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S. HRG. 105–598

IRS OVERSIGHT

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

APRIL 28, 29, 30, AND MAY 1, 1998

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
49–650—CC WASHINGTON : 1998

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IRS OVERSIGHT

TUESDAY, APRIL 28, 1998

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:06 a.m., in room 216, Hart Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, Hatch, Murkowski, Nickles, Gramm, Lott, Mack, Moynihan, Baucus, Breaux, Conrad, Moseley-Braun, Bryan, and Kerrey.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order.

Let me start out by pointing out that I have discussed with Senator Moynihan, the Ranking Member, that opening statements will be limited to 7 minutes for himself and for me, and we would ask each of the other members to limit theirs to 3 minutes.

When it comes to the questioning of witnesses, Senator Moynihan and myself will enjoy equal time, and all other members will be asked to limit each round, if there is more than one round, to 5 minutes.

This morning we continue our oversight hearings concerning the practices and procedures of the Internal Revenue Service. Last fall was a milestone in establishing the rights and expectations of the American taxpayer in dealing with the IRS.

Our hearings in September disclosed abuses against taxpayers and employees alike and prompted the agency to initiate investigations and new policies that are already beginning to change the way IRS does business.

I am pleased with Commissioner Charles Rossotti's leadership and the commitment he has made to strike at the heart of the problems we have uncovered, the use of goals and statistics, the reckless disregard of taxpayer rights, harassment, retaliation against employees, and inefficiencies in management and service.

I support Commissioner Rossotti and his efforts. We realize that one of the most important ways we can continue to support his efforts at reform is through oversight. I am pleased that our investigation and related efforts have already prompted action from the IRS to take the steps they announced yesterday to improve the Criminal Investigation Division.

History is filled with examples where one or two Congressional hearings led to promised reform, but when the lights were turned off and Congressional interest waned, the reform efforts too often died and the agency returned to business as usual.

The taxpayer and the employees of the IRS deserve our vigilance. The IRS is full of talented, hardworking employees. They suffer under this current system and they need to see how serious we are.

Many thought our September hearing were a one-time event, and they now know differently. I applaud their courage and determination to speak with us, to work with us, and to testify before this committee. Without them, there would be nothing here but an empty room.

Certainly, Congress' efforts must go beyond oversight. We have heard compelling testimony about the complexity of the Tax Code. I will say now that in the near future we will turn our attention to that. Seventeen thousand pages of rules and regulations, 5.5 million words, yield a Tax Code that has become a mine field for most Americans, and even too complex to be efficiently and consistently administered by the Internal Revenue Service. It needs to be simplified. This, too, is our responsibility.

Over the next 4 days, however, we will be taking another step in our important and ongoing oversight efforts. We will hear of disparate treatment between high-level executives and other employees within the service, how they are treated differently even when they have committed the same offense. Such inequities for the benefit of executive-level employees send the wrong message to the average worker and destroy morale throughout the agency.

We will focus on a number of serious issues which weigh heavily on the integrity of the IRS. We will hear how investigative techniques to deal with violent and dangerous criminals are used against taxpayers who are neither violent nor dangerous.

We will hear from taxpayers who have experienced armed raids of their homes and businesses, raids that were conducted on the flimsiest of evidence which later proved to be unwarranted and the taxpayer exonerated of any wrongdoing.

We will examine the sensitive issue of racism and discrimination, an issue that has come up from the moment we first started our oversight. We will hear that the IRS internal oversight is so bad that the agency is unable to track what its employees are doing, and we will also examine significant compliance problems.

Without a doubt, we have a full agenda over the next 4 days. Our goal is to put a spotlight on those areas of the IRS which demonstrate a need for immediate change, to continue our work with Commissioner Rossotti and the employees of the Internal Revenue Service who have waited for far too long for real reform.

With these hearings we continue to send a message to the agency and to the taxpayer that we are serious about changing the IRS, it is not beyond the control of Congress, it is subject to the will of the people it is here to serve.

At this time I would call on Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you, Mr. Chairman. Mr. Chairman, I heard your request that members keep their remarks to, I think it was, 3 minutes. I might say that I will not be here very much during the day. The ICET conference is going on and I will not be able to ask very many questions of the panelists. So, with your indulgence, I have a few more than three minutes in my opening statement.

The CHAIRMAN. Please proceed.

Senator BAUCUS. Mr. Chairman, one of the earliest controversies facing the newly independent United States of America involved the taxing power of the Federal Government. After all, unjust taxes were the chief causes of the war for independence.

But our founding fathers had fresh memories of raising an army and running and embattled government mostly on borrowed funds. They knew they would need revenue to provide for the common good. So, in an act passed by the very first Congress, we gave the central government the power to collect tariffs and taxes, so long as they were fair and uniform.

During the past couple of months in every household across the country, Americans went through an annual rite. They sat down at the kitchen table, pulled all of their financial records together, and figured out what they owed the government. Nobody likes doing their taxes and they probably dislike paying them even more. Yet the vast majority do it, and they do it honestly.

Americans realize they have a bargain with their country which is their duty to uphold: they pay their taxes so that their money, when pooled together with the money contributed by all their friends, neighbors, and fellow citizens, is used wisely for the common good.

Americans expect their money to defend their families from hostile nations, to educate their children, to provide for a clean and healthful environment, to improve their highways, to help keep them healthy, to help provide for them in their old age and to give a helping hand to those going through hard times. In short, Americans expect their money to be used to pay for all of the things that help make this Nation great.

In return, though, the American people want their government to do two things. First, the American people want their government to treat them with respect and dignity as the revenue is collected. They expect to have their privacy respected and to be treated fairly.

Second, Americans expect that everyone else who enjoys the benefits that taxes pay for will shoulder their share of the burden as well, that their neighbor down the street is not hiding part of his income and thus avoiding paying his fair share of the tax, that everyone is filing returns and the amounts claimed on those returns are accurate and true.

Mr. Chairman, I truly believe the American people have the right to have both of these expectations met. I believe we here in the Senate shoulder a great deal of the responsibility for making sure of it.

We were placed on this committee because, presumably, we understand the need for revenue to keep this country moving. We also understand the grave responsibility that goes along with the power to tax. After all, John Marshall said, "The power to tax involves the power to destroy."

It is our duty as members of this committee to make sure this country does not use its power in that fashion. How do we do that? We must stay above partisan politics and petty squabbles. We must make sure our laws reflect good public policy and that the Tax Code is used for the benefit of the American people.

That is why I have watched the process we have gone through in anticipation of these hearings with a measure of personal regret and disappointment. I do not believe these hearings are balanced. I believe they fail to rise above party politics. I do not believe they will ultimately benefit the American people.

Mr. Chairman, if you look at "Webster's New World Dictionary," under the word oversight you will find it described as "vigilant supervision." As members of the Senate Finance Committee, we must be vigilant that individual taxpayers are being treated right by the Internal Revenue Service.

However, it is every bit as important that we are vigilant to make sure that taxpayers are treated fairly. Let me make it clear, I do not object to investigating the IRS to make sure it is operating correctly and treating taxpayers right. We must, and we should, do so. That is part of our responsibility.

But I also believe we have a responsibility to look at the whole picture, not just place a spotlight on the issues that give political advantage to one party or another.

How can we spend 4 days talking about a handful of cases that the IRS might or might not have mishandled yet not spend a single minute talking about how some Americans are flouting the tax laws? Our entire system of collecting revenue would unravel if taxpayers stopped paying their fair share because they believed everyone else is cheating.

Estimates of tax avoidance are soaring, with many believing the numbers could reach $100 billion per year. How can we ignore this issue or ignore the dangers that IRS employees face every day as they try to do the job we have hired them to do?

Mr. Chairman, we have a new Commissioner of the IRS, Mr. Charles Rossotti. He is an honorable man and a good public servant. We have given him a mighty challenge, to reform an agency that has resisted reform in the past. He has asked us for a few simple tools to make the IRS work better: changes in personnel rules so he can put a good working team in place; the ability to reorganize the agency so he can eliminate layers of duplication.

Most of these provisions are included in the IRS restructuring bill that the House passed 6 months ago by a vote of 426 to 4. That bill still awaits action by the full Senate.

Mr. Chairman, if we are going to spend our time on these hearings I wish that they could be balanced. But since that apparently is not possible, I urge you to move quickly to pass a good IRS restructuring bill through this Senate.

Passing a solid restructuring bill will do more to get the IRS on track than 100 of these hearings where we sit, posture, pontificate,

and play politics. It is our responsibility as members of this committee, and more importantly it is our responsibility to the American people.

Thank you.

The CHAIRMAN. Well, thank you, Senator Baucus. I would point out that we expect the legislation to come up, hopefully, next week. To expedite its consideration, I am hopeful that we are able to reach some kind of unanimous agreement.

I do want to point out that, insofar as these hearings are concerned, many of the examples that are cited happened under Republican administrations as well as Democratic, so there is no partisanship in our pursuit of the facts.

I would point out that these hearings will deal, in part, with the problem of compliance. But I think the important thing is to get on with the job.

[The prepared statement Senator Baucus appears in the appendix.]

The CHAIRMAN. Senator Grassley?

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Mr. Chairman, I would caution all my colleagues to forget about points of partisanship or forget about the issue of balance. We heard those same statements made the first day of our hearings last September, and, after that first 24 hours, the things that were laid out were so bad to demonstrate how things are so wrong in the department, that for those hearings and the hearings last February there was never a charge of partisanship after that first day.

I think that we also want to remember that when it comes to the IRS trying to bring changes on their own, that through the evolution of the legislation, the Kerrey-Grassley legislation last year, there were always points being made by the IRS that we are going to change this, we are going to change that, we are going to fine tune that, and everything else, always the IRS coming on as a Johnny-come-lately to make change.

Just yesterday they announced a seven-point program to improve oversight of the IRS Criminal Investigative Division. Why is the IRS only willing to make change at a point where Congress is exposing some very bad wrongdoing?

So I want to begin by saying thank you to the witnesses who will testify before this committee today. I know that for all IRS employees or any government employee there is great peer pressure to go along, to get along with those in the organization. Anybody who wants to say that anything is wrong is kind of treated like a skunk at a Sunday picnic.

It takes courage and conviction to sit before us, before the glare of television cameras and before the watching eyes of the IRS and tell your stories. Such courage is rare. Such courage must be encouraged and it must be commended.

Such conviction is admirable, for it is the sort of conviction, the conviction to stand up against abuses, to stand up for what is right, that is the backbone of freedom and fairness. Freedom and fairness is what America is all about.

This week we will hear testimony about horrors caused by IRS agents that happened at the IRS. This does not mean that all IRS employees are bad. To the contrary, these hearings would not happen without the assistance of good, hardworking IRS employees.

These hearings are part of a bigger process, a bigger duty of Congress. One of Congress' most important duties is the oversight of Federal Government. I am not a newcomer to Congressional oversight because it has been a centerpiece of my career. These hearings will demonstrate the importance, the necessity, of Congressional oversight.

At this moment, these hearings are about these people and the horrendous acts that have taken place. But in the bigger picture they are proof that more oversight and more diligent oversight is vital.

Hopefully these hearings indicate that Congress is willing to step up to the plate and do its part and its constitutional responsibility of continuing IRS oversight, as well as other government agencies.

The IRS restructuring legislation recently reported out of committee has strong oversight provisions in it. It is imperative for any legislation to be effective that the Senate continue its diligent oversight.

So I commend Senator Roth, and particularly his staffer Eric Thornton, for their work on these hearings.

The CHAIRMAN. Thank you, Senator Grassley.

We, next, have Senator Kerrey.

OPENING STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM NEBRASKA

Senator KERREY. Mr. Chairman, first, I cannot even say hello in 3 minutes, so I would like to ask unanimous consent that my statement be a part of the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Kerrey appears in the appendix.]

Senator KERREY. To begin with, throughout this you and I have had some disagreements, but I want to continually and consistently congratulate you and thank you for holding these hearings. I think it is very important. I hope, as Senator Baucus said, we are able to get some hearings on the compliance issue.

A week ago Sunday there was an article in the New York Times, a long one, in the Business Section talking about a company, I believe that was in Montana, actually, the Columbia River Aluminum Company, that not only ripped their employees off for $100 million, but parked all their income in the Bahamas so they would not have to pay any taxes. There is an awful lot of that that goes on.

I am no apologist for the IRS. Congressman Portman and I, and Senator Shelby before that, launched this effort over 2 years ago. Indeed, the three points that I intend to make during this hearing is that most of the problems we are going to hear about are addressed in the legislation.

If they are not, then we ought to get it in the law so when it comes up on the floor we are able to change the law to take care of the various problems that we are identifying, and that there is

an urgency to do so, that there is an urgency for us to get that law changed.

The second point I intend to make during the hearings is that during our restructuring process from the public we heard over and over and over from citizens that, because the IRS has 535 members of its board of directors called the Congress, the IRS is not Sears and Roebuck, it is created by law, they believe that Congress is the problem and they do not have to look much further than a piece of legislation we passed last week, the Coverdale Education IRA bill. That is the 64th tax law change since 1986.

Now, who is going to have to administer that? I mean, just look at the detail of that tax law. It allows tax-free withdrawals, but taxpayers are going to have to keep receipts, detailed receipts. We tell the IRS to go out and audit. We are going to tell the IRS to go out and make sure the taxpayers have those receipts.

If you look at the detail in the law and the requirements upon the IRS, you can imagine all sorts of additional problems that will be created as a result. So I say that with great respect and I look forward to the Chairman's hearings on tax simplification. There is tax simplification analysis required.

The IRS Commissioner, under the legislation passed by this commission, would be at the table when tax laws are written so they could comment on behalf of taxpayers, who spend, some estimate, up to $200 billion a year just complying with the Code. But I intend to make the point that much of the problem that we hear about occurs as a consequence of laws that the Congress passes.

So I am hopeful, Mr. Chairman, that we are able to get some additional hearings on tax compliance. A significant number of Americans believe that they pay higher taxes as a result of somebody else paying lower because they have lawyers, accountants, and all sorts of people hired to figure out how they can avoid paying their fair share.

I hope as well that we can get quickly to the simplicity issue because I think it is an overriding issue in terms of our ability to be able to say to the American taxpayer, we are not only going to give the IRS Commissioner authority to run the agency, but we are going to reduce the complexity and the cost to you.

The CHAIRMAN. Thank you, Senator Kerrey. As I already mentioned, these hearings will deal, in part, with compliance. I agree as to the importance of that matter.

I would, next, call on my good friend Senator Breaux.

OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Well, thank you, Mr. Chairman, once again, for putting together these hearings.

I was talking to someone from Louisiana this weekend and they said, well, what are you folks going to be doing this week in the Senate? I said, well, we are going to start off with some more hearings on the Internal Revenue Service and the problems within the service.

His question back to me, which I think was somewhat appropriate, was when are you fellows going to quit talking about it and do something about it? I think that is a valid point.

We could probably do this for the rest of the year and still hear the problems, but at some point we have to put the problems aside and say, all right, we know what the problems are, what are we going to do to correct the problems? I think that we have a vehicle that goes a long ways towards doing that. We have passed it out of this committee. It has already passed the House of Representatives. It is now waiting to be taken up in the Senate.

So the question back for my constituent, when are you going to quit talking about it and start doing something about it, I think is a very legitimate and valid question. We have to do something about it more than just continue to talk about it, because we could do that for a long time.

The second point, however, is all of us know at least various versions of the two greatest lies ever told, one of which is, I am from the Federal Government and I am here to help you. Most people in our country do not believe that the Federal Government is there to help them, and in many cases do not believe the Federal Government is even on their side.

We will hear today from a witness from my State of Louisiana, Ray Mayo, who has a very impressive tale to tell as a lawyer representing people before the Internal Revenue Service.

Senator Kerrey talked about the complexity of the law and how much we make it complex, and he is right on target on that. But I think even more important than the fact that everybody has a difficult time interpreting the law is the attitude of Federal agents that go to the point of actually threatening people who practice before the IRS and represent clients. That is a far more serious problem, in my view, than carrying out the intricacies of the Federal Code.

We cannot tolerate, in a free society, any government agencies or government employees that threaten individual American citizens for trying to follow the law. That, more than anything else, is what disturbs me the greatest about what we are fighting through these hearings.

His story is very frightening in a free society, to think that because we do not like you representing your clients, well, we are just going to go out and audit you, and then carry out that threat with actual audits that continue ad infinitum. That is wrong. That is the most serious type of concern that I think we need to be following and following up on, but eventually we have got to do something about it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Breaux.

Senator Murkowski.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Good morning, Mr. Chairman. I very much appreciate and join with my colleagues in commending you for initiating this series of hearings this morning. The information that was developed by this committee last September, and I think earlier this year, really provided the foundation for the IRS reform legislation which was reported unanimously from this committee and which will be considered on the Senate floor next week. So, as

we reflect on where we have been, at least up until now, Mr. Chairman, we have been working in a bipartisan manner and our action has been unanimous.

I think that this latest series of hearings examining the workings of the Criminal Investigation Division, the CID, at the IRS, I believe it is not a coincidence that just yesterday, as has been pointed out by you and others, there was the announcement of a seven-point plan to improve its Criminal Investigation Division.

The IRS had plenty of time to initiate this. It is coincidental. I commend them, but it is rather interesting to see the sequence of timing here, just before our committee hearing they announce the seven-point plan.

I do not think this is surprising. It is a reality that far too often Federal agencies tend to act as if they are a law unto themselves, believing they are accountable to no one. I can think of several Federal agencies that would fit into that, the Forest Service, for one, under its current management.

It is only when Congress exercises its constitutional obligation of oversight to the people, only then do the agencies begin to reconsider how they are doing business because they know they are being examined, as they should be, as a consequence of our oversight.

So it is my hope that, as the Congress passes the IRS reform bill, we will not end this oversight process, that we can change laws, but we must be vigilant in our efforts to ensure that the people within the IRS are held accountable in how the law is enforced. This is the one key purpose of our oversight.

I would remind my colleagues, particularly relative to what we have accomplished here, is when we sat down we agreed that there was no accountability in the IRS. We agreed that the system was designed to avoid accountability. If we have any obligation in an oversight capacity, it is to ensure that there is accountability in the IRS.

So I have read through the testimony that has been submitted. I want to express my concerns about one aspect of the testimony that we will hear. I understand that one of the witnesses will testify about the harassment and intimidation he faced because he as an attorney who represented a taxpayer. I think that has already been mentioned this morning.

But if the IRS uses threat of criminal or civil proceedings to punish taxpayers, and particularly a taxpayer's legal advocate, I think we have an extraordinarily serious problem.

Our system of justice is based on the belief that a citizen has a right to counsel who will represent his client without hesitation. If counsel believes that representing a client before the IRS carries with it the threat of personal audit or an IRS criminal investigation of counsel, then the scales of justice are fundamentally undermined.

No legal system can survive if legal counsel fears personal retaliatory threat from the government merely for representing the interests of a client. I think this is a very serious issue and I hope that the committee will closely examine this matter, and other testimony before us.

I was disappointed in the comments from my good friend, the Senator from Montana, relative to the partisanship of this. I think the issue is accountability. If we do not get accountability out of this process we are wasting everybody's time, Mr. Chairman.

Again, I commend you for your diligence and commitment to proceed in this, and the American public is yearning for reform of the IRS, make no mistake about it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Now it is my pleasure to call on Senator Nickles.

OPENING STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much.

For our colleagues that said they want to see some action, I talked to the Majority Leader yesterday, I think we are going to have the reform bill on the floor next week, so we are going to see some action.

Also, this committee is directly responsible for cleaning up a lot of the IRS abuses, and done in a bipartisan way. No one can say that the bill that we put together is partisan. It was not partisan.

I will just give you a couple of examples. Some people were saying, well, let us just pass the House bill. We can pass that unanimously and it can be signed into law by the bill. But we are adding a provision that came out in Oklahoma, and also the hearings here, that a taxpayer would be given the opportunity for a court hearing before liens, levies, or seizures of his assets. That is a very important provision. It was not in the House bill, but is in the Senate bill.

We are putting in a provision that IRS can only seize a taxpayer's business or home as a last resort. We are putting in a provision that says that penalties and interest would not accrue to the deficiency if the IRS does not notify the taxpayer within a year.

I could go on with several. I have got about a dozen things that we added that was not in the House bill, is in the Senate bill, that are very, very positive in protecting taxpayers. So, we are going to see some action as a direct result of the hearings that we had in this committee.

So, Mr. Chairman, I want to thank you for doing it. I want to thank you for your persistence, because a lot of people were saying, let us just pass what the House did. We are going to come up with a bill that is much better than the House bill. We are going to put in some provisions for innocent spouses, for example.

One other thing, Mr. Chairman, I will just mention. We had hearings in Oklahoma. Every once in a while I think IRS is getting it because I hear, oh, yes, they are going to come up with some reforms, and that is good.

We had a hearing, Mr. Chairman, of a woman who was a pet groomer and 10 years ago realized she owed $4,000, was willing to work it out and make payments on a monthly basis and pay it off in two or 3 years, and the IRS said no. They accumulated interest and penalties up to $30,000. We exposed this in the hearing in Oklahoma.

As a result of that, she has made offers to the IRS. Supposedly IRS said, well, we accept your offer. They will take the $4,000 and settle the case. She presented a certified check to the IRS for $4,000, which they said by letter they would accept, and then they said, no, we cannot do that because of interest.

Interest on $4,000—she paid 2 days after they accepted it—was $1.37. They still have a lien on this woman's home, who is a pet groomer, from a case that goes back 10 years. What was the dispute now? The interest of the $4,000 over 2 days, and the lien still exists. So I am not sure the IRS gets it yet.

In the bill that we will take up next week we say that liens will not be allowed if the original tax debt was less than $5,000, and would have solved that case. The IRS will be required to adopt liberal acceptance policies for offers and compromise.

Clearly, you have a case where an agent was not willing to do that, for a couple of bucks. It is ridiculous, the harassment, the anguish that taxpayers go through because sometimes people do not show common sense.

We also put in a provision to fire employees that abuse their power. We found cases in Oklahoma and Arkansas where power was clearly abused and, to date, no one has been disciplined; a couple of people have been transferred, one person retired early.

So, Mr. Chairman, I think your hearings have resulted in good legislation. As the hearings go on, the legislation is improving. I think we have improved the House bill considerably, and I compliment you for it. I also compliment you for the hearings this week as well.

The CHAIRMAN. Thank you very much, Senator Nickles.

It is now my pleasure to call upon my distinguished colleague, the Ranking Member, scholar in residence, Senator Moynihan.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. A 10:00 scholar, Mr. Chairman. Forgive me. I was informed the schedule had been changed, and I am here a bit late, so I will not take but a moment to thank you again for resuming these hearings.

These are the first such in a century and a half. The Internal Revenue Service was established in 1862, which was the first time the Federal Government enacted an income tax, and it has grown very considerably and with very little oversight from this committee. Now it is receiving just that, and I think it is all to the good.

We have seen in the first instance the appointment of Charles Rossotti, who was appointed as Commissioner, unanimously approved in this committee and unanimously approved by the Senate. We are already seeing the energy in which he is proceeding.

In one specific, he has asked Charles Bowsher, the former head of the General Accounting Office with a great range of interests and ability in the area of public administration, to perform an independent review of the IRS Inspection Service. I think we shall learn a good deal from that, and I look forward to it.

I look forward to these hearings, and ask that my statement be placed in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Moynihan appears in the appendix.]

The CHAIRMAN. Next, we have Senator Bryan.

OPENING STATEMENT OF HON. ROBERT H. BRYAN, A U.S. SENATOR FROM NEVADA

Senator BRYAN. Mr. Chairman, thank you very much for calling this hearing this morning.

The abuse of taxpayers is inexcusable. Once the facts of these cases can be demonstrated, I will eagerly join with you, Mr. Chairman, and the rest of our colleagues in demanding that Commissioner Rossotti take immediate and decisive action to eliminate any injustices that we discover this week.

Taxpayers have the right to be treated with courtesy, they have the right to be treated fairly and honestly by the IRS, and no taxpayer should be subject to or fearful of some kind of arbitrary star chamber treatment at the hands of the IRS.

Any Federal employee or organization that abuses the public trust should be dealt with harshly, and the IRS is clearly no exception. We need to pass legislation to address the many problems in the agency that our hearings last fall and the hearings this week will indicate.

We need to pass the IRS reform bill that we reported out earlier this year sooner rather than later. Commissioner Rossotti has already proven himself able and ready to meet the many challenges at the IRS, and we need to give him the tools to achieve the real results.

While the outrages we will hear of this week certainly deserve our immediate response, I think it is important to retain some perspective. Millions of Americans pay their taxes every year. Yes, April 15th is a painful experience for each of us, but the vast majority of Americans pay their taxes each year. Protecting these honest, hardworking taxpayers needs to be our highest priority.

One of the biggest grievances that I hear about our tax system is that many people feel that not everyone is paying his or her fair share. Most Americans file a relatively simple, straightforward 1040 form with a few simple deductions, maybe some modest capital gains.

But there is a growing suspicion among typical taxpayers that somehow someone else is getting better treatment, taking advantage of complicated special tax loopholes that relieve that person or that entity of his, her, or its proper share of the tax burden through tax shelters, corporate loopholes, and the like.

Even worse, in my opinion, Mr. Chairman, are those who cheat the government, the tax evaders. The general public knows that if individuals do not pay their taxes, that the burden is shifted to them and it means that they will pay higher taxes.

Some estimates show that Federal revenues lost to noncompliance may approach $100 billion a year, a staggering sum. Pols show a very real suspicion that not everyone is paying their fair share. On average, Americans believe that one-third cheat on their taxes. Noncompliance is a serious problem, one that hits every honest taxpayer in the pocketbook each and every April 15th.

I would hope, Mr. Chairman, in the interest of providing balance to these proceedings, that we might have some hearings addressed to the tax cheat and the tax evader as well. I look forward to working with you in the hearings this week, and in the future week, in moving the IRS reform legislation to enactment in this Congress.

The CHAIRMAN. Thank you, Senator Bryan.

Senator Mack?

OPENING STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM FLORIDA

Senator MACK. Thank you, Mr. Chairman. I have a prepared statement which I will ask to be put in the record, and just make this observation.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Mack appears in the appendix.]

Senator MACK. Senator Moynihan said a few moments ago that there has been very little oversight of the IRS. I would say it has not just been this committee, it has been the Commissioner, it has been the Treasury. Virtually everyone has kind of looked the other way when it has come to the IRS.

So my point here is, while I understand the frustration some members may feel with getting on with it, the reality is, we have just begun to focus. So I would encourage you to continue to have oversight hearings. In fact, the Majority Leader is fond of saying that one of the things that we have not done well is oversight.

I think you are to be commended for the effort that you are making. Those who are anxious to get on with it will have the opportunity next week, as I believe the legislation will move to the floor. So I commend you for oversight and would encourage you to continue it.

The last point that I would make is, fortunately we have what I would consider brave taxpayers, practitioners, and others who are willing to come forward and speak the truth about abuses that they have seen, regardless of the fear that they have about being intimidated by those who want to see that the status quo is maintained.

So again, I commend you for these hearings and I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you, Senator Mack.

And finally we have Senator Conrad.

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Thank you, Mr. Chairman.

I just would indicate that I have a prepared statement as well that I would ask to be made part of the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Conrad appears in the appendix.]

Senator CONRAD. Instead of going through that, Mr. Chairman, I would just make some observations as well. First of all, I agree with what Senator Mack has said. We do have an obligation of oversight and there has been too little of it, not just with respect to the Internal Revenue Service, but I think that is a general in-

dictment of those of us in Congress who focus more on getting the budgets done every year, the appropriations bills done every year, and new legislation. Part of our responsibility is oversight, and there has clearly been a failure of oversight of this agency.

I think one thing we need to say loud and clear and up front, is that abusive treatment of taxpayers is totally unacceptable. Anybody in any agency who abuses taxpayers ought to be punished. That is just unacceptable. If we do not treat the taxpayers with respect, that breeds disrespect for the system, so that is something we cannot tolerate.

I think it is also important to acknowledge that there are many in the Internal Revenue Service who are honest, who are capable, and who do not disrespect taxpayers. Those people should not be sullied or marred by the few who have abused the system, who have acted unfairly, inappropriately, and even at times illegally.

Mr. Chairman, I would also want to add my voice to that of Senator Bryan. As a former tax commissioner myself at the State level and a former chairman of the Multi-State Tax Commission, I know there are a small percentage of taxpayers who also abuse the system and abuse everyone else who is in the system. That also should not be tolerated.

It is not fair to the vast majority of taxpayers who do pay what they legitimately owe to have more of a burden put on their shoulders because of the small percentage of people who think they are above the law and beyond the law and have no obligation to pay what they legitimately owe.

The word should go out from this committee, just as we say it is intolerable that IRS agents abuse taxpayers, it is also intolerable that some who are supposed to be taxpayer are abusing other taxpayers by failing to pay what they owe.

Mr. Chairman, finally, I would say I also agree that the legislation that came out of this committee to reform the IRS is far superior to what came out of the House. You are to be commended for a much better bill than what came out of the House. And it is important that we pass that legislation on the floor of the Senate.

I know that is not your responsibility, but I would address my remarks to the Majority Leader, who does control the schedule, and urge him to take up the IRS reform bill at his earliest possible opportunity. I know the Majority Leader has many competing demands for floor time, but I would hope we would move that IRS reform bill at our earliest opportunity.

I would just alert the Majority Leader that Senator Nickles indicated that you may intend to bring that bill to the floor next week, and I think that would be an excellent move following these hearings.

So again, Mr. Chairman, thank you for conducting these oversight hearings. I think it is important and I think we have got an obligation to do it. I again commend you for the excellent bill you helped produce in this committee.

The CHAIRMAN. Just let me repeat what I have said before, that you are living proof that you can be a tax collector and still elected to office. So, I congratulate you. [Laughter.]

It is now my pleasure to call on the Majority Leader, Senator Lott.

OPENING STATEMENT OF HON. TRENT LOTT, A U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Well, thank you, Mr. Chairman. I know that several Senators have already had statements to make, and I do not want to give one at this point. I am very interested in hearing the witnesses and the other witnesses we will have this week.

I want to commend you and the Ranking Member for going forward with these hearings. I want to assure the Senators on the committee and the full Senate that it is my intent that the IRS reform bill come up next week. I believe that we should be able to begin, if the Chairman is ready, Monday.

We do have a number of other important issues that we will be trying to get done before that and immediately afterward. I hope that we can do it within a reasonable period of days, but it is our intent for it to be first up next week.

Thank you, Mr. Chairman, for the leadership you have provided on this issue.

The CHAIRMAN. Thank you very much, Senator Lott.

Before I recognize the first panel I would like to welcome Jennifer Long, who was a witness at our hearings in September. We appreciate her being here today.

We now come to welcoming the members of our first panel, employees of the Department of the Treasury. As I said earlier, there could be no hearings if it were not for the willingness of employees to come to us and testify about their concern.

Senator Conrad, I just want to once again echo what you said and what I said in my opening remarks about the employees of the IRS because I do think it is critically important that everyone understand that the vast majority of employees of the IRS are intelligent, hardworking, and doing the best they can, sometimes under very adverse, difficult circumstances.

But these employees that are on the first panel, I think, will provide the committee with information and insight about the problems within the IRS involving investigation of employee misconduct. They will also address what appears to be a lack of internal disciplinary action taken against employees when allegations of wrongdoing are substantiated.

Our witnesses include Mr. Richard Calahan, who is the Deputy Inspector General, Office of the IG at the Department of the Treasury; Mr. Harry Patsalides, who is the Deputy Assistant Inspector General for Investigation at the Department of Treasury; and Ms. Yvonne D. DesJardins, who is the Chief of the Employee and Labor Relations Section, Personnel Branch, of the Internal Revenue Service.

I will now ask the witnesses to stand and raise their right hand.

[Whereupon, the three witnesses were duly sworn.]

The CHAIRMAN. Thank you very much. Please be seated.

Mr. Calahan, would you please begin.

Mr. CALAHAN. Mr. Chairman, members of the committee, we are pleased that you asked us to appear before you today to discuss our investigative work at the Internal Revenue Service.

It is my pleasure to introduce to you Harry Patsalides, the Deputy Assistant Inspector General for Investigations, who has over-

seen our IRS investigations. He will discuss some of our recent investigative work.

Harry?

The CHAIRMAN. Thank you.

Mr. Patsalides?

STATEMENT OF HARRY PATSALIDES, DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATION, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. PATSALIDES. Mr. Chairman, members of the committee, I appear before you today to discuss our investigative work at the Internal Revenue Service. As the Deputy Assistant Inspector General for Investigations, I have overseen our office's investigations of the IRS and will discuss some of our recent efforts.

The hearings held before this committee last September produced several groups of allegations which were referred for investigation to the Treasury Office of Inspector General. In addition, telephone calls to the OIG hotline more than doubled in response to those hearings.

This provided a serious challenge to our investigative resources, as the OIG Office of Investigations has the responsibility for investigating all employees at the eight non-law enforcement bureaus, as well as senior level officials and all employees in the Offices of Inspection, Internal Affairs, and Chief Counsel at each of the four law enforcement bureaus.

Our staffing was insufficient to conduct a number of significant cases that warranted investigation. Because of this, many issues had to be returned to the bureaus for action, since we lacked the resources to conduct the necessary investigations.

Our efforts were focused on four significant investigations involving misconduct by IRS officials. All of the allegations were investigated. Due to limited resources, we could only fully staff one of the investigations. We requested IRS Inspection to conduct two investigations, with OIG review. The fourth investigation was conducted by the OIG, but assistance was needed from three IRS inspectors and two Bureau of Alcohol, Tobacco, and Firearms agents.

The four investigations pertained to a series of complaints involving: (1) IRS mismanagement and mistreatment of taxpayers; (2) the use of collection statistics by IRS Collection Division managers to determine employee and group performance ratings; (3) the establishment of an IRS national policy regarding the use of collection statistics; and (4) reprisals against IRS employees who testified before this committee.

Because of its large scope, we referred the allegations regarding the questionable use of collection statistics to the IRS Chief Inspector's Office. Subsequently, we reviewed their work with the assistance of experienced investigators on detail to us from other Treasury law enforcement bureaus of ATF, the Secret Service, and the Customs Service. We appreciate the support provided by the department and those bureaus in this endeavor.

Senator Nickles, in the February 5th Finance Committee hearing, requested that we investigate a group of allegations he received regarding the Internal Revenue Service. We obtained the as-

sistance of investigators from ATF and the IRS Inspections to work under OIG supervision on these allegations.

On October 23, 1997, our office initiated an investigation regarding the allegations raised to the Senate Finance Committee by IRS employee Jennifer Long. During the investigation of the allegations raised by Ms. Long, additional issues were identified which have led to possibly six new cases being opened by our office.

As a result of the investigation of Long's allegations, we noted several areas of significant concern. IRS management appears to treat managers differently than employees when it pertains to disciplinary action. We were advised that IRS managers are allowed to voluntarily step down from their management position rather than being involuntarily removed. IRS management stated this was done to avoid the cost of a potential lawsuit.

An inspection manager stated that, "IRS managers are punished less severely than IRS employees." It was this manager's opinion that, since most managers have worked well for years with little or no prior problems, that their transgressions have been viewed with less severity.

We are also concerned that if an employee files a grievance, an EEO complaint, or a lawsuit against an IRS manager and the employee wins the settlement, usually no disciplinary action is taken against the manager for allegedly violating the rights of the employee.

This lack of disciplinary action may send a message to managers that they are free to harass an employee without being personally accountable. This also sends a message to employees that they cannot bring action against a manager who harasses or retaliates against them because only the agency is held accountable.

Employees may fear retaliation by management for reporting complaints to Inspection. Long alleged that Inspection advises IRS management of allegations provided to them and who provided the information.

There appears to be disagreement among Inspection employees regarding whether or not complainants' names are provided to management. Several of the Inspection employees interviewed said the complainants' names are provided to management, while others indicated the names are not provided.

When employees bring a complaint to Inspection they are routinely not advised whether the information will be investigated by Inspection or referred to IRS management. When management decides to address the complaint it does not advise Inspection of their action taken regarding the issue.

If the complaint to Inspection concerns a manager and is subsequently referred to management, the manager may unnecessarily be advised of the complaint and the complainant's name. Once management is alerted to the complaint, the employee may fear retaliation for lodging the complaint.

Before concluding my oral statement I would also like to mention one of the most significant problems that our office has with the current oversight arrangement. With regard to accessing tax information, our office does not have the same level of access to IRS information that is afforded to the Office of Chief Inspector.

While for the most part we have been able to obtain the needed information, we have had instances where access was refused or delayed and we had to expend unnecessary time and effort to resolve the matter or find alternatives to accomplish our objectives.

Legislative impediments center around two provisions in the 1988 Inspector General Act amendments. First, the OIG is required to provide notice to the IRS of its intent to access returns or return information.

Second, with reference to Chapter 75 of the Internal Revenue Code, the OIG may report to the Attorney General only offenses under Section 7214 without first obtaining the consent of the IRS Commissioner.

This provision restricts the authority of the Treasury OIG to refer violations of the Internal Revenue Code such as Section 7213 pertaining to unauthorized disclosures of returns or return information to the Department of Justice.

Both of these provisions have affected our work. One, is a process totally inconsistent with independent investigative procedure because it requires OIG investigators to needlessly notify others of the direction of their investigation.

The requirement for obtaining IRS Commissioner consent on referrals to the Department of Justice creates the possibility for conflicts of interest and precludes an objective review of the prosecutive potential.

In conclusion, while performing our normally extensive investigative responsibilities at the IRS, we were tasked, in response to this committee's September hearing, to intensify our investigative efforts in specific areas.

Through the extraordinary efforts of our entire staff, we met this additional challenge and maintained our normal duties and responsibilities in an effective and timely manner. I can state to this committee that I am proud of the performance of our staff.

Thank you for the opportunity to share my thoughts with you. I will be happy to address any questions that you may have.

The CHAIRMAN. Well, thank you, Mr. Patsalides.

[The prepared statement of Mr. Patsalides appears in the appendix.]

The CHAIRMAN. We will hear from the final member of the panel first, then we will address questions to all of you.

It is now my pleasure to call upon Ms. DesJardins.

STATEMENT OF YVONNE D. DesJARDINS, CHIEF, EMPLOYEE AND LABOR RELATIONS SECTION, PERSONNEL BRANCH, INTERNAL REVENUE SERVICE, WASHINGTON, DC

Ms. DESJARDINS. Mr. Chairman and honorable members of this committee, I appreciate the opportunity to appear before you today to share with you some of my experiences since working at the Internal Revenue Service.

During the period March 1991 through October 1996, I was an employee of the Internal Revenue Service. Since October 1996, I have been employed with the Office of Chief Counsel, Internal Revenue Service, where I currently serve as the Chief of the Employee and Labor Relations Section of the Personnel Branch.

During my tenure with the IRS I have worked in both supervisory and non-supervisory personnel positions and have had responsibility for providing advisory services to IRS managers regarding employee performance and conduct issues, up to and including the executive level.

During this time, I have observed how higher graded employees of the organization are not held to the same standards as employees of lesser grades, particularly when misconduct occurs.

My statement should not come as a surprise, particularly when one recalls the comprehensive investigation in 1988 into alleged ethics and integrity violations by IRS senior officials which culminated in hearings referred to as the Bernard hearings, and reported to the 102nd Congress in House Report 1021065 entitled "IRS Programs to Combat Senior Level Misconduct: Getting Stronger, But Still A Long Way to Go."

This report identified serious problems with the manner in which IRS failed to properly handle misconduct of senior level officials, particularly with respect to appropriate disciplinary actions.

The report concluded that the IRS culture needed to be changed to demonstrate that misconduct by anyone, including senior level officials, would not be tolerated and that employees could report misconduct without fear or reprisal or retaliation against whistleblowers.

As a result of this report, the IRS implemented an aggressive ethics program which required every IRS employee to participate in training, and included ethics publications and extensive internal communications efforts.

Unfortunately, ethics is something that a person cannot be taught with brief classroom training. Therefore, I am here today to report that ethics in the IRS still has a long way to go in order to persuade taxpayers and the IRS work force that fair, equitable, and consistent treatment of all is paramount to the IRS.

I can only speak from my personal experiences and observations since working for the IRS. Unfortunately, a good portion of what I have observed leaves much to be desired when it comes to consistent treatment of individuals regarding discipline and in the manner in which the IRS deals with whistleblowers.

The whistleblowers are ostracized and careers destroyed, and those senior officials who engaged in the misconduct which was reported and substantiated are not only protected from receiving any disciplinary actions, but are oftentimes rewarded during the same year the misconduct occurs. Again, I speak from personal experience.

During the period May 1994 to October 1996, I handled the many reports of misconduct that were made against any senior IRS officials grade 15 and above. These reports were in the form of investigations, telephonic hotline complaints, and written complaints. For approximately a 2-year period I had program responsibility for these matters and recommendations were made to the Deputy Commissioner of IRS.

While a good portion of these complaints were made by disgruntled employees and resulted in either closing without action or possibly a counseling of the individual, there were instances of serious misconduct which ultimately required disciplinary action against a

senior official. In some instances, actions were taken. However, in many instances they were not.

In those instances where no action was taken it appeared that those individuals were being protected by the organization by either being reassigned, with payment of relocation expenses, or until they either retired or sufficient time had elapsed to make the matter moot.

As an example, I recall one instance of an executive who was investigated by the Office of Inspector General, Department of the Treasury, for travel fraud. The allegations were substantiated, yet no action against this person was forthcoming. Rather, the report remained in the Deputy Commissioner's Office for an extended period of time with no action taken.

