ROLE OF THE INTERNAL REVENUE SERVICE IN LAW ENFORCEMENT ACTIVITIES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST AND SECOND SESSIONS

DECEMBER 1 AND 3, 1975, AND JANUARY 22, 1976

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ROLE OF THE INTERNAL REVENUE SERVICE IN LAW ENFORCEMENT ACTIVITIES

MONDAY, DECEMBER 1, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION
OF THE INTERNAL REVENUE CODE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2221, Dirksen Senate Office Building, Senator Floyd Haskell presiding.

Present: Senators Haskell, Byrd, Jr., of Virginia, Curtis, and Hansen.

Senator HASKELL. The hearing of the subcommittee of the Finance Committee on the Administration of the Internal Revenue Code will commence.

[The press releases announcing these hearings follow:]

PRESS RELEASE

For immediate release
November 19, 1975

Committee on Finance
Subcommittee on Administration
of the Internal Revenue Code
United States Senate
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE SETS HEARINGS ON THE ROLE OF THE INTERNAL REVENUE SERVICE IN FEDERAL LAW ENFORCEMENT ACTIVITIES

Senator Floyd K. Haskell (D.-Colo.), Chairman of the Subcommittee on Administration of the Internal Revenue Code of the Senate Committee on Finance, and Senator Bob Dole (R.-Kans.), Ranking Minority Subcommittee Member, today announced that the Subcommittee will conduct public hearings on the role of the Internal Revenue Service in Federal law enforcement activities.

The hearings will begin on Monday, December 1, 1975, at 10 a.m. in Room 2221 of the Dirksen Senate Office Building.

The objective of this hearing will be to publicly air the numerous views concerning the appropriate role of the Internal Revenue Service in general Federal law enforcement efforts. One of the key issues on which these hearings will focus is the extent to which the special authority granted to the Internal Revenue Service for tax collection purposes, such as the right to conduct noncourt-ordered searches and seizures and the right to administratively summon taxpayer and third party records, should also be utilized in peripheral or nontax-related Federal criminal inquiries. The discussion of this and other related issues will begin with statements by the Commissioner of Internal Revenue, Donald C. Alexander, and the Attorney General of the United States, Edward H. Levi, followed by an IRS-Justice Department panel of experts which will spell out and discuss present relationships and responsibilities.

These witnesses will be followed by a series of individuals representing a broad range of views and will include former United States Attorneys General, former Internal Revenue Service Commissioners, law enforcement personnel, American Bar Association spokesmen, academics, criminal lawyers, and other interested persons.

Written Testimony.—The Chairman stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be type-written, not more than 25 double-spaced pages in length, and mailed with five (5) copies by December 31, 1975 to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

PRESS RELEASE

For immediate release

Committee on Finance
Subcommittee on Administration
of the Internal Revenue Code
United States Senate
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE SETS FURTHER HEARINGS ON THE ROLE OF THE INTERNAL REVENUE SERVICE IN LAW ENFORCEMENT ACTIVITIES AND THE PRIVACY OF FEDERAL TAX RETURNS AND TAX INFORMATION

Senators Floyd K. Haskell (D., Colo.) and Bob Dole (R., Kans.), chairman and ranking minority member of the subcommittee, today announced that on January 22, 1976, the Subcommittee on Administration of the Internal Revenue Code will hold further hearings concerning the role of the Internal Revenue Service in Federal law enforcement activities. "Our earlier hearings have indicated that the extent of IRS involvement in these efforts has been determined on a case by case basis with little attention given to the broader question of whether limits should be set for these activities." Haskell said. "This additional day of hearings will focus on the need for setting appropriate limits and their impact on the administration of the tax laws and on individual rights." It is anticipated that the witnesses appearing before the subcommittee on this matter will include both academicians and constitutional law experts.

In addition, on January 23, 1976, the Subcommittee on Administration of the Internal Revenue Code hopes to wind up its hearings on the privacy of Federal tax returns and tax information, hearing from members of the public and representative state tax administrators who have indicated their concern with respect to this matter.* Haskell said, "The statutory rules governing the disclosure of tax information have not been reviewed by the Congress for 40 years, and over that period a number of rules concerning the disclosure of tax information have been established by Executive Order, regulation, and common practice. "In order to insure that the development of these procedures does not in any way impair the effectiveness of the voluntary assessment system—which is the key to Federal tax collection—we have tried to conduct exhaustive hearings on this matter. "The subcommittee hopes to bring out information which will help the Congress fashion legislation on the privacy of tax returns and tax information that is compatible with the Privacy Act of 1974 and the Freedom of Information Act."

Requests to Testify.—Senator Haskell advised that witnesses desiring to testify during this hearing must submit their requests in writing to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Wednesday, January 7, 1976. Witnesses will be notified as soon as possible after this cutoff date as to when they are scheduled to appear. Once the witness has been advised of the date of his appearance, it will not be possible for this date to be changed. If for some reason the witness is unable to appear on the date scheduled, he may file a written statement for the record of the hearing in lieu of a personal appearance. The hearings will be held in Room 2221, Dirksen Senate Office Building and will begin at 10 a.m. on each day.

*Printed as a separate volume.

Consolidated Testimony.—Senator Haskell also stated that the Committee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the subcommittee. This procedure will enable the subcommittee to receive a wider expression of views than it might otherwise obtain. Senator Haskell urged very strongly that all witnesses exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—Senator Haskell stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement *a summary of the principal points included in the statement.*

(3) The written statements must be typed on letter-size paper (not legal size) and at least *75 copies* must be submitted by the close of business the day before the witness is scheduled to testify.

(4) *Witnesses are not to read their written statements* to the subcommittee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for oral presentation.

Written Testimony.—The chairman stated that the subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by February 13, 1976, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

Senator HASKELL. This is basically an oversight hearing.

The issue to be addressed today and in a couple of days in the future, one the day after tomorrow and one after the beginning of the year, is the public policy and use of the powers granted to the Internal Revenue Service, whether those powers should be confined to enforcing the revenue laws of the United States, or whether those powers should be used in a more broadened fashion to enforce or help enforce the general criminal laws of the United States.

Being an oversight hearing, I would hope that certainly our panel of Justice and IRS would address themselves to the mechanics of the request for help back and forth between the Justice Department and the Internal Revenue Service, and I would certainly hope that our other witnesses who occupy policy positions would address themselves to the matter of public policy.

I may say that there are several former persons who held policy positions, both in the Treasury and in the Commissioner's Office, who were unable to appear. They will be given further notice. I do not know whether their failure to appear on short notice was in fact that the notice was short or whether the issue is hot. I do not know what the answer is, but I think it is terribly important that we get former Attorney's General and many former Commissioners to articulate their viewpoint. And, also, I think it is important that we get people who possibly are in a more dispassionate situation and who represent the law schools and other law enforcement institutions of the country.

So, with that very brief prelude and summary of what the hearings are all about, I look forward with great pleasure to hearing from the Honorable Donald C. Alexander, Commissioner of Internal Revenue.

It is a pleasure to welcome you here today, sir.

STATEMENT OF HON. DONALD C. ALEXANDER, COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY MEADE WHITAKER, CHIEF COUNSEL, INTERNAL REVENUE SERVICE; WILLIAM E. WILLIAMS, DEPUTY COMMISSIONER, INTERNAL REVENUE SERVICE; SINGLETON B. WOLFE, ASSISTANT COMMISSIONER (COMPLIANCE), INTERNAL REVENUE SERVICE; AND THOMAS J. CLANCY, DIRECTOR, INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE

Mr. ALEXANDER. Thank you very much, Mr. Chairman.

I would like to introduce those with me who may take part in this preliminary session.

On my immediate left is Meade Whitaker, Chief Counsel of the Internal Revenue Service.

Senator HASKELL. Pleased to have you, Mr. Whitaker.

Mr. ALEXANDER. And to my right, behind me, Mr. William E. Williams, the Deputy Commissioner of Internal Reveune; Mr. Singleton Wolfe, our Assistant Commissioner of Compliance; and Mr. Thomas Clancy, the Director of our Intelligence Division.

Mr. Wolfe and Mr. Clancy will be a part of the panel later, Mr. Chairman.

Mr. Chairman, I have a somewhat lengthy statement. With your permission, I would like to have it inserted in the record.

Senator HASKELL. It will be inserted in the record, Mr. Commissioner.

Mr. ALEXANDER. I prefer not to read it.

The issue, as you point out, Mr. Chairman, is a very important one and, I am told, a hot one: Whether IRS should play a significant role beyond that of enforcing and administering the tax laws, and the extent to which IRS, its people, its powers, and its information should be used for purposes other than enforcement and administration of the tax laws.

The issue is not whether the Nation should have a strong and an effective and a continuing drive against organized crime and against corruption, that is not the issue at all. Of course organized crime figures should be called on to meet their tax responsibilities and, of course, they are somewhat slow, to put it mildly, to meet them unless they are so called on. Of course, the IRS should make strong efforts as it is making and as it will continue to make to see to it that those who gain illegal income by corrupt activities share their gains with the Federal Treasury. That is not the issue.

The issue instead involves the proper and most effective utilization of the vast store of information that the IRS obtains voluntarily and obtains involuntarily from those who do not give us sufficient information or correct information voluntarily and the utilization of these

great powers of ours; the power to obtain additional information by the use of the administrative summons, for example, and the power to take property in a most peremptory way, the power of seizure, the power to terminate a taxable year, the power to make a jeopardy assessment.

And our people—we have almost 2,700 special agents, criminal investigators, in the Service, and these people are good people, doing a difficult job well. These people have a vast job to do, a vast job, because our tax system is almost unique in the world. Our tax system calls on more than 80 million individuals to file tax returns assessing themselves, and about 2 million corporations and a large number of partnerships and trusts and others to do the same thing. Our tax system depends upon reasonable confidence by the public in our law and the basic fairness of the Internal Revenue Code, and the reasonable confidence by the public in the way we go about administering the law in the fairness and the effectiveness of tax administration.

And the effectiveness of administration is vital, I think, to the continuation of this tax system of ours, which is far different from that of England or Japan, for example, depending as it does upon the willingness of the vast number of people to tell us what their taxes are and to meet their tax obligations voluntarily.

Oh, sure, a lot of taxes are withheld, we know that. But at the end of the year, the taxpayer can file a return claiming that the Internal Revenue Service owes him or her these amounts which have been only temporarily retained during the year.

Putting this in context means that we need to examine our activities in law enforcement, and law enforcement against figures suspected of organized criminal activities and figures suspected of corrupt activities, in the light of our overall job of law enforcement and law administration, because, unlike other law enforcement agencies—the FBI, for example, which is a fine agency—we have the basic job of administering a system which calls for the voluntary production of more private and confidential information than any other, by far, in the country, and which calls for the voluntary cooperation of most of the adults in the country.

So, unlike other law enforcement agencies, whose missions are confined to enforcing particular laws—in the case of the FBI they have general underlying law enforcement responsibility over all Federal crimes—our work includes dealing not only those who have committed crimes against the tax system and who have committed other crimes, but also with those who have committed no crimes at all but who have understated their tax liability or failed to pay as much as they should have paid when it was due.

Last year we made almost 2 million audits of individual taxpayers, and we had more collection contacts than we had audits. If we misallocate our resoures, if we concentrate on one sector to the detriment of others, while we may help in achieving a national goal, a goal we share with other agencies, we may well risk the achievement of our mission, which is to maintain the health, the effectiveness, and the soundness of tax administration.

That is one of the issues, and I think, the central issue.

But we have been called on to fill voids, actual or perceived, voids in the law itself, or voids in law enforcement.

An example is our recent narcotics program where we were called on to deprive narcotics traffickers of their working capital through the use of the tax system. Well, narcotics traffickers are surely not the first to march up to the counter and pay their taxes, but the use of the tax laws to effect forfeitures is impermissible, and the courts have so found in a number of cases.

This program was unproductive from a revenue standpoint. Our costs through fiscal year 1975 were about $68 million; the amounts collected from this program were about $38 million. That is a far cry from the relationship of collections to costs in our programs generally.

And this program resulted in some counteractions. The Ways and Means Committee has reported a bill, with which I am sure this committee is familiar, which specifically mentions the use of terminations of taxable years as a weapon in the narcotics program, and specifically provides for new restrictions and grants of new taxpayer rights with respect to terminations and jeopardy assessments.

This is an example of the use of tax powers and tax people to fulfill other goals. Now, however worthy the goals, one can question whether the tax system is the proper way of achieving them.

With respect to narcotics traffickers, the proper way to separate a narcotics trafficker's cash from the trafficker is through an amendment to the forfeiture provision, section 881(a) of title 21, to call for the forfeiture of cash, I do not know why this was not done. I am convinced that this is the way to achieve this particular goal if Congress wishes to achieve it.

We do not have enough people to go around. Next year is going to be a year of extreme budget stringency for the IRS, so it appears, and we are going to have less people next year than we have this year, possibly up to 4,000 less, as we now compute it. We have a hard question of allocation of resources. This brings me to the cooperative effort that we share with the Department of Justice and with other agencies, called the Strike Force, is an effort to prevent overlap or underlap, an effort, through sharing of resources and personnel and information, to achieve greater and better enforcement results for each of the participating agencies. Several issues are involved here.

The first issue, I am glad to say, appears to be one on which the IRS and the Department of Justice are now in complete agreement. On page 74 and also on page 76 of the transcript of the April 21 hearing before this committee, Judge Tyler, a man for whom I have great respect, stated in discussing the Strike Force, "Each agency participates in the planning and retains absolute control over its own operations..."

"Absolute control over its own operations" would mean to us not only control through our decentralized organization over what information we gather and what techniques we use, but also over what cases we work. Less than 2,700 special agents and about 15,000 revenue agents are an insufficient number, Mr. Chairman, to accomplish this vast obligation of ours to enforce and administer the tax laws and to assure the many who do comply that the few who do not will be called on to do so. If resources are diverted, if people are diverted, into cases which do not meet our standards, cases which will have little deterrent effect, and which are cases, although the taxpayer involved might be

a figure in organized criminal activities or suspected of such, not worth working as tax cases, then we have misused the resources which Congress has given us.

Furthermore, if our people—and they are good people—are sidetracked into working on cases in which it is clear that there is no criminal tax evasion or possibility of a conviction, then we have a question of going beyond our appropriation acts and also a question of impairing or perhaps destroying the immunity of our agents against claims and suits based on their action.

Now, this question of immunity was discussed by Judge Tyler at the prior hearing on page 72 of the record, and I am sure it is of concern to the Department of Justice just as it is to us. We cannot ask our people to engage in activities where they take substantial risk of personal liability, and we are not going to do so.

Another matter I touched on is that of techniques. The Internal Revenue Service has been in the press quite a bit this year with respect to certain techniques, and these allegations, like many recent allegations, have been vastly overstated. (There are many recent allegations that are not only overstated; they are totally false.) But these allegations about techniques, particularly the use of informants, have some foundation, and accordingly, Internal Revenue has developed and on June 23 promulgated new guidelines with respect to the information we gather, and we put stringent controls—which we are reconsidering at this time—on payments to informants.

In this respect, I am delighted to see, according to the transcript of Wednesday, November 19, before Senator Church's committee, that Mr. Adams for the FBI testified with respect to informants that the FBI has much of the rules that Internal Revenue has recently installed. In answer to a question by Senator Tower about control of informants' activities, Mr. Adams testified on page 1816 that not only the special agent in charge has control of the activities involved, but FBI headquarters. "We maintain the tightest possible control of the utilization of informants. We require Bureau approval to utilize a person as an informant."

And on page 1818 Mr. Adams stated further:

> We don't permit an informant to engage in any activity that an agent couldn't do legally himself.
>
> In other words, you can't have an extension of the agent out here engaging in illegal acts, and the agent saying I abide by the law.

That is all Internal Revenue is trying to do. We agree completely with the statement of Mr. Adams about the way the FBI conducts itself with respect to informants. And we are proud of the recent and growing activities of the FBI in areas of organized crime and white collar crime.

This brings us to another point.

The point has been made, and perhaps it will be again, that if the IRS does not stop organized crime and does not stop white collar crime or political corruption, no one can.

In the 1975 annual report of the FBI—and this is mentioned in my statement—the FBI states that it recorded a number of significant achievements in the fight against organized crime during fiscal year 1975. And the report leads off on p. 2 with these words: "With in-

vestigations resulting in more than 1400 convictions of hoodlum, gambling and vice figures." A chart on page 3 of this annual report shows an increase in convictions of organized crime and gambling figures as a result of FBI investigations from 631 in 1971 to 1,417 in 1975. As to the white collar crime, on page 11 of the FBI annual report, for the completed fiscal year, is this statement:

> Crimes investigated by the FBI which fall into the white collar category have increased over 25 percent since fiscal 1971. These offenses include fraud, embezzlement, bribery, antitrust, perjury, conflict of interest and others. During fiscal 1975, 3,427 convictions were recorded in white collar crime matters investigated by the FBI.

And the report then says:

> The FBI has set high priority in this area of its responsibilities and is training Special Agent Accountants in the latest accounting systems being utilized by the Government and private business. Also research is being conducted in the highly complex and sophisticated techniques used by the white collar criminal to perfect these crimes. The FBI is presently devoting approximately 14 percent of its agent manpower to white collar crime investigations in an effort to increase convictions and eventually reduce the rapid rise in this type of crime.

Fourteen percent means about 1,200 agents. We have offered to assist the FBI in recruiting those possessed of the necessary training and learning to investigate criminal financial matters. We are glad to work with them. We are delighted to see this interest, this interest which will help both the Internal Revenue Service and the Department of Justice meet our responsibilities, those that we share, and those which the Internal Revenue Service alone bears.

So we are talking about information and powers and people, proper techniques—not techniques like those which have been in the press, however overstated, which cost us about $8 million in our current budget—proper techniques of information gathering, proper use of our powers, our powers which are now being reconsidered by Congress because of feared excesses, and proper use of our limited people to do a limitless job.

Thank you, Mr. Chairman. I look forward to the questions of this committee.

Senator HASKELL. Thank you, Mr. Commissioner, very much indeed. I do have some questions, but since we opened the hearing Senator Hansen and Senator Byrd have come in, so I would defer to Senator Hansen to see if he has any statement or questions he would like to make at this time.

Senator HANSEN. Thank you, Mr. Chairman, I do not at this time.

Senator HASKELL. Senator Byrd, do you have any questions or any statement at this particular time?

Senator BYRD. Not at this time, Mr. Chairman.

Senator HASKELL. Mr. Alexander, I gather—and I would like to be corrected if I am wrong—I gather that your general viewpoint is that the Internal Revenue Service, which is charged statutorily with the collection of taxes due and owing to the United States, should in effect not necessarily not cooperate with other law-enforcement agencies but should make a judgment that the particular instance in which they are cooperating serves the primary function of the IRS, which is the collection of taxes due and owing the United States.

Does that fairly summarize your viewpoint or not?

Mr. ALEXANDER. It fairly does, but I would like to amplify that, if I may.

Our mission includes the collection of taxes, but our mission includes also the enforcement of the tax laws. We are cognizant of that part of our mission, and we devote a substantial part of overall Internal Revenue Service resources to enforcement of the tax laws. We need to work effectively and closely with others. We need to bear in mind, however, the restrictions that we discussed with the committee on April 21 with respect to the privacy of tax information entrusted to us.

We need to work, as I said, in a cooperative and sensible and sound way with others who have different missions from ours. I am not suggesting that we withdraw into splendid isolationism, and I am not suggesting that we are unaware of the probability, a presumption which you questioned to some extent on page 49 of the April 21 hearings, that those who make their living from criminal activities do not pay taxes. We believe that many of those that make their living from criminal activities are unlikely to pay their taxes, and we have an obligation to do something about it.

But we have an obligation not to take the position that these are the only people that we must do something about. Because there are other people whose only crime is tax evasion, we have to bear in mind the deterrent effect of a conviction for tax evasion. We have to bear in mind the fact that some of our major citizens in this country, our major corporate citizens, have not lived up to their responsibilities of citizenship. We are devoting substantial resources to this area now.

These obligations of ours require people—we are talking about an allocation of resources; we are talking about cooperation. We intend to continue to participate and cooperate effectively in the strike force.

Senator HASKELL. Now, in your particular relationship to the strike force, apparently in 1974, the Audit Division representative was withdrawn as an IRS representative on a strike force team.

Are you familiar with that particular situation?

And if you are, I would ask why that action was taken, and then I would go further to ask when was the Audit Division representative, who was taken off originally put on the strike force?

There are several questions wrapped up in one.

Mr. ALEXANDER. I am going to ask Mr. Wolfe to supplement my answers to these questions.

First, I am familiar with the situation, as it was I who accepted the recommendation made by the career people in the Internal Revenue Service that the second IRS Strike Force representative—we were the only agency with two—be removed, that the diversion of IRS resources and the cost of that diversion was not matched in the opinion of these people by an equivalent benefit. That recommendation is not new. The recommendation that there be only one strike force representative of the IRS was made in a 1971 paper which I would like to submit for the record, Mr. Chairman.[1]

Senator HASKELL. It will be received and reproduced.

Mr. ALEXANDER. On March 12, 1971, more than 2 years before I became Commissioner, there was a report by a study group appointed

[1] See appendix A, p. 255.

by the then Assistant Commissioner (Compliance)—at this time the Alcohol, Tobacco, and Firearms Unit was part of IRS, so IRS had three strike force representatives. The recommendation was that IRS have only 1 out of those 3, not 1 out of the 2 we had later when ATF was removed from IRS and put in the Treasury Department.

On page 6 of this particular part of this report the study group states that the presence of three men to coordinate one program results in a duplication of effort, excess costs, and greater delay and confusion in getting the job done. We were convinced that one strike force representative is sufficient for Audit, Intelligence, and ATF.

Mr. Wolfe?

Mr. WOLFE. Yes.

Mr. Chairman, in answer to your first question, when was the audit representative first put on, it was in 1968 when we formalized the program. We had one each from Audit, from Intelligence, from Alcohol, Tobacco, and Firearms. Also, it was later at the report that the Commissioner just mentioned, which will be furnished for the record, I was interviewed by that task force. I was then the Director of the Audit Division, and I recommended that we not have an Audit strike force representative. And, actually, when we finally made the decision, when we recommended—it came from my office to the Commissioner recommending that we eliminate one of the two remaining representatives. I did not care whether it was Audit or Intelligence. In fact, we left it up to the field to determine which representative would better serve the needs of the strike force, either the Audit or the Intelligence. Most of them decided to leave the Intelligence on there because the objective was to get criminal convictions for income tax evasion. The Intelligence strike force representative, in our opinion, would be the most logical person to keep on that as a strike force representative. So that was why the decision was made that way.

Senator HASKELL. Mr. Commissioner, either you or perhaps one of your assistants, I think for the benefit of the committee, might very briefly describe how a strike force comes into existence. What is the composition of a strike force? What is the objective of a strike force?

Mr. ALEXANDER. It is rather difficult for me to answer this question, Mr. Chairman. I am sure that Judge Tyler can answer it better than any one of us.

But I would like for Mr. Wolfe or Mr. Clancy to give their views.

Senator HASKELL. Perhaps just from their perceptions of how it comes into existence.

Mr. CLANCY. Mr. Chairman, I believe the strike force location is identified by a committee—I forgot the precise name, but I do not believe they have had a session since 1971, the last time they sat—composed of the Attorney General—again, I do not remember who is on this particular committee because it has not——

Mr. ALEXANDER. I think I am supposed to be on it, but it has not met since I have been Commissioner, to my knowledge.

Mr. CLANCY. And then they, based on the information furnished to the committee by, I believe, the Department of Justice, identify the location where they will place a strike force. Once that is decided, the Attorney General communicates to the other Federal enforcement agencies and to the Commissioner, in our situation, and then we provide

a—if the Commissioner concurs—we provide a strike force representative to participate in that strike force and under today's standards, we will provide it to the extent necessary to provide liaison.

Senator HASKELL. May I interrupt you?

To your knowledge, has any Commissioner ever refused on any grounds whatsoever to participate in a strike force?

Mr. CLANCY. Not to my knowledge, no, sir.

Senator HASKELL. Thank you.

Now, I do not want to monopolize the questions.

Senator Byrd or Senator Hansen?

Senator BYRD. I have no questions.

Senator HANSEN. I have no questions.

Senator HASKELL. My understanding, Mr. Commissioner, is that the intelligence community, the Internal Revenue Service, as far as powers go, has, by statute, three special powers over and above what maybe other law enforcement agencies may have. These special powers would be the administrative summons, the so-called early termination, and the jeopardy assessment.

Now, have I left out any special powers that the IRS has which are not available to other law enforcement agencies, generally?

Mr. ALEXANDER. I do not know.

Do you know of any, Mr. Whitaker?

Mr. WHITAKER. No, sir, I do not, Mr. Chairman.

Senator HASKELL. All right.

Then the next availability as a possible law enforcement tool would be the information that the IRS has by virtue of the filing of income tax returns and possibly the auditing of income tax returns. This would be the special information available.

Am I stating that correctly?

Mr. ALEXANDER. That is correct.

Other agencies do not have this information. We have this vast store of information.

Senator HASKELL. And then the third area which would make the Internal Revenue Service attractive to assist in general law enforcement would be specially trained personnel, particularly in the financial field.

Would that be an accurate statement?

Mr. ALEXANDER. That is correct.

Senator HASKELL. Now you said, Mr. Commissioner, in the course of your statement that one of the possible problems was where, let us say, the Justice Department decides we as a national effort should crack down on crime A, and crime A might involve a great deal of your resources but not bring in a great deal of revenue.

Is that one of your problems?

Mr. ALEXANDER. Yes, that is a problem area.

An example of that, as I mentioned, is the narcotics field. Our crime A is the province of the DEA, and the DEA has jurisdiction with respect to violations of the Federal narcotics laws. IRS jurisdiction with respect to those violations is completely absent.

The FBI, of course, as I stated, has underlying jurisdiction with respect to all violations of Federal laws by statute, although I believe that administratively the Attorney General has imposed certain restrictions. The IRS simply lacks jurisdiction.

Now, someone engaged in narcotics trafficking, particularly a kingpin rather than a street pusher, maybe failing to meet his tax obligations, and there is a reasonably substantial likelihood that that person will be so failing. Then the IRS has an obligation, given its limited resources, to do something about it. But the IRS should evaluate that case in the light of other demands upon its resources to determine whether that case should be worked. If another case cannot be, there we need to evaluate the strength of the particular case, the importance of the particular case, and the deterrent effect of the particular case. We should be the ones, we think, to make this decision.

Certainly, we need to prosecute narcotic traffickers for tax evasion when they have committed tax evasion. But certainly the DEA should have the primary responsibility to do something about this. We do not have the manpower, or the legal power.

Senator HASKELL. Well, now, in your capacity as Commissioner, have you set forth any guidelines as to when the Internal Revenue Service will or will not participate in a Strike Force or——

Well, the first question is: May, as a matter of authority, the Internal Revenue Service say, no, that in this particular strike force you do not think it is worthwhile our participating?

Do you have that authority?

Mr. ALEXANDER. I would doubt whether we have that authority, unless our budget situation is so stringent that we have large curtailments of manpower.

The Executive order signed in 1968 by President Johnson assigned basic responsibility to the Attorney General and called for the agencies to cooperate and work effectively with the Attorney General. We are doing our best to cooperate with the order.

The order also gave recognition to limitations on manpower, and the order, I am sure, did not transcend the limitations on our jurisdiction. Our agents do not have the authority to work nontax cases. Not only would that be an apparent violation of our appropriation act, but also it would expose our agents to the type of risks which both Judge Tyler and I have described.

Senator HASKELL. Do you happen to have any examples of in the past a misuse or overuse of any of the three unique enforcement powers that I mentioned a little bit earlier?

Mr. ALEXANDER. I would be glad to supply you, Mr. Chairman, with judicial comments on the use of our powers. Let the courts speak rather than I.

I think our people have done a good job under difficult circumstances.

Senator HASKELL. Well, I think that would probably be more appropriate than getting your comments. If there are court comments, for the record, I would appreciate it very much indeed.

[Copies of the following reported decisions have been supplied for the record by Mr. Alexander, and were made a part of the official files.]

MATERIALS SUBMITTED BY DONALD C. ALEXANDER

JEOPARDY AND TERMINATION CASES

Kabbaby v. Richardson, 520 F. 2d 334 (5th Cir. 1975)
Willits v. Richardson, 497 F. 2d 240 (5th Cir. 1974)
Clark v. Campbell, 501 F. 2d 108 (5th Cir. 1974), *petition for cert. filed sub nom. United States v. Clark*, 43 U.S.L.W. 34433 (U.S. Dec. 9, 1974) (No. 74–722)
Aguilar v. United States, 501 F. 2d 127 (5th Cir. 1974)

Rinieri v. Scanlon, 254 F. Supp. 469 (S.D.N.Y. 1966)
Pizzarello v. United States, 408 F. 2d 579 (2d Cir. 1969), cert. denied, 396 U.S. 986 (1969)
United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968)
Lucia v. United States, 474 F. 2d 565 (5th Cir. 1973)
Shapiro v. Secretary of State, 499 F. 2d 527 (D.C. Cir. 1974), *cert. granted sub nom. Commissioner v. Shapiro*, 420 U.S. 923 (1975) (No. 74–744)
Woods v. McKeever, 73–2 U.S.T.C. 82, 358 (D. Ariz. 1973)
Lisner v. McCanless, 356 F. Supp. 398 (D. Ariz. 1973)
Hall v. United States, 493 F. 2d 1211 (6th Cir. 1974) cert. granted, 419 U.S. 824 (1974) (No. 74–75)
Laing v. United States, 496 F. 2d 853 (2d Cir. 1974), cert, granted, 419 U.S. 824 (1974) (No. 73–1808)
Shaw v. McKeever, 74–1 U.S.T.C. 83,804 (D. Ariz. 1974)
Rambo v. United States, 492 F. 2d 1060 (6th Cir. 1974), petition for cert. filed, 43 U.S.L.W. 3115 (U.S. July 10, 1974) (No. 73–2005)
Schreck v. United States, 301 F. Supp. 1265 (D. Md. 1969), reaff'd, 375 F. Supp. 742 (D. Md. 1973)
Fancher v. United States, 10 A.F.T.R. 2d 5925 (D. S.D. 1962)
Sherman v. Nash, 488 F. 2d 1081 (3d Cir. 1973)

SUMMONS CASES

United States v. Henry, 491 F. 2d 702 (6th Cir. 1974)
United States v. O'Connor, 118 F. Supp. 248 (D. Mass. 1953)
United States v. Humble Oil & Refining Co., 488 F. 2d 953 (5th Cir. 1974), vacated and remanded, 421 U.S. 943 (1975), on remand, 36 A.F.T.R. 2d 75–5749 (5th Cir. 1975)
United States v. Friedman, 388 F. Supp. 963 (W.D. Pa. 1975), appeal pending sub nom. *United States v. Pittsburgh National Bank*, No. 75–1480, 3d Cir.
Third Northwestern Nat'l Bank v. Sathre, 102 F. Supp. 879 (D. Minn. 1952), appeal dismissed by stipulation 196 F. 2d 501 (8th Cir. 1952)
Lord v. Kelley, 223 F. Supp. 684 (D. Mass. 1963), appeal dismissed, 334 F. 2d 742 (1st Cir. 1964), cert. denied, 379 U.S. 961 (1965)

Senator BYRD. Mr. Chairman, may I ask a question?

Senator HASKELL. By all means, Senator.

Senator BYRD. Mr. Commissioner, in your statement, you quote a Robert Ozer as speaking enthusiastically of an investigation by terrorism.

Would you identify Mr. Ozer?

Mr. ALEXANDER. Mr. Ozer is, I believe, the chief of the Detroit strike force.

Now, perhaps Mr. Ozer was misquoted. People have been misquoted lately, as I know so well, and I am sure that Judge Tyler could respond.

Senator BYRD. Is he a Department of Justice employee?

Mr. ALEXANDER. Yes, sir.

Senator BYRD. Then in your statement you say "what it does not support." The "it" the Internal Revenue Service does not support, however, is conduct which involves the law enforcer becoming the lawbreaker.

Mr. ALEXANDER. We certainly do not support that conduct.

As I mentioned, Mr. Adams testifying for the FBI made it clear he does not support it, either.

Senator BYRD. To what extent does IRS participation in the providing of tax information to the Department of Justice through its participation in the strike force present serious fifth amendment problems which could hamper ordinary noncriminal tax administration?

Mr. ALEXANDER. I think the question is before the Supreme Court now, Senator Byrd, that touches on the issue you just raised, in the *Garner* case, which——

Has that been argued, Mr. Whitaker?

Mr. WHITAKER. Yes, sir. The *Garner* case has been argued, Senator Byrd. It has not yet been decided.

Mr. ALEXANDER. Could you spell out the issue?

Mr. WHITAKER. The issue there was at what stage a defendant is required or entitled to make a fifth amendment claim with respect to information which is on his tax return. The question is whether or not the claim of the fifth amendment can be made when the tax information is sought to be used for a nontax purpose in a criminal prosecution or whether the claim must be made on the tax return itself. That is an issue on which we will have to wait for the Supreme Court to speak. That is one aspect that is involved—a very difficult aspect—involved in the use of tax return information for nontax purposes.

Senator BYRD. Commissioner Alexander, you have referred to the IRS national program concerning improper reporting of political campaign contributions.

What has been done in this regard?

Mr. ALEXANDER. We have done a great deal, and we are going to do a great deal more, Senator Byrd. We have referred a very large number of leads or information items, as we call them, to the field. We checked a large number of political committees of both parties, and we have referred items to our field offices for development of what we think will be important tax cases.

We also have great concern about what we have developed, and what we have heard about, in the way of improper corporate activities, both in the political arena in this country and in slush funds and other improper payments outside of this country. We are devoting a substantial part of our skimpy resources to this effort. This is a difficult area. We think our efforts are important to the tax system, and we also think that it serves a sound nontax national goal as well.

Senator BYRD. Thank you, sir.

Your Service has a very difficult balancing act, I suppose. You have an obligation to protect the privacy of the individual, but you have an obligation to protect all of the taxpayers in the sense that individual taxpayers must pay their just share of the taxes. I think you have a difficult balancing act. I am sure the Service has not been perfect, but I am inclined to think that overall the Service has done a rather good job.

Thank you, Mr. Chairman.

Senator HASKELL. Commissioner, you mentioned section 881(a), of title 21.

Mr. ALEXANDER. That is the forfeiture provision.

Senator HASKELL. You mentioned that some other agency asked you to use that in connection with the taking of cash away from narcotics dealers.

To your knowledge, has the Justice Department, or whoever it is that asked you, ever requested a comparable power be granted to it in its own right as opposed to through the Internal Revenue Service?

Mr. ALEXANDER. Not as far as I know.

The question deals with the use of our powers to terminate taxable years and then to take property after we had determined the tax. Some courts regarded actions taken in a few instances by a few officers of the Service as being excessive. They stated, in instances that I will provide to this committee, that the tax was apparently based not upon a reasonable determination of liability but instead upon a determination of how much cash the trafficker had at the time of his arrest.

Now, the amount of cash that the trafficker had at the time of his arrest is indeed important if the forfeiture provision, section 881(a) that I mentioned, were broadened to provide for the forfeiture of cash, but it is hardly controlling and perhaps entirely irrelevant to the determination of the proper tax liability. And we cannot terminate a taxable year and take property unless we make a reasonable determination of tax liability on the then facts; otherwise, there could be a violation of section 7214 of the Internal Revenue Code.

Senator HASKELL. There has been some evidence at one hearing that this committee has had that in this area—and by criticizing the Internal Revenue Service I want to preface this by saying nobody is perfect—but in certain areas the early terminations and the jeopardy assessment of tax, or determination of tax, which preceded the early terminations were not based upon very much in the way of facts.

We had some testimony here the other day along those lines.

And, of course, although it is great and proper to put narcotics traffickers out of business, it seems to me—and I guess this is getting into a statement more than a question—that this is not a proper function of the Internal Revenue Service, and it was for that reason that I asked you whether any other agency had asked for a comparable power which it could use separate and apart from borrowing the power of the Internal Revenue Service.

Mr. ALEXANDER. Not as far as I know, in answer to your question.

We have sent our recommendation for a broadening of the forfeiture provision to the Department of Justice, to the FBI, to the DEA. This provision was considered by the Ways and Means Committee in 1974 at our request, but the committee found that it did not have jurisdiction over title 21 and did not proceed with the enactment of a broadened forfeiture provision which would legally deprive the narcotic trafficker of his cash.

Senator HASKELL. Thank you, Commissioner.

I think, in essence, one of the things you are saying is that you believe the Service should have a greater role or final say in determining which criminal tax cases to pursue depending upon a great many circumstances. I think you said that.

Mr. ALEXANDER. I did say that, because we think that effectively cooperating and responsibility cooperating does not mean that we should take orders to work a specific case when it does not meet our selection criteria.

Senator HASKELL. Now, what would be your selection criteria?

Mr. ALEXANDER. I am going to ask the career people who know the selection criteria far better than I to respond to this question.

Mr. Wolfe?

Mr. Clancy?

Mr. CLANCY. Sir, we have basically two policy statements that we rely on when we are selecting a potential criminal case. And I will just read the policy statement, if you don't mind.

Senator HASKELL. As long as they are not too long.

Mr. CLANCY. They are not very long, sir.

The enforcement program will be administered uniformly, applying the same standards to all violations investigated. It is not inconsistent with this principle which would select more aggravated cases, or those whose prosecution is believed to be most effective in acting as a deterrent to discourage similar violations, when available resources preclude investigation and development of all cases.

This is one of our basic policy statements.

The other is, basically—P-9-18—of course these are public. We would be happy to furnish them for the record, too, Mr. Chairman. But this one is a little bit longer. But I will paraphrase it, if you don't mind.

[The material referred to follows:]

P-9-3 (APPROVED 2-24-61)

UNIFORM ENFORCEMENT REQUIRED

The enforcement program will be administered uniformly, applying the same standards to all violations investigated. It is not inconsistent with this principle to select the more aggravated cases, or those whose prosecution is believed to be most effective in acting as a deterrent to discourage similar violations, when available resources preclude investigation and development of all cases.

P-9-18 (Approved 7-18-75)

BALANCED ENFORCEMENT PROGRAM NECESSARY

To foster voluntary compliance with the internal revenue laws by all taxpayers, the Intelligence Division must provide a balanced program of enforcement. In addition to the development of successful prosecution cases, consideration must be given to the need to:

(1) provide some coverage of all types of taxes and violations in all strata of society and geographic areas within district jurisdiction.

(2) direct enforcement efforts toward those segments of the population where noncompliance with the tax laws is highest, including major racketeers and those taxpayers with income from illegal sources or corrupt practices;

(3) give priority to investigations of alleged criminal violations which obstruct the administration of internal revenue laws, such as (a) multiple false refund claims, (b) attempts to bribe or assault employees during raids or arrests conducted by Intelligence or during an armed escort assignment, (c) forcibly rescuing seized property and (d) hazardous situations requiring armed escorts.

TRUST FUND CASES

The enforcement program will include investigations of alleged violations of the trust fund penalty provisions of the code that indicate disregard of the obligation to withhold or collect and pay over such taxes.

INVESTIGATIVE PROCEDURE—P-9-20 (APPROVED 3-23-61)

INVESTIGATIVE POLICY

All criminal investigations should be commenced and concluded as expeditiously as possible. They should be conducted impartially and thoroughly to obtain all pertinent information and evidence. Duplication in investigations, unnecessary inconveniences to the public and unnecessary embarrassment to the taxpayer should be avoided. Appropriate courtesies should be shown when soliciting information.

Full-scale investigations should be terminated when sufficient evidence to convict has been accumulated and there are no reasonable grounds to expect that further investigation may produce significant results in relation to the available evidence and to the additional investigative time and effort involved. All who are implicated in a crime will be sought out and definitive evidence obtained as to their implication, to the extent reasonable. Investigations of lesser prosecution potential shou'd be closed when there are insufficient resources in the foreseeable future for completing them and there are others of greater potential for development as substantial or flagrant criminal violations or having a greater deterrent potential.

SPECIAL ENFORCEMENT—P–9–46 (APPROVED 9–19–72)

ENFORCEMENT MEASURES APPLICABLE TO PERSONS DERIVING INCOME FROM ILLEGAL ACTIVITIES

The Service's overall enforcement effort will include special progams and procedures for identifying those taxpayers who derive substantial income from illegal activities and for a continuing scrutiny of the tax affairs of those so identified.

ANNUAL REVIEW OF RETURNS AND RELATED INFORMATION

Once each year the latest returns filed by persons identified as major special enforcement subjects, and related information, shall be scrutinized by designated district office enforcement officials for the purpose of recommending or initiating any Service action warranted.

PARTICIPATION IN GOVERNMENT'S DRIVE AGAINST SIGNIFICANT AREAS OF CRIMINAL ACTIVITY

The Service will participate in the Government's special drives against organized crime and other significant areas of criminal activity. This will include cooperation with the Department of Justice and other Treasury enforcement agencies in special programs aimed at individuals and criminal activities of mutual concern.

Mr. CLANCY. It says a balanced enforcement program is necessary. That is the purpose of the policy statement. It is to foster voluntary compliance with the Internal Revenue laws by all taxpayers, and the Intelligence Division must provide a balanced program of enforcement. We must assure that we provide some coverage of all types of taxes and violations in all strata of society, in geographic areas, within district jurisdictions. The enforcement efforts are directed against those segments of the population where noncompliance with the tax laws is highest, including major racketeers and those taxpayers with income from illegal sources or corrupt practices.

And then, of course, we give priority to investigations such as false refund claims, attempts to bribe or assault employees during raids or arrest conducted by Intelligence or during armed escort assignments, forcibly rescuing seized property in a hazardous situation requiring armed escorts.

We also have a program in the trust fund area.

So we have to maintain with our limited resources of something less than 2,700 special agents a balanced enforcement covering all of our 58 districts throughout the country.

Senator HASKELL. Thank you, sir.

Commissioner, just one more line of questioning. And that is, Senator Byrd asked you the question of illegal political contributions and what was done; and I believe you said that you were pursuing that, that you had sent instructions into the field.

Let me ask you two questions: Does the national office keep in contact with the field, or to what extent do they keep in contact with the field to find out what is going on in that area?

Mr. ALEXANDER. Well, the national office is responsible for developing programs, including this program, and for implementing these programs. Through our decentralized structure, the field offices have direct and day-to-day control over our people who are engaged in these investigations. They report on the status of their programs, including this one, to the national office, in this case to Mr. Clancy and to Mr. Wolfe, who in turn keep me advised. We eliminated the old sensitive case system.

Senator HASKELL. I realize that.

Mr. ALEXANDER. So we do not have this reporting on so-called sensitive cases that we formerly had, because it seemed to me that the detriments of that system far outweighed whatever benefits it might have served.

Mr. Wolfe, would you care to amplify what I have stated?

Mr. WOLFE. Yes.

Mr. Chairman, particularly in the large corporate area—we are talking about, now, the giants of industry—we keep in the national office a record in Washington of every case that is under examination in the field, the progress of that examination and any particular issues that are being raised that should be distributed to other areas within the United States for use by our agents examining similar corporations. So we know about those; we know the status of them.

In addition—and that runs about a thousand cases.

In addition, as a result of information we gathered from the Senate Watergate hearings, the Special Prosecutor's Office, we accumulated a great deal of information on what was happening and contributions to various political committees by various individuals and corporate structures. We have made all of that information available to all of our field offices. We also require that they advise us of the status of the cases involving those matters.

So in those two areas, in addition to issuing very explicit instructions, we are also keeping up with where they are.

Senator HASKELL. Did you ever perform an inspection function to see that—you know the old army game—they send you in a nice report?

Do you ever go into the field to check that report and see if it is quite as nice as it says it is?

Mr. ALEXANDER. We certainly do, both with our analysts and with our Inspection Service. Internal Audit certainly does check up with how our programs are working and whether the figures that may be submitted to us have substance behind them.

Senator HASKELL. One last question along these lines: Assuming that you have a case which you are satisfied with, that there was in fact an illegal political contribution, do you make a recommendation for prosecution of individuals to Justice, or do you merely pass on the factual matter obtained?

Mr. ALEXANDER. We make recommendations for prosecution where we have a case that we believe should be prosecuted.

Senator HASKELL. Thank you, Commissioner, very much indeed.

Senator Curtis, do you have some questions or a statement?

Senator CURTIS. Well, call on the others first because I am scanning here what the Commissioner had to say. I am not a member of the subcommittee, but I am interested.

Senator HASKELL. Senator Hansen?

Senator HANSEN. Mr. Chairman, I, too, am not a member of the subcommittee. I appreciate very much the presence of the Commissioner here this morning and would add my general word of commendation to that already uttered by Senator Byrd, in that I think most people are in general agreement with me when I say that the IRS has done a good job.

The way we have of collecting taxes in this country, the basic respect that the Service has earned over the years, I think makes us the envy of most other nations around the world.

Commissioner, is any of the information that the IRS has in its files denied other law enforcement agencies of the Federal Government?

Mr. ALEXANDER. Some of it is, Senator Hansen. But "denied"—the Commissioner has the right under Presidential regulations issued pursuant to section 6103 of the Code to make information available or to refrain from making information available to certain agencies asking for information upon the request of the head of the agency as to a matter officially before them.

Now very, very infrequently a question does arise as to the scope of the request, as to the need for the information, but nearly every time a request comes in in proper form, making what appears to be a proper request for information needed by that agency in the fulfillment of its mission, we grant such request.

Senator HANSEN. Do you know of any instances wherein, or any instance wherein an accused has been able to sustain his position by virtue of the charge that the information was conveyed improperly or the impropriety of giving information to another law enforcement branch of the Government that would have held that information secret or privileged information?

Mr. ALEXANDER. Well, in the *Garner* case that Chief Counsel Whitaker described, the basic issue is raised as to the application of fifth amendment privilege to information supplied on the tax return. In the past in two cases involving——

Senator HANSEN. If I could interrupt you right there—I am not as familiar with that case as I would like to be—is the contention there made by the defendant that the information he supplied on his IRS return is not public information and as a matter of fact should not be made available to other governmental agencies, and what he may have said or what he may have declared on his tax return could be properly withheld from a court, that it would result in self-incrimination if it were to be made available to other Federal agencies? Is that his contention?

Mr. WHITAKER. It is a self-incrimination contention, Senator.

The issue arose when, as I understand it, the prosecuting attorney sought to introduce in evidence, or did introduce in evidence, prior tax returns as corroborative evidence, and the defendant Garner claimed the right to exclude that evidence on the basis of the fifth amendment. That is the narrow issue.

As far as we know, there is no case in which the question of the Service's disclosure to another Federal agency pursuant to the regulations has been challenged; that is, a case in which the disclosure within the Federal Government has been challenged as violating rights, although that may come up now under the Privacy Act.

There has been a good deal of law on the books and not much opportunity to develop it as yet.

Senator HANSEN. I have two other questions, Mr. Chairman.

Is the basic issue whether the IRS ought to be involved in Strike Force activities or whether the IRS ought to have a greater say in which cases to pursue?

Mr. ALEXANDER. The issue is not whether the IRS ought to be involved in Strike Force activity; the IRS is involved and it should be involved. The IRS increased its involvement this year, as I mentioned on page 7 of my statement. In fiscal year 1974 the IRS devoted 1,792 man-years, a substantial number, to Strike Force and other Justice related cases.

The issues are: one, of control; two, of the amount of resources allocated to the Strike Force.

Senator HANSEN. You are talking about budget now?

Mr. ALEXANDER. Right. And budget will be a tougher issue next year than it is this year because if we have to administer the tax system and enforce the tax laws with 4,000 less people, then we are going to have less people in our special agent ranks, and the job is going to be bigger next year than it was this year.

The issue also relates to case selection, because with fewer people and a larger job we need to make the optimum use of our people to carry out our mission, and our mission is the administration and enforcement of the tax laws of the United States.

Senator HANSEN. Thank you, Mr. Chairman.

Senator HASKELL. Senator Byrd?

Senator BYRD. I have just one question, if I may, Mr. Chairman.

Mr. Commissioner, what is the mechanism for selecting individual returns for audit?

Mr. ALEXANDER. Most individual returns are selected for audit by computer, Senator Byrd. About 60 percent, I believe, are selected by the application of our DIF, our discriminant function system, to the return when it passes through our service centers. Returns are scored and those most likely to be in need of audit are audited.

Some are selected because of a selection of another return that indicates that we should look back a year and select a return because the issue which causes us concern arose in a prior period.

And some are selected because they are related.

For example, we are now auditing, as we should be, a substantial number of these tax shelter syndications. Some of them have met their tax responsibilities well, but a number have not. There they have a host of partners and we need to examine the returns of the partners. We select those for audit.

Some returns are selected by reason of a belief that there has been substantial underreporting of income, for example, and now I am touching on the group, the small group of taxpayers to which we devote a large percentage of our resources, those who are engaged in organized criminal activity.

Senator BYRD. Generally speaking, then, the returns are selected on a mechanical basis.

Mr. ALEXANDER. Generally speaking.

We do have all sorts of gradations here, Senator Byrd. Our audit program is like an inverted pyramid. We examine a much larger percentage of returns at the top of the income strata than we do at the bottom, as we think we should. We examine 100 percent of the major corporations in this country, as we think we should.

Senator BYRD. Thank you, sir.

Thank you, Mr. Chairman.

Senator HASKELL. Senator Curtis.

Senator CURTIS. Mr. Commissioner, I have just barely scanned part of your statement, so my questions will be rather brief.

How many individual income tax returns are filed now, approximately, this year?

Mr. ALEXANDER. About 84 million, as I recall, Senator Curtis. I will get the exact number for the record.

Senator CURTIS. That is near enough.

I believe it is true that when I came to Congress the number of individual taxpayers was 5 million. This was before World War II started in Europe. Would 1939, about 5 million be correct?

Mr. WOLFE. That is correct.

Senator CURTIS. But even before that, the practice had been rather well established, whether it had been in the statute or not, that the tax angle was used to reach certain criminals and gross violators of the law. Some of our most notorious gangsters were prosecuted for income tax violation.

Is it not true that in all probability a great many types of criminal activity do also have a very material tax angle to them?

Mr. ALEXANDER. Crimes of passion, of course, should be excluded because those are committed, I think, without regard to gain of a type that we could subject to tax. But organized crime, yes; those people do not rush forward and pay their taxes.

Now, with corruption, Senator, you have a different problem. There has been a recent indictment that all of us have read about in the papers of a Governor of a nearby State that does not involve any tax count, as least so far as I know.

Senator CURTIS. But on the other hand, all of those illegal activities which would lead to unlawful attainment of money or income would in all probability have some tax involved, is that not true? Because if activities were illegal, the chances are that they would be hidden, and at least there would be sufficient tax problems involved that it would be incumbent upon the Service to examine it; is that not correct?

Mr. ALEXANDER. We believe that those engaged in organized crime do not meet their tax responsibilities very well, and we believe that Mr. Al Capone was properly prosecuted. And we believe that we need to make major tax cases here against this segment of our taxpaying or nontaxpaying population, and we shall continue to do so.

The question is one of allocation of resources; the question is also one of control of our people and their powers and their techniques. So there is no disagreement, as I see it, with respect to our obligation to enforce the tax laws against those who violate other laws.

On page 49 of the transcript of April 21 I stated that those who tend to earn their money by violating other laws surely can be reasonably expected to have little respect for the tax laws. And the chairman stated in response:

> You are making a presumption that they violated other laws, Commissioner. And I am suggesting that the Justice Department, absent the regulation that you recently put into effect on mere suspicion or mere whim, could in effect piggyback on any of your powers.

And then he stated—

> I am not talking about present company; I am talking about past company or possible future company.

Senator CURTIS. Is it not also true that the responsibility in the conduct of an investigation where the subject of the investigation may be involved in criminal activity, the responsibility for maintaining the admissibility of the evidence you gather is more important now than ever before?

Mr. ALEXANDER. It certainly is important, and that means that we should not use methods which will result in cases having to be dropped or in acquiring evidence which is going to be thrown out. That is not an effective way of making a tax case, nor a sound way for an agency like the IRS, which affects so many people in so many ways.

Senator CURTIS. And part of that problem is increased by the volume of work and is also being altered by Supreme Court decisions of the last decade; is that not correct, the two?

Mr. ALEXANDER. Well, the Supreme Court decisions of the last decade have gone a long way toward striking a balance between law enforcement and constitutional or civil rights, more toward the constitutional and civil rights than toward the other side.

Senator CURTIS. That has had a very material effect upon the responsibilities and procedures of the IRS; has it not?

Mr. ALEXANDER. It has, but perhaps a more material effect on matters that Judge Tyler would be in a better position to discuss than I.

As to the IRS, one of the effects is the giving of our Miranda-type warning. That has surely been an effect.

A second effect, of course, is the exclusionary rule with respect to illegal investigative efforts, and that has been in the papers recently.

Mr. Whitaker, do you have any further thoughts on this point as Chief Counsel for IRS?

Mr. WHITAKER. No, I am not sure I do, Commissioner. It certainly is true that we are all much more conscious of individual rights than we have ever had to be before. The courts have gone a long way in that direction, which makes it all the more important within the Revenue Service to be very precise in the proper use of our investigative powers and techniques.

Senator CURTIS. Now, as a matter of law, suppose that in spite of the best efforts, the best instructions to the agents, something does happen, an action is taken that renders your evidence obtained inadmissible in any criminal case; does that stop you from proceeding civilly to collect the taxes, including penalties and interest?

Mr. WHITAKER. That issue is pending before the Supreme Court, also, Senator Curtis, in the *Janus* case. The cases which have focused

on it, most recent cases, which came out of the Tax Court, the Fifth Circuit and *Janus*, have held that we could not use for civil purposes evidence which is suppressible for criminal purposes. We anticipate the Supreme Court will, in the *Janus* case, give us more information on that point.

Senator CURTIS. I might delay you just one minute to tell you that I served on the Special Select Committee of the Committee on Ways and Means that investigated the Internal Revenue Service in 1951 and 1952, and became very sensitive because a few people took advantage of it. And they would show up and make accusations against field agents and others with whom they had had a disagreement and accused them of improprieties. And it was very important to the members of the committee in discussing the matter to make sure that it was stated that the vast majority of all of the people working for the IRS were honest and conscientious and so on, because there was sort of a blanket indictment against them all.

Mr. ALEXANDER. There frequently is, Senator Curtis.

Senator CURTIS. Well, we were very sensitive about it, and when I was called on to comment about it, I tried to observe that. And I was in San Francisco holding hearings on the San Francisco Office. The University of Nebraska had a luncheon; and I was invited, and spoke a little bit. And afterwards they had questions. And a very large and husky fellow who looked like he would be a good athlete himself, at about the end of the question period he got up and he said, "Congressman, I work for the Internal Revenue Service," and he said, "I would like to ask you a question."

Well, I thought, here it comes. All of the excesses of the committee and so on will be tied up in this question. And I said, "All right, go ahead."

And he said: "What the hell happened to our football team?

[General laughter.]

Senator Haskell. Commissioner, we all appreciate your being here. I would just really like to close with an observation. I think you have made a very impressive case for the Internal Revenue Service to operate first and foremost with the collection and enforcement of the tax laws.

To give you an example—you gave the example of some resources being siphoned off because somebody felt that getting heroin or other drug traffickers in jail was of first national importance. I think if I were in the position of being able to exert comparable influence, I would, if I were the Justice Department, say that tracking down people who make illegal political contributions is probably of higher public policy, because it subverts the system. But I think the very fact that I have that different prejudice than those other people did perhaps illustrate the desirability of having the tax laws enforced for the benefit of the tax laws and use our public policy elsewhere.

Now, maybe some of the subsequent witnesses will make a case that changes my mind. But I must say, you have been very impressive, and I thank you for coming.

Mr. ALEXANDER. Thank you, Mr. Chairman.

[The prepared statement of Mr. Alexander follows:]

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER, INTERNAL REVENUE SERVICE

I am pleased to appear before you today to explore with you the subject of the role which the Internal Revenue Service can and should play. The Internal Revenue Service has a large, difficult and important role—the collection of the revenues and the administration and enforcement of the Federal tax laws. If the Internal Revenue Service's ability to carry out its role is impaired, there will be a serious adverse effect on our system of taxation and government.

The subcommittee today begins considering what this basic role entails, what additional roles the Internal Revenue Service can and should be called upon to play, and what the costs will be. This analysis is necessary because most of the additional jobs that the Internal Revenue Service is called upon to perform from time to time are necessary and in many cases quite important to society and if they could be performed by the IRS without significant social costs, the service should undoubtedly do them. Unfortunately, however, in most instances, a social cost must be paid when the energies of the IRS are diverted from its primary role. In many cases these costs may not be apparent at the outset.

The responsibility for the investigation and development of cases involving violations of Federal law are assigned throughout the Federal establishment. Many agencies and departments, such as the S.E.C., Departments of Labor and Housing and Urban Development, and the Drug Enforcement Administration, have the primary responsibility for administering laws within their jurisdiction and for investigating violations of those provisions. The Internal Revenue Service is similarly situated—it has the obligation to administer a complex system which touches more Americans than any other, and to investigate violations of those provisions. Congress should be aware of the costs likely to be incurred and dangers which may arise if the limited law enforcement capacity of the service is diverted from a method of operation considered to be in the best interests of sound tax administration.

The issue on which your subcommittee is holding hearings today is one on which I have spoken several times before. It was probably in my speech before the tax section of the American Bar Association in Honolulu, in August 1974, that I first attempted to focus public attention on the fact that the Internal Revenue Service has been performing a number of functions unrelated to tax administration and that such activities had "a measurable effect on both the level of resources devoted to the tax administration effort and the quality of that effort . . ." In a later address before the tax section of the New York Bar Association I noted that the issue is not whether organized criminal activity must be prevented or deterred. Of course it must, and of course organized crime figures, like others must meet their tax obligations, but the issue is the extent to which the IRS, with its limited resources, can participate in these endeavors without rendering itself incapable of effectively carrying out its almost limitless task of administering the tax system. More recently, before Chairman Rosenthal's subcommittee on October 6, 1975, I reaffirmed my solid support for a firm and comprehensive program of tax law enforcement, but discussed in some detail with the subcommittee some of the steps which the service has taken to insure that, in the information it gathers, in the techniques it employs, and in the application of its powers and resources, the Service is engaged in matters that relate only to tax administration and enforcement.

I have described before other forums the numerous actions which the Internal Revenue Service has recently taken to restore confidence in the tax administration system and to insure that the job of tax administration and enforcement which is the Service's only mission, be carried on in a fair and effective manner. The Internal Revenue Service probably intrudes more deeply and more frequently into the private affairs of more Americans than any other organization, public or private. During the last fiscal period, for example, 85 million individuals filed Federal income tax returns and almost 2 million individuals' income tax returns were audited by the Service. Confidence in our self assessment system, which is a prerequisite to its effectiveness, will be severely impaired if the Service permits its unique civil enforcement powers and expertly trained personnel to be diverted to non-tax uses. The Internal Revenue Service has, therefore, taken a number of internal actions designed to insure that our agency does not exceed its stated purpose. The Service now has, for example, clear guidelines on the gathering of information, designed to insure that it collects "only information necessary for the enforcement of the tax laws".

Because of the fact that engaging in the recruiting and use of paid informants is a risky process that may lead to abuses, and because of difficulty of policing it—the confidentality of informer relationships may be used as a means of blocking review, and supervision—it is now required that payment of amounts to informers receive specific national office approval. We are considering a redelegation of this authority to the office of regional commissioner, the next highest level of authority.

There is a great deal of interest now, among law enforcement agencies, in waging war against organized criminal activity and white-collar crime. The IRS supports vigorous enforcement of the law against those suspected of organized criminal activity, official corruption and narcotics trafficking. What it does not support, however, is conduct which involves the law enforcer becoming the law breaker. Robert Ozer, chief of the Detroit strike force is quoted in the recent issue of Newsweek magazine as speaking enthusiastically of "investigation by terrorism". We question whether this would be an appropriate standard for the Service to employ.

The actions which have been taken by the Internal Revenue Service recently are designed to implement what should be a guiding principle of tax administration—the Service's power, and its people, should not be used to further an end other than tax administration and tax enforcement. For example, our participation in the narcotics traffickers' program not only misapplied our prerogatives in some cases but produced poor results insofar as collected revenue is concerned. Although the Service's power of seizure, terminations of taxable years and jeopardy assessments may have accomplished, in some instances, the objective of depriving the arrested narcotics trafficer of his working capital (by constructing an arbitrary tax assessment and seizing that amount of the cash which represented the unpaid tax liability), such practice would clearly represent an abuse of the Service's power. Even before the Service's action in these narcotics cases drew judicial criticism, we had taken steps to insure that the same standards would be applied in narcotics cases as are applied to tax cases generally. There must be a reasonable basis for making an assessment, and the circumstances must show that collection of taxes is in jeopardy, if these weapons which the Congress has granted are to be used. It is simply not appropriate to use the tax laws as a means of effecting forfeitures. Further, while the central objective of our criminal enforcement program should be the establishment of a deterrent or corrective effect, the narcotics traffickers' program produced such a poor cost-to-collection ratio, in comparison with our general program, that that alone dictated a fundamental reexamination of that activity. The objectivity of depriving suspected narcotics traffickers of their working capital would be far better accomplished by an amendment, suggested by the Internal Revenue Service, to broaden the forfeiture provision dealing with drug abuse, prevention and control to provide for the forfeiture of cash as well. If this were done it would not be necessary to use the tax laws for a purpose for which they were not intended.

The strike force activity, coordinated by the Department of Justice, is another area in which there is considerable potential for the misuse and abuse of the Internal Revenue Service's authority and resources. While the recently released report to the Administrative Conference of the United States on Tax Administration would have the Service completely remove itself from strike force activity, (finding, as it does, that the cost to effective tax administration is simply too great), the Service does *not* propose to withdraw from this unified investigative and prosecutorial effort. In fact, the staff years expended during the first quarter of fiscal 1976 (16.9% of total Intelligence Division investigative time) show an increase (from 13.2%) from the first quarter of fiscal 1975. Of all the agencies cooperating in the strike force activity the Internal Revenue Service has historically made more personnel available to that activity than any of the other participating agencies, including the FBI. Effective and fair tax enforcement assumes that all taxpayers, including those suspected of organized criminal activity and so called white-collar criminal activity, be appropriate subjects for the investigation of tax law violations. The strike force, under the coordination of the Department of Justice's strike force attorney, and cases developed as a result of direct cooperation with the U.S. attorneys should constitute an effective vehicle for the identification, investigation, and subsequent prosecution, of those involved in criminal activity who are suspected of committing tax law violations.

Despite the fact that the strike force approach may, indeed, be a sound manner in which to develop tax cases involving suspected organized criminal activity, the Service has some concerns about its participation in this effort. For purposes of analysis it is possible to classify the potential problem areas in two categories, those dealing with "control"—who should have supervisory control over the IRS agents assigned to the strike force—and those dealing with the parameters of the Service's commitment of resources to such activity.

We have been, and currently are carrying on discussions with the Department of Justice concerning the areas in which a difference of view exists between us and the Department. These discussions are not proceeding at as fast a pace as IRS would like and agreement on guidelines controlling each agency's participation may be difficult to achieve. On the question of whether the Service is to have the right to control its personnel assigned to strike forces, there appears to be agreement. Deputy Attorney General Tyler testified before Congressman Vanik's Subcommittee on Oversight during September that "each agency participates in the planning and retains absolute control over its operation." It would seem reasonable to assume that retention by the IRS of control includes the right of appropriate IRS supervisors to decide what tax cases should be selected for investigation. Given our limited resources—only 2,700 special agents—for the investigation of all tax law violations, those committed by the small criminal element and the large noncriminal portion of the taxpayer population, we must select those cases which serve our compliance objectives.

Though our enforcement program produces substantial amounts of revenue, it does not exist for this purpose—its central mission is to bolster and make our voluntary self-assessment system more effective through the establishment of a deterrent and corrective effect. If IRS agents participating in a strike force "team" work on a case which they would not ordinarily select to serve compliance objectives, the limited enforcement resources of the Service are not being properly utilized. We think that the Internal Reveune Service, which has the responsibility for administering our Nation's vast tax system, should decide which cases best serve compliance objectives. If the Service is compelled to choose, in the allocation of its resources between a case involving a suspected member of an organized crime group and a respected professional, it may well choose to develop the case involving the latter taxpayer. The recently released report to the Administrative Conference of the United States on Tax Administration, found, for example, that since average taxpayers may not associate themselves with the taxpayer involved in an organized crime criminal tax case, and may be misled into believing that tax law prosecutions are more or less reserved for organized crime figures, that "there is grave doubt that the investigation, prosecution, and conviction of organized crime figures promotes the objectives of the general program."

Our point is simply this—sound tax administration and enforcement is not benefited or served by directing IRS agents to spend their time developing criminal tax cases which fall short of the case selection criteria which the Internal Revenue Service has specifically designated as furthering the establishment of the corrective and deterrent effect which is essential to a well functioning, voluntary compliance system. This is not to say, of course, that the Service should not investigate and develop criminal tax cases against individuals suspected of organized criminal activity. Of course it should. Agents participating in strike force activities should receive, from the strike force attorney acting in a coordinating capacity, information regarding potential subjects for tax investigation. This information should serve as the basis for the development of cases which are consistent with the Service's case selection criteria. Service personnel should not, however, be directed to work cases simply because organized criminal activity or white-collar criminal activity is suspected.

Also, IRS agents assigned to strike force activity should not end up working on so-called title 18 criminal violations, that is, cases which involve non-tax criminal violations. This, however, may well occur if Internal Reveune Service personnel begin working cases which fall below the Service's own criteria. In such situations, it is likely that the agent, working a substandard potential criminal tax case, will actually be involved in developing a so-called title 18 criminal violation ignoring for the moment the fact that such activity does not further the goals of revenue administration, other problems are created by the involvement of Internal Revenue Service personnel in non-tax investigative work. Such activity, since it exceeds the agents' authority (which is to investi-

gate tax law violations) might well involve a misuse of our appropriated funds. Further, the involvement of Internal Revenue Service personnel in investigative activity unrelated to the development of sound tax cases, might possibly well subject special agents to loss of immunity for the consequences of their actions. Recent cases have held that the notion of absolute immunity for officials of the executive department no longer exists. Instead there is only a qualified immunity—the extent of that immunity being dependent upon the scope of discretion and responsibilities possessed by the individual involved. The court of appeals for the ninth circuit recently pointed out in *Mark* v. *Groff* that the scope of the immunity possessed by an IRS agent is, by definition, relatively narrow since his range of official discretion and responsibility is also narrow. If the actions of the Service employee were not in the course of his official conduct, and they would seem not to be if the agent was involved in investigating, or developing leads in, a case which had no tax potential, he might not be entitled to immunity. Regardless of what this line of decisions portends insofar as liability for the United States is concerned, it does not seem appropriate for the United States to place its employees in situations in which they might be individually liable.

Questions relating to the Service's allocation of its resources constitute the second group of considerations involved in the Service's participation in strike force and joint investigative activity with United States attorneys. The recently released report to the Administrative Conference of the United States states the issue succinctly: "First, and quite obviously, to the extent that Service personnel are assigned to work (special enforcement program) cases, they will not be available for (taxpayer in general program), where deterrent objectives of the entire enforcement program are more fully served". While our special enforcement program activity, which includes the strike force as well as cases developed as a result of cooperation with U.S. attorneys, does produce cases which are promotive of the Service's general compliance goals, it would be inimical to sound tax administration for the Service to overemphasize its involvement in cases concerning individuals suspected of organized criminal activity to the detriment of its other responsibilities. As the report to the Administrative Conference suggests, such an action might adversely affect "the reputation of the Service for fair and impartial administration of the tax laws."

The Service must continue to subject its participation in the strike force effort, and other joint investigations, to the closest scrutiny. While it is certainly appropriate to commit some resources to strike force investigations, and investigations carried on in cooperation with a United States attorney, our participation in such activity should be limited to the extent that it produces tax cases which are promotive of the best interests of our compliance program. The Administrative Conference report contains some observations that should concern us. The report notes that frequently "criminal tax cases which are investigated by a strike force group tend to be dropped at the indictment stage in favor of title 18 criminal cases." To the extent this is done, it can be readily seen that the advantages to tax enforcement may be nil, despite the significant amount of time that may have been devoted by Service personnel to the development of the tax case. The notion that the Service benefits by having its tax cases handled in a speedy and aggressive manner by the strike force attorney is also questioned by the Administrative Conference report. The report notes that "the strike force attorney has no particular interest in obtaining criminal tax convictions in preference to non-tax criminal convictions." In view of the fact that tax cases are often more complex and difficult to prove, the report notes that "this creates the distinct possibility that the cases which he (the strike force attorney) pursues will not be tax cases".

The Internal Revenue Service feels that it must subject its participation in the strike force program to the same kind of scrutiny which it applies, on a regular basis, to all of its activities. This is particularly true in a period of budgetary stringency such as 1976–1977. A recent study by the Internal Audit Division of the Service's participation in the strike force program in the three largest strike force locations present somewhat the same kind of discouraging picture, from a revenue point of view, as that presented by our participation in the narcotics traffickers' program. The study reveals that deficiencies of $122.5 million were proposed in 157 strike force cases developed during fiscal years 1972 and 1973 by agents in these three locations. Of this amount, as of July, 1975, only $12.1 million had actually been assessed, and as of the same date, only $1.3 million in taxes

and penalties had been collected. It is obvious that the amounts actually assessed represent a very small percentage, only 10% in this instance, of the deficiencies originally proposed. Further, the amounts actually collected in these cases seem to represent a disproportionately low percentage of the amounts actually assessed. Of the $12.1 million actually assessed, $6.0 million had either been abated or disposed of as uncollectable. Thus even if the remaining $4.8 million of the $12.1 million actually assessed is eventually collected—a possibility which must be considered remote—the total amount collected will be just about the same as the $6.0 million which was either abated or found to be uncollectable and a very small percentage of the amounts originally proposed. These figures seem to indicate that we may not have been making the most effective use of our investigative resources.

The argument is vigorously made that the Service's participation in tax cases involving those suspected or organized criminal activities is essential to the success of the general commitment which this Nation has against organized crime and white collar criminals. The validity of this proposition is questionable. First, it is misleading to imply, as is often done, that tax law violations constitute the only, or even the main, weapon to be used in the drive against crime, white-collar criminals and political corruption. The recent indictment of Governor Mandel indicates that the Department of Justice can proceed to develop evidence and obtain indictments in cases of this type which do not involve alleged tax law violations.

The Federal Bureau of Investigation, which possesses broad investigative powers, has underlying jurisdiction over all Federal offenses and is specifically charged, "subject to the general supervision of the attorney general", to "investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest . . ." There are recent indications that the FBI is participating to at considerably greater extent in the type of investigation that most people think fall within its province. For example, the 1975 annual report of the FBI states that during fiscal year 1975 "the FBI recorded a number of significant achievements in the fight against organized crime . . . with investigations resulting in more than 1,400 convictions of hoodlum, gambling and vice figures". The report goes on to state that "approximately 1,900 other organized crime subjects including three national syndicate leaders, were in various stages of prosecution as the fiscal year ended". In the area of white-collar crime, the recent annual report recites the same type of substantial activity. It is noted that "crimes investigated by the FBI which fall into the white-collar category have increased over twenty-five percent since fiscal 1971 and that "during fiscal 1975, 3,427 convictions were recorded in white-collar crime matters investigated by the FBI, nearly fifteen percent more than the previous fiscal year". This increased effort by the FBI in this type of investigation is highly commendable. The FBI report states that it "has set a high priority in this area of its responsibilities and is training special agent accountants in the latest accounting systems being utilized by government and private business. According to its annual report the FBI now has about 1,200 agents (roughly 14% of its total force) committed to white-collar crime investigations. This significant commitment of its resources to that effort should be of great assistance to the successful development of cases of that type.

It is simply not true that only the Internal Revenue Service has the capability to penetrate the quite sophisticated systems and intricate business transactions in which organized crime and white collar criminals are involved. With the special training which FBI agents receive, and the research which the FBI report states is "being conducted into the highly complex and sophisticated techniques used by the white collar criminal", the drive against this kind of activity can be carried on in a manner which is effective and does not divert IRS resources from general tax enforcement.

Criminal tax cases involving those suspected of criminal activity should be developed and brought to trial if they further the Service's compliance goals. Sometimes in the past, however, investigators have strained to develop tax cases against organized crime suspects. In the *Accadro* case, the txpayer was prosecuted for indicating an incorrect source of income and thus falsely claiming relatively small amounts as business automobile expense deductions on his return. As the report to the administrative conference points out, "the selection of that type of case for enforcement purposes is likely to subject the Service to criticism and ridicule". Such counterproductive effects should not be allowed to exist in a program which is designed to produce a positive deterrent and corrective effect.

I think that you will see that the subject matter of these hearings is closely tied with the question of tax return privacy on which this subcommittee held hearings in April of this year. The issues involved in making tax return information available for use in connection with the investigation of non-tax criminal offenses raises, as I think the administrative conference report indicates, serious statutory and constitutional questions.

Even if the Supreme Court decides, in the pending *Garner* case which it has under consideration, that no 5th amendment problem is created by using a taxpayer's return (or information from that return) in a non-tax criminal investigation, serious problems for revenue administration would continue. Taxpayers claiming the 5th amendment at the time the return is filed, by omitting pertinent data from the return, will be filing what must be regarded as an incomplete return, thus necessitating audit. When secondary sources are not sufficient, the information needed for revenue administration will be obtainable only from the taxpayer. Obtaining such information from the taxpayer would generally be at the price of a grant of use immunity, with result that the information would not be available to the Department of Justice. The announcement that 5th amendment rights must be claimed on the return would be accompanied by the imposition of severe problems for tax administration.

It is imperative, of course, that a discussion of the issues that should not be a part of the proper IRS role not cloud the fact that the Service is proceeding vigorously to discharge its obligation to administer and enforce the tax laws. For example, in the recent past the IRS has conducted (as part of its political campaign contribution compliance project) a national program to identify improper tax reporting arising out of campaign fund raising activities. This program, which has a significant number of both audit and intelligence division personnel assigned to it, has resulted in sending a sizeable number of information items to the field for further investigation. Generally speaking, also, our activity in the development of criminal tax cases involving corporations has been active—the number of completed intelligence division cases involving corporations (many of them major corporations) increased substantially in fiscal 1975 over the prior fiscal period. The Service has also intensified its attention in areas of those tax shelters which defy economic reality and is currently dealing with problems arising out of the abuse of foreign subsidiaries.

In the performance of its criminal law enforcement responsibility the Service fully understands the need to work closely and effectively with the Justice Department to see to it that the tax laws are effectively and responsibly enforced both against those suspected of other criminal conduct and those whose only crime is tax evasion. This spirit of cooperation must, however, be marked with two extremely important aspects. As is stated in our publicly available policy statement, our investigative activities must be "in all respects . . . within the bounds of the law." Next, these investigative responsibilities we assume must give due consideration to the service's limited resources and the allocation of those resources should be made in the way best suited to the fulfillment of our mission.

Senator HASKELL. Our next witness is Judge Harold Tyler, Deputy Attorney General of the United States.

Judge Tyler, it is a pleasure to welcome you here. The last time we talked, I believe, you had just left the judging business and had gone into the Attorney General's Department. I hope you do not regret the decision. But it is nice to see you here.

STATEMENT OF HON. HAROLD TYLER, DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

Mr. TYLER. Mr. Chairman, I thank you.

I was going to say that I would sympathize with you if the committee had a sense of deja vu to see Mr. Alexander and me back again. I can also add that I am a chastened and perhaps somewhat wiser man after having been here several months.

We, Mr. Chairman, do have a statement which I would ask your leave and that of the committee to incorporate in the record.

Senator HASKELL. It will be so reproduced.

Mr. TYLER. Let me just very briefly summarize our position in the Justice Department in the matters which you just took up with Commissioner Alexander in substantial part.

As the committee knows, it has been some 9 years now since the President of the United States, President Johnson, noted to the departments and agencies of the Government that there must be cooperation between the Justice Department and other agencies, including the Internal Revenue Service, in the investigation of organized crime and corruption cases.

Two years later the President uttered his Executive Order 11396 in February 1968, fleshing out that direction.

Until this year, or perhaps, to an extent, last year, there had been a pattern of very pleasant, effective cooperation, particularly between the law enforcement agencies and litigative offices of the Department of Justice and the Internal Revenue Service. I am frank to say that this year there has been considerable discouragement and indeed downright concern on the part of the Department of Justice, the 94 U.S. attorneys, and the heads of the strike forces as to whether or not this long-established cooperation in law enforcement is going to continue as effectively as in the past.

I have heard the issue, or issues, as stated by Commissioner Alexander. Perhaps he is right in part. But I believe most strongly that the issue really has not been stated here this morning, or at least we have not gone to the very core of the problem. The real issue is whether or not there should be IRS participation in any cooperative activity of law enforcement unless the Justice Department, either through its U.S. attorneys or the Criminal Division or a given strike force, can assure the IRS that the investigation is certainly going to lead to a tax prosecution. As I understand the Commissioner, we will not get any cooperation from the IRS unless we can make such a flat representation at the very outset of whatever the investigation may be.

That is the real issue which has divided us in this area, at least during the months that I have been in on the deliberations.

I might note, as the committee may know, that shortly after my appearance last April before this subcommittee, we arranged to have a series of meetings between IRS officials and our own officials on this and related issues. We have had a number of meetings. Quite frankly, they have been a grave disappointment so far. They have dragged on longer than I think they should. I note Mr. Alexander agrees, apparently, in his printed statement. We have not come to a resolution of our differences.

At the moment we are trying to work on a set of guidelines for joint participation in certain areas of law enforcement. That is a worthwhile goal and I do not want to give up on it yet. I think Mr. Alexander, or at least I hope you would agree, that he would not want to give up on it.

I want to emphasize a point that is often overlooked in public discussion of this issue, and that is that it is not just the strike forces, so called, that are engaged in prosecutive effort; it is also the U.S. attorneys who are concerned about the current thinking of Commissioner Alexander. The week before last, we had a conference of the 94 U.S.

attorneys in which we covered a number of subjects. I am not overemphasizing the point, however, when I say that the major concern of those gentlemen was just what we were talking about here today. They are concerned that if the apparent views of the upper echelon of the IRS are followed, we will not have the contributions of those gifted men and women of the IRS which have historically been so supportive and indeed of crucial importance in any white collar crime investigation or political corruption investigation that has been forthcoming in modern times.

I might emphasize a point that is also overlooked, and you, Mr. Chairman, hit upon it this morning as I heard you in one of your remarks. The contribution by the IRS in these investigations which is so valuable from the point of view of public interest is the audit function which is performed by the IRS agents who participate in these teams, whether it is a strike force team or U.S. attorney's office team.

Let me give you an example which Mr. Alexander himself raised at page 10 or so in his testimony. He mentions it in writing. He mentioned it orally, as I heard. He refers to the recent indictment filed in Maryland involving various public and private people of some notoriety. Contrary to what the Commissioner says in his written testimony, the fact is that although that indictment eventually did not include tax counts, the investigative work was contributed to most substantially by IRS people. I would be remiss if I did not have the record show how valuable and long and difficult their labors were, even though it was ultimately determined by both IRS and the Justice Department, a decision in which I participated and with which I agree, that there would be no tax evasion counts or tax law counts, if you will, included in that indictment.

Moreover, the fact is that at the time that investigation was started, it was thought quite realistically that there might be tax law violations. That is why the tax agents participated and, in my judgment, most properly so.

It ended up that there were no tax counts, but desipte that conclusion, there was fortunately no effort made by the IRS people in Baltimore to remove the tax agents and indeed, realistically there could not have been, as they were crucial to the case. But to reiterate, you just cannot start out an investigation and say you know where you are going right when you start. And that, I think, is the big rub between Commissioner Alexander's position, as I understand it, and ours in the Department of Justice.

Now, I would like to take issue with a couple of other statements of Commissioner Alexander. With some pain I note that he suggests in his written testimony before the committee—for example, at pages 7, 10, 13, and 14—that the Administrative Conference of the United States has issued a report about the very subject which we were discussing here this morning. I hate to sound as if I am a Mr. Know-it-all, but I happen to be a member of the Administrative Conference of the United States. Indeed, I am what is tastefully known as the Vice Chairman. The Administrative Conference has issued no such report whatsoever. As a matter of fact, the counsel of the Conference has not even approved the material to which the Commissioner refers. That

material was prepared by some consultants in professional and academic life. It is not necessarily at all the judgment of the Administrative Conference. Indeed, that Conference will not make an effort to decide their views in these areas until December 11 and 12 when the Conference meets here in Washington.

Senator HASKELL. Excuse me, sir. Is this the report that I have seen in the paper the last few days on the administration?

Mr. TYLER. There have been voluminous portions of the consultants' reports which have come into public view, Mr. Chairman. I am staggered. They kind of pile up about like this.

Senator HASKELL. I have not read that much, but it seemed to me last week there was a series of articles in the local paper.

Mr. TYLER. There was.

Senator HASKELL. And that is the one you are referring to?

Mr. TYLER. Yes, sir.

Senator HASKELL. I see.

Mr. TYLER. But that is not the Conference report.

Senator HASKELL. I understand.

Mr. TYLER. As a matter of fact, a gentleman who is now employed by Commissioner Alexander, Professor Emory, is one of the authors of that material, which is very helpful.

The only point I am trying to make is, contrary to the way I read the Commissioner's testimony, the Administrative Conference has not yet voted on these things, let alone support them. Now, they may well support them in whole or in part.

The third thing I would like to emphasize, and that is this. The Commissioner quite rightly says that he and the IRS do not intend, or at least we have heard no indication from him or elsewhere, that the IRS intends to withdraw from Strike Force activity. The problem as I see it, and I believe all my colleagues in Justice see it the same way, is that of trying to comply with the Commissioner's idea that at the outset of a Strike Force investigation we decide whether we are going the tax route exclusively or some combination of title 18 and title 26 offenses or purely title 18 offenses.

I maintain, and I submit to the committee, and I submit to the IRS, that it is impossible to make that determination before the investigation is completed. The fact of the matter is, as experience teaches, that when you deal with sophisticated white collar offenses, public corruption offenses, you are dealing with money; and when you are dealing with money in any amount, particularly large amounts, but indeed any significant amount, it is almost as sure as night following day that there will be a potential of tax violations. That being so, we cannot accept the Commission's apparent view that there must be a simplistic bifurcation at the start before the investigation is even completed as between tax charges and other criminal charges. We maintain that that cannot be done, that it would be a public disservice if we tried to do it in advance, and that it is just impossible to go along those lines and still follow the law and commonsense in any kind of a criminal investigation in these important areas of public corruption and white collar crime.

Now, finally, I do agree with the Commissioner if, and to the extent that he argues, that when IRS personnel are good enough to cooperate with us under the Presidential Executive order, that does not mean

that we have the right to remove the IRS people from the control of the IRS supervisor. I have stated that earlier this year before other committees of the Congress. I will repeat it here. Of course, it is true.

My own experience suggests that this has not been, except occasionally, a very serious problem, and I do not really believe that Commissioner Alexander seriously thinks it is a problem except in isolated instances.

Based on my own participation in these teams as a young lawyer 20 years ago, it appeared to me that the IRS people always check back with their bosses. As an assistant U.S. attorney, I did not think I had the power, nor did I think my boss, the U.S. attorney, had the power, to direct these IRS gentlemen, who were helping us so nobly and so effectively, to do something if they thought it was wrong.

As a matter of fact, in the biggest white collar case in which I participated as a young prosecutor, our decisions were carefully monitored by the Baltimore Appellate Division, as it was then known, of the Internal Revenue Service. I at least would not suggest that otherwise should be the case, and if the Commissioner feels that that is the case, I wish he would tell me so that we could get to the bottom.

I think, though, that this really is not the main difference, as I see it; the main difference between us appears to be that the Service wants to know in advance, before the investigation even gets off the ground, where the investigation is going. And if we can assure them it is going to be a tax case, then they will participate; if we cannot, apparently they want us to allow them to withdraw.

The Department of Justice feels that this is an absurd and irrational position to take. We do not believe that on the working level the IRS takes it. We certainly hope that we can persuade Commissioner Alexander if he feels to the contrary that this simplistic approach will not work and would not be to the public interest in a country of our kind with our particular form of tax statutes.

I see no point in going further. I would rather suggest, Mr. Chairman, with your leave that I be available for any questions that the committee may wish to pose.

Senator HASKELL. Thank you Judge Tyler.

I do have a series of questions. It is obviously not a simple issue.

I first might advert to the three special powers that the Commissioner said the IRS has that perhaps some other law enforcement agencies do not. These special powers would be the early termination, jeopardy assessment, and administrative summons.

Now do you find in enlisting the cooperation of the IRS the use of one or more of these powers helpful, essential or unessential?

Mr. TYLER. I would not want to say unessential, because I am sure there have been cases where one or more of the powers has been helpful. But I believe that everybody in the Justice Department would agree that these are matters which are really well, well down on the priority scale as far as we see it.

Very simply, Mr. Chairman, the thing that helps us, and that we think helps the United States in its prosecutive efforts, is the audit and investigative accounting skills that these men and women bring to us. They are infinitely the best available.

That, very simply—as I am sure Mr. Lynch would agree—that is what interests us. That is what is so effective. The IRS statutory

powers that you have mentioned, and the Commissioner mentioned, are really well down the scale. We are not seeking to get that kind of preferential statutory power so much as we are the skill and know-how that these gentlemen really do have.

Mr. LYNCH. Mr. Chairman, may I add a general comment?

Senator HASKELL. Yes.

Mr. LYNCH. There are several other agencies that also have administrative summons powers, including, as I recall, Customs Agency Service and also the DEA—at least in its prior incarnation as BNDD. They had an administrative summons power.

The Labor Department has administrative summons power. So it is not a tool peculiarly unique to the IRS.

Senator HASKELL. So you would confirm what Judge Tyler's thought was—that the use of those powers was pretty low on the totem pole.

Mr. LYNCH. Yes.

Senator HASKELL. Putting aside for the moment the use of these very skilled individuals, Judge Tyler at what scale of usefulness do you put access to just raw data in the form of tax returns?

Mr. TYLER. Well, that, as you know from our previous testimony in the spring, Mr. Chairman, is very important. There, the fact of the matter is that very frequently it is useful in these white collar, public corruption matters, to have access under appropriate safeguards to that kind of tax return data.

Again, however, I think it is worth making the point—it may be a small one, but I think not—and that is that the investigative know-how and the auditing capacity and know-how of IRS agents in these complicated cases are probably, in most instances, the most important thing, even where we ask under present statutory and Executive order ground rules for tax return information.

Senator HASKELL. So the importance from your viewpoint is basically the immense skills of some of the personnel within the Service.

Mr. TYLER. I think that puts it very simply, but correctly. We have found that because they are so good, and because white collar offenders—particularly sophisticated ones—are so discreet and camouflaged in their methods of moving about sums of money and other assets, it is only by dint of the special skills and competence of the tax auditing people, and the special agents as well, that these big cases—or even smaller cases—can be put together.

Now if I could just add here, Mr. Chairman, I have to sympathize, of course, with Commissioner Alexander's point that neither the Justice Department nor any other agency should divert or swallow up so many of the IRS people that they cannot do the other important missions assigned to them by law. In our meetings this summer with IRS representatives, including the Commissioner, we tried to stress that point. We also suffer and presumably will suffer, under budget constraints with similar problems. Perhaps the budget problems will equalize each other, but if they do not, I would still add that, of course, we understand that problem.

As a matter of fact, despite what he said this morning the Commissioner has been, in my judgment, extremely generous with us, and on specific requests this summer, even when we have asked for additional help in New Jersey and in New York City. Our people went

to him directly and he responded generously. And we have assured him that we will always try to treat with him, or his people, wherever they perceive a problem of that kind, and I am sure they will.

Senator HASKELL. Let me ask you this. To what extent do you think that the Federal Bureau of Investigation could be used for some of the work that is now assigned to IRS personnel?

Mr. TYLER. Well, that is a point which has received some discussion—and understandably so. At the moment I would have to say that the FBI accountants do not have the experience or the skills for the kind of investigations that are so important in the complicated white collar crime field and in so-called public corruption cases.

In all of the years that I can recall, of my professional lifetime, FBI accountants have been busy in bank investigations and the like, and they do not have, in my judgment, the experience or the skill requisite for these big cases.

Senator HASKELL. How about SEC personnel?

Mr. TYLER. SEC people, in stock fraud cases, have been very useful and helpful. My own experience in New York, as both a lawyer and a judge, has been that in most of those cases there are both SEC people and IRS people because of the point I was trying to make, basically, that when you start one of these kinds of cases you are almost sure that there will be tax consequences. And there usually are.

Senator HASKELL. Judge, you know there does exist—at least it occurs to me—some kind of a jurisdictional problem with the FBI on the one hand and the IRS on the other.

Do you care to comment on that at all?

Mr. TYLER. I am not sure I understand your point, Mr. Chairman. Do you mean that——

Senator HASKELL. Well, for example, the Commissioner raised a question that I had never thought of. He said that sometimes the use of IRS personnel in some investigations, admittedly at the beginning, are not tax-related and may subject some of the personnel of the IRS to the charge that they are going beyond the scope of their authority, and therefore, presumably put them crosswise with certain criminal inhibitions.

This is something that never occurred to me before, but it is a real possibility.

Mr. TYLER. Well, I am frank to say it had not occurred to me either, sir, until I had read his testimony and heard him this morning.

Senator HASKELL. What is your reaction?

Mr. TYLER. Well, let us start out with a simple case, which I hope fervently is not happening at the moment, at least.

Let us assume that some U.S. attorney's office somehow forced IRS agents to go out and do straight narcotics investigations. Clearly, that is wrong. Apart from the point that Commissioner Alexander makes, it should not be done. I hope that it never is done. That is an easy case.

What I think however is the answer to him is that where these collaborations are done properly there is no case law, including the case he cites in his written testimony, that comes close to holding that any IRS agent would be held to be guilty of ultra vires acts if he were participating in a case where there was a reasonable possibility of a tax violation, even if after the investigation an appropriate decision was made

not to go with a title 26 count. I just cannot imagine that the courts would go that far in one of these investigations where it looked likely to any reasonable man that very possibly in the outcome would be some tax counts. I just cannot believe that the law would erode the principles of presumptions of regularity and respondeat superior to the extent that Commissioner Alexander's argument implied.

I would agree with him if somehow the Justice Department coopted IRS people to do bank robbery cases or narcotics cases in the straight, simple sense that I imply.

Senator HASKELL. Let me ask you another question.

To what extent does the Department of Justice have an interest in nontax information? For example, you have somebody under investigation and you want to know who his associates are, and therefore you ask for a bunch of tax returns to see if he happens to be in a—oh, I don't know, an oil drilling syndicate, a feeding syndicate.

To what extent is nontax information desirable to the Department of Justice to be obtained from the IRS?

Mr. TYLER. It is a little difficult for me to answer that because I am a little unsure of its thrust. It is true, as your question implies at least, that with certain tax information which IRS has, if you isolate its parts you could read some as nontax provisions, such as the business that a taxpayer asserts he is in in a given tax year.

Is that the kind of thing you mean?

Senator HASKELL. Yes; or, let us say that he reports some income from a limited partnership, and you are rather curious as to who the other limited partners and the general partner are in the hopes that that may give you a lead. You are on a fishing expedition, let us assume.

So that is what I mean by nontax information.

Mr. TYLER. Well, I would rather doubt that our people would go to that kind of material to get leads on other people.

I would think it would be easier and better, and less of a burden on the Service, if our people went to other sources. Now I cannot deny but what if they get tax return information for other reasons they may get some help along the lines you say. But I would hope and trust they would not go first to do that because I would not think it would be the best way, No. 1. And No. 2, as I say, if that is the only reason they are asking for tax return information I would be inclined personally to think that is a bit of a burden on the Service and should not be sufficient reason to do it.

Senator HASKELL. What I am really trying to do is explore where the Service is helpful to you.

For example, suppose a special agent was doing an investigation on somebody. It might not be the person you were interested in, but it might be an associate. Would you want to see that special agent's investigation of Mr. Jones because you know Mr. Jones and Mr. Smith have been friendly just to see what you could pick up through Mr. Jones?

Mr. TYLER. Well, I am not so sure that that would be the basis on which they would want to get it. I think they would want to see it if they had reasons to suspect that Mr. Jones, along with taxpayer Smith, was involved in some kind of fraudulent activity. And they would probably, there, ask for both tax returns, or tax return data to be a little more precise.

But I do not think, as I said, this does not strike me as a way that it would realistically happen very often. I cannot say it never happened that way. I do not know that. But it just does not sound to me like a sensible way of doing business from the prosecutor's point of view.

Senator HASKELL. Well, what is the difference?

Where do you get additional help from the IRS over and above your right to convene a grand jury, for instance? I do not know too much about grand juries, but as I understand it you can go on a fishing expedition through a grand jury.

Where does the IRS come in to help you where you would not be able to——

Mr. TYLER. Very simple. They take books and records and they can audit them and explain them. And no grand jury, particularly since January 1, 1969, when our present grand jury bill went into effect, is likely to be able to do that on its own.

I am frank to say as a lawyer, Mr. Chairman, I do not think that we are a profession which is very good at this type of auditing and translating books and records of any kind of complicated——

Senator HASKELL. And you do not think you could employ accountants as assistants?

Mr. TYLER. Oh, of course. We could ask for money, I suppose, in theory, and hire a whole raft of accountants.

Senator HASKELL. I mean in an individual case. You have Mr. Jones under investigation, you convene a grand jury, you subpena his books and records. And I agree with you that as lawyers we are not red hot at interpreting. But also, it would seem to be possible to employ somebody who was.

Mr. TYLER. In theory we certainly could do that. But I hesitate to think they would be very good—at least for a few years until they got used to this kind of work.

But the other problem with it is what I tried to make as my main theme here. To me it seems to be almost an absurdity to argue that there should be a wall built between the IRS and the Justice Department when we all know as a matter of experience that any kind of white collar criminal investigation, or public corruption investigation as it is called, generally is going to cast up a likelihood of straight tax counts.

Now it may not turn out for one technical or factual reason or another, that in a given indictment that will always happen. I have to accept that. I adhere to the example that Mr. Alexander gave of the recent Maryland indictment. But most of the time it does. Therefore, it seems to me that it would be really a waste of Government resources and capabilities already in existence to take the course of hiring accountants from private life on a case-by-case basis.

I might add, Mr. Chairman, very frankly, that one of the puzzlements to me in this whole dialog, this whole last month, is this: If you talk to any IRS agent in the field you do not hear him opposing this kind of thing, and the reason is very simple. He knows, just like our lawyers know, that the chances are good that when you start one of these things you are going to end up with both title 18 counts and title 26 counts, and, therefore, it is really kind of absurd and impractical to think that you can build a big fence or wall and say, well, we are all going to go down one road, title 18, and we are going to announce

it in advance. And where we announce that in advance, no matter what the facts show later, we are not going to have any IRS help.

If, on the other hand, we want to be a little bit cutesy and misleading about this, we can assure the IRS in advance that we are going to go with tax counts. That means we will get tax agents' help. I do not think that is going to do the United States a bit of good.

Senator HASKELL. I would agree with you. You certainly do not want to build a wall.

Would there be any justification in having the Justice Department have a preliminary finding that tax matters were involved?

Mr. TYLER. Well, again, I think I have answered that when I said earlier, Mr. Chairman, that when you start an investigation it would be unfair to the targets of the investigation, it would be unfair to the IRS, it would be unfair to us in the Justice Department, to announce in advance where we are going when we do not have all of the facts before us. I just do not think we can do business that way for other reasons which you and I well know.

Mr. LYNCH. May I add to that, Judge Tyler, particularly in the area that Judge Tyler has addressed himself to, in the area of white collar crime, corruption, organized crime, there is almost an organic interrelationship between the kinds of crimes being committed. And one facet of that interrelationship is a tax facet, a criminal tax suit, a potential criminal tax case.

And the converse of what Judge Tyler says is also true. As often as not we will obtain information from the Internal Revenue Service in the course of one of their normal, but possibly more complex, investigations that other Federal crimes are being uncovered by their investigations, such as loan sharking, extortion, any one of a number of other Federal crimes.

Senator HASKELL. Gentlemen, I have no desire to build this wall, but I am exploring and turning around—and I have finished my questioning. What it really boils down to is the use of skilled personnel. That is what it boils down to, as I gather.

Mr. TYLER. Yes.

You see, that certainly is the top of the priority list. I suppose in theory that you could say, but for this we could be happy if we could get access to tax return data, and if we had the skills we could make both a tax case as well as a title 18 case. But we do not think—we admit the IRS have been valued partners because they are so good at what they do.

Senator HASKELL. And yet, before I turn to Senator Curtis, would you have any objection to having IRS say, Well, my friend, we have limited resources so we do not think we can assign our people to this particular case. Now, would that kind of thing upset you if they had that power?

Mr. TYLER. I do not see how we could be upset, because we cannot think that we run the IRS. And that is why I said what I said a moment ago. I sympathize with the Commissioner, and even before we get to these so-called budget constraints we have no right to tell his people where to go? And we know that—or at least I hope we do.

Senator HASKELL. Senator Curtis?

Senator CURTIS. Very concisely, what are the responsibilities on your office? What are your responsibilities under the existing Federal statutes?

Mr. TYLER. You mean of the Deputy Attorney General?

Senator CURTIS. Yes.

Mr. TYLER. Well, the Deputy Attorney General is the so-called second man in the Department. His responsibilities include supervision of a whole line of litigation divisions, a good number of the bureaus, and other agencies. He is responsible for the Freedom of Information Act and Privacy Act appeals now; he is responsible for processing judicial and other nominations.

Senator CURTIS. I will narrow my question.

What are the responsibilities, not only of your particular office, but of the Department of Justice, in reference to law enforcement?

Mr. TYLER. Well, the responsibilities of my office include, among other things, working with the Criminal Division of the Department of Justice, the Tax Division of the Department of Justice, and the Civil Rights Division of the Department of Justice, and the Antitrust Division, all of whom have some criminal responsibilities as you know, sir.

I also work closely with the FBI and the DEA, and so on, in their law enforcement activities, reviewing major——

Senator CURTIS. What is the responsibility, in reference to law enforcement, for the Department of Justice in the overall?

Mr. TYLER. The Department of Justice is assigned the responsibility of enforcing the criminal laws of the United States, and also, as I stated earlier, under an Executive order still in effect, promulgated by President Johnson, the Attorney General and the Department are responsible for coordinating all agencies of Government, including Justice and IRS, in law enforcement activities in the field of white collar crime and corruption.

Senator CURTIS. But this latter is something established by Executive order?

Mr. TYLER. Yes, sir.

Senator CURTIS. Under the statutes, Department of Justice is responsible to enforce the laws.

Mr. TYLER. Right, sir.

Senator CURTIS. Now, what is the responsibility on the IRS, and of course, the Commissioner as the head of it, under the Federal statutes?

Mr. TYLER. The Commissioner, as I recall the statutes of course, is obliged to collect the revenue. But as part of that overall Commission, the Commissioner and the Service have a criminal law enforcement role. They are to enforce the tax laws, including the criminal tax laws, of the United States in collaboration with the Department of Justice.

Senator CURTIS. Would it be an oversimplification to say the IRS responsibility is to collect the taxes that are due, and if, in that process they must enforce criminal laws relating to taxes, that that, likewise, is their responsibility?

Mr. TYLER. I would agree with that, sir.

Senator CURTIS. This is an unusual departmental controversy. To listen to your testimony—and I did not get in on all of the Commissioner's testimony—it would indicate it was sort of an adversary proceeding, this hearing between the two. And I do not think it is quite that serious. I really do not.

Mr. TYLER. I am inclined to accept what you just said.

One of the reasons why I told Chairman Haskell that I think that I refused to give up on us getting together is just what you said.

Senator CURTIS. Now, often departmental controversy, instead of wanting to get the help of another department is wanting them to keep their hands off what a particular department or branch or section wants.

Mr. TYLER. We feel like unrequited lovers, Senator Curtis, because we love these people, and they, apparently, according to some, do not want to be loved by us.

Senator CURTIS. Now had you ever thought of this, that here, by statute—and I make a distinction between that and Executive order—here, by statute, the Congress had invested with one agency the right to collect the taxes; if they find some criminal action, why use the criminal laws, but collect the taxes. And we have said to another agency, you enforce the law, you put the rascals into jail.

Maybe it will make it worse, I do not know, but have you ever thought of letting the Congress decide the policy question as to any modification, blending or overlapping of those two general commands that are found in the existing statutes?

Mr. TYLER. Well, if I understand you, sir, I assume that Congress certainly could make that determination. Indeed, I regard this, in essence, as one of the concerns of this subcommittee, for example, in your oversight function.

Senator CURTIS. I think probably the Congress will do a worse job of it. I do not know; they usually do.

Mr. TYLER. I think what we should do is, first of all, I think the Secretary of the Treasury and the Attorney General are very anxious that we work out our differences, which, as you state, are by no means as grave as one would assume from hearing some of the arguments here and elsewhere.

Senator CURTIS. I think that is very true.

Now, of a certain number of cases that do involve primarily tax matters, where do they originate? Do they originate with the many activities of the IRS in their quest to carry out their responsibilities?

Mr. TYLER. Yes, they do, as I understand it. There are occasions, of course, where some activities within the Department of Justice raise evidence of possible criminal tax violations which we then inform the Service of. But basically, the Service is the prime initiator.

Senator CURTIS. These cases are brought to attention primarily when the IRS are carrying out their responsibility of having everybody pay their just share?

Mr. TYLER. Right.

Senator CURTIS. Then does the departmental jurisdictional controversy or problem, arise only with those cases where Justice—and I include in that the U.S. attorneys—are in there first and want some help from IRS?

Mr. TYLER. Very frequently that is the kind of problem a U.S. attorney's office, or a strike force office, will be engaged in.

Senator CURTIS. Now whose strike force office?

Mr. TYLER. That is the Justice Department.

Senator CURTIS. Strike force.

Mr. TYLER. Basically, although it is made up of people from other agencies too.

Senator CURTIS. But it is under the jurisdiction of the Justice Department?

Mr. TYLER. Yes. Correct.

Very frequently those fellows will be doing some investigating and they will say to the IRS, if they are not already on the scene, look, we have some information which suggests we may well have some criminal tax responsibility of such and such a firm or people. And then comes the problem as I state it.

The Commissioner, as I understand him, would like us to assure him at the outset that we are going down, exclusively, the tax road, or, at the very least, we are going to come up with some tax counts. And that is where I think we have our big difference.

Senator CURTIS. Well the big difference is you want the IRS to come in and assist because of the——

Mr. TYLER. If it is reasonable to assume that there could be some serious tax consequences.

Senator CURTIS. So all of the cases which originate in the field, or otherwise, by informant or what not, in the IRS, this is not a problem?

Mr. TYLER. Not so much so.

Senator CURTIS. Well, the IRS is already in there?

Mr. TYLER. If the IRS hands over a criminal tax case to us, that is not the kind of problem we are discussing.

Senator CURTIS. I am talking about the period before it is a case ready to be filed. All those cases that originate with the IRS, you do not have any substantial problem with?

Mr. TYLER. That is right.

Senator CURTIS. So it resolves down to those cases that the IRS have not been in, but that some——

Mr. TYLER. The problem arises when they are not the sole originators, if you will.

Senator CURTIS. Well the sole originator is a relative term.

Mr. TYLER. The reason I put it that way, Senator Curtis, is this: Very frequently, as a practical matter, some IRS agents and some assistant U.S. attorneys who are working together on something else—a case in being, let us say—stumble across something which indicates some other criminal activity which might be both criminal tax activity and violation of some of the other criimnal statutes in title 18. Then they sometimes jointly, as a practical matter, say, Aha, we'd better push into this field.

Then there is the other type of case where you have an assistant U.S. attorney and, let us say some SEC investigators, and they are going along and they say, Aha, we have something here that may well lead not only to some violations of the securities laws, but also to violations of the tax laws. So they seek to get the tax people in on the case.

You see, there are myriad possibilities.

Senator CURTIS. Do you have any problem with IRS running into phases of cases where there appears to be nontax violation of law that are not turned over to you?

Mr. TYLER. I do not know of any such situations.

In other words, you are asking does the IRS refuse to turn over to us information of violation of criminal laws, not tax laws.

Senator CURTIS. Yes.

Mr. TYLER. I do not believe that is any particular problem that I know of. Do you, Mr. Lynch?

Mr. LYNCH. No; if they are familiar with the fact that certain indications or evidence may indicate other Federal criminal violations. That sometimes is a problem. That is a lack of knowledge.

Senator CURTIS. But when they do have that information they voluntarily turn it over to you?

Mr. LYNCH. And where they have the knowledge of it they advise us they do have such information.

Senator CURTIS. And they do so voluntarily?

Mr. LYNCH. Yes.

Mr. TYLER. I might say, Senator, that this——

Mr. LYNCH. Well, it may be operation of law, also Senator. They also——

Senator CURTIS. What I mean is, they do not put the burden on you to go ask about it.

Mr. LYNCH. Yes, they do put the burden on us to inquire of them. They advise us that they have information of interest to us in the Criminal Division.

Senator CURTIS. No, no, no. But they advise you first?

Mr. LYNCH. Yes.

Senator CURTIS. Sure. But they do not put the burden on you to ask, have you found anything.

Mr. LYNCH. Not if they have the knowledge and the information.

Senator CURTIS. They put the burden on you to ask, to say if you want it or not. Is that right?

Mr. LYNCH. That is correct.

Senator CURTIS. Well, now, does this disagreement, or this problem, boil down, then, to the cases that originate with the Department of Justice—and by that I mean strike force and U.S. attorneys—where you would like to have the help of the IRS in investigative stages of building a case, and they ask the question, are there any tax consequences or not. And does the controversy boil down as to when that question shall be asked and how much shall be required of you before you get their services?

Mr. TYLER. That is pretty close to what I think the main issue is.

Senator CURTIS. Well, I do not think you have much of a disagreement then. By that I am not taking sides.

Mr. TYLER. No.

Senator CURTIS. What I mean is, I think that——

Mr. TYLER. I understand. That is why I do not want to give up yet in our meetings which we have had.

Senator CURTIS. I can understand the desire, and rightly so, of everyone connected with the Department of Justice. They want every weapon they can get to do justice, and to bring offenders to trial. I can also understand the position of the IRS. They have a machinery set up that must investigate the taxes of a great many people where sizable amounts of taxes may be in controversy and still no crime. And I think that our voluntary system of tax returns is something that we have to maintain in this country. And one of the other Senators alluded to the problems of nonpayment of taxes and so on in some other countries.

I think that in spite of what we read and hear, I think the IRS is pretty well respected overall. I think that if the same machinery that puts thugs and criminals and gangsters in jail is the machinery that

walks in on citizens who have tax controversies where sizable amounts are involved, whether it is owed or not, but no criminal activity, I think a problem might arise. So it is a very delicate situation. And certainly the small amount of time I have given to it, I am not in a position to advise anybody or to criticize what they have done, but it just strikes me as something that can be unravelled.

Mr. TYLER. Well, I am certainly hopeful, Senator Curtis, and I think people on both sides are, that we can resolve this because surely, we in Justice do not have any right to expect to control the bulk, or even a fairly large number, of IRS agents if it diminishes their more important, albeit somewhat less flamboyant, role of collecting the revenue from people who are not involved in any criminal conduct.

Senator CURTIS. But it also—I think we should recognize that as a practical matter, a lawyer—whether he be a United States attorney, or an assistant, or on strike force, or in the Justice Department—that he would not have to work too long on a case before he could come to a fairly accurate decision that this case does or does not have tax matters involved in it that would lead to the requirement that the IRS should go into it very thoroughly.

Mr. TYLER. That, I think, is true, although there are cases—witness the example case—that Messrs. Alexander and Tyler have used here today where it was quite late that a determination could finally be made. But on the whole, I agree with you, it does not take forever, sometimes, to make that determination.

Senator CURTIS. That is all, Mr. Chairman.

Senator HASKELL. Thank you very much, Judge Tyler. I appreciate your coming. We will recess until 2 o'clock.

If you will leave your full statement for the record.

[Whereupon, at 12:23 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

[The prepared statement of Mr. Tyler follows:]

TESTIMONY BY HON. HAROLD R. TYLER, JR., DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

Mr. Chairman and members of the subcommittee: I am pleased to be here today at your invitation to discuss with you the important role which the Internal Revenue Service plays in Federal law enforcement, particularly in investigations and prosecutions of official corruption, organized crime, and so-called "white-collar" crimes.

These financially-related crimes are frequently based on a series of complex financial transactions, structures, and schemes intended to conceal the source and ultimate use of the money for which the crimes were committed. After a violent crime or theft, it is apparent that a crime has been committed and simply a question of who did it. Witnesses, fingerprints, or other information supply enough evidence to provide law enforcement agents with probable cause to arrest a suspect. With a sophisticated financial crime, however, it may not even be clear that a crime has been committed until financial specialists discover the fault in a seemingly sound structure of transactions, by comparing tax returns, corporate books and balance sheets, and the testimony of witnesses.

It is because of their unique financial expertise and familiarity with complex transactions that the cooperation of Internal Revenue Service personnel has been indispensable to the government's efforts against organized and white-collar crime.

The need for cooperation among law enforcement agencies—including the Internal Revenue Service—in order to attack organized crime was recognized as early as May 5, 1966, by President Johnson, who noted in a memorandum to heads of participating agencies and departments that:

"The success of the Department of Justice in securing indictments and convictions in organized crime cases is due to the ability of your many separate investigative units to work closely together toward a common goal."

It was for the purpose of this interagency sharing of expertise and information that the organized crime strike forces were set up, beginning in 1967.

Cooperation and coordination of law enforcement in other areas has also long been recognized as important. In Executive Order 11396 (February 7, 1968), President Johnson designated the Attorney General to coordinate the criminal law enforcement activities of all Federal departments and agencies, recognizing that ". . . coordination of all Federal criminal law enforcement activities . . . is desirable to achieve more effective results."

The fight against organized crime is by no means won. In addition, only recently the public has demonstrated renewed concern about official corruption and white collar crime. Yet certain law enforcement agencies seem to have lost sight of our common goal of enforcing the law. At this very time, certain persons urge continued reduction of Internal Revenue Service cooperation in the investigation of such cases.

Such persons base their argument upon the premise that the sole purpose of the Internal Revenue Service (IRS) is to enforce Title 26 of the United States Code. From this premise they draw the conclusion that time spent by IRS personnel on cases which might not meet usual IRS standards for a tax prosecution is detrimental to the proper functioning of the IRS. They further conclude that if a case on which the IRS is cooperating appears not to have significant Title 26 prosecutive potential, then IRS personnel should cease work on that case.

This attitude has resulted in limits being placed on IRS cooperation with the Department of Justice. This lack of cooperation has manifested itself in at least two ways—cutbacks or severe limitations in IRS allocation of manpower to Strike Forces generally, and a perceived new IRS policy orientation which severely limits the particular investigations in which IRS personnel may participate.

In the past, an IRS Regional Director or the agent in charge of a local office was willing to have agents participate in financial investigations with the local U.S. Attorney if the matter under investigation had possible tax consequences. IRS policy now appears to be that unless a U.S. Attorney can present a provable or *prima facie* tax case at the time that he requests aid in an investigation, IRS personnel may not cooperate. Obviously, it is usually impossible at the outset of an investigation to present a *prima facie* violation of the tax laws or in fact of any other laws.

At a conference of U.S. Attorneys two weeks ago, numerous U.S. Attorneys reported that local IRS officials have refused to lend assistance to investigations involving financial transactions because, according to these officials, IRS policy precluded such assistance unless the U.S. Attorney could demonstrate clear violations of the tax laws.

These investigations involved crimes such as bribery of public officials, trafficking in narcotics and various kinds of white collar offenses, where IRS investigators were necessary to pierce the veil of sophisticated financial transactions deliberately designed to conceal these crimes. In fact, these investigations are exactly the kind that the IRS in coordination with the Department of Justice successfully investigated in past years.

Of course, U.S. Attorneys attempt as best they can, given their limited resources, to investigate and prosecute their cases on their own, but often serious violations of law go undetected and unprosecuted because those who are uniquely qualified to do this specialized work are not available. This is simply intolerable.

The problem of IRS lack of cooperation is not new. A series of correspondence, beginning in early 1974, between Attorney General Saxbe and Secretary Simon outlines the problem of inadequate manpower commitments by the IRS, particularly to Strike Force activities. We have supplied this correspondence to the Oversight Subcommittee of the House Ways and Means Committee and would be happy to supply you with a copy.

The effects of inadequate IRS cooperation are already being felt in investigations of white collar and organized crime. Last Wednesday's *New York Times*, for example, reported that an investigation of a New York race track was being discontinued "because of lack of evidence and cooperation among the investigating agencies." The ultimate effects—fewer prosecutions and convictions—will be all too apparent in a few years.

However, the premise of the IRS purpose and the conclusions drawn therefrom are misleading. No one would dispute that the mission of the Internal Revenue Service is the fair and effective administration and enforcement of the tax laws of the United States. Obviously, this process must be carried on in a way which does not imperil the Service's reputation for fair and impartial administration of those laws. But IRS cooperation with other Federal law enforcement agencies in the investigation and prosecution of organized crime, official corruption and white-collar crimes is entirely consistent with this mission.

White-collar criminal behavior cannot usually be categorized as Title 26 or non-Title 26. Instead, it often includes elements of both Title 26 and Title 18 offenses. In almost every instance of illegally derived income, tax fraud may also be suspected. That is, the tax return treatment of funds involved in such crimes is usually done in a way that is itself a crime, as where the recipient of a bribe does not report it as income on his income tax return, and thereby commits tax fraud. The criminal should not be immunized from tax prosecution because he had also committed non-tax offenses. Nor should the possibility of additional non-tax offenses preclude the IRS from working with other law enforcement agencies on the total case.

As Mr. John Olszewski, former Director of the Intelligence Division of the Internal Revenue Service, testifid earlier this year[1]:

"It is cetrainly possible that an IRS agent, while investigating a potential tax violation by a loanshark operator may, while proving a likely source of income, also establish a violation of the Extortionate Credit Law under Title 18. But this is not inconsistent with the basic objective of proving a tax fraud crime. . . . The same principle is involved in Narcotics Trafficking investigations. Narcotics traffickers and financiers are engaged in a high risk and unbelievably profitable business. They are also universally tax evaders. I have never known a narcotics trafficker or financier who has reported his profits or income from this activity on his income tax returns. The untaxed profits are so huge, in the hundreds of millions of dollars, that the IRS should be criticized if it did not attempt to identify and prosecute these blatant tax evaders. . . . Taxes—tax evasion—tax enforcement *cannot* be treated in a vacuum. . . . In my opinion it is good tax enforcement to convict a tax evader who is also a narcotics trafficker, loansharker, swindler, gambler, or public corrupter. If this also contributes to the cure of a social ill or problem—then it is *the public* which is the beneficiary."

The investigation of crimes involving illegally derived income and sophisticated financial transactions should not be solely the concern of the Department of Justice. The IRS has a law enforcement mission. It is charged with the responsibility of enforcing the criminal sanctions of the Internal Revenue Code. To carry out that mission responsibly, the IRS necessarily must allocate a significant amount of its investigatory resources to organized white-collar crime, organized crime and political corruption, because these are fertile fields for developing tax evasion criminal cases which result in large recoveries of tax liabilities and penalties.

If the IRS persists in its refusal to fulfill its role in this regard, then its law enforcement capability should be given to the Department of Justice. This would, of course, be unnecessary if the IRS would return to the responsible policies it followed in past years.

Undoubtedly, the revelations of misconduct and abuse by law enforcement agencies trouble all of us. It would be tragic, however, if these revelations prevented law enforcement agencies from vigorously performing their common mission of promoting and protecting a law abiding society.

AFTERNOON SESSION

Senator HASKELL. The hearing will recommence. Our first witness this afternoon is the Honorable Mortimer M. Caplin, former Commissioner of Internal Revenue.

It is a pleasure to have you here, sir.

[1] Statement of John J. Olszewski before the Commerce, Consumer and Monetary Affairs Subcommittee of the House Government Operations Committee.

STATEMENT OF MORTIMER M. CAPLIN, ESQ., FORMER COMMISSIONER OF INTERNAL REVENUE

Mr. CAPLIN. Thank you, Mr. Chairman.

I appreciate the committee inviting me to testify on the important subject of IRS participation in general law enforcement.

For many, the word "taxation" suggests the revenue needs of the Nation, the citizen's obligation to meet those needs, and the governmental machinery to assure collection. For the Internal Revenue Service, it is "to encourage and achieve the highest possible degree of voluntary compliance with the tax laws" and to do "all things needful to a proper enforcement of the law."

However, for law enforcement officers, and for large segments of the public, taxation brings to mind one of the Federal Government's most effective means for attacking racketeers and organized crime. At times, it has been the only way the Government is able to catch up with major criminals.

In the past, the Revenue Service has taken credit for the prosecution and imprisonment of such figures as Al Capone, the Chicago gang leader; Johnny Dio—John Dioguardi, as he is also known—of New York; Michael Coppola of New York, Las Vegas, and Miami; "Boss" Tom Pendergast of Kansas City; and many others. In recent years, it has announced a Miami Strike Force investigation and tax conviction of Ettore Coco and his associate, Louis Nash; the sentencing of Aniello Dellacroce of New York; the conviction of Sam Cohen and Morris S. Lansburgh of the Flamingo Hotel in Las Vegas.

Internal Revenue rightly has earned the Nation's praise for its remarkable success in uncovering these tax crimes and in digging out the evidence for conviction.

But, is it appropriate for the Revenue Service to join forces with other Federal law enforcement agencies in an organized crime drive? The Department of Justice's Strike Force? The war on drug traffickers? Is it consistent with the central mission of the Service? Does it interfere with the proper functioning of the Service? Does it weaken or strengthen public confidence in the IRS?

These are not simple questions. Able and well-informed people differ broadly on the answers. To be sure, Congress can decide the issue by marking where jurisdictional lines should begin and end; or, as it has mainly done in the past, it can leave the decision to negotiation among different elements of the executive branch. In either event, different and at times competing values must be weighed and balanced: the need for sound tax administration, on the one hand and the need for effective law enforcement, on the other.

If we were thinking only of the administration of the Federal tax laws—the desire to achieve the highest possible degree of voluntary compliance—Congress might direct the Internal Revenue Service to end its participation in general Federal law enforcement activities, or at least to curtail the extent of its present efforts. These investigations principally involve the IRS Intelligence Division, comprised of some 2,700 special agents. Well-trained and highly specialized, they are responsible for enforcement of all the criminal provisions of the tax laws—tax evasion, failure to file returns, false claims for refunds, false withholding exemption statements, failure to remit withholding funds collected.

In fiscal 1975, the Intelligence Divison screened over 150,000 allegations of fraud: 8,730 investigations were completed and 2,760 prosecutions were recommended.

The Intelligence Division does not function in a vacuum. It leans heavily on the law enforcement community and today maintains close personal liaison with Federal, State, and local law enforcement agencies. This relationship produces many leads for the IRS, not only in pursuing tax fraud violations, but in fulfilling its other tax administration responsibilities.

The scope of the Intelligence Division's duties is extremely broad. As the Commissioner's 1974 annual report points out: "Unfortunately, tax fraud is not confined to any particular occupational or social group. Instead, it reaches across a wide spectrum of industries and occupations."

