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YOUR WORST NIGHTMARE: AN ACCOUNTANT WITH A GUN! THE CRIMINAL INVESTIGATION DIVISION OF THE INTERNAL REVENUE SERVICE: ITS PAST, PRESENT, AND FUTURE

Glenn D. Baker[†]

INTRODUCTION

Al Capone, gangster; Pete Rose, baseball star; Leona Helmsley, businesswoman; Mario Biaggi, former Congressman and the most decorated police officer in New York City history; Spiro Agnew, former Vice President of the United States; Harry Reems, porn star; Joseph D. Nunan, Jr., former Commissioner of the Internal Revenue Service (IRS). These individuals have one thing in common: They have all been convicted of a tax crime.¹

In the past, the Criminal Investigation Division (CID) of the Internal Revenue Service had the primary responsibility for investigating traditional tax crimes,² such as those committed by the individuals mentioned above.³ However, the past decade has seen a major shift in both CID's role and function.⁴ Along with the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), and other federal law enforcement agencies, CID has become a major player in the federal government's "war on drugs."⁵ This shift in priorities has led to a major debate among tax experts, members of the legal community, and governmental decision-makers about whether CID should return to its more

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1. Jeffrey A. Dubin et al., *The Changing Face of Tax Enforcement, 1978-1988*, 43 TAX LAW. 893, 906 (1990).

2. See, e.g., Matthew Brelis, *IRS Criminal Division Follows Paper Trails to Catch Offenders*, B. GLOBE, Dec. 26, 1992, at Metro/Region 26; Marianne Lavelle, *It's Safer to Cheat: The War on Drugs Means the IRS Is Too Busy to Nab More Traditional Income Tax Evaders*, NAT'L L.J., Apr. 30, 1990, at 1.

3. Dubin, *supra* note 1, at 906.

4. *Id.* at 906-07.

5. *Id.*

traditional tax investigation role or forge ahead in the battle against drugs.⁶

This Article examines the function of CID and the duties and background of its special agents. It details recent examples of inauspicious behavior by certain members of CID and discusses the safeguards implemented to prevent similar behavior in the future. It provides recommendations for handling tax fraud cases and examines the three money laundering statutes used by CID in its effort to join other federal agencies in the "war on drugs."⁷ Most importantly, this Article explores the current debate on the

6. For a discussion of this debate, see *infra* notes 278-342 and accompanying text.

7. Since the primary purpose of this Article is to examine the apparent change of CID's mission, which has led to its significant involvement in the "war on drugs," a complete discussion of the traditional tax crimes prosecuted under Title 26 is not included. It is necessary, however, to briefly highlight the traditional tax crimes contained in Title 26 in order to compare and contrast these crimes with the money laundering crimes, which CID currently allocates at least half of its resources to investigate. Therefore, a brief review of Internal Revenue Code (I.R.C.) §§ 7201, 7203, and 7206 is set forth below. Section 7201 is the most commonly charged and most serious offense under Title 26. In *Sansone v. United States*, the Supreme Court enumerated three basic elements that establish a prima facie case under § 7201. 380 U.S. 343, 351 (1965). They are as follows: (1) an unpaid tax; (2) an attempt to evade the tax by some type of affirmative act; and (3) willfulness. *Id.* The Court decided a case in 1991 which could have a major impact on how tax evasion cases are handled in the future. *Cheek v. United States*, 498 U.S. 192 (1991); see *infra* note 173. I.R.C. § 7203 is often a lesser offense of § 7201. ROBERT S. FINK, TAX FRAUD-AUDITS, INVESTIGATIONS PROSECUTIONS, § 16.05 (1994). Section 7203 has the same "willfulness" requirement as § 7201. *Id.* The major difference between the two is the "affirmative act" or "attempt" requirement of § 7201. *Id.* An affirmative act is not required for a conviction under § 7203; a failure to act or omission is sufficient. *Id.* § 16.01. Hence, § 7203 is a misdemeanor while § 7201 is a felony. I.R.C. §§ 7201, 7203 (1988 & Supp. V 1993). Subsections (1) and (2) of § 7206 basically deal with those who aid or assist in the filing of fraudulent or false tax returns. DARRELL MCGOWEN ET AL., CRIMINAL AND CIVIL TAX FRAUD § 16.65 (1986). Both subsections seek to ensure that the taxpayer does not make misstatements that would prevent the IRS from verifying the accuracy of tax returns and other similar functions. *United States v. Greenberg*, 735 F.2d 29, 31 (2d Cir. 1984). Section 7206(1) is commonly referred to as the "tax perjury" statute and usually deals with a material understatement of liability. MCGOWEN, *supra*, § 16.54. I.R.C. § 7206(1) is the offense often charged in cases where an individual has illegal sources of income that are "incorrectly described on returns." *Id.* Usually, only the taxpayer will be held liable under this subsection. FINK, *supra*, § 16.02. *But see United States v. Shortt Accountancy Corp.*, 785 F.2d 1448, 1454 (9th Cir. 1986) (holding that § 7206(1) and (2) are not mutually exclusive and a tax return preparer can properly be charged under § 7206(1)). Finally, § 7206(2) is referred to as the "tax preparer" statute. MCGOWEN, *supra*, § 16.65. The majority of people prosecuted under this statute are accountants or attorneys who have assisted in or prepared tax returns. *Id.* The penalty for conviction under § 7206(2) is exactly the same as under § 7206(1). I.R.C. § 7206 (1988).

future role of CID, and offers suggestions for what that role should be.

I. CID AND THE SPECIAL AGENT

During the 1920s and 1930s, in the early days of criminal tax enforcement, CID was known as the Intelligence Division and mostly prosecuted cases relating to bootlegging, gambling, and general violations of the tax code.⁸ In 1950, the Intelligence Division numbered 1622 agents.⁹ This figure increased to approximately 2700 agents by 1983.¹⁰ However, despite an increase in tax evasion and other related tax crimes and a significant utilization of CID resources in money laundering, narcotics, and other organized crime cases, the total number of CID agents in 1989 was only about 2800.¹¹ This estimated increase of just one hundred agents in six years was due to budget constraints.¹² In fact, even though CID is becoming more involved with "special enforcement" cases, its budget allowed staffing for only seventy additional agents for fiscal year 1992.¹³ Additionally, the Service's criminal enforcement budget remained constant throughout the 1980s at approximately 5.75% of the total IRS budget.¹⁴ Despite these budget constraints, CID has one of the highest conviction rates in federal law enforcement.¹⁵ It referred 4045 cases to the Department of Justice for prosecution in fiscal year 1992, resulting in 2778 convictions.¹⁶

The function of CID is set forth in Internal Revenue Service Regulation 601.107(a):

Each district has a Criminal Investigation function whose mission is to encourage and achieve the highest possible

8. See, e.g., *Capone v. United States*, 51 F.2d 609 (7th Cir. 1931).

9. MCGOWEN, *supra* note 7, § 1.01.

10. *Id.*

11. Robert D. Hershey Jr., *Gun-Toting Accountants Battle Tax Cheats*, N.Y. TIMES, Mar. 27, 1989, at B13.

12. *Id.*

13. IRS, *Internal Politics Said Partly Responsible for Criminal Investigation Reorganization*, DAILY REP. FOR EXECUTIVES, Feb. 19, 1992, at G4. For a general discussion of the IRS Special Enforcement Program and General Enforcement Program, see *infra* notes 278-342 and accompanying text.

14. Dubin, *supra* note 1, at 907.

15. Donald Vogel Is New Assistant Director for Criminal Investigation, 93 TAX NOTES TODAY 76-16 (Apr. 6, 1993).

16. *Id.*

degree of voluntary compliance with the internal revenue laws by: Enforcing the statutory sanctions applicable to income, estate, gift, employment, and certain excise taxes through the investigation of possible criminal violations of such laws and the recommendation (when warranted) of prosecution and/or assertion of the 50 percent ad valorem addition to the tax; developing information concerning the extent of criminal violations of all Federal tax laws (except those relating to alcohol, tobacco, narcotics, and firearms); measuring the effectiveness of the investigation process; and providing protection of persons and of property and other enforcement coordination as required.¹⁷

The Internal Revenue Manual (IRM) states that taxpayer compliance with the tax laws is the highest priority of CID.¹⁸

The special agents who work in CID are quite different from the auditors or revenue agents of the examination and collection divisions with whom most people work when dealing with the Service.¹⁹ To become a special agent, an individual must have a solid background in accounting, have some business experience, pass an aptitude test provided by the United States Treasury Department, and undergo training at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia.²⁰ At FLETC, a special agent takes two courses that last a total of twenty weeks.²¹ The first course trains the agent in criminal investigations.²² The second course teaches tax law,

17. 26 C.F.R. § 601.107(a) (1994).

18. INTERNAL REVENUE MANUAL, SPECIAL AGENTS HANDBOOK § 311(1)(b) (Nov. 1994) states:

The highest priority of the Criminal Investigation Division is to create maximum positive impact on the compliance attitudes and practices of taxpayers through an effective General Enforcement Program (GEP). Within the GEP program, priority will be given to high impact coordinated compliance projects.

Id.

19. Hershey, *supra* note 11.

20. INTERNAL REVENUE SERVICE, PUBLICATION 699 (Jan. 1, 1993), available in *Publication 699, IRS Criminal Investigation in Action*, 93 TAX NOTES TODAY 119-6 (June 6, 1993) [hereinafter PUB. 699].

21. *Id.*

22. *Id.* The Criminal Investigator Training Program at FLETC is an integrated general program which trains law enforcement members of numerous federal agencies. For instance, the class in which the author was trained included agents of the Secret Service, Alcohol, Tobacco, and Firearms (ATF), and Customs, and other special agents conducting criminal investigations for federal agencies from the IRS to the Environmental Protection Agency. The Federal Bureau of Investigation (FBI) and the

investigative computer techniques, and special agent investigative methods.²³

In the author's experience, a special agent's background is much different than an auditor's. Most of the agents with whom the author worked entered the agency to perform searches, seizures, and arrests, rather than to audit taxpayers' books. The younger agents were especially quick to volunteer for any assignment that involved joint agency criminal work and the opportunity to work with their counterparts in the FBI and the DEA.²⁴ Most special agents do not think of themselves as accountants. Rather, they consider themselves law enforcement officers.

For example, CID special agents have been involved in the Organized Crime Drug Enforcement Task Force (OCDETF) program since its inception in 1982.²⁵ Created by President Reagan, OCDETF combines the law enforcement resources of the FBI, DEA, ATF, Customs, and CID, and seeks to identify, investigate, prosecute, and destroy the operations of high-level drug trafficking enterprises.²⁶

Drug Enforcement Agency (DEA) were excluded. For agents to learn something about their counterparts and make contacts for possible use in the future, each class of about forty students had a diverse grouping of representatives from each agency. Interestingly, members of IRS Inspections, the unit responsible for internal investigations of all IRS personnel, were also included in this class. See *infra* notes 104-10 and accompanying text for a discussion of the wisdom of this particular practice. During the extensive course, the class learned about a multitude of areas in criminal law: ethics and conduct; enforcement operations, such as counterfeiting, crowd control, dangerous motorcycle gangs, execution of search warrants, federal firearms violations and policies, surveillance, and undercover operations; enforcement techniques, including safety and survival, bombs and explosives, fingerprinting, organized crime, narcotics, and terrorism; legal issues, such as the laws of Federal Criminal Procedure; and special training in firearms, physical techniques (i.e., arrest and self-defense), and computer and driving skills.

23. *Id.* This class included instruction in individual, partnership and corporate income tax law. Only members of CID were involved in this particular training. The Internal Revenue Code (IRC), various IRS publications, and schedules and forms were provided to each student during the course. *Id.*

24. In fact, the author observed some individuals within CID subsequently transfer to other agencies, including the DEA, ATF, Customs, and Secret Service. On the other hand, agents from other agencies rarely transfer to CID, since the CID has the additional requirement of an accounting background. PUB. 699, *supra* note 20.

25. PUB. 699, *supra* note 20.

26. *Id.*

II. THE SPECIAL AGENT ARRIVES: WHAT TO DO AND WHAT NOT TO DO

The special agent is an expert in recognizing tax fraud, identifying noncompliance with tax laws, and finding hidden assets or other unreported sources of income.²⁷ When a special agent arrives and starts questioning a taxpayer, this usually indicates a solid criminal case has already been established, and the agent is seeking to gather further evidence.²⁸ Thus, it is of the utmost importance that taxpayers and their representatives be aware of their rights and how to handle visits by special agents. After all, a criminal tax investigation can result in the loss of a taxpayer's reputation and business.²⁹

Special agents do not make appointments to meet with the subjects of their investigations.³⁰ They may arrive at any time, increasing the probability that the taxpayer will be unprepared for the visit.³¹ Some taxpayers may find it hard to believe they are being investigated. For example, even after agents properly identify themselves by displaying their badges and credentials, many suspects may think a joke is being played on them and may not take the situation seriously. A taxpayer should ask for proper identification, and if it is provided, accept it.³² The special agent will act professionally towards the taxpayer and expects the taxpayer to treat the agent in the same manner.³³

The Special Agents Handbook³⁴ outlines what is required of a special agent at the time of the first official interview with the subject of an investigation. Agents must properly identify themselves and state the following:

As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses In connection with my investigation of your tax liability (or other matter), I would

27. *Id.*

28. Cono R. Namorato, *What To Do When the Special Agent Arrives* 2-3 (Institute of Continuing Legal Education in Georgia 1989).

