

MEMORANDUM

January 27, 1997

TO: David Marwell, Jeremy Gunn
cc: Ron Haron

FROM: Laura Denk

SUBJECT: January 24, 1997, Meeting with Donald Squires at Internal Revenue Service

Ron and I met with Donald Squires of the IRS on Thursday afternoon. We discussed the following issues.

Threshold Legal Issues

Section 6103 of the Internal Revenue Code -- the statute that protects the confidentiality of tax return information -- may still operate as a block to release of IRS records. Fortunately, Squires thinks that IRS may be able to *disclose* certain tax return information, if it is subject to the attached IRS regulation. The regulation acts as a grandfather clause for information that the IRS lawfully disclosed before the 1976 amendments to § 6103. The regulation says that where IRS disclosed information to "an officer or employee of a Federal agency for a purpose not involving tax administration" *before* January 1, 1977, the "officer, employee, or agency" may disclose the tax return information for a purpose that the pre-1976-amendments-§ 6103 would have allowed.

Thus, when the IRS provided tax return information to the Warren Commission to aid in its investigation of the assassination of President Kennedy and the Warren Commission then provided it to NARA, then NARA may be able to disclose the records now, provided the first two disclosures occurred before 1/1/77. Squires is now looking into whether the IRS will apply this regulation to the NARA-WC documents (where the Oswald's tax returns are located). Steve Tilley told me that he has approximately two Hollinger boxes of IRS material in the NARA-WC files that is still being withheld.

Squires read Jeremy's letter requesting that IRS grant us access to their records, while acknowledging that the JFK Act would prevent transmission and disclosure of the records. Squires told us he did not understand why Congress would have distinguished between access and transmission to NARA/disclosure. I explained that one of the Board's functions was to ensure that all agencies complied with the JFK Act and to assure the public of agency compliance. If we have access to IRS records, we can assure the public that IRS identified assassination records and, if they prepare an index for the records, that IRS prepared an accurate index for the records. Squires said that he thought Jeremy's letter would be bolstered if we would tell IRS the purpose of our review and provided

supporting legislative history. Ultimately, Squires told us that IRS is happy to allow us to review their records, but they will have to be convinced that we have a legal right to do so since wrongful disclosure of tax return information results in criminal penalties. I told him that we would try to send him some helpful legislative history. I would recommend that we also write him a brief follow up letter explaining the purpose for our request for access.

Squires promised us that IRS will promptly determine its opinions on these two legal issues.

Search for Assassination Records

In 1993, after the JFK Act was passed, but before the Review Board existed, the IRS commenced its search for assassination records. The Commissioner's "side" of IRS issued a search directive to all headquarters offices and to the Dallas field office. I told Squires that he would need to review the Review Board's definition of "assassination record" and, if necessary, revise the search directive to reflect the breadth of the definition.

Ruby Estate Records

The 1993 search directive resulted in 52 documents (approx. 200 pages) received from the Dallas District Office relating to Jack Ruby's estate. Because certain of these records were made public in a tax proceeding, they no longer enjoy § 6103 protection. Squires knows that he will have to process these under the JFK Act and he told us that he believes he can transmit all of these records to NARA for disclosure.

Legal Files Associated with Tax Issues

Squires explained that, although the IRS does not retain tax return information for more than ten years, it will retain "legal files associated with tax issues." For example, when the HSCA and other committees investigating the assassination requested access to tax return information from the IRS, IRS had to decide what, if any, tax return information it could provide to the committees. He showed us one internal IRS memo on this disclosure issue. He said that he has some files that are in this category that involve the assassination investigation committees.¹

We also discussed two folders of records that Squires reported "concern a number of documents that IRS gave to the House and Senate Committees." Squires told Ron that these folders would fall under the rubric of "legal files associated with tax issues," but Squires was not clear on whether these two folders are the sum total of the "legal files associated with tax issues" or whether they are the

¹Ultimately, the IRS decided that the HSCA could only see tax return records if the taxpayer provided his or her consent. An HSCA OCR with Trudy Peterson at NARA verifies that IRS took this position -- saying essentially that the HSCA could see the Oswald tax returns if and only if the HSCA obtained a "joint resolution of Congress" authorizing the IRS to disclose the returns.

actual DOCUMENTS that were the subject of the legal question.

Commissioners' Files, Other Individual's Files

Ron asked Squires whether the initial search encompassed any files of individuals who had worked at IRS, such as previous Commissioners, Warren Commission liaison officers, or Congressional Committee liaison officers. Squires did not have first hand knowledge of whether the search encompassed these types of records, but he promised to check. (Shelley L. Davis, the former -- and only -- IRS historian, reported in the *Chronicle of Higher Education* that the IRS does not keep any records of the activities of 20th century IRS commissioners. However, she did report that IRS has a "basement room known as the 'Commissioner's Filing Room'," which contains "at least 75 boxes of significant records." Shelley L. Davis, *Chronicle of Higher Education*, Section 2, B2, March 15, 1996.)

Referred Documents

DOJ referred 78 pages of records to IRS. Although Ron specifically asked about the substance of the records, Squires did not tell us. NARA referred over 400 pages of records to IRS. Squires told us that these records were records that IRS provided to the House and Senate Committees that investigated the assassination. Steve Tilley told me that these records should be almost exclusively HSCA documents.

Documents at NARA, but NOT Referred to IRS

I called Steve on Friday morning, and he told me that he decided not to refer any of the IRS records from the NARA-WC files to the IRS, because he already knew what the IRS's position would be with regard to the files. As I stated above, he has two Hollinger boxes of these records and they are being withheld at NARA pursuant to Section 6103.

Investigatory Records Using Non-Tax Data

I asked Squires about IRS investigation into broad based issues like "organized crime" or "anti-Castro Cuban exile Groups in the U.S." etc. . . . Squires said that, pursuant to Title 31, the IRS does conduct some broad investigations where they do not use tax return information. So, these investigations and reports would be subject to the JFK Act without regard to Section 6103. I told him that we may want to talk to him more about these types of investigations, particularly with regard to IRS reports on organized crime during the Kennedy administration, etc. . . .

Compliance Program

Ron discussed with Squires the Review Board's compliance program.

IRS obviously needs to complete its search for assassination records. Squires said that they will complete the search, using the Board's definition of assassination record. He promised to double check each of the records we had discussed. He also agreed to check other relevant field offices, including at least New Orleans. He agreed to double check whether the initial search included Federal Records Centers. (I showed him a copy of certain IRS 135 forms from the Washington National FRC at Suitland and he appeared surprised that old IRS records existed. He agreed that "somebody should search these.")

Depending on how IRS opines on the outstanding legal issues, they may ultimately create two stacks of records -- one stack of records that they can release and a second stack that they may not release. At the very least, Ron told Squires that we will request that they create a public index of the material they will not disclose.

We discussed time frames in a general sense. Squires would like to be completely finished with IRS compliance by the end of March, but then thought it might take longer when he determined how much work IRS has yet to do.

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