A well-balanced tax fraud program has to be maintained as one of the underpinnings of our self-assessment tax system; and Intelligence's resources "must be used in an efficient manner that will have the maximum possible impact on all who engage in criminal violations of the tax laws." These constraints recently led the Service to begin "a reevaluation of its participation in investigations of organized crime figures and narcotics traffickers to insure that its criminal enforcement efforts are directed at the most significant violators of the income tax laws."

I should say that it is this reevaluation that is at the heart of the discussions today.

Now, while the Attorney General of the United States respects the needs of the IRS, he necessarily views the matter from a different perspective. As the Nation's chief law enforcement officer, his focus is on stamping out crime. His desire is to use the total criminal enforcement power of the Federal Government against criminals of all sorts—organized crime, racketeers, narcotics traffickers, gambling and loanshark operations, extortion, organized hijacking and other thefts, corruption of public officials, flow of illicit money to and from organized criminal activity, criminal infiltration of labor unions and legitimate business, political slush funds and other "white collar" crimes of individuals and organizations. In all of these efforts, the IRS has been a major contributor—in manpower and results. And, as we heard today, the Attorney General holds the IRS in high esteem.

For some years, IRS has been especially concerned about racketeer infiltration of legitimate business and its impact on revenue collections. In 1971, the Service reported that it had information on approximately 2,000 individuals and entities considered to be major racketeers, and that about 85 percent of them are engaged in legitimate business activities covering a broad variety of occupations. The IRS studies reveal the following number of racketeers engaged in each of the following legitimate businesses: 217 in restaurants, bars, and taverns; 186 in real estate and insurance; 116 in legalized gambling, casinos, and racetracks; 86 in finance—banking, savings, and loans, stock brokers; 82 in professions—attorneys, CPA's, doctors; 77 in entertainment and recreation; 71 in construction; 68 in hotels and motels; 64 in manufacturing; 62 in food sales; 56 in automobile sales and services; 52 in trucking and transportation; 51 in government employment—Federal, State, and local; and 50 in liquor sales. All these have been categorized by the IRS as major racketeers.

Now, once infiltration into legitimate business occurs, it seems to proliferate, not diminish. And there is every reason to believe that these numbers have increased over the past 5 years.

The training and skills of special agents of the Intelligence Division are uniquely suited to analyzing and auditing the financial aspects of illegal transactions and to determining possible violations of Federal tax laws. Just as the Revenue Service develops special examination programs for a variety of legitimate businesses and legitimate activities, why should it not do so for law violators?

IRS classifies income tax returns into numerous categories and, as we heard this morning, they select for audit higher percentages from those groupings which IRS believes will, on examination, produce the most additional revenue. While IRS leans heavily on its DIF—Discriminant Function—computer program to select returns, other techniques are used both in the selection as well as the tax examination process. For example, IRS recently announced a vigorous audit program for 1976 with special emphasis on, one, tax avoidance and tax evasion by corporations and corporate officers; two, abuses involving tax shelters such as oil and gas drilling, cattle breeding, real estate, motion picture and other industry shelters; and three, a Political Campaign Contribution Compliance Project aimed at improper tax reporting of fundraising by political organizations, candidates and contributors.

In addition, the audit searchlight is placed from time to time upon such activities as foreign transactions, oil company pricing, political slush funds, executive fringe benefits, and expense accounts, tips of waiters, waitresses, and cab drivers, and, in different areas of the country, the tax practices of such occupational groups as teachers, fishermen, airplane pilots, policemen, and others. IRS has even had an audit program called ACE—aimed at attorneys, certified public accountants, and enrolled tax practitioners.

Many believe that those engaged in illegal pursuits are inclined to follow the same illegal conduct in meeting their tax obligations, and the Commissioner underscored this today. With this in mind, the selection for audit of a high percentage of the tax returns of those engaged in criminal activities not only seems to be a reasonable exercise of administrative discretion, but also is consistent with customary IRS practices and standards.

To characterize Mr. Justice Jackson's statement in the *Kahriger* case on the gambling tax: "If Congress may tax or the IRS may audit one citizen to the point of discouragement for making an honest living, it is hard to say that it may not do the same to another just because he makes a sinister living." Nothing said by the U.S. Supreme Court in the subsequent *Marchetti* case weakens the force of this observation.

As an individual once said to me while I was Commissioner of Internal Revenue: "Why is the IRS going after the little fellow? Why does it not go after the racketeers who are beating the game for millions"?

In weighing these important and contrasting values in our society, and to summarize, I reach the following conclusions: One, the Internal Revenue Service should cooperate with the Department of Justice in

its general Federal law enforcement efforts. In doing so, IRS should limit its activities solely to the tax aspects of these joint investigations.

Two, IRS must be sure to maintain a balanced investigative program so that it fulfills its total responsibilities for all types of tax fraud violations. It must exercise a high degree of selectivity in investigating nonracketeering cases and an extremely tight rein on the use of its manpower.

Three, IRS must determine its own proper workload and, after consulting with the Justice Department, must be the final voice in selecting the tax returns and types of activities to be investigated by it in these joint projects.

Four, IRS must maintain complete supervisory control over its special agents, requiring the full reporting of their activities at the district office level. Special agents should not be assigned to or placed under the general control of the Department of Justice or U.S. attorneys.

Five, specialized training and techniques must be developed for this combined enforcement program, but they should not be carried over to regular tax fraud investigations.

Six, IRS practices and procedures must at all times be lawful and protective of the constitutional rights of those under investigation. It must assure that due process of law is respected in its fullest sense.

Seventh and last, IRS must continuously maintain a proper balance between respect for the rights of private citizens and zeal in the detection of lawbreakers.

In reaching these conclusions, I have kept in mind the primary mission of IRS—"to encourage and achieve the highest possible degree of voluntary compliance with the tax laws." I do not believe that these IRS-Justice Department cooperative efforts interfere with the achievement of these goals. Indeed, if this activity is undertaken with good judgment, and with firm leadership and supervision, I see it as reinforcing the standing and capabilities of the Revenue Service. Public respect for the IRS will not be diminished; rather it will be heightened.

These joint investigative projects are an integral part of a strong and balanced tax enforcement program which, in turn, serves to strengthen our self-assessment tax system. That they also serve the interests of the Attorney General is not cause for denying the appropriateness of IRS's participation. I hope that Congress will lend support to these efforts and will provide IRS with the necessary appropriations to carry out this special responsibility.

Too often in the past the Revenue Service has been assigned special responsibilities but has not been given the resources to carry them out.

Senator HASKELL. Thank you, Mr. Caplin.

In following your statement, your item 3 there, "IRS must determine its proper workload and after consulting with Justice must be the final voice in selecting the tax returns and types of activities to be investigated by it in these joint projects." That seems to me to be the thrust of the argument of the Internal Revenue Service this morning.

Would you concur? Were you here this morning?

Mr. CAPLIN. Yes, I was. But I don't think that was articulated as the heart of the matter. I really think it goes deeper than that. I think

that there is a basic philosophical difference of opinion that is at stake here; and my own view is it really should not be at one end of the spectrum or the other. It should be a middle ground. In other words, I think there is room for IRS participation. Indeed, I think it is a part of their responsibility. At the same time, IRS must be careful that it is not devoting to these projects all of its 2,700 special agents and many revenue agents—indeed, the participation of revenue agents may be just as significant as the participation of special agents. I think that what happens is that the Department of Justice may identify a particular figure that the IRS will agree is worthy of audit under its normal standards.

But then you get into what they call "satellite cases"—where they say, having investigated the principal figure, now we, in the Department of Justice, feel we ought to look into his associates, and then after that, one step further, let us look into his cousins, and his sisters, and his aunts.

Now, the IRS, if it just went along that way after the Justice Department communicated its wishes, would find itself in a quagmire. It would have too heavy a commitment. So, the IRS really has to be a decisionmaker. It has to be in on the evaluation process; and this involves the relative strength of the Attorney General, the Commissioner and the Secretary of the Treasury, and a willingness to sit down and recognize the responsibilities and resources of each. It really takes two people sitting down as reasonable men and resolving this issue.

But, in the final analysis, the Revenue Service must be able to say we can go no further: We think we can examine case A and B, but not C; we do not think the last is worthy of examination.

Senator HASKELL. In other words, what you are saying, Mr. Caplin, is that they should be master of their own house in the sense of investigating A and B, should at least have some tax potential to it.

Mr. CAPLIN. That is right, and it ought to meet certain basic criteria that the Service feels is necessary before it embarks upon an investigation.

In many of these situations the Service, as a human factor, probably bends the criteria in some of these investigations; but it is a question of how far that bending goes.

I should say that during the years that I was in Government there was concern by the responsible people—the Senate Finance Committee, the House Ways and Means Committee, the Joint Committee—in terms of achieving the proper balance. I recall having discussions with the chairmen of those committees, particularly the chairman of this committee then Harry Byrd, Sr., of Virginia. He had a great sensitivity towards the proper role of the Internal Revenue Service. He was quite protective of its functioning in the right manner. One thing that he felt was important was on the point that you are touching upon right now—the issue of the IRS maintaining a balanced program and ultimate control of its destiny, to make sure that it was not becoming an arm of the Department of Justice.

Senator HASKELL. This, I gather, would be your viewpoint as long as they are in control of their own destiny and the investigation at least has some tax potential. There is very little harm and perhaps much to gain by cooperation. Would that be your viewpoint?

Mr. CAPLIN. Yes. I do not think the image of the Internal Revenue Service is in any way injured by this. I think there is a certain public pride in the efficiency of the Internal Revenue Service to really be the final step in bringing some of these major criminals to jail. I think that the program has an impact on the average citizen—that if IRS is able to convict those criminals, certainly it can convict the average tax evader.

Senator HASKELL. And I suppose, Mr. Caplin, you would also feel that if it were important, that the public felt that there was at least a preliminary justification to start in thinking of the protection of the privacy element of a tax return, I assume that you would want at least a prima facie showing of a possibility of a tax violation before turning other people loose among tax returns. Would that be your viewpoint?

Mr. CAPLIN. Yes, sir.

Senator HASKELL. Well, thank you. You have been extremely helpful and I appreciate very much your comments.

Our next witness will be Mitchell Rogovin, who is a former Assistant Attorney General, Tax Division, and also former Chief Counsel of the Internal Revenue Service.

I appreciate your being here, Mr. Rogovin.

STATEMENT OF MITCHELL ROGOVIN, FORMER ASSISTANT ATTORNEY GENERAL, TAX DIVISION, AND FORMER CHIEF COUNSEL, INTERNAL REVENUE SERVICE

Mr. ROGOVIN. Thank you, Mr. Chairman.

Mr. Chairman, my name is Mitchell Rogovin. I have practiced law in Washington for some 20 years. I am a partner in the firm of Arnold and Porter. I appear here at the invitation of the subcommittee to present my personal views concerning the appropriate role of the Internal Revenue Service in general Federal law enforcement efforts. To assist you in evaluating my testimony, you should be aware that I held two positions relating to the enforcement of the Federal tax laws, positions you enumerated at the time I came to the witness stand.

At the outset, let me complement the chairman for scheduling these hearings. The subject has, over the past 15 years, been debated within the executive branch. It has not, however, in my view, received adequate consideration within the Congress or by the public. It is particularly timely to air this issue when the appropriateness of the activities of other Federal investigative agencies is also being examined closely by the Congress and the public.

Compliance with the tax laws depends in large measure upon what Jane Jacobs, in another context, has called the "intricate, almost unconscious, network of voluntary controls and standards among the people themselves." The function of the Internal Revenue Service in the enforcement of the tax laws is to reinforce those voluntary controls on which our tax system, and indeed, the economic health of our Nation, depends. Our tax laws provide "a system of sanctions which singly or in combination were calculated to induce prompt and forthright fulfillment of every duty under the income tax law and to provide a penalty suitable to every degree of delinquency."

Over the years a healthy public attitude toward our self-assessment system, coupled with an ample selection of sanctions available to induce compliance, has made our tax system the envy of the world.

This tax system and the agency that administers it has also been the envy of other Federal law enforcement officers. Ever since Prohibition, when Al Capone was convicted for tax evasion, attorneys general have been declaring war on organized crime and in doing so, have attempted to either enlist or draft the IRS into their wars. The reasons for co-opting the IRS and its statutes are apparent. The broadness in scope and flexibility in application of tax statutes makes them significant weapons. In addition, unlike most other economic sanctions, tax evasion is a relatively serious felony, carrying a maximum prison sentence of 5 years on each count.

Physically the Service has some 85,000 employees operating out of over 900 offices throughout the United States as well as abroad. It has over 20,000 agents, 2,700 special agents, 1,000 lawyers and a data retrieval system second to none. These resources, coupled with IRS's annual budget of over $1.5 billion, and its unique statutory authorities for obtaining information, make it the worthiest of allies.

Based on such calls to the flag, the IRS served in many of these holy wars. Indeed, if battle streamers were awarded, Revenue's flag would be resplendent with the silk of past battles. It fought against racketeers and communism in the 1950's; organized crime in the 1960's; and narcotics as well as the enemies of the Nixon administration in the 1970's.

Because of the all-pervasive nature of Federal taxation, it is not difficult to assert a tax interest—albeit indirect and not significant in revenue actually collected—in any investigation of an alleged violation of a penal statute. Indeed, the tax power, according to former Attorney General Kennedy, provides a "jurisdictional base" for the intervention of the Federal Government.

In the 1960's, more than 60 percent of the racketeering convictions stemmed from IRS intelligence agents. While a number of these successful prosecutions involve serious tax crimes, many reflect a significant departure from the historic standards applied by the Internal Revenue Service in recommending criminal prosecutions. A good example of this latter category is to be found in the case of *Janko* v. *United States*. The facts are simple. Mr. Janko, for 3 consecutive years, improperly took as exemptions his two minor children, who were living with his estranged wife. The tax deficiencies in question were $134 for 1 year and $264 for each of the other 2 years. Upon conviction, Mr. Janko was sentenced to 10 years' imprisonment. The Janko case is the only known instance of a taxpayer being prosecuted for claiming an exemption for his own minor children.

Such prosecutions hold the Revenue Service and indeed the United States up to ridicule. Clearly, the Janko prosecution served no revenue purpose and one must question whether the majesty of the sovereign was enhanced by such litigation.

It is my belief that the IRS should have but a single mission: to administer our revenue laws in a fair manner. The IRS should not, in the name of governmental economies, be detracted from this mission. If enforcement of nontax matters, such as the narcotics laws or eco-

nomic stabilization program or Federal energy program, requires additional manpower, the Congress should provide for it. These programs of a nontax nature should not be added to the IRS's already burdened shoulders. These nontax activities coupled with the apparent misuse of manpower by the "strike forces," erode the administration of our revenue laws.

Such erosion affects the confidentiality provisions of our tax laws, allows for the misuse of the very special jeopardy assessment provisions and permits the securing of otherwise unavailable taxpayer information through the use of the revenue summons. More is also done. It affects the attitude of IRS employees with respect to the evenhanded administration of the tax laws. You cannot sponsor special tax enforcement programs whether they be keyed to drug traffickers, Communists, members of organized crime or enemies of a given administration, without doing serious harm to the standards of fairness you seek to instill in your employees.

In closing, let me warn this committee to look closely at figures submitted to it by those who claim such joint programs with Internal Revenue Service pay their own way. It has been my experience that the figures projected never materialize. Such programs merely shift funds appropriated to the Internal Revenue Service for tax adminstration to those other agencies that seek Internal Revenue Service's assistance.

These hearings, focusing on the role of Internal Revenue Service in nontax law enforcement, are extremely important. I hope the Service will be given a clear congressional mandate that it should restrict itself to tax collection. In any event, the will of Congress should be made clear with respect to this issue.

Senator HASKELL. Thank you very much, Mr. Rogovin.

Assuming that the IRS is master of its own house, if you use the expression I just used with former Commissioner Caplin, and assuming that circumstances surrounding a particular individual or organization would indicate additional tax liability to be collected, would you see any objection to the cooperation by the IRS with the Justice Department in looking into the organization or individual generally, or would you erect that wall between them that Judge Tyler did not want to erect?

Mr. ROGOVIN. I am not familiar with Judge Tyler's testimony; but I would be very leery of bringing the special circumstances, the special statutes that the Congress has given the Internal Revenue Service for the collection of revenues under the supervision and control of the Department of Justice. I find it very difficult to assume a set of facts, a realistic set of facts that would stand for the proposition that the Internal Revenue Service would, in fact, be master of its own destiny under those circumstances.

Senator HASKELL. You see, Judge Tyler testified this morning that the Department of Justice did not care about early terminations, jeopardy assessments, or administrative summonses. He said that the IRS had some very competent personnel that did financial analysis.

Mr. ROGOVIN. No question about it.

Senator HASKELL. His statement was that he just wanted some help from those folks.

So, assuming he does want some help from those folks, and assuming the Commissioner of Internal Revenue thinks that there may be a tax deficiency or criminal activity involved, can you see any objection, to assembling one of these strike forces to go into both title 26 and title 18 violations?

Mr. ROGOVIN. Mr. Chairman, I am still very nervous about the simple request of the Department simply for some help because the IRS has talented people. The fact is, the IRS has talented, capable accountants, lawyers, and investigators. If the Department of Justice needs that type of talent, there is a market for it and they can go out in the marketplace to seek out that talent.

I am very concerned about the relationships that develop, and I think that it is on a practical level that such relationships have to be viewed. Information is the currency of investigators. Once an investigator is working with, not necessarily for, but with a Justice Department strike force, the chances that he will get additional information on the quiet without the formalisms that we seek in our regulations—I think the chances of that happening are high.

This Congress has concerned itself about the confidentiality of income tax returns, and indeed, if it were not for the fact that we have an income tax law, the U.S. Government would not have the enormous amount of financial information that it currently has with respect to its citizenry. Now, that information is given as an aid to the Internal Revenue Service in determining the correctness of the tax filed on an annual basis.

I am very troubled that nontax investigators will find this data to be an enormous value to them in the work they are doing. I am not making any case against the Department of Justice properly investigating wrongdoers, wherever they are and under whatever title of the U.S. Code violations exist. I am particularly concerned that the IRS will be contaminated by the types of investigations that are going on outside of IRS. I believe very strongly that attitudes and people change. The type of people who are interested in jobs with the Internal Revenue Service changes by the picture that is painted with respect to the strike forces and the crime fighting that is going on. I think those people who do that type of work are to be commended. But they ought not to be part of the Internal Revenue Service.

Senator HASKELL. Of course, Judge Tyler's viewpoint—I am sorry, he is not in the room, but he is obviously busy—was that it would be a waste of Federal money for the Justice Department to have to employ people who are as skilled as some of the Internal Revenue Service agents. But I gather you would not necessarily——

Mr. ROGOVIN. Mr. Chairman, I am now serving as special counsel to the Director of Special Intelligence. The very arguments that have been made apparently this morning sound to me like the arguments that must have been made 10 or 15 years ago when the Central Intelligence Agency was brought into domestic affairs . . . because it would have been a waste of talent and a waste of money to have all of that capability limited to foreign intelligence. These agencies—IRS, CIA, Justice—all have particular missions. I think this country gets in a lot of trouble when it starts mixing these missions and, in the name of economy, tries to join the people together. I think we all lose as a consequence.

Senator HASKELL. Let me ask you just one more question. In a case like this *Janko* case that I never heard of, what do you suppose the impact of such a case is on the self-assessment system of taxation?

Mr. ROGOVIN. Well, first of all, you do not teach foxes not to eat chickens. Mr. Janko was reputed to be an aide to a Mr. Workman of St. Louis, a gambler. I do not think as a consequence of the Janko prosecution similarly situated people, members of the rackets, decided to give up their erring ways and file accurate income tax returns. I think this was a last ditch effort to try to put Mr. Janko in jail. It failed. The Supreme Court reversed——

Senator HASKELL. Oh, I thought it succeeded. I misread your testimony.

Mr. ROGOVIN. The footnote, I believe, indicates the case was reversed. The point is that Mr. Janko, in fact, had been tried before two juries and convicted on both instances of the felony of evasion, a case brought on the slimmest of circumstances, a case obviously tortured by the Internal Revenue Service to serve a nontax purpose. I get very nervous when the Internal Revenue Service, an entity that has a selective prosecution program to begin with, selects prosecutions that do not aid the enforcement of the tax laws.

Senator HASKELL. You would not see any particularly material tax purpose being served by the *Janko* case?

Mr. ROGOVIN. None whatsoever, Mr. Chairman.

Senator HASKELL. Well, thank you, sir, very much for your thoughtful testimony. I would appreciate it.

Our next witness is the Honorable Sheldon S. Cohen, former Commissioner of Internal Revenue.

Mr. Cohen, nice to have you with us.

STATEMENT OF SHELDON S. COHEN, ESQ., FORMER COMMISSIONER OF INTERNAL REVENUE

Mr. COHEN. Thank you, Mr. Chairman, for the invitation. I, too, consider it an honor to testify before the committee to explore these things, that, unfortunately, neither this committee nor any of the committees of Congress have gone into, as fast as I can remember. I should start by saying I apologize for not having a statement. I have a case to argue in court here on Wednesday morning, and I did not have time to prepare other than a few notes here.

Senator HASKELL. No problem.

Mr. COHEN. I would like to applaud the views of my fromer Chief Counsel and the man who represented me as an Assistant Attorney General, Mr. Rogovin. I think I come out a little closer to his views, than I do to Mr. Caplin's, although I agree with some of his also. I would say I agree with some of what Deputy Attorney General Tyler and the Commissioner said this morning, as I understand it, in their summarized statement.

I suppose moderation is good in everything, and one should never become too zealous about anything because we tend to go overboard and we may be seeing a little of that on both sides right now. I will try to explore a few ideas with you on techniques that we use and some techniques that perhaps we used and I do not think are so good anymore. I am sure there are better techniques today, but law enforcement

and the IRS have been around since the beginning of time, that is since the beginning of the IRS at least and so it should be. When I first became Commissioner I was concerned about the amount of money and time and effort that was spent on criminal law enforcement. Was it enough? Was it too much?

A special agent on the average works one to three cases a year. A revenue agent may work 50 or 100, depending on the kind of cases he works. The amount of revenues are significantly different. The purpose of a special agent obviously is not to collect revenue; it is to make sure the laws are enforced, and whether the case warrants it on a money basis or not he should pursue the particular case to determine whether there is evidence of guilt or not.

But there are an awful lot of resources spent in criminal law enforcement. It is a great deal of money to spend, and, so, with the cooperation of the Justice Department and the Attorney General we undertook a study of whether we could have taken some of those resources that were otherwise applied to criminal law enforcement and put them on to civil law enforcement. Increased revenue was our major mission. What effect might that have on the system as a whole?

You could, of course, put in civil penalties that would be in lieu of some of the criminal penalties. You could make those civil penalties subject to publicity.

All of those things were explored in the study which took quite some time, in which several universities were used for surveying purposes. Without going at length into it, our determination after the completion of that study was, yes, criminal law enforcement in the tax system is essential. It probably is essential at about the level we were doing it at the time, although nobody could say that scientifically. There is something in the psyche of our people that makes the fear of the ultimate sanction, the criminal sanction in this instance, effective. It forces them or coerces them, or whatever, to cooperate, at least those recalcitrant people around the edges and perhaps even a few further in, so that it is necessary to have criminal law enforcement in the tax system.

The Commissioner spoke, I guess, this morning about both the white collar and the organized crime effort. The tax system, all of us will say—and I think you have heard all of us say—is a national asset. It is a tremendously valuable national asset. The first year I became Commissioner was the first year we collected $100 billion. We are collecting over three times that today. The budget of the Revenue Service was, perhaps, one-third at the time of what it is now. We never had enough resources, and I am sure that Mr. Alexander and his assistants do not have enough resources today to do the job.

The measure of a good society probably can be measured by how well its taxes are collected. If you look at those societies in the world, the free world, that have smooth running, efficient tax systems, it is basically a healthy citizenry and a healthy society, and the opposite is likewise true.

In order to have this system, we have had to give the Service a number of very special powers that Mr. Rogovin alluded to. One of the fears that I have—and I think he expressed some fear—is the possibility or probability that those special powers will be eroded if they are abused. They will be eroded either by the Congress or they will be eroded by the courts, but eroded they will be.

The Department of Justice and a number of other agencies have a number of laws to enforce. They by and large do a good job. They by and large do not have sufficient resources, and that is for the Congress to answer also. I think the Service has no apology to give or make for enforcing the tax laws against everyone and anyone, but in a fair and relatively uniform manner. That is, we were often pressed as to why we went after racketeers so heavily. Well, I do not have to apologize, nor does the present Commissioner, nor do any other Commissioners, that if a person did not pay his taxes because he happened to be a racketeer, you ought to get him for tax evasion if you can get him.

The problem with mixing the powers is a very troublesome problem because it is an awesome power, this taxing, authority. It is one that has respect and must continue to maintain respect. As a lawyer, I am constantly worried, I suppose, by the admonitions that if we do not give the least of our citizens their rights, then we will not give it to the rest of our citizens, something that Mr. Rogovin alluded to before. If we can have special prosecutorial standards for some people, then we can have enemies and friends. As long as I am the fellow who is determining who the enemies and friends are, it is all right, but if the other fellow is determining it, I would just as soon not have this authority myself. That is the problem. There ought to be cooperation. There ought to be joint efforts, and, yet, one must guard against that cooperation or those joint efforts going too far.

I have had discussions with the Deputy Attorney General in regard to a project that he and I are working on together over coffee about this issue. He needs—he, being the Department of Justice—he and his agency need trained people, but the only trained people in the world do not work for the Revenue Service. The only people capable of good, tight financial analysis do not work for the Revenue Service, or, if they do, they can be hired from the same pool of people by another agency. The problem is that over the years the Department of Justice has not given emphasis to good, tight financial analysis. I mean, after all, the FBI for years has had problems in controlling extortion crimes, crimes of bank embezzlement. It requires the same kind of analysis that a revenue agent does.

The Department of Justice is giving second-class citizenship to its FBI accounting agents and, therefore, the better ones do not stay, or, perhaps, they do but they do not work as hard because they are not being encouraged. What the FBI and the Department of Justice and the Criminal Division must do is it has to get in and get good people, give them good work and encourage them. It will not take very long to develop a crew of experts. I am sure the Department of Justice would have the cooperation of the Treasury Department and the IRS in training those people.

Now, if they want the interplay of these unique talents and abilities and the ability to get at the tax returns and the subpena powers and the like, that is a more troublesome problem. If it is pure manpower, as Mr. Rogovin said, I would say, again, give them more money.

Senator HASKELL. May I interrupt?

Mr. COHEN. Certainly.

Senator HASKELL. This morning Judge Tyler indicated quite clearly that as far as he was concerned, the additional statutory powers in the Internal Revenue Code came pretty far down the heap, pretty far down the totem pole.

Mr. COHEN. Judge Tyler has never worked a case, sir.

Senator HASKELL. He is talking now as far as the use of—why he wants the IRS in with him. He says the next thing was access to returns. He did not put that very high up.

Mr. COHEN. You would not put that very high up either because if the bank embezzler files a return he is not going to show his embezzlement on his tax return, so it is not going to do very much good.

Senator HASKELL. I would not think he would, but he did say that the important thing was these highly trained, sophisticated financial accountants.

Mr. COHEN. Well, in my dim, dark, distant past I was once a CPA, and I have worked with the accountants in the IRS and find them to be as good as I have ever worked with, but there are other good accountants in the world.

Senator HASKELL. I take it your view is that possibly the FBI either has or could have——

Mr. COHEN. It is authorized today to have—well, at one time the criteria for entrance into the FBI was either a law degree or an accountant degree. I do not know what the requirements are today, but the problem was always that they did not treat their accounting agents with the same degree of respect and honor and promotion, et cetera, and therefore the better accountants tend to go to other agencies.

Senator HASKELL. Well, I was just mentioning these things because I gather you would have a little difference of opinion with Judge Tyler on the necessity to having access to this pool of highly-trained financial people.

Mr. COHEN. Well, if, as he says, and I will take him at his word, that the subpena powers, et cetera, are not important to him——

Senator HASKELL. He said it is very low on the totem pole.

Mr. COHEN [continuing]. And the access to the tax returns are not very important to him, then the only thing is the people. The people are uniquely trained, only in the respect that over a period of time they have gained skills, and those skills are teachable.

Senator HASKELL. I must say that is the way it came through to me.

Mr. COHEN. I am sure the Treasury Department and the IRS would be glad to make spaces in their next training program for agents available to some people from the Department of Justice. That kind of interagency cooperation has been going on for years and would not raise any specter of any problems whatever.

Senator HASKELL. Thank you. Go ahead, excuse me.

Mr. COHEN. I think that I would like to make one other point. Mr. Rogovin alluded to this, and that is the standards of prosecution or the standards of referral for prosecution of criminal cases. The standard of referring a case from the IRS Intelligence Division to the IRS Chief Counsel's Office, and thence from the Chief IRS Counsel's Office to the Department of Justice Tax Division, the Criminal Section thereof, for prosecution ought to be the same for everyone because we cannot bear to go through the wretch we have just been through of different standards for different people. I am in favor of every crook in the United States being prosecuted. I would rather he be prosecuted

for the crime he committed rather than a tax crime because I think that is the way the laws were designed, but if it need be, he ought to be prosecuted for the tax crime. I think my record will sustain that while I was in the Government, that is what we attempted to do. But I am not in favor of a different standard of prosecutorial judgment for that person which some group will designate as organized crime because that lower standard might be applied to you and me tomorrow.

Senator HASKELL. You would not then feel that the *Janko* case was brought in the public interest?

Mr. COHEN. Or the *Accardo* case.

Senator HASKELL. What is the *Accardo* case?

Mr. COHEN. The *Accardo* case was a notorious hoodlum or allegedly notorious hoodlum in Chicago who was prosecuted for taking too much depreciation on his automobile, a standard which we would not apply to the normal businessman.

Senator HASKELL. You mean a fraud case was brought on taking——

Mr. COHEN. I do not have the case in front of me, sir, so I cannot give you the detail—but it is a pretty flimsy case.

Senator HASKELL. Right.

Mr. COHEN. I do not think anybody in the Service is necessarily proud or should be proud, some of them may be, saying we got him for—it is like getting the town hoodlum for spitting on the street.

Senator HASKELL. Other people—nobody that has shown up today, but I have heard other people say that access to tax returns are a great help in finding leads. I have heard people outside of the hearing room tell me that. What is your comment?

Mr. COHEN. I suppose that may be so. Probably not, it is probably the investigation that comes out of the tax return, rather than the tax return itself, although when you were talking about a universe of 85 million tax returns, I am sure you are going to find some leads. I have seen cases where a bad person—we will use that title—rather than an organized hood, reports sufficient income so you could not make a tax case on him. Whether it is right income or not, nobody knows, but it is sufficient so that nobody could prove otherwise. The return might give you the fact that he owns a particular piece of property which is a lead to other activities. That is generally available other places; it might make it a little bit harder, but I doubt if that is going to have much effect. A weight against that is this whole problem that has been going on for many years. What degree of confidentiality are we going to give a tax return. Who is going to have access to it? What agencies? What kinds of people? Are they going to be for statistical purposes only, or for law enforcement and State and local purposes?

We had a set of hearings—this committee had a set of hearings last year in which a number of Commissioners of Internal Revenue, as I recall, were arrayed across this table and I was sitting on the end. being the youngest. I said at the time—and I think it was universal amongst all of the Commissioners, former Commissioners who testified that they thought that the tax system would best be served by the tightest kind of confidentiality. It is not absolute, but the tighest kind you could get, and we arrayed off of that.

What are we going to decide? This committee, or ultimately the Congress, is going to have to decide are we going to opt for what is best for the tax system. I think a fair degree or tight degree of confidentiality will bring in the greatest amount of revenue and make the tax system work best. The other alternative is to try for the marginal effect that you might have in getting a few—and I say relatively few—so-called hoodlums. The choice is a judgment call. No one can make them with absolute certainty, and you will not know until long after the events have occurred whether you were right or whether you were wrong.

Senator HASKELL. May I gather, Mr. Cohen, that you would opt for beefing up the FBI's, say, accounting expertise, financial expertise, through incremental staffing as a method of pursuing organized crime as opposed to increased involvement by the IRS?

Mr. COHEN. I would, sir. I think if the U.S. attorney needs special trained people, then he ought to have them assigned. If the Department of Justice needs a pool in Washington, which they can assign around the country, then they ought to get them. But be careful of this melding of functions. You can abolish the FBI and the Narcotics Bureau, and let the IRS do it. Then you can abolish the investigative arm of the Customs Service, and local police officers because every thief is committing a tax crime when he does not report his theft. I think we are going to go too far, and once you start down the road, where do you stop? Who is going to be the referee that makes the calls? Once we get out of the strict rule area, who is going to make the close calls as we move down that line? I do not like that.

Senator HASKELL. Well, I thank you, Mr. Cohen. I appreciate very much your being here.

Our next witnesses are a panel composed of personnel from the Department of Justice and the Internal Revenue Service. Mr. Rudolph Giuliani, Associate Deputy Attorney General; James O'Brien, Acting Deputy Assistant Attorney General, Tax Division; William Lynch, Chief, Organized Crime and Racketeering Section, Criminal Division; Cono R. Namorato, Chief, Criminal Section, Tax Division; Mr. Wolfe, Assistant Commissioner of Compliance, IRS; Mr. Clancy, Director, Intelligence Division, IRS; Mr. Whitaker, Chief Counsel, IRS; and Mr. Gaston, Director, Criminal Tax Division.

Gentlemen, if you could come forward, and the purpose of this panel is not so much to discuss policy as it is nuts and bolts. First, who is the boss? Who convenes a strike force? On what basis is it convened, and then who reports to who? For example, how is the strike force operated? How are cases originated? Who directs the activities? What is the role of the IRS special agent? How do revenue agents become involved? Would withdrawal of an IRS agent limit the capacity of a strike force? Could the FBI assume a larger proportion of the IRS rules?

Now, these are some of the questions that I hope to answer. I would rather stay away from personal views as to whether or not we are doing right at the present time. So how do you want to proceed?

STATEMENTS OF RUDOLPH GIULIANI, ASSOCIATE DEPUTY ATTORNEY GENERAL; JAMES D. O'BRIEN, ACTING DEPUTY ASSISTANT ATTORNEY GENERAL, TAX DIVISION; WILLIAM S. LYNCH, CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION; CONO R. NAMORATO, CHIEF, CRIMINAL SECTION, TAX DIVISION; SINGLETON B. WOLFE, ASSISTANT COMMISSIONER, COMPLIANCE, IRS; THOMAS J. CLANCY, DIRECTOR, INTELLIGENCE DIVISION, IRS; AND DAVID E. GASTON, DIRECTOR, CRIMINAL TAX DIVISION, OFFICE OF CHIEF COUNSEL, IRS

Mr. LYNCH. Perhaps, Mr. Chairman, as I can——

Senator HASKELL. Would you identify yourself for the reporter?

Mr. LYNCH. Yes; I am William S. Lynch. I am Chief of the Organized Crime and Racketeering Section of the Criminal Division of the Department of Justice.

Since some of the questions you addressed related to the initiation and the operation of strike forces and since strike forces are, in a sense at least, field offices of the Organized Crime and Racketeering Section, I thought it might be appropriate to give you a little history. I certainly will be able to answer some of the questions that you have on the operations of the strike forces.

The strike force really was devised to improve the Federal response, prosecutive response, to the problem of organized crime which has been viewed by a number or congressional committees and by Congresses over the years as a very serious law enforcement and social problem. Organized crime is a sort of conglomerate of crime, engaging in illegal activities across the spectrum of Federal violations, with a designed purpose in a structured oragnization to minimize and neutralize the law enforcement efforts that are directed by the State, local, and the Federal levels.

One of the problems underlying what was felt to be inadequate Federal response was the fragmentation of the jurisdiction of the various Federal investigative agencies. The IRS responsible for certain violations; the Secret Service responsible for certain violations; the FBI, Customs and DEA, or its predecessor, Bureau of Narcotics and Dangerous Drugs responsible for others. In 1967 a team, a task force of supervisory investigators from each of the various Federal investigative agencies and experienced prosecutors from the Department of Justice were put together to focus the efforts of the Federal criminal investigative establishment on the problem of organized crime as it existed in a particular area. In this case it happened to be Buffalo.

It was a successful effort. There were significant inroads made into the criminal organization that did exist in the Buffalo area, and thereafter the additional strike forces were fielded from 1968 through 1971 when, I believe it was in April 1971, the last strike force was established. There are 17 strike forces in all in 16 geographically located areas, by and large the major metropolitan areas of the United

States. They are manned by attorneys from the Organized Crime and Racketeering Section. They have representatives from the various Federal investigative agencies, in this case, from the IRS, the FBI, Drug Enforcement Agency, Secret Service, Customs, Bureau of Alcohol, Tobacco and Firearms, assigned, and the agents are, as requested, generally supervisory level agents who are experienced in their field and are able to contribute to the combined planning that goes into a Federal strike force effort.

Mr. Chairman, I think some of the other aspects of the enforcement effort represented by strike force are sometimes obscured. I refer to the fact that when you deal with the problem of organized crime in the United States, in the different parts of the United States, you are dealing with a problem of massing large amounts of money outside the tax structure, in addition to the violations involved underlying illegal businesses that they are conducting. This is a serious law enforcement and social problem insofar as we view the problem of organized crime in the United States. To the extent that you utilize the various civil and other sanctions of the Federal law, including Internal Revenue Service law, we view it as impacting on the problem of organized crime and depriving organized criminals of substantial economic power.

Senator HASKELL. Excuse me, Mr. Lynch, but the Governor of my State is on the phone and I want to talk to him just a minute. I will be right back.

Mr. LYNCH. Certainly. Thank you, Mr. Chairman.

[Brief recess.]

Senator HASKELL. Excuse me, gentlemen. Go ahead, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. I was just about completing my general overview of the composition of the strike force and how they became established, and I was referring to the fact that it is not simply—although a large part of the effort of the Department of Justice, of the Criminal Division, of the organized crime strike forces, are the response to the crimes of organized crime. But it is also a very significant part and should be a very significant part of the Federal response, to take cognizance of the fact that these vast accretions of economic power outside the tax structure should be something that is of interest not only to the Department of Justice but to the Internal Revenue Service.

In that connection Internal Revenue Service has played a very significant role from the very beginning when the first strike force was established and Audit the Intelligence Divisions were assigned to the first strike forces.

Senator HASKELL. Let us stop there. Glittering generalities are all very well, but let us have a specific example of how a strike force works and what the contribution of the IRS was in a specific case, one that is over the dam, so that there is no problem of pretrial disclosure.

Mr. LYNCH. Well, I think it was in 1968 when the Attorney General requested of the Secretary of Treasury, and the Commissioner of Internal Revenue Service, that they supply investigative representatives from the Internal Revenue Service's Intelligence Division and Audit Division, Bureau of Alocohol, Tobacco and Firearms, Secret Service and Customs, and commenced a review of the criminal situation in New Jersey.

Among the conclusions of the group as they mutually planned what needed to be done was a recognition of the fact that certain people had significant criminal as well as political influence in the New Jersey area. The Internal Revenue Service undertook investigations of, among other people, Hugh Addonizio who was then mayor of, I believe it was Newark, N.J., in conjunction with their investigation of the Boiados who were rather infamous figures in the area in charge of various gambling, loan sharking, and other criminal operations.

The net result of the Internal Revenue Service investigation was to expose not only the Boiado criminal activities in the area of illegal wagering, but also to expose the interrelationships of Mr. Boiado and Mr. Addonizio in the regular kickback of contracts that were let out by the city of Newark, and that broke up that particular organization very significantly.

Senator HASKELL. Let me just interrupt you, Mr. Lynch, because it is important to get the IRS's role.

How did they expose the kickback relationship?

Mr. LYNCH. They did a very thorough, longtime investigation of the contracts let by the city of Newark, N.J. The details of that I do not know. But they found the conduit corporation, they traced the moneys from the conduit corporation into the political camps.

Senator HASKELL. OK, I understand their methodology. Why could the FBI not have done the same thing?

Mr. LYNCH. The FBI might possibly have done the same thing if they had a jurisdictional peg to begin with and if they had the same ability to go through the books and records of these various corporations that the Internal Revenue Service has. But until the Internal Revenue Service developed this information from the investigations that they undertook, there was no clear picture of bribery being paid. Indeed, it was only after the Internal Revenue Service's investigation that they surfaced the problem.

Senator HASKELL. Sure. Once they got the books and records, they could start tracing funds, right?

Mr. LYNCH. And doing the necessary third-party interviews and contacts, yes.

Senator HASKELL. OK. Now, suppose you convened a grand jury. Could they not have done the same thing.

Under grand jury authority, could you not have done the same thing with the help of the FBI?

Mr. LYNCH. The short answer to your question is yes, but it would clearly have been without the kind of financial and, indeed, tax expertise that the Internal Revenue Service had.

Senator HASKELL. OK. So we are back to talking about expert financial types.

Mr. LYNCH. With a predicate in their tax jurisdiction. That is to say, you can have a fine, outstanding, very thorough CPA, but he may not know much either about tax processes or tax practices or how the tax laws apply and work, and that is a particular and peculiar expertise that the Internal Revenue Services does supply.

Senator HASKELL. So it is the expertise of the knowledge of the tax laws combined with accounting and financial expertise.

Mr. LYNCH. Yes, sir, that is as I view it.

Mr. O'BRIEN. Yes, sir, that is it.

Senator HASKELL. Mr. Lynch, you may have heard Mr. Cohen, who was here a moment ago, say that there are other folks who have the qualities which you talk about. I am sure that if representatives of Arthur Andersen or Peat, Marwick, Mitchell & Co., were here they would say there are other folks who have that expertise.

What I am trying to get at is, why is it essential to use the Internal Revenue Service?

Mr. LYNCH. Because vast amounts of income taxes are being evaded by people whose regular profession it is, not only to engage in illegal businesses such as loansharking and illegal gambling, but a necessary comcomitant of their business is to take into account some way to evade the tax on those profits from those businesses.

Senator HASKELL. Now, wait a minute. We are not talking about a tax case. We are not talking about putting a person in jail because he failed to report income. You are talking about extortion and kickbacks, which I assume was——

Mr. LYNCH. But income, also, Also, income.

Senator HASKELL. All right, so long as there is income, but suppose there hadn't been? Suppose they had reported their income but used something else?

They would not say, for extortion, x number of dollars, but they might have said gambling at the racetrack, the same number of dollars. Now then, they would have paid whatever tax was due the U.S. Government, and then I do not think there would have been a necessary——

Mr. LYNCH. There probably would not have been a case, in that circumstance.

Senator HASKELL. But there still might have been an extortion.

You mentioned extortion which would be a different criminal statute.

Mr. LYNCH. Yes, that is right.

Senator HASKELL. If there is tax deficiency involved, obviously, the IRS should be involved; but where there may not be a tax deficiency, cannot other people do things just as well?

Mr. LYNCH. Yes.

Senator HASKELL. That is all I want to know. Go ahead.

Mr. NAMORATO. Mr. Chairman.

Mr. GUILIANI. Mr. Chairman.

Senator HASKELL. Would you please identify yourself to the reporter.

Mr. NAMORATO. My name is Cono R. Namorato. I am Chief of the Criminal Section of the Tax Division.

It would be rare that you would run across an extortion situation where the individual involved would be reporting it on his tax returns. No. 1, 99 times out of a 100 where you do have an extortion-type crime you will also have a tax-related crime.

Secondly, if an individual does report an item on his tax return and mislabels it, you could very well wind up having a violation of title 26, section 7206.

Senator HASKELL. You are a little ahead of me on these sections. But suppose you have invoked a grand jury and found out a few of these things; and you could tell the Internal Revenue Service so they can take it from there and suppose the Internal Revenue Service, in

the course of one of its audits, finds there is a potential violation of an extortion section; surely they would let you know.

But the only thing which I am curious about is that there seems to be an implicit assumption among many of you folks that everybody has to work together right from the beginning. I just wonder if that is absolutely necessary, in view you heard Mr. Cohen's statement and Mr. Rogovin's statement which are different from yours.

Your assumption is that unless you all start working together from the beginning, we are not going to come out with any kind of a successful prosecution.

Mr. GIULIANI. Mr. Chairman, my name is Rudolph Giuliani. I am Associate Deputy Attorney General, and for the last 5 years I have been a prosecutor in the Southern District of New York. I was in charge of the Special Prosecutions Section that dealt with official corruption. I was in charge of the Narcotics Section and I was executive assistant in that office. And I think that probably is the largest U.S. attorney's office, or at least Federal prosecutor's office, in the United States.

And I can tell you from personal experience that in any investigation of a sophisticated crime, probably the success or failure as to whether or not you are going to uncover the criminal activity that is often artfully concealed is going to turn on your ability to organize it well at the beginning. You need a team. A lawyer, an experienced investigator, and usually a man who is experienced in being able to go through books and records and to try and unravel the web which is usually weaved by those who are trying to conceal the financial transactions that are involved in the crimes they commit.

Attempting to investigate those kinds of crimes by referring things by memorandum to other agencies just does not work. You have to work together and try to interpret the leads that you are getting as they are coming in with a team that is familiar with all of the facts of the investigation.

Senator HASKELL. I could not possibly agree with you more. And the only thing that I want to try and bring out is that you have to have your lawyer, you have to have your investigator, you have to have your financial man, you have to have your accountant. Why, necessarily, does your accountant, your financial man, have to come from IRS?

Mr. GIULIANI. I do not think he necessarily has to come from IRS. I think as things work out, most of these crimes, crimes involving bribery, crimes involving large dealings in narcotics, crimes involving extortion, generally also involve evasion of substantial amounts of tax; because those who take bribes rarely, if ever, report those bribes on their tax returns. So that the IRS——

Senator HASKELL. Oh, I agree with you, sure.

Mr. GIULIANI. So that the IRS is not just assisting the Justice Department in fulfilling the Justice Department's mission. Their failure to investigate and to allocate a substantial amount of their resources to those crimes would be defeating their own mission if they were not doing that. So it makes sense for the Internal Revenue Service to allocate a substantial amount of their manpower to these kinds of investigations. These are also the investigations that will obtain the most publicity for the Internal Revenue Service, and that has a very beneficial effect.

There is an example given by the Commissioner in this statement that he submitted which I think puts it best, and I just think he comes to the wrong conclusion.

He gives the example of, if there were a choice between making a tax evasion case against a major member of organized crime or a professional, he would think that it might have more tax deterrent to make the case against the professional because taxpayers would identify better with the professional.

The problem is, they would not hear about the professional being prosecuted. Maybe five people would hear about that. It would be on page 58 of the New York Times if it was in the New York Times, and probably it would not be. I have prosecuted many, many tax cases, many of them against doctors and lawyers, that never appeared in the newspapers.

I prosecuted one tax case against a relative—in fact, a brother-in-law of Vito Genovese—and that was on the first page of the New York Times and I am sure had a lot more deterrent effect, not only on organized criminals, but on regular, ordinary taxpayers who see that the Internal Revenue Service is substantially involved in enforcing the tax laws.

Senator HASKELL. Now, that is a judgmental thing. You may be right or the Commissioner may be right. I do not know who is right, but that is judgmental.

Mr. GIULIANI. I think the problem, Mr. Chairman, is, there are an awful lot of agents in the Internal Revenue Service—and certainly I know from experience, just having spoken to all 94 U.S. attorneys, certainly among most of the U.S. attorneys, that the Internal Revenue Service over the course of the last several years has deemphasized, substantially deemphasized its effort to combat organized crime and has—I cannot quantify it—has put it down the priority ladder as one of those things that it considers important in its mission.

Now, I do not know how important that should be in terms of numbers. I am not sure that I can dictate—and I do not want to—how much manpower they should devote to that.

What I am saying is that given what they have done in past years, they have cut back substantially on that mission.

Senator HASKELL. Let me interrupt you, because I think maybe you are just the gentleman who could answer this.

Generally speaking, to what extent do U.S. attorneys use tax information as a starting point for financial investigations?

Mr. GIULIANI. I do not want to categorically say never. I cannot offhand think of a situation that I was either personally involved in or that I knew about where tax information was the starting point of an investigation, except maybe a referral from an Internal Revenue agent who may have picked up a lead, but not the tax return itself.

Senator HASKELL. Can anybody else answer that question?

Mr. NAMORATO. I would agree with Mr. Giuliani. Based on my experience, the need for tax return information would come after you have an indication that there was bribery or after there are indications of an extortion. It would be at that point that you would request disclosure authority from the Internal Revenue Service to examine the individual's tax return to see whether or not the extortion or bribery income was reported. But it would be rare at the inception of the investigation.

Mr. LYNCH. I agree with that.

Senator HASKELL. Well, that to me is quite a different thing and quite essential.

In other words, you have an indication that bribery has taken place. It could be a hundred different ways. So you would have at least reasonable grounds to believe it might take place. Now at that point, obviously, you ask the IRS for their investigative help or their information. That is quite a different thing from having a generalized thought that maybe somebody is doing something and getting all of you folks together in a strike force. I would make that as a point of distinction, saying to you, sir, as to whether or not right from the very beginning, not do you need a well-trained accountant, but do you need a well-trained IRS person?

Mr. LYNCH. May I say, Mr. Chairman, in a number of cases the investigation conducted by the Internal Revenue Service would involve perhaps third-party contacts, not information from the tax return at all. But on corporation A's tax return, investigation may lead to third-party contacts which make it quite clear to the Internal Revenue Service revenue agent or sometimes special agent that that corporation or officers of that corporation are either victims of or are committing certain violations, either extortion, loansharking, or violations such as that. And that happened quite frequently.

Senator HASKELL. And at that time they should turn it over to you.

Mr. LYNCH. That is correct.

Senator HASKELL. But there again, you see, it is not necessary that everybody start out at the ground floor.

Now, let me ask you this. Is there any effort made in strike force cases to coordinate IRS and FBI activity?

Mr. LYNCH. Yes; and they do it quite successfully in a number of cases.

Senator HASKELL. Now, who does that coordination?

Mr. LYNCH. Generally, the attorney together with the FBI agent responsible for the case and the IRS strike force representative.

Senator HASKELL. Who is this attorney? Is he the man in charge of the particular strike force?

Mr. LYNCH. Or one of the attorneys on the strike force in charge of a particular investigation.

Senator HASKELL. And he would normally, I suppose, come from Justice.

Mr. LYNCH. Yes.

Senator HASKELL. Basically, Justice is in charge of these strike forces that are put together and then you have the IRS and the FBI and the SEC participating? Is that the way it works?

Mr. LYNCH. Yes; in charge in the sense that they are responsible for the operation of coordination.

Senator HASKELL. Coordination and direction, I suppose.

Mr. LYNCH. That is correct, yes.

Senator HASKELL. Now let me ask you this. If you determine that there is a certain illicit activity going on in Denver, Colo., who makes the determination? Who contacts who to get agency blessing on the formation of this strike force? What is the methodology?

Mr. LYNCH. It really is an amalgam of information from the various agencies, the various Federal investigative agencies, as well as a review by the Department of Justice, that a particular area is so

severely impacted that we ought to establish or take some more affirmative effort in that particular area.

That was done when the strike forces were initiated. In 1970 the President appointed a National Council on Organized Crime, and that body established priorities for the placement or the initiation of strike forces. And the last one, as I say, was established in 1971.

Senator HASKELL. Let us use Salt Lake City, just for an example. Suppose you have in this city a situation where you think there is substantial criminal activity. As the lead man in Justice, what do you do? Who do you contact? Who do you get clearances from?

Mr. LYNCH. Well, I would initially, I suppose—say that that information would come in from an agency, say the FBI or, indeed, the IRS, that there is an acute problem that they would like us to take a look at. We ordinarily would get together with the U.S. attorney in the particular district and discuss it with him.

If circumstances warranted, we would then have one of our present strike forces send a man over to Salt Lake City to confer with the various investigative agencies and see if we can agree upon a proposed plan of action.

Senator HASKELL. In other words, you have existing strike forces?

Mr. LYNCH. That is correct.

Senator HASKELL. You do not form new strike forces?

Mr. LYNCH. That is correct.

Senator HASKELL. So what you are doing is assigning existing strike forces to different situations as they come to your attention.

Mr. LYNCH. That is correct, Mr. Chairman.

Senator HASKELL. I see.

Well, now, going back to the financial investigation of some individual that you think may be involved. In investigating him, do you then ask the IRS for tax returns of his associates as possible leads to something else?

Mr. GIULIANI. It would depend on the investigation. That would not be a normal practice. Usually, the way a U.S. attorney begins what I would describe as a sophisticated investigation, one involving bribery or maybe a securities violation, is by first—obviously, you start with a lead. That would come to you in any number of ways. Maybe someone alleges that a public official has received bribes over a long period of time and describes in general the method by which the public official received the bribe. You might very well begin by calling up the Internal Revenue Service, by calling up whomever the appropriate agent is that runs the Internal Revenue Service in your area, and discussing what you have available at this point with him and asking him to supply you with an agent, both an intelligence agent and a revenue agent.

One of the first things you might do is to request the tax return of the subject of the investigation, the person about whom it is alleged that he received the bribe.

Senator HASKELL. Sure.

Mr. GIULIANI. To see if there is any handling of that on his tax returns. I have never seen one reported on a tax return.

Senator HASKELL. I would not say it would be reported under the heading of bribe.

Mr. GIULIANI. Right. And normally it is not reported in any other way for fear, I imagine, that it would alert someone to the fact that there was additional income that is not explainable.

Senator HASKELL. And then, having gotten the subject's tax return and say it shows he has got several partnerships in the corporation, do you then ask for the partnerships' and the corporation's tax returns?

Mr. GIULIANI. Usually at the same time you are doing that, because that process administratively takes usually a month or 6 weeks to obtain a tax return, you are pursuing whatever other leads might be available—records of meetings, airplane trips—whatever the information suggests that you should be following up, and hopefully by the time you get the tax return you have some picture of the way in which the crime was committed and maybe even a witness or two that helps establish that crime. If, in fact, there were other coconspirators involved in the crime, let us say this particular public official received bribes by using an intermediary, you might——

Senator HASKELL. Well, let us say you cannot prove bribes. You still think you have a bribe, but you find him in the XYZ partnership. Do you then ask for the XYZ partnership's tax return?

Mr. GIULIANI. You might do that, yes, sir.

Senator HASKELL. And then would you possibly ask for Mr. X's, Mr. Y's and Mr. Z's tax returns for investigative purposes?

Mr. GIULIANI. It would depend on whether you found any indication that they were involved.

Senator HASKELL. Or you thought.

Mr. GIULIANI. I think it would go a little bit beyond thinking. I cannot remember, really, just indiscriminately asking for tax returns and being burdened by the delay just in order to look at the tax return. Usually there would have to be some indication that satisfied you that you were going to find something on that tax return that was helpful to furthering the investigation of a specific crime nature.

Senator HASKELL. Now I have a document which I gather was prepared in July by the Department of Justice concerning the use of tax returns in nontax litigation. I will just read from this document.

> The tax returns are generally the starting point in tracing the flow of money and stocks and identifying beneficiaries of any of the above fraudulent schemes. Specific examples of uses cited by the U.S. Attorneys we surveyed include the following: one, identifying the silent partners, mail and wire frauds. Tax returns have been used to trace fraudulently obtained funds.

I gather this would be one of the matters. And then it says, "Proving motive, tax returns have been used to determine the financial position of putative defendants and thus establish a motive." And it goes through a series of these.

Now, let us hear from some of the people in the IRS. What happens from your viewpoint. Of course, you already have personnel established. Mr. Jones is a member of Strike Force A, am I correct, and Mr. Jones is somebody in your office.

Mr. CLANCY. A Strike Force representative from Intelligence; yes, sir.

Senator HASKELL. All right. He is your representative. Now how is he selected? Who selected him and who selects his replacement?

Mr. CLANCY. At the present time they are decentralized either under the regional commissioner or under the district director, depending upon the geographic coverage of the strike force itself. That varies. They are selected by the person that he reports to, either the regional commissioner or the district commissioner.

Senator HASKELL. So, the district director himself generally would have authority?

Mr. CLANCY. Yes, sir.

Senator HASKELL. And then who does he, the coordinating man of the strike force, ask for some information? Does he have full authority to give whatever information is requested, assuming it is in your files?

Mr. CLANCY. No, sir. He is limited to what he can provide the strike force under the disclosure law.

Senator HASKELL. What is that?

Mr. CLANCY. That requires the, in the case of the strike force, the Assistant Attorney General of the Criminal Division to request a letter to the Commissioner to provide information that we may have on Mr. Doe under the disclosure law itself, the statutory law.

Senator HASKELL. So then a letter has to go to the Commissioner asking for all information you may have on Mr. Doe. Is a reason given as to why that information should be forthcoming?

Mr. CLANCY. Yes, sir, it is.

Again, as specific as the strike force attorney can give, he is to give the reason that he is making this request.

Senator HASKELL. I understand.

To your knowledge, has such a request for information ever been turned down?

Mr. CLANCY. I cannot answer that to my personal knowledge. I know that there has been a great deal of discussion on this over the past couple of years, and I believe the strike force attorneys and the U.S. attorneys have been requested by the Attorney General to provide more specificity in their requests so the Commissioner can respond to them. I know for a matter of fact that in some requests letters are written from the Internal Revenue Service back to the requesting U.S. attorney to provide more background information on just why he does need it before permission is granted.

Mr. LYNCH. May I just interject at this time, Mr. Chairman?

Senator HASKELL. Certainly.

Mr. LYNCH. You may have a misconception that most of the suggested areas of Internal Revenue investigation come only from either the attorney on the strike force or another agency. Quite often, probably the majority, come from the Internal Revenue Service representative on the strike force. He is aware of the organized crime picture in the area, and in discussions with the other agencies finding out what they view the problems are, what their information is. He may then decide that this is an area that is peculiarly susceptible to Internal Revenue Service investigation and suggest that they go into an investigation in that particular area, and will then initiate a request for disclosure.

Senator HASKELL. I see.

Now, let me ask you again what kind of backup is there for the Strike Force special agent? In other words, does the Audit Division do civil investigations at his request? What kind of help does he get?

Mr. CLANCY. Yes, sir.

The district organization in the strike force area, we have one strike force representative that operates as a liaison, still a Revenue Service employee, but he operates as a liaison with the strike force attorney and the other representatives that are on the strike force from the other enforcement agencies. That is the person that we just discussed, that is generally selected by the District Director. But then, under the District Director he has a Chief of the Audit Division and a Chief of the Intelligence Division, and they develop their strike force program on a yearly basis, based on all of the intelligence that we have to identify those individuals that we want to place in the program, and to either initiate examinations or investigations against them.

Senator HASKELL. And so, the strike force representative might request that a civil investigation go forward on Mr. Doe because he has a lead that maybe Mr. Doe in some way was involved?

Mr. CLANCY. Yes, sir. But again, the approval—before any examination or an investigation is made—is not because the strike force representative provides that name. That is only the beginning. Then all of the background material is provided, and if it warrants, if in the judgment of the District Internal Revenue people, if an examination and investigation is warranted, one would be initiated at that time.

This is why it is quite important for us to maintain the integrity of the Revenue Service in having the final decision on selecting the cases that we, in fact, will——

Senator HASKELL. And this is where the District Director would say yes or no.

Mr. CLANCY. Yes, sir.

Mr. GIULIANI. Mr. Chairman, just so that there is no misunderstanding as to the dispute, whatever it is, there is no suggestion from the Department of Justice that IRS should not have final control over determining whether they participate or do not participate in an investigation or a prosecution. Our dispute probably turns on the priority given by the Internal Revenue Service to what we might generally call cases involving illegally derived income. The statement that is going to be given later by the Federal Criminal Investigators Association, substantially states at least one of the Department's concerns. I can say easily 30 or 34 different U.S. attorneys at the recent U.S. Attorneys Conference explained to us situations in which they asked for Internal Revenue Service participation in investigations mostly involving crimes such as corruption, securities fraud, various kinds of business frauds, where they asked for Internal Revenue Service participation in situations in which they had been granted participation before, not in situations where they were asking Internal Revenue Service to investigate completely nontax crimes, but crimes that over the years have had a high potential for producing tax prosecutions, and that they had been refused Internal Revenue Service participation in those cases.

That is really our concern. We do not say that they should devote all of their manpower to investigating these kinds of cases. What we are saying is that the feedback that we get from the U.S. Attorneys and strike forces is that IRS have substantially cut back on what they had been doing, and for that reason we are very concerned about it, because there are many criminals who can only be prosecuted by utilizing the criminal sanctions of the Internal Revenue Code.

Senator HASKELL. Now, explain to me why——

Mr. GIULIANI. The *Janko* case was put probably as the most absurd example that could be found.

Senator HASKELL. That was pretty far out.

Mr. GIULIANI. Yes. There are many examples of how the criminal sanctions of the Internal Revenue Code have been used to prosecute dangerous criminals who had immunized themselves from prosecution for any other crime. The prosecution of Frank Costello, in the 1950's is a perfect example of how the tax criminal sanctions constitute the only way to reach some of the most notorious members of organized crime. Frank Costello basically owned the city of New York. He owned the members of the bench; he owned the major political party in that city, and he was unreachable because he worked through a chain of associates who protected him against any possible involvement. There were no witnesses against him.

Senator HASKELL. Now, how did this tax thing help?

Mr. GIULIANI. Because he had spent so much money beyond what he had claimed he had earned that he was prosecutable for income tax evasion on a net worth theory. The Government was able to prove that Costello must have earned a great deal more money than he was reporting because he was spending a great deal more than he was reporting in astronomical amounts.

Now, those are very difficult cases because you have to go back and reconstruct everything that a person earned, and tne everything that he spent. That man would have——

Senator HASKELL. And it was only on a net worth case that they nailed him, is that right?

Mr. GIULIANI. That is right. That is absolutely right, and I can point to several other situations. A case that I was involved in many years later involving a loan shark who had operated for many, many years, and the FBI, in fact, had attempted on numerous occasions to prosecute him, and it had even gotten into the grand jury with one or two investigations of him. Lo and behold, witnesses were killed or refused to testify when they arrived at the grand jury. Two or three went to jail rather than testify against him. The only way he was successfully prosecuted was in a similar fashion by Internal Revenue agents and auditors sitting down and comparing what he reported he earned as against what he actually spent. Otherwise he would still be operating as a loan shark in New York City.

Mr. WOLFE. Mr. Chairman, Singleton Wolfe, Internal Revenue—I do not think we have any disagreement over that kind of case. From the Internal Revenue's point of view, let me say how we see it. One is that when we get into one of these cases, we want a reasonable likelihood that there is going to be a tax matter involved. Two, we do not want to do other than title 26 investigations. If we get into a case and determine that there is no tax matter involved, we are concerned

as to whether we should continue this case simply because there may be some other crime that has been committed which does not fall within our jurisdiction. The third point I would like to make as far as Revenue is concerned, is that these cases should have the same criteria as any other tax case should have, and that is how we see our policy of work in this area.

Mr. LYNCH. May I make a comment on that, Mr. Chairman?

Senator HASKELL. Let me just ask, if I may, one question. Would it be helpful to you, Mr. Wolfe, if for example, from the IRS viewpoint, authority over strike force personnel was centralized in a national office in the sense that requests for information were passed on centrally to the national office as opposed to the many districts?

Mr. WOLFE. No, Mr. Chairman, it would not. We had it centralized there. I was Director of the Audit Division at the time it was centralized. I had 20,000 people reporting to me. There is no way, as Director of the Audit Division, that I could possibly adequately supervise what was going on with the audit strike force representatives.

Now, what we need to do is to develop the procedures that our field people can follow and then exercise oversight to see that they properly follow those procedures.

Senator HASKELL. Yes, I understand.

Mr. Lynch, you had a comment?

Mr. LYNCH. Yes.

Mr. Chairman, I would like to make a comment on Mr. Wolfe's comment on what he proposes as selectivity on prosecution. The former Commissioner Cohen referred to a study that the IRS and the Department of Justice did in 1968, the Role of Sanctions in Tax Compliance, and that related to a survey covering the fiscal year 1965 before the establishment of strike forces. That reflects that the source of tax racketeering investigations then was as follows: About three-fifths, originated from the special agents of the Internal Revenue Service themselves; slightly over one-sixth, that is a little less than 17 percent, resulted from audit examinations; one-fifth originated from the Department of Justice or other Government agencies; and the remainder from informants.

If you take as a criteria for selectivity something other than the DIF system that has been discussed, that is, 60 percent relying on the machine kicking out the right audits, the kind of people who are engaged in professional criminality are so well advised and have the sufficient wherewithal to employ attorneys and accountants, their filed returns are never going to be kicked out of that machine. They know how to protect themselves from that kind of investigation.

Senator HASKELL. I am sure you are right there. But what—I am sure you are right there. But on the other hand, I would think that the IRS, well, where do we go from what you say? I am sure you are correct. But a computer, they can outsmart the computer is what you are saying, and I agree with you.

Mr. LYNCH. Right.

Mr. Chairman, what we are talking about here is a question of ordering of priorities and maybe even more importantly, the perception in the field of the ordering of priorities within the Internal Revenue Service, and as Mr. Giuliani stated—although I was not at the U.S. Attorneys' Conference, he brings back from that a perception among them that the Internal Revenue Service commitment to this kind of

complex investigation is being withdrawn. The perception I have, and I think it is backed a little bit more by figures, is that indeed the IRS commitment to the strike force in the organized crime enforcement program has been diminished. I would say that the intelligence commitment has been diminished from about 311 direct man-years in 1972 to 302 in 1973, and 286 direct investigative man-years in 1974. I do not have the figures for fiscal year 1975.

Senator HASKELL. Thank you, Mr. Lynch. That bell was a vote. I will go over and vote and be right back.

I will be back gentlemen. It will be just 5 minutes.

[A brief recess was taken.]

Senator HASKELL. Mr. Giuliani, one question.

You, having been in the U.S. attorney's office, let us assume that John Doe, in the Southern District of New York, is an object of your investigation and you need some information from the Internal Revenue Service on Mr. Doe and his associates.

Just sort of describe to me, physically, how you are going to go about getting it.

Mr. GIULIANI. You mean information or investigative help, Mr. Chairman.

Senator HASKELL. Both.

Mr. GIULIANI. Well, if you needed investigative help you would probably sit down with the regional directors, or someone like that, and explain to him the proof that you had available, what investigative plans you had, and generally you would get the help. U.S. Attorneys—at least in my experience in the Southern District of New York—generally did not want to waste their resources any more than they wanted to waste the resources of the Internal Revenue Service. And usually, judgments like that, that they are going to undertake a major investigation, are only made because you have enough evidence available to assure yourself that you are not wasting your time.

If you needed information, the problem you normally have is the disclosure rules of the IRS. You would have to write a letter in which you laid out the reason why you needed information. And that letter would be signed by the U.S. attorney. And then, assuming it was approved—and normally it was, because generally what you are asking for in the way of information were tax returns—4, 5, 6 weeks later you would receive a tax return.

Senator HASKELL. But if you needed an investigation you would discuss this with the regional commissioner.

Mr. GIULIANI. Or the district director. Or, on some occasions, I can think of situations in which Mr. Curran, as U.S. attorney, discussed the situation with the Commissioner—with Commissioner Alexander—in order to straighten out some misunderstandings.

Senator HASKELL. And this investigation might be investigation by the Intelligence Division, or it might be investigation by the regular Audit Division; is that correct?

Mr. GIULIANI. That is correct.

Senator HASKELL. Would this include, possibly, third party investigations as well as your principal investigations, if warranted by the other?

Mr. GIULIANI. I am trying to think of an actual situation when that was involved.

Yes, it would; it would involve that.

Senator HASKELL. And would it also, maybe, investigate your own witnesses, the Government witnesses?

Mr. GIULIANI. Yes, sir.

If I could give you maybe one example.

Senator HASKELL. I think it would be very helpful.

Mr. GIULIANI. I will use as an example a case that has already been completed. There were allegations about 2 years ago that the New York City Narcotics Division—an elite corps of detectives—were involved in dealing with major narcotics offenders, were taking bribes, stealing money, and doing all sorts of other things, perjuring themselves, arresting people basically with a view toward obtaining bribes from them and not fulfilling their function.

There was substantial information to that effect, and the U.S. attorney put together what I guess could be called a task force that involved then BNDD agents and Internal Revenue agents to investigate that situation. He did that by calling together the Regional Director of the BNDD, the District Director of the Internal Revenue Service, sitting down with them, telling them what he had available.

Senator HASKELL. What is the BNDD?

Mr. GIULIANI. The Bureau of Narcotics, now known as the Drug Enforcement Administration.

That investigation lasted a year. Some of the subjects were prosecuted for narcotics offenses; most of them could not be. Most of them were prosecuted because they had excessive amounts of money spent on very low fixed incomes; earning $20,000 a year they were spending $100,000 a year.

So it was the combined efforts of both that really enabled the U.S. attorney to prosecute just about every single one of the agents, or detectives, that had been assigned to that division, including the commanding officer who was prosecuted for income tax evasion.

If there was a request like that made now, it would probably be rejected on the local level. It would require discussing this with Mr. Alexander and getting him to agree with you, and then get the District Director to go along with you, because the District Director perceives that he is not supposed to involve himself in investigations like that any more, that Commissioner Alexander takes the position that IRS is deemphasizing involvement in those kinds of investigations. And therefore, it would require going a lot further than the U.S. attorney would have to go in the past.

Senator HASKELL. Let me hear from the IRS.

Mr. WOLFE. Mr. Chairman, I do not want to get into an argument over deemphasis. I would like to submit for the record the amount of manpower that Internal Revenue Service has put into this program from its inception through 1975. Those are the latest figures that we have, both special agents and Internal Revenue agents, and then you can see and look.

Senator HASKELL. It will be received in the record.

[The information referred to follows:]

MANPOWER APPLIED TO STRIKE FORCE PROGRAM

Fiscal year	Staff years [1]	
	Total revenue agent and special agent	Other
1968	[2] 112	38
1969 [3]	150	60
1970 [3]	370	154
1971 [4]	856	398
1972 [4]	1,066	443
1973	1,056	470
1974	1,038	489
1975	904	333

[1] Includes all full- or part-time technical, clerical, and other support personnel,
[2] Only audit, intelligence not available,
[3] Includes Department of Justice and other racketeer cases for audit (separate statistics not available).
[4] Includes Department of Justice cases for audit (separate statistics not available).

Senator HASKELL. I would like to ask you, though, Mr. Giuliani said that the request would really go to the Regional Commissioner, or the District Director, normally, and then it comes—then, what the heck happens? He goes and tells somebody to do something?

Mr. WOLFE. He says that, as he understands it—and I think it is a judgment call on his part—that our people in the field would not honor that request. And I question that.

I think if this has a reasonable likelihood of a tax case our people have instructions to go ahead and accept it. And he maybe has information that I do not have.

Senator HASKELL. I mean, I am just talking about the flow of requests.

Mr. WOLFE. Normally the District Director would make that decision right on the scene. Now if it is a questionable one, where the District Director is not sure that there is a reasonable likelihood that a tax case will develop, I think it probably would come in. He would do one of two things: He would say, "No, I do not see that as a likely case that we should get involved in," or, he would go up and seek advice from the Regional Commissioner, and the Regional Commissioner may come in and seek advice.

Senator HASKELL. And may say yes or may say no.

Mr. WOLFE. Right.

Senator HASKELL. Suppose you have a—well, suppose you have a situation such as Mr. Giuliani said, that they would occasionally request investigations of their own witnesses—I gather to determine their credibility. That would be the purpose, would it not? Now, what would you do in a situation like that?

Mr. WOLFE. I do not think to check the credibility of their own witnesses. I just do not think the Internal Revenue Service, unless it involves a title 26, or a likelihood of a title 26 violation, that we should be involved in that.

Senator HASKELL. Well, now the witness, of course, is not—presumably is not—guilty of any crime, or, let us make that assumption, but nevertheless, you would kind of like to know, if you are a lawyer, whether your witness is going to be turned upside down in a courtroom. And therefore, I can understand why a prosecutor would want to know what his witness' background was. So I can see why the request would be made.

Now, can you tell me, of your own knowledge, how the request would be received by the Internal Revenue Service?

Mr. WOLFE. My opinion today is, they are requesting that—why could the attorney not get his own witnesses in and question them thoroughly as to what they are going to testify to, instead of having our people do it?

Senator HASKELL. Are you saying, then, that the IRS has not, or does not, or, to your knowledge does not conduct background investigations?

Mr. WOLFE. We have done it; yes, sir.

Senator HASKELL. You have done it in the past?

Mr. WOLFE. Yes.

Senator HASKELL. But your present policy is not to do it; is that the case?

Mr. WOLFE. Well, I think it depends. If it is a tax matter which we are going forward on, we would permit our special agents to do this, because this is all in preparation of that case that is to be presented.

Senator HASKELL. And it is not against the witness—the case is not against the witness, it is against the third party.

Mr. WOLFE. But it involves one of our cases. It involves a title 26 case.

Senator HASKELL. I understand.

Mr. WOLFE. And we are very concerned about the successful prosecution of that case.

Senator HASKELL. I understand.

Well, Mr. Morris points out to me that under existing regulations the Department of Justice can request certain information, whether it be a tax matter or not. The section is, what, 6103? I presume you honor the mandate of 6103?

Mr. WOLFE. Oh, yes.

If the Attorney General, or the U.S. attorney, makes a specific request for a tax return, properly filed with us, we do honor that.

Senator HASKELL. Well, thank you, gentlemen.

Well, I do have one more question Mr. Morris has handed me here for Mr. Lynch.

Apparently, under a section that I did not know existed, it is 1961 of title 18, you have certain authorities to get a court order seeking divestiture of property, or ceasing business where there is criminal activity, or a prima facie case of criminal activity.

Mr. LYNCH. Yes, sir. Pattern of racketeering. Yes, Mr. Chairman.

Senator HASKELL. Now, if you have that authority do you ever use the assessment and early termination authority in the Internal Revenue Code which, of course, results in a seizure? Do you ever, since the enactment of this statute here—section 1961—have you ever resorted to what is called, I guess in the parlance, a boxcar assessment with a subsequent seizure?

Mr. LYNCH. Well, Mr. Chairman, I understand the early terminations and the jeopardy assessments were significant in the narcotic taxpayer program which were not under my supervision, as Judge Tyler testified. I agree with him that those particular techniques are pretty low on the priority of things that we consider important insofar as IRS is concerned. We also have a forfeiture provision in the U.S. Code title 18—section 1955—in connection with illegal gambling businesses. And that, together with this provision, gives us fairly broad

forfeiture authority assuming we have proof beyond a reasonable doubt.

Senator HASKELL. Did you have something?

Mr. NAMORATO. Yes, Mr. Chairman.

I just wanted to add that before coming to the Department of Justice I spent 5 years as a special agent with the Intelligence Division of the Internal Revenue Service. Most of my experience was in the area of organized crime and racketeering-type cases in the New York City area.

Throughout this period I never once was involved with an early termination or a jeopardy assessment. The procedures are rarely used by the Intelligence Division in strike force cases.

Mr. WOLFE. Mr. Chairman, in response to your earlier question, from Internal Revenue's point of view, I know of no cases in which they ask us to make an early termination on a strike force case under either section 1955 or 1961 of title 18.

Senator HASKELL. Thank you.

Gentlemen, thank you very much, indeed. We appreciate your being here.

Mr. LYNCH. Thank you, Mr. Chairman.

Senator HASKELL. Thank you.

The next witness is Mr. Sherwin P. Simmons of the ABA, Section of Taxation.

STATEMENT OF SHERWIN P. SIMMONS, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY WILLIAM S. COREY, CHAIRMAN, COMMITTEE ON ADMINISTRATIVE PRACTICE, AMERICAN BAR ASSOCIATION

Mr. SIMMONS. Thank you, Mr. Chairman.

The section of taxation welcomes the opportunity to share with you its views on this most important subject. Appearing with me here today is Mr. William S. Corey of Washington, who is chairman of our committee on administrative practice.

Senator HASKELL. We are pleased to have you here, Mr. Corey.

Mr. SIMMONS. If you please, we have prepared a written statement which we would appreciate having put in the record.

Senator HASKELL. It will be reproduced in full in the record.

Mr. SIMMONS. The subject matter of these hearings is entitled "The Role of the Internal Revenue Service in Federal Law Enforcement Activities."

This is a subject of vital concern to the section of taxation. We have devoted a portion of our written statement to a discussion of the involvement of the Internal Revenue Service in noncriminal matters, for example, the economic stabilization program, oil allocation guidelines, and most recently, the child support obligations which were given to the Service.

With your permission, we will not make any mention of those activities during our oral presentation, and go to the more central theme of this morning's presentation.

Suffice it to say, the American Bar Association does not favor the Internal Revenue Service participating in completely nontax activities. We do not believe that the possible jeopardy to the critical con-

fidence of the public in our tax system justifies the diversion of Service personnel to extraneous law enforcement unrelated to the tax laws.

We believe that a succession of roles in which the Service acts as a policeman for reasons other than the collection of taxes is bound to erode the ability of the Service to earn the desired image of a fair tax administrator. The "in terrorem" use of Service personnel in these programs can scarcely foster the acceptance of Service people as objective judges of our complex tax laws.

This problem is aggravated when considered in light of the specific relationship between the Service and an individual taxpayer. This is something we believe that the witnesses this morning have not focused upon.

There is a large group—most taxpayers are not involved in criminal matters, and we think it is these taxpayers that deserve some consideration in these hearings. After all, as has been repeatedly said this morning, our tax system is unique around the world. And it is unique because taxpayers annually assess themselves and file their own tax returns.

We believe that this cooperation between the tax paying public and the Internal Revenue Service rests, in large part, on the image of the Internal Revenue Service as a fair tax administrator.

Now, where the activity involves only tangentially a tax liability, the problem is more difficult. And this is particularly so when the matter is a nontax crime of high public visibility and social concern. We believe that guidelines are badly needed to resolve the competing considerations concerning IRS participation in investigations of these matters. The decisions as to the primary responsibility for investigation, the desirability for Service participation, the supervision and control of Service personnel and the use of Service appropriations and the possible reimbursement thereof involve difficult policy and management considerations.

The participation of the Service also involves the balancing of certain things: The cost of the participation in people, time, and money against the potential tax revenue; the importance of the particular investigation against the impact of Service personnel being diverted from the investigation of pure tax cases; and, the desirability that the public be assured that criminals pay their taxes against possible disregard of traditional procedures and safeguards afforded to taxpayers generally in audits by the Internal Revenue Service.

I would differ with Mr. Giuliani's remarks a moment ago, and perhaps the difference comes about because I have a different vantage point—I practice law in Tampa. Mr. Giuliani observed that the deterrent effect from the prosecution of criminals is substantial. He said it is more important to prosecute criminals—if I understood him correctly—than perhaps other taxpayers.

Certainly it is important to prosecute criminals, but I do not think—as a practicing lawyer, if I may offer my personal observation—that deterrence comes very much from the prosecution of criminals. Where deterrence comes about is the prosecution of the local doctor, the local lawyer, the local banker, the local bartender, the truck driver.

I happen to represent at this time a farmer in central Florida who was indicted for tax evasion. His case was closed as a result of a plea. I can assure you that every farmer for miles around knows that my

client was indicted, and that as a result of a plea he was deemed guilty. And I can assure you that the deterrent effect on the other farmers, and the suppliers of fertilizer, and so forth, in that area, as well as his neighbors, is far more important than some well-known criminal being prosecuted.

I think people find—they expect criminals to be prosecuted and sent to jail, but when it is a doctor or a lawyer or a farmer, a neighbor, that has a deterrent effect.

The FBI and the Drug Enforcement Administration, and other agencies, have specific legal duties to investigate crimes within their jurisdiction. In our view, these agencies should carry the principal responsibility for the investigation of nontax crimes within their particular areas. Only when the investigation arrives at a point that it is determined that a particular taxpayer has engaged in activities which may have tax consequences should the Internal Revenue Service be brought into the case. And only then should the Internal Revenue Service be faced with a determination of whether or not it should accept the case.

Now please note that I said that an activity has tax consequences. We have been talking an awful lot this morning about income not being reported. Of course that is true. In many cases, income has not been reported, but there are also many cases that deserve indictment that involve excessive deductions, and that kind of thing.

Our suggestion does not mean that we do not think the Internal Revenue Service should not cooperate with the other agencies. We certainly believe it should provide investigative techniques, suggestions, audit guidelines, that kind of thing to the other agencies. And we recognize that our suggestion may well involve some duplication, but we believe it is justified in light of the Service's mission as a tax collector, and not as a criminal investigator.

If these other agencies need the audit assistance of the Internal Revenue Service for nontax matters, then we think that the Congress should provide them with the resources in men and money. We believe also that in all of these matters the Service personnel should, at all times, operate under the supervision and practical control of their Service superiors.

I emphasize practical control because there is no doubt in my mind that the administrative guidelines as presently in operation are followed and that the supervision and theoretical control are in the Internal Revenue Service. But it is clear, we believe, that from day-to-day working in a team effort, the practical control goes to the team leader on the local basis. We think that is wrong.

Let me emphasize it this way: The Service discharges its responsibilities in a peculiar manner. It has built up, over the years, some good will. It publishes procedures which give taxpayers administrative rights and conferences and the like. These are well known and they have provided a foundation for the Service to be accepted as a fair tax administrator.

A distortion of these rights may well occur if the case is processed outside the normal control of the Internal Revenue Service. For example, it is standard practice for a special agent in a noncustodial interview to give the taxpayer Miranda-type warnings. We do not believe that that type of warning is given by the other agencies prior to the custodial stage.

We think it is undesirable that taxpayers be denied warnings like this in tax cases just because the case starts as a nontax investigation, and just because the practical control of the case is in an agency other than the Internal Revenue Service.

We think it is equally damaging to the confidence of the public in our tax system for the special enforcement tools of the Internal Revenue Service to be used to achieve a nontax, although highly desirable social goal. The use of these special tools creates problems in tax cases alone, much less in nontax matters.

The proposed Tax Reform Act of 1975 contains two provisions relating to the termination assessment and jeopardy assessment and to the administrative summons. It is our understanding that both of these provisions have been included to insure against what the Ways and Means Committee believes to be excesses in the use of these procedures.

The Internal Revenue Service has overwhelming power, and if these enforcement tools are used to supplement or complement general criminal investigations, we believe their use may lead to further abuse.

The Service has already been severely criticized by some courts for allowing these special tools to be so used, and we have set forth in our prepared statement some citations and a quotation from one case.

Now, not only does this use violate the congressional purpose in giving the Service these tools, but their use in such a way may further tarnish the image of the Internal Revenue Service.

We suggest that if other agencies need comparable powers, then it would seem appropriate for specific legislation to provide.

As the Commissioner said this morning, the Internal Revenue Service suggested and, at least in a tentative draft of tax reform legislation last year, the Ways and Means Committee included an amendment to title 21, section 881(a), of the United States Code, which would have provided for the forfeiture of cash and personal property found in the possession of a narcotics trafficker. It is our understanding that these special tools, particularly the termination assessment, are used often in narcotics enforcement.

We are concerned, also, that agents participating under the practical control of other agencies may be subjecting the Internal Revenue Service to further assault on its image as the result of potential involvement in personal lawsuits brought by taxpayers. As you are aware, the qualified immunity afforded law enforcement officers applies to Internal Revenue agents. That decision was made very clear in September of this year with the ninth circuit in the case of *Mark* v. *Groff*, which is cited in the prepared statement. Today, if the agent's act is not within the course of his official conduct, he is not entitled to qualified immunity, and he is not entitled to a good faith defense.

It is not difficult to conceive of an agent being swept up in a nontax investigation and doing an act which may well be beyond the scope of his duty and authority under the tax laws although it may be entirely appropriate for the agent of another agency.

We believe that the risk of this type of claim cannot be ignored in evaluating the participation of the Service in other agency investigations.

In summary, we believe that the Internal Revenue Service should not be assigned any duties completely unrelated to the enforcement of our tax laws. We believe, in general, that the Service should not be called into investigations of nontax crimes unless and until the investiga-

tion by another law enforcement agency shows that a particular criminal activity may have tax consequences. We believe that the Service should retain supervision and practical control over its agents at all times. And lastly, we recommend to the Congress that it provide the other Federal law enforcement agencies with such resources, manpower, and tools as may be necessary to permit them to discharge their nontax investigations without availing themselves of the manpower and financial resources of the Internal Revenue Service or its specialized legal devices for the collection of tax.

Thank you.

Senator HASKELL. Thank you, Mr. Simmons, for a very thoughtful statement. I see your viewpoint. Do you think there is any possible middleground for cooperation between the IRS and the Department of Justice, or would you put it on the basis of when there is at least a prima facie showing of a tax case being involved, before you would have them come in?

Mr. SIMMONS. Yes, sir. I think I would. The Internal Revenue Service has too big a job and, if it does not have the resources available to it to discharge such job, it will not get done. We have cited in our prepared statement some figures relating to audits. We recognize that numbers are not entirely conclusive, but when you compare the number of audits with respect to the number of tax returns filed, it is a very small figure, and to the extent that the Service is diverted to nontax activities, that audit program, which is the backbone of its enforcement, is going to suffer more.

Senator HASKELL. So, basically, you would have the IRS retain final authority to determine what criminal investigation to pursue?

Mr. SIMMONS. Yes, sir.

Senator HASKELL. Thank you very much indeed Mr. Simmons. Thank you, Mr. Corey, for being here.

[The prepared statement and material submitted by Mr. Simmons follows:]

STATEMENT OF SHERWIN P. SIMMONS, ON BEHALF OF THE SECTION OF TAXATION, AMERICAN BAR ASSOCIATION

SUMMARY

The Section of Taxation, American Bar Association:

1. Does not favor the participation of the Internal Revenue Service in completely nontax-related activities;

2. Recognizes the lack of clear guidelines as to the proper role, supervision, and control of Service personnel in activities which only tangentially bear some relationship to collection of tax;

3. Recognizes the complex policy and management decisions and competing considerations involved in the participation by the Internal Revenue Service in joint agency investigations of nontax crimes;

4. Believes that in general the Service should not be called into investigation of nontax crimes unless and until the investigation by another law enforcement agency shows that a particular activity may have tax consequences;

5. Believes that at all times Service personnel should operate under the supervision and practical control of their Service superiors;

6. Recommends that the specialized tax enforcement devices of the Internal Revenue Service not be used for purposes unrelated to the collection of tax;

7. Recommends that the Congress provide the other federal law enforcement agencies with such resources, manpower, and tools as may be necessary to permit them to discharge their nontax investigative obligations without availing themselves of the manpower and financial resources of the Internal Revenue Service and its specialized legal devices which were intended only for the collection of tax;

8. Recommends to the Congress that at the earliest possible date guidelines be provided for the proper role of the Internal Revenue Service in enforcement activities which are not closely related to the administration of the internal revenue laws.

STATEMENT

Mr. Chairman and Members of the Subcommittee, as Chairman of the Section of Taxation of the American Bar Association, I welcome this opportunity to appear before the Subcommittee to present the Section's views on the role of the Internal Revenue Service in federal law enforcement activities.[1] Appearing with me today is William S. Corey, Chairman of our Committee on Administrative Practice.

The role of the Internal Revenue Service in federal law enforcement is a subject of vital interest to the Section of Taxation. As members of the practicing tax bar, we are concerned that the administration of our tax laws will suffer by the diversion of Service personnel and resources away from tax-related activities. In February of this year, the House of Delegates of the American Bar Association adopted a resolution of the Section of Taxation recommending ". . . to the Congress and the Executive Branch that the Internal Revenue Service and its personnel be limited to the functions, responsibilities and duties which are pertinent to the administration of the internal revenue laws . . ." The complete text of the resolution is set forth in the margin.[2]

This resolution was prompted by our concern over the impact of nontax-related activities upon the Internal Revenue Service. Specifically, we were concerned about (1) the intrusion upon the audit resources of the Service—money, manpower and time, and, (2) the effect upon the Service's relationship with the taxpaying public.

At the time of the preparation of the resolution in the winter of 1973–1974, the nontax-related activities of the Service had contributed to a steady decrease in the number of annual audits conducted by the Internal Revenue Service.[3] Indeed, audit coverage of income, estate and gift tax returns declined from 5.3% in the fiscal year 1964 to 1.9% in each of the fiscal years 1971 and 1972. We recognize that mere numbers do not tell the whole audit story; and, that the quality of the audit (including the type of taxpayer, the size and type of business or other income producing activity, the time required for the examination, and potential revenue impact) must be considered in any evaluation of the program. Nevertheless, by any standard, the number of audits as compared to the number of returns filed was very small. This was a disturbing development because the audit program is the backbone of the Service's enforcement activities.

However, commencing in the fiscal year 1973, and continuing through the fiscal year 1975, the number of annual audits increased to 2.55% of the returns filed.[4] We believe that the reversal resulted in large part from the termination of the Service's participation in the Economic Stabilization Program and the enforce-

[1] We have been asked to advise this Subcommittee that the Special Committee to study Federal Law Enforcement Agencies of the American Bar Association has concluded that the subject matter of these hearings is beyond the scope of its responsibility, and, accordingly, has taken no position with respect thereto.

[2] "*Resolved,* That the American Bar Association recommends to the Congress and the Executive Branch that the Internal Revenue Service and its personnel be limited to functions, responsibilities and duties which are pertinent to the administration of the internal revenue laws.

"*Further resolved,* That the Section of Taxation is directed to urge on the proper committees of the Congress and on the proper departments and agencies of the Executive Branch the enactment of statutes and the formulation and adoption of administrative policies which will achieve the foregoing result." Resolution XVI, Summary of Action of the House of Delegates, American Bar Association, 1975 Midyear Meeting, p. 31.

[3] The most widely known and significant example of a nontax-related activity was the administration and enforcement of the Economic Stabilization Program to which the Service devoted 277 and 1,926 realized man-years during the respective fiscal years 1972 and 1973. A more recent example of nontax-related duties was the assignment of revenue agents to check prices charged by gas stations and to verify fuel allocations.

Another example of an unrelated responsibility is found in new Code Section 6305 (effective 7/1/75) added by the Social Services Amendments of 1974 (P.L. 93-647), which requires the Secretary of the Treasury or his delegate to assess and collect amounts of unpaid child support obligations certified by the Secretary of Health, Education, and Welfare. See generally Tax Section Recommendation No. 1974-18A, 27 Tax Lawyer 936 (1974); see also Statement of the Honorable William E. Simon before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, May 14, 1975, BNA Daily Tax Report No. 95, p. J-1.

[4] Although there was a reversal as to total audits for the fiscal year 1973, field audits continued to decline as a percentage of returns filed; and, it was not until the fiscal year 1974 that this trend was reversed.

ment of oil allocation rules. We applaud this result and believe that it demonstrates the validity of our first concern in recommending the resolution adopted by the House of Delegates of the American Bar Association.

We are disturbed that the upward trend in annual audits will plateau, or worse still, reverse itself. We understand that a reversal may well occur in fiscal 1976. According to our information, the Service estimates that for the current fiscal year the number of audits will decrease to 2.50% of the income, estate and gift tax returns filed. This result is expected because the audit capacity of the Service is not sufficient in view of the number of returns being filed. The audit percentage will inevitably continue downward as the number of returns filed each year increases unless there is a proportionate increase by the Congress of audit resources of the Service.[5] Diversion of Service personnel to nontax activities can only aggravate this very serious problem.

Equally important is the effect of any diversion and reduced audit activity on the Service's relationship with the taxpaying public. Public officials, both in and out of the Executive Department and the Congress, have commented favorably on the success, unique around the world, of the voluntary self-assessment tax system of the United States. As you know, that success is best demonstrated by the fact that a very low percentage of the total amount of taxes paid is collected through the enforcement process. A primary reason for this success has been the ability of the Internal Revenue Service to maintain its reputation as a fair and equitable tax administrator in the face of the obvious dislike of most people to pay taxes and despite the fact that the Service suffers its share of bureaucratic errors and abuses which result from time to time in inconvenience to particular taxpayers.

We are concerned that this reputation and image may have been damaged by the revelations of recent months regarding the Service's participation in essentially nontax-related law enforcement which in some instances has resulted in invasions of privacy and deprivations of personal liberty. We fear that this loss of image will make it increasingly difficult for Service personnel to gain acceptance by taxpayers as objective and nonpolitical tax administrators.

Congressional spokesmen have expressed similar fears. For example, in S. Rept. No. 94-294,[6] the Senate Appropriations Committee commented on the fact that the Service had been ". . . . involved in nontax-related matters which drained valuable resources from tax administration and seriously impaired the goodwill of the American taxpayer toward a tax system which is largely voluntary in nature. The dangers inherent in this type of activity are obvious, and the committee expects that in the future the Internal Revenue Service will confine itself to proper tax administration and enforcement . . ."

The American Bar Association does not favor the participation of the Internal Revenue Service in completely nontax-related activities. We do not believe the possible jeopardy to the critical confidence of the public in the Service justifies the diversion of Service personnel to extraneous law enforcement unrelated to the internal revenue laws.

In our view, the preservation of the public's confidence in the Service can best be served by the discontinuance of enforcement assignments unrelated to the principal purposes of the tax system. It has been the goal of Commissioners in recent years to have the Service function in such a way as to entitle it to be viewed as an agency that seeks to find the facts fairly and dispose of the issues equitably. Obviously, this is a critical element in gaining the acceptance of the general population without which the tax system of this country cannot effectively function. A succession of enforcement assignments in which the Service appears to play the role of "policemen" for reasons other than the collection of taxes is bound to erode the ability of the Service to earn the desired image. Indeed, the "in terrorem" use of Service personnel in these programs can scarcely foster their acceptance as objective judges of our complex tax laws.

This problem is aggravated when considered in light of the Service's specific relationship with a particular taxpayer. It is not likely that a taxpayer who suffers sanctions at the hands of the Service for violations of rules and regulations unrelated to tax administration will feel very sanguine about the agency as a fair-minded tax administrator. That feeling may negatively affect that tax-

[5] The Section has previously expressed its concern over the failure of the Service to receive through appropriations adequate funding to permit it to maintain a high level of tax return examinations in the face of a significant increase in tax return filings. See the American Bar Association Recommendation To Restore Certain Amounts To The Budget Request Of The Internal Revenue Service, 23 Tax Lawyer 679 (1970).

[6] 94th Cong., 1st Sess., pp. 18-19.

payer's attitude toward his continued voluntary compliance with the tax laws. This result is even more likely when the same revenue agent proposes a substantial deficiency in tax against him. It might be difficult to assure the taxpayer that there was not a bias on the part of the Service that in some way influenced the tax result. The cumulative effect of numerous cases of this kind simply makes the Service's job more difficult and indeed may very well erode taxpayer confidence in the system.

There is no need to dramatize to excess this aspect of the problem. It is enough to say that regardless of the numer and cumulative effect of these incidents, their mere occurrence in any form and to any significant degree simply cannot be tolerated over any extended period of time. The failure to recognize his fact can undo all the salutary compliance inducement benefits that flow from an orderly, apparently unprejudiced enforcement mechanism.

We recognize that the problem is more difficult where a general cirminal investigation only tangentially involves a potential tax liability. This is particularly so where the nontax crime under investigation is one of high public visibility and social concern. Guidelines are badly needed to resolve the competing considerations. The decisions as to the primary responsibility for a joint agency investigation, the desirability or necessity for other agency participation, the supervision and control of participating other agency personnel, and the use of other agency appropriations and the reimbursement thereof, involve difficult policy and management considerations.

The participation of the Internal Revenue Service in these joint investigations involves not only these very difficult policy and management decisions, but also the balancing of: the cost of participation (in dollars and manpower) against the potential tax revenue from the investigation; the importance of the particular nontax investigation against the impact of the diversion of Service personnel from the invesigation of pure tax cases; and, the desirability that the public understand that criminals cannot avoid paying their taxes against the risk of loss of image resulting from a possible disregard of traditional procedures and safeguards afforted taxpayers in audits by the Internal Revenue Service.

The Federal Bureau of Investigation, the Drug Enforcement Administration, and other general law enforcement agencies are charged with a specific legal duty of investigating crime within their jurisdictions. In our view, these agencies should carry the principal burden of the basic investigation of any nontax crime within their areas of responsibility. When the nontax investigation arrives at a point that it is determined a particular taxpayer has engaged in activity which may have tax consequences, the facts should then be given to the Service for a tax investigation. To the extent that this suggestion produces some duplication, we believe that it is justified in light of the Service's mission as a tax collector and not as a criminal investigator. We also believe it important that at all times, Service personnel operate under the supervision and practical control of their Service superiors.

In this connection, I must return once again to the importance of the manner in which the Service discharges its responsibility and its effect on the success of that perfromance. As you know, the Service long ago adopted and published procedures which govern the processing of tax audits and the activities of its field personnel. These procedures include important provisions for conferences, administrative appeals, and other safeguards for taxpayers. These are well-known, are widely observed, and provide an important part of the foundation for fairness on which the Service operates. These rules enable taxpayers and their representatives to know their rights, not only under the Constitution, but also under the published procedures of the Service. Distortion of those rights may occur if a tax case is processed outside of the control of the Internal Revenue Service.

For example, it is standard practice in any investigation by a special agent of the Internal Revenue Service for the agent to give a taxpayer in a noncustodial interview *Miranda* type warnings when an investigation is commenced.[7] It has been our experience that these warnings are not given in the usual case by general criminal investigators prior to the custodial stage. We think it undesirable that taxpayers be denied these warnings in tax cases just because the case starts as a nontax investigation and just because the practical control of the case is in an agency other than the Internal Revenue Service.

The problem is aggravated by the further fact that some respectable businessmen involved in various transactions, particularly in those with widespread

[7] Handbook for Special Agents, Subsection 242.132, MT 9900-26 (1-29-75) Internal Revenue Manual.

participation, do not always know the full identity or character of some of their business contacts. If a general investigation is undertaken, then businessmen and all others involved in the investigation should have the right to prepare their defense to any tax charge arising therefrom and otherwise avail themselves of the procedural opportunities offered by the Internal Revenue Service to taxpayers generally. It may not be until the completion or perhaps the substantial completion of a general criminal investigation that it is known whether any tax crime is involved. On the other hand, taxpayers know that certain procedural rights apply to the examination of their tax returns. They know also that, at the point the Intelligence Division of the Service comes into the investigation, certain additional procedural safeguards and opportunities, including those involving the Tax Division of the Department of Justice, will be available to them. The tax collecting system will suffer severe damage if taxpayers are exposed to substantial loss of their procedural rights simply because they are caught up in a general criminal investigation.

Equally damaging to the confidence of the public in the tax system is the use of the special enforcement tools of the Service, particularly the termination [8] and jeopardy assessment procedures [9] and the administrative summons [10], as devices to get the gambling or narcotics money off the street. This result is undoubtedly a desired social goal, but the use of these tax enforcement tools to accomplish it is highly questionable.[11]

As Justice Blackmun has observed, the power of the Internal Revenue Service is "overwhelming".[12] The use of that power in general criminal investigations may lead to its abuse. The Internal Revenue Service already has been severely criticized for allowing its tax collection devices to be used as summary punishment to supplement or complement regular criminal procedures.[13] Not only does this use violate the Congressional intent and purpose in giving the Service these special tools; but it further tarnishes the image of the Service. If other agencies need comparable powers, then it would seem appropriate for specific legislation so to provide. Indeed, the Service has recommended and the Ways and Means Committee considered in connection with its 1974 tax reform efforts an amendment to Section 881(a) of Title 21 of the United States Code (relating to property subject to forfeiture) which would have provided in effect that all cash and other personal property found in the possession of a narcotics trafficker be forfeited.[14] This suggestion is at least one alternative to the use of the Service's jeopardy assessment procedure.

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[8] § 6851(a).

[9] §§ 6861(a), 6862(a).

[10] § 7602.

[11] Even in tax matters, the use of these procedures is not without problems. We note the proposed Tax Reform Act of 1975 (H.R. 10612, 94th Cong. 1st Sess.) contains a provision (Sec. 1209) for speedy judicial review of the termination and jeopardy assessment procedures, a position which is in substantial accord with a prior legislative recommendation (as amended) of the American Bar Association. Recommendation #11450–88 (1958–25), 11 Tax Lawyer 157 (1958), and 12 Tax Lawyer 21 (1959). Copies of this recommendation and related report are being provided to the Chairman of this Subcommittee under separate cover (see p. 87).

Substantial litigation has resulted from the use of the termination assessment as to whether such procedure requires a deficiency notice. The question has been argued before the Supreme Court and is now awaiting decision in the cases of *Laing v. U.S.*, 496 F.2d 853 (2d Cir. 1974) and *Hall v. U.S.*, 493 F.2d 1211 (6th Cir. 1974).

In addition, the proposed Tax Reform Act of 1975 contains a provision (Section 1211) whereby notice would be given to taxpayers on the issuance of an administrative summons to third parties. This proposal is in principle consistent with the position (as modified) of the American Bar Association relating to the issuance of administrative summonses to financial institutions. Report No. 116, Summary of Action of the House of Delegates, American Bar Association, 1975 Midyear Meeting, p. 15, as modified by Report No. 123, Summary of Action of the House of Delegates, American Bar Association, 1975 Annual Meeting, p. 47. Copies of these reports are being provided to the Chairman of this Subcommittee under separate cover.

[12] *Alexander v. "Americans United" Inc.* 416 U.S. 752 (1974) (dissenting opinion).

[13] "The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use." *Willets v. Richardson*, 497 F.2d 240, 246 (5th Cir. 1974) See also *Aguilar v. U.S.* 501 F.2d 127 (5th Cir. 1974); *Rinieri v. Scanlon*, 254 F. Supp. 469 (S.D.N.Y. 1966).

[14] Sec. 516, House Ways and Means Committee Print No. 5 Title V—Administrative and Miscellaneous Changes—of Tentative Draft of Tax Reform Bill (1974).

We are also concerned that agents participating in general criminal investigations under the practical control of an agency other than the Service may be subjecting the Internal Revenue Service to a further risk of assault on its image as a result of their potential involvement as defendants in personal lawsuits brought by taxpayers.

As you are aware, no longer do federal officers, including agents of the Internal Revenue Service, enjoy absolute immunity from damage claims arising out of their actions. The qualified immunity doctrine established by the Supreme Court in *Scheuer v. Rhodes*,[15] for state officers has been extended by some courts of appeal to suits against federal officers for a violation of Constitutional rights.[16] Under the qualified immunity doctrine of *Scheuer*, a federal officer performing acts in the course of official conduct is insulated from damage suits only if (1) at the time and in light of all the circumstances there existed reasonable grounds for the belief that the action was appropriate and (2) the officer acted in good faith. If the officer's actions are not in the course of official conduct, he is not entitled to any qualified immunity or good faith defense.[17] There is a serious question as to whether assignment to another federal agency avoids the problem of proper scope of duty.

It is not difficult, therefore, to conceive of an audit or special agent exceeding the scope of his official duties under the internal revenue laws as a result of being swept up in a general criminal investigation. His actions under the particular circumstances there involved might be appropriate for another federal officer but may well be inappropriate for Service personnel.

In summary, the Section of Taxation of the American Bar Association believes that the Internal Revenue Service should not be assigned any duties completely unrelated to the enforcement of our tax laws. Further, we believe that in general the Service should not be called into investigations of nontax crimes unless and until the investigation by another law enforcement agency shows that a particular criminal activity may have tax consequences. We believe that the Service should retain supervision and control over its agents at all times. We recommend that the Congress provide the other federal law enforcement agencies with such resources, manpower, and tools as may be necessary to permit them to discharge their nontax investigative obligations without availing themselves of the manpower and financial resources of the Internal Revenue Service and its specialized legal devices which were included only for the collection of tax.

In closing, the Section strongly urges that the Congress provide guidelines as to the proper role of the Internal Revenue Service in enforcement activities which are not closely related to the administration of the internal revenue laws. Because of the critical nature of the problems and the potential damage to the image of the Internal Revenue Service and to our self-assessment system, delay only aggravates the situation. We most respectfully suggest the early resolution of these very difficult and important questions.

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REPORT OF THE COMMITTEE ON PROCEDURE IN FRAUD CASES

Important Developments During the Year

CASES AND RULINGS

Proof of Source of Income in Net Worth Cases. In United States v. Massei,—U.S.—, 78 S.Ct. 495,—L. Ed 2d—(1958), the Supreme Court, in sustaining the First Circuit's reversal of a tax evasion conviction in a net worth case, gave some clarification of the requirement set forth in Holland v. United States, 348 U.S. 121 (1954) that the Government prove a likely source of income. One of the grounds of reversal specified by the Court of Appeals in the Massei case was that a likely source of income had not been established. This, said the Supreme Court, is not necessary in every case. If all possible sources of non-taxable income have been negatived, the Government need not prove a likely source.

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[15] 416 U.S. 232 (1974).

[16] *Mark v. Groff*, ———F.2d———(9th Cir. 1975); *Apton v. Wilson*, 506 F.2d 83 (D.C. Cir. 1974); *Rowley v. McMillan*, 502 F.2d 1326 (4th Cir. 1974); *States Marine Lines, Inc. v. Shultz*, 498 F.2d 1146 (4th Cir. 1974).

[17] *Mark v. Groff supra* n. 16; See also *Hutchinson v. Lake Oswego School Dist. No. 7*, 374 F. Supp. 1056 (D. Or. 1974).

A similar issue was involved in United States v. Ford, 237 F. 2d 57 (2d Cir. 1956), cert. granted February 25, 1957. However, because of the death of the taxpayer, the case became moot before the Supreme Court rendered its decision.

Committee Activities

In addition to the legislative recommendations set forth below, the committee has initiated a comprehensive study of procedures involved in the formulation and review of recommendations for criminal prosecution. A special subcommittee is analyzing such matters as the advisability of the special agent's making a recommendation instead of simply submitting a factual report, and of freeing the Regional Counsel's office from any necessity for obtaining the concurrence of the Intelligence Division representatives before declining a recommendation for criminal prosecution. This subcommittee has made an excellent start and will, it is hoped, have some constructive contributions to offer during the coming year.

Consideration is also being given to the possibility of re-establishing a voluntary disclosure policy in the Treasury Department.

Legislative Recommendations

1. JUDICIAL REVIEW OF THE EXISTENCE OF JEOPARDY WHERE A JEOPARDY ASSESSMENT HAS BEEN MADE

Resolved, That the American Bar Association recommends to the Congress that the Internal Revenue Code of 1954 and the Judicial Code be amended to permit the United States District Courts to review the finding of the Secretary of the Treasury that the assessment or collection of a deficiency would be jeopardized by delay; and

Be it Further Resolved, That the Association proposes that this result be achieved by adding section 6865 to the 1954 Code and amending sections 6861(a) and 7421(a) of the 1954 Code and section 2201 of the Judicial Code; and

Be It Further Resolved, That the Section of Taxation is directed to urge the following amendments or their equivalent in purpose and effect upon the proper committees of Congress:

Sec. 1. Section 6861(a) of the Internal Revenue Code is amended to read as follows (insert new matter in italics):

(a) Authority For Making.—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof. The fact that the period of limitation for the collection or assessment of the tax is about to expire shall not be considered in the determination that the assessment or collection of a deficiency will be jeopardized by delay.

Sec. 2. Chapter 70, Subchapter A, Part II, of the Internal Revenue Code is amended by adding at the end thereof a new section as follows:

SEC. 6865. JUDICIAL REVIEW OF JEOPARDY ASSESSMENTS.

(a) Review of Secretary's Finding and Vacation of Assessment.—A finding of the Secretary or his delegate that the assessment or collection of a deficiency would be jeopardized by delay shall, without further proceedings in the United States Treasury Department, be subject to review under section 2201 of Title 28, United States Code. Upon such review, if the court decides that the taxpayer has, by a fair preponderance of the evidence, proved that the assessment or collection of the deficiency will not be jeopardized by delay, the court shall vacate and annul the assessment made under section 6861(a) or section 6862(a), and it shall be void and of no effect.

(b) Stay of Further Proceedings of Secretary.—In an action for such review, the court shall have the power to stay any further proceeding of the Secretary or his delegate for the collection of the deficiency pursuant to the assessment sought to be reviewed, pending the determination of such action.

(c) Preference on Calendar Accorded to Review of Secretary's Finding.—Any such review pursuant to the provisions hereof shall be entitled to a preference on the calendar pursuant to the rules of the district court having jurisdiction of the proceeding.

Sec. 3. Title 28, Chapter 151, section 2201 of the United States Code is hereby amended to read as follows (insert new matter in italics):

Sec. 2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than a proceeding under section 6865 of Title 26, United States Code, any court of the United States and the District Court for the Territory of Alaska, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. In a proceeding under section 6865 the sole issue before the court shall be whether the collection of the deficiency will be jeopardized by delay.

Sec. 4. Section 7421(a) of the Internal Revenue Code is hereby amended to read as follows (eliminate the matter struck through and insert the new matter in italics):

(a) TAX.—Except as provided in sections 6212(a) and (c), 6213(a), and 6865 (b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

EXPLANATION

SUMMARY

The authority of the Secretary or his delegate to make a jeopardy assessment when he finds that assessment or collection of a tax will be jeopardized by delay is not, under present law, subject to judicial review. The absence of independent review permits the exercise of this authority in situations for which it was not intended. The proposed legislation enables the taxpayer to obtain a review in the district court of the question whether jeopardy exists, and authorizes the court to annul the jeopardy assessment if the taxpayer proves that delay will not jeopardize the assessment or collection of the tax.

DISCUSSION

Under present law, jeopardy assessments are made by the Secretary or his delegate under § 6861. He is authorized to make them when he believes that the assessment or collection of a tax deliquency will be jeopardized by delay. A determination that jeopardy exists is not subject to judicial review (e.g. Lloyd v. Peterson, 242 F. 2d 742 (5th Cir. 1957); Harvey v. Early, 66 F. Supp. 761 (W.D. Va. 1946), aff'd 160 F. 2d 836 (4th Cir. 1947); Veeder v. Commissioner, 36 F. 2d 342 (7th Cir. 1929); Foundation Co. v. United States, 15 Supp. 229 (Ct. Cl. 1936). The statute relegates the taxpayer to two avenues of relief: (1) abatement by the Treasury under § 6861(g), largely illusory because the decision to grant relief stems from the agency imposing th assessment in the first place, although there has been judicial admonition that this discretion should be exercised in proper cases (Darnell v. Tomlinson, 220 F. 2d 894 (5th Cir. 1955)); and (2) by posting a bond under § 6863 to stay collection of the assessment, nebulous, to say the least, when all of the taxpayer's assets are tied up (see Kimmel v. Tomlinson, 151 F. Supp. 901 (S.D. Fla. 1957), which characterized the right to post a bond in this situation as a "mockery").

Attempts at injunctive relief immediately run counter to § 7421 of the Code prohibiting injunctions in tax cases. While it is true that unusual circumstances will justify an injunction (e.g. Communist Party, U.S.A. vs. Moysey, 141 F. Supp. 332 (S.D.N.Y. 1956); Shelton v. Gill, 202 F. 2d 503 (4th Cir. 1953); Midwest Haulers v. Brady, 128 F. 2d 496 (6th Cir. 1942); Allen v. Regents, etc., 304 U.S. 439 (1938); Miller v. Standard Nut Margerine Co., 248 U.S. 498 (1932); Mitsu Kiyo Yoshimura v. Alsup, 167 F. 2d 104 (9th Cir. 1948)), such relief is granted on a strictly case-by-case basis (Homan Mfg. Co. v. Long, 242 F. 2d 645 (7th Cir. 1957). In any event, exceptional and extraordinary circumstances must be shown to exist, and indigency is not such a showing (Lloyd v. Patterson, *supra*; but see Arnold v. Cobb,—F. Supp. —, 57-2 U.S.T.C. ¶ 9711, 1957 P-H Fed. ¶ 72,727 (N.D. Ga. 1957), where this relief was granted to prevent the taxpayer from becoming a public charge). Furthermore, in the light of § 7421, false jeopardy would not appear to be one of these exceptional circumstances. Lastly, the fact that the imposition of the assessment leaves the taxpayer wholly without means to contest the matter is, under the current state of the law, of no moment (United States v. Brodson, 234 F. 2d 97 (7th Cir. 1695), cert. denied 354 U.S. 911).

Thus, the taxpayer who is subjected to a jeopardy assessment finds himself in a position where he cannot secure independent review of the correctness of the

Treasury determination that jeopardy does in fact exist. Conversely, the Treasury is in a position to use its jeopardy powers in an unintended fashion.

While it is generally considered wrong to use the threat of a jeopardy assessment as a vehicle for extracting an extension of the statute of limitations from a taxpayer, there appears to be some practice to the contrary. Section 6861 uses the words "assessment or collection" in the disjunctive. In Veeder v. Collector, *supra*, it was indicated that the fact that the statute of limitations is about to run constitutes jeopardy.

Amendment to the law should be sought to afford the taxpayer a right to review the Treasury's administrative determination as to the existence of jeopardy. Your committee feels that such a review should be made available to a taxpayer under the declaratory judgment procedure, because this would permit a speedy determination which might result in the release of needed funds to contest or defend the action. The courts also should be granted power to stay any further proceedings under the jeopardy assessment already made pending the outcome of the declaratory judgment suit.

Since this recommendation as well as recommendation 2 below, comprehends the fields in which the Committee on Court Procedure, the Committee on Administrative Practice and the Committee on Federal Tax Liens and Collection Proceedings are working, both recommendations have been referred to those committees.

2. RELEASE OF FUNDS FROM JEOPARDY ASSESSMENTS.

Resolved, That the American Bar Association recommends to the Congress that the Internal Revenue Code of 1954 be amended to permit the United States District Court to order the release of the taxpayer's property from jeopardy assessment liens for certain purposes; and

Be It Further Resolved, That the Association proposes that this result be achieved by amending section 6861 of the 1954 Code; and

Be It Further Resolved, That the Section of Taxation is directed to urge the following amendment or its equivalent in purpose and effect upon the proper committees of Congress:

Sec. 1. Section 6861 of the Internal Revenue Code is amended by redesignating the present subsection (h) as subsection (j), and by adding new subsections (h) and (i) as follows:

(h) RELEASE OF FUNDS FROM JEOPARDY ASSESSMENTS.—Where a jeopardy assessment has been made and notice of the lien or liens arising by virtue thereof has been filed, the United States District Court for the district in which the taxpayer resides, upon verified petition of the taxpayer, may in its discretion order released from said liens such funds or other assets as are sufficient to enable the taxpayer—

(1) to retain the services of legal counsel and to provide for other necessary expenses in the representation of the taxpayer in all matters, civil, criminal, or both, relating to or affecting the tax liability asserted in the jeopardy assessment;

(2) to repair, maintain and preserve property against which a lien in favor of the United States exists by virtue of the jeopardy assessment, including the satisfaction of liens against such property which have priority over said lien; and

(3) to pay taxes (except taxes covered by the jeopardy assessment) owing by the taxpayer whether due before or after the making of said jeopardy assessment.

Upon releasing such funds from such liens, the said court shall impose such conditions, as in its discretion it shall deem advisable, to insure the application of such funds to the purposes for which they were released.

(i) NOTICE TO SECRETARY.—The verified petition of taxpayer shall be served upon the Secretary or his delegate in triplicate at least twenty days before a hearing thereon. Subsequent to the mailing of such notice, the Secretary or his delegate shall have authority to release funds or other assets as requested in said petition without regard to the provisions of subsection (g) hereof.

EXPLANATION

SUMMARY

The freezing of the taxpayer's assets by a jeopardy assessment has harsh consequences which sometimes prejudice the interests of the Government as well as the taxpayer. One of the unfair results is the denial to the taxpayer of the use of his own property to defend himself against a criminal charge of tax evasion, or

even to contest the jeopardy assessment in the Tax Court. Another is the legal inability to obtain a release of funds to pay for needed repairs, fire insurance premiums, and similar expenses necessary for the protection, preservation, and maintenance of the property. The proposed legislation empowers the district court, in its discretion, to release such funds as are necessary for the purposes specified in the statute. The supervision of the court will restrict the release of funds to proper purposes and protect the interests of the Government without the unfair results which the presently inflexible statute produces.

DISCUSSION

The right to levy jeopardy assessments against taxpayers is one of the most drastic and far-reaching powers vested in the Secretary of the Treasury. This power is intended to be used sparingly, and only in situations in which there is good reason to believe that the taxpayer is planning to conceal his assets or otherwise place them beyond the reach of the collection officers of the Treasury Department. There have been many complaints that this power has been misused by the making of jeopardy assessments for reasons other than any real jeopardy to the assessment or collection of a deficiency, and that the amount of the assessment has been arbitrarily determined at a level far above what the facts warrant.

Whatever the reasons which prompt its issuance, a jeopardy assessment has far-reaching and often disastrous effects upon the taxpayer, and at times the interests of the Government are also jeopardized. For example, the freezing of the taxpayer's bank account may prevent him from paying fire insurance premiums on his property and from making necessary repairs, thus exposing the Government as well as the taxpayer to a risk of loss. The Government's interests, as well as the taxpayer's require some means of relief in this situation. Similarly, the taxpayer should be permitted to make use of his property to pay his current income taxes, as well as deficiencies for years other than those involved in the jeopardy assessment.

Even more compelling than these considerations, however, is the necessity for safeguarding the right of the taxpayer to make an effective defense against a criminal charge of evading the alleged tax deficiency on which the jeopardy assessment is based, and to contest in the Tax Court the alleged liability for such taxes. It is manifestly unfair to prevent a taxpayer from using his own property in such situations; yet that is the inevitable and necessary result of a jeopardy assessment under the present law.

The problem is dramatically illustrated by the case of United States v. Brodson, pending in the United States District Court for the District of Wisconsin. The district court, after lengthy but futile efforts to obtain administrative release of funds from the jeopardy assessment, dismissed the tax evasion indictment on the ground that the Government's action in tying up the defendant's assets has made it impossible for him to have a fair trial, particularly since the services of a qualified accountant were indispensable to a proper presentation of the taxpayer's defense in a complex net worth case. (136 F. Supp. 158). This decision was reversed on appeal by a 3–2 decision, in which the majority concluded that the district court's conclusion was premature and that the question of whether the jeopardy assessment had in fact made a fair trial impossible should have been decided after, rather than before, the trial. (241 F. 2d 107.)

Following the remand, the district court made an order postponing the criminal trial until after the taxpayer's appeal to the Tax Court from the jeopardy assessment had been determined, notwithstanding the vigorous protest of the Government that under a longstanding and consistently-followed policy the Tax Court trial should be deferred until after the criminal charge had been disposed of (58–1, U.S.T.C. ¶ 9183, 1958 P–H Fed. ¶ 58–352.)

The defense counsl in the Brodson case had been appointed by the court, but regardless of the quality of court-appointed counsel and of the amount of time which they can afford to donate, it is still repugnant to our concepts of justice to prevent a defendant from using his own property to hire counsel of his own choice to represent him. Moreover, the courts have no authority to appoint accountants to work for a taxpayer, although their services are usually indispensable in tax fraud cases.

Since the release of funds would be under the supervision of a district court, there would be reasonable safeguards against unwarranted expenditure of funds.

Respectfully submitted,

SPURGEON AVAKIAN, *Chairman.*

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* * * the net operating loss was sustained is not the same business or the same type of business as the business from which the income against which the net operating loss deduction is offset was derived.

Sec. 2. Effective Date. This amendment shall be applicable as if originally enacted as a part of the Internal Revenue Code of 1954.

(Motion to substitute alternative recommendation 4a on page 133 was rejected.)

5. Amortization period for corporate organizational expenses (Program, 133–134), Adopted without change.

INCOME OF ESTATES AND TRUSTS

1. To provide that the tax on accumulated income of multiple trusts created by the same grantor for substantially the same primary beneficiaries be computed as though the multiple trusts were a single trust (Program, 140–145). Rejected. (Alternative recommendation 1a on page 145 was not presented.)