29. Theodore M. David, *How to Handle the Tax Evasion Case (with Form)*, PRAC. TAX LAW., Winter 1992, at 22.

30. *See* Namorato, *supra* note 28, at 1-5.

31. *See id.*

32. *Id.* at 3-4.

33. Scott Sandstrom, *Tax Fraud Investigations: An Overview for Accountants, Attorneys, and Other Professional Tax Advisors*, 1986 TAXES 722.

34. INTERNAL REVENUE MANUAL, SPECIAL AGENTS HANDBOOK § 342.132 (Nov. 1994).

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like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.³⁵

Likewise, if the taxpayer is taken into custody, the agent must give a *Miranda* warning.³⁶

Interviewing is a major part of a special agent's job.³⁷ Special agents receive training in interviewing techniques.³⁸ For example, to obtain as many details as possible, the author's class was taught to use short questions that require narrative answers. Accordingly, the agent usually will attempt to lure an individual into speaking. Attorneys and accountants seem to agree that, as a cardinal rule, a taxpayer should not answer any questions before retaining counsel.³⁹ A taxpayer will not benefit by answering questions prior to obtaining counsel since voluntary disclosure does not result in termination of the investigation.⁴⁰ Further, taxpayers should be aware that any admissions made during a civil fraud investigation could be used in a subsequent criminal investigation.⁴¹ The bottom line is, if taxpayers contact their advisors prior to answering any questions, they will be in a much better position to defend themselves in the future.⁴²

Moreover, taxpayers should not rely on their accountants.⁴³ Rather, they should immediately obtain legal counsel since the Supreme Court has held there is no privilege protecting communications between accountants and their clients.⁴⁴ Thus, special agents may discover communications between an

35. *Id.*

36. *Id.* § 342.133.

37. *See* PUB. 699, *supra* note 20.

38. *Id.*

39. *See* David, *supra* note 29, at 13; Namorato, *supra* note 28; Sandstrom, *supra* note 33, at 722.

40. David, *supra* note 29, at 20.

41. Sandstrom, *supra* note 33, at 720.

42. Namorato, *supra* note 28, at 1.

43. *Id.*

44. *Id.* (citing *Couch v. United States*, 409 U.S. 322 (1973)).

accountant and a taxpayer by interviewing the accountant.⁴⁵ The attorney-client privilege, however, remains applicable in tax cases as in any other case.⁴⁶

Sometimes it is almost impossible to foresee that a criminal investigation will occur. However, there are certain warning signs of a criminal investigation:

1. *More than one agent has been assigned to a case involving an individual taxpayer. . . .* Where there are two agents present, taxpayers should directly inquire whether either of the agents is a criminal (special) agent

2. *A long delay occurs after an IRS civil agent has focused on an area of potential material exposure. . . .* Delays in routine civil audits are not uncommon for a variety of reasons. A long, unexplained delay [could mean trouble] [C]ivil agents who find clues which [support] a potential criminal charge [have] to suspend the audit *without* discussing the reason with the taxpayer. . . .

3. *When the IRS requests documents from third parties which could be obtained more expediently directly from the taxpayer* The presence of [this] may signal that the government believes that a strong criminal case can be built without giving notice to the target until the investigation is nearly complete.⁴⁷

Every tax advisor should be aware of these signs.

Statistics have proven that the probability of a criminal tax prosecution increases dramatically as the case proceeds through the system.⁴⁸ Hence, early action by the taxpayer's representative is essential. A thorough examination of a taxpayer's records by way of an independent audit may provide valuable information.⁴⁹ An attorney should analyze all the facts and all the possible defenses.⁵⁰

45. *Id.* at 1-2.

46. *United States v. Cote*, 456 F.2d 142 (8th Cir. 1972) (holding attorney-client privilege would apply if accountant prepared memoranda and working papers at attorney's request for purpose of giving legal advice to taxpayers).

47. Sandstrom, *supra* note 33, at 725-26.

48. *Id.* at 723.

49. David, *supra* note 29, at 21.

50. *Id.* While a discussion of the defenses used in criminal tax fraud cases are beyond the scope of this Article, it is important to note that they generally fall into two categories: (1) there is no tax deficiency, and (2) there was no willfulness or criminal intent. See FINK, *supra* note 7, § 18.01.

It is also important that the taxpayer does not attempt to lie or tamper with evidence.⁵¹ This would just make matters much worse. A good agent can detect lying or tampering. In sum, the best defense to an investigation is (1) remaining silent until counsel is retained, (2) using honesty and good faith in all dealings with the IRS, and (3) retaining the best accountant or tax advisor.

III. BAD BEHAVIOR

Like every other federal law enforcement agency, CID also has skeletons in its closet. Some of the problems have been quite serious. In November 1992, the House Government Operations Committee made available results of a survey of IRS employees.⁵² The results were astounding:

Thirty-four percent of the IRS employees surveyed believe that at least some upper level managers engage in misconduct and 8,000 employees believe that the level of "ethics" in the IRS is "very low."

... [L]ess than one-third of all employees felt ... that the IRS chief inspector and the treasury inspector general act independently and are committed to high quality investigations of senior level misconduct.

... Furthermore, only 23 percent of the employees surveyed believe senior IRS managers foster a climate for taking action against employees who breach ethical standards. Forty-three percent believe that senior managers are not willing to punish their peers and one-fifth thought (to a great or very great extent) that upper level managers received preferential treatment in situations of misconduct.

Seventy-one percent of the employees admitted to saying nothing when they have observed misconduct, and 51 percent said that they have witnessed misconduct over the last year.⁵³

Of course, this was a survey of the entire Service, not only CID.⁵⁴ However, the survey to some degree demonstrates the status of both morale and mistrust within the Service.

51. Namorato, *supra* note 28, at 8.

52. *Internal Survey Released Shows That 8,000 IRS Employees Think Ethics Level in IRS is 'Very Poor,'* PR NEWSWIRE, Dec. 10, 1992.

53. *Id.*

54. *See id.*

Like any large organization, CID has its share of bad apples. Due to the nature of CID work, perhaps misconduct within its ranks receives more publicity than in other federal agencies. However, the fact remains that there have been several instances of severe misconduct by various members of CID, including those at the senior level. The discussion below elaborates on these particular instances of misconduct, and what, if anything, the IRS has done to remedy the problem.

A. Former "Chief" Misconduct

In 1991, John Ehlen was demoted from his job as CID chief in Albany, New York, after he was found guilty of sexual harassment of two female employees.⁵⁵ Ehlen previously had been before the U.S. Merit Systems Protection Board on charges that agents in the Albany office targeted his next-door neighbor following a personal dispute between Ehlen and his neighbor.⁵⁶ However, the Board found him innocent.⁵⁷ Ehlen was reassigned as an analyst to the CID regional office in New York City.⁵⁸ Due to pay differential for federal employees in New York City, he is actually making \$5000 more than he was making in his Albany job.⁵⁹

In 1992, Robert Roche, former CID chief in New Jersey, was sentenced to three years probation after pleading guilty to charges of post-employment conflict of interest, violating the Ethics in Government Act.⁶⁰ Roche had retired from his position in 1988.⁶¹ However, in September of that year, he represented a convicted narcotics dealer in a meeting with IRS officials.⁶² Prior to this representation, Roche had personally supervised the original investigation of the dealer.⁶³

55. Jay Jochnowitz, *Demoted IRS Official Makes \$5,000 More in New Job*, 57 TAX NOTES 1696 (Dec. 21, 1992).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Ethics, IRS' Former Top Criminal Agent in N.J. Sentenced for Conflict of Interest*, DAILY REP. FOR EXECUTIVES, Nov. 16, 1992, at 221.

61. *Id.*

62. *Id.*

63. *Id.*

B. *Alleged Agent Misconduct*

Misconduct within CID is not always limited to senior management. The author personally knows of an instance in which an agent worked at CID for over two years before it was discovered that he failed to file income tax returns in the five years previous to his employment. When this was finally discovered, the agent resigned.

Moreover, in October 1992, a special agent of the Manhattan CID office was indicted for obstructing justice and making false statements about a defendant in order to help bring tax evasion, money laundering, and drug dealing charges against the defendant.⁶⁴ The defendant subsequently died of AIDS.⁶⁵ Prior to the indictment, there were charges that the indicted agent had targeted homosexuals in his investigations.⁶⁶ However, the grand jury never mentioned these accusations in the indictment.⁶⁷

C. *Report of the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Government Operations Committee*⁶⁸

The most well-known allegations and instances of CID misconduct were set forth in October 1990, in a House Subcommittee Report entitled *Misconduct by Senior Managers in the Internal Revenue Service*.⁶⁹ After completing its investigation, the Committee Chairman, Congressman Doug Barnard, Jr. (D-Ga.), commented that “[t]he investigation unearthed a pattern of improper and possibly unlawful conduct by a significant number of senior IRS officials. . . . The cases were either not properly investigated by IRS Inspection/Internal Security or no disciplinary action was taken.”⁷⁰ Most of the misconduct investigated by the subcommittee involved CID.⁷¹

64. Ronald Sullivan, *Ex-I.R.S. Agent is Indicted on Affidavit*, N.Y. TIMES, Oct. 22, 1992, at B3.

65. *Id.*

66. *Id.*

67. *Id.*

68. H.R. REP. NO. 800, 101st Cong., 2d Sess. (1990).

69. *Id.*

70. *House Panel Announces Report on IRS Misconduct*, 90 TAX NOTES TODAY 242-14 (Nov. 29, 1990).

71. *See id.*

1. *The Los Angeles "Jeans" Case*

The case involving Guess? and Jordache jeans received so much publicity that eventually a book was written about it.⁷² The case involved special agents from Los Angeles and New York. In April 1985, the Marciano brothers, owners of Guess? jeans, met with Ronald Saranow, Los Angeles CID chief, in order to provide information relating to the Nakash brothers, owners of Jordache and fifty percent owners of Guess? at that time. Apparently, there was a feud between the Marcianos and Nakashes over the future ownership of Guess?.⁷³

The Marcianos claimed they had information that would prove tax violations by the Nakash brothers and their company, Jordache.⁷⁴ The Subcommittee report found that over the next four years CID investigated the Nakashes and an individual named Jeff Bohbot, with whom the Marcianos also had a feud.⁷⁵ During this time, Saranow became quite friendly with the Marcianos.⁷⁶ In fact, after Saranow's early retirement from the IRS, the Marcianos offered him a job at Guess?.⁷⁷ Saranow also kept close tabs on the agents in his office who were investigating Mr. Bohbot and put pressure on them to continue their investigations, even though the agents believed there was no case against him and said so several times.⁷⁸

In the meantime, Saranow, known nationally as one of the most powerful men in CID, contacted the Manhattan CID office, where Jordache had its headquarters, and arranged a meeting.⁷⁹ Among those at the meeting were two CID agents from the Manhattan office; two Marciano brothers; Harold

72. See CHRISTOPHER BYRON, *SKIN TIGHT* (1992). Included on the back cover of this book is a comment by Harvard Law Professor, Alan M. Dershowitz, who stated the following regarding this case:

This story is a great read about a legal case—really a bloodfeud—gone out of control. It combines elements of *Romeo and Juliet*, *Bleak House*, and the Marx Brothers. Something is very wrong with a legal system that spends nearly \$100 million on a dispute involving dungarees. The ends don't justify the jeans.

Id.

73. H.R. REP. NO. 800, *supra* note 68, at 17-21.

74. *Id.* at 21-22.

75. *Id.* at 17-23.

76. *Id.* at 26-33.

77. *Id.*

78. *Id.* at 34-40.

79. *Id.* at 34, 38.