Another example involved a senior IRS official who had a reputation for abusing and mistreating subordinates, regardless of where this person worked in the organization. The OIG investigated this individual and the results of the investigation supported a serious disciplinary action. Again, however, the case remained in the Deputy Commissioner's Office for well over one year with no action taken.

A third case involved another travel fraud issue by an executive. This particular case was closed with a minor action, although it was substantiated that the individual provided false statements not only during the course of the investigation, but to the Commissioner as well when required to petition for a waiver of the funds in question.

Another case involved sexual harassment by a senior official. Although a disciplinary action was recommended, it remained on the Deputy Commissioner's desk for over 2 years, at which time the executive retired and the case was closed. The disciplinary action was never issued to the executive.

In a more recent action for which I was personally involved as the whistleblower, senior officials were not disciplined even though the allegations of fraud, waste, and abuse were substantiated by the OIG and reported to the Office of Special Counsel.

These allegations involved serious misconduct by certain IRS officials with responsibility for carrying out the personnel programs of the IRS. These actions, which included the processing of illegal performance appraisals and awards, would have had a detrimental effect on any reduction in force that the IRS would have had to run, yet no actions were taken even though the misconduct was reported, investigated by the OIG, and substantiated well in advance of IRS plans to run a reduction in force. A subordinate manager was directed to provide a false report regarding this matter.

Additionally, time and attendance fraud was brought to the attention of this same official, and I and others were directed to not report the matter to Inspection merely because this person was new in the position and did not want to confront the matter because of who the individuals committing the fraud were and the potential political problems which would have resulted with the confrontation. Even though this matter was raised numerous times, no action was ever taken.

Again, this issue was reported to the OSC and substantiated by the OIG during its investigation. To date, the person responsible

for this misconduct remains in this position of trust and is authorized to carry out the personnel program for the IRS.

The egregious misconduct, as well as misconduct by other officials, was substantiated by the OIG during its investigation and interview of approximately 20 witnesses, yet was ultimately viewed by the Deputy Commissioner of the IRS as a minor infraction of rules and no disciplinary action was taken.

In the meantime, because I challenged this misconduct and ultimately reported it to the OSC in October 1994, I have suffered retaliation and continue to suffer retaliation as a result of my whistleblowing activities and participation in the OIG investigation.

Additionally, I have expended an outrageous amount of personal funds for legal expenses, yet no relief is forthcoming. When I attempted to seek employment outside of the IRS, my efforts were stopped by my present organization through false and misleading information, as well as disclosure of my protected activities during the background check.

I have been told that my first- and second-line managers no longer have trust and confidence in me, and my attorney was told by the executive for whom I work that I am a liar and a manipulator, a statement which he now denies.

There are other examples that can be cited, but it became clear to me and others that senior level officials were consistently protected by their fellow executives. Many of the professional personnelists who were charged with the responsibility of handling these cases often joked and commented that a trained personnelist was not necessary in order to put a "Close Without Action" letter on the cases.

It was often commented that the skills of an Employee Relations Specialist were considered to be a detriment rather than an asset, particularly when we attempted to ensure consistency of penalties in our actions.

The executives of the IRS are close to each other, frequently socializing with each other, and often developing lifelong friendships. Because of this, it is extremely difficult, if not impossible, for one executive to recommend and take an action against another.

I observed that in most instances warranting disciplinary action, more effort went into how to clear the person rather than what needed to be done to ensure the misconduct did not recur. Exceptions were made and preferential treatment was granted. Excuses were readily accepted and misconduct was often reduced to being minor.

In several instances it became clear that the IRS applied different standards to the higher graded individuals, which oftentimes resulted in one set of rules for executives and another for the remainder of the work force.

Unfortunately, it is an indication of how misconduct by senior officials is viewed. There is always justification and good reason for their actions, even if a double standard has to be applied.

My purpose in appearing today is to assist you in determining the best course of action in addressing the manner in which senior level misconduct is investigated and dealt with in the IRS.

My appearance today is certainly at great personal risk, however, it is something that I believe is necessary. I sincerely believe that

much needs to be done in order to raise the level of ethics and integrity in order to increase the public trust of the IRS. Until the IRS is sincerely willing to deal with misconduct and not retaliate against those people who report it, a healing process cannot begin.

Thank you.

[The prepared statement of Ms. DesJardins appears in the appendix.]

The CHAIRMAN. Well, I want to thank both of you, Ms. DesJardins, and Mr. Patsalides, for being here today. I know it takes a great deal of courage to appear here, that there is considerable risk. I want to thank you for discharging your responsibility.

Ms. DesJardins, you were responsible for receiving the reports of investigation conducted on various IRS managers and providing them to the Deputy Commissioner for action. Could you explain further how this process worked and what was supposed to be done?

Ms. DESJARDINS. Yes, sir. The cases would come in to the Deputy Commissioner's Office and they, in turn, would then be brought to my office, where I would log the inventory and complete a case analysis and refer the cases out for action to the appropriate regional commissioner or chief officer who had responsibility for the investigation. They, in turn, would conduct further inquiry.

They would make recommendations to the Deputy Commissioner. The recommendations would come back to me. I would prepare another case analysis and finalize it and make a recommendation to the Deputy Commissioner as to whether or not the proposed action would be acceptable.

The CHAIRMAN. Now, are misconduct reports on senior IRS executives being shelved at the Deputy Commissioner's level?

Ms. DESJARDINS. Yes, sir, in some instances.

The CHAIRMAN. How often is this a practice, could you comment on that?

Ms. DESJARDINS. My observation was that, in those instances where there was serious misconduct which would support a disciplinary action against an individual, they tended to be shelved and no decisions were made in terms of recommendations or what actions would be taken.

The CHAIRMAN. So it was not an exception, but more often a practice.

Ms. DESJARDINS. Yes, sir.

The CHAIRMAN. Mr. Patsalides.

Mr. PATSALIDES. Yes, sir.

The CHAIRMAN. As you are aware, we have reviewed a number of investigation files from your office and the IRS Chief Inspector's Office. I would like to ask you about a couple of them that concern me.

Let me give you information from one IRS Inspection Office report completed in 1995. It appears that a manager in the Criminal Investigation Division who was responsible for overseeing undercover operations in his region managed to steal 20 government-owned vehicles for his personal gain.

Also, this person's supervisors were aware of his misuse of government credit cards, yet failed to notify Inspection of his mis-

conduct. How could such a thing like that happen? What happened to the individual, was he prosecuted?

Senator MOYNIHAN. Mr. Chairman, did you say 20 automobiles?

The CHAIRMAN. Twenty.

Senator MOYNIHAN. Twenty.

Senator GRAMM. Did he have a used car business or what?

The CHAIRMAN. Mr. Patsalides?

Mr. PATSALIDES. Mr. Chairman, the person was prosecuted by a method called deferred prosecution, which is not very often used. He had to repay $20,000 and he was put on 2 years' probation. After that 2-year probation, the case is dismissed. The records show that the case was dismissed.

The CHAIRMAN. Is he still with the IRS?

Mr. PATSALIDES. No, sir, he has left the IRS.

The CHAIRMAN. How long was he there after that?

Mr. PATSALIDES. I am not sure, sir, but I believe he retired during this process.

The CHAIRMAN. So he was ordered to pay $20,000 restitution, but he stole, what, 20 government-owned vehicles.

Mr. PATSALIDES. Basically, the investigation disclosed that the CID's office failed to account for all seized vehicles in the possession of that IRS office and to verify that their use was for undercover operations. So, there was a lack of internal controls there.

The CHAIRMAN. Now, let me ask you this. Has your agency had any involvement in auditing or investigating the IRS undercover operations?

Mr. PATSALIDES. No, sir, we have not. I checked with the Office of the Chief Inspector and their last national audit of this area was conducted in November 1995.

The CHAIRMAN. In 1995.

Now, I understand that the former IRS National Director of EEO and Diversity was investigated by the Inspections Office for allegations against him involving sexual harassment. According to the report, the allegations were substantiated and involved several victims. I have a few questions I would like to ask.

Was that individual the top EEO manager in the IRS?

Mr. PATSALIDES. Yes.

The CHAIRMAN. What happened to that individual?

Mr. PATSALIDES. He received a letter of official reprimand and was reassigned without a demotion.

The CHAIRMAN. Did this individual have any previous complaints of harassment alleged against him?

Mr. PATSALIDES. Yes, sir, he did.

The CHAIRMAN. What happened to these complaints?

Mr. PATSALIDES. The first complaint that was made was at the point where this gentlemen was entering the Executive Development Program and his manager did not want to address that complaint because he did not want to in any way, I guess, detract from this person's management development.

The CHAIRMAN. So in spite of concerns about alleged misconduct by this individual, is it correct that he was transferred to the IRS national office as the National Director of EEO?

Mr. PATSALIDES. Yes, sir.

The CHAIRMAN. Now, I have a 1996 report from the IRS Inspection Office where an IRS revenue officer was arrested by a State trooper for drunk driving and the IRS employee threatened to audit the State trooper unless he allowed the IRS employee to go.

Now, it seems to me that the State trooper was just doing his job. But when the trooper was interviewed he stated he was extremely concerned and afraid of what the IRS employee could do to him in terms of causing him economic hardship. What happened to that IRS revenue officer; where is he today?

Mr. PATSALIDES. He is still employed. He entered into what they called a last chance settlement agreement where he agreed to enter a rehabilitation program for his alcohol abuse, and also agreed that if he had any future violations related to that, that he would be fired without appeal.

The CHAIRMAN. So he is still dealing with taxpayers today.

Mr. PATSALIDES. Yes, sir, he is.

The CHAIRMAN. The next case I would like to ask you about involves a distinguished tax practitioner who has provided testimony before this committee's hearings. The practitioner received an anonymous written threat that was received prior to our September hearings when the practitioner testified which he believes was sent by an IRS revenue officer.

In fact, I have the letter that contained the threat in front of me. The following statement was typed on the top of a newspaper article that involved the IRS arresting a tax mediator. The statement is, "You and your clients are next. If you don't think it can happen, call David Kay and numerous attorneys in Los Angeles. You are currently under investigation and I am waiting for the day your name is in the paper."

Now, when the IRS Inspection Office investigated the matter they clearly determined that the letter had been typed on a typewriter within the revenue officer's immediate office. What happened to that IRS employee who made the threat; is he dealing with taxpayers today?

Mr. PATSALIDES. Yes, sir, he is. He is still there.

The CHAIRMAN. Can you say what happened to him?

Mr. PATSALIDES. The investigation was not able to completely substantiate that he was the one that typed this note, even though the forensic lab identified that the letter came from that particular office, was postmarked at that office, and the typewriter ribbon was obtained and indicated that the letter was typed in that office.

We feel, and the report did not show that, but potentially some additional investigative work regarding that situation, some additional interviews of the employees, review of their case loads to see if there was any other involvement with that practitioner, plus a statement analysis might still be of help in identifying and pinpointing who might have sent that letter.

The CHAIRMAN. In other words, you feel that they called off the investigation too early.

Mr. PATSALIDES. Potentially, yes, sir. I do not have the full case file, so I do not know the extent of their full investigation. However, in reviewing it there is no indication that they did these other things that I just mentioned. I believe that they might be able to help identify who the person was.

The CHAIRMAN. That concludes my first round of questions.

Senator Moynihan?

Senator MOYNIHAN. Thank you, Mr. Chairman.

I am trying to make some sense of the organizational structure here. I suppose that the fact of the Section 6103 confidentiality of taxpayer returns makes for a culture of compartmentalization in the IRS that is different from other places. I do not know that, but I feel that. You seem to indicate some agreement.

I would ask you, Mr. Patsalides, why do we mention no names here? That fellow who robbed us of 20 automobiles, that was a crime, was it not?

Mr. PATSALIDES. Yes, sir.

Senator MOYNIHAN. Well, what is his name? The names of criminals are not confidential records, are they? I just find this unusual.

Mr. PATSALIDES. I am sure they are listed in the public records.

Senator MOYNIHAN. What is his name?

Mr. PATSALIDES. But I believe I would have to check with my counsel.

Senator MOYNIHAN. Have you got a counsel around?

Mr. PATSALIDES. Yes, sir. But I believe there are some privacy issues there and it is not normally our process to disclose those kinds of issues publicly.

Senator MOYNIHAN. Counsel, come forth.

[Pause.]

Mr. PATSALIDES. Sir, with the records that we had, we were unable to determine if this is a matter of public record. All we had were the investigative files. If, in fact, it is a matter of public record we would be very pleased to provide the Senator with that name.

Senator MOYNIHAN. No. I am not sort of pressing you to know who the name of this man is, or where that Woodstock typewriter came from and who was using it, and so forth. One is impressed by how tightened up your procedures are with respect to names and individuals. I think it rises out of the confidentiality of tax returns.

Mr. Calahan, do you have any sense of that? Or tell me if I am wrong. I am not infrequently wrong.

Mr. CALAHAN. Well, it arises also out of the process of conducting investigations. That entire process is on a need-to-know basis. We are very careful.

Senator MOYNIHAN. Well, should the public not have a need to know?

Mr. CALAHAN. Not until it is completed.

Senator MOYNIHAN. Not until it is complete.

Mr. CALAHAN. Yes, sir. And as I said, if it is a public record, we would be happy to provide that information to you.

Senator MOYNIHAN. I do not need the information.

Mr. CALAHAN. But we are taught to be very close-held regarding this kind of information.

Senator MOYNIHAN. Closely held.

Mr. CALAHAN. Yes, sir.

Mr. PATSALIDES. I would just like to add that our office takes the Privacy Act very seriously and we are very careful in terms of how we exercise our work in accordance with its provisions.

Senator MOYNIHAN. Sure. Sure. I understand and appreciate that. We have comparable agencies in the government who are equally buttoned up, not internally, but from external inquiry, which may be part of the problem that the Chairman has identified here.

I certainly would like to know more about this matter of David Kay and that typewriter. That is unacceptable, "You and your clients are next." Now, if that came from an IRS employee, that is abuse of power. You would be the first to agree, would you not, Mr. Patsalides, Mr. Calahan?

Mr. PATSALIDES. Yes, sir.

Mr. CALAHAN. We would. We would.

Mr. PATSALIDES. I would and I can assure you that, after we get back to the office, we intend to meet with the Office of the Chief Inspector and discuss this case and see if there is any additional work that can be done.

Senator MOYNIHAN. All right. If a prothonotary warbler shows up in the evidence, we know we have a large issue that may go beyond the confines of the U.S. borders. I am referring to those inquiries about Woodstock typewriter and the sighting of the prothonotary warbler. You youth know so little about our history.

Mr. PATSALIDES. Yes, sir. [Laughter.]

Senator MOYNIHAN. But do look into that, will you not?

Mr. PATSALIDES. Yes, sir.

Senator MOYNIHAN. This is something that we will not have, nor would you.

Mr. PATSALIDES. I agree. No, sir, we would not have that.

Senator MOYNIHAN. Of course you would not.

So, Mr. Chairman, can we hope that we will learn more about that?

The CHAIRMAN. Absolutely.

Mr. PATSALIDES. Senator, we will take that as a request from you at this point.

Senator MOYNIHAN. Perhaps you would take it as a request from the committee, sir. Is that all right, Mr. Chairman?

The CHAIRMAN. That is fine.

Senator MOYNIHAN. Thank you.

And thank you, gentlemen. Thank you, Ms. DesJardins.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Grassley?

Senator GRASSLEY. I think as we listen to the testimony that we have before us that we can both be pleased that things like this are coming out, but I think we obviously have to be outraged at the same time.

I am pleased that these allegations are finally coming to light, but obviously we cannot stand this sort of activity in our government. People want to be proud of their government. People want to have trust in their government.

It seems to me that the agency that deals with more American citizens than all other government agencies put together, which happens to be the IRS, is the one that can set a standard for all other bureaucracies, and ought to set that standard.

Obviously, as a result of just this first panel, anyone watching would be very outraged at what is going on and wonder whether

or not we are a government of the people, whether or not we are really a participatory democracy, whether the rule of law is followed in a bureaucracy like it is expected to be followed by the citizenry.

You never get used to these sorts of allegations. You never get desensitized to these sorts of happenings. I would like to tell you what it would be like to be a U.S. Senator and trying to justify this sort of thing at the grass roots meetings of the State of Iowa.

Or for instance, if any of us in the Senate did exactly these same things or we conducted the employment in our office these ways, we would not be tolerated for a minute. We would be out so fast on our ears that we would not know what happened to us. So that is why it is very important that we have a standard that we can all be very proud of.

Ms. DesJardins, you discussed many cases where wrongdoing was found but no disciplinary action was taken. Could you, and if you could, would you be willing to, after these hearings give us more specifics so that we, either as a committee, or myself as an individual member of the committee, can pass these on to Commissioner Rossotti? Because I think the new Commissioner shows a willingness to get to the bottom of all these things right away, overcome these problems, and reestablish the credibility of the IRS. I would like to make sure that action is taken on these, if it is warranted.

Ms. DESJARDINS. Yes, sir. I would be happy to do that.

Senator GRASSLEY. All right. Thank you very much.

You state in your written testimony, Mr. Patsalides, that you have these limited resources that are a challenge to your office.

Mr. PATSALIDES. Yes, sir.

Senator GRASSLEY. Is that something that you would find within the bureaucracy of the IRS, difficulty fighting for the amount of resources you need, regardless of the amount of money that the IRS gets, or is this something that you think relates to the fact that Congress just is not giving enough money in the first place?

Mr. PATSALIDES. The Treasury Office of Inspector General is independent of IRS and is dependent on funding from the Congress.

Senator GRASSLEY. All right. Then take out the word IRS and put in place of it the Treasury Department officials. Is this a battle that you have within the bureaucracy, getting resources? Are you always told, well, Congress just does not give us enough money?

Mr. PATSALIDES. Mr. Calahan, do you want to answer that?

Senator GRASSLEY. It is all right with me if you answer.

Mr. CALAHAN. Thank you, Senator. The amount of resources we have is obviously a function of the budget process. That goes through several levels of review, the department, the OMB, and the Congress.

Mr. PATSALIDES. Senator Grassley, from my standpoint in the Office of Investigations, all our investigations are done professionally and with high quality. I demand that of our investigators. The problem is, we have too many significant allegations and not enough staff to investigate all those allegations.

We will never have enough staff to investigate all of the allegations, but the more significant ones, the ones we feel we should be

involved with, we cannot even do, therefore, we are forced to refer many of these allegations back to IRS management for resolution.

When we do, we do request that they respond back to us with the results of their review, but we are unable to do those ourselves independently of IRS.

Senator GRASSLEY. Mr. Chairman, I guess my time is up.

The CHAIRMAN. That is right.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Thank you, Senator Grassley.

We will now call on Senator Kerrey, please.

Senator KERREY. Thank you, Mr. Chairman.

Mr. Patsalides, you described, and then later identified, two significant issues. One, is your authority and the other is the problems that are associated with alleged inadequate or disparate discipline.

You have identified it as a problem, as well as alleged sexual harassment and racial discrimination as issues that are not being addressed.

What I would like to direct your attention to—in fact, all of the witnesses attention to—is the legislation as passed by the House and as passed by this committee dealing, first of all, with the Inspector General, second dealing with a new board that will have significant authority and responsibilities, and last, dealing with new powers and authorities granted to the Commissioner.

I have got to say at the beginning, my own view is that, unless and until just sort of common sense judgments are made—I appreciate you are going to get back to the committee on what happens if somebody sends a letter out threatening action against an individual, a taxpayer or somebody helping the taxpayer comply with the law, but I have got to say, you should not have to—you say, oh, yes, Senator, we are going to go back to the office and we are going to check on that one. I do not know what additional authority you need. It troubles me. I just will take this right up the food chain to Mr. Rossotti.

It seems to me that we have got to take immediate action when something like that happens and people have to know, as we do in other areas of the law, that you are going to pay a penalty for doing it, otherwise it continues. I mean, that is the problem with lax enforcement of any law, is it encourages other people to say, well, there is no punishment, there is no penalty, why worry about it?

I would like for you to comment, rather, on the specific provisions. You are saying you have identified a number of things. The IRS does not refer complaints about high-level employees, the IRS has been slow in taking administrative action, the IG views some adjudicative actions taken by the IRS against high-level employees as weak decisions, and so on.

In the legislation, both the House and Senate legislation, we significantly change the power and authorities of the Inspector General. We shift over to Treasury, first of all, and make the IG independent.

I wonder if you would comment on the legislation itself. I presume you have reviewed the legislation, both that as passed by the House and strengthened by this committee, and I wonder if you

would comment as to whether or not the proposed change in the law that this committee is looking at will solve the problems you are identifying. If not, what additional suggestions would you make to this committee when we take it up on the floor?

Mr. PATSALIDES. I would make a personal observation. The proposed legislation that I viewed calls for two independent Office of Inspector Generals within the Treasury Department. I believe that that is not necessary.

I believe that one Office of Inspector General within the Treasury Department, one independent IG overseeing all the bureaus including IRS, is more workable. The problem is that if that was proposed, we would need the sufficient resources to be able to oversee the operations of IRS.

Senator KERREY. Under the bill that was passed out by this committee, the Treasury IG has all the current responsibilities, but in addition it would assume all the duties and responsibility currently delegated at the IRS Office of Chief Inspector. Is that adequate?

Mr. PATSALIDES. Yes, sir, I believe so. I am not familiar with that.

Senator KERREY. Well, I would appreciate it if you would review that because we are about to change the law. One of the things that is awfully difficult in solving problems, is if we do not connect the problem with the law, again, I emphasize the IRS is not Sears and Roebuck.

We are not talking about a private sector entity here, we are talking about an agency that grows from the law. We have to pay attention to how we write that law and pay attention to the circumstances that you are identifying here and try to change it by changing the law. Again, in parentheses, some of the stuff the law cannot provide for.

I should not need a law that says that somebody gets terminated if they write a letter out threatening a citizen as a consequence of something he said publicly. I mean, if we have to have a law for that, we have got trouble. I should not have to have you go back and check it out and see what you are going to do about it.

Mr. PATSALIDES. The other situation was brought to our attention as a result of this meeting.

Senator KERREY. I appreciate that. But there are a lot of things——

Mr. PATSALIDES. We do not have that kind of oversight over IRS when they do their investigations. That is one of the problems right now, they do their own investigations. We do not have sufficient resources to oversee everything they do.

Senator KERREY. I appreciate that. I do not think you have a sufficient amount of authority, I think you need to be independent, I think you need to be in Treasury, I think the issue of resources is important. What I am saying is, even without resources judgments have to be made about what people are doing, whether they are right or wrong.

Mr. PATSALIDES. Yes, sir.

Senator KERREY. It seems to me that if I have got evidence that somebody has sent a letter out threatening a taxpayer or somebody that is helping them prepare their taxes, I do not need a law to tell me that is wrong and they ought to be terminated. I mean, if

you need a law for that, it seems to me that we are never going to get where we want to go.

Mr. PATSALIDES. I agree, sir.

Senator KERREY. If you have got to go back and check that all out and come back to us——

Mr. PATSALIDES. Yes, sir.

Senator KERREY. If somebody steals 20 cars, somebody sexually harasses employees, should not be promoted to be in charge of EEO for the whole agency.

Mr. PATSALIDES. We certainly agree.

Senator KERREY. So why does it happen? Why do you get to this point where you are coming here and saying sort of lamely that we will go back and check it out?

Mr. CALAHAN. Senator, could I make a clarifying point? Our office typically investigates grade 15s and up, higher level employees.

Senator KERREY. Yes.

Mr. CALAHAN. I believe that the employee involved in this matter was not at that level, and so I do not think we became aware of that issue until it was brought to our attention.

Senator KERREY. Well, I appreciate that. My red light is on and I will take up some of the personal items in the second round. But I hope you will review the legislation and tell us whether or not the problems you are identifying will be solved by the bill that was reported out by this committee.

I think it does, by the way. As I hear your testimony, I think in both cases the problems are going to be solved. But please pay attention to the law, because I think it matters a great deal.

Mr. CALAHAN. We would really be happy to provide you comments on the new bill.

Senator KERREY. Thank you.

The CHAIRMAN. Mr. Kerrey's time is up. Mr. Breaux has to leave to make a speech.

I would just make one observation. Obviously, what we write into the law in addressing these problems are of critical importance. I would also note that I think they make clear the importance of management changes as well. It is not just a matter of revising the law, but assuring that there are people who will faithfully pursue the law as it is written.

With that, I would like to call on Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you very much. Again, these hearings are kind of shocking. Correct me if I am wrong. I did not catch all these stories. But one individual was responsible for stealing 20 cars and he is still an IRS employee; did I hear that correctly?

Mr. PATSALIDES. No, sir. He is no longer an IRS employee.

Senator NICKLES. Was he fired or did he retire?

Mr. PATSALIDES. I believe he retired or left, resigned, before termination.

Senator NICKLES. Any criminal penalties whatsoever?

Mr. PATSALIDES. That was the issue where the person received a deferred prosecution and was placed on two years' probation and had to repay the government the $20,000.

Senator NICKLES. Twenty thousand dollars. Most cars, that is pretty light. His restitution was $20,000 and he stole 20 cars?

Mr. PATSALIDES. The person may not have stolen all 20 cars. It was documented that he misappropriated at least two or three of the vehicles. But, because of the inadequate controls of that office, they could not determine the disposition of the other vehicles under his control.

Senator NICKLES. That is pathetic.

Mr. PATSALIDES. Yes, sir, it is.

Senator NICKLES. An 18-year-old steals a car in Washington, DC could go to jail for years. And I do not want to paint all of our IRS employees with the same brush that implies that, but that is criminal conduct. To get off with 2 years' probation and to pay $20,000 restitution when you may have 20 cars that were stolen, is just a pat on the back. That is embarrassing.

Mr. PATSALIDES. Those issues were handled in the courts and not by the agency, either IRS or the Treasury OIG. They were adjudicated by the Department of Justice, and that was the end result.

Senator NICKLES. By the U.S. Attorney.

Mr. PATSALIDES. Yes, sir.

Senator NICKLES. Or Assistant U.S. Attorney.

Let me ask you another question. You mentioned somebody had several sexual harassment charges filed against him and was or is in charge of EEOC for the IRS; is that correct?

Mr. PATSALIDES. He was, yes, sir.

Senator NICKLES. He was until when?

Mr. PATSALIDES. I do not have the exact date, but he is no longer in that position. I believe he was removed maybe about 6 to 8 months ago.

Senator NICKLES. Six to 8 months ago. But several of these charges were filed against him.

Mr. PATSALIDES. Several charges were filed against him before he even obtained that position.

Senator NICKLES. Yet he still obtained the position to be head of EEOC with the IRS.

Mr. PATSALIDES. Yes, sir. Then subsequent allegations followed him, then he was removed from that position.

Senator NICKLES. Removed from that position, but he is still a current employee.

Mr. PATSALIDES. Yes, sir.

Senator NICKLES. One individual on this letter that we saw, do you know which individual that was? I mean, you said it was not investigated quite as thoroughly as you had hoped it possibly should be.

Mr. PATSALIDES. Yes, sir. In reviewing the report of investigation by the Office of Inspections, the allegation is listed as "Not Substantiated."

Senator NICKLES. Are you pretty sure who the individual was that had typed that note?

Mr. PATSALIDES. No, sir, I am not. But I believe that potentially additional investigation might help to determine that.

Senator NICKLES. Will there be additional investigation?

Mr. PATSALIDES. Yes, sir. We have committed to meet with the Office of Inspections. If they do not want to do it, we are going to do it.

Senator NICKLES. You mentioned one other case where an IRS agent was stopped by a policeman and threatened the policeman with an audit. Is that IRS agent still employed?

Mr. PATSALIDES. Yes, sir, he is.

Senator NICKLES. Should he not be terminated for that abuse of power?

Mr. PATSALIDES. Again, sir, that is part of the adjudication process and there are many factors that are involved in that. We do not normally get involved in the adjudication process. Our job is to gather the facts and present them in a report of investigation to management for appropriate action.

Senator NICKLES. Well, just a couple of comments. In these four cases I have cited, I guess nobody was fired. One person was moved. This is a real lack of control.

I understand your job is to do the investigation, but IRS has a hard time firing people. I know in the cases in Oklahoma where we had real abuses, and you mentioned that you are investigating those and I do not know that we have time to get into it, but to my knowledge no one was fired. We had one district director who retired early and went to Texas. One person moved. Did not want to testify for our hearing, frankly. But to my knowledge, there was no real disciplinary action. We still have IRS employees that say they are being harassed because they participated in the hearing.

Ms. DesJardins has mentioned the fact that she, as what I am going to say is a whistle blower, somebody who is presenting some facts, is taking a risk and has the courage to do it—and I compliment you for doing it because I know that is not easy. I know you can be ostracized. That is what I am hearing from people that testified in Oklahoma.

So I am concerned, one, that the IRS never fires anybody and seems to be very cliquish, and the fact that we are going to keep all this hush-hush and keep our power and keep everything private within their own house.

Frankly, as I said before, most IRS employees, I think, are fine, outstanding public servants, but you have got some that need to be fired. Obviously there has been a reluctance to do that, either by tradition or by inept management, and I think that has to change.

Mr. PATSALIDES. Senator Nickles, the issues about the investigation that you mentioned where some people retired, that is still open and it is before a review panel right now who will recommend appropriate action against as many individuals as they determine warrant action.

Senator NICKLES. Can you also assure me that people will not be retaliated against, are you checking into that, because they participated in a Congressional hearing?

Mr. PATSALIDES. Yes, sir. We are still currently conducting that investigation. It is still open and we will report back to you when it is completed.

Senator NICKLES. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nickles.

Senator MACK.

Senator MACK. Thank you, Mr. Chairman.

I want to ask Mr. Patsalides about Treasury Directive 40–01. As I understand it, that requires the immediate referral of allegations involving senior officials and employees of Internal Affairs and Inspection Offices and that the IRS has violated this directive. Is that correct?

Mr. PATSALIDES. The directive does require immediate referral and there have been instances where referrals were not immediately made.

Senator MACK. Do you consider that a problem?

Mr. PATSALIDES. Yes, sir, we do. We have a current review that our Office of Oversight is conducting to help address that issue and report back to us.

Senator MACK. All right. Frankly, that does not help me much. I am kind of surprised that a specific directive could be violated, and you do consider it to be a concern. How long has this been going on? I guess I got the impression, too, that this is something that happens. It is not an unusual occurrence for it to happen.

Mr. PATSALIDES. I think for the most part we timely receive the referrals, occasionally we do not. However, there is no way to tell——

Senator MACK. When you find out that there has been a delay, what responsibility do you have? Who should you be reporting this to? If you do you report it to somebody, do they take action? If they do not take action, why do they not take action?

Mr. PATSALIDES. Yes, sir, we do. We identify it and report it to the appropriate officials.

Senator MACK. And who would be the appropriate official?

Mr. PATSALIDES. The Commissioner or Deputy Commissioner of IRS.

Senator MACK. And the Deputy Commissioner does not react?

Mr. CALAHAN. I should point out that these are two current matters. The first obligation of our office is to investigate the issue and determine the seriousness of the matter, and then determine who it should be reported to.

The CHAIRMAN. I think the question was directed at Mr. Patsalides.

Mr. PATSALIDES. Pardon me, sir?

The CHAIRMAN. I think the question was directed to you.

Senator MACK. I think he is suggesting that maybe you answer the question as well.

Mr. PATSALIDES. I have been given some information that indicates the OIG completed a review of 40-01 and they are going to be making recommendations as to how we can better work those. They said they have made recommendations. That is our Office of Oversight, and I am not familiar with that. However, whenever we run across these situations we do provide them to the attention, as I told you, of the appropriate officials.

Senator MACK. Let me ask you this. This was in your testimony that I have read that from.

Mr. PATSALIDES. Yes, sir.

Senator MACK. You obviously consider it to be a problem worth noting.

Mr. PATSALIDES. Yes, sir, it is.

Senator MACK. Are you implying anything with respect to the failure to immediately notify? I mean, is it, in essence, being used? Are people keeping information from you, putting it in a drawer, keeping it out of your view? Is there some pattern that you have been able to determine; are people using it to avoid having to pursue wrongdoing?

Mr. PATSALIDES. We have not seen a pattern, but we have seen it on some significant issues that raised concerns.

Senator MACK. Would you tell me what those issues are and what concerns they raised?

Mr. PATSALIDES. As Mr. Calahan mentioned, we have some open issues right now, and the examples that we used were open, so I am not able to discuss those right now. However, we are planning on addressing that the next time we talk with IRS.

Senator MACK. I have this feeling I am just kind of being left out there. I mean, I understand the point that you are trying to make, but I am very uncomfortable with this response. Is there not some way we can get more information now? I mean, this was in your testimony.

Mr. PATSALIDES. Yes, sir. The examples are factual. What you are now trying—since it is an ongoing investigation, we may be——

Senator MACK. Let me move off of that for a second.

Mr. PATSALIDES. I do not want to compromise anything regarding that and that is why I am hedging.

Senator MACK. All right.

Mr. PATSALIDES. The issue that you raised is a valid issue and it does give us concern. The other issue is, since it is a voluntary system, we have no way to know whether they comply with 40-01 or not. We do not know how many times allegations have come to the attention of managers or employees and they fail to provide them to the Office of Inspector General. There is no way to control that.

Senator MACK. But you are not suggesting that these two matters that you say are under investigation now, that this is the only times that this has occurred.

Mr. PATSALIDES. No, sir, it has not.

Senator MACK. Were these unusual?

Mr. PATSALIDES. Yes, sir. They were significant ones.

Senator MACK. Can you give me a sense of the timing of when these occurred?

Mr. PATSALIDES. In one issue I think it was several months, maybe 5 or 6 months after the incident occurred.

Senator MACK. And how long ago? When did you begin this investigation?

Mr. PATSALIDES. That was recent. I am really reluctant to answer some of those because I do not want to compromise what we are doing.

Senator MACK. All right. Mr. Chairman, I would just ask that the committee be kept informed. I understand the concern about, I guess, divulging information while there is an ongoing investigation, but——

The CHAIRMAN. I think your request is a reasonable one, and we direct the witness to keep us advised.

Mr. PATSALIDES. Yes, sir. I would be happy to.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman.

First of all, in this last round, I would just say I think it is a little questionable that we are talking about cases that are not completed. I am fully prepared to hold the agency responsible for failing to deal with circumstances where somebody has been proven to have been dealing in wrongful acts, but when you have an ongoing case where apparently the final decision has not been made, it seems to me we have the cart before the horse. That does not make much sense to me.

Mr. PATSALIDES. Senator Conrad, the issue here is the timely referral. In those situations were used as examples for failure to get timely referral. However, we cannot document that until we complete the investigative matter.

Senator CONRAD. That is what I am saying. If you cannot document it, then I do not think it is time to talk about it. Let us deal with things that are documented. This committee has got to deal with facts, things that have happened, not things that in process. We cannot make a judgment on that until the process is completed. If we cannot document it, then we ought to move on and talk about things that are documented.

I would like to go to this question of the person that was——

Mr. PATSALIDES. I think we can provide some documentation of closed cases, sir. It is just going to take some research.

Senator CONRAD. Yes. Well, that is what we need to deal with. The fellow that dealt with the 20 stolen cars that we now find out is not 20, maybe it is 2 or 3, I would like to know exactly, he misappropriated cars. What did he do with them, did he use them for his own use, did he sell them; what did he do with these cars? What do we actually know that he did? What is documented?

Mr. PATSALIDES. Well, we know that there were approximately 20 cars that were unaccounted for.

Senator MOYNIHAN. Approximately 20?

Mr. PATSALIDES. We know that there were 20 cars unaccounted for. What we do not know, because of the lack of controls that the office had, is exactly what happened to those.

Senator CONRAD. Well, what do we know? We know about two or three cars.

Mr. PATSALIDES. Again, this is an IRS Inspection report where we reviewed the file, so we did not conduct this investigation ourselves. We just depended on the information in the file to find the final adjudication action. If you want us to research every——

Senator CONRAD. But what do we know? You indicated earlier that two or three cars were misappropriated, that you know that occurred; is that correct? Well, how did he misappropriate cars? What did he do with them? I am trying to determine if the penalty here is appropriate or not.

Mr. PATSALIDES. We know that at least two, maybe three cars were used for personal use. The other cars may just have been——

Senator CONRAD. You mean, on an ongoing basis or just temporarily? You mean, he took these cars home.

Mr. PATSALIDES. Yes.

Senator CONRAD. And these were cars that were seized in IRS operations.

Mr. PATSALIDES. Yes, sir. Most of them were.

Senator CONRAD. And he took these cars and used them for his personal use.

Mr. PATSALIDES. Yes, sir.

Senator CONRAD. That person paid a $20,000 fine.

Mr. PATSALIDES. Yes, sir.

Senator CONRAD. Then what happened to him?

Mr. PATSALIDES. He entered into this plea agreement where he got a deferred prosecution and 2 years' probation.

Senator CONRAD. Was he removed from service? He retired, apparently, during this time.

Mr. PATSALIDES. Yes, sir.

Senator CONRAD. He retired. And he paid the $20,000?

Mr. PATSALIDES. He either retired or resigned, but he left the IRS so they could not take any action against him.

Senator CONRAD. All right. Thank you very much.

Ms. DesJardins, you indicated there were cases where travel fraud occurred, yet the employees in question were not punished; is that correct?

Ms. DESJARDINS. That is correct.

Senator CONRAD. Can you tell us the nature of the travel fraud? I am not asking for names here, I am asking, what did the person in question do?

Ms. DESJARDINS. One of the issues involved travel of a number of IRS managers to a meeting and the individuals were permitted to stay overnight, which is all right. However, there were also managers that were in the local area that were allowed to stay overnight in the same hotel at government expense. The purpose of them staying overnight was to participate in social activities at the government's expense.

When the issue came forward, the individual stated that there was no knowledge or that it did not violate the travel regulations to have authorized these other managers to stay overnight.

It was proven that it did violate the travel regulations, so this person was required to ask for a waiver of the funds. In asking for the waiver of the funds, which was required to be approved by the Commissioner, this person did not provide accurate information to the Commissioner as to why the situation occurred.

Senator CONRAD. Do both the matters of travel fraud involve that fact pattern?

Ms. DESJARDINS. No, sir.

Senator CONRAD. What was the other travel fraud matter?

Ms. DESJARDINS. The other one involved an individual using companion tickets for travel. Government tickets, government bonus tickets, and using them for companion travel.

Senator CONRAD. The case where an IRS employee abused his employees.

Ms. DESJARDINS. Yes.

Senator CONRAD. What was the nature of the abuse?

Ms. DESJARDINS. The abuses ranged from, this person would harass employs, this person would require the employees to do a lot of personal business for the individual, just overall harassment and

demanding things that normally an employee should not be required to do.

Senator CONRAD. Personal business for the manager?

Ms. DESJARDINS. Correct.

Senator CONRAD. What kind of personal business?

Ms. DESJARDINS. If I recall, in one instance, picking up some music sheets. I do not recall anything else.

Senator CONRAD. All right. My time has expired. I thank the Chairman.

The CHAIRMAN. Senator Lott.

Senator LOTT. Thank you, Mr. Chairman.

Ms. DesJardins, thank you very much for being willing to come forward and give the statement that you have given. I have been going back and going over it. It looks to me like you have testified here today that IRS managers and high-level employees have committed the following: travel fraud, abusing and mistreating subordinates, lying to the Commissioner, sexual harassment, general fraud, processing illegal performance awards, telling a subordinate to lie, time and attendance fraud, lying to investigators, and lying to Commissioners.

Now, that is a long and devastating list. It also appears that only the last two resulted in some minor action of punishment, although there were a variety of things that apparently did occur here.

Now, each of these cases have been substantiated by the Inspector General or the Office of Special Counsel, yet nothing or very little has happened. Who is protecting these people? Who is not causing actions to occur when these allegations are substantiated? Where is the problem? I am not asking for a name, necessarily, but give us some idea of why and how these matters are not being appropriately pursued.

Ms. DESJARDINS. I think when these actions involve high-level individuals in the organization they are protected up at the Deputy Commissioner's Office.

Senator LOTT. Who is the Deputy Commissioner?

Ms. DESJARDINS. Mr. Dolan.

Senator LOTT. And this is a pattern, apparently, that has been going on for quite some time; is that correct?

Ms. DESJARDINS. Yes, sir.

Senator LOTT. How long have you been at IRS?

Ms. DESJARDINS. Since 1991.

Senator LOTT. And on several instances you have brought these problems to the attention of appropriate officials and you feel like inadequate, inappropriate, or no action has resulted.

Ms. DESJARDINS. Correct.

Senator LOTT. I know this is not easy for any of you, but I think it is important that we have this testimony. You are substantiating what the American people have been feeling for a good, long while and what we have suspected and now we are hearing specific examples.

Now, Mr. Patsalides, in your statement on page 9 you state that the IRS has failed to timely refer complaints to your office. Senator Mack has been asking about that. They have been slow to take administrative action against certain employees, and some adjudicative actions taken by the IRS were weak decisions.

When you say slow to take administrative action against certain employees, what do you mean? You talked a little bit about, slow to take it out of a drawer and get it in the appropriate place, but I have the impression it is more than that, that it is slow to be acted on, or weak actions have occurred once decisions are made.

Mr. PATSALIDES. Yes, sir. Even when allegations have been substantiated, prompt administrative action has not been taken.

Senator LOTT. What is the solution here? Do we not have a proper process to follow through or is this just a matter of people, individuals? I mean, if we had different people in these positions would it be different, or is this a culture that has developed that leads to no, or weak, administrative actions?

Mr. CALAHAN. Senator, I would like to respond.

Senator LOTT. Mr. Calahan, please.

Mr. CALAHAN. I would like to point out that I met personally with the Commissioner on this matter of slow decisions and he seemed to be genuinely distressed over that matter. I really believe that that is something that he is going to be very active about.