2. To provide that for a period that cannot exceed 63 months estates are taxable as separate entities without allowance of distribution deductions and that distributions of estates are exempt from income tax to the distributees (Program, 145–156). In lieu of the recommendation beginning on page 145, alternative recommendation 2a beginning on page 151 entitled "to provide that for a period that cannot exceed 48 months distributions by estates shall be treated in the same manner for Federal income tax purposes as they are treated for probate purposes under local law, etc." was adopted without change.

PROCEDURE IN FRAUD CASES

1. Judicial review of the existence of jeopardy where a jeopardy assessment has been made (Program, 157–160). Adopted with the following change: the words ", without further proceedings in the United States Treasury Department," in the 3rd and 4th lines of proposed Section 6865 were stricken.

2. Release of funds from jeopardy assessments (Program, 160–162). Adopted without change.

SALES, EXCHANGES AND BASIS

1. To provide for the deduction of litigation expenditures even though title to property is involved (Program, 164–166).

Report No. 116, Summary of Action of the House of Delegates, ABA, 1975 Midyear Meetings, p. 15

* * * governmental action should be consistent with the principles stated herein.

Criminal Justice (*Report No. 116*)

The first recommendation presented by the Section was approved. It reads:

Be It Resolved, That the American Bar Association reaffirms its support for the Uniform Alcoholism and Intoxication Treatment Act drafted by the National Conference of Commissioners on Uniform State Laws;

Be It Further Resolved, That the ABA urges those states which have not already done so to utilize newly-available federal funding (under P.L. 93–282) to implement the provisions of this Uniform Act;

Be It Further Resolved, That the ABA generally reaffirms its support for the principle of decriminalization of alcoholism; and

Be It Further Resolved, That the President of the ABA or his designee be authorized to contact every state governor, legislature, and state bar association, and logical ABA-affiliated groups, to express Association support for the above-named Uniform Act, and to request their support in its implementation.

The Section's second recommendation, to amend its by-laws to increase section dues from $10.00 to $20.00 per year, was approved.

The third recommendation presented by the Section concerned opposition, in principle, to S. 1401, dealing with mandatory imposition of the death penalty. The recommendation was withdrawn by the Section.

In lieu of the Section's fourth recommendation, a substitute proposed by the Section of Taxation was approved. The substitute reads:

Be It Resolved, That the American Bar Association endorse in principle amendments to the Bank Secrecy Act designed to protect the privacy of financial records as proposed by Senate Bill 2200 (93rd Congress) and its identical House Bill counterpart H.R. 9424 (93rd Congress) subject to the following modifications and reservations:

1. The financial institution should be barred not only from disclosing information regarding a customer's transactions to a federal, state, or local government agency in the absence of an administrative summons, judicial process, search warrant, or consent, but a similar bar should also be provided with respect to disclosure to other banks, other customers, the media, and the general public.

2. Where information is sought by a Federal Agency in connection with the enforcement of the Federal tax laws, the law should require the information demand to specify the names of the taxpayers under investigation, the type of tax, and the taxable period.

3. a. Prior to disclosure of documents or transactions by a financial institution pursuant to an administrative summons, judicial process or a search warrant, notice and opportunity to be heard should be given, in addition to persons to be notified under S. 2200, to any customer of the institution in any transaction involving another person if the customer is also the person under investigation.

b. Notice should not be required:

(1) To the payee of the check even though he is a customer, if he is not the person under investigation.

(2) To the source of a deposit, even though he is a customer, if he is not the person under investigation.

(3) To the customer creating a trust, agency or custodian relationship or the legal representative of an estate involving services of the fiancial institution, where the transaction is not between the institution and the customer.

legal representative of an estate involving services of the financial institution. (*e.g.*, legatee, stockholder), even though he is a customer, if he is not the person under investigation.

4. Disclosure should not be permitted where only one party to a multi-party transaction is given notice and opportunity to object, which has been overruled or waived by consent, where any other party not so notified is the person under investigation.

5. Except as provided in paragraph 4, if the records sought are identified in the administrative summons, judicial process, or search warrant solely with respect to one or more persons, it should be sufficient to give notice and opportunity to object only to such person or persons (whether or not he is or they are the person or persons under investigation and whether or not unidentified third persons are involved) so specifically identified as are customers of the institution.

6. Prohibition of disclosure without an administrative summons, judicial process, search warrant or consent should include those records maintained by the financial institution as a service to the customer involving transactions to which the institution is not a party.

7. The prohibition should not apply to records of property or rights to property in possession of the institution sought in connection with a levy made or about to be made on such property or rights by the government under Internal Revenue Code section 6233.

8. The financial institution should not be required to await a court order directing it to comply with disclosure demanded of the financial institution after both:

a. Establish records other than those required by regulatory authorities and

b. Ten days or some similar appropriate period has passed without challenge of the summons either judicially or administratively by the person or persons notified.

9. The Secretary of the Treasury should continue to have the authority to require the financial institution to:

a. Establish records other than those required by regulatory authorities and those required under the Internal Revenue Code (*e.g.*, "large currency" records, foreign exchange or purchase records)

b. Retain for reasonable periods records or copies of records established or received in the ordinary course of business (*e.g.*, checks, deposit slips, customer loan records) even if such is not required by regulatory authorities.

10. A financial institution should be permitted to transmit to appropriate government agencies information of possible criminal violations other than against the financial institution itself.

11. The American Bar Association reserves its position on the Fifth Amendment problem which is raised in Section 4(b) of the proposed bill.

Be It Further Resolved, That the President of the Association or his designee be authorized to urge the enactment of this legislation before the appropriate committees of the Congress.

The fifth recommendation presented by the Section concerned approval, in principle, of the Proposed Amendments to the Federal Rules of Criminal Procedure, as promulgated by the U.S. Supreme Court on April 22, 1974, with several changes suggested by the Section. In lieu of approving the recommendation, the House authorized the Section to submit its views on the Proposed Amendments to appropriate Committees of the Congress, provided that the Section makes it clear that the views submitted are those of the Section and have not been approved by the House of Delegates or the Board of Governors.

Family Law (Report No. 104)

The first recommendation presented by the Section, to amend its by-laws to add representatives of the Young Lawyers Section and the Law Student Division to the Section Council, was approved.

The Section's second recommendation, to amend its by-laws to increase section dues from $7.50 to $12.50, and to increase law student section dues from $3.00 to $5.00, was approved.

General Practice (Report No. 120)

The first recommendation presented by the Section, to increase law student section dues from $3.00 to $5.00, was approved.

The Section's second recommendation was approved. It reads:

Be It Resolved, That the American Bar Association endorse federal legislation and urge that the Congress and the President of the United States enact legislation providing, in principle, as follows:

That the Internal Revenue Code of 1954 be amended to permit the deduction of personal legal expenses not already, or otherwise, deductible or capitalized under current statutory provisions and judicial interpretations therof. That the amendment permit the deduction from adjusted gross income of legal expenses of a personal nature paid during a taxable year for legal representation and services performed for the taxpayer, his spouse, and dependents and not compensated for by insurance or otherwise. That the amendment include a deduction for legal insurance premiums paid for purposes of insuring against potential expenditures for legal representation and services with a ceiling limitation comparable to that imposed for the deduction of medical insurance premiums.

That the additional deduction be made available in full to those taxpayers with adjusted gross income not in excess of $15,000, with a simple phaseout for those with adjusted gross income in excess of * * *

Report No. 123

Summary of Action of the House of Delegates, ABA, 1975 Annual Meeting, p. 47

* * * Section of Patent, Trademark and Copyright Law—Department of Commerce (Patent and Trademark Offices) and Library of Congress (Copyright Office).

Public Contract Law (Report No. 105)

The recommendation presented by the Section, to amend the Section's by-laws to permit changes in the Section's regions, was approved by voice vote.

Real Property, Probate and Trust Law (Report No. 118)

The first recommendation presented by the Section concerned amendments to the Section's by-laws. Upon recommendation of the Board of Governors, agreed to by the Section, the amendments were further modified as follows: (1) Article I, Section 2(g) to read: "(g) to initiate, sponsor and promote within the Association legislation and uniform laws when necessary and appropriate in the public interest;" (2) Article I, Section 2(h) to read: "(h) to provide, in accordance with Association policy, a forum, where appropriate, with other disciplines and with governmental and private bodies for the exchange of ideas and opinions;" and (3) delete section 6 of Article VI, concerning proxy voting. In

addition, Article IV, Section I(d) was amended to add the following sentence at the end: "All such nominees of the Nominating Committee shall have been members of the Section in good standing for at least three years prior to the date of such nomination." As amended, the amendments to the by-laws were approved by voice vote.

The Section's second recommendation, for approval of the Principles Regarding Probate Practices and Expenses, was approved by voice vote.

Taxation (Report No. 123)

The recommendation presented by the Section was approved by voice vote. It reads:

Be It Resolved, That the American Bar Association further modify its Resolution adopted in February, 1975 to "endorse in principle amendments to the Bank Secrecy Act designed to protect the privacy of financial records as proposed by Senate Bill 2200 (93rd Congress) and its identical House Bill counterpart H.R. 9424 (93rd Congress) subject to . . . modifications and reservations" by deleting the reservation contained in subsection 11 thereof and substituting therefor the following modification:

"11. The ABA opposes Section 4(b) of the Bill which would purport to grant a customer of a financial institution, in any proceeding relating to subpoenas, summons, and court orders described in Section 4(a) of the Bill, the same rights in records maintained by the institution with respect to him as if the records were in his possession."

Young Lawyers (Reports No. 116 and 109D)

The House of Delegates, by voice vote, declined to approve the first recommendation presented by the Section, which concerned approval of unconditional and universal amnesty for all Vietnam-era war resisters.

The Section's second recommendation, concerning treaties relating to specific matters of international concern which would provide for the resolution of disputes by compulsory arbitration, was withdraw by the Section without objection.

For action on the recommendations submitted by the Section jointly with the Commission on Correctional Facilities and Services, see page 16 of this Summary.

AMERICAN BAR ASSOCIATION, SECTION OF TAXATION, RECOMMENDATION

With respect to the Resolution of the American Bar Association on Proposed "Right to Financial Privacy Act." (S. 2200 and H.R. 9424, 93d Cong.; S. 1343, 94th Cong.)

The Section of Taxation recommends the adoption by the House of Delegates of the American Bar Association of the following resolution:

Be it resolved, That the American Bar Association further modify its Resolution adopted in February, 1975 to "endorse in principle amendments to the Bank Secrecy Act designed to protect the privacy of financial records as proposed by Senate Bill 2200 (93d Congress) and its identical House Bill counterpart H.R. 9424 (93d Congress) subject to . . . modifications and reservations" by deleting the reservation contained in subsection 11 thereof and substituting therefor the following modification:

"11. The ABA opposes Section 4(b) of the Bill which would purport to grant a customer of a financial institution, in any proceeding relating to subpenas, summons, and court orders described in Section 4(a) of the Bill, the same rights in records maintained by the institution with respect to him as if the records were in his possession."

Brief Background of ABA Position on Proposed Right to Financial Privacy Act

The Section of Criminal Justice originally proposed that the American Bar Association approve the proposed "Right to Financial Privacy Act" which was introduced in the 1st Session of the 93d Congress in 1973 as S. 2200 and H.R. 9424. The Section of Taxation introduced at the midwinter meeting of the ABA House of Delegates on February 24 and 25, 1975, a resolution approving S. 2200 and H.R. 9424 subject to certain modifications. This Resolution was adopted on February 24, 1975, but was modified on February 25, 1975 by the specific reservation by the ABA of its position on the Fifth Amendment problem raised by Section 4(b) of the proposed identical Bills. In connection with this reservation, the House of Delegates requested the Section of Taxation and the Section of Crimi-

nal Justice to report and make recommendations on Section 4(b) of the proposed Bills at the 1975 Annual Meeting in Montreal.

Section 4(b) of the two companion bills (which have been reintroduced in identical wording in the 94th Congress as S. 1343) provides as follows: "In any proceeding relating to such subpenas, summons, and court orders, the customer shall have the same rights as if the records were in his possession."

Study by the Section of Taxation

Following the mid-winter meeting of the ABA House of Delegates, an Ad Hoc Subcommittee of the Committee on Administrative Practice, which had previously considered and reported on S. 2200 and H.R. 9424, was reconstituted to study, report on and make a recommendation to the Council of the Section of Taxation on Section 4(b) of the proposed Bills. Views were obtained by the Ad Hoc Subcommittee from a number of tax practitioners generally and from the Chairman of the Section's Committee on Civil and Criminal Penalties in particular. A Report to Council was rendered under date of April 29, 1975 recommending that the Section of Taxation recommend that Section 4(b) be adopted as proposed. The Report included the dissenting views of the Chairman of the Committee on Administrative Practice.

Following consideration of such Report by Council at its May meeting of Council and Committee officers, on May 16, 1975 the Council unanimously rejected the Report of the Ad Hoc Subcommittee and recommended that the American Bar Association oppose the retention of Section 4(b) in the proposed "Right to Financial Privacy Act."

Background on the Fifth Amendment

The Fifth Amendment provides individuals with a right against self-incrimination. The purpose of the privilege is to prevent self-incriminating statements from being elicited by inhumane treatment and abuses, and "the unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury, or contempt." *Murphy* v. *Waterfront Commission*, 378 U.S. 52, 55 (1964). It is important to note that the Fifth Amendment privilege is a personal privilege: it adheres basically to the person, not to information that may incriminate him. *Couch* v. *United States*, 409 U.S. 322 (1973). As Mr. Justice Holmes stated.

"A party is privileged from producing the evidence but not from the production." *Johnson* v. *United States*, 228 U.S. 457, 458 (1913).

The Constitution explicitly prohibits compelling an accused to bear witness "against himself," but it does not proscribe incriminating statements elicited from another. Compulsion upon the person asserting it is an important element of the privilege, and "prohibition of compelling a man . . . to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him." *Holt* v. *United States*, 218 U.S. 245, 252–253 (1910). It is extortion of information from the accused himself that offends our sense of justice. *Couch* v. *United States*, *supra*.

Anticipated Effect of Section 4(b) and the Fifth Amendment

It is the intent of Section 4(b) to extend to the customer those rights which he would have had "if the records were in his possession." The purpose of the subsection is to give the customer "the same standing he would have if the records were in his possession." Section-by-Section Analysis, Right to Financial Privacy Act, Congressional Record S. 5073–74 (March 26, 1975). It seems clear that the Fifth Amendment would be made applicable to such records, because (as stated above) the Fifth Amendment adheres basically to the person, i.e., a party is privileged from producing the evidence in his possession. Thus, the Act has the effect of creating a statutory extension of the privilege against self-incrimination. The courts have in effect taken the position that the Constitution does not require the privilege to extend that far; by enacting Section 4(b), Congress would be providing such coverage by statute. Since such privilege is not of Constitutional origin, Congress could later modify or revoke such coverage, without interference by the courts. It should be noted that, even without Section 4(b), the Act would also extend to the customer a Fourth Amendment right to be protected against unreasonable searches and seizures, and a right to personal privacy that would extend to natural persons if not to artificial persons operating through the means of natural persons.

Although the ultimate arbiter of the coverage of Section 4(b) will be the courts, it would appear that all bank records would be subject to a potential Fifth Amendment claim under the Act. Moreover, it is believed that it would

be most difficult to redraft Section 4(b) to provide a limitation on any particular bank records and that *if* the proposal is a meritorious one, Section 4(b) should cover *all* customer records maintained by the bank which are sought by the Government. Moreover, any attempt to exclude *some* records from coverage of the Act would in fact totally eradicate the intent and effect of the Act. Accordingly, since it appears that extension of the Fifth Amendment rights to the customer is an "all or nothing" proposition, it is recommended that no attempt be made to modify the language of Section 4(b).

Arguments Against Section 4(b) as Proposed

It is submitted that adoption of Section 4(b) would defeat the very salutary purpose of the Bank Secrecy Act, that of allowing Government more effectively to combat major crime by requiring financial institutions of all types to maintain records which would permit the Government to trace the financial transactions and illicit proceeds of underworld operations, white collar crimes, narcotics traffic, skimming activities and the like and bring the perpetrators to justice for violation of tax, anti narcotics, anti-firearms, securities, and anti-trust laws. In addition, there is a fairly uniform feeling among the responsible officials of the Internal Revenue Service, shared by the other Treasury law enforcement organizations, to the effect that the withdrawal of this authority or its substantial restriction would make enforcement of the criminal provisions of the tax laws more difficult if not impossible.

More specifically, the need for bank records is important in developing, tracing and prosecuting tax frauds, white-collar and organized crime cases, and the Internal Revenue Service and the Department of Justice would be greatly hampered by Section 4(b) of this Bill. The courts have held that the individual's Fifth Amendment right does not extend to records held by a bank. Compare *United States* v. *Bisceglia*, 420 U.S. — (Feb. 19, 1975); *California Bankers Association* v. *Schultz*, 416 U.S. 21 (1974); *United States* v. *Donaldson*, 400 U.S. 517 (1971). To permit this proposed Act to extend the Fifth Amendment would overrule those cases, without a showing of justifiable need.

Moreover, it is believed that enactment of Section 4(b) would restrict the tax collecting and enforcing agencies too severely in generally administering and enforcing the tax laws and ensuring that all persons pay their fair shares of taxes. For a practical standpoint, providing a Fifth Amendment privilege for customer records maintained by a bank would add tremendous difficulties in any tax investigation requiring the Service to make contact with all third parties who might have done business or had dealings with the taxpayer.

It is also submitted that the present known ability of the Service to obtain information about a taxpayer, particularly from his bank records, acts as a significant deterrent to potential tax "cheats." If this ability of the Service is effectively removed as to customers' bank records, there is a real possibility that the incidence of tax fraud will increase. This in turn, will further undermine our voluntary compliance system as otherwise law-abiding taxpayers see their neighbors getting away with tax fraud.

It is undoubtedly true, as contended by the proponents of Section 4(b), that abuses have been comitted by over-zealous investigators. However, and despite the publicity given to isolated cases by the news media, it has not been demonstrated that such abuses have been widespread in the case of the tax agencies. Moreover, a significant number of such abuses would be eliminated by reason of enactment of the procedural safeguards contained in the proposed "Right to Financial Privacy Act," without Section 4(b), particularly through the deterent effect of such safeguards and the ability, after notice, to utilize one's Fourth Amendment rights with respect to unreasonable searches and seizures and other abuses of privacy. In this connection, although it is recognized that individuals must deal with banks, the mere fact that one has a business relationship with an entity is not sufficient justification for extending the Fifth Amendment to records retained by that entity. Finally, it would be anomalous if the United States Congress, by enactment of Section 4(b), were to make bank accounts in the United States "secret," while the Executive Branch has been making efforts with the Government of Switzerland to open the secret Swiss bank accounts, which also allegedly harbor evidence of white-collar crimes.

Arguments in Favor of Section 4(b) as Proposed

In support of the enactment of Section 4(b) of the Bill, it must be said that the records of any citizen's or resident's financial transactions usually can give a very complete picture of the business and professional activities, family re-

lationships, political leanings and viewpoints in many other areas (such as organized labor, religion, charitable activities, and the like) of the individual concerned. It can also be said that if such records were maintained by the individual himself and were not in the custody or possession of a financial institution, he would have not only the right to assert any Fifth Amendment privilege against self-incrimination and any Fourth Amendment right against unreasonable searches and seizures, but also the opportunity to do so in a seasonable fashion. Moreover, he would have the opportunity to maintain any right of privacy with respect to his personal dealings that he may be deemed under the Constitution to have, a right that has been upheld by the courts in such situations as the expectation of privacy that is violated in the overhearing of a telephone conversation.

Moreover, in the light of the Bank Secrecy Act and of the Treasury Department regulations implementing it, together with the holding of the Supreme Court in the *California Bankers Association* case, it must be pointed out that at least as to the banking types of financial institutions such as commercial banks, savings banks, savings and loan institutions, and credit unions, the residents of this country are virtually forced to deal with one of these types of financial institutions if they are to have any sort of significant financial dealings at all. To force residents to deal with cash alone in order to be assured of retaining any right to privacy, right against unreasonable searches and seizures, or right against self-incrimination, appears not only to increase their risks of loss through negligence or dishonesty in financial transactions but to impose an unreasonable burden in terms of time and convenience. Morover, given the required maintenance of certain customer financial transaction records in accordance with the Bank Secrecy Act and its implementing Treasury Department regulations or even the maintenance of such records which is accomplished voluntarily by business efficiently with and on behalf of customers, it is a real possibility that notwithstanding the most well-intentioned agencies at various levels including the Internal Revenue Service, there can be many abuses arising from unlimited access to such records.

Conclusion and Recommendation

In summary, the recommendation that the American Bar Association should oppose Section 4(b) of the proposed "Right to Financial Privacy Act" is based upon the conclusion that the resulting impediments to the ability of the tax agencies and other law enforcement agencies to administer and enforce the laws which they are charged with administering and enforcing, outweigh the rights of individuals to absolute privacy in their records maintained by financial institutions. In this connection, it is believed that the procedural safeguards which would be added by the "Right to Financial Privacy Act" (without Section 4(b)) will significantly increase the actuality of individuals' rights to privacy and other Fourth Amendment rights. Section 4(b) is needed in the Act only if Fifth Amendment rights are to be extended to bank records relating to the taxpayer and this does not seem appropriate in the light of the original purpose of the Fifth Amendment which was to prevent elicitation of evidence through inhumane treatment.

Respectfully submitted,

RICHARD H. APPERT,
Chairman, Section of Taxation.

June 25, 1975.

Senator HASKELL. Our next witness is Mr. Robert K. Lund, former Director of the Intelligence Division of the Internal Revenue Service, and Mr. William A. Kolar, also former Director of the Intelligence Division. Gentlemen, I am sorry to keep you so long. I appreciate your being here.

Mr. KOLAR. It is a pleasure to be here.

Mr. LUND. Thank you, Mr. Chairman. It is late in the day. We have short statements, and I would like to add a couple of comments to prior testimony, if I may, sir.

Senator HASKELL. Certainly, and if you wish to submit your statement for the record—that will be fine.

STATEMENTS OF ROBERT K. LUND AND WILLIAM A. KOLAR, FORMER DIRECTORS OF THE INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE

Mr. LUND. A little background. I retired in June of 1972 as Director of the Intelligence Division of Internal Revenue. My entire Government career, which started in December of 1941, was with the Treasury Department. I became a special agent in the Intelligence Division in 1944, and I served in various positions, including Assistant Chief, San Francisco District, and in charge of the Los Angeles District. I became Assistant Director in Washington and served during most of Mr. Kolar's tenure here.

The role of revenue in law enforcement, and particularly the criminal enforcement function of the Intelligence Division, has been discussed almost continuously since the Service was reorganized in 1952. The discussion primarily related to the investigation of the tax liabilities of those that engaged in illegal activities. Periodically, especially when national problems related to criminal activity were highlighted, IRS was directed to participate in drives as the result of pressure exerted on the Service by Congress, several Presidents, and the Department of Treasury, each of which recognized that most nonheinous crimes are committed for profit which, in turn, have tax consequences. I might add that in each instance during these years organizational deviations were made or ordered to maximize control and effectiveness which, in turn, created difficult management and administrative problems.

We have had what amounts to roller coaster peaks and valleys of emphasis and changing philosophies as to the IRS role, especially that of the Intelligence Division, in combating illegal activities, which at times contributed to a somewhat wasteful use of resources due to the lack of a long-range commitment from Congress as to its role. Added to that was the frequent demand for short-term results, rather than attainment of long-range goals. Despite these difficulties. I sincerely believe, based on my years of experience, that IRS, both criminally and civilly, has made a significant contribution to general law enforcement, as well as creating a positive and supportive atmosphere toward the Service's administration of the tax laws.

It is obvious that for the tax system to be effective, it must have the public's confidence in seeing that all taxpayers, whether engaged in legal or illegal activity, pay their just share. To do this, IRS is, in my opinion, more than a tax collection agency—it is, and must also be, an enforcement agency enforcing the many civil and criminal statutes of the code. This is especially true in today's ethical and moral climate. In addition, IRS, and the Intelligence Division in particular, is also in the unique position to play an even larger role in today's society where crime, particularly white-collar crime, such as corruption, gambling, infiltration of legitimate business, and so forth, is currently being highlighted as a major social ill and enforcement problem. Thus, by detecting and collecting taxes and/or prosecuting for tax-related offenses, again emphasizing the area of white-collar crime, it tends to instill confidence in the tax system, as well as contribute to the containment of criminal activity in general.

I might add here it is my firm belief that if we do prosecute someone engaged in illegal activity, that the taxpaying public does relate to it in this way. They say, "ah, Revenue is just not after those of us engaged in legal activities." I just firmly believe that.

The forces to fight crime, be it tax evasion or otherwise, are limited. Everyone has talked about that today. We continually hear that crime—and I would include tax evasion—is on the increase. If each agency maintained a provincial policy of confining its activities solely to its own area of responsibility in a society where a cooperative effort to meet the menace is an absolute must, law abiding citizens are the losers. Those who would violate the law, including the tax statutes, deliberately secret their activities. To detect these violations, and again I include tax evasion, calls for the cooperative detection and exchange of pertinent intelligence. The key is intelligence. Further, and equally important, it calls for the various enforcement agencies engaged in the detection, investigation, and prosecution of violations of the law to be aware of, support and promote the objectives and programs of each, as well as know their limitations, and not—I emphasize not—live in their own vacuum or sphere of activity.

For example, in the case of corruption, there are two worthwhile and needed objectives. One is to detect and prosecute for a title 18 criminal violation and the other is to collect the taxes due and prosecute for tax evasion. In this instance, I would suggest that this calls for close cooperation and coordination among the Tax and Criminal Divisions of the Department of Justice, the Intelligence Division of IRS, and any other agency involved, in determining and working toward these objectives, as well as agreeing on the methods to reach them. In this way the Revenue System, the Department of Justice and/or other agency is demonstrating its determination to gain the confidence of and maintain integrity with the law-abiding citizens. From my experience, it is only when this is not prevalent that problems and questions arise as to role playing and effectiveness as well as questions of integrity and the level of confidence in their efforts.

I would like to repeat, based on my experience in the field and in Washington, it is only when we do not have this cooperation and the people do not talk and agree and get together that you have the problem of role playing and disputes.

To conclude, I firmly believe IRS, and especially the Intelligence Division, as a Federal enforcement agency, must be included in and be made an important cog in the fight on crime, particularly white-collar crime. It simply must assume responsibilities attuned to the changing socioeconomic conditions. I would add, of course, that IRS should not neglect the tax evasion engaged in by those engaged in legitimate business which is, in my opinion, also a very serious problem, but should strike a balance. Unfortunately, to detect those violators engaged in illegal activities is more difficult and frequently more time consuming.

At the same time, IRS should, as many witnesses have stated today, use its unique authority most judiciously and not use this authority unless there is a possible tax consequence involved, either civil or criminal. However, when evidence of other violations is discovered, as

is frequently the case, this should also be used toward the common goals of the IRS and the agency having jurisdiction over the other crime.

There was a comment today made on the matter of control. With respect to this, in Internal Revenue when each district is allowed to determine on its own which of these cases it is going to investigate, when the matter is involved in a national problem, you are going to have people who are going to place emphasis on this particular facet and some who are going to minimize it. You have no uniformity. Therefore, a clear and forceful statement of policy toward IRS participation in this type of activity is most certainly needed because it is the attitude of the people out there who detect and investigate that makes the program work or not work, written guidelines, notwithstanding.

The other comment I would like to make is there was some testimony about taxes collected versus expenditures. Now, in the area of prosecution we have never tried to equate the number or the dollars collected with the cost of prosecution because the mission and the objective is deterrence and calling to the attention of the taxpaying public that Internal Revenue is serious. They want all taxpayers to pay their just share, and the second part of the mission which is not written in it when I was there, it instills confidence in the honest taxpayers that Revenue is doing a good job. So that is the purpose of prosecution, not the dollars it collects.

No one can detect how many dollars come in, as a result of a prosecution, whether it be in the legal or illegal business.

Second, no one can tell you how many people in either type of business might have been tempted to evade their taxes had they not heard of Revenue's action against others.

Thank you very much.

Senator HASKELL. Thank you, sir. I appreciate your statement very much, and I am sure you are absolutely correct in stating that it is the deterrent that is important.

Now, Mr. Kolar, do you have a statement?

Mr. KOLAR. Yes, Mr. Chairman. I have a brief statement. I would appreciate the opportunity of reading parts of it, and then we will both be pleased to answer questions.

Senator HASKELL. The full statement will be made part of the record.

Mr. KOLAR. Thank you. I would like to give my background in brief.

I entered Federal service during World War II as a special agent of the Federal Bureau of Investigation. I resigned 8 years later as a supervisor in Washington, D.C. I then served in the Office of Price Stabilization, and then as chief investigator for a Senate judiciary subcommittee under the chairmanship of Senator Dirksen. My responsibility was to examine the administration of the Trading With the Enemy Act. After the subcommittee submitted its final report, I entered service with the Internal Revenue Service and served there for about 17 years as Director of Internal Security and then Director of the Intelligence Division. I retired in 1970 after about 4½ years as Director, and at the present time I am an assistant professor at a

local community college, and, in addition, I have served more than 7 years in private industry.

I would like to inform the committee that in the last 40 years, specifically beginning back in the 1930's, the Service was called upon in order to effect the investigation and prosecution of Capone and others. This was followed by Senate hearings chaired by Senator Kefauver into organized crime. I would like to note that the final report severely criticized the Internal Revenue Service for failure to enforce the tax laws in a vigorous manner against organized crime members.

The next Federal effort against organized crime resulted from the arrest of members who were holding a secret meeting in Apalachin, N.Y., in 1957. This involved a commitment of Internal Revenue Service manpower as a result of congressional and Department of Justice pressures. The drive against labor racketeers led by the Senate Government Operations Subcommittee was another example, as was the intensive drive against organized crime under the leadership of then Attorney General Robert Kennedy. This latter drive caused President Johnson to publicly give the Service credit for the trial and conviction of 60 percent of the organized crime leaders brought to trial. Most recently the Intelligence and Audit Divisions have distinguished themselves in strike force participation under the general leadership of the Department of Justice.

In spite of this outstanding record, or possibly because of it, a debate has been going on for 40 years within the Treasury Department and the Government as a whole, as to whether the Service, in carrying out its responsibilities, should aid other units of the Government enforce the laws under their jurisdiction. I feel the Service should, under policies spelled out by the Congress, continue to use its resources as it has in the past, as a part of, and not separate from the rest of the Government. This is not to suggest that the laws protecting the confidentiality of tax returns should be altered or violated.

The personnel of IRS Intelligence and Audit Divisions must be regarded as among the most capable financial investigators in the world, and I might add that under our democratic system no man should be subjected to investigation unless there is sufficient basis in the eyes of reasonable men that he may well have committed a violation of law. Given a tax return, they can determine whether a person has violated our tax laws or some other of the laws passed to regulate our conduct. I am not referring to laws that amount to trivia in the scheme of things, but to bribery, fraud, political corruption, and organized crime activities, with the subsequent nullification of government, the kinds of crimes that make citizens, and particularly the man on the street lose respect for our leadership and our law enforcement.

The Internal Revenue Service expertise is, in my judgment, unequivocally needed as a part of our overall effort to control crime in our society.

Profit is the motivating factor behind the types of crimes I have named. Such crimes and tax evasion generally go hand in hand. To divorce the enforcement of one from the other would be tantamount to encouraging the commission of crime and inviting erosion of the law. We must build more bridges between our enforcement agencies rather than more walls.

I believe that a stronger and more aggresive tax enforcement attitude within the Department of Justice Tax Division and the Internal Revenue Service would have revealed many of the scandals that have plagued the country, and that a strong tax enforcement system and participation in Government-led crime drives on the part of IRS will prevent future scandals. It will further convince the average citizen that all are equally sharing the burden of taxation.

I regard the enforcement of our criminal tax laws as weak and discriminatory. I say weak because of the limited number of special agents, about 2,500 to do the job, and discriminatory because the enforcement is highly selective. I do not mean to infer that there is political selectivity. This problem is more complex than my statement may imply, and I know that all law enforcement is discriminatory to a point. I believe that the enforcement of criminal tax laws is more discriminatory than others. However, it is one reason why special programs must be created to investigate the tax returns that IRS has not investigated under its own enforcement system. In making this statement, I do not attack the Audit Division of the Service. Their primary function is the assessment of taxes rather than the investigation of criminal fraud. They are of valuable and necessary assistance to the limited number of special agents in making the limited number of fraud investigations that are made. I might add that in strike force participation I am informed that taxes assessed per individual are greater than those assessed under the general program.

I have some recommendations in my prepared statement that I would rather not go over at this time. I do not think they are particularly in point; however, I believe they would contribute to the better operation of the Internal Revenue Service in the criminal tax enforcement area.

I would like to conclude that I recommend that the system of IRS strike force participation and involvement in general crime drives is the most practical, economical and efficient method of controlling crime in our society.

Thank you.

Senator HASKELL. Thank you, Mr. Kolar. I noticed that you did not read one of your recommendations which you made to the House committee. You recommended that the Commissioner of Internal Revenue should be appointed for a period of 7 years. Now, I do not know, whether 5, 7 or 9 years would be appropriate, but I think it is a very worthwhile suggestion because it gives him a certain autonomy which I feel is necessary.

Gentlemen, I do not have any questions of you. I appreciate your being here and I appreciate your statements. Thank you.

Mr. KOLAR. Thank you, Mr. Chairman.

Mr. LUND. Thank you.

[Mr. Kolar's prepared statement follows:]

STATEMENT OF WILLIAM A. KOLAR, FORMER DIRECTOR, INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE

Mr. Chairman and members of the Subcommittee on Administration of the Internal Revenue Code of the Senate Committee on Finance. I appreciate the opportunity to appear before this subcommittee to give testimony on the role of the Internal Revenue Service in Federal law enforcement.

I entered Federal service during World War II as a Special Agent of the Federal Bureau of Investigation. I resigned eight years later as a supervisor in Washington, D.C. Most of my time was spent investigating foreign directed espionage against the United States. This was a period when three nations were in a race to see which could first develop the atomic bomb, and espionage activity within our country was intense. After leaving the FBI in 1951, I served as Assistant Chief of Investigations in the Office of Price Stabilization and Chief Investigator for a Senate Judiciary subcommittee that was empowered to examine the administration of the Trading with the Enemy Act. After submission of the final subcommittee report, I was employed by the Internal Revenue Service and subsequently occupied the positions of Assistant Director and Director of the Internal Security Division. In January 1966, I became Director of the Intelligence Division, which is responsible for making criminal tax fraud investigations, and served in that capacity until my retirement in June of 1970. I am presently an Assistant Professor at a nearby community college. I have also worked more than seven years in private industry.

The Internal Revenue Service, specifically the Intelligence and Audit Divisions, has been called upon each time this nation faces a law enforcement crisis. The conviction of gangsters in the 1930's, such as Capone, is an example. Next came the drive against black marketeers during World War II. This was followed by Senate hearings chaired by Senator Kefauver into organized crime. His final report severely criticized the Internal Revenue Service for failure to enforce the tax laws in a vigorous manner against organized crime members. The next Federal effort against organized crime resulted from the arrest of members who were holding a secret meeting in Appalachia, New York in 1957. This involved a commitment of Internal Revenue Service manpower as a result of congressional and Department of Justice pressures. The drive against labor racketeers led by the Senate Government Operations Subcommittee was another example, as was the intensive drive against organized crime under the leadership of then Attorney General Robert Kennedy. This latter drive caused President Johnson to publicly give the Service credit for the trial and conviction of sixty percent of the organized crime leaders brought to trial. Most recently the Intelligence and Audit Divisions have distinguished themselves in Strike Force participation under the general leadership of the Department of Justice.

In spite of this outstanding record, or possibly because of it, a debate has been going on for forty years within the Treasury Department and the government as a whole as to whether the service, in carrying out its responsibilities, should aid other units of the government enforce the laws under their jurisdiction. I feel the service should, under policies spelled out by the Congress, continue to use its resources as it has in the past, as a part of, and not separate from the rest of the government. This is not to suggest that the laws protecting the confidentiality of tax returns should be altered or violated.

The personnel of IRS Intelligence and Audit Divisions must be regarded as among the most caapble financial investigators in the world. Given a tax return, they can determine whether a person has violated our tax laws or some other of the laws passed to regulate our conduct. I am not referring to laws that amount to trivia in the scheme of things, but to bribery, fraud, political corruption and organized crime activities, with the subsequent nullification of government, the kinds of crimes that make citizens, and particularly the "man on the street" lose respect for our leadership and our law enforcement.

The Internal Revenue Service expertise is unequivocally needed as a part of our overall effort to control crime in our society.

Profit is the motivating factor behind the types of crimes I have named. Such crimes and tax evasion generally go hand in hand. To divorce the enforcement of one from the other, would be tantamount to encouraging the commission of crime and inviting erosion of the law. We must build more bridges between our enforcement agencies rather than more walls.

I believe that a stronger and more aggressive tax enforcement attitude within the Department of Justice Tax Division and the Internal Revenue Service would have revealed many of the scandals that have plagued the country, and that a strong tax enforcement system and participation in government led crime drives on the part of IRS will prevent future scandals. It will further convince the average citizen that all are equally sharing the burden of taxation.

I regard the enforcement of our criminal tax laws as weak and discriminatory. I say weak because of the limited number of Special Agents (about 2,500) to do the job, and discriminatory because the enforcement is highly selective. I do not

mean to infer that there is political selectivity. This problem is more complex than my statement may imply. However it is one reason why special programs must be created to investigate the tax returns that IRS has not investigated under its own enforcement system. In making this statement I do not attack the Audit Division of the service. Their primary function is the assessment of taxes rather than the investigation of criminal fraud. They are of valuable and necessary assistance to the limited number of Special Agents in making the limited number of fraud investigations that are made.

While the recommendations that I made in testimony before the Congress, Consumer and Monetary Affairs Subcommittee of the House Committee on Government Operations may not be totally on point, I would like to briefly report them here as they are pertinent to the operations of IRS and its Intelligence Division.

1. The Commissioner of IRS should be appointed for a period of seven years rather than a short term employee.

2. The Intelligence Division of the service, which is responsible for making criminal tax fraud investigations should be headed by an Assistant Commissioner for enforcement who would directly supervise a reduced number of offices with greater efficiency and less cost. The organization should be centralized or regionalized for greater efficiency and effectiveness.

3. The Intelligence Division should investigate civil as well as criminal tax fraud cases.

4. The Intelligence Division should maintain a continuing organized crime drive program coordinated with that of the Department of Justice.

5. Congress should actively and continually oversight the drive against crime.

6. The Intelligence Division should institute courses of training for state tax enforcement personnel to encourage the states to discharge their own responsibility to prosecute criminal tax evasion when it occurs. Such prosecutions are generally unheard of today even though it is as much a crime to violate state laws as those of the federal government.

I thank you for allowing me to appear before the committee to express my views on the important matter under consideration.

Senator HASKELL. Our last witness is Mr. Charles Fishman, who is the Washington attorney for the Federal Criminal Investigators Association. Mr. Fishman, it is a pleasure to have you.

STATEMENT OF CHARLES FISHMAN, WASHINGTON COUNSEL, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

Mr. FISHMAN. Thank you, Senator. Rather than impose on you with the total statement, I prefer to read a summary of it.

Senator HASKELL. It will be reproduced in the record in full.

Mr. FISHMAN. Thank you.

Mr. Chairman, on behalf of the Federal Criminal Investigators Association I wish to thank the committee for this opportunity to appear and testify on the role of the Internal Revenue Service in Federal law enforcement. I am appearing today as the Washington counsel of the FCIA—a voluntary nonprofit association of Federal criminal investigators founded in 1968. Currently, there are more than 4,500 members of the FCIA organized into 65 chapters throughout the Nation.

A number of the members of the FCIA are employees of the Intelligence Division of the Internal Revenue Service. Hence, the FCIA has a substantial interest in the subject matter before this committee. The views expressed here today are the official views of the membership of the FCIA and represent the best judgment of the men and women who are called upon to daily enforce the Federal criminal laws.

On July 1, 1919, the Intelligence Division was created with a few agents and given the mission of uncovering all tax frauds perpetrated

against the United States. At the close of fiscal year 1974 the Intelligence Division had 2,577 special agents at more than 200 posts of duty. During the past 56 years the Intelligence Division has been viewed as the most sophisticated group of experts in the area of crimes of finance in the world. For years the leaders of our Nation and the IRS proudly proclaimed the accomplishments of the Intelligence Division as proof of the fairness of our voluntary tax system and as an effective deterrent against those who would do less than the tax code requires. I refer you to page 3 of my formal statement for examples of IRS statements in support of the Intelligence Division.

Over the past 10 years Americans have become increasingly aware of the epidemic of crime that is engulfing our Nation. Much of that crime is localized random violent street crime which is the province of our local law enforcement agencies. Unfortunately, a great deal of crime committed in the United States is highly organized—crimes such as narcotic trafficking, gambling, and stock fraud. This form of criminal conduct is not random or localized. It is national and international in scope and must be handled on a Federal level. The brunt of this responsibility has fallen upon the Intelligence Division. It came not from the desires of the special agents, but from the Oval Office of the White House.

Here again, I refer you to page 4 of my prepared statement where a number of Presidential statements calling for expanded Intelligence Division role against organized crime are set forth. Also, on pages 4 through 6 of my statement, you will see a discussion by IRS officials of the contribution that the Internal Security and Intelligence Divisions have made in the fight against organized crime and the "war" against narcotics.

However, an abrupt change in this attitude occurred in 1974. In the annual report for that year, a separate section of the IRS annual report dealing with organized crime was dropped. While discussing the Service's role in strike force activities, the following paragraph was added at the end of the compliance chapter, and I quote:

> In 1974 the Service began a reevaluation of its participation in investigations of organized crime figures and narcotics traffickers to insure that its criminal enforcement efforts directed at the most significant violators of the income tax laws. While the Service will continue to cooperate with other Federal agencies in the conduct of investigation of criminals who have violated the tax laws and maintain a strong drive to enforce the tax laws against criminals, its efforts in the future depend, of course, upon available resources. These resources must be used in an efficient manner that will have the maximum possible impact on all who engage in criminal violations of the tax laws.

The above statement was clearly a precursor of things to come. And come they did. Today it is no secret that a state of bitter hostility which often flairs into open warfare exists between the appointed management and a significant portion of the career employees of the IRS, especially those assigned to the Intelligence and Internal Security Divisions. The Commissioner has made it clear in his words and actions that he wants to limit IRS involvement in strike force activities and the war on narcotics traffickers. He has also suspended a number of substantial investigations under the jurisdiction of the Intelligence Division. Special agents, meeting in convention on October 12, 1975, adopted a resolution setting forth their feelings and beliefs. They believe that the IRS management has been impugning the integrity of

all special agents through the news media and within the Service by improperly accusing personnel of illegal and reprehensible conduct; that irreparable damage has been done to the morale of Intelligence Division employees; that restrictions placed upon them have destroyed their effectiveness as part of the strike force and the narcotic traffickers programs; that the legitimate grievances of Intelligence and Internal Security personnel have been ignored and their rights so trampled that management has lost all credibility with virtually all career personnel; that management's hostility to the accomplishments of the Intelligence and Internal Security Division has not only reduced their present capabilities but has discouraged and prevented new activities and programs relating to tax crime; that key career officials within the Intelligence Division have, without cause, been removed or forced into retirement; and that working relationships between management and career employees of the Intelligence Division have deteriorated to the point that it has affected the mission of the Service.

Obviously, these are serious charges, not lightly made. Before proceeding to suggest a possible solution, I believe it would be helpful to briefly review the record of the Intelligence Division and the Service's participation in the organized crime drive, and strike force activities. With respect to activities of the Intelligence Division, I have compiled an 11-year history of statistical information, which sheds some light on the value of the contribution made by the Intelligence Division. That chart appears on page 8 of my testimony.

For reasons of simplicity, the analysis is limited to the area of tax fraud. In each year the Intelligence Division receives in excess of 100,000 possible cases from among the 75 to 80 million tax forms filed. It makes substantial investigations in less than 10,000 and on the average recommends prosecutions in approximately 2,000 cases. Every year approximately 1,250 people are indicted for tax fraud and slightly in excess of 1,000 are convicted. Taxes and penalties collected average in excess of $100 million a year. All of this has been accomplished with an average of 1,932 Intelligence Division agents at an average annual cost of $48 million. I would also suggest that you take a look at statistics presented on pages 9 and 10 for analysis of contribution that the Intelligence Division has made to both strike force activities and war against narcotics activities.

With this background, I do not believe it is an overstatement to conclude that the Intelligence Division has successfully fulfilled its mission. Beyond the hard figures I have set forth above must be added the deterrence value of the Intelligence Division's activities plus the resources which society has saved because drugs have not reached the street or members of organized crime are in jail rather than plying their trade on our streets.

What I am saying is that the Intelligence Division of the IRS should be applauded and supported for a job well done. In some instances, mistakes have been made, but they have been relatively minor and individual acts at odds with the policy of the Intelligence Division. Unfortunately, the Commissioner disagrees. He apparently believes that strike force and narcotic activities are a misuse of time and resources. He has halted a limited number of other programs of the Intelligence Division's ongoing tax fraud work.

As a result of these actions and others the Commissioner has lost the confidence of many career employees. Frankly, he is no longer capable of leading them and the situation is deteriorating. Each side regularly leaks detrimental stories to the press hoping to injure the other. Each has scored points against the other, but each time a point is scored the Service is injured. The leadership of the FCIA understands this dilemma but is unable to control the wrath of many career employees. Nor has the leadership been successful in attempting to mediate the conflict with the Commissioner. Something must be done before the situation deteriorates even further.

The national executive board of the FCIA has made a suggestion. They recently passed a resolution setting forth the grievances of the career employees and then suggested the following:

> That the Secretary of the Treasury should, with the consent of the President and Congress, exert his executive authority to begin the process of transferring the criminal investigative functions of the Internal Revenue Service Intelligence and Internal Security Division to the office of law enforcement under the Assistant Secretary of the Treasury in enforcement, operations and tariff affairs.

It is highly unfortunate, but true, that given the history and the personalities involved, these problems will not be solved short of such a transfer of authority or the dismantling of the Intelligence and Internal Security Divisions or the removal of the Commissioner. The only alternative, continued conflict, is intolerable for all concerned.

Mr. Chairman, I wish my testimony today could have been more encouraging. Unfortunately, it could not be that way. I do hope that some good will come from the light shed at this hearing, but that requires dealing with reality, or at least perceptions of realities, however bitter those perceptions may be.

Senator HASKELL. Thank you, Mr. Fishman. You have expressed, of course, concern about the IRS management charging certain special agents with illegal conduct, and you have referred to a loss of morale within the Intelligence Division. I do not know whether that is from talking to people in the Division or not, but there has been a great deal of publicity concerning such activities and, assuming the publicity is correct, on such a thing as Operation Leprechaun and Operation Sunshine, et cetera, it would seem to me that the IRS must not condone illegal activities of overzealous agents.

Now, if that results in loss of morale, that would surprise me because I would think that the vast bulk of the members of the Intelligence Division would want things done in a proper and legal manner. I wonder if you have any comments on that.

Mr. FISHMAN. Well, that certainly was not the thrust of my suggestions. Clearly, if an agent engages in illegal conduct, that agent has no right to seek protection from the Service or from the FCIA. That is not our claim. What we are saying—and I think some of this has come out already and I suspect, as I understand, at least, more is scheduled to come out even this week—that a number of agents have been subjected to rather substantial adverse publicity in statements by the Commissioner's office for reprehensible and clearly illegal conduct when, in fact, they were not engaged in it. That is the allegation.

Senator HASKELL. Well that is, of course, an entirely different story.

Mr. FISHMAN. Yes, it is, and that is the allegation that the FCIA has made, and that is the allegation which they are prepared to substantiate.

Senator HASKELL. Have you pointed out in your statement where allegations of improper conduct have been made? Do you have information in your statement that contradicts those statements and says what the facts are, because we have to deal in facts and not just individuals throwing mud back and forth at each other.

Mr. FISHMAN. Yes. I believe on page 7 of my statement, about six lines down, they believe—"they" being the agents assembled in convention that passed this resolution—that the IRS management has been impugning the integrity of all special agents through the news media and within the Service by improperly accusing personnel of illegal and reprehensible conduct. I stress "improperly accusing". Attached to my testimony is a resolution from which that was taken, and you will find that paragraph on the first page of that resolution.

Senator HASKELL. Well, now, let us just stop a moment. I read about Operation Leprechaun in the paper. I cannot believe that anybody thinks that this is typical of what the Intelligence Division does.

Mr. FISHMAN. Let me ask you something, Senator. When you read that and statements that the Commissioner made, did you come to the conclusion that the agent involved in Operation Leprechaun was involved in improper or illegal conduct?

Senator HASKELL. Well, I do not know that it was the intelligence agent, but if what I read in the papers was correct, somebody was involved in illegal conduct. We will have to wait until the court tells us who it was.

Mr. FISHMAN. Well, in fact, that agent was not—and if I can ask your patience—I believe you will find before the end of the week through the information acquired by another congressional committee that, in fact, that was not the case and that the Internal Revenue Service knew it was not the case, and they knew it was not the case at the time the charges were made.

Senator HASKELL. If those are the facts, and if those come out as the facts, of course, making such an allegation is not excused.

Mr. FISHMAN. If you would leave the matter open for a matter of days.

Senator HASKELL. I will leave the record open for 2 weeks for anything anybody wants to submit.

Mr. FISHMAN. I am simply respecting the request of another congressional committee that that material not be placed in the public record until they do so.

Senator HASKELL. The record will stay open for 2 weeks if that is sufficient time for that to be submitted. I do not think, as far as I can see, that anybody is impugning—at least certainly no member of this committee is impugning—the Intelligence Division of the IRS, which has done a good job. The only point here is, what is the primary purpose of the intelligence unit? Is it to enforce the tax laws of the United States, or is it to enforce the general criminal laws? This is an issue of great complexity, with a great deal to be said on both sides, and I hope that further light will be shed on the matter in subsequent hearings.

Mr. FISHMAN. To some extent, it is a definition of problem, Senator. The FCIA has a very strong position that they oppose the use of the Internal Security or Intelligence Divisions for any use other than tax-related cases. I think what you are dealing with here is a difference in definition of what constitutes a tax-related case.

Senator HASKELL. That is correct. Thank you very much, Mr. Fishman. The record will stay open.

Mr. FISHMAN. Thank you.

[The prepared statement and material subsequently submited by Mr. Fishman follows:]

PREPARED STATEMENT OF CHARLES L. FISHMAN, ON BEHALF OF THE FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

Mr. Chairman, on behalf of the Federal Criminal Investigators Association I wish to thank the Committee for this opportunity to appear and testify on the role of the Internal Revenue Service In Federal Law Enforcement. I am appearing today as the Washington Counsel of the F.C.I.A.—a voluntary nonprofit association of Federal Criminal Investigators founded in 1968. Currently, there are more than 4,500 members of the F.C.I.A. organized into 65 chapters stretching from the Atlantic to the Pacific and from the Canadian to the Mexican borders.

A number of the members of the F.C.I.A. are employees of the Intelligence Division of the Internal Revenue Service. Hence, the F.C.I.A. has a substantial interest in the subject matter before this Committee. The views expressed here today are the official views of the membership of the F.C.I.A. and represent the best judgment of the men and women who are called upon to daily enforce the federal criminal laws. These men and women are dedicated professionals. Many of them are attorneys or accountants. All of them are committed to attaining the highest standards of professional conduct as criminal investigators. That level of commitment may best be expressed by quoting from the F.C.I.A. Law Enforcement Code of Ethics.

"As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality, and justice.

"I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

"I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

"I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession—law enforcement."

On July 1, 1919, the Intelligence Division of the I.R.S. was created with a few agents and given the mission of uncovering all tax frauds perpetrated against the United States. At the close of F.Y. 1974 the Intelligence Division had 2,577 special agents at more than 200 posts of duty. During the past 56 years the Intelligence Division has been viewed as the most sophisticated group of experts in the area of crimes of finance in the world. For years the leaders of our nation and the I.R.S. proudly proclaimed the accomplishments of the Intelligence Division as part of the fairness of our voluntary tax system and as an effective deterrent against those who would do less than the tax code requires. For example in the 1965 annual report of the I.R.S. the role of the Intelligence Division was characterized as follows:

"Through enforcement activities the Service seeks that all taxpayers pay their just share—no more and no less than the law requires. The taxpayer's confidence that the Service is indeed enforcing the tax laws in a fair and even-handed manner is essential to voluntary compliance, the foundation of our self-

assessment system. Consequently, a substantial portion of the resources available for the administration of the tax laws is expended on activities such as . . . investigation of tax fraud . . ." (See p. 20.)

More recently the 1971 annual I.R.S. Report stated:

"The criminal prosecution of tax fraud cases is required as a deterrent to tax evasion. Relatively few cases are prosecuted—around 700 or 800 a year out of 75 or 80 million corporate and individual taxpayers. The Service's objective is to get maximum deterrent value from the few cases prosecuted." (See p. 29.)

Without the Intelligence Division the I.R.S. would be unable to discover a tax fraud unless an employee of the Audit Division happened upon the fraud scheme during a routine audit. Such a development would be the exception—not the rule—since the Audit Division is primarily concerned with the system of computation utilized and its accuracy. In fraud cases the numbers always add up. It's what the Service is not told that matters.

Over the past 10 years Americans have become increasingly aware of the epidemic of crime that is engulfing our nation. Much of that crime is localized random violent street crime which is the province of our local law enforcement agencies. Unfortunately, a great deal of crime committed in the United States is highly organized—crimes such as narcotic trafficking, gambling, and stock fraud. This form of criminal conduct is not random or localized. It is national and international in scope and must be handled on a federal level. The brunt of this responsibility has fallen upon the Intelligence Division. It came not from the desires of the Special Agents but from the oval office of the White House.

In 1961 the I.R.S. ordered the creation of an Organized Crime Drive within the Intelligence Division. In response to President Johnson's May 5, 1966 speech on crime that drive was substantially expanded. To quote from the 1966 I.R.S. annual report:

"In line with the President's directive, the Intelligence Division is now in the process of establishing the Organized Crime Drive as an integral part of regular district operations, thereby making available to the Organized Crime Drive the knowledge and skills of all intelligence division supervisory personnel. (See p. 29.)"

Again, in 1970 at the urging of the White House the Service increased its efforts to combat organized crime. Resources committted to that struggle were increased and the fight against organized crime was given the highest priority. The Service became an integral and important part of the federal strike forces that were deployed throughout the nation. As reported in the I.R.S. annual report of 1970:

The Internal Revenue Service's participation in the war against organized crime retains a position of highest priority. Application of resources to the racketeer segment of the Service's overall program has steadly increased. Expertise attained in tax investigations of racketeers over a long period of time has enabled the Service to move immediately into any area singled out by the Department of Justice for Strike Force actively. (See p. 49).

Each year since 1970, the Service has discussed the Strike Force and the contribution of the Intelligence Division in positive terms. In 1971 the Service stated:

More than half the law enforcement manpower working at the Federal level on the Organized Crime is supplied by the Service.

The Government's initial plan to combat organized crime has been intensified to concentrate on illegal sources of income, such as: gambling, loan sharking, narcotics, prostitution, and other forms of vice. The primary efforts are concentrated in 18 Strike Forces strategically located throughout the country. The Strike Force concept melds the energies and expertise of several Federal law enforcement authorities under direction of the Department of Justice. Significant results have been obtained in several major crime centers across the nation.

Strike Force operations in Newark, New Jersey, illustrate the effectiveness of the concept. A Strike Force was established in that city in 1969 to eliminate a vicious organized crime situation which premeated a major portion of the state.

The team discovered large scale gambling and shylocking operations coupled with organized hijacking and other types of thefts. Labor unions were infiltrated or controlled by organized crime and the corruption of public officials was a principal means of achieving organized crime's ends. Among those indicated for income tax evasion as a result of the investigations were: 2 mayors, 4 city councilmen, 2 former city councilmen, 1 judge, 1 corporation counsel, 3 public officials, 2 construction contractors, and 8 racketeers.

In the 1972 Annual Report the Service characterized its Strike Force activities as follows:

The Government combats organized crime through the Strike Force concept which melds the investigative resources of various Federal agencies. Although all Federal law enforcement agencies participate, the Internal Revenue Service supplies more than half of the agent manpower to the 18 Strike Forces strategically located throughout the country. Agents from the Audit, Intelligence, and Alcohol, Tobacco, and Firearms Divisions participated in the program. This year, Service activity in the Strike Force Program established new records in criminal and civil enforcement.

* * * * * * *

The success of any program is measured by its results. During fiscal year 1972, investigative efforts by the Service helped to produce 355 indictments.

However, an abrupt change occurred in 1974. In the Annual Report for that year the separate section dealing with organized crime was dropped. While still discussing the Services roll in Strike Force activities the following paragraph was added to the end of the Compliance Chapter:

In 1974 the Service began a reevaluation of its participation in investigations of organized crime figures and narcotics traffickers to insure that its criminal enforcement efforts directed at the most significant violators of the income tax laws. While the Service will continue to cooperate with other Federal agencies in the conduct of investigations of criminals who have violated the tax laws and maintain a strong drive to enforce the tax laws against criminals, its efforts in the future depend, of course, upon available resources. These resources must be used in an efficient manner that will have the maximum possible impact on all who engage in criminal violations of the tax laws. (See p. 27)

The above statement was clearly a precursor of things to come. And come they did. Today it is no secret that a state of bitter hostility which often flares into open warfare exists between the appointed management and a significant portion of the career employees of the I.R.S., especially those assigned to the Intelligence and Internal Security Divisions. The Commissioner has made it clear in his words and actions that he wants to limit I.R.S. involvement in Strike Force activities and the "War" on narcotics traffickers. He has also suspended a number of substantial investigations under the jurisdiction of the Intelligence Division. Special agents, meeting in convention on October 12, 1975 adopted a resolution setting forth their feelings and beliefs. They believe that the I.R.S. management has been impugning the integrity of all Special Agents through the news media and within the Service by improperly accusing personnel of illegal and reprehensible conduct; That irreparable damage has been done to the morale of Intelligence Division employees; That restrictions placed upon them have destroyed their effectiveness as part of the Strike Force and the narcotic traffickers programs; That the legitimate grievances of Intelligence and Internal Security personnel have been ignored and their rights so trampled that management has lost all credibility with virtually all career personnel; That management's hostility to the accomplishments of the Intelligence and Internal Security Divisions has not only reduced their present capabilities but has discouraged and prevented new activities and programs relating to tax crimes; That key career officials within the Intelligence Division have, without cause, been removed or forced into retirement; and that working relationships between management and career employees of the Intelligence Division have deteriorated to the point that it has affected the mission of the Service.

Obviously, there are serious charges, not lightly made. Before proceeding to suggest a possible solution I believe it would be helpful to briefly review the record of the Intelligence Division and the Service's participation in the Organized Crime Drive, and Strike Force activities. With respect to activities of the Intelligence Division, I have compiled an eleven year history of statistical information, which sheds some light on the value of the contribution of the Intelligence Division. For reasons of simplicity the analysis is limited to the area of tax fraud of each year the Intelligence Division receives in excess of one hundred thousand possible cases from among the 75 to 80 million returns filed. It makes substantial investigations in less than ten thousand and on the average recommends prosecutions in approximately two thousand cases. Every year approximately one thousand two hundred and fifty people are indicted for tax fraud and slightly in excess of one thousand are convicted. Taxes and penalties collected average in excess of one hundred million dollars a year. All of this has been accomplished with an average of 1,932 Intelligence Division agents at an average annual cost of forty eight million dollars. This information is presented in chart form below:

Tax fraud investigations [1]	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	Total
Preliminary investigations	9,846	10,520	10,436	10,663	[2] 9,739	[2] 8,273	[2] 8,068	[2] 7,382	[2] 8,882	[2] 8,601	[2] 7,215	99,625
Full-scale investigations	3,796	3,643	3,772	3,193	NA	NA	NA	NA	NA	NA	NA	
Prosecutions recommended	2,391	2,382	2,418	2,015	1,620	1,139	1,118	1,368	1,777	2,555	2,454	21,237
Taxes and penalties (in millions of dollars)	63.3	122.2	108.9	72.3	109.6	126.2	54.3	107.7	77.9	126.0	212.7	1,180.5
Indictments and information	1,577	1,919	1,660	1,342	1,026	649	924	956	1,074	1,186	1,441	13,754
Guilty pleas and convictions	1,538	1,451	1,324	1,073	756	561	521	787	846	1,104	1,253	11,214
No. of Special Intelligence Division	1,714	1,712	1,721	1,740	1,731	1,673	1,857	1,912	2,221	2,396	2,577	
Tax fraud and special investigation costs (in millions of dollars)	29.2	31.2	32.4	33.8	35.1	38.5	47.2	54.3	64.1	74.0	85.9	525.7

[1] Exclusive of wagering and coin-operated gambling device cases, alcohol and tobacco cases.
[2] Represents only investigations completed

Unfortunately, the public record is sparse on details of the Organized Crime Drive that functioned from 1961 to 1967. One study that was undertaken dealt with the impact on tax payments of individuals investigated under the program. The study covered a six year period from 1958 to 1963 in an effort to determine if more taxes were being paid after the program was instituted than before. The study concluded that after the inception of the program major racketeers immediately reported 57% more average gross income than prior to 1961. By the end of the program more than 6,000 tax investigations had been conducted which resulted in 2,200 convictions with over 3 million dollars in fines and additional taxes and penalties recommended for assessment in excess of 300 million dollars.

By 1970 the Strike Force program which was just starting was already producing meaningful results. The Service characterized its own efforts as follows:

In connection with the Strike Force effort, there were 1,472 examinations in progress by the Audit Division, 896 investigations being pursued by the Intelligence Division and 161 cases being worked by the Alcohol, Tobacco and Firearms Division as of the end of the fiscal year.

Tax investigations are time consuming, especially those involving racket figures and their associates. Customary business records are nonexistent, prospective witnesses are uncooperative, obstructionist tactics are the rule, and audit trails are carefully conceled. Unlike the situation where the investigation is contemporaneous with the crime, Federal tax cases require the agent to dig out facts and evidence from cold leads. The actual crime may have taken place several years before assignment of the investigation and, depending on the theory of proof, the agent may need to trace back several years beyond the actual year of the tax fraud to establish evidence. Despite the inherent problems, a number of key Strike Force targets have been successfully prosecuted or are under indictment for income tax evasion. They include three top echelon racketeer leaders and four top lieutenants. The Service also has under scrutiny or investigation all known members of numerous racketeering groups and their associates. Many prominent racketeers have been investigated, indicted, and convicted for tax violations in the major areas of criminal activity.

Millions of dollars in tax deficiencies have been recommended for assessment in organized crime cases. The Service has contributed leads and expertise, such as reconstruction of complicated financial transactions, which helped make it possible for other Federal agencies engaged in the drive on crime to obtain indictments for violations outside of the Service's jurisdiction.

By 1973, some 238 organized crime members and their associates had been convicted of various tax charges. Assessments for additional taxes and penalties in excess of 500 million dollars were levied. In addition 1973 was the second year the Service participated in the "war" on drug traffickers. Investigations were recommended in 646 cases with 271 resulting in prosecution. Of those 122 indictments were issued of which 52 were convicted for tax violations and given an average sentence of 30 months.

By the end of F.Y. 1974, when the Service announced it would reevaluate its participation in the Strike Force Program it had recommended assessments growing out of the program of 737.6 million dollars in additional taxes and penalties. Four hundred forty two organized crime members or their associates had been convicted of tax violations during the preceding 8 years of the program including 174 during 1974 at a cost of 3⅛ man-years per conviction.

One point which I would like to emphasize is that all of the prosecutions, convictions and assessments referred to above resulted from tax crimes and substantive violations of the Internal Revenue Code. Thus, the F.C.I.A. dismisses as spurious, the argument that Strike Force work is unrelated to the mission of the Service just as they reject the argument that their involvement in cases of alleged illegal campaign contributions are to enforce the campaign laws and not the Code.

With the background I do not believe it is an overstatement to conclude that the Intelligence Division has successfully fulfilled its mission. Beyond the hard figures I have set forth above must be added the deterrence value of the Intelligence Division's activities plus the resources which society has saved because drugs have not reached the street or members of organized crime are in jail rather than plying their trade on our streets.

What I am saying is that the Intelligence Division of the I.R.S. should be applauded and supported for a job well done. In some instances mistakes have been made but they have been relatively minor and individual acts at odds with the policy of the Intelligence Division. Unfortunately, the Commissioner disagrees.

He apparently believes that Strike Force and narcotic activities are a misuse of time and resources. He has halted and limited other programs of the Intelligence Division's ongoing tax fraud work.

As a result of these actions and others the Commissioner has lost the confidence of many career employees. Frankly, he is no longer capable of leading them and the situation is deteriorating. Each side regularly leaks detrimental stories to the press hoping to injure the other. Each has "scored points" against the other but each time a point is scored the Service is injured. The leadership of the F.C.I.A. understands this dilemma but is unable to control the wrath of many career employees. Nor has the leadership been successful in attempting to mediate the conflict with the Commissioner. Something must be done before the situation deteriorates even further.

The National Executive Board of the F.C.I.A. has made a suggestion. They recently passed a resolution setting forth the grievances of the career employees and then suggested the following:

That the Secretary of the Treasury Should, with the consent of the President and Congress, exert his executive authority to begin the process of transferring the criminal investigative functions of the Internal Revenue Service Intelligence and Internal Security Division to the office of Law Enforcement under the Assistant Secretary of the Treasury In Enforcement, Operations & Tariff Affairs.

It is highly unfortunate but true that given the history and the personalities involved, these problems will not be solved short of such a transfer of authority or the dismantling of the Intelligence and Internal Security Divisions or the removal of the Commissioner. The only alternative, continued conflict, is intolerable for all concerned.

Mr. CHAIRMAN, I wish my testimony today could have been more encouraging. Unfortunately, it could not be that way. I do hope that some good will come from the light shed at this hearing but that requires dealing with reality, or at least perceptions of realities, however bitter those perceptions may be.

Appendix A

Federal Criminal Investigators Association

RESOLUTION

In convention assembled in the City of Detroit, Michigan, October 12, 1975, through its members to the National Executive Board, the members of the Federal Criminal Investigators Association resolved that:

Whereas, there has been official impugning without factual basis, both through the news media and within the Internal Revenue Service of illegal and reprehensible conduct on the part of Intelligence personnel so as to discredit irresponsibly and indiscriminately the integrity of all Special Agents in the public mind and in the minds of other Internal Revenue Service Personnel;

Whereas, untold resources have been expended in endless investigations and inquiries of Intelligence Division personnel so as to cause irreparable damage to the morale and esprit de corps which has been an Intelligence Division hallmark since the original establishment as a separate unit in 1919;

Whereas, such restrictions have been imposed on the activities and priorities of the Intelligence Division and its personnel so as to reduce it long standing effectiveness in the Strike Force Program so as to virtually curtail all participation in the narcotic traffickers program;

Whereas, a large segment of Internal Revenue Service officials have been led to view the purpose and legitimate functions of both the Intelligence and Internal Security Divisions in such a negative and biased manner as to affect the credibility of Special Agents and Inspectors and make future harmony impossible;

Whereas, the legitimate grievences of Intelligence and Internal Security Divisions personnel have been so repeatedly ignored, the rights of individuals within the divisions so trampled and management's unwillingness to compromise, being so apparent that top officials have lost their own credibility with virtually all Intelligence and Internal Security personnel;

Whereas, top Internal Revenue Service officials have caused District Directors and other managers through fear and threat of humiliation to place even further restrictions at their discretion on the activities of Special Agents, and to thus render them less effective in the performance of their responsibilities in the criminal enforcement of tax laws;

Whereas, the confidentiality of informants has been placed in such jeopardy within the Internal Revenue Service so as to severely impair the discovery of tax violations among the criminal element, large corporate entities, international operators, and corrupt public figures;

Whereas, top Internal Revenue Service officials have evidenced such a completely and consistently negative reaction to the Intelligence Division and its accomplishments so as to not only reduce its capabilities but also to discourage and even prevent new initiatives and programs relating to tax crimes;

Whereas, a deliberate pattern of harassment against Intelligence Division leadership has taken place, including the removal and forced retirement, without cause of key officials in the Division, who are yet held in high esteem by their peers and other officials in the Internal Revenue Service and who were highly commended by former commissioners under whom they had served;

Whereas, these cumulative actions have so severely hampered the performance of the Intelligence and Internal Security Divisions, so damaged working relationships with other law enforcement agencies and so needlessly tainted the criminal tax enforcement activities so as to cause grave concern about the future of our tax system if Intelligence and Internal Security Divisions' activities remain in the existing organizational climate and structure;

Whereas, the members of this Association feel that in order to effectively enforce the laws of the United States of America and insure equal protection for all citizens of the United States, *Be it resolved*,

That the Secretary of the Treasury should, with the consent of the President and Congress, exert his executive authority to begin the process of transferring the Criminal Investigative functions of the Internal Revenue Service Intelligence and Internal Security Divisions to the Office of Law Enforcement under the Assistant Secretary of the Treasury in enforcement, operations and tariff affairs.

CHARLES LOUIS FISHMAN,
ATTORNEY AT LAW,
Washington, D.C., December 24, 1975.

Senator FLOYD K. HASKELL,
Suite 4106, New Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: At the close of your December 1, 1975 hearings on the Role of the Internal Revenue Service (I.R.S.) in Federal Law Enforcement Activities, you requested that I furnish, for the record, whatever information I had to suggest that I.R.S. Special Agents were correct in their stated belief that "I.R.S. management has been impugning the integrity of all Special Agents through the news media, and within the Service by improperly accusing personnel of illegal and represensible conduct." You noted that this allegation, if substantiated, raised serious questions that should be addressed.

I am transmitting this letter to call your attention to the hearings before the House Ways and Means Oversight Subcommittee held on Tuesday, December 2, 1975. Unfortunately, I do not have access to a copy of the Ways and Means transcript at this time. Therefore, the comments set forth below are as I recall them or from my notes taken during the hearings. I would urge you not to rely on my memory on such an important matter. Rather, the Committee should review the sworn testimony contained in the Ways and Means transcript for itself and come to its own conclusions.

As I recall the substance of the testimony before the Ways and Means Committee the following points were made:

Item: When operation Leprechaun first became public, I.R.S. officials came before the Congress and the press and publically characterized it as an "abberation" "gutter tactics", and "reprehensible" notwithstanding the fact that *no* I.R.S. investigation had yet been undertaken to determine what in fact had been done or who did it. In effect I.R.S. officials contributed to the sensationalism in the press coverage of Operation Leprechaun by making strong negative statements without a factual basis.

Item: According to the hearings the Inspection Division of I.R.S. eventually commenced an investigation of Operation Leprechaun and began the process of systematically acquiring the information necessary to analyze and determine what did happen. Before that investigation was completed—indeed that investigation was ongoing—the office of Public Affairs of the I.R.S.—not the *Commissioners Office* or the *Inspection Division*—released an Inspection Division Interim Report that was highly critical of Special Agent Harrison and operation

Leprechaun. The release of the Interim Report was, I have been informed, accomplished by holding a press conference. I submit that the use of the office of Public Affairs—a noninvestigative public relations arm of the I.R.S.—to release a report on such a controversial subject has only one purpose—to generate more negative publicity about Intelligence Division Activities including Operation Leprechaun and Special Agent Harrison.

Item: A letter was introduced into the record that shows that within weeks of the release of the Interim Report referred to above Deputy Commissioner, William E. Williams, instructed a regional I.R.S. official—a Mr. DeWitt—to bring charges against Special Agent Harrison—in effect to formally accuse Harrison of wrongdoing in a manner that would result in his unfavorable termination from the Service. Williams ordered this action notwithstanding the fact that the I.R.S. investigation was incomplete and no review had been made of the source material compiled by the Inspection Division. Mr. DeWitt requested the assistance of a personnel specialists in preparing charges against Special Agent Harrison. Jeffrey Shapiro of the I.R.S. Conduct and Appeals Branch was assigned the task and traveled to Florida to review the material.

Item: According to the record Shapiro conducted the one and only review of the actual source material concerning Harrison and Leprechaun and found no substantial evidence of wrongdoing. Shapiro concluded that any violation of I.R.S. rules and regulations were technical and procedural and even they were surrounded by mitigating circumstances. Accordingly, Shapiro concluded there was no basis to bring charges against Special Agent Harrison.

Item: Assistant Regional Commissioner E. J. Vitkus also testified about his review of Operation Leprechaun. Vitkus also concluded that Special Agent Harrison was without blame or fault and characterized early official I.R.S. statement on Leprechaun as "premature and unfortunate."

Item: According to Shapiro's testimony he met with Deputy Commissioner Williams to review the Shapiro report. Shapiro characterized Williams reaction as surprised but concluded that Williams accepted the report and its conclusions. However, Shapiro then testified that the rest of the meeting with Williams was consumed with a discussion of alternative methods to force Special Agent Harrison out of the I.R.S. notwithstanding the findings of the Shapiro report.

At the close of the House Ways and Means Committee Hearings chairman Vanik told Harrison "the record up to this point clears you of any wrongdoing," and that "the common thread in Leprechaun and Tradewinds has been for the national (I.R.S.) office to zero in on the agent-in-charge and to prosecute and keelhaul him in public."

I submit that these tactics have been very successful. You may recall that during your hearings you referred to your understanding of Operation Leprechaun, which you apparently acquired in the public press, in substantially negative terms.

I hope that these additional remarks are of assistance to the Committee. If I may be of any further assistance please do not hesitate to call upon me.

Sincerely,

CHARLES LOUIS FISHMAN.

FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION,
Forestville, Conn., April 18, 1975.

Mr. DONALD C. ALEXANDER,
Commissioner of Internal Revenue, Room 3000, 1111 Constitution Avenue, NW., Washington, D.C.

DEAR COMMISSIONER ALEXANDER: I am the Executive Secretary of the Federal Criminal Investigators Association which is composed of both active and retired criminal investigators employed by the United States Government. We have approximately 900 Special Agents of the Intelligence Division, I.R.S., as members, which we believe is approximately 50% of your Intelligence Division working force.

I am writing to ask your assistance in my organization's attempt to determine the validity of certain rumors regarding a number of your decisions which are having a demoralizing effect on the investigative personnel of the I.R.S. and thereby reducing its efficiency. I am not attempting to interfere with the prerogatives of management of the I.R.S. as they have a difficult enough job. However, I am taking the liberty of appealing directly to you because I know that

you are just as concerned as we are in seeing that both the needs of your investigators and the Government are served.

Let me give you an example of how an unfounded rumor was handled by the F.C.I.A.

After the passage of the H.R. 9281 (2½% retirement bill), we received numerous inquiries indicating that various agencies were reviewing their criminal investigator position to determine if the GS–1811 classification was justified. Part of the rumor was that Special Agents of the Intelligence Division would be reclassified to general investigators and that their positions would be downgraded or abolished. Our inquiries established that there was no validity to this rumor and we passed this information to our membership by publishing our findings in our monthly newsletter.

However, since that time, numerous other rumors have circulated causing grave concern among our members and these rumors were buttressed by certain actions of your office. Will you please take time from your busy schedule to give us your comments on the following areas of concern:

1. Restrictions on Title 18 investigations

Your text material for a speech before the Annual Convention of the Tax Section of the American Bar Association, Honolulu, Hawaii, on August 14, 1974, indicated a strong and drastic move away from the use of the Internal Revenue Service as a "law enforcement agency." If this is to be your policy for the future, what role do you have planned for the Intelligence Division?

2. Restrictions of Arrests by Special Agents

In numerous conversations you have indicated strong opposition to Special Agents making arrests, particularly when shown photographs of suspected felons in handcuffs. Are you opposed to the use of established law enforcement procedures in tax cases, at the risk of the safety of the Special Agent and the arrested individual? Would you prefer that criminal investigators in the I.R.S. not make any arrests? If so, how do you expect the courts and the public to consider tax evasion a serious crime (which it must, if voluntary compliance is to continue) when I.R.S. does not consider it or treat it as a serious crime?

3. Prohibitions on Special Agents Participating in Raids

Improper conduct by a criminal investigator during a raid can generate unfavorable publicity and possible law suits for damages. However, such isolated instances do not call for the complete abandonment of this investigative technique but, rather, are a lesson upon which to formulate future conduct. If one of your investigators abuses his subpoena authority, does that mean that you will forbid all investigators from using this authority? Is there perhaps another reason for prohibiting your investigators from participating in raids and arrests with other Federal agencies, even when they can gain valuable information on a person they are investigating?

4. De-emphasis of Strike Force Program and Narcotics Traffickers Program

You have stated that the Internal Revenue Service has changed the criteria for involvement in these activities in that they must satisfy the revenue and professional criteria which have long been established within the I.R.S. as guides for channeling its resources. Further, you have stated that in the future, special activities will have to compete openly and equally for resources against the regular tax administration activities. It is the opinion of the Association that the I.R.S. cannot and should not divorce itself from the needs of the government as well as the public which it serves. In the areas of Organized Crime, Narcotics Traffickers and Political Corruption, history has proven that numerous skillful violators of various statutes of the U.S. Code have only been brought to justice through the judicious use of tax laws. Therefore, to curtail or restrict such resources from endeavors in these areas is to deny the public, for whom we all work, the right to a fair, unbiased and impartial return on its investment and to deny your criminal investigators the integrity of a system which should be operated impartially. Is there not a need for I.R.S., as well as all other enforcement agencies, to be vitally concerned with law violators? Should we not utilize whenever and wherever needed, all our resources to combat crime? Is not the I.R.S. one of these resources?

5. Restrictions on Premium Pay

This, above all else, has caused more complaints and rumors than any other subject. We understand that the study by Treasury has been completed and its

preliminary draft presented to you for comments. Will you follow the guidelines published by Treasury? If not, what guidelines will you use? Can you put to rest the persistent rumor that your restrictions on premium pay were designed to defeat the new legislation making such pay part of the base pay computation for retirement purposes?

Is it not to the benefit of the taxpayer that the investigation be completed as speedily and efficiently as possible? Is it not to the benefit of the witness contacted during an investigation that they be contacted in the evening rather than normal daytime working hours when they might suffer a loss of pay? Does not premium pay save the government and witnesses both time and money in addition to speeding up the investigation?

How can premium pay be applied after the fact when regulations prohibit it? What happens when an agent is required to interview a witness after hours, the situation is uncontrollable and the agent is not on premium pay? Why is I.R.S. the only U.S. Treasury law enforcement agency that administers premium pay differently? On again, off again—more off than on, regardless of whether the cases call for the investigator to be on premium pay.

6. Suspension of Information Gathering and Retrieval, and Confidential Funds

Since the inception of the Intelligence Division, it has always been the policy and DUTY to receive, evaluate, and when necessary, investigate fully any information which has a tax consequence and comes to the attention of any Special Agent. However, with the suspension and/or restrictions placed on Information Gathering and Retrieval and the use of Confidential Funds, you have removed your criminal investigative personnel from contacts with informants and the surveillance of organized crime figures, corrupt politicians and narcotics traffickers, since monies for these activities comes from Confidential Funds. Even worse, you have prohibited your criminal investigators from contacts with other law enforcement agencies (in developing information on the aforementioned people) since Internal Revenue Manual Section 9311.2(3) does not permit contacts outside of the I.R.S. other than public records. I would be remis if I did not inform you that the suspension of the Manual provisions permitting agents from gathering information on people such as narcotics traffickers, corrupt politicians and organized crime figures might raise grave questions concerning these suspensions.

No responsible management official can fail to understand the importance of this function to any intelligence organization.

Will your future instructions limit the I.R.S. information gathering to merely straight tax information? Is it not true that many significant income tax cases are developed as a result of gathering information that appeared unrelated to taxes? For example, former Vice President Agnew, Governor Hall and the Watergate tax cases. Is it not true that a large part of the Intelligence Division inventory comes from Information Gathering by the Special Agents? I am sure your Special Agents are not interested in the sex lives of any individuals unless an individual pays large amounts of money for this service and this expenditure is not commensurate with his reported income. This should cause an agent to become suspicious of the tax return and rightly so. Would he not be remiss in his duty if he did not attempt to document this expenditure in any criminal tax case as a cost of living item in a net worth case?

7. Poor and Inadequate Communications by the Commissioner's Office and Others on Matters Affecting Employee Morale in the Intelligence Division

We have received allegations that the Director's comunications are often misinterpreted by your staff before they reach your office. We have been told that one of your staff has stated that the Intelligence Division is "behind the times." A further remark allegedly made by this same individual while he was in a district was that he "one day would bring Intelligence to its knees." Would you please explain these remarks, if true . . . and if not true, put this rumor to rest?

8. Adversary Posture of the Commisioner Toward OC&R Section of the Department of Justice

Numerous reports of conflicts between your office and the Department of Justice suggest an adversary relationship rather than the spirit of cooperation needed to work together to perform effectively.

Since the Department of Justice handles the prosecution of all the criminal cases of the Intelligence Division, is that adversary posture another way of emasculating the Intelligence Division?

9. Restrictions on Legal Use of Electronic Surveillance

If the use of Electronic Surveillance is legal, why do you prevent your Intelligence Agents from using it? Do you plan to continue this restriction?

10. Failure to Endorse and Support Aggressive Fraud Investigations of Major Political Figures, Organized Criminal Activities and Major Corporations

I would be remiss if I did not call to your attention the reaction of the public and media to your actions and statements that I.R.S. should prosecute the "little guy" i.e., the butcher, the baker and candlestick maker while organized crime figures, narcotics traffickers and major political figures are pushed into the background. Is this a correct evaluation of your policy? If not, will you please state your policy in this area?

11. Transfer of Wagering Enforcement to BATF

Why this was done we do not know. However, the effect is clear, as your men and other law enforcement people believe, that you did this because you did not consider your men capable of doing this type of investigation. Could you explain the reason for this transfer—especially when the I.R.S. Agents were fully trained and experienced in the field of wagering and BATF was forced to expend large sums of money to send its agents to school during a period when the President is calling for economy in government?

12. Retirement of the Director, Intelligence Division

It has been alleged that the Director of the Intelligence Division has retired because he was being pressured by your office to conduct investigations on the "little guy" as opposed to his policy of conducting investigations in accordance with the mission of the Intelligence Division. This mission is, in fact, the identification of and aggressive enforcement of pockets of non-compliance which encompasses Narcotics Traffickers, Organized Crime Activities and political corruption. Will you advise whether or not these allegations are true?

13. Disclosure of Identity of Confidential Informants

Another recent development are the questions Internal Audit (a non-criminal division) is asking your criminal investigators about their contacts with "confidential informants" even though no payment was made to the informant. It appears from the questions that they are attempting to learn the names of these informants. As any criminal investigator knows, once an informant's name has been disclosed to another individual, two things usually occur: a) the informant is useless to the investigator from then on, and b) other informants discover that you divulged a name without the informants permission, and they, therefore, refuse to give you any further information.

The above restrictions plus others instituted by the I.R.S. prevent the Intelligence Division from developing informants to give them information on corrupt politicians, organized crime figures and narcotics traffickers. How is the public going to react to the preclusion of your special agents in investigating political corruption, organized crime and narcotics cases? Will it not be a "black eye" for the entire agency?

14. Restrictions on Pre-Trial Publicity Far Beyond the Requirements of the Attorney General's Guidelines

Is it your policy to restrict pre-trial publicity so that the public will not be aware that I.R.S. does prosecute tax evaders?

In summary, Mr. Commissioner, whereas each of the circumstances mentioned herein, taken separately may be explained as a proper exercise of management's discretion, the sum total of all of these restrictions and curtailed activities can create the impression that your intent is to reduce the effectiveness of all criminal investigative aspects of the Intelligence Division. Apparently you want criminal investigations conducted but more along the lines of an audit examination. In this manner, very few—if any—criminal cases will be made against organized crime figures, narcotics traffickers or corrupt politicians—but only on the low and middle income class people.

Finally, all of the above lend credence to the suspicions being whispered that it is your intention to destroy the effectiveness of the Intelligence Division, long recognized as one of the leading investigative agencies in law enforcement.

I am pleased to offer you the services of the Federal Criminal Investigators Association to assist you in any way we can to fulfill your law enforcement functions and to enhance the professional level of Federal Criminal Investigators.

I sincerely hope that our correspondence will bring about improved understanding and communication between your office and your employees. Your views on these subjects will be disseminated throughout the Federal law enforcement establishment.

Sincerely yours,

JOHN P. RYAN,
Executive Secretary.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., May 16, 1975.

MR. JOHN P. RYAN,
Executive Secretary, Federal Criminal Investigators Association, P.O. Box 353, Forestville, Connecticut

DEAR MR. RYAN: Commissioner Alexander has asked me to reply to your letter of April 18, 1975, conveying your concerns, and those of your membership, about certain matters relative to the IRS Intelligence Division. In recent weeks, this particular arm of the Service has received considerable coverage in the news media—much of it based on incomplete facts and considerable misinterpretation. Many of the issues raised in your letter are the same as those that have been receiving a great deal of attention from the news media. I welcome this opportunity to respond to the questions you have raised and, hopefully, help dispel any rumors or misinterpretations about the Intelligence Division and its continuing role as the criminal tax law enforcement arm of the Service.

In order to put my answers in proper perspective, I think that it would be useful if I were to explain why we believe that the criminal investigative role of the Internal Revenue Service must be limited to the enforcement of the tax laws. The reason is simply that we believe it is vital to the survival of the IRS as an effective administrator of our self assessment tax system.

The Internal Revenue Service probably intrudes more deeply and more frequently into the private affairs of more Americans than any other organization, public or private. Last year, for example, more than 83 million individuals (or fiduciaries) filed Federal income tax returns and over 1.76 million individual and fiduciary income tax returns were audited by the Service. It is essential to the continued viability of our self assessment system, and to the effective civil enforcement of the tax laws, that the public have confidence in the Internal Revenue Service. I believe that this confidence will be severely impaired if the Internal Revenue Service permits its civil enforcement powers and personnel to be used in mere fishing expeditions where there is, at best, a mere suspicion of tax evasion, or if the Service begins collecting information about the subjects of such suspicions, or paying confidential informants for information in such circumstances.

I want to make it clear that we are firmly behind the efforts to eliminate corruption in public office and other so-called white collar crimes, particularly tax crimes. I am sorely disappointed when a Federal prosecutor declines to prosecute, or a Federal judge declines to impose a jail sentence in a tax evasion case because of his/her view that tax evasion is not a serious offense. Whenever the Internal Revenue Service uncovers any evidence of a violation of Federal laws other than the tax law, we are quick to furnish that information to the appropriate agency. However, I also believe just as firmly that if the Internal Revenue Service permits itself and its employees to become entangled in investigations relating to those who are suspected of committing only non-tax related crimes, public confidence in the IRS as the tax administrator will be shattered, and our system of self assessment and our high voluntary compliance levels will be severely damaged. Quite simply, our present revenue collection system cannot be administered by an agency which lacks public confidence, and the type of criminal law enforcement activities which are currently being urged on the Service will destroy that confidence.

I am quite sympathetic with the budgetary and manpower pressures that affect the Justice Department, and with the fact that they do not have enough qualified people do their job. However, the remedy is not for the Internal Revenue Service to do their job for them, because of the adverse impact this would have on our job of administering the tax laws. The Service stands ready to aid them in every way possible in acquiring the funds, personnel, and expertise which they need. For example, we are ready to provide accounting and auditing training to

Justice Department employees who may need, but lack, those skills. And when they are able to develop sufficient indication of a criminal tax case, or when such an indication is developed by our Audit personnel, our Intelligence personnel will exert their full energies to bring the case to a successful conclusion.

I will respond to each of your questions in the order in which they were presented in your letter.

1. Restrictions on Title 18 Investigations

The Intelligence Division will continue to be the criminal investigatory function within the IRS charged with the responsibility of enforcing Title 26 violations. In addition, violations of Title 18 provisions will be investigated when committed in contravention of the tax laws. However, Intelligence Division resources will not be used to investigate violations of Title 18 which do not have any tax implications. This in no way affects the status of the Intelligence Division as a law enforcement agency. It is merely a position which focuses on the specific investigative jurisdiction and responsibilities which the Intelligence Division is authorized to enforce.

2. Restrictions of Arrests by Special Agents

The IRS does treat tax evasion as a serious crime and on many occasions the Commissioner has made very clear his position that tax violations are serious and that there should be more severe sentences for convicted tax criminals. The fact that tax cases are within the province of the Justice Department when most arrest situations arise, makes it the responsibility of the United States Marshals, not IRS special agents, to effect the arrests. Our position in this regard does not lessen the seriousness of tax evasion, but does recognize the U.S. Marshals as the proper arm of the judicial system to make post indictment arrests. Proper utilization of resources dictates that each agency within the government perform those functions for which they are responsible.

3. Prohibitions on Special Agents Participating in Raids

As you recognized in your letter, improper conduct by agents conducting raids is one of our concerns. However, a more likely danger exists in exposing our agents to possible legal actions involving alleged crimes and torts committed by other participants in a raid over which IRS has no control. It is important to note that the type raids you mention in your letter do not include IRS participation in the planning stages, and as a consequence the IRS has little control over the ultimate outcome. Furthermore, any tax-related information developed as a result of such raids can be obtained by IRS agents after the raid.

4. De-emphasis of Strike Force Program and Narcotics Traffickers Program

The IRS will continue to participate in the Strike Forces and to investigate significant narcotics traffickers provided the investigations are for tax law violations. The IRS cannot utilize its resources for the sole purpose of correcting social ills. Such results often do occur, however, as a by-product of our tax law enforcement activities. Nevertheless, we must bear in mind that the principal responsibility charged to the IRS by Congress is the effective administration of the tax laws, and our ability to discharge that responsibility can be impaired by our engaging in other activities.

5. Restrictions on Premium Pay

The IRS will continue to abide by the Treasury Department guidelines regarding premium pay. The present IRS policies on premium pay are temporary measures until the new Treasury guidelines are published. Any inference that the present IRS policies regarding use of premium pay are intended to reduce retirement benefits is simply not correct.

The IRS administers premium pay according to the Civil Service regulations which require periodic reviews to determine an employee's continued eligibility for premium pay and prohibit retroactive determinations. Where those reviews indicate that an employee should continue on premium pay, he will continue to have that status.

6. Suspension of Information Gathering and Retrieval, and Confidential Funds

The recent suspension of the Information Gathering and Retrieval System is a temporary measure. We are currently preparing guidelines for a new system, which will permit special agents of the Intelligence Division to continue to meet their responsibilities to seek and assemble information necessary for the discharge of their duties. The principal difference from the prior system will be a much

greater emphasis on ensuring that the information gathered is directly tax-related. We have neither the duty nor the resources to assemble information which does not, in some way, relate to ongoing or contemplated IRS investigative actions. Rather than being a hindrance to law enforcement, we view the changes in our information gathering procedures as a major step in making our law enforcement activities more efficient.

With regard to the use of confidential funds, this is an area that is currently under intensive study, both within the IRS as well as by outside agencies. Decisions as to the ultimate continuance or modification of this practice have not yet been made.

7. Poor and Inadequate Communications by the Commissioner's Office and Others on Matters Affecting Employee Morale in the Intelligence Division

The establishment and maintenance of effective communications is perhaps the most common problem faced by large, multifunctional organizations. The IRS is no exception. We are constantly seeking better ways to keep our employees informed about the actions of management and, conversely, to keep ourselves informed about the entire spectrum of IRS activities. The nature of our organization, of course, requires that communications pass through various levels of authority en route to their ultimate destination. This fact may have contributed to your inference that communications from the Director of Intelligence are often "misinterpreted" by members of the Commissioner's staff before they reach Commissioner Alexander.

What normally occurs is that the Director, Intelligence Division makes recommendations to me or prepares correspondence to the Commissioner for my signature. If I elect an alternative course of action to that proposed by the Director, Intelligence Division, it is not the result of misinterpretation of his views but the choice of another option reached after considering the various alternatives. I seriously consider his views when making any decision which impacts on his area of responsibility.

You also quote an unidentified member of the Commissioner's staff as having said that Intelligence is "behind the times", and that he "one day would bring Intelligence to its knees." I do not know whether such remarks were actually made by anyone. I can only assure you that they do not represent my views, nor the views of the Commissioner.

8. Adversary Posture of the Commissioner Toward OC&R Section of the Department of Justice

First, I would like to point out that in the processing of our criminal cases our relationships wtih the Department of Justice continue to be excellent. It is in the area of policy considerations in the application of IRS resources that we have views that may differ from those of some Justice Department officials, particularly in the matter of Strike Forces. I believe we are in agreement that the basis concept of the Strike Force is sound and should be continued. However, I believe our major contribution must come about through our enforcement of the tax laws and tax-related Title 18 provisions. I think it is this posture that may have caused some misunderstanding between our two agencies. However, to label this an "adversary posture" is, in my view, a gross exaggeration of the situation.

9. Restrictions on Legal Use of Electronic Surveillance

The IRS does permit the use of electronic surveillance provided the consent of at least one of the participants has been obtained and that certain designated officials grant their approval. In order to conduct electronic surveillance without any participant's consent, it is necessary to obtain a court order under Title III of the Omnibus Crime Control and Safe Streets Act. The statute does not authorize non-consensual monitoring to investigate violations of Title 26.

10. Failure to Endorse and Support Aggressive Fraud Investigations of Major Political Figures, Organized Criminal Activities and Major Corporations

It is simply not true that the IRS wants to prosecute the "little guy" at the expense of foregoing prosecutions of racketeers and political figures. There have been a significant number of racketeers and political figures prosecuted since Commissioner Alexander took office. To achieve the maximum levels of voluntary compliance with the tax laws, it is necessary that criminal enforcement activities be directed toward all segments of the taxpaying public. This would include some attention to the "ordinary" tax criminals as well as those involved in organized crime or political corruption.

11. Transfer of Wagering Enforcement to BATF

The decision to transfer this responsibility was made by top officials of the Treasury Department. Before making the decision, they reviewed position papers and proposals submitted by both agencies—IRS and BATF. The facts cited in your letter regarding the availability of trained IRS personnel and their prior experience in enforcing these statutes were among many factors that were considered in making the decision. I have no doubt that IRS Intelligence personnel are fully qualified and capable to enforce the wagering laws, nor was any such doubt expressed by the officials making the decision. They key factor was to try to derive the greatest benefit from the effective deployment of Treasury's law enforcement personnel.

12. Retirement of the Director, Intelligence Division

The Director has stated that he is retiring for personal reasons.

13. Disclosure of Identity of Confidential Informants

The IRS Inspection Service has always had the responsibility to review the procedures and practices of other segments of IRS to ensure adherence to existing laws, regulations and rules. In the light of recent events, it has become necessary to conduct a thorough review of the use of informants by the Intelligence Division. Such a review may require that Inspection be given the names of certain, selected informants for purposes of verification of payments and other procedures. This does not mean that complete lists of all informants used in a given district will be disclosed to Inspection. It does mean that each Intelligence Division Chief should maintain a list of informants and, upon receipt of a duly authorized request, reveal the names of a selected few informants for test check or verification purposes. This Inspection responsibility is not new, nor is the process of verifying transactions with informants. I believe the current concern on this issue has been sparked, to a great extent, by the recent misleading publicity regarding IRS informants.

14. Restrictions on Pre-Trial Publicity far Beyond the Requirements of the Attorney General's Guidelines

IRS guidelines regarding pretrial publicity were designed with two principal objectives in mind. First, they are intended to fix the responsibility for publicizing these actions with the agency that has jurisdiction in the case—in this instance, the Department of Justice. Second, the guidelines are designed to avoid prejudicing an individual's right to a fair trial by causing excessive pretrial publicity. Both of these are genuine concerns that the IRS must recognize if it is to be successful in its criminal enforcement efforts.

On the other hand, we recognize that a prosecutive action can be more effective if it is publicized. For this reason, our guidelines are designed not to restrict, but simply to control our publicity generating activities.

Mr. Ryan, let me assure you and the members of your organization that both Commissioner Alexander and I are keenly aware of the need for a strong criminal enforcement program as an integral part of our tax system. We also recognize and appreciate the effective and efficient performance of the Intelligence Division in this regard. It is unfortunate that recent events have presented an unfair and distorted impression of Intelligence and of our views toward it.

Once again, I thank you for this opportunity to present our views on these very important issues. Please convey them to your members, along with my reassurance of support for the important role of the Intelligence Division as one of the top law enforcement agencies in the federal service.

With kind regards,

Sincerely,

S. B. WOLFE,
Assistant Commissioner (Compliance).

[Whereupon, at 5:25 p.m., the subcommittee recessed, subject to the call of the Chair.]

ROLE OF THE INTERNAL REVENUE SERVICE IN LAW ENFORCEMENT ACTIVITIES

WEDNESDAY, DECEMBER 3, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION
OF THE INTERNAL REVENUE CODE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2221, Dirksen Senate Office Building, Senator Floyd Haskell presiding.

Present: Senator Haskell.

Senator HASKELL. The hearing of the Subcommittee on Administration of the Internal Revenue Code will continue. The subject matter obviously is the advisability or inadvisability of use of IRS criminal enforcement powers and personnel enforcing the general criminal laws of the United States, or whether they should be confined to enforcing the tax laws, or whether there is some happy medium ground. This is the subject matter of the hearings, and I am very pleased to welcome my colleague, Senator Morgan of North Carolina.

Senator, maybe we had better go vote and come back. What do you say to that? We will be back very shortly.

[A brief recess was taken.]

Senator HASKELL. Let's see if we can continue without further interruption.

It is a great pleasure to welcome the Senator from North Carolina, Senator Morgan.

STATEMENT OF HON. ROBERT MORGAN, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator MORGAN. Thank you, Mr. Chairman.

I wanted to come this morning and express my position on the question before this committee. I come without any prepared statement or remarks, and frankly, without having a great deal of time to think about my remarks this morning. But I feel very strongly about the issue before this committee, and my thoughts are based on many years of experience in the practice of law and as a law enforcement officer for 6 years. I was the Attorney General of North Carolina, and in that role I served as chief law officer of the State. Within my department came the State Bureau of Investigation, which is charged with enforcement of the laws on the State level. The S.B.I. was involved in the enforcement of all narcotics and gambling laws and many other areas

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such as that, as well as with rendering assistance to local law enforcement officers.

So you see my experience in law enforcement covers the whole field, Mr. Chairman. I believe very strongly that if we are going to generate respect for the law, then those of us involved in government, and who are charged with enforcing the laws, must ourselves respect the law. Our failure to do so, in my opinion, can only generate lack of respect on the part of the public.

In that connection, I would like to read just one quote of Justice Brandeis, because I think it states my position very strongly.

Justice Brandeis said that:

> Decency, security and liberty of life demand that governmental officials shall be subjected to the same rules of conduct as the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is a potent, omnipotent teacher for good or for ill. It teaches the whole people by its example. If the Government becomes a law breaker it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of our laws that the end justifies the means would bring terrible retribution.

I think, Mr. Chairman, that when we use the internal revenue laws for purposes other than for which they were designed and enacted, we subvert the law and we contribute to the lack of respect for law which many of our citizens have today.

I realize, Mr. Chairman, there is the fine line between the enforcement of the internal revenue laws and the enforcement of that broad body of laws that we generally refer to as the criminal laws. But I think the thing we must remember is that internal revenue laws were designed for the purposes of collecting revenue and enforcing the tax laws of our country, and not for the purpose of enforcing the general criminal laws.

In that connection, the Internal Revenue Service and its agents are given extraordinary remedies not available to the average law enforcement officer. They are given extraordinary remedies which bypass due process of the law.

For instance, an official of the Internal Revenue Service has a right to examine a taxpayer's financial records without the aid of a subpena. The Internal Revenue Service has the power to terminate a taxpayer's tax year, and to make a jeopardy assessment which can, in effect, tie up the assets of a taxpayer to such an extent that he has actually been deprived of his property without due process of law.

Now, Mr. Chairman, when I was Attorney General of North Carolina I had as my director of the State bureau of investigation an enlightened young man. I brought him into the SBI on the first day that I took office. And I instructed him on that day that we were not to violate the laws ourselves in order to apprehend someone else we thought might be violating the laws. I ordered all wiretapping equipment destroyed; and, to the best of my knowledge, we lived within the law while enforcing the laws.

But even with this enlightened director that we had, I found in the last year or two of my administration that the bureau would suspect a given citizen of being engaged in the narcotics traffic, or cigarette smoking, or some other violation of the law, and yet they were unable to obtain evidence to prove that.

In other words, it might have been a suspicion based on some reason, but they certainly had no evidence. They had no probable cause. And because they thought this individual, or these individuals, ought to be punished they immediately would bring in the Internal Revenue Service who would exercise these extraordinary remedies. This citizen or taxpayer would then have his property tied up in the courts for a long period of time without having been afforded the due processes the Constitution and the laws entitle him to.

I put a stop to the practice, Mr. Chairman. I called my director in, and we had an understanding that if we could not, by legal means, obtain sufficient evidence to go before a grand jury to get an indictment, then we were not going to circumvent the law by using these extraordinary processes. I feel very strongly about this. In the course of enforcing the internal revenue laws legitimately, if violations of other laws are discovered then I think it would be proper and indeed perhaps neglect of duty, to bring these matters to the attention of the proper authorities. But simply to use these processes because other evidence cannot be obtained is unthinkable under our Constitution.

While I had little time to get my thoughts together, I would like to bring to the chairman's attention the case of *Willits* v. *Richardson, and others*, decided in the U.S. Court of Appeals in the Fifth Circuit in 1974. I will file this for the record if the chairman would like, because I think, Mr. Chairman, it is a good illustration of how abuses can occur.

[The information referred to follows:]

[¶9583] Sharon Willits, Plaintiff-Appellant v. W. L. Richardson and A. J. O'Donnell, Defendants-Appellees.

U.S. Court of Appeals, 5th Circuit, No. 73-3163, 7/18/74.—(497 F. 2d 240.) Rev'g and rem'g District Court decision, 73-2 USTC ¶ 9602, 362 F. Supp. 456.

[CODE SECS. 6851 AND 7421]

Injunctions: Jeopardy seizures: Purpose: Remedy at law.—The lower court erred in holding that the taxpayer could not enjoin a jeopardy seizure of her property. The seizure denied her all means of supporting herself and her children. Moreover, the evidence showed that the purpose of the seizure may not have been to collect the tax but to punish the taxpayer for suspected illegal activity. Back references: ¶ 5607.01, 5779.615 and 5779.6378.

George D. Gold, 511 Biscayne Bldg., 19 W. Flagler St., Miami, Fla., for plaintiff-appellant. Mervyn L. Amos, Assistant United States Attorney, Miami, Fla., Scott P. Crampton, Assistant Attorney General, Meyer Rothwacks, Crombie J. D. Garrett, Ann Belanger, Department of Justice, Washington, D.C. 20530, for defendants-appellees.

Before WISDOM and CLARK, Circuit Judges, and GROOMS, District Judge.

CLARK, Circuit Judge: Sharon Willits sought injunctive relief from a jeopardy seizure of virtually all of her property by the Internal Revenue Service (IRS) pursuant to a quick termination proceeding under 26 U.S.C. § 6851.[1] At the conclu-

[1] In pertinent part, this section provides:

(a) *Income Tax in Jeopardy.*—

(1) *In general.*—If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate,

sion of an evidentiary hearing on her motion for a preliminary injunction, the district court found the cause to be barred by 26 U.S.C. § 7421(a),[2] which prohibits judicial restraint of tax assessment or collections. The trial court erred procedurally in dismissing the action at this preliminary stage. It also erred substantively in determining the proof adduced failed to show that the seizure procedures utilized by the IRS, although in the guise of a tax, were intended to harass and punish Mrs. Willits for her association with a suspected dealer in narcotics; and in holding that she had failed to show a basis for equitable relief. We reverse.

The following were the facts as found by the district court:

[O]n May 24, 1973, Officers Mosher and Ahearn of the City of Miami Police Department, while driving in an unmarked vehicle, began pursuing the plaintiff, *Sharon Willits*, who was driving a 1972 Cadillac in the vicinity of the 79th Street Causeway in Miami. Upon becoming aware that she was being followed by an unmarked car, the plaintiff pulled over to the side of the street momentarily and the unmarked car pulled in behind her. No one emerged from the unmarked car and the plaintiff pulled away from the side of the curb and the unmarked car containing Officers Ahearn and Mosher continued following the plaintiff. The plaintiff then pulled over a second time when the unmarked car pulled up beside her and she noticed police badges being waved at her by the occupants of the unmarked car. Officer Ahearn then emerged from the unmarked car and approached the plaintiff. Officer Ahearn was not in uniform and was dressed in very casual clothes. He had a full beard and long frizzled hair which was tied in a ponytail in back. Officer Mosher also emerged from the car and was dressed in a manner similar to that of Officer Ahearn.

Upon identifying himself as a police officer, Officer Ahearn asked the plaintiff for identification, including her driver's license. Officer Ahearn asked the plaintiff if the address shown on the license was correct and the plaintiff responded that she could not or would not disclose her correct residential address. The address appearing on the driver's license appeared to be in Broward County and the plaintiff was arrested in Dade County. Registration of the automobile which the plaintiff was driving showed that the car was registered in the name of an individual other than the plaintiff and the plaintiff explained that she was using the car with his permission. A check was made on the registration through the police radio and the officers found that the address on the registration did not exist. It was later found that there had been a typographical error in making out the registration and the car was released to the registered owner.

Approximately six weeks prior to May 24, 1973, Officer Ahearn had stopped a vehicle containing the plaintiff and a Mr. Rick Cravero. The plaintiff was also driving that vehicle when it was stopped and her license was checked by Officer Ahearn. Mr. Cravero had been under surveillance by the City of Miami Police Department for approximately five months in that he was suspected of dealing in narcotics. Neither the plaintiff nor Mr. Cravero were arrested by Officer Ahearn on that occasion. Inasmuch as the plaintiff was unable to give Officer Ahearn a specific address for her residence, she was arrested for speeding and was taken by Officers Ahearn and Mosher to the police station some seventy blocks distant. The time of this arrest was approximately 7:30 p.m. on May 24, 1973. The plaintiff was not taken to the traffic section of the police department but was taken to the narcotics section. Officers Ahearn and Mosher were not assigned to traffic detail but were assigned at the time of this arrest to the narcotics section and took the plaintiff to their office. Upon arriving at their office, the plaintiff was requested to open her purse and at that time a pistol was observed. The plaintiff did not display a permit for carrying this weapon and she was thereafter placed under arrest by Officer Ahearn for carrying a concealed weapon and was advised of her constitutional rights at this time. A more thorough search was then made of her purse and certain tablets were discovered. These tablets were not placed in evidence although there was testimony from one witness that the tablets were

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made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy. * * *

(b) *Reopening of Taxable Period.*—* * * A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe.

[2] *Tax.*—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

subjected to chemical analysis and were found to be barbiturates. Plaintiff claimed at the time that these barbiturates had been purchased pursuant to a prescription she had received from a doctor. No additional evidence on that point was submitted by plaintiff. The search of plaintiff's purse also revealed an envelope containing some slips of paper and approximately $4,400.00 in cash and a gold coin and another small piece of jewelry. Plaintiff was wearing some diamond rings and these were also surrendered to the police by the plaintiff at the request of the police. The plaintiff was then taken to another section of the police station and was charged with possession of narcotic drugs, unlawfully carrying a concealed weapon and speeding. She was released later that night on $2,000.00 bond which was posted by a friend.

On the morning of May 25, 1973, Officer Ahearn advised Mr. John Zahurak of the United States Internal Revenue Service that Mrs. Willits had been arrested and advised him of the charge of possession of narcotics placed against her. Mr. Zahurak on that day went over to the City of Miami Police Department and viewed the police report prepared on the arrest of the plaintiff and the description of the materials taken from her purse. Mr. Zahurak was also advised by representatives of the City of Miami Police Department that the plaintiff was an associate of several persons who were suspected of dealing in narcotics. Mr. Zahurak was advised by Officer Ahearn that the sum of $4,400.00 had been taken from Mrs. Willits' purse and that the sum was in a white envelope which contained a slip of paper with some names and figures on it. He further advised Mr. Zahurak that Mrs. Willits had told him that she was not employed. Mr. Zahurak testified that he then checked to seek whether Mrs. Willits had filed an income tax return for the years 1969, 1970, 1971 and 1972, and the information he received was that no return had been filed by Mrs. Willits for those years. Although the police report indicated that only a few pills contained in two vials had been found in Mrs. Willits' purse. Mr. Zahurak computed that Mrs. Willits had earned commission income of $60,000.00 on sales of $240,000.00 worth of cocaine during 1973 and recommended to his superiors that Mrs. Willits' taxable period for the period from January 1, 1973, through May 23, 1973, be terminated and that a tax be demanded and if necessary assessed against Mrs. Willits for that period in the amount of $25,549.00. Also on May 25, 1973, Officer Zahurak caused an administrative summons to be issued to the City of Miami Police Department for the property which had been taken from Mrs. Willits' purse and person.

On May 25, 1973, at approximately 3:20 p.m., a notice was sent to Mrs. Willits by certified mail from the District Director of Internal Revenue Service in Jacksonville, Florida, advising her that her taxable period from January 1, 1973 through May 23, 1973, had been terminated and that there was a tax due and payable from her for that period of $25,549.00. Mrs. Willits was further advised in that letter that any unpaid portion of the tax would be assessed against her and that administrative or judicial action to collect the assessment would be taken immediately. On May 25, 1973, an assessment in the amount of $25,549.00 for Federal income taxes for the terminated period was made against Mrs. Willits. On May 30, 1973, Revenue Officer Vincent Bernola served a notice of levy and a notice of seizure upon the City of Miami Police Department seeking the property of the plaintiff, Sharon Willits, in their possession

The plaintiff, Sharon Willits, was divorced from her husband, Kenneth E. Willits, in June 1972. Pursuant to the terms of that divorce, Sharon Willits received $67.50 alimony per week and child support for her two children of $67.50 per week. The plaintiff received the alimony for five months and thereafter received a settlement of $400.00 and no further alimony. The child support has continued. Pursuant to the divorce, plaintiff also received the residence in which she had lived while married which was sold in the Spring of 1973 for $2,000.00 cash with the purchaser assuming the mortgage. Plaintiff had no other funds or substantial property at the time of her divorce. During 1973 and for an unspecified period in 1972 the plaintiff has been supported either by Mr. Rick Cravero or by winnings from gambling and all money and property which she has received during that period derived from one of these two sources—she testified that the jewelry and money in suit was provided by Cravero. No evidence was introduced which would tend to show that she will not continue to be supported by Mr. Cravero.

Based upon these fact findings, the district court concluded that without regard to the legality of Mrs. Willits' arrest or the legality of the initial police search and seizure of her property, she had failed to show that under the most liberal view of the law and facts the government could not ultimately prevail on its claim. The court further concluded that Mrs. Willits failed to establish that the

immediate recovery of her property was necessary to prevent irreparable injury because she did not negate that Mr. Cravero would support her in the future. In addition, the court determined that Mrs. Willits had an adequate remedy at law consisting of the right to file a return for the calendar year of 1973 and seek a refund in the district court or a redetermination of her tax liability in the Tax Court. Since these conclusions established that Mrs. Willits' action was barred by the tax anti-injunction statute, Section 7421(a), under the tests laid down in *Enochs* v. *Williams Packing and Navigation Co.* [62-2 USTC ¶ 9545], 370 U.S. 1, 82 S. Ct. 1125, 8 L. Ed. 2d 292 (1962), the court dismissed the complaint.

PROCEDURE

At the hearing on the preliminary injunction the district court inquired of counsel for both parties if it could be stipulated that the hearing then held could be converted into a final hearing on the issues at controversy in the litigation. Counsel for plaintiff declined to so stipulate, stating to the court that a witness whose testimony was considered essential to his case was unavailable at that time. There was no showing or suggestion that this witness would not in fact give testimony that was material to Mrs. Willits' case. Thus, no issue as to the prejudice to plaintiff's case remains. *Cf. Eli Lilly & Co. v. Generix Drug Sales, Inc.*, 460 F. 2d 1096 (5th Cir. 1972); *Nationwide Amusements, Inc. v. Nattin*, 452 F. 2d 651 (5th Cir. 1971). The court entered no order of consolidation under Fed. R. Civ. P. 65(a)(2). *See* C. Wright & A. Miller, Federal Practice and Procedure, § 2950, at 486-8. Construing the evidence adduced in the court below most favorably to the plaintiff, as we must on reviewing a dismissal at a preliminary stage such as this, we cannot find the dismissal authorized.

SUBSTANCE

Indeed, the evidence adduced established such a gossamer basis for the drastic actions of the Internal Revenue Service that they cannot be sustained. The proof showed that the taxes assesed were based solely upon income which was attributed to Mrs. Willits as a commission to her from the sale of six kilos of illicitly imported cocaine. Agent Zahurak testified without dispute that the sole source for connecting Mrs. Willits at all with income from the importation or sale of any cocaine was Police Officer Ahearn. Yet, he further testified that Ahearn did *not* tell him that Mrs. Willits had ever dealt with the speculative six kilos or more or less cocaine or with the sale or distribution of any other narcotic. No basis in fact nor foundation for any reasonable assumption was demonstrated in this record that Mrs. Willits was connected with the smuggling or sale of this or any other amount of cocaine or narcotics. Agent Zahurak testified that the IRS computed the amount of Mrs. Willits' commission by supposing that she received a commission of at least 25% of an assumed sales price of 40,000 dollars per kilo for the putative six kilos of cocaine. This commission was arbitrarily selected by Agent Zahurak as a "conservative figure" of what Mrs. Willits would collect *if* she had participated in such a cocaine sale based upon a notation on the back of a scrap of paper that Officer Ahearn found in her purse. The notation reads:

Ceon	—3000
Ron	1500
Slt	—2000
P	500
C	400
ME	5900

The revenue agent presumed this record showed a list of persons with dollar amounts after their names and added to this supposition the further speculation that the notation related to the division of income from a typical drug sale. He furthermore assumed that "ME" referred to Mrs. Willits and, pyramiding all these guesses, concluded that her commission on the theoretical transaction would have amounted to 44%.

Agent Zahurak testified that he was assigned to the Narcotics Project Division of the Internal Revenue Service—a division he described as working exclusively with cases involving persons dealing in or using narcotics. While the overall purposes and procedures of the IRS's Narcotics Project were not spelled out in this record, it is transparently obvious that the action taken as to Mrs. Willits does not represent an isolated instance wherein police information was utilized by the Internal Revenue Service to protect the public fisc. Rather, this record clearly establishes that a seizure pursuant to the quick termination provisions of Section

6851—a procedure which according to the contention of the IRS has the harshest possible notice and correction consequences for the purported taxpayer—was instantly clamped upon every meaningful asset of Mrs. Willits, based upon scanty and largely inaccurate information[3] which, at best, amounted to nothing more than a vague suspicion that she must have come by her jewelry and cash by improper means since she admitted that she gambled for a living and was kept by a man who police believed was dealing in narcotics.

This court's recent en banc decision in *Lucia v. United States* [73-1 USTC ¶ 16,075], 474 F. 2d 565, 573 (5 Cir. 1973), provides a succinct standard for appellate determination of the *Enochs* issue in the case at bar.

Following *Pizzarello v. United States* [69-1 USTC ¶ 15,886], 408 F. 2d 579 (2d Cir. 1969), this Court holds that a taxpayer under a jeopardy assessment is entitled to an injunction against collection of the tax if the Internal Revenue Service's assessment is entirely excessive, arbitrary, capricious, and without factual foundation, and equity jurisdiction otherwise exists.

The proof made on the preliminary injunction established that the sole basis for the seizure of Mrs. Willits' property was the altogether fictitious assessment which Agent Zahurak implemented on the basis of Officer Ahearn's speculations. Furthermore, Mrs. Willits alleged, and the proof she adduced tended to show, that the seizure was sufficiently extensive to deny her all means of supporting herself and her children. The district court's assumption that Mr. Cravero, who owed her no legal duty to support whatsoever, would continue to voluntarily furnish the necessities of life to Mrs. Willits cannot mitigate the financial ruin inflicted upon her by this seizure.

If the IRS is correct in its contention that no notice of deficiency is required in a Section 6851 termination procedure, the best formalisms of a refund suit or a petition for redetermination would take many months to process. The more probable prospect is that, regardless of the lack of merit in the original assessment, more than a year could be consumed before her property was freed. For one in Mrs. Willits' circumstances, this does not constitute an adequate remedy at law for such an extensive seizure.

The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval if such use.

The plaintiff has urged us to hold that the illegality of Mrs. Willits' arrest vitiated the subsequent tax proceedings against her; and further that quick termination proceedings under Section 6851 necessitate a deficiency notice in accordance with Section 6212(a).[4] We expressly decline to reach either of these contentions.

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[3] Zahurak was initially advised that Mrs. Willits had 2 grams of heroin and 2 grams of cocaine in her possession at the time she was arrested. Though proof on the preliminary injunction hearing was not free from some minor contradictions, it did show that this information was totally erroneous and that at the time of her arrest and the seizure of her property, the only drugs possessed by Mrs. Willits were 4 tablets her testimony established to be medication (Desbutal) which had been prescribed for her by a doctor whose name she gave. As the district court found, the police laboratory determined these pills to be barbiturates.

[4] This is an issue which is the subject of extensive litigation with thus far varying results in the several circuits that have addressed the problem.

The Second and Seventh Circuits have held that an assessment made under Section 6851 and Section 6201 is not a "deficiency" within the purview of Section 6211 for which Section 6212(a) mandates that notice issue. See *Laing v. United States* [74-1 USTC ¶ 9243] 496 F 2d 853 (2d Cir. 1974) [#73-2537 May 15, 1974], *aff'g* [73-2 USTC ¶ 9665] 364 F. Supp. 469 (D. Vt. 1973), petition for cert. filed, 42 U. S. L. W. 3679 (U. S. May 31, 1974) (No. 73-1808); *Chapman v. IRS* [73-2 USTC ¶ 9638], 487 F. 2d 1393 (2d Cir. 1973) (decision without opinion), aff'g 32 Am. Fed. Tax R. 2d 5027 (S. D. N. Y.); *Irving v. Gray* [73-2 USTC ¶ 9581], 479 F. 2d 20 (2d Cir. 1973; *Williamson v. United States*, 31 Am. Fed. Tax R. 2d (7th Cir. 1971). Concluding that a tax declared under Section 6851 is a deficiency within the ambit of Sections 6211 and 6861, the Sixth Circuit recently reached the contrary result. *Rambo v. United States* [74-1 USTC ¶ 9242], 492 F. 2d 1060 (6th Cir. 1974); *Hall v. United States* [74-1 USTC ¶ 9296], 493 F. 2d 1211 (6th Cir. 1974). This issue may have been involved, sub silentio, in *Lewis v. Sandler*, — F. 2d — (4th Cir. 1974 [#73-2185 June 6, 1974]. Currently, a number of appeals raising the question are pending in this court as well as in the Third, Fourth and Ninth Circuits. See *Boyd v. United States*, (E. D. Pa. 1974) (notice of deficiency not required) [33 Am. Fed. Tax R. 2d 1246 Apr. 16, 1974], appeal docketed, No. 74-1565, 3d Cir., June 10, 1974; *Schreck v. United States* [69-2 USTC ¶ 9541], 301 F. Supp. 1265 (D. Md. 1969) (notice of deficiency re-

Senator MORGAN. I would like to recite these facts just briefly. A lady in May of 1973 was driving a Cadillac automobile in Miami, Fla., when she noticed that she was being followed by another car. She pulled her car over to the curb and stopped, and the car following her pulled over behind her and stopped but no one got out.