Wilson, the Chief of the Criminal Division for the U.S. Attorney for the Southern District of New York; and Lorna Schofield, the Assistant U.S. Attorney originally assigned to the case.⁸⁰

Eventually, the Manhattan CID office became involved in the case, and Glenn Archer, an Assistant Attorney General in the Tax Division for the Southern District of New York, approved a grand jury tax evasion case.⁸¹ In January 1986, a raid against Jordache facilities in New York and New Jersey was executed, resulting in the seizure of three million documents.⁸² However, on November 15, 1989, the Department of Justice announced it was closing the case with no action.⁸³ The Subcommittee investigation concluded that “[t]he customs and tax fraud investigation that was sold to the New York authorities when the Marcianos traveled there on September 29 and 30, 1985, with Ronald Saranow was closed with no criminal charges, at great cost, embarrassment, and consternation to the Nakashes and Jordache.”⁸⁴

The Subcommittee’s investigation revealed that all actions taken in the case were based solely on the information provided by the Marcianos, and that this information “was of dubious value, unreliable, and inaccurate.”⁸⁵ The Subcommittee also found that Ronald Saranow violated IRS Rules of Conduct by being involved in the case after he had already received a job offer from the Marcianos.⁸⁶

2. Other Misconduct

The Subcommittee report also contained other instances of misconduct. Included were two Cleveland cases involving the

80. *Id.* at 39.

81. *Id.* at 39-40. The U.S. Attorney to whom Mr. Archer reported was Rudolph Guliani, the current Mayor of New York City. *Id.*

82. *Id.* at 40.

83. *Id.* at 23.

84. *Id.* at 58.

85. *Id.* at 44.

86. *Id.* at 45-49. It should be noted that the above is only a brief synopsis of the Subcommittee’s findings. *Id.* Numerous other allegations of other CID misconduct were included throughout the Subcommittee’s lengthy report, including an allegation that all documents originally supplied to Ronald Saranow by the Marcianos were destroyed. *Id.* at 21-22. Those documents led to the New York tax fraud investigation of the Nakashes. *Id.* at 21. Consequently, the only information available was that obtained in the raid of the Jordache facilities in January 1986. *Id.* at 22.

Cleveland CID chief, Dante Marrazzo.⁸⁷ In the first case, local police stopped Marrazzo and another agent for speeding in a leased automobile being used for an undercover operation.⁸⁸ Marrazzo and the other agent allegedly had been drinking at a bar prior to the stop.⁸⁹ In the second case, Marrazzo and two of his managers took a joy ride in a government boat on government time and misspent government funds.⁹⁰ Other misconduct outlined in the report included travel and other abuses by a high level CID agent,⁹¹ improper advice given by IRS counsel to CID agents, and IRS denial that this conduct ever occurred.⁹²

3. *The Office of Inspection*

Another twist to the Los Angeles (L.A.) case involved the IRS Office of Inspection. The IRS Office of Inspection has two sections, one of which is Internal Security.⁹³ Internal Security is responsible for conducting investigations involving allegations of employee misconduct.⁹⁴ At the time of the L.A. case, the following procedure was in place to investigate wrongdoing by IRS senior officials:

[A]llegations of wrongdoing by IRS employees should be forwarded to the Office of Inspection. If the allegation involved wrongdoing by a senior manager, Inspection would notify the Treasury Department's Inspector General (IG). The IG would then determine whether to conduct the investigation itself or have IRS Inspection investigate.⁹⁵

Apparently, during the L.A. case, the L.A. IRS Inspections Unit attempted, on several occasions, to investigate the problems with Saranow and other aspects of the case.⁹⁶ However, the manager of Inspections in L.A., Deborah Jones, who was responsible for any internal investigation, was also a personal

87. *Id.* at 71-83.

88. *Id.* at 72.

89. *Id.*

90. *Id.* at 72-77.

91. *Id.* at 99-107.

92. *Id.* at 117-31.

93. *Id.* at 3.

94. *Id.*

95. *Id.*

96. *Id.* at 49-58.

friend of Saranow.⁹⁷ A former senior inspector in the L.A. office testified to the Subcommittee that:

“During my years in Los Angeles a close professional relationship had developed between local inspection-Internal Security management and that of the Criminal Investigation Division (CID) of Los Angeles District IRS This professional relationship, for some employees, developed into a more personal one, with this interaction continuing for 12 to 15 years. Such continuing familiarity may have negatively impacted on Inspection’s ability to effectively investigate CID wrongdoing, especially on the part of management.”⁹⁸

Consequently, Jones warned Saranow of any problems he might have with L.A. Inspections.⁹⁹ Thus, the Subcommittee concluded the Internal Security investigation in the L.A. case was performed in an “untimely, incomplete, and inept” manner.¹⁰⁰

As a result, a new system of internal investigations was established in January 1990.¹⁰¹ The Inspector General (IG) now uses its own staff and resources to investigate senior IRS personnel.¹⁰² This includes those whose level is above GS-14.¹⁰³ This is a favorable approach to the problem; however, the Service missed an excellent opportunity to solve another potential problem.

As mentioned earlier,¹⁰⁴ CID special agents and Internal Investigation agents, along with agents of many other federal agencies, may actually be in the same training class at FLETC.¹⁰⁵ This course is approximately two months long; thus, one can expect that agents in each class will naturally become quite friendly with, and rely on, each other.

A problem arises when a CID agent becomes friendly with an Internal Security agent who may have cause to investigate the CID agent in the future. The potential for conflict of interest is quite clear. So is the solution. CID agents and Internal Security

97. *Id.* at 50.

98. *Id.*

99. *Id.*

100. *Id.* at 49.

101. *Id.* at 3-4.

102. *Id.* at 4.

103. *Id.*

104. *See supra* notes 20-23 and accompanying text.

105. PUB. 699, *supra* note 20.

agents should never be placed in the same training class, even if they are not from the same district. There is always the possibility that one of the agents will move to another district in the future, perhaps to a district where a friend in Investigations resides. Thus, it would be prudent to place those agents in different classes. This would not be difficult to accomplish.

Instead, the Subcommittee recommended the entire inspection function be transferred to the Department of the Treasury IG.¹⁰⁶ In support of its recommendation, the Subcommittee cited a 1989 written statement submitted by Michael A. Hill, former Inspector General of the Department of the Treasury:

Evidence of serious integrity problems in the Service demands that changes be made to assure objective and independent internal investigations. I am convinced that consolidation of the IRS inspection function into the Office of the Inspector General, Department of Treasury, would provide that assurance and would also result in increased efficiency and cost savings¹⁰⁷

The Subcommittee noted that former IRS Commissioner Lawrence Gibbs lobbied heavily against this change.¹⁰⁸ Mr. Gibbs contended that such a change would make it difficult to keep tax information confidential.¹⁰⁹ The Subcommittee disagreed. It concluded that it would be very "easy to dedicate certain Inspector General resources for investigating IRS and thus restrict access to tax information to those individuals."¹¹⁰ The author disagrees with the Subcommittee. Tax confidentiality would almost certainly be breached with the use of a totally separate agency which is not at all accountable to the IRS. It would be much simpler and easier to keep Internal Security within the IRS, yet ensure that it is kept wholly separate from CID and any of its members, by providing certain safeguards which will ensure that there is not any undue influence by CID management and personnel.

106. See H.R. REP. NO. 800, *supra* note 68, at 113.

107. *Id.*

108. *Id.* at 114.

109. *Id.*

110. *Id.*

4. *The Aftermath*

As a result of the Subcommittee investigation, then-Commissioner Fred Goldberg, who took command of the Service only one month prior to the report, stated that “the public has a right to be concerned’ . . . ‘We cannot have a double standard. We cannot shoot the GS-7 (lower-level employee) who has violated our rules but only slap senior executives on the wrist.’”¹¹¹ Goldberg said that procedures within the Inspections division would be “tighten[ed] up’ ” and rules would be “spelled out more carefully.”¹¹²

Since that time, the IRS has instituted several changes. Then-IRS Commissioner Shirley Peterson testified before the same Subcommittee in July 1992 to stress the IRS’ accomplishments since 1989 in “revitalizing ethics and integrity.”¹¹³ Commissioner Peterson said that the IRS had established a comprehensive action plan in order to address “ethics, integrity, and conduct awareness on an ongoing basis.”¹¹⁴ Specifically, Commissioner Peterson commented that the IRS has:

- Provided ethics training to 13,000 managers and scheduled such training for an additional 106,000 employees;
- Improved its orientation for new employees to stress ethics and integrity;
- Strengthened internal communications on ethics;
- Conducted surveys of managers and employees to establish a baseline from which to gauge progress and to identify areas that need further attention; and,
- Reviewed and strengthened its management and oversight of Criminal Investigation Division, particularly with regard to undercover operations.¹¹⁵

The General Accounting Office stated that while the Service continues to progress in this area, it will “take several years to effect cultural change.”¹¹⁶ The report commented that while the Service has effectively communicated to employees the

111. Robert L. Jackson, *New Chief Vows to End IRS Ethics Violations*, L.A. TIMES, Aug. 11, 1989, pt. 1, at 4 (quoting interview with Fred T. Goldberg, Sr.).

112. *Id.*

113. *IRS Making Progress on Employee Ethics Issues, Has ‘Long Way to Go,’ Panel Told*, DAILY REP. FOR EXECUTIVES, July 23, 1992, at 142.

114. *Id.*

115. *Id.*

116. *Id.*

importance of ethical issues, it still does not have "adequate and equitable disciplinary [measures] because its management information system has not been used consistently by field offices."¹¹⁷ As one employee commented, the Service "has a long way to go."¹¹⁸

And what about Ronald Saranow, the man allegedly behind many of the problems cited by the Subcommittee in 1989? Saranow was never prosecuted.¹¹⁹ He currently works as a partner in a white-collar investigations firm.¹²⁰ Saranow claims that even though he would like to clear his name and reputation in this matter, he is unable to accomplish this because of federal restrictions against talking.¹²¹ Saranow stated:

I have not been charged with anything but unfounded allegations

. . . .

There's no question that writing something negative about the IRS is something that some people in the media are anxious to do I spent a lifetime trying to build up a reputation of honesty and integrity . . . and in some areas, it was damaged and destroyed.¹²²

As for the Marcianos and Nakashes, they settled their feud.¹²³ Yet, while the Subcommittee's findings were in favor of the Nakashes, certain evidence since that time reveals the Nakashes may not have been as innocent as they appeared.¹²⁴ In fact, one commentator has suggested that the Subcommittee hearings were the result of a public relations coup scored by an investigator hired by the Nakashes.¹²⁵ Saranow, of course, maintains the Marciano brothers did nothing wrong.¹²⁶

117. *Id.*

118. *Id.*

119. Stuart Silverstein & Jim Schachter, *Guess-Jordache Feud Bloodied Outsiders, Too; Litigation: Some Who Investigated, Reported or Were Otherwise Drawn into the Case Say Their Reputations, and Even Their Health, Have Been Damaged*, L.A. TIMES, June 4, 1990, at D1.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. See Chris Welles, *A 'Blood War' in the Jeans Trade*, BUS. WK., Nov. 13, 1989, at 74.

125. *Id.*

126. Silverstein & Schachter, *supra* note 119.

IV. A MAJOR SHIFT IN THE ROLE OF CID: FROM LEGAL
SECTOR TAX INVESTIGATIONS TO MONEY LAUNDERING
AND CURRENCY TRANSACTION REPORTING

President Bill Clinton has stated the following about money laundering:

We can do what every serious federal prosecutor who's ever dealt in any detail with these drug cases has told me, and that is if you really want to get the big criminals, we can focus more on the money laundering aspects of their operations and use the federal authorities to deal with the financial transactions that cross state lines, that deal with federally insured institutions, that deal with those things that the states will never be competent to deal with because we will never have the resources. That is what the federal government ought to focus on in the law enforcement area. Go after the money, and we can get the big people.¹²⁷

Ex-President George Bush stated the following about money launderers:

(We) will handcuff these money launderers, and jail them—just like any street dealer A person who knowingly launders drug money is just as guilty as the kingpin or somebody pushing the crack into the school kids of our country.¹²⁸

These two statements illustrate how much of a priority money laundering has become to the federal government. Money laundering is commonly associated with drug dealers and is a big part of the "war on drugs." CID currently plays a major role in this war. For example, drugs involved almost 70% of CID's money laundering cases in 1990.¹²⁹ In addition, 44% of all 1990 CID cases involved some or all of the money laundering related

127. *Bush Signs Comprehensive New Money Laundering Law*, MONEY LAUNDERING ALERT, Nov. 1992, at 1 (quoting presidential candidate Bill Clinton) [hereinafter *Bush Signs*].

128. *Id.* (quoting former President George Bush).