Senator LOTT. Well, he certainly needs to.

One last question, Mr. Chairman. On pages 10 and 11 of your statement, Mr. Patsalides, you talk about access to taxpayer information. Senator Moseley-Braun and I have been concerned that the IRS is using taxpayer confidentiality, commonly referred to as the 6103 information, as an excuse to hinder your investigation and inquiries.

We have some language, I believe, in the bill that would, except for the name, address, and information that could be used to identify the individual, make that information available to this oversight group that we have. Now, is that a hinder to the investigations and inquiries?

Mr. PATSALIDES. The lack of 6103 authority is, yes, sir.

Senator LOTT. So you feel that opening it up in the way we have proposed could be helpful.

Mr. PATSALIDES. Extremely. Yes, sir.

Senator LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lott.

Senator Gramm?

Senator GRAMM. Mr. Chairman, let me say, having sat here and listened to this hearing and having sat through the hearings that we had prior to our bill, I think it is obvious to a blind man that our problem here is the old Greek adage that power corrupts.

Our problem is, we have an agency that has virtually no checks and balances and an agency which basically protects its own against the public. I am very proud of the bill that we have written, Mr. Chairman, but there is one area that we have not been able to deal with which greatly concerns me, and that is the absence of checks and balances.

In the criminal justice system, basically the police do the investigation and they turn their information over to the prosecutor, and, in evaluating the evidence, the prosecutor invariably oversees and evaluates what the police did, so you get a check on abuse.

Then the prosecutor has got to go before a grand jury, where again you get a check and a balance. Then you go into a court, if the dispute continues or a crime was committed, and you got inde-

pendent jurors and you have got generally an elected judge, so you have got a division of power and checks and balances. It is the genius of our system. Yet, with the IRS we literally have the investigator, the prosecutor, the judge, the jury, all in the same agency with no checks and no balances.

So maybe we are surprised that all of this is happening, but I think anybody who understands how organizations work would have predicted exactly this kind of problem. I do not think there is an easy or pretty face you can put on the fact that the Chief of Employee and Labor Relations Section of the Personnel Branch of the General Counsel's Office at the IRS raises all of these potential violations of the law and nothing happens.

How are we to conclude anything else other than, nothing is happening because the Internal Revenue Service is protecting people who are violating the law and who are treating citizens in a way that, at least we claim, we will not tolerate. I do not understand how somebody threatens to audit somebody and they are not fired on the spot. I mean, I just do not get it.

Let me ask, since we have the Deputy Inspector General and we have the Assistant Inspector General, in the last 10 years, how many people has the Internal Revenue Service actually fired? You have 100,000 employees. So if we were looking at the private sector, I would say you would have maybe 1 out of 100, maybe 1,000. How many people have been fired by the Internal Revenue Service in the last 10 years?

Mr. CALAHAN. Senator, I do not think we know that, but we would be happy to get that for you for the record.

Senator GRAMM. Well, I would like to know. This committee has raised this question now many times. How many people in the last 10 years have been fired as a result of wrongdoing and how many people in the last 5 years have been fired as a result of wrongdoing?

We would like the actual number of people, not who have retired or that have come back to the system after somebody raised an objection to what they have done. But to how many people have you actually said, you are fired, get out of here? We would like to know that number. It seems to me that that number is something we ought to be comparing to other government agencies and it is a number we ought to be comparing to the private sector.

I think, Mr. Chairman, these are very important hearings. I think we have taken a major step toward dealing with abuse, but I think there is this final area that is virtually untouched by our legislation, and that is our failure to separate out these massive powers as prosecutor, judge, jury, investigator all wrapped in one that the Internal Revenue Service has. It is this power that is the problem. It is not the people, in my opinion.

Having all the sociology professors in the country come in and give sensitivity training is not going to solve this problem. The problem is, power corrupts. People have got too much power. It seems to me that maybe this ought to be phase two of what we should be doing, is looking at trying to find a system of checks and balances.

And I know you guys have a terrible job sitting here, people yelling at you and trying to answer questions that just, honest to

God, cannot be answered. But it is clear that these abuses are occurring and nobody is doing anything about it. I think that is obvious.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Gramm.

Senator MOYNIHAN. Could I just say to my colleague from Texas, we do have a table here that has been provided to us on involuntary separations. They seem to range from, in fiscal 1995 it was 902 out of a total of employees of 126,000. Then it went to 1,256 in fiscal 1996 then up to 1,856 in fiscal 1997. Perhaps you could help us with that, because the Senator raises a perfectly straightforward question.

Mr. CALAHAN. We would be happy to do that.

The CHAIRMAN. Next, we will call on Senator Moseley-Braun.

OPENING STATEMENT OF HON. CAROL MOSELEY-BRAUN, A U.S. SENATOR FROM ILLINOIS

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

To my colleague, I think one of the most important checks that we have, because I think we are all in this together and looking for some results here, is these women who have come forward, the whistleblowers on the system, because when you have employees inside of the agency who are willing to step up, to put themselves at risk to take on the challenge of being a tattletale, we used to call them in school. That takes a lot of courage. It takes an awful lot of courage. When I first came in I recognized Ms. Long from the last hearings.

Frankly, in the testimony I thought the response regarding her testimony was a little oblique in that it says, "It cannot be concluded that IRS managers do not harass or retaliate against employees in the Houston district or other districts," and that was in response to Ms. Long's testimony about harassment and retaliation and people getting back at employees who had come forward.

Ms. DesJardins essentially testified the same way in regards to retaliation and harassment inside of the agency, and that employees who come forward, the whistleblowers, the people who resist the corruption in the culture, get punished by their colleagues.

That is really awful because I think, instead of those employees being punished, they ought to be applauded and encouraged, or even promoted, for what they are doing because I think that whistleblowers, people who are inside the agencies, perform an important function in that they provide an important internal check on the abuse of power that Senator Gramm was talking about on the mistreatment of other taxpayers and on conduct unbecoming a public servant.

So I just have two congratulations. One, I want to congratulate the Chairman for this second set of hearings. I know, Mr. Chairman, it was controversial to go to the second set of hearings, but I think it is important that we perform our role in providing oversight and providing a safety valve on the agencies. I think I want to congratulate also these women and the other employees who have come forward and helped us with this whole set of examinations of the agency, because it is not a negative thing. It is not a bad thing for the service.

I was looking at a quote here, and I am going to quote it before I go on and ask my question, from the head of the Intelligence Unit, Mr. Elmer Irey, who back in 1919 said, "When engaged in common endeavor, a group no less an individual needs occasionally, for the good of its soul and in the interest of its efficiency, to review and appraise its origin, its objectives, and its progress and development.

So I think really that this oversight is that kind of a review that can be good for the service if people will not just resist it, but rather will kind of go with it and give themselves over to it and understand the message that is being communicated here.

I think a major part of the communication here has to do with what it is we do to provide the checks and balances that Senator Gramm is talking about. While on the one hand this conversation that we are having and the sunshine that it gives to the operations of the service will help and we have a bill in place which will hopefully take us a long way and help, at the same time I think I still have a concern regarding what, if anything, is being done to protect those employees who want to help the agency to do the right thing.

What steps are being taken right now? There is an ongoing internal change directive by Mr. Rossotti in terms of reinventing the agency and changing the culture of the agency, but what steps are currently being taken, Mr. Patsalides, to protect those employees who have come forward, those, to use the term, whistleblowers, tattletales, whatever you want to call them, the people who have, I think, helped to inject this very important element of internal sunshine on the operations of the agency?

What is being done to protect them in the first instance, and second, what additional steps or what steps would you recommend to protect employees who are, again, trying to get the agency to do the right thing, who are prepared to step forward, again, in very courageous ways to take on the challenge of restoring the respect that the agency has got to have if it is going to function appropriately?

Mr. CALAHAN. Senator, if I may respond to at least part of that. The Inspector General Act allows for employees to make disclosures of fraud, waste, and mismanagement to the Inspector General either anonymously or with confidentiality requested. If they request confidentiality, we do not provide their names to anyone and it stays with us.

We certainly would follow up with any allegations of reprisal taken against employees that provide us information. However, the Office of Special Counsel has primary jurisdiction in that area.

Senator MOSELEY-BRAUN. Mr. Patsalides, your written testimony does not say that. Maybe I gave too little of the sentence. It says, "In addition, Long alleged that IRS managers harass and retaliate against IRS employees." It goes on, "Although the report does not substantiate her specific allegations of harassment, it cannot be concluded that IRS managers do not harass or retaliate against employees."

Mr. PATSALIDES. That is correct. As a result of Jennifer Long's testimony and our investigation, we have gained sufficient information to initiate, I think it is, up to six additional investigations right now.

Senator MOSELEY-BRAUN. Investigations of managers harassing employees?

Mr. PATSALIDES. Allegations that have been brought to our attention in connection with the Houston district.

Senator MOSELEY-BRAUN. All right. So am I to discern from your answer that you think the current procedures that are in place to deal with harassment and retaliation are adequate or would you recommend that there be additional procedures?

Mr. PATSALIDES. I think it would be premature now for us to make any recommendations, and that is not normally what we do. We investigate the facts and then provide our report of investigation with the facts. However, there are ongoing investigations and some do include those type of allegations.

Senator MOSELEY-BRAUN. All right. As to the ongoing investigations, and again, looking at Mr. Rossotti's internal review of the service, has your office or any other office made any recommendations to Mr. Rossotti regarding beefing up the procedures for protecting whistleblowers? Have you paid any attention?

Mr. PATSALIDES. Yes, ma'am. One of the things that was brought out in this investigation was that there were certain potential systemic weaknesses. Our normal process is to submit a management implication report to the Commissioner identifying those systemic weaknesses, which include the potential for disclosing complainants' names.

Senator MOSELEY-BRAUN. Well, just disclosing complainants' names—and I do not mean to beat this horse, but it is a line that follows. I am not just talking about disclosing the complainants' names, whether disclosed officially or not, if an employee comes forward and that individual winds up being harassed and retaliated against, that is the conduct that I think we have to protect against. I guess, again, I do not know why we are having such difficulty communicating here.

Are there procedures in place to protect the whistleblowers or, alternatively, have you made any further recommendations to protect whistleblowers, given that the two that we have here are saying that the result of their action was to be harassed and retaliated against?

Mr. PATSALIDES. The procedures in place to protect whistleblowers fall under the jurisdiction of the Office of Special Counsel. That is why I am having difficulty answering that question. However, from a personal standpoint, we want to do everything we can to protect whistleblowers from retaliation. One of the investigations we are conducting now, at the request of Senator Nickles, is an employee retaliation investigation.

Senator MOSELEY-BRAUN. All right. I see my time is up. But Ms. DesJardins, would you take a stab at that. Would you have some recommendations in terms of what can or should be done to protect whistleblowers?

Ms. DESJARDINS. I personally think that the Office of Special Counsel needs to become more involved and not view each case as a case filed by a disgruntled employee and have an attempt to close it as quickly as possible.

I think that when the allegations are substantiated, the Special Counsel should become more involved in ensuring that the appro-

priate actions are taken, which would include the protection of the whistleblower.

Senator MOSELEY-BRAUN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. I would say to the distinguished Senator that retaliation is a very, very serious question here and one that I think we are all going to have to work hard at finding a solution for. Part of the answer, I think, has to be the ongoing oversight by this committee because you need somebody outside as well as inside reviewing what is happening.

We will now call on Senator Hatch, which will bring this portion of the hearing to an end.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman. I will not be long. I want to compliment you and the Ranking Member for your continuation of these hearings, and I want to thank each of you as witnesses for appearing here today and being as candid as you have been.

I want to just follow up a little bit on our Leader Senator Lott's question because, Ms. DesJardins, you said in your testimony that many of the investigations ended up in the Deputy Commissioner's Office for a length of time with little or no action taken. Senator Lott, I think, brought that out well.

But first tell me what, if any, is the current procedure or procedures once an investigation gets to the Deputy Commissioner; do we have any procedures?

Ms. DESJARDINS. Yes, sir, we do.

Senator HATCH. And what are they?

Ms. DESJARDINS. Once the inquiry or the investigation has come back in, normally after it comes back in from the field or the region where it has been looked into the Regional Commissioner will make recommendations as to what type of action should take place.

When I receive the report I would do an analysis of the report and all of the material that was included in the IG's report, and I would then in turn summarize that and make a recommendation to the Deputy Commissioner. Sometimes the recommendation was consistent with what was recommended by the Regional Commissioner, other times it was not.

Senator HATCH. That is it, and then it is up to him to just make a determination based upon your recommendation and the materials that you submit to him.

Ms. DESJARDINS. Yes, sir.

Senator HATCH. Can you recommend for us ways to prevent cases sitting for a prolonged period of time on someone's desk without any action? If you had the opportunity to really tell us what to do, what would we do?

Ms. DESJARDINS. I am not really sure. I think many times you have an issue where an individual who is making the decision should really recuse himself from handling that action. I think that lots of times that is really the problem, that the person has an interest, personal friendship, or something like that with the individual.

So for me, I found many times that because that recusal did not take place, that was the reason why the cases more or less laid around and did not have final action taken on them.

Senator HATCH. Could I have any response from the other two witnesses on these questions that I have asked?

Mr. CALAHAN. Senator, one thing that should be pointed out is that statistics are kept in terms of the aging of the laps of time for adjudicative decisions. Once an investigative case is provided to the IRS it goes into a system that keeps track of how old the case is. For example, we flag——

Senator HATCH. Well, is there any printed record of that for us to see?

Mr. CALAHAN. The statistics?

Senator HATCH. Yes.

Mr. CALAHAN. Sure.

Senator HATCH. So we could see it.

Mr. CALAHAN. In fact, our Office of Oversight, as Mr. Patsalides was describing earlier, is in the process of testing those numbers to make sure that they are correct, and we would be happy to provide that report to this committee when it is completed.

Senator HATCH. I think that would be good. But could we have regular reports on how these things are handled and how delayed they are? I think this committee is interested, and our two leaders on this committee, are interested in the oversight functions of this committee. It seems to me, if we are having somebody's desk piled up with things that are not being handled, we ought to know about it.

Do you care to say anything, Mr. Patsalides?

Mr. PATSALIDES. No. I agree with that statement and I believe that more independent oversight of IRS is needed. The most important aspect is to increase the accountability of managers.

Senator HATCH. Well, my time is just about up, but let me just say this to you. I think almost every agency has some of these problems, but none of them, it seems to me, except the Justice Department perhaps, creates the concern on the part of our committees up here as much as yours and Justice.

We went so far as to have an independent counsel statute in order to try to resolve conflict of interest problems and to push things ahead and to make sure that there is no preferential treatment given to anybody under the law. Of course, as you know, that works and it does not work. Sometimes independent counsel are not requested when they should be, sometimes they are requested when they should not. We find that working and not working.

I guess one of the things I would like to have you stop and consider, since you are as frustrated as we are on some of these issues, is how might we work this with the IRS, because it is apparent that there is a good old boy system, it is apparent that there are people who are afraid to take on their colleagues, it is apparent that whistleblowers are being abused. I thought Senator Lott's long list of criminal activity that he described was pretty significant. Frankly, these hearings are pointing it out to the whole of America.

Let me just close with this. Throughout the debate on IRS reform we have heard stories of abuse from IRS officials and employees. Because there have been some bad apples in the barrel, it would

be easy to give the picture that all IRS employees are like that and they are somehow mistreating the taxpayers they serve. Of course, that is not true. The vast majority of IRS employees are doing a good job.

But we hear enough of these complaints and enough of these horror stories that literally we want to do something about it and we need your help to help us to know what to do. So I personally have appreciated your testimony here today and look forward to any suggestions that you would care to make to the committee, or to any of us individually.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

That will conclude the questioning of these witnesses.

Senator KERREY. Mr. Chairman?

The CHAIRMAN. I would say to the Senator from Nebraska, it is our intent to leave the panel open so that written questions can be submitted.

Senator KERREY. Well, I would respectfully ask, I have waited here and I abided by the 3-minute time limit, both in my opening statement and in my first round of questioning, and that gives me 6 minutes total. I would just respectfully ask that I be allowed to ask some additional follow up.

The CHAIRMAN. How long would the Senator need?

Senator KERREY. I can be over in three minutes, as you originally spoke of.

The CHAIRMAN. All right. Let us go ahead. We will give you the three minutes.

Senator KERREY. I thank the Chair.

Mr. Chairman, and I say to the panel, there is a pattern that we have heard of personnel actions. There is another pattern that concerns me, and that is, it seems like every half a dozen years or so Congress gets outraged about what the IRS is doing and then issues press releases, and so forth.

This time around we have got a piece of legislation that has advanced out of this committee. I say that because from 1988 to 1993, the House Government Operations Committee held 4 or 5 years' worth of hearings leading to a report, leading to Commissioner Peterson saying, here is the action we are going to take.

I suspect during those hearings there were lots of members who were expressing outrage about what is going on, and we have got to do something about it, listening to the stories and saying, by gosh, we are going to do something about it. It is a very effective thing for us to do, to express our outrage. Nobody emotes better than a member of Congress when they are dealing with somebody who has been abused by the IRS. I mean, I can give you my maximum amount of sympathy.

The question is, are we going to change the law? I would ask you to look at the law. And again, you do not have the advantage of holding the law, but one of the things the House did, and this committee strengthened, was the authority under Title 5 of the Personnel Code to be able to take personnel action, additional flexibilities in providing awards, additional flexibilities in being able to manage the agency, but also very specifically the bill requires the IRS to

terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties.

There are six of them in total, and number six is violations of Internal Revenue Code, Treasury regulations, or policy of the IRS, including the Internal Revenue Manual for the purpose of retaliating or harassing a taxpayer or other IRS employee.

We have got a list of things in this piece of legislation, this proposed change in the law, that would on the one hand give the Commissioner the authority to manage in an affirmative way because if you have 100,000 employees, 95,000 of them are going to respond to positive incentives and not threats. So give the Commissioner the authority to be able to manage the agency, but make it very explicit.

One of the things you are telling us here is, all you do is investigate and present it to the Department of Justice. This would change the law, saying that if an IRS employee violates the Internal Revenue Service Code and retaliates or harasses a taxpayer or another IRS employee, either one, that is grounds for immediate termination.

Now, does that not solve the problem that you all have brought to us here this morning? So if we change the law to give the Commissioner that kind of authority, that should solve this problem.

At least, whenever this cycle repeats itself a half a dozen years from now that will not be one of the things that we will be expressing our outrage about and issuing our press releases and trying to raise money around, right? I mean, will it not solve the problem, is the question I am trying to ask? It had better be yes, for God's sakes.

Mr. CALAHAN. I am not an expert in personnel law.

Senator KERREY. If it is no, tell me. Again, it is painful to go through these things, especially when you look at the historical record. Congress has done this before.

There are Associated Press stories that show how these hearings are being used by some to raise money. I am outraged. I am going to do something about it. Fine. So run your mouth, run your press releases, put out your fundraising letters, but now it is time to change the law.

I hope that you will examine this law. All of you have expressed a considerable amount of patience and courage to come before this committee, but we are talking about changing the law.

Remember, IRS has 535 members of its board of directors, it is called the Congress. Every single witness that we heard before the Restructuring Commission would say that Congress is the biggest part of the problem.

But I will guarantee you, any hearing where we are going to express outrage, we are not going to say we are outraged about our own behavior, we are going to be outraged by your behavior.

I hope that you will help us as we move down the road to finally changing the law, examine the changes that we are proposing, and ask the question if these changes are made. One of the changes in the Inspector General's Office is to ship 900 of your employees over to Treasury, leaving 300 in your shop.

You need to look at that language and give us a real, honest evaluation of whether or not that is going to make it better or if

it is going to make it worse, and help us write the law so that it improves your operation and decreases the number of problems that we hear on a repetitive basis before the Congress.

Mr. PATSALIDES. Senator Kerrey, I just want to make a clarification. We have a total of only 33 criminal investigators on our staff right now. We are not the Office of the Chief Inspector, who has a staff of approximately 1,200, not criminal investigator staff. I think approximately one-half of that is the criminal investigators.

Senator KERREY. I just use that as exhibit A. You have underscored my own ignorance, which is not unusual or atypical. I mean, that is the sort of response that we need in order, when we all stand down on the floor of the Senate.

My guess is, it is going to be 100 to nothing when this bill finally passes. It is going to be 100 to nothing, we are all going to put our press releases out, and we are all going to go back to our town hall meetings and say we solved the problem. Help us make certain that we do as good a job as possible in solving this problem.

Mr. PATSALIDES. Yes, sir. Thank you.

The CHAIRMAN. I would just make the observation that the section quoted obviously is an attempt to address the problem of retaliation. It is not only a question of the law, of course, it is a question of it being enforced properly. It has to be enforced properly and not by a double standard, which we hear so much about today. So, there are those problems.

Well, I want to thank you for being here today. I know two of you feel you come here at great personal risk, and we find your testimony was very helpful. We would appreciate any further comments you have to make.

I would point out for the benefit of the committee that we have had requests from members who wish to address further questions to the witnesses, so the record will be kept open. Further questions can be provided on the panels today until 5:00 today, and we would ask the witnesses to respond by Thursday.

Again, I want to thank you very much for being here, as I say, I know at great personal risk and sacrifice. We could not hold the hearings if it were not for people like you who are willing to testify.

Thank you very much.

Mr. PATSALIDES. Thank you, Mr. Chairman.

Mr. CALAHAN. Thank you.

Ms. DESJARDINS. Thank you.

The CHAIRMAN. I would now like to welcome the members of our second panel. As practitioners of the law, these gentlemen appear before us today to tell us of the events they have both witnessed and experienced involving the IRS, and offer this committee their insights regarding resolution of the many problems they will identify.

The first witness is Mr. Robert E. Davis, who is an attorney with 40 years' experience with the firm of Hughes, Lewes of Dallas, Texas. During the years 1982 and 1983, Mr. Davis served as Deputy Assistant Attorney General in the Tax Division of the Department of Justice. His expertise is in white collar crime, Federal tax controversies, and civil litigation.

The second witness is Mr. Jay Earl Epstein, who is a lawyer with 35 years' experience and member of the firm Epstein, Shapiro &

Epstein of Philadelphia, Pennsylvania. Mr. Epstein's expertise is in tax, corporate real estate, and probate law.

Third, is Mr. Philip MacNaughton who has been in practice since 1976. A portion of his practice is dedicated to representing taxpayers before the IRS in tax controversies and collection matters.

Fourth, Mr. Cody Mayo is currently Assistant District Attorney of the Caddo Parish in Louisiana. He is also a certified public accountant with a law practice in Shreveport. Mr. Mayo specializes in tax law and white collar crime.

Gentlemen, if you would please rise and raise your right hand.

[Whereupon, the four witnesses were duly sworn.]

The CHAIRMAN. Thank you. Please be seated.

We will start with you, Mr. Davis.

STATEMENT OF ROBERT E. DAVIS, ATTORNEY, DALLAS, TX

Mr. DAVIS. Thank you, Mr. Chairman and honorable members of the committee. My name is Bob Davis. I am an attorney. I have been practicing law in Dallas, Texas for about 40 years.

During most of those years, the greatest part of my practice has been devoted to representing taxpayers in connection with civil and criminal tax litigation and controversies with the Internal Revenue Service and with the Department of Justice.

During the years 1982 and 1983, however, I served as Deputy Assistant Attorney General in the Tax Division of the Department of Justice in Washington, DC. I was then responsible for overseeing the functions of the Criminal Section and the Review Section of the Tax Division.

I think it would be fair to say that I have had as much experience, probably, as any practitioner who has been representing taxpayers over the last 40 years.

Tax collecting, as we all know, is an unpopular calling. Indeed, from biblical times to the present, there have been few, or no, warmly regarded tax collectors, perhaps with the exception of Senator Conrad. Obviously he is warmly regarded.

But most of the employees of the Internal Revenue Service, as has been noted by the Chair and other members of this committee, are honorable, sincere, hardworking people doing their best to administer a very complex set of laws which were enacted by this Congress.

Notwithstanding those positive things, I think it is fair to say, in my personal experience, that all is not well with our tax system. I believe the Internal Revenue Service has, to a significant extent, strayed from the proper path; second, that there is excessive use and misuse of intrusive investigative techniques by the Criminal Investigation Division of the Internal Revenue Service; and third, there are sometimes serious integrity issues within the agency, but that the IRS Inspection Service is simply not up to the task of investigating and correcting IRS agent misconduct when it does occur.

I would like to present my views on these subjects to the committee over the next several minutes, and then a supplemental written statement.

Fifteen years ago when I was in the Tax Division, criminal tax enforcement practices were almost totally different than they are

today. At that time, undercover investigative techniques were almost entirely unknown in criminal tax matters.

At that time, search warrants were used in criminal tax cases only a dozen times in the course of an entire calendar year, and grand jury investigations were a rare exception and administrative investigations were the rule.

Today, that has dramatically changed and the use of these much more intimidating and intrusive techniques is commonly encountered. For example, search warrants are executed in criminal tax investigations today some 20 times as frequently as they were then when I was in the Tax Division.

It is not surprising that these changes have occurred, as the IRS CID has been increasingly used in the suppression of drug and organized criminal activity. Its special agents have learned the investigative techniques which are employed by the DEA, the FBI, and local law enforcement to deal with violent and dangerous criminals. These investigative strategies are then borrowed and used by IRS CID in routine criminal tax investigations of taxpayers who are neither violent nor dangerous.

Many of us believe this is very bad tax enforcement policy. Today we see too many "cowboy agents," as they are called, who are undisciplined, who are inadequately controlled, and who think that the end of putting away the bad guys justifies the means, that is, these intrusive, intimidating, and oppressive investigations.

Senator MOYNIHAN. Mr. Davis, you will recall that it was the IRS that finally nailed Al Capone.

Mr. DAVIS. Absolutely. I do, indeed, Senator Moynihan. That has been mentioned repeatedly throughout the recent history of the Internal Revenue Service in justification of the use of these kinds of techniques. That is an important observation, and there is value in that function. The problem is, we all are comfortable with the concept of using those kinds of techniques in dealing with violent criminals, and Mr. Capone and his ilk were in that class.

What troubles us, is are we equally wise to use those same strategies when we are dealing with a citizen who runs a little grocery store by the side of the road?

Senator MOYNIHAN. A fair and explicit question.

Mr. DAVIS. Yes, sir. Indeed, it is. Thank you for raising that question.

The example I would like to bring to you, if I may, from my own experience is as follows. In June of 1994, approximately 10 IRS special agents appeared at a private residence at 7:30 in the morning. They knocked on the door, which roused the resident of the home from her bath. This resident, Sally, answered the door in her bathrobe. There were 10 IRS special agents in her yard and on her porch, one of whom presented a warrant to search her home.

She was told that she could either leave her home or stay, but if she left she would not be permitted to return until the search had been concluded. She chose to stay and was confined to one bedroom. The remaining agents searched her home for about 8 hours and then they left. The only property which was seized and taken by them as evidence was 86 old family photographs.

Have you a question, Senator Moynihan, or are you just reacting to what I am describing?

Senator MOYNIHAN. I am listening.

Mr. DAVIS. Thank you.

Those 86 family photographs, many were taken at Christmas time and showed the family around the Christmas tree. Later, Sally discovered the real reason for that invasive search. It was not to seize contraband, or weapons, or drugs, or evidence of any crime.

Instead, the agents had brought with them a furniture appraiser who went from room to room, valuing the beds, the sofas, the chairs, the tables, and other personal effects which had been left in the house by her grandmother, who had passed away a few years earlier.

The IRS believed that Sally's father, the executor, had under-valued the furniture on her grandmother's estate tax return. Sally was not a suspect or in any way involved in the estate tax matters, and her father did not live in the home with her. The criminal investigation of Sally's father which was then pending was later abandoned by the Internal Revenue Service.

The extravagant use of agent time in preparing for and executing this raid on the home of an admittedly innocent party was utterly needless. A simple telephone call to Sally would have resulted in consent or permission for the appraiser to enter the house and inspect the furniture.

It is obvious in this context that intimidating and intrusive searches and seizes are simply not necessary to develop a valuation case involving household furniture. In my view, that search and seizure operation never should have been authorized or executed. Several years later, fairly recently, I demanded the return of the 86 family photographs and we finally got them back.

I believe, and I think others may join me in this belief, that kicking down doors, wearing body armor, and carrying automatic weapons and bursting into people's homes with large raiding parties are techniques which should be used, if used at all, in investigations of dangerous and violent criminals.

The IRS CID should do what it was created to do, in my view, and that is to enforce the Internal Revenue laws and largely leave violent and dangerous criminal suppression to the DEA, FBI, and local law enforcement authorities.

There should be exceptions to the rule in the case of violent and dangerous criminals who threaten the public safety like Al Capone, but those exceptions should be limited and the strategies used in those cases should not be imported into the other class of cases which are their chief work.

I would also like to speak briefly on the subject of undercover operations. Some of us also believe that the deceit and the misrepresentation inherent in undercover investigations and sting operations have no proper place in routine criminal tax investigations.

Successful criminal tax prosecutions have long been made without the aid of these undercover techniques. Indeed, they are used in fewer than 3 percent of the total cases, according to IRS view, which leaves it pretty clear that one can make 97 percent of these cases—and I suspect a much greater percentage—without the use of these techniques.

I believe the IRS does serious damage to its image, its relationship with the public, when it lies to and deceives taxpayers in routine criminal tax investigations.

I would close with this thought, if I may. There is, I believe, a pervasive national frustration with our current Federal income tax system which is far too complex and far too unintelligible to be fairly and uniformly administered by the IRS, or, indeed, be complied with by the great majority of our taxpayers.

I would, therefore, respectfully urge—and I heard this from other voices today—that the time is here for some kind of substantial simplification of the Internal Revenue laws which the Internal Revenue Service must struggle to administer and the taxpayers must equally struggle to comply with.

Thank you very much.

The CHAIRMAN. Well, thank you, Mr. Davis. As you have heard, we feel very strongly about the need of reform and simplification.

Just let me say, as one citizen, I am outraged that any of our citizens would have to undergo and endure the kind of anguish that is caused by such intrusive practices. It is a serious matter that we are looking at very carefully.

Mr. Epstein?

STATEMENT OF EARL J. EPSTEIN, ATTORNEY, PHILADELPHIA, PA

Mr. EPSTEIN. Thank you, Mr. Chairman.

My name is Earl Epstein and I am a practicing lawyer, a member of a small firm in Philadelphia, and I appreciate the opportunity to testify here today.

For the past 35 years, after completing a clerkship at the U.S. Tax Court, I have been practicing tax law in Philadelphia. During that time, I have represented many taxpayers before the Internal Revenue Service.

It may sound like I am repeating what a lot of other people have said here today, but it is the truth that most of the people that I have worked with, from the Commissioner and the Chief Counsel at the top, all the way down the line, have been terrific people, hardworking, honest people, and they do their best and it is a difficult system. I guess I should say, some of my best friends work for the Internal Revenue Service.

But when you get down to the Collection Division, you have a whole different situation because it is clear to me that harassment and overreaching by the Collection Division is not isolated, but is, indeed, a practice.

It is my experience that collection agents treat taxpayers as though they were deadbeats, people intent on cheating the government. For some reason which I have never understood, they also treat the taxpayers' representatives as though they were just accomplices in that effort.

Of course, that perception is an unfair one. For the most part, I found that people who cannot pay their taxes when they are due are often caught in circumstances which are not of their own making.

Sometimes they are innocent women caught in a situation created by their husbands. Some have been audited and found to have

made an honest mistake on their tax return, or maybe the Tax Court has disagreed with a position.

Whatever the reason, they find that they do not have the cash with which to pay and, in most cases, it is the interest and penalties which are added on to the tax which cause their downfall. Only rarely have I found taxpayers who have the money and just do not want to pay.

I would like to give you just a few quick examples of some of the cases in which I have been involved with over the years. Just recently, I came to represent a taxpayer who had directed his previous attorney to make a $30,000 payment to a collection agent on the promise by the agent that the payment would be credited to his personal liability and not to a corporate liability for which he was not responsible.

When the attorney made the payment, in fact, the $30,000 was credited to the corporate liability. When I got into the case and I challenged the agent, he just laughed at me and he said, well, did your client get that promise in writing? And that was the end of the story. My client had to pay the $30,000 again, which he borrowed from his father.

A few months ago, the Collection Division placed a lien against the joint account of a husband and wife in Tennessee when the liability for the tax was only the husband.

I brought the agent's attention to a Tennessee Supreme Court case which was controlling which made the lien invalid against the joint bank account, but the result was that the agent would not listen and the funds which the wife had borrowed from her father to pay for food for her children was taken by the Internal Revenue Service. The amount that was involved just did not justify the litigation that would be required to recover the funds.

A number of years ago, a woman came to me with a story. She said her beauty shop had been sold by a collection agent at auction, even though she had displayed a canceled check for $175 showing that the tax had been paid. The agent would not look at the check, refused to listen, and went ahead and conducted a public auction in front of her friends and her family. She came to me afterwards and I started to check into it.

What I discovered was that the Internal Revenue Service had made a computer error. They had debited the tax twice and only given her one credit for the payment, so that when they added up the totals before this auction it actually showed the tax was due, and it was not.

I went to look at what I could do about it. Well, the Federal Tort Claims Act prevents you from bringing an action against the government for this kind of a situation. The most I was able to do for her was to get a private bill introduced into the House which would have allowed her to sue for compensation, but that, of course, died in committee. It was just a little thing, and that was the end of her. The only thing she had to show for it was that she could show her friends the printed copy of the House bill.

During my representation of a taxpayer who had been harassed by the IRS over a period of years, I attempted to settle his case with the Collection Division. We filed the Form 433, which is a list

of his assets and liabilities, and that is signed under the penalties of perjury.

The next thing we knew is that an agent, one that I had dealt with before, had fought with before, and had problems with before, got into the case and he started a criminal investigation. This went on for some time, with my taxpayer spending a lot of money on representation.

Finally, we caused a hearing to be held in the U.S. District Court to quash a subpoena that was issued by the IRS. At that point when the District Court judge heard the story, she turned to the agent and said, what is this all about; what are you looking for? Sheepishly, he admitted that there were two stocks that were in the name of the taxpayer which were not listed on the form.

The taxpayer leaned over to me and whispered, they are in custodian names for my children, they are not mine. I informed the court and the court said, fine. Bring the certificates in and show them to me tomorrow morning. Then she turned to the agent and she said, I do not want you bothering these people. Stay away from them until we conclude this matter.

At 7:00 the next morning I got a phone call from my client. That agent had been pounding on his mother's door, an 85-year-old woman, demanding to be let into the garage to go through papers in the garage.

Of course, I reported this to the court and of course the court chastised the agent. But I have to tell you that I had to deal with him again and again, and as far as I could tell nothing ever happened to him.

A few years ago, a collection agent came to my office and asked to see me on a personal matter. My secretary came in and said, it is personal. I thought maybe he had a problem that he wanted to consult me with. When he got into my office, he demanded to see files of my client.

I said, first of all, I have an attorney-client privilege and you know I am not going to show you the files. Second of all, why did you lie? Why did you tell my secretary it was a personal matter when you knew it was not? He looked at me and he kind of shrugged his shoulders. He said, well, sometimes we need to lie.

I asked him to leave. He would not leave. I insisted that he leave. He did not leave. I finally—and this is the truth—got up, I took him by the neck, and I marched him physically out of my office into the hallway to the elevators.

I was so incensed that I wrote a letter to the Commissioner of Internal Revenue, whom I believe at that time was Roscoe Edgar. Two days later, I got a phone call from the Commissioner's office. They were horrified at the story. They promised to investigate.

A couple of weeks later I got another call from the Commissioner's office saying they had investigated, they apologized, and that the agent would be disciplined, but please do not ask what the discipline is, and I left it at that.

What that tells me is, when the Commissioner finds out about these things, when the hierarchy knows about these situations, they will do something and they will take action. I think the problem is, most of the time it does not get that high and the people down at the lower end in the Collection Division do not care and

they protect each other. I think what you have is an institutional philosophy or personality where fear and intimidation is approved.

My only suggestion to you, sir, and I know you have adopted some of the provisions of the Federal Debt Collection Practices Act, which I think is wonderful, but I think the key to this thing is that a right of an individual who is harmed to bring an action, not only against the institution, but against the individual.

Senator Gramm talked about justice. As far as I am concerned, the only justice that we will ever get is if the individual and the institution is concerned about personal liability as a result of improper actions and violations.

Thank you, sir. I would like to submit more detailed written comments, if you would.

The CHAIRMAN. Thank you. Your full statement will be included as if read. You are correct, we have incorporated the standards established by the Fair Debt Collection Practices Act, but will look further at your suggestion.

Senator MOYNIHAN. But we have not included the personal liability.

The CHAIRMAN. No, we have not, so we will take a careful look at that.

Mr. MacNaughton?

STATEMENT OF PHILIP MACNAUGHTON, ATTORNEY, HOUSTON, TX

Mr. MACNAUGHTON. Thank you, Mr. Chairman.

My name is Phil MacNaughton. I am a lawyer with offices in Houston and my practice does include representing taxpayers before Internal Revenue in tax controversies and some collection matters.

The Internal Revenue Service has claimed that its officers are trying to be fair with taxpayers and that the occasional horror stories represent aberrant situations. I would like to tell you about one IRS revenue officer whose abusive actions may have literally hounded a Houston taxpayer to death.

In 1995, a CPA referred to me a 61-year-old swimming pool designer who was being pursued then by tax collectors in connection with possible assessment of 941 and payroll taxes. Although ill with heart disease and cancer, the man was still working each day and he was supporting himself and his family.

The first thing I did was contact the revenue officer, determined what information he wanted. I provided it. I also sent to him a letter that detailed the taxpayer's fragile medical condition and I asked him to route all communication through me.

In mid-1995, my office filed on behalf of that client a written offer to compromise the taxes. The Internal Revenue Manual has written procedures governing the offer and compromise process. Those procedures include statements that the collection activity shall cease during the pendency of a good-faith offer and compromise. They get more detailed than that, but that is the general rule.

Despite that, though, the revenue officer continued his collection activities in this case despite continued objections by me. I advised the revenue officer that these collection efforts were in violation of

written IRS procedures and that they also, more importantly, were a threat to the taxpayer's life because he did suffer from heart disease, he had experienced, I think, three heart attacks by then, and he had reported to me that the IRS collection actions were terrifying to him.

In response, that revenue officer typed up a summons, personally, he told me, ordering the taxpayer to appear before him for face-to-face interrogation, and then personally drove that summons to the taxpayer's house and served it on his son when he was not there.

My client called me, clearly shaken. I called the revenue officer and asked him to provide to me any questions to which he wanted answers, but he told me that what he really wanted, and intended to get, was a personal confrontation between himself and my client.

I asked him why and he was simply silent. This was a phone conversation and, for perhaps 15 seconds, there was dead silence. I reminded the revenue officer that my client was ill with heart disease and cancer and should not be subjected to the stress of face-to-face interrogation. He responded then with derisive laughter.

I then contacted his supervisor, explained the situation, and asked for her to stop the harassment. But she refused, saying only that she, in her words, "stood behind her revenue officers." I asked her just to reassign the case to a different RO, but she declined to do that. I then contacted the Chief of Collections and asked him to stop the harassment, but he also declined.

Next, I contacted the Problem Resolution Office in Houston and requested what is called a taxpayer assistance order to stop the harassment. In support of that request, with it, I faxed a copy of a letter I had obtained from the taxpayer's physician.

The letter stated that the taxpayer was, in the physician's words, "severely impaired and unable to withstand stressful situations because of his severe heart failure and cancer."

The Problem Resolution Office declined to issue the TAO because there was "no significant hardship," although privately the personnel there acknowledged that they knew this officer was someone they felt was mean.

The IRS continued its collection actions. In late October of 1995, my client received a notice of intent to levy. Ashen-faced and visibly distressed, he hand-delivered the letter to me that same day. Two days later, he died from heart failure. He was then 61 years old, and is survived by his wife and four children.

I provided that information to the Treasury Department and asked them to investigate. The Regional Inspector General for Investigations, Southern Region, concluded that, "These issues are best addressed by the agency involved," and sent the file back to IRS.

IRS then sent me a letter which claimed to report the results of the investigation. IRS's investigation consisted entirely of accepting everything said by the revenue officer whose behavior was in question as gospel. Not surprisingly, the IRS came to the conclusion that the revenue officer's actions were, in their words, "taken in accordance with agency procedures."

I do not think anyone can be certain that that RO's actions were the proximate cause of that taxpayer's death. But what is clear to me is that that officer demonstrated a callous disregard for a taxpayer's life, that his behavior was condoned specifically by his supervisor, it was permitted by the Chief of Collections, it was not stopped by the Problem Resolution Office, and it was, in my opinion, not adequately handled by Treasury or by the IRS when it was brought to their attention.

IRS abuse is not a series of isolated events. It is my experience that IRS culture increasingly permits, and even encourages, taxpayer abuse. Many IRS collection personnel regularly ignore written IRS rules and procedures, jumping from one excuse to another while they continue to harass taxpayers.

I know of one IRS employee whose in-service instructor asked of the class how the IRS enforces tax compliance. After a moment of silence in the classroom, he wrote the word fear in letters that reached from the top of the blackboard to the bottom, and then left the room.

I hope these hearings and the reform bills will help correct IRS's drift into becoming our National bully. But, if I may, while these reforms are welcomed they are only a temporary fix, in my opinion. The long-term solution will require replacing the income tax system as a method of financing our government.

Even if Congress were able to stop all the abuse and to spend all of the money necessary to replace IRS's Model T computer system, we would still have a system that requires the deep intrusion of the Federal Government into the daily life of many, if not most, Americans, one that burdens us every year with the need to spend time and money filling out exquisitely complex forms.