She continued on down the road and after a short distance she was stopped and the other car came up and an officer held up a police badge. He asked to see her driver's license and the registration of the car. The car was registered in the name of another person these officers suspected of being involved in narcotics business. They arrested her, not on any narcotics charge, but on a speeding charge.

They took her to the police department, not to the place where you normally would take a speeding violator, but to the narcotics division. Then they used a trumped up charge of speeding to examine her pocketbook. They found some pills which were later analyzed to be barbiturates, although it was never brought into evidence. She stated they were prescribed by a physician. She was not charged with any narcotics violation, but because she was driving the car of a man they suspected of being involved in the narcotics business they called in the Internal Revenue. An IRS agent came down and he immediately terminated her taxable year from January 1, 1973, until that date, which I believe was in May or June of 1973. She had $4,000 in her possession. He immediately determined that she owed, on the basis of what he believed to be profits she might have derived from narcotics traffic, something like $25,000 in taxes, and imposed a jeopardy assessment taking the $4,000 and all of her other property.

After lengthy judicial proceedings the courts returned it all back to her, but only after she had gone through the Circuit Court of Appeals.

Here is what the court said: "The Internal Revenue Service has been given broad powers to take possession of the property of citizens by summary means that ignore many basic tenets of preseizure, due process, in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrong doing, not as tax collection devices, but as summary punishment to supplement or compliment regular criminal procedures. The fact that they are cloaked in the garb of a tax collection, and applied only by the narcotic project to those believed to be engaged in or associated

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quired), reaff'd on recon., — F. Supp. — (D. Md. 1973) [33 Am. Fed. Tax R. 2d 749 Dec. 19, 1973], appeal docketed, No. 74-1566, 4th Cir., May 16, 1974; *Clark v. Campbell* [72-1 USTC ¶9233], 341 F. Supp. 171 (N. D. Tex. 1972) (deficiency notice required), appeal docketed, No. 73-2147, 5th Cir., argued Dec. 4, 1973; *Aguilar v. United States* [74-1 USTC ¶ 9173], 359 F. Supp. 269 (S. D. Tex. 1973), appeal docketed, No. 73-2454, 5th Cir., argued Dec. 4, 1973; *Rodger v. United States*, (S. D. Fla. 1974) (deficiency notice not required) [#73-705-CIV-CA Jan. 29, 1974], appeal docketed, No. 74-1723, 5th Cir., Mar. 18, 1974; *Rogers v. O'Donnell*, (M.D. Fla. 1974) (deficiency notice required) [#72-246-ORL-CIV Mar. 5, 1974], appeal docketed, No. 74-1731, 5th Cir., Apr. 18, 1974; *Lisner v. McCanless* [73-1 USTC ¶ 9299], 356 F. Supp. 398 (D. Ariz. 1973) (deficiency notice required), appeal docketed, Nos. 73-2037 & 73-2038, 9th Cir., June 8, 1973; *Woods v. McKeever*, (D. Ariz. 1973) (deficiency notice required) [32 Am. Fed. Tax R. 2d 5967 Oct. 16, 1973], appeal docketed, No. 74-1133, 9th Cir., Jan. 25, 1974; *Williams v. United States* [74-1 USTC ¶9139], 373 F. Supp. 71 (D. Nev. 1973) (deficiency notice required) [33 Am. Fed. Tax R. 2d 467 Nov. 16, 1973], appeal docketed, No. 74-1192, 9th Cir., Feb. 4, 1974; *Avery v. Sparley*, (E. D. Wash. 1973) (deficiency notice required) [Civ. #3860 Nov. 16, 1973], appeal docketed, No. 74-1625, 9th Cir., Apr. 10, 1974, *Shaw v. McKeever*, (D. Ariz. 1974) (deficiency notice required) [33 Am. Fed. Tax R. 2d 1213 Mar. 22, 1974], appeal docketed, No. 9th Cir. [notice of appeal filed May 17, 1974); see also *Musso v. Commissioner* [CCH Dec. 32,091(M)], 32 CCH Tax Ct. Mem. (1973) (Section 6212 notice of deficiency prerequisite to Tax Court jurisdiction to redetermine taxes assessed after Section 6851 termination), appeal docketed, No. 73-3916, 5th Cir., Dec. 12, 1973.

with the narcotics trade must not bootstrap judicial approval of such use."

Mr. Chairman, I know I have overstepped my time, but let me add just one other thought.

In the Intelligence Committee hearings we have found that through the years Internal Revenue Service has been used for many purposes other than legitimate tax purposes. Testimony was that in one case, the FBI did not want a certain college professor to attend the 1968 Democratic Convention, so they called on the Internal Revenue Service to audit his tax return and to keep him so busy that he would not have time to go to the Democratic Convention.

There is a memorandum in the files in the Intelligence Division, and I will give it to the chairman later if you like.

Senator HASKELL. I would like to have that very much.

[The information referred to follows:]

FBI

Date: August 1, 1968.

at the following in ----------
(Type in plaintext or code)

AIRTEL ----------
(Priority)

To: Director, FBI.
From: SAC, Midwest City.
Re: COINTELPRO—NEW LEFT, IS.

By routing slip, 7/11/68 the Bureau forwarded to Midwest City copies of the income tax returns of Professor X (Security Index—Key Activist) for the years of 1966 and 1967. An examination of these returns reflects that Professor X claimed deductions which, at the very least, provide a basis for questioning by IRS. For example, in the year 1967 he claimed total deductions of $6,565 from a total adjusted income of $16,689, or over one-third of his adjusted gross income. Included in these deductions were automobile expenses, other travel expenses, maintenance of office space in his home even though he has office space at a Midwest University and the Group A and Group B and charitable contributions. Included in the latter item were contributions to the SPOCK Peace Fund, Counseling Service (an anti-draft operation, Student Non-Violent Coordinating Committee and SDS.

Bureau authority is requested to call Professor X's returns for 1966 and 1967 to the attention of local IRS officials with the view of suggesting that that Service may wish to afford his returns further auditing and examination. In so doing, Midwest City further suggests that local IRS be advised of public source material concerning Prof. X activities in the National Mobilization Committee, of which he is a high official and the anti-draft movement with which he has been publicly identified on numerous occasions. If the Bureau concurs with this recommendation it is contemplated that information concerning Prof. X would be called to the attention of Inspector ———— of the IRS office in Midwest City. Inspector ———— worked closely with the Midwest FBI Office in relation to other matters and he has been extremely cooperative, discreet and reliable during the course of these relationships.

In the event IRS decides it feasible to proceed with further examination of Prof. X's returns, the following benefits could be expected to accrue therefrom:

1. Due to the burden upon the taxpayer of proving deductions claimed, Prof. 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 deductions 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 Hall Counseling Service may also be productive of embarrassing consequences.

2. If Prof. 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 Prof. 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 Prof. 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.

The Bureau is requested to consider this suggestion and afford Midwest City the benefit of its comments at the earliest possible time. No action will be taken by this office pending receipt of the Bureau's response to this COINTELPRO recommendation.

Senator MORGAN. The memorandum, which is from the FBI to all its field agents, asks that all members of black student activist groups be kept under surveillance regardless of whether they had engaged in protests or not. And such surveillance was to include auditing of their tax returns in accordance with Bureau instructions. Those Bureau instructions were to keep them so busy they could not engage in anything else.

How willingly the Internal Revenue Service complied, I do not know. But the testimony before our committee is that last year the tax returns of over 29,000 taxpayers were distributed and used by other agencies of the Federal Government.

Mr. Chairman, if our people are going to maintain confidence in our Internal Revenue Service, and voluntarily pay the taxes that are justly due, then they have to be assured that the information they submit to the Internal Revenue Service is going to be used for legitimate tax purposes.

I hope this committee will take these matters under consideration.

Senator HASKELL. Thank you very much Senator.

It seems to me that you have hit on the heart of the issue. If IRS personnel, or IRS powers, or IRS information is used for peripheral purposes, how can the taxpaying public have confidence in the impartiality of the administration of our tax laws? I think that is the heart of the whole matter.

I would like to get your reaction to this—yesterday Judge Tyler, who, as you know, is the Deputy Attornel General of the United States, basically said in his testimony that we put the use of piggybacking on the IRS powers such as jeopardy assessments pretty low on the totem pole, but we put the use of the skilled financial accounting personnel of the Internal Revenue Service very high on the totem pole.

And also, I think, there was testimony that information in the files of the Internal Revenue Service could be very helpful to other law enforcement agencies. For that reason he wanted to be sure that the strike forces, which—as you are very well aware—are composed as an interagency task force, were kept together. And it was his feeling that to find other skilled financial people might be a duplication of effort on behalf of the Government. And that was really his reason for wanting to continue the IRS's involvement.

I wonder if you have a reaction to that opinion of Judge Tyler's?

Senator MORGAN. Yes, I do, Mr. Chairman, and I feel very strongly about it.

There is no reason why accounting expertise cannot be developed in the Federal Bureau of Investigation; and if it is an additional burden or expense to the taxpayers of this country to have this duplication of expertise, I think it is a small price to pay in order to preserve the due processes that every citizen is entitled to.

Mr. Chairman, when the new line of decisions of the U.S. Supreme Court began to come out in the 1960's—the *Escobedo* case and the

Miranda warnings for example—law enforcement officers all across America threw up their arms and said they could not live with them. But the contrary was true, Mr. Chairman.

What they did was to become better law enforcement officers. They learned to live within the law and to develop techniques, skills and expertise to do it themselves. But as long they could flout the law, there was no need to develop this expertise. I say as long as the Federal Bureau of Investigation and other Federal law enforcement agencies can call on the Internal Revenue Service, then they are not going to develop these skills; and you cannot call an Internal Revenue Service agent without him bringing into play information he has gained from tax returns.

I question the wisdom of making available to the Justice Department tax returns and criminal investigations unless they come through the regular processes of the court. For instance, if a Government car were to run into your car and you filed a claim against the Government for damages to your car, more than likely one of the first things the Government would do would be to send over and get your tax returns. I know this for a fact, Mr. Chairman, I served in the Judge Advocate General Reserves Office of the Air Force in the Litigation Division. And every time a claim, a lawsuit, was brought in the Federal courts against the U.S. Government by a private citizen, the first thing we did was get his tax returns.

This information might be available to you and in private lawsuits but it would have to be by subpena by due process. I think the same procedures should apply to the Government that apply to an individual.

Senator HASKELL. I cannot thank you enough, Senator, for coming forward and testifying. Not only your long experience in practicing law, but the fact that you were for 6 years chief law enforcement officer of your State, gives what you have to say a tremendous amount of weight. And I want to extend my very, very heartfelt thanks.

Senator MORGAN. Thank you, Mr. Chairman.

Senator HASKELL. Thank you very much.

The next witness is the Honorable Ramsey Clark, former Attorney General of the United States.

Mr. Clark, we are very pleased to have you here.

STATEMENT OF HON. RAMSEY CLARK, FORMER ATTORNEY GENERAL OF THE UNITED STATES

Mr. CLARK. Thank you, Mr. Chairman.

It is good to be here and I appreciate your holding these hearings. This is not a field in which I have great expertise. I would urge you to hear from Louis Oberdorfer and Mitchell Regovin who were the Assistant Attorney Generals in charge of the Tax Division in the 8 years I was at the Department of Justice. Regovin was also Chief Counsel at IRS for a while, which gives him a unique perspective.

My views stem more from my sense of constitutional and legal propriety and purpose than from any direct experience. I think the integrity of the taxing power is directly involved. It is basic to government, the price of civilization. Holmes once said anything that impairs that integrity impairs government and the welfare of the Nation.

I do not think you can force this society to pay taxes any more than you can force them not to drink whisky. People in the main are going to pay taxes because they believe in their Government and they care about their society and they believe that its purpose is fair and just. To use the taxing power to attack unpopular people, to use it as a means of focusing on individuals or groups that you fear or hate for any reason, to use the tax laws as a means of getting at someone who you feel has been guilty of some other crime will erode and finally undermine the integrity of the taxing power and do enormous damage to the country.

So I would urge a strict prohibition in the statutes against the use of criminal sanctions relating to tax laws for any other purpose than the effective enforcement of those tax laws. That is easier to state than to apply.

If you look at organized crime—I can remember as a youngster feeling that getting Capone through the tax laws was wrong. Capone never was a hero of mine by any means. But, there is some failure of system, some failure of integrity when a person—and I should not use him as an illustration—is allegedly engaged in a whole range of wrongful misconduct, including potentially violence, and the only thing you can get him on is a violation of the tax law. There is some misapplication of power there, and it should not be done.

That does not mean, however, that you can blink at the existence of organized crime. You cannot ignore the fact that it is engaged in a business for profit. Often high profits are involved and presumably often without paying taxes, these people should have no special immunity from enforcement of the tax laws because there may be other laws that even range higher in the priority of public safety than the enforcement of the tax laws. They should, of course, be accountable for violations of tax laws as well. But they should not be brought into the focus of a tax investigation merely because they are believed to be organized crime figures; where your real purpose is to get them for illegal gambling or narcotics, or whatever their principal trade or occupation may be.

Let me say a word or two as well about how you enforce the tax laws themselves through investigation. I think it has been a premise of this country, I hope so, and I think it must be a premise of a people that intend to live by democratic institutions and enjoy freedom and adhere to a rule of law that the law can protect the public and provide for its needs by fair means, by honorable means. If law enforcement engages in dirty business it will finally imperil both the public's respect for it and its own self-respect.

These are the foundations for our Government under law, and for democratic institutions and, in my opinion, for freedom. That means that lawmakers have a high obligation and a difficult obligation to instruct the executive by law as to those activities that are permissible, those activities that are prohibited, and those activities that fall in between and afford some peril to freedom require regulation.

I would urge you, as I have urged other committees in the Congress generally, to assume that responsibility.

In one of his most powerful and articulate dissents, Justice William O. Douglas in the *Wunderlit* case describes the tyrrany of discretion, a minor discretion there in terms of freedom. It had to do with the finality clause of Federal contracts back in earlier years, of the rec-

lamation programs. Douglas concludes that of all the devices of tyrrany, uncontrolled discretion is the most dangerous. It is wrong for the agents on the street, it is wrong to the public to leave to their guess, to leave to habit, or perhaps erroneous assumption as to what has been done before, decisions as to the types of investigative activities that can be undertaken.

I urge the creation of a code prohibiting, where appropriate, invoking criminal sanctions, those investigative activities that are inimical to freedom. I would urge in the twilight zone, strict regulation. We have some history and a pattern, title III of the Omnibus Crime Control Act of 1968 which gives us what I consider to be an inadequate but, nevertheless, an existing regulatory experience with the phenomena of electronic surveillance or wiretapping.

We have had long experience under the fourth amendment with the judicial review of requests for search warrants. I think we are going to have to go beyond that and take the hard questions of what use of informants is permissible. I think we can devise rules. I think we must devise rules. I think we have to lean to the side that believes that the principles of this country involve an absolute necessity for fair conduct by its agents at all times, and under all circumstances.

I have no prepared statement. I do have—because of a longer involvement with it—a statement that I will give to the Select Committee on Intelligence Activities this morning, or this afternoon, depending on when they get to me. In it are nine recommendations for legislation relating to investigative enforcement functions.[1]

While the focus there is primarily on the FBI, to which I have had a closer and longer direct experience, and therefore some would not be relevant, at least in specific terms, I think the general principles apply. I will leave you a copy of it, and say that I think to focus only on one of more than 20 significant Federal investigative agencies at this time in our history is a bad mistake; we need the same discipline, the same effective and fair rule of law applied to all.

Certainly the Internal Revenue Service would rank high among those.

Thank you, sir.

Senator HASKELL. Thank you, Mr. Clark, very much indeed.

As you heard me mention to Senator Morgan regarding Judge Tyler's testimony; I am sure that Judge Tyler and those who think the way he does obviously would not advocate an unlawful use of the powers of the Internal Revenue Service, nor I am sure, would they advocate unlawful use of agents of the Internal Revenue Service's Intelligence Division or otherwise.

But the thrust of his testimony was that the strike forces were necessary, that the personnel of the Internal Revenue Service were highly skilled, sophisticated financial accountants; that in some part it was helpful to have access to tax returns of individuals. But primarily he dwelled on the expertise of the Service's personnel as a reason for involving personnel in an interagency group known as the tax force.

This basically was the thrust, if I recall correctly, of his testimony and the rationale. Do you have any comment on that?

Mr. CLARK. Yes, sir.

[1] See page 139.

The strike forces were initiated while I was Attorney General. It was something I believed in very deeply. The first strike force was in Buffalo. The second was in Detroit. By the time I left office we had had seven underway, and twice that many in the pipeline. If we could get money—I was not sure and it is interesting and rather important that I was not, but I found out this morning just by chance while I was waiting here that IRS was involved in the original strike forces.

My judgment is that it would probably have been involved primarily for a wrong reason, a reason of history, and that is beginning some time, but certainly by 1961, IRS developed a great deal of what we would call intelligence or information about organized crime, and that information, unrelated to the filing of tax returns, would be very important to the foundation and the beginning of a strike force operation.

I think that it is something that really ought to be examined carefully and I do not believe that IRS agents and other Treasury agents, or agents from any other investigative agency should be used in a strike force where there is not information approaching at least probable cause to believe that the statutes they have responsibility to enforce are directly affected and being violated.

To shift manpower, to shift intelligence activities is a very dangerous business. I have great respect for Judge Tyler, but I have to disagree. I think this is a question of fact so it can be readily determined.

If this assumption is that IRS has an accounting expertise that would be wasteful to duplicate elsewhere, I think he is wrong. The FBI—since I was a kid—has always had large numbers of accountants. I know when my father came to the Department of Justice you had to have a law degree or be a CPA to be an agent. And if I had to guess, I would guess that the number of CPAs and accountants that the FBI presently has available to it as agents, would number up in the thousands.

The idea that there is a particular expertise unique to IRS, unless you are talking about tax data, which is another subject, is contrary to my understanding of the skills of Federal investigators in the FBI specifically. I do not see that. I have great trouble with the idea of the use of tax returns and information produced voluntarily by citizens in accordance with the law and in compliance with tax requirements in paying their taxes for any other purpose. I think to permit the use of that information for other purposes is very dangerous; first to the integrity of the taxing power which is essential to government; second to the respect for government itself, it is an abuse of power.

And I would frankly even have a fifth amendment concern about it. I believe deeply in the underlying principle of the fifth amendment that individuals should not be compelled to give evidence against themselves either in the form of a direct accusation or indirectly because of a requirement of the tax code.

Senator HASKELL. Basically, I gather, it would be your view that the IRS personnel should involve themselves only where there is at least a good reason to believe there is a violation of tax laws of the United States. Other than that, I gather you would feel that they should not be involved in a general fishing expedition against somebody suspected of violating criminal laws.

Mr. CLARK. Insofar as your remarks apply to IRS, it is accurate. But I do not think anybody ought to be engaged in fishing expeditions. I do not think it is a matter of whether or not some of the others should fish, but not IRS. We should not fish. The IRS should not be involved unless there is reason to believe there has been a violation of revenue provisions. This kind of reason to believe there are violations should at least be on a parity with the required reason to believe there are violations of other Federal statutes.

One of the nine things I have urged is, No. 6 here, is that the Congress should strictly prohibit unauthorized agencies or private persons from engaging in criminal investigation authorized to another agency. That is not just a "plumbers" situation, where you pull the people out of the agency that has responsibility under the law for enforcing a particular statute, and set them after people under that statute. It is the shifting of personnel from IRS to a strike force or to supplement FBI in accounting areas. The FBI has got an enormous amount of accounting work it has to do that is totally unrelated to—just take all the work they do for the Civil Division, for the Lands Division and other divisions that are not related to the internal revenue laws at all. These areas don't involve that tax laws, and the FBI has acquired that expertise. We should not have agents floating back and forth because it holds a potential for dangerous abuse.

Senator HASKELL. Thank you, Mr. Clark, very, very much. I appreciate your appearing here.

Mr. CLARK. Thank you, sir.

I will leave this here.

Senator HASKELL. If you would.

[The prepared statement of Ramsey Clark before the Select Committee To Study Government Operations With Respect To Intelligence, U.S. Senate follows:]

STATEMENT OF RAMSEY CLARK BEFORE THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, U.S. SENATE

Must we remind ourselves? This is America. Freedom is our credo. Because we overcame fear and live free, our imagination and energy burst across the continent and built this incredible place. Fulfillment is the flower of freedom, born of no other tree. Freedom is the child of Mother Courage.

What utter outrage that as we approach our two hundredth anniversary of the quest for freedom striving still to "secure the Blessings of Liberty to ourselves and our posterity" we should turn, frightened, careless or unscrupulous, to police state tactics. Have we forgotten who we are and what we stand for?

Recent years have seemed a constant revelation of growing abuses of freedom. Frightened, hateful, insecure, craving power, a thousand ignoble emotions have justified means to obtain ends. We have felt the hot breath of tyranny in America. Many have found it comforting.

Some seeming paralysis grips us. Raised to believe the truth will set you free, we are told the truth is to dangerous and not for the people to know. A year in the wake of Watergate, the Congress has not enacted a single law to prevent its recurrence, while a Senate Bill 1 imperils freedom from the Committee on the Judiciary.

If we love freedom, we will demand a full accounting by government, federal, state and local of past conduct threatening liberty.

Your partial disclosures about FBI efforts to destroy the desperately needed moral leadership of Martin Luther King, Jr. are an important first service. We need to know more. For years I have pleaded for full disclosure. Five years ago, writing in *Crime in America*, I observed:

"There have been repeated allegations that the FBI placed bugs in hotel rooms occupied by Dr. Martin Luther King, Jr., and subsequently played the tapes of conversations recorded in the room for various editors, Senators and opinion

makers. The course of the civil rights movement may have been altered by a prejudice caused by such a practice. The prejudice may have reached men who might otherwise have given great support—including even the President of the United States. The public has a right to know whether this is true. If it is, those responsible should be fully accountable. A free society cannot endure where such police tactics are permitted. Today they may be used only against political enemies or unpopular persons. Tomorrow you may be the victim. Whoever the subject, the practice is intolerable."

What you have now revealed demands the creation of a National Commission, empowered to investigate thoroughly all governmental activity relating to Martin Luther King, Jr., his movement, family, friends, associates, church, the Southern Christian Leadership Conference, his activities and his murder. The Commission, broad based and fully financed, with the power to subpoena documents and compel testimony, should report to the Congress, the President and the People. When the evidence warrants it, a special grand jury should consider its findings. The Commission should develop, draft and present legislation, regulations and review procedures to prevent recurrences of wrongful conduct it uncovers.

We must recognize the far greater danger and injury flowing from government misconduct than from any threat claimed to justify it. Government can only be effective with the support of the people. The people will only support government which earns its respect. People do not respect "a dirty business."

Law enforcement will not long respect itself when it engages in wrongdoing. Integrity will be destroyed. Good people drawn to public service will abandon it. A mystique of cunning and surreptition will drive out objective, lawful investigative priorities and practices. America, too, can be a police state. The only special immunity we have known has been our commitment to freedom.

The notion that moderate Machiavellian means are required by dangerous conditions and can prevail over a radical Machiavelli is twice wrong. An unbridled discretion in police power is the sure road to despotism. We should learn from the words of a great and uniquely free man, William O. Douglas:

"Law has reached its finest moments when it has freed from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times his liberty of movement; at times his freedom of thought; at times his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."

The only acceptable course is constitutional principle.

Now, as Lincoln urged at Cooper Union in the darkening year before the Civil War, "Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it."

A society aspiring to freedom, to the rule of law and democratic institutions, can prevent domestic insurrection, crime and wrongdoing within its own borders by fair, lawful, honorable means. To adopt lesser means is to kill the American Dream.

We gave some cause to the Soviet newspaper Tass to report as it did in January of this year with regard to CIA–FBI activities: "And now it is obvious that fundamental rights of citizens are flouted in the leading country of the 'free world.'" It is for you and me now to redeem our pledge to freedom for humanity. And we must begin at home.

From a larger number of recommendations, I will outline nine proposals I have urged to control domestic surveillance, preserve freedom and protect society. I urge the enactment of laws implementing them.

1. Specific statutes should authorize, prohibit or regulate every investigative and enforcement method and practice for federal, state and local government. Obviously, disruptive government activities such as those revealed in Cointelpro or against the Ku Klux Klan should be subjected to criminal sanction. Every authorized act must be founded in law. Government agents should not have to guess what is permitted.

2. Police investigation and accumulation of data, files or dossiers should be prohibited except in criminal investigations initiated only where there is probable cause to believe a crime has been committed. Information retained by police from public sources for general informational purposes, such as newspapers, should be kept equally available in its original form to the public and the press.

3. Where techniques inherently inimical to freedom such as paid informants or electronic surveillances (I oppose both) are authorized by law, they should be stringently regulated. Court orders meeting Fourth Amendment standards should be required. Internal compliance, inspection and reporting to the highest

authority should be rigorous and regular public reporting of times, numbers and duration required.

4. Every individual and organization should be entitled to notice of, and on demand to review, any information possessed by any investigative or enforcement agency concerning him, her, or it, unless that information is part of an ongoing criminal investigation where it should be subject to judicial rules of discovery and full disclosure not more than two years after receipt.

5. When government agencies act unlawfully, responsible persons should be subjected to criminal sanctions, civil damages and injunction.

6. Law should strictly prohibit unauthorized public agencies or private persons from engaging in authorized criminal investigation.

7. Law should prohibit and punish leaks of information from government investigations which can either damage reputations or prejudice fair trials.

8. Freedom of Information Acts at all levels of government should open investigative agencies to public authority. Democracy is premised on an informed public. Only rights of privacy and the integrity of ongoing criminal investigations should exempt information from disclosure.

9. Civilian Review Boards comprised of the broadest citizen representation, with power to subpoena witnesses and documents and compel testimony should be created for all police departments and investigative agencies. They should oversee, check, initiate studies, review and determine complaints of wrongful conduct and report regularly to the legislature, executive, judiciary, the public and the Fourth Estate.

If this sounds burdensome, it is a small price to pay for freedom. Without such safeguards we will enter our third century with liberty exposed to clear and present danger. We must ask ourselves, in the words of Justice Hugo Black "whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution will have the confidence and courage to be free."

Senator HASKELL. Our next witness is the Honorable Randolph Thrower, former Commissioner of Internal Revenue.

We are pleased to have you here, Mr. Thrower.

STATEMENT OF RANDOLPH THROWER, ESQ., FORMER COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. THROWER. Thank you, Mr. Chairman.

My name is Randolph W. Thrower of Atlanta, Ga., an attorney. I was Commissioner of Internal Revenue from April 1969, to June 22, 1971. I am very pleased to be able to respond to the invitation from the chairman to testify on the matters now before the committee. The invitation came to me while I was out of the city, and I have not been able to prepare a written statement. I did have the opportunity to review some of the statements presented on Monday here before the subcommittee, and could comment briefly on some of the questions raised there.

The strike force concept was fully reviewed and approved by me, and in the Treasury Department in 1969. After a very full discussion and the arrival at an accord with the Department of Justice, we agreed, subject to the availability of the manpower through increased appropriations, to enlarge the operations substantially and to allocate more manpower to it.

We agreed upon organizational matters and operational procedures, and it was during my term a subject of continued discussion and review. The basic concept of the organized crime effort, as I understood, involved the cooperative and coordinated investigative efforts of several investigative agencies. The objectives of each could more effectively be fulfilled in this particular area of concern to all, than to

have it done separately and in an uncoordinated way by the several agencies. Each of the participating agencies recognized, as did the IRS, a heavy responsibility within its own area of responsibilities in connection with the several problems of organized crime. Each of us, including the IRS, recognized that there were particular, special difficulties in carrying out its responsibility in the organized crime field, and thus, the concept was that this cooperative and coordinated investigative effort would contribute best to the objectives of each of the several agencies.

It has now been operating on an expanded basis for several years. I think it is quite appropriate that this hearing be held. I think it is quite appropriate for the operations to be reviewed. I would suggest even, if I may, Senator, that a careful study and full report on the operations of the organized crime project or concept from its initiation would be very useful. I would think that a staff, such as a staff of the Joint Committee, could make a very useful contribution through a thorough study, having available to it the files and information of the two agencies or departments. This is certainly fully within the oversight responsibilities that the Congress has in the administration of the internal revenue laws.

Several questions have been raised by the testimony. I think one of the important questions would be the standards to be used in evaluating the worth of such a program, how to justify it or find that the effort is not justified. From the standpoint of the Internal Revenue Service could it be simply the amount of tax collected or the amount of indictments and convictions, the number of indictments and convictions obtained? Would it include an appraisal of the impact on organized crime itself or general tax compliances secured, or the extent of the tax deterrents established? Certainly it cannot be measured by the usual standards in the application of revenue agent time, which are time, cost, and tax collected, plus an appraisal of the deterrent value of an IRS presence.

Yet, all of these need to be taken into account. Criminal cases, criminal investigations by the Internal Revenue Service within the organized crime field generally take a great deal more time than other cases on the whole. They are certainly on the whole less productive in tax collections than other cases. The number of indictments and convictions secured during the course of a year relative to the effort has always been fairly low, I think around a thousand, perhaps, in the entire Internal Revenue criminal field for a year.

The organized crime area itself represents probably the most difficult of all of the areas of noncompliance that the Internal Revenue Service investigates. The question may be raised as to whether the Internal Revenue Service has the responsibility to investigate so intensively in the organized crime area. As a matter of general policy, the Internal Revenue Service has focused attention upon any area, any segment of our society, where it appears that there is significant tax evasion. Where this is found or there is reason to suspect that such evasion exists, attention is focused upon the area, and it does not make any difference whether it happens to be waitresses at the moment, or doctors, or lawyers, or members of organized crime, there is a focus there. I think we do know from experience that tax evasion is rampant in organized crime, and the avoidance of tax on the large gains from

organized crime is an essential and indeed important part of the garnering of moneys within organized crime. Much of the gain would have to be returned. Much of the illegal gain would have to be returned if it were properly subjected to tax.

Because it is a difficult area, though an area of rampant tax evasion, should the IRS turn its back and walk away without an attempt at thorough coverage. Assuming there were then justification for a concentrated, organized, and continued effort to secure compliance in the area of organized crime and to detect and prosecute tax evasion in the area of organized crime, should the selection of the cases and the direction of the investigations be undertaken solely by the IRS, or as now, through the cooperative strike force effort of the Internal Revenue Service and the Department of Justice?

I would certainly welcome a report on the extent of the cooperative effort of the several agencies which were committed to a joint effort in the organized crime field. I do not know how extensive the cooperative effort and how significant and how effective this has been. Has it been on the whole largely an IRS effort directed by the Department of Justice? It was a source of concern, I would say frequent concern on my part, that the cooperative aspects of the program were not developing to the extent we were all assured that it would when I reviewed and approved the expanded program.

I am certainly not suggesting that there was not an extensive cooperative effort. On the other hand, I never felt assured that it was entered into as fully by all of the agencies as I had initially contemplated or had been led to believe that it would. I think this would be a question worthy of examination. If, in fact, it is not an effective, efficient cooperative effort, but simply an IRS effort directed by and in which attorneys of the Department of Justice are actively participating, then I would question the continued program on this particular basis. I would think serious consideration might well be given to a return of it to the Internal Revenue Service.

This certainly does not mean that the attorneys of the Department of Justice would not participate. The Department of Justice is the lawyer for the Internal Revenue Service in all civil and criminal cases in all of the courts, other than the Tax Court. Necessarily there is close communication and cooperation between the two agencies or departments, and this communication, of course, is not confined and need not be confined solely to cases within the strike force area.

Another question discussed this morning is whether IRS agents are being used to investigate nontax crimes. I agree with what has been said with respect to the very broad summary of powers of investigation given to the IRS. An FBI agent, for example, has no such powers. Without the assistance and powers of a grand jury and without securing warrants from the court, other agencies could not examine as fully or as summarily as the Internal Revenue Service agents are able to do. Beyond this, revenue agents are voluntarily given great access to records for examination. Certainly these powers and privileges of access should not be abused to conduct nontax investigations under the guise of tax investigations. I think no one would take issue with that. Consequently, whether the organized crime effort is in the Internal Revenue Service or, as now, in joint strike force area, the IRS must participate in the selection of its own cases and must, in the direction

of its cases, have the ultimate decision and the right of veto as to its participation and direction.

This is, as I understood it, implicit in the program that was planned. The investigating agents remain under the direction of IRS group supervisors and other superiors in the line. They are not taken out from under the Internal Revenue Service responsibilities and merely assigned to the Department of Justice. We do know that, as I have mentioned, tax evasion is rampant in organized crime. It is an easy assumption that, where there is reason to suspect the production of substantial income from criminal activities, it is not being reported, and consequently, the drawing of the line might, in many instances, not be an easy one. It cannot be drawn in accordance with any clearly definable standards. Nevertheless, it should be made clear, I would suggest, that the IRS not be used to do any of the work of the FBI.

I have a very high regard for the FBI. I think they can develop and should develop all of the capabilities that are required for the investigation of nontax crimes.

Another matter, I think, of greatest importance, in whatever form such a program is carried out, that there are maintained the same strict and high standards of prosecution that the IRS observes in other criminal investigations. A case is not recommended for prosecution by the Internal Revenue Service until, one, its representatives are convinced, satisfied of the guilt of the taxpayer and in addition, are satisfied that they have acquired evidence which will demonstrate or prove this beyond a reasonable doubt.

Only under these circumstances would a case be recommended to the Department of Justice for prosecution. This was very thoroughly discussed with the Department of Justice when the expanded program was approved. It was agreed that the same standards, that the same reviews of the cases, would be observed as in the ordinary tax cases, that is, at the several levels of review within the Internal Revenue Service and within the Office of the Chief Counsel and at the General Counsels throughout the country. There was no shortcutting of the process and no lowering of the standards.

Also, we insisted upon a review as in other cases by the Tax Division of the Department of Justice rather than a decision directly by and solely in the Department by the Criminal Division. The only concession we made in this respect was to agree to an acceleration of the process in those cases where the Department, principally through the Criminal Division, indicated that a shortening of the normal time process, which is generally very long, was imperative. But there was no lowering of the standards on the part of the Internal Revenue Service and no lowering of the standards on the part of the Tax Division of the Department of Justice, which has also consistently over a long period of years maintained very high standards in determining whether to seek indictment in a tax case.

As a consequence of this, the number of indictments each year, as I mentioned, has been consistently quite low. One product of this, I have found during my time of service, was that the Department of Justice and Criminal Division on occasion, not infrequently—my recollection is too frequently—would move ahead with nontax indictments and would prosecute them and simply not wait for the full, more thorough, I would suggest, examination and review of the tax

crime. Consequently, not infrequently, in important cases for prosecution in the organized crime field, there would be no indictment for the tax crime. This clearly denied to the Internal Revenue Service, to our revenue system, to the Government and to our Nation the deterrent value of a tax indictment and prosecution in there cases.

I consider this to be a very substantial loss, particularly where there are so few indictments and convictions each year. I felt that the Criminal Division possibly did not show a sufficient appreciation of the value to the revenue system and to the Nation of the deterrent value of a tax prosecution. This was a source of not infrequent discussion. I think in any thorough review, it would deserve attention. I would say I appreciated Judge Tyler's comments upon the value and thoroughness and competence of the Internal Revenue's investigating agents. I consider them to be a body of very able, very dedicated persons. I think they frequently have been criticized without the respect being accorded to them that any dedicated and efficient public servant is entitled to.

Certainly, there is a tendency and temptation in criminal investigations for overzealousness at times to enter in. I had experiences of this as any agency would. Certainly, I saw and felt and sensed in the IRS as in the Nation a new spirit of respect for civil rights, for the rights of individual taxpayers. On the other hand, the very processes which I have discussed and reviewed were directed toward preserving those rights. At the same time, there is an obligation to the entire public which was accorded also very high respect in the IRS, to see that the internal revenue laws are enforced, evenly over the entire society, and that there is no segment of society which has an immunity or is not expected and required to observe the internal revenue laws.

This is not confined to organized crime. We gave great attention to the question of political contributions and the then Assistant Attorney General, Tax Division, Johnnie Walters, and I and my Chief Counsel, Martin Worthy, early in our administration saw that the fraudulent reporting of political contributions as business expenses on tax returns was a vice of serious concern to the country, far beyond the limited dollars involved. The dollars were not great, but this too often involved conspiracies between top executives in business and officeholders, or would-be officeholders or their representatives, not only to evade the laws with respect to political contributions, but then to evade the tax laws in concealing it. That was not a great problem in terms of the dollars involved, but it was a great problem so far as society was concerned. We considered it justified that we give a great deal of attention and apply manpower to this and try to let the people know, both in the political area and in business, lawyers and accountants as well, that we considered this to be a very serious practice of petty evasion, to be far beyond the small amount of dollars involved, and that we were going to pursue it very vigorously. And we did, with close cooperation and coordination with the attorneys of the Department of Justice. Although Assistant Attorney General Walters and I and our staffs frequently conferred about these programs there was no assignment IRS responsibilities to others. It was not coordinated effort with other agencies as in the organized crime effort.

Thank you, Mr. Chairman, for allowing me to make these comments and observations.

Senator HASKELL. I appreciate it, Mr. Thrower, very much indeed. I do have a few questions which are basically just matters of fact.

During the time you were Commissioner IRS personnel, of course, participated in the strike force activities we have discussed. Were there any other law enforcement efforts that you were called on to assist in other than obviously the administration of officials of the Internal Revenue Service? In other words, were there any other law enforcement efforts with outside agencies where your superior, the Secretary of the Treasury, or anybody else called you to engage in?

Mr. THROWER. Yes. There were not infrequent calls or suggestions. On the whole, I resisted them very strongly.

Senator HASKELL. What kind of calls would these have been?

Mr. THROWER. One involved the crises with respect to the hijacking of airplanes. The immediate almost overnight answer provided was to put armed guards on the planes with the consent and approval of the airlines involved and the pilots, I suppose, of the several planes. There was simply not manpower available in the country to perform this function with so little notice.

Senator HASKELL. Was there any other?

Mr. THROWER. We were asked to contribute and we did contribute. I got the people back as soon as I could. Getting them back once they were provided was difficult. There were proposals for the IRS in the social field with respect to the negative income tax and with respect to other social programs. I discouraged the use of the IRS manpower for this purpose. While recognizing the value of such programs, I felt the cost should be——

Senator HASKELL. This was a law enforcement request?

Mr. THROWER. No. This was not law enforcement. This was a program under contemplation.

Senator HASKELL. I was asking you what other law enforcement requests you might have received.

Mr. THROWER. I do not recall any other law enforcement requests, use of our law enforcement——

Senator HASKELL. You heard——

Mr. THROWER [continuing]. Law enforcement personnel for nontax crimes.

Senator HASKELL. You heard Senator Morgan refer to, for instance, the narcotics program. I think you were in the room when Senator Morgan testified. Were you asked to assist in the apprehension of narcotics violators?

Mr. THROWER. Yes; when the program was initiated it was discussed during the latter part of my term, principally, after I had submitted my resignation and was waiting several months for a replacement. A program was designed largely in the Treasury Department. With respect to the, not—narcotics program, it was approved and endorsed by Assistant Secretary of Operations and by the Secretary and Under Secretary. I was asked to cooperate. I had misgivings, actually, about the worth and value of the particular program and the way it was to be undertaken.

In the first place, I questioned seriously whether tax investigations would assist materially with respect to street crime of this sort, but was assured that the target of evasion to be sought after was not street crime but those behind the street criminals.

It occurred to me that such a program, if it were to be undertaken, probably should be part of the organized strike force program which had a concern in this area, and it did relate to organized crime.

Nevertheless, we did initiate a program. I am not in a position to evaluate it.

Senator HASKELL. I guess you were Commissioner at a time when protests took place involving the Vietnam War. I do not know if it would be accurate to say that protesting was at its height; but it certainly was at a time of high activity.

Were you ever asked to have groups who were anti-Vietnam war groups investigated?

Mr. THROWER. No, sir. I have no recollection of any such request. And I feel I would have had a strong response to such a request.

Senator HASKELL. During your tenure, at least in 1971, I gather that——

Mr. THROWER. Could I modify that?

Senator HASKELL. Certainly.

Mr. THROWER. To this I will expand my response, to this extent, so there will be no misunderstanding.

There were groups which advocated nonfiling, openingly and notoriously advocating nonfiling of tax returns or nonpayment of certain taxes—as, for example, the telephone tax. We did give some special attention, not a great deal, but some special attention to those cases simply because we could not ignore them.

But, for example, with respect to the nonpayment of income tax, we simply would ascertain generally where people were employed, and if there had not been withholding, there would be other reports on the compensation. And there were very few prosecutions—in many instances, simply a levy of the tax, a request for payments, and it would be paid. The same with the telephone tax.

Senator HASKELL. I gather in 1971 the Internal Revenue Service apparently supplied more than 50 percent of the manpower to the organized crime investigations. I gather that from a memorandum that you wrote to Mr. Rossides.

Assuming it is a fact—first I guess I had better ask you, Is that a fact?

Mr. THROWER. You gather this from a memorandum——

Senator HASKELL. You addressed this memorandum to Mr. Rossides who was the Assistant Secretary for Enforcement. You say here: "When one considers the participation of all Federal agencies in the program, IRS now provides substantially more than 50 percent of the manpower committed to battle organized crime."

I am reading this from your memorandum, so I assume——

Mr. THROWER. Yes; I did not intend to say, and if I had said it, it would have been, I think, an overstatement, that more than 50 percent of the IRS——

Senator HASKELL. No. It says that the IRS now provides substantially more than 50 percent of the manpower committed to battle organized crime.

That is not 50 percent of the IRS personnel.

But can you describe, in your opinion, the effect that that commitment of IRS personnel might have had on the general compliance

and enforcement of the tax laws, because this is a factor we have to consider.

Mr. THROWER. My recollection is that the number of revenue agents and intelligence agents committed would have numbered several hundred. It did cover a broad area, including the alliances found from time to time, between business, political officeholders, and organized crime. I would not want to discount the effort or the product in any way. I think it was quite important. I think it was quite important to the—for the IRS to assert a very strong presence in this area.

Senator HASKELL. Do you mean the organized crime area? You do not think it detracted at all from your general enforcement of the tax laws?

Mr. THROWER. I think it contributes to general enforcement to have it demonstrated to the people that all segments of our society are expected to observe the laws.

Senator HASKELL. I will just put the memorandum[1] following your testimony in the record.

It probably speaks for itself.

Mr. THROWER. I think I had indicated earlier that I questioned whether the IRS might not be called upon, or might not have been called upon, to carry more than its fair share of the total load, or that other agencies—and I frankly was directing this particularly at the Federal Bureau—might not be doing as much as I, at least, had been led to believe initially that they would.

Senator HASKELL. Thank you, sir.

The American Bar Association in February of this year adopted the following position. I would like to get your reaction to it.

I quote: "The Internal Revenue Service and its personnel should be limited to functions, the responsibilities and duties which are pertinent to the administration of the Internal Revenue laws."

Would you support that general principle, as a former Commissioner of Internal Revenue?

Mr. THROWER. No question. I think I would. It is at terrible cost that a significant portion of the investigative personnel, revenue agents and others of the IRS would be utilized, for example, in the price control program; would be utilized, for example, in skyjacking programs; and only where the demand is imperative and the need is shortlived and simply there is no other source available should the IRS personnel be used for this.

People, I am afraid, in asking for IRS personnel do not realize the total cost involved in diverting the IRS personnel, The compensation of the agents is quite small in relation to the total loss in revenue resulting from diverting agents into other fields.

Senator HASKELL. Thank you, Mr. Thrower, very much indeed. I appreciate your being here.

We will take a 5-minute recess, and then our witness will be the Honorable Johnnie M. Walters, former Commissioner of Internal Revenue.

Thank you, sir, very much.

[The following memorandum was submitted by Mr. Thrower:]

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[1] See page 149.

Attachment 3

MEMORANDUM

To: Mr. Eugene T. Rossides, Assistant Secretary for Enforcement and Operations.
From: Commissioner Thrower.
Subject: Proposed Narcotic Program—FY 72 Supplemental Request.

The President recently announced an all out effort to control the flow of narcotics traffic wherever it may affect American citizens. We fully endorse the concepts and the principles outlined in his proposal.

The Internal Revenue Service through its regular programs has already identified narcotics violators as a by-product of its war on the racketeer segments of society in this country. We welcome the opportunity to pursue this program further in a more definitive fashion by attacking the financial structure of the wholesaler. We believe this is one of the keys to eliminating the overall problem. However, I have reservations and am far from convinced that IRS is the vehicle to produce substantial impact in this area.

There is no question that IRS has always been fully committed and has always been a major contributor in terms of resources to those programs aimed at eliminating syndicated crime. When one considers the participation of all Federal agencies in the program, IRS now provides substantially more than 50% of the manpower committed to battle organized crime.

In recent years congressional legislation in the exempt organizations, as well as our continuing expansion of manpower commitments to strike force activities, have severely limited and in many cases hampered our efforts to deal with mainstream Service programs in the Audit and Intelligence activities. Our 1972 budget request indicates our willingness to participate in these special programs. However, even if the entire '72 budget request remains intact the impact of these various programs on the Service during the past few years will not be offset by one or even two years of uncut budgets.

The Service has gone as far as it can go in diverting manpower from our mainstream programs and we have already reached a dangerous compliance profile throughout the general population. Yet, no matter how one looks at it, a supplemental request must still result in manpower diversions of some kind. Newly recruited Special Agents and Revenue Agents need considerable time and training before they can assume a fully mature and productive role in the Service. Obviously, then, experienced manpower will be required to do the job in FY 72 and beyond.

Narcotics traffic is largely endemic to the major cities in our country. As in other special programs, this program will impact heavily in the large districts where there is little or no manpower available for further diversion. This will necessitate attracting needed personnel from other districts. We anticipate the need to offer temporary promotions, premium pay, and of course, per diem. Even with these inducements, we will probably have some difficulty in staffing properly to meet the challenge.

Due to our limited experience in the proposed program, we cannot forecast with any certainty upper and lower limits and resource requirements. We do believe, however, that our experience in all of our special programs requires that we proceed with caution, so that we may have adequate time to develop and implement a proper operating program.

The attached supplemental request is not a recommendation but reflects the cost of any given size program in multiples of 100 Special Agent manyears. I want to emphasize that the Service feels an obligation to resist manpower commitments until the supplemental request for replacement has been authorized by Congress. We further recommend that the established task force consisting of Service and Treasury officials convene as soon as possible in order to properly evaluate the short term and long term needs regarding IRS contributions in the overall program.

COMMISSIONER.

Attachment.

PLANNING ASSUMPTIONS FOR A NARCOTICS PROGRAM IN INTERNAL REVENUE SERVICE

1. Internal Revenue Service will examine or investigate those engaged in narcotics who generally have insulated themselves against arrest on a narcotics charge. This will be primarily wholesalers and financiers in the upper echelons.

2. Only experienced agents are qualified to conduct these audits and investigations. In the initial year of a program, this would entail diverting manpower from mainstream programs.

3. Other enforcement agencies having knowledge of narcotics trade will identify and furnish rather detailed information on major narcotics figures.

4. After evaluating all available information on specific individual or individuals, the Service will make the decision whether investigation or audit is appropriate. Investigation or audit will not be mandatory merely because an individual is known or suspected of being engaged in narcotics.

5. In the racketeer area, an average 1 of every 4 criminal investigations initiated results in a prosecution recommendation. Civil tax liability is recommended on a high proportion of all investigations. It can be assumed that the results of narcotics investigations will be substantially the same as in other racketeer cases.

6. Due to lack of records, most investigations will focus on the "net worth" approach which requires more investigative time than other types of financial investigations.

7. Surveillance of individuals will be required to determine location of funds and other assets and types of expenditures.

CONCLUSION

Based on the above assumptions, we can reasonably expect an experienced special agent to submit one prosecution case per year. Further, we estimate that, on all cases under investigation (both prosecution and non-prosecution) Internal Revenue Agents will recommend $75,000 in additional tax and penalties.

BUDGET INCREASES—FISCAL YEAR 1972

For every 100 Special Agents assigned to the Narcotic Program, the Internal Revenue Service will require a supplemental appropriation of *$7,200,000.*

The cost of the increase required was computed as follows:

	Positions	Man-years	Amount
Special agent	100	100	
Revenue agent	100	100	
Other	71	71	
Total permanent	271	271	$2,988,000
Premium pay and overtime			784,000
Total personnel compensation			3,772,00
Personnel benefits			268,000
Operating travel			1,722,000
Training travel			631,000
Material and facilities			807,000
Total			7,200,000

For every 100 Special Agent manyears, support personnel of 100 Revenue Agent—66 field clerical—5 National Office manyears have been included.

One-time special costs for purchase of enforcement automobiles and two-radio units for each enforcement vehicle have been included in the material and facilities costs.

Cost rates for staff expansion have been used for the hiring of personnel to be trained and eventually assume the duties of the personnel assigned to the Narcotic Program. Increased costs of premium pay for administratively uncontrollable overtime at the maximum rate of 25%, overtime pay for personnel other than Special Agents and travel costs for detail assignments have been included for the personnel involved.

The above cost is based on full-year employment, therefore no lapse for part year is shown.

If a decision is made to expand the Narcotic Program in the Internal Revenue Service, the required Office of Management and Budget schedules for a supplemental appropriation estimate will be provided.

[Brief recess.]

Senator HASKELL. Mr. Walters, we are pleased to have you here, sir.

STATEMENT OF JOHNNIE M. WALTERS, ESQ., FORMER COMMISSIONER OF INTERNAL REVENUE

Mr. WALTERS. Thank you, Mr. Chairman.

Mr. Chairman, I have prepared and have filed a statement which I can either read at this point, or attempt to summarize.

Senator HASKELL. That will be put into the record in full, so please just summarize it and speak extemporaneously.

Mr. WALTERS. I think, as the chairman knows from my prior appearance, my professional career has allowed me an unusual opportunity to see our Federal tax system working. Due to my experiences in private practice and in government, both at Justice and at IRS, I have been fortunate in being able to see it working both from the inside and the outside.

I am quite confident, Mr. Chairman, that our voluntary self-assessment tax system is truly a great national asset, but I am equally concerned that we do not appreciate that fully. As I see it, it is a mainstay, not only of our Federal governmental and economic systems, but also of our State and local systems as well. And certainly it is the envy of other countries around the world.

Even so, however, our tax system is not perfect, and certainly it is not invulnerable. Therefore, I think each of us should be concerned and should strive in every appropriate way, not only to protect the tax system, but to improve it and strengthen it.

Having said this, let me say what we have already seen demonstrated this morning. There are two schools of thought as to whether the IRS should participate in general Federal law enforcement.

The first school feels that to do so tends to erode our valuable tax system. The second school—in which I place myself—feels that it is important for IRS to participate in the general enforcement of our laws.

The first school, as I understand it, thinks that participation by IRS discourages the would-be general law violator, or the criminal element, or the corrupt official, from voluntarily filing his return and paying the taxes due. And there is some merit for this thought.

Certainly it may be true, but, nevertheless, Mr. Chairman, it seems to me that this ignores a very important fact. And that is the real impact of a vigorous enforcement of our tax laws.

The criminal, the general law violator, does not file his return and voluntarily pay his taxes in order to perform that function of a good citizen. He does it out of fear; he fears that if he does not do it IRS will put him in jail. And that is simply the reason he does it.

I believe that in doing that he does not attempt to live up to his other obligations. I think, therefore, that his fear will continue, and maybe even increase, if he knows that IRS does participate in a proper way in general law enforcement. I do not believe it will change his mind about filing his tax return.

I also feel that we operate under a unitary Federal system. IRS is one part—though a very important part—of that system. I believe that as a part of the unitary Federal system, IRS should cooperate to the full extent it properly can in the general enforcement of our laws.

No one—certainly not I—would argue that IRS should ever ignore its primary responsibility, and that is the even-handed, but vigorous administration of our tax law. That always has to be its primary function. I would do absolutely nothing that would tend to decrease or erode the effectiveness and fairness of our tax system.

On the other hand, I would do everything, I properly and appropriately could to enhance that system, because I think it is basic to our way of life, our governmental system.

IRS does not have, and never will have, adequate resources to perform fully its assigned responsibilities. That being so, it always must look for ways to achieve the greatest accomplishment in its primary field that it possibly can with the resources available. It can extend its potential accomplishment by utilizing fully the good will and the help of citizens, and also sister governmental agencies. It is essential that it do this, and insofar as some of the agencies—and I think particularly of the Department of Justice—it is absolutely essential that agencies work very closely. It is not only essential, it is mandatory, because IRS is totally dependent upon the Department of Justice for the final process in the enforcement of the tax laws; and that is litigation of both the civil and criminal cases. Therefore, there is no question but that we have to have cooperation in that area, Mr. Chairman.

Going on, it seems to me today we are all concerned, all loyal Americans are concerned with the increase in crime rate and also the apparent greater influence of organized crime. This being so, I am convinced that it is essential that all of us—individual citizens and government—do all we properly can to combat that. We must do it.

I think for anyone, either an individual or a Government agency, not to do all he or it properly can is going to meet with contempt and continuing criticism of the loyal Americans who expect us to do it. That is another reason, I think, that IRS can never afford to back off from a proper role in the general enforcement of laws.

What is the proper role? First and foremost, of course, it must pursue tax matters. It should not engage in general law enforcement where there is no tax function to be served.

In the area of organized crime, touching on some of the things that were said earlier, it was noted—and I think it is generally acknowledged—that in that area, in most instances where you have a massive violation of general law you also find violations of the tax laws.

That being so, I have no reservation about the use of IRS to a proper extent, and recognizing available manpower and restrictions. Putting IRS in there early in order to develop what very likely will be a tax case, although not always a tax case, I think is essential. I do not see anything wrong with that. I think the IRS derives an enhancement of its image by participating in that kind of an investigation.

Besides, who is to argue against? Is it the tax violator, the would-be tax violator, or the criminal? If that is what we are worried about, it seems to me that we should not shrink from that kind of a shriek. We should not be too sympathetic toward the lawbreaking person.

We all recognize—and it has been touched on already this morning—that IRS, over the years, has been called upon to perform in some areas where the sole issue is not taxes. It has been used in instances

where—and in one case that was cited this morning, the *Al Capone* case—where we were not able to convict an individual of other crimes.

I personally believe, Mr. Chairman, that the image of the IRS and its capabilities has been enhanced immensely from that kind of a case. You can find that on the street today—one of the things you will hear from people in all walks of life. Just yesterday I heard it from a retired former high Government official, most respected, and he referred to the *Al Capone* case as being the type of thing IRS should do.

I do not believe we should do away with that kind of possibility, although I would maintain, as others have, that in doing this kind of work we have always to acknowledge the resources available and use them wisely. We cannot afford to abandon the general tax field purely for the criminal area.

Let me just say, Mr. Chairman, that, based on my experience, particularly since 1969, I would say that the one recommendation I would make, if you were to ask me what I would recommend to improve our tax system most, I would say provide the IRS with adequate resources to do its job properly. Then provide responsible congressional oversight.

In the past years we have not had enough congressional oversight. At the present time, Mr. Chairman, I suspect maybe there is too much, and with some disadvantage. But I think we need to find the right amount of both, and then apply it because then I think we can accomplish great things with this tax system. And as we do so, we need to work to improve it, not to diminish the great benefit of this tax system which supports the entire governmental machinery we have, not only the Federal system, but to some extent State and local systems and also some foreign governments.

As citizens though, I think we rightfully can look to our Federal system, our Federal agents to work constructively together. I think when it appears they are not working constructively together, we are puzzled and are worried because we recognize in that kind of a situation that we are not deriving the greatest constructive potential that we should get. So I think it is absolutely essential, and particularly where you have agencies so close and also mutually dependent, to some extent, as the Department of Justice and IRS.

I would just like to close, Mr. Chairman, by noting again, as I have for years now, that in my opinion the IRS is a superior Government agency. It truly is one of our great agencies. It knows its basic responsibilities and generally performs well. It has performed admirably in areas other than strict tax areas, and I think in the future, unless Congress prohibits, it very likely will be called upon again at times of emergency or immediate concern. It can do those jobs well.

One reason it has been called on time and again is because it does perform well, quickly. I think however in some of those instances we would be well advised to stick more strictly to tax matters, but in saying this I certainly would not diminish in the slightest the required cooperation between the Department of Justice and the IRS.

I think we must have that, sir.

Senator HASKELL. Thank you very much, Mr. Walters.

I gather that you would, however, feel that there must be at least a possibility of tax fraud before you get the IRS involved.

Mr. WALTERS. Well, it depends on what you mean by possibility, Mr. Chairman. I think I would say yes; I think I would agree with that because you are going to suspect fraud or else you do not want to go. I would not insist upon probability.

Senator HASKELL. Would you leave it up to the determination of the IRS as to whether a case was taxworthy?

Mr. WALTERS. Yes, sir.

Senator HASKELL. I think that is important because obviously people in crime do not just commit crimes outside the Internal Revenue Code; they commit them inside the Internal Revenue Code. I think there is a balance. Somebody here the other day said that in their experience a farmer had a fraud case brought against him which was resolved against the farmer. And he said farmers from miles around started paying more attention to their income tax returns, which I think is an effect we should bear in mind.

I appreciate, Mr. Walters——

Mr. WALTERS. Mr. Chairman, may I just add I agree with you and the impact of your statement is that at least on a local basis the greater impact probably will come from prosecuting the farmer or the doctor or somebody who is not in white collar crime, but on a national basis I think we ought to consider the national impact, maybe even international, of getting a member of organized crime.

I know there is a contention on the part of some in the past, even, I have noted that generally speaking the ordinary taxpayer is more concerned with and impressed by what happens to his neighbor or to his lawyer or to his doctor, than what happens to Al Capone. And I can understand that and appreciate it.

However, as a nation, we do not hear about that farmer, but we do hear about Al Capone. I think there are compensating features, and what we need is a real balance. We need both.

Senator HASKELL. Thank you, sir, very much indeed.

[The prepared statement of Mr. Walters follows:]

PREPARED STATEMENT OF JOHNNIE M. WALTERS

My entire professional career has been concerned primarily with our Federal tax system. From January 1969 to August 1971, I served as Assistant Attorney General in charge of the Tax Division of the Department of Justice. And from August 1971 through April 1973, I served as Commissioner of Internal Revenue. Both before 1969 and after April 1973, except for four years with the IRS Chief Counsel's office (1949–1953), I have engaged in the private practice of law with primary emphasis in the field of Federal taxes.

My experiences have afforded me an unusual opportunity to see our Federal self-assessment tax system working from several vantage points. As a young lawyer on the Chief Counsel's staff, I was privileged to participate in the drafting of tax law and regulations. In private practice, I have represented taxpayers, both corporate and individual, in a wide range of disputes with IRS, both civil and criminal. At the Department of Justice, I participated in a large volume of tax litigation, both civil and criminal. And, as Commissioner, my responsibilities covered the entire spectrum of IRS and its broad assignments and obligations.

I state the foregoing as a preface for saying that our voluntary self-assessment tax system is a great National asset. It is one of the basic foundations of our democratic and economic systems. I am afraid that we as a Nation do not appreciate fully this great asset. It is a mainstay not only of our Federal system

but also of State and local systems as well; and it is the envy of other nations around the world. Even so, our tax system is not perfect and certainly it is not invulnerable. Thus, there is an ever-present need to improve and protect it. At all reasonable costs we must keep the system healthy and in good working order.

Having said this, let me now narrow my remarks to the announced purpose of these hearings—the appropriate role of IRS in general Federal law enforcement efforts. On this issue there are two schools of thought:

(1) Some quite conscientiously believe that our tax system should be used solely for the purpose of collecting taxes. Those who hold to this theory, with some merit, say that IRS's participation in non-tax law enforcement activities destroys confidence in our confidential tax system, thereby eroding it to some extent.

(2) Others equally conscientiously believe that in its administration and enforcement of our tax laws IRS can and should contribute to the general enforcement of the laws without damage to the tax system. Those who hold to this theory see IRS as a vital part of the Federal Government. They feel that it makes no sense to sanitize IRS from the overall enforcement of the Federal laws. In their view, for IRS to abstain from a cooperative effort in the overall enforcement of the laws in effect protects criminals and invites criticism of IRS and erosion of the tax system.

Those in the first school think that participation by IRS in general law enforcement discourages those who violate or may violate the general laws from voluntarily meeting their tax obligations. This may be so; however, it overlooks the impact of a vigorous administration of our tax laws. The criminal does not file his returns and pay his taxes because he wants to live up to that obligation of a good citizen. He does it because he fears that IRS will detect his tax violations and send him to jail. His fear will continue, or maybe increase, with IRS cooperating in general law enforcement.

I place myself in the second school, amongst those who believe that IRS, as a vital part of our unitary Federal system, can and should cooperate in general law enforcement as that cooperation results from the pursuit of its primary responsibility, i.e., the administration of our tax laws. I would do nothing to erode the effectiveness and fairness of our tax system. I would do everything I appropriately and properly could to enhance its effectiveness and fairness.

IRS's primary concern is and at all times must be the even-handed administration and enforcement of our tax laws. It does not and never will have adequate resources to accomplish the job. Accordingly, it must seek and utilize assistance from others, including other governmental agencies. To abstain a meaningful cooperation from other agencies, when it properly can IRS should assist those agencies in their assigned responsibilities.

In this era when the crime rate is rising rapidly and influence of organized crime appears to be escalating, we must do all we properly can to combat those who violate the rules of society, whether those rules be tax or general, and particularly when the violations are on an organized basis. I am confident that for any citizen or government agency to do less will draw the condemnation and contempt of that large body of law-abiding Americans who keep this Great Nation in its world leadership role.

The important overall task is to protect the law-abiding citizenry from the criminal without violation of law or the constitutional rights of the criminal. IRS's job is to pursue the tax violator. Whatever it does it must do lawfully. Not only should IRS conduct its business lawfully but also in all circumstances it should act courteously and properly. If in the pursuit of its responsibilities IRS contributes to the overall task by aiding and assisting other law-enforcement efforts, who is to complain? Certainly we should not shrink from the shrieks of the tax violator or the would-be tax violator.

Over the years IRS has contributed in appropriate but limited ways to general Federal law enforcement efforts. I doubt that its notable success has detracted measurably from the accomplishment of its mission or the general confidence in our tax system. And of one thing we can be sure: we cannot measure the value or lack of value of IRS participation in general law enforcement programs in dollars.

If I were asked for a recommendation as to how best to improve the administration of our tax system, I would say:

Provide IRS with adequate resources to administer the internal revenue laws properly and provide responsible Congressional oversight to see that IRS accomplishes its mission responsibly.

In past year, Congress has not exercised enough oversight. In this spasmodic era it may be exercising too much, with disadvantage. We have a good tax system. It is an absolute necessity in this real world that we keep it working well. Our task is to strive for improvement and performance that generates continuing general confidence. To accomplish such performance, IRS needs the full cooperation of its fellow law-enforcement agencies. IRS cannot do the job alone. When one needs and seeks assistance from others on a continuing basis, he must cooperate with them to the extent he can—otherwise what should be a congenial and prdouctive working relationship degenerates and loses its constructive potential for all concerned. As citizens we rightfully expect our Federal agencies to work together—properly—for the Nation's good; we are puzzled by and critical of failures that appear to diminish the constructive potential. Thus, our governmental agencies should work together within the framework of their respective assignments and responsibilities.

The Internal Revenue Service is a superior government agency. It knows its basic responsibilities and generally addresses them effectively. It also has performed admirably in some additional roles in periods of emergency and special concern. With all the institutional experience at hand, we should be able to judge the issue and set a sound course for the future.

Senator HASKELL. Our next witness is Mr. Richard M. Roberts, formerly Deputy Assistant Attorney General of the Tax Division.

STATEMENT OF RICHARD M. ROBERTS, FORMER DEPUTY ASSISTANT ATTORNEY GENERAL, TAX DIVISION

Senator HASKELL. We appreciate your coming.

Mr. ROBERTS. Mr. Chairman, I have no prepared statement. I feel that the tax laws should be used generally to assist the Department of Justice in enforcement—of overall enforcement of the laws, criminal laws; not that the investigators should be assigned to other investigations, but that the use of the tax law should be brought to bear against the organized crime area, against the organized criminal.

I do not think that the Revenue Service resources should be focused only on organized crime. Part of my function as a Deputy Assistant Attorney General was to supervise the Criminal Tax Section which handles the tax prosecutions for the Department of Justice. Also as an adjunct of that, I was the coordinator with the Organized Crime Section of the Criminal Division. In work that we did we tried to assign, and successfully did assign ultimately to each of the strike forces, a representative of the Tax Division.

We did not have them in the field. We kept them in Washington, but it was their duty to review the tax cases that were being developed in the strike forces. And I can assure the chairman that in that review there was no lowering of the standards of the Tax Division in the review that it gave to tax cases. In fact, a number of cases were eliminated at that early stage, so that the laws were not brought to bear against people who should not have been investigated by the Service.

And my understanding of the strike force operation is that the Service personnel is not assigned to the strike force as such. Their agents were not separated from the Service physically and assigned to the strike force where you have an investigative team made up of strike force personnel.

Senator HASKELL. If I understood the testimony on Monday correctly, there would be a specific individual from the IRS, maybe a specific individual from the SEC, maybe a specific individual from some other agency that would meet together; whether you call that official detachment or not I do not know.

Mr. ROBERTS. No, that is correct. There is one man from each of the intelligence areas where there is a strike force who is assigned to a strike force. It is his function to coordinate the Revenue Service activities. And what I understand his purpose is, is to receive from the strike force general intelligence, criminal intelligence that is available to the strike force, and to work with them in developing whether or not this person who has been identified as an organized crime figure, whether there should be the tax investigation.

Then once he determines that there should be, it goes back to the Service to conduct their investigation in their normal way.

Senator HASKELL. I presume they, of course, review his decision. He might decide it is not worthwhile and he might decide it is. Would that be true? I am talking about his superiors in the Service.

Mr. ROBERTS. That is true, or vice versa. And I assume they determine whether or not they should investigate in certain areas. Now once the investigation has started, then there is an open investigation, then we have our man who is assigned to that particular strike force coordinate the effort that is being made tax-wise against that individual who is a member of organized crime.

Senator HASKELL. Mr. Roberts, you have had tremendous experience. If this sheet is correct, you were with the Attorney General's office for 13 years. Is this correct?

Mr. ROBERTS. I was as a Deputy Assistant Attorney General for those 13 years; for 11 years prior to that I was in the Tax Division.

Senator HASKELL. So you have a total of 24 years?

Mr. ROBERTS. In the tax area, not all in the criminal tax area.

Senator HASKELL. Then I would say that you must know this subject inside out. Could the Federal Bureau of Investigation conduct some of the inquiries that the IRS is now engaged in?

Mr. ROBERTS. If I understand the operation of the strike force and the IRS agents, no, sir; because my understanding of it, in the true strike force, that the effort is by the Revenue Service on its own. Now there are other operations where they are known as joint operations and they are not always strike force operations.

Senator HASKELL. Describe those to me.

Mr. ROBERTS. If you get into a joint operation, you may have FBI, you may have Revenue Service personnel, and it is a joint operation where the Service and the Tax Division and the Criminal Division, that there were probable violations of the tax laws as well as other laws, and may be conducted under the supervision of a U.S. attorney and may be conducted under Organized Crime depending on who the person is who has been identified in the program that is being implemented. There you would have joint effort, but I do not believe that even there that the Revenue Service personnel would be doing work that the FBI agent should be doing.

There may be that in some financial areas that because they are looking at them from a tax point of view, that they are analyzing bank deposits or other financial statements, that they would give their opinion to whoever is conducting that operation. And there you could say that they have been doing something that maybe an FBI agent could do also. But they were looking at it also from their own point of view for tax.

Senator HASKELL. It is your understanding that the IRS men and women assigned to this strike force really represent the IRS and are under the authority of the IRS, not under the authority of somebody else?

Mr. ROBERTS. That is my understanding. I also must admit that I would only be closing my eyes if I did not understand or know that from general operations of anything, you have dominant figures and people who are not so dominant. I suppose if you have a dominant strike force head that he may be able to dominate the head of intelligence in that area, and therefore he may be more active in getting information and exchanging information, and getting information from the head of intelligence, and therefore he may be more vitally into the investigation than another head of a strike force.

Senator HASKELL. That is human nature. Tell me something about these joint operations. For example, right now we have the Gulf Oil Co. situation where the SEC apparently uncovered huge corporate political contributions. Is this the kind of situation that possibly a joint effort might be put into? Because theoretically, if Gulf Oil did it, the possibilities exist that other corporations did it. Would that be a subject of a joint effort?

Mr. ROBERTS. It could be, if the thought was that there were other violations other than tax, and I assume the thought is there may be SEC, there may be——

Senator HASKELL. It could be all sorts.

Mr. ROBERTS. There could be a joint operation in that area; yes.

Senator HASKELL. You left in May of this year so I do not suppose you know whether there is.

Mr. ROBERTS. I do not know whether there is.

Senator HASKELL. I will ask somebody who is currently with the Department. The Bar Association adopted this general standard that I read to Mr. Thrower, and I just wonder whether you, with all your experience in Justice, would agree with the thrust of this. I will just read it again:

> The Internal Revenue Service and its personnel should be limited to functions, responsibilities and duties which are pertinent to the administration of the Internal Revenue laws.

Is this a generalized standard that you would apply, or if not, what would you apply?

Mr. ROBERTS. I would apply that, Mr. Chairman. I think they should be limited to investigating tax offenses. I think also, though, that unlike some people who have testified here and my former boss, Mr. Clark, whom I have great admiration for, I do not feel the Revenue Service should operate in its own cocoon and keep the information within its own confines if it determines—and this goes beyond strike forces—if it, in the course of its investigation, discovers that a crime has been committed. I believe they should share that information with other enforcement agencies.

Senator HASKELL. I did not understand Mr. Clark to——

Mr. ROBERTS. If you only used their agents and if you, as I understand the proposal of those who might be called purists of tax laws, that you would keep the tax information—and information by tax, information by regulations is described as being any information obtained in a tax investigation—that that would remain within the confines of

the Service, unless, of course, they do ultimately prosecute for tax evasion. Then it becomes a matter of public record.

Senator HASKELL. It is my understanding that as a matter of law, if an Internal Revenue agent runs into something that looks like, let us say, a bribe or some other crime, that by statute, as it should be, he has to let the Department of Justice know. You are the expert; I am not.

Mr. ROBERTS. My understanding is that the proposal would be that they would not exchange information if they can exchange that kind of information under a statute. I know the administration proposal that came up 2 years ago, or maybe 3 years ago, to amend 6103, would have had written into the law the exchange and the allowance of exchange of information. But there is a school of thought that feels that that law goes too far and that there should not be an exchange of information that they develop in the course of their investigation.

Senator HASKELL. I am not familiar with that law, and I am not familiar with that thought. I do know that there is a school of thought that people as well as other law enforcement agencies, should not rummage indiscriminately through tax returns because they are confidential information. We happen to be of that school of thought.

On the other hand, it would be darn foolishness if the Department of Justice ran into something that looked like tax evasion and did not inform the IRS, or if the IRS ran into something that looked like a bribery case and did not inform the Department of Justice. I hope nobody is going so far as to make such a suggestion.

Mr. ROBERTS. Let me say this. In a prosecution, it would be after 1961, of either the mayor or city councilman in San Diego, evidence developed by the Internal Revenue Service could not be given to the local prosecutor for use in his case.

Senator HASKELL. For the record, where did that take place again. I would like to look into it.

Mr. ROBERTS. This was in San Diego in the prosecution of either the mayor or the chairman of whatever their governing board is in San Diego. He was prosecuted for bribery, and it was determined under 6103—and I participated in the determination—as I read 6103 and the regulations under 6103, the Service could not turn over to the local prosecutor the information that had been developed. This was a local prosecutor. This was not a U.S. attorney. This was the local county prosecutor.

Senator HASKELL. I see. Well, that would be a different situation.

Mr. ROBERTS. Under the regulations.

Senator HASKELL. If he could subpena, he could probably go to court and get a court order to produce the man's tax return, I would think.

Mr. ROBERTS. It was not a tax return. This was information gathered by the Service in their investigation. The tax return did not disclose the bridge, but the Service, in its investigation, had developed certain evidence that the local county prosecutor wanted to use, and 6103 and the regulations under it prohibited it. Under 6103, the request must come from the Department of Justice for disclosure. I have not known—and I may be mistaken in this, but I would not operate in that area having been in the tax area—the Service to come to the Department and say here is a violation of the SEC law we developed.

Senator HASKELL. Let me ask you a little bit different question. You have had 24 years of experience both in the criminal enforcement and in the tax area. As a matter of general compliance, seeking compliance by citizens of this country or anybody else who would have to file a tax return, would you feel that it was important to have a balanced enforcement proceeding? In other words, we focused here basically on organized crime. There are lawyers, farmers, corporate executives, union officials, all of whom from time to time probably do file intentionally inaccurate tax returns. Do you feel it is important to go across the entire spectrum of society, making examples of various people? Would that be an effecetive method of seeking compliance or would you put your efforts on, let us say, organized crime?

Mr. ROBERTS. I think it should be across the board, and I believe that it is across the board, Mr. Chairman. I cannot give you the exact figures of the number of organized crime cases. They are available I am sure. The chairman can get them if you ask for them from the Department of Justice, the breakdown of their criminal prosecution between normal criminal tax prosecutions and organized crime prosecutions. And I think you will find it does not absorb all the time of the Tax Division. I know it does not. I was there, and I know it does not absorb all the time of the Tax Division. There is a balancing effort and I am sure that there are some who would like it to absorb more of the money and effort of the Revenue Service than it does, and there are those in the Service who have expressed at times—and I would guess the memorandum you referred to earlier was probably one of Mr. Thrower's—that he expressed some concern over the amount of time and effort that was being demanded by the organized crime. This is a balancing, and I am not sure who should have the ultimate decision.

Senator HASKELL. That is the next question I was going to ask you.

Mr. ROBERTS. The ultimate decision, I suppose, has to rest with the heads of the agencies, meaning the Secretary of Treasury, who does have supervision over the Revenue Service, and the Attorney General. If you get lower than that, there are give and take between say the Commissioner or the head of Intelligence is coequal in the Department. But ultimately if it is a valid effort that is attempting to be made by the Criminal Division, Tax Division, or some other divisions, it will get to the Attorney General, and I assume he would go to the Secretary of the Treasury and that the decision would be made whether you do have an effort.

When Attorney General Kennedy came in, he started a drive against organized crime. He was aghast at the Government's effort. He was aghast at the lack of exchange of intelligence within their buildings and had never given it to the Department of Justice. He started that process, and ultimately, in an effort to make it more cohesive and a better effort, Ramsey Clark devised the strike force concept. As he explained, there were two in being. They were about to start more. They had more on the planning boards.

Senator HASKELL. Let me interrupt you. Speaking strictly about information—how did the Internal Revenue Service happen to have or what type of information did they have on organized crime that, let us say, the FBI did not have? How come, and what type?

Mr. ROBERTS. Well, you would have an investigation that they would be running, and a taxpayer may not have filed a return in a given year, in a given location. Let us say he did not file a tax return so they have started an investigation.

What do they find he is in?

They find he is making serious loans. He is operating houses of prostitution. He is doing various things that would put him in with what might be characterized as organized crime. He is in gambling. They have that information.

Before Kennedy came in, there was no exchange of this I understand. That is, on a general basis. Now there might be on a given instance or two an exchange of information. But on a regular basis, there was no exchange of that informa ion.

Senator HASKELL. It is my understanding that, under present law, if the IRS should find that some given individual is running a series of houses of prostitution, they would have to let the Department of Justice know. Is that also your understanding?

Mr. ROBERTS. They do under the strike force concept. But generally I do not believe they have to.

Senator HASKELL. I mean, under statutory law.

Mr. ROBERTS. No, sir.

Senator HASKELL. Our last witness is Mr. Eugene Rossides, former Assistant Secretary of the Treasury.

STATEMENT OF EUGENE ROSSIDES, FORMER ASSISTANT SECRETARY, TREASURY DEPARTMENT

Mr. ROSSIDES. Good morning, Mr. Chairman. I have a statement for the record, Mr. Chairman, which I will summarize.

Senator HASKELL. The statement will be reproduced in full.

Mr. ROSSIDES. Thank you, Mr. Chairman. I am very pleased to be here, and particularly pleased at the interest of this committee in oversight of IRS, and I echo the comments of Commissioner Walters that one of the most important factors that we need is a continuing, and I would say aggressive, oversight by the Congress, of not just Internal Revenue Service operations but agency operations in general. And I think it has been lacking regarding the Revenue Service.

Mr. Chairman, let me give you a little background of how the narcotics trafficker program developed because it bears on the relationship between the Internal Revenue Service and the Department of Justice and the strike forces and the Treasury and the Congress. Frankly, it developed because the strike forces would not, at the time I became Assistant Secretary, concentrate on drugs. To me and to the Secretary, drugs were far more important than gambling as far as what they should be concentrating on.

We suggested that the strike forces be oriented toward the drug members of organized crime. We got nowhere from that stand so I made a decision to see what we could come up with. And we made this recommendation. I made it to Secretary David M. Kennedy and Dr. Charles E. Walker, Under Secretary at the time, and they agreed to move ahead with a pilot program. And Secretary John B. Connally then asked that it become a national program and obtain special funds from the Congress. And I think this is important when we talk about

IRS resources. The moneys in the Treasury/IRS narcotics trafficker tax program were specially appropriated for just this purpose and no other IRS purpose so the comments on resources regarding the narcotics trafficker tax program should take that into account.

The NTTP was organized in a way that resolved the major problems of the strike forces. No. 1 is the selection of targets. As you can see from my statement, we developed a very carefully drawn procedure to select the major targets in the narcotic trafficker tax program. It was not left to any one agency, which I think is most important regarding the selection of targets. When you have multiple agencies reviewing and selecting, you have a cross-check, you have an accountability system built into it. We went, and we developed it in the field; all agencies were represented at the State, Federal, and local level. Targets selected in the field were reviewed again in the Office of the Secretary, again with the Federal agencies represented, the Internal Revenue Service, the Bureau of Narcotics and Dangerous Drugs and Customs.

On the selection—we had guidelines, Mr. Chairman, and this is most important, because I do not know if there are guidelines for selection of targets in the strike forces—there had to be what was considered among the professionals, a major dealer in drugs. There had to be some evidence of assets or else why have the tax investigation. But once selected and referred to the Internal Revenue Service, it became a tax investigation.

The second thing that we did, that we stressed, and another innovation, Mr. Chairman, was to go after them criminally or civilly. Our first emphasis on finding an indication of fraud was to go after the target criminally. But too often in the past, we wasted a lot of time trying to build a criminal case—I am talking about a criminal tax case. If the criminal case is not a good one, forget it. Drop it. Move civilly.

The program thus affected organized crime figures in two ways. You put them in jail or take their money. We have not done enough on the civil end.

The third reason I have trouble with the strike forces involves the control of the agents. I am troubled—I listened to the response of Mr. Roberts, who I might say during his time at the Department of Justice, was an enormous help in our prosecutions, under our narcotics trafficker tax program in the criminal prosecutions, in the priority that the Department of Justice gave.

It is nice to have the guidelines, and I worked on the guidelines when we set up the first Federal, State, city strike force and we expanded it to the city, they were under control of IRS. His response was most appropriate, that it depends on the personality of the strike force chief.

I have not analyzed it; I have not studied it. I would estimate 9 out of 10 times agents are being run by the strike force chief, and the prosecutor, in effect, is an investigator. This troubled me. I did not like this blurring of the image, the blurring of two separate functions, the prosecutor's function and the investigator's function, which is in the strike force's. I felt it could be done where the investigator does his job, and if it turns out to be a criminal tax case, and refers it to the Department of Justice; if it is civil, and depending on which way it

goes, the Department of Justice or the IRS chief counsel. But our tradition on the investigating level is that the investigator does the job and decides whether there is a violation of law, and the prosecutor is supposed to look at it de novo. He is supposed to say well, is there sufficient evidence. It troubles me greatly to see the two functions merged into one.

I think the strike forces should move to adopt some of the basic procedures and organization of the NTTP. It would obviate the problem of control of agents. Second, the very important question of fairness of the prosecutor not assuming as well the investigatory function. Another thing that we did, and it developed as the program developed, we could not take a highly trained intelligence agent and a revenue agent and spend a full-scale tax audit on a minor dealer, on a street level pusher. But we could take what we call tax action. Did he file a tax return? And, if there was cash and other valuables found, the use of jeopardy assessment or tax year termination. It is very important how this developed because these targets developed primarily from arrests.

Senator HASKELL. Let me, if I may, interrupt you, because I think that your point on narcotics is very important. When you talk about the cost of a program versus the tax collections, this basically was a nontax crime program.

Mr. ROSSIDES. No, Mr. Chairman.

Senator HASKELL. See if this is true. I do not know whether it is true or not.

For the 48-month period ending June 30, 1975, the IRS participation in the narcotics program cost about $67 million, while tax collections amounted to $38 million. I have no objection to going after narcotics traffickers, but it seems to me that just the figures themselves show it was a program designed to get the people selling or who push or traffic a drug, rather than to collect taxes. I mean, just the figures seems to show that, but maybe they do not.

Let me ask you this. The Treasury Department could have asked for an amendment of section 881(a) of title 21 to provide for the forfeiture of cash by narcotics operators instead of using the back door of the early terminations of the so-called box car assessments. Why didn't Treasury seek separate and additional statutory remedies?

Mr. ROSSIDES. Mr. Chairman, I would say this. No one ever suggested that at that time, No. 1. No. 2, that route has nothing to do with major dealers. That route has nothing to do with the major narcoics dealers. You are not going to find cash amongst a major narcotic dealer because you are not going to find narcotics on him. This is the misconstruing by Commissioner Alexander of the entire program. This is only a minor dealer, a guy that you find with some heroin or cocaine and $10,000 of cash. If you want to put my forfeiture into the law, a straight forfeiture provision, that if you have narcotics and you are found with narcotics and somewhere else in your apartment or on your person or in a safety deposit box, there is cash in it, it is automatically forfeited, all of it. That is a very serious suggestion.

It may be that that is a good proposal. But it has extraordinary implications.

Senator HASKELL. I understand that.

Mr. ROSSIDES. But it has nothing to do with the major dealer tax program.

Senator HASKELL. Let me throw out another figure to you, if I may, and see how you react to this.

Again, it is my information that more than $20 million over this same 4-year period was seized from thousands of individuals. Those fellows must have been the guys on the street, not the ones we primarily want to get hold of. How do you explain all this?

Mr. ROSSIDES. Very easily. That is one of the most important parts of the program, and again, this is mythology from persons who are not in favor of this program. Let me give you a quick answer.

I question the figures that Commissioner Alexander used, because our figures show that we actually collected more than we spent. In the last 2 years of the program there was a downturn because the Commissioner just cut it off, and particularly the 4th year. But the point on the cash from the thousands of individuals is that it is absolutely essential to drying up the drug dealers' money on the street. That aspect of the program was one of the most important in drying up money on the streets, so the dealer could not have three or four or five pushers he was paying, and the pusher could not go into a bar and flash a hundred dollar bill and be the big shot in the community. And, if there is any place that anyone can show me that is more pertinent for the use of jeopardy assessment and tax year termination and the concept of those two instruments more than this program on the minor target area, I would like to know. It meets every criteria of the policy of these two instruments.

Senator HASKELL. Let me see if I understand you correctly. Are you saying that by seizing this cash in this way from the folks on the street, you prevent the big shot in the penthouse from operating profitably. Is that what you are saying?

Mr. ROSSIDES. I am saying that had a major influence in that. I am not saying automatically, absolutely, Mr. Chairman. Two things: one, when the dealer, that smalltime dealer has suddenly, one of his pushers has been arrested, and cash is taken, if you do not think that is spread around the community and fast among these dealers, that automatically anyone arrested with drugs was referred as a criminal matter, and they have cash, that they are supposed to inform IRS of these things—most of the times in other types of arrests they do not, but in this program they did. That was one of the most important factors in my judgment, if not the most important factor, plus our attack on the major dealers, the fact that we had a thousand of them under investigation on tax audits for the heroin shortage of 1972, much more so than the substantive narcotics cases, of picking up some of the dealers on narcotics charges.

Senator HASKELL. I can see how going in and using the jeopardy assessment and the early termination is very effective, as long as it is used against the right folks. I can see how it can be helpful if used against the right folks. But I hope you were in the room when Senator Morgan referred the committee to a case in which it was not used against the right folks. Does that not bother you?

Mr. ROSSIDES. Yes, it does; very, very much so, Mr. Chairman. I was not in the room at that time, but it does bother me. I will say that at the time I was Assistant Secretary no case was brought to my attention. That does not mean that some abuses were not there. But, Mr. Chairman, that is the reason for more oversight by this committee. That

is the reason for a greater oversight by the Office of the Secretary, and that is the reason that the IRS operations must be aired year in and year out. Any abuse of that nature troubles me greatly. But that is a simple operational problem of proper supervision.

If there is review on this abuse of the rules and regulations, if the rules and regulations are not adequate, if they are too loose, if we do not have strong standards or tight standards on the use, then it is a question of the regulations and the law. And if it is a question of law and it is in the courts, as I understand it now, certain aspects of this law, the IRS, as I put in my statement, must bend over backwards to be fair.

But, you do not use 1 or 2, or 10 or so abuses; and, in fact, the failure to properly supervise the program, and then use that as an example and use it, to cut the guts out of the entire program.

Senator HASKELL. Early termination is an extraordinary procedure, as is jeopardy assessment. The potential for abuse is there. Do you think, for example, that a greater showing should be made before you invoke these extraordinary remedies?

Mr. ROSSIDES. I would be happy to submit additional comments on the law and regarding more stringent requirements, Mr. Chairman. It is a complex area of the law. But I would say this, that in one case I recall, they found a cocaine dealer in the Upper East Side who had $4,000 in cash in his safety deposit box; a proper search warrant by the city police found another $10,000. That is $14,000 in an East Side apartment with cocaine. This was a dealer. Before he would just be out, he would have money, using it for whatever purposes, including more purchase of drugs. I think that would meet a criteria of coming in and checking. Does this man have a tax? Did he file a tax return?

Sometimes you get them where they have not even filed the previous year. It would also justify tax year terminations. If he is going to come out, he is going to use that money for something; we do not know where it is going. But I would be for stringent tax standards. I understand that is what they have now, but I would be happy to review them and give the suggestions to you, Mr. Chairman.

Senator HASKELL. I think it would be very helpful because at least there is, certainly we know there are abuses of everything, but certainly we know there are extraordinary remedies, and I do not know, and goodness knows, I certainly do not know all there is, what possible tools the FBI has, the Department of Justice and other areas.

But, to my limited knowledge of the law, this is a very extraordinary remedy, and whether it is subject to, if not used properly, is subject to great abuse, and it is all very well to depend upon the good discretion of law enforcement officers. But I think it is kind of nice to have, perhaps, probable cause showing in court orders and that type of thing involved.

Mr. ROSSIDES. Mr. Chairman, I agree with you thoroughly on this. I do not want to leave it to discretion. I want to have tough and tight guidelines. But at least I want to make sure of one thing, that I have that money tied up until the tax process has been completed.

Senator HASKELL. Do you not think it might be better to, if you need that money as a law enforcement tool against drug traffickers, do

you not think it might be better to devise some remedy where you can tie up that money, but not do it through tax laws?

Mr. ROSSIDES. That could be fine. You have no problems with that, Mr. Chairman. I would have to think about the implications of forfeiture because I think it is the idea that no matter what it is they forfeit——

Senator HASKELL. But——

Mr. ROSSIDES. I am saying I have no qualms about that. The less IRS has to do that other agencies can do, I am in favor of.

Senator HASKELL. I am, too.

Mr. ROSSIDES. Absolutely, because these men are tax specialists, as I understand it, a tax matter was involved here. Furthermore, you are not talking about an intelligence agent. You are not talking about a revenue officer. You are talking generally about a procedure that is completed in a day. It has to go to the District Director and so on where they assert their jeopardy because of the fact that it is a criminal violation, narcotics found and so on. This is the Collection Division.

Senator HASKELL. Its very simplicity along with the ruggedness of the remedy is what I think would concern both of us.

Mr. ROSSIDES. I think the forfeiture idea may be a very good one because, believe me, Mr. Chairman, the impact on the street is extraordinary. What they are saying is, if I am going to get into either gambling or narcotics, maybe I had better go into something other than narcotics. That was the psychology we wanted to create.

Senator HASKELL. I am sure other members of the subcommittee would welcome any suggestions you would have in dealing with that specific problem of the drug traffic. I am very concerned that using the tax laws which are designed for quite a different purpose in aid of what you were after, which is a completely legitimate and good, but different purpose, so any suggestions you may have I would appreciate.

Mr. ROSSIDES. I would be happy to pass them along. But I must disagree with the chairman. That it is for a different purpose. In effect, what you are saying is that the IRS should not be involved in organized crime because narcotics traffickers are the key organized crime figures we want to get at.

Senator HASKELL. What I think I am saying is that I am very concerned if these figures are correct, that $20 million is picked up from thousands of individuals over a 4-year period. You combine that with the case that Senator Morgan talked about at the beginning of today's hearings, plus some of the instances I have heard elsewhere, and the misuse of these extraordinary remedies concerns me a great deal.

Mr. ROSSIDES. I am with you a thousand percent, Mr. Chairman. But do not confuse that with the major target of investigatory tax audits where we do to a limited degree use—the figures in the charts show that out of several hundred investigations, to a limited degree we use jeopardy assessment, tax year terminations, as we do with any other taxpayer.

But my point is, when we are talking about organized crime, these are the key members of organized crime that the Federal Government should be going after far more than gamblers or others in the organized crime area. I would hope the committee would focus on that, as well.

I will give you a story that dramatized to me the great concern I have on target selection. I think Mr. Roberts raised the question of who makes decisions on priorities. Those decisions should be made by two areas, one the executive, and that is the Secretary of the Treasury, as far as IRS is concerned, not the Commissioner; secondly, the Congress, and it has got to be the Congress and executive, not just the executive selecting priorities and enforcement as well.

So it is a quesion of what is tax substantive policies, also tax operations. In Chicago, and I think this story illustrates to me one of the great problems of the strike forces. In visiting with the target selection committee on the narcotics organized crime program, there were several people there from IRS, ATF, Customs, State police, and local police. Afterwards, the head of the Chicago IRS Intelligence wanted me to visit the office and say hello, and I did. I visited with the agents working on our cases. I went to his office, and in his office there were two charts, one on the one wall was the organized crime strike force chart; on the other wall was our Treasury-IRS narcotics trafficker tax program chart. Literally, Mr. Chairman, never the twain shall meet.

I am suggesting problems I have with the strike force in the selection of targets. I am suggesting to the Congress and generally this committee, we must get a better target selection procedure. I think most of the time spent by our IRS agents on the strike force would be put to better use in organized crime activities if we had a cooperative and coordinated target selection procedure.

Senator HASKELL. When you talk about congressional participation, do you mean through the appropriations process?

Mr. ROSSIDES. Yes, but also this committee's oversight function. I am saying congressional policy. This committee is saying what it feels in oversight. Where should the impact be?

For instance, a study as to the impact of deterrents, there is a great impact of deterrents when you pull in major criminals because it gets publicity. The fireman does not; and in the appropriation process, clearly the Congress acted in appropriating several hundred men for this program, but I am thinking of both procedures.

Senator HASKELL. Thank you.

The hearing record will stay open for 2 weeks, and I would appreciate—if this adequate time will keep it open longer if it is not. I would appreciate your suggestions as to how your objective, which is, of course, a national objective, of suppressing drug traffic can be done without running into the dangers that you and I have discussed here.

Mr. ROSSIDES. Thank you very much, Mr. Chairman.

Senator HASKELL. Thank you for appearing.

[The prepared statement of Mr. Rossides follows:]

STATEMENT OF EUGENE T. ROSSIDES

I am pleased to respond to the request of this Committee to testify regarding the Treasury/IRS Narcotics Trafficker Tax Program (NTTP)[1] in which I was involved while I was at the Treasury Department.

The NTTP was initiated as part of the overall effort to crack down on the illegal traffic in narcotics. Recognizing that the huge profits of the drug trafficking business are largely unreported and therefore untaxed, in late 1969 I recommended to the Secretary of the Treasury, David M. Kennedy, and to Under Secretary Charles E. Walker, who had the responsibility for direct supervi-

[1] The abbreviation generally used is NTP. I prefer NTTP in order to stress that it is a tax program.

sion of IRS, that the Treasury develop a tax program aimed at the drug trafficking business.

Preliminary surveys in 1970 showed that among a group of suspected narcotics traffickers several patterns could be observed. First, there was a high incidence of non-filing of income tax returns. Second, a large number appeared to have life styles which would require income far in excess of that on which taxes were being paid.

As a result of these findings and our general studies and review, in late 1970 a policy decision was made by Secretary Kennedy and Under Secretary Walker to start a pilot program in one district. In early 1971, Secretary John B. Connally directed that the pilot program be expanded into a national program. In the late spring of 1971, Secretary Connally obtained White House and Congressional approval for the program and $7½ million in appropriations.

FUNDS AND MANPOWER SPECIFICALLY EARMARKED FOR NTTP

Thus, this program had the full backing of the Congress and the Executive. Monies were appropriated specifically for the NTTP—monies and manpower which would not have been authorized or appropriated but for this program and were not authorized and appropriated for any other IRS activity.

NTTP IS AN INCOME TAX PROGRAM

The Narcotics Trafficker Tax Program is an income *tax* program. The goal of the NTTP is to *tax the illegal profits of the drug trafficking business, a major area of tax noncompliance.* The program was carefully developed over a two-year period and the results during the short time it was active—from July 1, 1971, to some time in 1974, including substantial start-up and training time—demonstrate that it was extremely successful.

TAXING THE ILLEGAL PROFITS OF THE NARCOTICS TRAFFICKING BUSINESS

It is important and central to the NTTP program to understand that the income from the illegal narcotics traffic business is *taxable.* And it is the responsibility of the Treasury Department to go after this taxable income. Drug trafficking is a *business.* It is not some isolated activity.

It is damaging to the "voluntary compliance" concept of tax administration to suggest that income from *illegal activity* should be given a *lower* priority than income from *lawful activity.* The narcotics trafficking business is a highly organized criminal activity which requires a sophisticated and comprehensive program to identify the individuals involved and to determine the income which is taxable. Are we to encourage unlawful activity of the most serious kind by our failure to enforce the tax laws against the narcotics traffickers?

The enormous profits of the narcotics trafficking business constitute taxable income to traffickers. To develop a program to identify major narcotics traffickers and tax them is part of administering the tax laws. There is no meaningful distinction between this type of activity and the ordinary IRS methods of identifying what is referred to as "pockets of noncompliance."

There is no difference in concept in deciding to select suspected major drug traffickers for tax audit and in deciding to select waitresses and taxicab drivers regarding gratuities income, corporate executives, individuals regarding interest and dividends payments or tax resister groups, and other classifications of taxpayers. Indeed, the incidence of tax noncompliance by drug traffickers is, I submit, higher than other noncompliance groups.

The significant point with respect to the NTTP was that under such a tax program we were able for the first time on an organized and comprehensive basis to get at major drug traffickers, persons who use intermediaries to insulate themselves from the day-to-day operations of the drug traffic. In this way, they achieve virtual immunity from prosecution under the substantive narcotics laws. The Narcotics Trafficker Tax Program was able to get at many of the kingpins of the traffic.

In developing the original program and thereafter while I served at the Treasury, the program had the full support of three Secretaries of the Treasury, David M. Kennedy, John B. Connally, and George P. Shultz; the excellent cooperation and leadership of two Commissioners of IRS, Randolph Thrower and

Johnnie M. Walters; the support of the Tax and Criminal Divisions of the Department of Justice and the various U.S. Attorneys; and the full bipartisan support of the Congress.

CIVIL AS WELL AS CRIMINAL ENFORCEMENT

Important and central to the NTTP was the policy decision to stress civil as well as criminal enforcement. This policy decision was a significant improvement on previous uses of tax administration to go after profits from criminal activity. It was our position that the illegal profits must be taxed and should be attacked either by civil enforcement or criminal enforcement. If a criminal case could be made, fine. If not, then the decision should be made as soon as possible and appropriate civil action pursued vigorously.

TARGET SELECTION PROCESS—MAJOR TRAFFICKERS

An important innovation in federal law enforcement was the development of the major drug traffickers target selection procedure—a coordinated and cooperative selection of persons to be audited.

As of July 1971, the paucity of information identifying known major drug traffickers was appalling.

We developed a program for selection of targets, which once selected would be turned over to the IRS for audit. We organized field target selection committees throughout the country and developed guidelines for target selection. The persons selected had to be considered major traffickers and there had to be an indication of assets to warrant a full audit.

The field target selection committees were composed of professional career personnel from Federal, State and local agencies. On the Federal level, the committees included personnel from IRS, the then BNDD, and Customs. On the State and local levels, ite included representatives from the local and State police. The committees would meet periodically and pool their knowledge.

Targets selected would then be sent to Washington, D.C. for review and final selection by an inter-agency target selection committee composed of personnel from IRS, BNDD and Customs and chaired by the Deputy Assistant Secretary for Enforcement. This Treasury committee would meet periodically to review the field recommendations and decide to accept, reject, or hold for further consideration each field recommendation.

Once a person was accepted the file would be sent to IRS and from that point on in the investigative process it was an IRS tax case and handled in accordance with IRS operating procedures. After investigation if the decision was that the evidence justified a criminal prosecution it was referred to the appropriate U.S. Attorney's Office. Otherwise it was pursued civilly by IRS.

HIGH LEVEL TARGETS, INCREASED EFFICIENCY AND REDUCED POSSIBILITIES OF CORRUPTION

Important byproducts of multi-agency analyses and review of potential targets are that it insures selection of high-level targets, increases cooperation and efficiency and reduces the possibilities of corruption in the selection process to a minimum.

MINOR TRAFFICKER TAX PROGRAM

The minor drug trafficker tax program was designed to go after the profits of the minor dealer and pusher. It was designed to achieve maximum results with a small outlay of manpower and resources. The individuals involved were primarily lower-level drug traffickers—dealers and pushers—who were arrested by State, local and Federal officials on substantive drug charges and where there was cash found. We decided against a full audit of these individuals but instead we took tax action; we stressed a tax check type of investigation—did they file a return—and the use of tax year termination and jeopardy assessment procedures on these individuals.

This part of the program achieved outstanding success in taxing and reducing street-level profits.

The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement actions. Recently, the program has been assigned a low priority because of IRS concern about possible abuses. The task force is confident that safeguards against abuse can be developed, and strongly recommends re-emphasizing, this program.

The IRS should give special attention to enforcement of income tax laws involving suspected or convicted narcotics traffickers. (pp. 43 and 44)

The task force recommends that the Internal Revenue Service reemphasize its program of prosecuting drug traffickers for violation of income tax laws under strict guidelines and procedures. (p. 99)

Mr. Chairman, I would be pleased to answer any questions the Committee may have.

TWELVE MONTH REPORT OF THE TREASURY/IRS NARCOTICS TRAFFICKER PROGRAM

During the first year of operation—July 1, 1971, to June 30, 1972—the Treasury/IRS Narcotics Trafficker Program has accomplished the following:

1. 793 major targets in 40 states, 53 metropolitan areas and the District of Columbia were selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 410 Treasury Agents and 112 support personnel are presently conducting the intensive tax investigations. In addition, 565 minor traffickers are under tax action.

2. $54.2 million in taxes and penalties have been assessed under the program, of which more than $8.5 million has already been collected in the form of cash or valued property. This is $1 million more than the $7.5 million appropriated for the program by Congress. *We are now using the drug traffickers' illegal profits to put them out of business* (see attached Table II).

3. Six men have been convicted on criminal tax charges; 15 other criminal tax cases are pending in Federal District Courts in New York, Miami, Detroit, Los Angeles, San Francisco, Indianapolis, Baltimore, and Washington, D.C.; and another 35 investigations have been completed with prosecution recommendations. Investigations were completed in an additional 78 cases with civil assessments and penalties determined in 64 cases.

We believe this represents a substantial achievement. By focusing attention on the persons responsible for the narcotics distribution, this program is making a major additional contribution to the President's offensive against drug abuse.

The word for the drug traffickers is to get out of the illegal drug traffic or face up to intensive tax investigation. This word should be spread in every city and town in the United States. We have institutionalized this program. Everyone in this illegal business should realize that they will be subjected to tough tax scrutiny.

The program's objectives—to take the profit out of the illegal traffic in narcotics and thereby further disrupt the traffic—are accomplished in two ways:

1. *Major targets:* by conducting systematic tax investigations of middle and upper echelon narcotics traffickers, smugglers, and financiers. These are the people who frequently are insulated from the daily operations of the drug traffic through intermediaries.

2. *Minor targets:* by the systematic drive underway to seize—to be applied to taxes and penalties owing—the substantial amounts of cash that are frequently found in the hands of minor narcotics traffickers—those below the middle and upper echelon level.

Computers are now being used in this program to facilitate the year in, year out scrutiny of the finances of these narcotics traffickers. By computerizing our information, we will be able to examine systematically and quickly each major and minor trafficker targeted under this program.

Although all of the penalties and taxes that have been assessed may not be collected, the impact of this program on the narcotics traffic is already substantial and increasing each month.

MONTHLY REPORT SYSTEM

A monthly report system was developed to monitor the progress of this tax program. That report system enabled the Secretary and me to follow the progress of each element of the program. The monthly report listed the number of cases by states and metropolitan areas and the status of the cases.

Within the first twelve months of the NTTP, 793 major targets in 53 metropolitan areas in 40 states were selected for intensive tax investigation and 565 minor traffickers were put under tax action. Within seventeen months 1,175 major targets were selected for intensive tax investigation and 1,239 minor traffickers

were put under tax action. Attached to this statement are excerpts from reports I made after 12 and 17 months of the program and statistical tables which tell the unique story of this tax program.

The success of the program stems from three groups of dedicated personnel: (1) the target selection efforts of federal, State and local officials; (2) the several hundred men and women in IRS—tax specialists performing a tax function—who took this program to heart and dedicated themselves to it; and (3) the attorneys in the Department of Justice and the U.S. Attorneys' offices throughout the country.

From personal visits to field offices throughout the country and meetings with IRS personnel, State and local officials, and Department of Justice attorneys, I can state that they were dedicated persons who believed in and who performed outstandingly in this program. Those meetings, and the extraordinary morale I observed, stand out vividly in my memory.

IRS Commissioner Donald Alexander's Testimony

Commissioner Alexander has criticized the NTTP.

1. He states, in effect, that NTTP is not a tax program. The facts are otherwise as discussed earlier. The enormous profits of the narcotics traffic business constitute taxable income to traffickers. To develop a program to identify major drug traffickers and tax them is part of administering the tax laws.

2. He refers to possible misapplication of resources. The facts are otherwise. The argument sometimes made about insufficient personnel and allocation of resources does not apply in this case because Congress specifically authorized and appropriated funds earmarked for this program. Even if this were not the case, I would take issue with the Commissioner as a matter of policy on the allocation of resources for this program.

3. He refers to the costs of the program from July 1, 1971, to June 30, 1975, as $67.6 million, or $16.9 million per year, and collections of $38.3 million, $9.6 million per year. He does not give any breakdown of the cost figures. I am not privy to the cost figures he cited, nor the method by which they were arrived at, but I submit that the figures from the 12 and 17 month reports discussed earlier are to the contrary. Further, even if the cost is greater than the income, its impact is far in excess in deterring tax evasion and in disrupting the drug trafficking business. The NTTP, if allowed to continue, does not require an annual increase in manpower because there is a finite number of major drug traffickers.

4. He cited some abuses of procedure regarding jeopardy assessments and tax year terminations.

If there were abuses, they should be corrected—obviously. If it stemmed from lack of supervision—correct it. If it is an issue of law—the courts will decide and until they do, IRS personnel must bend over backwards to be fair. This must be insisted upon. Such abuses, however, must not be used to thwart the policy of the Congress and the Executive as expressed in this program.

I might add that while I was at the Treasury, no instances of abuse were called to my attention.

The NTTP Should Be Reactivated As Soon As Possible

I strongly recommend that the NTTP be reactivated as soon as possible.

This highly successful program was unique in the spirit of cooperation it engendered among state, local and federal officials and among federal agencies. No jealousies and no infringement of jurisdiction existed among the various agencies cooperating in the NTTP. I submit that it ranks as one of the finest, if not the finest, cooperative law enforcement programs in our history. It can be put back in operation and effective within months if there is a firm policy decision to move ahead once again.

I was pleased to note that the Domestic Council Drug Abuse Task Force in its recent Report to the President (September, 1975) "strongly recommends re-emphasizing" the NTTP program (pp. 43 and 44; p. 99):

By focusing on the trafficker's fiscal resources the government can reduce the flow of drugs in two ways. First, high-level operators, usually well insulated from narcotics charges, can often be convicted for tax evasion. Second, since trafficking organizations require large sums of money to conduct their business, they are vulnerable to any action that reduces their working capital.

TABLE I.—12-MONTH REPORT

State	Metropolitan areas	Targets	Completed Investigations
Alabama	Mobile	2	
Alaska	Anchorage	1	
Arizona	Phoenix, Tuscon, Yuma	35	4
Arkansas	Little Rock	2	
California	Los Angeles, San Diego	39	10
	San Francisco, Oakland	33	3
Colorado	Denver	8	
Connecticut	Hartford	12	3
Delaware	Wilmington	1	
District of Columbia	Washington	17	4
Florida	Miami	64	17
Hawaii	Honolulu	10	2
Georgia	Atlanta	19	6
Illinois	Chicago	40	7
	Springfield	4	
Indiana	Indianapolis	8	2
Louisiana	New Orleans	12	4
Maine	Bangor	1	
Maryland	Baltimore	6	1
Massachusetts	Boston	12	1
Michigan	Detroit	53	6
Minnesota	St. Paul, Minneapolis	2	
Mississippi	Gulfport	1	
Missouri	St. Louis, Kansas City	10	2
Nevada	Las Vegas	3	
New Hampshire	Portsmouth	2	1
New Jersey	Newark, Camden	52	6
New Mexico	Albuquerque	9	2
New York	Albany	4	
	Buffalo	9	
	New York City and suburbs	130	30
North Carolina	Greensboro, Charlotte	16	1
Ohio	Cincinnati, Dayton	9	
	Cleveland	7	
Oregon	Portland	11	1
Pennsylvania	Philadelphia	40	1
	Pittsburgh	15	5
Rhode Island	Providence	1	
South Carolina	Columbia	5	1
Tennessee	Nashville, Memphis	5	
Texas	Austin, Houston, El Paso	41	11
	Dallas	3	1
Utah	Salt Lake City	2	
Virginia	Richmond, Norfolk, Arlington, Alexandria	24	
Washington	Seattle	11	2
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	1	
Total		793	134

TABLE II.—12-MONTH REPORT

	Number	Amounts
Major target assessments:		
Regular assessments	18	$4,373,126
Jeopardy assessments[1]	19	18,764,281
Tax year termination assessments[2]	23	7,974,616
Total	70	31,112,023
Minor target assessments:[3]		
Jeopardy assessments	36	863,712
Tax year termination assessments	529	22,256,438
Total	565	23,120,150
Total assessments involving narcotic traffickers		54,232,173

	Major targets	Minor targets	Amounts
Seizures involving narcotic traffickers:			
Currency	$1,763,213	$5,449,923	$7,213,136
Property	86,738	1,249,828	1,336,566
Total dollars seized			8,549,702
Cases recommended for prosecution			35
Criminal tax cases in U.S. courts awaiting trial			15
Criminal tax convictions			6

[1] Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.
[2] Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize collection of the revenue.
[3] These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

SEVENTEEN MONTH REPORT OF THE TREASURY/IRS NARCOTICS TRAFFICKER PROGRAM

During November, Treasury Agents and support personnel of the Internal Revenue Service seized and collected $2.4 million from narcotics traffickers and made assessments of $5.4 million. In addition, 68 new major targets were selected and 157 minor targets were placed under tax action.

In the Courts, 2 traffickers were convicted, and 4 indictments were returned. The Treasury has recommended an additional 11 cases for prosecution.

The additional targets expanded the program into one new state, South Dakota, and eight metropolitan areas—Aberdeen, South Dakota; Augusta, Georgia; Peoria, Illinois; Annapolis, Maryland; Reno, Nevada; Chattanooga, Tennessee; Forth Worth, Texas, and Bridgeport, Connecticut.

The 17 months result of this program are as follows:

1,175 MAJOR TARGETS AND 1,239 OTHER TRAFFICKERS

In 46 states, 82 metropolitan areas and the District of Columbia, 1,175 targets have been selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissionr Johnnie M. Walters, 550 Treasury Agents and 112 support personnel are presently conducting these investigations.

The Congress has passed a supplemental appropriation of $4.5 million which will increase the number of Treasury Agents to 648.

In addition, 1,239 minor targets traffickers are under tax action.

$82.5 MILLION ASSESSED—$15.6 MILLION COLLECTED

$82.5 million in taxes and penalties have been assessed under the program, of which more than $15.6 million have already been collected. The drug traffickers illegal profits are being used to put them out of business (see attached Tables II and III).

20 CONVICTIONS+44 INDICTMENTS+61 PROSECUTION RECOMMENDATIONS=125

Twenty men have been convicted on criminal tax charges; 44 other criminal tax cases are pending in Federal District Courts in Atlanta, Miami, Detroit, Los Angeles, San Francisco, Seattle, Boston, Indianapolis, Baltimore, and Washington, D.C., and in other areas; and another 61 investigations have been completed with prosecution recommendations (see attached Tables II and III).

TABLE I

17-MONTH REPORT, DEPARTMENT OF THE TREASURY, TREASURY/INTERNAL REVENUE SERVICE

NARCOTICS TRAFFICKER PROGRAM

Results as of Dec, 1, 1972]

State	Metropolitan areas	Targets	Completed investigations
Alabama	Mobile	13	2
Alaska	Anchorage	1	
Arizona	Phoenix, Tucson, Yuma	61	9
Arkansas	Little Rock	3	
California	Los Angeles, San Diego	45	22
	San Francisco, Oakland	42	7
Colorado	Denver	12	2
Connecticut	Hartford, Bridgeport	16	2
Delaware	Wilmington	1	
District of Columbia	Washington	22	5
Florida	Miami, Jacksonville, Tampa, Orlando	95	27
Hawaii	Honolulu	10	1
Georgia	Atlanta, Augusta	31	12
Illinois	Chicago, Springfield, Peoria	61	7
Indiana	Indianapolis, Gary	12	3
Iowa	Des Moines	4	
Kansas	Lawrence	1	
Kentucky	Louisville, Covington, Newport	6	
Louisiana	New Orleans	16	2
Maine	Bangor	1	
Maryland	Baltimore, Annapolis	14	3
Massachusetts	Boston	24	3
Michigan	Detroit	71	13
Minnesota	St. Paul, Minneapolis	5	
Mississippi	Gulfport	3	
Missouri	St. Louis, Kansas City	21	8
Nebraska	Omaha	3	
Nevada	Las Vegas, Reno	5	
New Hampshire	Portsmouth	4	2
New Jersey	Newark, Camden, Trenton	67	7
New Mexico	Albuquerque	11	5
New York	Albany	14	1
	Buffalo, Rochester	20	3
	New York City	157	55
North Carolina	Greensboro, Charlotte	17	1
Ohio	Cincinnati, Dayton, Columbus	17	
	Cleveland, Toledo	24	
Oklahoma	Oklahoma City	3	
Oregon	Portland	18	4
Pennsylvania	Philadelphia	42	3
	Pittsburgh	39	6
Rhode Island	Providence	6	
South Carolina	Columbia	5	2
South Dakota	Aberdeen	1	
Tennessee	Nashville, Memphis, Chattanooga	8	
Texas	Austin, Houston, El Paso	51	11
	Dallas, Fort Worth	8	2
Utah	Salt Lake City	6	
Virginia	Richmond, Norfolk, Arlington, Alexandria	28	2
Washington	Seattle	24	5
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	5	1
Total		1,175	239

TABLE II.—17-MONTH REPORT

	Number	Amounts
Major target assessments:		
Regular assessments	189	$11,052,523
Jeopardy assessments [1]	43	19,450,434
Tax year termination [2]	51	9,172,179
Total	283	39,675,136
Minor target assessments: [3]		
Jeopardy assessments	91	2,862,639
Tax year termination	1,148	39,997,320
Total	1,239	42,859,959
Total assessments involving narcotic traffickers		82,535,095

	Major targets	Minor targets	Amounts
Collections and seizures involving narcotic traffickers:			
Currency	$3,163,904	$10,237,426	
Property	141,463	2,082,999	
Total dollars seized and collected			$15,625,792
Cases recommended for prosecution			61
Criminal tax cases in U.S. courts awaiting trial			44
Criminal tax conviction			20
Total criminal cases			125

[1] Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.
[2] Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize the revenue.
[3] These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

TABLE III.—17-MONTH REPORT

Metropolitan areas	Major target program						Minor target program			
	Number	Assessments	Dollars seized [1]	P.R. [2]	I. [3]	C. [4]	Number	Assessments	Dollars seized	Collections
Atlanta, Ga	14	$415.977	$28 511	5	4	0	37	$476, 433	136$, 797	$67, 977
Austin, Houston, El Paso, Tex	15	1, 576, 515	54, 200	3	1	0	91	1, 629, 028	817, 487	----------
Baltimore, Md. and Washington, D.C	11	1, 362, 882	----------	3	1	5	2	238, 834	44, 789	93, 636
Buffalo, N.Y	3	16, 383	----------	1	0	0	19	149, 326	92, 122	----------
Boston, Mass	5	5, 561, 815	22, 183	2	1	1	67	2, 132, 887	542, 582	----------
Cleveland, Ohio	----------	----------	----------	0	0	0	12	690, 646	113, 375	----------
Chicago, Springfield, Ill	10	311, 713	16, 850	3	2	0	78	2, 264, 421	178, 008	----------
Detroit, Mich	17	1, 252, 1166	13, 455	4	3	2	69	1, 310, 544	367, 806	629, 000
Charlotte, Greensboro, N.C	3	163, 922	15, 240	2	0	1	24	320, 680	53, 989	10, 052
Miami, Jacksonville, Tampa, Fla	32	1, 0183, 653	1, 300	2	11	4	49	762, 032	593, 594	142, 877
Los Angeles, San Diego, Calif	25	915, 441	59, 238	4	1	1	177	19, 291, 836	1, 325, 802	----------
Newark, Camden, Trenton, N.J	14	3, 721, 619	1, 656	0	2	0	27	1, 502, 991	869, 319	----------
New York City	53	7, 503, 738	1, 621, 027	10	3	1	108	7, 794, 275	3, 766, 264	----------
Philadelphia, Pa	5	206, 195	16, 000	1	0	0	41	714, 073	320, 47	----------
Phoenix, Tucson, Ariz	10	280, 422	5, 620	3	2	0	58	1, 416, 699	377, 765	----------
Pittsburgh, Pa	4	36, 689	2, 843	3	1	1	11	451, 202	120, 752	8, 144
San Francisco, Oakland, Calif	12	760, 888	79, 684	2	3	0	61	2, 582, 650	452, 163	----------
Seattle, Tacoma, Wash	5	137, 838	35, 000	1	2	1	13	224, 932	122, 204	----------
St. Louis, Mo	9	1, 019, 793	5, 573	2	2	2	8	247, 712	27, 071	----------
Richmond, Norfolk, Arlington, Va	3	146, 734	11, 274	1	0	0	7	264, 880	15, 836	----------
Other	33	4, 100, 742	274, 114	9	5	1	270	7, 393, 868	1, 953, 073	----------
Total	283	39, 675, 136	2, 263, 888	61	44	20	1, 239	42, 598, 959	12, 320, 435	1, 041, 481

U Dollars seized includes both property and currency.
¾ P.R.—Cases recommended for prosecution.

* I.—Criminal cases in U.S. courts awaiting rital.
C.—Criminal convictions.

Senator HASKELL. The hearing is adjourned, subject to the call of the Chair.

[Whereupon, at 12:50 p.m., the committee recessed subject to the call of the Chair.]

ROLE OF THE INTERNAL REVENUE SERVICE IN LAW ENFORCEMENT ACTIVITIES

THURSDAY, JANUARY 22, 1976

U.S. SENATE,
SUBCOMMITTTEE ON ADMINISTRATION
OF THE INTERNAL REVENUE CODE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 10:08 a.m., pursuant to notice, in room 2221, Dirksen Senate Office Building, Senator Floyd K. Haskell (chairman of the subcommittee) presiding.

Present: Senator Haskell.

Senator HASKELL. The hearing of the Subcommittee on Administration of the Internal Revenue Code will commence. Today, we are continuing our inquiry into the problem of whether the IRS tax compliance powers and personnel should be used for general criminal law enforcement purposes, or should be confined to enforcing the tax laws.

I am extremely pleased to welcome the very distinguished witnesses testifying this morning. I wish to thank all of them for consenting to take part in the development of a public dialog on this important matter.

Our first witness is Louis Oberdorfer, formerly U.S. Assistant Attorney General, Tax Division. Mr. Oberdorfer, we are very pleased to have you present.

STATEMENT OF LOUIS OBERDORFER, FORMERLY U.S. ASSISTANT ATTORNEY GENERAL, TAX DIVISION

Mr. OBERDORFER. Mr. Chairman, I appreciate the invitation to be here this morning, and to speak briefly about some random thoughts with respect to the very important subject that the committee has under consideration.

It has been over 10 years since I have had any personal responsibility for tax administration, and I hope that my experience and knowledge is not completely out of date at this point. I have watched in the press the accounts of the work of this committee, the stories about the apparent tension and resolution of the tension between the Department of Justice and the Internal Revenue Service concerning the allocation of Internal Revenue Service resources and the responsibility for the control of those resources in the investigation of interrelated tax and nontax criminal law concerns of the Government.

Speaking somewhat from the past, I thought that it is not inappropriate for me to take the occasion to read to you and to insert in the

record, if it is not already there, some wisdom of the Supreme Court, or at least Justice Jackson of the Supreme Court, in his decision in the *Kahrigher* case, 20-odd years ago. I think he expressed there the attitude, the reaction, or point of departure that most of us who have had responsibility in this area assume in analyzing problems like this.

As you know, Mr. Chairman, Justice Jackson, before he was on the Supreme Court, had been Attorney General and before that he had been Solicitor General, and before that he had been Assistant Attorney General in charge of the Tax Division. In the late 1930's he was the Commissioner of Internal Revenue, and I remind myself now that he was also Chief Counsel of the Internal Revenue Service.

He reflected his respect for the tax system and the way it was administered, the public response to the administration of it, in the *Kahrigher* opinion, when he described that system as a system of "taxation by confession." In other words, people write their own assessments out of their own consciences and out of their own records.

He said the fact that "a people so numerous, scattered and individualistic assesses itself of a tax liability often in highly burdensome amounts is a reassuring sign of the stability and vitality of our system of self-government," and he also said that what surprised him in once trying to help administer these laws was "not to discover examples of recalcitrance, fraud, and self-serving mistakes in reporting, but to discover that such derelictions were so few."

"It will be a sad day," he said, "for the revenues if the good will of the people toward their taxing system is frittered away in efforts to accomplish by taxation moral reforms that cannot be accomplished by direct legislation."

He was speaking there about a statute relating to gamblers. He was not speaking to the particular subject before you, namely, the allocation of resources between those two departments, with respect to, which he had had responsibility.

