2990. There is discretion in closing the file without effecting compliance under the de minimus rule.[184]

A second case corroborates the view that Collection did not question SSS referrals. A revenue officer signed the following summary of his interview: [185]

> This was a case of mistaken identity. SSS was interested in the wife of an activist, and the lady to whom the referral related happened to have the same name. *The referral contained no information indicating the basis to believe the taxpayer was not in compliance* with the tax law, but was merely a request for a "compliance check", which is an investigation of whether the individual filed tax returns and, if not, whether they are required to do so.
>
> . . . *A revenue officer would not normally question the reason for a compliance check.* . . . In this case, it was determined there was full compliance, and, as a result of the investigation it was also determined that the taxpayer being investigated was not actually the one in which SSS was interested.

3. *SSS Pressure on Field Personnel.*—SSS file material does not tell the whole story of SSS influence over the subsequent handling of referrals.[186] Much of this influence was by telephone and was not reduced to writing, at least not in detail.[187] In a few cases the field personnel were able to recall the impact which SSS contact had on the handling of the case. In a case in St. Louis involving an organization which advocated resistance to the "war tax", the revenue agent who was the "case reviewer" (whose job is to determine whether to accept the recommendation of the field agent who actually conducted the investigation) recalled how a telephone conversation with an SSS member influenced his review of the case. The field agent had filed three reports, each recommending that the case be closed and giving reasons. Under normal procedures, according to the revenue agent, he would simply have closed out the cases in accordance with the field agent's recommendations. However, because of the "special

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[184] The revenue officer need not actually obtain the delinquent return if the result will be a refund.

[185] Statement of Cardone. Collection Division, Los Angeles District, 8/3/75, p. 2. Mr. Cardone also stated: "It is true that the [person requesting a compliance check] does not have to provide reasons for the check, but this is the exception and not the rule. Generally the originator will give reasons and also supply any information and/or material which would be of assistance. . . ." (*Ibid.*, p. 2.) SSS was apparently an exception in this case, but the absence of any stated basis for the check did not lead to the field's questioning the propriety of proceeding.

[186] The Select Committee staff interviewed IRS representatives who handled SSS field referrals in several of the districts investigated.

[187] SSS bi-weekly reports refer to telephone conversations with the field on many occasions. See e.g. Bi-Weekly Report 10/5/70.

procedures" applicable in this Special Service Staff case," [188] he first called the National Office, SSS, to discuss the matter. SSS criticized the field agent's recommendations, saying, *inter alia*: [189]

> Although it's the District's decision on type of closing he [SSS member] hates to see this happen since they want to get [the organization] and [individuals] on filing records (for comparisons, etc.). At any rate, they will review and return to District with suggestions if applicable. Viet Nam being over is not a valid reason for closing as the [organization] will (and is) redirecting their attention to other problems.

As a result of this conversation, the reviewing revenue agent returned the case to the field agent for further work.[190] Thus, the organization received more prolonged attention than the field would have accorded it on its own.

4. *Tax Results of SSS Actions.*—The perception which resulted in the establishment of Special Service Staff, that activists and dissidents posed a significant problem of noncompliance with the tax laws, was not validated by the results of SSS compliance checks. The number of cases SSS referred to the field was small in comparison to the number of files it established and reviewed.[191] Only 225 cases were referred—after SSS had made a compliance check on about 5,000 of the 10,000 taxpayers on its list.

As of the date of publication of the Joint Committee Report, June 5, 1975, the four-year SSS project had resulted in assessment of a total of $622,000 ($82,000 against organizations, $580,000 against individuals), $501,000 of which was attributable to four cases. Thus, SSS success in focusing greater than normal IRS attention upon its target group did not have a widespread tax impact on dissidents and activists.

III. THE IDEOLOGICAL ORGANIZATIONS PROJECT

The IRS reaction to Congressional and White House pressure in establishing the Special Service Staff was not unique. In 1961, the IRS, in direct response to statements made by President Kennedy at

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[188] In a memorandum dated March 30, 1972, the Assistant Commissioner (Compliance) directed District Directors to investigate individuals designated as "War Tax Resisters" and:

"Whatever action is taken, or deemed appropriate, in these cases should be documented sufficiently to provide a memorandum of actions taken and results obtained to the following address:

Mr. Paul H. Wright
P. O. Box 14197
Benjamin Franklin Station
Washington, D.C. 20044."

The address is that of the Special Service Staff.

[189] Statement of Chief, Review Staff, Audit Division, St. Louis District, 8/7/75. See also Memorandum, Chief, Review Staff, Audit Division, to Revenue Agent Ross Howard, 7/12/73.

[190] Memorandum, Chief Review Staff, St. Louis, 7/12/73.

[191] According to the Joint Committee Report, SSS referred a total of 225 cases to the field for Audit, Collection, or Intelligence action out of a total of 11,458 files. Of the 11,458 files, SSS had reviewed the IRS Individual Master File for 3,658 and the Business Master File for 832, and thus had made some assessment of the taxpayer's compliance with the tax laws in a total of 4,490 cases, and in addition, checked the Exempt Organization Master Files for 437 organizations

a news conference, selected 18 organizations for concentrated tax enforcement activity. The "Ideological Organizations Project", although smaller in scope than the Special Service Staff, reflected as clearly IRS a response to pressures to enforce the tax laws against targets selected for it by others according to political criteria.

A. Origins of the Ideological Organizations Project [192]

On November 16 and 18, 1961, President John F. Kennedy made two speeches critical of right-wing extremists. At a news conference on November 29, 1961, in response to a question concerning reportedly "sizable financial contributions to the sort of right-wing extremists groups you criticized last week," the President stated:

> As long as they meet the requirements of the tax laws, I don't think that the Federal Government can interfere with the right of any individual to take any position it wants. The only thing we should be concerned about is that it does not represent a diversion which might be taxable—for nontaxable purposes. But that is another question *and I'm sure the Internal Revenue System examines that.* [Emphasis added.]

The next day, the Assistant Commissioner (Compliance), William Loeb, sent a memorandum to Dean J. Barron, Director of the Audit Division, calling his attention to the President's news conference and directing that the Audit Division secure from the Attorney Advisor to the Commissioner, Mitchell Rogovin, a list of organizations to be examined for possible tax liability by the IRS.[193] On December 20, 1961, Rogovin forwarded to Barron a list of 18 organizations partially compiled from the December 4 and 8 issues of *Newsweek* and *Time* magazines, respectively, for the sample checks.[194]

During the next month a single left-wing organization was added to the list, bringing the total of targeted groups to 19.[195] Apparently, none of the organizations were chosen on the basis of any information that they were not in compliance with tax laws.

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[192] The history and operations of the Ideological Organization Project are detailed in the June 5, 1975, report prepared by the staff of the Joint Committee on Internal Revenue Taxation, entitled, "Investigation of the Special Service Staff of the Internal Revenue Service." Documents examined and interviews conducted by the Select Committee corroborated and expanded the findings of the Joint Committee's staff. See pp. 101–110 of the Joint Committee's report for its discussion.

[193] The November 30, 1961, memorandum from Loeb to Barron, with a copy to Rogovin, read as follows:

"The attached clipping reporting on the President's meeting with the press contains comments regarding financial contributions to so-called "right-wing extremist groups". You will note the President's reference to the fact that "As long as they meet the requirements of the laws," etc. I think it behooves us to be certain that we know whether the organizations are complying with the tax law as a matter of fact.

"I have asked Mr. Rogovin to ascertain the names of some of the oragnizations which we might use for a sample check. Please have someone contact him to secure the same in order that appropriate audits may be made."

[194] Memorandum from Mr. Rogovin, Attorney Assistant to Commissioner, to D. J. Barron, Director, Audit Division, 12/20/61.

[195] Memorandum from Commissioner, IRS, to Surrey, Assistant Secretary of the Treasury, 1/18/62. The left wing organization added to the list was the Fair Play For Cuba Committee.

B. IRS Initial Investigative Action

After the organizations which were to be the subject of the sample compliance checks had been designated to the Audit Division, normal IRS machinery became operational, with the sample checks being conducted as a National Office project. The Director of the Audit Division, in a March 9, 1962, memorandum to the Assistant Commissioner (Compliance), stated that the Audit Division had requested examinations of six large corporate taxpayers who were alleged to be financial backers of extremist groups in New York and San Francisco.[196] It had also requested examinations of the activities of three large extremist groups in New York and San Francisco and was soon to send memoranda to the Assistant Regional Commissioners (Audit) supervising audit activities in regions in which seven of the other 19 organizations were based.[197]

While the Audit Division was looking at the activities of the organizations for possible tax consequences, it is apparent that its concentrated efforts were related to the criteria that initially caused the organizations to become IRS targets: their public political activities. In the March 9, 1962, memo, the Audit Director stated:

> We think it advisable to examine the organizations listed in the memorandum to the Assistant Regional Commissioner (Audit), San Francisco, since these organizations appear to be among the largest and most publicized groups.

Although the IRS was aware that the activities, and not possible tax liabilities, of the target organizations were the reasons they were selected, it attempted to place its actions within the proper scope of IRS enforcement activities, stating:

> [W]e have used the term "political action organizations" rather than "right-wing organizations" throughout this discussion. This has been done to avoid giving the impression that the Service is giving special attention to returns filed by taxpayers or organizations with a particular political ideology." [198]

Indeed, on April 2, 1962, almost five months after the initial effort was begun, the Commissioner's Office forwarded to the Audit Division a list of 19 organizations considered by the Assistant to the Commissioner to be "left of center." [199] In an interview with committee staff,[200] Mr. Rogovin could not recall the sources he used to compile the list of left-wing organizations, but stated he may have gotten some of them from the FBI.

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[196] Memorandum, D. J. Barron, Director, Audit Division, to Assistant Commissioner (Compliance), "Examination of Returns Filed by Certain Political Action Organizations", March 9, 1962.

[197] The memo stated: "We intend to send similar memorandum [sic] to Assistant Regional Commissioners (Audit) *requiring* that examination be made of the following organizations. . . ." [Emphasis added.]

[198] Memorandum, Director, Audit Division, to Assistant Commissioner (Compliance), March 9, 1963.

[199] Memorandum, Attorney Assistant to the Commissioner, to Director, Audit, April 2, 1962.

[200] Interview with Mitchell Rogovin, former Attorney Assistant to Commissioner, IRS.