129. *Internal Revenue Service on the IRS' Administration of Currency Reporting Laws and Money Laundering Enforcement, Hearing Before the Subcomm. on Banking, Finance and Urban Affairs, 103d Cong., 1st Sess., (1993)* (statement of Donald K. Vogel, Internal Revenue Service, Assistant Commissioner, Criminal Investigation & Michael L. Killfoil, Internal Revenue Service Acting Assistant Commissioner, Examination), available in *IRS Officials List Goals of Money Laundering*, 93 TAX NOTES TODAY 112-52 (May 26, 1993) [hereinafter Vogel].

statutes.¹³⁰ This compares with 0.2% of all CID cases in 1980.¹³¹ Further, as of 1990, CID investigated over 4200 money laundering cases.¹³² Some of those resulted in seizures of over \$135 million.¹³³ Moreover, in 1990, 526 CID agents were assigned to money laundering groups as compared to only 236 in 1987.¹³⁴ Thus, CID's growth in this area continues—from 507 cases initiated in 1987, to 2525 initiated in 1992.¹³⁵

It is only logical that CID investigate money laundering crimes. The special agent's background in accounting and law enforcement techniques perfectly complement each other for investigating crimes that often involve both money and drugs.

The IRS views laundering as "converting 'dirty' or illegally-gained money to 'clean' money."¹³⁶ Michael J. Murphy, a Senior Deputy Commissioner of the IRS, has defined money laundering this way:

Money laundering is the concealment of the existence, nature or illegal source of illicit funds in such a manner that the funds will appear legitimate if discovered. Thus, 'dirty' money is washed in order to appear 'clean'. To many people, money laundering is equated solely with the proceeds of narcotics trafficking. However, to IRS, it includes income from any illicit activity, including white collar crime, as well as unreported income from an otherwise legitimate activity.¹³⁷

Simply put, money laundering is the conversion of dirty money into clean currency, so that the true owner's identity is concealed during the transaction.¹³⁸ The goal "is to move the illicit

130. *Capital Developments*, 58 BANKING REP. (BNA) No. 10, at 408 (Mar. 9, 1992) (attributing comment to Barry Finkelstein, Assistant Chief Counsel, IRS Criminal Tax Division).

131. *Id.*

132. *Hearing Before the Subcomm. on Oversight of the House Comm. of Ways and Means*, 101st Cong., 2d Sess., (1990) (statement of Michael Murphy, Senior Deputy Commissioner, Internal Revenue Service), available in *Murphy Outlines IRS' Attack on Money Laundering*, 90 TAX NOTES INT'L 39-31 (Sept. 26, 1990) [hereinafter Murphy].

133. *Id.*

134. *On the Agenda*, MONEY LAUNDERING ALERT, June 1991, at 8.

135. Vogel, *supra* note 129.

136. INTERNAL REVENUE SERVICE PUBLICATION NO. 1544, REPORTING CASH PAYMENTS OF OVER \$10,000 (Nov. 1, 1991), available in 93 TAX NOTES TODAY 69-8 (Mar. 28, 1993).

137. Murphy, *supra* note 132.

138. Patricia T. Morgan, *Money Laundering, the Internal Revenue Service, and Enforcement Priorities*, 43 FLA. L. REV. 939, 944 (1991).

proceeds through the financial system and then back into the economy in a form which appears legitimate"¹³⁹

In the early 1980s, most money laundering was accomplished through the use of financial institutions.¹⁴⁰ The IRS and other law enforcement agencies have cracked down on this significantly.¹⁴¹ Thus, today many launderers convert "dirty" money into "clean" or legitimate assets, including autos, jewels, gold and silver coins, artifacts, and real estate."¹⁴²

Money laundering offenses can be put into three different categories.¹⁴³ First, Title 31 of the United States Code contains various sections that regulate currency and foreign transactions often used to launder money.¹⁴⁴ Second, the Internal Revenue Code (IRC) has its own section which deals with money laundering.¹⁴⁵ Section 6050I requires all persons engaged in a trade or business to report all cash transactions over \$10,000.¹⁴⁶ These transactions are to be reported on Form 8300.¹⁴⁷ Third, 18 U.S.C. §§ 1956 and 1957 define the actual criminal offenses of money laundering.¹⁴⁸

A. *The Bank Secrecy Act*

Congress first enacted the Bank Secrecy Act in 1970, and it has since been codified as 31 U.S.C. §§ 5311 through 5326.¹⁴⁹ The Act was Congress' "response to [the] increasing use of banks and other institutions as financial intermediaries by persons engaged in criminal activity."¹⁵⁰ It was the first major effort by the legislature to combat money laundering.¹⁵¹ This Act requires financial institutions to report certain currency transactions.¹⁵² For purposes of this Article, the most important

139. Vogel, *supra* note 129.

140. See Murphy, *supra* note 132.

141. See *id.*

142. *Id.*

143. Vogel, *supra* note 129.

144. *Id.*; see 31 U.S.C. §§ 5311-5326 (1988 & Supp. V 1993).

145. I.R.C. § 6050I (1988 & Supp. V 1993).

146. *Id.* § 6050I(a).

147. FINK, *supra* note 7, § 16.10[3].

148. 18 U.S.C. §§ 1956-1957 (1988 & Supp. V 1993).

149. 31 U.S.C. §§ 5311-5326 (1988 & Supp. V 1993)); Morgan, *supra* note 138, at 944.

150. Ratzlaf v. United States, 114 S. Ct. 655, 658 (1994).

151. Morgan, *supra* note 138, at 944.

152. 31 U.S.C. §§ 5311-5326 (1988 & Supp. V 1993).

requirement is the filing of a Currency Transaction Report (CTR) whenever currency in excess of \$10,000 is received.¹⁵³

Compliance by financial institutions to the requirements of CTR reporting was inadequate for many years.¹⁵⁴ However, in 1985, the IRS imposed several civil penalties on the Bank of Boston after it pled guilty to Bank Secrecy Act violations.¹⁵⁵ Since that time, compliance has dramatically improved.¹⁵⁶ CTR filings in 1985 were approximately 70,000 per month.¹⁵⁷ As of 1990, CTR filings numbered over 500,000 per month.¹⁵⁸

One major problem federal authorities faced in enforcing the various Bank Secrecy Act provisions was the act of "structuring."¹⁵⁹ For example, if an individual has someone deposit \$3000 into four different banks on the same day the transaction has been structured. Taken together, the four transactions are greater than \$10,000, but the person is trying to avoid the filing of CTRs by not depositing more than \$10,000 in any one bank.

The federal courts were split as to whether or not structuring was lawful.¹⁶⁰ In response, Congress amended the Bank Secrecy Act in 1986 and enacted 31 U.S.C. § 5324, the Anti-Structuring Statute.¹⁶¹ There are now three types of

153. 31 C.F.R. § 103.22(a)(1) (1993).

154. Murphy, *supra* note 132.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. See FINK, *supra* note 7, § 16.10[2]. "Structuring" is defined as:

Structure (structuring). For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

31 C.F.R. § 103.11(p) (1993).

160. FINK, *supra* note 7, § 16.10[2].

161. 31 U.S.C. § 5324 (Supp. V 1993). The statute provides the following:

No person shall for the purpose of evading the reporting requirements of section 5313(a) . . . with respect to such transaction--

structuring activities that are considered illegal under the 1986 Amendment: "(1) causing or attempting to cause a financial institution not to file a CTR; (2) causing a financial institution to file a CTR that contains a material omission or misstatement; and (3) structuring or attempting to structure a transaction to avoid a reporting requirement."¹⁶²

The Amendment was designed to curtail some of the existing structuring operations.¹⁶³ However, the impact of this amendment may be effected by the recent Supreme Court holding in *Ratzlaf v. United States*.¹⁶⁴ Prior to *Ratzlaf*, many questions existed regarding the level of intent necessary to convict an individual of structuring under the Act.¹⁶⁵ One defendant argued that if he was not aware structuring was illegal, he could not be prosecuted under § 5324, even if his actions resulted in a structured transaction.¹⁶⁶

The Second Circuit Court of Appeals ruled that the defendant did not actually have to know that structuring was illegal in order to be in violation of the Act.¹⁶⁷ The court stated that "[b]y its plain language, § 5324(3) is violated when an individual structures a currency transaction with the intent to evade § 5313's reporting requirements."¹⁶⁸ The court said that structuring can be proven even when the defendant is unaware of its illegality.¹⁶⁹ The court asserted that unlike other sections of

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- (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) . . . ;
 - (2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) . . . that contains a material omission or misstatement of fact; or
 - (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Id. (footnotes omitted).

162. FINK, *supra* note 7, § 16.10[2].

163. *See id.* The penalty for committing a crime under Title 31 can be quite severe. A willful failure to file a report required under Title 31 is punishable by up to five years of imprisonment and a \$250,000 fine. 31 U.S.C. § 5322(a) (Supp. V 1993). Both numbers could be doubled if the offense was committed "while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period. . . ." *Id.* § 5322(b) (1988).

164. 114 S. Ct. 655 (1994).

165. *See United States v. Scanio*, 900 F.2d 485 (2d Cir. 1990).

166. *Id.* at 489.

167. *Id.* at 491.

168. *Id.* at 489.

169. *Id.* at 491.

the Bank Secrecy Act, the purpose of § 5324(3) was to protect the government's right to information.¹⁷⁰ Thus, the court concluded it would be inconsistent with this goal for the court to now require proof that the defendant had knowledge the structuring was illegal.¹⁷¹ Several other circuits ruled the same way.¹⁷²

Other defendants argued that the Supreme Court decision in *Cheek v. United States*¹⁷³ overruled *Scanio* and all the other cases that held knowledge of the illegality of structuring was not a requirement for the requisite intent in a structuring crime.¹⁷⁴ In *United States v. Caming*,¹⁷⁵ the Second Circuit Court of Appeals rejected this argument and held that *Cheek* would not apply to structuring violations under § 5324.¹⁷⁶ In *Caming*, the defendant made more than eighty separate cash deposits, totalling \$675,000, into nine different accounts in New York

170. *Id.*

171. *See id.*

172. *See, e.g.*, *United States v. Rogers*, 962 F.2d 342, 344-45 (4th Cir. 1992); *United States v. Brown*, 954 F.2d 1563, 1568 (11th Cir. 1992); *United States v. Dashney*, 937 F.2d 532, 538-39 (10th Cir. 1991); *United States v. Hoyland*, 914 F.2d 1125, 1129-30 (9th Cir. 1990).

173. 498 U.S. 192 (1991). In *Cheek*, the Court discussed the element of willfulness as it applied to an I.R.C. prosecution under § 7201. 498 U.S. at 194. The Court held that the test for willfulness is subjective, rather than objective. *Id.* at 192. Defendants need only assert a good-faith belief that they did not violate the law to claim the defense of lack of willfulness. *Id.* The Court now examines the individual defendant's belief no matter how objectively unreasonable it may appear. *Id.* To prove a lack of necessary intent for willfulness, defendants will now be allowed to submit to the jury evidence of their own understanding of the tax system. *Id.* at 203. In *Cheek*, the defendant was a pilot for American Airlines. *Id.* at 194. He followed the advice of an extremist group that believed federal taxation was unconstitutional. *Id.* at 195-96. Prior to this case, Cheek had been involved in at least four separate civil suits challenging the federal tax system. *Id.* at 194-95. The Court held that Cheek's belief that his wages were not income and that he was not a taxpayer within the meaning of the I.R.C. should be considered by the jury, whether or not the misunderstanding or belief was objectively reasonable. *Id.* at 192. The Court also held that if the jury could find that Cheek had a good-faith belief that his wages were not reportable as income, it could conclude that he was innocent of the charge of tax evasion, since the element of willfulness would be missing. *Id.* It is too early to tell what the ramifications of *Cheek* will be. It is quite possible that in the future the IRS and the courts may put tax protestors, like Cheek, on notice much earlier in the process. For instance, Cheek had already been in court dealing with tax issues on at least four separate occasions. *Id.* at 194. If during his first appearance in court, the judge had instructed Cheek that his wages were taxable, he could not possibly claim subjective ignorance of the law in future cases.

174. *United States v. Caming*, 968 F.2d 232, 240 (2d Cir. 1992).

175. *Id.*

176. *Id.* at 240-41.

City.¹⁷⁷ Most of these deposits were for more than \$9000, but all were for less than \$10,000.¹⁷⁸

The defendant argued that the Supreme Court decision in *Cheek* should apply to his case.¹⁷⁹ He contended that in crimes involving structured transactions, the government must prove the “defendant was aware of the illegality of his actions.”¹⁸⁰

The court did not agree. It asserted that the holding in *Cheek* was limited to federal criminal tax cases only.¹⁸¹ The court saw no reason to extend the *Cheek* rule to currency transaction reporting cases in which the statutory requirements were so straightforward.¹⁸²

However, the Supreme Court recently addressed these issues in *Ratzlaf*.¹⁸³ In a five to four decision the Court held that, contrary to the prior circuit court decisions discussed above, in crimes involving structured transactions, the government must prove “that the defendant acted with knowledge that his conduct was unlawful.”¹⁸⁴ Thus, as in *Cheek*, the Court once again stated that in the domain of criminal tax crimes, ignorance of the law is an excuse. The Court based its decision on the fact that “structuring is not inevitably nefarious,”¹⁸⁵ rejecting the government’s argument that structuring is so obviously “evil” that the act of structuring itself satisfies the “willfulness” requirement, whether or not the defendant knows of its illegality.¹⁸⁶ This is a disturbing decision that is certain to make the government’s task in this area in the future even more difficult and is likely to lessen the impact of the Anti-Structuring Act.