Mr. Chairman, in making legislative proposals and in your oversight of the people administering the revenue laws in the Internal Revenue Service and the Department of Justice enforcing them, my basic thought (and it is not original with me, but it is almost platitudinous now), is that everyone with that responsibility should always bear in mind that this self-assessment system, with all the mistakes it makes and all the interstitial injustices that occur, does extract from the American people who are not exactly a homegeneous people, not exactly the most law-abiding people in the world, hundreds of billions of dollars of revenue every year.

I suppose the basic reason for that is the character and commonsense and patriotism of the American people.

I think that more credit is due than is given to the accounting profession and the segment of the legal profession that engages in the practice of the tax law. There is a very nice relationship—and I do not mean cozy, but respectful and healthy relationship—between the taxing authorities on the one hand, the tax bar, the tax section of the ABA and individual lawyers, and accounting firms. It is my observation that the vast majority of tax lawyers and accountants teach their clients, that the best business, the best decision, is to be straight and square and forthcoming in their dealings with the Internal Revenue Service, so far as tax returns and tax reporting are concerned.

Another vital reason why the system works as well as it does, and it works well, is because the people who are running it, have tried to be fair, and they have tried to be effective. One of the reasons for this is that at the cutting edge of the tax system, where those who commit tax crimes are prosecuted, there has, over the years, developed a really quite good organization of intelligence or special agents in the Internal Revenue Service, and tough-minded, fair-minded prosecutors in the Department of Justice.

It is through their efforts, I think, that the tax system has achieved credibility in the sense that the term is used by those who are concerned with foreign policy.

Most taxpayers believe, with good reason, that if they cheat on their taxes, as the saying goes, there is a reasonable chance that their crime will be detected, tried and punished. This credibility has been achieved by the routine administration of the tax laws, the nitty-gritty, the part that does not get in the newspapers, and does not attract the attention of the Hill. By routine, I mean the application of the criminal sanctions of the tax laws to persons whose violations are first detected as the result of a routine audit of tax returns and the natural flow of information to the Internal Revenue Service from a variety of sources. The result of this process, which ends up in recommendations of prosecution to the Department of Justice, is that the Tax Division at Justice authorizes prosecution of about 85 percent of the cases that are referred to them by the Internal Revenue Service, and 90 to 95 percent of those case in which prosecution is authorized result in conviction.

Most of those convictions are obtained on pleas of guilty and nolo contendere. There is a good reason for that. When the Internal Revenue Service recommends one of these routine cases to the Department of Justice and the Department of Justice has investigated that case and authorized the prosecution of it, it is generally a strong case, and people who do not plead guilty and go to trial find that generally the Government wins.

I have a statistic here from 1973, which was the latest report of the Attorney General I had available to me on short notice: 186 or 77 percent, of the 241 cases in which there was a plea of not guilty resulted in conviction after trial.

The result is that as April 15 approaches each year, and taxpayers and their advisers think about what they are going to put down on the tax return, there is vivid in the minds of millions of them the prospect that if they fail to do the right thing, if they cheat, omit conspicuously, deduct deliberately and erroneously, there is a good chance that that error will be detected, and if it is detected, it will involve them in the tender care of a special agent, and that process can very well end up in a recommendation for prosecution, and when that happens, generally, there is a conviction.

It is my view, Mr. Chairman, that the maintenance of this credibility is the principal business of the Intelligence Division of the Internal Revenue Service and of the tax enforcement elements of the Department of Justice.

I do not have any real perspective or information or basis for decision or counseling about decisions such as resulted, or were reflected, in the January 11 press release from the Department of Justice and the Treasury about the allocation of resources in organized crime

and white-collar crime investigations, one element of which is a tax investigation.

I had one experience at Justice when I was there that I am pleased to put on the record, because I think it is a precedent both in result and in reasoning process, which is meaningful, or can be meaningful, to those making decisions and those who are trying to design some rules.

During the time that I was at Justice a question arose. I suppose it arose before that in other administrations, and possibly has arisen since as to whether the Tax Division's authority to authorize prosecutions of tax law violators would be shared with the Criminal Division of the Department. This was an internal Department of Justice problem, but one, nevertheless, which has many implications.

There is obviously a tremendous public interest in detecting and punishing criminals. It is reflected in the January 11 press release. And no one argues that crime is not a very, very serious problem. We are a long way from managing it much less licking it.

There is always a tremendous public pressure to get at criminals by identifying some category of people that are deemed to be criminals, there is some evidence for believing they have violated some law or another, and to organize an across-the-board investigation of all their affairs, including their tax affairs, so that the Government as a whole, the Federal Government, the Department of Justice, or the whole prosecuting arm of the Federal Government can find some crime that they have committed and prosecute them for it and punish them.

There are those who believe that that kind of activity requires an ultimate control of all final decisions in such cases; namely, that the authority to commence and to enter agreements after a plea bargaining, if it occurs, should ultimately reside in the Criminal Division in the Department of Justice.

On the other hand, during the period that we faced this question, there was a danger that if tax prosecutions were authorized by the Criminal Division pursuant to its standards for authorizing prosecutions, and if plea bargaining could be conducted by the Criminal Division with a tax count wrapped up with the other things and possibly used as a bargaining chip, they might authorize untenable or technically unsound tax changes or they might bargain away a real tax count.

The public might get the impression that the criminal sanctions of the tax laws applied to criminals. A fellow sitting in his study on the eve of April 15 might fail to do the right thing by himself and by the Government and by the law by deluding himself on the proposition that the tax prosecution resources were all going to be used against criminals and bad people. That taxpayer who loves his wife and children and goes to church every Sunday, and has never been in trouble and nobody would ever think as a person who was a proper subject of a criminal tax investigation need not be too concerned about his tax duties.

If that attitude become prevalent, the credibility of the tax system might be somewhat diluted.

There is also, Mr. Chairman, for appropriate consideration by this committee, I believe, a latent constitutional and moral problem

about compelling taxpayers, under penalty of law, to supply information about their affairs which can or will be used by the Government to prosecute them for nontax crimes, or give prosecutors leads to nontax crimes.

Finally, part of the credibility, part of the success of the criminal tax enforcement activity of the Federal Government derives from the respect which it has enjoyed, sometimes more and sometimes less, but generally enjoys, with the Federal courts.

If the courts got the impression that people in authority were in some respect playing games with the tax sanction and tax information, the ability of the Government to win these convictions in court when taxpayers stand up to the Government, might well be weakened.

Senator HASKELL. May I interrupt you, Mr. Oberdorfer?

Mr. OBERDORFER. Yes.

Senator HASKELL. You mentioned one thing, a possible constitutional problem involved in making a person disclose information on a tax return for the purpose of assessing taxes and the subsequent use by the Government for some other purpose, in criminal conviction.

Mr. OBERDORFER. Yes.

Senator HASKELL. To your knowledge, have any courts ever spoken on this question?

Mr. OBERDORFER. In the *Kahriger* case that I mentioned, Justice Black wrote a dissent which took that position, that is, that the gambling tax statute was unconstitutional, because it compelled a taxpayer to incriminate himself vis-a-vis the State government, if he happened to be in a State where gambling was illegal.

There are possibly other decisions, Mr. Chairman, that are worth investigating. Whether there are decisions or not, in my judgment, the problem is latent.

Senator HASKELL. Yes; I would agree.

Mr. OBERDORFER. That concludes my statement, Mr. Chairman.

Senator HASKELL. I thank you.

I do have a couple other questions. Some people, of course, say that the high advisability you get by putting a well-known criminal in jail by using the tax laws, one case is Al Capone, operates as a deterrent to all citizens who cheat on their returns. I have heard this proposition several times, actually, during the course of these hearings, and I wondered if you have any comment on that.

Mr. OBERDORFER. So far as the impression on the public mind is concerned, I suppose all of us——

Senator HASKELL. Amateur psychologists?

Mr. OBERDORFER [continuing]. Might testify on that. I reiterate the concern I expressed that I would think it unfortunate if citizens generally come to the view that the tax enforcement personnel were so tied up in the prosecution of criminals, bad people, that it was unlikely that someone with a previously good reputation would run any serious risk should he have to, should he make a serious mistake on his tax returns.

Senator HASKELL. Yes. I notice that particularly in your testimony, and I think it has considerable validity to it.

Mr. OBERDORFER. And, of course, apart from a sort of psychological guesswork involved, the fact is that if too many people in the Internal Revenue Service, or if too many of the best people in the Internal

Revenue Service and the Department of Justice, or if too much time of the people who have primary responsibility were consumed in dealing with those kinds of target-type investigations, to that extent the capability of the law enforcement personnel to deal with what I call the routine case, which is what makes the system work as well as it does in my view, that capability would be reduced.

Senator HASKELL. Thank you, sir.

I guess I have covered the areas I wanted to discuss with you. I really do appreciate your coming, and for your extremely thoughtful testimony. It helps a great deal.

Mr. OBERDORFER. Thank you, Mr. Chairman.

[The prepared statement of Mr. Oberdorfer follows:]

STATEMENT BY LOUIS F. OBERDORFER, WILMER, CUTLER & PICKERING

My name is Louis F. Oberdorfer. I am in private law practice in Washington, D.C. From January, 1961 through June 15, 1965, I was Assistant Attorney General in charge of the Tax Division of the Department of Justice.

My experience in tax law enforcement is now somewhat out of date. My knowledge of recent developments is limited to news accounts about the activities of the Internal Revenue Service and the apparent tensions that have developed between the Service and the Department of Justice.

My former familiarity and present distance from the problem does perhaps give me some perspective.

In perspective, and responding to your invitation, I am reminded of the statement of Mr. Justice Jackson writing in 1953 about the "important and contrasting values in our scheme of government" which create problems with respect to the "legitimate use of the taxing power." *U.S.* v. *Kahriger*, 345 U.S. 22, 34 (1953) (concurring opinion). Justice Jackson had a unique perspective, having served, prior to his appointment to the Supreme Court, as Commissioner of Internal Revenue, Assistant Attorney General in charge of the Tax Division Solicitor General and Attorney General. In his *Kahriger* opinion, Mr. Justice Jackson complimented the tax system and its administration stating:

"The United States has a system of taxation by confession. That a people so numerous, scattered and individualistic annually assesses itself with a tax liability, often in highly burdensome amounts, is a reassuring sign of the stability and vitality of our system of self-government. What surprised me in once trying to help administer these laws was not to discover examples of recalcitrance, fraud or self-serving mistakes in reporting, but to discover that such derelictions were so few. It will be a sad day for the revenues if the good will of the people toward their taxing system is frittered away in efforts to accomplish by taxation moral reforms that cannot be accomplished by direct legislation." 345 U.S. at 36.

I believe that those of us who have worked during the past 20 odd years in the Internal Revenue Service or the Tax Division generally share Justice Jackson's confidence in the federal tax system. It is dramatic evidence of the stability and vitality of our system of government and of the good will of the people to their taxing system. The federal tax system is a vital element of national strength.

It is a modern miracle that, warts and all, the tax system extricates nearly $400 billion of revenue from our people peaceably, quietly and with reasonable efficiency.

There are many reasons why we have passed this miracle. Of course, the fundamental reason is the loyalty and common-sense of the American people. Another reason, not often appreciated, is the respect which tax lawyers and accountants have for the Internal Revenue Service and the underlying concept of the federal tax system. In my view, an equally important reason for this miracle is the striving for essential fairness with which our tax laws have been administered by the public servants and the courts responsible for their administration.

The tax system has largely achieved what our foreign policy aspires to achieve: credibility. Most taxpayers believe, with reason, that if they "cheat on their taxes," as the saying goes, there is a reasonable chance that their crime will be detected, tried and punished.

This credibility has been achieved by the "routine" administration of tax law enforcement. By routine, I mean application of the criminal sanctions of the tax

laws to persons whose violations are first detected as a result of routine audits of their tax returns and the natural flow of information to the Internal Revenue Service from a variety of sources.

In the routine case, an ordinary Revenue Agent detects probable cause for believing that a taxpayer may have committed a tax crime. By operation of a long-established procedure, the Revenue Agent refers his lead and the audit file through channels to a Special Agent for purposes of a criminal investigation. This reference is made not because the individual taxpayer is an otherwise notorious criminal or an otherwise controversial political leader, or a radical activist. The reference is made because the Revenue Agent suspects violations of the criminal provisions of the tax law.

If the Special Agent's investigation confirms the suspicions of the Revenue Agent, and his recommendation is approved by Regional Counsel, the case is referred to the Tax Division with a recommendation for prosecution. After affording each taxpayer a conference (or an opportunity for one) the Tax Division authorizes prosecution of about 85 percent of the cases it receives. Over the years, 90–95 percent of the cases in which prosecution was authorized resulted in convictions. Although most of these convictions derive from pleas of guilty or *nolo contendere*, these results may fairly be attributable to the meticulous care with which the Internal Revenue Service prepares criminal cases and the high standards applied by the Tax Division for authorizing their prosecution. Prosecution is not authorized unless the Division is convinced by adequate admissible evidence that the case should be prosecuted *and* that a conviction is probable. And in 1973, 186 (or 77 percent) of the 241 cases in which there was a plea of not guilty resulted in conviction after trial.

The result is that each year, as April 15 approaches, millions of taxpayers and their advisors engage in the arduous process of reporting income and paying heavy taxes to the federal government with the knowledge that deliberate mistakes can be detected and prosecuted with a 90 percent chance that an indicted defendant will be convicted. This common belief, based on fact, gives our tax system the credibility that accounts at least in part for its miraculous success.

In my view, maintenance of this credibility is the principal business of the Intelligence Division of the Internal Revenue Service and the tax enforcement elements of the Department of Justice.

From my distance, I have no confident view about particular decisions with respect to the diversion of functions and manpower from this routine activity to the support of investigation and prosecutions of non-tax crimes. I would, however, unhesitatingly urge that each of those decisions should involve a careful appraisal of the effect which it might have upon the heart and soul of our federal tax system: its credibility.

I had one relevant experience with a decision in which these factors were weighed. When I was at Justice a question arose as to whether the Tax Division's authority to authorize prosecutions of tax law violators should be shared by the Criminal Division of the Department. There is a great public interest in detecting and punishing criminals. Crime is obviously a serious problem in this country. We have never really succeeded in controlling it. Indeed, if enforcement of federal criminal law generally were as successful as the enforcement of our tax laws has been, this country would be a better place to live in. There were those, then as now, who believe that "criminals" should be "targeted" for an across-the-board investigation of all of their affairs with a view to detecting and prosecuting any federal crime including a tax crime which may be discovered in the process. In order to carry out this function correctly, it was argued, those investigating the tax crimes of targeted persons should have final authority to decide whether the cases developed merited prosecution.

On the other hand, there was a danger that if tax prosecutions were authorized by the Criminal Division pursuant to its standards for authorizing prosecution, the public might get the impression that the criminal sanctions of the federal tax laws applied primarily to criminals and other "bad" people. The tax sanction might lose its credibility with respect to most taxpayers. There is a latent constitutional and moral problem about compelling taxpayers to supply information about their affairs which will be used by the government to prosecute them for non-tax crimes with which they are compelled by law to supply leads. Furthermore, if the prosecution of some violators was authorized by different standards from those applied in authorizing prosecution of other violators, the courts might lose confidence in the fairness of tax enforcement.

The then Attorney General decided not to divide the responsibility for final decisions with respect to tax prosecutions. He continued the ultimate authority of the Tax Division with respect to each criminal tax charge.

I think that decision was a healthy one. I think the reasoning and result should guide the resolution of other issues arising with respect to the allocation of personnel, resources and responsibility between routine tax enforcement and other applications of the tax law to criminal matters.

Senator HASKELL. The next witness is Mr. Boris Kostelanetz of New York.

STATEMENT OF BORIS KOSTELANETZ, ESQ., NEW YORK

Mr. KOSTELANETZ. Good morning, Mr. Chairman.

I would like to thank the committee, and you, Mr. Chairman, for the invitation to come here. It is a great privilege for a New York City lawyer to appear here.

In my notes to the committee, I noted a story told of Dean George Kirchwey, who early in this century was dean of Columbia College, and later in his career became warden of Sing Sing Prison. When he was asked about the differences in his roles, he indicated that he liked the latter job better. He said, "At least the alumni do not come back and tell you how to run the place!"

With this criterion in mind, I wish to say I am an alumnus of the Justice Department. They gave me a postgraduate course in criminal law and its administration. I was a very active young prosecutor, and I was an administrator in the Criminal Division.

This probably gives me appropriate alumni credentials to come here and give you some of my thoughts. Since leaving the Government, except for a brief stint with the Kefauver committee, that is, the Senate Committee To Investigate Crime, back in the early 1950's, I have practiced law in New York, in a law firm, Kostelanetz, Ritholz & Mulderig, which specializes in taxes and litigation. I suppose my essential qualification is that I have had on-the-job training for about 40 years.

What I would like to do, Mr. Chairman, at the beginning, is to start out with a perspective as to how I see law enforcement in the Federal tax area. My suggestion is, and I say this most respectfully, that you are not going to make decisions based on a gravest kind of crisis in the same way that a study might deal with street crime or with narcotics where government efforts, State and Federal, seem to be failing.

On the contrary, we are dealing with tax statutes which for more than 60 years have been really very well enforced, successfully enforced. As of now trillions of dollars have come into the Treasury, and they have been raised pursuant to these statutes, and this "self-assessment system" to which Mr. Oberdorfer referred, a caption somewhat misleading, because sanctions are really built into it to make self-assessment work.

But it works very well, and it is a model for the rest of the world. I think if we were to compare it with some of the other countries in the world where tax assessment and collection is a kind of an annual sporting event, we ought to be very, very proud.

So if I have any message at all, I would say that we should try to make a good system work better, rather than to look for ways and

means of diluting what we have in order to achieve some objective other than the collection of tax revenues.

I think I should go a little bit further and express a rather old-fashioned thought that robbers ought to be punished for robbery, extortionists for extortion, bribers for bribery, et cetera, under appropriate statutes, and it dilutes the gravity and the seriousness of revenue sanctions to use them as tools for everything that may be wrong.

In this connection, and addressing myself specifically to the topic—I think except in a most unusual situation, there should be a basic theory of revenue administration that one special agent of the Intelligence Division working on 10 possible tax evaders should be much more productive for the Service than 10 special agents investigating one taxpayer, no matter how socially undesirable that one taxpayer may be.

I think, and I believe Mr. Oberdorfer alluded to it, that many of us feel strongly; many of us are carried away by perfectly understandable antipathy for major crimes. We see the alliance of the Intelligence Division in the drive on crime as something that will solve all ills. Indeed probably our most respected senior officer of the Government who has testified before you, said these agents have unique expertise and familiarity with complex transactions, and they are indispensible to the Government in its effort against organized and white-collar crime.

I really must respectfully dissent.

I think that white-collar offenses, which deal with books and records, do require financial detectives, financial sleuths. I do not think that in cases which do not involve title 26, the Internal Revenue Service has to supply them. In the FBI, the SEC, the Post Office and other agencies, there exists some accounting talent which can be used in the Government's struggle against crime. It would seem to me that in extraordinary situations the Government might consider the training of more accountants, or even possibly permit, pursuant to legislation or regulation, the engagement of outside accounting firms, if that is in order.

But it also does seem as if the limited budget of the Internal Revenue Service should not be used to make drives on bookies, procurers, social deviates, and what not, whose cases for the most part do not even require any real accounting specialty.

We can all agree that in this country there are probably more law violators than constables. It could be argued that if law violators and constables were even in number, everyone would be safe. I am saying in this connection that there are probably, even with our self-assessment system, many more tax evaders undiscovered than the 2,700 special agents which I think we now have.

So unless Congress is willing to multiply that force manifold, it would seem that the Service is doing the proper thing in being frugal in discharging its real fiscal responsibility and in even being miserly in lending its assets for other purposes.

The other thing that I would like to suggest deals with the moral soundness of the statutes which are being enforced.

In my days as a young tax prosecutor, tax rates were much lower, and the number of cases processed by the entire Government were

small. But there was an absolute requirement of quality, and an acquittal was almost unheard of. Since that time, cases have multiplied, and it may very well be that there is a balancing in favor to exposing some people to the jeopardy of litigation whose transgressions could better be determined by civil courts by way of penalty suits.

Of course, if you include all the guilty pleas, the percentage of convictions is very high, but out of the cases which go to trial, I believe the conviction rates run somewhere between 60 and 70 percent, usually closer to 70 percent.

I think the ratio of acquittals in tax cases that go to trial is probably higher in acquittals than in the cases of the other Federal violations. By this I do not mean to say that Americans who are guilty should not be prosecuted. Of course, they have to be. But, I think if cases brought in the Federal courts were to serve as a deterrent to defaulting taxpayers, the cases should involve facts where the prosecution would not only be strong, but where the results would be morally certain.

Senator HASKELL. May I interrupt?

Mr. KOSTELANETZ. Yes.

Senator HASKELL. I do not really know much about the percentage of success in bringing criminal cases at any level, but, given the hazards of litigation and given the vagaries of juries, close to 70 percent does not sound bad to me.

Mr. KOSTELANETZ. It is not bad, Mr. Chairman, compared to, let us say, narcotic cases, where I believe the percentage of conviction is—before juries—tremendously high, it is not very good, either. Certainly in counterfeiting cases, and certain cases of that type, the ratio of convictions, I believe, is much greater than you have in tax cases.

What I am really suggesting is that this is an unusual setup, where the Service really has a choice of going two ways. They can go and prosecute a civil penalty.

Senator HASKELL. For civil fraud?

Mr. KOSTELANETZ. Yes, a 50 percent penalty in one direction, and they can prosecute criminally in another direction.

In the case of a criminal prosecution when successful, of course, they get the civil penalty as well, practically automatically upon conviction.

There are very, very few violations, except perhaps for customs duties and things of that sort, where the Government really has a choice of which way it could go. I am merely suggesting that when they go criminally, the cases should be morally certain, and acquittals, as I say, should hardy occur.

Senator HASKELL. I understand.

Mr. KOSTELANETZ. I think, to go back somewhat to the original text, that where the revenue laws are used to achieve other than revenue ends, such as apprehension of criminals whose transgressions are not concerned with revenue, my suggestion is that the deterrent effect, really, of the intelligence mission becomes a little bit blurry.

For example, in maintaining the integrity of the statutes, it seems the talent of the IRS personnel could be used more productively elsewhere than in producing headlines such as we had in New York a few months ago. It involved a procurer, who had written and published his autobiography, which was in all the stores, and he received 3 years for failure to file tax returns.

If that is the best society can do for a moral deviate, ordinary tax evaders are going to say the Service is interested in those kind of people and "it is not interested in me."

As far as the procurers are concerned, they are not going to rush to pay taxes, they will just avoid writing autobiographies.

Senator HASKELL. Do you think he filed a return on the royalties he received from his autobiography?

Mr. KOSTELANETZ. Now, I would like to give the Chair, if I may, another instance of what I think is a misjudgment in prosecution, the effect of which is a dilution, or a diminution of the statutes.

I set forth in my paper questions asked recently by one of our most esteemed judges in the Southern District of New York when a guilty plea was offered for evading $427 in income taxes.

The judge said, and this is just a few weeks ago, a month or two ago, "There seems to be some form of distortion that is going on here, an unreality, to bring a matter of this kind into the Federal court, requiring the services of a special practitioner, a judge, a clerk, stenographer, a courtroom, and a lengthy, detailed report. Is there not any sense of proportion involved in these matters," The Court: "What excuse is there for bringing a man up on a Federal charge involving $427.81? Are there not other adequate penalties than the imposition of criminal penalties?"

Senator HASKELL. This brings me, if I may, to a question I had. In a previously heard hearing, we had some examples of, for instance, an undesirable or bad guy, as Mr. Oberdorfer would characterize him, put in jail over a disputed payment for a dependent. Another thing was, I think, deduction of a depreciation on an automobile. So, may I gather you share Mr. Oberdorfer's view that this might have an adverse effect on the Federal courts, as well as on the public?

Mr. KOSTELANETZ. Yes. I think that it is inevitable that prosecution has to be selective in one sense, the quality sense, but when it becomes selective in being used for some other purpose to bring people before the court, it really makes the Government perhaps look poor in the eyes of the court and the public, then it does not serve a purpose.

This really brings me to the end, if I may. My suggestion, to recapitulate, is really that the IRS should deploy its troops in support of its primary mission, the assessment and collection of revenue.

Second, and I cannot see how anyone could differ with me, the emphasis has to be on the quality of the case, and some of the haste and some of the so-called streamlining should not be the order, the No. 1 order, of the day. The order of the day should be the quality of the specific case being prosecuted.

Third, it is my view that the penal sanctions provided by Congress to assist collection of revenue should not be diluted to enforce some sociological policy, and obviously should not be applied to trivia.

Now, that is the end of my presentation. I think, again, we have a good system, we have good people, and I think all our efforts, I most respectfully suggest, our efforts should be to make the system work better and to eliminate these small kinks in it. The mandate of Congress, of course, is that the Service and the Government deal fairly with the citizens, and overwhelmingly it does so. I would just like to have it do better.

Senator HASKELL. Thank you very much, Mr. Kostelanetz. One thing in the course of the certainty of result, it is my understanding that when the intelligence unit makes a recommendation for prosecution, they—at least from the knowledge that I have—are pretty certain that a conviction will result. I cannot think of any case I have heard of where a lesser standard was applied in the recommendation for prosecution.

Are you suggesting otherwise?

Mr. KOSTELANETZ. Well, I think in terms of recommendations, at the Intelligence Division stage, I think you have a very, very separate problem which is really a suitable topic of discussion in and of itself, and that is this. Of all agencies that I am familiar with, the FBI or the Post Office, Alcohol Tax Unit, Secret Service, Food and Drug Administration, the working investigators at the working level report facts to a lawyer. He may report the facts to a Food and Drug lawyer, or perhaps he will report it to the SEC, which finally makes a recommendation, and that, of course, is staffed at the top by lawyers.

The only agency offhand that I know of, where an investigator sits down at the end, and he may be 2 years out of accounting school, and in effect makes findings of fact and conclusions of law, is the Intelligence Division.

How that grew up, I just do not know, and I think it is a great burden for an investigator to carry. My preliminary view, if you will, because I have never really heard the subject fully debated, is that probably the investigator should not make his recommendations to Treasury lawyers.

He should state the facts to the Treasury lawyers, and then it is up to the Treasury lawyers in analyzing the facts to come up with a recommendation. I think that would probably tend to solidify the quality of the work created within the IRS.

Senator HASKELL. Again, thank you very much, Mr. Kostelanetz, for your statement. I feel that in view of your years of experience, your testimony carries a great deal of weight. Thank you, sir.

Mr. KOSTELANETZ. Thank you.

[The prepared statement of Mr. Kostelanetz follows:]

STATEMENT OF BORIS KOSTELANETZ

Mr. Chairman, my name is Boris Kostelanetz and I am a New York City lawyer. My appearance here recalls to my mind a story told of Dean George Kirchwey who early in this century had been dean at Columbia College and later in his career had become warden of Sing Sing Prison. When he was asked about the differences in his roles, he indicated that he liked the latter job better. He said: "At least the alumni don't come back and tell you how to run the place!"

With this criterion in mind, I wish to state that I received an excellent post graduate education in the administration of criminal law from the Justice Department. I was a very active young prosecutor and later an administrator in the Criminal Division. This alone probably gives me the proper alumni credentials to express some thoughts. Since leaving the Government in 1946, except for a brief stint as special counsel to the U.S. Senate Committee to Investigate Crime, then known as the "Kefauver Committee," I have practiced law in New York as a senior partner in a small law firm, Kostelanetz, Ritholz, & Mulderig, which specializes in taxes and litigation. Thus, my essential qualification, I suppose, is that either as Government or private counsel I have had 40 years of on the job training.

I would like to start with what I respectfully suggest is a proper perspective for law enforcement activities in the area of Federal taxes. My suggestion is that the legislative decisions made by this committee will not be made in response to

the gravest emergency need found elsewhere. This study does not deal with street crime or narcotics where governmental efforts, State and Federal, appear to be inadequate if not failing. On the contrary, we are dealing with tax statutes which in modern form have been a part of the law for more than 60 years. They have been most successfully enforced and vast sums of money, now in the trillions, have been raised for the needs of the Federal Government pursuant to such statutes. Our self-assessment system, a description somewhat misleading since sanctions are built into it to enforce "self-assessment," has worked well and is indeed a model for the rest of the world. As we know, in some countries tax collection and assessment have the aspect of an annual sporting event.

If I have any message at all, it is that I firmly believe that we should attempt to make a good system work better rather than to look for ways and means of diluting what we have in order to achieve objectives other than those directed to collection of revenue.

Except in a most exceptional situation, it is a basic theorem of revenue administration that one special agent of the Intelligence Division investigating 10 possible tax evaders is more productive for the Service than 10 special agents investigating one taxpayer, no matter how socially undesirable the latter taxpayer may be. I suggest that many who may be emotionally carried away by a fully understandable antipathy for major crimes see the alliance of the Intelligence Division of the Internal Revenue Service in a crime drive as assuring the solution of many ills. Indeed, a most respected senior officer of the Government has stated that the Internal Revenue Service personnel has unique financial expertise and familiarity with complex transactions which make them indispensible to the Government in its efforts against organized and white collar crime. To this I most respectfully dissent.

Pershaps I should go further and express the old fashioned thought that extortionists should be prosecuted for extortion, bribers and bribees for what the appropriate statutes proscribe as illegal, and so forth, and that it dilutes and depreciates the gravity and the seriousness of revenue sanctions to have them used as penal tools for everything which may be wrong.

I agree that white collar offenses, which deal with books and records, require financial sleuths. I do not agree that in non-title 26 cases the Internal Revenue Service must supply them. Unquestionably, within the FBI, SEC, Post Office, and other agencies, there exists accounting talent which can and should be used in the Government's continued struggle against crime. It may very well be that in extraordinary situations the Government might consider the training of additional accounting sleuths or even permit, pursuant to legislation or regulation, the engagement of private accountants to solve particular crises. But why use the limited budget of the Internal Revenue Service to make drives on bookies, procurers, social deviates, and what not, whose cases for the most part do not even require any real accounting talent at all?

I suppose we can all agree that in this country there are probably more law violators than constables; that probably if law violators and constables were even in number, we would all be forever safe. I am merely suggesting with fair certainty that there are more tax evaders in this country than our 2700 special agents. Unless Congress were willing to multiply that force manifold, it is incumbent on the service to use its assets frugally in discharging real fiscal responsibility and be most miserly in the spending of such assets for other purposes.

The second observation which I make deals with maintaining the moral soundness of the statutes providing criminal and civil sanctions attendant to title 26 violations. Here again, you are dealing with situations where by prosecutive action and without real warrant there has been, I suggest, an unthinking downgrading of violations. In my days as a prosecutor, tax rates were much lower and the number of cases processed by the Justice Department for the entire country was small, but there was an absolute requirement of quality with respect to a proposed criminal case and an acquittal was almost unheard of. Since that time the cases have multiplied. There has been, I think, a balancing in favor of exposing some to the jeopardy of a criminal trial whose transgressions might be better determined in the civil courts by way of penalty suits. While the percentage of successful criminal dispositions in total is very high, by reason of guilty pleas, the results in cases going to trial are quite different. Success is obtained in some 60% to 70% of the cases. It is entirely probable that the ratio of acquittals in tax cases which go to trial is considerably higher than the acquittal rates of other federal violations.

These observations are not intended to indicate that the guilty should not be prosecuted. Of course, they should be. But I do say that if cases brought in the federal court are to serve as a deterrent to faulting taxpayers, the cases should involve facts where the prosecution would not only be strong and just but where the results would be morally certain.

"Streamlined" procedures which reject the possibility of analysis and some exchange of information between the parties and which put a premium on haste will in many instances preclude the government from meeting this kind of exacting criteria. The compulsion to keep traffic moving may sometimes be just a bit stronger than the desire to make a considered decision.

Where the revenue laws are used to achieve other than revenue ends, such as the apprehension of criminals whose real transgression is not concerned with revenue, the deterrent effect of the intelligence mission is blurred. For example, in maintaining integrity of the statutes, it seems to me that the talent of the internal revenue service personnel could be more productive elsewhere than in producing headlines, such as one which we had recently in New York, involving a procurer who had written and published his autobiography and received three years for failure to file tax returns. If that is the best that society can do to a moral deviant, ordinary tax evaders, professional and business men, might say to themselves that the service is interested in those kinds of people and not in me.

To highlight a judicial view of a misjudgment in prosecution, the effect of which is dilution and diminution of the statute, I set forth the questions asked recently by one of our most esteemed judges in the southern district of New York, where a guilty plea was entered for evading $427.81 in taxes:

"The court: there seems to be some form of distortion that's going on here and unreality, to bring a matter of this kind into the federal court, requiring the services of a special practitioner, a judge, a clerk, a stenographer, a courtroom, and a lengthy detailed report.

Isn't there any sense of proportion involved in these matters at all?

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The court: what excuse is there for bringing a man up on a federal charge involving $127.81?

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The court: aren't there other adequate penalties than the imposition of criminal penalties?"

All this brings me to the end of a round trip with respect to my views concerning the role of law enforcement activities and the federal tax.

To recapitulate, the Internal Revenue Service should deploy its enforcement troops wisely in support of its prime mission, the protection of the integrity of the revenue process.

Secondly, the selection process where the service has a choice in its recommendation between civil and criminal sanctions should underscore quality and certainty of prosecutorial success rather than speed and "streamlining" of procedures.

Thirdly, the penal sanctions provided by congress to assist the collection of revenue should not be diluted or even demeaned to enforce social or sociological policies on the one hand nor to be applied to trivia on the other.

I have said before and I repeat, that our system of tax compliance is indeed a good system which will merit respect just so long as government officials do a proper professional job within their assigned tasks. In the last analysis this involves the mandate of congress to deal fairly and justly in the fiscal affairs obtaining between the government and its citizens.

Senator HASKELL. The next witness is Prof. Robert Blakey, director, Organized Crime Institute, Cornell University.

STATEMENT OF PROF. ROBERT BLAKEY, DIRECTOR, ORGANIZED CRIME INSTITUTE, CORNELL UNIVERSITY

Mr. BLAKEY. Thank you, Senator.

My name is G. Robert Blakey. I am a professor of law at Cornell, and director of Cornell's Institute on Organized Crime.

My appearance here today is personal, and nothing I say should be attributed to Cornell or any other organization with which I am associated.

My background includes service in the Department of Justice during a period between 1960 and 1964 as a special attorney in the Organized Crime and Racketeering Section. Subsequently, I returned to the Notre Dame Law School to teach. I was a consultant in 1967 to the President's Commission on Law Enforcement and Administration of Justice in the area of organized crime. Most recently, I spent 5 years as Chief Counsel to the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee, which has jurisdiction in the Senate over much of the criminal legislation dealing with organized crime. I have been at Cornell since 1973.

I would like to express my appreciation to the Senator, and to the committee, for asking me to come here today, and to share with it my thoughts or perspectives on what is, I think, a very serious problem that you are facing: What should be the role of the Internal Revenue Service in the general Federal program to deal with organized crime?

I might say that this is not a new problem for me, either personally or professionally. While this issue is now receiving congressional attention, it has been something continuously facing those people concerned with the Federal organized crime program, almost right from the beginning.

I have had the opportunity to work in the field with Internal Revenue Service agents, and with FBI agents, as well as other officers in the Federal law enforcement establishment. It has always been a very difficult task as a prosecutor working with agencies whose immediate allegiance was to their own bureaucratic hierarchy.

So, this problem is not new to those concerned with organized crime?

Perhaps I should sketch for you, if only briefly, the history of the Federal organized crime program, and then put the IRS participation in context.

The truth is, until the early 1950's, the Federal Government had no concerted organized crime program. As I am sure you are aware, Senator, the Federal law enforcement agencies have developed a great deal like Topsy, "they just growed." Normally, they have grown around special missions. They began, I think, with the Revenue Cutter Service in 1789. The FBI developed around specific criminal statutes, the Drug Enforcement Administration grew up around drug laws, and so forth. The Federal Government, fortunately, has never had a general Federal law enforcement agency, and I include the FBI in this remark. The Bureau is not a general investigative agency. It is, to be sure, multipurpose, but its purposes are, in fact, relatively limited.

What this has meant can be concretely illustrated. Let me take a non-IRS example to neutralize its possible overtones.

The theft and fencing of stolen property in this country is a serious problem. Organized crime participates in it at the highest levels.

The Federal investigative involvement in theft and fencing sometimes comes in through the FBI. Interstate transportation of stolen property in excess of $5,000 is a Federal offense. The theft of Government bonds is a crime investigated by the Secret Service.

Now, what happens when an FBI agent, using, perhaps, informants, or a Secret Service agent, using, perhaps, informants, begins to investigate an interstate theft or the theft of Government bonds?

Very often, the Secret Service informant will begin dealing with a large fence, and he will want to purchase from the fence not stolen property generally, but stolen Government bonds, because that is all that lies within the Service's jurisdiction.

The FBI agent, on the other hand, will be worried about the value of the property that has been transported interstate.

Each responds to the narrow investigative jurisdiction of his agency. In fact, neither may be successful in investigating the fence because neither is looking at his entire program or activities.

This is not a problem that is unique on the Federal level. The division of responsibilities in general-purpose police agencies in large metropolitan areas reflects similar problems; for example, an officer on the robbery squad will interview an informant, and he will want to hear about robberies. The informant may want to tell him about narcotics, but the officer will say, "Don't tell me about narcotics, I want to hear about robberies."

Conversely, down the hall, a narcotics informant will be telling an officer about a robbery, and the officer says, "I want to hear about narcotics."

Somewhere, somebody has to listen to both narcotics and robbery, or the job of crime control doesn't get done, and this has been the rationale of the Federal response to organized crime.

The turning point came in 1960 when the Attorney General was the President's brother. He had had an important experience with organized crime here on the Hill with the McClellan committee.

He came to the Department of Justice and said, "I am tired of hearing people talk about their limited problems. From the citizens' perspective, organized crime is a serious threat; the corruption associated with it is a serious problem. I want somebody to know what the left hand is doing and what the right hand is doing. I want to put general-purpose people concerned with organized crime in the field talking simultaneously with IRS agents, FBI agents, and the Bureau of Narcotics agents, and I want them to look at the whole problem, and not through the limited perspective of special-purpose agencies, but from the general perspective of citizens worried about the enforcement of all of the Federal criminal laws."

This new program from about 1960, through, I would say, about 1969, was singularly successful, in my judgment. It had, of course, serious problems and deficiencies, but they weren't administrative; they were legislative. One of the things that Senator McClellan asked me to do as Chief Counsel of the Subcommittee on Criminal Procedures was to examine that experience, and as an appendix to my testimony today, I have made available to you, Senator, and the staff, a statistical analysis of the Federal organized crime program's efforts in the years between 1960 and 1969.

Included in that material is a list of the top 10 offenses prosecuted against identified members of organized crime, and by this I mean members of La Cosa Nostra. I do not limit the phrase "organized crime" to La Cosa Nostra. Other groups are certainly involved. But they are the heart of the problem, particularly in the East. They are what the President's Crime Commission in 1967 called "the core of the problem."

When you look at the prosecutions brought against hard-core organized crime, the offense that is No. 1 is tax evasion. In this

regard, I would take serious exception to the drift of some of the testimony I have heard this morning, which would leave you with the notion that somehow racketeers are those who commit other crimes, but not tax evasion. I would suggest to you that a racketeer who evades his taxes is a tax evader, too, and simply because he is a racketeer, he ought not be given special treatment and not investigated. It seems to me that if one of his crimes is tax evasion, he should be prosecuted for tax evasion.

Senator HASKELL. I certainly wouldn't disagree with you that tax evasion is a major crime, but what is your reaction to the instance which Mr. Kostelanetz quoted in his testimony, where there was $427.36 involved for some minor infraction, or where there was a case involving a dependent, and the allegation was that it was a fraudulently claimed dependency? Is that the kind of tax evasion you are referring to, or are you referring to something a little different.

Mr. BLAKEY. It would be presumptuous of me, Senator, to comment on that particular case, without knowing the facts of it. It may well have also been presumptuous of the Federal judge to comment on the quality of the prosecution, when all that was brought to his attention was what was laid out in open court. I gather that this was a guilty plea and that the figure was $400. I have no idea what the real figure was. The real figure could have been higher than that, and this could have been a compromise figure.

Let me respond to your question by contrasting, if I might, two prosecutions that I do have a good deal of familiarity with, and I would suspect at least some of the readers of your record might also have some familiarity with them.

Focusing on Chicago, two major racketeers who have operated in that area over the years have been Al Capone and Tony Accardo. As I am sure you remember, Capone was ultimately prosecuted and convicted for tax evasion. But the tax evasion was massive. He paid no taxes on the liquor his illicit liquor business, his bordellos and his gambling casinos, and if you read the Court of Appeals opinion, while indeed it is a tax case, it is obvious that he was also a wholesale violator of all laws, State and Federal, but one of the major crimes he committed was that of tax evasion.

To somehow suggest that this was a racket prosecution and not a tax prosecution seems to me to miss the central point of the prosecution. He evaded taxes, too.

To contrast this prosecution with a case mentioned by Mr. Alexander when he testified before the committee, the *Accardo* case. This was, at best, a marginal tax prosecution. This was a man who had a false source of income, a sham source of income, The Foxhead Bear Co., and he was prosecuted for misstating his relationship with that company. It was a marginal tax prosecution.

What I would suggest to you is that to take either the Capone prosecution as typical of all the cases, or take Accardo, as typical, is unfair. You would have to take a sample of all the cases brought and ask if they are Accardo-type cases, or Capone-type cases.

What has been left with you this morning, however, is impressions that none of the racket prosecutions have validity, that they are all like the *Accardo* case.

The Department of Justice, having as many prosecutions as it has, will have some bad cases. But this is a case of judgment; we all make mistakes.

But on the whole, the tax cases that have developed out of the organized crime program have been for substantial tax violations.

The illustration given you of a pimp who didn't file returns for several years is also misleading. He wasn't only a pimp. He was also a massive tax evader, and I see no reason why he should have been indicted and convicted for tax evasion. I see no reason why he shouldn't have been indicted and convicted for being a pimp, too, but why do we have to choose? This is not an either/or proposition.

As I was saying, the organized crime program between 1960 and 1969 found that tax evasion was one of the top Federal offenses committed by organized crime. I do not have more recent statistics, Senator, for the period 1970 on. This committee would have to develop them. It may well be that that order has changed. In 1970, as I am sure you remember, Congress expanded the jurisdiction of the FBI in the racket area, and it may well be that the FBI's participation in the organized crime program is probably now more substantial than that of the IRS. It is also true that the impact of those tax cases led to, contrary to the previous witness' testimony, a substantial increase in tax payments. The Internal Revenue Service testified before the Fascell committee in 1969 in the House that a study done of racketeer tax returns indicated a 57-percent increase in declared income. Now, this indicates two things. Tax cases will be more difficult to make in the future, and second, that this program dealing with racketeers has in fact, increased the tax revenues.

The central point, though, that I want to make with you goes like this.

If I may be candid with you, Senator, I think much of what you have heard here today can be best described as arguments that flow from a "bureaucratic imperative."

I don't quarrel with those who see this as a real policy issue. I, too, see it as a real policy issue, but hidden behind the policy issue, that is, the veneer of what you have heard here about tax agents must investigate tax crimes, behind the veneer of seriousness of the argument, there is also "a bureaucratic imperative."

The real issue here is who controls the IRS agents.

Are they controlled in some degree, or are their investigations directed in some degree, by outsiders, that is, people in the Criminal Division, who may or may not have a different perspective than the enforcement of the tax code?

The test of whether this is a real argument on the part of IRS administrators is brought out when we looked at the FBI's role in the organized crime program. The FBI doesn't have the convenient excuse not to participate on the ground that they are not primarily involved in this area; they don't have the tax argument excuse. They can't say, like the IRS, that they have a different mission. In fact, the FBI has a primary mission in the racketeer area. Yet, they, too, have held back from the sort of strike force approach that I outlined to you, that is, bringing all the agencies together to look at a single problem.

If the FBI is or has been at various times, less than a full participant in the program, I suggest to you that the real reason that both the

IRS and the FBI are holding out has little or nothing to do with taxation. It has a lot to do with "a bureaucratic imperative." It is a question of how agents are controlled and by whom.

If I give you two of my agents to investigate your priorities, I lose power and control over them.

What I am suggesting to you, Senator, is that this argument is a perennial one. You will hold hearings today, and tomorrow and later. Will you arrive at what you hope is a fair and balanced decision? But that decision will not hang together, Senator, no matter how you resolve this. The "bureaucratic imperative" will push it in another direction at another time in another place. It is the kind of thing that will go on and on. No one likes to share control. No one likes to have it said he is not fighting organized crime.

Included in statistics I have given you is also an outline of the performance of the Department of Justice, that is, the actual statistics of man-days in court and so forth. Included in that is also an outline of man-days of participation by the Internal Revenue Service in the organized crime area. It is put on a graph for you.

I would suggest to you that the single most important factor in interpreting that graph is not the policy question we are discussing now, not the actual desires of the people in the field, but who was Commissioner of Internal Revenue and who was Attorney General. And if they gave a high priority to organized crime, then the IRS participated and they were happy.

When a new Attorney General came in, and he didn't give the same priority to organized crime, the "bureaucratic imperative" took over and the IRS pulled out. There was no change in announced policy, but they were a change in administration, and you can see it dramatically, Senator, in the graph. After Robert Kennedy died and the President's—I am sorry. After the President died and the Attorney General no longer had a President for a brother, and when he spoke in Government circles, he no longer spoke with the authority of an alter ego to the President, the normal tendency of the bureaucracies began to prevail. Each one pulled back into its own limited sphere. You can see, you can plot, you can almost tell exactly at what time and at what point, the various people participated and why.

The second major point that I want to make with you, Senator, before I leave, goes to the nature of law enforcement generally, to the quality of compliance with the role of law.

It is my judgment that the vast majority of the people in this country are indeed law abiding, and that consequently much of the administration of justice is engaged in for the benefit of the law abiding, not the lawbreakers.

Unless people have faith in the general administration of justice, however, they will not be law abiding. So, I suggest to you, far from analyzing tax compliance as a simple question of tax laws, I think you have to analyze tax compliance in the context of all law compliance.

If a person is not law abiding on some questions, he also tends to be not law abiding on all issues. I suggest to you, on the other hand, that a person who is law abiding is law abiding on most questions, including tax.

Consequently, I must reject the perspective that has been brought to you this morning that analyzes only the narrow deterrent impact of individual tax prosecutions. That seems to me myopic.

Senator HASKELL. It seems to me you have hit on a very important question. I wonder, really, whether your basic premise is so, that people who wear black hats when they file their tax returns, also do other crimes. Would you say it is true generally?

Mr. BLAKEY. I think it can, and can't be, Senator. Certain people aren't given the occasions for violations that others are. I will never be convicted of embezzlement, not because I am not a thief, but because nobody trusts me with their property.

This goes for a lot of middle-class people. The only crime that usually comes to their attention is evasion of taxes. This is a middle-class crime. The poor don't evade taxes. They have no income to pay it with. The rich avoid taxes. They don't evade them.

So, what I am suggesting to you is that each person is law abiding in his own way, but if he begins systematically to lose faith in his government, and the essential justice of his social system, we will see a decline in voluntary payment of taxes.

I can tell you when tax time comes around, and I have to pay my taxes, sometimes it bothers me when I don't like Government programs, and I don't always feel like paying to support them. So what I am suggesting to you is a broader perspective that says that allegiance to the law is important here, too.

It is not the only consideration. I agree with the previous witnesses who suggested to you that there must be a certain number of routine tax prosecutions, of people who are W–2, people who simply file W–2's. There also has to be a certain number of tax prosecutions brought against the professional people, who fill out the long form. There also has to be a certain number of tax prosecutions brought against corporations. I suggest to you that there are also a certain number of tax prosecutions that have to be brought against prominent politicians and a certain number that have to be brought against prominent racketeers, and if those tax prosecutions are not brought against prominent politicians and racketeers, the people will decide that there are two standards of law enforcement here. There is one law for the rich and the powerful and another law for the rest of us.

And if they really believe that there are two standards, one for the rich and the powerful and one for the rest of us, their general allegiance to the law will decline.

Now, I can't prove this to you by statistics, and I suggest that none of the people who will follow me or who preceded me can prove the contrary to you with statistics. Nevertheless, it is the general consensus of those people who, over their professional life, have carefully examined the question of law-abiding behavior.

Let me quote to you one passage from the National Advisory Commission on Civil Disorders. The Commission was talking about the impact of law enforcement in the ghetto, or the absence of it. I quote from page 163 of the Commission's report:

> With the father absent and the mother working, many ghetto children spend the bulk of their time on the streets, the streets of a crime-ridden, violence-prone and poverty-stricken world. The image of success in this world is not that of the solid citizen, the respectable husband and father, but rather that of the hustler, who takes care of himself by exploiting others. The dope seller and the numbers runner are the successful men because their earnings far outstrip those men who try to climb the economic ladder in honest ways. Young people in the ghetto are acutely conscious of a system which appears to offer rewards to those who il-

legally exploit others and failure to those who struggle under the traditional responsibilities. Under these circumstances, many adopt exploitation and hustling as a way of life, disclaiming both work and marriage in favor of casual and temporary liaisons. This pattern reinforces itself from one generation to the next, creating a culture of poverty and an ingrained cynicism about society and its institutions.

Let me parallel that quote with one of the concluding passages of the President's Crime Commission on Law Enforcement and the Administration of Justice. I quote from page 209.

Organized crime is not merely a few preying upon a few. In a very real sense, it is dedicated to subverting not only American institutions but the very decency and integrity which are the most cherished attributes of a free society. As the leaders of the Cosa Nostra and their racketeering allies pursue their conspiracy unmolested in open and continuous defiance of the law, they preach a sermon that all too many Americans heed. The government is for sale, lawlessness is the road to wealth, honesty is a pitfall and morality a trap for suckers.

Now, I read these two quotes to you, Senator, because I think what they do is that they sum up in a special way the importance of one aspect of the Internal Revenue Service's function. I am referring to the Intelligence Division now. They are the law enforcement people. The law that they particularly happen to enforce is failure to pay taxes. If that law is not adequately enforced against the racketeers in this country, it will preach a sermon to the American people that will lead to general lawlessness on their part as well as specifically to tax losses.

The final point I would like to make to you, Senator, is that this, like some things in life, is a question of balance. I don't suggest that the major or total program of the Tax Division or the major or total program of the Internal Revenue Service should be focused or concentrated on the racketeer program, and I would hope that those people who are seemingly arguing in absolute terms against the racketeer program would not suggest that no racketeer prosecutions be brought. The important thing here is keeping a sense of balance.

The unfortunate thing, however, is that racketeer cases are not like doctor cases and lawyer cases. You cannot evaluate a "quality racketeer case" by using a "cost of collection ratio," as Commissioner Alexander did before you. These cases are not cost and collection ratio cases. They are symbolic cases. It is important to have 10 special agents working one good racketeer case, even though those same 10 agents in terms of man-hours, could produce more income in the short run by working 10 lawyers or 10 doctors. This is a question of symbolism.

The same thing is true of the FBI. The FBI can use 10 agents working 10 interstate transportation of stolen car cases and produce statistics of 10 convictions, but the one racketeer will go free, and the impression will be left to the people that the racketeers are above the law. It seems to me a balance has to be struck here.

The IRS's participation in the organized crime program is essential. If it is withdrawn, it will be a major blow to the ability of the Government to bring criminal sanctions to bear on racketeers, and I will tell you, candidly, Senator, outside of the Federal Government, and with exception of one or two major metropolitan areas, the criminal law in this country is not enforced against organized crime. If it is not enforced by the Federal people, it is not enforced at all.

In the Federal enforcement program, there are three basic agencies that do their homework: The FBI, the IRS, and the Drug Administra-

tion. Others are involved, but these are the top three. If you take the IRS out in a significant way, you will take out what, in my judgment, is to a significant degree the finest agents in the program.

My friends in the FBI and my friends in the Drug Agency will give me hell for what I am going to say now, but I will say it nonetheless. I have worked with a large number of FBI agents, a large number of DEA agents, and a large number of IRS agents in the Intelligence Division. The imaginative agents in the Intelligence Division are better man for man than the other two agencies.

Senator HASKELL. The other two agencies are going to give you hell.

Mr. BLAKEY. I said individual agents. The general quality of the FBI is higher than in IRS. But I am talking about the financial agents, the ones who can come in and trace cash flow, and can imaginatively pick apart a set of books. In my experience, the IRS agents are the best.

It may well be that you can train the FBI agents to do this. I would hope they can. I have a feeling in the long run the general purpose FBI agent, even if he concentrates in accounting, however, will never match the special expertise of the IRS agents. They have to be kept in the field.

Part of the problem here, too, Senator, is a natural expectation on the part of IRS supervisors. They want to see their agents working IRS cases. They want to see hardworking agents produce IRS cases in the end. But the candid truth is that in the major stages of racket investigations, it is not possible to determine what the ultimate crime is. You don't know whether the best prosecution will be extortion or tax evasion. That is not an IRS decision, or an FBI decision. That ultimately has to be the decision of the Federal prosecutor, who decides which case is the best case to bring to court. This means, and it happened in my own experience, that cases were developed 80 to 90 percent by the IRS in good faith, pressing toward tax evasion prosecutions, turned out in the end to be better as extortion or bribery prosecutions. That is unfortunate. It is unfortunate in the sense that the IRS is not given appropriate credit for the hard work they did.

But from the perspective of the people of the United States and I take it that that is the perspective of the committee, and it certainly ought to be the perspective of the witnesses who come before you, there is no special interest in bringing criminals to book under one statute as against another. If a man's life style, in fact, violates 10 or 15 different crimes, but the best single case that can be brought against him in the judgment of the experienced prosecutor in the field is bribery, or extortion, or tax evasion, that is the one I want the experienced prosecutor to bring, and the fact that there is a bureaucratic argument that the investigative agency that did all the work didn't get title 26 credit is something that bothers me little.

Thank you, Senator.

Senator HASKELL. Thank you very much, Professor Blakey. I think it is very important that I and other members of the committee have some understanding as to how this cooperative effort, sometimes called a strike force, generally works. I am going to ask you some questions involving that because of your experience in that area.

Were you involved in the prosecution of Jimmy Hoffa?

Mr. BLAKEY. I was indirectly involved in it, Senator. In the early stages before the Kennedy administration came in, and I go back before the Kennedy administration, I was involved in the review of the so-called *Test Fleet* case in Nashville. Subsequently, my one area of expertise was in labor violations.

Senator HASKELL. It is my understanding that the IRS also was involved.

Mr. BLAKEY. Senator, everybody was involved at one time or another.

Senator HASKELL. We need an understanding of the mechanics of how this works. Can you give for the record some idea of what the IRS role was in that?

Mr. BLAKEY. Let me answer that in two ways, Senator: first by saying that included among the materials that I asked to have inserted in the record following my testimony is the summary of the Fascell committee's findings on the nature of the organized crime problem, the Department of Justice's efforts against it, and the IRS participation in it. So, to those of your readers who might want a more detailed analysis of it than I can give you orally, I would ask they take a look at the appendix to my testimony.

As I said Senator, I was indirectly involved in the Hoffa case, that is, there was a special unit set up in the Organized Crime Section that had as its general mission the examination of corruption in the Teamsters Union. It was headed by a man named Walter Sheridan, and I suggest to you that if you want the direct testimony of the man most centrally involved in analyzing the multilevel investigations by the Department of Justice into the Teamsters Union, of which the Hoffa case was only one, Walter Sheridan is a better man to talk to than I am.

Basically, what was done in that unit, Senator, was that a number of very able lawyers were put together who were then given general jurisdiction over the Teamsters Union. Then the FBI, the Internal Revenue Service, the Bureau of Labor Management Reports of the Labor Department were all asked to give to this unit all the information that they had about the Teamsters Union, the various members in the Teamsters Union, the alliance between the Teamsters Union and various organized crime figures: for example, Tony Provensano, who has been in the paper recently in New Jersey. He is, or was, both a member of La Cosa Nostra, according to Justice Department testimony, and a union official.

Senator HASKELL. What kind of information were these agencies asked to give? For example, what kind of information did the IRS give?

Mr. BLAKEY. IRS was a special problem, because they had limitations on disclosure of tax returns. Normally, what would happen in a case in which a general investigation was being made of a situation, and one aspect of that investigation was possible violation of taxes, the appropriate series of letters would be exchanged between the Department of Justice and the Internal Revenue Service pursuant to the relevant Presidential directives, and the tax returns would be released by the Service to the departmental attorneys.

As a general investigation of the man's activities, but let me say, Senator these investigations were not fishing expeditions. They were

normally based on sound, general intelligence that the man was a racketeer, and some of the general intelligence went back, for example, to the Kefauver Commission hearings in the 1950's, and, indeed, the McClellan committee's hearings into labor-management discrepancies. There had been public testimony as to who these men were.

Then the man's general criminal lifestyle was investigated, for example, the relationship between a business agent and an employer, who had a sweetheart contract. The man's general sources of income were examined. It would be compared and contrasted to his tax returns, and if the tax returns showed a substantial understatement in income in reference to his general lifestyle, an effort would be made to see if a net worth case could be brought against him. Some effort had to be made to get a starting net worth. You would get a look at his lifestyle over the years, the home he had, the lifestyle of his wife. An effort had to be made to determine how much income he had, or rather, how much expenditure he had, and then account for the income by his tax returns.

If a net worth case could be made, it would be. Sometimes, when a major payment of one kind or another would be made, that might appear best as a specific item tax prosecution. That specific payment might also be an extortion case, or that specific payment might also be potentially a bribery case. It would depend, as you developed the facts, on a day-to-day basis, on which was the best.

If you had several witnesses, where one said, "I was bribed" and the other side said, "I paid the payment through extortion," and in your heart of hearts you knew both were lying, but you couldn't make up your mind, and you knew a jury couldn't make up its mind between extortion or bribery, maybe the best way to handle that was a tax evasion case.

On the other hand, if you had a clear shot at extortion you take it, even though it may well have been that the facts about the specific item were developed as part of a general net worth tax case, but when the specific item began to develop itself, it turned out that there was an extortion payment. Since your ultimate social goal, I take it, was the incapacitation of these people, and the HOBBS set offers you a 20-year penalty, while the tax evasion offense offers you only 5 years, and you can bring the action either way, there is certainly a tendency to bring the extortion charge. My own judgment is that you ought to bring both. I see no reason in giving a free ride on the tax evasion because you are going to charge him for extortion. But some people prefer simple cases.

So, information about the individual was brought in and collated and developed, and as an individual agent would bring in information, the normal tendency was to let him work that aspect of it to pursue his own leads. He had talked to the banker, and he had talked to the woman who ran the department store. It was only deep into the investigation when you sat down to begin writing a prosecutive memorandum that you would go back and analyze that investigation and decide that when push came to shove it was a tax case, or an extortion case.

Senator HASKELL. Are you saying, Professor Blakey, that before you would ask for the tax returns you would have a pretty good idea that either extortion or bribery or something like that was involved?

Mr. BLAKEY. I think——

Senator HASKELL. Is that the way it would work?

Mr. BLAKEY. Senator, it is easy to talk in an offhand phrase about extortion or bribery, because as a lawyer we tend to think in how the law categorizes it.

In the early stages of an investigation, particularly against a racketeer, what you generally begin with is a long police history on the man. Someone says he is involved in sweetheart contracts, or he has no regular employment, but he drives a big, black Cadillac.

So you begin to look into what he is doing. You may need to put him under physical surveillance for a week to see who his associates are. In other words, you begin with a generalized understanding of his place in hierarchy of organized crime. You may hear something in a previous case from one of the witnesses who broke and agreed to discuss everything with you and he said, "Hey, you know who you really ought to get is not me, but —" and it gives you an outline of a corrupt relationship between a union and a lawyer. He doesn't know the name of the man who took the money, or the date the money is passed. Then you take this further and further.

Senator HASKELL. Excuse me. Let me restate my question.

I am really interested in knowing at what stage the IRS is brought in. If somebody has no visible means of support and they are living high on the hog—you could assume that something funny is going on. Is it at this stage that you ask the IRS to produce his tax returns?

Mr. BLAKEY. No, Senator. What is wrong here is that what you are asking for is a photograph of a motion picture. These things don't have a simple beginning. There isn't one day in which he is not of concern to you, and then one day that he is, where you could analyze the factors that make him a matter of concern. Most of the people engaged in racket activities have been engaged in them for substantial periods of time. The IRS has had racketeer-type program of periodically auditing known racketeers for years. The question is, How does a man become a known racketeer?

He enters the rackets at a young age and grows up and acquires a reputation among police agencies.

Senator HASKELL. I realize the racketeer doesn't jump up full blown, you know, but I think it is important to understand at what time the IRS is brought in.

Now, let me put it a little different way. I think people generally, if they felt that their tax returns are being rifled through by——

Mr. BLAKEY. By curious prosecutors.

Senator HASKELL [continuing]. By curious prosecutors, would feel uneasy, and with great justification.

On the other hand, if there is reason to believe that something funny is going on, as I put it, I think the attitude might be different. That is why I am trying to find out when the IRS gets in the act and what they do.

Mr. BLAKEY. Senator, strike forces and the strike force concept has its bureaucratic imperatives, too. You have a limited number of resources, and you want to put the resources into a place that will give you major payoffs, that is, major convictions against major racketeers. So you don't fritter away your time looking into things with idle

curiosity; you don't just pick every 10th citizen in the phone book and pull his tax return to see what you can find.

What happens in a strike force is that the agent from the Bureau of Narcotics, from the FBI, et cetera, will come in and say, "Let's see if we can't describe generally the racket problem in Philadelphia. Who are the major figures? Who are the major corrupt union leaders? Who are the major corrupt politicians? Who are the corrupt judges?"

The truth is, law enforcement, just by enforcing the law, requires a lot of hearsay, rumor, and good information—"Who is back from prison? Is he back in the business?" You lay out a group of people as potential targets. You try to lay out who is the top guy, and who is the guy who is vulnerable.

Sometimes you have an FBI agent in the same room with an IRS agent, and they will actually talk to each other face-to-face. There is no need for this communication to be down through Washington and back out to the field.

The unique thing is that you have the investigative agencies talking right in the room. Some guy may have an informant. The IRS may have a tax-related informant in an organized crime area, and the tax-related informant may be able to give the FBI a key fencing case. The IRS agent has never bothered to ask this key informant a fencing question.

So, the intelligence begins to build up on whether the guy is a worthwhile target. Then preliminary investigations are made. It may be started by debriefing other informants about this man. "Can you identify his areas of activity?" Then you identify the areas of illegal activity, the areas that may be most vulnerable to a criminal investigation.

So, it moves by stages.

But if the public ever gets the notion that Federal investigative agencies, the FBI, IRS, and DEA, spend their time doing things from idle curiosity, that would be most unfortunate, and it would also be most inaccurate.

My returns, for example, are pulled because they are strange looking. I have seven children, which means that none of the statistical profiles that fit most people fit me. My monthly doctor bills are way out of proportion, so my return tends to be kicked out every year. It is kicked out on a statistical profile by the computer, and I think that is an important and valuable way of enforcing the tax laws against normal people like myself.

The way a racketeer's return gets kicked out is because he has become known as a racketeer, based on hard evidence, associated with previous criminal prosecutions and previous criminal activities as a racketeer.

Now, this is not to say, Senator, and I want to be candid with you, and I want the record to be accurate, that all of the people who received organized crime designations in the past were organized crime racketeers. Some of the people who got on the OC list got on the OC list because the IRS wanted to get credit for an OC win, and they got a good case near prosecution, and they decided, "Can't we call it an OC case, so we get OC credit?" So some people were called OC that probably were not. Ultimately, however, that kind of problem worked itself out in the Department. Today, the approach is pretty well settled.

Senator HASKELL. Thank you, Professor Blakey. You have worked out a good dimension to these hearings and I appreciate it. I look forward to reading your appendix.

Mr. BLAKEY. If I can be helpful in any other way by discussions with the staff, I am available any time.

Thank you.

[The material submitted by Mr. Blakey follows:]

MATERIAL SUBMITTED BY PROFESSOR G. ROBERT BLAKEY, DIRECTOR, CORNELL INSTITUTE ON ORGANIZED CRIME, CORNELL LAW SCHOOL

RÉSUMÉ OF G. ROBERT BLAKEY, PROFESSOR OF LAW

D.O.B. 1-7-36; A.B. 1957, University of Notre Dame; LL.B. 1960, Notre Dame Law School.

Special Attorney, Honors Program, Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice, 1960–64.

Assistant Professor of Law, Notre Dame Law School, 1964–67; Professor, 1967–74.

Chief Counsel, Subcommittee on Criminal Laws and Procedures (Chairman—John L. McClellan), Committee on the Judiciary, United States Senate, 1969–73.

Consultant on Organized Crime, President's Commission on Law Enforcement and Administration of Justice, 1966–67.

Reporter on Electronic Surveillance, American Bar Association Project for Minimum Standards in Criminal Justice, 1967–68.

Consultant on Conspiracy and Organized Crime, National Commission on the Reform of the Federal Penal Law, 1968.

Consultant, Commission on the Review of the National Policy Toward Gambling, 1974–75.

Member; National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, 1974–75.

Professor, Cornell Law School since 1973.

Subjects: Criminal Justice, Criminal Procedure, Seminar on Organized Crime Control.

Director, Cornell Institute on Organized Crime, Summer 1975—present.

Organized crime prosecution—charges in order of frequency: top ten

Charge:	*Number of cases with charge out of 379 cases*
Tax evasion	46
Hobbs extortion	40
Narcotics	37
Conspiracy (not designated as to type)	26
Wagering	22
Obstruction of justice	21
Liquor law violation	17
Interstate travel in aid of racketeering (gambling)	17
Perjury	10
Theft from interstate shipment	9

LIST OF ALL CHARGES FILED AGAINST COSA NOSTRA BY FREQUENCY OF OCCURRENCE

Charges—1

Assist in Offense Against the United States
Bribery
Cited for Contempt
Conspiracy False Statement
Extortion Conspiracy
Fraud
False Statement on SBA Loan Application

Intimidation of Federal Officer
IT Counterfeit Bonds
ITAR
ITAR-Conspiracy
ITAR-Gambling Loansharking
ITAR-Kickback Scheme
ITS-Money and Firearms
ITWI
ITWP
Migratory Bird Act
Moving Goods from Bonded Area
Postal Burglaries
Sale of Worthless Stock
SEC Act
Smuggling Contraband to Prisoners
Sodomy on Government Property
Theft from U.S. Mails
Transacting and Pledging Counterfeit ITT Bonds
Violation of Parole

Charges—2

Alien Registration Voalation
Embezzlement
Threats of Extortion Conspiracy
Harboring a Fugitive
ITAR-Etortion
Operating a National Wireroom

Charges—3

False Statement on FHA Loan
False Statement on Savings and Loan Application
Firearms Violation
ITAR-Bribery
ITSP
ITSP-Securities
Theft and Passing of Stolen Travelers Checks

Charges—4

Bail Jumping
Bank Robbery
Conspiracy ITSP
Hijacking

Charges—5

Loansharking
Mail Fraud
Taft-Hartley Act

Charges—6

ITAR-Gambling Conspiracy

Charges—7

Bankruptcy Fraud
Counterfeiting
Extortion

Charges—8

Assault on Federal Officer

Charges—9

Theft from Interstate Shipment

Charges—10

Perjury

Charges—17

ITAR-Gambling
Liquor Law Violation

Charges—21
Obstruction of Justice

Charges—22
Wagering

Charges—26
Conspiracy (not designated as to type)

Charges—37
Narcotics

Charges—40
Hobbs Extortion

Charges—46
Tax Evasion

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969

	Name	Indictment	Disposition	Sentence	District
1	Accardi, Sam	Aug. 15, 1955, narcotics	July 20, 1964	15 years, U.S. Penetentiary, Atlanta, Oct. 29, 1964	Southern district, New York.
2	Carbo, Paul John	Sept. 22, 1959, Hobbs extortion	May 30, 1961	25 years, U.S. Penitentiary, Alcatraz, May 24, 1962; U.S. Penitentiary, Marion, Ill., Jan. 6, 1969.	Southern district, California.
3	Dragna, Louis T	do	do	5 years, Dragna—reversed Feb. 13, 1963	Do.
4	Palermo, Frank	do	do	15 years U.S. Penitentiary, Lewisburg, Pa., Dec. 2, 1961, Federal Prison Camp, Allenwood, Pa., Dec. 11, 1968.	Do.
5	Sica, Joseph	do	do	20 years, U.S. Penitentiary, Leavenworth, Aug. 1, 1964	Do.
6	Evola, Natale	May 21, 1959, perjury, obstruction of justice (combined with 10-year narcotics sentence).	Jan. 30, 1960	5 years, U.S. Penitentiary, Leavenworth, Mar. 6, 1960; Mar. 21, 1966 MR.	Southern district, New York.
7	Accardo, Anthony	Apr. 25, 1960, tax evasion	Nov. 11, 1960; remanded Jan. 5, 1962; acquitted Oct. 3, 1962.	6 years	Northern district, Illinois.
8	Persico, Carmine	Apr. 28, 1960, Hobbs extortion	Apr. 20, 1964, reversed July 30, 1965; May 28, 1968, convicted.	15 years	Eastern district, New York.
9	Di Pietro, Cosmo	May 5, 1960, narcotics	June 25, 1962	20 years, U.S. Penitentiary, Terra Haute, Oct. 22, 1962	Southern district New York.
10	Galante, Carmine	do	do	20 years, U.S. Penitentiary, Leavenworth, Jan. 7, 1963	Do.
11	Ormento, John	do	do	40 years U.S. Penitentiary, Leavenworth, Oct. 10, 1962; U.S. Penitentiary, Marion, Ill., Jan. 16, 1969.	Do.
12	Loicano, Angelo	do	do	20 years, U.S. Penitentiary, Atlanta, Mar. 26, 1964	Do.
13	Genese, Pasquale	June 1, 1960, mail fraud	Jan. 11, 1961	1-year suspended sentence; 5 years probation	Do.
14	Allegretti, James	June 30, 1960, possession of hijacked liquor.	Apr. 24, 1962	7 years ,U.S. Penitentiary, Terre Haute, July 1, 1965	Northern district, Illinois.
15	Lisciandrello, Frank	do	do	7 years	Do.
16	Verra, John	Oct. 13, 1960, liquor laws	Oct. 25, 1961	2 years, U.S. Penitentiary, Lewisburg, May 3, 1962	Southern District, New York.
17	Provenzano, Anthony	Nov. 15, 1960, Hobbs extortion	June 11, 1963	7 years ,U.S. Penitentiary, Lewisburg, May 31, 1966	New Jersey.
18	Sisa, Alfred	Mar. 17, 1961, tax evasion	Mar. 17, 1962	3 years, U.S. Penitentiary, McNeil Island, May 27, 1964; U.S. Penitentiary, Atlanta, Dec. 3, 1964.	Southern district California.
19	Agueci, Vito	May 22, 1961, narcotics	Dec. 28, 1961	15 years, U.S. Penitentiary, Atlanta, Feb. 13, 1962; Federal Correctional Institutions, Sandstone, Minn., Oct. 15, 1969.	Southern district, New York.
20	Valachi, Joseph	do	do	20 years, U.S. Penitentiary, Atlanta, June 17, 9160; Federal Corredtional Institution, Milan, Mar. 22, 1966.	Do.
21	Caruso, Frank	do	Mar. 4, 1963	15 years, U.S. Penitentiary, Atlanta, Apr. 22, 1963	Do.
22	Maneti, Salvatore	do	do	15 years, U.S. Penitentiary, Terre Haute, Apr. 20, 1963; U.S. Penitentiary, Atlanta, July 12, 1965.	Do.
23	Mauro, Vincent	do	do	15 years, U.S. Penitentiary, Atlanta, Apr. 22, 1963	Do.
24	Gagliadotto, Charles (died Aug. 22, 1968).	Arrested Sept. 3, 1961, narcotics	Dismissed Dec. 6, 1966		
25	Troiano, Leonard	Oct. 26, 1961, theft from interstate	Apr. 12, 1962	4 years, U.S. Penitentiary, Atlanta. Apr. 26, 1962; Federal Correctional Institution, Danbury, Jan. 16, 1964; Feb. 3, 1965, MR.	Do.

26	Troiano, Frank	do	Apr. 20, 1962	4 years, U.S. Penitentiary, Atlanta, Apr. 26, 1962; Federal Prison Camp, Allenwood, Jan. 15, 1964; Jan. 28, 1965, MR.	Pennsylvania.
27	Marcello, Carlos	Oct. 30, 1961, conspiracy	Nov. 22, 1963, acquitted		Eastern district, Louisiana.
	Do	Oct. 31, 1961, perjury	August 1965, dismissed		Do.
28	Coralio, Anthony	Dec. 7, 1951, obstruction of justice	June 16, 1962	2 years, U.S. Penitentiary, Lewisburg, Nov. 15, 1963; May 7, 1965, MR.	Southern district, New York.
29	Verra, Anthony	Dec. 28, 1961, obstruction of justice	Aug. 17, 1962, acquitted		Do.
30	Verra, John	do	do	1 year and 1 day, concurrent with 2 years in liquor case	Do.
31	Caruso, Frank	Feb. 2, 1962, bail jumping	Mar. 4, 1963	5 years, concurrent with 15 years for narcotics	Do.
32	Maneri, Salvatore	Continued Feb. 2, 1962, bail jumping	do	5 years concurrent with 15 years narcotics	Do.
33	Mauro, Vincent	do	do	do	Do.
34	Carlino, Leo	Apr. 11, 1962, tax evasion	Nov. 7, 1963	1 year and 1 day Federal Correction Institute, Danbury, Dec. 9, 1963; exp. GT Sept. 22, 1964.	Do.
35	De Lucia, Fred	Arrested Aug. 2, 1962, counterfeiting	Mar. 17, 1965	1 year, USP, Lewisburg, Nov. 25, 1967, Federal Prison Camp, Allenwood, Pa., Aug. 14, 1968; released Sept. 18, 1958.	Eastern district, New York.
36	Borelli, Frank	Aug. 15, 1962, narcotics	Dec. 12, 1963	20 years	Southern district, New York.
37	Ciccone, Anthony	do			Do.
38	Locascio, Carmine	do	Dec. 12, 1963	15 years	Do.
39	Loiacano, Angelo	do	do	do	Do.
40	Mogavero, Joseph	do	Dismissed, Sept. 19, 1966		Do.
41	Mogavero, Rosario	do	Dec. 12, 1963	15 years	Do.
42	Sedotto, Michael	do	do	10 years	Do.
43	Tantillo, Harry	do	do	do	Do.
			All convictions reversed July 31, 1964; indictment dismissed January 1967.		
44	Napolitano, Joseph	Sept. 17, 1962, liquor laws	Oct. 12, 1962	3 years, Federal Corrections Institute, Danbury, Jan. 9, 1963; Aug. 17, 1964, paroled.	Maine.
45	Todaro, Richard	Sept. 21, 1962, wagering	Dismissed Oct. 15, 1965		Western district, New York.
46	Cino, Stephen	do	do		Do.
47	Ciancutti, Thomas	Sept. 26, 1962, wagering	Mar. 1, 1963	2 years suspended, 2 years probation	Western district, Pennsylvania.
48	Sams, William	do	do	do	Do.
50	Giordano, Samuel	Oct. 3, 1962, bankruptcy fraud	Mar. 25, 1964	18 months	Eastern district, Michigan.
51	Rubino, Matthew	do	Mar. 20, 1964, acquitted		Do.
52	Provanzano, Anthony	Nov. 14, 1962, Taft-Hartley Act	Dismissed June 24, 1966		New Jersey.
53	Maccagnone, James	Nov. 15, 1962, harboring a fugitive, superseding indictment, Oct. 8, 1963.	Apr. 23, 1965	5 years	Eastern district, Michigan.
54	Barata, Peter	Jan. 8, 1963, narcotics	Mar. 20, 1964	7 years, USP, Atlanta, May 20, 1955	Southern district, New York.
55	Pecora, Joseph N	Feb. 20, 1963, ITAR-gambling	Apr. 2, 1963, acquitted		Northern district, West Virginia.
56	Taglianette, Louis	Feb. 26, 1963, tax evasion	Apr. 28, 1966	7 months	Rhode Island.
57	Stassi, Joseph	Mar. 19, 1963, narcotics; superseding indictment Nov. 1, 1963.	Mar. 14, 1967; new trail ordered Apr. 14, 1967; June 28, 1967, convicted.	18 years, U.S. Penitentiary, Atlanta, Dec. 10, 1967	Southern district, Texas.

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969—Continued

	Name	Indictment	Disposition	Sentence	District
58	Schipani, Joseph	Apr. 11, 1953, tax evasion	Oct. 15, 1965; reversed 1966; Nov. 11, 1968. convicted.	3 years	Eastern district, New York.
59	Meli, Frank	Apr. 18, 1963, embezzlement	Dismissed May 4, 1965		Eastern district, Michigan.
60	Lombardozzi, Carmine	Apr. 29, 1963, tax evasion	Mar. 23, 1964, convicted		Southern district, New York.
61	Tortorello, Arthur	do		1 year, U.S. Penitentiary, Lewisburg, Aug. 24, 1963; 1 year concurrent with mail fraud case.	Do.
62	De Filippo, Louis	do	Apr. 7, 1964, convicted	8 months, Federal Correctional Institution, Danbury, Apr. 29, 1964; exp GT Nov. 10, 1964.	Do.
63	Finazzo, Sam	May 8, 1963, moving goods from bonded area.	Acquitted Dec. 17, 1964		Eastern district, Michigan.
64	Mannarino, Gabriel	May 10, 1961, tax evasion	Acquitted, Dec. 10, 1963		Western district, Pennsylvania.
65	Mannarino, Samuel	do		1 year, 1 day, U.S. Penitentiary, Lewisburg, Sept. 10, 1954; Aug. 1, 1965, min exp w/EGI 1 year, 1 day.	
66	Sams, William	do	do	do	Do.
67	Pagano, Joseph	May 27, 1963, bankruptcy fraud	Dec. 30, 1964	5 years, U.S. Penitentiary, Atlanta, Mar. 4, 1965; Federal Prison Camp, Allenwood, Pa., Apr. 2, 1968, fr U.S. Penitentiary, Lewisburg.	Southern district, New York.
68	Castellana, Peter	do	do	5 years, U.S. Penitentiary, Atlanta, Apr. 15, 1966; U.S. Penitentiary, Lewisburg, Mar. 2, 1967; Federal Prison Camp, Allenwood, Pa., May 22, 1968.	Do.
69	Granza, Anthony	June 13, 1963, narcotics	Sept. 25, 1964	20 years	Southern district, Texas.
70	Sherman, Charles	June 26, 1963, tax evasion	May 12, 1964	1 year, 1 day, Federal Correctional Institution, Milan, June 15, 1965.	Eastern district, Michigan.
71	Caifano, Marshall	July 21, 1963, conspiracy, extortion	Feb. 7, 1964	10 years, U.S. Penitentiary, Leavenworth, Oct. 21, 1966	Southern district, California.
72	Lombardozzi, John	July 22, 1963, assault on Federal officer	Nov. 26, 1963	20 months, U.S. Penitentiary, Lewisburg, May 7, 1955	Eastern district, New York.
73	Marino, Daniel	do	do	20 months, Federal Correctional Institute, Danbury, Apr. 22, 1965; Mar. 3, 1966, exp GT.	Do.
74	Lombardozzi, Carmine	Aug. 22, 1963, violation of parole	Aug. 23, 1963	1 year, U.S. Penitentiary, Lewisburg, Aug. 24, 1963; 1-year writ discharged June 17, 1964.	Connecticut.
75	Aiuppa, Joseph	October 1962, Migratory Bird Act	Aug. 22, 1963, 3 months; reversed and remanded Nov. 13, 1964; June 21, 1966, convicted.	3 months	Kansas.
76	Lombardozzi, John	Aug. 29, 1963, conspiracy ITSP			Southern district, New York.
77	Martinelli, Joseph G	do			Do.
78	Lisciandrello, Frank	Sept. 19, 1963, liquor laws	Feb. 4, 1964	15 months, U.S. Penitentiary, Leavenworth, Sept. 11, 1964	Northern district, Illinois.
79	Testa, Philip C	Oct. 25, 1963, cited for contempt	Nov. 1, 1963	Discharged Oct. 30, 1964	Eastern district, Pennsylvania.
80	Guiga, Louis	Oct. 28, 1963, narcotics	June 27, 1967, acquitted		Southern district, New York.
81	Plumeri, James	Oct. 28, 1963, tax evasion	Feb. 9, 1965	2½ years, U.S. Penitentiary, Atlanta, May 20, 1965, Mar. 30, 1967, MR.	Northern district, New York.
82	De Pietto, Americo	Oct. 29, 1963, narcotics	June 4, 1964	20 years, U.S. Penitentiary, Leavenworth, Nov. 19, 1964	Southern district, New York.
83	Bruno, Angelo	Oct. 31, 1963, shylock extortion	Acquitted July 8, 1964		Eastern district, Pennsylvania.

84	Testa, Philip C	do	do		Do.
85	Giacalone, Anthony	Nov. 19, 1963, tax evasion	Dismissed, August 1964		Eastern district, Michigan.
86	Giacalone, Vito	do	do		Do.
87	Rubino, Matthew	Dec. 17, 1963, tax evasion	Acquitted July 15, 1964		Do.
88	Moceri, Leo	October 1963, tax evasion	Acquitted Mar. 25, 1965		Northern district, Ohio.
89	Cangelose, Louis, deceased	Jan. 17, 1964, firearms violation	Dismissed Aug. 4, 1965		Northern district, Iowa.
90	Picillo, Warren V	Jan. 24, 1964, ITAR-gambling	Oct. 23, 1965	4 months, Federal Corrections Institution, Danbury, Feb. 1, 1966; May 27, 1966 exp. ft.	Rhode Island.
91	Tortorello, Arthur	January 1964, sale of worthless stock	Apr. 8, 1965; Mar. 10 1969, Supreme Court remanded re effect of electronic surveillance.	4½ years	Southern disriict, New York.
92	Alderisio, Felix	Feb. 4, 1964, threats of extortion conspiracy.	Acquitted Apr. 8, 1965		Colorado.
93	De Pietto, Americo	do	Acquitted Feb. 24, 1966		Eastern district, Michigan.
94	Termine, Anthony	Feb. 7, 1964, false statement on FHA loan.	June 81, 1964	60 days House of Corrections, Hales Corners, Wis., Oct. 13, 1963; exp. term Dec. 11, 1964.	Eastern disrict, Wisconsin.
95	Gentile, Nicholas	Mar. 3, 1964, tax evasion	May 10, 1965	2 years Federal Correctional Instiitution, Danbury, July 1, 1965	Southern district, New York.
96	Granello, Salavatore	Mar. 16, 1964, tax evasion	June 4, 1964	2 years Federal Correctional Institution, Danbury, Mar. 23, 1965; May 26, 1966 pardoned.	Massachusetts.
97	Napolitano, Orlando	Mar. 18, t1964, ITAR—Gambling	do	4 months, Federal Correctional Institution, San Pedro, Calif., May 11, 1967; released Sept. 8, 1967; exp. FT.	Southern district, California.
98	Rizzo, Michael	Mar. 18, 1964, tax evasion	May 23, 1965	2 years probation	Northern district, Illinois.
99	Pinelli, Anthony R	May 31, 1964, tax evasion	Dismissed June 18, 1964		Southern district, New York.
100	Luciano, Frank	Apr. 10, 1964, narcotics	July 31, 1964	5 years, U.S. Penitentiary, Leavenworth; Nov. 3, 1964; U.S. Penitentiary, Terre Haute, Mar. 26, 1965.	Eastern district, Wisconsin.
101	Trilliegi, John B	Apr. 14, 1964 ITSP—Securities	Feb. 17, 1967	3 years	Southern dis rict, New York.
102	Covello, Joseph	Apr. 17, 1964, ITAR—Gambling	Acquitted, Feb. 17, 1967		Do.
103	Napolitano, Anthony	do	July 22, 1964, acquitted		
104	Lombardozzi, John	Apr. 29, 1964, obstruction of justice	do		NNorthern district, Illinois.
105	Marino, Daniel	do	Jly 23, 1965	1 yr. Federal Correctional Institution, Sandstone, Minn., Oct. 26, 1965.	
106	Tornabene, Louis	May 28, 1964, Fal 5e statement on	Oct. 27, 1965	Oct. 26, 1965.	Southern district, New York.
107	Crapanzano, Patsy	July 9, 1964, Taft-Hartley Act	July 9, 1964	3 years probation	Do.
108	Castaldi, Anthony	Civil contempt	Mar. 7, 1967	2 years	Do.
109	Tortorello, Arthur	July 15, 1964, SEC Act	Nov. 12, 1964	30 days	Northern district, Illinois.
110	De Pietto, Americo	July 28, 1964, assaulting Federal officer	February 17, 1967	2 years, concurrently wtih 20 years in narcotics case	Southern distr8ct, New York.
111	Guarnieri, Salvatore	July 28, 1964, harboring; assist in offense against the United States.	August 14, 1964	2 years, U.S. Penitentiary, Leavenworth, May 17, 1968	Do.
112	Shillitani, Salvatore	Civil contempt	Jan. 13, 1966	2 years, U.S. Penitentiary, Lewisburg, Nov. 5, 1964; vacated by Supreme Court on June 6, 1966.	Eastern district, New York.
113	Lo Cicero, Charles	August 11, 1964, tax evasion	Acquitted, Jan. 26, 1965	18 months	Southern district, New York.
114	Palmisano, Vincent	August 12, 1964, false statement on savings and loan application.	June 22, 1965		Southern district, New York.
115	Armone, Joseph	September 30, 1964, narcotics	do	15 years, U.S. Penitentiary, Lewisburg, October 21, 1966	Do.
116	Grammauta, Steven	do	do	8 years, U.S. Penitentiary, Atlanta, Sept. 18, 1966; U.S. Penitentiary, Lewisburg, February 24, 1967.	Do
117	Pacelli, Vincent	do	do	18 years, U.S. Penitentiary, Atlanta, October 18, 1965	

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969—Continued

	Name	Indictment	Disposition	Sentence	District
118	Armone, Alfred	do	Acquitted		Do.
119	Romano, Arnold	do	March 14, 1969	30 years	Do.
120	Marcello, Carlos	October 4, 1964, obstruction of justice	August 17, 1965, acquitted		Eastern district, Louisiana.
121	Pappadio, Andino	Civil contempt	October 30, 1964; June 6, 1966, vacated by Supreme Court.	2 years	Southern district, New York.
122	Lombardozzi, John	Nov. 24, 1964, bankruptcy fraud	September 22, 1967	2 years suspended, 5 years probation	Do.
123	Tramunti, Carmine	Civil contempt	December 2, 1964; June 6, 1966, vacated by Supreme Court.	1 year	Do.
124	Glimco, Joseph P	December 17, 1964, Taft-Hartley Act	August 26, 1965, dismissed.		Northern district, Illinois.
125	Marino, Angelo A	January 4, 1965, tax evasion			Northern district, California.
126	Balistrieri, Frank	January 6, 1965, tax evasion	March 23, 1967 southern district, Ill.	2 years, on appeal	Eastern district, Wisconsin.
127	Anguilo, Gennaro	January 15, 1965, assault Federal officer	June 30, 1966	1 month, Massachusetts.	
			House of Corrections	House of Corrections, Billerica, Massachusetts	Massachusetts.
128	Limone, Peter	do	do	do	Do.
129	Cammisano, William	February 12, 1965, liquor laws	January 7, 1966	2 years, U.S. Penitentiary, Leavenworth, February 28, 1966; August 1, 1967, MR.	Western district, Missouri.
130	Simone, Thomas (died May 21, 1968).	Feb. 12, 1965, liquor laws	Dec. 20, 1965	20 months, U.S. Penitentiary, Leavenworth, Feb. 25, 1966; Federal Correction Institute, Texarkana, Tex. Mar. 9, 1966.	Western district, Missouri.
131	Ciarelli, James	do	do	20 months, U.S. Penitentiary, Leavenworth, Feb. 28, 1966; exp. GT May 16, 1967.	Do.
132	Scudiero, Henry	do	Jan. 21, 1966, dismissed		Do.
133	Lapi, Joseph	Feb. 26, 1965, narcotics	May 11, 1966	7½ years, U.S. Penitentiary, Atlanta, Apr. 13, 1967	Southern district, New York.
134	Bonanno, Salvatore Vincent.	Civil contempt	Mar. 2, 1965	Released June 4, 1965	Do.
135	Battaglia, Charles	Mar. 5, 1965, Hobbs extortion	Jan. 20, 1967	10 years, U.S. Penitentiary, Leavenworth, Feb. 14, 1968	Arizona.
136	Spinelli, Salvatore		Dec. 9, 1965, acquitted		
137	Rao, Vincent John	Mar. 17, 1965, perjury	Nov. 17, 1967	5 years, U.S. Penitentiary, Lewisburg, Nov. 22, 1968	Southern district, New York.
138	Conte, Ralph	Mar. 26, 1965, wagering	Aug. 6, 1965	1 year, reversed Mar. 4, 1968; dismissed Apr. 19, 1968	Do.
139	Castellana, Peter	Mar. 30, 1965, tax evasion	do		Eastern district, New York.
140	Malone, Albert	Apr. 21, 1965, wagering	Apr. 12, 1968, dismissed		Do.
141	Romano, Arnold	Apr. 27, 1965, bail jumping	Oct. 7, 1966	5 years, U.S. Penitentiary, Atlanta, Mar. 19, 1967	Southern district, New York.
142	Tourine, Charles	May 13, 1965, ITAR-gambling	Oct. 19, 1966, acquitted		District of Columbia.
143	Rubino, Matthew	May 20, 1955, tax evasion	Jan. 29, 1969	10 years, on appeal	Eastern district, Michigan.
144	Giancana, Samuel	Civil contempt	June 1, 1965		Northern district, Illinois.
145	Aiello, John J	June 8, 1965, tax evasion	Aug. 1, 1967, dismissed		Eastern district, Wisconsin.
146	Quasarano, Raffaele	June 30, 1965, false statement on SBA loan application.	Nov. 29, 1965, acquitted		Eastern district, Michigan.
147	Erra, Pasquale	July 27, 1965, tax evasion	Jan. 7, 1966	8 months, Federal Correction Institute, Tallahassee, Mar. 11, 1966; exp. GT Sept. 23, 1966.	Southern district, Florida.

148	Pranno, Rocco	Aug. 3, 1965, tax evasion	1958, dismissed		Northern district, Illinois.
	Do	Aug. 3, 1965, extortion conspiracy	Mar. 9, 1966	15 years, U.S. Penitentiary, Leavenworth, Oct. 23, 1966; U.S. Penitentiary, Atlanta, Apr. 21, 1969.	Do
149	Palma, Salvatore, died Jan. 6, 1966.	Sept. 2, 1965, ITS money and firearms, used in Houston robbery.			Western district, Missouri.
150	Cappello, John A	Sept. 13, 1965, ITAR-gambling	Nov. 10, 1966	1 yr probation	Eastern district, Pennsylvania.
151	De Vito, Dominick A	do	do	do	Do.
152	Narducci, Frank	do	Nov. 10, 1966; May 24, 1967.	do	Do.
				Federal Correctional Institute, Danbury, 1 year probation violation; U.S. Penitentiary, Lewisburg, June 13, 1967; Feb. 9, 1968, min exp w EGT.	
153	Lazzaro, Joseph		Nov. 10, 1966	1 year probation	Do.
154	Sindone, Frank		do	do	Do.
155	Scandifia, Michael	Sept. 30, 1965, IT counterfeit bonds	May 4, 1967	6 years	Southern district, New York.
156	Giacalone, Vito	Oct. 6, 1965, tax evasion, wagering			Eastern district, Michigan.
157	Bisogno, Joseph V	Oct. 12, 1965, extortion	Mar 17, 1966	Acquitted	Southern district, Florida.
158	Sansone, Ernest	Oct. 27, 1965, narcotics registration	June 27, 1966; reversed Oct. 10, 1967.	1 year	Northern district, Illinois.
159	Pacelli, Vincent	Nov. 8, 1965, obstruction of justice	Mar. 9, 1966	2 years, to run consecutively with 18 years now serving for narcotics violation.	Southern district, New York.
160	Vitali, Albert	Dec. 3, 1965, theft from interstate shipment.	Oct. 20, 1966	1 year, Federal Correctional Institution, Danbury, Nov. 1, 1967; exp. GI Oct. 30, 1968.	Rhode Island.
161	Infelice, Ernest	Dec. 8, 1965, conspiracy	May 10, 1966	5 years, U.S. Penitentiary, Terre Haute, Aug. 10, 1967; U.S. Penitentiary, Leavenworth, Sept. 26, 1967.	Northern district, Illinois.
162	De Pietto, Americo	do	do	5 years, on appeal	Do.
163	Mirro, James	do	do	do	Do.
164	Dioguardi, Frank	Jan. 5, 1966, narcotics	July 1966	15 years, U.S. Penitentiary, Leavenworth, Nov. 16, 1967	Southern district, New York.
165	Ruggierello, Louis	Jan. 18, 1966, wagering	do	do	Eastern district, Michigan.
166	Picillo, Warren V	Feb. 9, 1966, operating national wireroom	do	do	Eastern district, Pennsylvania.
167	Stassi, Joseph	Feb. 16, 1966, perjury	Feb. 1, 1967	5 years	Southern district, Florida.
168	Picillo, Warren V	Feb. 18, 1966, operating national wire room.	do	do	Rhode Island.
169	Maggio, Joseph	Feb. 18, 1966, narcotics	do	10 years	Southern district, New York.
170	Mancusco, Anthony	do	do	do	Do.
171	Todaro, Richard J	Mar. 2, 1966, wagering, superseding indictment, Apr. 21, 1966.	Dismissed, July 22, 1968		Western district, New York.
172	Varelli, John	Mar. 10, 1966, false statement on FHA loan application.	do		Northern district, Illinois.
173	Lombardozzi, John	Mar. 14, 1966, conspiracy, smuggling contraband to prisoners.	Sept. 22, 1967	5 years' probation	Southern district, New York.
174	Amato, Angelo A	Mar. 16, 1966, ITSP	do	do	Northern district, Ohio.
176	Di Brizzi, Alexander	Mar. 24, 1966, embezzlement	Mar. 8, 1967	2 years' probation	Southern district, New York.
176	Rocco, Michael	Apr. 4, 1966, assaulting Federal officer	Apr. 17, 1966	3 years' probation	Massachusetts.
177	Infelice, Ernest	Apr. 7, 1966, tax evasion	1968	1 year	Northern district, Illinois.
178	Inserro, Vincent	do	May 31, 1966	2 years, Federal Correction Institute, Sandstone, Minn.; Sept. 15, 1966; Mar. 4, 1968 MR.	Do.
179	Franzese, John	Apr. 12, 1966, bank robbery	Mar. 3, 1967	50 years, on appeal	Eastern district, New York.
180	Matera, John	do	do	5 years, serving life sentence in State prison, Raiford, Fla., for armed robbery.	Do.
181	Daddano, William	Apr. 15, 1966, hijacking	June 7, 1967, acquitted		Northern district, Illinois.

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969—Continued

	Name	Indictment	Disposition	Sentence	District
182	Infelice, Ernest	do	June 7, 1967; reversed and dismissed by Supreme Court on Feb. 11, 1969.	15 years	Do.
183	Varelli, John	do	June 7, 1967; reversed and remanded for new trial by Supreme Court on Feb. 11, 1969.	15 years	Do.
184	Melillo, Nicolo	Apr. 20, 1965, perjury			Southern district, New York.
185	Dioguardi, John	Apr. 21, 1966, bankruptcy fraud	Nov. 10, 1967	5 years; on appeal	Do.
186	Sciarra, Rudolfo	June 1965, wagering	Apr. 26, 1966	$300 fine	Rhode Island.
187	De Lucia, Paul	Apr. 28, 1966, perjury	Nov. 1967, acquitted		Northern district, Illinois.
188	Manna, Louis Anthony	May 16, 1966, extortion	Mar. 17, 1967, acquittal		New Jersey.
189	Dentico, Lawrence	do	do		Do.
190	Principe, Thomas	do	do		Do.
192	Salerno, Ugo	do	do		Do.
192	Palmisano, Vincent	May 16, 1966, extortion; dismissed July 18, 1966; dismissal reversed Aug. 12, 1966.	Oct. 27, 1966	18 months, U.S. Penitentiary, Atlanta, Jan. 4, 1967, Federal Prison Camp, Eglin AF Base, Fla., Feb. 23, 1967; exp. GT, Feb. 1, 1967.	SF, Florida.
193	Bonanno, Joseph	Apr. 14, 1965, sealed; Apr. 17, 1966, unsealed; obstruction of justice.			Southern district, New York.
194	Glimco, Joseph P	June 1, 1966, Taft-Hartley Act	Feb. 4, 1969	$40,000 fine	Northern district, Illinois.
195	Guglielmini, Frank	June 2, 1966, bankruptcy fraud	Nov. 30, 1966, reversed and remanded, Oct. 24, 1967.	5 years	Eastern district, New York.
196	Piccolo, Frank	June 16, 1966, wagering	Jan. 31, 1967, dismissed		Connecticut.
197	Potenzo, Rocco	July 7, 1966, liquor laws	Mar. 30, 1967	$1,000 fine	Northern district, Illinois.
198	Caifano, Marshall	July 28, 1966, mail fraud	June 22, 1967	12 years on appeal	Do.
199	Lucido, John A	Sept. 1, 1966, wagering	do		Eastern Michigan.
200	Allevato, Dominic	Sept. 2, 1966, wagering	do		Do.
201	Lucido, Jack	do	do		Do.
202	Lucido, Sam P	do	do		Do.
203	Rubino, Matthew	do	do		Do.
204	Santoli, Anthony P	Oct. 4, 1966, ITAR-gambling	do		Southern district, New York.
205	De Luna, Carl A	Oct. 5, 1966, theft from interstate commerce.	Apr. 14, 1967, dismissed		Oregon.
206	Marcello, Carlos	Oct. 7, 1966, assault on Federal officer	June 5, 1967, dismissed		Eastern district, Louisiana.
207	Angelone, John D	Oct. 21, 1966, theft from interstate commerce.	Sept. 20, 1967, acquitted		Southern district, New York.
208	Alo, Vincent	Oct. 10, 1966 obstruction of justice	do		Do.
209	Manfredonia, John	Nov. 10, 1966, wagering	May 16, 1967, 1 year; reversed 1968.		Do.
210	Castaldi, Anthony	Civil contempt	Nov. 10, 1966	Released Dec. 16, 1966	Do.
211	Trumunti, Carmine	do	Nov. 16, 1966	do	Do.

212	Dara, William J	Jan. 5, 1967, Hobbs extortion	June 17, 1967	7½ years on appeal	Southern district, Florida.
213	Esperti, Anthony	do	do	10 years on appeal	Do.
214	Martello, Peter, murdered Oct. 14, 1967.	Jan. 25, 1967, TAR—gambling			Southern district, New York.
215	Gatto, John	Jan. 26, 1967, ITAR—gambling	Oct. 29, 1968	3 years' probation	Eastern district, Pennsylvania.
216	Mosiello, Mario	do	do	do	Do.
217	Battaglia, James	Jan. 30, 1967, wagering	Mar. 1, 1968	$1,500 fine	Southern district, New York.
218	Battaglia, Samuel	Feb. 16, 1967, Hobbs extortion	May 9, 1967	15 years, U.S. Penitentiary, Leavenworth, Oct. 8, 1967, U.S. Penitentiary, Marion, Ill., Feb. 20, 1969.	Northern district, Illinois.
			do	15 years, U.S. Penitentiary, Leavenworth, July 22, 1967	Do.
219	Amabile, Joseph	do		15 years, on appeal	Do.
	Do	Feb. 16, 1967, Hobbs Act extortion	Oct. 27, 1967	15 years, U.S. Penitentiary, Leavenworth, Nov. 17, 1967	Do.
220	Palermo, Nick	do	do	do	Southern district, Florida.
221	Dara, William	Feb. 21, 1967, obstruction of justice	do	do	Southern district, New York.
222	Lampasi, Lorenzo, Jr	Mar. 2, 1967, false statement on FHA loan application.	do		
223	Bradley, James H	Mar. 11, 1957, postal burglaries, superseding indictment, Mar. 31, 1967.	May 22, 1967	15 years, U.S. Penitentiary, Leavenworth, Mar. 22, 1968, U.S. Penitentiary, Marion, Ill., Jan. 16, 1959.	Western district, Missouri.
224	Fortano, Nicholas	Mar. 13, 1967 wagering	Nov. 29, 1967	do	Southern district, New York.
225	Melillo, Nicolo	Mar. 23, 1967, Hobbs extortion	do	do	Do.
226	Scandifia, Michael	Mar. 23, 1967, transacting and pledging counterfeit ITT bonds.	do	do	Do.
227	Caputo, Carlo	May 4, 1967, tax evasion	do	do	Western district, Wisconsin.
228	Borardo, Ruggiero	May 15, 1967, wagering	do	do	New Jersey.
229	Boyd, Toby	do	do	do	Do.
230	Gerardo, Andrew	do	do	do	Do.
231	Marcello, Carlos	June 1, 1967, assaulting Federal officer	Aug. 8, 1968, Southern district, Texas,	2 years on appeal	Eastern district, Louisiana.
			Mar. 31, 1969	3½ years	Southern district, New York.
232	Genova, Peter	June 5, 1967, counterfeiting	do	do	Do.
233	Calandruccio, Joseph	June 8, 1967, Hobbs Act, ITAR conspiracy	do	5 years, USP Atlanta, Mar. 29, 1969, Mass	Do.
234	Patriarca, Raymond	June 20, 1967, ITAR—bribery	Mar. 8, 1968	5 years	Do.
235	Cassessa, Ronald	do	do	5 years, on appeal	Do.
236	Tameleo, Henry	do	do	20 years, U.S. Penitentiary, Terre Haute, Jan. 14, 1968	Western district, New York.
237	Randaccio, Frederico	June 29, 1967, Hobbs extortion	Nov. 21, 1967	U.S. Penitentiary, Leavenworth, Apr. 3, 1968	Do.
			do	20 years, U.S. Penitentiary, Atlanta, Mar. 1, 1968	Do.
238	Natarelli, Pasquale	do	do	20 years, U.S. Penitentiary, Lewisburg, Dec. 11, 1967	Do.
239	Cino, Stephen A	do	do		Do.
240	Randaccio, Frederico	June 29, 1967, Hobbs extortion	do		Do.
241	Natarelli, Pasquale	do			Do.
242	Rizzo, Nicola	do			Do.
243	Preri, Salvatore	June 29, 1967, conspiracy	Feb. 24, 1968, acquitted		Northern district, Illinois.
244	Farrell, Lew				Do.
	Died Nov. 24, 1967	do	Jan. 9, 1968, acquitted		Southern district, Florida.
245	Lo Proto, Salvatore	Aug. 9, 1967, ITAR gambling	Jan. 25, 1968	3 years, on appeal	Western district, Arkansas.
246	Massi, Pasquale A	Aug. 16, 1967, sodomy on Government property.			Southern district, New York.
247	Potenza, Vincent	Mar. 23, 1967, theft and passing stolen travelers checks.	Nov. 9, 1967	5 years, U.S. Penitentiary, Lewisburg, Jan. 4, 1968	Do.
248	Savino	do	do	5 years	Do.
249	Spignarolo	do	do	5 years	

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969—Continued

	Name	Indictment	Disposition	Sentence	District
250	Roselli, John	Oct. 20, 1967 alien registration	May 23, 1968	6 months concurrent, with 5 years in conspiracy case; on appeal	Central district, California.
251	Scaglione, Nick	Oct. 24, 1967, ITWP	do		Maryland, Florida.
252	Lazzara, Augustine	Oct. 25, 1967, liquor laws	Apr. 8, 1968	Dismissed due to death of Lazzare on Apr. 8, 1968	Do.
253	Fratianno, James T	Nov. 9, 1967, conspiracy false statement	June 28, 1968	3 years probation	South Dakota, California.
254	Sansone, Ernest	Dec. 14, 1967, conspiracy	Feb. 12, 1969	18 months Federal Correction Institution, Sandstone, Minn. Mar. 1, 1969.	North Dakota, Illinois.
255	Corallo, Antonio	Dec. 18, 1967, ITAR—kickback scheme	June 19, 1968	3 years on appeal	South Dakota, New York.
256	Daddano, William	Dec. 19, 1967, bank robbery superseding indictment Mar. 5, 1968.	Oct. 3, 1968	15 years US Penitentiary, Atlanta Oct. 8, 1968	North Dakota, Illinois.
257	Dipietto, Americo	Dec. 19, 1967, hijacking, bank robbery	Feb. 2, 1968	7 years concurrent with narcotics and ITSP charges	Do.
258	Roselli, John	Dec. 21, 1967, conspiracy, tax evasion	Dec. 2, 1968	5 years on appeal	Central district, California.
259	Pecora, Joseph N	Jan. 18, 1968, liquor laws	Sept. 23, 1968	5 years probation	Western district, Wes. Virginia.
260	Aloisio, William	Feb. 1, 1968, passing counterfeit notes, superseding indictment, July 3 1968.			Northern district, Illinois.
261	Cacioppo Frank C	Feb. 19 1968, theft from interstate commerce.	June 12, 1968	3 years, U.S. Penitentiary, Terre Haute, July 18, 1968; U S Penitentiary, Leavenworth, Aug. 29, 1968.	Western district, Missouri.
262	Timphony, Frank V	Mar. 8, 1968, ITAR-gambling			Western district, New York.
263	De Cavalcante, Samuel	Mar. 21, 1968, ITAR-extortion			New Jersey.
264	Vastola, Gaetano D	do			
265	Panzarella, Anthony	Tax evasion	Mar. 22, 1968	5 years, probation	Northern district, Ohio.
266	Tropiano, Ralph	Mar. 27, 1968, Hobbs extortion	Nov. 15, 1968	12 years, U.S. Penitentiary, Leavenworth, Dec. 9, 1968	Connecticut.
267	Piccaretto, Rene	Apr. 3, 1968, Hobbs extortion	do	do	Western district, New York.
268	Imburgia, John	do	do	do	Do.
269	Tartamella, Francesco	April 1968, conspiracy			Eastern district, New York.
270	Fiordilino, Giovanni	Theft from interstate shipment			Do.
271	D'Amato, Paul E	Corporate tax evasion	Apr. 22, 1968	$500 fine	New Jersey.
272	Randaccio, Frederico	May 2, 1968, Hobbs extortion			Western district, New York.
273	Natarelli, Pasquale	do			Do.
274	Cino, Stephen A	do			Do.
275	Mantredonia, John	May 9, 1968, perjury	Oct. 11, 1968	18 months	Southern district, New York.
276	De Feo, Peter	May 10, 1968, conspiracy			Do.
277	Lanzeri, Edward	do			Do.
278	Plumeri, James	do			Do.
279	Cimini, Anthony J	May 14, 1968, conspiracy, theft from interstate commerce.			Eastern district, Michigan.
	Do	May 15, 1968, ITSP	Nov. 15, 1968	2 years	Do.
280	Plumeri, James	May 27, 1968, conspiracy			Southern district, New York
281	Plumeri, James	May 29, 1968, conspiracy			Do.
282	De Rose, Salvatore	November 1967, theft from interstate commerce.	June 18, 1968	7 years, U.S. Penitentiary, Terre Haute, July 10, 1968	Northern district, Illinois.
283	Strada, Ross J	June 24, 1968, conspiracy	Nov. 6, 1968	6 months, 5 years probation; Medical Center for Fed Prison, Springfield, Mo., Nov. 12 1968.	Western district, Missouri.
284	Badalamenti, Emanuel	June 27, 1968, interstate transportation of firearms.			Eastern district, Michigan.

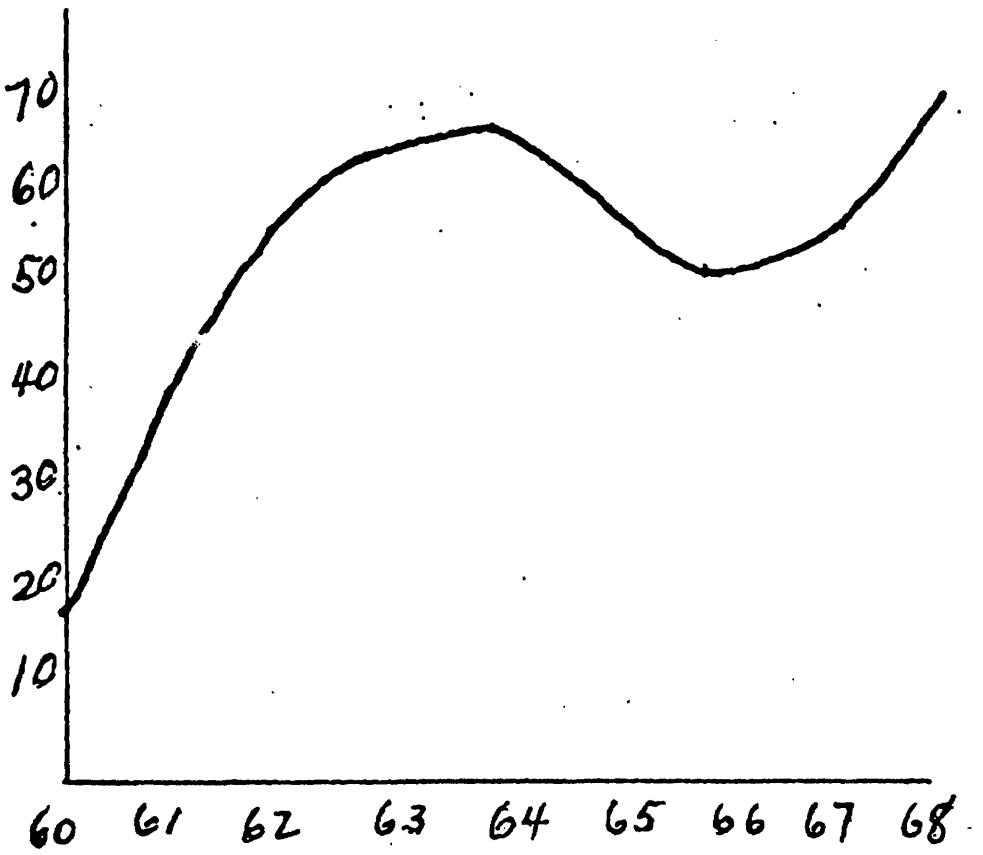
285	Bruno, Michael	June 27, 1968, ITAR, gambling			Do.
286	Marchesani, Bernard	June 27, 1968, intimidation of Federal officer.			Do.
287	Daddano, William	June —, 1968, liquor laws			Northern district, Illinois.
288	Dongara, Charles P	July 5, 1968, conspiracy			Southern district, New York.
289	Greca, Angelo J	do			Do.
290	Granello, Salvatore	July 18, 1968, conspiracy			Do.
291	Plameri, James	do			Do.
	Do	July 24, 1968, conspiracy			Do.
292	Lentine, Sam	July 31, 1968, liquor laws	December 1968, dismissed.		Eastern district, Michigan.
293	Lentine, Liberty	do	Dec. 24, 1968, convicted		Do.
294	Bisogno, Joseph	July 31, 1968, counterfeiting, superseding indictment Oct. 9, 1968.	Mar. 4, 1969 convicted		Southern district, Florida.
295	Mancuso, Thomas	Aug. 14, 1968, narcotics violator registration.	Mar. 26, 1969 convicted		Eastern district, New York.
296	Meli, Vincent	Aug. 20, 1968, counterfeit money			Eastern district, Michigan.
297	Lombardozzi, Carmine	Aug. 21, 1968, ITSP	Mar. 12, 1969 convicted		Eastern district, New York.
298	Augello, Anthony	Sept. 18, 1968, Hobbs extortion			Do.
299	Falange, Anthony	Sept. 20, 1968, conspiracy	Feb. 27, 1969	5 years	Northern district, New York.
300	Passalacqua, Salvatore	Oct. 16, 1968, counterfeiting			Eastern district, Michigan.
301	Ruggirello, Louis	Oct. 22, 1968, firearms in interstate commerce by convicted felon.			Do.
302	Giacalone, Anthony	Nov. 14, 1968, Hobbs Act; obstruction of justice; tax evasion.			Do.
303	Giacalone, Vito				
304	Agosta, Salvatore				
305	Amorimino, Peter				
306	Bucciero, Albert				
307	Marchesani, Bernard				
308	Morelli, Ronald				
309	Passalacqua, Salvatore	Nov. 20, 1968, counterfeiting			Eastern district, New York.
310	Mannarino, Giacento	Nov. 27, 1968, conspiracy, IISP	Feb. 14, 1969	5 years	Do.
311	Bonanno, Salvatore	Dec. 3, 1968, mail fraud, conspiracy, perjury.			Do.
312	Notaro, Peter	do			Do.
313	Capparelli, William	Dec. 4, 1968, loansharking			Do.
314	Magaddino, Stefano	Dec. 4, 1968, ITAR—gambling conspiracy.			Western district, New York.
315	Magaddino, Peter	do			Do.
316	Nicoletti, Benjamin, Sr	do			Do.
317	Butalino, Russell A	Dec. 12, 1968, conspiracy of ITSP			Do.
318	Sacco, John	do			Do.
319	Mannarino, Gracento	Dec. 18, 1968, ITSP, theft from U.S. mails.			Eastern district, New York.
320	Emordino, Phillip	Dec. 20, 1968, liquor laws			Northern district, Illinois.
321	Corallo, Antonio	Dec. 20, 1968, Hobbs Act, ITAR, mail fraud, conspiracy.			Southern district, New York.
322	Lentine, Sam	Dec. 24, 1968, superseding inf. liquor laws.	Dec. 24, 1968 convicted		Eastern district, Michigan.

COSA NOSTRA INDICTMENTS AND CONVICTIONS, 1960 TO MARCH 1969—Continued

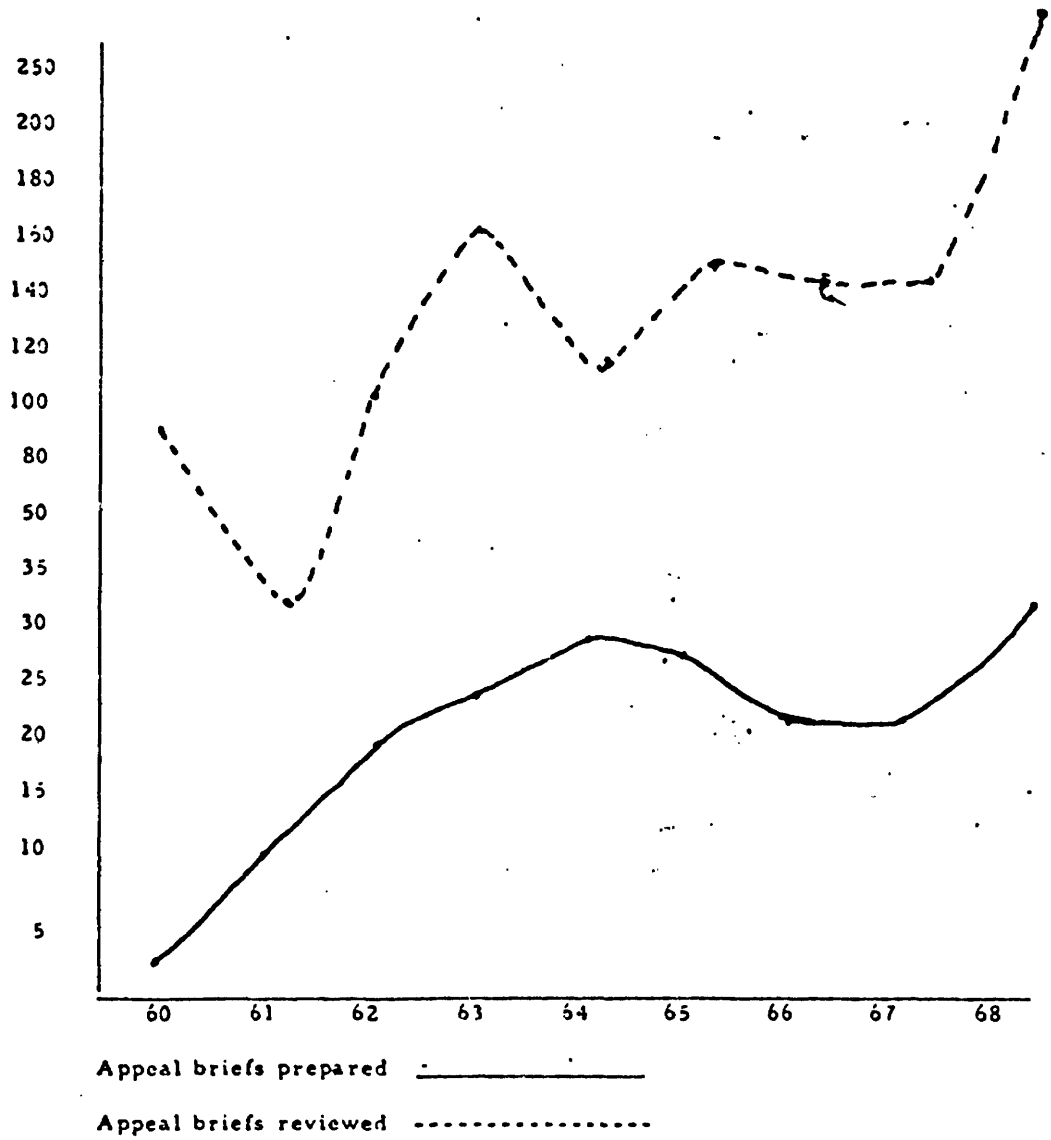
	Name	Indictment	Disposition	Sentence	District
323	Coraluzzo, Orlando	Jan. 14, 1969, Taft-Hartley Act Hobbs Act			Southern district, New York.
324	Dippolito, Joseph	Jan. 30, 1969, perjury			Central district, California.
325	De Riggi, Louis	Feb. 5, 1969, false statement on loan application.			Northern district, Illinois.
326	Cerone, John P	Feb. 6, 1969, ITAR-gambling conspiracy			Northern district, Illinois.
327	Angelini, Donald	do			Do.
328	Aureli, Frank	do			Do.
329	Bucciero, Albert	Feb. 18, 1969, loansharking			Eastern district, Michigan.
330	Lucido, Jack A	Feb. 18, 1969, ITAR-gambling			Do.
331	Randazzo, Frank	Mar. 6, 1969, bringing illegal aliens and harboring same from Canada into Detroit.			Do.
332	Marchesani, Bernard	Mar. 6, 1969, loansharking			Do.
333	Masiello, John	Mar. 19, 1969, bribery			Southern district, New York.
334	Malaponte, Michael C	Mar. 21, 1969, ITAR-gambling loansharking, ITWI.			Western district, Missouri.