Rogovin's memorandum adding the left-wing organizations, while attempting to make IRS activities balanced in that organizations on both sides of center were to be checked, did not in fact accomplish that purpose. In a memorandum from the Commissioner to the Under Secretary of the Treasury, the Commissioner acknowledged IRS' primary interest in right-wing organizations, stating: [201]

> The activities of so-called extremist *right-wing political action* organizations have recently been given a great amount of publicity by magazines, newspapers and television programs. This publicity, however, has made little mention of the tax status of these organizations or their supporters. *Nevertheless, the alleged activities of these groups are such that we plan to determine the extent of their compliance with Federal tax laws.* In addition, we propose to ascertain whether contributors to these organizations are deducting their contributions from taxable income. [Emphasis added.]
>
> The following is a list of the largest and most publicized extremist groups whose activities we have directed our field offices to examine: . . .
>
> . . . . . .
>
> Inasmuch as we are not certain any of these organizations or their benefactors are failing to comply with the tax laws, we believe it prudent to avoid any possible charges that the Service is giving special attention to a group with a particular ideology. In furtherance of this goal, we are planning to examine the returns of a representative group of alleged left-wing organizations.

On the next day, the Commissioner informed Attorney General Robert Kennedy of the new program, noting that previous interest had been expressed in the tax status of right-wing groups by John Seigenthaler, Special Assistant to the Attorney General.[202]

On February 8, 1963, the Assistant Commissioner (Compliance) provided the Commissioner of IRS with a status report [203] of the "Test Audit Program of Political Action Organizations" in which he summed up IRS efforts directed at 12 allegedly right-wing organizations and 11 allegedly left-wing organizations. At that time,

> . . . nine allegedly right-wing organizations have been audited, including four exempt organizations. Revocation of exempt status was recommended in two of these cases. . . . No changes in tax liabilities were recommended upon examination of the five taxable organizations. . . .
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> Only four of the allegedly left-wing groups have been examined, including two exempt organizations. No changes were recommended as a result of these examinations . . .

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[201] Memorandum to the Under Secretary from Commissioner, IRS, 5/14/62.

[202] Letter, Commissioner of IRS to Attorney General Robert Kennedy, May 15, 1962. This letter places Seigenthaler's initial expression of concern in November of 1961, at about the same time the President made his open attacks on right-wing extremist organizations.

[203] Memorandum, Assistant Commissioner (Compliance) to Commissioner, IRS, 2/8/63.

Additionally, the Assistant Commissioner stated that no evidence had been found that individual taxpayers were claiming deductions for contributions to non-exempt political action organizations. The memo also contained a summary of the results of IRS actions which had been undertaken at that point and noted that IRS would concentrate on exempt political action organizations in the future.[204] In July of 1963, the White House was brought up-to-date on IRS activities directed at ideological organizations and expressed renewed interest in the project.[205]

C. The Planned Expansion of Project to Audit of 10,000 Organizations

A status report from the IRS Commissioner to the Deputy Special Counsel to the President detailed IRS' findings with respect to seven of the right-wing organizations, and stated that it had completed nine audits of left-wing organizations with one requiring further study.[206] The report also announced IRS' plans for "10,000 examinations of exempt organizations of all types including the extremist groups" in 1964. White House pressure intensified upon receipt of this report. On July 23, and in response to the report, President Kennedy called the Commissioner, urging IRS to proceed with an aggressive program on both sides of center and mentioning that Congressional hearings were scheduled for January 19, 1964.[207] Within the next month, IRS officials met twice with White House representatives and once with the Attorney General.[208]

The IRS response to the interest of the White House and Attorney General again intensified [209] and plans to initiate the new surveys were drawn up.[210] A list of right- and left-wing organizations was to be prepared with the survey to first concentrate on the examination of right-wing groups exempt under the provisions of section 501(c)(3) of the Internal Revenue Code. All cases which had been begun as a result of President's initial remarks were to be absorbed into and completed

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[204] The Committee attempted to ascertain why non-exempt organizations were included in the initial phases of the project. The following exchange took place during the Committee's deposition of former IRS Commissioner Caplin:

Q. Do you know why non-exempt organizations were included in the test audit?

A. Well, I would think then because they went into ideological organizations. And there were all kinds of ideological organization....

Q. What would [be] the purpose of doing a test on it in order to study exemptions, and selecting non-exempt organizations?

A. Well, I think that they were looking for a standard that could be applied in separating what was an educational organization from an ideological or political action organization. And the regulations were inadequate. . . .

See testimony of Commissioner Caplin, 9/22/75, pp. 40, 41.

[205] Memorandum, Assistant Commissioner (Compliance), to Commissioner, IRS, 2/8/63.

[206] Memorandum, Commissioner, IRS, to Myer Feldman, Deputy Special Counsel to the President, 7/11/63.

[207] Handwritten notes on 7/11/63 memorandum from Commissioner to Feldman. Testimony of Caplin, Commissioner, IRS, 9/22/75, p. 44. The hearings were to be before the Senate Committee, chaired by Senator Yarborough.

[208] Handwritten notes on 7/11/63 memorandum from Commissioner to Feldman.

[209] There is also evidence that Congressional interest also served as a catalyst to the IRS response. IRS documents note that two Congressional committees had held hearings on political activities of exempt organizations. Memorandum, Commissioner to Feldman, 7/11/63.

[210] Conference report, Political Action Organizations, July 26, 1963.

during this second operational phase.[211] Files of all target organizations were to be checked to see if prior allegations had been made against them and if they affected the exempt status of the organizations. A procedural outline for field action in examining the organizations was adopted.[212] On August 2, 1963, the task force responsible for conducting the examinations met again and decided to begin the survey of well-known organizations already identified and adopted procedures to ensure meeting the October 1, 1963, deadline which had been established at the last meeting.[213]

Mitchell Rogovin, Attorney Assistant to the Commissioner, continued to act as IRS liaison with the White House and Justice Department during this period of intensive IRS activity. On August 20, 1963, at the Attorney General's request, he briefed the Attorney General on the progress of the program.[214] On August 21, Rogovin was requested to and met with Myer Feldman at the White House, where he briefed Feldman on the expanded audit program and went over the names of the 24 organizations then included in the program. Feldman expressed his desire that the program be completed by the October 1 deadline and suggested that two organizations on Rogovin's list be deleted.[215] Feldman also stated he would make available to Rogovin an "extensive confidential memorandum he had prepared for the President touching on both exempt and non-exempt organizations."[216] On August 29, 1963, Rogovin, in a letter to a member of the task force, suggested the deletion from the current list of the two organizations mentioned by Feldman, suggested the addition of two organizations which were associated with an organization already on the list, and recommended the addition of three other organizations.[217]

The IRS plan to audit 10,000 exempt organizations never materialized. Pursuant to the plan devised at the meeting, IRS employees began to draw up a list of target organizations. A list of 24 organizations was eventually prepared, with 19 of them being categorized as "right-wing". During this phase of the program, field personnel were responsible for compiling information in the field and transmitting it to the National Office, where the task force which had been handling the Ideological Organizations Project analyzed the information and informed the field as to what action should be taken. Procedures were later adopted which required review by the Chief Counsel of all revocation recommendations by the task force. Of the 15 cases in which the task force recommended revocation (14 right-

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[211] The IRS referred to the examinations of the first 22 organizations as a "test audit program" of political action organizations.

[213] Under the contemplated procedure, a task force was set up to coordinate field response to the program. The field was to check its files for allegations concerning the organizations to see if they affected the organizations exempt status, the field was to report the results of its investigation back to the National Office task force which would take appropriate action (revocation, no change, etc.) through the Assistant Regional Commissioner (Audit) for the region in which the organization was located.

[213] Conference Report, Political Action Organization, 8/2/63.

[214] Rogovin memorandum, Political Action Organization File, 8/21/63.

[215] Rogovin memorandum, Political Action Organization File, 8/21/63.

[216] *Ibid.*

[217] Letter, Rogovin to Chapper entitled, "Ideological Organizations Proposed for First Phase of Audit Program," 8/29/63.

wing), only 4 were approved (3 right- and one left-wing).[218] The remaining recommendations were either rejected or sent back to the field for further study.[219]

IRS efforts directed at the ideological organizations apparently waned as White House interest decreased. The last status report to the White House was sent on March 23, 1964.[220] Later status reports to the Treasury Under Secretary indicate that in 1966 three organizations lost their exempt status and four exemptions were revoked in 1967 (of these seven, six were right-wing).[221] The program was apparently completed and surveys of organizations labeled as ideological were integrated into normal IRS enforcement procedures after 1967.

D. Analysis of Ideological Organizations Project

The Ideological Organizations Project resembled the Special Service Staff in ways other than the selection of targets based on their ideological beliefs. Although IRS justified the project as an effort to strengthen its exempt organization laws, the IRS perceived the need to initiate the tax enforcement methods only after, and in direct response to, statements of the President. As in the case of the Special Service Staff, the IRS was not totally unaware of the possibility that an area of potential revenue existed in the exempt organizations area and had considered the tax exempt status of political action groups prior to the President's remarks. It had, however, based on its previous experience, decided that the area was one which bore little potential for revenue. In his July 11, 1963 memorandum to the President's Deputy Counsel, the Commissioner of IRS stated:

> In the past, examinations of exempt organizations were held to a minimum since these difficult and time-consuming audits were rarely productive of revenue. Also, for every man year spent on such examinations there is a potential loss of approximately $175,000 otherwise produced from income tax audits.

Despite this reasoning and these statistics, the IRS response to the President's expressed interest was an attempt, although never carried out, to increase the examination to 10,000 during fiscal year 1964.

Just as the Organized Crime Drive had brought about a reduction in the accounting training required of special agents, the Ideological Organization Project necessitated a similar change in the areas of concentration of audit personnel assigned these cases: the analyses of contents of literature and activities of the target organizations. The Commissioner stated:

> The examination and administrative processing involved in revoking exempt status of ideological organizations is complex. An "educational" organization may advocate a particular point of view, but, under our regulations, the agent must analyze all publications, speeches, and seminars to determine

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[218] Memoranda, Commissioner, IRS, to Under Secretary of Treasury, 12/4/64, 2/8/65, 3/8/65.
[219] Ibid.
[220] Joint Committee Report, p. 112.
[221] Memoranda to IRS Commissioner, 4/66, 11/67.

that there has been a full and fair exposition of pertinent facts to allow formation of independent opinion by the public. The same detailed analyses is required on whether more than an insubstantial, part of a charitable organization's activities are the carrying on of propaganda to influence legislation.