I have heard about flat taxes and I do not see how they solve this problem. I do some audit work too, and I have never had an audit where application of the correct brackets was even an issue, much less a problem.

The problem is, income is just a complicated concept. If you tax income, you have to define it. All simplistic definitions will fail and you will have to come up with the complicated ones you have now, or something like it. Any tax on income, flat or graduated, is still going to require a complicated Tax Code and, therefore, a huge Federal bureaucracy.

Still, the issue of the moment is taxpayer abuse at the hands of the IRS, and I thank you for refusing to accept it. Thank you.

The CHAIRMAN. Well, I thank you for being here. You are right, your client's experience is not unique. This is a matter of great concern to me, as well as the question of simplicity of the tax system.

Senator MOYNIHAN. But Mr. Chairman, we are about to hear Mr. MacNaughton's solution and his time was up. If you have an answer, you would not mind putting it in writing, would you?

The CHAIRMAN. We would be very happy to receive that.

Mr. MACNAUGHTON. Sir, if I may, my dad, who is 91 now, was a practicing accountant for some 65 years, and had a solution. He said, all we need is a simple law that would require all of the members of Congress and the President to prepare their own tax return without professional assistance. [Laughter.]

The CHAIRMAN. That may well be the answer. Well, thank you, Mr. MacNaughton. The hour is growing late and we do have a policy luncheon, so I do want to proceed.

Mr. Mayo?

STATEMENT OF HON. RAY CODY MAYO, JR., ASSISTANT DISTRICT ATTORNEY, CADDO PARISH, LA

Mr. MAYO. Thank you, Mr. Chairman.

My name is Cody Mayo and I live and work in Shreveport, Louisiana. I graduated from Louisiana Tech University in 1976 with a degree in accounting. I went to law school at Louisiana State University Law Center, and graduated in 1979.

My first job was with the Caddo Parish District Attorney's Office as Assistant District Attorney, a position that I still hold this day, prosecuting only special white collar crime assignments.

In early 1981, I took and passed the CPA exam and I continue to hold a license as a certified public accountant. I returned to school in 1981 and earned a Master of Laws and Taxation, graduating in 1982 from Southern Methodist University School of Law.

Since that time, I have had an active tax practice, as well as holding a part-time position as Assistant District Attorney. I am board certified in taxation, I am board certified in estate planning and administration. I know almost everyone in the Shreveport office of the Internal Revenue Service on a first-name basis.

I have represented taxpayer in disputes with the IRS most of my career. These taxpayers come to me in their times of crisis for help in dealing with a Tax Code that to them is confusing and insurmountably complex, while at the same time dealing with an agency that too often is overbearing and, in some cases, outright mean.

I enjoy my work because it pits David against Goliath, the little guy in need of help against the most powerful of agencies. This, to me, is the ultimate calling of a lawyer, to help those people who would otherwise be helpless.

It is because of this that I come before you now, because without lawyers who are willing to aid taxpayers against the Goliath of the IRS the individual taxpayer, the small businessman, the everyday go-to-work-pay-your-taxes American will be defenseless when caught in IRS's cross-hairs.

Through many years of experience I have seen the mental anguish and depression suffered by taxpayers who are under audit or investigation. For many, it is the worst experience of their lives.

Several of my clients have divorced because of the pressure of IRS audits or investigations. One of my clients, a very successful businessman, actually had a nervous breakdown because of the audit and was taken from his house in a straightjacket by deputy sheriffs.

One of my clients put a .357 magnum to his head and blew his brains out just 4 days before his Tax Court case came to trial because he could not take the stress any longer.

These experiences have shown me why it is important to have competent and zealous representation for the American taxpayer. Often I, as a tax attorney, am the only thing that stands between the defenseless taxpayer and the IRS juggernaut.

As a lawyer who represents taxpayers I have had the opportunity and the pleasure, and in some cases unfortunately the misfortune, of working closely with agents and employees of the IRS. Over the years I have met and worked with and, in many cases, become friends with many fine employees of the IRS.

While I am here to talk about the abuses that I have suffered and observed from certain members of the service, it would also be a disservice to paint with a broad brush and imply that all agents and employees of the IRS are bad people. Most of them are not. They are loyal public servants trying to do a most difficult and thankless job.

While I have had my disagreements with many over taxpayer issues, I can say over the years I have come to respect many persons within the agency who serve it loyally. Many of these same people have become my friends and, in recent years, my clients.

Too many of these loyal public servants have themselves become victim of the IRS culture and have been singled out for abuse and discrimination by an agency that, in all fairness, is out of control.

There is a clear and present danger not only to taxpayers, but the agency's own employees have been and are being subjected to arbitrary and outrageous treatment at the hands of the IRS.

My most immediate concern, however, is the agency now has gone beyond merely abusing taxpayers and many of its own loyal agents and employees. I, as a tax lawyer, am concerned that it appears that the agency has in some instances directly targeted lawyers who represent taxpayer in an effort to intimidate, harass, and I believe with an ultimate goal of making lawyers think twice about zealously representing taxpayers.

I know this because I was, and still may be, a target of such agency attack. I have also witnesses firsthand the targeting and criminal investigation of another tax attorney over a matter that can best be characterized as a witch hunt.

When the government became aware of the existence of evidence of this lawyer's unquestioned innocence, the government chose to abandon the investigation or risk exposure of its sinister motives.

I have heard that many prominent tax attorneys are unwilling to appear before this committee because they are afraid of the retaliation of the kind I have suffered. Frankly, I am concerned that my appearance here could further enlarge the target on my back.

In 1992 and 1993, I was representing a small business corporation and the two owners of the business in an audit proceeding of the corporation with the IRS. During the course of the audit, the local group manager for exam at the IRS became enraged when I refused to allow my clients to be interviewed by the IRS, asserting their constitutional privilege against self-incrimination.

The agent thereupon directly threatened to subject me to the full wrath of the agency, stating, "Maybe we just ought to audit you." Understandably, I was shocked at this direct threat of retaliation. Soon thereafter, I learned that this was not an idle threat.

I was soon subject not only to an audit, but to an intense criminal investigation as well. My clients and business associates were bombarded with IRS summonses as part of the criminal investigation. My business and financial dealings were put under intense scrutiny.

My confidential tax information was illegally disclosed, with the primary instigator of this vendetta openly bragging among other IRS employees of what he was doing and why, all because I stood up for my clients.

After several grueling months of this torture, the IRS finally dropped the criminal investigation and issued a no change letter on my audit because, despite their best efforts, there was nothing to hang me.

My paranoia had saved me. Because I had always feared that some day I might be a target, I have always overpaid my taxes. As the IRS's own records show, my overpayment was very substantial and the IRS knew it from the beginning.

As stated earlier, having the IRS investigate your affairs and scrutinize you is, at best, uncomfortable, but when there is someone behind the investigation that is trying to carry out a personal vendetta, it can be downright scary. I frequently had to ask myself if it is worth it. I have my family to think about and I wonder, should I find something else to do, some other way to make a living?

I can tell you from first-hand experience, when two IRS agents, one of them armed with a gun, corner you as you leave the District Attorney's Office where you work after following you there, produce their badges, and tell you that you are under criminal investigation for having failed to file your tax returns when the returns have, in fact, already been filed, it is very stressful and it makes you wonder what has happened to our country.

Unfortunately, the abuse did not stop even after the termination of the criminal investigation and after the audit showed my return was 100 percent correct. I was due a substantial refund. A campaign of harassment continued for years.

In June of 1996, I finally heard from other agency employees that the years of abuse I have suffered was a result of a vendetta by the group manager who was bent on punishing me for daring to stand up for my clients.

I have now initiated a lawsuit in the U.S. District Court for the Western District of Louisiana seeking redress for what can only be described as outrageous conduct on the part of the IRS.

The group manager violated existing Federal law prohibiting willful oppression of a taxpayer. This is a felony. The Justice Department has the responsibility to prosecute agency employees who wailfully oppress taxpayers or disclose taxpayer information, then must also defend the action of the same IRS employees in civil suits brought by oppressed taxpayers. Despite the lawyer jokes you have heard, this does require talking out of both sides of your mouth. What is wrong with this picture?

The IRS has responded to my lawsuit, claiming, in essence, that even if these facts are true, it contends I have no recourse against the IRS, or even the responsible employee. The IRS contends that it and its employees are immune from this type of suit.

Legislation is needed to make it absolutely clear to the IRS that this type of conduct is unacceptable and that it will be held responsible. I think Mr. Epstein referred to a private cause of action. Just about everyone at this panel could tell you that that is definitely needed.

The agency cannot be trusted to police itself. I only filed suit after making a complaint to the Internal Security Division and nothing was done. I express my concern to the members of this committee. This committee has become aware in recent months of shocking instances of abuse of taxpayers, and more recently abuse of IRS employees, by an agency that is clearly out of control.

The IRS is now targeting even the attorneys who dare to represent the everyday taxpayer in what I believe is an attempt to intimidate and harass those attorneys who dare to stand up for American taxpayers.

For good reason, this is an area which most attorneys fear to tread. In light of the outrageous abuses of taxpayers brought before this committee in recent months, the need for competent and zealous representation of the American taxpayer is of obvious necessity.

The attempt of the IRS to deprive citizens of their right to competent and zealous representation through harassment, intimidation, and abuse of the attorneys representing these taxpayer must be stopped. Taxpayer representatives need protection from the IRS.

Thank you.

The CHAIRMAN. Thank you. Just let me say that right of counsel is an important right. I can tell you it is very disturbing to sit here and listen to your testimony. That is the reason for these hearings, to try to do something about it, and I appreciate each and every one of you being here.

I have a series of questions that I would like to ask the panel. First, all of you have described in your statements today some kind of an experience with an over-zealous or abusive IRS employee.

How difficult was it for you to receive a response from the IRS when you reported this abuse? Was action ever taken to reprimand or remove the employee? I think, Mr. Mayo, you have already answered that question, but if you care to elaborate.

Mr. MAYO. It does not take very long to get a response. Response comes fairly quickly, and the answer is, we are not going to do anything about it.

The CHAIRMAN. Mr. MacNaughton?

Mr. MACNAUGHTON. That was exactly my experience. I got responses very quickly and the responses were either, I am not going to do something about it, or it is somebody else's job and that is why I am not going to do anything about it.

The CHAIRMAN. Mr. Epstein?

Mr. EPSTEIN. I had that one contrary experience where I wrote directly to the Commissioner, and I felt that he was zealous in doing something. Of course, I do not know exactly what it is that he did, but he certainly responded and did indicate that he felt that the actions of the agent were wrong. But within the Collection Division itself, I would agree with my colleagues, that you get no response and no assistance.

The CHAIRMAN. Mr. Davis?

Mr. DAVIS. And the fundamental experience I have had is that the accounts of the taxpayer's representative and the taxpayer are discounted, not given credit, and the assessment of what went on and the report by the agent is always accepted. There is no objec-

tive attempt to find fact, and the complaint is almost uniformly rejected. That has been my experience.

The CHAIRMAN. Let me ask you this, Mr. Davis, and I will ask each of you. In your experience representing taxpayers, have you ever known an IRS employee to open a fraudulent criminal case in retaliation against a taxpayer or as part of a personal vendetta? If so, what happened to the IRS employee, what about the targeted taxpayer?

Mr. DAVIS. Of course, this is a subjective assessment of why someone did something. My experience tells me that, yes, criminal tax investigations and civil examinations of returns have been initiated by individual revenue agents and revenue officers, in part, in retaliation for positions taken by the taxpayers or taxpayers' representatives. I believe that to be true. Again, that is my personal assessment. I cannot vouch for what is in the mind of the person making the referral.

The CHAIRMAN. We appreciate and understand that.

Senator MOYNIHAN. Mr. Chairman, could I just remark at this point, in response to Mr. Davis' comments and the others', that Commissioner Rossotti has appointed Judge William Webster to conduct an independent investigation of the Criminal Investigation Division.

Judge Webster was a Federal Judge, he was Director of the FBI, and the Central Intelligence Agency. I think we should see that he has this testimony directly.

I am particularly impressed by the thought of the carry over of the modes of the Bureau of Alcohol, Tobacco, and Firearms into body armor and automatic weapons. That is not appropriate to a tax collection agency.

The CHAIRMAN. I have to say, Senator Moynihan, that to me it is very disturbing, very much a concern, that these intrusive tactics which were not the practice 10, 15 years ago, are becoming so commonplace.

Senator MOYNIHAN. This has the quality of fashion about it.

The CHAIRMAN. As I said in my opening statement, I congratulate and applaud what the new Commissioner has done in creating this independent study, because I think is a matter of the highest importance in reform of the culture of IRS.

Mr. Epstein, do you want to make further comment on my question?

Mr. EPSTEIN. No, I think I agree with what Mr. Davis said. Absolutely.

The CHAIRMAN. Mr. MacNaughton?

Mr. MACNAUGHTON. I have not had that experience.

The CHAIRMAN. You have not.

Mr. Mayo?

Mr. MAYO. I am familiar with one. I am familiar with two, my own and another one that I saw less than a month ago.

The CHAIRMAN. Having heard your testimony, Mr. Mayo, I would like to ask the rest of our practitioners if they have ever personally experienced retaliation from the IRS because of their representation of a taxpayer.

Mr. Davis?

Mr. DAVIS. Well, yes, although I would say much of the retaliation I have experienced I will put in the category of lawful but reprehensible conduct. That is, there will be a level of rudeness, abruptness, and unfairness in the exchanges, which I regard as lawful.

They do not have to love me, and they do not love me, when I take a role of vigorous advocacy. That occurs. In terms of any direct referral of my returns or any direct retaliation, I fortunately have not had that experience.

The CHAIRMAN. Mr. Epstein?

Mr. EPSTEIN. I have had no problem with that, and I certainly hope it does not start tomorrow morning. [Laughter.]

The CHAIRMAN. Mr. MacNaughton?

Mr. MACNAUGHTON. I have had the experience Mr. Davis describes, and I also hope that it does not start tomorrow.

The CHAIRMAN. The last question I will ask, and I may submit some of these in writing, but do you have any suggestions of ways to change the current culture of the IRS to prevent the inappropriate use of armed raids and other unnecessary law enforcement techniques? Mr. Davis?

Mr. DAVIS. Well, I believe, Mr. Chairman, I have suggested one. That is, to a considerable extent it may be useful to redirect the resources of the Internal Revenue Service back into what they refer to as tax gap cases. Those are cases which are directly intended to reduce this $100 billion deficiency or this amount which goes unreported each year.

There are roughly 3,500, perhaps, IRS special agents in the United States, and 40 percent or more, as much as 50 percent, of those resources have been used in specialized investigations in areas that are currently of interest to the Congress, for example, drugs and organized crime, Medicare fraud, bank and savings and loan fraud, and they deflect their resources into those areas where they get in touch with these intrusive techniques and they become sort of commonplace.

If they would spend more of their resources trying to collect that $100 billion gap which they have themselves identified, that might be the proper calling for them and keep them away from the temptation to borrow the hard-ball techniques from Drug Enforcement and use them against mom and pop and their grocery store on the street corner.

I think if they would use their resources in the way I think Congress intended—I hope that I am right in that interpretation—then I think there would be less temptation to get involved in this hard-ball strategy that is currently being used.

The CHAIRMAN. Thank you, Mr. Davis.

Mr. Epstein?

Mr. EPSTEIN. Yes, I have one thought. If some of the actions that we have heard took place in private industry, there would be a right of action where you would be able to sue the company, you would be able to sue the employee who harassed you or caused you harm. The Federal Tort Claims Act, as I understand it, protects the individual and the government from actions, civil actions, for damages.

To me, that gives them a license that nobody else in the economy has. If I do something to my employee or harass the employee, either I get sued or my firm gets sued. But if someone from any government agency does the same thing, they are protected and the agency is protected.

So to me, the first thing is, I would give a right of action, private action, against the individual and the agency. The second thing I think I would do, which I think is almost as important, is that I would require the Commissioner to report to the Congress personally each year about actions for harassment or violations and compensation paid by courts.

In other words, put the Commissioner in the position where he must know about what happened and he must stand before you and report what happened. My reaction is that if the Commissioner had to do that, he would do everything in his power to stop it because he would not want the embarrassment of standing in front of this committee.

The CHAIRMAN. How would you answer the assertion on the part of some that if you created such a cause of action, the IRS agent would not act, he would not place himself at any risk, so your whole enforcement procedure would collapse.

Mr. EPSTEIN. Well, to me that is a specious argument. If you follow the rules, and the Internal Revenue Manual is very clear on what the rules are, you are safe, if you do not follow the rules, you are at risk.

The CHAIRMAN. Let me ask Mr. Davis, do you have any comment on the creation of a tort and the concern that that would hamstring efforts?

Mr. DAVIS. Yes, Mr. Chairman. I will confess, I am very concerned about that. It is true that we in the private world are accountable in civil lawsuits, and even otherwise in criminal proceedings, if our conduct crosses the lines. But I am more cautious about the idea of creating a private cause of action involving individual IRS employees.

I am not suggesting there should be no remedy. One may fashion a remedy that would cause the agency to respond, the Internal Revenue Service to respond, if it inflicts suffering on taxpayers, but the individual action I view as a closer call and one about which I would be somewhat more cautious, I think.

The CHAIRMAN. Thank you.

Mr. MacNaughton?

Mr. MACNAUGHTON. How to police the police has always been a problem. I think it is also true that governments are inherently less responsive to lawsuits than are private individuals because governments can spend somebody else's money to respond to them. It does make for a problem. I think a private remedy is appropriate under egregious situations.

I also think, though, that in my experience where this problem will get addressed is when people that work for the IRS know that misbehavior—and these are not mistakes, these are intentional abuse situations—is not going to be tolerated, and they will know that when they have a Commissioner who makes that clear and when they have a committee like this one that makes that clear, if that is held over time then it will not be a problem that goes

away and has to be revisited every 5 or 6 years because the Commissioner is there continuously.

I have seen this in other governmental agency situations. When you get leadership that, in fact, says abuse will not be tolerated, then people change and the culture then can change. Without it, I think it is very hard to get there through legislation and penalties.

The CHAIRMAN. Mr. Mayo?

Mr. MAYO. My solution would be two-fold. I do not see a problem with a private cause of action. We have private causes of action against all the police departments in the country. When a policeman violates rules and beats up a citizen, he can be sued. Now, what is the difference with an IRS agent that violates the rules and beats up on a taxpayer? He should be sued, too.

But that is the negative reinforcement. There is a better solution, in my mind. That is, I am familiar with all of the revenue officers in my local district. I know that they are all overworked. Taxpayer harassment that we have talked about today is referred to in the business as Grade 9 technique.

The CHAIRMAN. As what?

Mr. MAYO. Grade 9 technique. Grade 9 is a lower level revenue officer who is out there trying to do his job because he is overworked and he does not have the experience needed to bring all the tools into play. Believe me, they have all the tools need.

So if there were more revenue officers and they were trained, as Mr. MacNaughton says, they could increase revenue. A good revenue officer ought to be able to collect a couple of million dollars a year.

I happen to represent a man named W.E. Weldon who was Revenue Officer of the Year in 1993 or 1994, and I have seen him deal with a taxpayer over and over again, that when we got up from the meeting to leave, the taxpayer would say thank you. Thank you.

You are fixing to take my house, I have got to sell my car. I do not know what I am going to do. But thank you, Mr. Weldon, for being so nice about it. He was good. You could talk around my town, and all of the people who have dealt with him will tell you, he is a prince of a man.

You can do this job without being mean. If you had more people with more resources, they could collect more money. Front-line officers, not management types.Front-line officers.

The CHAIRMAN. Maybe the solution is what the New Yorker recently had. It had a cartoon with a revenue agent and a taxpayer there, and on the side was a jar that said "tips." Maybe we could seek that as a goal. [Laughter.]

Senator Moynihan.

Senator MOYNIHAN. Very briefly, Mr. Chairman. This has been wonderful testimony. I again say Judge Webster should have it directly.

I would address a question of culture and how you can change it. I was in the navy 54 years ago. The U.S. Navy in those days had just then given up flogging, but just, not quite. If you go aboard a Trident submarine today and you could be in a Quaker meeting, such is the degree of cooperation and reciprocal agreement and understanding. Things do change and they can change

for the better, and for the worse, as when people start breaking into houses with body armor.

I liked very much Mr. Davis' point about the gap. Senator Kerrey raised that. There is $100 billion a year in taxes not paid. Senator Kerrey, there is $100 billion a year in taxes not paid, as you pointed out. More attention to that would be appropriate.

Well, first of all, just more revenue and less sorrow. I think that is an organizational goal. You might just say, how much resources do we put into that goal as against other ones?

But Mr. Chairman, again, this is a wonderful panel. I have learned a lot.

I think that father of yours knew something.

The CHAIRMAN. Thank you.

Senator MOYNIHAN. Thank you. I have to speak to a forum being conducted by our former colleague Senator Durenberger, so I will have to leave.

The CHAIRMAN. Thank you very much, Senator Moynihan.

Senator Grassley?

Senator GRASSLEY. Yes. Thank you very much for your testimony. Before I ask a question, I would like to follow on and supplement something the Chairman said to the previous panel on a couple of occasions, that we realize the risk that they take in being here to testify.

But I doubt very much if we feel the pain that they feel every day they are having to be on the job with having the reputation of being a whistleblower, and probably the suffering that they go through every day on the job.

I wish we all had a better understanding of that. If we did, we probably would be more outraged than we are with all of the testimony that you folks gave, and the testimony of the previous panel, and probably the more outrageous testimony that we are going to have. I should say more testimony of outrage we are going to have in the future meetings here.

I happen to chair the Committee on Aging here in the U.S. Senate, so I spend a lot of my time on the plight of older Americans and trying to help them. Mr. MacNaughton, you were the one that had the story about the ill client who was pursued by agents even after they knew that his illness was really bad, and that upsets me. Likewise, we had the story about an 80-year-old grandmother out of bed at 5:00 a.m. That is also inexcusable. All the stories we hear are stories of preying on the old, and these are particularly egregious situations.

To all witnesses, do you believe, from your experience, that the IRS has any target on older people?

Mr. DAVIS. No, sir.

Mr. EPSTEIN. No, sir.

Mr. MACNAUGHTON. No, sir.

Mr. MAYO. No, sir.

Senator GRASSLEY. Do you have any other cases or clients that would illustrate what you are trying to tell us? In other words, examples like you had given to us in your testimony. Or does that tend to be the only ones you know about?

Mr. MAYO. How much time do you have?

Mr. MACNAUGHTON. I could talk all day, Senator.

Senator GRASSLEY. Particularly as it relates to older people.

Mr. MAYO. Generally speaking, in my practice what happens is, in the collection area, as is referred to earlier, a lot of people get into collection problems because of things that they really could not control.

The only time I have had a problem with older people was when it was an older tax debt. I had a situation where we could not get an offer and compromise done last year for an older couple. They had a home. They wanted to live in the home. We made an offer and compromise that ultimately was more than the IRS collected on the sale of the home.

Finally, what I arranged was, they would not compromise the liability and the account has now been written off, or as they say in the business, 53, considered uncollectible. They sold the home at a tax sale rather than have the way we arranged the transaction, which was for the taxpayer's brother to loan him some money to compromise the case and take a second mortgage on the home and release the tax lien.

The IRS would not have it, so in this situation we just said, sell it. I mean, fortunately, the taxpayer's brother and in-law were there to bid on the property so he did not have to move out.

Senator GRASSLEY. Mr. Mayo, would you elaborate on that case you talked about in your testimony where you had a client who committed suicide, you had another client who had a nervous breakdown.

Mr. MAYO. The client that committed suicide was an oil field worker. He had a sixth-, seventh-, or eighth-grade education and he operated a cash business. He had gross income probably in the $130,000 to $140,000 range, but only included $30,000 on his tax return.

Now, best we could figure was that that was his net and he just was unintelligent enough to know he really did not owe that much money. But he did not have any records because he operated on a cash business.

So what happened was, he had $70,000 or $80,000 worth of costs associated with this $100,000 of income he did not include, but he could not take a deduction for it because he had no records. I had worked out a settlement between the IRS and the taxpayer, and it was reasonable considering the circumstances, that they would allow a portion of that amount as a cost of goods sold. He was just in a position, he was fixing to have to spend his life's savings on paying taxes that he did not owe, and he just could not take it.

It is my favorite Tax Court story, in a sad kind of way. The Tax Court does not give continuances, so I had to call the court the morning after he killed himself and say, I need a continuance.

District Counsel said, well, you know, the Tax Court does not give continuances. Well, we have got special circumstances. Well, what is it? Mr. So and So killed himself. Oh, you are kidding. No, I would not kid about that. Let us call the judge.

So we call the judge. We say, Mr. So and So has killed himself. Oh, you are kidding. No, I would not kid about that. Then the judge asked the District Counsel, he said, you need to check out Mr. Mayo's story. I mean, for crying out loud, that would not be

anything I could just make up. A taxpayer cannot show up alive later on.

But it was a major deal just to get a continuance of that case for trial. I eventually was able to vindicate him. We turned up some records and I was eventually able to vindicate the surviving spouse. I was just at the point of having her being evicted before we just saved that case, and she was elderly at the time.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Senator Kerrey.

Senator KERREY. First of all, as to this issue of fear, the best witness on that regard was Commissioner Richardson. She was a former IRS Commissioner before Mr. Rossotti who appeared before the IRS Restructuring Commission and said when she received her first paycheck it came in an envelope with a return address of the IRS, and it even scared her to open the envelope. So this issue of fear is a very important one for us to remember.

I would declare that I share Mr. MacNaughton's view that until we collect on some other transaction other than income, given that income is being more and more complex, as long as income is complex it is going to be very difficult.

As long as you are going after income, it is going to be very difficult for us to design a system that is not extremely intrusive. I think that is a fundamental problem that hopefully this Congress can address.

I do think that we can change the law and improve the operation, but as long as we are going to go after income it is going to be and going to feel very, very intrusive and very, very fearsome to the individual that has to document every single thing that they have done over whatever period of transaction that the IRS is concerned about.

Let me ask you gentlemen, were you asked by this committee to evaluate the bill, the legislation that this committee reported out? I am struck in your testimony that none of you have commented on the law that we are about to change.

Mr. MAYO. I have only received a copy of it. I have not yet had the opportunity to study its provisions. What I have seen seems to move in the right direction, but I have not had adequate time.

Senator KERREY. Specifically, I would call to your attention and urge your comment on Title 3, which is all the changes dealing with taxpayer rights. Senator Grassley, who has left, was on the Restructuring Commission and took the lead in this area, as well as Congressman Portman.

There are a number of things in there that you have talked about here, including some right of action, some capacity to recover damages, some capacity to recover damages especially if the IRS has been negligent in the conduct of its efforts.

What we have said essentially is, as with all other areas of human endeavor, if there is not some kind of penalty that has to be paid it tends to deter that small fraction of people.

By the way, one of the things the Restructuring Commission heard is, just as taxpayers are afraid of the IRS, sometimes these revenue agents end up in positions of fear as well. There have been death threats against employees. One of the things we have to be

very careful of is that we do not foment that kind of an environment.

But I would be very grateful, since the Majority Leader earlier announced that we are likely to be on the floor debating this thing next week, if you would look, especially at Title 1, which deals with a number of things that you have addressed.

As to the criminal investigations, unfortunately, the cause and effect of our actions was so unclear it is difficult to figure out what is right and what is wrong. One thing that has happened over the last 15 years, is we have had a huge increase in the amount of money laundering.

A lot of the investigations in the Criminal Investigation Division occur as a result of a referral from some other law enforcement agency that is asking CID to get involved. They are asking to get involved as a result of us again saying we have got to do something about drugs. So they are not doing it by accident. They are doing it, again, because of something that we are doing.

So the only thing we have got in the bill right now creates a unified, new Inspector General for Tax Administration inside of Treasury. What this committee and the Restructuring Committee heard was there was a tendency to say, it is not our fault, it is the other guy's, and they point back and forth and then nobody is accountable.

So if you can look at that, that is in Title 1 of the bill, and if you could give us your evaluation of whether or not you think that is going to improve. Especially Title 1 and Title 2, but anything else in this legislation. As I said, we are going to be debating it on the floor.

And, though I take Mr. McNaughton's point that it is going to be very difficult as long as we are taxing income, we have got to do the best that we can under the circumstances. And we are not going to replace the income tax with a consumption tax this year, but we are likely to change the law governing the IRS.

Something I would like you to commend on though that all of you have kind of alluded to, and that is the resources that we give the IRS. Again, I say for the record, IRS is not Sears and Roebuck. They do not generate the revenue by going out and selling product to customers, their revenue comes from us. We give them their budget.

Mr. Rossotti, in his report that he has filed recently with Congress, lays down the challenge. IRS collects $1.5 trillion with a budget of $7.2 billion. Now, for the record, on a percentage basis that is smaller than any other industrial nation. It is less than a half a percent of total revenue collected.

They got a slight budget increase from last year with substantial more revenue, and I suspect you know what the phrase Schedule B is. We have increased the amount of work both taxpayers and the IRS is going to have to do as a result of the Balanced Budget Agreement that we enacted last year.

I am still sending out press releases praising what I did last year, while trying to avoid the responsibility for the complexity of the Code and the burden I am placing on the IRS to administer that Code.

So $1.5 trillion of collections, $7.2 billion of budget. They process 215 million tax returns, 88 million refunds, assisted 110 million taxpayers, distributed a billion forms and publications, and on, and on, and on.

I would appreciate very much in the interim between today and whenever we take this up on the floor, and I will provide it to you, the year-to-year amount of money the IRS is collecting, the changes in the Tax Code that have occurred during that time period, and the amount of money that Congress has authorized, and just give us your evaluation.

Are we part of the problem again? Are we shorting the agency? You have talked about the need to get high-quality, experienced people. Mr. Mayo, you talked about an individual in your own district who knows how to get the job done.

I mean, one of the problems in government is, we have got to hire, we have got to train, and we have got to retain. As you know, once somebody gets pretty good at being a revenue agent, guess what? You guys hire them, or somebody else is hiring them. They become very attractive employees.

So part of our problem is trying to retain people and getting the resources, it seems to me, as well as the authority to Mr. Rossotti so he can provide the kind of positive reinforcement, incentive pay, and all the other sorts of things that this law does, it seems to me, is a very important issue.

Mr. MAYO. There is one thing, Senator. I can tell you that in my local office there are fewer Grade 12 agents there and fewer revenue agents there than there were 25 years ago.

Now, not only that, but they have lost five revenue agents in the last year, in the last 24 months, as a result of sexual discrimination and a program the Internal Revenue Service has called ERR 16, which was designed to promote minorities and women into upper level positions.

So the way they did it, was they evaluated managers on how well they were promoting minorities and women. When you had an old Grade 12 guy that had been there and was good, you needed to move him out so you could hire somebody else. They have lost their pool of talent in my area. It just happened before our face.

Senator KERREY. I had the very same experience. We had a field hearing both in Nebraska and in Iowa, the Restructuring Commission, and we heard that from all of the people who are providing services, that it is getting harder, and harder, and harder to get services because there are fewer and fewer people available to provide those services, and we are asking them to do more, essentially, with less.

So again, I would ask you, in addition to reviewing especially the titles that are relevant to the things that you have brought to our attention today, and I appreciate very much your bringing them to our attention, and the Chairman bringing it before this committee, but if you could comment on the relevant provisions specifically as to whether or not you think it is going to solve the problem or make it worse.

Second, I will also provide you the year-to-year budgets for the IRS, as well as the amount of taxes they are collecting and some changes in the Tax Code, and just give me your response. Just give

me your judgment. Are we providing a sufficient amount of public resources, given the amount of work we are asking the IRS to do?

Mr. DAVIS. May I add one additional response? It will not take long. One of the most useful words and important words I have heard today, and I heard it several times, is the word oversight. The Internal Revenue Service is an exquisitely sensitive political machine. If they perceive this body and the House Ways and Means Committee are watching their behavior and monitoring what they are doing——

Senator KERREY. Sir, if I could interrupt you, one of the problems—and I apologize for interrupting you.

Mr. DAVIS. No, sir.

Senator KERREY. One of the problems that we have got, and the Restructuring Commission heard it as well, is they do not just go to Finance and Ways and Means, they go to Finance, they go to Ways and Means, they go to two appropriations committees, and two government oversight committees. They have six committees that the Commissioner has got to come up to.

Again, imagine if you had a little company out there and you had 535 members of your board of directors, all elected. Ask a member just to sort of test them who just expressed their outrage, do they know the budget of the IRS? Ask them if they know it. Ask them if they know how many returns are processed. Ask them if they know what the IRS does.

One of the problems that we have got, and you are quite right, this lack of oversight and accountability, we hope to solve with a new public board. We are creating a board. That is in Title 1 of the legislation.

But I hope Congress is also able, in response to the public saying you are part of the problem, you are not giving enough oversight, that we will include language, as the House did, that will require us to have some consolidation of oversight so the IRS can come at least once or twice a year to a single committee and get agreement on what it is that we want them to do. Right now you are apt to get six different sets of instructions coming from six different committees.

Mr. DAVIS. One thing is clear to me since these hearings began, I think, in November. There has already been a change in the attitude of some people within the Internal Revenue Service.

They are sensitized to the fact that the Congress is looking over their shoulder and they are dealing with us in a more responsive and a more positive way. I think that is a byproduct of this oversight. I do not want to overstate it, but I will simply say it is a wonderful thing that you are doing.

Senator KERREY. Thank you.

The CHAIRMAN. I would just give the personal observation that, frankly, my concern is not that there is too much oversight, there has been too little. This organization has been essentially isolated from oversight, either within any administration now or past, that the Congress itself has not help appropriate oversight. I agree with you, Mr. Davis, as to the need of doing a better job.

I want to echo what Senator Moynihan said. This has been an excellent panel. We greatly appreciate your being here today. I know it is at some risk and I regret that, but these hearings would

not be possible without public-spirited citizens like yourselves appearing today. Thank you very much.

The committee is in recess.

[Whereupon, at 1:05 p.m., the hearing was recessed, to reconvene at 9:00 a.m. on Wednesday, April 29, 1998.]

IRS OVERSIGHT

WEDNESDAY, APRIL 29, 1998

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to recess, at 9:00 a.m., in room 216, Hart Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, D'Amato, Murkowski, Nickles, Gramm, Lott, Mack, Moynihan, Conrad, Bryan, and Kerrey.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order.

Let me begin by welcoming everyone back to this second day of hearing to examine the policies and procedures of the Internal Revenue Service.

I believe that yesterday's proceedings clearly demonstrated how important it is that we continue our oversight of this most powerful agency.

These efforts not only focus our attention on the restructuring legislation that the Senate will take up next week, but they also continue to define the critical issues that must be addressed in our efforts to reform this agency.

Our work here is also having a very positive influence on the administration's commitment to addressing problems within the agency. Yesterday's appointment of William Webster to head the IRS review of the Criminal Investigation Division is a most welcome choice.

It demonstrates a willingness to address the concerns that are being raised by our efforts at oversight and is another manifestation of Commissioner Rossotti's dedication to change the way the IRS does business.

One agenda item that I would like to see Mr. Webster add to his review concerns placing these CID employees who are trained to use intrusive and oppressive law enforcement techniques against violent criminals under the direction of our agencies that are experienced at combatting such individuals. These agencies would include the FBI and DEA.

Now, as we heard yesterday it is wrong to use these kinds of aggressive tactics in routine criminal tax investigations of Americans who are neither dangerous nor violent. At every turn we must

work to promote an agency that puts service and efficiency before intimidation and vindictive behavior, and that is what these hearings are all about.

Senator Moynihan?

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Mr. Chairman, I could not more agree about the testimony we heard yesterday in which we encountered members of, how shall I say, the armed forces of the Internal Revenue Service dealing with citizens involved in a dispute with the government over taxes, which is a normal thing.

There is a migration of these SWAT team techniques in our government and we have to be careful about it. I think Judge Webster would be very responsive to your thoughts, he having headed the FBI, of course, and being a judge, and the CIA.

The Bureau of Alcohol, Tobacco & Firearms is in the Treasury Department, so there is a possibility of that kind of trade, and they should pursue it with energy and listen to this committee's concern that the boundary between litigation and para-military activities on behalf of fundraising by the Federal Government ought to be clearly defined.

So I thank you again.

The CHAIRMAN. Thank you, Senator Moynihan.

It is a pleasure to have Senator Chafee here. Senator Chafee?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Well, thank you very much, Mr. Chairman. I just want to commend you for conducting these hearings. As you know, I have been involved with the conference on the highway legislation, the transportation legislation and I have not been able to be here as much as I would like. But I look forward to hearing the witnesses today, and commend you for the leadership you have given to the committee in connection with these hearings.

The CHAIRMAN. Thank you, Senator Chafee.

It is now a pleasure for me to introduce our first panel of the day. These taxpayers have agreed to come before this committee to testify and answer questions about their egregious encounters with the IRS.

I would like to take this moment to thank each and every one of them for their courage to appear here today, and to let them know that the committee is most sympathetic and understanding of the frustration and anger they will experience in recounting their stories.

Our taxpayer witnesses are Mr. John Colaprete, Mr. Richard Gardner, and Mr. William Moncrief, Jr. I will now ask the witnesses to please stand and raise their right hand.

[Whereupon, the three witnesses were duly sworn.]

The CHAIRMAN. Thank you. Please be seated.

We will now start with your testimony, Mr. Colaprete.

STATEMENT OF JOHN COLAPRETE

Mr. COLAPRETE. Good morning, Senators. My name is John Colaprete and I am from Virginia Beach, Virginia. I am in the restaurant business. I am also a husband, a father, a veteran, having served my country proudly as a U.S. Marine Corps captain from 1965 to 1969.

I have never been in any sort of trouble with the law, and I believe that every American has an obligation to pay their fair share of income taxes. I have never failed to meet that obligation.

I have always considered myself both patriotic and a law-abiding citizen. I will always be a law-abiding citizen. However, I feel I have literally been punished for upholding the laws of the Nation I swore an allegiance to honor and defend.

Four years ago, I employed a bookkeeper in my restaurant who eventually embezzled approximately $40,000 from the business. She went to prison for her crimes, but not before turning my life and the lives of countless others upside down.

With the full cooperation of the Internal Revenue Service, this woman, a multiple felon who already had an outstanding warrant for her arrest, managed not once, but twice, to victimize me, my family, partners, employees, and patrons and others of the business community who depended upon me and my business.

This dance with the devil began in March of 1994, when my partner and I became aware that we were being swindled by our bookkeeper. When we discovered substantial shortages in our accounts, we confronted her and she admitted to stealing from our business.

She told us she would make restitution. Unfortunately, rather than make restitution she sought shelter with the IRS and told them a fantastic tale of money laundering, gun running, and drug dealing by my partner and I.

Little did I know that the IRS would spend less than 48 hours investigating my bookkeeper's allegations before conducting raids on my businesses, my home, and the home of my manager. Little did I know that the government that I had so proudly served would accept these allegations to be true, despite the alarming lack of substantiation, probable cause, or proof of any sort whatsoever.

Little did I know that the IRS, when faced with the outrageous claim that I had thousands of pounds of cocaine stored like cord wood in my office, would subscribe to a policy of guilty until proven innocent.

This was not a matter of an honest mistake. In fact, a recently retired FBI agent divulged in a deposition taken for the case that I have pending against the IRS that he had advised all involved to be skeptical about the claims of my accuser. The FBI specifically declined to become involved and, in the words of one of its agents, the whole story sounded like a grade B movie.

On the morning that both my home and businesses were raided, raids executed solely on the word of my ex-bookkeeper, I was in church for the occasion of my son's first Holy Communion.

Armed agents, accompanied by drug-sniffing dogs, stormed my restaurants during breakfast, ordered patrons out of the restaurant, and began interrogating my employees.

The IRS impounded my records, my cash registers, and my computers. Since the raids, we have managed to get up and running

despite what can easily be perceived as our own government's best attempts to put us out of business.

Today, I still wonder how such a thing can happen. But I know it does. I would like you to know that for every taxpayer like me, those who have survived armed assaults on our businesses and our homes, there are perhaps several thousands of taxpayers who, in fear, lick their wounds, tally their losses, and consider themselves lucky that the IRS has finally left them alone, their innocence notwithstanding.

I have nothing to hide and I will never consider myself lucky when I ponder the events of the last four years. As for the taxpayers who have suffered similar injustices at the hands of the IRS, I hear from these people every week. They seek me out and relate horror stories that at one time would evoke from me nothing more than simple skepticism. I used to believe that such things could only happen in a communistic bloc country or police state. I do not believe that any more.

When the raid occurred at my home, the front door was torn from the hinges, my dogs were impounded, along with my safe and 12 years of my personal income tax returns and supporting documents.

When that safe was finally returned, an heirloom watch that I had received as a gift from my late father was missing. In the aftermath of the raid, I returned to find my home in shambles. It was if I had been burglarized, both in appearance and in the sense of having been grossly violated.

While my restaurant and my home were being raided by armed agents of the Internal Revenue Service, a raid was also being conducted on the home of my manager. In that raid, my manager was pulled at gunpoint from the shower and forcibly restrained while he attempted to call an attorney. His teen-aged son was knocked to the floor.

His daughter, 14 years old at the time, had several friends over for a slumber party the night before. These young girls had to get dressed under the watchful eyes of male agents, despite the presence of female agents. The IRS agent stood in the doorway to the bedroom, gun drawn, refusing these young girls even a semblance of privacy. We were never charged with any crimes.

After scrutinizing our records for 4 months, the IRS returned most of them. A rental truck pulled up in front of my business 1 day and the items that were returned were basically dumped in a pile for us to sort through. I never received an apology.

Following the raids, I could get no answers as to why all of this occurred. I was met with, "No comment, Mr. Colaprete," at every turn. Freedom of Information requests were ignored, ostensibly due to a backlog of such requests and despite legally mandated time limits on such requests.