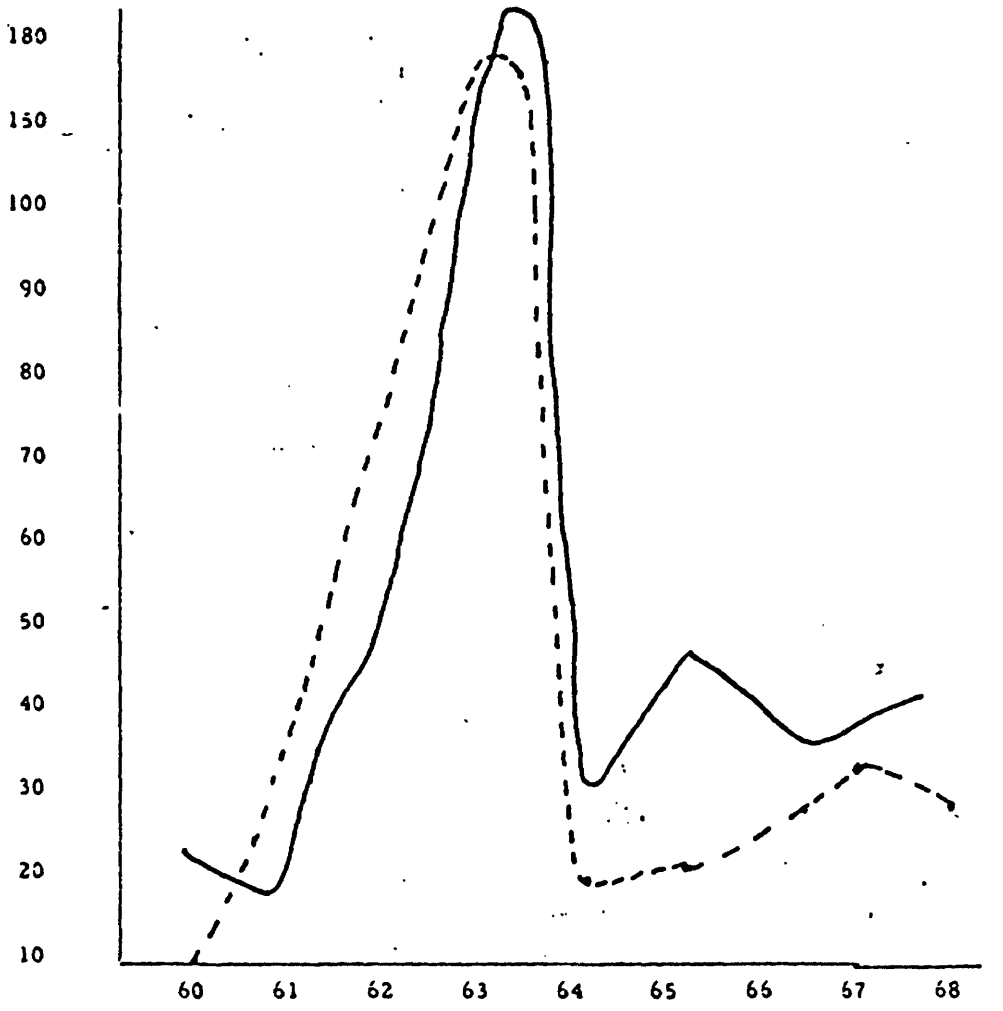
CHARTS: WORK LOAD/ORGANIZED CRIME AND RACKETEERING SECTION, 1960–69

CHART I.—ORGANIZED CRIME SECTION, NUMBER OF ATTORNEYS



From U.S. Cong. Sen. Hearing, Measures Relating to Organized Crime, 91 Cong., 1st Sess., 1969, pp. 119–123.

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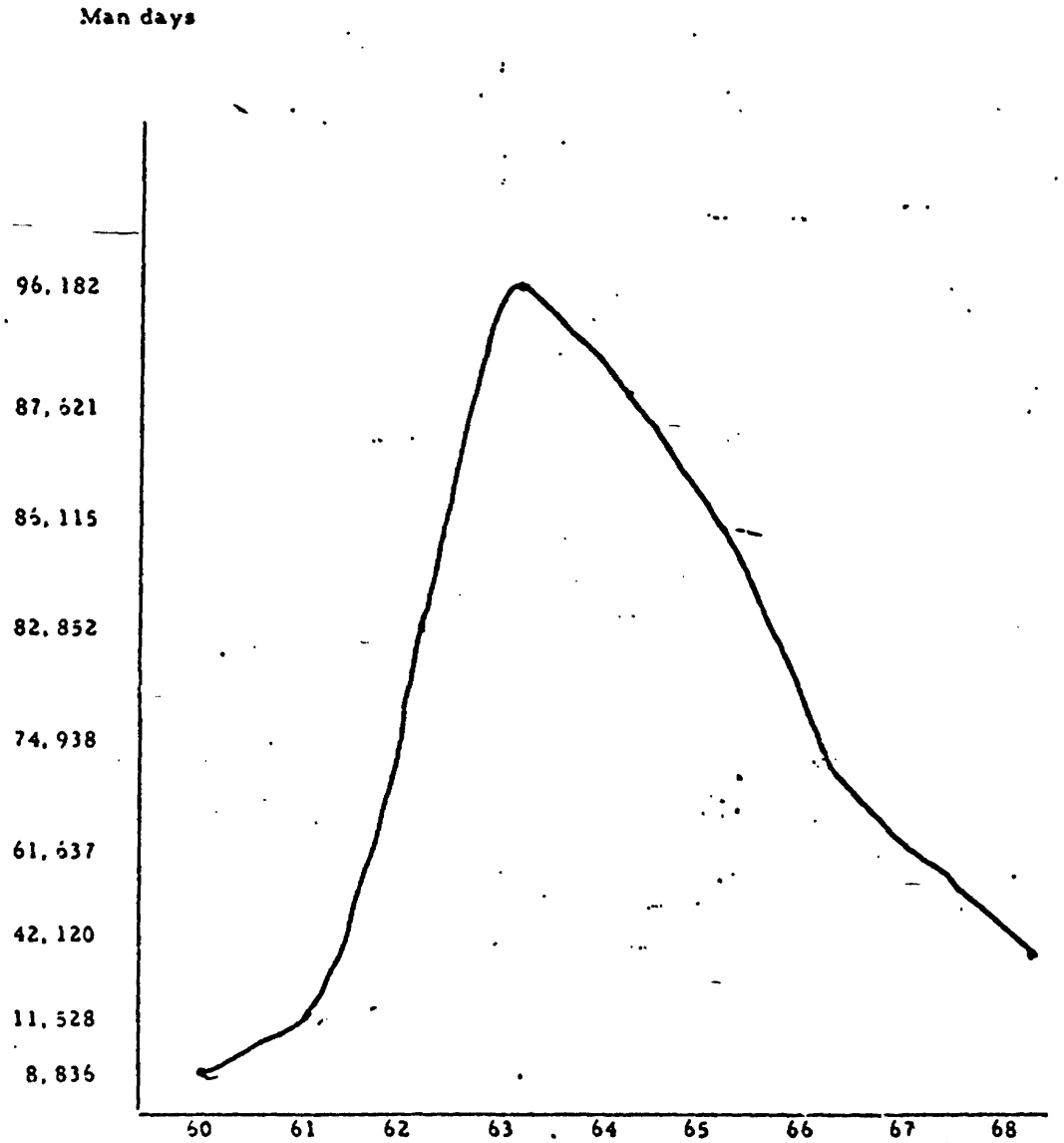
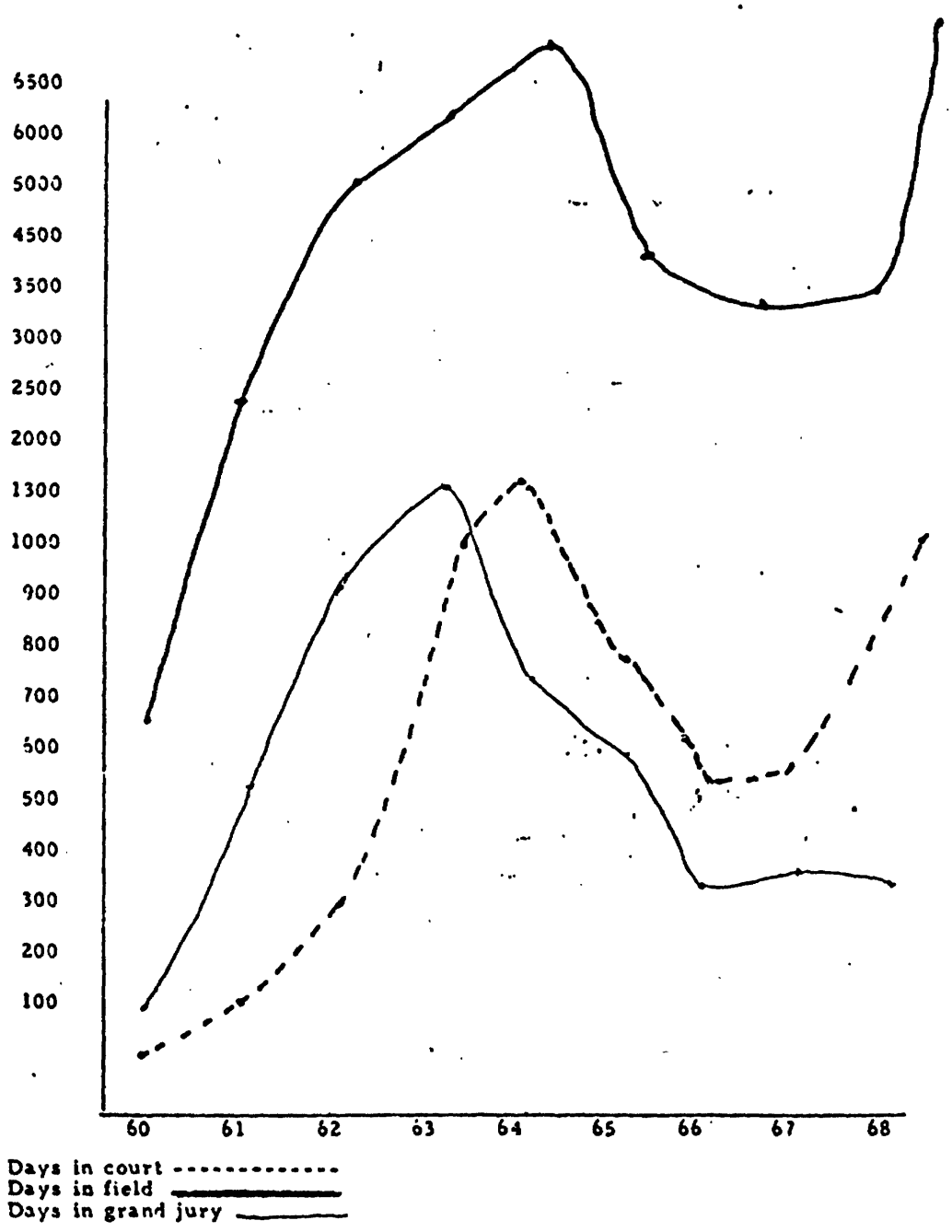
District briefs reviewed

CHART V.—INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE PARTICIPATION, ORGANIZED CRIME DRIVE



[Excerpt: *Federal Effort Against Organized Crime*, H. Rept. No. 1574, 90th Cong., 2nd Sess., pp. 17–34 (1968)]



Federal Effort—Present Posture

The present posture of the Federal effort against organized crime, within the Department of Justice and in other Federal departments and agencies, is outlined below. The data upon which summaries were prepared were submitted to the subcommittee by the departments and agencies listed.

Department of Justice

The organizational structure of the Department of Justice (as it is pertinent here) is as follows: The Attorney General is the head of the Department; he superivses and directs the activities of the U.S. attorneys in the various judicial districts throughout the Nation. Nine Assistant Attorneys General, including the Assistant Attorney General, Criminal Division, report to the Attorney General. The Organized Crime and Racketeering Section is in the Criminal Division.

The Attorney General's authority is set out in 26 U.S.C. 501 et seq. Additionally, the Attorney General has such power as is delegated to him by the President consistent with the United States Code. The President in his "Meeting the Challenge of Crime in the United States" message to Congress of February 7, 1968, stated with respect to the Attorney General:

"I signed this morning an Executive order designating the Attorney General to: Coordinate the criminal law enforcement actiivties of all Federal departments and agencies."

The authority of the Assistant Attorney General Criminal Division, and of the Chief of the Organized Crime and Racketeering Section is derived from the power of the Attorney General.

Organized Crime and Racketeering Section—Criminal Division: OCRS Responsibilities

The OCRS is charged with the responsibility of supervision of those criminal statutes which are specifically designed to suppress organized illegal activity of an interstate nature. The section also supervises and assists in the enforcement of the gambling and liquor laws, and is responsible for the enforcement of the statutes aimed at curbing racketeering influences in the relations between labor and management.

OCRS Structure

In the first 4 years that the OCRS was in operation (1954–58) there were only between two and four attorneys assigned to that task. The Department's major effort against organized crime was carried on through U.S. attorneys. Thereafter the complement of its attorney personnel increased quite rapidly, until 1964, when it reached 63. By 2 years later, however, it had fallen to 48—even though there is nothing to indicate that there was any corresponding diminution in organized crime's strength or activity.

The following table reflects the time OCRS attorneys spent in the field, before grand juries and in courts:

	Fiscal year 1967	Fiscal year 1966	Fiscal year 1965	Fiscal year 1964	Fiscal year 1963	Fiscal year 1962
Days in court	612	606	813	1,364	1,081	329
Days in field	4,494	3,480	4,432	6,699	6,177	5,076
Days in grand jury	419	373	605	677	1,353	894

Incongruously, the decrease in prospective personnel took place shortlv before the President, in establishing his crime commission, told that body that organized criminal activities were gaining despite the Nation's best efforts. By April 1968 the number of attorneys assigned to OCRS increased to 67. A total of 85 attorneys is anticipated for fiscal year 1969.

OCRS tries to get 3- to 5-year commitments to stay from attorneys who enter its employ. Its new attorney-employees are put under an on-the-job course of training, and are provided with manuals on organized crime, and on the trial of Federal criminal prosecutions, with which they are required to become familiar on their own time. They spend about 6 months learning the operations of the OCRS, and of the investigative agencies involved, the statutes employed and the legal problems which can be expected to be encountered. They work with senior

attorneys analyzing the intelligence to learn the scope of the problems, and the operations and techniques employed by organized crime, and familiarize themselves with all aspects of grand jury proceedings.

It takes about 3 years for a young attorney to become reasonably expert. In addition to the work being difficult, it is very demanding. Much of it must be done in the field, on assignments of too short duration to warrant an attorney's moving his family to his site of operations, and yet long enough to disrupt normal family life—particularly since an attorney can return to his home over weekends or holidays only at his own expense, and salaries are not large enough to permit such expense except infrequently.

The rate of turnover of OCRS attorneys averages about 12 a year. However, this does not result in total loss to OCRS, because some leave to join the staffs of U.S. attorneys' offices, and some have become professors of criminal law, where they use their expertise in instructing students on organized crime problems. Most leave to enter private practice. None has defected to organized crime, according to the testimony.

Upward of 25 Federal agencies contribute information to OCRS. This has resulted in accumulation of intelligence information which OCRS attorneys analyze and often disseminate to other interested agencies. Such information is additional to the investigative reports that are received from Federal agencies in the course of, or at the completion of, criminal investigations made by some of the agencies.

In the organizational structure of OCRS, the chief of the section reports to the Assistant Attorney General, Criminal Division. Two assistants to the OCRS Chief share responsibilities for administration of the Department's efforts against organized crime nationwide, each with geographical areas roughly divided by the Mississippi River.

In addition to staff attorneys, there are two specialist units. The labor unit concentrates on criminal activities in the labor-management area; the statutory enforcement unit on antiracketeering, gambling devices, and liquor laws. There is also an intelligence unit which catalogs information received concerning organized crime figures and their associates. Approximately 400,000 index cards have resulted from the indexing of reports of more than 12,000 investigations. The cards, which are manually prepared contain the names of racketeers, their associates, their activities (known or suspected, legal or illegal), telephone numbers, automobile license numbers and other similar data.

Permanent antiracketeering units have been established in the offices of the U.S. attorneys in Chicago, Los Angeles, Miami, Newark, and New York City.[1] In a number of other U.S. attorneys' offices one or more attorneys have been designated solely to handle organized crime problems.

According to the Justice Department witnesses, to increase the Department's effort against organized crime would require more than just increasing the manpower of OCRS. They thought that doubling the OCRS staff conceivably could produce justifiable results, but that a point of diminishing returns would be reached by merely increasing OCRS personnel; that what is needed is new ideas, together with a constant renewal of effort and dedication to the established program. They said that if the "safe streets" bill is passed, State and local communities will be able to undertake strategic intelligence operations on a larger scale, and to establish their own organized crime units; and in that event the OCRS would seek to enlarge its staff to handle the increased work volume created thereby.

Further testimony was to the effect that while the OCRS is the focal coordinating point of the Federal fight against organized crime, the hard work that requires substantial manpower is done by the investigative agencies, and that resources should be committed at that level. If more activity resulted therefrom, the OCRS would then need more lawyers.

OCRS OPERATIONS

OCRS analyzes all the intelligence information received for a given area, city, or State, and decides on the investigative approaches that should best reach the heart of a problem. OCRS attorneys at times are dispatched to the problem

[1] The organized crime operations of the U.S. attorney for the Southern District of New York are quite autonomous. The salaries and expenses of that office are paid from funds appropriated to maintain the U.S. attorney's office. Some or all of the expenses to maintain the units in other jurisdictions are paid by the Criminal Division.

areas with the objective of coordinating investigations into the organized crime apparatus there. Its operations largely have been on an ad hoc basis.

From time to time the Assistant Attorney General, Criminal Division, and the head of OCRS make field trips to meet with Federal, State, and local law enforcement officials, as the situation warrants. At these meetings, policy decisions are made for combating specific areas of organized crime, and with the view to achieving fullest cooperation between all who are to be involved in the effort.

As example of a fairly typical operation was cited at the hearing. Becoming interested in a given metropolitan area, several OCRS lawyers were assigned there, and spent about 3 months becoming familiar with the criminal activity in the area. Thereafter the Assistant Attorney General, the OCRS head, and the assigned attorneys met with the investigative agencies in the area, and briefed them on the problems as the Department saw them. Suggestions were solicited from the agencies for a problematic approach to the whole scope of the organized crime problems in the area.

Responsibilities for investigations were allocated between the agencies. For example, three organized crime gambling operations were operating in the area, one of them controlled by, the other two connected with, a major crime syndicate. The FBI was requested to concentrate its forces upon the syndicate-controlled operation, and the IRS was asked to concentrate on the two other operations. Also, because there were substantial allegations of corruption and of close relationships between the racketeering community and local public and and police officials, the IRS was requested to conduct tax audits of the officials and of some 70 top hoodlums in the area. The Department of Labor was requested to investigate alleged labor racketeering. After launching the program, OCRS attorneys met weekly with the various investigative agencies and assisted in such ways as getting search warrants and in conducting grand jury inquiries.

OCRS keeps seeking new and better means of coordinating the overall investigative effort and prosecutive results against organized crime. Thus, in early 1967, as an experiment, it put together a task force consisting of 5 OCRS atttorneys, and supervisory personnel from several of the Government's major investigative agencies. Its purpose was to concentrate and coordinate investigations of an organized criminal syndicate in a particular metropolitan area. The group had no direct investigative duties; its functions were to analyze all available criminal intelligence data in that geographical area, to relate that to the jurisdictional functions of each agency, and to make recommendations, jointly reached, to OCRS and to their own agencies concerning the best investigative approach to the problems that could be taken. Grand jury inquiries in a number of cities in the area supplemented these efforts.

That strike force used OCRS personnel, the U.S. attorney, investigators from the Internal Revenue Service, the Bureau of Narcotics, the Bureau of Customs, U.S. Secret Service, the Department of Labor, and the Federal Bureau of Investigation.[2] Its efforts, in cooperation with Canadian and local officials, resulted in the indictment of 25 underworld figures. Its results were alluded to by the President in his February 8, 1968, "crime" message to the Congress. He stated that additional strike forces are being formed to be moved, without public notice, into several parts of the Nation where organized crime now flourishes. He said he has directed the Attorney General and the Government's law enforcement agencies to give this program highest priority. At present time three strike forces are operational, and another is contemplated for June 1968. Additional strike forces are planned for the next fiscal year, and it is intended to locate strike forces in all areas of major concentrations of racketeers.

As another technique, OCRS has put a group of five of its attorneys into another eastern State, where through the use of grand jury proceedings and conventional investigative techniques of the whole spectrum of the Federal establishment of the whole scope of syndicated crime activities in that State is being explored. This investigation covers the entire organization of gambling, extortion, corruption of public officials, and labor racketeering in that State.

As another prong of OCRS efforts, in early 1967, accent was directed toward those activities that bring the racketeers great income: that is, gambling and

[2] The Assistant Attorney General Criminal Division, advised the subcommittee that "While the Federal Bureau of Investigation is not a member of the strike force, we rely heavily upon that agency for the intelligence information critical to the operation of the strike force. Also the strike forces work very closely with the Federal Bureau of Investigation where a violation of law within their investigative jurisdiction is indicated."

narcotics. Since that program was launched there have been two developments which can be expected to affect it. The U.S. Supreme Court has held provisions of the Federal Wagering Act to violate constitutional rights, which, at least temporarily, deprives the Government of an antigambling weapon; and the functions of the Bureau of Narcotics and of the Bureau of Drug Abuse Control have been transferred to a new agency, the Bureau of Narcotics and Dangerous Drugs, within the Department of Justice.

OCRS also aids in the overall fight against organized crime by working with State and local authorities. OCRS holds itself out as being ready to furnish whatever assistance it can in response to such requests, so that by such unified efforts a maximum reduction in the extent and influence of organized crime can be achieved. Such cooperation generally is on a specific basis, where either Federal or community law enforcement authorities have a special need for assistance from the other.

For the most part, however, such cooperation is effected by the on-the-scene officers in charge of Federal investigative agencies, without the aid, and often without the knowledge, of the OCRS. Ordinarily such liaison with local officials is made by the Federal narcotics agent, the U.S. Customs agent, the Labor Department agent, or the FBI special agent in charge—as the case may be—who is in the field, and while the OCRS encourages such relationships, the credit for instituting such operations usually belongs to the field office of the investigative agency.

This line of testimony was predicated upon newspaper accounts of assistance that had been given by the FBI to local officials in Chicago, who made large numbers of gambling raids and arrests. The Assistant Attorney General thought that to be a typical example of Federal and local cooperation. The subcommittee chairman, commending the job that had been done by the FBI, wanted to know what direction, if any, OCRS had given to that operation. The following colloquy transpired:

"Mr. FASCELL. I am, of course, very willing to concur in placing that credit. But what you say disturbs me, because I don't see where the direction comes out of your office.

"Knowing that gambling is a national syndicated operation, with tentacles all over, it is fine for the agent in charge of an investigative agency to lead the fight, so to speak, with respect to providing law enforcement in a given area. But, except indirectly, how does that tie in with what you are trying to do—if you have an overall plan of operation. * * * The point is, who makes a policy decision, like "We are going to bear down on gambling in Chicago today"—or wherever it is, an overall integrated effort against organized crime?

* * * * * * *

"Mr. VINSON. If I may make one other thing clear, Mr. Chairman. The cooperation of the sort you referred to—hard information that would enable a local police force to seek a search warrant, for instance—is customarily done in our business on the investigative level, investigator to investigator, and not prosecutor to prosecutor.

"But as far as emphasis on gambling in the national picture, we have a distinct emphasis on that in every major city in the country.

"Mr. FASCELL. I am sure you do. And I definitely got that understanding from your testimony. But I wasn't quite clear about how this investigative assistance to local law enforcement effort is related to the policy decisions which are made by the Organized Crime Section. That is the think that I am not clear on yet—when it starts and when it stops. Because it sounds to me as if you have the Federal Bureau of Investigation, for instance, doing its job and carrying out its responsibility—which it does extremely well—but doing it as the Bureau. And, because of its investigative emphasis in a particular area, or with respect to a particular problem, it then, in effect, makes a policy decision which actually ought to emanate out of the Organized Crime Section.

"Mr. VINSON. That isn't a limited policy decision. That is a way of life.

"Mr. FASCELL. In other words, this is a standard operating procedure that goes on all the time?

"Mr. VINSON. Absolutely."

OCRS has no line authority. That is, it has no statutory authority to order or direct Federal agencies to conduct investigations or to take any other action that OCRS may believe to be helpful in the Federal effort. Such authority as it has flows from the authority of the Department of Justice to represent the United

States in litigation in the name of the United States, to conduct prosecutions of Federal offenses, and such power in its dealing with Federal agencies that may flow from the President's May 1966 memorandum (mentioned above) which designated the Attorney General as the focal point of the Federal Government's attack on organized crime, and Executive Order No. 11396, of February 7, 1968, which designated him the coordinator of criminal law enforcement and crime prevention programs of all Federal departments and agencies. Under the 1966 memorandum, the President wanted each investigative agency to provide the Attorney General with periodic status reports on the progress of its organized crime investigations "showing for each current or proposed investigation the planned area of inquiry, the number and type of personnel assigned, and the expected prosecutive potential"; and to establish direct lines of liaison with the Department of Justice, to enable the Attorney General to carry out his responsibilities for directing the program. Neither the memorandum nor the Executive order was implemented by the Attorney General by the promulgation of any formal guidelines to the agencies for the attainment of the stated objectives.

Compliance with the memorandum by agencies varies. Apparently each agency makes its own decision on whether the memorandum applies to it, and to what extent. Some report intelligence information to OCRS monthly, and immediately if it is particularly "hot." Some furnish a quarterly report of current and contemplated investigations (as distinguished from intelligence). With respect to whether the intelligence is submitted automatically or is directed by OCRS, the following exchange is expository:

"Mr. ST GERMAIN. It sounds to me as though this is a shotgun approach, however. You say you get this information in from approximately 25 Federal agencies. However, is this directed—in other words, do you tell them: "We want information on John Doe or on this information"? Do the 25 agencies in various ways go out and gather evidence and statistics and what have you on this operation or on this individual or on this group of individuals? Or do you just wait and they dump this into your laps and you analyze it, and from there you decide who you are going to go after or what you are going after?

"Mr. VINSON. It works both ways. But it is not a shotgun approach, Mr. Congressman. It is the exact opposite because our effort is to focus and to choose targets in a given area and then to discuss these targets with the investigative agencies in their jurisdictional limits; then to conduct grand juries.

So it is the exact opposite of a shotgun approach, but I think where I may have misled you, we get intelligence on specific people. We also get criminal intelligence."

Whether or not liaison was to be established by an agency, or the extent thereof, with OCRS also seems to have been questions that were decided by each agency. The answer to the questions apparently was made easier for some agencies after the subcommittee indicated its interest in the whole problem, because more have joined, or expanded their efforts, since the subcommittee's hearings began.

Throughout the subcommittee's hearings, members were concerned with whether there was sufficient understanding between the OCRS on the one hand and the other Federal agencies on the other with respect to the relationships that should exist between the agencies and OCRS, and between the agencies themselves, with respect to the coordination of effort and the exchange of information.

For instance, Congressman Edwards of the subcommittee sought to ascertain whether, if an agency—for example, the Internal Revenue Service—obtains information concerning organized crime figures, that information is immediately fed into the OCRS' data files. The testimony followed these lines:

"Mr. EDWARDS. Do you feel that you have satisfactory guidelines for these other agencies so that you are convinced you are getting in the type of information in a proper procedure to keep your section informed on the individuals?

"Mr. VINSON. Generally, yes. However, I am not at all satisfied with our system. We are now exploring the possibility of computerization of this intelligence system in the Department.

"Mr. EDWARDS. On the known or suspected criminal element?

"Mr. VINSON. Yes, sir.

* * * * * * *

"Mr. EDWARDS. The guidelines that you are using, they are written? Do you have some rules or procedures written out that you follow in your interagency relationships?

"Mr. VINSON. That is a question that cannot be answered yes or no. We have letter agreements with some. We prepare memorandums of understanding between investigative agencies to define their responsibilities."

As an example of the kinds of agreements that exist, Assistant Attorney General Vinson presented for the record a copy of a memorandum agreement entered into between the Department of Justice and the Department of Labor with respect to the separate responsibilities of each of these departments for investigations and other actions under the Labor-Management Reporting and Disclosure Act of 1959. That interdepartmental agreement, however, arose because the functions of the two Departments under the act could overlap. The agreement then was not a general arrangement made between the two Departments for coordination of effort, except as it related to the particular statute involved.

In other words, it was not a guideline established by the OCRS or the Department to coordinate the Labor Department's efforts against organized crime with OCRS or with other agencies. The Assistant Attorney General explained, however, that this was not a typical memorandum of understanding that would be entered into between the Justice Department and other departments or agencies and that more typical arrangements between the OCRS and other agencies are much less formal.

For instance, IRS, which has had a leading role in the Federal effort against organized crime, has no letter agreement nor anything else in writing from the Justice Department concerning coordination of efforts. The Internal Revenue Service's witness responded to subcommittee questions in that regard as follows:

"Mr. ST GERMAIN. You mean you don't have anything even in the form of a memorandum that points out guidelines to the agencies involved, such as I mentioned before—Internal Revenue, Justice, Customs, Immigration, and what-have-you—that gives you the guidelines as to what general technique you follow when any one of these agencies comes upon an individual or a group that they feel is part of the organized group—and here is how we proceed from them, and at this point we ought to call in Justice, or what-have-you.

"Mr. KOLAR. What we do—every time we decide that an individual belongs in the organized crime drive, that the Department of Justice is responsible for administering, we write a letter to the Assistant Attorney General and advise him this is our view. He writes back and tells us, this man will be included in the drive, or won't.

"What procedure we will take within our own agency, that is pretty well defined.

"Mr. ST GERMAIN. That is why I keep harping on this coordinating—the question of coordination. Don't you feel that it would be beneficial to the agencies involved if they did have a general guideline, a memorandum, that could be distributed to all the individuals concerned working in the field, so that when they come upon something, though it might not ordinarily occur to them that they have got something that is worth looking into further, and calling maybe some of the other agencies in—this indicates to them automatically—well, here, we should submit this situation to the Justice Department, to the Organized Crime Section.

"Don't you feel that would be helpful?

"Mr. KOLAR. Yes, I feel it would be helpful, certainly. But I have not found it to be a problem—II will put it that way—the lack of it. But there is no question that the more clearly these things are spelled out, the more helpful they become."

The witness testified that in his relatively short term of office he found the coordination and relationship coming out of the OCRS to be excellent and that he was enthused by the coordination OCRS has given IRS. He recommended that it be strengthened, if that be possible.

The Alcohol and Tobacco Tax Division presented for the record the instructions or guidelines it has issued to all of its personnel for determining what should be considered as falling within the organized crime program, and what the objective is .This guideline is spelled out as an agency manual supplement, for intra-agency use. In the testimony of that agency's witness, he said that the OCRS has assisted the agency through its accumulation of information and intelligence, and through coordinating activities by OCRS' fieldmen obtaining information from various agencies in aid of the Alcohol and Tobacco Tax Division, the following exchange took place:

"Mr. ST GERMAIN. According to the concept of the Organized Crime Division, as now set up, they are supposed to be coordinating all of this. They have got 60 men to coordinate, just between your two agencies, the work of 2,600 men, and to serve as liaison.

"Mr. CASEY. I don't think they have enough manpower myself.

"Mr. ST GERMAIN. It seems evident, wouldn't you say?

Mr. CASEY. Yes, sir; I would agree with you.

Mr. FASCELL. Will you gentlemen yield at that point. The real point is that the Organized Crime Section cannot coordinate, because they have no line authority with respect to investigations.

"Mr. CASEY. That is correct, sir."

From the context of subcommittee hearings, it was clear that each agency, particularly each investigative agency, operates within its own sphere of interest, and obtains information from other agencies on request. However, such information, collectively, is not immediately available at any centralized points, nor can the requesting agency be certain that it obtains all of the information that the agency on whom the request is made has in its files on a subject. As was stated at the hearings, "One never knows what he doesn't get. I only know what we do get. * * * There is no question that we could give more and others could give us more."

The following testimony is pertinent:

"Mr. FASCELL. In other words, what you are telling me is you do your own investigations and you are responsible for the successful prosecution of your own case, other investigative agencies of the Federal Government, to the contrary notwithstanding.

"Mr. KOLAR. I guess it could be put that way.

"Mr. FASCELL. In other words, I have stated it correctly. So in addition to all the other problems we have, now we find that every investigative unit is probably duplicating investigations beyond belief.

"Mr. KOLAR. Let's say to the extent that the Organized Crime Section does not see this duplication, or doesn't correct this duplication, it exists, I am sure.

"Mr. FASCELL. If the OCRS does not get the benefit of information from all the investigations that are performed by either IRS or the Bureau, or whatever other agency is involved, then they are processing and coordinating only a certain percentage of the total sum of information being gathered and collected by all these investigative agencies. If the OCRS sees only a percentage of this information, it is likely that they are not even aware of much of the duplication. It seems somewhat less than desirable for all this mass of intensive investigative effort to continue without some coordination.

* * * * * * *

"Mr. EDWARDS. * * * Should there be a procedure whereby you would make known automatically to these other investigative agencies that you are after a given individual?

"Mr. KOLAR. It would be helpful from a disseminating standpoint. There is no question about it.

"Mr. EDWARDS. But there is no present guideline that would call for that. Is that what you are saying?

"Mr. KOLAR. I know of no present guideline."

The balkiness of some agencies to surrender any of their sovereignty of jurisdiction or operation is evident also in the operation of the "task force" technique. At least one agency refused to participate in the original task in the manner desired until OCRS picked up the tab for salaries and expenses of that agency's participants. Another, the FBI, participated, but on its own terms. In response to the subcommittee chairman's inquiry about the FBI's position with respect to the Department of Justice's "strike force" plan for fighting organized crime, the Director of the FBI advised in his letter of November 24, 1967:

"With reference to your specific inquiry, we have maintained daily contact with the Department's "strike force" (or "task force," as it is alternately called) which has been assigned to the Buffalo, N.Y., area since November 1966, providing the members of that group with information coming to our attention regarding individuals involved in organized crime. It is, therefore, certainly not true that we have faled to cooperate with this task force, even though we do not at the present time have any agent personnel assigned exclusively to work with it.

"The FBI has clearly indicated to the Department that we will handle any investigation which it desires us to conduct and which falls within our investigative jurisdiction. Our position is that the supervision of these investigations should remain within the FBI and that we continue to direct the activities and the assignment of our personnel so that the maximum utilization of available agents can be achieved at all times.

"Historically, our program embodied the separation of the investigative and prosecutive aspects of the drive against organized crime and, as a general rule, we have found it to be true that greater efficiency results and responsibilities become more clearly established when investigators investigate and prosecutors prosecute. Under this system, the supervisory direction and the assignment of personnel are left in the hands of professionals experienced in the handling of sensitive investigations in a most complex field of activity."

The Assistant Attorney General in charge of the Criminal Division advised in his letter of December 8, 1967, that it was technically correct that the FBI was not participating in the strike force concept, because it—

"* * * has not detailed its agents in the manner required for full participation of any such task force. However, in point of fact, the FBI's contribution to any such task force is very significant as the FBI is the only Federal agency which is oriented to development of strategic intelligence in the organized crime field. This intelligence, supplied to the Organized Crime and Racketeering Section and to other agencies on a continuing basis, is indispensable to our organized crime program. I might also add that the position of the FBI is that it will investigate promptly any matter within its jurisdiction which is referred to it by the strike force.

"* * * The other agencies which participate in the strike force—the Bureau of Narcotics, the Bureau of Customs, Secret Service, and the Department of Labor—all have small investigative staffs and have jurisdiction which brings them into the organized crime field to a lesser extent. The strike force concept, among other things, helps focus the contribution that they make to the organized crime field."

The FBI Director has pointed out in his letter that—"The FBI has been engaged over the years in a continuing campaign against the hoodlum racketeering elements throughout the United States. In addition to our own investigations, which led to some 197 convictions during fiscal year 1967, we have regularly furnished copies of our reports to both the Department and to the U.S. attorneys around the country. We also disseminated more than 287,000 items of criminal intelligence information to other Federal, State, and local law enforcement agencies during the past year, which led to the arrest by these agencies of 3,748 hoodlum, gambling, and vice figures."

The OCRS organized crime intelligence files have been built up largely from a nucleus supplied, beginning in 1961, by the FBI, and since added to by submissions from other Federal agencies and other sources, including private communications and those from State and local officials. The OCRS list of some 3,100 persons who have been identified as organized crime figures—with names added or deleted as circumstances require—is disseminated to other Federal agencies.

To the Federal investigative agencies, the existence of OCRS has meant what each agency wants it to mean. Mainly, it has meant that they incorporate the OCRS list of organized crime figures into their own files; that they report intelligence data to OCRS periodically; that they submit investigative information to the OCRS on a case-by-case basis, either prior to or concurrently with submitting it to U.S. attorneys; and that they participate in the conduct of special investigations or collaborate in such special projects as the OCRS task forces. Otherwise, the operations of the investigative agencies have not been substantially changed by reason of the existence of OCRS. They have their functions to perform and they decide what investigations to make.

Most submit the results of their investigations to appropriate U.S. attorneys and collaborate with other Federal agencies and with State and local law enforcement officials pretty much as they did prior to the formation (in 1954) or revitalization (in 1961) of the OCRS.

That is not to say, however, that the existence of OCRS has not had salutory effects on the agencies. For example, OCRS conducts the first centralized organized crime intelligence center; it spurs interagency cooperation; it attempts new means of coping with syndicated crime; and it develops specialists in the combat of organized crime. Perhaps what it does best was aptly described by the witness for the former Bureau of Narcotics, who said that the OCR provides—"the overall Government thrust. In other words, they have agencies that, perhaps, were not as interested as they should be in the organized crime problem working on it. In other words * * * they are keeping everybody on their toes."

EFFECTIVENESS OF EFFORTS

It is difficult, if not impossible, to measure the effectiveness of Federal efforts against organized crime. In 1965, President Johnson indicated his belief that organized crime was expanding, and his Crime Commission, 2 years later, had to

agree. On the other hand, the Assistant Attorney General, Criminal Division, asked by the subcommittee for his views on the extent to which organized crime operations were increasing or decreasing, replied that although he had no way, really, of gaging the results, he did not believe that they were increasing. Another witness, however (the head of the Internal Revenue Service's Intelligence Division) expressed his belief that on information that came to him, and his own knowledge, "we are losing (the war against organized crime) a little."

Statistically, the OCRS shows an increase in criminal indictments and informations of from 45 in 1961, to 609 in 1966; an increase in individuals indicted from 121 in 1961, to 1,198 in 1966; and an increase in individual convictions from 73 in 1961, to 477 in 1966.

In 1967, there were 704 indictments and informations returned against 1,231 defendants. In 338 cases in 1967, there were 492 defendants convicted.

Statistics alone, however, do not adequately measure the full effectiveness of efforts against organized crime. For instance, concerning syndicated crime families, the statistics for the 8-year period 1961 to December 1967, show 232 indictments, 127 convictions, 12 acquittals, six dismissals, and four reversals. These totals are small, compared to the overall statistics; and their significance is not fully measurable in the absence of detailed information regarding the nature and extent of the crimes involved, and the relevant position each defendant occupies in the syndicated crime hierachy.

According to the Department of Justice, the impact of its efforts is determined by a continuous analysis of intelligence data, including information from informants. For example, in one major city, informants indicate that members of the hierarchy of the dominant syndicated crime family have refused to assume leadership for fear they will become targets of the Federal effort. In another area, a family which formerly controlled the numbers activity in a major city has turned over actual operation of that racket to another group, but still extracts a percentage of the profits from the present operators. (Query: Might this reflect not a reduction in organized crime, but a mere substitution of one criminal group for another?) The Department's response continued:

"* * * Numbers of individuals indicted or convicted by themselves are meaningless in determining the effectiveness of our efforts, for the indictment or conviction of an underboss is far more significant than the indictment or conviction of tens of pickup men. Only last month we convicted * * * the alleged head of the New England * * * family, a most significant victory in the war on organized crime. * * * And on March 21, 1968, a Federal grand jury indicted three men including * * * the alleged head of the New Jersey * * * family, on a charge of conspiring to use interstate facilities to help carry out an extortion scheme * * *."

The Department pointed to a 57-percent increase in income reported in tax returns by racketeers in the North Atlantic region, and stated that undoubtedly increased Federal attention to organized crime figures was a major force in obtaining that result. (In the absence of better information, could not this result indicate the desire of racketeers to avoid becoming involved in income tax violations—or that there had been large increases in racketeer activities, licit and illicit?)

The information submitted by the Department as means of measuring effectiveness, while interesting, establishes quite clearly that no means are yet available for measuring the genuine effectiveness of efforts against organized crime.

The President's Crime Commission pointed to the essentiality of our society's being able to tell when changes in the amounts of crime occur, and what kinds, and to be able to distinguish normal rate raises and volumes from long-term trends. Whether crimes increase or decrease, and by how much, are important questions for law enforcement, for the citizens who must run the risk of crimes, and for the officials who must plan and establish prevention and control programs. The Commission's surveys indicated, however, that no fully reliable methods for measuring crime volume and trends have yet been found.

According to Department of Justice testimony, the rate of arrests for all crimes is about 25 percent of reported crimes—"not a good average." The conviction rate of arrested persons is high, averaging between 80 and 90 percent; however, probably twice as much crime is committed as is reported. Any figures on unreported crimes are speculative, and probably more so as regards organized crime.

The Census and Statistics Subcommittee of the House Committee on Post Office and Civil Service is conducting a study which relates to the Crime Com-

mission's findings of a critical need for a strong, effective statistical program encompassing all aspects of the criminal process.[3]

The Commission found law enforcement officials to be the only group with any significant knowledge about the organized crime problem, and that other disciplines (social, economic, and legal, for example) until recently have not considered the possibility of research projects on organized crime. The Commission recommended that the Department of Justice should "sponsor and encourage research by the many relevant disciplines regarding the nature, development, activities, and organizations of these special criminal groups."

TREASURY DEPARTMENT

INTELLIGENCE DIVISION—IRS

The Intelligence Division (ID) of the Internal Revenue Service enforces the criminal laws applicable to Federal tax laws—income, estate, gift, employment, and certain excise taxes—with the objective of achieving maximum voluntary compliance. As of May 1967, the ID had about 1,700 special agents operating in 58 district offices spread throughout the Nation and in Washington.

The IRS has had what it calls an "inservice racketeer program" since the prohibition era. The program was stepped up following the Kefauver committee hearings, the Appalachian meeting and the McClellan committee hearings. As a part of its program, the IRS maintains a continuing information file in its offices on all identified racketeers. The ID reviews the tax returns of these hoodlums each year, and may audit them every 2 years.

The ID's special attention to the tax affairs of racketeers and other persons operating in illegal activities proceeds on the premise that such persons are motivated to obtain profits illegally and without regard for sharing their portion of the tax burden.

In 1961 when—as IRS views it—the Department of Justice's organized crime drive began, the ID established a special group in its Washington office to coordinate organized crime cases nationwide; and, in the field it established the position of regional coordinator for each region. The ID maintains coordination with the attorneys from the OCRS of Justice, at the field level throughout an investigation. In figures provided by the OCRS the ID developed an expanded or liberalized definition of persons to be investigated by including people operating in a continuous fashion to violate the laws in a manner deemed detrimental to the community in which they resided. The ID still investigates such individuals, but since 1967 has conformed to the designations made by the OCRS of organized crime figures for investigation.

The ID finds the Criminal Division, and its OCRs, an excellent focal point through which it obtains information which may be pertinent to its investigations which OCRS has obtained from other investigative agencies. The ID also furnishes information to OCRS to the extent that such exchange is not prohibited by the nondisclosure provisions of tax laws. The ID witness testified that the coordination and cooperation of the Department of Justice is most helpful. It has found, for example, that frequently there have been prosecutions of organized crime figures which were based on evidence that was developed by ID, but disclosed crimes which were not under ID jurisdiction. The reason that the ID feels the role of the OCRS has been most helpful is that OCRS operates from the top, and helps to direct efforts. ID recommends that OCRS's operations be strengthened.

Since February 1961, the ID has has made over 5,000 investigations in the organized crime area, with 20 percent of its manpower being concentrated therein. By the spring of 1967, this work resulted in 2,198 convictions, with 1,338 other cases pending prosecution. Fines totaling about $3 million had been imposed, and recommendations for tax assessments of $295 million in cases involving income and wagering tax violations had been made. During this period 60 percent of all Federal convictions against organized crime figures resulted from ID investigations.

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[3] In a Mar. 5, 1968, press release that subcommttee stated that although basic data is necessary for research and new technology for effective crime control and rehabilitation, less than $1 million is spent on crime statistics.

ID's investigation of organized crime racketeers is of greater depth than its usual investigations. The ID looks for unusual angles in such cases. The instructions for the commencement of an investigation go to the district director from the Assistant Commissioner for Compliance, who is the only official that can authorize the release of tax information to the Department of Justice. Every 45 days a report is written on the progress of an investigation, which is reviewed by the IRS Regional Organized Crime Coordinator and the organized crime coordinator in Washington, and then it is sent to the OCRS.

If an IRS special agent recommends prosecution, the report goes to the Assistant Regional Commissioner of Intelligence in the region for review. The report must then go to the regional counsel, even if the Assistant Regional Commissioner of Intelligence does not concur in the recommendation for prosecution. If he agrees with the recommendation for prosecution, the regional counsel sends the case to the Tax Division of the Department of Justice, with a copy of the Criminal Division; otherwise he sends the case to the Criminal Division with a copy to the Tax Division of the Department of Justice. These cases are not closed without the approval of the OCRS of the Department of Justice. In wagering cases, the reports have been sent directly to U.S. attorneys.

ID has found that some whose names appear on the OCRS organized crime list recently have become active in counterfeiting and forging of Government bonds. These activities are carried out not by syndicate leaders but by "fringe" figures, who engage in them as individual enterprises, and not as a part of the syndicated crime operations.

It was pointed out by the Director of the ID that organized crime is successful because it makes tremendous profits through monopolistic methods, terror, and corruption of officials, while staying unseen in the background. He said that—

"Gambling, the financial support of organized crime, has the potential to destroy our democartic way of life if we do not control it, and contributes to the poverty which exists in many parts of the country. * * *

"A basic must in combating organized crime is more stringent enforcement of gambling laws at the local and State levels. These governments have the laws and the machinery to curb and control gambling. If the gambling profits which finance most, if not all, organized crime activities were eliminated or materially reduced mobsters would have difficulty financing their other nefarious enterprises such as loan sharking, prostitution, and so forth. It would also substantially reduce the extent of corruption of public officials, for without huge gambling profits, there would be little incentive to corrupt police and public officials."

Another reason, he said, for the success of mobsters is public apathy, and the failure of the citizenry to understand the nature of the stranglehold that organized crime puts on their daily life. This indicated, he said, the necessity that the public needs to have officials appointed and elected who would not get involved in corruption. He agreed with the conclusion of the President's Crime Commission that most of organized crime gambling profits go untaxed, and that the proceeds are difficult to follow because they are handled as cash.

He gave as his opinion that ineffective local enforcement constitutes the weak link in the battle against organized crime, and recommended intensified law enforcement at all levels. He favored the use of the OCRS to stimulate enforcement intensification. He recommended also that action be taken to protect witnesses; that a statute which would provide immunity from prosecution under the tax laws without excusing the payment of taxes would be helpful; that the Department of Justice should collect data concerning the infiltration of organized crime into legitimate business in order to determine the nuances thereof; that a continuing congressional committee operating in the oversight area to keep abreast of the crime problem would be helpful; and he favored the continued use of undercover agents unless it should be determined that the Congress does not support this investigative technique.

The Director stated he was not opposed to legalized gambling if it could be properly supervised, but he professed some doubt that this could be done. He gave his personal view that supervised wiretapping would be very helpful to the investigation of organized crime cases, particularly with reference to cases involving the use of the telephone by gamblers in "laying off" bets on an interstate basis.

He gave as his opinion that we are losing somewhat in the fight against organized crime, apparently because organized crime tax violations are increasing.

Senator HASKELL. The next witness is Mr. John D. Crowley, of Chicago, Ill.

STATEMENT OF GEORGE D. CROWLEY, ESQ., CHICAGO, ILL.

Mr. CROWLEY. Mr. Chairman, my name is George D. Crowley of Chicago, Ill. I am in private practice of law. I have been a member of the Criminal Justice Council of the American Bar Association, and I am a fellow of the American College of Trial Lawyers and have been for several years.

I am not speaking as a representative of either of those groups. My opinions are my own.

In my earlier years I was with the Securities and Exchange Commission, the Department of Justice, as well as the Chief Counsel's Office of the Internal Revenue Service. I am appreciative of the opportunity which you have given me to appear before this committee today.

The issue before the subcommittee is whether or to what extent the Internal Revenue Service should continue to assist the strike force program of the Department of Justice. This is a part of an overall appraisal of the Service's enforcement program that was generated at least in part by some of the disclosures made in the recent scandals of the last several years.

By and large, I think the Service resisted the effort to politicize itself during the last administration, but nevertheless, disclosures of enemy's lists and unjustified audits and investigations made it clear even to the casual observer that the power of the Internal Revenue Service must be closely and objectively scrutinized if American liberties are to be preserved.

The Service is the most pervasive agency of the Federal Government. It possesses a dossier on every American citizen who files a return, and that dossier is updated annually under penalty of law. It has powers of collection that can put almost anyone out of business with the assertion of a jeopardy assessment. It has powers of audit that can assess taxes and oblige the taxpayer to prove, at his cost, that the assessment is wrong. It has powers to investigate so broad that a special agent could be fairly described as a one-man grand jury, and it has a series of criminal statutes covering almost every act, every conversation with Service personnel, every line of every tax return that is filed, and with a statute of limitations that stretches back 6 years. Those powers were conferred by Congress to assist the Service in its awesome responsibility of collecting $300 billion of taxes each year.

I find no fault with this. The real question before this subcommittee is whether Congress also intended those powers to be used to bring down the general objects of the Federal criminal law—organized crime figures, narcotics traffickers, and corrupt politicians.

The second question is what impact such use of the Service's power has on its responsibility to collect taxes.

The issue is not the use of Service personnel. It is the use of the power wielded by Service personnel. If it were simply a question of technical assistance, the answer would be simple; that is, permit the Service to provide such technical services until the strike force and/or the Department of Justice are sufficiently staffed to provide it themselves.

I do not mean to minimize the technical capacities of special agents. They are, in my opinion, the best criminal investigators in Government. But that is not their sole attraction to the strike force in its drive against narcotics and its conduct of political corruption investigations,

such as those in Baltimore, Newark, and Chicago. These special agents have access to income tax returns. They may use jeopardy assessments, they may issue Commissioner's summons, they may invoke the criminal sanctions of the tax law as a jurisdictional backup for expanding Federal criminal jurisdiction. They may scour records going back 6 years to find some technical violation of the tax law, thereby obtaining a conviction for a false statement on an old return and convicting an individual on it rather than the substantive charges they were investigating.

Another attraction of IRS personnel to the strike force is their facility at building indirect methods in tax evasion cases which require less proof than most other criminal cases, and where the burden of proof has been subtly shifted over the years to force the defendant to explain various transactions or "to remain silent at his peril." If this committee told the strike force that it would authorize the employment of sufficient technical personnel to act as substitutes for the IRS personnel now being used, it would not satisfy them. They want the power that goes with the personnel.

The basic question, then, is the use of the power conferred on the IRS to assess, audit, investigate, and recommend criminal charges against selected individuals whose alleged crimes have little or nothing to do with the tax laws of the United States?

I do not believe it should be so used. We require virtually every adult American to file a tax return every year. If one of those returns is used in a criminal investigation, it should be because questions have arisen as to its accuracy. It should not be used as evidence or as the technical basis of a criminal charge, simply because someone in the strike force is convinced that the person who filed it is guilty of another charge that at the moment he cannot prove. It should not be used to confer Federal jurisdiction over State criminal violations, such as when an alderman allegedly takes a bribe and they charge him with tax evasion for not reporting it because they are not sure title 18, United States Code, section 1952 does confer jurisdiction.

Although I have never represented organized crime figures, as a criminal tax fraud trial lawyer for over 30 years I can testify that rules of evidence developed in tax cases involving organized crime figures have proven to be traps for the doctors, lawyers, small business executives, et cetera, who find themselves facing tax fraud charges.

This issue is as old as the Intelligence Division of the IRS itself. The Division was formed in 1919 by the transfer of six postal inspectors to the Treasury Department. Elmer Irey, the head of the newly formed unit, recounted these early days in a book published in 1948. He states that: "When (Herbert) Hoover became President, he sent out orders to get (Al) Capone." Hoover had been approached by some Chicago citizens who complained about Capone, and Irey quotes Hoover as saying, "That's when I gave the order to put Capone in jail."

Almost all of the manpower Irey had was devoted to the task of putting Capone in jail, and they were successful in so doing. Once they did, their functions of protecting the integrity of the tax took second chair to the investigations of the Capones, Frank Nitti, "Big Bill" Johnson, Huey Long, Tom Pendergast, and the like.

The criminal tax laws were considered merely a source of Federal jurisdiction and a suitable snare for mobsters and politicians who could not find a convenient category to declare their ill-gotten gains. The Service was not protecting the integrity of the tax; they were loaning their agents, their criminal tax statutes, and their talent at proving violations of those statutes to bring down selected targets.

The strike force wants to use the IRS in the same way today. I think it makes for bad police work, a dangerous selection process, a misuse of congressionally conferred powers by executive action, and a genuine confusion in the public mind as to whether the criminal tax statutes apply to everyone who files a return or only to gangsters and politicians.

When you set out to put someone in jail rather than to investigate a crime or a particular criminal activity, it is the law of the land that ulimately suffers. It is no excuse that this conduct began with a notorious figure such as Al Capone. What applied to Al Capone, with shifts in administration and attitude, can apply to Mr. Lawrence O'Brien, whom John Erlichman wanted in jail, too.

If a man is guilty of trafficking in narcotics, the object of the Federal authorities should be to prove that he is, not to seek technical violation of some other statute. If the latter is the case, the only important thing is that someone in the enforcement authority believes you are guilty of trafficking in narcotics not that you are, in fact, guilty of it.

I do not believe that the power of the Federal Government should simply be turned loose on someone to catch him in any violation, whether his name is Al Capone or Jimmy Hoffa or anyone else. I believe the Chair referred to the *Janko* case where the strike force had determined that this man was a notorious gambler, but apparently there was a paucity of proof in their particular case. So they charged him with evading taxes on the basis of claiming as dependents two children, and it wasn't that he didn't have two children or that he didn't contribute to their support, but he didn't contribute more than 50 percent of their support, and he was indicted for 3 years. One year there was $140 in taxes, and the other 2 years were about $240 in each year.

He was convicted, and he was sentenced to 10 years in the penitentiary.

Now, that is what I call a use of a technical violation on a special target. Now, potential for the misuse of power of the IRS by the strike force is only one side of the issue. The effect of this use on the primary responsibility of the Service to protect the integrity of the tax is the other side. There are no statistics available that would document the impact on the deterrence program of the Service by the diversion of personnel to the strike force, but practical analysis would indicate it has a significant effect.

First, according to Donald Bacon, Assistant Commissioner of Compliance, in a statement reported in a 1971 article in the Wall Street Journal, strike force investigations take six times as much time as investigations of ordinary taxpayers. For this effort, the IRS is obtaining criminal tax charges against organized crime figures and corrupt politicians.

The ordinary taxpayer is not deterred from committing tax offenses by such prosecutions because be cannot relate his situations to the cir-

cumstances of these kinds of cases. In fact, he may be encouraged by these prosecutions to believe that criminal tax charges are only brought against such individuals and not against an ordinary taxpayer who fudges on his expense account or turns off the cash register before the evening business is completed.

The IRS is then diverting significant manpower and man-hours to the development of cases that have little impact on its deterrence program, and possibly even a negative effect.

I would recommend that the IRS provide only technical and investigative assistance on a diminishing basis to the strike force until such time as the strike force has sufficient personnel to do the job itself. A time limit should be set for the return of all IRS personnel to their original and proper functions. I would suggest that 1 year would be sufficient to handle the transaction.

It is my understanding that the FBI has 1,300 agents specializing in the white-collar crime area, and I am sure they are qualified, with minimal additional training, to handle the tasks now being performed by IRS personnel. The IRS should have exclusive authority to determine the use of their manpower, the nature of their investigations, and the overall enforcement policies to be accomplished.

The direction of their policies should be the development of cases with significant deterrent effect on the taxpaying public, cases necessary to the protection of the integrity of the tax laws.

Mr. Chairman, that concludes my remarks.

Senator HASKELL. Thank you, Mr. Crowley. Are you aware that in February of last year the American Bar Association adopted the following position, and I quote: "IRS and its personnel should be limited to functions, responsibilities, and duties which are pertinent to the administration of the Internal Revenue laws."

In your opinion, do you support this position; and if so, do you consider it the best way of reducing possible misuse of IRS personnel?

Mr. CROWLEY. I am aware of the policy, and I endorse the policy, and I believe it would result in the best use of IRS personnel.

Senator HASKELL. Another question: Do you think that the FBI could be utilized to conduct some of the inquiries currently assigned to IRS personnel?

Mr. CROWLEY. I am sure that the FBI has highly qualified agents who, as a matter of fact, are engaging in investigations of financial crimes already, and I believe there could be the allocation of that type of personnel to the FBI to take over where IRS should be relieved of its responsibility currently.

Senator HASKELL. Do you happen to know to what extent the Department of Justice may have interest in nontax information that you could obtain from returns, such as associates, and people you deal with financially? Do you know whether this is one of the Department of Justice's motivations in asking for cooperation or involvement of IRS personnel in strike forces?

Mr. CROWLEY. I am hardly qualified to determine the motivation of the Department of Justice, but it would seem that they are interested in getting anything they can out of tax returns.

Senator HASKELL. You were never in the Department of Justice?

Mr. CROWLEY. I was, but I hesitate to say how long ago it was. I was with them in 1939 and 1940.

Senator HASKELL. All right, sir. I thank you very much indeed, Mr. Crowley, for your excellent testimony.

Mr. CROWLEY. Thank you.

Senator HASKELL. Our last witness is Mr. Charles Davenport, formerly Project Director, Administrative Conference of the United States.

STATEMENT OF CHARLES DAVENPORT, FORMERLY PROJECT DIRECTOR, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Mr. DAVENPORT. Good morning, Mr. Chairman.

My name is Charles Davenport. I am pleased to be here today at your invitation.

I have practiced and taught tax law for more than 15 years. From July 1974 through June of 1975 I was the principal consultant to the Administrative Conference of the United States and directed the project which studied some of the procedures of the Internal Revenue Service. Although the subject matter of these hearings was not involved in that study, the views which I present are my own personal views and were formulated during that period.

To the uninitiated the title of these hearings must bear the marks of Lewis Carroll. The role of the Internal Revenue Service in Federal law enforcement. What could be more Alice in Wonderland?

The Internal Revenue Service has about 80,000 employees. It must administer a law that contains more than 9,000 sections. Over 120 million income tax returns are filed each year. Some 400 million information documents must be processed annually. This year over 2 million audits will be conducted and about 2.5 million delinquent accounts must be collected. The revenue system produces some $300 billion of revenue each year. By most any measure the Internal Revenue Service performs these tasks well, but they are not viewed as being enough. Instead, a number of people believe that the already overburdened Internal Revenue Service should do more. Namely, many urge that the Service continue and increase its part in law enforcement far afield from the enforcement of tax crimes.

As a general rule when I find anything that operates as well as the Internal Revenue Service does, I would advise that we leave it alone. Perhaps those who urge general law enforcement on the Internal Revenue Service are envious of its record in collecting revenue and believe that it can be as efficient in investigation of criminals. For reasons discussed below, it not only cannot be as efficient in catching criminals as it is in collecting revenues, but also by engaging in criminal investigation activities it will lessen its effectiveness as a revenue agency.

WHAT THE IRS HAS

The Internal Revenue Service as a cop. What is there about the Internal Revenue Service that causes the Department of Justice to sing its praises? What magic makes the Internal Revenue Service so efficient in the investigation of white-collar crime? There are a number of things that the Internal Revenue Service has that others who are

more directly charged with the enforcement of criminal law seem not to have. Let us start with them.

First, the Service has the power (and has exercised it) to require the keeping of books and records with much confidential personal and financial information. Much of this information is then sent to the Service on tax returns. Failure to provide the information may result in incarceration. Most of this information would not be compiled if there were no requirement to file income tax returns.

In addition to these confidential tax returns, the Internal Revenue Service has broad investigatory authority. It may inquire into matters not mentioned on the return. It may also question about returns which may not have been filed. It may question about other people. It may inspect the books and records of any person, canvass districts for those who have not paid taxes, and it may issue summons to compel any person to give testimony or surrender evidence. These powers were granted for the sole purpose of enforcing the revenue laws. [See sections 6001, 7601, and 7602 of the Internal Revenue Code.]

In addition, the Internal Revenue Service has a number of extraordinary collection powers. It may impose immediate assessments when the collection of the tax is in jeopardy. It also has the power to terminate a tax-year and make an immediate assessment. Under the decisions handed down by the Supreme Court just last week this power is approximately the same as that of the jeopardy assessment.

After the taxes have been assessed, the Internal Revenue Service may put a lien on property and may seize and hold it for sale pending an administrative or judicial determination of the tax due. The Service thus may sequester a person's assets if it finds that the collection of the tax is in any way jeopardized. As many know, this power has been exercised even when there was substantial question whether any tax was due or any jeopardy was present.

Finally, the Internal Revenue Service has a group of highly trained specialists, special agents and revenue agents. These agents are usually accountants who have had substantial experience analyzing financial transactions and applying the tax law to them. Undoubtedly they are very skilled at unraveling the most complex financial transactions.

Senator HASKELL. May I interrupt you Mr. Davenport?

How important are these powers of the Department of Justice?

Mr. DAVENPORT. The Department of Justice largely takes the view, as I read Attorney General Tyler's testimony last December, that these powers are not the crucial factor which is important to the Department of Justice. I think that in general they obviously were the key, for instance, to some particular programs, such as the narcotics trafficker program. One key to that was the so-called termination program. I think they are useful.

I do not think, however, it is the primary motivation of the Department of Justice, the use of these powers, that is, but I think they have been very helpful to the Department of Justice. I have a little bit in my statement on that, and having sort of summarized that question, let me go on and deal with what seems to me to be the primary reasons that the Internal Revenue Service gets into the investigation of general crimes.

Senator HASKELL. Yes, please proceed.

Mr. DAVENPORT. Instead, we are usually told that the Service's expert investigators are essential to criminal investigation. This con-

fession is almost amusing. After more than 50 years as the envy of the policemen of the Western World, the FBI has been unable to develop the expertise to investigate complex money transactions.

Can this be? Do these hearings and all that surrounds them turn on the FBI's alleged inability to train CPA's to understand financial manipulations? Surely there must be something more involved. What then makes the investigation of general law attractive to some personnel at the Internal Revenue Service and to a lot of personnel at the Department of Justice?

FORCES URGING CRIMINAL INVESTIGATIONS

One approach to this question is to ask who wants the Service in general law enforcement. Generally we find that the Intelligence Division of the Internal Revenue Service is interested in the Service's conducting general criminal law investigations. Generally, speaking over the years, this view has been opposed by the appointed head of the agency and those career personnel whose responsibilities are turned toward the civil collection of tax. The dispute inside the Internal Revenue Service then finds the Intelligence Division pretty much arrayed against the rest of the Internal Revenue Service. Most all tax practitioners are also opposed to the Service's exercising its powers as a general law enforcement agency.

What then are the motivations of the Intelligence Division? Certainly those in the Internal Revenue Service who desire to conduct these investigations either do not know or have not told us. Sometimes they claim a special competence. At other times they rest their case on the public interest. But surely other agencies must have competent investigators, and surely the question of the public interest is not to be decided by the Intelligence Division. There must then be other reasons for this desire to investigate crime in general.

I will turn to them, and I am speculating at this point.

First, in the language of my children it is more fun to investigate real criminals than to be concerned about those who have committed tax crimes. Real criminals have done such things as extorted money, committed frauds, and perhaps bribed public officials. These are real evils and have a long tradition of being morally wrong.

Tax crimes are legislated evils with a history of less than three-quarters of a century. Furthermore, many of these criminals are organized criminals, and we are informed that the war on organized crime is at the point of being lost, if indeed it has not already been. Perhaps just one more investigation by the IRS will turn the tide and prevent our being in the hands of organized crime. Certainly fighting in a cause so grave is far more romantic than investigating whether the extortionist, the defrauder, the doctor, or the lawyer has merely failed to pay his income taxes. There is more glory in the greater fight. It is then just more fun to catch criminals than to investigate tax crimes.

Also, it is more fun because there are less constraints on what the investigating agents must do. If not confined to looking for evidence of a tax crime, an agent may go off on any sort of a frolic of his own. Nearly any curiosity can be satisfied in the search for white-collar crime while fewer matters are relevant to the investigation of a tax crime. There are simply then less constraints on an agent in a general criminal law investigation.

There is also more freedom in working hours. Criminal investigations do not always begin at 9 a.m. and stop at 6 p.m.. They may require more continuous duty. Who except the investigator knows just when to start, or to stop? Why not continue surveillance another 30 minutes today and receive premium pay benefits or take compensatory time? Perhaps in that 30 minutes the vital link will be found.

Also agents who make this kind of investigation have more freedom for another reason. Their masters are divided. To the Internal Revenue Service they are working for the strike forces under the leadership of an attorney of the Department of Justice. Yet, they do not nominally report to the Department of Justice, and the Department of Justice really does not account for them.

Do not misunderstand. I am not suggesting that the Service investigators are derelict in their duties or take conscious advantage of the situation. Rather, I merely suggest that they are less accountable in working general criminal cases than they are in working tax cases and that minimum accountability is a desirable working condition.

Furthermore, there is always a bureaucratic desire to grow. Every person wants to build his own empire. This is not an impulse that is limited to Government service or even the Internal Revenue Service or its Intelligence Division, but it does exist, and general criminal law enforcement gives a bigger world to conquer.

Finally, criminal investigators need real crimes in order to retain their status as criminal investigators. Can one expect to remain a criminal investigator if all his targets are mere local businessmen or others who may have secreted a part of their income or taken false deductions?

No, real criminals are needed. Why remain a criminal investigator? By a tradition based on the hazardous nature of the work, criminal investigators reach retirement in 20 years. But so do the secretaries and supervisors. This tradition lives in the Intelligence Division, and without real criminals—not mere tax cheaters—the tradition might die.

For all these reasons there is a natural human desire on the part of criminal investigators in the Intelligence Division to choose investigations on the basis of whether they are dealing with real criminals—and not just tax criminals. Taken alone, each of these reasons may seem rather small and petty. Indeed, the suggestion of some of them almost introduces a note of unintended frivolity. Added together, however, they offer an explanation of the Intelligence Division's desire to do general criminal law work.

The motives of the Department of Justice are easier to discern. The IRS agents who work general law enforcement cases are not on the budget of the Department of Justice. The Department of Justice does not have to account for their time. Justice obtains a group of specialists who perform investigations with no cost and with no accountability to Justice. Thus, if an agent of the Internal Revenue Service should engage in illegal conduct, the press will write that the Internal Revenue Service has done it again. The fact that the Justice Department is the sponsor of the work is completely overlooked. It is simply a "Heads, I win, tails you lose" position for the Department of Justice. It need not train its own personnel. There are no risks. There are many benefits. The cost is paid by another Federal agency.

HARM TO THE INTERNAL REVENUE SERVICE

None of the forces which wed the Internal Revenue Service and the Department of Justice in investigating crimes—or really the Intelligence Division and the Department of Justice—argues strongly against the Service's participation. Indeed, there probably would be nothing wrong with the Service's activity if the question were just one of who pays for the work. But more is involved than that. General criminal investigative work is detrimental in a number of ways.

First, the investigation for general crimes drains resources from the tax law enforcement program. The agent is more likely to spend his time wondering whether he has a good extortion case or a good fraud case than whether he has a good tax case.

But even if a good tax case is developed, the general public does not identify with organized crime, and there is very little deterrence from cases in which organized crime figures are prosecuted. Indeed, instead of identifying with those kinds of cases, the average taxpayer is likely to conclude that only organized crime figures are prosecuted for tax crimes and that tax crimes do not, in fact, apply to the average person. This image is, of course, just the opposite of the deterrent effect that would be created with the proper criminal tax program.

But this kind of investigative work will also drain off substantial energies in other ways. There will always be tension inside the Internal Revenue Service between those who are interested in the collection of civil taxes and those who are interested in investigating crimes. These tensions inevitably boil over and consume considerable energies. Indeed, how much better would it be for the Commissioner to be back at the Internal Revenue Service worrying about a proper audit program than to be before this subcommittee explaining what the role of the Internal Revenue Service is in the enforcement of criminal law. Yet, it is the desire of the Intelligence Division and the Department of Justice to continue a role in general criminal law enforcement, and this desire results in the Commissioner's being here, the Assistant Commissioner for Compliance being here, the Assistant Commissioner for Inspection being here, and so on. There is no end to the amount of time and energy that is involved in this kind of bureaucratic infighting.

Also, an Internal Revenue Service involved in criminal law enforcement projects a police image to the public. A taxpayer who views the Internal Revenue Service as a policeman will be considerably more frightened and distrustful of the kind of treatment he received in an audit than if he did not think of the Internal Revenue Service as a policeman. The police image is intimidating, and it is destructive of the citizen's willingness to pay taxes and to trust the agency which is collecting them. If the Service is given considerable publicity for its general criminal law work, there is no way that it can avoid this kind of image. If it does the work, there is no way it can avoid the publicity.

Furthermore, the working of criminal cases affects the entire organization. The organization takes on what might be called the "Al Capone syndrome." Many people believe that the Service's greatest moment was the sending of Al Capone to prison and that Mr. Capone got his just deserts. But that belief does not arise from his failure to pay taxes. Rather, he was a well-known, notorious mobster directing a

network of sinister criminal activities who deserved imprisonment instead of the good life provided by his ill-gotten gains.

The public cared little about the ground on which he went to prison. The Service, however, misread the public approbation and believed that it did the right thing in "getting Al Capone" and that it should do the same for other mobsters. The whole organization then takes on the aspect of a policeman, and it begins to believe that it is a policeman.

The working of these organized crime cases will also inevitably lead to a transfer of confidential information in tax return files. If it is not the information on the return itself, it will be the results of investigations based on the confidential information in the tax file. The knowledge that one cannot trust his tax collector with his secrets breeds a mistrust of the agency. A mistrust of the agency leads to a mistrust of, and noncompliance with, the law.

Also, the belief that the agency is endowed with general criminal law enforcement purposes leads to bad programs. A prime example is the so-called narcotics traffickers' program which was recently laid to rest. It resulted in a number of so-called termination cases. I believe that Senator Morgan testified about at least one of those termination cases when he appeared before you last December. That was but one of the many cases which seem to be clear abuses of the termination power.

Abusive cases may have a more profound effect on the law than they do on individuals. Again, the narcotics traffickers' program provides an example. The *Hall* case, decided last week by the Supreme Court, arose from the NTP aimed, as Mr. Rossides testified earlier, at taking the drug cash from the street—the so-called termination program.

Mrs. Hall's home was searched by Kentucky State troopers who found illegal drugs. The next day the Acting District Director terminated Mrs. Hall's tax year, assessed a tax of $52,000, and seized her automobile. Mrs. Hall then sued for and obtained an order preventing disposition of her property. She charged that termination assessments were subject to the same restrictions as jeopardy assessments. The Service had long contended that termination assessments were not so restricted. The Supreme Court held they were.

There is no question but that *Hall* was only tangentially related to tax administration, but closely related to the program designed to take the drug cash from narcotics dealers. Yet the device used was a revenue-related one—the termination assessment—and its validity was judged in this nontax context. In his dissent, Mr. Justice Blackmun opined that the equities of Mrs. Hall's case turned the outcome. In other words, if Hall had not been a bad case from a bad program, Mr. Justice Blackmun thought the outcome would have been reversed.

The *Hall* decision will have profound effect on the law. Certainly the Service thought the issue at stake was important, for the Supreme Court noted that 70 cases were pending. At an earlier time, some 200 cases had been decided or were pending. (See *Willits* v. *Richardson*, 497 F.(2d) 240, 246 n. 4.) But this tax issue was decided in context of a nontax case. In short, whether right or wrong on the merits, the result was shaped by the nontax equities. This criminal program then has influenced the course of tax procedures.

Finally, there is a difficulty in knowing where to draw lines. Immense discretion is imposed in any agent of the Internal Revenue Service. If he is turned loose to work organized crime cases, perhaps he will be turned loose to work unorganized crime cases. Maybe he will work cases which involve Communist Party members. Perhaps he will work cases which involve immoral people. Once some criterion other than the question of tax enforcement is involved, there is little restraint on the agent.

Nor is there much restraint on the institution. It is not bound to the principle that tax law administration is its only purpose: The consequences are serious: Special Services staff, Operation Sunshine, IGRU, Operation Leprechaun, and the numerous exposés that have recently been in the newspapers. None of these would have occurred had the agency and its personnel been imbued with the belief that its sole purpose was the collection of revenue. Rather, over the years the Internal Revenue Service has been permitted to engage in many other activities and has ofttimes been commanded by the Congress or the President to engage in other activities. The consequences is that there is no basic underlying philosophy as to the general purpose and work of the Internal Revenue Service. Thus, it is easy to stray from its purpose.

This tendency meets less resistance when the straying is to prosecute bad people. Bad people are those who might possibly be defendants in white-collar crime, and they might also, of course, be merely war protestors or others who somehow deviate from the norm. Thus, the allowing of general criminal law enforcement activities by the Internal Revenue Service is distracting from its purpose, will lead to embarrassment of the Service, and will damage its effectiveness as a revenue collection agency.

In closing, let me add that the powers used in these general criminal law investigations were granted for the purpose of drug cash from the street, to crack down on white-collar crime, or to prosecute bad people. Their use for that purpose is lawless. A lawless tax collector begets a lawless taxpayer.

I thank you.

Senator HASKELL. Thank you very much, Mr. Davenport.

I believe you were present when Professor Blakey testified. Take the example of, as he said, some figure that is living very well, has no business or visible source of income, and as Professor Blakey stated, there would be reason to believe—or suspicion anyway—that he wouldn't have filed honest tax returns.

In those circumstances where that valid suspicion exists, do you see any reason why the IRS shouldn't participate in a strike force investigation?

Mr. DAVENPORT. The real question is whether the selection is made in connection with an enforcement program designed by the Internal Revenue Service having in mind the entire world of possible tax frauds. If this particular target fits within a program of the Internal Revenue Service which is designed by people who are interested in having an effective deterrent program in collecting taxes, there probably is no great difficulty in working with the strike forces on that particular case. But working with the strike forces is a case where you probably can't be a little bit pregnant.

Once there is an assignment to the strike forces, the strike force attorney will then have control of the cases, the selection of the targets, and the size and extent to which investigation should be made. It does, as Mr. Blakey suggested—it does go to the control of the program from the Internal Revenue Service to the Department of Justice, and despite his comments, I think that is important, because there really is very little that the Internal Revenue has outside of some of these exceptional powers. They couldn't be duplicated in other ways.

Senator HASKELL. You are aware, I am sure, that the Department of Justice and IRS have entered into a new procedure for investigations. I don't know whether you have looked at the guidelines, but do you consider this a temporary cease-fire?

Mr. DAVENPORT. I think it is a temporary cease-fire. I think the Commissioner thought that was the best deal he could get at the moment, and I think it is a deal that will be up for negotiation one of these days.

Senator HASKELL. Thank you, Mr. Davenport, for your very helpful testimony.

[The prepared statement and letter from Mr. Davenport follows:]

STATEMENT OF CHARLES DAVENPORT

SUMMARY

Congress has endowed the Internal Revenue Service with a number of tax enforcement tools which make it an efficient general law enforcement agency. These include broad authority to investigate all persons or records and to compel cooperation by a summons, extraordinary powers to sequester assets, and a body of skilled investigators. The Department of Justice finds these tools helpful to it. By using the Internal Revenue Service, Justice obtains a number of investigators for which it is not responsible and for which it does not have to pay.

General law enforcement is harmful to the Service, however. It drains off resources which should be concerned with tax administration. It creates the public image that the Service is a policeman. It may induce people to believe that only organized crime is subject to criminal tax laws. It creates hard cases which may create bad law. Most importantly, it frees Service personnel from the principle that the Service administer only the tax law. Many extraneous programs result, and often they become embarrassing.

These factors are harmful to the Service's efficiency as a tax administrator. We should not risk the revenue collection process for the minimal benefits of having the Service act as an agency of general criminal law enforcement.

Mr. Chairman and Members of the Subcommittee: My name is Charles Davenport. I am pleased to be here today at your invitation.

I have practiced and taught tax law for more than 15 years. From July 1974 through June of 1975 I was the principal consultant to the Administrative Conference of the United States and directed the project which studied some of the procedures of the Internal Revenue Service. Although the subject matter of these hearings was not involved in that study, the views presented here, which are my own personal views, were formulated during that period.

To the uninitiated, the title of these hearings must bear the marks of Lewis Carroll. The role of the Internal Revenue Service in Federal law enforcement. What could be more Alice in Wonderland? The Internal Revenue Service has about 80,000 employees. It must administer a law that contains more than 9,000 sections. Over a 120 million income tax returns are filed each year. Some 400 million information documents must be processed annually. This year, over two million audits will be conducted and about 2.5 million delinquent ac-

counts must be collected. The revenue system produces some $300 billion dollars of revenue each year. By most any measure, the Internal Revenue Service performs these tasks well. As a general rule, when I find anything that operates as well as the Internal Revenue Service does, I would advise that we leave it alone. But some people are not willing to do so. These tasks are not viewed as being enough. Instead, a number of people believe that the already overburdened Internal Revenue Service should do more. Namely, many urge that the Service continue and increase its part in law enforcement far afield from the enforcement of tax crimes.

Perhaps those who urge general law enforcement on the Internal Revenue Service are envious of its record in collecting revenue and believe that it can be as efficient in investigation of criminals. For reasons discussed below, it not only cannot be as efficient in catching criminals as it is in collecting revenues, but also by engaging in criminal investigation activities, it wil lessen its effectiveness as a revenue agency.

What the IRS has

The Internal Revenue Service as a cop! What is there about the Internal Revenue Service that causes the Department of Justice to sing its praises? What magic makes the Internal Revenue Service so efficient in the investigation of white collar crime? There are a number of things that the Internal Revenue Service has that others who are more directly charged with the enforcement of criminal law seem not to have. Let us start with them.

First, the Service has the power (and has exercised it) to require the keeping of books and records with much confidential personal and financial information. Much of this information is then sent to the Service on tax returns. Failure to provide the information may result in incarceration. Most of this information would not be compiled if there were no requirement to file income tax returns.

In addition to these confidential tax returns, the Internal Revenue Service has broad investigatory authority. It may inquire into matters not mentioned on the return. It may also question about returns which may not have been filed. It may question about other people. It may inspect the books and records of any person, canvass districts for those who have not paid taxes, and it may issue summons to compel any person to give testimony or surrender evidence. These powers were granted for the sole purpose of enforcing the revenue laws. (See Sections 6001, 7601, and 7602 of the Internal Revenue Code.)

In addition, the Internal Revenue Service has a number of extraordinary collection powers. It may impose immediate assessments when the collection of the tax is in jeopardy. It also has the power to terminate a tax year and make an immediate assessment. Under the decisions handed down by the Supreme Court just last week, this power is approximately the same as that of the jeopardy assessment. After the taxes have been assessed, the Internal Revenue Service may put a lien on property and may seize and hold it for sale pending an administrative or judicial determination of the tax due. The Service thus may sequester a person's assets if it finds that the collection of the tax is in anyway jeopardized. As many know, this power has been exercised even when there was substantial question whether any tax was due or any jeopardy was present.

Finally, the Internal Revenue Service has a group of highly trained specialists, Special Agents and Revenue Agents. These agents are usually accountants who have had substantial experience analyzing financial transactions and applying the tax law to them. Undoubtedly, they are very skilled at unravelling the most complex financial transactions.

Which of these makes the Internal Revenue Service indispensable to the prosecution of white collar crime? Only rarely does anyone argue that confidential information on the tax return renders the Internal Revenue Service indispensable. Sometimes the fruit of investigations rooted in tax returns is said to be crucial, but most adherents of criminal law enforcement would not rest their case on access to tax returns. Some would have us believe that the power to investigate is of some importance to general law enforcement. The power to investigate, however, is not unique to the Internal Revenue Service although some of its tools for investigation are. For example, the Department of Justice may have a subpoena issued only after convening a grand jury. We are told, however, that is not the administrative summons power of the Service which renders the Service indispensable to criminal investigations. We have also been told that the ability to place the alleged criminal defendant in a hammerlock by levying jeopardy and termination assessments and tying up all his assets does not render the Internal

Revenue Service indispensable. Clearly, however, these powers were the key to the termination assessments in the Narcotic Traffickers' Program.

Instead, we are usually told that the Service's expert investigators are essential to criminal investigation. This confession is almost amusing. After more than 50 years as the envy of the policemen of the Western World, the FBI has been unable to develop the expertise to investigate complex money transactions.

Can this be? Do these hearings and all that surrounds them turn on the FBI's alleged inability to train CPA's to understand financial manipulations? Surely, there must be something more involved. What then makes the investigation of general law attractive to some personnel at the Internal Revenue Service and to a lot of personnel at the Department of Justice?

Forces urging criminal investigations

One approach to this question is to ask who wants the Service in general law enforcement. Generally, we find that the Intelligence Division of the Internal Revenue Service is interested in the Service's conducting general criminal law investigations. Generally speaking over the years this view has been opposed by the appointed head of the agency and those career personnel whose responsibilities are turned towards the civil collection of tax. The dispute inside the Internal Revenue Service then finds the Intelligence Division pretty much arrayed against the rest of the Internal Revenue Service. Most all tax practitioners are also opposed to the Service's exercising its powers as a general law enforcement agency.

What then are the motivations of the Intelligence Division? Certainly, those in the Internal Revenue Service who desire to conduct these investigations either do not know or have not told us. Sometimes they claim a special competence. At other times they rest their case on the public interest. But surely other agencies must have competent investigators, and surely the question of the public interest is not to be decided by the Intelligence Division. There must then be other reasons for this desire to investigate crime in general. I think there are, and I will speculate about them.

First, in the language of my children, it is more fun to investigate real criminals than to be concerned about those who have committed tax crimes. Real criminals have done such things as extorted money, committed frauds, and perhaps bribed public officials. These are real evils and have a long tradition of being morally wrong. Tax crimes are legislated evils with a history of less than three-quarters of a century. Furthermore, many of these criminals are organized criminals, and we are informed that the war on organized crime is at the point of being lost, if indeed it has not already been. Perhaps just one more investigation by the IRS will turn the tide and prevent our being in the hands of organized crime. Certainly, fighting in a cause so grave is far more romantic than investigating whether the extortionist, the defrauder, the doctor, or the lawyer has merely failed to pay his income taxes. There is more glory in the greater fight. It is then, just more fun to catch criminals than to investigate tax crimes.

Also, it is more fun because there are less constraints on what the investigating agents must do. If not confined to looking for evidence of a tax crime, an agent may go off on any sort of a frolic of his own. Nearly any curiosity can be satisfied in the search for white collar crime while fewer matters are relevant to the investigation of a tax crime. There are simply then less constraints on an agent making general criminal law investigations than there are in tax cases.

There is also more freedom in working hours. Criminal investigations do not always begin at 9:00 a.m. and stop at 6:00 p.m. They may require more continuous duty. Who except the investigator knows just when to start, or to stop. Why not continue surveillance another 30 minutes today and receive premium pay benefits or take compensatory time off. Perhaps the vital link will be found in that time.

Also agents who make this kind of investigation have more freedom for another reason. Their masters are divided. To the Internal Revenue Service, they are working for the Strike Forces under the leadership of an attorney of the Department of Justice. Yet, they do not nominally report to the Department of Justice, and the Department of Justice really does not account for them.

Do not misunderstand. I am not suggesting that the Service investigators are derelict in their duties or take conscious advantage of the situation. Rather, I merely suggest that they are less accountable in working general criminal cases than they are in working tax cases and that minimum accountability is a desirable working condition.

Furthermore, there is always a bureaucratic desire to grow. Every person wants to build his own empire. This is not an impulse that is limited to government service or even the Internal Revenue Service or its Intelligence Division. But it does exist, and general criminal law enforcement gives a bigger world to conquer.

Finally, criminal investigators need real crimes in order to retain their status as criminal investigators. Can one expect to remain a criminal investigator if all his targets are mere local businessmen or others who may have secreted a part of their income or taken false deductions? No, real criminals are needed. Why remain a criminal investigator? By a tradition based on the hazardous nature of the work, criminal investigators reach retirement in 20 years. But so do the secretaries and supervisors. This tradition lives in the Intelligence Division, and without real criminals (not mere tax cheaters), the tradition might die.

For all of these reasons, there is a natural human desire on the part of criminal investigators in the Intelligence Division to choose investigations on the basis of whether they are dealing with real criminals—and not just tax criminals. Taken alone, each of these reasons may seem rather small and petty. Indeed, the suggestion of some of them almost introduces a note of unintended frivolity into these hearings. Added together, however, they offer an explanation of the Intelligence Division's desire to do general criminal law work.

The motives of the Department of Justice are easier to discern. The IRS agents who work general law enforcement cases are not on the budget of the Department of Justice. The Department of Justice does not have to account for their time. Justice obtains a group of specialists who perform investigations with no cost and with no accountability to Justice. Thus, if an agent of the Internal Revenue Service should engage in illegal conduct, the press will write that the Internal Revenue Service has done it again. The fact that the Justice Department is the sponsor of the work is completely overlooked. It's simply a "heads, I win, and, tails, you lose" position for the Department of Justice. It need not train its own personnel. There are no risks. There are many benefits. The cost is paid by another Federal agency.

Harm to the Internal Revenue Service

None of the forces which wed the Internal Revenue Service and the Department of Justice in investigating crimes argues strongly against the Service's participation. Indeed, there probably would be nothing wrong with the Service's activity if the question were just one of who pays for the work. But more is involved than that. General criminal investigative work is detrimental in a number of ways.

First, the investigation for general crimes drains resources from the tax law enforcement program. The agent is more likely to spend his time wondering whether he has a good extortion case or a good fraud case than whether he has a good tax case.

But even if a good tax case is developed, the general public does not identify with organized crime, and there is very little deterrence from cases in which organized crime figures are prosecuted. Indeed, instead of identifying with those kinds of cases, the average taxpayer is likely to conclude that only organized crime figures are prosecuted for tax crimes and that tax crimes do not in fact apply to the average person. This image is, of course, just the opposite of the deterrent effect that would be created with the proper criminal tax program.

But this kind of investigative work will also drain off substantial energies in other ways. There will always be tension inside the Internal Revenue Service between those who are interested in the collection of civil taxes and those who are interested in investigating crimes. These tensions inevitably boil over and consume considerable energies. Indeed, how much better would it be for the Commissioner to be back at the Internal Revenue Service worrying about a proper audit program than to be before this committee explaining what the role of the Internal Revenue Service is in the enforcement of criminal law. Yet, it is the desire of the Intelligence Division and the Department of Justice to continue a role in general criminal law enforcement, and this desire results in the Commissioner's being here, the Assistant Commissioner for Compliance being here, the Assistant Commissioner for Inspection being here, and so on. There is no end to the amount of time and energy that is involved in this kind of bureaucratic infighting.

Also, an Internal Revenue Service involved in criminal law enforcement projects a police image to the public. A taxpayer who views the Internal Revenue

Service as a policeman will be considerably more frightened and distrustful of the kind of treatment he received in an audit than if he did not think of the Internal Revenue Service as a policeman. The police image is intimidating, and it is destructive of the citizen's willingness to pay taxes and to trust the agency which is collecting them. If the Service is given considerable publicity for its general criminal law work, there is no way that it can avoid this kind of image. If it does the work, there is no way it can avoid the publicity.

Furthermore, the working of criminal cases affects the entire organization. The organization takes on what might be called the Al Capone syndrome. Many people believe that the Service's greatest moment was the sending of Al Capone to prison and that Mr. Capone got his just deserts. But that belief does not arise from his failure to pay taxes. Rather, he was a well-known, notorious mobster directing a network of sinister criminal activities who deserved imprisonment instead of the good life provided by his ill-gotten gains. The public cared little about the grounds on hich he went to prison. The Service, however, misread the public approbation and believed that it did the right thing in "getting Al Capone" and that it should do the same for other mobsters. The whole organization then takes on the aspect of a policeman, and it begins to believe that it is a policeman.

The working of these cases will also inevitably lead to a transfer of confidential information in tax return files. If it is not the information on the return itself, it will be the results of investigations based on the confidential information in the tax file. The knowledge that one cannot trust his tax collector breeds a mistrust of the agency. A mistrust of the agency leads to a mistrust of, and noncompliance with, the law.

Also, the belief that the agency is endowed with general criminal law enforcement purposes leads to bad programs. A prime example is the so-called Narcotics Traffickers' Program which was recently laid to rest. It resulted in a number of so-called termination cases. I believe that Senator Morgan testified about at least one of those termination cases when he appeared before you last December. That was but one of the many cases which seem to be clear abuses of the termination power.

Abusive cases may have a more profound effect on the law than they do on individuals. Again the Narcotics Traffickers' Program provides an example. The *Hall* case, decided just last week by the Supreme Court, arose from the NTP aimed, as Mr. Rossides testified earlier, at taking the drug cash from the street—the so-called termination program.

Mrs. Hall's home was searched by Kentucky State Troopers who found illegal drugs. The next day, the Acting District Director terminated Mrs. Hall's tax year, assessed a tax of $52,000, and seized her automobile. Mrs. Hall then sued for and obtained an order preventing disposition of her property. She charged that termination assessments were subject to the same restrictions as jeopardy assessments. The Service had long contended that termination assessments were not so restricted. The Supreme Court held they were.

There is no question but that *Hall* was only tangentially related to tax administration but closely related to the program designed to take the drug cash from narcotics dealers. Yet, the device used was a revenue related one—the termination assessment—and its validity was judged in this non-tax context. In his dissent, Mr. Justice Blackmun opined that the equities of Mrs. Hall's case turned the outcome. In other words, if *Hall* had not been a bad case from a bad program, Mr. Justice Blackmun thought the outcome would have been reversed.

The *Hall* decision will have profound effect on the law. Certainly, the Service thought the issue at stake was important, for the Supreme Court noted that 70 cases were pending. At an earlier time, some 200 cases had been decided or were pending. (See *Willits* v. *Richardson*, 497 F. 2d 240, 246 n. 4.) But this tax issue was decided in context of a non-tax case. In short, whether right or wrong on the merits, the result was shaped by the non-tax equities. This criminal program then has influenced the course of tax procedures.

Finally, there is a difficulty in knowing where to draw lines. Immense discretion is imposed in any agent of the Internal Revenue Service. If he is turned loose to work organized crime cases, perhaps he will be turned loose to work unorganized crime cases. Maybe he will work cases which involve Communist party members. Perhaps he will work cases which involve immoral people. Once some criterion other than the question of tax enforcement is involved, there is little restraint on the agent.

Nor is there much restraint on the institution. It is not bound to the principle that tax law administration is its only purpose. The consequences are serious:

Special Services Staff, Operation Sunshine, IGRU, Operation Leprechaun, and the numerous exposés that have recently been in the newspapers. None of these would have occurred had the agency and its personnel been imbued with the belief that its sole purpose was the collection of revenue. Rather, over the years the Internal Revenue Service has been permitted to engage in many other activities and as ofttimes been commanded by the Congress or the President to engage in other activities. The consequence is that there is no basic underlying philosophy as to the general purpose and work of the Internal Revenue Service. Thus, it is easy to stray from its purpose. This tendency meets less resistance when the straying is to prosecute bad people. Bad people are those who might possibly be defendants in white collar crime, and they might also, of course, be merely war protestors or others who somehow deviate from the norm. Thus, the allowing of general criminal law enforcement activities by the Internal Revenue Service is distracting from its purpose, will lead to embarrassment of the Service, and will damage its effectiveness as a revenue collection agency.

In closing, let me add that the powers used in these general criminal law investigations were granted for the purpose of tax law administration. They were not granted to take the drug cash from street, to crack down on white collar crime, or to prosecute bad people. Their use for that purpose is lawless. A lawless tax collector begets a lawless taxpayer.

I thank you.

FEBRUARY 27, 1976.

Hon. FLOYD HASKELL,
Subcommittee on Oversight, Senate Finance Committee,
Washington, D.C.

DEAR SENATOR HASKELL: At the hearings on January 22, 1976, you asked several witnesses if IRS procedures were altered for cases arising from IRS special enforcement programs. I think that they are.

When fraud is suspected, the Intelligence Division makes an investigation and writes a report. A recommendation for prosecution proceeds from the District to the region where it is reviewed by Regional Counsel. The purpose of this review is to ascertain whether the recommendation is adequately supported by the facts and law. In the routine fraud case, Regional Counsel's office will recommend either for or against prosecution. If it recommends favorably, the case goes to the Department of Justice. If it recommends against prosecution, the case will go no further unless the Intelligence Division asks that the matter be sent to the National Office. In this latter case, the National Office will then decide whether the case should be sent to the Department of Justice.

In cases which arise from Strike Force activity, Regional Counsel reviews them using the same standards that are applied to routine cases. If Regional Counsel agrees that prosecution should take place, the case is sent to the Tax Division of the Department of Justice. If Regional Counsel's office believes the case should not be prosecuted, it will so advise, but the case is sent on to the Criminal Division of the Department of Justice. Thus, in a Strike Force case, once a recommendation is made by the District Intelligence Division, the case will be sent on to the Department of Justice.

There are then different procedures for Strike Force cases. The review standards are the same, but Regional Counsel cannot "kill" a case. Instead, a case which Regional Counsel finds unsatisfactory is sent to the Criminal Division (rather than the Tax Division) of the Department of Justice.

I hope you find the foregoing helpful.

Sincerely,

CHARLES DAVENPORT.

[Whereupon, at 12:30 p.m. the subcommittee recessed, to reconvene at 10 a.m., Friday, January 23, 1976.*]

*The Jan. 23, 1976, hearing was printed as a separate volume entitled "Federal Tax Return Privacy."

APPENDIX A

Communications Received by the Committee Expressing An Interest in These Hearings

66-411 O - 76 - 17

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., January 11, 1976.

The Internal Revenue Service and the Department of Justice today approved guidelines governing the participation of IRS personnel in joint investigations with United States attorneys and the Department of Justice.

The guidelines recognize that the IRS mission is the fair and effective administration and enforcement of the tax laws in a way that best utilizes IRS resources. The guidelines include a recognition that appropriate priority should be given to investigations involving organized crime, major narcotics trafficking, public corruption and white collar crimes.

Under the guidelines, activities of IRS agents working on joint investigations with the Department of Justice will be coordinated by the U.S. Attorney or Justice Department attorney in charge of the case.

However, IRS agents will be assigned by Service supervisors and the IRS will, of course, retain complete control over its own operations.

Insofar as IRS cooperation with Strike Force investigations is concerned, the Service will continue to assign a Special Agent of the IRS Intelligence Division to each Strike Force as the IRS representative.

The Service will also designate an Audit Group Manager on an as-needed basis, to act as a policy and program advisor to the Strike Force.

The guidelines further recognize that because it is frequently impossible to determine at the outset of a joint investigation what types of charges will result, no premature decision will be made as to the eventual potential of a case under investigation. It was agreed, however, that if it is not reasonable to continue to develop either a civil or criminal tax case that the IRS will normally withdraw its personnel from the case. Further, in a case in which a guilty plea is accepted every effort will be made to insure that any such plea will include a plea to at least one tax charge.

The guidelines also provide for the exchange of information between the two agencies and establish a Coordinating Committee, composed of three high level officials from each agency, to monitor their application.

Members of the Coordinating Committee are: IRS Commissioner or Deputy Commissioner, IRS Chief Counsel or Deputy Chief Counsel, IRS Assistant Commissioner (Compliance), or Director, Intelligence Division, Deputy Attorney General or an Associate Deputy Attorney General, Assistant Attorney General for the Criminal Division or the Deputy Assistant Attorney General for the Criminal Division, and Assistant Attorney General for the Tax Division.

DEPARTMENT OF JUSTICE—INTERNAL REVENUE SERVICE GUIDELINES REGARDING COOPERATION IN JOINT INVESTIGATIONS

I. GENERAL PURPOSES AND OBJECTIVES

Department of Justice—The Atttorney General is designated to facilitate and coordinate the criminal law enforcement activities of the federal government. In accordance with that responsibility, the Internal Revenue Service has consistently cooperated with the Department of Justice in criminal investigations and prosecutions involving civil or criminal tax consequences. The Attorney General has determined that priority must be given to the investigation and prosecution of organized criminal activity, corruption in government, narcotics trafficking, and all forms of white-collar crime. Such crimes can be efficiently and effectively investigated and prosecuted by Department of Justice attorneys and IRS agents working together in a spirit of cooperation toward the same goal—the vigorous and impartial enforcement of the law. Such cooperation is often essential to detect and to prosecute those persons involved in such activity.

Internal Revenue Service—The mission of the Internal Revenue Service is the fair and effective administration and enforcement of the tax laws of the United States. This process must be carried on in a way which most effectively utilizes the resources of the Internal Revenue Service and which does not imperil its reputation for fair and impartial administration of those laws. An important part of this responsibility for tax administration is the vigorous enforcement of the criminal sanctions within its jurisdiction. To encourage compliance with the tax laws, the criminal enforcement program should be equitably applied and characterized by broad occupational and geographical coverage. The Department of Justice shall continue to assist in the achievement of this mission by prosecuting those criminal tax cases referred to it by the Internal Revenue Service which the Department of Justice determines in the exercise of its discretion are appropriate for prosecution.

As part of the tax law enforcement responsibility of the Internal Revenue Service, special agents and revenue agents, possessing a special expertise in the investigation of crimes with financial aspects, will cooperate with United States attorneys and Department of Justice attorneys in developing cases concerning tax violations which are within the enforcement jurisdiction of the Service.

This cooperation, which shall be consistent with the compliance objectives of the Internal Revenue Service, entails the commitment of intelligence and audit manpower to the investigation and prosecution of tax offenses related to organized criminal activities, corruption in government, narcotics trafficking, and white-collar crime.

II. OPERATIONAL AND CONTROL ASPECTS OF INVESTIGATIONS WITH U.S. ATTORNEY AND DEPARTMENT OF JUSTICE ATTORNEYS

A. Supervision of IRS Agents

The investigative activities of IRS agents working on a joint investigation with the Department of Justice will be coordinated by the United States attorney or Department of Justice attorney in charge of the case. IRS is to participate in the planning and contribute to group strategy and operations through investigations conducted in its specialized area of responsibility. IRS agents will be assigned by IRS supervisors and the IRS will retain complete control over its own operations.

B. Selection of Cases for Investiagtion

Consistent with its compliance goals and criteria, the Internal Revenue Service will cooperate fully with United States attorneys and Department of Justice attorneys in criminal tax investigations where there exists potential criminal or civil tax violations.

In selecting cases for investigation and possible prosecution, DOJ and IRS will:

(1) Recognize that appropriate priority be given to investigations involving organized crime, major narcotics trafficking; public corruption and white-collar crimes;

(2) Consider the limitations upon their resources including the availability of personnel; and

(3) Recognize the IRS's policy of a balanced program of tax enforcement and administration.

C. Conduct of Investigations

The Internal Revenue Service and the Department of Justice recognize that it is frequently impossible to determine at the outset of an investigation what types of charges, suitable for prosecution, will result from the investigation. Consequently, no premature determination regarding the eventual potential of cases under investigation shall be made by either the IRS or the Department of Justice.

During the course of an investigation, it may be concluded that it is not reasonable to continue to develop either a civil or criminal tax case. If this occurs the IRS will normally withdraw its personnel from the case. In the event that an individual case presents difficulties or disagreements respecting withdrawal of IRS personnel from any particular case, the difficulties or disagreements shall be referred to the Coordinating Committee. In resolving such difficulties or disagreements the Coordinating Committee shall consider, among other things, the effect of such withdrawal upon the development of the case and the comparative manpower needs and total enforcement resources of both IRS and DOJ.

D. Participation in Strike Forces

The Internal Revenue Service shall assign an intelligence agent to each Strike Force to act as Strike Force representative who will coordinate Strike Force objectives with the district or districts in the cases under investigation. It will also designate for each Strike Force an IRS audit group manager to act, on an as needed basis, as policy and program adviser to the Strike Force. The Strike Force representative will remain under the supervision and control of IRS supervisors. However, their participation in Strike Force investigations will be coordinated by the Strike Force attorney who will also assist in the formulation of enforcement policies and the selection of cases for potential investigation. However, final authority concerning taxpayers to be investigated by IRS will be vested in IRS. IRS Strike Force representatives will participate with representatives of other agencies in the analysis and evaluation of organized crime activities, and IRS will be provided with all relevant information pertaining to potential criminal or civil tax cases. Disagreements concerning commencement of particular investigations may be referred to the Coordinating Committee.

E. Prosecuting a Case Involving Tax and Non-Tax Offenses

In situations in which a criminal tax and a non-tax criminal case involving the same taxpayer, or arising out of the same set of circumstances, are referred to the Department of Justice for prosecution, the Service and the Department of Justice will make every effort to coordinate the prosecution for both the tax and non-tax criminal cases. This coordination will manifest itself in obtaining, whenever possible, simultaneous indictments and the prosecution of both types of cases with equal vigor. For example, in any situation in which an attorney of the Department of Justice or an United States Attorney agree to accept a plea, every effort will be made to insure that any such plea accepted shall involve a plea of guilty, other than a plea of *nolo contendere*, to at least one tax offense.

III. EXCHANGE OF INFORMATION

A. The Department of Justice, including the Federal Bureau of Investigation, shall supply IRS with any information that the Department obtains concerning possible tax violations.

B. To the extent permitted by applicable law and regulations, the IRS shall supply the Department of Justice with any information, obtained during a tax investigation, relating to the possible commission of non-tax crimes. Normally IRS will not further develop such information except with appropriate supervisory review and where further development is necessary and this can only be accomplished by IRS personnel.

IV. COORDINATING COMMITTEE

A six man committee is hereby established to monitor the application of these guidelines. IRS shall designate the following as members of the Committee: (a) the Commissioner or Deputy Commissioner; (b) the Chief Counsel or Deputy Chief Counsel; and (c) the Assistant Commissioner (Compliance) or Director, Intelligence Division. The Department of Justice shall designate the following members of the Committee: (a) the Deputy Attorney General or an Associate Deputy Attorney General; (b) Assistant Attorney General for the Criminal Division or the Deputy Assistant Attorney General for the Criminal Division; (c) Assistant Attorney General for the Tax Division.

The Committee, which is authorized to receive and consider communications concerning the implementation of these guidelines and to discuss and negotiate their application to particular cases, is to serve as a focal point for the discussion of the nature and extent of each agency's participation in cooperative investigative efforts and for the resolution of any other disagreements with respect to criminal investigations, indictments or prosecutions.

The Committee shall have no authority to meet and transact business unless at least two of the three members of each agency's membership are in attendance.

Dated: January 8, 1976

HAROLD R. TYLER, Jr.
Deputy Attorney General,
Department of Justice.

DONALD C. ALEXANDER,
Commissioner
of Internal Revenue.

SAN DIEGO, CALIF., *December 17, 1975.*

Attention Mr. MICHAEL STERN,
Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: I.R.S. should never be involved in any criminal law enforcement except for the basic collection of taxes.

Anything else is indeed a scary spector. Consider the I.R.S. laws being used to investigate bank robberies, burglaries, smuggling, prostitution, confidence, kidnapping, counterfeiting, thefts, alien smuggling, and wetbacks to mention a few. The I.R.S. power would be unlimited in ferreting out every financial tid-bit concerning every citizen (i.e. for the purpose of catching eight million illegal aliens).

Just as a good financial internal control system for a business firm requires a separation of duties to prevent fraud and theft; so the various Governmental agencies must have clear and separate duties to prevent any one of them from improperly or illegally running with the ball.

The year 1985 could place the financial falling of a sparrow at the notice of the I.R.S. criminal investigators. All C.P.A.'s banks and Tax Attorneys could unknowingly become sub-agents for the I.R.S. Special Agent.

I can foresee the private business computers of the country being connected knowingly or unknowingly by WATS lines to the I.R.S. computers for a continual perusal concerning certain or all taxpayers. This system would also be used for jeopardy assessments. The annual filing and review procedure would become a daily computerized review.

I firmly believe that the sophisticated computer and the civil-criminal tax laws could be used to "tie up" this country as you and I cannot conceive. All of the other Governmental computers of the country could be reviewed by the I.R.S. computers for all information concerning every taxpayer—i.e. the change of license plates and cars, the Real Estate tax roles, private airplane movements, and the secret taping of the computers of other countries.

All of the above computerized snooping would ostensibly be for the purpose of apprehending immediately white collar criminals, illegal aliens etc. It could not be justified for the mere collection of a tax bill. If the I.R.S. weer to combine with the F.B.I., the Justice Department, the C.I.A. etc. all 250 million of us would be in bad trouble.

I sincerely hope that you can permanently "pull the reins". The I.R.S. capability is probably only 10 to 15 years in advance of the other Federal-State agencies.

Buy us the time—We need every minute.

Sincerely,

C. L. BEASON,
A former I.R.S. Special Agent.

SHAFTER, CALIF., *December 2, 1975.*

MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: I am writing to express my concern for the current hearings on the role of the IRS in federal law enforcement activities.

It is my opinion that any further expansion of IRS power is unwarranted and poses serious threat to the already beleaguered freedoms of our citizens.

I urge the committee to recommend withdrawal of the unconstitutional power wielded by the IRS.

Very truly yours,

JOHN A. ROGERS,

MARY ROE, PUBLIC ACCOUNTANT,
Winchester, Ind., December 6, 1975.

MICHAEL STERN,
Staff Director, Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: According to our Commerce Clearing House Federal Tax Guide bulletin, you are hearing reports and testimony on the roles of the Internal Revenue Service in federal law enforcement.

For over half a lifetime I have been engaged in public accounting and tax return preparation for my clients, and I have just returned from my annual

participation in Federal tax instruction, this year at New York University's Institute on Federal Taxation. This is a good school. But one of the most ominous results was a continuing conviction that the Internal Revenue Service, and our most knowledgeable tax specialists, both attorneys and accountants from all over the United States, have widely differing interpretations of our complex Federal tax structure. In my opinion this leaves the way open to wide spread violations of the constitutional rights of American citizens.

I have always been of the opinion that the 14th Amendment to the U.S. Constitution is violated when the Internal Revenue Service arbitrarily demands to rummage through all of an accountant's papers and records or arbitrarily invades a client's bank account. Some courts have upheld this, what is in my opinion, police state methods. Other courts have not, notably a Federal Court of Appeals in Richmond, Virginia. See Exhibit B.

All Americans should be bitterly opposed to any division of our government violating our constitutional rights.

I am also bitterly opposed to the Internal Revenue Service demanding a list of our clients; also, in my opinion, a violation of the 4th Amendment. If nothing else, these lists will inevitably become the basis of tons of junk mail advertising.

I hope your Committee examines my exhibits. We are where it is at. We bear the brunt of short-sighted tax laws passed by Congressmen, who, I suspect, could not interpret their own laws even in a small accounting practice like mine.

Personally speaking, I have never had any serious difficulty with IRS agents or examiners. With one exception IRS representatives have been uniformly courteous and reasonable. Therefore this is a completely impersonal "gripe" and not a personal one.

Very truly yours,

MARY ROE.

Exhibit A

EDITORIALS AND COMMENT

"*Where the Spirit of the Lord Is, There Is Liberty.*"—II Corinthians 3:17
(James C. Quayle, Publisher)

This is my commandment, that ye love one another, as I have loved you.—John 15:12

TO CURB THE IRS BUREAUCRATS

One section of a tax revision bill being worked up in the House of Representatives Ways and Means Committee would place a few long-needed restrictions on the investigative and seizure powers of the Internal Revenue Service.

The Fourth Amendment to the Constitution guarantees the right of the people "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." A part of tnat right, as defined in the amendment, is that a court warrant for search or seizure shall be issued only on a showing of probable cause to believe that a crime has been committed and shall specify the place to be searched and the person or things to be seized.

Many an obviously guilty thief or murderer has been set free because police failed to observe the niceties of that right. But the IRS operates as if it did not exist.

A bureaucrat in an IRS office, without consulting any court, can simply command a taxpayer to bring in his books, records or other data pertinent to his federal tax liability. The taxpayer will ignore such a command at his peril.

NO VILLAINS

The Council of Wage and Price Stability recently released a report showing that after-tax profits of 15 large food store chains totaled nine-tenths of one per cent of sales in the first nine months of 1974.

The Council found no villains in last year's 12.2 per cent jump in food prices. It blamed the big increase in prices on the rising costs of farming, higher transportation and fuel costs and problems in world agricultural production.

* * * * * * *

The IRS can also, simply on its own summons, gain access to records of the taxpayer's bank account, or to the files of his accountant if he has one. The taxpayer need not be notified of such action.

With or without the demanded evidence, the IRS can make an arbitrary decision that the taxpayer owes more taxes than he has paid, also without involvement of any court, and the taxpayer has no choice but to pay up if he can. If he cannot pay, or refuses to pay, the IRS without court warrant can seize his property, including money in a bank account, and can sell the property to satisfy the tax claim.

The taxpayer can protest, but he must wait six months after a protested payment or a seizure of property before he can go to court to plead for relief.

The IRS simply by issuing its own summons can inspect bank or accounting-firm records in a random search for evidence of illegal activity.

The whole thing is more than arrogant. It is tyrannical.

The committee bill would curb those powers somewhat, though not enough. The IRS would have to notify the taxpayer of any intent to search records held by a third party and the taxpayer could go to court to try to stop it. The IRS would have to go to court for "fishing license" search authority. The taxpayer would be able to go immediately to court to contest a property seizure.

Those changes would help, and would open the door to putting the IRS on the same footing of other investigative and taxing agencies.

* * * * * * *

Exhibit B

[From the NSPA Washington Reporter]

U.S. APPEALS COURT CALLS IRS SUMMONS "FISHING EXPEDITION"

SUMMONS NOT TOOL TO POLICE ACCOUNTING PROFESSION

A Federal Court of Appeals in Richmond, Virginia, has ruled that "the Internal Revenue Service is not to be given unrestricted license to rummage through the office files of an accountant in the hope of perchance discovering information that would result in increased tax liabilities for some as yet unidentified client."

This decision overturns an earlier finding reached by the U.S. District Court in Greenville, S.C., in the case of *U.S.* v. *Theodore.*

Calling the Government's action "a fishing expedition", the 4th Circuit Court of Appeals added that the summons demanding Theodore's records involving some 1500 returns and accompanying documentation was "unprecedented in its breadth."

The case, reported in the NSPA Washington Reporter of December, 1972, followed a visit by undercover agents of the IRS during the investigations of tax return preparers in 1972.

After the accountant refused to provide a list of clients for whom the firm prepared returns, an IRS summons was issued, but resisted. The District Court had ordered that all accounting records, work papers, correspondence, memoranda and other documents in the possession of or used by the defendant in connection with the preparation of all Federal income tax returns for 1969, 1970 and 1971, as well as all retained copies of those returns,

* * * * * * *

[From the NSPA Washington Reporter]

IRS COMMISSIONER TO SPEAK AT 1973 NSPA CONVENTION

Commissioner of Internal Revenue Donald C. Alexander is scheduled to speak at the NSPA Annual Convention in Montreal, August 20–24.

Mr. Alexander is slated to give the keynote address at the NSPA Past Presidents' Luncheon on Thursday, August 23. The luncheon program is the traditional event honoring the past leaders of the National Society.

* * * * * * *

Exhibit C

MARY ROE, PUBLIC ACCOUNTANT,
Winchester, Ind.

Re Senate Bill 1401.

HON. SENATOR ABRAHAM RIBICOFF,
Senate Finance Committee,
Washington, D.C.

DEAR SIR: One of the conditions which causes so much anxiety and outright fear among American citizens is the unbridged gap which exists between our lawmakers, and the practical effects of short-sighted laws which are passed by Congress. In what I consider to be a demagogic effort to assist the great vote-producing public, the final effects have, more often than not, the exact opposite. Example:

A member of one of our respected multiple-office CPA outfits in Indianapolis tells us that their minimum fee for any tax return is $250. An inquiry revealed that the new H & R Block office in our community has a minimum fee of $10. Do you and other members of Congress realize what you are doing when you try to make whipping boys of all the commercial tax-preparers who are not attorneys or accountants? You are pricing such services out of the reach of the very taxpayers you think you are "protecting", and the taxpayer won't thank you for it. They will only consider it to be one more rip-off.

Although I get just as bored with Mr. Henry Block's "seventeen reasons" why his company should prepare tax returns, far from resenting an H & R Block office moving into our community, we welcomed it. We are year-round accountants. We have year-round duties with a mind-boggling number of other tax returns to prepare for our regular clients, and cannot function when the work load is excessive. Neither can the CPA or attorney.

Again I must point out, as I did when I contacted every Senator and others to try to head off your original and similar bill in 1973—S. 1046—the situation has not changed. Again, to put it crudely, examinations to determine the ability of tax preparers to interpret the tax laws are about as useless as female appurtenances on the belly of a boar hog. We attend tax schools in November each year, but often between November and Jan. 1, rulings have changed and new laws put on the books. We also attend ISPA Chapter meetings each month where we are kept abreast of other aspects of taxation. We buy the best reference material available, and find we must research the majority of our tax returns for one reason or another.

These reference volumes have loose leaves. Since January 1, 1975, we have removed and replaced pages which amount to a pile of discards at least 1" thick. Under separate cover I am mailing these discards to the Honorable Russell Long in order to substantiate my objections to Senate Bill No. 1401. I am also going to mail him sample IRS forms which we buy from our reference source, and which fill a large volume. Therefore it seems incredible that you are again asking for an examination expected to be valid for five years, when one week later some of the answers will be obsolete.

The only examination which would approximate sensible fairness would be held under normal working conditions, with correct forms at hand, reference material at hand, and office equipment at hand.

I have no connection with, and am acquainted with no one who operates an H&R Block office, nor do I have any personal knowledge of any other office which specializes in preparing tax returns. But I believe they are doing no worse than the Internal Revenue Service (beset by the same problems we all are) in interpreting the very nearly incomprehensible tax laws. I am no particular fan of Mr. Ralph Nader, but his tax research group announced that identical tax data was submitted to 20 different IRS tax offices throughout the country, and the result was 20 different tax figures, varying from a refund of $811.96 recommended by the IRS office in Flushing, N.Y., to a tax due figure of $52.14 arrived at by IRS office in Portland, Oregon. Do commercial tax preparers have a worse record?

Think. Think. Would requiring tax preparers to take unrealistic examinations guarantee that they could correctly interpret the income tax laws for five years—or five days?

I, personally, do very few tax returns for the general public, but confine myself to returns based on records kept by us. I do not want to be known as a "licensed tax preparer." *I have been completely "turned off" by what seems to me to be efforts to make spies, secret police, and enforcement officers of accountants or tax preparers. I have bitterly opposed IRS having the right to invade an accountant's office demanding to examine all of his clients' records. There is a grim parallel*

here with police state methods which, as Americans, we abhor, I would bitterly oppose being forced to give a list of my clients. Both of the above must surely violate Article LV of the Amendments to the U.S. Constitution. One Federal Court of Appeals in Richmond, Virginia, has ruled that "IRS is not to be given unrestricted license to rummage through the files of an account in the hope of perchance discovering information that would result in increased tax liabilities for some as yet unidentified client."

I have no quarrel with the ruling that a copy of tax returns be retained in our office, and that one copy be given to the taxpayer for his records. We have always done this. *Does IRS keep copies when assisting taxpayers? I also have no objection to stating my employer's I.D.#, on any tax return I prepare. I have always signed returns.*

But I am also bitterly opposed to penalties being levied for carelessness which is now being suggested as a means of whipping tax preparers into line. When we have worked until we are skull-weary and nearly blind from overwork trying to meet tax-time deadlines, and we transpose a figure or misread a tape . . . is that carelessness? Can you suggest a method of combatting this disabling weariness, other than by assessing fines, or perhaps sending us to jail? Have you ever worked 105 straight days from 7:00 a.m. or earlier, until you could no longer see in the evening?

That, my dear Senator, is the ground level result of our widely proliferating, cancer-cell-type tax laws. Wild is the record and now almost out of control.

As a child all I ever asked of my parents and other adults was that they be fair; that they be just. I sincerely believe that is what all Americans would like their government to be. Fair. Just. Since the IRS disclaims responsibility for the accuracy of tax returns prepared by them, commercial tax preparers, CPA's, attorneys, licensed public accountants, and even what we call Kitchen Table Operators, should be able to abide by the same set of rules. Otherwise, in my opinion, the 14th Amendment to the U.S. Constitution is violated.

If you really have the downright courage to work toward simplification of the tax laws—curing the disease instead of the symptoms—I have appended a series of suggestions which would be of enormous help to the American taxpayer.

Respectfully,

MARY ROE.

Exhibit D

[From the Zodiac News Service]

NADER FINDS IRS DELINQUENT

Washington—Ralph Nader's tax reform research group has conducted a study to test whether Internal Revenue Service offices around the country give out the same advice.

The group prepared 22 identical tax reports based on the fictional economic plight of a married couple with one child.

The tax reform group then submitted the 22 identical copies to 22 different IRS offices around the country—and, sure enough, each office came up with entirely different figures.

The results varied from a refund of $811.96 recommended by the IRS office in Flushing, N.Y., to a tax due figure of $52.14 arrived at by the IRS tax office in Portland, Ore.

Is this carelessness? Should the IRS be penalized?

KORNFELD MCMILLIN PHILLIPS & UPP,
Oklahoma City, February 4, 1976.

Re Abuses of power and criminal violations by Internal Revenue Agents.

SENATE FINANCE COMMITTEE'S
Subcommittee on Administration
of the Internal Revenue Code,
Room 2221,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: This letter is written in response to the announcement of your recent hearings on the role of the IRS in federal law enforcement activities.

Enclosed herewith is a copy of a letter written by me on October 17, 1975 with the names and other identifying information blacked-out. This letter was written

with respect to a current investigation of a client by the Intelligence Division of the Internal Revenue Service. This letter is enclosed for the purpose of demonstrating severe abuses of administrative power, if not outright felonies, that have been committed by Internal Revenue Agents during a current tax investigation.

Due to the fact that I completed six years of employment in the Office of Chief Counsel for the Internal Revenue Service on September 12, 1975, I have a very high regard for the Service, in general. However, during the five months that I have been in private practice, I have been absolutely amazed by the severe abuses of power and potential criminal violations that are routinely committed by Internal Revenue Agents every day. My recent shock at this deplorable state of affairs causes me to now believe that all evidence of such transgressions is carefully removed from the files before a case is ever reviewed by Government counsel.

My primary concern about this matter is that the general public is virtually defenseless against such transgressions by Government agents. Most people still believe, and should be able to believe, that all investigations conducted by their Government will be conducted clearly within both the letter and the spirit of the Constitution and the laws of the land. I hope that your subcommittee will take appropriate actions to once again justify this type of belief by the people.

Please do not hesitate to contact me if I can be of any assistance on this matter.

Yours very truly,

TOM G. PARROTT

KORNFELD MCMILLIN PHILLIPS & UPP,
Oklahoma City, October 17, 1975.

Re ———
——— ———.

Mr. ———,
Group Supervisor, Intelligence Division,
Internal Revenue Service,
Post Office Box ———
——— ——— ———

Dear Mr. ———: This letter is substantially briefer and more to the point than I had originally anticipated due to two compelling reasons. First, I believe it is a very inequitable situation that requires a citizen of this country to have to incur legal expenses in order to properly protect himself from what appears to be perpetration of Federal crimes against him by agents of the United States. Second, I believe that, in order to prevent other citizens, involved in this matter, from having further potential crimes perpetrated against them, it is imperative that the subject investigation by Revenue Agent and Special Agent be brought under the immediate scrutiny and supervision of Government counsel and of a United States District Court Judge.