IRS Information Gathering Procedures

I. THE INFORMATION GATHERING AND RETRIEVAL SYSTEM

A. Introduction

In May, 1973, the IRS established the Information Gathering and Retrieval System. The IGRS was a new approach to intelligence gathering, and to the storage and retrieval of so-called "general" intelligence, as contrasted with intelligence developed in the course of an investigation of a specific tax case. Under the system, significant intelligence resources were to be diverted from investigation of specific tax cases and allocated to gathering general intelligence. The purpose of this allocation of manpower was to develop tax cases which the existing IRS procedures missed. A crucial element in the system was computerization of the storage and retrieval of general intelligence. The computer, it was thought, would make it possible to retrieve masses of data by category—e.g., by subject name, by illegal activity category—and would thus make gathering vast quantities of general intelligence fruitful.

Within a year of the formal establishment of IGRS, the system came under fire in the press as an alleged secret IRS "hit list" and an index of dossiers on the personal lives of Americans containing data unrelated to tax law enforcement. Allegations linked the system to the so-called Nixon Enemies List. It was alleged IGRS was part of a vast Federal data bank to which other agencies, such as the FBI, had unlimited access. The Committee has investigated these allegations in the course of studying the origins, purpose and operation of IGRS.

IGRS fell short of its goals of enhanced case development and improved intelligence retrievability. In general, more "intelligence," most of it of little or no value, was input into IGRS than the computer could effectively retrieve. In a number of districts, IGRS fostered unrestrained, unfocused intelligence gathering and permitted targeting of groups for intelligence collection on bases having little relationship to enforcement of the tax laws. While there were no "dossiers" of personal information (with the possible exception of Operation Leprechaun) in the districts the Committee investigated, there were the beginnings of politically motivated intelligence collection in at least one district; and evidence that the fruits of similar investigative efforts in two districts had been destroyed. The lack of adequate control on the system resulted in the ultimate inclusion of 465,442 names on the IGRS index. IRS traditional reliance on agent discretion combined with this new, broad intelligence collection effort to produce a dangerous machine which, had it continued unchecked for a long period, could in some districts have approached the monster some newspaper accounts described.

B. Origins of IGRS

Before IRS implemented the Information Gathering and Retrieval System during the early 1970's, its devices for the storage and retrieval of general intelligence in a typical district consisted of two basic filing systems: (1) an "information item" system, and (2) investigative files.[222] The information item system was in theory a file of information the IRS received (e.g., through an agent's investigative efforts, an unsolicited informant's letter, a referral from another law enforcement agency) amounting to an allegation of tax fraud.[223] Some information items would lead to intelligence investigations; some would result in audit or collection action; those of questionable value would simply repose in the files.[224] These files were indexed according to subject and were not cross-indexed to related files and subjects.

An investigative file [225] consisted of all the information collected in determining the validity of a specific allegation of tax fraud. The IRS indexed these files only by the name of the subject of the investigation. There was no formal system of cross-indexing information between agents; informal systems for information exchange were at best intra-district systems. Intelligence of potential value in several investigations would normally simply repose in the file in which it was basically developed.

A third, informal information storage system existed: the "squirrel" file.[227] Since there was no designated repository for information which did not amount to an allegation of tax fraud, but was of potential future value, treatment of such information varied widely between districts and between agents.[228] Some districts had local filing systems which made the information available to some extent to all agents in the district. Some districts improperly used Information Item Files. In most districts the information reposed in the agents'

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[222] Internal Revenue Manual, Sec. 9300, *et seq.*

[223] Sec. 9311.1 of the Internal Revenue Service Manual defines information item as: ". . . any communication or information received by Intelligence alleging or indicating a violation within the investigative jurisdiction of Intelligence . . ."

[224] The staff obtained much of the information about the practical operation of IRS district intelligence systems through personal observation of six districts (Los Angeles, San Francisco, Baltimore, St. Louis, Chicago, and Jacksonville) and interviews of many special agents in those districts. To assure the accuracy of the staff's observations, the Committee requested that IRS intelligence specifically review the IGRS section of this report for accuracy. Footnotes to support statements herein which are based upon staff observations and upon review by IRS Intelligence will state: "Staff observations of District Intelligence operations."

[225] Investigative files, or numbered case files, are generally established after the Intelligence Division has received and evaluated a referral from the Audit or Collection Division or after information items relating to a specific taxpayer have been evaluated and the evaluation support the opening of an Intelligence investigation. See IRS Manual, Sec. 932D et seq.

[227] "Squirrel" files is not the official IRS name given to these files, but a name the files had come to be called in one district investigation. Generally, they consisted of information which was not a part of a particular investigation and which had been privately developed by the special agent in whose files they were usually kept.

[228] *Ibid.*

drawers, as they were primarily considered an individual special agent's private files. In no case was the information readily available outside the district in which it was collected, and no means existed for determining its potential value to other districts.[229]

Before IGRS and the information item system, intelligence gathering (as contrasted with the passive receipt of unsolicited information) was generally restricted to active investigations of specific allegations. The collection of "general" intelligence—information of potential value but not needed for a specific case occurred only incidentally to specific investigations, and, because of the absence of any filing system for such information, was largely not retrievable except by the agent who ran across it.

In September, 1963, the National Office Intelligence Division expressed a need to improve the retrievability of the information the district Intelligence Division collected.[230] While decentralized intelligence operations meant fragmented information, organized crime was both widespread and monolithic. The flagrant tax violator was becoming more sophisticated in his efforts to avoid payment of taxes. The Intelligence Division wanted to devise means to aggregate the information each of 58 districts had gathered on organized crime. National Office Intelligence Division planners proposed a mechanized cross-indexing system which would make the intelligence retrievable nationwide without altering the scope of intelligence gathering.

The result was the Central Index of Racketeer and Wagering Investigations (CIRWI), which would contain all intelligence on organized crime figures, cross-indexed so that information from one district would be available to other districts concerned with related investigative targets.[231]

The CIRWI was to be a prototype system restricted to the "limited and identifiable universe" of organized crime, a pilot project to gauge the usefulness of a nationwide retrieval capacity.[232] However, although improvements in the system were under constant study, the thought of extending the system beyond the organized crime area was not pressed for several years.[233]

In March 1968, the Planning and Procedures Branch reported the interim results of a study of the CIRWI and of possible improvements in it.[234] It found the system had been a "valuable and effective tool in

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[229] The above description of the filing systems maintained in the IRS Intelligence Division is drawn from IRS documents, as noted above, and from the actual methods used to file information observed by the Committee staff during its investigation of IRS districts.

[230] Memo from Intelligence Division to Assistant Commissioner (Compliance), dated September 27, 1963.

[231] Manual Supplement 94G–19, April 9, 1964; Manual Supplement 94G–20, September 18, 1964.

[232] Memo from Intelligence Division to Assistant Commissioner (Compliance), September 27, 1963.

[233] Memo for file, INFORMATION RETRIEVAL, Visit to Detroit District Intelligence Office by M. J. House, April 15, 1966.

[234] Memorandum, 3/28/68, Acting Chief, Planning and Procedures Branch, to Acting Director, Intelligence Division. The report contained no hint of extension of the system beyond organized crime, but did hint at an expansion of Intelligence gathering (as contrasted with mere improved retrieval) in its suggestion that the question of what sources of information to explore and the nature and volume of information to be gathered should be part of the recommended study.

identifying racketeer subjects and their interrelationships." The report recommended further study of the operation of the system and exploration of possible improvements with those districts with most experience in its use.

As the National Office reconsidered its approach to intelligence gathering and retrieval, several districts were experimenting on their own with new systems of retrieval and new approaches to collection. In 1968, the Los Angeles District created a special intelligence-gathering unit,[235] denominated a "Case Development Unit", comprising two special agents who were to devote their time to systematically gathering intelligence calculated to lead to the initiation of actual "numbered" investigations.[236] The unit was expected to concentrate on organized crime figures.[237] This unit was the earliest forerunner of the case development units which would be created under the Information Gathering and Retrieval System. Its function was distinct from any previous IRS intelligence operation in that the gathering of general intelligence was its sole objective, whereas under prior practice the IRS gathered general intelligence only incidentally to specific investigations.

The unit was created at a time when improved data processing and information retrieval systems were becoming available, suggesting a possible combination between gathering general intelligence and storing it in a computerized retrieval system. General intelligence is by definition intelligence the relevancy of which is unclear; it is potentially relevant to as yet unconceived investigations of as yet unidentified taxpayers. For general intelligence to be of value, a system must exist which permits its to be cross-indexed to every category of potential usefulness.

At the same time the Los Angeles District created this unit whose function was to gather intelligence of potential, but undetermined, value, it evaluated and eventually implemented a mechanized microfilm retrieval system called Miracode, which, to some extent, enabled the case development unit to cross-index information to those intelligence gathering targets of potential interest, and to retrieve that information more rapidly than a manual system permitted.[238] The Chicago District established a somewhat similar system with individual agents becoming responsible for case development. The indexing system in Chicago was not as advanced as that in Los Angeles.[239]

The remainder of the history of the development of IGRS is a story of the interaction of district experimenters and National Office policy

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[235] Staff interview with Chief, Los Angeles Intelligence Division, 7/24/75.

[236] Section 9570-400 of the Internal Revenue Service Manual provides: "When the Chief, Intelligence Division, determines that an information item has intelligence potential, he will assign it the next case number in the District sequence."

[237] The Committee staff's review of the files of this unit indicates it did generally concentrate on organized crime—with at least one important exception.

[238] Staff Observations of District Intelligence Operations, Los Angeles, 7/75.

[239] The St. Louis District had a case development unit whose function was in theory akin to that in the Los Angeles District. However, in St. Louis no mechanized retrieval system existed. In fact, St. Louis is one of the few districts which never adopted the IGRS. Its case development unit is, therefore, not really a precursor of IGRS. A pilot program was also initiated in the Jacksonville District.

makers. The study group which the Planning and Procedures Branch had recommended studied existing information gathering and retrieval systems and reported on June 25, 1969: [240]

> We considered the various systems now in use in different districts and the Central Index in operation in the National Office. It is our opinion that the Central Index has not been effective because it has failed to provide the special agent with current useful information. The districts' systems have not been effective due to lack of uniformity, lack of a prescribed formal system and lack of sufficient resources.
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> We conclude, therefore, that a serious need exists for a formal uniform system, operated by the district offices, that will provide current and useful information.