Two newspapers in Virginia Beach made repeated requests under the Freedom of Information Act, only to have the Justice Department thumb its nose at those requests. When an investigative journalist began to get to the bottom of things, he was also subjected to the harassment of the IRS.

He had an opportunity to interview Special Agent Carol Willman from the IRS office in Norfolk, Virginia. During that interview, Ms.

Willman interrupted the reporter's inquiries with a demand for his Social Security number.

Within the year, he was notified that the IRS wanted to audit his return. When a local publication reported this, the audit was abruptly canceled. An IRS agent stated at the time that the agency does not retaliate against citizens through the use of audits, but the facts would seem to indicate otherwise.

The ex-bookkeeper, meanwhile, was kept in protective custody by the IRS in a motel up to the time of the raids. It is almost unimaginable that there could be such a level of incompetence at the IRS that they would not only take the word of this woman and begin any sort of investigation, but they would shield her from the authorities who were trying to arrest her.

The woman whom the IRS was protecting and on whom they had relied had already been convicted numerous times of embezzling and stealing. In fact, the outstanding criminal charge pending against her at the time she approached the IRS was for a crime involving lying and stealing.

Ironically, just a week before this woman approached the IRS I had specifically gone to the police and filed a complaint against her, alleging that she had lied, stolen, and embezzled from me. In the face of all that, how could anyone, let alone supposedly trained, professional inspectors with the IRS accept at face value what the woman was saying?

Based on her word, she, Carol Willman, not only commenced an investigation but completely shut down a business and turned the lives of innocent people upside down less than 48 hours after first meeting this woman.

Is there such a competitive atmosphere within the IRS to add another feather in their cap that they would ignore not only basic investigative techniques, but the obvious flaws in this woman's character and simply accept her at face value?

It is frightening that such a woman could have conned the IRS into believing that her employer, despite all appearances to the contrary, was a high-level gangster, and then shield her from the law in the belief that she would lead them to a bigger fish like me.

To compound this vigilante or lynch mob approach that the IRS had adopted, they then allowed her to leave the jurisdiction of Virginia to go to North Carolina, where she was only later sent to jail for embezzling from three other employers in that State.

On the surface it might appear that she acted alone, but this just is not so. The IRS was her partner in crime, first acting in concert to destroy my life, then allowing her to flee the State and victimize others.

I looked for answers and was rebuffed at every turn. I suffered a deep depression that lasted a year. I was immobilized. I could not get out of bed some days. My neighbors shunned me. My wife, who is an artist, has not been able to pick up a paintbrush in 4 years.

My children were taunted at school and told that their father was a gangster and a drug dealer. I raised my children with a zero tolerance for dishonesty, and now they must hear allegations that I am a major drug dealer and a tax cheat? I am here to tell you, I am none of those things.

Relatively speaking, the trauma that has befallen me is mild compared to what has happened to my manager. He has suffered severe depression, sought counseling from his pastor, literally been shunned by friends and acquaintances, and has yet to get his life back in order. He has been ruined financially and emotionally, with little or no hope of ever getting his life back to where it was prior to these raids.

I am also here to tell you that we cannot treat our citizens this way, not in America. I have been repeatedly victimized over the past 4 years, primarily by a government tax agency that is funded with my tax dollars.

If Americans have a perception of the IRS as a bogeyman, it is because the IRS itself has promoted that perception through policies that are fundamentally unconstitutional and illegal. This is not a partisan issue, this is a people issue. This is a freedom issue.

I have a lawsuit pending against the IRS and I will not rest until I have my day in court. The IRS's response to that lawsuit has been to cast doubt on my character by insinuating that they did find some evidence of wrongdoing, but they chose not to prosecute it.

If I was guilty of anything, why would they choose not to prosecute? While any allegations will eventually be shown in court to be what they are, a smoke screen, until I get into court to prove my case these allegations linger in the community where I live and work and continue to compound my frustration.

The system does not work for the American taxpayer. The total sense of violation that we have experienced has had a devastating effect on us all. In the wake of all this, I find that there is no system in place to defend me, or others like me. I would like to believe that someone takes responsibility for what has happened, for what continues to happen every day in this country.

If the example we ought to set for our citizens is one of no accountability and no remorse, then our form of government, the oldest surviving democracy on the planet, cannot survive much longer.

A day does not go by that I do not wonder what harassment will occur next. I would like to know why this dark entity known as the IRS has come into my life and refused to leave. So who protects me in this system? Who cares about my constitutional rights? Not the courts. Not the IRS. I am hoping that the buck stops here with you, Senator Roth, and this committee.

I leave you with three questions, Senators. Why did this happen? What will you do to see that it never happens again to innocent taxpaying citizens? We cannot employ inexperienced and immature people to play God with the lives of taxpayers, IRS agents who decide that it is a beautiful day to go out and destroy someone's life.

Finally, once this ordeal has ended and I have obtained a verdict in a court of law and a judgment against the IRS, what will you do to assure me that the IRS pays the judgment rather than continue to beat me into submission through endless appeals and an outright refusal to pay the judgment that I obtained?

In this great democracy we have created this entity to collect taxes, which we all agree must exist. However, we have empowered the agency to be subject to no one, to no laws, to no checks and

balances, and all of us, including each one of you, are afraid of them. Why should we fear the very people we employ?

When these hearings began last September I was told that Senator Roth would conduct these hearings because he has no fear. After my ordeal, I have no fear any longer. But when Americans receive that letter with the logo of the IRS in the upper left-hand corner, their pulse rate, their heart beat, and their blood pressure rises. There is genuine fear. This fear must stop.

Thank you for giving me this opportunity, Senators.

The CHAIRMAN. Well, thank you, Mr. Colaprete.

Let me just say that no law-abiding American should have to go through this ordeal. That is the reason we are here today. We are here today to hear the experiences of people like you so that we can reform the process to ensure that the American taxpayer is treated in a fair and equitable manner. That is the whole purpose of these hearings. I appreciate your courage in coming here and telling us your story.

Mr. Gardner, you are next.

STATEMENT OF RICHARD GARDNER

Mr. GARDNER. Good morning, Senators. My name is Richard Gardner. I graduated from the University of Tulsa with a BS degree in accounting. I am a Vietnam veteran, having served in the U.S. Army from 1967 to 1969.

In December of 1976, I started Gardner's Tax Service, Inc., located in Tulsa, Oklahoma. According to the U.S. Federal Attorney, my company prepares between 4,500 and 6,000 tax returns a year, making my tax service one of the largest in the State.

I appreciate the opportunity of being here today in order to tell you about my ordeal with the IRS. While this experience has affected me and my family greatly, this is also a story about how the IRS will not spare anyone, even individuals remotely connected to the taxpayers in question, from unfair treatment, intimidation, and threats.

My personal nightmare began on March 29, 1995. I was in my tax office in Tulsa doing a couple's tax return when one of my assistants called me to the phone to tell me that an IRS agent wanted to see me and was waiting outside my door for me.

I went out to meet the agent and was greeted by approximately 15 IRS agents and between 5 and 8 U.S. Federal Marshalls. They were all armed and they were wearing those jackets that say in bright letters "IRS" or "U.S. Marshall" on the back.

One of the IRS special agents directed me into one of my other offices, handed me a search warrant, and said, "we are seizing all of your client tax returns, computers, large printers, personal papers, and other records."

He then said, "I want you to make a phone call for us. I will tell you what to say. We will tape it. If you will do this for us, we will ask the judge to be lenient on you sentencing."

What was this special agent ordering me to do? For me to call another accountant who did my electronic filing for my clients for a charge that I, in turn, billed my clients for. In essence, the agent was using me to set up the accountant to deliberately get him into trouble.

After I refused to comply and the event with the telephone ended, the seizure of my office property continued. Please understand, at the time of this raid the IRS had no complaints against me that I was aware of, or any complaints from any of the over 90,000 tax returns my office had prepared in the last 22 years.

Following the raid, I went out and bought a new computer, new software, and I reopened the next morning at 8:00 a.m. preparing tax returns. At about 9:00 a.m., the same agent called my assistant, telling her that he thought the office would have closed down.

My attorney at the time told me, "in 99 percent of the Federal cases, when they raid your place of business, they have already indicted you, or will in a few days." In my case, it took nearly 2 years. It took until March 22, 1997 for this episode with the IRS to come to a head. It was a terrible strain on me, my family, and my employees.

The entire case of the IRS against me would extract a terrible toll. It was the intent of the IRS to break me emotionally and financially over what eventually would be a total of 33 months so that I would plead guilty to at least one count each of bankruptcy and tax fraud.

I would like to lead you through some of the experiences that my family and I was forced to endure over the course of these 2 years. Between the time of the raid on March 29, 1995 and the 23 Federal count indictment delivered on March 22, 1997, this same special agent and the IRS took the following actions against me.

They tried to force some of my clients to wear hidden microphones into my tax office to record me, and when they refused, the special agent became angry and hinted, as a result of their refusal, that they too might experience some problems with the IRS.

My employees were threatened with the loss of their jobs and were informed that they could buy out my tax business cheaply, since I would soon be out of business.

In February 1997, the special agent informed me that I would be out of business by that April, since all of my papers had been sent to Washington and the IRS approval to shut me down had been obtained.

My wife, Soccoro, was forced to endure an unnecessary appearance before a grand jury. The IRS lied to the grand jury on the indictment. Many of the 18 tax clients listed on the grand jury indictment never knew anything about it.

One of my clients was surprised to learn from me that his name was on the list, especially since he had never appeared before the grand jury. Many of these clients were surprised to learn of their names being on their list. Also, some of those had advised the IRS agents that there had been no problems with their returns.

Lastly, in March of 1997, two of my employees had to visit the office of the special agent to retrieve some client files confiscated in the raid some 2 years before.

When they asked the special agent if he had a vendetta against me, he replied, "I've had a personal vendetta against Richard Gardner for 15 years." Keep in mind, I never knew this special agent until he came into my life in my office on March 29, 1995.

In the end, the IRS had put between three and five agents working on my case and had supposedly put between 6,000 and 8,000

tax returns on its computers in an attempt to show fraud, and failed.

The IRS examined between 35,000 and 45,000 of my client tax returns for fraud, and failed. It had questioned hundreds of my clients, threatening them, and spent hundreds of thousands of dollars to prove wrongdoing, and failed.

When it came right down to actually going to court, the IRS caved in. The IRS knew it could not win a case based upon fabrication, false, and non-existent testimony. Yet, the Justice Department indicted me anyway in March of 1997 on 23 Federal counts.

Please understand that all 23 of these counts were handled and investigated by the same special agent who had visited my office in March of 1995. Even then this special agent had so many problems with these indictments the IRS had to reconvene another grand jury in May of 1997 and have me re-indicted.

Finally, on December 4, 1997, the Justice Department dropped two counts against me. On January 5, 1998, in Federal Court, all of the other counts against me were dropped and the case was dismissed.

The IRS admitted in Federal Court what I stated earlier, that I prepared between 4,500 and 6,000 tax returns annually and that I am one of the largest independent tax services in Oklahoma. It appears the IRS wanted a high-profile, guilty-even-if-you-are-not victim to use to scare other tax preparers and taxpayers.

As you can imagine, to live under the threat of prison for 33 months has been terrible and has exacted a very high toll. I feel that if the Congress did not hold these hearings, the IRS would continue as always.

Thank you for hearing my story.

The CHAIRMAN. Well, thank you, Mr. Gardner, for being here today. As I have said on several occasions, these hearings would not have been possible if it were not for the courage of taxpayers and employees of IRS who appear here at great personal risk.

Senator GRAMM. Mr. Chairman?

The CHAIRMAN. Yes. I will call on you next. Mr. Moncrief is our next witness, and our Senator from Texas would like to make a few comments.

Senator GRAMM. Mr. Chairman, thank you for recognizing me. Tex Moncrief is an old and dear friend of mine. When we first started these hearings, Tex contacted me saying he wanted to testify. I told him that I remembered his case and that it obviously was exactly the kind of thing that we were looking for, but that he ought to think through doing this because, by testifying, obviously his case is in the public domain and people have a right, and some will feel an obligation, to try to portray it in the most negative light. Tex was determined that he wanted to come, and I just wanted people to understand that. Thank you, Mr. Chairman.

The CHAIRMAN. Well, I appreciate the fact that you are here today, Mr. Moncrief. Please proceed.

STATEMENT OF W.A. MONCRIEF, JR.

Mr. MONCRIEF. Mr. Chairman and distinguished gentlemen of this committee, I consider it an honor and a privilege to appear before you today.

In my imagination, Federal raids were always confined to Mafia bosses and drug lords. If you had told me that 64 IRS agents would storm my office with sidearms holstered and bootheels trampling my civil rights and my business reputation, I would not have believed you. I am a graduate petroleum engineer, a former World War II naval officer, and a second-generation Texas oilman.

My father was a World War I army officer and a highly respected and successful oil and gas explorer. My family and I are patriots and law-abiding Americans. We have given tens of millions of dollars away to medicine, the homeless, and the needy, and pay many millions of dollars in taxes every year.

But on the morning of September 1, 1994, the IRS raided the Fort Worth office of my family-run oil company. Making sure my employees saw their guns, they stormed the offices like an army landing on an enemy beachfront.

My employees heard the agents shout, "IRS! This business is under criminal investigation. Remove your hands from the keyboards and back away from the computers, and remember, we are armed."

They rummaged through every inch of our building, breaking into offices, barking orders like, "Open the doors, or we'll knock them down." One special agent told my son that he could blow the hinges off his safe if he would not open it. Agents even removed sheetrock from the walls, as if they were looking for illegal drugs. They herded my employees down to a first-floor dining room, treating them like criminals. No food, no phone calls, and for some, no chairs.

My entire staff at the time consisted of less than 35 people, mostly women. That is a ratio of nearly two armed agents per employee. One employee commented, for the first time in my life I feel bad to be an American. I was humiliated and branded a criminal before anyone in the IRS bothered to consider that I had not done anything wrong.

Although these investigations are supposed to be confidential, someone with inside information alerted the media. This ensured maximum coverage and maximum embarrassment. News of the raid was broadcast on radio, TV, and in newspapers from coast to coast. It sent my business reputation into a tailspin, and in my business a good reputation is about the most precious thing a man can have.

They left later in the day with over one million documents and an entire computer system. Virtually our whole company including records dating back to the 1970's was packed up in less than a day and moved to a warehouse in Dallas. For several months, when we needed to see a document, file, or have access to a checkbook to handle business, IRS agents checked us in and out of the warehouse like prisoners.

Our long nightmare had only begun. My family was investigated for more than 16 months. The Justice Department finally offered to drop the criminal investigation after I had spent millions of dollars in legal and accounting fees, roughly $5.5 million, to prove that we had committed no crime.

But the IRS would not go unless we paid a large, arbitrarily determined sum which was, in my opinion, plain extortion. IRS also

demanded that we sign releases promising not to sue its agents and every other government employee who had ever touched the case for violating our civil rights under the Fourth Amendment of the constitution, and other Federal laws. We gave in to these demands, beaten for well over a year into submission and threatened with more of the same.

I am one of the few taxpayers blessed with the resources to fight back against IRS abuse and Gestapo-like tactics. The IRS must be held accountable to the people it is supposed to serve. I am here today in the hopes that this committee will take steps to prevent what happened to my family and me from happening to any other American.

Here is my story. The September 1, 1994 IRS raid came about as the result of a plot hatched by our former chief in-house accountant while he was working for us and supposedly overseeing our accounting and the preparation of our tax returns.

About 2 years before the raid, he began stealing information from our files and enlisting a group of well-connected former IRS, Justice Department, and Treasury Department officials to help him. In March of 1993, they approached the highest level of the IRS, the Acting IRS Chief Counsel, the number one lawyer at the IRS, with a plan.

While this accountant was still working in our offices every day, he secretly had his well-connected co-conspirators travel here to Washington to meet the Acting Chief Counsel at the IRS National Office. They used their connections to entice the IRS to throw its full, terrifying weight against us in exchange for money, and lots of it.

In June of 1993, I fired the accountant for incompetence, giving him a generous severance and an automobile. I never guessed that his scheme to ruin me and make himself rich at my expense was already well under way.

On November 9, 1993, the IRS District Director in Dallas signed an agreement to pay our former in-house accountant as much as a $25 million bounty, his share of the money he told the IRS to expect to take from us.

Our former accountant, in turn, signed a contract with the former Justice Department, IRS, and Treasury lawyers who had helped them, promising to pay each of them a share of this huge IRS reward.

At the same time, these conspirators took the stolen information to prospective plaintiffs and their lawyers and used it to generate spurious private, but ultimately futile, lawsuits seeking outrageous damages from us.

Anyone could have seen that these people had a financial stake in destroying me, but the IRS accepted them and their story without bothering to investigate their motives or honesty.

All too happy to accept this information, the IRS never bothered to inquire how its informer got it or whether it was true before launching its massive raid. It could have checked our former accountant's claims by employing the usual, but far less intimidating or intrusive, practice of sending an agent over to our office to audit our financial records.

I still do not know why it chose not to issue us a summons or a subpoena. Had it done either, we would never have had to endure this nightmare. There was one enormous problem with all of this: we had committed no crime.

Not long after the raid, the Justice Department began to realize that our former accountant lacked credibility and that his motives and conduct were highly suspect. However, the IRS would not quit. Spurred on by conspirators chasing a $25 million reward, IRS agents terrorized our employees, knocking on their doors after work, and scaring most of them to death. The pressure on our loyal, hardworking employees was intense.

Many of them were working well into the nights and on weekends trying to help our lawyers and accountants figure out what the IRS was told we had done wrong, while simultaneously trying to keep up with our regular business. That was the toughest part, there was no new business. An independent oil company's most precious asset is its reputation. Ours was shot to heck. The damage to our family business and reputation was enormous.

The emotional damage was even greater. One of our accountants was hospitalized and placed on medication for high blood pressure. Another key employee who had worked for us for 17 years stated under oath that she was so terrified and intimidated by the IRS agents that she agreed to work for them in the evenings to help them go through our accounting records.

Our former accountant offered that same employee a share of his IRS informer's fee the night before she was to testify in the grand jury in the hope that she would support his baseless allegations.

It may be hard to believe, but IRS agents even subpoenaed my college transcript and those of two of my sons. I am convinced that they did this to get around the non-disclosure laws, embarrass, and intimidate us. Why else would they tell our alma maters, the institution we attended years ago and now serve as trustees, that we were under grand jury investigation?

Ultimately, the truth won out because I was fortunate to have the means to fight back. Over the U.S. Government's strong opposition, we sought to take the sworn depositions in a civil lawsuit of the men who had conspired against us.

An Assistant U.S. Attorney actually made an appearance in Texas State Court, but failed to block the depositions. It was then that the conspirators and the IRS's scheme came apart. Our former in-house accountant claimed the Fifth Amendment privilege and refused to be deposed on the ground that truthful testimony might incriminate him.

His lawyer, the former U.S. Attorney for the Northern District of Texas and one of the beneficiaries named in the IRS reward-sharing agreement, suggested in open court that he might have to do the same. At this point when the entire scheme was backfiring, the Justice Department offered to settle the investigation.

It got back to us that, even though its extravagantly paid informer had disgraced both the IRS and himself, the IRS would not stop tearing our lives apart for less than $300 million, which, in a matter of weeks, dropped to $100 million, then $24 million, and finally $23 million.

Although the IRS never bothered to conduct a civil audit to find out whether we owed one additional set of tax, it called the $23 million it extracted from us additional taxes and interest.

It was, in fact, nothing more than an amount arbitrarily demanded from me, various family business members, our business, and our charitable foundation to let the U.S. Attorney issue a press release praising the IRS Criminal Investigation Division for what it had done to us.

But money and a press release were not all it wanted. Despite the fact that its informer's originally, highly compensated allegations were false, the IRS refused to quit. It demanded that we sign releases promising not to sue the agency itself and every government employee who had violated our rights. I did not like this arrangement, but it was clear to me that if I did not agree the IRS would investigate our family business to its demise and me to my grave.

When we learned the truth about our former accountant's extortionate plan we asked the U.S. Attorney and the IRS Inspection Division to investigate. They resisted. First, IRS Inspection took a half-hearted look at the case, but closed that investigation without taking the time to interview me or my sons to find out what had happened. But we kept pressing. We acquired more evidence. A new investigation was opened.

A new IRS inspector recommended that my former accountant be prosecuted, but no action has been taken. It is shocking that no IRS inspector has bothered to take action against the IRS case agents and supervisors who thoughtlessly accepted and viciously pursued the false accusations made by our greed-driven former accountant.

Our government has consistently stonewalled our efforts to obtain internal documents disclosing the truth. A Federal judge in Fort Worth recently tired of the government's effort to hide the facts. He ordered the government to give us all the information we had asked for and to pay attorney's fees to compensate us for the burdens it had placed upon our efforts to seek out the truth.

The past 4 years have taken a personal and emotional toll that can never be restored. It is my hope that our suffering can be used as a mirror reflecting the need to reform an IRS that is completely out of control. Put yourself, for a moment, in my shoes.

Your former accountant, a person you trusted for years to oversee the accounting and tax preparation for your business and fired because he was not doing the job, bargains for an incredible IRS reward, falsely tells the IRS you evaded as much as $300 million in taxes, and uses stolen information to generate private lawsuits against you.

Armed IRS agents tear apart your offices, terrorize your employees, go public with the case, and after a long, personally and professionally painful investigation, inevitably come up empty-handed.

There were no apologies, no public corrections of the record, and no efforts to right the wrongs. In the end, the IRS was concerned about one thing, getting a release from liability for itself and its agents.

What about civil rights? This was a clear-cut case for serious self-examination by the IRS. But the IRS did its best to cover its

tracks, protect itself from ever having to answer for its actions, and move on to another investigation on another, preferably defenseless, taxpayer.

I am here today to ask you to call an end to this kind of abuse and ensure that what happened to us never again happens to another innocent American. Thank you very much, gentlemen.

Mr. Moncrief, I thank you for being here. Again, I say it is outrageous. It is outrageous that any lawful American should have to go through this kind of experience, and I just want to again express my appreciation to you, and to the three of you, for being here today. Our whole purpose is to seek to assure fair treatment to the American people.

Now, Mr. Colaprete, I will start with you, if I may. The question must be asked, were you or any of your partners trafficking in illegal drugs out of your restaurant?

Mr. COLAPRETE. Absolutely not.

The CHAIRMAN. Absolutely not.

Mr. COLAPRETE. Emphatically not. I do not know how strong of words I can use for something so outrageous.

The CHAIRMAN. Now, Mr. Colaprete, 2 days is not a very long time. But, based on just 2 days of investigation, as I understand your testimony, the IRS raided your business, going so far as to take a fork out of the hands of one of your customers, tearing the front door off the hinges of your home, ransacking your house.

Now, after all this mayhem, did anyone from the IRS explain to you why they took less than 48 hours to investigate the claims brought against you before they descended on you and your business?

Mr. COLAPRETE. No, sir. The IRS had no contact with me. As a matter of fact, by making inroads to find out just those questions, I was met with, "No comment, Mr. Colaprete," as though you are a criminal, we do not talk to criminals.

The CHAIRMAN. Now, let me ask you this. After the IRS investigated your books and records, were you assessed any sort of penalty or were you notified that any taxes were due?

Mr. COLAPRETE. No, sir.

The CHAIRMAN. How long prior to the raid had you reported your bookkeeper's activities to the authorities?

Mr. COLAPRETE. Prior to the raids, I contacted the Virginia Beach Police 10 days prior to the raids with the evidence of this embezzlement.

The CHAIRMAN. Ten days.

Mr. COLAPRETE. Ten days.

The CHAIRMAN. Let me turn to you, Mr. Gardner.

Mr. GARDNER. Yes, Senator.

The CHAIRMAN. Had you received any advance notice from the IRS of any problem they had experienced with your current or previous tax returns prior to the CID raid?

Mr. GARDNER. No, sir, nothing at all.

The CHAIRMAN. None at all.

Mr. GARDNER. No, never.

The CHAIRMAN. Now, is it your testimony that the IRS actually listed witnesses in the grand jury indictment against you who had never, never been involved with the case; is that correct?

Mr. GARDNER. Yes, sir.

The CHAIRMAN. How do you explain that?

Mr. GARDNER. Well, for example, one of my clients listed on the indictment sheet contacted me and informed me that the IRS had called him a year and a half before and talked to him for about 20 minutes. The agent told my client that if he did not give them the evidence they wanted, he might also have some problems with the IRS.

He was not the only one. There were about 10 other clients that were also threatened this way that were on the grand jury indictment. These clients for whom the IRS claimed I filed illegal tax returns came back year after year to have their tax returns prepared by me, even after the alleged illegal returns were filed. Obviously, they did not think I had done anything wrong, and these clients were the ones that the IRS was building their case on.

The CHAIRMAN. Mr. Gardner, since the time the indictments against you were dismissed earlier this year, have you received any policy or any explanation from the IRS for the raid?

Mr. GARDNER. No, sir.

The CHAIRMAN. None whatsoever?

Mr. GARDNER. None whatsoever.

The CHAIRMAN. Mr. Moncrief, there must have been some cause for the initial effort to investigate you in the first case. What do you believe this was?

Mr. MONCRIEF. I know of no reason why the IRS investigated us. We had no notice, nothing. I have no reason why it should have occurred.

The CHAIRMAN. No reason whatsoever.

Mr. MONCRIEF. No, sir.

The CHAIRMAN. Why do you believe the IRS served the University of Texas with a subpoena for your college transcripts? Now, it is true you were a regent at the University of Texas, at least up to 1 year prior to the IRS raid.

Mr. MONCRIEF. Yes, sir.

The CHAIRMAN. Why do you think the IRS notified them?

Mr. MONCRIEF. Well, I thought about it at the time. It was not because I was a Tau Beta Pi, the honorary engineering profession, although I was later named a distinguished engineer and graduate, but I think it was undoubtedly due to embarrass me, because as soon as they had contacted the registrar, Dr. Cunningham, who was the chancellor, called me. Then pretty soon most everybody in the university knew it, and then it gets around Austin, Texas, and all around the State of Texas. So I think it was to embarrass me.

his kind of a raid was supposed to be confidential, and what they did was supposed to be confidential. But by going and getting my transcript, it could be used as public information, so I think it was to embarrass me.

The CHAIRMAN. Mr. Moncrief, you paid $23 million at the conclusion of your case. That is a lot of money. If you were not guilty of any charges by the IRS, why did you pay such a large amount of money?

Mr. MONCRIEF. Well, the IRS wanted to settle the case. They wanted to settle the case, but they wanted a substantial amount of money. We had it on pretty good authority that if we did not set-

tle, they were going to keep after us, just year, after year, after year, and harass us, trying to find something wrong.

That would have been hard to put up with and might have, as I said in my statement, chased me to the grave. So I finally agreed to pay this $23 million, which had come down from $300 million, for the welfare——

The CHAIRMAN. Their initial demand was $300 million?

Mr. MONCRIEF. Originally they said it was a $300 million tax case, which I assume they figured they might get because they were going to pay the accountant $25 million. But I did that for the welfare of my family and so I could get back to running the successful oil business that we had. I mean, it was ruining our life and I decided to do that and then go ahead and pursue things like I am still doing today.

The CHAIRMAN. Let me ask you this. Was there ever an audit done on your taxes for the years in question, or an assessment notice provided you for any amount of taxes?

Mr. MONCRIEF. No, sir.

The CHAIRMAN. None whatsoever?

Mr. MONCRIEF. None whatsoever.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Wow! Gentlemen, thank you for your testimony. I said at the opening remarks, and I just think we have heard confirmation, that we have to be much concerned about the para-military performance of the Internal Revenue Service.

I mean, one is aware of it, but thinks of it as marginal and having to do with cooperative involvement with drug enforcement, which is also in the Treasury Department. Clearly, it is not. Clearly, if armed agents can appear in these scenes where there is no issue of violence, it is government violence directed against citizenry.

I think we have to ask Judge Webster to look into that with the specific concern of, are civil rights being violated in a most egregious mode, as would seem to be the case in each of what you have described.

I have one other thought, Mr. Chairman, and that is the role of the Justice Department. Are they sensitive to these matters, and in particular the U.S. Attorneys? I think we as Senators had better pay attention to that because, although it is not widely understood, U.S. Senators choose U.S. Attorneys. I have been here 22 years, and I so attest. Am I not right, sir?

The CHAIRMAN. You are absolutely correct.

Senator MOYNIHAN. We choose U.S. Attorneys and have responsibilities for our choice.

Mr. Gardner, you mentioned that at one point that the IRS convened a second grand jury.

Mr. GARDNER. Yes, sir.

Senator MOYNIHAN. Well, sir, it would have been the U.S. Attorney who convened it, as you know.

Mr. GARDNER. That is correct.

Senator MOYNIHAN. You referred to a grand jury indictment which had persons on it that ought not to have been there. That is the U.S. Attorney's choice. It may be something he has deputized to a Deputy U.S. Attorney, but he is responsible.

It is the same case with you, Mr. Moncrief. I think the U.S. Attorney was involved in ways that one asks about their competence and their motivation. U.S. Attorneys have been known to rise to higher levels in public life, and the mode of indictment and convictions is well known.

I think we have to ask the Justice Department down here, sir. Are they paying heed to what the U.S. Attorneys are doing? What kind of discipline do they have over there? I would invite any comments you might have about that. Mr. Moncrief, you probably knew that U.S. Attorney. Perhaps you did not, but you certainly knew his name.

Mr. MONCRIEF. I did not quite catch that.

Senator MOYNIHAN. Well, the point is, the U.S. Attorneys are the ones who take these matters into criminal court, into a criminal phase.

Mr. MONCRIEF. Yes, sir.

Senator MOYNIHAN. What are their grounds and what are their restraints, and what do they understand they are doing? How much do they just accept what the IRS gives them and go forward?

Mr. MONCRIEF. Well, I think, Senator Moynihan, they accepted our bookkeeper's allegations without even investigating, just in almost a matter of minutes. We have tried for 4 years to get the affidavit. There were supposed to have been an affidavit that is sworn out by an informer where they can get a search warrant, and we asked for that within days after this raid happened.

We still have not gotten that affidavit, under the Freedom of Information Act or anything. We still do not know what this informer said that caused this raid. I do not think that is right, after 4 years.

Senator MOYNIHAN. I could not more agree. What I would wonder, is why does that U.S. Attorney still have his or her job? These are political appointments for which Senators are responsible, and the Justice Department, and the President who sends their nomination? It is a formality, but it is real.

In your case, Mr. Gardner, did you have any feeling about the U.S. Attorney's office taking anything like being prudent, as they ought to have been in your case?

Mr. GARDNER. Senator Moynihan, I believe they just followed what the IRS agent said. I do not know if they really checked it out.

Senator MOYNIHAN. Well, that is not why they are appointed by the President and confirmed by the U.S. Senate, not just to take anything they are handed.

Mr. GARDNER. Absolutely correct.

Senator MOYNIHAN. And is there no disciplinary process for U.S. Attorneys?

The CHAIRMAN. There certainly should be.

Senator MOYNIHAN. None of these gentlemen would have been in court without a U.S. Attorney taking them to a criminal indictment.

Mr. MONCRIEF. In my case, the bookkeeper had friends who were employees of the IRS and the Justice Department that cooperated with him to set this up.

Senator MOYNIHAN. That is called corruption.

Mr. MONCRIEF. Yes, sir. It really is.

Senator MOYNIHAN. I hope the Attorney General is watching. I doubt it, but there is a Deputy Attorney General who is responsible for the U.S. Attorneys. You cannot get into a criminal situation without the Justice Department cooperating with the IRS. That cooperation has to be something more than an automatic transfer of, anything you say, we will indict and send somebody else to jail.

I will put it this way, sir. These U.S. Attorneys are our appointments and our responsibility, and I think we should attend to it in a way we have not done previously. I am appalled with what I hear and I hope we will not leave it there, and I am sure we will not, thanks to you, sir.

Thank you, gentlemen.

Mr. COLAPRETE. Senator Moynihan, in regards to my situation, after 5 months of keeping my records and every part of my business, holding me in abeyance, we were contacted by the U.S. Attorney, who told my attorney, we have no evidence of any crime, come get your things. Of course, at that point I said, well, you have all my things, you have looked at them, why don't you just keep them? But no, the next week they sent them to me.

After that case, or whatever case they assumed they had was finished, my question was, as a citizen now, since this is over, can I please see the reasons this occurred. That is, the affidavit. That was stonewalled for 2 years. The only reason I know what is in that affidavit is because we are suing the Internal Revenue Service and finally a judge said, let them see the affidavit.

The Justice Department and the IRS claimed that it was sensitive and that we could not see it. Freedom of Information requests? They do not mean anything. I do not even understand what a Freedom of Information request is. It does not work. They pick and choose what they want to show you, I guess, or give you. But if you require something or request it legally and they do not want to give it to you, you are not getting it.

Senator MOYNIHAN. Well, I think the Department of Justice has to look to its standards here. I would appreciate very much—we have a practice of asking you to give us something in writing after your testimony—if we could have the names of the U.S. Attorneys involved.

Mr. MONCRIEF. Yes, sir, I believe so.

Senator MOYNIHAN. Just when you get a chance to send us a note tomorrow or the next day.

Mr. MONCRIEF. Yes, sir. I certainly would, sir.

Senator MOYNIHAN. Thank you very much, gentlemen.

The CHAIRMAN. I would also urge, Senator Moynihan, that we request William Webster and his investigation of the CID, that it would be appropriate for him to look at the role of the U.S. Attorney.

Senator MOYNIHAN. Yes. Exactly. He having been a judge and head of the FBI. Exactly.

The CHAIRMAN. Gentlemen, again, we appreciate very much your being here today.

Senator KERREY. Mr. Chairman, are we going to be given an opportunity?

The CHAIRMAN. Oh, I am sorry. You are right. In fact, you are next, Senator Kerrey. Sorry about that.

Senator KERREY. Thank you very much, Mr. Chairman.

Gentlemen, I also appreciate and congratulate you on your courage in appearing before this committee. May I presume that the committee did not ask you to comment on the legislation that we passed a couple of weeks ago and sent on to the floor, that you have not reviewed the legislation that Congress is taking up? May I presume that is correct?

Mr. MONCRIEF. I have not reviewed it.

Senator KERREY. Well, one of the things I would like to do as just sort of a follow on is get you a copy of the bill. There are changes in the law that we are proposing that I think will address some of the problems that you have identified, although the larger problem we are dealing with here is a Fourth Amendment right that all citizens have. This Congress, in its responsibilities governing Federal law, pass laws all the time that grant all kinds of Federal agencies power, and you are dealing with one of them.

All of us in our offices have citizens who have faced the IRS, the EPA, the USDA, the Health Care Financing Administration, and on, and on, and on, not to mention the Drug Enforcement Agency, the FBI, and other agencies to whom we grant substantial power, in some cases police power, to be able to collect and acquire evidence and bring a case. What we are dealing with here, is you all have had your Fourth Amendment rights violated.

One of the things I think we need to be sensitive to all the time is that citizens have those Fourth Amendment rights and we have to be careful, in granting any agency of government power, that we do not give them so much power that they are able to do what you just experienced.

I think in our legislation we heard, in addition to individual stories such as yours, lots of other stories; $4 billion of taxpayer money wasted on computers, difficulty in managing, difficulty in recruiting, difficulty in retaining, all kinds of other problems; taxpayers not getting their calls answered, all kinds of other things.

In our legislation we have three titles that I would ask you to review, and I will get you a copy of the bill. I regret that you were not given a copy of the bill prior to coming here because I think it would have been useful to get your comments in public as to whether or not, in particular, the new Taxpayer Rights, a new right of action, for example, under negligence. It may not be enough and we may need to look at it.

I was talking to Senator Bryan, who was a former prosecutor. We may need to look at the process of approaching a taxpayer. How do you approach the taxpayer? We may need to look at an amendment, given your experience and other people's experiences, that will change the process of approaching a taxpayer to say we think that you have broken the law, we want to accumulate evidence, and so forth. I mean, there is a need to acquire evidence. Obviously, in all three of your cases they have done it in the wrong way.

The question is, how do we change our law? So I would appreciate it very much if you would look at Title 3 of our legislation, which extends substantial new powers to taxpayers and attempts

to address this problem. I would appreciate very much your comment as to whether or not it does it.

Title 1 and Title 4 of the bill also attempts to deal with the problem, because one of the things we discovered, and all of us who are members of Congress know this, we have a very difficult time finding out what the IRS is doing.

They are not terribly accountable because the law grants them not only authority, but the law says we want you to keep all this information private. We do not want taxpayer information to be made public.

So inside this wall of privacy, it is difficult for us to work a case. It is difficult for us to help a citizen. I have got cases that stretch all the way back to the 1980's that I am working on on behalf of taxpayers, so it is difficult to approach it.

So we created a new public board that has substantial powers over the IRS to manage this agency and to work with Congress. We also found in Title 4 attempts to deal with this, and I would appreciate very much your honest comments on that, but not today because you have not looked at the bill.

We also found that Congress has not done a very good job in its oversight. This is the first committee hearing meeting, since the Chairman started last fall, in 17 years where we have had full committee oversight of the IRS. There are six committees that the IRS reports to in Congress.

We proposed in our legislation to consolidate that oversight at least twice a year so that this new public board will have somebody they can come and talk to to make certain that they get consistent instructions in the Congress as to what they are supposed to be doing.

Mr. Moncrief and the rest of you, I am sure, would appreciate what it would be like to run your business if you had 535 people on your board of directors who were elected, and that is basically what the IRS deals with.

So I just want to congratulate you and thank you for bringing this to this committee publicly, especially your sensitivity now to the dangers of granting any government agency powers as to the Fourth Amendment rights of a citizen, and I would appreciate very much, and I will get you a copy of the legislation, any detailed comments that you would give us on Title 1, Title 3, and Title 4, especially in the Title 3 area and the new rights that we grant to citizens.

My guess is from listening to your testimony that we may need to look at some change in the law that would change the process of approaching a taxpayer when there is a suspicion that maybe a violation of the law has occurred.

Mr. GARDNER. Senator Kerrey.

Senator KERREY. Yes, sir.

Mr. GARDNER. Could I ask you if, on this new tax bill, the appeals and the original auditing are going to be separated, or are they still being handled the same way that they have always been handled?

Senator KERREY. Well, first of all, the Taxpayer Advocate is made more independent than they were before. The Problem Resolution Officer will no longer get their performance graded by some-

body inside of the IRS, so they will be more independent. We do change the due process of appeals. There is a detailed section on that. Rather than responding to you directly, I think it would be best if I just gave you the language.

Again, all three of you have experienced this thing and have knowledge of it first-hand. I think your advice to us as to whether or not we have got the changes in the law right would be very helpful.

I mean, you all know that the IRS is not a Sears and Roebuck. They are not a private sector agency, they are created by law. We write the law. We write the laws that tell the IRS we want you to get more involved in drug investigations.

One of the reasons they are doing what they are doing is that we have asked them to be more police-like in going out and going after individuals and trying to solve the problem of drugs, money laundering, and so forth.

What has happened, it seems to me, is in the effort to do that we have not given them, under the law, clear enough instructions of how to do that. So we now need to change that law to make certain that they——

Senator MOYNIHAN. And how not to do it.

Senator KERREY. And how not to do it. That is quite right. So anyway, I would be very grateful. The Majority Leader has indicated, that it is going to come to the floor next week and we are likely to be debating this. We will go into conference relatively quickly. I hope that you can help us make certain that we get this law improved so that we do not have this kind of situation in the future. Mr. Moncrief, you are quite right. Most American people do not have the resources to fight.

I said yesterday, and I will tell you, the fear that you, Mr. Gardner, mentioned in your testimony is so bad that former Commissioner Richardson, in her testimony to the Restructuring Commission, said that right after she came on the job she received her first paycheck in the mail with an IRS return address, and she was too frightened to open it, and it was her paycheck. That just is perhaps the most extreme example.

The IRS, under this new law, we hope, will presume that taxpayers are law-abiding citizens and will have an attitude towards them that presumes they are law-abiding citizens. What we are trying to do is get the penalties high enough that would deter this kind of action, as well as establish new due processes for citizens when they are approached by the IRS.

Again, I thank you very much for your testimony.

The CHAIRMAN. Mr. Gardner, I would point out that we have made some changes in the appeals approach. The present language forbids ex parte conversations between the agent and the appeals officer. There is a right to appeal to the Tax Court. But it would be very helpful to have each and every one of you take a careful look and give us the advantage of your advice.

It is now my pleasure to call on Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you very much. Some people were questioning whether we should have this second round of hearings. I think yesterday's hearings, coupled with today, are

certainly evidence that we need these hearings. I think the Criminal Investigative Division is out of control, the IRS is out of control.

Mr. Colaprete, how many agents busted your restaurant, your home, and your staff member's home?

Mr. COLAPRETE. It was between 20 to 30 men in each establishment.

Senator NICKLES. Twenty to 30.

Mr. COLAPRETE. Four raids simultaneously, two homes, two restaurants.

Senator NICKLES. You have two restaurants in Virginia Beach.

Mr. COLAPRETE. I did have two restaurants. One, of course, was closed six, 8 months later because I just could not keep it together. When you have a business that is out there in the community like a restaurant, you do not recover from an armed intervention such as this. You just do not recover.

Senator NICKLES. I understand.

Mr. COLAPRETE. This is 4 years later and we have not recovered. We lost one restaurant, but at that time there were two restaurants. We had just opened the restaurant 4 months prior to the raids.

Senator NICKLES. Mr. Gardner, how many people raided your IRS office?

Mr. GARDNER. There were 15 IRS agents and approximately 5 U.S. Marshals.