Briefly stated, I believe there now exists probable cause to believe that the following Federal crimes have been committed by the subject examining agents:

I. During April or May of 1975, Revenue Agent ———, by trickery, deceit, or misrepresentation, illegally obtained possession of certain private property of, in violation of 26 U.S.C. § 7214(a)(3);

a. Such property is either subject to return pursuant to a motion under Fed. R. Crim. P. 41(e) or can be suppressed from use in a criminal tax prosecution, under *In re Leonardo*, 208 F. Supp. 124, 62-2 USTC 9614 (N.D. Cal. 1962).

II. Commencing on October 1, 1975 and continuing to date, Special Agent ——— aided and abetted in the commission of the above crime, in violation of 18 USC § 2 and 26 USC 7214(a)(3);

III. On October 9, 1975, at approximately 8:30 a.m. and at approximately 8:55 a.m., Revenue Agent ——— and Special Agent ——— corruptly endeavored to influence, intimidate, or impede a witness (———), who, at that time was under an Internal Revenue summons, which had been served by said agents, requiring him to appear and testify in an administrative hearing before the Internal Revenue Service on October 14, 1975. This offense was committed in violation of 18 USC § 1505;

a. Unlike the other allegations made herein, I believe that there now exists sufficient evidence to establish the guilt of Revenue Agent ——— and Special Agent ———, in the commission of this offense, beyond a reasonable doubt.

b. I was a witness to the commission of the offense at 8:55 a.m. as was a ———.

IV. On October 9, 1975, at approximately 7:30 p.m., Revenue Agent ——— and Special Agent ——— willfully conspired to injure, oppress, threaten, or intimidate a citizen in the free exercise or enjoyment of the rights secured to her by the Fourth Amendment to the Constitution of the Untied States, in violation of 18 USC § 241.

(a). Similar nighttime visits by British Soldiers led to the enactment of the Fourth Amendment to the Constitution of the United States.

(b.) Rule 41(c) of the Federal Rules of Criminal Procedure requires a showing of reasonable cause for the execution of a search warrant *at times other than daytime.* A search warrant, however, is always issued under the authority of the judiciary. How much greater showing of probable cause should be required to authorize a nighttime interrogation by an administrative agent, when such interrogation is limited only by the judgment and discretion of a single special agent.

In light of my professional background, I fully understand and appreciate the gravity of the above allegations. Nonetheless, I believe that these allegations constitute, at best, a very severe abuse of the administrative powers of the Service, and, at worst, a grave indictment of the actions of the examining agents.

Based on my knowledge of this area, I am confident that upon the entrance of Assistant Regional Counsel in this case, the investigation will be conducted within the limits prescribed by the Constitution and laws of the land. It is unfortunate that our three separate requests that the examining agents seek the assistance of counsel, pursuant to routine pre-referral procedures, were denied. Had this been done, it is likely that none of the above transgressions would have been committed.

I fully recognize that all of the subject allegations are due primarily to the actions of two young, and apparently inexperienced agents. I also recognize that a vast majority of the investigations conducted by the Intelligence Division are conducted within both the letter and the spirit of the law. However, I believe the subject investigation clearly demonstrates a need for the close supervision of inexperienced agents until such time as they have proven themselves to possess the maturity, judgment and responsibility which their position demands of them.

Assuming, arguendo, that the above transgressions by the examining agents have not equitably estopped the Service either from continuing with the criminal investigation, or from asserting a civil deficiency, under *Reineman v. United States*, 301 F2d 267, 62-1 USTC 9386 (7th Cir. 1962) and *In re Leonardo*, 208 F. Supp. 124, 62-2 USTC 9614 (N.D. Calif. 1962), we believe that the following procedural issues must be resolved, prior to the commencement of any further criminal or civil investigations by the examining agents.

Pursuant to an International Revenue summons served on him on September 26, 1975, ——, personally appeared at an administrative summons hearing conducted at Room ———, ——— ——— in ———, on October 14 at 10:00 a.m. This hearing was conducted by Group Supervisor ———, Special Agent ——— and Revenue Agent ———.

At the October 14, 1975 summons hearing, ———, on advice of counsel, requested that his required testimony be temporarily delayed, pending judicial resolution of his right to comply by submitting written answers, under penalties of perjury, to written questions propounded by the examining agents.

Pursuant to an Internal Revenue summons *improperly served* on ———, on September 26, 1975, ———, as President of ———, personally appeared at an administrative summons hearing conducted at 3037 N.W. 63rd Street, Oklahoma City, Oklahoma, on October 14, 1975 at 1:00 p.m. This hearing was conducted by Special Agent ——— and Revenue Agent ———. The corporate books and records of ———, which were designated in the improperly served summons, were present, and in plain view of the examining agents, during this hearing.

At the October 14, 1975 summons hearing, Mr. ———, as President of ———, requested, on advice of counsel, that his duty to produce the corporate books and records, pursuant to the improperly served summons, be temporarily delayed, pending judicial resolution of the issue of whether the Service can meet its burden, under *United States v. Powell*, 379 U.S. 48 (1964) and *United States v. Pritchard*, 438 F.2d 969 (5th Cir. 1971), to establish ". . . that the information sought is not already within the Commissioner's possession . . .". *United States v. Powell*, supra, at pp. 57-58.

In order to avoid a duplication of litigation, we would like to have the following additional procedural issues resolved during either, or both, of the above-discussed judicial summons enforcement actions:

1. The right of the custodian of corporate records to receive a witness fee of $20.00 per day and mileage of $.10 per mile for each day that the corporate records are examined by the examining agents, pursuant to a valid Internal Revenue summons.

a. Supporting authorities:

United States v. Coson, 515 F.2d 906 (9th Cir. 1975); *Roberts v. United States*, 397 F.2d 968 (5th Cir. 1968); Rev. Rul. 68-645, 1968-2 C.B. 599; 5 U.S.C. § 503 (b); and I.R.M., Sec. 9363.7.

2. The effect of the unauthorized or illegal actions of the examining agents on the Service's right either to obtain judicial enforcement of the summonses or to continue with any further examination of the tax liability of ———.

We are confident that the entrance of Government counsel in this case will greatly assist us in our efforts to obtain an expeditious resolution of the above procedural issues and thereby allow us to proceed with whatever type of examination that is then deemed appropriate. At such time, we feel confident that we can persuade the appropriate supervisor or reviewer that any potential civil adjustments to the taxable income of ———. ——— for the taxable years 1972, 1973 and 1974 are totally and unequivocally devoid of any element of criminal willfullness, whatsoever, by virtue of the full disclosure to, and complete reliance on the advice of, a competent C.P.A., and by virtue of the high justiciability of the potential income adjustments.

We look forward to the commencement of a cooperative effort to accomplish a mutually satisfactory resolution of this case.

Sincerely yours,

TOM G. PARROTT.

APPENDIX B

A Study of Internal Revenue Service Participation in Strike Force

DEPARTMENT OF THE TREASURER,
INTERNAL REVENUE SERVICE,
March 12, 1971.

MR. DONALD W. BACON,
Assistant Commissioner (Compliance), Internal Revenue Service,
Washington, D.C.

DEAR MR. BACON: We have completed our study of the role of Internal Revenue under the Strike Force concept and are pleased to submit the attached report.

This report represents the consensus opinion ofthe members of the Study Group as to the ways in which the participation by IRS personnel can make a greater contribution towards the overall objective of eliminating the cancer of Organized Crime from society. We also gave much attention to the need for closer coordination between all the federal law enforcement agencies engaged in this joint effort.

Our report is not intended to criticize the past accomplishments in this area but to bring together the many ideas an dsuggestions that will result in a more effective program.

Respectfully submitted,

WARD E. HOLLAND,
Chief, Audit Division,
Jacksonville District.
BRENTON G. THORNE,
ARC—ATF,
Western Region.

LEVOY G. VENABLE,
Chief, Operations Branch,
Intelligence Division, National Office.

I. INTRODUCTION

A. GENERAL

The Strike Force concept of concentrating the combined force of Federal law enforcement agencies against the criminal element in our society can achieve meaningful results only when each participating agency makes a contribution in the area for which they are organized. In order to carry out such a program we must first determine the basic causes of crime and then devise methods to combat it. All crimes are either crimes of anger, crimes of passion or crimes for profit. Since Organized Crime falls in the latter category, our efforts must be concentrated primarily in the taking the profit out of crime. Internal Revenue, as the tax collecting agency, has a major role in this program. Our participation in this program should be handled through the established lines of authority that are presently set up to implement our compliance and enforcement activities. The superimposing of another managerial structure for this or any other separate program tends to fragment our efforts and creates confusion at various levels of management.

B. PLACES VISITED

During this assignment we visited twelve of the cities where Strike Forces are located in addition to several trips to Washington. The cities not visited were those where the Strike Force had been set up for only a relatively short period of time or other special studies or action had been taken, such as Buffalo and Chicago.

C. CONTACTS MADE

We wanted to get as wide a range of comments and views as possible so it was arranged for us to talk with all levels of management as well as the employees actually doing the work or serving as coordinators. Included in the 215 people we

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talked with concerning this program were the Commissioner, Assistant Commissioner (Compliance), Division Directors, Regional Commissioners, Assistant Regional Commissioners, District Directors, Assistant District Directors, Division Chiefs, Branch Chiefs, Group Supervisors, Coordinators at all levels and many front line agents. We also talked with officials from the Department of Justice to include the Strike Force Attorneys. A detailed list of the contacts made are included in section VI.

II. Purpose

The Study Group approached the assignment with two basic purposes in mind.

A. To make an analysis and appraisal of all aspects of the program as it pertains to Internal Revenue.

B. To make recommendations in the areas of redesigning, redirecting and reshaping of practices, policies, and other factors so as to best correlate IRS efforts with the overall objectives to destroy organized crime.

III. Program Evaluation

Comments concerning an evaluation of IRS participation in the Strike Force program to date has been limited in this report for the reasons set forth below:

A. The most complete information available at this time is included in the quarterly report on Law Enforcement Activities. No purpose would be served in repeating this information in this report.

B. A pictorial review of the targets identified and the action taken to date on each one provides a better understanding of what actually has been done. The charts that have been prepared on the activities of each Strike Force are included in Section V of this report.

C. The time spent in each Strike Force City did not permit us to make a fair evaluation of the effectiveness of the individuals involved or the separate Strike Forces. This would have required a considerably longer stay in each city than we felt was warranted at this time.

D. Comments concerning changes we think should be made in order to have a more effective operation are included in our recommendations.

IV. Recommendations

A. OBJECTIVES

1. Establish short-range IRS oriented objectives that support the Strike Force long-range plan of elimination of Organized Crime. The types of objectives we have in mind are as follows:

a. Identify Organized Crime's source and disposition of funds and cut off or break the flow through taxation.

b. Determine, assess and collect any tax owed by Organized Crime members.

c. Seek successful prosecution of Organized Crime members guilty of tax evasion, with special emphasis on the top echelon of the LCN.

2. Develop a Work Plan to accomplish the objectives to include the actions taken by organizational units and individuals.

3. Set up evaluation factors by which we can effectively measure our progress and success. The following measuring devices should be used:

A. IMPACT

(1) Discovery of corrupt public officials.

(2) Abandonment of criminal activities in a given area and relocation of the criminal element.

(3) Identification of infiltration into legitimate businesses by Organized Crime members.

B. TRENDS

(1) The number of increased amended returns filed.

(2) Increased amounts of income reported by Organized Crime members in subsequent years.

(3) Increased and improved efforts by local and state enforcement agencies against Organized Crime members.

C. STATISTICS

(1) Indictments.
(2) Prosecutions.
(3) Convictions.
(4) Assessments of tax.
(5) Collection of tax.

B. ORGANIZATION

1. Assign only one Strike Force Representative as the local coordinator and place him under the line authority of the District Director.

a. The selection should be based on the best qualified applicant without regard to his present geographical location. The current career program should be utilized for this purpose.

b. Any promotion should be on a permanent basis and the person should be assigned to the District involved. Where more than one district is involved in one Strike Force, the key district concept should be used.

2. Alcohol, Tobacco and Firearms role should be expanded to include intelligence gathering through surveillance and undercover work to meet the needs of Audit and Intelligence.

3. Collection Division participation should be expanded to insure that special attention is given to uncollected accounts of Organized Crime members.

C. GUIDELINES

1. The role of IRS in Strike Force should be clarified with the Department of Justice.

2. The roles of Strike Force Representative, Regional and National Office Coordinators should be more clearly defined.

3. National Office should provide procedure and work techniques instructions for personnel assigned to Strike Force work.

4. National Office should set forth conditions under which premium and overtime pay would be authorized.

5. Personnel assigned to Strike Force work should not be assigned other program work. The groups should remain stable and not be subject to periodic rotation.

6. The meaning of the terms "Organized Crime" and "Strike Force Targets" should be spelled out in more specific terms.

D. MANPOWER

1. Additional man years should be requested to the extent that Strike Force activities take away from other programs.

2. Personnel assigned to Strike Force work should receive an orientation on the importance of the assignment, the basic concept of Strike Force, and the potential law violations under the jurisdiction of other enforcement agencies.

3. Promotional opportunities provided must be equal to that available in other programs.

4. More care should be exercised in the selection of personnel assigned to this type work.

E. INTER-AGENCY PARTICIPATION

1. Steps must be taken to assure full participation of all agencies involved if the Strike Force concept is to be effective.

2. On site review of the criminal reports should be made by appropriate representatives of Internal Revenue and Department of Justice so that the prosecution process can be accelerated.

3. Review should be made of IRS disclosure policies to insure that we are cooperating with other agencies to the fullest extent possible in the exchange of information.

4. The legal aspects of the use of information obtained from special Strike Force Grand Juries and Title III activities should be studied.

F. COMMUNICATIONS

1. Frequent meetings of IRS Strike Force team consisting of Strike Force representative, Supervisors of Audit, Intelligence and AT&F groups should be held for the purpose of coordinating IRS efforts. Strike Force attorney should be encouraged to attend these meetings.

2. District and Regional managers should attend these IRS Strike Force team meetings to the extent necessary to keep properly informed as to the Strike Force activities and to demonstrate interest and support of the program.

3. National Office Coordinators should plan their visitors to coincide with these regular scheduled meetings.

4. There should be sectional meetings of the appropriate National and Regional Office Coordinators along with the Strike Force representative on a semi-annual basis for the purpose of exchanging ideas and techniques. These meetings should be set up along the same geographical lines now used by the Department of Justice. Strike Force attorneys should be strongly urged to attend these meetings.

5. The following lines of communication should be considered fully open and unrestricted for purposes of exchanging information, reporting and offering guidance between:

a. Strike Force Representatives and Strike Force Supervisors
b. Strike Force Representatives and Regional Coordinators
c. Strike Force Representatives and National Office Coordinators
d. National Office Coordinators and Regional Coordinators

G. MISCELLANEOUS

1. Information gathering techniques must be expanded to include specially trained individuals on a full time basis. Certain required information concerning the activities of this type taxpayer can be obtained in no other way.

2. The need for adequate funds readily available for the purpose of securing information was noted. The coordination of funds presently available to the various agencies would help in this area.

3. A program should be initiated to educate the public concerning the insidious influence organized crime is having on their lives.

4. Take a closer look at the types of legitimate businesses that may be infiltrated by the criminal element with particular emphasis on the news media organizations and financial institutions.

5. Encourage a closer working relationship between the U.S. Attorney and the Strike Force Attorney.

V. DISCUSSION

This section is divided into two basic parts. The first part includes the primary targets identified by each Strike Force plus the action taken on each target from the date the program was started in each city to on or about December 31, 1970. The information is set up by city in the same chronological order as the Strike Forces were organized. A list of targets for Baltimore, Pittsburgh and San Francisco are not included because they had not developed a program as of December 31, 1970.

The second part includes the reasons for the conclusions reached in our Recommendations. We visited most of the Strike Force cities for the primary purpose of finding out how the field felt about this program and to pick up any ideas available that would make it more effective. We listened to what was said, we tried to read their reactions, and we evaluated the suggestions made. Our Recommendations are based on this information. The topics are set up in the same order as the basic recommendations and have been identified for easy reference.

A. OBJECTIVES

In our discussions we found most people were cognizant of the very broad Strike Force objectives to eliminate organized crime. Their responses as to the progress made towards the accomplishment of this goal were, with little exception, nil. They were of the opinion there would be a passage of several years before any real evidence of "eliminating" would be available; most suggested at least five years.

It would be of considerable help if the Justice Department would define the mission for a Strike of Force when it is first set up. Often the city or area calls for a different objective because of the prime targets identified (political corruption, labor racketeering, LCN). This effort would go a long way to pointing the way for the IRS objective and would certainly establish a command understanding for all participant "Eliminating Organized Crime" is much too general for any activity.

On how to achieve this objective there were two camps, one for incarcerating the racketeer and the other for hurting him in the pocketbook (tax collection).

There were, of course, some who thought the two-pronged attack was best, money and jail. The impression was they looked at these efforts as a work program leading to the distant objectives of eliminating organized crime.

We discerned a frustration, or dissatisfaction with this goal; and of not being able to measure against it. It finally evolved along these lines in the discussions; (a) "elimination" was just too far over the horizon to be useful; (b) the necessity to have something to hang our hat on as to the needs of today. The Study Group concluded short range objectives were more appropriate to our cause, and so evolved our recommendation.

1. IRS ORIENTED OBJECTIVES

Study Group feels the absence of a uniform, documented goal as to where we want to go causes confusion and disinterest. Supervisors and agents have difficulty relating to the pie in the sky "eliminate organized crime". We therefore recommend a planned approach to this and suggest a uniform managerial method which is realistic and one to which all levels of the organization can relate.

We are not suggesting the "over the horizon goal" of eliminating organized crime be discarded but that it be identified as the long-range goal to be used as a guide for establishing the more realistic IRS oriented objectives.

We suggest objectives be developed for IRS which (1) are meaningful to the IRS work effort; (2) are achievable; (3) can be related to by organizations, groups and individuals; and (4) can be measured. The examples of objectives we have identified in the Section IV of the report meet the criteria we have outlined. There are probably others and they should be incorporated into the overall plan for IRS.

2. WORK PLAN

Once the objectives for IRS are established the next step would be the development of a Work Plan. Although we envision the objectives as being uniform for all Strike Forces, we feel there will be differences in the Work Plan from Strike Force to Strike Force. Nevertheless, each Work Plan should be geared to the Objectives. Also, Work Plans would not be the same for each of the functional activities, Audit, Intelligence, Collection and Alcohol, Tobacco and Firearms.

With an Objective in mind, a Work Plan would have three mandatory criteria:

(1) What is to be done!
(2) Who is to do it!
(3) When is it to be done!

We do not suggest the Work Plan is completely different from the Strike Force programs we now develop and use. We do think it is a more practical, and most important a vehicle with which groups and individuals will be able to relate.

In other parts of this report we discuss methods of stressing the importance of Strike Force and how to convey this message to those people assigned to the Strike Force effort. Here we wish to stress the need for a Work Plan with which each Strike Force participant can see what it is he has to do, when he should do it, and how it contributes to an IRS objective.

3. EVALUATION

The final requisite of this managerial approach to Strike Force operation is the establishment of Evaluation Factors. These need to be agreed upon by everyone involved in Strike Force; that is, agreed that the factors do represent a measuring device. It is critical to this plan, that in particular, IRS executives and managers view the evaluation factors as representing the yardstick by which we measure our progress and successes.

The Study Group has set out a number of evaluation factors, but we do not necessarily believe we have provided every method of evaluating the IRS effort.

Like the Objectives, we feel Evaluation Factors should be the same for all Strike Forces. This is necessary to any reporting system which may be utilized and for the purpose of keeping management, Regional and National, informed.

4. CONCLUSION

Thus the Study Group has recommended: (1) settting objectives; (2) developing a work plan; and (3) using uniform evaluation methods.

The three go hand in hand, the first says where it is we want to go; the second tells us how to get there; and the third provides the means of telling us how well we are doing—or when we have arrived.

The Study Group's observations found it took a Strike Force about a year to a year and a half to become operational. We believe the development of uniform objectives and clearly defined Evaluation Factors will reduce the time between setting up a Strike Force and becoming operational. We would like to think that management, armed with the Objectives and Evaluation Factors, could develop a Work Plan in six to eight weeks and be operational in three months. If not, someone should ask "Why not?"

We touched upon the fact that IRS people are not relating well to the IRS Strike Force effort. This is understandable in the light of our method of managing the program to date. Adoption of our recommendation should go far in emphasizing the importance of Strike Force, eliminating the frustration of not knowing where we are going, and never knowing how well we are doing.

The Study Group is confident any Strike Force audit or collection action will in the future be more significant to the overall IRS effort and to individual Revenue Agent or Revenue Officer performing it. We are of the opinion the audit or collection will be identifiable with one or another of the Objectives; and the performance of the act measurable by an Evaluation Factor.

A. OBJECTIVES

IRS MANAGERS

1. He thinks the goal of Strike Force operation is to make cases against the bigger people in organized crime—included the labor racketeer and the corrupt political. He feels the Strike Force has had an impact on organized crime in the area. He believes there is a need for greater awareness on the part of the public as to the IRS contributions to the fight against organized crime.

2. There has been some difficulty in turning Audit people around so their concern might be more directed toward the criminal aspects of a case as opposed to tax collection. Strike Force efforts must be considered as the top priority program within the District. The Intelligence Division should spend *all* of its manpower on it. Criminal cases (fraud) on businessmen are not very effective. Intelligence Division should depart from its present concepts to a straight criminal activity. Fraud sentences are meaningless. No one has gone to jail. Always ends up with a tax collection plus penalties.

3. He recognizes a need for a new approach toward evaluating Audit procedures. He sees a great many of Audit examinations taking place (Strike Force) but feels there may be little in the way of potential. The dollar return from those audits are considerably less than those realized under the regular Audit program. There is a doubt that the money realized from audits, including the penalty factor, will be much of a deterrent to organized crime

4. The District Director (differs with the Chief Intelligence) believes criminal prosecution is a deterrent to the general public. The public complies with laws because of publicity on criminal fraud prosecutions.

5. Seems to be a difference of opinion on the definition of what organized crime is. Management expressed the opinion that getting a crooked politician is as important as getting a racketeer.

6. They cannot see the difference between Strike Force and what would normally be done by Audit and Intelligence pursuing their regular duties.

7. On the question of anticipated results, Management believed they were not sufficiently knowledgeable to comment. The Mafia men living in this area are retired, old men, and yet, they are included as Strike Force targets. Doubts we can benefit much from such an approach. Does not feel anything comes as a result of the Strike Force effort.

8. The Audit Division Chief was in an acting capacity and was not too familiar at this time with the Los Angeles Strike Force operation.

9. The objective seemed to be to put the biggest dent possible in organized crime. This simply means identifying those people in organized crime and going after them.

10. The Intelligence Division has had several supervisory staffing changes in the past few months; they are now sufficiently stable to get the program into high gear.

11. In the future some measurements beyond statistics might be useful in determining the effectiveness of the Strike Force effort. This will be primarily based on evaluating information from undercover sources.

12. Although our efforts or results may not be clear, it is important that we keep pressure on so that we might have some assurance that organized crime is at least not growing. We need to be particularly alert to the underworld entering the legitimate business field.

13. Getting started in Los Angeles consisted of taking over work already under the OCD Program and adding to it the name of crime figures furnished by the Department of Justice. Nick Lacata, 72 years old, is regarded as the principal organized crime man in this area. Los Angeles is different from other areas in that they do not have an identifiable family. The organization here is different from that of the east. At present there is no information that it is singularly controlled or how it is organized. There is some doubt that there is any overall control or organization.

14. One of the major problems in the Strike Force operation is the racketeer getting into many legitimate businesses. One such crime figure was identified as having an interest in forty different legitimate enterprises. Such a situation requires a great deal of audit time if the crime figure is to be fully checked out.

15. The program plan gives all the appearance of being short-range (two not three years duration). We need to revise our thinking and our planning to a long-range concept of a five or ten year duration or even indefinitely. If, at the inception of the organized crime drive, or now the Strike Force program, such projects had been made, we would be much further along and better able to measure our success than we are now able to do.

We should very clearly state what it is we want to accomplish. The over-the-horizon objective of eliminating organized crime is to far distant for the average individual to grasp. This far-reaching objective should not be abandoned but there should be established intermediate goals of along-the-way which are identifiable and measurable.

In keeping with a long-range plan, we should initiate action to infiltrate organized crime. All of the resources required should be identified and applied. At the present, we would have no trouble in justifying manpower needs, particularly if we were to look at how much has been applied and wasted over the past several years without sufficient accomplishment to show for it.

The need for more realistic goals is most pertinent to the field operations and the individuals assigned to Strike Force work. It is possible to set up a chart of the organization in any given city and state that individuals on the charts are the immediate targets of the Strike Force. As successes were had, the front-line people and supervisors woud be able to identify with the succesess and meaningfulness of the program. Through the elimination of organized criminals from the scene and the collection of tax dollars, we would have legitimate yardsticks on which to base our success. Other measurements which would be available by this method would be changes in reporting income, reporting funds which had previously been had, increase in information being obtained, information on where crime money is going and how it is being used, and information on the corruption taking place.

16. Can't understand why it takes so long to get the program under way and, in particular, the delay in setting up the targets. Can see the same thing happening in Baltimore.

17. There is a need to establish and set out goals that are reasonable and obtainable. Putting family heads in jail is such an objective and one that will hurt the organized crime operation. Do not believe the organized crime structure provides for replacement of the top figures in organized crime.

18. Really wouldn't know how to measure the success of the program. Prosecution would not be a real measurement of progress. It is disturbing that, as results go, it is difficult to get a handle on Strike Force.

19. Personal feeling is that crime figures must be hurt in the pocketbook. More effort needs to be made to find out where the money is and then tax it.

20. Revenue Agents have not been prepared for Strike Force work. What we want to know is how the money gets in and out, and have not developed guidelines for making an audit which would provide this information.

21. Some of our targets are worthless as far as an IRS effort is concerned. It appears we still have two programs going on, OCD and Strike Force.

22. The program needs to have defined how you measure success. Having this guide would be of assistance in determining the manpower that should be applied. Prosecutions and sentences have not resulted in any serious dent to organized crime. To date, cannot see us gaining any ground on organized crime. The tax dollar accomplishment has been poor.

23. Would recommend time be applied to the corporation here we suspect hoodlum money has been invested. This would be much more productive than trying to work net worth cases.

24. Make clear that the program is long-range and that evidence of success are not going to be measured over a short period of time.

25. There is something wrong with the system in that it is not providing the information necessary to support the Commissioner.

26. Have had an impact on organized crime measures by convictions that have been obtained. Some targets previously worked without success are part of these convictions.

27. The program was initiated in June of 1969. Intelligence Division started taking active part in April 1970. Had to say that up to the present time they have been organizing and are just now beginning to get books and records for examination.

28. It is really only since July that IRS has been properly organized and moving on the program. It is only at this time that plans are being made for the Audit Strike Force operation.

29. Program is not viewed as being short-ranged. Feel the program should be indefinite.

30. Paying too much attention to criminal indictments and not giving enough effort to locating and getting the money.

31. Did not get off to a good start because of the Strike Force Representatives assigned. Slowed us for a year. Representatives were not very good did not get along and failed to communicate.

32. Was shocked only Audit and Intelligence have programs. Understand it is nationwide that other agencies have no program. How do they know where they are going without a plan? How does Attorney relate to these agencies as he can with IRS and a plan.

33. Think we need to be more interested in today. Stop looking at the past of the organized criminal. Need to learn where the money is; how it is being passed.

34. Have problem getting started. Intelligence Strike Force Representative did not have program after one year; Representative was removed.

A. OBJECTIVES

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. Setting of Objectives:

Listing of targets—individuals identifed as crime leaders.

Cooperation between agencies—who has best change of getting target individual.

Program—Determine manpower needed for objective. Priority of attention to individuals.

Entry of Strike Force interests local and state police. They pay more attention—cooperate.

Success measured in jailing targets. Believe families less effective.

2. The objective of this program is to get rid of organized crime. In Los Angeles it will require looking a little longer and harder than is the case in the eastern cities. The biggest problem here which needs to be examined are the financial operations and manipulations of an organized and illicit nature.

3. The Los Angeles operation should be further along than it is. It was a slow start here due in part to the unfamiliarity of the Attorney and Strike Force Representatives in this area. They had to take a long time to learn the area, the people, and what organized crime was in the Los Angeles area. It is suggested that Representatives be permitted a few weeks in an area with nothing to do except to familiarize themselves with the situation. It is also suggested that spending some time in an ongoing Strike Force city in a sort of on-the-job training would be of considerable benefit. In isolated cases where this was done, the Representative was better able to get the job moving. The Intelligence Representative said he tried to get guidelines on how to get started and was told he was experienced and should use his good judgment. There is a need for better and more definitive guidelines and help from someone who has had prior Strike Force

experience. In calling other Representatives in other areas, the responses were so varied that they were of litle use in getting set up in Los Angeles.

4. There should be more lead time between the decision to set up a Strike Force and developing the program for any given city. There is too much emphasis into getting into a fully operational program without taking time to get the feel of the area and the problems that exist.

5. There have been several changes in IRS management in Los Angeles which have caused problems in continuity of effort. There is also the problem that cases that have been assigned have already been worked and closed by the District. Cases that are now being worked on are not showing adequate progress or promise. There has been some criticism of the Attorneys and Representatives for making suggestions directly to the working agent. They are constantly reminded that this must be done through the supervisor. Rule in effect requires that an agent can be talked with only in the presence of his supervisor.

6. We could have less targets than is now the case and expect to cut down the number in order to give better concentration to those that remain on the list. Criteria for selection will be those which have the greatest impact on the area.

7. There are not enough guidelines at the forming of a Strike Force. There is nothing to go on to base the formation of the operation or procedures to be followed. Everything had to be developed by oneself.

8. Objective of the program is not clear. Unable to know whether we are making progress or not. The statistics alone are not able to show what progress we are making to deter organized crime. The only indicator we have thus far are that violators appear to be exercising greater care.

9. Recognize that organized crime is not just LCN. Investigations and audits being conducted have never been limited to LCN numbers.

10. Concluded it is a waste of time trying to make tax cases on targets who deal in cash only (bookies, loan sharks) and decided that Intelligence should concentrate on crime figures going into legitimate business. Gave example of attempt to make networth case on loan shark which ended up being of little value ($187). In the meantime, FBI made loan sharking case which threw IRS case out.

11. Discussions covered:

1. Objectives of the program
2. Jailing of targets
3. Strike Force as long-range operation (five to ten years)

12. Discuss setting up program and selecting targets. Question some of the targets selected because of their age, being in bad health, are in jail, or inactive. An effort being made now to give more attention to lieutenants of organized crime.

13. Strike Force Program should be long-range with view toward eliminating top targets and those identified as the successors to the bosses. Along with putting them in jail, the assessment and collection of taxes should have more emphasis put on it.

14. There is a need to evaluate the targets being worked on to be sure manpower is being effectively used. There is a need for an evaluation process where progress on a target determines whether to continue on a case.

15. There are 532 targets established at this time. We have not been in business long enough to determine if the audits are adequate; so far, the cases closed have not produced anything.

16. Didn't have a program for over a year and this was cause of slow start.

SUPERVISORS AND TECHNICIANS

1. The operations to date have established valuable background information on racket suspects. Surveillance has been particularly good—establishing information on racketeers' way of life, friends, girls, expenditures and vehicles. They feel they are in good shape to take off on making cases for prosecution. It will probably be necessary to wait for two or three years before the fruits of today's labor will be assessible.

2. There is a need for guidelines spelling out just what organized crime is and how you select targets for Strike Force pursuit.

3. They look at the purpose of the Strike Force as being a team effort going after the organized criminal by making a tax case or to put them in jail.

4. There's been no criticism on the length of time investigations or audits take, although the experience to date shows that much more time goes into this

type audit and that the change rate and dollar returns are less than under the regular Audit Program. Supervisors have been supportive of the efforts taken under this program and they are under the impression as individuals they should cooperate to the maximum extent. The concern for tax return appears to be secondary to getting the criminal behind bars.

5. Part of Intelligence mission is to get publicity on accomplishments. This acts as strong deterrent to others.

6. Many of the targets are old men, gamblers, and minor figures in organized crime. There are about 225 targets at present, but no one has ever explained the importance of the target or his relationship to organized crime. We would do well to eliminate about 25 to 35 percent of the present targets.

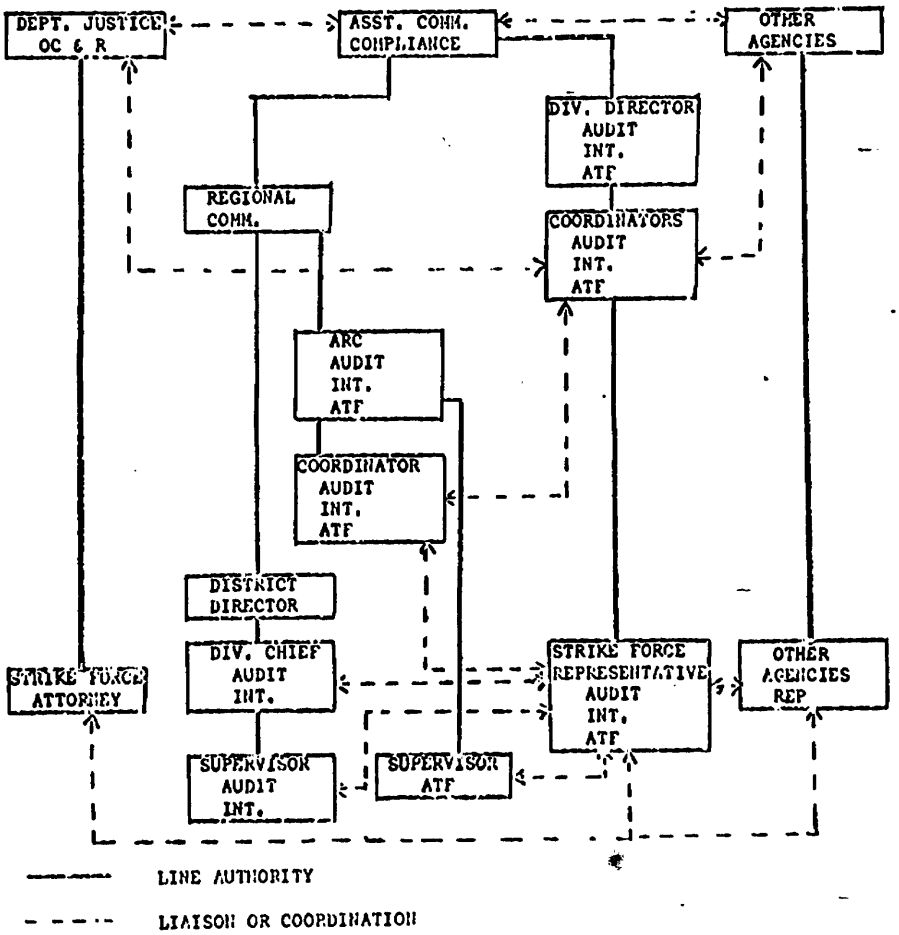
7. Agree change rate and dollar return is not being stressed. Cannot relate cases being worked on to fight against organized crime. Strike Force lost of targets needs to be cleaned and the targets made more meaningful.

8. Believe objective is to put targets in jail. Would like to see clear guidelines on the short and long range objectives of the program and be assured that other agencies have similar goals.

9. Favor approach of putting violator in jail over collecting money because it is most damaging to organized crime structure.

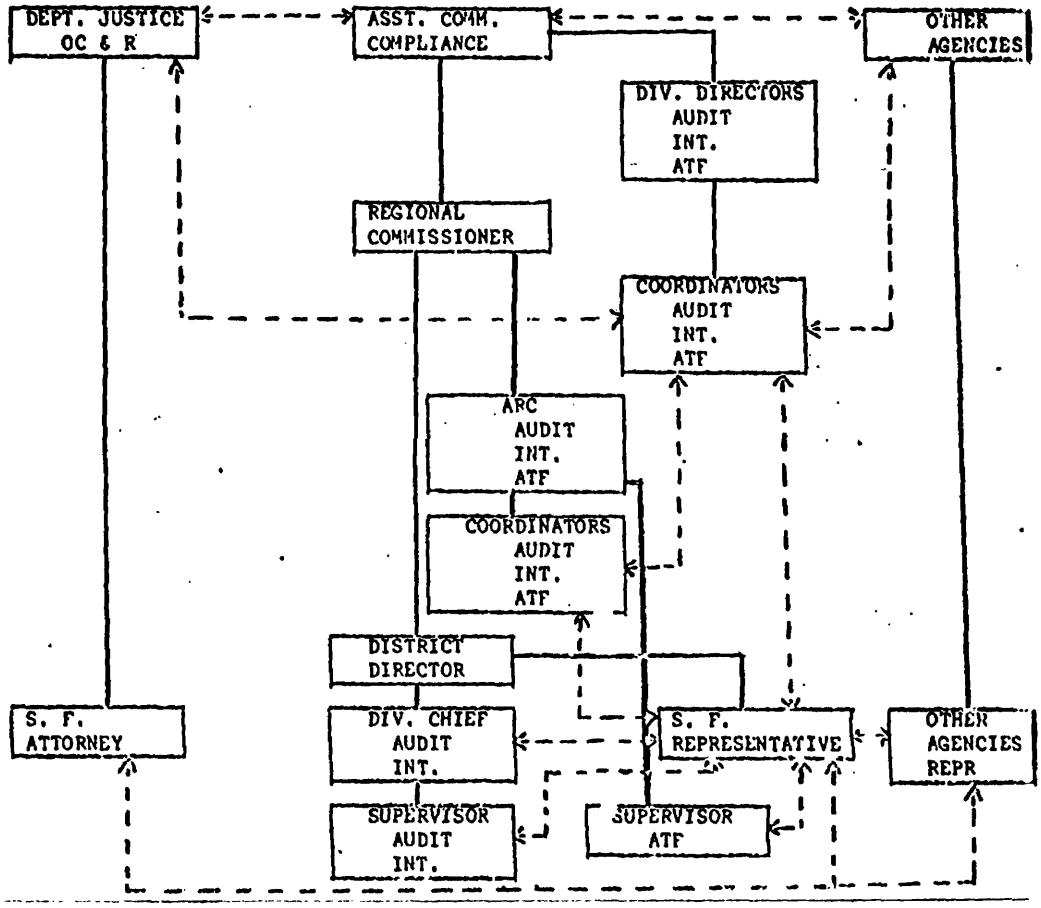
10. Believe present system might be improved. Instead of one or two Agents working on five targets, would suggest five Agents working on one target. Believe the efforts should be directed to fewer targets but with more concentrated efforts on them.

PRESENT ORGANIZATION STRIKE FORCE



STRIKE FORCE REPORTS ARE SUBMITTED TO ALL OPERATIONAL UNITS

PROPOSED ORGANIZATION STRIKE FORCE



——— LINE AUTHORITY

- - - - LIAISON OR COORDINATION

STRIKE FORCE REPORTS ARE SUBMITTED TO ALL OPERATIONAL UNITS

B. ORGANIZATION

1. It is our recommendation that the action taken to implement this change be made when setting up any new Strike Force or as the temporary assignments of the present Strike Force Representatives come to an end. This would provide test areas for evaluation purposes and would not create an undue hardship on those individuals to whom we have made other commitments.

At the present time we have 19 Strike Forces in operation and we have 89 individuals coordinating these activities. This includes three Strike Force Representatives for each Strike Force, or a total of 57, a Regional Coordinator in each activity for a total of 21, and 5 Audit, 4 Intelligence, and 2 ATF National Office Coordinators. Since the program responsibility for Strike Force activities is primarily that of the District Director and we already have an organizational structure to control the work done by revenue and special agents it is difficult to understand why we need so many coordinators at the local level.

The presence of 3 men to coordinate one program results in duplication of effort, excess cost and greater delay and confusion in getting the job done. We are convinced that one Strike Force Representative is sufficient for Audit, Intelligence and ATF. The principal supervisors would be the contact with the Strike Force Representative. (See the Strike Force Team.)

The elimination of 2 Strike Force Representatives at the district level is not intended to cut the lines of communication to any activity management as explained more fully in the section on communications.

As we see the duties and responsibilities of the Strike Force Representative we are convinced they can be effectively handled by one person. These duties would include:

(a) Assist in planning the program in conjunction with operating officials and the Department of Justice. This would place the responsibility where it belongs since district officials are providing the manpower to carry out the program. This also gets district management involved in an active manner and will result in increased interest in this vital program.

(b) Secure information from other agencies and coordinate actions of IRS as it pertains to targets under consideration. This should be on a continuing basis.

(c) Serve as primary liaison between the Strike Force attorney and IRS. This would mean that the attorney could look to one person for necessary coordination and proper action.

(d) Coordinate closing of Strike Force cases with appropriate IRS officials as well as Department of Justice.

(e) Gather necessary information for National Office and prepare reports as required for National Office Officials. It is hoped that the coordination activities of the Regional and National Office coordinators could keep formal reports to a minimum.

The size of the ATF group assigned to Strike Force work and the extent of their activities are such that the local supervisor could readily perform his supervisory duties and provide the coordination necessary.

This would result in an annual savings of $1,138,920 in salary and per diem costs. (This computation is made on the base salary of a GS–14 and $25 per diem.) There would be an additional $200,000 per annum saving for premium and overtime pay under the present arrangement. Even more important it would make 38 more people available for front line work where they are so desperately needed in today's limited manpower resources.

One of the strongest criticisms heard of the present program was the fact that local management had no say in the selection of the Strike Force Representative and yet he is one of the keys to the success of the program. This change would eliminate this complaint.

The strong factor in this recommendation is to make the District Director a more integral part of the Strike Force program. The attitudinal problem noted in most areas was not because the director was opposed to the Strike Force concept in any way but because he felt left out of the planning and control of the program. This is understandable when you consider the circumstances surrounding the setting up of a Strike Force.

(a) Strike Force was announced as a Department of Justice operation.

(b) Strike Force Attorney arrived and directed setting up the program.

(c) National Office announced the operation would be under the Assistant Commissioner, Compliance.

(d) National Office selected and assigned the Strike Force representatives.

(e) Strike Force representative is more responsive to needs of the Strike Force Attorney than the District Office.

(f) All reports were submitted directly to National Office with copies being sent to district and region.

(g) Targets and program development was stated to be the primary responsibility of the Strike Force attorney and/or the Strike Force representatives.

It is not reasonable for the District Director to have program responsibility for Strike Force and not have any authority over the IRS individual who is working in such close daily contact with his supervisors and agents. A tabulation of district management officials revealed that about 80% would prefer to have the Strike Force Representative under their control. Some district officials were divided on this question but we did not find any district where all the Management people wanted the Strike Force Representative to remain under National Office control. The general feeling was that this program should be directed by the National Office but controlled by the district.

Under the present set up the Strike Force Representative has little or no supervision or control in carrying out his assigned duties. Only someone in the immediate area can provide proper supervision and assistance. It is believed the National Office Coordinators could provide a more objective monitoring and

evaluation of the program if the Strike Force Representative was not under his direct supervision. It is difficult to criticize any program for which you are responsible or control.

It has been suggested that in those districts where the director has not taken an active role in the Strike Force program, the placing of the Strike Force Representative under his direct supervision would be fatal to the program. There is another side to that coin and that is by placing the Strike Force Representative under his control you are removing his built in excuse or crutch that this is a National Office program and he is not fully responsible for its execution. We also feel there is a better way of dealing with a director that does not respond properly to any program initiated by the National Office.

The Strike Force Representative stated they could maintain their independence more if they were under National Office control. They also stated they could be more objective in their approach if they knew they were not going to have to work for a particular division chief when this program was over. Even though these arguments may have some merit, it was our conviction the necessity of getting the director more involved in this program must be the prime consideration.

A. BEST QUALIFIED PERSON

Since the work required in Strike Force cases requires more investigative knowledge and skills than regular examination work, this factor should be given heavy weight in selecting the person to handle this assignment. Another factor that is vital is that the person selected must have the ability to deal with others in a persuasive manner, be tactful and yet be forceful in getting the job done.

Due to the importance of the position of a Strike Force Representative, it is our recommendation we use our career program in order to select the best qualified person available without regard to where he is presently located. This does not mean that you should always select a local man. There are circumstances where it would be desirable and necessary to have some one from another geographical area, but we do not feel that it should be a mandatory requirement that he be an outside man. As a matter of fact, IRS is the only agency that is complying with this restriction at this time.

We feel that there are certain disadvantages in having an outside man that often outweigh the advantages.

(1) When he has roots in another area, we found that it was necessary for him to travel back home frequently and he was unable to be as effective as he could have been.

(2) In order to get results you must have certain contacts and be accepted by those with whom you deal. Building a reputation takes time.

(3) A knowledge of the area, targets, and personnel in a given area often saves considerable time in getting any program off the ground.

(4) The cost and personal inconvenience of moving often prevents the best qualified man from making application for the job. Whenever we accept less than the best we are flirting with managerial suicide.

The placing of the Strike Force Representative under the director would also place on him the responsibility for providing clerical help as needed. At the present time, there is no provision for the Strike Force Representatives to have clerical help and we found many instances where high paid technical men were performing considerable clerical duties.

B. PERMANENT PROMOTION

The person selected for this program should be given a permanent promotion and assigned to the area where he will work.

(1) The giving of a temporary promotion implies it is a temporary job and often the best people are not interested in a short-range assignment. It is difficult to visualize a de-emphasis on this work anytime in the near future to the extent that we will not need this position.

(2) Temporary promotions also leads the agents assigned to work these cases to conclude their work is of a temporary nature.

(3) If we select the right person for the job we will have no difficulty in reassigning him to another job at that grade if that ever becomes necessary.

(4) If Strike Force work is as important as we say it is then let's make it an integral part of our career promotional program.

(5) If the Strike Force Representative is going to work under the authority of the District Director he would have to be assigned to the area.

(6) This would save an additional $175,000 in per diem payment per year. (This is based on $25 per diem for 19 Strike Force Representatives.) Comments on premium or overtime pay for these individuals are covered in the Guidelines section of this report. There are other factors that are involved in this per diem payment that should receive careful consideration at a high level. We noted in certain instances where the Strike Force Representative had moved his family to his new assignment and severed all connections at his old post of duty. It is seriously doubted if he could properly claim per diem under these circumstances. There is also a question as to where he shows his post of duty in the preparation of his travel vouchers. Since these assignments are of an undetermined length, we have the problem of paying per diem for an indefinite period of time instead of only when a person is temporarily in a travel status. This could result in a tax problem for the employee. We realize a study was previously made at the request of the Assistant Commissioner, Compliance, which resulted in the change from a flat $25.00 per day to a sliding scale based on the circumstances in each case. However, the whole problem needs further study and guidance given to these employees.

(7) This would result in moving expenses having to be paid when a person was selected from outside the area as is done in any other assignment to a different post of duty.

2. The Study Group found a considerable vacuum existent in filling the IRS Strike Force need for current information on the doings of Strike Force targets. The fine concept of sharing information by agencies is not working. Either the other agencies can't relate to our needs or don't care to bother filling them—we suspect both.

We found one exception, in the Manhattan District, where an Intelligence group was assigned to surveillance of targets. They were furnished with the information desires of Revenue Agents and Special Agents and then set about to fill them. It was working very well.

The Study Group was led to its recognization ----------* the efforts of the AT&F Division. Unfortunately, they are relegated to firearms investigations of the low priority hoods for the simple reason that Mafia bosses, political corruptees, labor leaders and their like do not go about armed. (There are exceptions, such as investigating hidden interests of racketeers in the legitimate liquor industry.)

The Study Group does not necessarily suggest we abandon these pursuits of AT&F, but that the role of AT&F be expanded to that of the apex for gathering information critical to the needs of the Audit and Intelligence efforts. They possess the skilled and able horses to conduct surveillance and bring back the information we want on the current activities of Strike Force Targets.

The Study Group would also suggest the proven ability of the ATF Investigator to go undercover not be overlooked. In all of these we are not proposing some new pursuit for IRS, but that we do take advantage of the resources we possess.

3. Too often a Strike Force target has gone to assessment without notifying Collection in any way that special attention should be given to this account. We recommend that a procedure be set up so that an Organized Crime member account could not be 53'd without the personal approval of the Chief, Collection Division.

A procedure should also be set up to take advantage of the considerable information available to a revenue officer in the course of his day to day assignments. This could be done through discussion with appropriate collection supervisory people when information on a certain individual is needed.

More consideration should be given to taking necessary civil action in appropriate cases before the criminal aspects have been disposed of. This should be on a case by case basis, but we noted some instances where certain assets were identified during the investigation but by the time we followed our normal procedures in disposing of the criminal features before making any attempt to collect whatever tax we could, the taxpayer had placed the assets beyond our reach. We should ask ourselves if we are making use of jeopardy assessments in appropriate cases or it may be the collection of the money may be a greater deterrent than a light jail sentence or possible probationary sentence.

IRS MANAGERS

1. There appears to be good cooperation between the Strike Force people and the District Office. Believes the Strike Force Representative is a good idea and should be continued the way it is with the Representative being independent.

* Copy illegible.

He was not familiar with Strike Force Representative selection process, but after having it explained, was satisfied the system was proper. Made no recommendations for change. He felt the Strike Force Representative was a considerable improvement over the defunct OCD Program in that now a man was provided to coordinate in the gathering of information and its distribution.

2. He was not too enthusiastic on the use of a strictly undercover man. It would take several years to do this and to be able to measure the effectiveness of the effort. It would probably have a little success but would not be much more than you can get from street talk. Not very enthusiastic about the idea.

3. Feel the Intelligence mission has changed to where they have primary interest in keeping account of what is going on in the District. That is, surveillance as opposed to making cases.

4. The general opinion of Management appears to be less than enthusiastic about Strike Force.

5. The only difference notable about Strike Force is that it goes across agency lines. Does not think it is working well in Los Angeles. Believes it may be that leadership is lacking on the part of the Strike Force Attorneys and Representatives. Lead Attorney is not the type of person who would get the type of cooperation needed. A strong, personable man is required by this job. Very unimpressed with the Intelligence Division Strike Force Representative. Thinks he plays politics and is playing this job off as bigger than it is. He's definitely not a leader.

6. A District Director needs to be fully confident in leadership before he would be willing to turn over resources without question. This trust does not exist at the present time as it applies to the Strike Force Representative. There is considerable doubt they know what they're doing, and this doubt extends to the use of the manpower now assigned.

7. Would prefer to give this type of assignment to someone of our own people. Believe we would be much better off using a local man, and particularly since these people are considered to be of a higher caliber. The District would then know the quality of the man doing the job. Believe the District man's knowledge of the area and the people he needs to work with overshadows other selection criteria.

8. The Regional Commissioner has made it clear he wants full cooperation, and the District Management realizes they must support this program, but are hindered on going all out because they cannot rely on the Representatives now in Los Angeles. If this program is that important and requires the full District effort, then District Management should be personally involved in the selection of Strike Force Representatives. It is unreasonable for the District Director to hold program responsibility and have no line authority over the Strike Force Representatives.

9. There's a feeling that organizational change should be made, but no areas were identified. There's a feeling there are too many "cooks." There's been a lingering problem between the IRS and the Department of Justice on where some of the cases belong, in the District or with the Strike Force.

10. One solution to the existing problem of responsibility and authority might be to vest the authority at the National Office level and put all manpower used under that authority. (This idea was not endorsed by other managers.)

11. There were several innuendos made regarding the National Office Coordinators that were not complimentary. Do not see the usefulness of these people and they could very easily be eliminated from the structure.

12. There is nine and one-half million dollars collectable from identifiable hoodlums. Even though some of these collectables are being 53'd, there is probably considerable valuable information coming to the attention of Revenue Officers that would benefit the Strike Force organization. Before closing these accounts, they should be carefully examined for passing information to the Audit and Collection groups dealing with organized crime.

13. Some of the best information comes from undercover efforts, and in all cases it is more valuable than anything coming from informants. Informants are considered unreliable and suspected of double dealing. In Las Vegas it took two years to place an undercover man and have the information he was feeding be of value. At present there is one particularly valuable informant who is on a six-month, $10,000 contract which will probably be renewed for an additional six months.

14. Regions should be allowed to select Strike Force Representatives. They could do a much improved job of selection because of their superior knowledge

of people applying for Strike Force Representative positions. There is absolutely no justifiable reason why Strike Force Representatives need to be selected from outside the District or Region concerned.

At the expiration of the two year terms of the Strike Force Representatives, the above mentioned system should be used for selecting the replacements. If the incumbent Strike Force Representatives are to remain beyond the two year period, it should be with the consent of the Regional Executives.

An example was cited where the Strike Force Representatives selected were good men but they did not know the area, the IRS people, or the violators. They did not become at all effective for a considerable time and then when they became fully useful, they were on their way because of the two year assignment limitation.

"Strike Force Representatives liked th money and lack of responsibility, and are trying to stay as long as possible."

Another instance was cited (Detroit) where qualified men were assigned, but in this new area were completely lost. They don't know how to go about getting familiar and had no help because they had no friends to assist. It is a very difficult arrangement.

None of the ARC's favored the use of the outsider, although they did identify the seven arguments for his selection. They felt, however, that the criteria for knowledge of the area outweighed most other considerations.

15. Strike Force Representatives should be reporting to the Regional Office and not to the National Office, Strike Force Representative must be responsive to the people who have responsibility for the program. Why is it that Regions are responsible for all programs and an exception is made for the Strike Force program?

Cases were cited where the Strike Force Representative made no contact with the Region for weeks at a time. In one case, an example was given where the ARC had not seen the Strike Force Representative for more than four months.

While the ARC has program responsibility, the Strike Force Representative is being put into the position of Sub-ARC for the Strike Force program. Planning for the program, including the assignment of resources, is done at the Region and it is actually the Regional Commissioner who approves the program. These things are inconsistent with the Strike Force Representative not being accountable to the Regional Office.

16. The Strike Force Representative is receiving a good salary, and on top of this, per diem. He has a good job and no responsibility being accountable to no one. Recommend the Representative be under District supervision. Can appreciate the outside man; takes a fresh look at District operations but do not think this is sufficiently important.

17. Raise questions on the need for a Regional Coordinator. Can't see why the ARC can't keep abreast of monitoring the Strike Force Program on his own.

18. Look at the program as a District operation and do not see the necessity for it to be run by or so strictly monitored by the National Office. Look at the program as nothing different than the coordinating of large cases between Districts and Regions. Cited the instance where an audit extends beyond a single District and, therefore, key District or Region can be set up.

19. See a problem with the Strike Force effort because there is not good coordination between Audit and Intelligence and because it is not fully under the control of the District Director.

20. The only person who can really coordinate this type operation is the District Director. This is merely following the principal of getting the operation down to the lowest level of responsibiilty who, in this case, is the District Director. The only real success of any program is achieved where the District Director has felt responsible and, therefore, gets himself fully involved. The Philadelphia Strike Force is a good example. The present District Director is interested in becoming personally involved to insure the success of the program. Inference was made that the former District Director, holding himself aloof from the program, did not get things moving and the program was a failure.

21. View the National Office responsibility is that of setting up good guidelines and then let the District run the program. Strike Force shouldn't be looked on for effectiveness as being different from the way we proceed with other programs in the IRS where Districts have full responsibility. The National Office has no more business being in operations than does the Regional Office. View the Region's role of anticipating pitfalls and evaluating the program and helping to solve problems.

22. Believe Collection should be in the Strike Force operation for the purpose of getting as much money away from organized crime as is possible.

23. Recommend the Strike Force Representative be from the local area and under the control of the District Director.

24. After two years the Philadelphia operation is just getting started. For considerable amount of time no one thought of it as a District program but believed it was one directed by the National Office. From the beginning it was a very confused operation and even today there is serious questions on the targets that are being worked.

25. Starting in September 1970, the District took a more active interest in the program including controls over it. The District took on work as requested by the Representative who we felt was getting his orders from the Strike Force Attorney. We believe the Strike Force Attorneys were in charge of the program and that they determined what the work effort should be. The District felt they were to take on targets as given to them by the Representative without question. The priority of targets of Audit and Intelligence were not the same.

26. Not able to see where Strike Force Coordinators are doing anything for the District. We have discussed problems with them but they have not contributed to solution.

27. Feel the present organization is good. Strike Force Representative should be apart from the District.

28. Feel Strike Force is a National project with the District having responsibility for execution of the program.

29. Would recommend that no publicity be given at the outset of Strike Force. It would be advisable to operate for about six months gathering information so that targets are not put on the alert. The program needs much more undercover work and surveillance. Examples were given of how surveillance work has contributed meaningful knowledge. ATF has provided surveillance which has helped, but it would be better if Intelligence Division would do more surveillance because of their familiarity with the need in developing tax cases.

30. ATF opposes the idea of a Strike Force group for the identification of individual investigators of Strike Force people.

31. Question the need of a Strike Force Representative and particularly his value for what it costs.

32. Would like to have some say in the selection of the Representative. Knowledge of the area should be a selection criteria. Doubt that the best people are being selected as Representatives.

33. Opposed to the idea of the Strike Force Representative coming from outside the District. Gave example of ATF man who was from District and working out very well.

34. Advocated greater surveillance effort. Believe there is information in the hands of other agencies which could be of value to IRS but is not being provided. Gave examples of cases where the FBI actually withheld information.

35. Believe Strike Force could be set up as is presently the case, but that at some point its being taken over by the District or Region, thus eliminating the Strike Force Representative. There appears to be too many people riding herd on the operation. With the addition of Coordinators at the National Office, we should be able to keep track of what is going on and meet the needs of the Commissioner and Green.

36. Fail to see why we need to monitor the regions (with Representatives) when it has been made clear the importance of the program. Have this opinion even though Districts have not bought the program one hundred percent.

37. From an Intelligence Division point of view would prefer the Representative to be under the Region. The Region must take a stronger role in the program because it is here responsibility lies and where resources are allocated.

38. The selection of Strike Force Representatives was learned by the Director third-hand. There have been two selections made which he protested and had cancelled. He feels that some method of selection must be adopted that would involve the District in that selection. He has no strong opinion on whether the Representative be from within or outside the District. Integrity maybe a factor to be considered, but believes some weight must be put on the man's knowledge of the area. In Newark and other major cities there would certainly be a need for a city-wise individual.

39. Strike Force concept is wasteful in that there are too many good people involved in a paper-shuffling job and not involved with actual case production.

40. Strike Force Representatives should be under the District Managers, and the Region should be involved with their selection. If there is concern that the Representatives might be over-dominated by the District, they could be under the supervision of the ARC.

41. There is no complaint with the Representative assigned to Newark, but in Philadelphia, no one knows what they're doing. They are too free-wheeling without being responsible to anyone. The difference that has been found may be nothing more than the individual differences of the Representatives and the Strike Force Attorneys.

42. There are serious consequences which may come about because the Representatives do not appear answerable to anyone. There is not now even any defined period for evaluating their performance and it is difficult to see how this could be done except by someone at the local level but not from the National level.

43. Program responsibility is the concern of the District and the Region, and at present has nothing to say about this most critical position of Strike Force Representative.

44. Very strong opinions expressed regarding the selection of the Representatives. Emphasis was placed on the need for Strike Force Representatives to be compatible with the Regional people and responsive to their needs.

45. Believe the Strike Force Representatives are good. Agree with the concept of selecting from outside the district.

46. Believe Collection should be involved although no procedure has been worked out for controlling results of work going into Collection Division.

47. There is a special group of Intelligence Agents who work exclusively on surveillance gathering information on the activity of Strike Force targets.

48. The surveillance work was started in July, and the information coming out of this effort has been very good. It is providing valuable information on the key figure's movements, his associates, financial interests, and method of operation. Surveillance is recognized as requiring special skills, and the men assigned are selected on the basis of demonstrated ability in this area. The number of surveillance requests that have been made has caused a backlog of work to be accomplished, and there may be a need to increase the number of Agents assigned.

49. There is a need for an increase in the motor vehicle fleet. Effort is being hampered by not being able to pursue surveillance on targets who reside or have interests outside of New York City. Almost all cars available have been assigned to Strike Force work, but this is still not enough. A car coordinator is being used in order to get maximum use of vehicles available. For the seventeen men assigned there are only six vehicles available. Have asked for an additional 25 cars and told two may be made available. ATF has not made much contribution to the surveillance efforts because they are not working the same targets. To date there has not been any close relationship with the ATF. Our only actual contact with ATF has been through the Strike Force Representatives.

50. Information available at the start has been very meager.

51. Believe the Strike Force Representative should have been a man more familiar with the local area. Those that are assigned are very cooperative and work very closely with District supervision.

52. Agree the Strike Force Representative reporting to the National Office is best. Would not put him under District supervision.

53. Collection Division should be more active in the program, but not necessarily as a full Strike Force member. It would be more appropriate were there a Collection Liaison Officer to maintain contact with other active divisions. Discussion was held on the advantages of hurting organized crime through the collection of tax monies. There is a need for a closer control to insure collection after a change has resulted from the audit. There is probably a need to revise the machinery for collecting taxes, notwithstanding our interests in criminal prosecutions.

54. District or Region should have something to say about selection. Seems the present criteria is a willingness to travel and collect per diem. (one of the new ones having a communication problem.)

55. Representative needs to talk more with the District Director. His contact with National Office leaves District Director out in the cold.

56. Desirable the Representatives come in from outside with no preconceived ideas on how things are working. Prefer man be from outside.

57. Strike Force Representative should be outsider, but District should be involved with selection through interview. Districts should participate in evaluation of Representative.

58. There is a need for undercover operation for purposes of gathering information.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. Identifiable problems. Temporary promotion is not advisable. Feel a permanent grade would be more in order. By doing so, per diem costs, which are extremely high, could be considerably reduced.

2. The Department of Justice is strong on having assignments of individuals from outside of the concerned District area. They feel this provides less influence on the individual by either the District Director or Regional Office management.

3. Field of cooperation and work with the District Office is very good. There have been no problems to date.

4. The Supervisor of the Strike Force Representative is the National Office Coordinator. Contact with the region has been very limited. The ARC gets involved only to the extent of allocating manpower.

5. It would be difficult to be under the supervision of local management because there would be a constant worry over going to work for him at some later date. At present it is possible to be completely frank and honest without concern of future consequence. They did not feel their career suffers because of the Strike Force details. That they were being given same promotional consideration as ever.

6. The basic organization of Strike Force is sound and he did not have any recommendations for change. Suggest the use of the Collection Division would be of assistance if they were to go after assessments involving organized crime leaders. Emphasis ought to be placed on TDA's which are the result of the Strike Force effort. He would like to see Strike Force be given a go ahead into criminal aspects in lieu of proceeding with a tax case. Tax cases take too long, while there is a criminal violation pending. It would be better if the information developed by Audit would be given over so that a tax fraud or other criminal violation investigation might be pursued. He suggests a policy for procedure in this area needs to be defined.

7. Enthusiastically recommends a pool of agents for undercover operations be established. Money should be made available to finance such an effort without concern for who has agency jurisdictional responsibility of the information developed. In other words, men and money to fight crime without regard to agency prerogatives. The results obtained from such an undercover operation would probably be cheaper than buying the information as we are doing now. There is a need for a good surveillance crew without need to justify the expenditure. The information obtained would be of considerable value in Grand Jury hearings.

8. He believes that agents assigned to Strike Force should not be assigned to regular District work.

9. Strike Force organization is most satisfactory in ATF where the Representative gives direct supervision to the investigators assigned. But this is not the case in either Audit or Intelligence. The statistics on the time applied by these latter two indicates that less time than is required is being applied. Also, Audit and Intelligence have not set up separate groups to work exclusively on the Strike Force program.

10. For the usual reasons of fresh look and not influenced by District or Regional Management, the Strike Force Representatives should continue to be selected from outside the area of Strike Force operation.

11. Recommend the use of undercover men because it has worked so well in other cases (Pittsburgh). These assignments, however, result in the man being forgotten and not being considered for promotions. Along with this is a need for funds for buying information. There have been cases of informants who would have proven quite valuable but there was no money available for paying. If money were to be made available, it should be put in the hands of the agency and not the Strike Force Attorney, and most specifically in the hands of the Strike Force Representative.

12. It is their opinion a program has the District Office in control. Strike Force Representative is only advisory depending on the District for cooperation. Strike Force can be successful if the District will give full support to the effort. Strike Force Representative is unable to get the job done directly, but must depend on persuading the District people to do the job. The Representative has no authority but he should have. This is contrary to one of the reasons for having Strike Force whose theme has running through it a need to get the job done through direct dealing between agency and people. However, nothing has changed and there is considerable doubt that the job that is being done will be improved upon.

13. The concept of separate agencies cooperating is too damn cumbersome and recommend the idea be abolished and a single enforcement agency be set up to cope with organized crime. Strike Force Representatives should be placed in charge and report directly to a National Office body. If adopted, this would end most of the problems that now exist. There is an emphasis on direct supervision by the Strike Force Representatives to get the job done. The basic structure recommended would be from the Department of Justice to the Strike Force Representatives to the field agents.

14. The Representatives talked of being in the Los Angeles area for nine months and did not consider themselves completely oriented as yet. The two-year assignment may prove to be too short. Nevertheless, they would not have taken on this job if it were anything but a temporary assignment. If Strike Force is permanent, (why do Representatives question its permanency?) it will probably be necessary to make assignments permanent. This is admittedly a very expensive way to operate.

Contrary to District thinking, Strike Force Attorneys do not believe local management should have anything to say about the selection of Strike Force Representatives. IRS corruption in Newark was cited as an example where corrupt local people would have been involved with selections.

15. Further emphasis was placed on the need for Strike Force Representatives having some authority to act. They suggested that a more efficient job could be done with present resources if this were the case. There might be fewer cases but the results would be far better. The way things are now, it is difficult to know who exactly has responsibility for the job getting done. Someone should be asking, "Who's answerable for lack of program effectiveness?"

16. The men assigned from Audit were not interested in going on this work. Audits involving Strike Force targets were assigned throughout the various groups. It is mandatory that Strike Force audits be done in one place. In the beginning there were no aids for auditors in use to approach or work on an audit of this type.

17. The above is not true of the ATF work where there is little difference in the effort made on a Strike Force target compared with that made in other firearms investigations. Strike Force Representative is the catalyst for information in getting action.

18. Unless the guidelines for the Strike Force Representative are made exceedingly clear, including the specifics of his duties and responsibilities, it is a must that the Strike Force Representative come from outside the region. Otherwise it will be left to the Region to interpret the program and apply manpower to it as they see fit. The guidelines would have to spell out what is required of a Region or District contributing to a Strike Force operation.

During this discussion the usual reasons for Strike Force Representative being an outsider were advanced. It should be noted that the ATF Representative is a local man.

It would not be possible to combine the three activities of the IPS and use only one Strike Force Representative. The technical knowledges are too different to make this feasible. There might be a possibility of one Representative for Audit and Intelligence, in which case, the man with the Audit background should be selected because of technical knowledge needed.

19. Method of selection of Strike Force Representatives might be improved through the use of the interview process whereby District Management and Strike Force Representative concepts would be more in unison. District and/or Regional people should have something to say about who is selected as Strike Force Representative for their area. Candidates for Strike Force Representative need to have made available to them more information on just what the Representative's job is all about. There is nothing really available now.

Representatives entering Strike Force work for the first time should spend a few days with an on-going operation to learn just what a Strike Force operation is and how the Strike Force Representative goes about getting his job done.

20. Believe the civil processes available to the IRS are being effectively used. Would not recommend the assignment of a Strike Force Representative from the Collection Division. Quick assessments have been entered and collections made.

21. Discussing the subject of a full-time Representative, the Attorney has reservations on this need. Cited the ATF man with no other duties than coordinating is not necessary to full-time work. Believe Strike Force Representatives could get out and work cases and the Strike Force Attorney would be satisfied to have a contact or liaison between his office and the District Office.

22. Lean toward selection of Strike Force Representative from outside District but was not too strong on subject.
23. Because of limited number of ATF people working on Strike Force, would like to see the Representative supervising them. Have some question on the ATF participation. Would probably suffice to ask for their assistance only in special circumstances.
24. Strike Force Representative is a full-time job.
25. Believe it takes about two years to become familiar with an area. Would recommend against rotation of Strike Force Representatives. Weighing pros and cons, believe Representative should be outside man.
26. Believe assignments of Representatives should not be terminated after two years, but that they should stay on the job as long as there is a Strike Force. No strong feelings on where Representative comes from.
27. Would like to see some people assigned undercover work and be doing nothing but this for a year or more.
28. Have clear understanding of the Strike Force chain of command and realize evaluations of them are made by National Office Coordinator (the Intelligence Representative had been dropped from the Central Region Promotion Register). Actually, the Strike Force Attorney is the only person in a position to know what they are doing and how well.
29. See nothing wrong with being assigned to area providing they continue to answer to National Office. Assignments should not be limited to two years.
30. Strike Force Representatives spend about six percent of their time on liaison and coordination and about forty percent on case development.
31. Usual arguments were given for selection of Strike Force Representative from outside District. Should remain on job period in excess of two years.
31. Regional Coordinator does not seem to serve much useful purpose. Obtain their own information by dealing directly with other Strike Force Representatives outside area.
32. Opposed to local man being put in as Strike Force Representatives. Satisfied with the present structure and very pleased with the men now assigned.
33. Have no strong feelings on whether the Strike Force Representative is selected from outside or from a local district. A local man could possibly have the same advantages he is enjoying. Other agencies do not select from the outside. Qualification of the man should be dominant selection factor.
34. Believe the IRS work is going along very well. Would like to be more sure the surveillance effort of IRS is on people recognized as targets. Needs to know the information coming from that surveillance.
35. ATF contributions have been very valuable, particularly in the area of after-hour bars and some of the legitimate industry which appear to be racket controlled.
36. Strike Force Representatives all claimed to be enjoying the work. Most of them would not transfer to the New York area because of the high cost of living.
37. They had no strong objections to the concept of assignment being at the Strike Force city so long as they reported directly to the National Office. Have a concern over being dominated by District supervision with consequent loss of their independence.
38. Strike Force was set up June 1969, but did not get underway for almost a year. Did not believe the assignment of a local man would have reduced this interval of time.
39. The idea of a Collection Division Liaison man was endorsed as was the need for more lenient disclosure rules.
40. ATF is working on the same targets as Audit and Intelligence. From the basic list of targets ATF selects those most vulnerable to the firearms laws.

SUPERVISORS AND TECHNICIANS

1. The organization seems cumbersome. Group Supervisors should be more free to check information needed by whatever means necessary. They would feel better if there was one Representative to deal with. They doubt that the Group Supervisor could act as his own Representative. There are just too many other responsibilities and work for him to perform.
2. Believe Collection should be included in the Strike Force effort. Revenue Officers check records which could very well have information pertinent to the Strike Force effort. They should be as well informed as possible on the targets that have been selected. It would be advisable that before Collection closes an

account they get a financial statement. This would be valuable information and could also lead to a potential fraud investigation. It is advisable that identified members of organized crime be given special attention in the attempts to collect from them.

3. Not getting enough information from people making surveillance on targets. Made reference to information obtained by other agencies not getting to RA's. (Gave example of Licavoli wedding where guests were insufficiently identified. Why were they there? What is connection with Licavoli?)

4. Like idea of Strike Force Representative under National Office. Makes him better independent and able to deal with other regions and National Office. He can be critical of assignments made or agents engaged in effort. Not being accountable to District makes them more frank and honest in their appraisals and recommendations.

5. Feel the Representative should be selected from the local area.

6. Would like to see Strike Force Representative from District so that he would be more familiar with problems of area.

7. Favor selection of Strike Force Representative from within the District, but that he should report to the National Office. Consider the chain of communication from National Office to District as being too long. (During discussion it was evident these people did not have any clear understanding of Strike Force organization.)

8. In this area the Strike Force Representative covers four Districts and is, therefore, not available. Between his visits to the four Districts and the amount of reports he must submit, he is very often not available. May be that more than one Strike Force Representative is needed.

9. Strike Force structure seems awkward with too many layers and too many coordinators. Not able to make recommendation for change.

10. Prefer Strike Force Representative be man from outside. Representatives should not be terminated after two years. Believe if you eliminate per diem you would not have as many applicants for the job.

GUIDELINES

1. ROLE OF INTERNAL REVENUE SERVICE

The basic function of the Internal Revenue Service is to serve as a tax collecting agency and through its efforts in both the civil and criminal fields insure the greatest extent of voluntary compliance possible. It is known that compliance on the part of Organized Crime members is less than in any other profession or occupation, and, in fact, only token compliance is being realized. If this low degree is allowed to continue, Organized Crime operations will continue to attract the criminal element and make the criminal operations worth the gamble. On the other hand, if the profit from Organized Crime can be taxed then it becomes much less lucrative and the vital financial structure of the organization will be badly crippled. As we see it, this is the most meaningful contribution that Internal Revenue Service can make to the Strike Force effort.

We fear, however, that the Department of Justice attorneys in some Strike Force areas look upon our personnel as investigators and auditors at their disposal to use for whatever purposes needed. This attitude exists primarily because of Internal Revenue Service's sincere desire to cooperate and the immediate availability of our personnel. The full cooperation of other agencies would help alleviate this problem (See Participation section of this report). We do not intend to recommend that Internal Revenue Service lessen its cooperation. However, we recommend that the role of Internal Revenue Service be made clear with the Department of Justice, thereby causing them to understand that if Internal Revenue Service personnel are used properly that the overall effort against Organized Crime will be more effective. The life blood of Organized crime is untaxed money, and Internal Revenue Service can cut that line only by getting to the heart of the source and certainly not by relative insignificant criminal cases against the outer fringe personnel of Organized Crime. Our total effort must be brought to bear at the center of the Organized Crime organization.

2. ROLES OF STRIKE FORCE REPRESENTATIVE, REGIONAL AND NATIONAL OFFICE COORDINATORS

Our study revealed that in some instances an uncertainty on the part of Strike Force Representatives, Regional Coordinators and National Office Coor-

dinators existed with respect to their duties and responsibilities. If our effort is to be successful, these duties and responsibilities must be clearly defined. We recommend that each functional director, in conjunction with Regional and District officials, take necessary action to accomplish a clear understanding on the part of these employees as to what is expected of them in this program.

The coordinators should be available when a new representative is assigned to a Strike Force to assist him in setting up or revising the program. They should also help set up the selection of targets to be certain they are in accordance with the overall objective to be reached.

The study group will be happy to provide its other thoughts in this area, but we do not feel that we should outline the responsibilities and duties in this report because we feel that this should be flexible in order that each manager involved may assure that their needs are met.

3. PROCEDURES AND WORK TECHNIQUES INSTRUCTIONS

It is generally agreed that the techniques and procedures in Organized Crime and/or Strike Force cases must be different from those used in general audits and investigations if the fraudulent schemes of Organized Crime members are to be exposed. A large percentage of our auditors and investigators are carrying this type case for the first time in their career and quite frequently are lost in a maze of terms such as: "in depth audits", "penetrating investigation", "banking codes", etc.

It is recommended that each functional director take necessary action to cause proper techniques and procedural guidelines to be made available to each employee assigned to Strike Force work. Classroom training may be needed in some instances. We recognize that the Audit Division is in the process of preparing guidelines for this purpose. The guidelines should be completed and distributed to all Strike Force personnel at the earliest possible date.

4. PREMIUM AND OVERTIME PAY

Our study revealed that each Internal Revenue Service representative is receiving either 25% premium pay or equivalent overtime pay. Premium pay is not available to Internal Revenue Agents and it has been the practice of the Audit Division in some instances to authorize overtime pay for their representatives to the extent that the dollar value is equivalent to that received by their counterparts in Alcohol, Tobacco Tax & Firearms and Intelligence Divisions. This action was taken since it was believed that the Audit Division representative would be required to work overtime since he works closely with his Intelligence Division counterpart in this Internal Revenue Service team effort.

Based on our limited study of this matter, we believe that an in-depth study of the entire overtime pay procedure is needed. We believe that special emphasis should be given to determine whether or not there is a continuing and constant need for a pre-determined number of overtime hours or persentage of premium pay. We recommend that the functional directors take necessary action to make the recommended study and in addition, prepare standard guidelines for the use of premium and overtime pay for representatives and employees assigned to Strike Force work. The guidelines should fix responsibility for monitoring the need for and the use of premium and overtime pay. It was noted that in some areas, Revenue Agents are working considerable overtime and are not being paid for the additional work. This situation should be corrected. We strongly urge that compensatory time not be considered as a remedy to this problem because it would take away man years from an already short supply.

5. PERSONNEL ASSIGNED TO STRIKE FORCE WORK

Continuity is essential to the successful completion of Strike Force audits and investigations. It is also essential that agents and/or investigators working in the Strike Force area not be assigned duties in other Internal Revenue Service programs since Strike Force cases require the agent's full time and concentration. We recommend that agents assigned to Strike Force cases and Strike Force groups remain on the assignment unless compelling reasons dictate otherwise. The employee's career must be considered as a factor in such determination. (For further discussion, see Manpower section of report.)

We recognize that it is not always easy to transfer all cases in process by an agent at the time of his assignment to Strike Force work. However, an analysis

should be made of each case in his inventory and those cases that can be completed in a short time should be completed prior to assignment to Strike Force. If it is found that the agent has cases which will require a substantial period of time to complete, consideration should be given to reassignment of such cases. We noted that in those intsances where an Internal Revenue Agent kept non-Strike Force cases in his inventory, he normally spent more time on this type case than he did on his Strike Force assignments.

6. ORGANIZED CRIME AND STRIKE FORCE TARGETS

The Task Group found the little information available to define Organized Crime and the procedure for selecting targets was not adequate for the needs of managers.

We have heard Organized Crime defined from LCN to Black Panther. There is no universal opinion on just what constitutes Organized Crime. Without such a guide it becomes quite difficult for Internal Revenue Service to intelligently initiate and pursue its Strike Force effort. We do not suggest Organized Crime is the same across the board in each Strike Force city. But we do feel that something more definitive is required if work plans are to be more intelligently developed.

Related to the foregoing, is a need for guides in the selection of Strike Force targets. This may seem simple once you have defined Organized Crime, but we found within a Strike Force where there was agreement on the definition of Organized Crime there was considerable confusion on the selection of targets.

You will find in our notes several comments questioning why we are working on several well known LCN members. The method of selection of targets also gets considerable discussion from those we talked with. This sort of confusion deters from the concentrated effort so necessary to an organized pursuit.

Organized Crime cannot exist without corrupt public officials and the exclusion of these individuals from our organized efforts will mean we will always be fighting the problem piecemeal.

Lastly, there needs to be some guidance on the priority which should be assigned the differing targets and types of Organized Crime. The Internal Revenue Service manpower resources are not unlimited and if we are to use them wisely we need to know where we should concentrate our effort. We might otherwise go in all directions but never arrive anywhere.

We again note that Organized Crime will differ from Strike Force to Strike Force; and so too will it differ in the selection of targets and priority.

In another section of this report (Objectives) we discuss the deveolpment of a Work Plan. To do this job in an intelligent manner we recommend guidelines: (a) Defining organized crime; (b) for the procedure of selecting targets; and (c) assigning priorities to individuals and groups.

IRS MANAGERS

1. Certain manual provisions are not conducive to or in tune with the efforts of IRS. There is a need for reconsidering proceeding with a tax case while fraud case is developing and getting in and collecting tax where assessments have been entered. The idea that a fraud case will be jeopardized by tax collection needs to be reconsidered.

2. To date Audit has not developed any real good cases as they apply to the organized criminal. Racketeers have too well hidden their assets. They do not keep books and records, and file tax returns that are difficult to challenge. They are careful to live within their stated income and make it impossible to perfect a net worth case against them. There is probably some need for training to overcome these handicaps, but at this point it is not identifiable.

3. The concept of the Strike Force is good with reference to the sharing of information. A central pool of information which would be developed would be of considerable value. A source of information, Grand Jury proceedings, is not being made available, and this could be a valuable tool in pursuing identified criminals. Also, there is a change needed in the disclosure rules. Information available to IRS should be made more available to other federal agencies with a less regard for discloseure.

4. Special authority is now needed by Collection Division to proceed to ensure there is no jeopardy to criminal prosecutions. In dealing with members of organized crime we should take collection action without being so concerned with

prosecution. It is important that organized crime be hurt in the pocket as much as possible.

5. There is a need for resuming electronic surveillance with the law loosened on its application. In the past information coming from such surveillance was the best available and the best example was the information on funds leaving Las Vegas destined for Miami and the east.

6. There is badly needed some better guidelines on Strike Force. Too much of the information available has come from the informal sources and from the minutes of meetings. Don't know who is actually running Strike Force. The effort needs an operational man but doesn't seem to have one. No drive on our efforts is coming from the National Office.

7. The Strike Force Representatives today are not doing anything for the District. Their loyalties appear to be with the Strike Force Attorney and there is no control over their activities. They have been wanting us to do a lot of work which does not have a relationship to tax. We are apprehensive of criticism if we do not go along with the Strike Force Representatives and Attorneys.

8. Example was given of the ATF man undercover who was getting information on everything except tax matters. The cost of this operation was approximately $40,000 without a single result for the IRS. Under the Strike Force concept there is probably a role for the Representative but there's a need for everyone to know what it is. Believe he should be responsible to either the District or Region. This would place some control over him and limit his free-wheeling as is now the case.

9. Be more liberal in allowing electronic surveillance.

10. Some of these Chiefs were unfamiliar with the guidelines that had been issued on the duties and responsibilities of the Strike Force Representatives. Felt the Strike Force Representative could be of more value if he would get more information of value to the IRS. Believe he is more responsive to the Strike Force Attorney than he is to the District.

11. Not able to see the value of the Regional Coordinator. He has not provided anyhing to the District (ATF thought differently). This was also related to a need for guidelines regarding all participants in the program.

12. There is some question whether IRS efforts are going to result in tax violations. Suggested we should be less concerned with this so long as we are contributing to the Strike Force effort. Would like to see some means of giving credit to the IRS for these non-tax efforts.

13. We should raise the question of Representatives collecting per diem and premium pay, which is very costly.

14. In Newark there are actually two Strike Force operations in progress. One of which is that as normally conceived by the Department of Justice and the IRS. The second is one whose targets would qualify and in other cities have been under the direction of the Strike Force Attorney. This one, however, is under the direction of the U.S. Attorney, the targets of which have been political corruption. U.S. Attorney and the Strike Force Attorney do not get along at all and this, plus the demands of the two operations, leave the IRS in the middle.

15. The U.S. Attorney is practicing selecting a geographic area and then proceeding to develop political corruption cases. In his processes through special Grand Juries, he has obtained books and records belonging to the targets of his effort. These records are by court order restricted to the office of the U.S. Attorney. This makes it necessary for IRS people to make their examinations in that office. U.S. Attorney believes that the IRS people should be concerned with this type of investigation, but from a normal standpoint, the IRS is operating outside its normal boundary. U.S. Attorney considers his office is charged with investigating as much as is with prosecuting.

16. With due regard to the fact the IRS is operating in a non-tax area, the successes of the U.S. Attorney might indicate the IRS could consider departing from its traditional practices and taking a line similar to that advocated by the U.S. Attorney.

17. The District Director expects the Representative to assist in the development of the program including:

a. Selection of targets.
b. Continuous evaluation of the program.
c. Keeping the District Director informed.
d. Helping with decisions on cases.
e. Evaluation of people assigned to the program and the cases being worked by them.

He considers the Representative to be *his* man and looks on him as really a District employee.

8. Under the present system there is a need for a Strike Force Coordinator located at the Regional Office. This is the vehicle by which ARC's are kept informed of program progress, and in turn, are able to advise the Regional Commissioner.

19. Recommend the Strike Force Attorney has made clear to him the procedures and restrictions that are placed on IRS involvement.

20. Recommend joint guidelines be issued for both Intelligence and Audit, and not separate guidelines for each activity.

21. A selection of the Strike Force targets was a cooperative effort between the Strike Force Representatives and the District Supervisors.

22. Special Agents assigned are on premium pay and authority has been given for allowing overtime for Revenue Agents. Many of the meetings held by the RA's and SA's are held after normal working hours.

23. Did not select the targets, but were only asked to concur in the selection made by the Strike Force Representatives. Believe Audit and Intelligence should have more of a say in the actual selection.The original list which came from Department of Justice should be refined during the next year. We are not certain the present targets are the best possible.

24. Organized crime is viewed as being directly associated with the five families existing in New York. If an individual cannot be related to one of the families, he is not put into the Strike Force Program. Some identified organized crime (Kennedy Airport, garbage disposal) have not been included as Strike Force work because family association has not been established. It is probably time that we started thinking about an industry approach to organized crime.

25. The Regional Coordinator role has been diminished in comparison with what it was under OCD. There is some question of the need for both a Coordinator and a Representative. Perhaps his job could be meaningful were he to be the Supervisor of the many Representatives in this area. On some occasions the Coordinator has been helpful in getting information and solving problems. His primary function seems to be that of evaluating the program with particular emphasis on the use of manpower.

26. Have had good assessments from Audit but by the time we get around to collecting the money has disappeared. Our procedures too slow, allows violator to get rid of assets.

27. Believe all organized crime controlled by family or with their approval. Strike Force targets are limited to LCN members.

28. Fully involved with target selection.

29. SA's and RA's working well together and improvement being sought. Plan common library and housing for them.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. Not sure that Strike Force Representatives understand their responsibility. There is evidence that there is some confusion to the point where some of the Representatives are afraid to move. Strike Force Representatives should know everything that is going on and should keep in touch with Area Supervisors in particular.

2. They feel the entire organizational concept needs to be changed, and the roles for Representatives better defined. They had a feeling that the roles of Coordinator and Representative is "screwed up." They have found that different districts look upon the role of Strike Force Representative in different ways.

3. There is a need to make clearer the role of the Strike Force Representative. District Directors must understand the Strike Force Representative will be making suggestions and that he should be listened to. Generally there remains a need for improved cooperation. Strike Force Representatives do not need more authority.

4. Strike Force Attorney concept makes for more vigorous prosecutions since these Attorneys have a genuine concern for the program and its progress toward destroying organized crime. There are examples where the Attorneys lose sight of their advisory capacity and often get too close to the working agent. The role of the Attorney needs to be clearly defined and the limitations spelled out.

5. Organized crime is defined as any organized group dealing in illegal services which has been going on for a sufficient amount of time to influence the power structure (political). This would include anyone and extending so far as to

embrace the Black Panthers. Organized crime cannot be limited to direct connection with the LCN. Example of Pittsburgh was referred to where crime and political corruption did not indicate association with the LCN.

6. We are not using our civil processes as well as we might. We should be more aggressive in going after the money that has been assessed in cases involving Strike Force targets. We should avoid compromising. At some later date there will probably be a need for a Collection Division man to be either on or associated with the Strike Force Group.

7. There is too much review of cases in IRS.

8. Recommend guidelines be issued. Representatives feel they have no yardstick with which to measure how well they are doing job.

9. Feel cases should not be settled by Audit or Appellate where a Strike Force target is involved. Strike Force Representative should be included in settlement discussions. Also feel tax deficiencies on targets should be set up and never written off.

10. Do not see where the Regional Coordinator does anything for the Strike Force Representative. (ATF felt differently saying ATF Coordinator was a full partner in effort.)

11. Better guidelines with more detailed information in the IR Manual.

12. There is a need for guidelines and better definition of the duties of people involved with Strike Force.

13. There should be a system to us the Grand Juries faster. The IRS wants to approve subpoenas, but would like the process of approval speeded up.

14. The IRS review procedure on cases needs to be made simpler and faster.

15. In this area Strike Force Representatives are involved with joint investigations which is a cooperative effort of the federal agencies. Joint investigations are those on which reliable information has been received and believed worthy of the effort to be made. This would include a particular type of of racketeering where a principal has been identified and then the agencies set up a group to work on it. This is an unique effort having a lot of manpower going into it.

16. Though satisfied with the disclosure rules, would be more pleased to be able to put more of this information in the hands of the local people.

17. Does not look upon LCN as being exclusively organized crime. Believes anything organized should be included though not necessarily worked by the Strike Force. Can't say he has really made a firm decision on this as yet. Particularly as it applies to criminal activities—the Kennedy Airport, garbage disposal, and pornography.

18. Would like to see things speeded up but realizes he must live with a slow IRS procedure.

19. Representatives were knowledgeable on their responsibilities and the objective of Strike Force. They view the operation as being one which must continue for at least five to ten years.

20. When setting up the program the District supervisors were full partners in selecting the targets. It was not done by the Strike Force Representative with only the concurrence of the District people.

21. Would like to see efforts concentrated on LCN members. Have been spending too much time on gamblers that are not considered important or are that high up in the organization.

22. Except to sit down with District people in effort to get them to concentrate on LCN members. Believe this is hard core of organized crime.

23. Strike Force Representative should have better guidelines. Should be more clear on their procedures and to whom they are responsible. This would have avoided problem mentioned above.

24. ATF works different targets but they are members of the family. Higher-ups do not engage in the type crime in which ATF has jurisdiction.

25. Strike Force Representative's job is:

a. Liaison
b. Clearing house
c. Assist District people
d. Stay with case when it is important
e. Get information as needed
f. Furnish information to outside agencies
g. Orientations for District people
h. Act as information center for District

26. Have good relation with District. Would like to have authority for adding and removing targets. Would like to have some form of direct supervision of the people in Strike Force.
27. Program is not limited to the family members. Anyone identified as being engaged in organized crime is classed as a target.

SUPERVISORS AND TECHNICIANS

1. Auditors viewed all examination as being of either a return, a taxpayer, or a return to get information on a taxpayer. An expression endorsed by all was, "When you tell me what you want, you have told me the techniques to be employed."
2. They would like to have clarified the problem of information that is gained during a tax return examination which leads to criminal charges. At present there appears to be an inhibition over the requirement of warning the taxpayer of his rights. There is an indication that many leads are not being pursued as far as they might be. Employees on this detail felt that problems that exist today are bound to grow. Difficulty of audit or investigation concerning racketeers is difficult. Cases are not going to fall into your lap, a lot of digging is required and a lot of time that will have to be devoted. There should be an Audit Fraud Group established with a clear understanding of its function.
3. Problem. When an audit is initiated on the basis of the Strike Force Program, information on evidence that is developed may not be admissible because the taxpayer was not warned of his rights. Can these audits be considered as normal or are they directed toward proving frauds? A need for stated policy is in order.
4. Using IRS people on criminal work is beyond the scope of IRS responsibilities.
5. At the present time most auditors are carrying a mix of regular examinations and Strike Force cases and they do not feel that this is wise. Auditors noted that much time they spend on a joint investigation is wasted due to the fact they are just going along with the SA and not making real contribution.
6. All are assigned to a separate organized crime group.
7. Audit groups were reorganized on January 1, 1970. Agents assigned brought with them unfinished regular audits and some of these are still being worked. New cases assigned are not always Strike Force work.
8. Would like a better approach to what organized crime is now. Presently, it is Angelo Bruno or Italian associated.
9. Most information of value is coming from the Intelligence Division and not from the Strike Force Representative. Do not know what the Strike Force Representative function is. Have not received any assistance from the Representative.
10. There is a need for guidelines applicable to all levels involved in Strike Force. Gave example of those provided in the EO Program.
11. Selection of targets was by mutual agreement, which is also the case for changes in the list.
12. They are planning some net worth training. Otherwise would not have any need for guidelines or additional training.
13. RA's and SA's are enjoying a very good relationship. It is a completely shared venture.
14. Need to make some type change on letting a statute run. Decision in this area should be in the hands of Strike Force Representative than under present cumbersome system for decision. Many cases with no significant dollar return are requiring work for statute protection. Also, it is embarrassing to be asking taxpayers for two and three 872'c.
15. Recommend a team audit approach be utilized in Strike Force examinations.

D. MANPOWER

1. ADDITIONAL

In discussing the manpower being applied to Strike Force work district management expressed areas which were causing them considerable concern. Most serious was the decrease in man years being applied to the general programs because of the needs of the Strike Force effort.

District management, fully aware that Strike Force is of the highest priority, nevertheless, is apprehensive of a day when criticism will be leveled because of inattention to the other responsibilities of the Internal Revenue Service. It would seem appropriate that two actions are necessary to alleviate the doubts being lived with by district managers.

(a) They need, in writing, evidence that Strike Force is the number one priority work of the Internal Revenue Service. Having it implied in speeches or press releases has not filled the bill.

(b) They need assurance that the man years planned for Strike Force is fully endorsed by the Regional and National Offices.

With the exception of one or two Strike Force attorneys everyone agrees the amount of manpower being applied meets the present needs; that is, it is in balance with the current work load. But, in every Strike Force, and most particularly in the Audit function, manpower needs are on the increase. Going to work on a selected target sooner or later takes on a snowballing effect that not only involves the _____.* Very simply, the man year needs for Strike Force will be ever on the increase.

Finally, from a broad Internal Revenue Service outlook, some Strike Forces are in the early stages with the full impact of manpower needs not yet realized; and other Strike Forces not yet established. From our experience to date, we can with reasonable accuracy determine the total number of man years we are applying, and will be applying in the future.

In the pre-Strike Force years the Internal Revenue Service was hard pressed to keep abreast of a work load ever on the increase because of the Nation's increased economic and population growth. The Internal Revenue Service, already short changing its regular programs, did not need a new program to add to its trouble. But, Strike Force is doing just that!

We cite two recent examples setting precedent for what must be done:

1. The FBI given new jurisdictional responsibilities in the bomb disruption areas was appropriated funds for a thousand man years.

2. The Alcohol, Tobacco & Firearms Division charged with administering the explosives law was given an added 300 man years.

It should not be otherwise for the Internal Revenue Service. If we are to properly attend our normal mission of tax compliance, we must be given the supplemental funding for man years, space and travel for the added burden of Strike Force participation.

The Task Group recommends the strongest possible efforts be made to obtain this supplement.

2. ORIENTATION

The Task Group was not satisfied that adequate steps were being taken to indoctrinate those employees assigned to Strike Force work. Here and there we found a few instances where participants met together to be advised of the role of Strike Force. Some received talks on the laws enforced by participating agencies and in two cases a brochure had been prepared on this topic.

But, there was no uniformity in procedure to orient the Internal Revenue Service employees. The IRS people are not sufficiently knowledgeable on the significance of Strike Force and this has caused a detraction of their interest. Also, some real evidences exist which are detrimental to their being too enthusiastic. We refer to:

1. The prior decline of emphasis of the OCD Program which was similar to Strike Force.

2. Noted lack of assistance coming from other agencies.

3. A less than called for enthusiasm by upper management. Probably more imagined than real, but nevertheless the impression given.

4. In Audit, lower grades and an absence of promotional opportunity (more on this later).

To overcome this condition the Task Group recommends:

1. An orientation session for every employee assigned to Strike Force work.

2. A booklet on Strike Force for distribution to these participants.

We suggest both orientation and handbook be similar in content containing the following as the minimal information:

1. Statement of Commissioner (notes from speeches and meetings).

2. Statement of District Director (should open or attend session if possible).

3. The Strike Force concept.

(a) President's vow to fight organized crime.

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(b) The organization. Relationship of Department of Justice and other agencies.
(c) The operation. How it functions—the Strike Force attorney.
4. The Internal Revenue Service role. Why we are in it and what we can do.
5. What to expect from others.
(a) Strike Force Attorney.
(b) Strike Force Representative.
(c) Other Agencies.
6. Your job. How it contributes to the objectives.
7. Your other job. Aiding other Internal Revenue Service functions and outside agencies. (List of Laws enforced by others.)

3. CAREER OPPORTUNITY

The need for a promotion ladder and better grades is most critical to the Audit Division where the Task Group found the situation less than adequate.

It is incongruous to tell people how very important the Strike Force effort is (see above) and then place them in work which provides limited grades and a sketchy promotion ladder. Revenue Agents for the most part are reluctant to go into a Strike Force group. And good men are lost to the effort because to advance their career it is necessary they leave Strike Force work.

The Task Group found some effort being made to cure this problem and there was some success. But, better opportunity for advancement through an improved allowance of higher grades for Strike Force work needs an across the board application.

4. SELECTION OF PERSONNEL

Here again the problems that exist are in the Audit function, not with Intelligence and Alcohol, Tobacco & Firearms people who all seemed enthusiastic about Strike Force assignments. But, the Revenue Agents held attitudes covering the full spectrum from "this is the greatest" to "just another job." The Task Group believes if the career opportunities are improved, for the most part the attitudes and enthusiasm of Revenue Agents will likewise be heightened. But, more important, we think better people will seek to get into Strike Force groups and will be more inclined to stay with it.

Once the career ladder is strengthened managers will be in better position to be more selective. It is now time to give more consideration to listing selection criteria (standards) for identifying agents we desire to work on Strike Force. Ability is, of course, a first requisite. What we mean by ability in this case are the qualities of the most successful and productive agents now assigned fraud or Strike Force work. An examination and evaluation of their talents would automatically produce the ability standard.

The next most valuable characteristic would be the agent's enthusiasm for the work. His interests should be geared to the Strike Force effort, where his success can often only be measured in the part he plays in an overall effort and not the measurable and concrete change rate and dollar return. He needs to be more the suspicious prober, never quite satisfied he has completed the task. And finally, as told to the Task Group, he must have the overriding ability to "think dirty."

IRS MANAGERS

1. It was not easy to program the number of people necessary in a Strike Force operation. It is dependent on the situation at the time and it is different at different times.

2. District Director is concerned with how much manpower needs to be applied to Strike Force, and how long it will be before we can see results. He is particularly concerned as this applies to the Audit Division efforts.

3. Auditors assigned to Strike Force work are doing that at the exclusion of other assignments. Feedback indicates the individuals so assigned are very interested in this work. From the Intelligence Division standpoint, Audit application is productive and the referral rate is very good. There is some question that Audit people are not finding the work as sexy as they imagined it would be. The change rate is not as productive as anticipated. Information is not being sent to them from other activities. Revenue Agents have been sold by management on the Strike Force concept of criminal violations as opposed to dollar return. Dollar production on Strike Force examinations is below regular examination. Coopera-

tion of District management and the Strike Force group is good and working smoothly.

4. People assigned do have a commitment to the program since they view it as a District operation.

5. We need to be able to get a better fix on manpower requirements at the beginning of a year so that we might build it into the overall District program. A substantial application of manpower to the Strike Force operation would result in the regular program showing up badly, and this could result in unwarranted criticism. It is an existing fear of District Management. In Las Vegas a large amount of Audit time is being applied to joint investigations which has a serious effect on the regular program. It is, of course, permissible to deviate from the fiscal year plan so long as notification is given at the earliest possible time. Intelligence Division plans to put 50% of their time on regular work, 25% on Strike Force, and 25% miscellaneously applied. This is actual work time and does not account for trainees. Despite the above comments, neither Audit or Intelligence feel there is a real conflict or that there will be criticism on the use of resources.

6. In addition to Strike Force there have been other special programs and all these together are taking a considerable amount of manpower away from the general program. At this time cannot measure or give an opinion on the manpower that is being applied to Strike Force. Regardless, in Strike Force we will probably have to continue to apply a generous amount of manpower.

7. The only recommendation for training would be to instill in the auditor to think "dirty."

8. Have concern for the manpower that is being applied to the program. Audit has 25 percent of their people on Strike Force and, as a consequence, the other programs are suffering.

9. There remains a lingering doubt about the manpower that is being applied to Strike Force which is causing a neglect on other programs. There is a suspicion that some day criticism will be leveled.

10. Insure that grades of Revenue Agents in Strike Force are equal to those in other Audit work.

11. The District Managers and the Strike Force Representatives meet every two weeks to discuss the Strike Force operation and plan for the future. There is a concern about the manpower being applied to the Strike Force Program. The needs of Strike Force keep going up and, as a result, manpower applied to the regular programs is decreasing. This problem has been brought to the attention of Don Bacon and the Commissioner. However, it was clear that the Commissioner considered Strike Force a number one priority program.

12. Manpower predictions to date have been reasonably accurate. Thus far the demands of Strike Force have not exceeded what was anticipated. This is not to mean that it is not recognized that manpower contributions to Strike Force are taking away from the general Audit program and that the average yield on dollars and change rate is poor in comparison. It has also been noticed that manpower requirements are slowly increasing.

13. The Strike Force concept seems to be an improvement over the OCD Program, if for no other reason than the emphasis that has been placed on our participation. It is significant that the Administration, Commissioner, and Regional Commissioners are emphasizing the importance of Strike Force.

14. Out of the Grand Jury hearings on corruption in Hudson County, the U.S. attorney has a room full of records; the best estimate available is that it will take three years to audit these records. Later, these records will have to be reported on and returned to the sources from which they were obtained. Again, by estimate, 50 to 20 man years per year will be required to get the job done. And even now, a new U.S. Attorney is anticipated for Newark with the result the IRS *may* get itself into a serious bind.

15. RA's and SA's assigned are the best qualified for this type work. All of them are volunteers and the promotions have been high.

16. The 45 RA's are adequate for the Strike Force, but this leaves only 150 men for all other Audit programs. If Strike Force demands keep increasing, there will be further letting go in the general program.

17. The shortage of manpower has made it necessary to take less than the best people to work on Strike Force. Would prefer to have people experienced in fraud work. Presently using some people who are still in a trainee status. Do not consider RA groups to be fully productive as yet.

18. Management is looking at Strike Force program the same as they look at the general program: overage cases, dollars, change rate.

19. Revenue Agents selected for the work are those who have indicated an interest in fraud work and some who indicated interest by the number of referrals they had made to Intelligence. Two-thirds of the auditors volunteered for the assignment. Criteria used for selection, for the most part, a genuine interest in this type work and the talent for it. There is an opposition to rotating agents in the Strike Force.

20. The workload does not seem to be more than what can be handled. There are about 5,000 names in the pot, but this has been narrowed to about 1200 people who will be given audit attention. Of these 1200 there has been a priority placed on them in categories of A, B, and C. The highest category has about 300 names. Example was given where an "A" target would not be indicative of productive work, so the effort would be sufficient to a "C" target in order to work up to the "A" man.

21. As expected, proceeding in the Audit program has a mushrooming effect. Working on an individual leads to learning more of his financial interests and associates, and thus, requires further audits of these entities. As a consequence, it is probable considerably more manpower will be needed in the future, but this may be offset by knowledges that will permit being more selective of targets.

22. Program is revised every month with names being added or eliminated as we become more knowledgeable. At present there are many more names being added than deleted.

23. The people assigned to Strike Force were considered most able and were among the most experienced, and this has caused a loss in other program areas. Because of the high priority of Strike Force there was little else that could be done.

24. In the process of establishing an Enforcement Branch in the Audit function with the hope of providing a new and improved grade structure at a GS–12 and 13 level. This should provide opportunities equal to those elsewhere in the Audit Division. Looking to have a promotion ladder in this fraud work which would keep good men on the work rather than their going elsewhere for promotion. There is also hope that supervisors assigned would be at the GS–14 level (now have 3 of 9).

25. RA's and SA's must break from traditional approach; need to cope in new way with the organized criminal. We need the benefit of knowledges that have been gained by organizations that have been investigating organized crime (FBI, local police).

26. Participated in selection of targets. Wanted to be sure we could handle the number. A little worried we may be adding more than can be handled.

27. Worried about the whole Compliance Program slipping without relating it to cause by Strike Force. We need a complete and fresh look at everything we are doing and how it is being done.

28. Consider the Strike Force Program as No. 1; the Commissioner has made that clear.

29. Major concern with taking on more targets than can be handled. What is to come out of program if new targets are put in? Could be a need for more manpower assigned.

30. Program is long-range effort. Presently expanding and should grow considerably during coming year. Will require application of more manpower. No doubt reflecting on general program.

31. Have Audit Group working exclusively on Strike Force—13 men. Will have serious manpower problem because of Strike Force and airport case.

32. Selection of Agents for usual reasons. Their people on program would rather be elsewhere due to lack of interest in work and promotion limitations. View program as long-range.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. The workload of the District Office conflicts with the Strike Force need for manpower and resources.

2. There is a manpower problem evident by there not being enough Agents assigned for the total job. Often previous priorities take precedent and a current request must be deferred. In time it will be possible to project with accuracy the manpower necessary for the Strike Force effort. Even though these are the circumstances as they exist, there is a general feeling that the right amount of manpower is presently being applied.

3. Although realizing it is a necessity, due to the nature of the work, he feels investigations take a long time for completion. Because of his criminal back-

ground and experience in other fields, this causes him some frustration. He sees a problem where Audit people work too many different cases: that is, a combination of Strike Force cases and the regular workload. This causes a loss of time and lengthens the time for completing the investigation. He suggests there is a need for a greater number of auditors working on Strike Force.

4. There are some evidences that progress is being made toward a more effective operation. The Regional Office is very responsive to requests for manpower, and the District Office is moving toward special groups to work on Strike Force. An existing problem is the need to go to Region for manpower rather than being able to go direct to the District Managers. This is a requisite according to National Office guidelines.

5. To improve the Strike Force operation, it would be advisable that better grade be permitted for RA's. Some auditors have been told that the type of audits being conducted do not justify higher grades. Suggest it would also be advisable if the man assigned to the Audit Strike Force Group did not do any of the regular Audit work, which is now the case.

There is no big training need. Perhaps a little extra effort on the methods for developing net-worth cases; some briefing on examining bank deposits.

6. We suggest that auditors not be assigned to the program if they are engaged in law or CPA study, which is an indication the auditor maybe _____.*

7. Audits being conducted are proving very effective. The change rate is high although the dollar return is not. Revenue Agents assigned have been advised on what to look for and given special guides on conducting Strike Force audits. Believe the auditing will be further improved when all RA's are located in one group and doing Strike Force work exclusively. There is some indication that the individual workload may be getting too heavy. It will be necessary to be more selective or add more audit manpower. In starting a Strike Force, would recommend that the targets be limited in number.

8. Manpower from the Intelligence Division has been hampered because of its diversion to work on bomb threats and sky marshal duties.

9. Of the 45 Special Agents assigned there are no more than 20 working on Strike Force. Audit has a large volume of cases but appears capable of keeping up with workload.

10. Would like to see an undercover operation and have been asking for this since arrival.

11. Consider relationship with District Management good. Feel the new Director and Assistant are more interested in program than was case in past.

12. Feel more manpower could be applied which would enable Strike Force to take on more of the targets.

13. ATF man is good and has excellent contacts in the area. The trouble is the targets are not involved with liquor and do not carry guns so ATF will have difficulty making cases. Actually, this is true of most Strike Force agencies. The ATF cases that have been made are all minor figures of organized crime. A present case involving undisclosed interest in the liquor business should be a good one. Because of past relationships with local and state police, ATF is providing excellent intelligence.

14. Do not believe the District regards Strike Force as the number one program. Believe District should furnish more manpower, but they have said they are unable to do so. ATF is the same. This is the case despite the fact the Commissioner has spoken here and made clear the importance of the program.

15. People assigned to program have an attitude which is generally acceptable but is not an enthusiastic one. The attitude in the District is a reflection of the District Directors' feeling. One District Director is high on the program, a second is against the program, and the other two are lukewarm.

16. Manpower problem is serious, due mostly to the drain of manpower by the U.S. Attorney who seems to have priority. He is going from one case to another keeping a large group of Agents tied up and there is no control by Strike Force on the investigations he is conducting. Many of the things he has IRS people doing should be done by the FBI because the work is investigative and not tax related. We have had to shortchange work on some high priority targets because we cannot get enough manpower. Some relief is in view as we understand the District has authority to hire ten to twenty SA's for Strike Force.

17. U.S. Attorney has requested the examination of the records of 300 contractors.

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18. Consider the quality of the agents assigned to Strike Force as very good.

19. Should provide those participating in Strike Force work with information on the duties and responsibility of other activities.

20. There have been demands when the manpower was not sufficient and there are things that we have not been able to do. This has resulted in our having to take extra care to take on only as much work as we have manpower to handle it.

21. Cooperation of IRS has been excellent to the point we sometimes feel we may be overdoing our requests.

22. Commissioner Trower had visited the New York District people and stressed the importance of the Strike Force work. This had a lot to do with getting the cooperation of the IRS and cut away many of the problems that exist in other Strike Forces.

23. Sees a problem in the future when additional requests for manpower are needed. Wonders whether all of the branching out that IRS is doing will be sufficiently staffed.

24. Feel we are making an adequate contribution to the Strike Force effort. It appears we will have some very valuable cases which will contribute to the fight against crime. In our efforts we are already running into crimes that are referred to the other agencies. The Strike Force concept makes us completely knowledgeable of other agencies' responsibilities enabling us to pass on good leads for their investigation. We are trying to put together a package on other agencies' responsibilities for the use of everyone working on Strike Force.

25. See the workload as being manageable. The principal targets needing immediate attention are getting it, and those of lesser stature are in a proper priority and will receive attention as resources are available.

To date we have limited our attention to the LCN members. In the future, organized crime outside the LCN will get attention. Suspect that most of the organized crime being talked about does have an association with LCN, but cannot be directly associated at this time.

26. Satisfied the District is applying the right amount of manpower. IRS has the greatest commitment to the program and has applied more manpower than anyone else.

27. Need more man years supplied for program. There are additional cases that should be worked but manpower limitations prevent this. Agents assigned have been pulled off for Air Marshal duties. These assignments should have been given to other people. All but one ATF man was assigned to Air Marshal duty.

28. We need to be going after more of the targets. Though working on the leaders now, more of the lieutenants need our attention. District has said they cannot put more men on the program because other programs are suffering now. Intelligence feels 32 men are required now. Believe it takes two RA's for every SA assigned. Case load being carried by RA 's is too much for this type work (10-12 cases).

29. Would like to have less formality in getting targets added. Procedure for doing this is too cumbersome. District is cooperative but are not giving targets proper attention because of manpower limitations

30. ATF has no manpower problems. If investigations are generated, manpower will be supplied.

SUPERVISORS AND TECHNICIANS

1. Revenue Agents felt they were detached and not involved in a group effort. They have a need for more knowledge of what others are working on in order to coordinate their efforts and share information coming to their attention. They recommend meetings once a month to review accomplishments, know pending cases and names that are being worked on. Suggest Revenue Agents and Special Agents be housed together so they might share knowledge and ideas. They would like to see a reference file of names established which come into play during an audit or investigation.

2. These participants seemed knowledgeable of the Strike Force effort and quite interested in it. Auditors talked and gave evidence of having good techniques for getting the job done (I was impressed by this group's enthusiasm.)

3. Problems: Audit examination work is not nearly as productive as regular examination. Grades are restricted. The situation of getting a large change corporate case is absent. They are leery of criticism of time being expended on fraud audits. The standards of measurement on the effectiveness of audit need to be revised and new criteria applied to organized crime examinations. There is some feeling that the program is not considered highly by the District. There is

a lack of recognition for their efforts. In some cases they feel promotion opportunities are limited. The Audit effort is a field of the regular Audit concept of change rate and dollar return. Strike Force efforts may be just another side program of the IRS and that in two or three years it will be forgotten. Management must demonstrate by word and deed that this is an important program.

4. In forming Strike Force groups the best men were selected. There is no plan for rotating them so long as these agents show an interest in the work and the ability to perform it well. They will be given the same consideration for promotion as anyone else. Selections for promotions thus far have been based on merit without consideration for present assignment. Some of the men assigned have doubts about this and have expressed them, but believe this is a throwback to the past when agents assigned to the Fraud Program were all but forgotten.

5. Auditors feel there is a need to pick the right man for the job since most audits under the Strike Force program have an objective differing from the usual practice of change rate and dollar return. The auditor needs to feel a sense of accomplishment not related to dollars and have a genuine interest in the criminal aspects of the cases.

6. Individuals assigned to Strike Force work have no feeling that promotion is limited.

7. Nothing special has been brought to the Strike Force program. The cases are being worked (audited) in the same manner as their regular cases. Some auditors feel that it is just a new program titled for the same work. Their experience leaves them to suspect this is a program like so many in the past and too often in two or three years is dropped. Management says they are behind this program and emphasize its importance, but have not been convincing. They have heard the stories of the Buffalo operation which was reported as being not very successful, and as of the latest information not being continued.

8. Program needs to be given greater emphasis through a better promotional plan by supervisors and managers, and that would mean right up to the Commissioner of Internal Revenue. There's much disillusionment with court actions and the example was give that only one judge in Los Angeles would give sentences on a tax case.

9. Detroit Strike Force since 1967, but not every effective until about January 1970. Just now starting to work top figure, Licavoli. In January 1970, new supervisor assigned. Grades improved. Some RA's removed because of lack of interest; new men assigned based on having fraud experience. Agents now assigned are interested; willing to tackle any job, accept new challenge. Some supervisors do not like Strike Force work because it is not a field of normal Audit concepts.

10. Reorganization of Strike Force group brought about because former supervisor had no interest in Strike Force type work. People coming into group have genuine interest and not for promotion alone. Believe they can really do a job here. Supervisor willing to try new ideas; gives agent a lot of freedom. Do not see any concern for change rate or dollar return. Would be surprised if there was an criticism based on change or dollars.

11. RA's need to know more about laws enforced by other agencies; they might be able to offer informational assistance to them. Information which has been given on other's responsibilities has been helpful.

12. Strike Force audits are a little more difficult. Experience best teacher; no special training needs identifiable. Recommend Black agents be obtained; would be extremely helpful in narcotic and bookmaking targets.

13. Suggest occasional meeting or seminar to (1) learn all laws of participating agencies (2) get examples of specific successes, techniques (3) exchange information, direct contact for questions or information.

14. Individuals under investigation are associated with organized crime. The number of cases is adequate, agents are not over burdened.

15. Of the five groups in Detroit, two are working Strike Force material, one on organized criminals and one other on wagering. For the future it appears the case work will be more than present assigned manpower can handle, mostly because Audit is getting to good referrals.

16. Believe Intelligence Division Chief has conflict on assigning manpower because of needs in Strike Force and regular fraud workload. Have heard Chief complain about Strike Force using too much manpower. He is strong person who wishes to run own programs; he questions contributions of other agencies. He does consider Strike Force as a top priority program.

17. Agents assigned on basis of talent and interest in organized crime. They would not prefer regular fraud work. Feel promotion opportunity is greater on

Strike Force assignment. Do not believe Strike Force is second rate or a temporary program.

18. See problems in Audit. Talent not what it should be. Promotion restricted—know of man transferring out of Strike Force group to gain promotion. Some leaving were best-qualified to do fraud work.

19. RA's on Strike Force are not volunteers. We tried that and couldn't get enough manpower.

20. Selection of people is based on their ability, skills, and interest in the work. We operate with the belief that we do what we are told to do and nothing else. We have no say in what is done or what the program should be. The thing is that there are other programs more important than Strike Force. Strike Force would probably rank second or third in importance.

21. Opportunities of the RA's working on Strike Force was much less than those working on the regular Audit Program. As a result, promotion is slow in Strike Force and we are think of a rotation system to improve this.

22. Audit has serious questions on promotion opportunities when assigned to Strike Force. Size of cases being worked are not significant and tend to suppress grade. If given the opportunity, most auditors would avoid Strike Force assignment.

23. Strike Force Program has caused low morale with the reasons given as: Revenue Agent grades, overtime, retirement benefits. Believe Strike Force Program is looked upon as second rate and is not attracting the best RA's to it. Reference is made to the OCD Program which was discontinued after a few years and never provided an adequate grade structure.

24. Workload has been increasing and manpower applied has also increased.

25. Agents assigned like the work and there have been no problems. Assignment is not a detriment to promotion.

26. Strike Force cases are more difficult to work because of the reluctance of witnesses and the lack of books and records. Would get more satisfaction making an LCN case than the regular type. Find the work more challenging.

27. RA's believe they are moving more toward being an Investigator.

E. Inter-Agency Participation

1. FULL PARTICIPATION

As we viewed the overall operations of our Strike Force we were often forced to come to the conclusion that we were trying to fight organized crime with a disorganized effort. The assignment of representatives from various enforcement agencies to the Strike Force does not automatically result in a team operation. We noted many areas of misunderstanding and confusion as well as certain areas of open non-cooperation.

(a) There must be a better understanding of the role each agency can play in the overall accomplishment of the Strike Force objectives. Each agency must understand what information the other agencies need if a team effort can ever exist. Most of the information exchanged to date has been of very limited value to other agencies. IRS people felt without exception that we were giving much more than we were getting.

(b) Jurisdictional authority should be tempered with the keen desire to see that we get the job done by whichever agency has the best chance to make its charge stick.

(c) The actual participation by each agency should be made known to the representatives of the other agencies. There were many indications that IRS felt they were providing 80% to 90% of the effort and yet we are certain some other agencies feel that they are carrying the burden of the program. The lack of information creates dissension where so much cooperation is needed.

(d) The representatives assigned to this program from other agencies must have this as their sole or at least primary duty. The continuous pulling them off for other assignments makes them ineffective and they quickly lose interest in the program.

(e) The Strike Force attorney as the principal coordinating agent must understand and recognize the role of each participating agency. We noted strained relations in some instances due to failure of the attorney to fully understand the strengths and limitations of the agencies involved.

(f) Each agency must assign a person who has the ability to get along with others if we are to have an effective organization. This is not the place to assign

ineffective or hard to get along with individuals. If it becomes a dumping ground, the program will suffer.

(g) The representative should have a direct line to someone in authority in his own organization so that action can be taken promptly as necessary. Nothing destroys confidence as much as inaction.

(h) The representatives should be as permanent as possible. It takes time to build up trust between individuals from different agencies. The constant rotation of these people has a strong deterrent effect on active cooperation. This is particularly true with reference to the Strike Force attorneys assigned to the program.

(i) Many individuals felt although the FBI cooperates with the Strike Force they are not really a part of it. It is believed that a full time representative from the FBI would go a long way towards convincing many people that this is really a cooperative effort by all enforcement agencies.

(j) A contact should be established at some level, probably at the National office, to secure information from governmental agencies that are not an official part of a Strike Force. What we have in mind is information from SEC or HEW and similar agencies.

(k) Regular meeting should be held where there is a free exchange of information concerning the targets under consideration. This should include a discussion as to the best way to take enforcement action against an individual Organized Crime member.

2. ON SITE REVIEW

If we are to have an effective enforcement program we must find a way to reduce the time lapse from the comparison of the examination to the time of the final decision concerning prosecution. We submit that one way of doing this would be to institute an on site review of all Strike Force cases on which criminal prosecution has been recommended. It is our conviction that this approach would result in the following benefits:

(a) By getting all concerned parties together at one time, we could resolve questionable items on the spot and thus not only speed up the review process but have a more comprehensive review. Nothing beats having a face to face discussion with the agents who did the work and not have to rely solely on the written word.

(b) The enthusiasm of the investigative personnel would increase if they could see a prompt decision on their recommendation. This would create a more vigorous and active participation on the part of the agents. Interest is lost when it takes an extended period of time to realize the culmination of a lot of hard work.

(c) If criminal action is not recommended, then aggressive steps can be taken to institute necessary civil action. This would improve our chances of collecting any tax determined to be due.

(d) More information will flow in if prosecution is instituted immediately upon conclusion of the examination. The momentum-generated by a vigorous investigation will carry over into a prompt prosecution. This should reduce the time necessary to prepare for trial if we strike while the iron is hot, and increase our chances for a successful prosecution.

(e) Witnesses developed by the agents should be of more value if their services are utilized within a relatively short period of time. Delay in bringing any case to trial invariably works in favor of the defendant.

(f) We recognize the added cost of having various review personnel assemble at one place, plus the possibility of having to make visits to several diffrent locations within a reasonably short period of time. We do not feel that there will be a sufficiently large number of cases that fall in this category to create any problem in this area. The putting away of any organized crime member even a few months earlier would justify any inconvenience we may experience.