B. I.R.C. § 6050I

I.R.C. § 6050I was enacted in 1984 and parallels the CTR requirements of financial institutions.¹⁸⁷ Section 6050I applies

177. *Id.* at 234.

178. *Id.*

179. *Id.* at 240.

180. *Id.*

181. *Id.*

182. *See id.*

183. *Ratzlaf*, 114 S. Ct. 655 (1994).

184. *Id.* at 657.

185. *Id.* at 661.

186. *Id.* at 662.

187. I.R.C. § 6050I (1988 & Supp. V 1993).

to any person engaged in a trade or business who receives more than \$10,000 in cash in one transaction or two or more related transactions.¹⁸⁸ If such a transaction occurs, this information must be reported on Form 8300.¹⁸⁹ The criminal penalties for a violation of § 6050I are harsh. For example, a willful failure to file a Form 8300 is punishable under § 7203, which is generally a misdemeanor statute.¹⁹⁰ However, due to the amendments of 1988 and 1990, failure to file a Form 8300 is a felony punishable by imprisonment of up to five years.¹⁹¹

As of February 3, 1992, "cash" is not limited to currency but also includes cashier's checks, bank drafts, traveler's checks, and money orders, for which the face amount is greater than \$10,000.¹⁹² The primary reason for the change in the definition of the term "cash" was to assist in the prevention of criminal structuring.¹⁹³ Congress previously amended § 6050I in 1988.¹⁹⁴ This amendment added a subsection paralleling the provision of the Bank Secrecy Act.¹⁹⁵ For example, a person previously might have been able to purchase an automobile by paying \$5000 in cash and \$6000 in cashier's checks without worrying about the dealer filing a Form 8300. Now the dealer is required to do so.

Compliance with § 6050I requirements has not been satisfactory in the past.¹⁹⁶ Four years ago, Representative J.J. (Jake) Pickle (D-Tex.), Chairman of a House Committee investigating business compliance with § 6050I, issued a startling report of its findings:

Ninety-six percent of the merchants investigated agreed to take large sums of cash from staff investigators and not report the transactions. Ninety-six percent of the merchants who were probed said, "We will take the cash, turn our head, and make no report."

188. *Id.* § 6050I(a)(1)-(2).

189. 26 C.F.R. § 1.6050I-1(e)(3)(i) (1994).

190. Morgan, *supra* note 138, at 964-65. See *supra* note 7 for a discussion of § 7203.

191. Morgan, *supra* note 138, at 965.

192. Elkan Abramowitz, *Money Laundering Statutes and Guidelines*, 209 N.Y. L.J. 3 (Jan. 5, 1993).

193. *Id.*

194. Morgan, *supra* note 138, at 962.

195. *Id.*

196. Murphy, *supra* note 132.

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They agreed to do that without question and they agreed not to report it to the Internal Revenue Service.

Ninety-five percent of the merchants were willing to take false names and more than 25 percent suggested ways to avoid the reporting rules.

So, not only were they willing to use false names, but they just would jimmy up the report enough so that it would not be a valid report and, therefore, it could not be examined that closely.¹⁹⁷

Representative Pickle commented that this type of mentality hurts the IRS' "ability to identify taxpayers with [sizeable] cash incomes which might otherwise go unreported for tax evasion."¹⁹⁸

The available data comparing filings of CTRs with filings of Forms 8300 suggests Rep. Pickle's gloomy report was on target. From 1987 to 1990 the amount of CTRs filed exceeded five million, while the number of Forms 8300 averaged about 23,000 per year.¹⁹⁹ While the relationship between CTRs and Form 8300 is not really a direct one—the latter applies universally to any trade or business, while the former applies only to financial institutions²⁰⁰—it does present enough of a difference for comparison purposes to have IRS officials concerned.²⁰¹

As a result, the Service has attempted to crack down in this area. It has been conducting "compliance sweeps" to determine if businesses are following the law, and it will punish violators with both civil fines and criminal proceedings if they are not.²⁰² It

197. 139 CONG. REC. H330 (daily ed. Feb. 2, 1993) (statement of Rep. Pickle on money laundering in the United States).

198. *Id.*

199. Morgan, *supra* note 138, at 970.

200. *Id.*

201. Abramowitz, *supra* note 192.

202. *Id.* Deputy Commissioner Murphy provided an example of the results of a "compliance sweep" in his statement to the Subcommittee on Oversight:

In New Jersey, yacht brokers and real estate title companies were identified as businesses filing few 8300s. Agents did comparison checks on CTRs filed by financial institutions showing large cash deposits by these entities with no corresponding Form 8300 on file. When agents made a field call to a local yacht dealer, they inquired as to a particular \$27,000 cash deposit the broker had made to his business account and no Form 8300 had been filed. The broker explained he had received the cash in three increments and produced records showing the sale of a yacht to a Philadelphia pharmacist for \$360,000. The yacht broker's records showed that almost all the payments received on the sale were \$9000 checks that the buyer had purchased at numerous financial

has also engaged in several compliance education programs. For instance, on one occasion, CID matched filings against corresponding Forms 8300 filed by car dealerships in Dallas.²⁰³ When the matching revealed many discrepancies in the 8300 filings, CID sent letters to specific car dealerships.²⁰⁴ As a result, a massive number of delinquent Forms 8300 were filed, and comparison between the forms and criminal indices revealed several known narcotics dealers.²⁰⁵

To further educate businesses about the filing requirement, the IRS has also sent out various notices and publications explaining how the system works.²⁰⁶ These actions seem to be achieving some degree of success. While only 29,000 Forms 8300 were filed in 1990,²⁰⁷ approximately 60,000 were filed in 1991.²⁰⁸ This total still falls far short of the 7,454,000 CTRs filed in 1991, but it shows some progress.²⁰⁹

C. Form 8300 and Federal Law Enforcement

Form 8300 has been a vital tool for CID to use in its money laundering and narcotics investigations and has assisted other federal agencies as well.²¹⁰ Forms 8300 are filed with the IRS Computing Center in Detroit and are updated via magnetic tape to the Treasury Enforcement Communication System (TECS).²¹¹ As a result of the 1988 Anti-Drug Abuse Act, CID and other federal agencies are able to obtain Form 8300 data through the Treasury Enforcement Communications Systems (TECS).²¹²

institutions. The ensuing investigation, joined by the Drug Enforcement Agency, resulted in the indictment of the pharmacist who had been selling a combination of codeine and methamphetamine on phony prescriptions.

Murphy, *supra* note 132.

203. Murphy, *supra* note 132.

204. *Id.*

205. *Id.*

206. *Id.* Two such documents were: 1) IRS Notice 923: "A Guide to Reporting Cash Transactions for Trades and Business," and 2) IRS Publication 941: "Reporting Cash Payments of Over \$10,000." *Id.*

207. *Internal Revenue Service, IRS Reports Increase in Cash Reports Filed*, 91 TAX NOTES TODAY 240-27 (Nov. 25, 1991).

208. *Id.*

209. *Id.*

210. Murphy, *supra* note 132.

211. *Id.*

212. STAFF OF HOUSE COMM. ON WAYS AND MEANS, 102D CONG., 2D SESS., 1992

One of these federal agencies is the Financial Crimes Enforcement Network (Fincen). Fincen was established in April 1990 to combat drug traffickers and money launderers.²¹³ It is an "interagency intelligence center that combines resources from the Internal Revenue Service, the Justice Department, the Drug Enforcement Agency, the Federal Bureau of Investigation, the Customs Service, and other agencies" ²¹⁴ Bryan Brew, Director of Fincen, has noted that if something looks suspicious, "[Fincen] will not turn it away, . . . [but] will provide the Service with a package." ²¹⁵

The authority given to various federal agencies to disseminate Form 8300 information through TECS expired in November 1992.²¹⁶ As a result, this information is currently only available to IRS personnel.²¹⁷ This policy should, and almost certainly will, change. In fact, the Oversight Subcommittee chaired by Representative Pickle recommended providing the IRS with permanent authority to disseminate this information to other federal agencies.²¹⁸ The 1992 Revenue Act, which George Bush vetoed, included this recommendation.²¹⁹

1. *Form 8300 and the Attorney's Dilemma*

One other aspect of Form 8300 is the problem it poses for criminal defense attorneys and other lawyers. This is a topic of hot debate.²²⁰ Form 8300 requires individuals who complete the forms to disclose various information about their clients, including their names, addresses, Social Security numbers,

COMPREHENSIVE OVERSIGHT INITIATIVE OF THE COMM. ON WAYS AND MEANS (Comm. Print 1993), available in *Ways and Means Releases 1992 Oversight Initiative*, 93 TAX NOTES TODAY 4-19 (Jan. 7, 1993) [hereinafter *Ways and Means*].

213. John Turro, *The 'War on Drugs' Is Causing U.S. to Increase Investigations of Tax Evasion Through Tax Havens*, 90 TAX NOTES INT'L 37-12 (Sept. 12, 1990).

214. *Id.*

215. *Id.*

216. *Overview Document Explaining IRS Initiatives*, 93 TAX NOTES TODAY 31-38 (Feb. 9, 1993).

217. *Id.*

218. *Ways and Means*, *supra* note 212.

219. *Id.*

220. See generally Morgan, *supra* note 138; Ellen S. Podgor, *Form 8300: The Demise of Law as a Profession*, 5 GEO. J. LEGAL ETHICS 485 (1992); Catherine A. Earl, Note, *Will This Be Cash? The Validity of Internal Revenue Code Section 6050I and the Attorney-Client Relationship*, 21 CREIGHTON L. REV. 893 (1988).

employer identification numbers, businesses or occupations, and other identifying data.²²¹

A new twist to the form was added in 1990. The form now has a small box that asks the payor to check it if the transaction would be considered a "suspicious transaction."²²² A suspicious transaction is defined as "a transaction in which it appears that a person is attempting to cause Form 8300 not to be filed, or a false or incomplete form to be filed, or where there is an indication of possible illegal activity."²²³ While it does not appear that this is mandatory, attorneys may face quite a predicament if they fail to identify a transaction as suspicious, when they believe the transaction to be suspicious.²²⁴

Since the practice of law is considered a "trade or business,"²²⁵ attorneys are required to fill out Form 8300 when a client gives them greater than \$10,000 in "cash."²²⁶ Attorneys are also subject to the civil and criminal penalties of I.R.C. § 6050I.²²⁷ Many in the legal community believe this interferes with the attorney-client privilege.²²⁸ Strong arguments are put forth that it is unethical to reveal this information and that it undermines the trust and confidence that is so essential in an attorney-client relationship.²²⁹ The American Bar Association has adopted a formal resolution in opposition to § 6050I's enforcement upon attorneys.²³⁰

On the other hand, Randolph Thrower, former Commissioner of the IRS, commented that if prospective clients want to pay attorneys in cash, attorneys should be forthright and explain to their clients that they will be reporting the payment as required by law.²³¹ In addition, if a client, accused of a diamond heist,

221. Form 8300, Department of the Treasury, Internal Revenue Service (Feb. 1992).

222. *Id.*

223. Definitions, Form 8300, Department of the Treasury, Internal Revenue Service (Feb. 1992).

224. Podgor, *supra* note 220, at 498.

225. *See* United States v. Goldberger & Dubin, P.C., 935 F.2d 501, 506 (2d Cir. 1991) (finding that "the practice of law is treated as a 'trade or business' under . . . income tax laws" (citing 6 Mertens, *Law of Federal Income Tax* § 25.123 (1992))).

226. For a description of what constitutes "cash" for purposes of § 6050I, see *supra* note 192 and accompanying text.

227. *Goldberger*, 935 F.2d at 506.

228. Morgan, *supra* note 138, at 979-80.

229. *See generally* Podgor, *supra* note 220, at 522-30.

230. *Id.* at 492.