Senator NICKLES. Did they go into your home or just into your office?

Mr. GARDNER. In my tax service, sir.

Senator NICKLES. Mr. Moncrief, how many did you say hit your business?

Mr. MONCRIEF. There were 64. Absolutely. Sixty-four. They had to get them from Waco, Dallas, and surrounding areas to have that big a group.

Senator NICKLES. Mr. Gardner, I do not remember you saying that you had a disgruntled employee, but Mr. Colaprete and Mr. Moncrief evidently had former employees that had contacted IRS and said that there was a problem. In your case, Mr. Moncrief, evidently the former accountant even signed a contract where he could make millions of dollars if there was significant recovery, is that correct?

Mr. MONCRIEF. Yes, sir, he did. The bad part was, he used employees of the IRS and the Department of Justice to get this contract for his reward.

Senator NICKLES. Mr. Moncrief, you mentioned that you eventually settled. They were trying to get several hundred million dollars, you eventually settled for $23 million. It sounds to me like that was not the result of an audit that said, here are mistakes, you deducted things you should not have deducted or you took a credit when it should have been a deduction. It did not look to me like it was mistakes made on returns, it sounds more like extortion.

Mr. MONCRIEF. This was an arbitrary sum that they came down to. They realized that they had done wrong and it was an arbitrary sum that they came down to. But at that point, with the harass-

ment we had been through, it just made sense to me to get my family and myself back enjoying life.

Senator NICKLES. You wanted to get it behind you and you were willing to pay some amount to get rid of the harassment.

Mr. MONCRIEF. Yes, sir. And I am still after them.

Senator NICKLES. I appreciate that. You also were forced to sign a waiver that you would not sue either the IRS or the agents that were involved in this case; is that correct?

Mr. MONCRIEF. That is correct.

Senator NICKLES. Mr. Chairman, when we talk about legislation we talk about taxpayers' rights, and we have this bill before the Senate next week. I think we should look at repealing this added waiver that IRS gets in trying to complete these cases and that they would not be sued.

When you find this type of abuse and then say, oh, but we want to be held totally free from future liability, I am bothered by that and I am bothered by it a lot.

So I am thinking maybe we need to look at an additional amendment when we come to the floor next week, and I will work with the Chairman on it, as well as Senator Gramm from Texas who also mentioned that maybe we need it, because that is wrong. That is absolutely wrong.

I can see from a business perspective where you would say, hey, I want to get this behind me and I am willing to pay something to get it out, because there is a lot of anxiety. Mr. Colaprete, you mentioned it very well, and Mr. Gardner. This is an unbelievable strain, mental strain, financial strain. Mr. Gardner, they tried to put you out of business.

Mr. GARDNER. Yes, sir, they did.

Senator NICKLES. But they were not successful.

Mr. GARDNER. No. We opened the next morning and are still in business today.

Senator NICKLES. Mr. Colaprete, the net result was, you lost one of your restaurants.

Mr. COLAPRETE. Yes, sir.

Senator NICKLES. A lot of employees lost their job as a result.

Mr. COLAPRETE. My restaurant generated lots and lots of dollars for my country in tax revenues. We lost that capability. We turned lives upside down. I had 50, 60 employees in that one restaurant who lost their jobs.

Senator NICKLES. Mr. Moncrief, in your case you mentioned, what, you only had like 30 some employees in your headquarters.

Mr. MONCRIEF. That is all.

Senator NICKLES. But again, I can appreciate the anxiety because I used to be on your side of the fence, although I did not have an IRS problem like this. But there is an enormous amount of angst, anxiety and tension dealing with these dealings. I can imagine you might at some point be saying, yes, I will pay $23 million to get rid of it. I would be willing to get this thing behind me and try to get on with life.

Well, I hope, Mr. Chairman, that we will look at improving our bill even further. I think, as a result of every hearing and almost every witness, we have made improvements on this bill. It was a

good reason, in my opinion, we did not take the House bill and pass it.

We have made significant improvements from the hearings that we had in Oklahoma. We added about nine provisions as a result of the witnesses there that I think strengthened the bill and will hopefully make IRS more accountable in the future. I think this panel has contributed to that and I compliment them for it. Thank you.

The CHAIRMAN. Next, we have Senator Murkowski.

Senator MURKOWSKI. Thank you very much. I am not going to add much to what has already been said by my colleagues relative to the indignantcy that I share as a U.S. Senator in accepting the responsibility for representing the people of this country and the particular circumstances surrounding the IRS actions against the three of you. Such Gestapo-like actions are uncalled for.

To suggest that 64 agents would come into a business of 32 people, it is really almost beyond belief. But it is factual and it does not occur just in the IRS, Mr. Chairman.

I had an occasion in my State where one of our two pulp mills, which is not in existence any more because of being shut down by environmental opposition, and the case was parallel. It involved the Environmental Protection Agency, who for some time had been investigating the mill, taking records out by the carload, all engineering designs, and so forth, over an extended period of time instead of asking for specifics.

A short time later, they came in with some 30 U.S. Marshals, armed, and seized the offices, made a demand on management to explain the effluent that had allegedly been going out of the mill.

When the mill personnel and engineers explained that the drawings they had taken were from a small sawmill located on a small island in the native community of Metlekatla, they recognized in examining this information they clearly had no knowledge of the engineering aspects of a pulp mill. There was no emissions flowing from the pulp mill into the bay, but it was another mill for which the pulp mill managed to have the engineering plans.

They accumulated this Gestapo-like effort because they were absolutely unfamiliar with the technical aspects of what they were dealing with and had been responding to this case simply by a whistle blower who had alleged that they were putting out effluent.

I think it brings it to the point that I want to make, Mr. Chairman. I think we should look a little bit beyond just the tactics of the IRS, but other Federal agencies that clearly are using a presence to threaten and harass citizens of this country, whether they be taxpayers or others doing business. Obviously we have to maintain enforcement and compliance with Federal law, but these tactics are absolutely uncalled for.

We can send people in to investigate, but you do not have to send armed personnel in flak jackets, and that is what occurred in my State and I am very much opposed to it, Mr. Chairman.

So I would encourage, as we reflect on this, that other Federal agencies that have enforcement responsibility had better temper their procedure a little bit and recognize we are dealing with U.S. citizens here who, for the most part, are honorably engaged in their daily activities.

And if there is cause for action and investigation, it should be done in an appropriate manner befitting of the trust that we put in these agencies to enforce actions, and the suggestion that Gestapo-tactics men in uniformed flak jackets, armed, is simply inappropriate and unnecessary in 99 percent of these cases.

Thank you, Mr. Chairman. I want to commend you witnesses for coming forth with your stories.

The CHAIRMAN. Senator Conrad?

Senator CONRAD. Thank you, Mr. Chairman, and I thank the witnesses as well.

First of all, I am a former tax administrator elected by the people of my State to serve in that position. I cannot conceive of a circumstance that would justify the treatment each of you have endured. It is absolutely outrageous.

Mr. Colaprete, I have read your testimony. I was not able to be here when you started, but I have read it. It is unspeakable, the way you were treated, and your partner, and your employees. Frankly, it tells me that there is a revenue service run amok to be treating taxpayers in that way. It is absolutely and totally unacceptable.

I, for one, would apologize to you. That should never have happened. Even if they had somebody making these assertions, they had an affirmative obligation to establish that there was cause, and even then the way they approached you and your business was absolutely outrageous. How anybody in a position of responsibility would authorize raids of this nature is beyond my understanding. The people who did authorize such actions should be held to account themselves.

Mr. Gardner, it is also in your case I find totally unacceptable the way you were approached. What conceivable justification could there be for approaching you in the way you were approached? I mean, this is people who have gotten a little bit of authority and have let it go to their heads. What is in their minds to treat a taxpayer the way you were treated?

And I do not care what evidence they had. You do not approach anybody in the way you were approached. That is just wrong. And anybody that does not have the judgment to understand that ought to be fired. That is just the way it is. They ought to be removed from service because they have no understanding, they have no basic judgment.

Mr. Moncrief, this raid on your business, 64 agents, whatever it was, that is preposterous. What are they thinking of? I must say, it sounds like police-state tactics.

I do not care if they thought you owed $100 million, they have no justification for this kind of heavy-handed assault on any American. That is wrong and we have got to say it clearly and distinctly. That is wrong, it is unacceptable, it cannot be repeated. And the people that engage in that kind of conduct ought to be held accountable and they ought to be fired and they ought to be punished.

That ought to be the message that goes forth from here. And I do not care if you owed $100 million, nobody and their employees deserve to be treated that way in America. So that needs to be the message that is loud and clear here.

Mr. Gardner, do you have any idea what led to this raid on your business? This IRS agent indicated to somebody that came and talked to some of your employees, as I recall your testimony, said he had a vendetta against you. For what reason? Do you have any idea why he would have had a vendetta against you?

Mr. GARDNER. Other than being a tax preparer and helping clients reduce their taxes legally, I have no idea. I had never met the fellow before he came in my office. They did send an undercover agent in wired back in May of 1991 to tape record me, for whatever reason, we found out. But that was 4 years before they raided. I just really have no idea, sir. That is just the IRS today.

Senator CONRAD. To your knowledge, have the tax returns that you have prepared understated your client's income?

Mr. GARDNER. No, sir. I do 5,000, 6,000 returns a year and I have about maybe 6 to 8 audits a year. It is just normal, everyday auditing. It is usually less than the percentage by about half, but I really do not know, sir. Just because I was a large tax service and they just wanted to make an example out of me.

Senator CONRAD. Well, that is totally outrageous. I mean, that is not the way one operates. As a tax administrator, it is important to enforce the law. There is no question that there are people who understate what they owe, but that is totally unacceptable to be treating people in that way.

Mr. Moncrief, you indicated you did pay $23 million. Have you paid that amount of money over to the IRS?

Mr. MONCRIEF. Yes, sir, I paid that. But that was not for taxes, it was just what they called a settlement. I never got any tax notice before September 1, 1994, nor have I seen something saying I was in arrears or had done something wrong. I had not received one before that or since then.

Senator CONRAD. How many years were involved in this settlement?

Mr. MONCRIEF. This went back to about 10 or 12 years ago.

Senator CONRAD. Ten or 12. Is this for a 10- or 12-year period?

Mr. MONCRIEF. More than that. It went back to about 1979 or 1980, right in there. From 1984.

Senator CONRAD. So this would be like a 16-year period in which they assert that you owed this additional tax. Do you have any idea what your effective tax rate has been during that period?

Mr. MONCRIEF. Well, it is up in the top. But they did not say this was a tax, they just said this was an arbitrary amount that they wanted. It came down from $300 million to $200 million, to $100 million.

Senator CONRAD. You believe that you do not owe any additional tax?

Mr. MONCRIEF. I never have looked at it or found any that appears we owe. They never said that we owed it.

Senator CONRAD. Well, Mr. Chairman, I think one thing we should do is ask the Revenue Service to revisit this issue and to determine whether or not Mr. Moncrief owes any additional money or not. If he does not, he ought to receive a refund. We ought to ask the Revenue Service to review this case where this man asserts he does not owe the money. He certainly should not have had to pay the money.

I thank the Chairman.

The CHAIRMAN. I would say to the distinguished Senator, we have had problems with settlements before where we have tried to get the agency to take a second look. We thought there were very serious problems with it. But so far, I have had no success in that regard.

We have got three additional Senators to raise questions, and we, of course, have two more panels. But the order will be Senator Grassley, Senator Mack, and Senator Lott. I will recognize the Majority Leader if he has to leave.

Senator LOTT. Thank you, Mr. Chairman. I will wait.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. First of all, I think I need to compliment Senator Conrad on his very strong statement about the need for this sort of discipline, and in fact, people that act like this not even to be in government service.

But let me follow on where he left off. To each of you, were any of the agents that you have discussed who committed these horrible acts against you disciplined, that you know of?

Mr. GARDNER. No, sir. Not in my case.

Mr. COLAPRETE. Not that I know of.

Mr. MONCRIEF. No, sir.

Senator GRASSLEY. Well, then even emphasizes more than ever the point that Senator Conrad was making because this is where the problem is then. We have this abuse of power, we have abuse of your constitutional rights, and nobody is held accountable. We talk about the agents should, but there is a system here that ought to be examined.

The IRS itself has to assume responsibility, it seems, to make sure that people's constitutional rights are protected. And when somebody abuses those, if the people in management at IRS are not going to discipline people like this, we are just going to encourage more of it.

These stories that you have told us, they are awful stories, they are appalling stories. To the average citizen watching on television, these are earth-shattering things that IRS agents could, and would, heartlessly wreak havoc on people's lives. It is amazing that anyone would be so destructive, feel so strong about something, that they would treat you folks the way that you have been treated.

I am used to discussing things like we are discussing here in the Finance Committee as a member of the Judiciary Committee where we discuss criminals and prison terms, we discuss what to do with heartless criminals who intentionally destroy other people's lives. That is what we have right here with IRS agents who have done things that are criminal.

So it is kind of amazing to me that the IRS system, that is part of our government, a government that is supposed to be under the rule of law, a government where employees are supposed to be held responsible. It does not hold people responsible for their actions.

This is the point that I want to emphasize that Senator Conrad made very clear about agents being punished for what they are doing wrong, but there is something wrong that we have got a system that does not want to hold these people accountable because these are destructive actions.

But it is equally awful that no one is held accountable. If agents were held accountable, if they were disciplined for their wrongdoing, it would serve as a deterrent, it seems to me, that would keep other agents from abusing taxpayers, if these agents were used as high-profile examples.

It is still not too late. If some of these people are employed, it is still not too late to hold them as high-profile examples as they attempt to use prominent taxpayers, and then maybe we would not have any more of this and they would know how it feels themselves how they treated you. It is a crime itself that IRS agents get away with these sort of crimes.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

Senator Mack is next.

Senator MACK. Thank you, Mr. Chairman. Again, I commend you for holding these hearings. There has been some indications in the past that we held these hearings last year, we do not need to hold any more, we ought to get on with passing the legislation.

But as Senator Kerrey raised in his questions, which is exactly the first point that I put down, which was going to be to ask you whether you had read the legislation that we had proposed and do you think it addresses the problems that you have experienced. I understand from your response that you have not.

I will tell you, Mr. Chairman, I am troubled that we have frankly not covered all the areas that need to be covered in this legislation. I am going to consider whether I should appeal to the Majority Leader to delay this until we have an opportunity to really have folks who have experienced these problems, have had an opportunity, I would assume with their attorneys, to take a look at this legislation and see, in fact, whether we have gone far enough. I see I have just excited my colleague from the other side.

Senator KERREY. Well, Mr. Chairman, if we are going to do that, let us ask the witnesses to come before the committee to comment on the legislation.

Senator MACK. Good idea.

Senator KERREY. Thank you.

Senator MACK. I will do such right now. One of the areas where I have a problem, and which is not a secret to any of you, were the amendments that were passed at mark-up to add two members to the commission.

Now, this Oversight Commission is supposedly to help see that the experiences that you have gone through do not happen again. But we ended up adding to this private sector taxpayer, if you will, board to oversee the IRS two individuals, one to be a representative of the IRS employees, and the other being the Secretary of the Treasury, who did not want this legislation in the first place.

Now, mind you, these individuals who are going to be on this board are part-time. If you have these other two entities added to this board who have huge staffs to supply them with all kinds of information and a point of view, my concern is we have destroyed the credibility of this oversight board. I would be interested in your sense about that as well. Would any of you like to respond?

Mr. MONCRIEF. Well, I cannot respond to that now, but I can certainly discuss it with my attorneys and get back with you. But what you said makes all the sense in the world.

Mr. GARDNER. I would like to discuss it with my attorney, too, Thomas Seymour, give you our opinions on it. (See p. 268 for Mr. Moncrief's response to Senators Mack and Kerrey.)

Mr. COLAPRETE. The same with me, sir.

Senator MACK. All right. Again, we have all used language here today that I think comes from our hearts. I was trying to think how I was feeling. How do you put into words the feelings that go through our hearts and minds here this morning? A couple of them were, stunned by what you had to say, chilled was another one. Chilled by what you told us this morning. Angry about what you had to tell us. Troubled. Troubled.

Again, my intentions are not to delay this any longer. But, as you have said, Senator Kerrey, over and over again, we write the laws. I just want to make sure we go far enough in addressing these issues. I have great concern with the police powers that are used by the IRS that seem to be way beyond anything that they should have, given what they have done with them.

I think one of the messages from the hearing this morning that all of should take to heart, in our zeal to go after criminals, we need to make sure we write in the proper safeguards to make sure that honest, taxpaying citizens do not have those tools used against them.

For the first time I saw this morning this informant reward agreement. It says, "Whereas, the Commissioner of the IRS is authorized, pursuant to Internal Revenue Code Section 7623 and Treasury Department Order Number 150–10, to approve payments for information."

I suspect that when that was done it was, again, done for the purpose of getting to drug traffickers, Mafia. But we see three individuals before us this morning where these tools have been used against them. I mean, 10 percent of the first $10 million, 15 percent of the next $10 million, 20 percent of the next $10 million. I think we have got a perverse system and I am not sure we have gone far enough.

So, I really do appreciate your being here this morning. I think you have really focused the country, once again, even though many of us thought that could not be done again after the hearings last September. I think you have clearly focused us again.

Mr. Moncrief, in your opening statement you said, "In my imagination, Federal raids were always confined to Mafia bosses and drug lords. If you had told me that 64 IRS agents would storm my office with sidearms holstered and boot heels trampling my civil rights and my business reputation, I would not have believed it."

You know what? I think for too long many of us have heard those stories and there has been a tendency to say, not in America. Not in a free country. These kinds of tactics cannot be used against honest individuals.

Well, I think that your testimony this morning has indicated that, in fact, they have, and we have got to make sure that it does not happen again.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Mack.

Just let me make a couple of observations. The question of oversight is a continuing matter. One oversight hearing, two, or a dozen are not going to finish the matter because we are going to continue to have problems in the future that need to be exposed and corrected.

Now, some wanted me to move ahead early on the House bill and I felt that was not the appropriate time because I thought there was much more that needed to be immediately done. But there never is an ideal time. I think it is important that we do move. We have a number of proposals in the legislation that we have worked out with the new Commissioner, in whom I have the greatest confidence. I want to ensure that he has the tools and opportunity to do what is necessary.

So I feel very strongly that the time has come that, in the immediate future—and I do not say it has to be any particular day, or so forth—it is important that we get on with the job.

At this time I would like to call on our distinguished Majority Leader, Senator Lott.

Senator LOTT. Thank you, Mr. Chairman. I am going to be brief because I know you have other witnesses. If the rest of them have stories to tell anything close to this, we need to hear it.

I have heard over the years the conduct and actions sometimes of the IRS described as Gestapo-type actions, but I never had heard examples as explicit as this of exactly that kind of conduct, and it is totally unacceptable in America.

I have had people ask me, well, why have you not done more about it in Congress? Why have you not had more oversight hearings, why have you not had legislation before now? I have thought a lot about that and I have talked to some members of the House and Senate. I really think there is a certain degree of intimidation that is applied to the Congress itself. I know of some examples where Congressmen and Senators, as a matter of fact, felt this sting repeatedly if they got too aggressive.

So to these people, on behalf of the American people, I apologize for allowing a situation to develop in the law that would lead to this kind of conduct.

Now, having said that, while I think that the legislation we have developed is a significant improvement, I still would like to make some changes and we are learning as we go along. I think what we have had described here today clearly is illegal. This kind of conduct should not have been allowed. Somebody should have taken action to stop this and it should not have needed these hearings or an additional set of laws to accomplish that.

But I will just get to the real question here. Mr. Colaprete, in your testimony you name the IRS special agent who tried to destroy your business, a Ms. Carol Willman. Now, this question is being asked, I guess, in general, but I want to ask you specifically. Do you know if Ms. Willman is still employed by the IRS, if she was ever punished for what she did to you? That is my first question.

Mr. COLAPRETE. No, sir. I have no idea.

Senator LOTT. You do not know what her situation is.

Mr. COLAPRETE. I have no idea. I do not have the luxury of speaking with people like Carol Willman.

Senator LOTT. You do not know whether she was punished or allowed to continue working at IRS.

Mr. COLAPRETE. No, sir. No, sir.

Senator LOTT. Or, in fact, was fired or not.

Mr. COLAPRETE. I have no idea.

Senator LOTT. Mr. Moncrief, the same question to you. You described this instance that you had to deal with. Do you know if, for instance, the IRS District Director in Dallas was investigated, punished, or fired for placing a bounty on you and your business?

Mr. MONCRIEF. No, sir. No one has been fired that I know of.

Senator LOTT. You do not know of any disciplinary action that was taken.

Mr. MONCRIEF. I know of no disciplinary action. The bookkeeper that we had really broke the law in splitting what the IRS gave him. That is against the law. I have a lawsuit coming up against these six conspirators in June.

Senator LOTT. I wish you well.

Mr. Chairman, yesterday, in answer to a question from one of the witnesses, she identified the Office of the Deputy Commissioner, Mr. Dolan, as the place where these cases had died, either through slow treatment, neglect, or whatever.

But I think we need to go a step further. Who is the person that is responsible for making sure that people that act like this are punished, is it the Deputy Commissioner or is it the Commissioner?

Somebody should have acted on these cases and I think we need to find out the answer to that. It is not just a question of passing new laws, it is a question of finding out why existing laws have not been enforced.

Thank you, Mr. Chairman.

The CHAIRMAN. There is no question but that is a problem of this agency's, not only a question of changing the process, but it is a question of assuring that there is strong, capable management that will, on a consistent basis, apply the law as written by the Congress. I think this is a serious problem of management. That is the reason I think it is so important that the new Commissioner be an individual experienced in management matters.

Senator CONRAD. Mr. Chairman?

The CHAIRMAN. Yes, Senator Conrad.

Senator CONRAD. Might I make just a quick observation?

The CHAIRMAN. Yes, sir.

Senator CONRAD. One of the things that strikes me is the culture that has developed here. Senator Kerrey was mentioning to me earlier that he thinks that perhaps some of this flows from what we have done to try to go after drug kingpins.

I think, unfortunately, we may have a situation where people have kind of gotten mixed up here. We have authorized tough legislation to use the IRS to help other law enforcement go after criminal figures, whether it is organized crime or drug kingpins, and that is as it should be.

But we have got to make sure there is a bright line out there so that kind of police action is not visited against taxpayers. I do not care if those taxpayers owe money. Obviously we have got to

enforce the laws and we have got to make sure people pay what they owe. But we should not permit or allow these agencies to engage in police-state tactics against average taxpayers. I think that has got to be a focus of part of our concern here.

The CHAIRMAN. It is my concern with that matter that caused me to say in my opening statement that I think it is critically important that William Webster, as part of his study, look at this question of CID and whether it is appropriate for them to be involved in money laundering and drugs, and so forth.

I think the most impressive thing that we heard yesterday by one of the witnesses, or one of the most impressive things, was the fact that, today, we see intrusive investigations of the type you gentlemen described today. That was not the case, according to this witness, of 15 years ago when they were successful as they are today in assuring that the taxpayer was paying what he or she owed the government.

Well, gentlemen, time is moving on. I cannot tell you again how much I appreciate your courage, the fact that you are here today. Your story is an appalling one. This is America and no American should have to go through the kind of suffering that you and your families have endured. I want to express my appreciation for your being here today. Thank you very much.

Senator KERREY. Mr. Chairman, I did not hear your opening statement, I just heard a statement about it. We have enacted laws in this Congress that have granted law enforcement agencies substantial authority to erode Fourth Amendment rights in the effort to fight a war on drugs and other sorts of things.

Do we intend to ask Mr. Webster whether any of these laws that weaken Fourth Amendment rights have had not only an unanticipated impact upon these three gentlemen here, but perhaps other citizens?

Senator MOYNIHAN. We do, indeed, and we ought.

The CHAIRMAN. Gentlemen, thank you very much for being here today.

Mr. COLAPRETE. Thank you.

Mr. GARDNER. Thank you.

Mr. MONCRIEF. Thank you.

The CHAIRMAN. I would appreciate it if the area would be cleared so we could proceed with the next panel of one individual.

Mr. Warren, if you would please come forward. Mr. Warren, it is a great pleasure to have you here today. I appreciate that you are here to testify before the committee regarding racial discrimination.

Let me start off by just emphasizing that there is no place for racial discrimination, especially in the workplace, and especially in the Federal Government. Retaliation against employees based on race, whether in the corporate world or the departments and agencies of the U.S. Government, is totally unacceptable.

Our witness will address intolerable situations inside the IRS, where racial discrimination has been openly reported as a very, very serious problem.

Our witness is Mr. Leroy Warren, who is the chairman of the NAACP Criminal Justice Committee. Mr. Warren, I would ask you, as we have all witnesses, to please rise and raise your right hand.

[Whereupon, Mr. Warren was duly sworn.]

The CHAIRMAN. Thank you, Mr. Warren. Please proceed.

STATEMENT OF LEROY W. WARREN, JR., NAACP NATIONAL BOARD OF DIRECTORS, CHAIRMAN OF THE BOARD'S CRIMINAL JUSTICE COMMITTEE

Mr. WARREN. Mr. Chairman, I want to thank the Senate Finance Committee for granting NAACP and my request for this opportunity to testify before this distinguished body on the severe problems of racial discrimination and abuse of power and mismanagement of the Internal Revenue Service by its leaders.

Since August 1997, I have served as chairman of the NAACP Task Force on Federal Sector Employment Discrimination. This task force convened a Summit on Federal Sector Employment Discrimination on January 17, 1998 at the University of Maryland, College Park.

This summit was sponsored by black employees of seven Federal agencies and seven NAACP units in Maryland and Northern Virginia. The seven Federal agencies were the Department of Defense, Commerce, Agriculture, Federal Deposit Insurance Corporation, Interior, U.S. Information Agency, Voice of America, and the Internal Revenue Service. Approximately 350 people from 9 States were in attendance.

Approximately 30 employees from the IRS were in attendance and presented testimony at this summit. The summit has received a number of verbal complaints and affidavits on IRS employees, some of whom are whites, Hispanics, and Asians, including blacks also.

The strongest complaints were received from Milwaukee, Wisconsin, Houston, Texas, Oklahoma City, Oklahoma, and Washington, DC. Based on the data received, the NAACP believes that most of the complaints and allegations are of substantial merit and validity.

IRS abuses and allegations received by the NAACP are basically the following summary listing: (1)Allegations of racial and sexual discrimination in promotions are a severe and increasing problem; (2) Allegations of management's refusal to deal positively and fairly with valid complaints are common; (3) Retaliation, loss of promotional advancements, and mistreatment are by-products faced by most individuals filing an EEO complaint, regardless of race and/or sex; (4) In many instances, some long-term career black employees are compelled to train whites, who become their supervisor within a relatively short time frame; and (5) Many blacks, especially those at the GS–13 and above level, claim that they are frequently the recipients of lower than deserved performance ratings which negatively impact their pursuit of upward mobility opportunities.

Racism and sexism across the board is wrong and illegal. There are a number of white NAACP members and millions of white supporters across America. The NAACP has received a number of complaints that some blacks and other racial minorities employed by the IRS are guilty of committing discrimination against their coworkers and subordinates.

NAACP believes with the theory of the late Associate U.S. Supreme Court Justice Thurgood Marshall that racism practiced by any person and/or entity is wrong and has no place in America.

The IRS needs a housecleaning of its top management, including some blacks who have basically zero commitment to doing the right thing.

Promoting marginal or unqualified individuals occurs frequently. IRS management has frequently promoted marginally qualified or possibly unqualified individuals, including a few blacks, to high-level positions as a reward for supporting racism, racist policies, and/or whatever management does.

The personal benefits for many IRS managers who frequently promote marginally qualified or unqualified individuals are employees who display a personal and institutional loyalty as a result of their promotions by accepting and backing up the actions of their managers.

In addition, the issue of competitive promotion is basically a joke because many, or possibly a majority, of the high-level GS/GM–12 and above jobs involve pre-selection prior to being posted.

A case in point involves a black GS–15 male who acted in an SES job for a period of time. The selection panel recommended a white male for the job. During early September 1997, the Office of Personnel Management, under pressure from IRS, refused to certify this unqualified white male for a senior SES position. The GS–15 black male has not received any justice at IRS.

Some of the major cost of promoting marginally qualified or unqualified employees are as follows: (1) The taxpayers are paying for incompetence, while at the same time some IRS employees are simultaneously violating Federal EEO laws; (2) The quality and skill level that the agency workforce is subpar, with low productivity and low morale being the bottom line result of such questionable actions; (3) The Balkanization of the workplace is one of the very serious results of the hiring and promoting of marginally qualified or unqualified employees, especially in high-level jobs which require substantial skill, formal training, and education; and (4) Many blacks with substantial education and skills are hired into the IRS at the GS–5 and/or GS–7 levels and retire, in many instances, with only one promotion over a 20- to 40-year career.

It is obvious to the task force, and me, that IRS will issue a substantial percentage of its highest performance ratings to blacks who occupy lower level positions or to blacks who, under basically any standards, are not qualified by education, experience, training, or personal ability to hold middle management positions.

This tactic and strategy allows IRS management to give many of its highly qualified, highly educated, and highly skilled and overall best qualified blacks unjustified lower performance ratings, with little to no change of being overturned because the percentage of blacks with the highest ratings are within an acceptable tolerance range. This IRS strategy has negatively impacted many highly skilled and highly educated blacks.

A workplace free of religious, ethnic, and racial bigotry is an American dream which we all look forward to, but much of IRS's higher management has other ideas, namely to keep themselves in power.

Milwaukee, Wisconsin IRS Office, a Case Study in Abuse. The Milwaukee NAACP president has asked the National NAACP and me as National NAACP's Criminal Justice Committee chairman to assist in its efforts to get IRS to deal with some very significant racial and sexual problems at the Milwaukee office and smaller offices in Wisconsin.

The U.S. Senators from Wisconsin and some members of the Wisconsin Congressional delegation have shown substantial dignity, courage, and decency in their pursuit of justice and equality for the IRS employees in Wisconsin.

The following is a listing and synopsis of some of the major concerns and allegations received by the NAACP in Milwaukee and forwarded to me for assistance.

Case one. A white female GS–13 Criminal Investigation Division Special Agent has been placed on administrative leave since August or September of 1997. She has faced numerous actions which are pure and simple retaliation from IRS officials in Wisconsin for telling the truth. According to the information provided to the NAACP, she had an upward and rewarding career until January of 1996.

In or around January of 1996, she compiled a truthful affidavit for use in an EEO case involving another person which was the right thing to do, but it has created significant personal suffering for her.

She has been subjected to repeated medical testing and diagnosis. As recently as today, she is now in Washington, DC being subject to psychological training under the guise of fitness for duty.

She filed an EEO complaint which alleged that, in an attempt to scare her, an IRS agent drove recklessly towards her in a government vehicle. As far as NAACP could determine, the special agent driving the vehicle has not been disciplined. The employee has suffered too much for basically no justifiable reasons, and she urgently needs your individual and collective help.

Case two. A black female GS–6 secretary has provided the NAACP with the following bizarre story which our investigation has found to be truthful. She has endured racial and sexual discrimination since 1988. She quietly endured until recently filing her first EEO complaint in 1994.

The U.S. Equal Employment Opportunity Commission, EEOC, found that the charges were valid. The retaliation, verbal abuse, and harassment has escalated since that time as a result of filing this and nine complaints later.

Some of the documented abuses of racism and IRS abuse of authority are as follows: One: She won the first case when it went before the EEOC, but this winning has negatively impacted her career and her physical well-being.

Two: She has been discriminated against, subject to verbal abuse in front of her co-workers, her managers, and fellow employees, and harassed almost daily in a very hostile work environment with the goal of ostracizing her.

Three: In one very sordid incident, her manager threw pictures and a newspaper at her in front of her co-workers. He was allowed to retire without sanctions and with his dignity intact.

Four: In another incident, the same manager referred to her as a "Black Bitch" in front her co-workers.

Five: Management has referred to and spread the word among employees that she and other IRS employees who believe in equality and justice are unstable and a potential deadly threat to their co-workers.

Six: Her performance evaluation was deliberately rated low in order to deny her competitive upward mobility opportunities. This happens too often to individuals who are not favorites of IRS management.

Seven: As a final act of management to strategize her planned removal, a black female was assigned as her acting manager for approximately 6 months to replace the previous manager who had recently retired. The job was posted, she applied for it, but she was not selected and it was given to a white male. The acting manager filed an EEO complaint and she eventually negotiated a transfer to a western State.

After filing her complaint, the black female acting manager told the secretary she found no reason to give her a low performance rating, and the refusal to do so was a factor in her failure to get the job on a permanent basis.

Case three. A black female who was objecting to a black male and Hispanic female showing their love in the workplace reported the affair to IRS management. She was the recipient—whether intended or not is unknown to the NAACP—of filthy, gross, and vile sexual correspondence between the couple.

On April 9, 1998, 20 days ago, the black male lost his composure, yelled incoherently eyeball to eyeball at the terrified black female. A National Treasury Employee Union official aided her in her escape from the angry black male.

The issue is before the Wisconsin courts for relief. The victim is requesting a temporary restraining order. IRS, to the best of NAACP's knowledge, has done virtually nothing to ensure the safety of this employee who does not want to be the recipient of filthy sexual material at work.

Case four. A Hispanic female, GS–12, Internal Revenue Agent objected to being unfairly evaluated as a low dollar per hour producer, which is supposedly against IRS policy.

She is under severe pressure from IRS for her belief that an outside vendor prepared Climate Assessment Report which dealt with the hostile work environment in Milwaukee should be released.

IRS does not want to release the report because of its negative findings. The possible loss of her job is a deep concern. It is our hope that there will be an investigation into these serious and substantiated allegations.

Mr. Chairman and committee members, all of us are Americans and we do not want quotas and/or favored treatment. We are seeking a chance to fulfill the dream eloquently voiced by Dr. Martin Luther King, Jr. many years ago.

Congress must take an active role in cleaning up the mess at IRS, especially employment discrimination. Correspondence to former IRS Commissioner Richardson were met with exception to all claims of racism within the IRS.

The response is typical of the IRS and illustrates that this agency often blindly denies serious allegations of wrongdoing without a thorough examination into the facts.

It is highly probable that the failure to institute significant senior management changes will be an exercise in futility. A new IRS Commissioner, surrounded by senior level career employees who caused the problem, will not solve IRS's internal problems. IRS senior management, legal staff, and EEO staff are major contributors to the internal problems within IRS.

In closing, I want to thank the Chairman and the committee for allowing me to speak on this serious national problem.

The CHAIRMAN. Well, thank you very much, Mr. Warren.

On the first page of your testimony you state that, "IRS management has frequently promoted marginally qualified or possibly unqualified individuals, including a few blacks, to higher level jobs or positions as a reward for supporting racism, racist policies, and/or whatever management does."

Now, you are clearly saying that racism is a major problem at the IRS. But are you also saying that racism is part of the way the agency manages its employees?

Mr. WARREN. Racism and the reward for willing to be part of a racist organization is one of the prime requirements for many IRS managers to accept a black person. Not on qualifications, but they want you to be there to do whatever they want you to do, when they are wrong, to do wrong.

We hear black people talking about blacks who know they are not qualified for jobs but are recipients of jobs because that way they do not have to promote the best qualified blacks, the best educated blacks.

An example of what you were talking about when you hear these things, is a black man in his mid- to late-50's would say he never experienced discrimination in his life and he is at a high level position. So that tells you something about the world we live in, the IRS world.

The other thing about that is, I think the problem is they have had so much—I do not work there, I am at the national NAACP. I do not work there, but what has happened, the EEO office there has evidently been staffed over the years by people who are marginally qualified, who have problems and charges against them.

They are selecting people to run the EEO office that should not be selected to run any EEO office, not to mention a national EEO office. There is no punishment and no penalties for doing wrong, so racism is the reward.

The CHAIRMAN. Let me make sure I understand what you are saying, Mr. Warren. You are saying that the agency purposely gives high performance ratings to black employees in lower positions so that it can give lower performance ratings to black employees in higher level positions, but little or no chance of these low ratings being overturned; is that correct? How does this work?

Mr. WARREN. Well, how it works, it is like the gentlemen who were here before. If you do not have millions of dollars and you have got the Justice Department attorneys down there, you cannot hardly prove an EEO case today unless you have $100,000. How many people in this room have $100,000 to fight an EEO case?

So if you get the person down at the bottom and you give them this high rating and with the best qualified blacks filing a complaint, you are going to take affidavits from the whole room.

What you are going to find in the room, is the blacks with the lower grade are going to be satisfied and scared to lose what they have got, and the guy who is the best qualified black with education and training is angry, he is hostile, or she is upset and hurt, pained, because some of them want to be accepted so bad that, when they do file a complaint, their careers at that point are over with.

So what has happened there is, the people at the bottom are very happy to get those high ratings, knowing they are not going to go anyplace higher than the middle or upper levels, and the people at the higher levels are given the lower ratings because they know the agency is going to sustain their complaint.

When they file a complaint against the agency, the agency is going to sustain based on the numerical numbers. It is very difficult to sustain an EEO case when you are fighting an agency with unlimited resources and when they are buying off some of the blacks.

One of the things you have is a situation today in the IRS, and other agencies too, we find, is a lot of the blacks who are being promoted are nothing but mercenaries available for the highest bidder.

The CHAIRMAN. Let me go to a statement you make at the end in respect to senior management changes at the IRS. You go on to say that, "A new IRS Commissioner, surrounded by senior level career employees who caused the problem, will not solve IRS internal problems. IRS senior management, legal staff, and EEO are major contributors to the problems within the IRS."

Is it your opinion then that the Commissioner should clean house at the highest levels?

Mr. WARREN. He should clean house based on the information that the NAACP has received. Let me just say, I have a notebook here from Milwaukee, and I have another two-inch notebook at my house that I did not bring with me that basically deals with Milwaukee. We could go to Houston. We have files on Houston. We have got files on other cities.

Let me just say, the information to the Deputy Commissioner of the IRS as a career employee, I think, has been there for a while. I think the first thing you should do is think about removing them and put new leadership in that office, new leadership in the management administration office, and new leadership in the EEO office because I do not think the EEO office now, and in the future, is going to do the right thing.

We have people out in the field in these various regional offices that our NAACP members, black and white—and some of the whites are not members. We deal with anybody. If you want to comment, if you have legitimate complaints, we will hear you.

The concern we have there is, if you clean house you might get something done. The new Commissioner might be an outstanding individual, but if you go into a cage and you are surrounded by snakes, cobras, eventually one of those cobras is going to bite you and it is going to be fatal to what you are trying to do.

I think that is where he has himself today. He needs to get some new people there. He needs to be given some authority to select some new people that he can have trust in that is going to do the right thing.

If you get the housecleaning there, take these people out of the positions, maybe they would do the right thing and the government would not be facing all of these liability suits, this discontent in the workplace, and abuse of authority. They know what is going on. These are career people. These District Managers, like in Milwaukee, that is an office that you would think the Gestapo ran, not Americans run that office.

They are rewarding blacks to do the wrong things, and my parents did not teach me that. I am from Texas. I went to schools where they taught people to do the right thing. But in Milwaukee, you are rewarded for doing the wrong thing, and in the national IRS office that is also a problem.

You are finding people who know they are not qualified. They are being promoted, they are happy, they are going to defend the system. People who are qualified and not being given equitable treatment and fairness and justice, they are going to be opposed to the system. So you have got to clean house.

The CHAIRMAN. I would say to the distinguished witness that in the legislation to come before the Senate, one of the things we are doing is providing the opportunity for the new Commissioner to bring in some new faces, so I think that is a very, very important initiative.

Let me conclude my questions at this point. I want to make sure I am clear, Mr. Warren. Is it your testimony that you found evidence of discrimination against whites, blacks, and Hispanics in IRS?

Mr. WARREN. What you have got is a little game that is being played. It is a maintenance of power game. You put somebody in position and you are at the top. If they are black and there are some whites you do not like, you put them up that person, like the black female secretary I showed you with the acting manager.

You put somebody in charge who is black and let them come down on the whites, and that way you get rid of them. You could do it white on white, black on black or whatever, but you are using the system to select management and officials whom you know are people of virtual moral bankruptcy and they will do whatever they have to do just to keep their job without any thought of the consequences.

So what I am saying is, you have people there, blacks who are not doing the right thing. They know they are not doing the right thing, because you hear the employees talking about them all over the place. But the fact becomes, they are favorites of management because of the kind of people they are. They are not good people.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman. Thank you, Mr. Warren.

You referred to the situation in Milwaukee. I understand that the Department of Treasury is leading an EEO study of the Milwaukee office, and I am sure you are aware of that.

Mr. WARREN. Let me just say, Senator Moynihan, I have talked with the President. This was faxed to me last night from the Criminal Investigation Division in Milwaukee.

Let me just say something about what is going on in Milwaukee about that task force. I think it is partially a fraud. I am going to be very frank. It is kind of harsh language, but there are some fraudulent aspects of this. You have people when the panel originally was started that were the real culprits of the problem.

What they should have done in Milwaukee is gone outside and gotten independent, non-agency people and a staff person from the agency, a contractor or something like we did in our school system, to deal with these problems.

What you are doing here, is the EEO officer at the national EEO office, as far as I am concerned and as far as the NAACP in Milwaukee is concerned, is trying to control this thing, but they are controlling it to make sure the outcome is already predetermined.

Senator MOYNIHAN. Well, can I just understand that the final report will be issued to Senators Kohl, Feingold, and Congressmen Barrett and Kleska. I am sure they will be vigilant in attending to the issues you raised.

I look forward, Mr. Chairman, if we need to be——

Mr. WARREN. Senator Moynihan, may I say something in reference to that issue? They have not been forthcoming with Mr. Kohl, Mr. Feingold, Mr. Kleska, and Mr. Barrett, I do not think, either. I think the IRS in Milwaukee is just like the IRS at the national office. They release only the data they want. I asked for employment data, we have not gotten it. We have not received anything from them.