As in the case of the Central Index, the need for the proposed new system was said to emanate from the threat of organized crime. The report explained:

> In recent years the growing menace of organized crime, racketeering and corruption has been recognized as a critical national problem. . . . The techniques being used by syndicated crime to infiltrate legitimate businesses and to corrupt public officials have reached new heights of sophistication. Some of these same techniques are also being adopted by various major subversive and radical elements to further breakdown [sic] the basic fibres of our society.[241]
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> . . . . . .
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> The Intelligence Division has reached the point where it can no longer rely on haphazard, outdated methods to identify those of the criminal element who are evading taxes. Nor can it continue to allow files to be almost irretrievable. Instead, it must meet the demands of the President and the Service and devise a uniform effective system of information gathering, evaluation, dissemination and retrieval to allow it to fulfill this essential element of its mission.[242]
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> . . . . . .
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> The success of the [proposed] program will depend almost entirely upon the full cooperation of every District Director, Chief, Intelligence Division [District Intelligence Division heads], and Special Agent to assure its full implementation and acceptance since the system is basically a district operation.

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[240] Letter, John J. Olzewski, Chairman, Task Force on Intelligence Gathering and Retrieval System, to William A. Kolar, Director, Intelligence Division, 6/25/69.

[241] Report of Task Force on Intelligence Gathering and Retrieval System, June 25, 1969, Internal Revenue Service Intelligence Division.

[242] The reference to "subversive and radical elements" is an early indication that these groups were regarded as suitable targets for IRS intelligence. The reference foreshadows a fundamental problem of the "general" intelligence gathering approach IGRS represented: the lack of objective criteria for target selection, and the resulting tendency to select targets on the basis of the personal predilection of the agent or someone in the National Office.

The proposed system included the following key elements: (1) case development units similar to the Los Angeles model; (2) a uniform system for encoding entries into the system for flexible retrieval; (3) a non-automated retrieval system; (4) limitation to organized crime figures.

The IRS did not establish the formal, nationwide system until May, 1973. In the meantime, the districts experimented with a variety of systems. Because of the high degree of local autonomy in IRS intelligence, the variations covered the spectrum from a continuation of the former practice of gathering general intelligence only as part of specific investigations or on a sporadic individual basis to the forward-looking Los Angeles system.[243] Districts tried various methods of automated retrieval of information. Los Angeles experimented with "weighting" data for its potential tax consequences so that when data about a particular subject reached a given weight, his file would automatically be reviewed.[244]

Los Angeles also gained practical experience with the collection efforts of its "case development" unit. The district found that two special agents who devoted full time to gathering intelligence outside the scope of specific investigation gathered an enormous mass of material. By the time IGRS supplanted it, the Miracode retrieval system contained 40,000 documents.[245] This practical lesson in volume in Los Angeles apparently strongly influenced the decision to computerize the IGRS retrieval system.

In May 1973, the National Office issued a directive creating the formal Information Gathering and Retrieval System (IGRS).[246] The system as modified in March, 1974,[247] had two key features not included in the June 25, 1969, recommendations of the study group: (1) the storage and retrieval system was to be computerized; (2) *the targets of general intelligence gathering were* not to be limited to the organized crime figures whose "sophisticated" methods and nationwide operations had been the basis for the study group's recommendations, but were *to include all subjects of the General Enforcement Program, i.e.*, all taxpayers who came to the attention of the case development units.[248]

The reason for the computerization of the general intelligence input is clear. By the time IGRS was formally implemented, the Los Angeles lesson had been learned: case development units amassed tens of thousands of pieces of information. This practical experience in intelligence gathering since the issuance of the June 25, 1969, study had made it apparent that the computer was the only means of retrieving that data which turned out to be of use in a subsequent investigation, or which, when related to other information, justified opening an investigation.[249] To establish case development units nationwide would result in the collection of so much data that the relatively

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[243] Staff observations of district intelligence operations, Los Angeles, 7/75.

[244] Memorandum, Assistant Regional Commissioners—Intelligence (Western Region) to all District Intelligence Chiefs (Western Region), 4/29/71.

[245] Staff interview with special agent in charge of pre-IGRS system, Los Angeles, 7/75.

[246] Manual Transmittal 9300-40, May 4, 1973.

[247] Manual Transmittal 9300-47, March 4, 1974.

[248] *Ibid.*

[249] Memorandum, Assistant Regional Commissioner Intelligence, Western Region, 4/29/71.

unsophisticated automated retrieval systems available to the individual districts would be insufficient. All indexing of all general intelligence would have to be performed at the IRS' national computer center in Detroit.

The origin of the decision to extend general intelligence gathering to the General Enforcement Program is less clear than the reasons for computerization, but may be related. Businesses and sophisticated taxpayers employed devices similar to those employed by organized crime to escape IRS detection of tax evasion, so the same logic which justified the new approach to general intelligence gathering for organized crime figures justified it in the General Enforcement Program. A manual system could not handle the mass of additional data that would result from extension of the program to the GEP. The Data Center's computer could handle this information. The decision to extend general intelligence gathering to the GEP, therefore, reinforced the choice to computerize general intelligence.[250]

Under the new system, the information-collection functions of a "typical" district Intelligence Division were to be divided into three categories: (1) the former Information Item system; (2) specifically assigned intelligence-investigations and projects; (3) the Information Gathering and Retrieval Unit (IGRU). The first category was the classic Intelligence Division activity: investigation of an allegation of tax fraud involving a specific taxpayer or group of taxpayers. In this classical function the allegation had to have sufficient probability of truth to justify opening an investigation and allocating manpower to corroborating or disproving the allegation. The second category was the long-standing system for handling any information which amounted to an allegation of tax fraud.

The function of the IGRU was to gather information which did not qualify as information items (*i.e.*, which did not amount to allegations of tax fraud) and which was not relevant to any pending case to evaluate this data for its potential future value,[251] and to "input" the valuable information into IGRS.

The new system called for the creation of IGRU's (case development units) in large districts, and for the allocation of manpower to the case development function in others. In general, during the existence of IGRS, approximately 10 percent of total Intelligence manpower was to be allocated to the general intelligence gathering and retrieval effort. A new Manual section spelled out the duties of the IGRU in a district:

(a) Evaluation of newly received information.

(b) Preparation and submission of input documents for information entering the background files to determine if any

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[250] Memorandum to Chief, Intelligence (Manhatten), Information Retrieval System in the Manhatten District, 10/29/71.

[251] For example, if a special agent in the IGRU read in the newspaper that a known organized crime figure had invested $40,000 in a restaurant, that newspaper article would be filed and indexed in IGRS for two basic reasons: (1) so that any agent working on an investigation of that individual would have that information available, and (2) so that, at some future time, someone in the IGRU could pull all information on that individual to determine whether a basis existed for opening an investigation—a basis which, conceivably, would never have been detected but for the gathering of many pieces of information none of which alone would have triggered an investigation.

investigative action should be taken, and to ensure that subjects and documents no longer of interest to the Intelligence Division are purged from the files.

(c) *Establishment, development and coordination of* liaison contacts with other law enforcement agencies and *other organizations and information sources* as directed by the Chief, Intelligence Division.[252] [Emphasis added.]

Thus, the IGRU was not to be a passive recipient of information. Its function was to actively seek information which would lead to a tax investigation.[253] This tasking encouraged cultivation of regular informants.

However, IGRS altered the informant pattern in one important way. IGRS was not restricted to organized crime figures. While the OCD was not known for clarity of targeting, IGRS had virtually no targeting criteria. The districts were instructed to cultivate sources, but were left largely free to select their own targets within the following general guidelines:[254]

9393.1 Criteria for Inclusion in District Background Files—

(1) Documents entering the district background files must relate to specific subjects or entities. They must involve financial transactions with potential tax consequences; illegal activities with tax potential; or other illegal activities which fall within our investigative jurisdiction.

The guidelines thus gave their blessing to intelligence gathering regarding illegal activities without potential tax consequences ("other illegal activities"), subject only to a limitation that the illegal activity had to fall within "our investigative jurisdiction."

The heart of IGRS was to be the retrieval system. The system contemplated using the Data Center computer to generate an index to documents physically filed in the districts.[255] When the IGRU evaluator[256] decided that a particular document merited inclusion in IGRS, a clerk was to fill out an input card containing all the references under which that document would be indexed for retrieval, including the persons mentioned in it in relationship to the information which had caused the document's selection, the area of business activity involved, the area of illegal activity, the source of the information, and a forty-character description of the content of the document. The computer would then turn these cards into a print-out listing alphabetically all the persons listed for each document in IGRS, and identifying every document (by number) in which that person's name appeared. The computer would also produce an index

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[252] May 5, 1973, MT 9300–40, Section 9392 (5).

[253] For example, in discussing the establishment of an Intelligence Gathering and Retrieval Unit in Birmingham, the Chief, Intelligence Division, stated, "All special agents are encouraged to develop, for the purpose of receiving useful information in relation to tax violations in all walks of life, confidential informants who can provide meaningful information in this regard." Memo from Chief, Birmingham Intelligence Division, to Special Agents, dated February 20, 1974.

[254] Sec. 9393.1, IRS Manual, 3/4/74.

[255] IRS manual Transmittal 9300–40, May 4, 1973.

[256] Evaluators were part of the case development team. Their function was to evaluate material gathered by the special agents assigned to case development and to decide whether it should be included in IGRS.

by document number showing the same of each person listed in connection with that document. Both indexes would also show, as to each document, the source, the illegal activity, the business, and the 40-character document description.[257]

The computer stored and updated the index to the documents, but was not to be a repository of data about the subjects. If, for example, a 30-page report of the debriefing of an informant contained statements the informant had spontaneously made about the sex life of the subject, that information would not be "in" the computer unless the agent chose to include it in the forty-character document description. The document would be referenced in the index, as would the subject's name, business, illegal activity coding, and a code indicating the document source was an informant. But the detailed information would remain in the district's files, retrievable only by reading the report. As envisioned, the system would ultimately permit nationwide identification of every document in any district's IGRS pertaining to a particular individual, a particular illegal activity, or a particular business. Districts had available optional local codings which they could use to categorize their information by geographical area or in any other way they choose. New input was to be provided to the Data Center monthly so that the indices the Data Center returned to the districts would be current.[258]

C. IGRS in Practice

1. *Introduction.*—A principal deficiency of IGRS was the misplaced reliance upon the computer's retrieval capability. This was a natural result of the lack of controls over input. The districts' normal discretion in *selecting targets* is inherently limited by the general requirement that there exist a probability of a specific tax violation; the discretion is in selecting the most fruitful of such allegations to investigate. The agents' discretion in how to investigate is inherently limited by the narrow scope of the information which is relevant to the suspected violation.