231. Randolph Thrower, Remarks at Georgia State University (Mar. 16, 1993).

attempted to pay a lawyer in diamonds, the lawyer should use the Nancy Reagan approach—"just say no."²³²

2. *Form 8300 and the Goldberger Decision*

Nevertheless, the rule still stands that Form 8300 is applicable to attorneys. The seminal case in this area is *United States v. Goldberger & Dubin, P.C.*,²³³ a Second Circuit decision which reinforced the requirement that attorneys must complete Forms 8300.²³⁴ In *Goldberger*, two law firms each filed a Form 8300, but did not identify the names of their clients.²³⁵ The firms argued that § 6050I violated their Sixth Amendment right to council.²³⁶ In addition, they argued that I.R.C. § 6050I conflicts with the doctrine of attorney-client privilege.²³⁷

The court did not agree. As for the Sixth Amendment argument, the court asserted that clients do not need to pay in "cash"; rather, they could pay by some other means that would not require the filing of Form 8300.²³⁸ Thus, I.R.C. § 6050I does not prevent clients from choosing whomever they wish to represent them.²³⁹ Consequently, since the "Sixth Amendment does not guarantee the client the right to his first choice," the court rejected this argument.²⁴⁰

The most heavily debated aspect of the *Goldberger* decision was the portion dealing with the doctrine of attorney-client privilege.²⁴¹ In this regard, the court held that the requirement of identifying clients on Form 8300 did not violate any privilege.²⁴² In making its determination, the court looked to the legislative history and examined why Congress instituted this requirement in the first place: "Congress believed that reporting on the spending of large amounts of cash would enable the Internal Revenue Service to identify taxpayers with large cash

232. *Id.*

233. 935 F.2d 501 (2d Cir. 1991).

234. *Id.* at 506.

235. *Id.* at 503.

236. *Id.* Although the firms also asserted their Fourth and Fifth Amendment rights had been violated, the court summarily rejected these claims. *Id.*

237. *Id.* at 503-04.

238. *Id.*

239. *Id.*

240. *Id.*

241. *See, e.g., Morgan, supra* note 138, at 983-89; *Podgor, supra* note 220, at 506-09.

242. *Goldberger*, 935 F.2d at 505.

incomes.”²⁴³ The court noted “[t]he importance of client identification as a means of uncovering tax evasion is apparent”²⁴⁴ Therefore, the court concluded there is no merit to the argument that I.R.C. § 6050I conflicts with the attorney-client privilege.²⁴⁵

The ramifications of this case are immense. As Paul Goldberger, a principal in the firm of Goldberger & Dubin, stated prior to the conclusion of trial:

The federal government is taking the adversary out of the adversarial relationship. They have been doing it for the past several years, and this is the next step If one doesn't like the adversarial system, then the Legislature can vote in a new system, but this latest assault is making it very difficult to practice. A lot of guys are getting out.²⁴⁶

Many would agree with Mr. Goldberger. One commentator has suggested that the legal profession has been attempting to create a new standard of excellence and professionalism, but enforcement of § 6050I against attorneys undermines this development.²⁴⁷ Another commentator has suggested that “if you are in a position to believe a transaction is suspicious, [your best recourse] is [to] immediately withdraw from the transaction and consider calling the appropriate federal authorities.”²⁴⁸ Still, the ABA and the National Association of Criminal Defense Lawyers have adopted a stricter view of the attorney-client privilege:

The ABA, in its Model Code of Professional Responsibility, states that the attorney has an ethical obligation to withhold disclosure of information such as that required in Form 8300 The National Association of Criminal Defense Lawyers . . . states that if the client [should not want] to disclose his identity, the lawyer should include a statement

243. *Id.* at 505-06 (quoting STAFF OF THE JOINT COMMITTEE ON TAXATION, 98TH CONG., 2D SESS., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE DEFICIT REDUCTION ACT OF 1984, 491 (Comm. Print 1984)).

244. *Id.* at 505.

245. *Id.* at 504.

246. Marcia Chambers, *Law Firms Getting Their Defenses Up*, NAT'L L.J., Jan. 8, 1990, at 15.

247. Podgor, *supra* note 220, at 530.

248. Robert E. Panoff, *Structuring, Money Laundering and "8300" Improprieties—The New "Tax" Crimes of the Decade?!*, 66 FLA. B.J. 34, 36 (1992).

in the form asserting confidentiality, as well as evidentiary and constitutional privileges.²⁴⁹

Clearly, attorneys do not have much direction in this area. It is a difficult issue that could possibly lead to a breakdown of the criminal defense system. In any event, it appears that both the IRS and the Justice Department are very reluctant to press criminal charges against an attorney who fails to comply with the requirement.²⁵⁰ Perhaps they do not want to test the law in this area. Thus, although *Goldberger* remains good law, it would not be surprising to see the Supreme Court review this quandary sometime in the future.

D. Money Laundering Statutes: 18 U.S.C. §§ 1956 and 1957

1. 18 U.S.C. § 1956

The federal money laundering statutes were enacted in 1986 and effectively made money laundering a crime for the first time.²⁵¹ 18 U.S.C. § 1956 was amended by the enactment of the Money Laundering Prosecution Improvements Act of 1988, which set forth specific violations of two tax crimes, I.R.C. §§ 7201 (tax evasion) and 7206 (fraud and false statements).²⁵² Pursuant to

249. Frederick P. Hafetz, *Lawyers Under Fire: Actions Against Defense Bar*, N.Y. L. J., Jan. 12, 1993, at Outside Counsel 1.

250. Morgan, *supra* note 138, at 978.

251. Money Laundering Control Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, 3218 (codified as amended in scattered sections of 18 U.S.C.).

252. Pub. L. No. 100-690, 102 Stat. 4181, 4354 (codified at 18 U.S.C. § 1956(a)(1) (1988)). Section 1956(a)(1) provides:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

a 1987 Memorandum of Understanding between the Attorney General and the Treasury Department, the IRS has primary jurisdiction over federal money laundering statute violations that become apparent during Title 26 (Internal Revenue Code) or 31 investigations.²⁵³

Since CID may now classify an investigation as one that primarily involves money laundering, it can dispense with some of its own internal procedures that are usually followed in criminal tax investigations and refer the case directly from the chief of CID to the U.S. Attorney.²⁵⁴ Furthermore, the elements of proof under 18 U.S.C. § 1956 are easier to satisfy than under its tax crime counterparts.²⁵⁵ Finally, the criminal penalties under 18 U.S.C. § 1956 have the potential to be much higher than those under the I.R.C.²⁵⁶

Thus, in cases in which prosecutors have a choice, they will normally prefer to proceed under 18 U.S.C. § 1956 instead of I.R.C. § 6050I.²⁵⁷ In fact, a member of the U.S. Attorney's Office for the Southern District of New York has deemed "most willful 8300 or CTR violations . . . 'money laundering prosecutions in waiting.'"²⁵⁸

Likewise, the Special Agents of CID would also prefer a prosecution under 18 U.S.C. § 1956 rather than under the IRC, since

[CID] usually work[s] these cases as part of an operation involving a major drug operation of some sort and part of what happens is [CID] look[s] at different statutes that would apply and often . . . charge[s] people with title 18, 1956 . . . even though it may involve an 8300 because [it] has a much stiffer penalty, a twenty-year jail term associated with it and a much stiffer fine.²⁵⁹

Id.

253. Stephen E. Silver, *IRS Likely to Increase Use of Money Laundering and Related Statutes*, 73 J. TAX'N 286, 288 (1990).

254. *Id.* (stating that if a violation of the tax laws is also prosecuted in addition to § 1956, then a review by IRS District Counsel must take place).

255. Morgan, *supra* note 138, at 950. For instance, a prosecution under I.R.C. § 7201 requires a tax deficiency, while it is not required under 18 U.S.C. § 1956. *Id.* at n.60.

256. *Id.* at 950.

257. *Id.*

258. Abramowitz, *supra* note 192.

259. Morgan, *supra* note 138, at 950 (quoting *Business Community's Compliance with Federal Money Laundering Statutes, Hearings Before Subcomm. on Oversight of the*

2. 18 U.S.C. § 1957

Section 1957 has a less severe penalty than § 1956.²⁶⁰ Section 1957 makes it illegal to knowingly engage in a monetary transaction involving any “criminally derived property of a value greater than \$10,000 [that] is derived from specified unlawful activity”²⁶¹ If the defendant has knowledge that the property was “criminally derived,” the scienter requirement of § 1957 is met; § 1957 contains no additional requirement of intent.²⁶²

Like IRS Form 8300,²⁶³ § 1957 may also present certain problems for attorneys. If an attorney accepts a monetary instrument from a client whom the attorney knows has engaged in criminal activity, the attorney may be subject to criminal liability under § 1957.²⁶⁴

An amendment to § 1957 has been of some assistance to attorneys.²⁶⁵ This amendment exempts attorneys who accept money from clients “whose Sixth Amendment rights have already attached.”²⁶⁶ However, Sixth Amendment rights only attach when “adversary judicial proceedings have been initiated,”²⁶⁷ and this does not occur until a “critical point in the prosecution.”²⁶⁸ Therefore, the amendment would not apply to situations in which an attorney has been retained prior to indictment or arrest, since Sixth Amendment rights have not

House Comm. of Ways and Means, 101st Cong., 2d Sess., 133 (1990) (statement of Inar Morics, Assistant Commissioner, Criminal Investigation Division, Internal Revenue Service)).

260. FINK, *supra* note 7, § 16.10[1]. As previously discussed, the penalty under § 1956 is up to twenty years imprisonment and a fine of the greater of \$500,000 or twice the value of the property involved in the illegal transaction or both. 18 U.S.C. § 1956(a)(1) (1988). By contrast, 18 U.S.C. § 1957 provides for a maximum term of imprisonment of ten years. *Id.* § 1957(b) (1988). The civil fine amount, however, may be similar to that under § 1956. *Compare id.* § 1957(b)(2) (1988) *with id.* § 1956(a) (1988).

261. 18 U.S.C. § 1957(a) (1988).

262. FINK, *supra* note 7, § 16.10[1].

263. For a discussion of the problems Form 8300 poses to attorneys see *supra* notes 220-50 and accompanying text.

264. Morgan, *supra* note 138, at 951.

265. *Id.*; see Money Laundering Prosecution Improvements Act of 1988, Pub. L. No. 100-690, 102 Stat. 4354 (codified at 18 U.S.C. § 1957(f)(1) (1988)).

266. Morgan, *supra* note 138, at 951; see 18 U.S.C. § 1957(f)(1) (1988 & Supp. V 1993).

267. Kirby v. Illinois, 406 U.S. 682, 688 (1972).

268. Morgan, *supra* note 138, at 952.

attached at that time.²⁶⁹ In that instance, an attorney may be prosecuted under § 1957.²⁷⁰

3. *Justice Department Guidelines*

The Justice Department has set forth certain factors it will consider in order to determine whether charges under §§ 1956 or 1957 should proceed:

(1) whether a financial institution accepts a commission when general industry practice does not provide for commission or whether the commission accepted is above market rates; (2) whether the proposed defendants used false names to purchase goods and/or services; (3) whether the legitimate livelihood of the purchaser is insufficient to afford the goods and/or services being purchased; (4) whether there is evidence of an intentional failure not to inquire so that the claim of ignorance can be made; (5) whether there is past governmental interaction with the financial institution and the institution's reputation for honesty and integrity; (6) the amount of profit made from the transactions by the financial institution; (7) whether there is more than one branch of the financial institution that is suspected of being engaged in money laundering and how much of the money laundering activity was conducted by the financial institution outside of the United States and the availability of evidence from those jurisdictions.²⁷¹

The Justice Department has also established a separate money laundering section in order to ensure consistency in its criminal prosecutions.²⁷²

4. *The Annunzio-Wylie Anti-Money Laundering Act*

On December 20, 1992, a new anti-money laundering statute, entitled the "Annunzio-Wylie Anti-Money Laundering Act,"²⁷³

269. *Id.* at 952-53.

270. *Id.* at 953.

271. Abramowitz, *supra* note 192 (quoting Gordon Greenberg, former Chief of the Financial Investigations Unit of the U.S. Attorney's Office for the Central District of California).

272. *Id.*

273. Pub. L. No. 102-550, 106 Stat. 4044 (1992).

took effect. The Act contains forty-one provisions and targets money laundering activity by financial institutions.²⁷⁴

The Act provides, among other things, that any financial institution convicted of money laundering under §§ 1956 or 1957 may have its rights terminated subsequent to a hearing scheduled by the Comptroller of the Currency.²⁷⁵ In determining if a bank will be terminated, the following five factors will be considered:

(A) The extent to which directors or senior executive officers of the national bank, Federal branch, or Federal agency knew of, or were involved in, the commission of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank, Federal branch, or Federal agency which were designed to prevent the occurrence of any such offense.

(C) The extent to which the national bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(D) The extent to which the national bank, Federal branch, or Federal agency has implemented additional internal controls (since the commission of the offense of which the bank, Federal branch, or Federal agency was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.²⁷⁶

It appears some of the provisions came about as a direct result of the Bank of Credit and Commerce International (BCCI) scandal.²⁷⁷ If any banks needed further incentive to file CTRs, this new law certainly provides it.