So I think what is happening in Milwaukee, you have got some black people up there in Milwaukee, as far as I am concerned, and most people at the NAACP is concerned, that ought to be in jail for their criminal acts.

Senator MOYNIHAN. I do hope you will take those matters to Senators Kohl and Feingold. They are not going to be indifferent in the least, and they will be vigilant. Thank you for your testimony.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Kerrey?

Senator KERREY. Thank you, Mr. Chairman. Thank you as well, Mr. Warren, for bringing this to our attention. I would ask you to review some of the specific sections of the bill that we have that attempt to address this and many other personnel issues as well.

If you want to take notes on it, Section 1101 of the legislation, in creating an oversight board, sets out the terms of authority, as well as the responsibility that includes reviewing plans for training, education, and other personnel issues.

Section 1102 of the bill requires the Commissioner to have a demonstrated ability in management; it is fairly straightforward. The Chairman of our committee has talked about that as well. It is in both the House and the Senate bill.

Section 1102 requires a semiannual report on the status and disposition of employee misconduct and abuse allegation. Section 1201, both the House and the Senate bill provides more effective management of employee contact, providing flexibility provisions, again, as the Chairman has referenced.

Section 1205 of both the Senate and House bill requires submission of an employee training plan to Congress. Section 3709, some additional procedures for employees to provide confidential information to our committees and to report on allegations of employee misconduct or taxpayer abuse.

As I pull them out, those are the sections that reference the situations that you are describing. There may be some additional things that you would have for us to consider.

Again, the Majority Leader has indicated that relatively soon we are going to bring this up on the floor, so any suggestion that you have got to us on ways to change this law to help reduce the amount of discrimination that is obviously a government-wide problem would be very much appreciated.

Mr. WARREN. Thanks very much.

The CHAIRMAN. Thank you, Senator Kerrey.

Senator Grassley?

Senator GRASSLEY. I think, once again, we have an example here, as we did in the first panel, of accountability at the IRS. In the first panel we had mistreatment of taxpayers, in this case we have got mistreatment of employees. In either case, people who are meting out mistreatment have to be held accountable. The most top management at the IRS is going to have to see that people are punished for this sort of wrongdoing so that people who are mistreated can do their job.

The people you are telling about cannot be good tax collectors, good government employees, when they have this sort of environment of intimidation. We talk about the culture of intimidation as it is used against the taxpayer. We have a culture of intimidation here that is used against the employees, to the detriment of the goals of the IRS to collect all the money that is legally owed.

So I want to take advantage of my few minutes here to get you, because you are on television, to be counseling people who might be watching who have the problems that you are talking about. What would you tell current IRS employees who are having problems with racial or sexual discrimination; what would you recommend that they do to most effectively deal with their problem?

Mr. WARREN. Let me just say, there is no easy solution to your question. What we are trying to do at the NAACP is we are trying to release our Federal Sector Employment Discrimination Report, which will be released on June 17 at the Renaissance Hotel in Washington, DC here at a breakfast. We are trying to take affidavits and documents.

We are going to give Mr. Clinton a notebook just like this with a couple of hundred affidavits from people all over this country, with all religions and all races, talking about Federal sector employment discrimination.

We take in blacks, we take in whites, we take in Asians, we take in Hispanics. We are taking anybody that believes in decency and justice, regardless of who they are. If they have been treated wrongly and we do not agree with everything they do, we still are going to take them because it is the right thing to do.

Senator GRASSLEY. How wide is retaliation against those employees who complain and who stand up for what might be their rights?

Mr. WARREN. I would say it is 90 percent of the time, and it is a death sentence for upward mobility and you are going to be ostracized, you are going to be punished, and you are going to be subject to retaliation. There is a 90 percent chance. I would say it is probably close to 90 percent. I know of very few people who have filed a complaint and not been subject to what I call State-sanctioned terrorism right after they filed the complaint.

Senator GRASSLEY. In other words, they are kind of like a skunk at a Sunday afternoon picnic.

Mr. WARREN. That is about right.

Senator GRASSLEY. There is a great deal of peer pressure to go along, to get along, not to complain.

Mr. WARREN. Yes. If you complain, you are virtually a communist, a troublemaker, or what they call a trouble employee. They have all kinds of names they put to you, but it is anything except being a child of God.

Senator GRASSLEY. Do you know this, or is it always behind the scenes that this evidence is brought to you? Is it quite obvious to you as an employee that you are labeled as a troublemaker?

Mr. WARREN. Let me put it like this. The blacks, the Hispanics, the Asians, whoever they are that we have heard from, we talked to, have affidavits we have at home, these people have career track records of being outstanding.

Let us take this GS–13 white female whom I was talking about right here in Washington, DC today under going mental fitness for duty testing as if she has gone crazy. She has got awards, she has letters of accommodation, everything else until she filed that EEO complaint. The minute you file the EEO complaint is like you are going under a death sentence.

Senator GRASSLEY. That psychiatric requirement of treatment that you are talking about is too reminiscent of the Soviet system where everybody who tried to buck the system ended up in a psychiatric hospital, which was another way of being in prison.

Mr. WARREN. Well, the people out in the field refer to the Criminal Investigation Division as another State-sanctioned terrorist group of the Gestapo from Germany, worse than the problems we had in World War II. People are terrified when they have to deal with these agencies because they know the agency has unlimited resources.

The Criminal Investigation Division has abused people in Houston. We know people first-hand, blacks and whites. These people are saying they have done nothing wrong. These are good, hard-working individual Americans who gave this country their all in all, and now 15 or 20 years later they are being subject to just terrorism by the State.

Senator GRASSLEY. Thank you, Mr. Chairman.

Thank you for your testimony.

The CHAIRMAN. Thank you, Senator Grassley.

Senator Lott?

Senator LOTT. Thank you, Mr. Chairman.

Mr. Warren, thank you for your testimony here today. In your testimony, you described several cases of racial discrimination against IRS employees and intimidation of those employees.

But what really struck me was, you are describing a subtle, sinister, systematic problem in which you are maintaining top IRS management has a coordinated strategy to give all these excellent ratings to blacks who have low ranking positions and give unjustified, you maintain, low performance to those that are higher ranking positions.

Now, this would have to be some sort of coordinated strategy by the top IRS management. Is that what you are claiming?

Mr. WARREN. Let me rephrase and clarify. What I am saying is, it happens so frequently when they file the complaints, when you get a chance to talk to people and get their performance ratings on the individuals who file the complaints and documentation within the office, when you finally get around to finding out who got the higher ratings, you see this proportion of the secretaries, the GS–5, 6's, 7's, and 8's got the real high ratings, and the blacks with the most skills got, not lower ratings, but they will not get the top. You need the top to move up. In other words, you cannot make the competitive announcement roster.

Senator LOTT. So you are basing this on statistics that you have been able to get.

Mr. WARREN. Cases we have looked at, right. But they are not just at the national office. We are talking about folks in Houston, Milwaukee, we are talking about folks in Missouri, and we are talking about folks in Chicago, who have talked to other people who say they have the same problem out there. One of the national civil rights leaders has some of those cases. I have not seen the files.

Senator LOTT. Do you have reason to believe that top management people in those district offices talk among themselves about that or that there is some communication in this regard from the national office, or is this an unspoken, unwritten, very subtle thing, or is it some sort of a coordinated effort? I mean, I find it hard to believe that it could happen the way that you describe it without some thinking about it beforehand.

Mr. WARREN. Let me just say this.

Senator LOTT. I am not questioning that it is accurate. It is like so much of what we have heard about IRS. It is mind boggling.

Mr. WARREN. I do not think anything is in writing, but you have a culture. Let me just say, I deal with a lot of people, police people across the country, on these issues. Sometimes you can go into a place and you can see people who are doing what they think management wants, and nobody is going to put that on a piece of paper. But it is a culture. It is a cultural, environmental thing, what you are responding to. You know if you do certain things that might be morally bankrupt it is going to get you ahead, so you do it. If somebody does not pat you on the wrist or put some sanctions or reprimand against you, you are going to keep on doing it.

A lot of times the people who are doing this are rewarded by being promoted higher and higher. I do not think it is what you call an organized crime family, but I think it is a culture acceptance, environmental problem.

Senator LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lott.

Senator Conrad?

Senator CONRAD. Thank you, Mr. Chairman. Mr. Chairman, I want to just make a statement based on a conversation I just had as I left the hearing room. Earlier we had a panel of three witnesses, and I found their testimony certainly compelling and of real concern with respect to the way the Revenue Service had approached them.

But as I left this hall, I was stopped by a man who was very agitated and he said, Senator, you have got an obligation, and this committee has got an obligation, to get both sides of the story before you make a judgment. He said, unfortunately, you are not getting both sides of the story, you are getting one side of the story.

He said to me, I know of facts that are not being presented to you, but I cannot talk about them because the IRS has not been given a waiver by the taxpayers in question, so we cannot give the other side of the story. He said, I would lose my job if I gave what I know to be another side of this story.

So I say that, Mr. Chairman. I do think we have an obligation, before we reach judgment, to get both sides of the story. This particular gentleman was very concerned that people were named here today who are in the Internal Revenue Service who are, he felt, being judged guilty without ever having their chance to tell their side.

He said, you know, I wonder if people are going to be able to get a fair hearing if we do not have a chance to get both sides of the story given to the public. I would say again, this gentleman was very agitated. I could tell he was very sincere.

Senator KERREY. Mr. Chairman, let me associate myself with what Senator Conrad has said, especially since names have been publicly inserted into the record, especially when we are dealing with taxpayers who are bringing to us stories that said, our reputations were ruined as a consequence of what was said publicly. We should not allow the same thing to happen.

It is very important, especially as we go into consideration of changing the law, that we not just change the law as a consequence of hearing one side and not the other.

Senator CONRAD. I do think we have that clear obligation. Let me say that I also believe, Mr. Chairman, as I expressed this morning, that what we heard here today indicates to me that there are cases where the Internal Revenue Service is acting totally inappropriately in terms of how they are approaching taxpayers. I mean, sending in armed agents and this kind of heavy-handed treatment.

Senator MOYNIHAN. SWAT team.

Senator CONRAD. This is not the way to approach taxpayers.

Senator KERREY. Has the Chairman thought about offering an opportunity for Attorney General Reno to testify, for example, to come up and talk to us about the issue of the U.S. Attorneys that Senator Moynihan was raising?

The CHAIRMAN. No. But Friday, I would point out to my distinguished colleague, we have, of course, extended an invitation to the IRS Commissioner to come here to present whatever they think is appropriate, so there will be an opportunity at that time.

Senator CONRAD. Well, Mr. Chairman, if I might just add this point, though. The problem is, if the taxpayers do not give waivers, he cannot present the other side of the story. So I think we need

to be asking the witnesses that come here if they will grant waivers so the other side of the story can be told.

Otherwise, Mr. Rossotti can come up here and talk in general terms, but he cannot talk about the specifics and we may make judgments based on only hearing one side of the story. If there is one thing I have experienced in public life, making a judgment based on one side of the story can lead you down a path that is just wrong. I do not think that is the intention of any of us.

I think we all share a view of wanting to resolve problems that we have uncovered with respect to the Revenue Service, but they ought to be based on facts. The only way I know, the best way to get at facts, is to get both sides of the story. I thank the Chairman.

Senator MOYNIHAN. Well said.

The CHAIRMAN. As I said, the Commissioner has been invited to come Friday. He will have the opportunity to present what he thinks appropriate.

Senator KERREY. Mr. Chairman, can you comment on inviting the Attorney General? I mean, a lot of this is a law enforcement issue.

The CHAIRMAN. Well, I think the Ranking Member raises a very important question. As I said, we think it is something that William Webster ought to look at, and we all ought to look at. Subsequently, if it seems appropriate, we can, in the future, invite the Attorney General.

Senator MOYNIHAN. Well, all right.

Senator KERREY. I appreciate, Mr. Chairman, your response. But the dilemma, of course, is that we are about to consider changing the law. The Attorney General has the responsibility of doing the enforcement effort of the IRS and all this stuff gets referred to her people.

The CHAIRMAN. Well, I would point out that yesterday there were people on your side wanting to raise it earlier, now today they want to delay it. There is no perfect time. I think we have——

Senator MOYNIHAN. But, Mr. Chairman, could we not leave it that we will get in touch with Attorney General Reno and see what she thinks and we will pass it on to you?

The CHAIRMAN. All right. We will leave it that way.

Senator KERREY. Thank you.

The CHAIRMAN. Thank you.

It is my understanding that there is a vote beginning in the next several minutes. So I think what we will do, is recess until the end of that vote.

Senator MOYNIHAN. Thanking Mr. Warren.

The CHAIRMAN. Yes. That is the next thing, is I want to thank you for being here today, Mr. Warren. It is very much appreciated and very helpful to this committee. Thank you very much.

Mr. WARREN. Thank you.

The CHAIRMAN. The committee is in recess.

[Whereupon, at 11:47 a.m., the hearing was recessed to reconvene at 12:26 p.m.]

The CHAIRMAN. The committee will please come to order.

A question has been raised as to a waiver by the taxpayers heard this morning, whether the IRS can comment on their cases. Let me remind the panel that the IRS has already made an effort to make

their case against these taxpayers and could not sustain any criminal action. The taxpayers were not found guilty of anything.

Let me say that I am aware of no mitigating circumstances that would excuse the type of treatment of taxpayers that we heard about this morning. As to the waivers, that is between the taxpayer's counsel and themselves. I certainly would not recommend giving the IRS a second shot at destroying reputations after the compelling testimony that we heard here today.

Let me point out that Commissioner Rossotti and I agreed that we would not seek waivers, nor did Commissioner Rossotti want to be questioned on specific cases.

Now it is my pleasure——

Senator KERREY. Mr. Chairman, I want to alert you that I disagree with the decision on the request for a waiver. I have no desire to retry those cases, actually, to the innocence or guilt of the witnesses. I do not want to drag them through that. I quite agree with you, no taxpayer should be treated in this fashion. I do not take the side of the IRS in this matter. But we are making a determination about what the law should be.

It is going to be very difficult for us to make a determination about the law unless Commissioner Rossotti, who has the authority only the witnesses can grant him, can talk either generally or specifically about the cases.

So I respectfully disagree with the ruling and I will ask at some point, if it is not changed, for a roll call vote to enable us to at least approach the witnesses and see if they will allow a waiver to be granted so Mr. Rossotti, who will also, I am quite certain, say that he does not condone this kind of behavior. He does not condone behavior that harasses taxpayers, that bust down the door, and so forth.

I would say, further, Mr. Chairman, no drug kingpin or money launderer has a big, flashing neon light on their foreheads saying, I am a drug kingpin and a money launderer; they wear dark suits and red ties and they look normal. They hang out. They live in the neighborhoods.

So Attorney General Reno, we have tasked her with a responsibility. We have passed legislation, after legislation, after legislation saying, go get those drug kingpins. I do not hear an awful lot of concern about Fourth Amendment rights on the floor of the Senate when these things are being debated.

So what we do, is we give her the authority to go after it, and we need to hear from her in order to be able to determine whether or not a change in the law might actually result in her coming back 2 years from now and saying, congratulations, Senator Kerrey, you just made it possible for money launderers and drug kingpins to survive in this country.

So I hope, whether it is in written testimony or some sort of solicitation, Mr. Chairman—I appreciate very much what you are trying to do and I am not trying to be a thorn in your side on this issue, but I know we are going to come to the floor of the Senate and debate this law relatively soon, thanks to your leadership.

I just hope that we are prepared to consider not that these individuals should be drug out again, but to consider that our action could make matters worse, not better.

The CHAIRMAN. Well, I would point out that everything that was discussed this morning is in the public realm so that there is no confidential information. But in any event, what we are looking at is the process and we think that there is adequate opportunity to discuss that. But, as we said, as far as the Attorney General is concerned, we would look at that.

Senator MOYNIHAN. We would look at that. Mr. Chairman, I wonder if the staff could not meet with some of the IRS staff and just talk about this matter and bring you their judgment?

The CHAIRMAN. That would be fine.

Senator KERREY. Thank you very much, Mr. Chairman. I appreciate it.

The CHAIRMAN. It is now my pleasure to welcome the members of our third panel, the co-directors of TRAC, or more properly called Transactional Records Access Clearinghouse located at Syracuse University.

Our witnesses are Mr. David Burnham, who is a co-director of TRAC. He is also an associate professor at the SI Newhouse School of Public Communications at Syracuse University.

In addition, he is a lecturer and author of "A Law Unto Itself: Power, Politics, and the IRS." Mr. Burnham has already provided valuable testimony to the Senate Finance Committee in our hearings last September, and we are pleased to have him back with us today. So, welcome to you, Mr. Burnham.

Mr. BURNHAM. Thank you, sir.

The CHAIRMAN. And to you, too, Ms. Long. Ms. Susan B. Long, who in addition to being co-director of TRAC, is an associate professor of Quantitative Methods with the School of Management at Syracuse University.

We are very delighted to have both of you here. I would ask you to please rise and raise your right hand.

[Whereupon, the two witnesses were duly sworn.]

The CHAIRMAN. Thank you. Mr. Burnham, would you please proceed.

Ms. LONG. We are going to share this testimony and bring it together.

The CHAIRMAN. Very good, Ms. Long. Delighted to have you as a co-witness.

STATEMENT OF SUSAN B. LONG, ASSOCIATE PROFESSOR OF QUANTITATIVE METHODS, SCHOOL OF MANAGEMENT, SYRACUSE UNIVERSITY; AND DAVID BURNHAM, ASSOCIATE RESEARCH PROFESSOR, NEWHOUSE SCHOOL OF PUBLIC COMMUNICATIONS, SYRACUSE UNIVERSITY; CO-DIRECTORS OF TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE

Ms. LONG. Mr. Chairman and members of the committee, we welcome this opportunity to inform you about two serious problems that have plagued the Criminal Investigation Division of the IRS for many years.

The first problem concerns the CID's systematic inability to keep track of the work of its 3,352 criminal investigators, men and women who, under the law, are among the most powerful of all Federal enforcement agents.

The second problem concerns the inexplicably erratic way the Nation's tax laws are enforced throughout the U.S. While these two problems at first seem unrelated, we believe they are, in fact, directly linked, that the lack of accountability inherent in the CID's faulty bookkeeping system undermines the ability of this important investigative force to enforce the Nation's tax laws in an effective and fair way.

Mr. BURNHAM. Before presenting the evidence that supports our conclusions, we would like to make one general observation. District to district variation in the enforcement of any Federal law is natural and to be expected. The United States is a vast country. Sioux Falls, South Dakota, after all, has nothing in common with Miami, Florida, and no one would expect Federal enforcement in the two cities to be similar. But the variations that emerge from a careful examination of data that we have obtained from the Justice Department and the courts appear to go way beyond such natural occurring outcomes.

It is fair to ask, for example, why for the last five years the per capita number of IRS convictions in Memphis, Tennessee, in Ashville, North Carolina, in Charleston, West Virginia, Mobile, Alabama, are at least twice that racked up in important financial and business centers like Texas, South Houston, like in Boston, or in Los Angeles.

Two questions present themselves about the erratic enforcement patterns of the CID. First, mindful of the constitutional mandate that government must work to assure the American people equal protection under the law, is the IRS treating similarly situated citizens in similar ways?

Second, at a time of scarce government resources is the IRS effectively targeting its criminal enforcement activities in the areas and against the individuals and organizations where they are most needed?

We believe that one reason the IRS has shown a lack of concern about these and other hard-to-explain regional patterns of criminal enforcement, it is a surprising fact that the IRS is unable to accurately track what its own criminal investigators are doing.

As suggested above, this is not nearly a question of expecting the IRS to meet some decidedly minimal bookkeeping standards, although there is great irony in its failure to do so. When the senior managers of an enforcement force with the powers of the IRS's Criminal Investigation Division are unable to keep track of the activities of their agents to even provide Congress and the public an accurate count of the number of people its investigators have convicted or sentenced to prison, systematic supervision is impossible.

Lacking effective internal oversight, genuine abuses by individual agents can go easily unnoticed. Outside oversight by institutions like the Treasury Department's Inspector General, the General Accounting Office, or this committee, is problematic. More broadly, we are confronted by an agency that is outside the required boundaries of a working representative democracy.

Ms. LONG. We understand that these are serious allegations, but we believe that the longstanding failure of the IRS to provide the American people with an accurate accounting of this critical en-

forcement function is a serious problem. There are two related points.

First, in addition to being unable to track the work of its CID investigators, there is strong evidence that the IRS is engaged in an active public information campaign intended to substantially exaggerate its effectiveness in this area. Put directly, the IRS has been hyping the numbers.

Second, there is no question that for several years the IRS has refused to examine the compelling evidence regarding the existence of this problem that it, in fact, has worked to avoid the accurate balancing of its checkbook.

Mr. BURNHAM. What is the basis for our finding that the criminal enforcement counts of the IRS, the numbers that have long been relied upon by the Office of Management and Budget, Congressional committees, the GAO, news organizations, and the public are inaccurate and misleading?

As you know, TRAC is a data gathering, data research, and data distribution organization associated with Syracuse University. For the last 9 years, under the Freedom of Information Act, TRAC has obtained data tapes from the executive office of U.S. Attorneys. According to Justice Department manuals, these tapes contain a detailed record about every occasion when an investigative agency has recommended the prosecution of a criminal matter.

In which of the 90 judicial districts was the matter referred? When was the matter referred? Which agency made the referral? What was the most important criminal charge? Which matters were declined for prosecution; why? Which referrals resulted in the prosecutors bringing formal charges, in winning convictions, in sending individuals to prison?

From this matter-by-matter information, TRAC has developed counts and batting averages for several investigative agencies, including the IRS. According to the Justice Department data, the IRS, from 1992 to 1996, referred about 23,000 investigative matters to the prosecutors that the IRS had determined should be prosecuted.

During that same period, again, according to the Justice Department, Federal prosecutors went forward with about 12,400 prosecutions and won conviction in 9,350 convictions, and sent 4,800 individuals to prison. These counts cover all IRS criminal enforcement actions, those for tax fraud as well as those considerable number of cases aimed at special areas such as drugs and money laundering.

In its annual report covering the same 5-year period, however, the IRS presents a very different picture of its criminal enforcement activities. While accounts of the number of referrals are about the same, when it comes to prosecutions, convictions, and prison sentences the Justice Department and the Tax Agency seem to be living in very different worlds. The IRS, in fact, claims about 50 percent more prosecutions, 70 percent more convictions, and twice as many individuals sent to prison as does the Justice Department.

The simple fact that the counts of the two institutions are so very different is surprising by itself, but the inconsistent nature of these numbers concerning a closely-linked administrative process is

almost impossible to explain. How can it be that the IRS claims 50 percent more prosecutions than the Justice Department, but then reports twice as many people sent to prison?

In response to a series of inquiries going back more than 2 years and an extensive discussion with a senior CID official last week, the IRS has been unable to explain the astonishing inconsistency of its claims. There is additional evidence supporting TRAC's findings that the IRS counts are substantially incorrect.

This evidence has emerged in connection with TRAC's belief that our mission does not end with the simple collection and distribution of data. Equally important, we believe, are our efforts to ensure that the information is as accurate and comprehensive as possible.

In this connection, we compare the counts that emerge from one agency's records with those developed by another about a particular government function. The point here is, when two independent bodies come up with the same answers the confidence in the accuracy of these answers is greatly enhanced.

That is why TRAC spent considerable time comparing the enforcement counts that emerge from the Justice Department data tapes with similar information developed by the administrative office of the U.S. courts.

We decided to focus our examination on the core responsibility of the CID, tax fraud. Because of definitional differences and other such problems relating to any two large data systems, exact matches in such counts are rare.

Ms. LONG. But when we examined the numbers of the Justice Department and the courts about the tax fraud activities of the CID, we found that the 5-year counts were in substantial agreement. According to the Justice Department data tapes, for example, Federal prosecutors charged 4,854 individuals with tax fraud. According to the courts, there were 4,654 such charges.

When it came to convictions, the counts of the two independent organizations again were quite similar, 4,139 to 4,187. Considering individual who are sentenced to prison, Justice recorded a total of 1,690, the courts 1,662. The similarity in these key performance numbers is striking and lends credence to their general reliability.

But when the very similar tax prosecution numbers of the Justice Department and the courts are compared with the tax prosecution numbers of the IRS, we found surprising disparities and inconsistencies. Here are the actual numbers. As just noted, from 1992 to 1996, records of the Justice Department and the courts indicate that a total of about 4,100 individuals were convicted for tax fraud. The IRS, on the other hand, claims 6,030 convictions on such charges.

The gap for individuals sentenced to prison for tax fraud is even more glaring. While Justice and the courts count about 1,600 of these unfortunates during the 5-year period, the IRS boasts of sending 3,595 such individuals to prison, more than twice the number.

Thus, the impressive success rates claimed by the IRS in its official annual report, the data relied upon by the General Accounting Office in its investigative reports to this committee and the rest of Congress about the CID is totally contradicted by the information

compiled by two institutions with much less immediate interest in the outcome, the Justice Department and the courts.

Mr. BURNHAM. There, thus, is strong and disturbing evidence that an important arm of the IRS has been unable to accurately track its work product, the prosecution of tax violators, and that it has routinely hyped its enforcement achievements.

Almost as distressing, however, is the evidence that the Criminal Investigating Division has for the last two years refused to balance its checkbook. While individuals citizens are free to keep their cash balance in their heads and pay penalties when this easygoing accounting system results in a bounced check, this option is not appropriate for an arm of the IRS.

This is especially true when, under the mandate of the Government Performance and Results Act, all Federal agencies are now required to establish specific goals and explain how well they are achieving them.

The evidence regarding the IRS's active disinterest in balancing its checkbook has emerged in connection with a unique effort by TRAC to provide all American citizens with detailed information about the performance of the IRS and three other Federal agencies.

TRAC has pursued this goal by mounting special web sites. Complete with colored maps, graphs, tables, explanatory material, and the text of relevant laws, these sites gives citizens a unique way to obtain authoritative information about the district patterns and long-term trends in how the IRS, FBI, the DEA, and ATF are enforcing the law.

The sites are based on data TRAC has obtained from the Justice Department, the Office of Personnel Management, the agencies themselves, the courts, the GAO, the Census Bureau, and other sources.

Ms. LONG. From the very beginning of this effort, we were troubled by the obvious problems in the accuracy and consistency of the criminal enforcement information available in the annual data publications of the IRS.

In 1997, after determining that the information from the Justice Department and courts conflicted with the contradictory claims of the IRS, we added a prominent segment to the IRS web site stating that our investigation had determined, "The information now being provided the public by the IRS about its criminal enforcement activities is substantially misleading and inaccurate."

Before detailing our criticism on TRAC's web site, we had written the IRS a series of letters outlining the serious problems we had uncovered and requesting the Agency for Public Record Information that might have allowed us to determine why the agency was unable to track its own activities.

One specific request was for a district by district list of all IRS defendants, along with relevant docket numbers, processing dates, and specific statutory codes, who was prosecuted, convicted, or sentenced to prison from 1992 to date.

The IRS has resisted our inquiries, flatly denying that its data system was seriously flawed, and not producing the list of defendants and other information we had requested.

On August 2, 1996, for example, Tad Brown, the Assistant Commissioner for Criminal Investigation responded to TRAC's criticism

by writing that the IRS was "satisfied with the tracking of this information through our own data bases," and that the agency did not "see the need to reconcile or verify the records with those maintained by the executive office of the U.S. Attorney."

In a letter on March 31, 1997, Brown wrote that, "We continue to stand by our statistics and cannot assist you in reconciling our data with that of other agencies."

Mr. BURNHAM. But what makes this mess truly discouraging is the fact that it is not new. In fact, more than 15 years ago the problems were publicly identified by two expert studies supported by the Federal Government. One was completed in 1978 by a panel of the National Academy of Public Administrators, the second, commissioned by the Justice Department in 1980, was written by Susan Long.

However, the IRS's head-in-the-sand attitude about the shortcomings we have documented may be coming to an end. We are encouraged by Commissioner Charles Rossotti's concern about the reliability of the agency's information system and the importance of such information to effective management.

The United States pays a lot of lip service to our system of checks and balances to the theory that we are a government of public laws and not of whimsical bureaucrats. But unless the actions of a powerful government agency like the IRS are accurately and carefully monitored, our celebrated checks and balances are a sham.

John Adams said it well in a letter he wrote to Thomas Jefferson 180 years ago. "Power," Adams said, "must never be trusted without a check."

Thank you very much. We would love to get your questions.

First of all, let me thank both of you for a very insightful report, a very shocking report, I might add. I was just looking at some of the statements you made. "IRS is unable to track what its own Criminal Investigation agents are doing; lacking effective external oversight, genuine abuses by individual agents can easily go unnoticed."

Then you go on to say, "More broadly, we are confronted by an agency that is outside the required boundaries of a working representative democracy."

I wonder if you would explain exactly what you mean by that.

Mr. BURNHAM. We give police agencies, enforcement agencies, a lot of power. That power is needed. We need a New York City Police Department, we need an IRS, we need enforcement. It is part of our system of assuring that society complies with the rules.

But we also must insist that these agencies live within the law. We established a very complicated system for doing that, the Congress and the courts. And if the Congress and the courts are unable to get good information about how many arrests the cop is making in a precinct or what the CID is doing, you get the horror stories that you have heard today, and the horror stories that I uncovered in my book 10 years ago. We have to hold them more accountable.

The CHAIRMAN. Ms. Long, would you have anything to add?

Ms. LONG. Well, without information you do not know what they are doing, and the managers within IRS cannot effectively manage

if you do not have accurate information about what your personnel are doing.

The CHAIRMAN. I have here a copy of the IRS so-called fact sheet. As you know, the IRS recently released the sheet that profiles its Criminal Investigation Division. Your group, TRAC, is, of course, an expert on IRS. Both of you are well known for the excellence of your work.

How would you describe the so-called facts contained in this report, accurate reporting, inaccurate, wishful fiction?

Ms. LONG. Well, the report covers a lot of ground so I do not think you can summarize it in that simple fashion. But as to the numbers it presents, as to the number of cases that it recommends for prosecution, the number that are prosecuted, the number of convictions, the number sentenced to prison, those data do not at all correspond with those kept by the Justice Department or by the Federal courts.

The CHAIRMAN. Well, let me get a little more specific. The IRS says, of roughly 5,000 cases its CID initiated last year, the conviction rate of these adjudicated was 93 percent. Is that correct?

Ms. LONG. Well, basically, if you look at the Justice Department figures for the 5-year period for 1992 to 1996, it shows a conviction rate of about 82 percent, not 93 percent. If you just focus on tax fraud, the number is around 88 percent.

But this does not include those cases that IRS recommends for prosecution and are never prosecuted. If those are included, then the figure falls to something like 44 percent for all cases, and about 58 percent for tax fraud cases.

The CHAIRMAN. It falls to 44 percent, and 58 percent.

Ms. LONG. Fifty-eight percent. But that, of course, is including those that are never prosecuted.

Senator MOYNIHAN. The U.S. Attorney just decides not to proceed.

Ms. LONG. He does not prosecute. So the conviction rate I believe that IRS was referring to at 93 percent was looking at those that were prosecuted, how many were convicted. It is higher than the Justice Department figures, but depending on your base of 82 percent versus 88 percent, something in that range.

The CHAIRMAN. Do you have any idea how those percentages stack up against other Federal law enforcement agencies?

Mr. BURNHAM. Because the Federal agencies like the FBI, DEA, and the INS investigate very different kinds of cases, comparing the success rates can be misleading. However, when the IRS's performance is compared on charges of a similar nature, such as money laundering, for example, just taking money laundering statutes, the agency's record appears to be comparable with that of the FBI. Not better, not worse, but about the same. Of course, that contradicts with their claim that they are superior to all other agencies.

The CHAIRMAN. Now, the IRS fact sheet maintains that, "convictions may result in substantial prison sentences, as well as payment of fines, civil taxes, and penalties." Can you give us a more concrete explanation of the results of these efforts?

Ms. LONG. Yes. Obviously, prison can result from those kinds of efforts. The IRS's annual report usually claims something on the

order of 75 to 80 percent of those that are convicted end up with prison sentences.

If you look at the Justice Department and court data, it is really quite different. It is more like around half, 51 percent. If you look just at tax fraud cases, it is more like 37 percent. So, there is just a huge disparity here.

The CHAIRMAN. You made some passing reference, and both Senator Moynihan and I have also, referring to the fact that the Commissioner has set up a new organization headed by William Webster to review the CID. I think that is an excellent move. I wonder what advice each of you would have for Judge Webster as he starts to undertake this review.

Mr. BURNHAM. Well, Judge Webster should not rely on the IRS's internal management data. He must obtain data from the courts, the Justice Department and the Sentencing Commission. He must put them together, look at them, and then examine the performance of the IRS.

The CHAIRMAN. Ms. Long, would you like to add?

Ms. LONG. I just echo those comments. I think they would be helpful.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Just to thank two exceptionally gifted investigators. Not everybody can do the work that you have done with just a couple of computers and a Xerox machine. It is really remarkable.

The GAO has told us that a problem for the IRS in this regard is that they do not have the technology. We keep running into that problem all over this organization. Would you think that is likely?

Ms. LONG. Everything I know suggests that IRS's information systems are in a dreadful shambles.

Senator MOYNIHAN. Yes. Yes.

Ms. LONG. But this goes beyond that. This goes beyond that, I would say.

Mr. BURNHAM. Senator Moynihan, we asked for a list of people that they were indicted as a result of their investigations or were convicted. That is not very many people.

Senator MOYNIHAN. It is not an overwhelming number.

Mr. BURNHAM. No.

Ms. LONG. Or very complicated.

Mr. BURNHAM. Or very complicated.

Senator MOYNIHAN. Yes.

Mr. BURNHAM. They have not produced that. I cannot believe that is a computer problem, that is a will problem.

Senator MOYNIHAN. That correspondence you had was not exactly consumer friendly.

Mr. BURNHAM. No.

Senator MOYNIHAN. Yes. Yes. Well, sir, another matter to be raised. We are much in the debt of these two academics and citizens. You are kind of both in these regards, are you not? We much appreciate it.

The CHAIRMAN. We do, indeed.

Senator Kerrey?

Senator KERREY. Mr. Chairman, I have actually had an opportunity to hear Ms. Long and Mr. Burnham's testimony before on

the issue of examinations, where we have a similar problem. I would say that I think one of the things we ought to consider doing, is to examine the bill.

I say to Ms. Long and Mr. Burnham, that in the bill that passed out of committee, Section 3709, I believe, helps Section 1103, which is a new section, the independent IG for Tax Administration will help. Then Section 3503 deals with examination data and I asked earlier Ms. Long and Mr. Burnham to examine that to make sure we have that language right.

Senator MOYNIHAN. Good.

Senator KERREY. We may want, Mr. Chairman, to look at the possibility of putting language into Section 1101, which is the duties of the new Oversight Board. I mean, all of us understand that you get different interpretations of data.

If I am presenting data to you I may want to skew it in my favor. I may want to say I am taller, I do not weigh as much, I am younger than I look. I mean, we skew data to our benefit. I am a lot faster than I look, and so forth.

So we understand that data can sometimes get skewed as a result of my desire to impress you, but that is not what we are talking about here. We are talking about just the availability of reliable data that IRS says they agree it is good, we agree it is good.

It may be, Mr. Chairman, and I would say, Senator Moynihan, in your longstanding interest in getting good data from government, maybe we ought to look at putting some language into 1101 that would make certain that this committee is getting, and the public is getting, the kind of data that they need to make certain that the best oversight of all in representative democracy occurs, which is the public's ability to get the information, and we then respond to that information as it is being analyzed by the public.

Now, Ms. Long actually has a permanent injunction right now. She went through a lengthy Freedom of Information Act process in order to get the examination data. It is a remarkable story all by itself, and indicates why we need to change the law so that the public, and we as their representatives, can try to figure out what is right and what is wrong.

The CHAIRMAN. Well, I think we all agree that accurate information is essential to effective oversight, so we will be glad to work with you on that, Senator Kerrey.

I just want to again express my thanks to both of you for being here today. It is very helpful to have available the kind of information you accumulate and investigate. It gives us a great deal of help. I just want to publicly say how indebted we are to both of you for the excellence of your work.

Thank you very much.

Mr. BURNHAM. Thank you very much.

Ms. LONG. Thank you very much.

Senator MOYNIHAN. Mr. Chairman, if I may just, on an atavistic attachment to Syracuse University, note that this year in the U.S. News and World Report, I believe, they listed the 20 best universities for the study of public administration in the Nation, and Syracuse was number one. Also number one for snow cover, which keeps you indoors and working. Thank you very much. Thank you.

The CHAIRMAN. Thank you. Come again.

The committee is in recess.

[Whereupon, at 1:02 p.m., the hearing was recessed, to reconvene at 9:00 a.m. on Friday, May 1, 1998.]

IRS OVERSIGHT

THURSDAY, APRIL 30, 1998

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:37 a.m., in room 216, Hart Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, Murkowski, Nickles, Gramm, Lott, Mack, Moynihan, Baucus, Kerrey, Conrad, and Moseley-Braun.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order. This morning, I would like to welcome our first panel of witnesses before the committee today. Our panel of Internal Revenue Service auditors, all of whom are currently employed by the IRS, will tell us about their personal and professional experiences within the IRS.

They will address cases of fraud and abuse, and then provide examples that show the sheer indifference of IRS management for internal abuses against their own employees. And they will uncover serious compliance problems that cause a significant loss of revenue to the government. They will also focus on selected IRS practices and procedures that have clearly developed into serious problematic issues for both the IRS and taxpayers alike.

Our witnesses are Ms. Maureen O'Dwyer, Ms. Minh Johnson, Mr. Michael Ayala, and Ms. Ginger Jarvis. I welcome each and every one of you.

Now, I want to point out that Federal law prohibits public disclosure of taxpayer information without the consent of the taxpayer. For that reason, I would like to remind the witnesses that if questions are posed to them regarding the names of specific taxpaying entities, tax years, or amounts of taxes paid, you are instructed by the Chair not to respond.

In the interest of disclosure, we have asked the witnesses to understate the revenues involved to prevent any possibility of identification no matter how remote.

I would now ask the witnesses to please rise and raise their right hand?

[Whereupon, the four witnesses were duly sworn.]

The CHAIRMAN. Thank you and please be seated.

Ms. O'Dwyer, we will start with you.

STATEMENT OF MAUREEN O'DWYER, INTERNATIONAL EXAMINER, MANHATTAN DISTRICT, INTERNAL REVENUE SERVICE

Ms. O'DWYER. Thank you. Mr. Chairman and distinguished members of the committee, I am a grade 13 International Examiner in the Manhattan District of the Internal Revenue Service. I joined the service in March 1987 as a grade 7 Examiner. My college studies were in mathematics, economics, and accounting. Prior to that, I was involved in art.

Within the service, I progressed from the office examination of simple Form 1040's to the field examination of small business Schedule Cs and Form 1120's through to large case, CEP, examination, and ultimately to the audit of international corporations. I have been in International for 7 years.

In the past, I have received awards, and have also written an audit technique for the service.

When first approached to give testimony before you, I was reluctant to do so, as I considered it to be a betrayal of my fellow employees. The IRS is an easy smear. And it has been reviled, both justly and unjustly, in the press. From the inside looking out, it is easy to distinguish between which accusations are true and which are not. No one has risen to the defense of the service against the unjust accusations. I did not wish to add more fuel to the already raging fire or further demoralize my fellow employees by disclosing any other inequitable practices of the service.

But our system of taxation is dependent on the taxpayer's belief that the tax laws they follow will apply to everyone and in the belief that they will be administered impartially. I observed that this impartiality does not exist—does not happen.

Therefore, my sense of righteous indignation at the betrayal of the fiduciary trust of the American public by the service outweighed any personal concern that my testimony would display a lack of loyalty toward the service. It is the average American citizen who is my employer. And it is this citizen to whom I am beholden, not the service nor its administrators nor my fellow employees.

Thus, I am here today to discuss the uneven enforcement of the Internal Revenue Service Code and Regulations by order of some Internal Revenue Service managers and administrators. I am also going to explain the reasons that the service does this and the devastating affect that it has on the morale and the sense of morality of its employees.

My discussion begins with the case of my recent past. The taxpayer was a sophisticated, international corporation, well-schooled in international and tax law. My examination of this taxpayer led me to believe that it had aggressively pursued tax avoidance.

I had orally proposed adjustments to this taxpayer on issues which involved transfer pricing, reorganizations, mergers, and consolidations. The dollar amount of my proposals were in excess of $42 million and had tax effects in excess of $12 million. Penalties and interest could double the tax effect to over $24 million.

The taxpayer had agreed on the issues proposed, but was negotiating as to the numbers and was preparing a pricing study. My

manager after reviewing the case asked me to call the taxpayer and get a response date from their on their pricing study. The taxpayer requested two more weeks. The two-week extension was given.

The following day a memorandum listing overage cases was circulated by the International District Program Manager. My case was on that list.

When my manager received the memorandum on overage cases, he called me into his office and ordered me to immediately no-change the case. He said it was not necessary to write an international examiner's report. He ordered me to purge my work papers, to simply hand in the tax return stamped no-change. Therefore, there will be no record of any audit work on the issues considered in this case.

He informed me that he had the absolute authority to do this and that he had the full support of his branch chief in so doing and that if I did not do this that I would be held as insubordinate. It was only when I threatened to go to inspection about being ordered to purge my work papers that I was allowed to hand them in and write "the international examiner's report, no-change as ordered".