However, the IGRS granted the districts total discretion in determining whom to investigate. It was not intended that a specific allegation would *precede* intelligence gathering; rather, it would follow. For the same reason, agents were given total discretion to collect whatever information they chose, as long as it related in some way to IRS' "investigative jurisdiction". The only control which IGRS left intact was the judgment of the agents, the chiefs, intelligence, and the district directors.[259]

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[257] See IRS Manual Transmittal 9300–40, May 4, 1973.

[258] IRS Manual Transmittal 9300–40, May 4, 1973.

[259] In one district, the problem of what information was to be input in the system was clearly stated in a memo from a District Director to all Division Chiefs in the division. The District Director stated:

"I request that each agent or officer under your supervision be alert to such unusual items and submit them to our Information Gathering and Retrieval Unit. While it is difficult to establish criteria concerning what to submit, each agent can at least ask himself whether a particular item would be of value to him now or in the future if he were assigned a case on an entity named in a given item of information." Memorandum, District Director, Greensboro District, to All Division Chiefs, Branch Chiefs, and Managers, March 4, 1974.

IGRS was an intelligence collection system. It did not bypass the decentralized control system for initiation of actual criminal investigations. Therefore, no actual investigation could result from the intelligence-gathering in the absence of a basis for believing a tax violation was present.

IGRU "case development" agents gathered massive quantities of information having no bearing on tax enforcement. In at least one district an agent amassed huge quantities of intelligence on militant groups without adequate tax justification; in other, militants were also targeted without good reason, but to a lesser degree.

IGRS became an information catch-all from which useful information retrieval was almost impossible even with the computer's aid. However, the abuses of IGRS were largely potential in the sense that they consisted only of the gathering of intelligence. Because of the basic requirement of probable cause to believe a tax violation had occurred before a criminal investigation could begin remained intact, IGRS did not result in criminal tax investigations of improperly selected targets. However, had the system worked more effectively, it would have resulted in selective enforcement against groups chosen for investigation by agent predilection rather than by tax enforcement criteria. Concentration of information gathering will ultimately result in concentration of enforcement since information is the key to commencing an investigation. The overbroadness of IGRS led to the glut of data which made IGRS ineffective. Overbreadth was thus the cure for the very evils it created.

2. *The Los Angeles Example.*—The uniform, nationwide IGRS the Internal Revenue Manual prescribed never came into existence. The Committee staff studied the systems in six districts: Los Angeles, San Francisco, Jacksonville, Chicago, St. Louis, and Baltimore. By January, 1975, the Los Angeles IGRS has amassed 80,000 documents; Baltimore had 39 files filling two small file drawers containing approximately 3,000 documents. These statistics reflect the two poles. They indicate that at the time of its termination on June 23, 1975, the IGRS described in the Internal Revenue Manual was not a reflection of a uniform reality.

Since Los Angeles had the longest experience with an IGRS-type intelligence gathering system, its experience epitomizes the problems the system entailed: 1) lack of controls over targeting; 2) inadequate screening of information gathered for its relationship to tax enforcement; 3) as a corollary of the first two, ineffectiveness in producing the anticipated crop of high quality cases for investigation.

The Los Angeles information gathering experiences predated the formal establishment of IGRS by four years. However, the guidelines set forth in the Manual were essentially the informal guidelines under which the Los Angeles general intelligence gathering operation had functioned since its inception: any target was an appropriate subject for general intelligence gathering as long as it was within the IRS investigative jurisdiction.[260] The largest single category of targets

[260] In a January 18, 1971, memorandum discussing consolidation of various features of the Los Angeles IGRS with similar systems in San Francisco and Reno, it was stated that "Los Angeles [IRS Intelligence Division] is interested in anything and everything. . . ." Memorandum, Special Agent David D. Gehrt to Chief, Intelligence Division, Reno, 1/18/71.

was organized crime,[261] a concentration which reflects the rationale for devising an improved information-gathering system. However, Los Angeles also focused its intelligence gathering on activists and militants, particularly black militants.

During July, 1975, the Committee staff searched the last IGRS print-out for Los Angeles and found many references to documents in the IGRS files relating to militants and activists. The "illegal activity" code for these groups was code 509, which has carried both the designation "subversives" and the designation "sabotage." The Staff was able to learn very little about the contents of these files, however, as the Los Angeles Intelligence Division had destroyed them (not in keeping with any routine document destruction schedule) in approximately December 1974.[262]

The initial decision to target militants for intelligence gathering in Los Angeles was made by the Chief, Intelligence Division, in early 1969.[263] An employee in the Audit Division had a personal interest in militant groups and felt since they "violated the Constitution they were likely to be violating other laws as well, including the Internal Revenue Code.[264] He also felt that the IRS should be checking on their tax compliance because of the large sums of money which passed through their hands. The auditor recommended to his Chief that he be permitted to transfer to Intelligence to work on this problem. Following a meeting with the Chief, Intelligence, the auditor joined the new "case development" unit in Los Angeles and began to gather intelligence on militants from public sources, other law enforcement agencies and informants.[265] The auditor stated that the information he had gathered was strictly limited to tax-related financial information about the groups.[266]

There is no way of knowing how extensive the Los Angeles project would have been had the National Office not developed a similar interest in activists a short time after the Los Angeles project began. This National Office interest, which had its origin in criticism of IRS by congressional committees and ultimately led to the establishment of SSS, initially found expression in a request to all the districts on

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[261] Staff statistical review of contents of Los Angeles IGRS files.

[262] The story of their destruction is set forth later in this section, as is a description of the destruction of a similar file in the St. Louis Intelligence Division in January 1975.

[263] Staff interview of Robert Handley, Audit Division, Los Angeles, 8/1/75.

[264] *Ibid.*

[265] The informants were, according to the auditor, not members of the groups, but people in positions to learn of their activities through their own informants, including one person alleged to be an investigator in the employ of the Office of the Governor of the State of California. Ibid.

[266] The destruction of the material this agent gathered was not quite complete. The few remaining documents dealing with militants the staff located in the IGRS files, were, for the most part, not related to financial transactions and of no apparent value in tax enforcement. They related to such subjects as changes in leadership in the groups, arrests for violence, meetings, and surveillance reports by other law enforcement agencies as well as minutes of meetings of law enforcement associations concerned with militants. In the absence of the complete files the auditor created, there is no means of verifying the means of information gathering employed or the kind of information gathered.

March 25, 1969 and again on July 18, 1969, for all existing file information on certain activist organizations.[267]

Los Angeles chose to read this request as a reason to redouble their efforts. The auditor spent the ensuing nine months preparing a comprehensive report for what was to be the Special Service Staff.[268] In preparing the report, he gathered large amounts of material on various groups including militants and activists, but the material was destroyed.

The auditor amassed roughly one file drawer of documents concerning militants. When the Los Angeles District created an automated retrieval system for microfilmed intelligence documents he selected some of this material for inclusion in that system. The material was not actually microfilmed, however, but, unlike all the other intelligence documents, was merely referenced in the microfilm system, while the auditor retained personal control over the documents themselves. When he was transferred in 1972 he destroyed the documents which were not referenced in the automated system but retained the ones which were.[269] With the establishment in 1973 of the IRS–wide intelligence retrieval system known as IGRS, the Los Angeles microfilm system was entered on the IGRS computerized index, including the references to the auditor's documents. As of that date (May 1973), under IRS document destruction rules, the documents acquired a new filing date, and destruction was not permitted for seven years thereafter.[270]

In approximately December 1974, at a time when it was common knowledge that the Congress was preparing to examine intelligence agencies, the auditor's documents were apparently destroyed. The Chief (Intelligence), Los Angeles, ordered a subordinate to retrieve the documents from the auditor and to provide them to a second subordinate whose function was to review incoming documents to determine whether they should be retained or destroyed. The latter individual does not specifically recall whether he destroyed the documents, but believes he may have done so.[271] A thorough search of the Intelligence Division, Los Angeles District, has failed to produce the documents.

The Chief (Intelligence) has stated that the retrieval of the documents was pursuant to a short-lived directive from the Western Region to clean out intelligence files. However, the Chief also stated that no general review was made of intelligence files, and that the only specific action he can recall taking pursuant to the directive was to order the retrieval of the auditor's file materials on militants and activists.[272]

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[267] Memorandum, Assistant Commissioner (Compliance) to All Regional Commissioners, March 25, 1969. Memorandum, Assistant Commissioner (Compliance) to Assistant Commissioners (Data Processing, Technical), Chief Counsel, and All Compliance Division Directors, July 18, 1969.

[268] For a discussion of Special Service Staff, see p. 876.

[269] Staff interview of Robert Handley, 8/1/75.

[270] Internal Revenue Manual Transmittal 1(15)59–101 (8/12/69) (Records Control Schedules).

[271] Statement of Jerry Baker, Intelligence Division, Los Angleles District, 8/1/75.

[272] Statement of Chief, Intelligence Division, Los Angeles District, 8/1/75. That the staff detected the destruction of the Los Angeles material demonstrates a benefit which results from computerization of intelligence: a record of the material gathered exists outside the control of the gatherers. Such a record is of particular importance where control of intelligence-gathering depends upon

In St. Louis, the staff discovered a folder denominated "Militants" and a second folder denominated "Subversives" in the intelligence files. The "Militants" file had been checked out to the Chief (Intelligence) in January 22, 1975. The Chief stated that at some time during December or January he ordered the file destroyed because he believed it was inappropriate for it to be in the intelligence files as it had no bearing on tax matters.[273] The "Subversives" file contained only material on the Church of Scientology. No employee of the Intelligence Division could recall that it had ever contained any other material.[274]

3. *Overbreadth.*—Reports on the IGRS have suggested that the presence on the subject index in certain districts of many names of reputable citizens indicates that the IRS was unjustifiably spying on such people and seeking to develop tax cases against them or other discrediting information about them. However, a thorough review of the IGRS files in six districts disclosed no evidence that any of the Intelligence Divisions employed their Intelligence Gathering Unit for this purpose.