274. *See id.*; *Bush Signs*, *supra* note 127.

275. 106 Stat. 4044, § 1502(a).

276. *Id.*

277. *Bush Signs*, *supra* note 127.

VI. THE DEBATE OVER THE FUTURE ROLE OF CID

The Service classifies cases involving CID into two categories.²⁷⁸ The General Enforcement Program (GEP) deals with cases involving violations of criminal tax statutes.²⁷⁹ The Special Enforcement Program (SEP) is concerned with individuals who derive their income from illegal sources.²⁸⁰ This usually involves an instance in which a nontax crime is combined with a tax crime.²⁸¹ However, the Service has started to work with other federal agencies and prosecutors to bring tax

278. Terry Philip Segal, *IRS Focus on Criminals Invites Others to Cheat*, MASS. LAW. WKLY., Sept. 23, 1991, at Viewpoint 5.

279. *Id.* Section 9152 of the INTERNAL REVENUE MANUAL, entitled General Enforcement Program, provides:

This program encompasses all criminal enforcement activities of the Criminal Investigation Division except those included in the special enforcement program discussed in IRM § 9153. The identification and investigation of income tax evasion cases of substance with prosecution potential is a primary objective. The program also provides for balanced coverage as to types of violations, as well as geographic locations and economic and vocational status of violators as considered necessary to stimulate voluntary compliance.

INTERNAL REVENUE MANUAL § 9152 (Nov. 1994).

280. MCGOWEN, *supra* note 7, § 1.01. Section 9153 of the INTERNAL REVENUE MANUAL, entitled Special Enforcement Program, provides:

This program encompasses the identification and investigation of that segment of the public who derive substantial income from illegal activities and violate the tax laws or other related statutes in contravention of the Internal Revenue laws. The very nature of their operations requires national coordination of enforcement efforts, close cooperation and liaison with the Department of Justice and other Federal, State and local law enforcement agencies (see IRM 9400).

INTERNAL REVENUE MANUAL § 9153 (Nov. 1994).

281. Segal, *supra* note 278. As noted by one commentator, section 9411.2 of the INTERNAL REVENUE MANUAL provides that individuals within the purview of the SEP include:

[P]ersons who are reasonably believed to be: (a) engaged in organized criminal activities; (b) notorious or powerful with respect to local criminal activities; (c) receiving substantial income from illegal activities as a principal, major subordinate, or important aider or abettor; (d) infiltrating legitimate business through illegal means or infiltrating legitimate business through loaning or investing therein the proceeds from illegal activities; (e) engaged in an occupation requiring registration as one who is engaged in receiving wagers; (f) designated as Strike Force case subjects under the IRS Strike Force Program; and/or (g) receiving substantial income from illegal activity that is separate and apart from the alleged tax violations, such as corruption in government, welfare fraud, or commercial bribery.

MCGOWEN, *supra* note 7, § 1.01 n.19 (citing INTERNAL REVENUE MANUAL § 9411.2 (1980)).

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indictments into larger multi-agency investigations in white collar crime areas, such as bank fraud.²⁸²

During the past fifteen years, CID has dramatically shifted its priorities from GEP to SEP cases.²⁸³ It has gone "from a tax-type entity to more of a law enforcement entity."²⁸⁴ In fact, the IRS has discontinued the use of the GEP and SEP designations and instead uses six categories:

- (i) white collar tax crimes, which include Title 31 offenses as well as underreporting of income both legally and illegally earned;
- (ii) narcotics crimes, which include prosecution of narcotics offenders for tax fraud and currency offenses;
- (iii) abusive compliance crimes, which include fuel excise tax cases, tax protester, and questionable refund cases;
- (iv) public corruption tax crimes, which include Title 26 and 31 cases against public officials;
- (v) organized crime, which includes local organized crime, pornography and obscenity investigations, and wagering cases; and
- (vi) other direct investigative activity, such as the receipt and evaluation of information items.²⁸⁵

The statistical data which has been compiled bears out this shift in priorities. For instance, in 1978, CID had 2898 tax prosecution recommendations in GEP cases, which accounted for 84% of the total criminal tax cases.²⁸⁶ In 1988, this figure was down to 1383 or just 45% of the total criminal tax cases.²⁸⁷ Meanwhile, during the same ten year period, SEP investigations jumped from approximately 15% of the total cases in 1979, to approximately 45% in 1987.²⁸⁸ In conjunction with this trend, and within the same period, CID prosecution recommendations in

282. *IRS Should Switch Enforcement Emphasis, Says ABA Report*, 91 TAX NOTES TODAY 177-14 (Aug. 23, 1991) [hereinafter *Switch Enforcement Emphasis*].

283. Segal, *supra* note 278.

284. *IRS, Official Says Commissioner Recognizes Too Much Focus Placed on Special Enforcement*, DAILY REP. FOR EXECUTIVES, Mar. 4, 1992, at G2 [hereinafter *IRS Official*] (quoting Barry Finkelstein, Assistant Chief Counsel, IRS Criminal Tax Division).

285. *Switch Enforcement Emphasis*, *supra* note 282.

286. Segal, *supra* note 278.

287. *Id.*

288. *Id.* at n.11.

narcotics cases rose from 81 to 876, and in currency cases from 14 to 353.²⁸⁹

Presently, approximately 50% of the work of CID is devoted to narcotics, organized crime, and money laundering.²⁹⁰ In 1980, only 2.4% of CID cases involved illegal narcotics, while in 1990 this number was 38%.²⁹¹ Moreover, in 1980 only 0.2% of CID cases involved the Bank Secrecy Act, while in 1990 this figure was up to 25%.²⁹² In fact, from 1980 to 1989, the number of drug and money-laundering cases recommended for prosecution increased by 337%, while general case recommendations fell 30%.²⁹³ Finally, in 1978, 0.011% of all tax returns filed were subjected to a criminal investigation.²⁹⁴ This compares to only 0.004% in 1988, a drop of almost two-thirds.²⁹⁵

One explanation for this striking shift in priorities is that the prosecution of SEP cases has become a political issue.²⁹⁶ Barry Finkelstein, assistant chief counsel of the IRS Criminal Tax Division, has stated that the IRS cannot realistically cut down its support to SEP cases due to the influence of strong political leaders.²⁹⁷ One tax lawyer agrees, stating that "[t]he war-on-drugs, the resolution of failed savings and loans, procurement fraud, and public corruption cases all are enticing issues that politicians have decided to pursue. . . ."²⁹⁸

Finkelstein contends that prosecutors would rather have CID personnel working on special enforcement cases because "they are investigated through the grand jury process and for that reason 'tend to get through the system rather well.'"²⁹⁹ Furthermore, they are less complicated to prosecute than general enforcement cases, and they are more "sexy" than general enforcement cases.³⁰⁰

289. *Id.* at n.10.

290. 'Big Ticket' Merchants Targeted, *IRS CID Chief Says*, MONEY LAUNDERING ALERT, Jan. 1991, at Regulatory Actions 5.

291. *IRS Official*, *supra* note 284.

292. *Id.*

293. Lavelle, *supra* note 2.

294. *Switch Enforcement Emphasis*, *supra* note 282.

295. *Id.*

296. *See supra* notes 127-28 and accompanying text.

297. *IRS Official*, *supra* note 284.

298. *Id.* (attributing comment to Scott Michel of Caplin & Drysdale, a Washington, D.C. firm).

299. *Id.* (quoting Barry Finkelstein).

300. *Id.*

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A. John Pappalardo, a U.S. Attorney from Massachusetts, seemingly agrees with this notion. He claims that “[i]t wasn’t that long ago, . . . that the Criminal Investigation Division was essentially relegated to bringing cases against taxpayers for failing to file, and that was a clear underutilization of their skills and talents.”³⁰¹ Now, however, Pappalardo believes it is apparent how valuable a weapon CID is in prosecutions involving narcotics and organized crime: “What is common to drug cases, organized crime cases and bank fraud? . . . They are all engaged in making money. The issue isn’t so much the taxes but following the money. And that is what they do at CID, and they do it very well.”³⁰² The IRS agrees: “Since financial gain is in most cases the source of criminal activity, there is a place for IRS in these investigations,” reasoned Patrick Dorsey, Director of Operations for CID.³⁰³

Many believe, however, that the IRS’ emphasis on SEP causes directly lessens the deterrent effect of tax evasion statutes.³⁰⁴ Further, some believe the IRS special agents currently can become “too excited about the chase.”³⁰⁵ Cono Namorato, a member of the ABA’s subcommittee on criminal tax policy, summarized these types of concerns in a memorandum: “We recognize that there is a war on drugs and a war on savings and loan fraud, but CI[D] should be directed more toward maximizing voluntary compliance with the tax laws. . . .”³⁰⁶ Namorato believes that CID should not seek to increase its role in SEP type crimes, such as “narcotics, financial crimes and other nontax offenses.”³⁰⁷ Rather, it should be directed “‘clearly and unequivocally . . . toward general enforcement and voluntary tax compliance.’”³⁰⁸

Some also believe that the more people think they are likely to be prosecuted, the more likely they are to fill out an accurate tax return. Therefore, if the trend toward SEP cases continues, the

301. Brellis, *supra* note 2, at 26 (quoting U.S. Attorney A. John Pappalardo).

302. *Id.*

303. *IRS Official, supra* note 284.

304. Lavelle, *supra* note 2.

305. Thrower, *supra* note 231.

306. *Summaries of Today’s Important Tax Items*, 91 TAX NOTES TODAY 259-H (Dec. 3, 1991) (quoting Cono Namorato of the ABA’s subcommittee on criminal tax policy).

307. *Id.*

308. *Id.* (quoting Cono Namorato).

deterrent effect will decrease, and the gap between taxes owed and taxes paid will continue to grow.³⁰⁹ Many lawyers would like the IRS to prosecute more cases like Leona Helmsley's, believing cases like hers do have a deterring effect on tax evaders in the business world.³¹⁰

Clearly there has been a dramatic shift in the priorities of CID's criminal tax enforcement. However, people disagree on whether this has been a favorable shift in the larger scheme of tax enforcement and deterrence in general.³¹¹ This debate led to a study of current priorities in tax enforcement by a special committee of the American Bar Association (ABA).³¹² After its study was concluded, the Civil and Criminal Tax Penalties Committee of the ABA's Section of Taxation released a final report in August 1991, which was endorsed by eight former IRS commissioners.³¹³

The study concluded the following:

Our criminal tax enforcement system is rapidly losing its ability to deter otherwise law abiding taxpayers from cheating on their obligations Tax prosecutions of drug dealers, mobsters, corrupt politicians and other notorious offenders do little, if anything, to foster voluntary compliance with the tax laws among the large majority who earn their income legitimately, which is and should remain the goal of criminal tax enforcement. Absent some quick and decisive redirection of efforts, the long term stability of our voluntary compliance system could be seriously jeopardized.³¹⁴

To support its conclusion, the Committee noted that the shift in priority "has occurred with essentially no attention given to

309. See Lavelle, *supra* note 2; *Switch Enforcement Emphasis*, *supra* note 282. This gap was estimated by the General Accounting Office to be at \$84.9 billion as of 1987. Hershey, *supra* note 11.

310. Lavelle, *supra* note 2.

311. *Switch Enforcement Emphasis*, *supra* note 282.

312. *Id.*

313. *Id.* (reprinting in full Cono R. Namorato et al., *Redirecting Criminal Tax Enforcement to Improve Voluntary Compliance*, A.B.A. SEC. TAX'N). The eight former commissioners who endorsed the report and the years of their service, are as follows: Mortimer Caplin 1961-1964, Sheldon S. Cohen 1965-1969, Randolph W. Thrower 1969-1971, Johnnie M. Walters 1971-1973, Donald C. Alexander 1973-1977, Jerome Kurtz 1977-1980, Roscoe L. Egger, Jr. 1981-1986, Lawrence B. Gibbs 1986-1989. *Id.* (reprinting in full a letter from the former commissioners to Fred T. Goldberg, Jr., Commissioner of Internal Revenue).

