

IRS agents testify they destroyed documents

By Larry Kramer
Examiner Staff Writer

SAN JOSE — Two Internal Revenue Service agents have admitted in pre-trial hearings in the Harry Margolis tax fraud case that they destroyed documents that could have become evidence.

The statements from Oxnard agent Jerry Hirneise and his superior, Raymond Smith, came during three days of testimony in federal court here last week. Hirneise said Smith ordered him to destroy the documents after their office received a letter from the U.S. attorney in San Francisco asking for all material relating to Margolis.

Margolis, 56, of Los Gatos, has been charged along with San Francisco attorney Quentin Breen, 36; Ronald Adolphson, 43, a San Francisco accountant, and a bank in the Netherlands Antilles with conspiring to cheat the government out of taxes due on \$1.4 million in fictitious deductions through offshore companies.

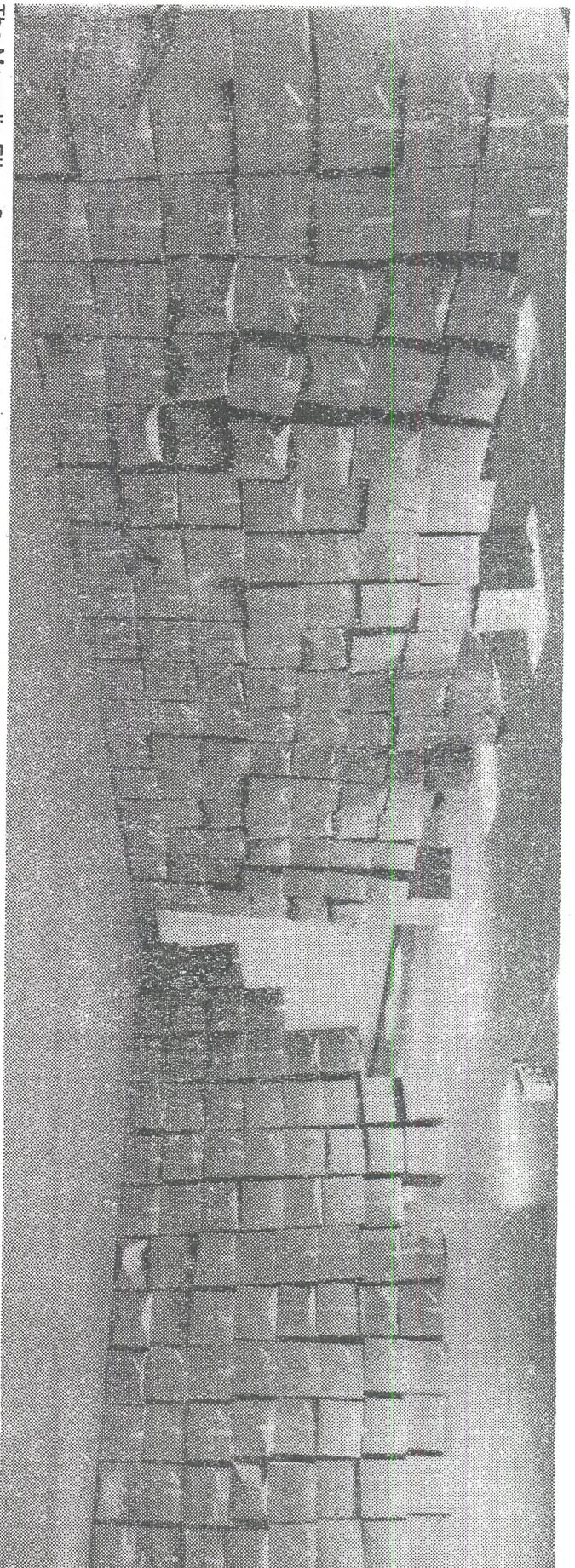
The Justice Department has called the case "perhaps the biggest breakthrough ever in the fraudulent use of offshore tax shelters."

Among Margolis' clients are Olympic diving star Sammy Lee, singer Barbara McNair, blackjack expert Edward Thorp and Erhard Seminars Training, Inc. (est). Lee and McNair are expected to testify at the trial, which is expected to last four to six months.

Under the discovery process, the government has turned over to the defense 140,000 documents, in cardboard boxes, constituting potential evidence.

This week the defense sought to discredit the government case by revealing the destruction of potential evidence and by attempting to show that Margolis was investigated by the IRS for several years without his knowledge, which is illegal.

Anyone who becomes the subject of a criminal investigation by the IRS must be told within a reasonable amount of time.



The Margolis Files: Government turned over 140,000 documents in cardboard boxes to the defense in the Harry Margolis tax fraud case

The defense claimed Margolis made his files available to the government in good faith for the hundreds of audits his clients were being subjected to and that the government was using that information to build a criminal case against Margolis.

On the stand Thursday and Friday before U.S. District Judge William Ingram were IRS special agents David Ellison from New York and Richard Jaffe of Miami. Both served as field project managers in "Project Haven," an 11-year IRS and Justice Department investigation into the use of offshore tax havens by wealthy Americans who may be seeking to evade payment of U.S. income taxes.

The defense is trying to show that Margolis was being investigated by "Project Haven" agents much

earlier than the government claims.

Ellison and Jaffe were questioned by three defense attorneys. The interrogation centered on the terminology used by the agents in pre-1974 reports. While they said they were not investigating Margolis for criminal charges, they admitted referring to an "investigation" in early reports mentioning Margolis.

The two agents said they were investigating Margolis' clients and his firms, but repeatedly contended the criminal investigation of Margolis himself didn't begin until just before he was notified in April 1974.

On the destruction of evidence issue, agents Hirneise and Smith testified that they destroyed the documents only because Smith believed they were not supposed to have them once the investigation was over

and the related cases went to court.

Smith said he believed the documents had to be destroyed because "it would appear we were keeping a secret file when we weren't, and it could have been an embarrassment to the service." He added that he was worried about vague new regulations in the Freedom of Information and Privacy acts that limit the files the government can keep on private citizens.

Both Smith and Hirneise claimed they were able to reconstruct most of the documents from other files. They said that together they had shredded enough paper "to fill two or three wastebaskets."

The government has also contended that the evidence was "not destroyed in bad faith or connivance by the government nor has the loss of the destroyed material prejudiced the defendant."