Few IGR Units adequately screened the documents which they placed on the index. Virtually none of the Units screened those documents it selected to eliminate insignificant names. The result can best be demonstrated by an example. If the Special Agent screening documents selected for inclusion a newspaper article which mentioned that a known racketeer was investing money in a restaurant, alluded to the former owners, and contained interviews with several patrons, the IGRS index would contain a numbered reference to that document under the name of each of the persons mentioned in the article, including the randomly interviewed patrons and the former owners. This collection of useless data resulted from the use of clerks to prepare the input cards who were not permitted to exercise any judgment about which names in a document were important, and therefore included them all. In effect, the function of evaluators was being bypassed. The name J. Edgar Hoover appears in many IGRS indices because he often made statements on subjects dealing with organized crime. Newspaper articles reporting his statements were often filed in IGRS. The name Internal Revenue Service often appeared on the indices, as did the names of the present and most former Commissioners of Internal Revenue.

The presence of a name on the IGRS index therefore did not mean that individual had been selected by the IRS as a subject of intelligence gathering. It meant the individual was mentioned in some document which an agent had selected for filing in IGRS. Further, none of the districts investigated had complied with manual provision providing for the review and purging of unnecessary names and information from IGRS.[275] The wholesale inclusion of names in the system, coupled with the failure to screen material adequately at the inception of IGRS and the failure to purge the files pursuant to standing instructions explains why the nationwide total of IGRS "subjects" is 465,442.

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retrospective review and revision of guidelines rather than upon day-to-day direction of operations.

[273] Statement of Chief, Intelligence Division, St. Louis District, 8/6/75.

[274] Staff observations of district intelligence operations.

[275] Staff observations of district intelligence operations.

The presence of thousands of names of prominent, reputable people, and of tens of thousands of names of less well-known but apparently reputable people on the IGRS index does not demonstrate that IGRS was targeting innocents but that it was choking on its own data.

4. *IGRS Ineffectiveness.*—Statistical evidence suggests that IGRS did not succeed in producing a large number of high quality cases for investigation. In Los Angeles, by January 1975, the system contained 85,387 subjects. Between July 1, 1973, and October 31, 1974 Los Angeles attributed the initiation of 45 intelligence investigations to IGRS. Chicago had 89,417 subjects and attributed four investigations to IGRS.[276] Nationwide, investigations were started against only 350 of the 465,108 "subjects".

The table shows comparable results in 45 districts.

Because Operation Leprechaun is the focal point of the most serious claims of abuse connected with IGRS, the staff's conclusions regarding IGRS follow the discussion of the Leprechaun allegations.

IGRU DATA[1]

District	Number of entities (names) Jan. 15, 1975	Intelligence division investigations initiated July 1, 1973 through Dec. 31, 1974
Augusta	955	1
Portsmouth	961	1
Burlington	574	5
Boston	1,421	4
Providence	3,511	
Hartford	298	2
Brooklyn	8,561	20
Manhattan	8,918	27
Albany	1,684	
Buffalo	278	45
Newark	6,720	12
Philadelphia	6,218	6
Pittsburgh	3,773	5
Cincinnati	14,996	7
Cleveland	29,431	
Indianapolis	4,403	6
Chicago	89,417	4
Springfield	5,907	
Detroit	33,489	28
Milwaukee	6,626	
Des Moines	2,680	3
Wichita	4,539	
Wilmington	225	
Baltimore	872	
Richmond	460	
Parkersburg	1,404	
Greensboro	1,072	1
Columbia	26	
Atlanta	2,867	8
Jacksonville	17,224	51
Louisville	4,788	
Nashville	552	5
Birmingham	3,414	2
Little Rock	1,420	1
New Orleans	1,298	
Oklahoma City	6,654	1
Austin	8,868	3
Dallas	4,407	3
Denver	33,921	
Albuquerque	3,768	5
Phoenix	8,944	9
Reno	18,118	7
Portland	15,062	28
San Francisco	8,997	5
Los Angeles	85,387	45
Total	465,108	350

[1] The information in this table was furnished the Director, Intelligence Division in response to directive issued by IRS Commissioner suspending the operation of IGRS in January 1975.

[276] The relatively large quantity of material in some districts' IGRS is the result of their having intelligence gathering systems prior to the formal establishment of IGRS. In the case of Los Angeles, the numbers are particularly high because of an apparent error by the regional data center in following the district's instructions regarding the input of the material the district had gathered under the Miracode system. The district apparently screened the material and asked to have a program written which would result in the automatic selection of that material from the Miracode data most likely to be of continuing value. Through an oversight the program was not used, and all of the Miracode data was included in IGRS. The result of this mass inclusion of the Miracode data is that the IGRS in Los Angeles gives a picture of intelligence gathering practices in the district over a period of six years, and of the results of this long experience with an IGRS-type system in relation to the amount of data accumulated.

II. OPERATION LEPRECHAUN

"Operation Leprechaun" was an intelligence gathering project directed at political corruption and participated in by both the Internal Revenue Service and the Justice Department. Because of the sensitive character of the intelligence gathering effort, it occurred outside the framework of the normal intelligence administrative structure. The staff's investigation revealed that most of the allegations which comprised Operation Leprechaun were unfounded. Those of the alleged acts of wrongdoing which actually occurred are attributable to a combination of circumvention of normal supervision over intelligence gathering and informant control, and the inadequacy of IRS guidelines for control and payment of informants.[277]

A. Background of Operation Leprechaun

In late 1971, a local investigation by the Miami Police Department and the Dade County Department of Public Safety uncovered certain information concerning political corruption and bribes of political figures in Miami-Dade County. This investigation came to be known as the "Market Connection". The attorney in charge of the Justice Department's Organized Crime Strike Force located in Miami, Mr. Dougald McMillan, cooperated with the local authorities and received information from them concerning allegations about those political figures. McMillan became interested in initiating a federal strike force investigation and in securing the aid of the IRS and other law enforcement agencies in such an effort. In several conferences with the Justice Department and IRS officials, he vigorously solicited their support.[278] At about the same time, the IRS chose the Jacksonville District, of which Miami is a part, to be one of the pilot districts in an intelligence gathering and retrieval experiment.[279] The Miami Intelligence Division chose Special Agent John T. Harrison as the principal IRS agent to work on the Market Connection intelligence-gathering effort, and later assigned him to feed the resulting intelligence into the new information gathering and retrieval system.

The purpose of a Justice Department Strike Force Program is to achieve a coordinated effort by all federal law enforcement agencies against organized crime in a particular locality. A Justice Department attorney headed the Strike Force effort in Miami as elsewhere. The

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[277] Two members of the Committee staff spent ten days in Miami investigating the allegations. For much of its information about the allegations, however, the Committee relied upon the work of the 91 investigators IRS Inspection Division assigned to investigate the allegations of Operation Leprechaun. The Committee's independent investigation of cases which Inspection also investigated has convinced the Committee of the thoroughness and independence of Inspection Division inquiries into alleged IRS wrongdoing. The Committee staff has also read or attended the hearings of the Oversight Subcommittee of the House Ways and Means Committee and the Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs on the subject of Operation Leprechaun. The Committee also devoted a portion of its public hearing on IRS intelligence to Operation Leprechaun.

[278] See, *e.g.*, Memorandum of Meeting of IRS Target Selection Committee attended by Strike Force Attorney prepared by Thomas Eaton, June 28, 1972.

[279] See discussion of the development of the Information Gathering and Retrieval System at p. 900.

Audit and Intelligence Divisions of the Miami IRS District each assigned a representative to the Strike Force whose function was to (1) concentrate tax enforcement efforts on Strike Force targets; (2) exchange information with other agencies represented on the Strike Force to the extent disclosure regulations permitted; (3) participate in identifying new targets. These Strike Force representatives were to remain under both the operational and administrative control of the District.[280] The Strike Force concept did not call for the bypassing of normal administrative controls.

Agent Harrison, though not the Miami Intelligence Division's Strike Force representative, was assigned to work closely with the Strike Force attorney.[281] His assignment was to seek to develop tax cases against public figures suspected of accepting bribes or otherwise participating in corruption through the use of informants and other intelligence-gathering method.[282] On the basis of memoranda of meetings between the Strike Force attorney and members of the Intelligence Division in Miami, it appears that the Strike Force attorney contributed names of individuals and other information to IRS, some of which was subsequently used by the Target Selection Committee, an IRS group charged with final approval of targets for information gathering.[283] In any event Harrison generally did not select his own targets. The Chief, Intelligence Division, ordered that Harrison be removed from the normal chain of command.[284] Harrison's nominal superior, his Group Manager, was to be advised of Harrison's activities only on a "need-to-know" basis.[285] As a result, Harrison's IRS superior lost effective control of his activities.

Agent Harrison chose the name "Operation Leprechaun" to describe his efforts. He picked that name because he used green ink for his informant files and green ink caused him to think of leprechauns.

> . . . I looked up the definition of a leprechaun and found, in essence, the meaning to refer to the "wee mysterious people" who could reveal many secrets.[286]

B. Allegations About Operation Leprechaun

Allegations of improprieties within the IRS Intelligence Division in Miami first appeared in a series of articles in the Miami News

[280] Memorandum of IRS Inspection Interview with Dougald D. McMillan, 4/5/75, p. 22.

[281] Affidavit of John McRae to IRS Inspection, 3/19/75, p. 3. McRae, in a later affidavit, modified some of the statements contained in the affidavit of 3/19/75. His later statements indicate that there was some misunderstanding within IRS concerning the exact status of Special Agent Harrison.

[282] *Ibid*, pp. 3–5.

[283] See memorandum dated June 28, 1972, summarizing a meeting with the Strike Force attorney; memorandum dated September 6, 1972; minutes of Target Selection Committee meeting, dated May 15, 1973.

[284] McRae affidavit, 3/19/75. McRae, in his affidavit, states, "At a subsequent meeting a short time later Chief Register directed that Special Agent John T. Harrison be relieved of his present assignment and given the task of perfecting the case development files on the individuals identified on Dougald McMillan's list. It was Chief Register's further direction that S/A Harrison would consult directly and closely with Dougald McMillan about the corruption in Dade County. Chief Register advised me that I would learn of S/A Harrison's activities on a need-to-know basis. Mr. Register asked me if I could work with S/A Harrison under such an arrangement and I told him I saw no problem." See also, Transcript of IRS Miami meeting, 3/25/75. Register, in subsequent statements, has denied ever removing Harrison from the effective control of his supervisors. The staff concluded that his later statements, as was McRae's statement, are indicative of the misunderstanding within IRS as to Harrison's exact status.

[285] McRae affidavit to IRS Inspector, 3/19/75, p. 3.