314. *Id.*

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whether such a shift has reduced overall tax compliance, or might do so.”³¹⁵ While admitting that no specific research yet exists that can prove what effect the shift from GEP type cases to SEP type cases has had on deterrence, the study cites research findings which conclude that the possibility of criminal prosecution does deter otherwise law-abiding citizens from committing tax fraud.³¹⁶ Additionally, research seems to indicate people are more likely to be deterred if one of their peers in the same line of business is criminally prosecuted than if a drug dealer is prosecuted.³¹⁷

In making its recommendations, the Committee first assumed that no additional funds or resources were available for criminal enforcement.³¹⁸ Therefore, existing resources needed to be shifted appropriately. In this regard, the Committee recommended that the government demonstrate a renewed commitment to GEP cases by diverting at least seventy-five percent of the resources currently used in SEP cases to GEP cases.³¹⁹ To accomplish this, the Committee suggested that the Service redesignate criminal tax enforcement resources appropriately and make the public aware that it intended to renew its efforts against “tax cheats who earn their incomes legitimately.”³²⁰

In response to the increasing criticism of the continuing shift of CID priority in tax enforcement cases, Fred T. Goldberg, Jr., then-Commissioner of the IRS, convened an executive committee of high-ranking officials within the IRS to contemplate the future direction of CID.³²¹ The committee consequently appointed a study group and charged it with the function of examining CID and recommending any changes that would “balance, direct and strengthen its activities in the future.”³²²

Relying on the findings of the study group, the executive committee, led by Commissioner Goldberg, forwarded a

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. See Rita L. Zeidner, *Goldberg Memorandum on CID Reorganization Available*, 92 TAX NOTES 9-53 (Jan. 14, 1992) [hereinafter *Goldberg Memo*] (reprinting Memorandum from Fred T. Goldberg, Jr., to all CID employees (Jan. 13, 1992)).

322. *Id.*

memorandum to all CID employees. The memorandum stated that the committee had determined there should be no changes and that CID should retain its current focus on illegal income or SEP type cases.³²³ In the memorandum, Commissioner Goldberg stated the following:

I am convinced that the involvement of CI[D] in investigations on financial crimes, such as money laundering and narcotics cases, is not only necessary but wholly appropriate. These are typically multi-agency investigations which clearly benefit from the participation of CI[D] agents who are acknowledged as the best financial criminal investigators in government. We will reaffirm the propriety of this part of CI[D]'s mission and recognize that in a broader sense, these cases are a part of the contribution CI[D] makes to effective tax administration . . .

. . . . The IRS will continue to use Title 18, Title 26, and Title 31 in Criminal Investigation Activities. These titles provide valuable tools for tax administration and will continue to be used for both legal and illegal income cases.³²⁴

The Commissioner also asserted that more resources, such as staff increases to CID, should be allocated to criminal enforcement in order to increase voluntary compliance.³²⁵ Notwithstanding the conclusion reached by the ABA and others, the Commissioner stated that "illegal source income enforcement activities (narcotics, BSA/money laundering, savings and loan fraud, etc.) do directly or indirectly encourage voluntary compliance."³²⁶ He also indicated, however, that this particular issue would be further researched, and, pending the conclusion of this research, CID will maintain the status quo.³²⁷

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.* The study group also examined CID's organizational structure and decided to maintain the existing structure in which CID exists as a coequal element of other divisions, including Examination and Collections. See *IRS Commissioner Washes Hands of CID Realignment*, MONEY LAUNDERING ALERT, Jan. 1992, at 4 [hereinafter *IRS Commissioner Washes Hands*]. While Goldberg's memo stated that the National Office would begin to assume more responsibility for oversight of CID, particularly in financial crimes investigations, the gist of the memo indicated the structure of CID would remain the same. See *Goldberg Memo*, *supra* note 321. This memo upset many members of CID. Many within the organization believed that few district level managers had law enforcement backgrounds and were not as sympathetic toward law enforcement efforts by CID as the National Office might be. See *id.* For a full

Interestingly enough, Lawrence Gibbs, one of the former IRS Commissioners who had signed the ABA report criticizing the current priority of CID's tax enforcement, commented that he agreed with Goldberg's conclusions.³²⁸ Gibbs said that Goldberg's decision to have CID priorities remain in special enforcement investigations, while at the same time requesting additional personnel and resources, was a good compromise. Gibbs also agreed with the decision to increase the National Office's oversight of CID.³²⁹ He remarked: "The final decision recognized competing considerations and balances them nicely by providing additional funding so that general and special enforcement functions can be [pursued] by CI[D], but with better oversight by the national office."³³⁰

Following this decision, it was announced in October 1992 that another new committee had been formed to study CID.³³¹ The committee was chaired by newly retired IRS Commissioner Shirley Peterson.³³² Its responsibilities were to "develop and implement a plan for consistent and continued growth for CID resources to deal with tax, white-collar crime, and money

discussion on the recent reorganization of CID, which has led to the National Office assuming much greater control, see *infra* notes 335-42 and accompanying text. Some had hoped CID would become a separate entity within the Treasury Department, reporting directly to the Assistant Secretary of Enforcement, or possibly become a part of the Secret Service. See *IRS Commissioner Washes Hands, supra*. In fact, Bob Martinez, Director of the Office of National Drug Control Policy, wrote that he believed "CID could make an improve[d] contribution to the nation's drug and money laundering effort by being 'centralized' outside its present home." *Id.* Furthermore, "the financial [investigative] expertise of the CID has rarely been in higher demand and . . . changes in its mission and location were required to comply with the Bush Administration's drug control policy." *Id.*

328. *IRS: IRS Decision to Keep Criminal Investigation Focus on Illegal Sector Raises Questions*, DAILY REP. FOR EXECUTIVES, Jan. 24, 1992, at G2.

329. *Id.*

330. *Id.*

331. Rita L. Zeidner, *Panel Named to Study IRS' Criminal Investigation Division*, 92 TAX NOTES TODAY 215-6 (Oct. 26, 1992).

332. *Id.* The other members of the study committee included: David M. Nummy (Assistant Secretary for Management at Treasury), Peter K. Nunez (Assistant Secretary for Enforcement at Treasury), Carol Hallett (U.S. Customs Commissioner), Donald K. Vogel (IRS Assistant Regional Commissioner for CID), James A. Bruton (Acting Assistant Attorney General, Tax Division, Justice Department), Joe Whitley (U.S. Attorney, Northern District of Georgia), Bob Martinez (Director, Office of National Drug Control Policy), Michael Donal (IRS Deputy Commissioner), Patrick J. Dowling (IRS Associate Chief Counsel, Enforcement Litigation), Lawrence Gibbs (Former IRS Commissioner and Partner, Johnson & Gibbs), and Michael Gratz (Professor, Yale University). *Id.*

laundering responsibilities.’³³³ Additionally, the committee examined various management issues, including “overtime, the use of firearms and enforcement vehicles, and the authority of CID agents to initiate and participate in wiretaps and money-laundering investigations.”³³⁴

After all these studies and committees were concluded, CID was finally reorganized.³³⁵ It has been realigned to give the National Office more power to control criminal investigations, as was first suggested in Goldberg’s memo.³³⁶ This change began in October 1993, and will continue to be phased in throughout 1994.³³⁷ Basically, the realignment allows the National Office to develop national policy for CID criminal investigative procedures.³³⁸ Previously, many of these procedures were set and approved at the district level by individuals who had accounting experience, but no law enforcement experience.³³⁹ Thus, this change should be viewed as a positive one by CID agents who have for some time wanted more centralization and hands-on direction from Washington.³⁴⁰

However, the decision to reorganize did not include any modification whatsoever in CID enforcement priorities. Despite all of the criticisms and recommendations made by various study groups and committees regarding CID’s future role, it apparently will remain unchanged for the time being. Soon after the IRS announced CID’s reorganization, David Palmer, IRS Deputy Assistant Commissioner of CID, declared that the reorganization will in no way effect CID’s current enforcement priorities.³⁴¹ He said that half of CID’s time will continue to be spent on investigating legal income (GEP) cases, and the rest will be spent on illegal income (SEP) cases.³⁴²

333. *Id.*

334. *Id.*

335. Rita L. Zeidner, *IRS Reorganizes Criminal Investigation Division*, 61 TAX NOTES 146 (Oct. 11, 1993).

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *IRS Official Explains Recent Criminal Investigation Division Reorganization*, 1993 DAILY TAX REP. 195, Oct. 12, 1993, at D6.

342. *Id.*

CONCLUSION AND SUGGESTIONS FOR THE FUTURE

While CID may have its share of problems, it also contains the finest financial criminal investigators in the world. The past decade has witnessed much change within CID. It is no longer relegated to only GEP type crimes. Rather, the majority of its time and work force is involved in investigating SEP crimes. This has stirred debate over just what CID's future role should be. Should it return to the days of investigating basic tax crimes, or should it continue to increase investigations into income derived from illegal sources? There are strong and compelling arguments on both sides. That the Service has apparently decided to leave this question unanswered for the foreseeable future is unfortunate.

It is imperative that CID continue to expand its investigations of money laundering operations and other SEP type cases. The author disagrees with the ABA's study; both the ABA and all the former Commissioners who signed the report were not looking at the big picture. If they had been, they would have looked within CID itself. In doing so, they would have found that CID is no longer composed of agents who are satisfied with traditional tax cases. If they had surveyed CID, they would most likely have found that a strong majority of agents, especially the younger ones, would like to investigate only SEP type cases.

A CID agent is a rare breed; not many college students who major in accounting are willing to take jobs in which they will have to carry a firearm, investigate drug dealers, and perform other federal law enforcement functions. Therefore, the pool of talent is severely limited. CID strives to hire only the select few who meet its requirements.

The ABA committee did not consider this limitation. It did not consider that as a result of changing the entire direction of its investigative focus, CID could lose many talented people. It did not consider the impact that switching the direction of almost half of its work force would have on morale. Many agents within CID would not tolerate this. They would simply exit and join other federal agencies. Those agencies would likely be eager to take on agents from CID due to their experience and expertise.

There is a serious problem with tax compliance and some action is necessary to deal with this problem. Hence, this Article proposes a more drastic restructuring of CID than that recently implemented by the Service. However, this restructuring should

not be accomplished in the same manner in which the ABA study group recommended. Instead, CID should be split into two separate and distinct entities. The first should retain the traditional role of investigating actual tax violations. The second should handle only cases of income derived from illegal sources, including money laundering, narcotics, and similar crimes.

The first organization should remain a part of the Service. It would include former members of CID, but could also include Service members from other divisions, such as Examinations or Collections. Knowledge about firearms and law enforcement techniques is not really needed in most basic criminal tax enforcement cases. It should not be necessary to have every member of this new organization trained in these areas. The former members of CID could provide the law enforcement background necessary. Meanwhile, a blend of former CID agents with other Service employees would provide an opportunity for sharing ideas and knowledge.

The second organization would be composed of the remaining CID agents. This organization should split from the IRS. It could remain at Treasury as an independent investigative unit, or could become a part of the Secret Service, ATF, or even a part of the Justice Department. Any one of these agencies would welcome the assistance of financial experts in their drug and money laundering investigations. A study should be performed to determine how many agents would be needed to ensure each organization has an appropriate amount of agents to function adequately.

Once this is resolved, each agent must be assigned to a particular organization. This decision should be made at the district level. Agents should be given the opportunity to choose to which organization they would like to transfer. If either organization suffers a severe shortage as a result, placement decisions should be made by CID management based on talent, seniority, and any other factors deemed important by the Service. In addition, one should not assume, as the ABA study did, that no additional funds and resources will be available in this area. CID has consistently generated revenue for the federal government.³⁴³ In fact, the numbers indicate that money laundering seizures are increasing everyday.³⁴⁴ As resources

343. See PUB. 699, *supra* note 20.

344. Murphy, *supra* note 132. As of 1990, the total amount of seizures under the

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within the organization increase, so will the revenue it generates for the government. Hence, in order to enact this change, resources should be made available.

It would not be prudent to enact a change within CID, as recommended by the ABA committee, and return to the days of solely focusing on general enforcement and voluntary tax compliance, without first determining the effect on the organization itself. It is shortsighted to deal with the problem of tax compliance simply by shifting CID priorities, without examining the potential damage this may cause to the morale and structure of the organization. Shifting CID priorities may result in some short term satisfaction, but would ultimately lead to serious problems.

Fortunately, the Service has recently determined that such a shift in priorities is unnecessary. Unfortunately, the Service also has recently determined that a split of CID into two separate entities is not feasible at this time. IRS Commissioner Margaret Milner Richardson recently said that a current review of CID's function concluded that such a split would "not be in the best interest of sound tax administration or The Department of Treasury's objectives"³⁴⁵ This is disappointing. After all the time and resources the Service has spent on examining the future role of CID, it is discouraging that its mission remains totally unchanged. By making this determination, the Service has missed a tremendous opportunity to make a powerful and lasting impact on the "war on drugs." However, this issue will not go away. Undoubtedly, the time for change within CID has come. When, and if, this change will finally come to fruition remains to be seen.

money laundering statutes was \$135 million; almost half of the seizures occurred during 1990. *Id.* This represents a remarkable one year increase and appropriately reflects how money-laundering seizures are increasing every day.

345. Letter from Margaret Milner Richardson, Commissioner, Internal Revenue Service to Patricia T. Morgan, Professor of Law, Georgia State University College of Law (June 25, 1993) (on file at the Georgia State University College of Law Library).