3. DISCLOSURE POLICIES

Are our traditional disclosure policies compatible with the Strike Force concept? We need a study made and guidelines issued so our pepole will know the action they should take in this area.

The following conditions were noted during our visits:

(a) We found that no two Strike Forces had the same understanding as to how much information could be disclosed by IRS to other agencies. Some felt our disclosure prohibitions were limited to only information on the return whereas others felt it extended to any information secured during the course of an examination.

There is also the problem of bringing in local and state police. Many feel we can never control organized crime without bringing them in to some extent.

(b) There was a reluctance in some instances to request authority to disclose information concerning related taxpayers. This results in a feeling of distrust on the part of the other representatives when we appear to be giving them only partial information.

(c) Under the present method of operation we could be faced with the necessity for the revenue agent to advise the taxpayer of his constitutional rights when he makes his first contact. Just how much is Intelligence involved before the examination is started? We need guidelines in this area.

4. USE OF GRAND JURIES AND TITLE III INFORMATION

Do we really have a problem in this area or is this another of our self-inflicted wounds that we so often impose on ourselves to make our job more difficult?

(a) There is a strong feeling that we have placed an unnecessary obstacle in our dealings with the criminal element by not taking advantage of all the legally secured information by the use of special Strike Force Grand Juries and Title III activities. We cannot limit ourselves to the old established procedures for securing information in dealing with a taxpayer that is using illegal means to keep his activities hidden.

(b) ~~It is essen~~tial that all members of the Strike Force team be familiar with current laws dealing with the securing of information so that a good case will not be lost because of a technical violation.

E. INTERAGENCY PARTICIPATION

IRS MANAGERS

1. To his knowledge, all agencies are cooperating in the Strike Force effort, and this includes the FBI. Recommendation for a more effective operation that local enforcement effort needs to be embraced into Strike Forces; however, in Cleveland they have had an experience indicating local people were leading information of Strike Force activities.

2. People assigned to the Strike Force program are dissolutioned with the amount of information contributed by non-IRS agencies.

3. District Director thought the Strike Force was a united effort by all of the involved federal agencies, but it has been coming to his attention that this is not the case. Other agencies are not cooperating.

4. There had been a recent meeting of all Agency Representatives to review responsibilities of each. Cooperation between agencies has not been too good. It appears at this point that the only work being done is that of IRS. There are serious questions of the U.S. Attorney being on the team. From his comments he does not believe in the Strike Force concept. He has stated that he liked the Intelligence Division as long as they stayed on their regular work, but couldn't see their devoting time to the Strike Force effort. There is a considerable rift between the Strike Force Attorneys and the U.S. Attorney.

5. Not able to see where there is much exchange of information between agencies. It seems the IRS is carrying at least 70 percent of the workload.

6. An example of non-cooperation is the FBI participation in Las Vegas. The agent sits in the meetings, takes notes, but offers nothing.

7. Jurisdictional rights do not help in the exchange of information. Agencies are careful not to give away information on something under current investigation.

8. In the efforts to date it appears that the Strike Force concept has been lost in this area, as it pertains to a concerted effort by federal agencies. It appears the IRS is doing it alone.

9. Strike Force is an IRS operation.

10. There seems to be little information that comes from the other activities in Strike Force. Investigations are started with little or no background information on the targets.

11. Do not believe the program is developing as much information as is needed. Does not appear other agencies are contributing as much as they could. Strike Force appears to be an almost total IRS effort. The files are showing little more than what is being contributed by the IRS. Everyone was of the opinion that everything is going out but nothing coming in. Many complaints were registered on this subject.

12. Do not feel other agencies are fully participating. Consider Strike Force effort 80 percent IRS.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. There is more cooperation now than there was in the past. Relationships seem to be coming around (comments of the Coordinators left me with a feeling that there is a long way to go).

2. Examples were given on Strike Force meetings that are held and which include IRS and those from outside IRS activities. In some areas non-Federal agencies are included such as the A.B.C. in Florida, and the local police in New York and Buffalo. In these cases care is taken on discussion topics to insure disclosure rules are not violated.

3. Cooperation between participating agencies is rated as excellent. The best of it is a result of the close personal relationships between individuals that are developed. A concern that exists is what happens to these relationships if reassignments are to be made every two years. It would then appear that the same relationships would have to be developed with a consequence the assignments are little more than a two-year training period. As various Representatives work together, they become more familiar and therefor more trustful, and consequently, become much freer with the information they have. The most significant aspect of the Strike Force concept may be this mutual trust which develops. Also, through their association the Representatives become more familiar with the responsibilities of other agencies.

4. There was discussion about the U.S. Attorneys and their lack of cooperation. An example was given where local people from other agencies (FBI, Customs) were sat down by the U.S. Attorney and told they deal with Strike Force at their peril. As a consequence, several of these Strike Force Representatives are not committed to the Strike Force.

5. Comments on other activity Representatives:

Customs' man is from outside the local area. He is not given any men to assist by local management. He is now on and has been on Sky Marshal duty for the past four weeks.

In the case of the Secret Service Representative, there is a belief U.S. Attorney got in the way of his being effective. There is an individual in the U.S. Attorney's office who finds law enforcement officers guilty of anything and everything. Since the start of the Strike Force operation, there is no evidence the Secret Service man has done any work.

Believe he is operating with fear. Previous Strike Force Representative was removed because U.S. Attorney did not want him in the area.

Labor Department Representative does not have the time to do a sufficient amount of work although he has made a couple of good cases.

Post Office Representative has too many other duties.

Immigration Representative is doing a good job and is considered best that the Lead Strike Force Attorney has seen. He works the cases by himself.

The FBI Representative does not participate very much. He brings only what is required, attends meetings, but doesn't say anything.

Narcotics Representative not in the best graces of his local office. He's hard working, but somewhat disorganized. He does not get very much help from the local office, and only recently was admitted to meetings of Narcotics people. He needs a couple of men to work with but the assistance is not forthcoming.

Local District Attorney will give information responded only to the specific question asked. Nothing is volunteered.

6. With regard to the entire Strike Force Representative organization, trust has not been built up as yet.

7. Major advantage of the Strike Force concept is united effort of the various federal agencies against organized crime. The ATF Representative cited firearms cases that have been made on the basis of information obtained from other agencies which they would not have otherwise made. The cooperation between the agencies in this area is very good and the other Strike Force Representatives appear to be well qualified.

8. There is no FBI Representative on the Strike Force.

9. FBI cooperates with the Strike Force but is not a part of it. They do not have a man assigned. No one attends the regular meetings of Strike Force.

10. What little information comes in from other agencies has not proven of any value.

11. Need more and better information from the FBI.

12. The FBI does a lot of surveillance and should be providing useful information, but they are not turned to the needs of the IRS. Information that is available is shared as it is with other participating agencies.

13. All participating agencies have Representatives assigned full time. Strike Force Representatives meet every Monday for review of cases and exchange of information.

14. Believe FBI has to become more involved in the Strike Force operation including the assignment of a full-time Representative. Regard the attitude of FBI as being aloof. Information available to them is withheld if they have possibility of making a case. Most information comes on a private basis rather than in his official reports. FBI is reluctant to include financial information in their reports and their present policy is to exclude such information from all written reports. There is a 40-man FBI force working on OCD doing nothing but gathering information.

15. There is no Representative on Strike Force from the FBI, although the Attorney keeps in touch with them all the time. FBI files have been made available and on an individual basis FBI Agents are responding to our needs.

16. Would like to have a contact at the National level of the Social Security Department for information on target's employment.

17. Information is coming in from other agencies particularly the FBI, but would agree the IRS is giving more than it is getting. The information that is available that does come in has proven to be of value on many of the audits conducted (a difference of opinion with the District people). The information is passed to the agent through his supervisor. It is sometimes an oral communication and at others it has been put in writing. The process is to inform the Agent there is information available for him and he then goes to the Strike Force Offices to pck it up.

18. There is no FBI man permanently assigned to Strike Force.

19. Think there should be an FBI agent permanently assigned to Strike Force. Need to have a man available on a daily basis.

E. Interagency Participation

SUPERVISORS AND TECHNICIANS

1. It does not appear anyone is doing any work except the IRS. Coordinated effort is a myth since it appears other agencies are not investigating, nor do they show an interest in the program. Information exchange is nil, all of it coming from IRS. There is no information on who other agencies are investigating in order to tie in the IRS effort.

2. Other agencies are not cooperating.

3. Strike Force Representative makes information available. Feel Representative is necessary for liaison between IRS and Strike Force Attorney. Not satisfied with the amount of information coming in.

F. Communications

1. FREQUENT MEETINGS OF IRS FORCE TEAM

2. ATTENDANCE BY DISTRICT AND REGIONAL MANAGERS

3. ATTENDANCE BY NATIONAL OFFICE COORDINATORS

We find that it is essential for Internal Revenue Service personnel assigned to Strike Forces to function as a team, and that frequent discussions and meeting should be held in order that all components of the team are aware of the goals, needs and general direction being taken. A danger, of course, if that a Strike Force Representative becomes bogged down with meetings and keeping interested Internal Revenue Service officials properly briefed. To circumvent this danger to the extent possible, we recommend that District, Regional and National Office officials attend these scheduled meetings, when possible, for the following reasons:

a. The Strike Force Representatives will be able to keep appropriate officials briefed and be able to do so in groups rather than individually. This will conserve the representative's time for other essential duties.

b. Attendance by Internal Revenue Service officials will further demonstrate their interest and support of the Strike Force program.

We found that in most Strike Force operations, the lead Department of Justice attorney holds meetings on a weekly basis with all representatives from participating agencies. The purpose of these meetings is to exchange information between the representatives which has come into their possession as a result of the activities of their respective agency. We do not recommend that this meeting be discontinued but do recommend the addition of Internal Revenue Service personnel only as outlined.

4. SECTIONAL MEETINGS

Our discussions with National Office and Regional Office Coordinators and Strike Force Representatives established that a definite need exists for the exchange of ideas, techniques and procedures by the Strike Forces. Such an exchange, of course, can be accomplished to a limited extent through National Office Coordinators. However, a more satisfactory exchange will be accomplished if semi-annual sectional meetings of these officials are held. The National Office sectional teams, that is, Department of Justice deputies, Audit, Intelligence and Alcohol, Tobacco Tax and Firearms Coordinators should be responsible for arranging these meetings and outlining discussion programs which will be meaningful and bring out the necessary exchange of procedure, etc. We feel that this recommendation is necessary because there are few established techniques and procedures relating to investigations of taxpayers operating in the Organized Crime area. If one Strike Force operation finds an effective method of dealing with the problems which develop in this type work, such methods should be made known to all personnel interest in Strike Force investigations.

5. OPEN LINES OF COMMUNICATION

If our recommendation as set forth under the Organization section of this report is adopted, then a direct line of authority will be cut between the functional directors in the National Office and the Strike Force representative. Although the direct line of authority will be cut, we do not intend that the line of communication be cut, since it is essential that there be a free and unrestricted exchange, especially between Strike Force Representatives and National Office management. It is the normal procedure for a National Office representative to first contact the District Director prior to discussing any matter with personnel working under the direction of the District Director. However, it is our recommendation that this policy be abandoned in Strike Force operations. We feel that the National Office Coordinator must be able to deal directly with the Strike Force Representative because of the many sensitive and critical situations which develop on a daily basis in the Strike Force operation. National Office Coordinators are responsible for keeping top management of Internal Revenue Service, including the Commissioner of Internal Revenue, briefed on a current basis of all such sensitive and critical developments. This can only be accomplished if the National Office Coordinator has free access to the Strike Force representative.

IRS MANAGERS

1. We should let the public know more on the IRS participation in Strike Force.
2. Communications are the biggest problem on the Strike Force. The basic problem is keeping everyone informed.
3. To date Audit and Intelligence have not coordinated their efforts. They have a different order of priority. Seems the Audit and Intelligence Representatives are not talking to each other. It appears we take a great deal of effort to hide information from each other. Suspect organized crime knows more than our own people. Would recommend we let everyone know who the Strike Force targets are so they could be on the look out for these names as they go about their regular work.
4. When starting on a target, we do not have any information except what we get ourselves. There should be some system for feeding information into a central point.
5. Strengthen the liaison with the U.S. Attorneys.
6. Examples were given where District people were getting information on Representatives.

7. Recommend meetings between Districts to compare operating procedures.
8. A team approach is used in both Audit and Intelligence and is proving very beneficial. Biggest benefit comes from the exchange of ideas and methods of working on cases.
9. These are three types of meetings being held:
a. Management: Between Strike Force Representatives and Branch Chiefs with either the District Director or Assistant District Director attending.
b. Monthly family meetings of Area Supervisors, Branch Chiefs, and Agents assigned, and
c. Quarterly case meetings for the review of particular cases for the purpose of reviewing present progress and laying plans for future efforts.
10. Biggest advantage of Strike Force is the communications existing within the IRS, which had not been the case under the OCD Program. The Strike Force Representatives and Agents have an added advantage of being in touch with people from other agencies which provides information which had never been available before. Theer is a very close contact between the Strike Force Representative and the working agents.
11. Difficult for District Director to be current on Strike Force. Use a quarterly review getting case by case presentation by the Representatives along with Division Chiefs, Group Supervisors. Get copy of Representative's reports going to National Office. In between we get information on significant matters.
12. Regional Coordinator could be in more communication with District. Unless we see him at a party we don't get to talk very much.
13. Same is true for Attorney.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. As the National Office Coordinator, the example was given of hearing from him about every four weeks and that only for the purpose of gathering information. Feel visits from him are adequate and did not need to be increased unless there were problems that developed that needed to be resolved. Amount of guidance coming from National Office is adequate.
2. Representatives recommended that periodic meetings of Strike Force Representatives from the various parts of the country were in order. This would provide for a better and meaningful exchange of information, ideas, etc. Due to the number of Strike Force Representatives that there are, it would be advisable that the meetings be either by activity or by geographic area. These meetings would be of particular value to Representatives who have most recently been assigned to a Strike Force.
3. The channels of communication are too long and it would be better if Attorneys and Strike Force Representatives had more direct access to the SA's or RA's assigned. They see too many people between the Attorneys and the front-line workers for getting the job done.
4. The organization setup in IRS and the guidelines for going through channels is a special difficulty for Strike Force Attorneys. It takes a year for a new Attorney to become familiar with the IRS structure.
5. It is the opinion that the Los Angeles program is not being properly coordinated from the National Office. There is doubt the National Office knows what it is doing or what is going on. Calling the National Office does no good and it is impossible to get any clear answers to the problems being encountered. Likewise, they are not being kept informed, but are left with a feeling that they are out of the picture and are not considered. There is a definite lack of communications between Los Angeles and the National Office. (Audit took exception to these comments, but felt there is still some need for improvement in communications.)
6. Length of communications is confusing. Reports do not come in direct from the National Office but must be filtered down from the Regional Office. An example was given (the Flamingo case) which was regarded as coming under the Strike Force and yet the Strike Force Representative did not know anything that was going on in the case because it was closely controlled by the District people. Some cases regarded as National Office projects should have been made part of the Strike Force operation, but this has not been done.
7. ATF was pointed out as being a particularly effective operation. Mostly due to the Strike Force Representative exercising line authority. When problems have existed, they have been resolved through meetings with a very cooperative

local management. Similar meetings have been held in Las Vegas with Audit and Intelligence Managers, but not in Los Angeles.

Strike Force Attorney and Representatives noted the value of the discussion that was being held today with the Task Group members. Lead Attorney said this discussion made him more aware of the problems that exist and brought to light some that he didn't know existed. He feels this example of discussion ought to be followed through and made a regular practice for the relationship between the District Management and Strike Force people.

8. Exchange of information with the Region utilizing the office of the Regional Coordinator has been good. The experiences of one area and the methods of operation are passed without delay to a second Strike Force city. It does not appear that the exchange between regions fares nearly as well. There does not seem to be a clearing house at the National level to adequately provide for this exchange. There is a feeling that it is the Strike Force Representative's responsibility to make known good techniques they have discovered in their area. Once they make this information known to the National Office Coordinator, it becomes his responsibility to pass it on to other regions.

9. Communications with other Strike Forces is just about nil. There is a need for regularly scheduled meetings between Strike Forces on either a geographic of activity basis.

ATF has no problem in this area since they use the FTS to alert areas on the movement of suspects. Also effective November 1, a central system was started for gathering information and keeping it on file. The TWX system is being utilized for this purpose and the information is being stored in a computer.

10. Communications with Coordinators have been extensive. They keep them advised of what's going on in the area and are in turn being fed good information by the Coordinators. The Regional Coordinator has been extremely helpful in solving Strike Force problems. He has the ability and contacts necessary to open doors within the Region and across Regional lines.

11. Meetings we have with District Management are mostly a waste of time.

12. Have not had much to do with National Office Coordinator. Same is true for Regional Coordinator.

13. We do not have much contact with anyone; seems we are just sitting out here. Would like to have more meetings with the National Office Coordinators and other Strike Force Representatives from this area.

14. Someone paying more attention to the Strike Force Representative.

15. The Strike Force Attorney makes himself available even going so far as to discuss problems with individual IRS Agents.

16. We should have better access to the National Office Coordinators, and they should make more visits to the field to see and discuss the problems. Also recommend meetings with other Strike Force Representatives.

17. Need a speedier method to obtain information from the Service Center.

18. In the discussion of the periodic meetings that are held, it was pointed out the RA or SA is often put in touch with the FBI Representative to discuss information on a particular target.

19. RA and SA must come to Strike Force Representative at least once each quarter to review the file of the target he is working on.

20. Representatives consider themselves IRS-oriented. They spend most of their time gathering and passing information and feel they are more concerned with keeping the IRS people knowledgeable than the Strike Force Attorney.

21. Communications between Strike Forces in other regions is done either by phone or written communication. Gave one example on having gone to Las Vegas personally to get information.

22. There are no regular meetings of Strike Force Representatives. Over the past year there have only been two or three meetings. There has been a turnover of Attorneys—five Attorneys since the start of Strike Force. Coordination with other agencies is informal, mostly through meetings in the office or visiting them at their office.

23. Recommend meetings be held with other Strike Force Representatives outside this area. Suggest meetings every two months. Suggest meetings at National Office one to two times a year. Would make it along Activity lines.

SUPERVISORS AND TECHNICIANS

1. People assigned to Strike Force need to have every bit of information that is available on any subject under audit or investigation. It would help if the Strike Force Attorneys were made more available to group meetings where the

Revenue Agents and Special Agents could make known their general and specific information needs. It would also provide a better avenue of communications with regard to the needs of the Attorneys for preparing their cases. It would be better if there were direct contact between RA's and SA's as well as Representatives from outside agencies. This would permit a more direct and quicker means of getting information as opposed to the lengthy communication processes now in effect.

2. The procedure for closing a case is not good. The Attorneys have final authority for approving closing, but the layers between the Agent and the Attorney are so vast the Agent is never sure he has a completed case or the reasons why he might not have one. The organization and means of communication is in bad need of simplification. The information is not getting where it is needed.

3. Audit does not see the work as being different from the normal Audit procedure. The only difference they can identify is the need for *all* the information available on the person under examination. Although not able to be specific, it is evident that some type of central information center is required.

4. There is some confusion as to what a Representative or Coordinator is with many of the auditors thinking of their Group Supervisor as the Coordinator. There has been very little, if any, contact with the Representatives and Attorneys. Relationships with the SA's have been very good and generally considered as a partnership effort although controlled by the SA because of the recognized fact the criminal case takes precedent over the tax case. There was a discussion about past conflict existing between auditors and SA's most of which concerned importance of work, detraction from Audit productivity, and night hours. Intelligence Division people felt it would be a better procedure for two SA's being assigned to a case and Revenue Agent brought in only as was necessary. This would make it possible for the SA always to have assistance without having to schedule his time to mesh with that of the RA.

5. Information available is insufficient and not immediately available. Need for a central file to which they could go. Suspect information is not filed or passed to them because it can't be related by individual obtaining it.

6. The first Strike Force Representative was effective because he kept abreast (was involved) of cases being worked. He furnished information to agents on the targeted individuals. He had good informants who provided information on suspects. Other Strike Force Representatives have not done as well. Appears communications have stopped.

7. Would like to have more meetings with Strike Force Representative. It would be best if SA's could have direct contact with Strike Force Representative. Some of the agents don't know who, or what, Strike Force Representative is. Strike Force Representative is often not available; has continuing interests in home region and his visits there are disruptive. He needs to be more involved in day-to-day operations.

8. Not getting enough information on targets.

9. Recommend Agents have more direct contact with other people working in Strike Force in and out of the IRS. Suspect the filtering of information by the Strike Force Representative keeps a lot of information from getting to us.

10. Would like to see Strike Force files made more available.

11. Strike Force Representative assigned has been of help providing information on assigned targets.

G. Evaluation

IRS Managers

1. He feels there is some curbing of funds available to organized crime and cited examples.

2. Evaluation of the Strike Force efforts can only be by the number of cases. There is no other apparent measuring means available. There are no indicators avilable by which the Strike Force operation can be measured as to its impact on organized crime.

3. Strike Force effort is getting off to a slow start, and as a consequence, the measuring of effort to date is not possible. These officials were not able to pinpoint the cause for the slow start.

4. Measurement of deterrent. It is impossible to measure. It will always be as difficult as our efforts to measure compliance where the gap of a grey area is unknown. We will probably be limited to a measurement of cases, indictments, and sentences. We may never be able to say that the results are from the Strike Force.

5. Thus far, there have been some results coming out of Strike Force. The most notable of which was the indictment of Alesio in San Diego. The IRS got quite a bit of publicity in this case. There are continuing good cases in the San Diego area which cannot be said for Los Angeles. Since the operation has been in existence for only six months, it is too soon to talk results. In the next year there is an expectation that some very large cases involving significant members of organized crime will be made. However, most of these results have and will come out of actions initiated under the OCD Program.

6. While there have been some cases coming out of the program, no evaluation is possible at this time because there has not been any prosecution.

7. Have had indictments but no prosecutions as yet. Expect court results to be better than under regular fraud program.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. Comments on the various Strike Force operations:

Buffalo—a horrible example. Conflict. United States Attorney, District Director, Strike Force Attorney.

Boston—a weak program. Question of the strength of the Audit Strike Force Representative. Not forceful. Seems afraid of District Director. Representation is a local man. Time is down on applications to Strike Force.

Newark—Conflict between U.S. Attorney and Strike Force Attorney. Cases made in spite of the conflicts. High production Strike Force.

Manhattan—Different problems; good operation. Regional Commissioner has genuine interest.

Philadelphia—Probably smoothest operation in country. Have had good success. Good cooperation.

Detroit—Good Audit Representative. Working without good Intelligence Representative.

Cleveland—Good operation. Experienced Representatives work well together. A new Strike Force. Not too much on paper yet, just getting operational.

Brooklyn—Slow—should be further advanced. Changes in personnel has hurt.

Chicago—New District leadership. Very large and complex operation. District Director tied up with District problems.

Los Angeles—Still in formative stage. A Department of Justice problem. Attorneys dealing too much with IRS people.

2. IRS participation in the Strike Force operation by itself will not eliminate organized crime, but it's making a proper contribution. There is no way of evaluating the Strike Force Program at this time. Even after a considerable amount of time, the statistics may be all we will be able to show. Information coming from undercover sources will give some additional information on our effectiveness. There should also be other signs available which will be helpful, such as increases in the stated income of racketeers, increase of publicity and a change in tax returns from labor organizations. The role of the Representative is one of coordination feeding information after screening the same. They view themselves assistants to the Area Supervisor in determining who will be working on them and how. They expect they can make contributions regarding allocation of manpower and in the broad field of liaison between Attorneys and the District Director.

3. In Cleveland there has not been a sufficient amount of time in the operation to determine the impact on organized crime. In two or three years it should be measurable.

4. Those people among the general public who have a concern for organized crime have knowledge and are aware of the IRS contributions. The business community has such an awareness. He suggests publicity of prosecutions and involvement of the IRS could contribute as a deterrent to racketeering. You cannot always measure results by indictments, cases, etc., but you must consider that these do have some impact. A box score is no way to measure success. Crimes such as narcotics violations or theft are not of a nature to be deterred from publicity, but a tax case does have such an impact on the public.

5. There is an importance to deterring the criminal organization when a conviction of a labor racketeer is gained. It demonstrates to members of organized crime that they are not infallable and the leaders, to remain leaders, must constantly demonstrate that they are untouchable.

6. There has been an impact on the Strike Force operation in the San Diego area where many public officials have been or will be indicted. This cannot be said to be true anywhere else in the Los Angeles Strike sphere. An effort of the

Strike Force should be to put people in jail and cause disruption in the organized crime ranks. In the San Diego operation there was not a single IRS caused indictment issued, but believe that our participation and the publicity surrounding it has had impact.

Not sure you can measure the effectiveness of Strike Force by indictments, but nothing else is immediately available. Street crime, whether it goes up or down, will never be a measure of the effectiveness of Strike Force.

If a person has political clap (influence) and is prosecuted, there is a belief this will have an effect on organized crime. These people depend on their being untouchable for much of the power they hold, but when prosecuted, serious questions are raised as to their influence.

7. Perhaps by fear measurement alone some good is coming out of the Strike Force effort, but it is doubtful we are getting out of it all that we should.

8. It is too soon to determine if Strike Force audits have been effective, but it can already be identified that success will be dependent on the attitude of the Revenue Agent. There is a need to have auditors willing to go further into cases than has been our past practice. It is a question of desire without regard to special training. Thus far, cases that have been completed have washed out with no really good production to point to. None of the foregoing is indicative that the efforts of Audit have not been satisfactory, but only that the cases have not been productive.

9. There appears to be some changes taking place in the organized crime scene of Detroit. Several of the top wheels have left for Florida and are going into business there. Bookmaking in Detroit is being taken over by the Blacks. There have been some changes in the income reported by crime figures with the stated income continually increasing.

10. IRS cases are just coming through now. They take longer to make than other type criminal cases. After 2½ years there has only been six indictments, and these are not very good cases.

11. Expect it will take five or six years to do the job here.

SUPERVISORS AND TECHNICIANS

1. Believe the efforts to date are having some success. An example was the crime figure who filed a return showing income of $17,000 and then later an amended return for $50,000. Believe this was a consequence of his knowing he was being worked on and thus needed to be more careful. They suggest this example will be repeated many more times in the future.

2. They feel investigations under this program are disturbing the criminal. He does not want to be worked on to begin with, and is particularly apprehensive when the audit or investigation requires contacts of legitimate business people with whom he is doing business.

3. Group now concentrating on narcotics dealers. Have been examples of amended returns being filed indicating violators concern with audit. One showed income of $135,000; later filed amended return with income of $50,000. Can recall use of quick assessments resulting in collection of over a million dollars. Narcotics dealers showing much higher incomes today than in past. The crime figures are aware of Strike Force effort. Have been several newspaper articles on Strike Force; publicity seems adequate.

The comments in this section are in the nature of observations as well as recommendations.

1. INFORMATION GATHERING

The lack of books and records and the failure to produce what is available by this type of individual makes it necessary to secure information from some other source. Consideration should be given to setting up a surveillance group under National Office control and available to Strike Forces on request or providing additional personnel at the local level for this purpose. This is particularly valuable in determining which targets should have priority and in securing pertinent information before the investigation is started. The use of ATF agents for this purpose is covered in another section of this report.

2. SPECIAL FUNDS

Most of the Strike Forces indicated a need for funds with which to pay for information. The very nature of the Strike Force concept creates certain problems in this area because the funds that are presently available are for the use of a

particular agency and they are reluctant to spend their money for information for another agency. In order to get the maximum utilization of these funds, there should be close coordination to be certain we are not duplicating payments or working at cross purposes with some other agency.

3. PUBLIC APATHY

The consensus of opinion was that the public as a whole was not aware of the role IRS was playing in the fight against Organized Crime. There also appears to be a form of resignation on the part of the people that Organized Crime has always been with us and always will be so why get worked up about it.

We recommend that action be taken to try to make the public more aware of the effect of Organized Crime on their lives through increased cost of living, monopolistic control and corrupt public officials. If we can arouse the public we can make a contribution by getting rid of some of the cancer on society through the ballot box.

4. LEGITIMATE BUSINESS

All of the Strike Forces showed concern about the extent of infiltration of legitimate businesses by the criminal element. Of special concern was the information that there are indications they are taking over financial institutions and the news media to some extent. The fact that the stock of most of the corporations controlling these industries are listed on the stock exchange make it rather easy for untaxed illegal funds to be used for this purpose. This possibility makes it all the more an absolute necessity that we make a concerted effort to identify the source and disposition of funds by Organized Crime.

5. ATTORNEYS

We found in more than one instance where there were strained relations between the U.S. Attorney and the Strike Force Attorney. This places IRS in the middle in many instances and creates confusion and doubt in the minds of our people as to the importance and value of the entire program. Where we found a close working relationship between the U.S. Attorney and the Strike Force Attorney we invariably found a more effective Strike Force operation. We realize this program is relatively new and the setting up of a new structure in any organization always creates problems, but fighting Organized Crime presents so many obstacles we must have the full cooperation of everyone involved.

O. MISCELLANEOUS

IRS MANAGERS

1. There's been very little publicity on the Strike Force operation. The public is neither informed nor interested.

2. A major problem existing in Los Angeles is the "in-fighting" in the Department of Justice. The U.S. Attorneys and the Strike Force Attorneys are totally opposed to one another. The Los Angeles Attorneys are not permitted to go on the same floor where the U.S. Attorney's office is located. In San Diego, Tax Division Attorneys are turning down cases that the Strike Force Attorneys would like to have had prosecuted. (U.S. Attorney in San Diego is suspect.) These Department of Justice actions detract from an IRS effort because our people are being put in the middle of the struggle.

3. Most pressing need of the Strike Force Representatives in this area is a clerical one. Most clerical work is now being done at the District or by the Representatives themselves.

4. It is doubtful local police action will be very effective for some time to come because of the evidence that local police and local politicians are being bought off.

5. The use of IRS manpower on criminal type work is a little difficult to explain. We have trouble living with applying time to work which benefit other agencies but produce no tax dollars or statistics for IRS. There is a need for a procedure involving statistical accounting of time which produces no IRS result. Strike Force Attorneys are interested in criminal prosecutions so attempt to influence IRS people in applying time to this effort.

6. Made reference to an address delivered by an FBI man on the subject of LCN wherein he made strong anti-Italian statements. Most of the agents

assigned to the program are of Italian descent and resented these statements to the extent that several of them considered asking to be relieved of Strike Force duties.

7. Strike Force was a take-over of the OCD Program.

8. Provide a special funding for the fight against organized crime with emphasis toward supporting local and state police efforts.

9. Their information indicates the Strike Force Representatives are overburdened with reports required by the National Office.

10. See the advantage of the Strike Force Attorney in getting prosecutions in a much shorter time than was the case with U.S. Attorneys.

11. The Strike Force Attorneys and Representatives are considered excellent.

12. A pending problem is the 50 cases before the U.S. Attorney for indictments and prosecutions. If these IRS cases are not brought to trial, the program is going to suffer as a consequence. If nothing is done, even RA's and SA's assigned to Strike Force will raise questions on their own efforts.

13. Strike Force Attorneys have visited office and are helpful. Strike Force Representatives are excellent.

14. There are no identifiable training needs although for the purpose of helping newer agents assigned to the program, work shops are being planned.

15. The feeling is that the Strike Force Attorney has a real interest in tax cases. He appears to be extremely cooperative.

16. Do not feel we are very far along the road to reaching the objective of eliminating organized crime. Have not learned what is going on within the criminal organization. Don't even know who the prime movers are. Only a very meager knowledge of the opposition. Don't know how long it will take to get such information. Have informants but doubt how good they are.

17. Not in agreement with publicity; may be harmful. People read how little we are collecting and must laugh. Raises further questions on our integrity.

STRIKE FORCE REPRESENTATIVES AND STRIKE FORCE ATTORNEYS

1. They recommend that funds for the purchase of information are needed to a much greater extent than has been available to date. Probably there needs to be an unlimited amount available because information on racketeers is extremely costly.

2. It is recognized that part of the Western problem is the geographic spread which makes cooperation and communication extra difficult. This, again, is another example of the difference between Los Angeles and other Strike Force locations.

3. General public does not know we are here or have any idea of what Strike Force operation is all about. The publicity has not been good. Procedures require that all publicity be handled by the U.S. Attorney, and in Los Angeles, he doesn't even want us here. Believe that sometime in the future when a Grand Jury is called to look into organized crime, some good publicity will come out. Feel the ATF publicity should be played down because the gun laws are unfamiliar to the criminal element and publicity only tends to alert them and gives them time to get rid of their guns.

4. See no need for more legislation, assuming a wagering law will be passed in the near future. The recently enacted Title IX (Investment of Illegal Money in Legitimate Business) will be very valuable to our efforts. Regulations do sometimes get in the way and particularly there was reference to the disclosure rules. It has been noticed that some of the disclosure letters seem to be getting lost or at least there is no action being taken. In cases where disclosure is to be allowed, the information needs to be transmitted immediately to the Representative and not through channels. Although he originates the request, the response gets to him through Regional or District channels.

5. Believe the Strike Force Representatives are doing an adequate job, but that they are in dire need of clerical assistance. The ATF Representative made a case for having at least one clerk assigned to him since some of the work they are doing would otherwise be done by the Branch Office. The dependency of the Strike Force operation on District people is not good. Strike Force should be provided with the men and materials necessary to getting the job.

6. Although requests have been made, there has been no information coming from the overseas operations.

7. Publicity has been very good. There was a period of time when you couldn't pick up a newspaper but what it contained an article on Strike Force.

8. A bad relationship which existed two years ago between the U.S. Attorneys and the Strike Force Attorneys had disappeared with the issuance of guidelines on the handling of prosecutions issued by the Department of Justice. Relationships with other agencies could still stand some improvement. It would be helpful if the Strike Force Attorneys were more knowledgeable of the laws enforced and responsibilities of the agencies involved. Have had no problems regarding a need for clerical assistance. What typing is required has been handled by the Strike Force Attorney secretaries. ATF is having their reports done at the Branch Office. Reports being prepared by Strike Force Representatives are very minimal.

9. With the increased powers of the FBI (wire tap, gambling) the role of the IRS may be decreasing. They can make cases fast while the process of a tax case takes so long.

10. This is the third lead Attorney assigned to Philadelphia since the start of the program two years ago.

11. Have good relationship with the U.S. Attorney. He has been very cooperative.

12. Considers IRS cooperation to be very good and the Strike Force Representatives to be excellent.

13. Would like to see the wagering law enacted. Although FBI is making good progress, believe the IRS would be much more effective with wagering.

14. Would like to have a fund for the purchase of information.

15. Intelligence Representative is not happy in his position and he is looking forward to completing the assignment. Appears this is due to his being dropped from the Central Region Promotion Register.

16. There is a need for a Purchase of Information Fund identified for the exclusive use of Strike Force and controlled by the Strike Force Attorney.

17. There is a need for clerical assistance. Strike Force Representatives now do an excessive amount of clerical work.

18. Have had a good relationship with the local police and other authorities. They have provided much valuable information, and on occasion, manpower assistance. New York has had $250,000 made available to them from the LEA for use on Strike Force with the fund being handled by the Strike Force Attorney to use as he sees fit. $150,000 is for use in the investigative effort of buying information or using as "show money." The money may also be believed to pay the local police when they are called upon for a special effort.

19. Have a great deal of faith in the local people who are participating in the Strike Force effort and feels they can be trusted fully.

20. Attorney started in June 1969. He had the advantage of being from the New York area having served as an Assistant Attorney in New York. He has many close contacts, some of whom he attended law school with. (Impressed—this maybe best Strike Force Attorney we have talked with.)

21. Can see that some of our cases will be prosecuted, but not able to evaluate what the impact to date has been.

22. There has not been too much publicity as it applied to the IRS, but the Strike Force itself has been given good coverage. The Strike Force Attorney is highly regarded in the area, and anytime he does or says anything, it makes the newspapers.

23. Adequate clerical assistance is being provided. Five girls are available, three of whom come from the IRS on loan. In instances where the clerical workload has become excessive, the District has provided additional assistance.

24. Gave story of Strike Force Representative who had trouble with the District and was removed. Strike Force Attorney was quite upset by these circumstances feeling that Strike Force Representative was in the right. Did not feel National Office backed up Strike Force Representative properly.

25. U.S. Attorney is cooperative although he would like to have Strike Force operation in his office consult with him every Friday to give him rundown of efforts.

26. Recommend an undercover operation. Also would like to see a fund made available for the purchase of information which should be in the hands of the Strike Force Attorney. Funds in the Region are difficult to get and not adequate to Strike Force needs. Believe fund should not be IRS because information being obtained is not always IRS business.

SUPERVISORS AND TECHNICIANS

1. There were no recommendations on identifiable training needs. After more consideration it might be found that there were minor needs, but for the most part they could only recognize a brushing up of techniques.

2. They are not hung up on the dollar return from examinations or the time being expended in making Strike Force examinations. They seemed to take an approach in looking at the bigger picture and the advantages of a long term gain.

3. There is a need for an organized effort to inform the public on organized crime and the efforts of the IRS. They suggest bringing home to the public how organized crime affects and costs the public (taxes, corrupt officials, crime, loss of revenue).

4. The above would do much toward gaining the cooperation of the public where there is now a reluctance by it to give information for a variety of reasons they view as legitimate. The public needs to know how they are being hurt. There is also the problem of getting proper legislation because it appears on the surface to be against the rights of the public. The courts are not giving meaningful sentences which could go a long way toward deterring crime. They are lenient to the point of being suspect of being under the influence of organized crime.

5. Recommend developing a system of getting information by paying for it. There is a need to get closer to the people who have inside knowledge on the workings of crime. This would require large sums of money.

6. Real assistance could be gained if the public's interest could be increased by Public Information Program. Informants with special knowledge are needed if you are to gain information not available by the examination of books and records some of which are non-existent. Such informants are available but would be very high priced because of the need to outbid the benefits available through organized crime. Informants referred to are those known to be close to illicit operations but will not give information on the basis of money IRS is offering.

7. Referred to problem of Lazarus: He claimed IRS people were crooked. This sort of thing makes agents a little leery when on crime suspect case. Worried of similar accusation. Too many people inclined to listen to this type accusation.

8. In establishing targets the ongoing OCD suspects were adopted. The Strike Force Program was nothing but a new name for the OCD.

9. Believe Strike Force Representative impaired because of paper work requisites. National Office report requirements too heavy. They are continually asking for information saying it was requested by National Office.

10. Discussed the RA who had received a threatening phone call. Though never proven, it came from a Strike Force target which caused considerable concern to all RA's doing Strike Force work.

VI. Notes

The following are the notes made by the Study Group as they were discussing Strike Force in the field. The notes are arranged by subjects coinciding with our recommendations. They are also segregated by the level of organization we were talking with.

One of our Study Group members was capable of taking shorthand, so you will find most of the notes the near verbatim statements of those interviewed; at the least the gist of the statement made.

We feel the greatest value of these notes is in enabling the reader to "hear" for himself what is being said in the field.

BROOKLYN STRIKE FORCE

SET UP APRIL 1968

COLOMBO FAMILY

JOSEPH COLOMBO - I
Boss

LIEUTENANTS

VINCENT ALOI - FS

NICHOLAS FORLANO - FS

FRANK R. FUSCO - FS

JOHN ODDO - FS

CARMINE PERSICO, JR. - FS

JOSEPH BRANCOTO - FS

SOLDIERS

SABASTIAN ALOI - FS

JOHN GUTRONE - AA

GEORGE TROPIANO - FS

ANTHONY AUGELLO - FS

AMBROSE MAGLIOCCA - AA

SALVATORE PERITORE

JOSEPH BRANCOTO - FI

ANTONIO MAGLIOCCO - AA

JOSEPH MUSUMECI - FS

LOUIS BARBOSCA - AA

ROCCO MIRAGLIA - AA

MICHAEL BELVEDERE - I

NICCOLAS BIANCO - AA

DOMINICK SCIALO - AA

GAETANO VASTOLA - FS

CASSANDRO BIASSPA - AA

[illegible] STRIKE FORCE

SET UP APRIL 1968

TARGETS NOT IN COLOMBO LCN FAMILY

CARMINE TRAMONTE - FS

SALVATORE BONANNO - C

MATTHEW IANNIELLO - FS

E. RICHARD LANDIS - I

JOHN MORALE - FS

DAVID WENGER - C

SAM COHEN - FS

IRVING S. SCHWARTZ - FS

RALPH LOMBARDO - FS

CARL MOSKOWITZ - FS

HARRY DAVIDORFF - FS

JAMES NAPOLI - FS

ANTHONY LOMBARDOZZI - PR

GUY JULIANI - FS

WILLIAM LIGHT - I

FRANK PASQUA - C

ROBERT DI BERNARDO - FS

MARTIN HODAS - PI

AIR PACKAGE DISTRIBUTION COMPANY - FS

Joint investigations in process relative to these entities which are part of Kennedy Airport Probe - Sixteen related Strike Force audits also being conducted. Tax and penalties to date amount to $197,635.92. The Manhattan Strike Force also has nine audits and three investigations in progress. Related non-strike force audits in both districts total seventy.

HARRY DAVIDORFF - FS

HENRY DELETIS - AA

SAM JACOBSON - FS

GARRETT WILLIAMS - FS

ROSLYN PRIES - FS

STEPHEN DE PASQUALE - FS

ALFRED IANNIELLO - FS

JOSEPH TRAINA - FS

ETTORE ZAPPI - FS

DOMINICK SABELLA - FI

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PHT "A" STRIKE FORCE

JULY 1963

ANGELO BRUNO FAMILY

ANGELO BRUNO - FS
Boss

JOSEPH ROCCISANO - AA
Consigneri

DOMINICK CANCELLO
Under Boss

CAPODECINS - NJ

CAPODECINS - PHILA.

MEMBERS - NJ

SALVATORE ACCARDO
ALFRED ANGELICOLA
MICHAEL ANICO
LOUIS CAMPELL
THOMAS CAPISI
ANTHONY CAPONIGRO
PETER CASSELLO
FRANK CORSI
CHARLES COSTELLO
JOSEPH J. COSTELLO
VITO GENNA
JOSEPH GIRGENTI - PI
VINCENT GIOE
ARTHUR GOBBO
JOSEPH IDA - PI
ANTHONY IPPOLITO
CARL IPPOLITO - AC
WILLIAM LAPERCOLA
PAUL LOMBARDINO
DOMINICK LUCIANO
JOSEPH PASSALACQUA
JOSEPH PERELLA
SAMUEL SCADIFI
GEORGE SCIMECA
MICHAEL TRAMONTANA - AC
VINCENZO TURCO - AC
NICODEMO SCARFO - AC
ANTHONY VERNIERO -AC

MEMBERS - PHILA.

VINCENZO AMATO
EDWARD C. CAMINITI
EDWARD DATILLO - FS
JAMES DATILLO - FS
DOMINICK DEVITO - PI
FRANCESCO DE BELIA
IGNAZIO DI GIROLIMO - PI
ROCCO DI DONDINA
ADAM R. [illegible]LIO
ALBERT ESPOSITO - PI
FRANK FAILLA - PI
VINCENT FUSCI
LEONARD GALANTE - PI
JAMES GATTO
JOHN GIRGENTI
FRANK GRECO
ANTHONY IACONE
SANTO IDONE - AA
FREDERICO IAGANA
JOSEPH IAGANA - AA
JOSEPH IOZZARO - PI
DOMENICK LE PERE - PI
MORIS MAGGIO - AA
ALPHONSE MARCONI - AA
GUERINO MARCONI - AA
FRANK MENTE - FS
AUGUSTINE MAZZIO - PI
JOSEPH MAZZIO
FRANK MARRUCCI - AA
FRANK NICCOLETTI - AC
LEONARD NICCOLETTI
FRANK PALERMO, SR.
JACK PARISI
ERNEST PERRICONE - AA
ANTHONY PICCOLO - PI
JOSEPH PICCOLO - AA
MICHAEL PICCOLO - AA
ANTONIO POLLINA
FILLIPO POLLINA
SAN[illegible]ISTORE
LUIGI QUARANTA -
FRANK RICCA
[illegible]LO RICCOBENE -
[illegible]NT RICCOBENE -
SANTO ROCCO - AC
[illegible]DERICK RUGGIERO
[illegible]PE SABATO
[illegible] SCAFIDI - P
[illegible]IO SCIALFA
[illegible] SCIALFA
[illegible] TEDESCO -
[illegible] ZERBOLE -

JOHN BASCINO - PI
GABRIEL BERES - AA
FRANK CAPELLO - AA
MICHAEL CASERTA - PI
ANTHONY CASMIRRI - PI
DOMINICK CHIANCO - PI
ARMINIO COLLIANNI
ANTHONY CONSIGLIETTI
GEORGE COREN - AA
CARMELA DEL VECCHIO - FS
EDWARD FIDA - PI
NICHOLAS DEL VECCHIO - FS
RUGGERIO D'ONOFRIO - FS
IGNATIUS ESPOSITO
MARIO EUPHRASIO - AA
FRANCIS FIDA - PI
LUTHER FLECK - AA
FRANK FORTE - AC
ALLAN GOZERMAN - FS
BENJAMIN GOLSB - FS
MICHAEL GRASSO - AA
FRED GUAGLIANORE, JR.- AA
FRED GUAGLIANORE, SR. - AA
EDWARD HILL - AA
GEORGE HILL - AA
FRANK IANNARELLA - AA
RALPH KATZ - PI
VITO LA ROSE - PI
SERAFINA MAZZIO - AA
JAMES MALETTERI - FS

ASSOCIATES

FRANK MALFI
FRANCIS MARINO
JOHN MARTORANO - AA
ANTHONY MARTINELLI - PI
RAYMOND MARTORANO - AA
FRANK MATTEO - FS
JOSEPH MIGLIAZZA
MARIO MOSIELLO
VINCENT MANJONE
ARTIE MUNGIOLE - AA
DOMINICK MARCISI - PI
JOSEPH MARDELLO - AA
CHARLES PAGANNO - AA
JOHN PENNISI - PI
FRANK POLESTRELLI
THOMAS PORRECA - PI
ANTHONY PUNGITORE - AA
JAMES REGAN - AA
SALVATORE RISPO - AC
CARL ROBINSON - PI
FRANK ROVIELLO - PI
JOSEPH RUBINO - PI
ANGELO RUSSO - AA
ALBERT SCHWARTZ - FS
SAMUEL SHAPIRO - AA
FRANK SIDONE - FS
JAMES E. SINGLETON - PI
[illegible] - PI
[illegible] - FS
FRA[illegible]
[illegible] QUERRA - A
JOH[illegible] - AA
MIC[illegible] - AA
THO[illegible] - PI
JOS[illegible] - AA
PE[illegible] - AA

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PHILADELPHIA CRIME FORCE

SET UP JUNE 1968

BUFALINO FAMILY AND ASSOCIATES

RUSSELL BUFALINO - FS

DRESS INDUSTRY

ANGELO SCIANDRA - FS
WILLIAM AIAIMO - FS
CASPAR GUIMENTO - FI
JOSEPH SCALLEAT - FS
ANN LEE FROCKS
DOMINIC AIAIMO - FI
FIFI FROCKS, INC. - AA
TRI-CITY TEXTILES
JACK PARISI - FI
ALBERT SCALLEAT - FI
PASQUALE SALLEAT - FI
MISS TOSI DRESS
A & J SALES
IRENE MANUFACTURING CO.

WILLIAM MEDICO - FS

PHILLIP MEDICO - FI
ANGELO MEDICO - FI
CHARLES MEDICO - FR
SAMUEL MEDICO
ANGELLO J. SON - FR
CHARLES P. MEDICO
SANTO VOLPE, JR. - FR
MEDICO INDUSTRIES - AA
JAMES OSTICCO - FI
MEDICO REALTY
GROFF EQUIPMENT CO.
MEDI SALES FINANCE CO. - AA
C. J. & L., INC.
LEWIS COHEN & SON, INC. - FR
AMALGA PANE, INC.
JAMES VIOLA - FI
LEONARD VALENTI - FR
JAMES TABIT - FR
JOSEPH ELIAS - FS

FANT CORPORATE - FS

SWAN OIL CO. OF PA.
CORREALE BROTHERS
CORREALE CONSTRUCTION CO. - FS
SHENANDOAH MINING
NECHO COAL CO.
HONEYBROOK MINES
HONEYBROOK WATER CO.
LION COAL CO.
ARCHER COALS
BEECHWOOD TRANSPORTATION CO. - FS
STATE COAL CO.
FILM COAL CO.
FILM REALTY CO.
BEARS TV CABLE
DIAMOND SUPPLY CO.
FANT CONSTRUCTION CO.
HONEYBROOK COAL SALES
MT CITY TELEVISION CO.
PENN MICROWAVE CO.
GEORGE LAPUTKA - FS
M. J. LAPUTKA & SON - FS
THEODORE LAPTUKA - AA
CORREALE MINING CORP.

SHAMROCK RACING ASSO.
ACROPA BOARD
NATIONAL ENTERPRISES INC.
DURKIN ENTERPRISES
REXCRAFT, INC.
STEWART GAS & OIL CO.
CARCO, INC.
KLEIN REALTY
TASCO ADJUSTMENT SERVICE
NATIONAL [illegible] SERVICE
ADAMS AUTO, INC.
ALMA REALTY CO.
DART COAL CO.

FOR O[illegible] ONLY

PHILADELPHIA STRIKE FORCE

SET UP JULY 1968

CENTER CITY MOB

WILLIAM "WILLIE" WEINBERG - FS
Head

SAMUEL MILLER - PI
Lieutenant
HARRIS COHEN - FS
HERMAN KURLAND - FS
DONALD LEES - AA

LIEUTENANT VACANT
Formerly Headed by
SAMUEL "CAMPY" MORTMAN (DEC.) - FS

MEMBERS

DAVID ANTONOFF - AA
RALPH KATZ - PI
ABE GRASSMAN - AA
LOUIS GRODAK - PI
LEONARD PARKER - FS
JULIUS PAUL - PI
CARMEN ROGERIS - PI
ALLAN SLOTT (2) - AA
JACK PALEY - PI

MICHAEL BERARDO - AA
HARVEY BERRE - AA
EDWARD SCRODY - AA
HARRY ROCKFIELD - AA
ROBERT MILLER (3) - AA
ANGELO MASONE - PI
STANTON MILLER (3) - AA
WALTER DONAMDE - AA
EDWARD HORNSTEIN - AA

MITCHELL LIPSCHUTZ (4) - AA
SIDNEY BROOKS - FS
SYLVAN SCOLNICK - FS
A/K/A CHERRY HILL FATS
SAUL BASEN - FS
KENNETH PAUL - FS
ALLEN ROSENBERG - FS
BARRISH "FOX" POLEY
SOLLEY GLEANER

HERMAN "LABEL" MILLER
JOSEPH "NICKEY" TANTSKY
JEFF NEMAN - AC
ALBERT I. SILVERBERG - AC
CHARLES "CHUCK" NEEDLEMAN
JACK NEMAN
JOSEPH KAMZESKY
A/K/A JOE KANE
A/K/A MIDNIGHT

GEORGE KATZ
WM. "BIG BIG [illegible]
MORRIS FLEIS[illegible]
ABE HOFFMAN
DAVE KAPLAN
SAMUEL WEINSTOCK
SAMUEL SILVERST[illegible] - AC
A/K/A THE BARBER

NORTHEAST PHILADELPHIA MOB

FRANK JASKIEWICZ - FS
Boss

FRANCIS FERN - PI
Lieutenant

JOSEPH MONDICIE, SR. - PI
Lieutenant

GEORGE ILIGAS - AA
Lieutenant

ASSOCIATES

GEORGE WARNER
THOMAS WILSON
STANLEY PITEL
EDWARD PANFIL - AC
CHARLES MCGEVITT - FS
ROBERT MCGEVITT - AA

JAMES MORVAN
CHARLES BAKER - AA
ELMER GRAFF - AA
WILLIAM DEROGERIS - FS
PASQUALE BIONDI - FS
CHESTER LUBACZENSKI - AA

FRANCIS DOMANICO - AA
JAMES ORSINO - FS
JOHN MOSCUFO - AA
FRANCIS X. MCNALLY - AA
CHARLES PEDZIOK - PI
VENTON CALDWELL - FS

JOSEPH MONDICIE, JR. - AA
TREGDORE PERRY - PI
CHARLES F[illegible] MILLER - AA
CARMEN DORANZO - AC
NICHOLAS COSMO - AA
PHILIP MILESTONE - FS

EDWARD GOSS[illegible] - AA
THOMAS MALONE - [illegible]
CAESAR MILISC[illegible] - [illegible]
JOSEPH MOCCI[illegible] - [illegible]

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PHILA STRIKE FORCE

SET UP JULY 1968

OTHER STRIKE FORCE TARGETS

LOANSHARKS

ANTONI CRIGLIO - PI

ANTONIO ORIGLIO, INC. - PI

EDWIN CANTEL - PI

MICHAEL MYERSON - AA

S. T. STEVENS, INC. - AA

STARR ASSOCIATES

LEON MILLER - AA

MAXIMILLIAN KLINGER - AA

HENRY DE VITO - AA

VINCENT CELLA - AA

PAL JOEY, INC. - AA

HERMAN SCOTT - AA

MEYER REVITCH - AA

GAMBLING

RALPH ARDARY - PI

PHILA HARBOR TOURS - PS

JACOB KOZLOFF - AA

PARIDO GIACOMETO - AA

MICHAEL D'ALESSANDRO - AA

PROSTITUTION

HERBERT MARRIOTT - AA

JAMES K. LEWIS - AA

POLITICAL FIGURES

HELEN BLUMBERG - PS

EUGENE ANDERER - PI

PAUL MARZULLO - PI

EDWARD COHEN - PI

CLARENCE FERGUSON - PI

WILLIAM COTTRELL - PI

PETER CANTEL - AA

RAYMOND BAURKOT - AA

PENN WOOD DIST. CO.

EDWARD GALDON - AA

JAMES LEIGH - AA

EDWARD HOLLAND

CHARLES HOLLAND

CHARLES MADDEO - AA

GEORGE WILSON - AA

CHARLES SIMON - PS

CONFIDENCE MAN

MAJOR COXON - AA

PRECIOUS METAL SMELTERS

HERMAN PETROFF - PS

HYCO METAL - REFINING - PI

MAN FRED DE PEMAL

GILBERT COHEN - AA

TITAN RESEARCH - AA

BOOKMAKERS - BANKERS

ANTIONIO LATORRE - AA

FRANCIS STABISKI - AA

MATTHEW WHITAKER - PS

THOMAS J. MASTRANGELO - AA

FRANK JAWORSKI

MARTY SWARTZ - AA

JAMES VON HEFFNER - AA

WILLIAM HOWE - AA

ROBERT CONNELLY - AA

JOSEPH J. MARCHEGIANO - AA

MISCELLANEOUS

EDWARD WOHLMUTH (TRAVEL AGENCY) - PR

ADMIRAL TRAVEL, INC. - PR

ALFRED J. LAND (PHISICIAN) - PS

WILLIAM PASTORE (FENCE) - AA

JOSEPH PASTORE (COUNTERFEITING) - AA

ROBERT SIMONE (ATTORNEY) - AA

BLU RESTAURANT, INC. - AA

PATTY ANN BAR, INC. - AA

GEORGE LINDSAY (ATTORNEY) - PI

ORGANIZED THEFT

JOSEPH TAYLOR - PS

JOSEPH PHILLIPS - PS

JAMES MCINTYRE - AA

BELMONT CONTRACTING - AA

LABOR RACKETEERS

LOUIS LARDI - PS

MARY MALALE - PS

JOHN ANELLO - PI

ARTHUR J. GOSER - PS

WILLIAM STEARN - PI

RAYMOND GATES - AA

INT. BRANCH OF TEAMSTERS

LOCAL 158 - AA

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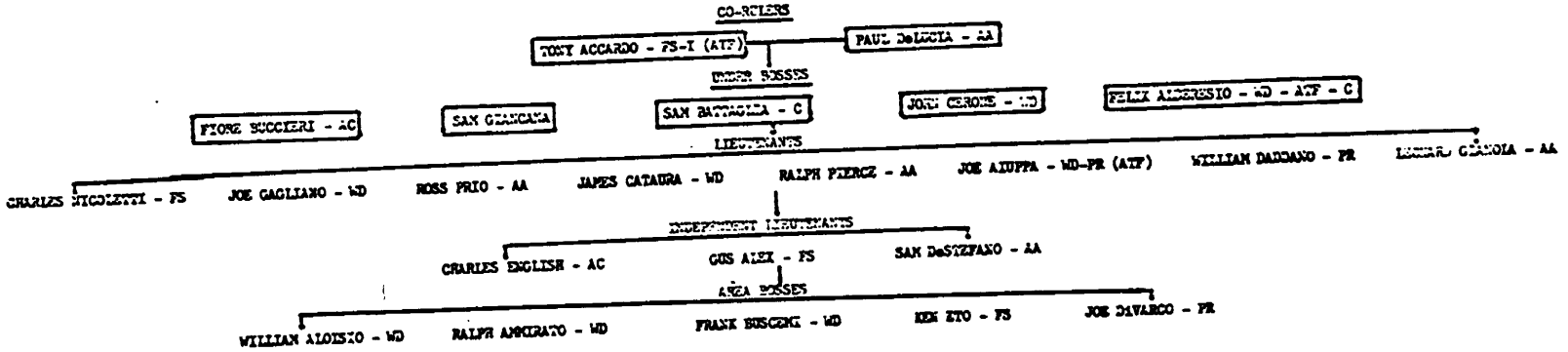
CHICAGO STRIKE FORCE

SET UP OCTOBER 1968



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CHICAGO STRIKE FORCE

SET UP OCTOBER 1968

ASSOCIATES

FINANCIAL

ALLEN DORFMAN - FS
HERBERT BLITZSTEIN - FR
JOHN D'ARCO - FS
JAMES GOTTLIEB - FS
MORRIS LASKY - FR
CHARLES LEGGETT - FR
VITO MICASIO - FS
CHARLES PALLARDY - FR
HARVEY POMERS - I
M. DONALD ROSS - FR
JOE STEIN - FR
LEONARD STALLMAN - FR
LOUIS CHARNIN - FS
FRANK ZADDINO - FS
WILLIAM D. ZELLA - FS
SHELDON GREEN - FS
JACOB HAGOPIAN - FS
NICK NITTI - FS
JOE VELLA - FS
JOE PECK - FR
ANTHONY MAVAROLLI - FR

GAMBLING

MARIO DE STEFANO - FS
ROCCO DE STEFANO - FS
DAVID LEADER - FS
NORMAN LEADER - FS
ARNOLD LOAT - FR
WILLIAM McGUIRE - MD
MICHAEL POSNER - FR
ROCCO SALVATORE - FS
ROCCO POTENZO - FS ATF-C
ANTHONY SPILOTRO - MD
RONALD TARAS - FS
THOMAS DART - ATF - FR

LABOR & CORRUPT PUBLIC OFFICIALS

JOHN AURIEMMA - FS
THOMAS HOGERTY - FS
PATRICK McCANN - FS
MARK THANASOURAS - FS

PROSTITUTION & VICE

ALBERT FRABOTTA - FS
CHARLES GIANCANA - FS
ROCCO PATERNOSTER - FS
LAWRENCE ROTH - FS
MARLENE WHITT - I
HARRY GEMANT - FS
DONALD SMITH - FS
JOE ZITO - ATF - FR
PHILIP E. MORENO - ATF -FR

JUICE & EXTORTION

STEVE ANDREOZZO - FS
EDWARD BLITZSTEIN - FR
JOHN FECARROTTA - FS
JOSEPH FERRIOLA - FS
BENNIE FILLICCHIO - FS - ATF - FR
MAX HECHTMEYER - FR
ANGELO LA PIETRA - FS
ALBERT MINIZZI - FR
FRANK SCHWEIS - MD
THEODORE ZIENS - FS
DOMINIC CARZOLI - C
WILLIAM DAUSER - FS - ATF - FR
VITO DI ZOSSO - FS
SIMONE FULCO - FS
LEO ROSENDORF - ATF - I
CARL FIORITO - ATF - I
JOE ROCCO - FR
LOUIS VENTIMI - FR

NOTE: In addition to above audit has open examinations on 250 related tax payers and has closed cases with deficiencies over $6,500,000.

CHICAGO STRIKE FORCE

SET UP OCTOBER 1968

NORTHERN INDIANA
ORGANIZED CRIME

PUBLIC OFFICIAL

JOHN J. MC KERMA - FS

POLICY OPERATORS

REGINALD BOYD - FS

TAYLOR OTIS HAYES - FS

JAMES A. PETERSON - FS

FRED HACKEY - FS

In addition to the above principals, Audit Division has 57 open examinations, and Intelligence Division has 9 investigations on associates of organized crime.

MILWAUKEE
ORGANIZED CRIME

RULER

FRANK P. BALISTRIERI - FR (ATF)

UNDER BOSSES

JOSEPH F. MADRIGRANO - FS-FR(ATF) FILIPPO CANDELLIA - AA LOUIS N. PALLO - AA

In addition to the above, Audit Division has 55 open examinations, Intelligence Division has 11 investigations, and AT & F has 282 investigations on associates of organized crime.

NEWARK STRIKE FORCE

SET UP DECEMBER 1968

MEMBERS OF DE CAVALCANTE - GENOVESE - RIZZO FAMILIES

CURRENT EXAMINATIONS

SIMONE DE CAVALCANTE - I

ALPHONSE LA TORRE - FS

JOSEPH DOTO - FS

NICOLA SCARFO - FS

THOMAS EBOLI - FS

ANTONIO ROCCO CAPONIGRO - FS

FRANK COCCHIARO - FS

VINCENT GIGANTE - FS

CHARLES COSTELLO - FS

ANTHONY PIROZZI - FS

GERARDO CATENA - FS

PHILIP DAMEO - FS

These investigations involve numerous individual and corporations. At present an entire Audit Group and approximately six special agents are assigned.

CONCLUDED EXAMINATIONS

SEMOUR ARONOWITZ - I

VINCENT CAMMARA, JR. - I

VINCENT CAMMARA, SR. - I

JOSEPH A. ZICARELLI - I

GEORGE MALONGA - I

JOHN DONATO - I

ANTHONY RUSSO - I

LOUIS MALANGA - I

JOSEPH AMBRO - I

PETER ROSSI - PR

CARMAN OTTILIO - I

PHIL FOSTER - I

JOHN JONES, JR. - PR

JOSEPH IPPOLITO - PR

DANTE D'AGOSTINO - PR

EMILIO DELIO - PR

ROCCO LE TORRE - PR

NOTE: The Newark District Intelligence Division now has 18 full scale and 111 Preliminary investigations underway -- 38.6% of the Districts direct investigative time is being applied to Strike Force Cases.

FOR OF ONLY

NEWARK STRIKE FORCE

SET UP DECEMBER 1968

POLITICAL CORRUPTION CASES

HUGH ADDONIZIO - C

FRANK ADDONIZIO - I

IRVING L. TURNER - I

CALVIN D. WEST - I

ANTHONY GURLIANO - I

PHILIP Z. GORDAN - I

ANTHONY LA MORTE - C

LEROY BERNSTEIN - I

JAMES T. CALLAGHAN - I

ANTHONY BOIARDO, JR. - I

RALPH VIGARO - C

JOSEPH BIANCONE - C

MARIO GALLO - I

JOHN V. KENNY - I

THOMAS J. WHELAN - I

FRED KROPKE - I

WALTER W. WOLFE - I

JOHN J. KENNY - I

FRANK G. MANNING - I

JOSEPH B. STAPLETON - I

PHILIP W. KINZ - I

JOSEPH R. CORRADO - I

THOMAS M. FLAHERTY - I

BERNARD MURPHY - I

TEN PERCENTERS ARRESTED AT GARDEN STATE RACE TRACK

SECTION 7206(2) VIOLATION

ALLEN CHERVITCH - C

WILLIAM M. CRAIG

FRANK GILIBERTO

PAUL A. CROMELL - C

HARRY G. GARDNER - C

SAMUEL W. GROSS - C

CHARLES P. HOWARD - C

ALBERT LABRIOLA - C

JOHN LUCASZEK - C

DUVALL A. MC COY - C

MICHAEL E. MC DONOUGH

LAWRENCE G. MOLOGHNEY

CHARLES E. MULKEY - C

FRANK J. QUARLES - C

THOMAS QUILTES - C

HENRY F. SOMERVILLE - C

MICHAEL TAZZI - C

VINCENT L. ZAMBELLI

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DETROIT STRIKE FORCE

SET UP DECEMBER 1967

ZERILLI FAMILY

JOSEPH ZERILLI - AA
Ruling Council

WILLIAM TOCCO - AA
Ruling Council

JOHN PAPPALARDO - AA
Ruling Council

PETER LICAVOLI - AA
Ruling Council

ASSOCIATES

SAM LAGRASCO - AA
ALBERT BATTISTI - FS
SAM LENTINE
HARRY LENTINE - FR
MICHAEL MATRANGA - I
MARIO FIORILLI - AC
VINCENT SEVERINO - AA
JOHN BALAS - AC
PETER ANDREO - I
ARROW RECYCLING CORP. - C
LOUIS MORY - I
DAVID STEEL CORP. - I
HERBERT LENTINE
ANTHONY BARRASCO - AA
CHARLES CASSESE
CHARLES MERACLE - AC
ANTHONY ABATE - AA
PETER GUASTELLA - AA
JACK GIACALONE - AA
SALVATORE AGOSTA - I

JAMES MARALIA - I
JACK SHAPIRO - AA
SYLVIA PARIS - AC
JOSEPH FRASCO - AC
JOHN SHAMAY - C
RICHARD ZIMMERMAN - I
FRANK MUSARO
DOMENIC LICAVOLI - AA
A. L. BUCCIERO - I
LOUIS C. SARNO - C
JOSEPH SPERRAZZA - AC
VINCENT H. MELI - AA
ARTHUR ROOPS - AA
CLARENCE STEPHEN - I
CHARLES GOLDFARB - A
LAWRENCE BURNS - C
GUS COLACASIDES - AC
PETER BELLANCA - AC
FRANK RYAN - AC

PRIMARY HEIR APPARENTS AND/OR ADMINISTRATORS

ANTHONY J. ZERILLI - FS
VINCENT A. MELI - AA
JACK W. TOCCO - AA
ANTHONY GIACALONE - I

MICHAEL POLIZZI - AA
MICHAEL RUBINO - C
DOMINIC P. CORRADO - AA
RAFFAELE QUASARANO - AA

SECONDARY HEIR APPARENTS AND/OR ADMINISTRATORS

ANTHONY TOCCO - AC
ANTHONY J. CORRADO - AA
VITO GIACALONE - I
PETER VITALE - AA
DANNY COSENTINO - AA

CALOGERO LICATA - AC
JOSEPH BARBARA - FS
LOUIS ROGGIRELLO - I
PAUL VITALE - AA
JACK A. LUCIDO - I

UNIT CHIEFS

PETER CAVITAIO - I
FRANK RANDAZZO - FS
ANTHONY IMBRUNONE - FS

JOHN SERRA - WD
SAM GIORDANO
NICK DITTA - AC

BERNARD MARCHESANI - I

LIEUTENANTS

VINCENT RICCOBONO - AC
JOSEPH CIARAMITARO - AA
MARIO AGOSTA - AA

LEONARD MONTELEONE
RONALD MORELLI - I
DOMINIC ALLEVATO - AA

BOOKMAKERS

NICK MONDELLA - I
ERNEST ANASTAS - I
LEONARD TORRICE - I
FRANK DUVIC - I
DONALD DAWSON - I
WARREN LUKE MARTINO - I
SALVATORE SICURO - I
CLARENCE ROBINSON - FR
STEPHEN DAUNCH - I
DAVID GODSEY - I
HOWARD DIXON - I
PETER MARTINO - I
IKE JONES - I
MARK THOMAS - I

NUMBERS OPERATORS

CHARLES HARRIS - FR
JAMES WINGATE - AC
CLARENCE WILLIAMS - FS
ERNEST WHITE - AC
HARRISON BROWN - C
LAWRENCE WINGATE - FS
DOIL TAYLOR - C
PHIL GRESHAM - AA
JAMES HUGHES - FS
OSCAR WALTON - FS
MCGRANT PYE - AC
ALPHONSO WATSON - AC
JULIUS SIMMONS
JOSHUA ELLIS
JAMES CUMMINGS
RANDOLPH MONTGOMERY - AC
HOWARD BAKER - C
ERNEST MACKEY - AC
EDDIE WINGATE - AC
ANDREW HARRIS

[illegible]

GEORGE [illegible] - FS
JOHN [illegible] - FS
[illegible] - FS
WILLIE [illegible] - AA
RICHARD [illegible] - AA
LESTER [illegible] - AA
GEORGE [illegible] - AA

[illegible]

PETER LUCIANO - FS
ALEX [illegible] - FS
ROY GRUENBERG - FS

SET UP DECEMBER 1963

MEYER LANSKY - PS
PRINCIPAL

Business Associates

SAMUEL S. GARFIELD - AA
[illegible] PRODUCING CORP.
EDWARD LEVINSON
ALLARD ROSE
GEORGE GORDON
MORRIS KLEINMAN

BENJAMIN B. SIEGELBAUM
GERSON BLATT - AA
WILLARD KATTOVE - AA
MILTON PEPPER
HOWARD SCHARLIN

MORRIS KLEINMAN
MAX DALITZ
LEO BERCOVITCH

JACK LANSKY - AA
SINGAPORE MOTEL - AA
ARTEC MOTEL - AA
MEYER WASSELL - AA
MARVIN BERGUSON - AA

THE FRANCISCO CO. - PS
SAM COHEN - PS
MORRIS LANSBURGH - PS
DANIEL LIFTER - PS
CHESTER SIMMS
ROBIN ZERLIN

IZZY BLOOM - AA
SINGAPORE MOTEL
HAWAIIAN ISLE MOTEL
HARRY & IZZY BLOOM

ALBERT PARVIN
PARVIN DOHRMAN CORP.

LEO BERCOVITCH
ROSOSA INVESTMENTS LTD.
MORRIS KLEINMAN

Personal Associates

VINCENT ALO - AA

BERNIE BERGUSON - AA

IRVING FELDMAN

BENJAMIN GAINES

LEO FRANK

H. ARDIE FINCKE

EMIL GLEICHMAN

PHILIP KOVOLICH - AA

BEN KAUFFMAN

LOUIS KANZE

ALVIN MALNIK - A

JOHN SULLIVAN

SAM SPERLING

SAM TUCKER

HYMAN SIGEL - PI

HYMAN STROMBERG

ADOLPH SCHWARTZ

MEYER WASSELL

ANTHONY RICCI

JOE SOSKEN - PS

Family Associates

THELMA LANSKY - Wife

MURRY SCHEER - Brother
GEORGE SCHEER - Brother
RICHARD SCHWARTZ - Son
by prior marriage

JACK LANSKY - Brother

ANNA LANSKY - Wife
LINDA BAKER - Daughter
NATHANIEL BAKER - Husband
ROBERTA SZYPERSKI - Daughter
JOHN SZYPERSKI - Husband

ESTA CHESS - Sister

MATTHEW CHESS - Husband

SANDRA LOMBARDO - Daughter

VINCENT LOMBARDO - Husband - AA
SAN FRAN CORP.
IMPERIAL INVESTMENT CORP.

PAUL LANSKY - Son - PI

EDNA S. LANSKY - Wife

BERNARD LANSKY - Son
(an invalid)

Suspected Associates

I. JACK SCHEIN - AA

HAROLD HIRSCH

JACOB LEVINSON

WILLIAM LEVINSON

DAVID YAFFE

MOUSETRAP OF MIAMI - AA

BENJAMIN GRAD

BENJAMIN ZUCKER

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TRAFFICANTE FAMILY

SANTOS TRAFFICANTE, JR. - FS
Boss

HARLAN BLACKBURN - PR

FRANK DICGINUS - FS

JAMES LONGO - FS

FRANK RAGANO - FS

HENRY GONZALEZ - AC

JOE DIEZ - FS

RALPH DIEZ - AA

SAM TRAFFICANTE - FS

NICK SCAGLIONE - C

FRANK TRAFFICANTE - AA

MINNIE LOPEZ - FS

PETER POLARI - FS

JAMES DONOFRIO - PR

ANGELO GUIDA - PR

LAZARO MILIAN - I

CLARENCE PREVATT - FS

MIAMI - [illegible]

SET UP [illegible] 1957

Other LCN Members

ENRICO PERONI - C

ALFRED FELICE - I

JOHN CLARENCE COOK - I

ALFRED MONFS - I

FRANCIS SANTOS - I

SAM GIANNUSO - I

ANGELO DIFRISCO - I

PASQUAL CORRADO - I

MICHAEL POCLASPE - PR

PHILIP SIMON - PR

DOMONIC DIQUARTO - PR

NATHAN LEVINE - PR

STEWART GREENFIELD - PR

GEORGE MOBILE - FS

EDWARD COOK - FS

MARTIN KATZ - FS

WILLIAM DENTAMARO - FS

ATF Accomplishments
LCN Members

JOSEPH DISORSO - I

WILLIAM DRAI, JR. - C

LIBRA CAPR - I

JAMES TAMANTINO - I

SANTO TRAFFICANTE, JR. - C

AUGUST PATTELLO - Dismissed

LLOYD DYAL, JR. - I

MICHAEL FALCO - I

ANTHONY BONANTI - I

The above portrays only a portion of the Service's program and accomplishments through the Miami Strike Force to date. The Audit Division has completed a total of 80 independent examinations, now has 155 examinations in process, and has recommended taxes and penalties of over $8 million. Intelligence and AT&F investigations have resulted in 21 indictments, most of which are pending further court action. In addition, Intelligence has completed 11 investigations in which the prosecution recommendations have not reached the indictment stage, and has 13 cases now in the investigative stage.

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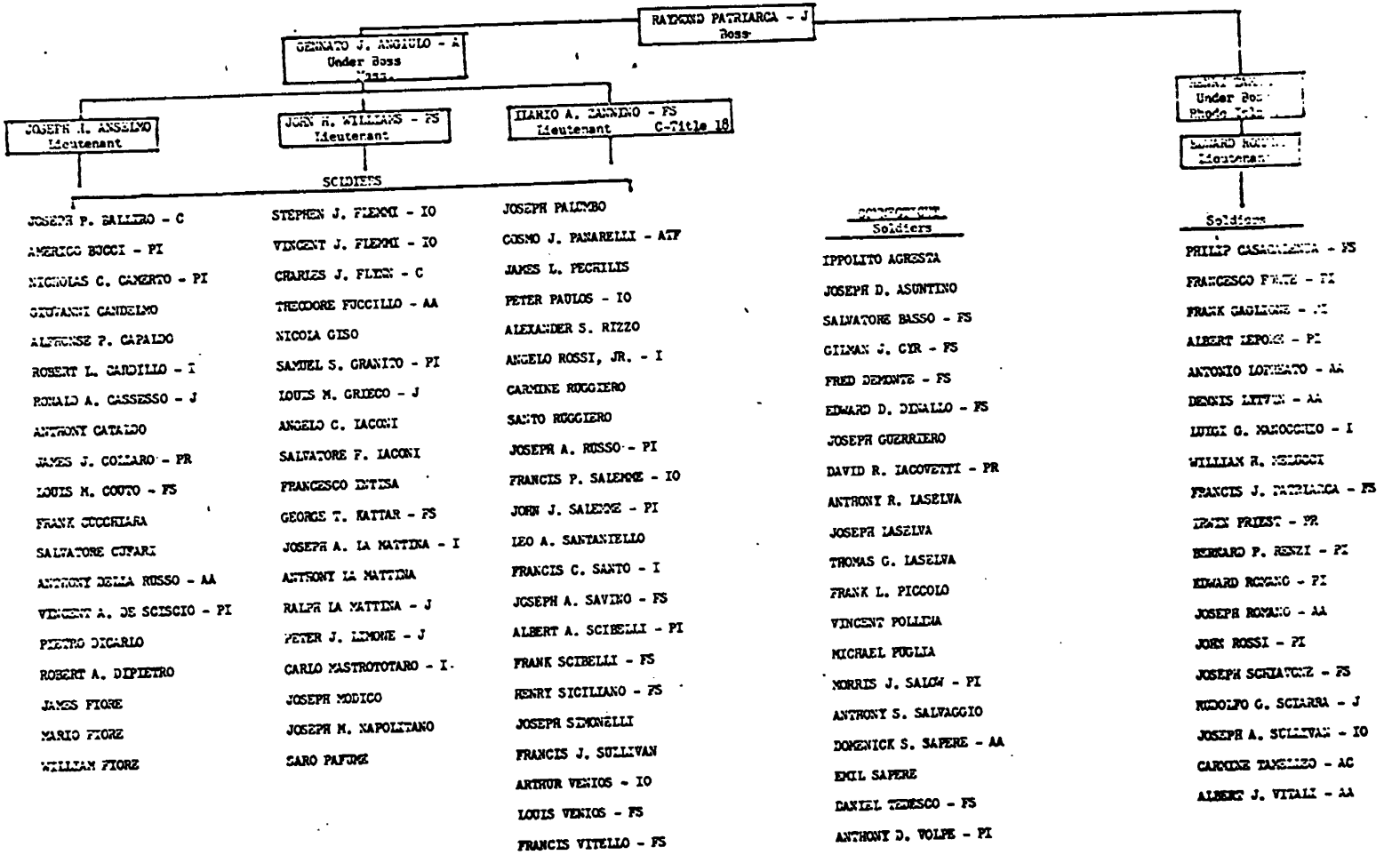


JOSEPH P. BALLIRO - C
AMERICO BUCCI - PI
NICHOLAS C. CAMERTO - PI
GIOVANNI CANDELMO
ALFONSE P. CAPALDO
ROBERT L. CARDILLO - I
RONALD A. CASSESSO - J
ANTHONY CATALDO
JAMES J. COLLARO - PR
LOUIS M. COUTO - FS
FRANK CUCCHIARA
SALVATORE CUFARI
ANTHONY DELLA ROSSO - AA
VINCENT A. DE SCISCIO - PI
PIETRO DIGARLO
ROBERT A. DIPIETRO
JAMES FIORE
MARIO FIORZ
WILLIAM FIORZ

STEPHEN J. FLEMMI - IO
VINCENT J. FLEMMI - IO
CHARLES J. FLEMMI - C
THEODORE FUCCILLO - AA
NICOLA GISO
SAMUEL S. GRANITO - PI
LOUIS M. GRIECO - J
ANGELO C. IACONI
SALVATORE F. IACONI
FRANCESCO INTISA
GEORGE T. KATTAR - FS
JOSEPH A. LA MATTINA - I
ANTHONY LA MATTINA
RALPH LA MATTINA - J
PETER J. LEMOME - J
CARLO MASTROTOTARO - I
JOSEPH MODICO
JOSEPH M. NAPOLITANO
SARO PAPUMI

JOSEPH PALUMBO
COSMO J. PANARELLI - ATF
JAMES L. PECHILIS
PETER PAULOS - IO
ALEXANDER S. RIZZO
ANGELO ROSSI, JR. - I
CARMINE RUGGIERO
SANTO RUGGIERO
JOSEPH A. RUSSO - PI
FRANCIS P. SALEMME - IO
JOHN J. SALEMME - PI
LEO A. SANTANIELLO
FRANCIS C. SANTO - I
JOSEPH A. SAVINO - FS
ALBERT A. SCIBELLI - PI
FRANK SCIBELLI - FS
HENRY SICILIANO - FS
JOSEPH SIMONELLI
FRANCIS J. SULLIVAN
ARTHUR VENIOS - IO
LOUIS VENIOS - FS
FRANCIS VITELLO - FS

[illegible]
Soldiers

IPPOLITO AGRESTA
JOSEPH D. ASUNTINO
SALVATORE BASSO - FS
GILMAN J. CYR - FS
FRED DEMONTE - FS
EDWARD D. DINALLO - FS
JOSEPH GUERRIERO
DAVID R. IACOVETTI - PR
ANTHONY R. LASELVA
JOSEPH LASELVA
THOMAS G. LASELVA
FRANK L. PICCOLO
VINCENT POLLINA
MICHAEL PUGLIA
MORRIS J. SALOM - PI
ANTHONY S. SALVAGGIO
DOMENICK S. SAPERE - AA
EMIL SAPERE
DANIEL TEDESCO - FS
ANTHONY D. VOLPE - PI

PHILIP CASACCIENTA - FS
FRANCESCO FRATE - PI
FRANK GAGLIONE - [illegible]
ALBERT LEPORE - PI
ANTONIO LOMBARDO - AA
DENNIS LETTEN - AA
LUIGI G. MARCOCCIO - I
WILLIAM R. MELUCCI
FRANCIS J. PATRIARCA - FS
IRVIN PRIEST - PR
BERNARD P. RENZI - PI
EDWARD ROMANO - PI
JOSEPH ROMANO - AA
JOHN ROSSI - PI
JOSEPH SCHIATONE - FS
RUDOLPH G. SCIARRA - J
JOSEPH A. SULLIVAN - IO
CARMINE TANCREDO - AC
ALBERT J. VITALI - AA

MANHATTAN STRIKE FORCE

SET UP JULY 1969

GENOVESE FAMILY

GERARDO CATENA - FS
Acting Boss
Newark Strike Force

THOMAS EBOLI - FS
Acting Boss
Newark Strike Force

MICHAEL MIRANDA - FS
Consigliere

LIEUTENANTS

VINCENT ALO - AA
MICHAEL GENEROSO
PHILIP LOMBARDO

RICHIE BOIARDO - FS
PASQUALE EBOLI
ROSARIO MOGAVERO - FS

ANTHONY CARILLO - FS
COSMO FRASCA - FS
FRANK TIERI - FS

FRANK CELANO - FS
MICHAEL GENEROSO - FS

SALVATORE CELENBRINO - FS
VINCENZO GENEROSO - FS

ANGELO DE CARLO - FS
THOMAS GIGGO - FS

PETER DE FEO - FS
HARRY LASTA - FI

SOLDIERS

JOSEPH AGONE - FS
FRANK CAGGIANO - FI
ANTHONY DE MARTINO - AA
JOHN A. MASIELLO - FR
PETER PELLAGRINO - FI
ANTHONY SANTOLI - FI
VICTOR TRAMBOLINO - FI

A. ALBANESE - FS
WILLIAM CAGGIANO - FI
MATTHEW FORTUNATO - FS
ALDO MAZZARITTI - AA
RUDOLPH PRISCO - FI
JOHN SCIASCIA - FS
CHARLES URICOLA - FI

D. ALONGI - FI
J. CATALDO - FS
J. GAZIA - FS
JAMES NAPOLI - AA
NICHOLAS RATTENI - FS
FRANK SERPICO - FS
ANTHONY VERA - FI

SALVATORE APPAZA - FI
JULIUS CELENTANO - FS
ANDREW GERARDO - FI
PASQUALE PAGANO - FS
ALEX RUSSO - FI
GAETANO SOMMA - AA

MORRIS BARRA - FI
LAWRENCE CENTORE - FI
MARIO GIGANTE - FS
ROSARIO PALMIERI - FI
FRANK RUSSO - FI
JOHN STOPELLI - FI

ROBERT BLANCHE - FI
FRANK COSTELLO - FI
ORLANDO GRIECO - FI
WILLIAM PARADISE - FS
NUNZIO RUSSO - FS
JOSEPH STRACCI - FI

PASQUALE BURGENS - FI
JAMES DARMINIO - FS
MICHAEL GENOVESE - FS
CARMINE PELLAGRINO - FS
ANTHONY SALERNO - AA
CHARLES TOURINE - AA

MANHATTAN STRIKE FORCE

SET UP JULY 1969

SCIACCA FAMILY

RULING COUNCIL

PHILIP RASTELLI - FS — JOSEPH ZICARELLI - I — JOSEPH DI FILIPPI - FS — NATALE EVOLA - FS

LIEUTENANTS

FRANK D'ANGELO - FS | NICHOLAS MARANGELO - FI | ARMAND POLLASTRINO - FI | DOMINICK SABELLA - FS | MICHAEL SABELLA - FS | SERGIO TARTAMELLA - FS

SOLDIERS

SALVATORE BONANO - I | ANTHONY GRISCI - FS | VITO DE FILIPPO - FS | SALVATORE MARCHESE - FS | ANTHONY MESSINA - FS | SALVATORE MIRABILE - FI | JOHN SCIACCHITANO - FS

VITO LICAVOLI - FS | ANTHONY LUCIDO - FS

MEMBERS NOW LOCATED IN PHOENIX, ARIZONA

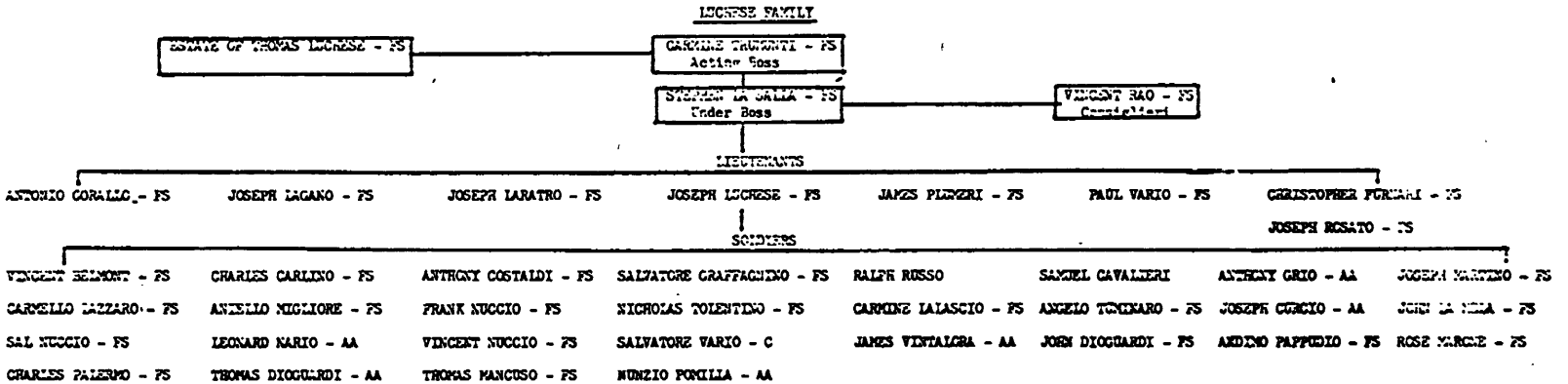
JOSEPH BONANO - FS
Former Boss

JOHN AQUADO | SALVATORE BRUNO | TONY CACIOPPO | VITO NOLE | SALVATORE SPITALE

Los Angeles Strike will expend into this area.

MANHATTAN STRIKE FORCE

SET UP JULY 1969



MANHATTAN STRIKE FORCE

SET UP JULY 1969

GAMBINO FAMILY

CARLO GAMBINO - FS
Boss

[illegible] - FS
Under Boss

[illegible] - FS
Consigliere

JOSEPH N. GALLO - FS
Acting Consigliere

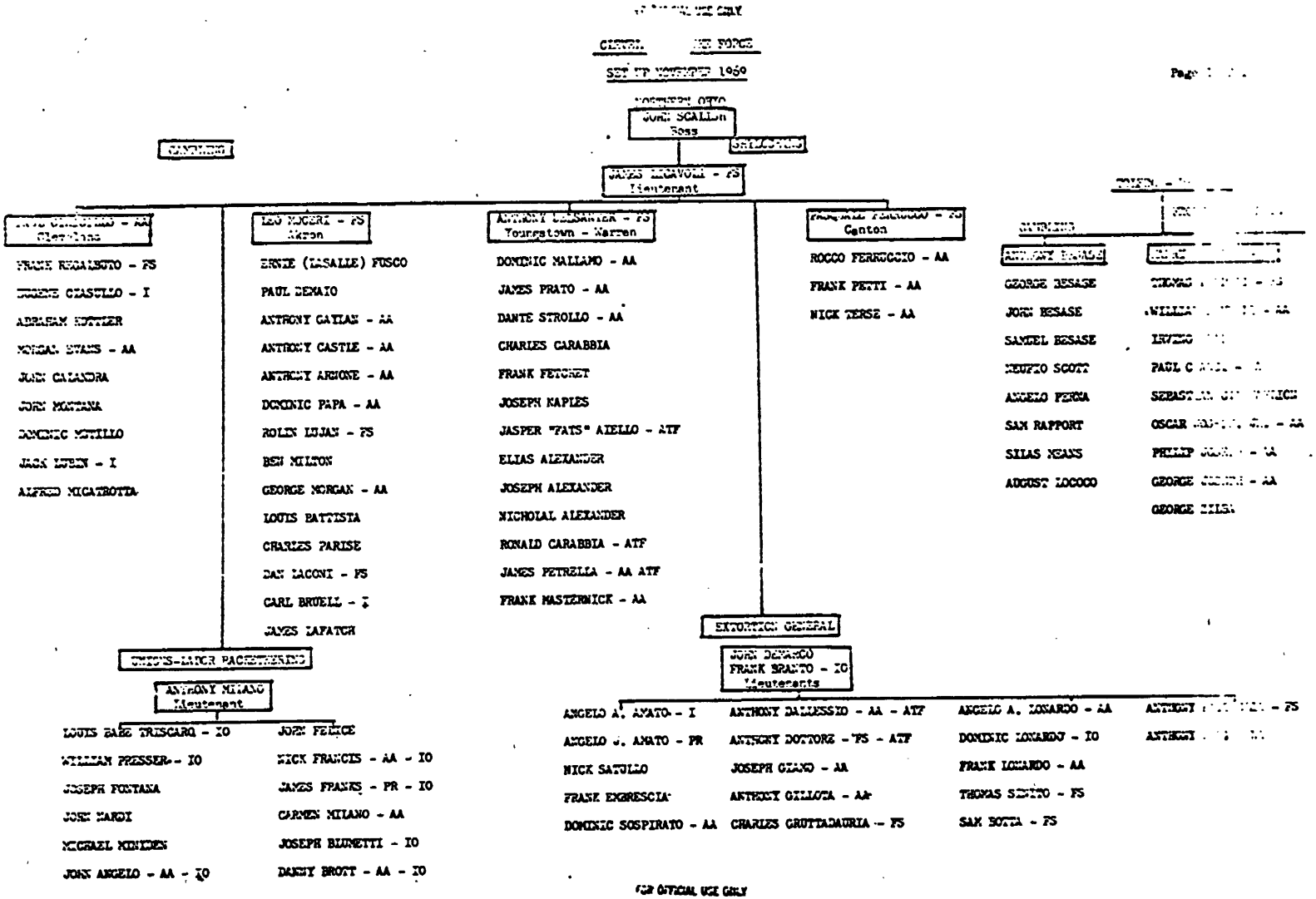
LIEUTENANTS

DAVID AMODEO - FS	DOMENICO ARCURI - AA	SALVATORE AVARELLO - FS	LOUIS AVITABILE - FS	PAUL CASTELLANO - FS	JOSEPH FRANGATO - AA	ROCCO MAZZIE - FS
JOSEPH COLUZZO - FS	POSQUALE CONTE - FS	VINCENT CORRAO - FS	CHARLES DONGARRO - FS	JAMES EPPOLETO - FS	JAMES FAILLA - FS	JOSEPH GAMBINO - FS
JOSEPH GAMBINO - FS	PAUL GAMBINO - FS	OLIMPIO GARAFOLO - FS	ANGELO MASCIA - I	ANTHONY NAPOLITANO - FS	FRANK RIZZO - FS	GAETANO RIZZO - FS
JACK SCARPOLLA - AA	ANTHONY SCOTTO - FS	ANTHONY SEDOFFO - FS	PETER STINCONE - FS	MARIO TRAINA - AA	ETTORE ZAPPI - FS	JOSEPH ZINGARO - FS

SOLDIERS

VINCENT JAMES - AA	EDWARD AMPIO - AA	GERMAIO ANACLERIO - FS	ANTHONY ANASTASIO - FS	JOHN ANGELONE - FS	JOSEPH ARCURI - AA	DOMENICK [illegible] - FS
FRANCESCO BARRANCA - AA	JOSEPH BARRANCA - AA	HUGO BASSI - FS	EDWARD BONICA - FS	MICHAEL CATALANO - FS	JOHN CHIONELLO - FS	CARMINE [illegible] - FS
WILLIAM COTTONE - FS	JOSEPH COSIMANO - FS	JOSEPH C. COSIMANO - AA	JOSEPH D. ALESSIO - AA	FRANK D'APOLITO - AA	JOSEPH DeCICCO - FS	VINCENT De[illegible] - AA
GUIDO DeCURTIS - FS	ANTHONY DeLUTRO - FS	CHARLES DeLUTRO - FS	JOHN A. DeMATTEO - AA	NICHOLAS FORLANO - FS	JOSEPH GIARDINA - AA	LOUIS M. G[illegible] - AA
SALVATORE GIARDINA - AA	FRANK GUGLIELMINI - FS	JOSEPH GUGLIELMINI - FS	SALVATORE GUGLIELMINI - FS	LOUIS GUIGA - FS	CARMINE LOMBARDOZZI - I	PHILIP LO[illegible] - FS
ANIELLO MANCUSO - FS	GENNARO MANCUSO - AA	JOSEPH MARINO - FS	THOMAS MASOTTO - AA	JAMES LEO MASSI - FS	ANGELO MELI - FS	NICOLA MELILLO - FS
FRANK MOGGARDI - AA	PHILIP J. MORDICA - AA	GUIDO PENOSI - PR	PHILIP PERFITTI - AA	DOMENICO PETITO - AA	PETER PIACENTI - AA	ANTHONY PI[illegible] - FS
JOHN SCOTTO - AA	EDWARD GUIROLO - FS	JOHN RICCOBONO - AA	ERMIGLIA RIZZO - FS	SAM ROMORE - FS	VINCENT SARULLO - FS	GIACOMO SC[illegible] - AA
ANTHONY TARELLA - AA	GEORGE SANTO - AA	ALFONSO SPITALIORI - AA	FREDDIE TESTA - AA	PETER TORTORELLA - AA	ARTHUR TORTORELLIO - FS	SALVATORE T[illegible] - AA
SALVATORE PISELLO - FS	CARMINE VIVOLA - AA	PAUL ZACCARIA - FS	ANTHONY ZAPPI - AA			

NOTE: As of December 31, 1970 the Manhattan Strike Force had 453 independent audits, 68 preliminary investigations and 142 full scale investigations.



FOR OFFICIAL USE ONLY

FOR OFF

LOS ANGELES STRIKE FORCE

SET UP JANUARY 1970

L. C. N. MEMBERS & ASSOCIATES

LOS ANGELES

LOUIS THOMAS DRAGNA - FS
JOSEPH P. DECARLO - FS - C (ATF)
ANDREW J. IACOCO - FS
ELI LUBIN - FS
MICHAEL A. PETRO - FS
LOUIS BARBELLA - FS
FRANK BOMPENSIERO - FS
JACK LIPARDI - AA
FRANCISCO MATRANGA - FS
JOSEPH MATRANGA - FS
SALVATORE PIZZO - FS
JOHN HADZINA - I - (ATF)
NATHAN ROSENBERG - FS

SAN FRANCISCO

JOSEPH CERRITO - FS
ABRAHAM CHAPPAN - FS
JAMES FRATIANNO - I
CHARLES L. CENTERS - FS
ANGELO MARINO - FS
CARL F. ZINGALE - FS
ELMO FERRARI - AA
ALBERT SCALLEAT - AC
ROBERT TEGAT - AA
RAY GUADAGNOLO - FS

LAS VEGAS

EDWARD A. BOCCHERI - FS

OTHER STRIKE FORCE TARGETS

FINANCIAL

IRVIN J. KAHN - FS
ALBERT B. PARVIN - PR
PARVIN/DOHRMANN CO. - AA
THE ALBERT PARVIN FOUNDATION - AC
JET SET OF CALIFORNIA, INC. - FS
ROBERTA MFG. CO., INC. - FS
BAPTIST FOUNDATION OF AMERICA - AA
WILLIAM J. CUDD - FS
SEVENTH STEP FOUNDATION - AC
LOCAL 396 TEAMSTERS UNION - AA
LOCAL 402 CULINARY WORKERS UNION - AC AL BRANCATT
ALSTATE COIN MACHINE CO., INC. - PR
LAWRENCE S. FISHER - PR
BROOKS RENT-A-CAR, INC. - FS
IRVING BELL - FS
BENJAMIN LASSOFF - MD
BANK OF LAS VEGAS - AA
LEONARD CAMPBELL ENTERPRISES - AA
CARL COHEN
COMMERCIAL CENTER, INC.
FRANK MILANO, JR. - FS

PUBLIC CORRUPTION

CHARLES A. PRATT - PR
SAN DIEGO YELLOW CAB, INC. - PR
DORIS MARTIN - FS
RALPH W. BORETTI - AA
CALEB MILLIGAN - FS

PORNOGRAPHY

SAM RATNER - I
DONALD WEINER - I - (ATF)
ANTHONY MIRRA - I - (ATF)
MATT GINGER - FS
NICK SIMONIS - FS

SHYLOCKING

CHARLES J. BUFALINI - FS

PROSTITUTION

ARTHUR COLVIN - FS
JOSEPH COMFORTE - FS
ALVIN L. FIDONI - FS

THEFT - STOLEN PROPERTY

JOHN D. TERITT - AA
LONNIE CHADWICK - AC

BOOKMAKING & GAMBLING

HERBERT FRIED - FS
FRANK GUTIERREZ - FS
EDWARD PRICE - PR
DOCKET BROOKS THRELO - AA
JOE LOVATO - AC
JOSEPH IACULLI - FS
PETER MILANO - FS
GEORGE D. ANDROS - PR
JEANIE M. TORCHIA - AA
WILLIAM M. CHRISTIE - AA
ARNOLD KIMMES - I - (ATF)
GEORGE P. STILLWAGON - FS
HARRY MILANE - I - (ATF)

LOS ANGELES STRIKE FORCE

SET UP JANUARY 1970

LAS VEGAS CASINO SKIMMING

CAESARS PALACE - FS

DEAN E. SHENDALL, JR. - FS

ELLIOTT PRICE - FS

IRVING RESNICK - FS

NATHAN JACOBSON - FS

JAY SARNO - FS

JERRY ZAROWITZ - FS

DUNES - FS

HOWARD I. ENGEL - FS

MAJOR A. RIDDLE - FS

LEONARD D. CAMPBELL - AA

ROBERT PRICE - AA

CHARLES RICH - AA

SIDNEY WYMAN - AA

LARRY ROSENTHAL

STARDUST - AA

ALLEN YALE COHEN - AC

ISADORE EPSTEIN - FS

GEORGE G. RIFF - PR

JOHN DREW

ALLARD ROEN

MORRIS B. DALITZ - FS

FLAMINGO - FS

BUD BANNER - AC

SAM BELKIN - PC

JERRY GORDON - PR

ARTIE NEWMAN - FS

CHESTER D. SIMMS - WD

CHARLES BARGIEL - FS

RIVIERA - FS

ROSS MILLER - FS

EDWARD TORRES - FS

JEROME MACK - AA

E. PARRY THOMAS - AA

[redacted] - AA

CIRCUS CIRCUS

STANLEY MALLIN

LAS VEGAS INTERNATIONAL - A

KIRK KERKORIAN - AA

ALEX SHOOFEY - AA

TRACY LEASING CO. - AA

WILLIAM MILLER

TROPICANA

HORSESHOE CLUB - AA

LESTER B. BINION - WD

JACK BINION

MORRIS M. MASON - AA

M. WALTER MASON - AA

STUART J. MASON - AA

ALADDIN - AA

[redacted] - AA

PAUL [redacted] - AC

CLIFFORD JONES - FS

EDWARD [redacted] - WD

COURIER PROJECT

IRVING DEVINE - AA

MYRON FREEMAN - AC

NEW YORK MEATS - AA

ISADORE JACOBSON - AC

LONNIE CHADWICK

SYRIAN ORGANIZED CRIME FAMILY

JAMES A. MICHAELS, SR. - FS
Boss

JAMES A. MICHAELS, JR. - AA
Under Boss

FRANCIS J. MICHAELS
Under Boss

Associates

MARTIN ABOUSSIE - AC

WASHINGTON ABOUSSIE - AA.

WARREN DAPRON - FS

PAUL LEISURE - FS

GEORGE J. MICHAELS - AA

LESTER STRAUSEN

MATTHEW TRUPIANO - AA

SORKIS J. WEBBE - AA

ARTHUR BERNZ - FS

RAY CONRAD - AA

SPRINGFIELD, ILLINOIS ORGANIZED CRIME FIGURES

ERNEST DIMORA - FS

STANLEY DURYA - FS

JAMES MURPHY - FS

CHARLES & PETER SALVO - FS

ANTHONY ZITO - FS

ATF ACCOMPLISHMENTS

TERRY TREATT - I

ULISSES HARRIS - I

EAST ST. LOUIS AND SOUTHERN ILLINOIS

REMNANTS OF BUSTER WORTMAN MOB

ARTHUR BERNZ - FS
WORTMAN'S SUCCESSOR

WILLIAM F. BOLAND - FS

WILLIAM BUDSHIK - FS

LOUIS CALCATERRA - FS

GEORGE F. CARNER - FS

FRANK HARRELSON - FS

EDWARD HARRIS - FS

DONALD HAZEL - FS

STANLEY SIERON - FS

ITALIAN ORGANIZED CRIME FAMILY

ANTHONY GIORDANO - FS
Boss

CATHERINE GIORDANO

WILLIAM A. GIORDANO - FI

BANA[illegible] OF [illegible], INC. - FS

JOHN VITALE - FS
Underboss

M & [illegible] CO. - FS

Lieutenants

JAMES GIAMMANCO - FS

RALPH CALECA

ANTHONY GIAMMANCO - FS

WILLIAM SPINELLI - FS

DOMINIC ORLANDO - FS

MATHEW TRUPIANO - AA

Associates

JACK BALLARD - FS

JOSEPH CAMMARATA

GIROLAMO CATALDI

RAY CONRAD - AA

SAM D'AGOSTINO - PR
MISSOURI HOT FARMING & MACHINERY CO., INC. - PR

JOE DIGIORANNA

SAM GUCCIONE

EDWARD I. GRIMM

PAUL LEISURE - FS

DOMINIC ORLANDO - FS

ARTHUR SAFRON - FS

LOUIS SHOULDERS - FS

ARTHUR BERTZ - FS

PUBLIC OFFICIALS, BUSINESSMEN AND UNION OFFICIALS

CHARLES BRUNO

ALFONSO J. CERVANTES - AA

GLENNON ENGLEMAN - AA

HAROLD GIBBONS - AA

STEVE LEKOMITROS - AA

JOHN MURPHY - AA

CLYDE ORTON

MORRIS SHENKER - FS

STANLEY STANHOPE - AA

GREGORY TAYLOR - PR

BERNICE TAYLOR - PR

VENNERS, INC. - AA

ROY WILLIAMS - AA

FOR O ONLY

NEW ORLEANS STRIKE FORCE

SET UP MAY 1970

CARLOS MARCELLO FAMILY

CARLOS MARCELLO

MEMBERS

JOSEPH C. MARCELLO

JOSEPH MATASSA

PELICAN TOMATO CO., INC.

JOSEPH SALADINO

JBC COMPANY

STEVAN MOTEL, INC.

NEMO MOLTZ

FRANK CARACCI - FI

ASSOCIATES

CHARLES T. D'AMICO - PR

HAYES DUGAS

PETER J. GUARISCO - FS

SYLVAN HEYMANN - FS

MICHAEL MAROON - AA

CHARLES PACE - FI

PALACE AMUSEMENT COMPANY - FI

TOMS & COUNTRY MOTOR HOTELS, INC. - AA

J. POLSE ROY - AA

MAYAIAH INSURANCE CO. - AA

A. K. ROY, INC. - AA

HARTCO, INC. - AA

JEFF, INC. - AA

WEGROW, INC. - AA

ACERS, INC. - AA

NELTON J. BERTHELOT - AA

HYDRO ELECTRIC POWER, INC. - FS

HENRY BURKE, SR. - FS

RELATED

CHURCHILL FARMS, INC.

BOYOU VERRET LAND CO., INC.

AMETHIST LANDS, INC.

EMERALD LANDS, INC.

GEMS, INC.

GARNET, INC.

MOONLIGHT, INC.

PEARL LANDS, INC.

RUBY LANDS, INC.

SAPPHIRE LANDS, INC.

TOPAZ LANDS, INC.

OTHER ORGANIZED CRIME FIGURES

PINBALL MACHINES

LOUIS BOASBERG - AA

NEW ORLEANS NOVELTY CO. - AA

CECELIA DELANEY - AA

HARRY HARRIS - AA

ARGUS GALLERY

BUSINESS RESEARCH COUNSELORS, INC.

STATE NOVELTY COMPANY, INC.

JOHN THOMANN - FS

EMILE WILLIZ

GAMBLING, SHY [illegible] DISTRIBUTION

ORY J. HOOVER - FS

DELOY C. HOSS - FS

DONALD M. KENDRICK - FS

FRANK SALA - AA

SALA ELECTRIC, INC. - AA

ATF ACCOMPLISHMENTS

CHARLES V. HAWKINS - C

LAMAR JONES - I

JOSEPH FAGUR - I

JOHN VICE - I

MERLE REDOZELL, JR. - I

REX WILLETTE - I

ROBERT CRAIG - I

MICHAEL MAROON - I

NOTE: The major thrust thus far of the New Orleans Strike Force and of the participating Service Districts has been a major attack on the coin operated gaming device industry. The Service fully participated and cooperated closely with the Strike Force and the FBI in the seizure of over 3300 gambling type pinball machines and approximately 1000 slot machines in Louisiana and Mississippi. The effort directly and substantially suppresses an important source of revenue to organized crime, and additionally, the loss of the machines themselves and their replacement cost amount to an added financial blow of several million dollars.

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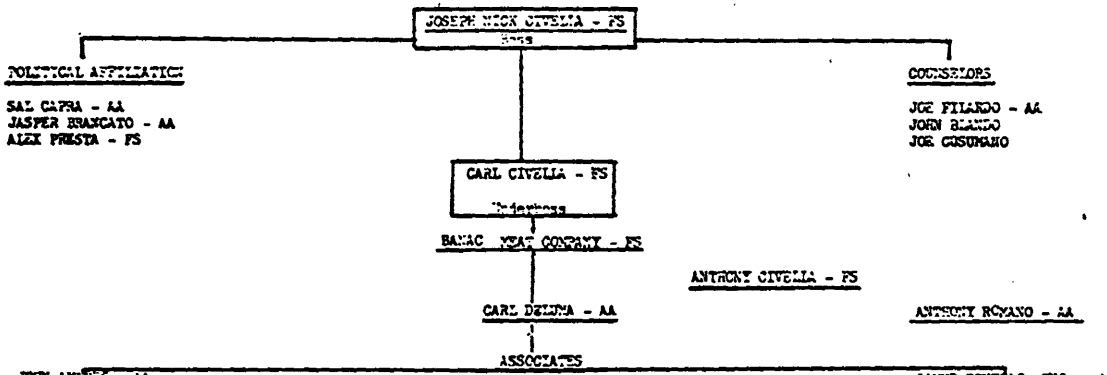
FOR OFF ONLY

KANSAS C... STRIKE FORCE

SET UP DECEMBER 1970



NOTE: This is a spin-off from the St. Louis Strike Force

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BUFFALO ST... FORCE

SET UP NOVEMBER 1966

MAGADDINO FAMILY

STEFANO MAGADDINO
Boss

FREDERICO RANDACCIO
Under Boss
Buffalo Area

FRANK NATARELLI
Under Boss
Rochester Area

PETER A. MAGADDINO - FR
Under Boss
Niagara Falls Area

[illegible]
Under Bo...
Syracuse-Utica

LIEUTENANTS

PASQUALE NATARELLI
JOSEPH FINO
SALVATORE PIERI
ROY CARLISI

JOHN CASTELLERI
RENE PICCARRETO
WILLIAM LUPO
SAMUEL ROSSOTTI

BENJAMIN NICOLETTI, SR.
ANTHONY FALANGE
ANTHONY DESTEFANO
ROSARIO MANCUSCO

ASSOCIATES

NICHOLAS MAURO - I
FRANK BARILE - I
NELLO RONCI - I
RALPH VELOCCI - I
ALFONSO MICHELLINI - C
FRED G. RANDACCIO - C
PASQUALE NATARELLI - C
CHARLES GACCI - C
STEVEN CINO - C
LOUIS SORDI - C
DANIEL DOMINO - C
JOSEPH EPHART - C
THOMAS CAPELLA - C
JOSEPH VIZZI - I
ANTHONY GLORIOSO - I

JOSEPH MANDALA - I
RICHARD RAYMOND - I
FRANK TIMPRONI - I
VINCENT TIMPHONY - I
DUDLEY GEISERMAN - I
VICTOR JOUBERT - I
JOSEPH VIZZI - I
ROBERT SALA - I
JOHN IMBURGIA - I
ANTHONY FLANGE - C
ROCCO TAGLIANO - C
JOSEPH TERRERANT - C
DELWRIGHT DEMAN - C
RUSSELL DECICCO - C
LOUIS MARRIS - C

GREGORY PARNESS - C
RENEE DECICCO - C
STANLEY SENECA - C
GREGORY PARNESS - C
FRANK D'ANGELO - I
BENJAMIN NICOLETTI, JR. - I
GINO FRANK MONACO - I
SAM JOSEPH PODESE - I
MICHAEL FARELLA - I
AUGUSTINE RIZZO, JR. - I
PASQUALE PASSERO - I
LOUIS TAVANO - I
RUSSELL BUFALINO - I
JOHN C. SACCO - C
SALVATORE TODARO - I

STANLEY SENECA - C
JACK PISKOROWSKI - C
RONALD CARLISLE - C
ANTHONY ROMANO - PR
RALPH JACOBS - I
VICTOR RANDACCIO - A
NICHOLAS MAURO - I
FRANK BARILE - I
NELLO RONCI - I
RALPH VELOCCI - I
FRANK FARACI - I
PATRICK DILLON - I
SALVATORE PIERI - C
BERNARD SPAZIANO - I
JOSEPH TODARO, JR. - I

PHILIP B. SCIMAB - I
ALBERT BILLITERI - I
SAMUEL LAGATUTTA - I
SALVATORE RINIOLO - I
GEORGE GUZZETA - I
MURPHY JAMES RUSSO - I
JOSEPH CRIMENTO - PR
FRANK CRIMENTO - PR
EMPIRE SCRAP METALS, INC. - PR
MADER PLASTERING CO. - PR
LAWRENCE REGER - PR
PASQUALE CIPOLLA - AA
JOSEPH DICARLO - FS
SAMUEL DIGAETANO - FS
ALBERT BILLITERI - I

NICHOLAS TINO - AA
[illegible] - AA
SALVATORE GINGELLO - AA
ANTONIO MANDOLINO - AA
[illegible] - AA
MARSHALL MILES - AA
CHARLES A. MONTANO - AA
CHARLES J. MONTANO - AA
VINCENT SCRO - AA
JOSEPH TODARO - I

[illegible]

CONTACTS MADE

Washington:
- Commissioner—Randolph Thrower
- Assistant Attorney General—Henry Peterson
- Assistant Commissioner—Compliance—Don Bacon
- Deputy Assistant, Commissioner—Compliance—Leon Green
- Director, Intelligence Division—Bob Lund
- Director, Audit Division—Singleton Wolfe
- Executive Assistant, Audit Division—Bob McCauley
- OC&R, Department of Justice—William Lynch
- Acting Director, ATF Division—Rex Davis
- Executive Assistant, Intelligence Division—Dick Nossen
- Coordinator, Intelligence Division—Bill Parker
- Coordinator, Audit Division—Dave Williams
- Coordinator, ATF Division—Tom Hines

ARC's Intelligence:
- Central Region—Harold Holt
- Mid Atlantic Region—Bob Manzi
- Midwest Region (Acting)—John Olszewski
- North Atlantic Region—Alan McBride
- Southeast Region—Ed Vitkus
- Southwest Region—Bill Beloate
- Western Region—Herman Kuehl

Cleveland:
- Assistant District Director—Mike Sassi
- Chief, Intelligence Division—Eldon Meyers
- Chief, FA Branch—Charlie Shea
- Strike Force Attorney—Kurt Mullenberg
- Strike Force Rep. Audit—Jim Ruckreigle
- Strike Force Rep. ATF—Bob Rowe
- Strike Force Rep. Intelligence—Ray Wilwant
- G/S Intelligence—Bill Wilson
- 8 Revenue Agents—Special Agents

St. Louis:
- District Director—Eugene Coyle
- Asst. District Director—Aldon McCanless
- Chief, Intelligence Division—Henry Rachet
- Chief, Audit Division—Ralph Albrecht
- Exec. Asst., ARC-1—Thomas Martin
- Chief, Intelligence Division—Detroit—John Olszewski
- Asst. Chief, Intelligence Division—George Keesizler
- Regional Coordinator—Arthur Rubenstein
- FA Branch Chief—George Marcinko
- Group Supervisor, Intelligence (St. Louis)—Glenmore Lowe
- Group Supervisor, Intelligence (K.C.)—Ralph Kieser
- Group Supervisor, Audit—Julius Taake
- Strike Force Rep., Intelligence—Norman Hemphill
- Strike Force Rep., ATF—Andy Potts
- Strike Force Attorney—William B. Jones

Las Vegas:
- Chief, Intelligence Division—Jim Moody
- Actg. Chief, Audit Division—Jum Muyres
- Group Supervisor, Intelligence—Tom Dorst
- Group Supervisor, Audit—Homer Peterson
- Special Agents—Ken Meece, Charlie Spears, Glenn Telgren
- Revenue Agents—Jim Koch, Richard Ehrensing

Los Angeles:
- Asst. District Director—Ralph Short
- Chief, Audit Division—Elmer Kletke
- Actg. Chief, Intelligence Division—Vernon Hansen
- Reg. Coordinator—Intelligence—Al Keeney
- FA Branch Chief—John Robertson
- Group Supervisor, Intelligence—Ike Echeverria (LA)
- Group Supervisor, Intelligence—Ed Wardell (San Diego)
- Group Supervisor, Audit—Paul Sled (LA)
- Group Supervisor, Audit—Jack Farris (LA)
- Group Supervisor, Audit—John Gallogly (San Diego)
- FA Branch Chief—Les Clark (LA)
- Special Agents—Lee Bennett, Dan Foley
- Revenue Agents—Bob Obels, Dick Knapp
- SFR Audit—Gordon Jalleston
- SFR Intelligence—Naurbon Perry
- CFR ATF—David Conroy
- SF Attorney—Alfred King

Detroit:
District Director—Tom Cardoza
Asst. District Director—Roger Schockcor
Chief, Intelligence Division—John Olszewski
Asst. Chief, Audit Division—Bernie Zafferan
Group Supervisor, Intelligence—Tony Getto
Group Supervisor, Intelligence—Art Milne
Group Supervisor, Audit—Ted Eckhard
SF Attorney—Jim Richie
SFR Audit—William Koestskey
SFR Intelligence—Ernest Tiberino
SFR ATF—Thomas Lambert
Special Agents—Dennis Pope, Al Marek, Dan Beaghan
Revenue Agents—George Zak, Larry Greg, Joe Miller

Manhattan:
Acting Regional Commissioner—Bill Williams
ARC Intelligence—Alan McBride
ARC Audit—Bill Wolfe
Asst. District Director—Elliott Gray
Chief, Audit Division—Chick Iacullo
Chief, Intelligence Division—A. E. Walters, Jr.
SF Attorney—Daniel Hollman
SFRs Audit—Oscer Beldner, Ray L. Brown, Charles Pacheco
SFRs Intelligence—David Egan, Hilton Owens, William Lynn.
SFRs ATF—Kendrick Sayer, Kenneth Fagan, Lou Schaab
Branch Chief, Intelligence—Dominic Dignich
Branch Chief, Audit—Joseph Levine
Group Supervisors, Intelligence—Joseph Ferrise, Floyd Ostrager, Harry Masse, Rosario Giunta, William O'Donnell
Group Supervisors, Audit—Walter Haber, Lawrence Donis, Albert Franceschun, Edward Hanley, Nicholas Tryforos, Lawrence Leubt, Gerard Weingartner, Sidney Bloom, Harry Gruber, Edward P. Dolan

Brooklyn:
Asst. District Director—Eugene Sturdevant
Chief, Audit Division—Raymond Maller
Chief, Intelligence Division—Howard McHenry
FA Branch Chief—Richard Rosman
Group Supervisor, Audit—Leon Unger
Group Supervisor, Intelligence—Jerome Hart
Group Supervisor, Audit—Joseph Delfino
SF Attorney—Denis Dillon
SFR, Audit—Coleman Raines
SFR, Intelligence—Fred Krysa
SFR, ATF—Walter Korzow
Revenue Agents—Harry Heller, Stanley Pollack, Arthur Purcell
Special Agents—Lawrence Lucey, David MacGregor, Louis Nahmias

Newark:
District Director—Roland H. Nash, Jr.
ARC, Audit—Dwight James
ARC, Intelligence—Bob Manzi
Chief, Audit Division—George Alberts
Chief, Intelligence Division—John O'Hara
Chief, SF Branch—Joseph Leahy
Special Asst. to Chief, Intelligence Division—Nicholas Viola
Group Supervisors, Audit—Frank Adamo, Bernard Moskowitz
Group Supervisors, Intelligence—Irving Dubow, Charles Rapa
SF Attorney—John Bartels
SF Audit—Walter J. Homa
SFR, Intelligence—Thomas Eaton
SFR, ATF—Desmond O'Neill

Boston:
Acting District Director, Boston—Frank J. O'Connor
District Director, Providence—John J. O'Brien
District Director, Portsmouth—Frank Murphy
ARC, ATF—Edward Fox
Chief, Intelligence Division, Boston—Robert Calhoun
Chief, Intelligence Division, Portsmouth—Arthur McAlled
Chief, Intelligence Division, Providence—Charles A. Harmon, Jr.
Chief, Audit Division, Portsmouth—Roger Charpentier
Asst. Chief, Audit Division, Boston—Max Singer
Chief, Special Inv. ATF—Victor Pezir
Group Supervisors, Audit—Ray Rizzo, George Sarafian
Group Supervisor, Intelligence—William Riley
SF Attorney—E. F. Harrington
SFR, Intelligence—Guy Wetherell
SFR, Audit—Henry Bileski
SFR—Louis Borrelli
Revenue Agents—Norman Ceder, Bob Guarino
Special Agents—Charlie McNally, Joe Bishop

Philadelphia:
- Regional Commissioner—Ed Fitzgerald
- District Director—Al Whinston
- Asst. District Director—Bill Daniel
- Chief, Audit Division—Charlie Kostenbauder
- Chief, Intelligence Division—Steve Balan
- Supervisor, ATF—Harry Mattera
- Chief, FA Branch—Rollin Washington
- Group Supervisors. Intelligence—Michael Kelcourse, Joseph Kane
- Group Supervisor, Audit—K. W. Schwertzer, Herman Bell
- SF Attorney—Richard Spriggs
- SFR, Intelligence—Mervin Boyd
- SFR, Audit—Walter Slade
- SFR, ATF—Allan Cole
- Revenue Agents—Edward Boyle, Edmund Fitzpatrick, Ingual Melby
- Special Agents—Edward Kelly, Louis Ruch, James Trout
- ATF Investigators—Harry Goss, William Drum

Atlanta:
- Regional Commissioner—W. J. Bookholt
- ARC, Audit—Harold Bindseil
- Regional Coordinator, Intelligence-John Mask

○