[286] Affidavit, John T. Harrison, 3/18/75, p. 2.

beginning in March 1975 alleging serious abuses by IRS intelligence in Operation Leprechaun. The source of most of the allegations was an informant used by Harrison, Elsa Gutierrez.[287] Among the principal allegations concerning Operation Leprechaun were the following:

—that the IRS recruited Gutierrez and other informants for the purpose of gathering information on the sex lives and drinking habits of thirty public officials in the Miami area;
—that two IRS operatives burglarized the Miami campaign office of a congressional candidate;
—that the IRS made improper use of electronic listening devices;
—that Special Agent Harrison threatened Gutierrez with fatal accidents and imprisonment if she revealed her IRS activities;
—that personal information gathered in the course of Operation Leprechaun about enemies of the White House was funneled to the White House by the IRS;
—that following publication of the newspaper articles on Operation Leprechaun, IRS audited the tax returns for each of eleven years of a reporter who was the principal author of the Leprechaun stories; and
—that IRS agents promised Gutierrez $20,000 per year for life and eventually a home outside the country in return for her spying on public officials.

C. Operation Leprechaun Improprieties

While evidence gathered by IRS Inspection and corroborated by the staff indicates that many of the allegations of Elsa Guiterrez about Operation Leprechaun were unfounded, several improprieties were discovered.[288] Of these, some apparently are directly related to the environment in which special agent Harrison conducted the project and these further illustrate the increased potential for abuse of individual rights when the normal IRS structure and its inherent controls on IRS activities are circumscribed to meet the needs of a special program which has, as its objective, a set goal in addition to enforcement of the tax laws. The principal improprieties occurring in Operation Leprechaun include improper special agent supervision, improper informant usage, including unauthorized electronic surveillance, and useless and improper material being gathered and stored by the IRS. These areas are discussed below.

1. *Improper Special Agent Supervision.*—From its inception, the project which became Operation Leprechaun placed Special Agent Harrison in a position inconsistent with normal IRS operating procedures. The then Chief of the Jacksonville District Intelligence Division has stated that in response to the request of the Miami Strike Force Chief, Dougald McMillan, information gathered concerning political corruption in the Miami area was sensitive and should be disseminated on a "need-to-know" basis only.[289]

John McRae, Harrison's Intelligence Division Group Manager, has stated that he, upon receiving a listing of targets from the Intelligence Chief, instructed Harrison to first develop initial files on the targets. McRae further stated that Harrison was to consult directly and closely with Mr. McMillan regarding this investigation and that

[287] The staff, in its investigation by Operation Leprechaun, did not attempt to determine Gutierrez' motives for exposing Operation Leprechaun. As previously noted, many of her allegations appear now to have been unfounded.
[288] Operation Leprechaun always had as its goal the enforcement of the tax laws.
[289] IRS Report on Relationship between Miami Strike Force and IRS Miami Strike Force Personnel, p. 4; Affidavit, McRae to IRS Inspection, 3/19/75.

he (McRae) was to learn of Harrison's intelligence gathering activities on a "need-to-know" basis only.[290]

McMillan, in an affidavit to IRS Inspection, stated that Harrison was at no time the official IRS representative to the Miami Strike Force, and at no time did he in any way supervise Harrison.[291] McMillan stated, however, that in response to a request by Harrison, and because Harrison was always in a hurry, he (McMillan) told Harrison that he could stop dealing with the IRS Intelligence Division Representatives to the Miami Strike Force and deal directly with McMillan on Strike Force related matters.[292]

While the evidence cited above does not conclusively define the exact nature of the relationship between the IRS and the Strike Force during Operation Leprechaun, it does indicate lines of communication were unclear and that the normal IRS organizational structure had been changed to meet the needs of the specialized, sensitive project. This hybrid structure necessarily diminished the effectiveness of built-in controls over special agent investigation activity and apparently was a primary contributing factor to other improprieties in Operation Leprechaun.

2. *Informant Recruitment and Development In Operation Leprechaun.*—Special Agent Harrison had for several years advocated the need for a network of confidential informants to obtain information on organized crime, corruption and racketeering.[293] This view apparently was a major factor in the decision to place him in charge of the Operation Leprechaun intelligence gathering activities, which were targeted at political corruption.

Harrison began to recruit informants to develop intelligence for the project. Since Harrison would have to purchase the information, the Chief, Intelligence, applied to the National Office to establish an "imprest fund" of $30,000 to finance the project. In his application, he stated it was understood that:

> Expenditures from these funds will not be made unless the information received warrants compensation. The informants who will be utilized as the opportunity arises will be guaranteed no compensation or operating expenses but will be paid for value received only.[294]

The Director, National Office Intelligence Division, approved the fund.[295]

Harrison [296] developed his informants through fellow agents, other law enforcement agencies, state agencies, and through his own per-

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[290] Affidavit of John McRae to IRS Inspection, 3/19/75, p. 3.
[291] McMillan, statement to IRS Inspection, 4/5/75. p. 3.
[292] Ibid.
[293] Harrison affidavit, 3/18/75.
[294] Letter from G. T. Register, Jr., to Assistant Regional Commissioner, Intelligence, 3/30/72. This limitation on informant payments is set forth in Internal Revenue Manual section 9372.1(3), as follows: "When practicable, direct payments to informants should be made only after the information or evidence has been obtained, evaluated, and determined to be worthy of compensation." Other regulations govern accountability for imprest funds, including the requirement that advances from the funds be made only by "class A cashiers". As administered, Operation Leprechaun violated all these regulations.
[295] He later (April 22, 1973) approved a $17,000 addition to the fund.
[296] Harrison affidavit, 3/15/75, p. 1.

sonal contacts.[297] He also instructed some informants to develop other confidential sources.[298] According to Harrison's statement, a total of 42 confidential informants were involved in some aspect of Operation Leprechaun.[299]

Of twenty informants used by Harrison during the project and interviewed by IRS Inspection during its investigation, five advised that they had been requested to gather sexual information, two advised they had been requested to research public records or develop background files; five advised they had been requested to gather political information, one advised she had been instructed to gather drinking habit information and 4 advised they had been involved in electronic surveillance.[300]

D. Informant Activities During Operation Leprechaun

1. *Breaking and Entering.*—The conduct of informants during the course of Operation Leprechaun ranged from the performance of activities which were clearly illegal to those which were at least questionable. Although they do not necessarily reflect on the wisdom or integrity of Special Agent Harrison, they do indicate an inadequacy in the system of informant control utilized during Operation Leprechaun.

Two Leprechaun informants, Nelson Vega and Roberto Novoa, according to Vega's admission, burglarized the office of Evelio Estrella, a candidate for Congress on November 14, 1972.[301] Vega (Novoa is deceased) stated in an affidavit to IRS Inspector that he was hired to work on "Operation Leprechaun" for $100 per week and was given the assignment of getting information on people who were running for office to determine where they were getting their money for parties and other activities.[302] Vega stated that he and Novoa burglarized the office of Estrella and took from it a filing cabinet which they thought contained certain information which would be useful to the Internal Revenue Service.[303] Vega emphasized that Harrison was unaware of the burglary at the time it was committed, and that, although he and Novoa later turned over some of the stolen material to Harrison, they advised him someone had given them the material.[304]

Harrison stated he was unaware of the burglary at the time it was committed and became aware of it only when he read Vega's newspaper statement.[305] Harrison also stated that he emphatically told

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[297] Harrison affidavit, 3/15/75, p. 1.

[298] *Ibid*, p. 2.

[299] *Ibid.* The IRS Inspection Report on Operation Leprechaun states that ". . . during the time Harrison was identifying his expenditures to informants with the code name "Operation Leprechaun," Harrison was obtaining information from 41 informants; 29 of whom were paid and 12 unpaid." See IRS Inspection Report Sec. 2.

[300] IRS Inspection Report, Operation Leprechaun, Sec. 2.

[301] The police report on the Estrella burglary indicates that a "heavy instrument was used to smash and completely remove glass from front door;" that an employee of Estrella's campaign office discovered the breakin on the morning of November 13, 1972, and found that a beige filing cabinet about 48" high containing all their campaign records had been stolen.

[302] Affidavit, Nelson Vega to IRS Inspector, 4/16/75.

[303] *Ibid.*

[304] Vega affidavit, 4/16/75.

[305] Harrison affidavit, 4/8/75.

each informant that they were not IRS employees and that their relationship with him was not a license to violate the law.[306]

Harrison's informants' files contained a manila envelope with the name Evelio S. Estrella written on the outside containing originals and copies of State Campaign Treasury Pre-Election Reports, including itemized receipts and expenditures, invoices and similar items relating to Estrella. Roberto Novoa's wife, who confirmed that her husband and Vega had brought the filing cabinet to the Novoa home, stated that about three days following the theft Harrison asked Novoa and Vega if they knew who had broken into Esterella's office and, upon being advised Novoa and Vega did not know, told them that whoever had done it would go to jail regardless of the motive for the burglary.[307]

2. *Unauthorized Electronic Eavesdropping.*—Although consensual non-telephone electronic surveillance (i.e., where one party to the conversation consents to eavesdropping) is not illegal, the IRS has established regulations to safeguard against abuse of the technique. Internal Revenue Manual section 9389.3, entitled *Consensual Monitoring of Non-Telephone Conversations*, requires prior Justice Department approval of all such monitoring providing that:

> Consensual monitoring is to be approved in writing by the Attorney General of the United States or any designated Assistant Attorney General as follows: a) all requests for approval must be submitted through channels and may only be signed by the Director, Intelligence Division or Acting Director; when time is a factor a telephone request may be made to the Director. If an emergency exists approval may be granted by the Director, or Assistant Director, Intelligence Division. Additionally, as soon as practicable, after monitoring the non-telephone conversation, a report will be filed with the Chief showing how the equipment was used and summarizing the intelligence or evidence obtained by such use; this report should complement the information set forth in the original request.

Elsa Gutierrez stated [308] that on August 23, 1972, she was present when a Leprechaun informant (9th-28) outfitted with a radio transmitter, entered the home of a former judge, Harrison, Novoa and another special agent sat in Harrison's car which was equipped with receiving equipment, and listened to the ensuing conversation. Harrison, in an affidavit,[309] has stated that Elsa Gutierrez was present when another agency, either the Miami Police Department or the Dade County Sheriffs' Department, placed a concealed transmitter on one of Harrison's confidential informants, but that the investigation was not an IRS investigation. Harrison stated that the Miami Strike Force Attorney had become interested in a possible state charge against the judge and had solicited the aid of the Miami Police Department and Dade County Public Safety Department, and arranged

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[306] *Ibid.*
[307] Affidavit, Marina Novoa to IRS Inspection.
[308] E. Gutierrez Affidavit to IRS Inspection.
[309] Harrison Affidavit, 4/10/75.

for the Miami Police to use the equipment. He further stated that he was asked only to supply an informant to be wired for the surveillance, that he had provided the other agency with the confidential informant, and that Elsa Gutierrez was there because she had recruited the informant and might have been able to lend moral support.[310]

Harrison's confidential informant files contain two documents signed by 9th-28 authorizing police officers to place electronic eavesdropping devices on his person; both forms are signed by Harrison as a witness. The files also contained an affidavit by 9th-28, regarding a conversation he had with the judge in question while wearing the transmitter, in which 9th-28 stated that he had permitted an associate of Harrison to wire him for sound and that he had obtained bad checks from the judge which the judge wished him to collect for him and that 9th-28 had given the checks to Harrison.[311]

Major Herbert Breslow of the Miami Police Department has furnished an affidavit [312] stating that on August 9, 1972, the Chief Attorney for the Miami Strike Force requested that he furnish technical assistance to Harrison and that a state case could result from the investigation in which the technical assistance was needed. Breslow stated that he accompanied Harrison to a location near the judge's home where Breslow equipped 9th-28 with a transmitter and that 9th-28 then entered the judge's home. While 9th-28 was in the judge's home, Harrison, Breslow and certain other persons unknown to Breslow, listened to the conversation in Harrison's car at a distance of 300 yards from the judge's house. In addition, Breslow's affidavit states that the monitoring had nothing to do with any Miami Police Department investigation. Breslow recalled that he either kept the tape of the conversation or received it from Harrison shortly after the event and kept it until Harrison advised him it was no longer needed and that Harrison supervised and coordinated the activity. Finally, Breslow stated that he assumed that the eavesdropping was in aid of an IRS investigation. Other affidavits of members of the Dade County Department of Public Safety indicate that similar requests for technical assistance from Harrison were honored on two other occasions.[313]

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[310] 9th-28 Affidavit to IRS Inspection.

[311] 9th–28 Affidavit to IRS Inspection. The files also contained memoranda to the file from Harrison dated August 22, 1974, and August 24, 1974, respectively, in which Harrison states that 9th–28 had given him information regarding the judge; and that Harrison (or 9th–28?) had paid informants Novoa and Vega for the information they had supplied concerning the judge. Neither memorandum alludes to any electronic surveillance.

[312] Affidavit, Major Breslow to IRS Inspection.

[313] The Miami Intelligence Division files contained handwritten and typewritten versions of memoranda regarding informants which differed in significant respects. The typewritten version of one memorandum did not contain a section from the handwritten version of the same memorandum describing a meeting between 9th-28 and the judge during which a "microphone was taped to 9th-28's body." A second handwritten memorandum described a second recorded meeting between 9th-28 and the judge and indicated the informant and 9th-28 dealt with a "voice recording technical." The typed version of this memorandum omitted the references to these events. In his affidavit, Harrison stated the first omission was a typing error. As to the second, he said, "It appears from checking back the dates that had erroneously included that material on August 22, 1972, which could have been on Tuesday, whereas the written material assuming it to be correct should have been referred to on Wednesday which was

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Both Harrison and the police assign a key role in the initiation of the surveillance on the former judge to the Miami Strike Force Attorney, who has stated in substance that although he could not recall his exact conversations with Major Breslow and Captain Bertucelli, he felt sure they were aware that the sole purpose of wiring the informant was to determine if state law was being violated since obviously there was no tax violation.[314] He advised that Major Breslow and Captain Bertucelli may have assumed the incident was part of a Federal investigation. He emphasized, however, the whole purpose was a possible state charge.

Whether Harrison was assisting state or local police or vice versa, his participation in the electronic surveillance appears to have violated the IRS regulations requiring Attorney General authorization for consensual electronic surveillance, since the regulation does not require that the surveillance have a Federal purpose before Attorney General permission is required.

E. Results of Operation Leprechaun

The intelligence gathering efforts of Operation Leprechaun, by tax enforcement standards, were successful. Full-fledged Intelligence Division investigations, which can be initiated only upon the probability that criminal tax fraud has occurred, as well as IRS Audit Division investigations, which indicate the probability that a substantial delinquent tax liability exists, were opened as a result of the project. Out of 42 joint Intelligence and Audit Division investigations of taxpayers who were the subject of Leprechaun documents, 22 were opened directly as a result of allegations furnished by either the Strike Force or information gathered during Operation Leprechaun, or both. Further, five of eight separate Audit Division investigations of Leprechaun subjects were opened as a result of information obtained from the Strike Force, Leprechaun informants, or both. Much of the information gathered, however, bore little or no relationship to tax law enforcement and some of the information was concerned with the sex and drinking habits of Operation Leprechaun targets.

Examination of 594 debriefing documents of Harrison's confidential informants indicate 135 (23%) contained references to the sexual

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August 23, 1972." A four page memorandum in the Miami Intelligence office files, dated August 15, 1972, prepared by Harrison, contained the following statement:

"On August 9, I met with (informants) together with Capt. Herb Breslow . . . (Informant) consented for an electronic transmitter to be placed on his person. He had made an appointment to see (judge) at his home . . . At approximately 5:55 p.m., (informant) commenced his conversation with (judge) inside (judge's) home. The conversation was monitored and taped by use of a KEL KIT supplied and operated by Capt. Breslow in my presence. Upon completion of the conversation . . ., Capt. Breslow presented me with the tape. A transcript of the tape will be forwarded once it has been typed."

The same memorandum appeared in 9th-28's file, but it lacked the above paragraph. Harrison, in his April 10, 1975, affidavit, stated that he could only speculate that he received instructions to omit the paragraph from the second memorandum and that such instruction could only come from the Chief, Intelligence. The apparent reason for the omission, according to Harrison, was to prevent a casual reader from being misled into thinking that the IRS had engaged in electronic surveillance. The Chief, Intelligence, has no recollection of giving such instructions. (Affidavit, Chief, Intelligence, Jacksonville District.)

[314] IRS Inspection Interview with Dougald McMillan, 7/29/75.

and/or derogatory drinking activities of the subjects. Of these 135 documents, 70 also contained tax related information, but 65 did not.[315] By comparison, out of 3,719 confidential informant debriefing documents prepared by all other Special Agents in the Jacksonville District, only 255 (7%) contained references to sexual or derogatory drinking activities of the subjects.[316]

The above evidence, in addition to statements of some of his informants, suggests that Harrison encouraged his informants to collect personel, non-tax-related information about the subjects of Operation Leprechaun, either through specific instruction to the informants or through displaying particular interest in the information upon debriefing the informants. Since the informants' continued employment depended upon their providing information which interested Harrison, they would naturally be alert for information which interested him, despite the lack of specific instructions to gather it.

It does not appear, however, that the targets of Operation Leprechaun were selected because of any interest Harrison may have had in their personal lives. The responsibility for target selection lay with the Target Selection Committee. Harrison's influence was primarily over the nature of the information gathered about the targets, rather than the selection of the targets. And, as indicated by the positive tax enforcement results of Operation cited above, Harrison's apparent interest in personal information did not cause the collection of such information to become the main focus of the intelligence gathering operation. The statistics cited indicate that a substantial amount of the information gathered was tax-related, and that collection of personal information, while excessive in relation to other tax investigations, remained subsidiary to the main purpose of the operation, the effort to develop tax cases against the targets.

F. Causes of Leprechaun Abuses

The system of controls over intelligence gathering activities failed in the case of Operation Leprechaun. Special Agent Harrison's collection of personal information was not detected and arrested. He recruited some informants of extreme unreliability and poor judgment without his superiors' realizing it. He allowed informants to recruit and to pay other informants whom, in some cases, Harrison never met.[317] Harrison engaged in unauthorized electronic surveillance without its being detected by his superiors. Harrison paid many of his informants on a regular salary-like basis instead of paying them according to the value of the information received. Even though his superiors knew of the practice none prevented it.[318]

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[315] *Ibid.*, p. 18. Copies of some of these documents are in the Committee files.

[316] *Ibid.* It is possible to quibble with the criteria applied to determine whether a given document contains sex or drinking related information. A subsequent re-evaluation of the documents by IRS using different criteria resulted in a smaller percentage classified as being related to the sex and drinking habits of the targets. However, since the criteria applied to Harrison's debriefing documents and those applied to those of other agents were uniform, the comparison is valid. The Committee files contain some of Harrison's debriefing documents. They clearly contain sex and drinking related information with no relevance to tax enforcement.

[317] In his March 18, 1975, statement, Harrison said he had one informant who " . . . did recruit one individual from the Cuban community who, in turn, recruited three or four other confidential informants."

[318] Memorandum, Harrison to Chief, Intelligence Division, Jacksonville, 9/13/72.

Each of the abuses of Operation Leprechaun can be traced to failure of Harrison or his superiors to meet responsibilities. The evidence suggests that Harrison conducted the unauthorized electronic surveillance, without his superiors' approval, and was able to do so because, as in the case of the electronic surveillance abuses the Long Committee studied, he was outside the normal chain of command. Harrison's superiors had an opportunity, however, to curb potential abuse in Harrison's employment of informants. In a September 13, 1972, memorandum from Harrison to the Chief, Intelligence Division, Harrison advised that he had 34 paid informants, many of whom he had never met; that these unknown informants had been developed by other informants; and that some of his informants were paying others. Harrison expressly acknowledged in this memorandum that the arrangement was unusual and risky. The memorandum also advised the Chief that Harrison had learned that Elsa Gutierrez was a "double agent" and had plans to expose his activities and dispose of him.

While the Leprechaun abuses can, therefore, be explained as individual failures to detect potential abuse, there is a pattern to the failures which indicates that the abuses have a general cause. The IRS failed to prevent, or to curtail, the serious misdeeds of Operation Leprechaun for three principal reasons:

1. IRS guidelines for the recruitment and use of informants were not sufficiently stringent;

2. IRS reliance upon retrospective detection of abuse followed by corrective action is inadequate to achieve control of intelligence gathering of the type necessitated by projects such as Operation Leprechaun activities;

3. Agent Harrison's anomalous position outside the normal administrative structure seriously aggravated the existing deficiencies in the system of controls. In particular, the limited controls the IRS had over the use of informants were largely deactivated by the decision to place Harrison out of the effective reach of the IRS chain of command.