I was not, however, even granted the two weeks promised to the taxpayer in an attempt to close the case agreed. Nor was I allowed to write the case up as unagreed in an attempt to protect the revenue base of the service.

That this was an egregious and capricious misuse of authority by my manager can be seen by the fact that an international examiner's report is always written up in the same format. It takes no great or lesser amount of time to write a case unagreed, agreed, or no-change.

All the time I spent developing the issues was wasted. The manager violated the mission of the service to collect the proper amount of the tax revenue at the least cost.

In that report, I wrote of the issues of the taxpayer's counter proposal and of the order by my manager to no-change the case.

Administrators and managers, while they bear the ultimate responsibility for the disposition of cases which are worked by examiners who are under their supervision, do not have unqualified authority. This means that there must be a sound and legal basis for the disposition of all taxpayer cases.

These administrators are not granted such absolute authority as they usurp, either through position descriptions or under the Internal Revenue Manual. They are sworn in as servants of the public to uphold the law.

The Assistant District Program Manager International keeps a file of these reports on closed cases. My file on that case is missing. It was removed because the case was closed no-change without basis in tax law and proper IRS procedure and when a taxpayer was agreeing. And that report contained my protest.

If that report was ever accessed under the Freedom of Information Act and the information on that action got out, the IRS would be badly embarrassed. The only defense of the IRS for its action of no-change would be poor audit techniques and lack of issue development by the examiner. This the IRS could not do. Not only be-

cause it was not so, but because of the tax sophistication of the taxpayer that was agreeing.

This decision by my manager to no-change the case was based on his desire for advancement in the Manhattan District. The Manhattan District was and still is statistics driven. The district is very self conscious about having the oldest cases in the service. And its administration continually monitors the statistics, not the issues on aging cases.

A manager who has an aging case in his group will not receive an evaluation that will merit him a monetary award and help him carve out a career path within the service.

When my manager no-changed that case, he betrayed the trust and confidence of the American people and his own sworn duty to perform in a matter warranting the highest degree of public confidence in his integrity, efficiency, and fairness. My manager through ambition, incompetence, and lack of integrity gave up a potential tax deficiency which could have brought in as much revenue as $24 million in exchange for his vain hope of a monetary award in the amount of $2,000.

There are managers in the Manhattan District who hold their integrity in higher esteem than their careers and who will argue for the merits of issues on such cases. These are usually the more intelligent and technically competent managers.

Throughout the Manhattan District, the technically weaker managers consistently ordered cases closed, no-change as they begin to age. In large case, CEP, it is standard practice to drop an issue that will delay the closing of the case. Large dollar amounts on major taxpayers are routinely zeroed out in this manner.

It matters not that there appears to be an egregious tax abuse nor that the complexity of the issue requires time to develop. What matters is the manager receive a performance award for having met the case-closing deadline timely.

When questioned as to why the issue was dropped, a praiseworthy although obfuscating answer that is often given in response is, it was good taxpayer relations.

I am cognizant that there are cases which should be no-changed because there are no issues. However, this recognition that there is no issue and the decision to no-change a case is one that is made early in the audit cycle.

The cases that begin to age ordinarily have outstanding issues which have gone unresolved due to the complexity of the issues involved and the difficulty of their development or due to the deliberate procrastination and lack of cooperation on the part of the taxpayer.

Therefore, it can be seen that the cases which are closed no-change under the statistically-driven cosmetic deadline are usually large and wealthy taxpayers who have the means to consistently contend and dispute with the IRS.

The Internal Revenue Service has often expressed the concern that an adjustment would bankrupt Wall Street, but it has never expressed any concern about bankrupting Main Street.

I am personally aware of similar cases handled by other managers in the same manner can verify the above statements. Due to time constraints, I cannot describe them all.

However, I would like to recount just one case. The examiner in this case had proposed a unique and seldom-considered adjustment in international. The adjustment placed a special tax on the foreign shareholders of an American corporation. The examiner had researched the foreign tax treaty applicable to the foreign shareholders and found no exemption to the tax. The adjustment was strictly statutory, highly technical, and ordinarily placed only against American shareholders.

Even the taxpayer's highly qualified and highly paid representative agreed that it was a viable issue. But because there was no case law on point for the application of this issue to foreign shareholders, the representative requested that the examiner secure a tech advice from Washington counsel in order to clarify and resolve the issue.

To do so would age the case. Therefore, the examiner's manager ordered the case closed no-change. The amount of tax revenue given up by this malfunctioning manager was about $500,000. And if an audit was extended to the later years, as is required by the Internal Revenue Manual, the amount of tax revenue would probably have been over $1 million.

But all taxpayers are not treated to a no-change by a manager as a case ages. The aging returns of small taxpayers are written up unagreed and penalties are assessed. The taxpayer will receive a stat notice, that is it must respond within 90 days. If the taxpayer does not respond within this timeframe, it will automatically lose its appeals right and the right to petition Tax Court.

Understanding these procedures is difficult for the unknowledgeable small taxpayer. Without representation, the small taxpayer is vulnerable. The results can be costly.

Stat notices are routinely done to small taxpayers through service centers in correspondence audits and through agents in field and office exam. The service does this because it has over loaded the working inventory of examiners in order to pump up closed-case statistics.

While this may be an example of what drives the IRS, perhaps a more defining example of what drives a career motivated IRS administrator is an account of how two similar tax cases were handled by one manager.

The examiner under the manager on both tax cases was the same. Unreported income and/or false deductions which would incur a fraud penalty had been found in succeeding years on both tax cases by the examiner.

Both taxpayers were professionals. The first taxpayer was very cooperative. He went through alone represented by neither an accountant nor lawyer.

When it became apparent that there would be unreported income, the examiner asked him to bring in his accountant. The man declined. He was embarrassed and could not bear to have his accountant think that he had these charges leveled against him by the IRS.

His tax deficiency without penalties for 2 years was about $45,000. With interest and penalties, especially the civil fraud penalty, this amount increased to over $100,000. The man had no bank

account and no assets other than his cooperative apartment which he was arranging to sell in order to pay for this IRS assessment.

The examiner asked the manager to remove the fraud penalty, explaining that although this man could not substantiate all of the money which passed through his bank account, the audit revealed that the man had sold some possessions and that he had received the return of some money which he had lent to friends. Both of these accounted for some, but not all of the unearned income deposited in his account.

Perhaps, a more comprehensive investigation would find adequate explanations for the balance of the unreported income.

The examiner also explained that if this man had representation, refused to agree, and his case went to appeal, that the civil fraud penalty would probably not be upheld. Deliberate intent would be difficult to prove, especially when assessing the character of this man.

During the audit years, the man had successfully raised two children as a single parent, paid for medical expenses of friends who could not afford to do so, and had altruistically donated money to impersonal charities without thought of any personal gain. The manager simply responded, no, he's guilty. This taxpayer without an advocate was callously condemned.

The other taxpayer never appeared for the audit. He was represented by a CPA attorney and also by a former IRS Criminal Investigation Division employee.

The previous 3 years of this taxpayer's return had been audited by another examiner. The taxpayer had agreed to the disallowance of personal items which he had deducted on those returns.

Both of his representatives were uncooperative, cited IRS harassment of their client, procrastinated, held back information, and consistently attempted to intimidate the examiner.

Despite this, the examiner persisted and found substantially large deductions that were false, as well as the same personal deductions that had been disallowed in the previous 3-year audit.

The deficiency not including penalties for this taxpayer was $450,000. With civil fraud and other penalties as well as interest, it would be over $1 million.

The moment the examiner found these false deductions, the representatives changed their approach to the audit. Formerly hostile and aggressive, they now whimpered and became nauseatingly friendly.

They cited the prestige of the taxpayer and the representative in the community and the meaning of their respective positions to the community, but they offered no explanation of the falsification and the repeated taking of personal deductions which had been previously disallowed.

The examiner, on the other hand, the education and knowledge of the taxpayer, the contempt he displayed for the law by taking personal deductions that he knew were wrong.

In comparison to the first taxpayer, this man considerably more wealthy lived off his tax return. He deducted his designer cloths, the wages paid to his housekeeper, the furnishings and rent of his personal apartment as well as trips abroad for both him and his father. His charitable donations were to foundations in his own in-

dustry, always bearing his own name, and designed to enhance his career.

An examiner has no authority to remove a penalty. A manager does under certain conditions. When exhorted by the representative simply to be understanding and give a little to this taxpayer, the manager without hesitation removed the fraud penalty. When asked by the examiner why——

Senator MOYNIHAN. Mr. Chairman, could I respectfully ask a question at this point?

The CHAIRMAN. Yes.

Senator MOYNIHAN. There are two points, sir. And we know the respect and affection you are held by this committee on both sides. But our rules specifically require that testimony be distributed to members of the committee at noon day.

Senator KERREY. At noon of the business day immediately before the last business day.

Senator MOYNIHAN. Noon of the business day immediately beforehand. And in all these hearings, we have never seen testimony. It is handed out to us at the moment it begins, the witnesses appear. And then, it says "having submitted his written testimony, the witness shall be allowed not more than 10 minutes for oral presentation of his statement".

Now, we gathered here at 9:30. It is now 10:00 o'clock. And Mrs. O'Dwyer is still going on about people who are nauseatingly friendly having been whimpering and such. We do have rules, sir. And can we not keep to a 10-minute rule? And could we hope that in order to ask so we can join in this? This legislation is coming out of this committee unanimously. And we want to keep it that way, but the staff is just not being very helpful. Could I ask my colleagues?

Senator Kerrey, would you?

Senator KERREY. Yes, sir. I mean, not only do we have rules governing this committee and if there is going to be changes in the rules, we should vote on it. I mean, I am willing to accommodate concerns that the witnesses might have for intimidation by the IRS if that is the concern.

Senator MOYNIHAN. Sure.

Senator KERREY. But that concern should be brought to the full committee. And we should vote to make an exception to the rules. I mean, we set the rules. Furthermore, there are standing rules of the Senate that govern the conduct of the committee. And that also makes clear that this testimony needs to be made available to everybody on the committee.

The CHAIRMAN. Well, first of all, let me point out that in most cases, we rarely have in advance the testimony of administrative witnesses.

Senator MOYNIHAN. It has been known to happen, yes, sir.

The CHAIRMAN. And before. So that this is a practice that has become the general practice rather than the exception.

The Chairman let me point out here that one of the reasons we withheld this information is because frankly the witnesses needed to be protected. I think it would be a serious mistake to try to delay these hearings.

We have a number of distinguished members of the IRS who at great personal risk are coming before us to testify what they have seen as long-time employees.

And I think it is critically important that this is not a matter of being critical of this administration or any other administration. As a matter of fact, many of the examples that are used took place under other administrations.

Senator MOYNIHAN. Oh, clearly, we have never suggested for a moment that this administration or any particular administration.

The CHAIRMAN. I would hope that we would agree that these witnesses who are here today, who have come here at tremendous personal risk and are worried about retaliation, to be perfectly honest, they have an opportunity to tell their experiences as they see them.

I would remind you these are current witnesses and they are under oath. I think it is important that the facts be brought out.

Senator KERREY. Mr. Chairman, I do as well. I would point out merely that prior to the enactment of the Taxpayer Bill of Rights 1 and Taxpayer Bill of Rights 2 that Senator Grassley and Senator Pryor were so much involved with, there were similar sorts of hearings. And I would ask Senator Grassley in the previous moments when we had other witnesses. We have had other IRS employees before the committee at previous times prior to the enactment of those two pieces of legislation.

I mean, we are basically enacting Taxpayer Bill of Rights 3 as Title III of this bill. And the only reason I want—I do not want to stop the witness from testifying. I want to make certain that they are protected against any kind of retaliation or intimidation that might occur against them.

But the question before us is how should we write this new Taxpayer Bill of Rights 3? And my presumption would be that when Senator Pryor and Senator Grassley had their hearings that they distributed testimony and they followed the rules of both the Senate and the committee.

Senator BAUCUS. Mr. Chairman.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Mr. Chairman, there are really two issues here. One is protection of the taxpayers, that is the witnesses in particular which we all do want to do. And the other issue is the degree to which these are going to be informative hearings where we as a committee get to the bottom of the matter and find some ways to minimize the recurrence of the allegations.

Now, the rules, our committee rules are designed to accomplish both objectives. In the first place, the notice. Regrettably, none of us, except for the chairman and maybe other staff or other people, certainly no Democratic Senators or Democratic staff had any idea of who you are, who you were going to be until we walked in here.

We did not know what your testimony would be. We did not know who you are. We had no idea which makes it a little bit difficult to prepare. It makes it difficult for us to kind of work to get to the bottom of the matter, that is work on your testimony and try to find out what constructively is going on here, not engage in the theatrics or demagoguery, but rather just constructively find out what is going on here.

So that is why we have the requirement and the rules that the testimony be submitted a day in advance, by noon a day in advance presumably so that members of the committee and their staffs can look at the testimony and ask intelligent questions.

It is much more difficult to ask intelligent questions the first time we have seen you or know of you or seen your testimony as the moment we walked in here. That is just no way to conduct business. That is why the rules were written that way I think, Mr. Chairman.

With respect to protection of the witnesses, there are ways we can do that. We can have redacted testimony. We can meet in executive session, Mr. Chairman. I mean, we can have the witnesses tell us their problems and what they faced with the IRS in executive session, not in public. That is another way to protect the witnesses. Already have another hearing afterwards, after we have had the executive session hearing.

That is what we do in the Intelligence Committee, as the Senator from Nebraska knows who is the Vice Chairman of the Intelligence Committee. We have many hearings in executive session, closed sessions dealing with intelligence. Then, we often have another open hearing on the same subject, but not going into classified information because I think the public has a right to know what generally we are doing and what is going on.

So, Mr. Chairman, I urge you to find some way to minimize the politics of this. And I will be honest with you, this is getting political because our side has no idea what is going on here.

Senator MOSELEY-BRAUN. Mr. Chairman.

Senator BAUCUS. No idea whatsoever. And in addition try to do it in a way that does protect the witnesses. As I said, executive session of one way. Redacting their testimony is another way, but at least find some way other than the current road we are going down which I think is not doing the public a good service.

The CHAIRMAN. Well, just let me make a couple of observations. Then, I will call on you. As I mentioned, this particular rule has more often not been followed. Frankly, as you well know, in the majority of cases, the agencies, from the Administration, have not submitted their testimony. And nobody, but nobody has made any objections to me on that score in the past. This is the first time this has happened.

Secondly, as I just mentioned, these hearings are not partisan. Many of the situations and cases happened under other administrations. What we are looking at is to try to make changes in an agency that has some practices that are not in the best interest of the taxpayer.

As far as going behind closed doors, as we know, we have sunshine legislation. And the general rule is that these matters should be discussed in public. The public is entitled to know.

The reason in this particular case the testimony was not submitted earlier was frankly to protect the witnesses, who are current employees. As they will testify, they are very concerned about retaliation.

We are not in any way trying to indict the administration. As a matter of fact, I have said time and again that we applaud the appointment of the new Commissioner. We think he is an outstanding

man. We have been trying to work very closely with him, and we will continue to do so. But in the meantime, I think it is important to get the facts out.

Again, I emphasize that each of these witnesses are long-time employees. They are under oath. And it seems to me that it is important that the public hear what they have to say.

Now, Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. As you know, particularly going through these hearings, there is has been no member on this committee that has been more concerned about retribution against IRS employees than I. We had the conversation yesterday with the majority leader. This is a matter of real concern I think on both sides of the aisle for all members of this committee to make sure that these people who have the courage to come forward are protected.

Having said that, it just happens, Mr. Chairman, that I am sitting here. I have with me a history of the Committee on Finance. I do not know. I think this was authorized when Robert Dole was the chairman of this committee. But in any event, it has been made available. And I have decided that as the first woman on the committee, I would read the history of the Committee on Finance.

What this book makes very clear is that this committee has a tradition of bipartisanship. This committee has a tradition of people working together without regard to partisan lines and that Democratic members are treated as well as Republican members, that the rules are followed without regard to what party you belong to on this committee, and that there is a sharing of the leadership between the chairman and the minority party spokesman.

No one wants to not have sunshine on this process. Everybody wants to have sunshine. Everybody wants to hear from these witnesses.

But I would just urge the chairman and the members to listen closely to what Senator Moynihan had to say because if anything, he was raising I think an issue in the tradition of this Finance Committee which is that we have rules and that those rules are equally applied and that we all, all of us have equal access to the information.

And I probably should have mentioned the majority leader's name because now I have inspired him to want to say something, but in any event I can tell. Oh, boy, did I punch a button.

Of all the committees, we should not let this committee devolve or get diminished into any kind of partisanship. That is not in keeping with the tradition of the Finance Committee.

The CHAIRMAN. Senator Gramm.

Senator GRAMM. Well, Mr. Chairman, let me yield to Senator Lott. And then, if you will come back to me.

Senator LOTT. I will be brief. Are we listening to ourselves here? We are talking about a rule. I did not see this testimony, but I am real interested in what these three ladies and this gentleman have to say. For 15 minutes now, we have been arguing over two rules. We want to cut this lady off.

I would like to ask the witnesses to try to limit themselves to 10 minutes. But I really think in a bipartisan way, we ought to listen to what this panel has to say.

[Applause.]

Senator MOYNIHAN. Mr. Chairman, may we have order? What is that in the back? And just that I agree with the majority leader. And he agrees with us. If we had read this testimony overnight, we would know more about it, but let us hear it.

And may I say to Ms. O'Dwyer that if you feel under any threat to your life or position, you have the senior Senator from New York State here to say that it will not happen.

Ms. O'DWYER. Thank you.

Senator GRASSLEY. The trouble is the senior Senator from New York or the senior Senator from Iowa in the case of Des Moines, we cannot be with these people enough to really protect them from harassment.

Senator MOYNIHAN. They have our phone numbers.

Senator GRASSLEY. Well, I know it. And I know you are sincere, Senator Moynihan. And I know you will do what you can.

But these people are here. I think that we are worried about ourselves as political leaders, maybe following a rule or not following a rule, the extraordinary circumstances under which these people are here. And they are ruining their lives as a result of being here. They are no longer going to be able to function in the IRS the way we know the IRS. And we do not even know it as well as they do.

And I think we ought to have some sympathy for the people that are before us rather than worrying about our own prerogatives. I think it is pretty selfish of us when these people are sacrificing. We are not sacrificing one doggoned thing by sitting here and listening to them. But it is sure evident that the Congress has not been doing its job for the last 20 years or we would not even have these people here.

The CHAIRMAN. Well, I suggest that we move ahead and hear these individuals. I would say, for example, in Mrs. O'Dwyer's case, we initially asked her to limit her testimony to 10 minutes. She felt very strongly that she had an important story to tell that would take longer. And so we agreed with that.

Senator MOYNIHAN. All right. I am fine with that.

The CHAIRMAN. Please proceed, Mrs. O'Dwyer.

Ms. O'DWYER. Thank you. When asked by the examiner why he removed it, this was when the manager removed a fraud penalty, the manager's response was, "if I didn't, the representative would lose him as a client."

Why such an astounding and perverted response from an IRS manager? Because this was a manager who was always looking for a tax appointment outside the service. By this decision, he bonded a network with two men he saw as wealthy and powerful and in a position to recommend him for some future job opening.

This manager stands not alone in his behavior. Other even more senior level administrations and executives do the same, their agenda and introduction into the business world. They network and make friends in preparation for careers outside the service. Their sense of morality has been eclipsed by their personal ambition.

Many administrators have known IRS projects to be a waste of time and of resources immediately after the inception of these projects. As those administrators were responsible for these projects, the projects were pushed forward anyway because they

were tax trendy or because they would bring favorable publicity to the IRS and thus to the career of the project administrator.

One such project was so highly visible and trendy that it propelled the administrator out of the service and into a lucrative position.

Another project had good public relations value. A senior-level administrator placed a lower level administrator in charge of that project and requested a follow-up report on the project. The lower administrator told the senior administrator that the project was useless and should be abandoned because the project could not achieve the goals that were expected of it. As the project had good public relations value, the senior official told the lower official to expand the project and to write it up as worthwhile.

I especially mention this in order to make the public aware that many pronouncements made by the IRS are simply not true. The service deliberately disseminates false information.

An examiner complained to me about the handling of his case by an IRS expert. Two issues had existed in the examiner's tax case. One issue was entirely technical in nature. The taxpayer had conceded this issue. The other issue fell into a gray area that came under the umbrella of this man's expertise.

As is the custom within the service, the expert was asked to attend the closing conference on the case with the examiner and his manager. The expert took over the case completely, treating the examiner and his manager as bystanders.

The expert relinquished the technical adjustment not within his province which had been conceded to by the taxpayer. He then reduced his own adjustment to a diminimus amount. He told the examiner and the manager that this was necessary in order to get an agreed case. Actually, this man needed his issue agreed in order to proof the worth of his expertise.

The taxpayer's prominent lawyer was delighted. The examiner and his manager were outraged, vowing to never again invite the expert to a closing conference. That evening as the examiner stood near a fax machine, he saw a fax come in for the expert. It came from the prominent lawyer in the prominent law firm praising the IRS expert for his excellent expertise and invited the IRS expert to speak at a prominent legal association. Weak egos in need of acclaim are sometimes the cause of moral deficiency.

When people, such as these experts, commissioners, district directors, executives, and lawyers leave the service, they return as representatives of major taxpayers and ignore the ethical mandate of the service that former employees disqualify themselves for a 2-year period from representing any taxpayer whose cases were open and under their authority while they were employed by the service.

They seek to intimidate examiners by asserting their former prestige and their still current contacts within the service. They endeavor to call in markers to influence the people whom they have promoted and those who they used to manage in order to make the adjustments just go away.

A former district director employed by a major accounting firm shamelessly solicited work from other accounting firms citing his influence within the service. They bypass the examiner and at-

tempt to conduct the audit through a manager or a more senior-level administrator.

An audit is conducted by an examiner. Hence, the title examiner. Their purpose is to seize control of the examination in order to negotiate a settlement before the audit even begins. They exert tremendous pressure to drop significant items on the return and to convert an adjustment which would have substantial tax effect into an adjustment with no tax effect.

These former administrators obstruct the path of the audit and never respond to much of the requests for information. They whisper those magical words, time on a case, months in process, dollar yield, good taxpayer relations which they have heard and used so often in their former careers into the ears of the service administrators.

These remarkable subliminal prompters are so effective that unwarranted settlements are made. Vowing to the pressure of a representative, a manager reassigned a case that had been closed and agreed for processing. It was reassigned to a junior examiner to be reworked in order to ensure the flow of the audit toward the position of the representative, an adjustment of only $2 million.

The case had been closed, unagreed with the stamp of approval of Washington counsel. It is the policy of the service never to reassign and rework the case except when the case has been left incomplete due to the resignation or reassignment of the examiner.

As the lead into my next section, I have been asked to express the sentiments of a revenue officer in the Manhattan District Collection Division. He was to appear before you today. That fear of losing his job caused him not to appear gives witness to the magnitude of retaliation that is imposed by the service upon the outspoken.

Again, as time limits his story, I include only his most poignant testimony. This collection officer had written off as uncollectible two taxpayer accounts. His manager threatened disciplinary action against the employee if he refused to levy these two taxpayers as ordered.

On Christmas day, this manager brutally forced the collection officer to levy the salary of one taxpayer who was earning subsistence wages.

The second taxpayer was dying of cancer, was living on welfare. Even though internal documents informed the IRS that this man was a welfare recipient, the collection officer was ordered by his manager to have the terminally ill and impoverished taxpayer provide the service with a written statement and supporting documentation that would verify his financial condition and his illness.

The collection officer was also instructed to make a count of in order to seize any and all assets that belonged to this sick taxpayer.

What would the IRS do with $50 from a piggy bank? Was it really necessary for big brother to levy on Christmas eve? Could it not wait until after Christmas eve?

What was the ultimate disposition by the service of these two taxpayer accounts? They were declared uncollectible and written off. A tremendous amount of service resources had been utilized, time had been wasted, two taxpayers were preyed upon, one em-

ployee was demoralized, all on the order of management in its attempt to achieve an improperly measured productivity statistics. Before ever there is a taxpayer victim, there is first an employee victim.

If either of these taxpayers had had the wherewithal to have filed a complaint or had the actions of the collection officer somehow become public, management would have declared them the actions of a rogue employee. Not so.

Incidents such as these occur over and over again, both in collection and in examination. The employee is intimidated and coerced into submission to the misused authority of administrators with the resulting inequitable actions that harm taxpayers.

While government agencies, such as the Internal Revenue Service should be held to standards of efficiency for productivity, the service can never be measured by the same standards as for-profit businesses.

Statistics as they are used by the Internal Revenue Service to measure productivity can never be correct. Productivity on cases must be measured by the complexity of the issues involved, the complexity and cooperation of the taxpayer as well as other mitigating circumstances.

However, the service as a number-oriented organization will always regress to the safety and rigidity of statistics. Right now within the service, as statistics and dollar yield are disappearing, other statistics on months in process, hours per case, and filed time versus office time are emerging to replace them. These statistics are directly ordered by Washington and remanded to local districts as record keeping for enforcement.

Within the IRS, the power of the chain of command, line authority prevails. The pressure on lower-level administrators to achieve these administratively imposed statistical goals is overwhelming.

Special emphasis is placed on blind obedience prompted by the desire for successful careers, administrators on each succeeding lower level will yield. The service acknowledges and rewards deference to line authority, not deference to moral authority.

Goals must be reached. Statistics are massaged. A senior level administrator will order the justified penalties of a major delinquent taxpayer removed in order to get the case quickly agreed and closed into the statistics of the current quarter.

The revenue received from the deficiency was needed to increase the current dollar yield of the district. Another administrator will order in 5,000 cases which are known to have poor tax potential in order to plump productivity statistics.

There are other administrators who will not condone such behavior, but they cannot openly condemn it. Instead, they turn silently away, seeing nothing, hearing nothing, knowing nothing.

Reluctant to become the target of their powerful brethren, these timid administrators close ranks to form a wall of protection around the more mighty. This policy of containment creates a culture of deceit.

I once asked a branch chief why he had lied about a trivial matter concerning upper management policy. This was only after the branch chief had been exposed in the lie. He responded that it was his program to form a buffer between baseline employees. Problems

must never go up. Policy must never come down. In other words, correct information is never transmitted upward or downward. And truth is never free to flow in any direction.

Loyal but inept employees will be protected and even promoted. Critical but effective employees risk harassment, demotion, and dismissal. Character assassination on these outspoken employees is normal. Other employees who participate in the attack on the outspoken employee will be rewarded a coveted assignment, a promotion.

Management has the tools and the power to get what it wishes. The outspoken employee will be ostracized and attacked on all fronts. If his integrity cannot be impugned, every effort will be made to destroy his work product.

Recourse to the offices of inspection or EEO for that employee are useless. Both agencies seldom act independently from but rather as arms of the service administrators.

If acts of alleged physical menace were charged in two separate instances, one incident between two bargaining unit employees and the other incident where a bargaining unit employee was allegedly the victim of an administrator, inspection will not investigate the incident where the charges were alleged against the administrator. It will investigate alleged charges brought against the bargaining unit employee in the other incident.

If an EEO complaint is brought either against an outspoken employee or by an outspoken employee, administration will get involved to the detriment of the outspoken employee. Strong efforts will be made by management to imply that the outspoken employee is the offending party.

If the EEO complaint was leveled against the outspoken employee, management will immediately reassign the outspoken employee, sending out an implied signal there is truth to the charges leveled against the employee.

When an EEO complaint is brought by an outspoken employee against a supervisor, it is usually because that supervisor has been harassing and derogating the employee for being outspoken.

Management will make every effort to hinder, impede, and deep six the charges. The charged employee will receive visible sympathy and be given career enhancing assignments, implying his innocence. There could be no relief to the employee victim of IRS harassment except to step into Federal court.

If the employee is not strong enough to fight retaliation of victimization, the consequences can be dire: dismissal, alcoholism, and even death.

A manager placed a mocking poster of a moronic character on his wall which had a crude title. Onto this poster, the manager placed the name of an employee whom he disliked because he was vocal. The manager went undisciplined. The employee so degraded and vilified died of a heart attack.

Within the Manhattan District, there has even been a suicide by a bargaining unit employee as a result of harassment by management.

A dual standard is used in disciplining management employees and bargaining unit employees with similar breaches of the rules of conduct. A joint IRS-NTEU study concluded that bargaining unit

minority employees routinely receive harsher discipline for minor infractions of the rules of conduct.

A Manhattan District administrator publicly embarrassed the service when arrested for violation of a civil statute. The arrest was splashed across the media. The behavior of this administrator was an enormous breach of the rules of conduct for not satisfying in good faith obligations, including all just financial obligations that are imposed by law. That administrator was never discharged and is now in a superior position.

A bargaining unit employee would have dismissed if his salary was garnished and not sent on a career enhancing detail to a superior position, as was another Manhattan District executive employee.

In the milieu that I have described, is it not easier for an employee to abandon critical thought, relinquish sound reasoning, suspend ethical judgment, and surrender to the lie? Within the IRS work force, as splendid talents lie dormant, novocained by the outrages of management, Stepford employees are arising.

When the service is caught in unethical acts, public apologies will be made and lip service given to new principles and concepts, but the service is incapable of understanding and absorbing any principle or concept that cannot be reduced to a statistic, a number, or a digit.

Management needs to be rehabilitated. A channel must be put in place that will ensure that the old bureaucracy and its old ideas are swept aside.

Risks must be taken for the issue oriented creativity to endure. If not, always there will coexist customer taxpayer victims and employee victims. And there will continue a run on the moral bank by the IRS.

Is it not a sad irony that all Nations of the world look to the United States as a model of democracy for guidance in the establishment of freedoms and human rights? Yet the IRS as an agency of that government grants its administrators such a liberal totalitarian hand.

Not long ago when Commissioner Rossotti visited the Manhattan District, no message of his visit was sent to the general population of employees because the district had need to control the image it presented to the new Commissioner. The image that that district wished to show was one of focus, productivity, and harmony.

As the Commissioner watched and listened, selected employees told tales of great accomplishments. Hidden in back rooms was the ineptness and the discord.

It is not that Commissioner Rossotti chose to see the district through rose-colored glasses. It is that Commissioner Rossotti was deliberately led down an impoverished road where decaying houses had only the sides that faced the road painted white. The Manhattan District was on a mission to sell their piece of real estate as prime. The Commissioner was prevented from seeing past the facade.

If the Commissioner would learn and understand the truth about the Manhattan District, let him put on simple raiment, enter the district unattended, re-walk down that road, and talk to ordinary employees as if a fellow traveler.

As my testimony draws to an end, I would like to raise some reasonable questions. If one were to multiply the approximate revenue lost due to the injudicious actions of managers to the benefit of large taxpayers in the first two examples that I cited, $24 million and $1 million, by similarly acting managers in each district in each region of the country, how much lost revenue would a practical person determine that to be $1 billion, $2 billion, more?

If one were to multiply the economic hardship, emotional damage and mental stress placed on each small taxpayer in each State throughout the Nation because unfairly forced by the service into tax deficiency in order to fulfill policies and quotas of administrators, would a humane person even be able to value the cost?

In conclusion, I should like to read an excerpt from a recent court case where a small taxpayer had the gumption to bring an action against the IRS for violation of its rights. The court awarded actual damages for mental stress, emotional damages, and humiliation, as well as punitive damages to the taxpayer.

It reads, "The conduct of our Nation's affairs always demands that public servants discharge their duties under the constitution and laws of this republic with fairness and a proper spirit of subservience to the people whom they are sworn to serve. Public servants cannot be arbitrarily selective in their treatment of citizens, dispensing equity to those who please them and withholding it from those who do not. Respect for the law can only be fostered if citizens believe that those responsible for implementing and enforcing the law are themselves acting in conformity with the law. By this award, this Court gives notice to the IRS that reprehensible abuse of its authority by any one of its employees cannot and will not be tolerated."

May my words and the words of others testifying before you today stir you to action. May you bring to taxpayers and to Internal Revenue Service employees a renewed acquaintance with liberty. And may this century not close before democracy is renewed by the remodeling of this agency and the rewriting of its laws. Thank you.

The CHAIRMAN. Well, thank you, Ms. O'Dwyer. Again, I know it takes a great deal of courage and dedication to come before this body and testify as you have today.

Ms. Johnson?

STATEMENT OF MINH THI JOHNSON, REVENUE AGENT, LOS ANGELES DISTRICT, INTERNAL REVENUE SERVICE

Ms. JOHNSON. Mr. Chairman, Senators, good morning. My name is Minh Thi Johnson. I have been employed with the Internal Revenue Service's Los Angeles District Office as a revenue agent since January 28, 1991. I am a certified public accountant and have a B.A. degree in business administration with emphasis on accounting and finance.

I am also currently serving as a lieutenant commander in the Navy reserves with the Supply Corps. My personal achievements include a Joint Service Commendation Medal and a Joint Service Achievement Medal. Prior to my employment with the IRS, I worked for the Office of the Inspector General at the Housing De-

partment—excuse me—for the Department of Housing and Urban Development as an auditor/CPA coordinator for over five years.

As an employee of the IRS, let me assure you that if I did not care about the IRS or have respect for many of my fellow employees, I would not have bothered to travel all the way from California to be here today.

I appear before you today to testify about activities I have personally observed as an IRS employee, activities which I do—I know are not fair, not equitable, clearly not honest, and clearly do not serve the American taxpayer.

Since the committee's September 1997 hearings on IRS practices and procedures, IRS management has openly flaunted the fact that it is not concerned with the Finance Committee hearings and that it will carry out business as usual when things quiet down.

However, as a result of those hearings, one change did occur within the IRS. The direct communication from the chief of examinations regarding the circulation of dollars per hour to the employees has stopped.

However, indirectly, under the guise of what the IRS refers to as cycle time and adjustment size, IRS management continues its long-time practice of basing employee's advancement and rewards on the dollars per hour basis.

In general, IRS field agents are simply not allowed enough time by IRS management to thoroughly develop case related issues through adequate researching of tax law, court case, etcetera. Rather, we are ordered by our managers to propose adjustments, in this case increases in taxes owed without any justification for it.

It appears to many of us that aggression coupled with an accumulation of high arbitrary tax adjustments is the gateway to promotion. Is the standard for promotion based on fairness or accuracy? Or are we to accept a standard based on aggressiveness to satisfy management's desire to achieve large adjustments?

If there is no quota system, why does the IRS encourage us to use such a heavy hand in proposing baseless adjustments, and promote the employees who do? I do not believe you can reform the IRS without changing its standards for promotion.

I am aware of one branch chief who encourages his revenue agents to ignore the larger tax cases that typically have the resources to fight IRS claims and inflated adjustments.

Instead, that branch chief will have his revenue agents focus on cases involving smaller corporations. Why? Because more often than not, the smaller corporations tend not to have the financial or legal means that larger corporations do to defend themselves against these erroneously high adjustments proposed by the IRS.

Also of note is the fact that IRS management has hounded employees so much about the time they spend on cases that several employees, including me, have had to take leave time to work on them at home. By doing so, office time would not be charged against these cases and the average adjustment figure would remain high against the number of office hours spent on them. This is outrageous.

While these cases result in the collection of questionable tax revenues, the amount collected in these case pales compared to what I am about to tell you. This case involves IRS employees who actu-

ally recalculate taxes owed by some of the largest corporations in this country in order to reduce the legitimate taxes that are truly owed by these corporations.

I am talking about millions and millions of dollars deliberately lost to the Department of the Treasury and under the watchful eye of some of the IRS' own managers.

One particular tax case with which I am familiar involved a company enterprise that had been confronted by the IRS with a $70 million tax deficiency. During the time this case was being handled by the IRS, the original IRS team negotiating the case was replaced.

Now, it is important to note that at the time the case was being turned over to the new team, the company had just offered to pay the IRS $35 million. In fact, it is my understanding that the corporation had actually made out a check for that amount, but the IRS rejected it.

Because the IRS declined the payment, the company and the IRS entered into renewed negotiations. This time the company had a former IRS district director on their negotiating team. And the new IRS team now consisted of the current district director and the IRS district counsel.

With these two teams in place, the new round of negotiations ended up with the company paying only $22 million in taxes. This was $13 million less than the $35 million the IRS had previously rejected.

When I learned about the final decision, I was furious. I raised my concerns and demanded an investigation. However, I was quickly informed by colleagues that the case was a forbidden subject and we were not allowed to talk about it.

Even as an employee of the IRS, I find it difficult if not impossible to understand how, on the one hand, the IRS will go after small taxpayers for arbitrary adjustments, while on the other hand, reduce by millions the amount of real taxes owed by extremely wealthy and powerful companies. I do not believe this is an isolated case.

While I have not been personally involved with other cases, I have become aware through other co-workers that large adjustments are often being eliminated when IRS management negotiates with former district directors representing large companies. This is because certain members of IRS management hope to earn the thanks for the tax breaks they arrange for the companies in the form of future employment with those companies.

As a result of my objections to the resolution of the specific case I previously described, I became the focus of harassment by other agents. Harassment has included comments on the quality of my work to comments on my Vietnamese heritage.

When I told my group manager about what co-workers were doing to me, the IRS management took no action. However, my own manager joined the other agents in the verbal attacks. I was encouraged by a co-worker to file an EEO complaint which I did.

After my group manager retired, the temporary manager joined with a union steward and began telephoning me at home both at night and on the weekends, demanding I withdraw my EEO complaint.

At this point, my husband came to my defense and spoke with my manager about the problems I was experiencing. Shortly after my husband became involved with the EEO issue, his tax return from the year before we were married was audited.

Senator Roth, than you for allowing me to express my concerns as an IRS employee and American citizen about the highly questionable conduct of certain IRS employees.

However, IRS management has demonstrated it will retaliate severely against those employees who question its integrity, legality, or the ethics of its actions. Those employees who dare question these action in public will certainly pay.

Therefore, Senator Roth, I am respectfully requesting the protection of this committee from retaliation by the IRS management in any form due to my appearance and testimony before you today. Thank you.

The CHAIRMAN. As I said to Ms. O'Dwyer, we appreciate very much your being here today. We understand that it takes tremendous courage to do exactly that under these circumstances. I assure you that Senator Moynihan and I will do everything within our power to protect those who come forward to testify here. There will be no retaliation.

Ms. JOHNSON. Thank you, sir.

Senator MOYNIHAN. I would like to associate myself with that completely. Mr. Rossotti would not allow it and Secretary Rubin would not allow it.

The CHAIRMAN. Exactly.

Ms. JOHNSON. Thank you, sir.

Senator MOYNIHAN. And the laws do not allow it.

The CHAIRMAN. That is absolutely correct. The committee will not allow it.

It is now my pleasure to call on Mr. Ayala.

Mr. AYALA. Thank you.

The CHAIRMAN. Please proceed.

STATEMENT OF MICHAEL AYALA, ANALYST, GEORGIA DISTRICT, INTERNAL REVENUE SERVICE

Mr. AYALA. Mr. Chairman and members of the committee, I appreciate the opportunity to provide my testimony here today. I have a bachelor's degree from Weber College in Ogden, Utah in criminology and military science, and a master's degree from the University of Northern Colorado in communications. I am also a graduate of the officers advanced course administered out of Fort Lee, Virginia.

I am currently an analyst with the Internal Revenue Service in the Georgia District and have worked for IRS for over 30 years. My previous assignments have included working at the IRS Service Center, as a collector in various districts, as an employment tax examiner, as a manager, and until recently as a compliance analyst on the staff of the regional Commissioner.

During my 7 years on the Commissioner's staff, I witnessed a broad range of misconduct by high-level managers in both tax administration and civil service practices.

This misconduct included mistreatment of taxpayers, covering up serious revenue losses, sexual harassment, the creation of false

records, improper use of enforcement statistics, covering up misconduct by executives and their high-level subordinates, and violations of prohibited civil service personnel practices.

Such abuses are generally known to a large percentage of the IRS work force, but are perpetuated by management's intimidation and punishment of anyone inside the agency who objects or reports such misconduct.

Over the course of the last several months, we have read and heard about many IRS-related horror stories concerning small taxpayers and small businesses. I would like to take this opportunity to share with you an example of the type of business the IRS audited at the opposite end of the scale.

In one case with which I am personally familiar, certain members of IRS management in a particular district actually forgave over $30 million of a $50 million tax liability for a large, influential business concern for no apparent reason.

The remaining $20 million was allowed to be paid over a five to six year period. The arrangement which was approved by the IRS, also we waivered the requirements for this same business to provide documented justification for its not paying the total amount of liability due. The IRS is also protecting it from levies and full tax liens being filed against it.

My assignment on this case was literally to stand vigil over the 15 State area of the southeast region on behalf of this business to ensure that other IRS employees did not inadvertently file liens or levies on the company.

It was my job to make certain that this case never got into the hands of unknowing Federal agents who could potentially take enforcement action against it.

Such action was actually initiated on several occasions. And I was required to contact the district involved and stop the pending action.

I also believe I have counterparts in the three other regions of the country who were assigned similar responsibilities relating to preferential treatment of other large corporations.

To me, this was a clear example of unequal treatment of taxpayers depending on their financial strength and influence. It was also clear to me that those benefitting from such significant savings are not going to come running to Congress to report that the IRS is illegally saving them millions of dollars.

I am left wondering though about certain members of IRS management who have left the agency and were hired at extremely handsome salaries by these large prestigious companies or other accounting firms.

In another matter, I reported that the district improperly closed 83,621 taxpayer cases. In other words, they simply closed the books on over 80,000 cases without completing the process of collecting taxes owed on any of them. This was done at a cost of many millions of dollars to the public through a loss of uncollected revenue.

In addition, I was able to report that this same office was also improperly closing over 4,000 taxpayer cases in a project the IRS referred to as the Low Dollar Study.

This project was approved by my own manager as well as the IRS national office in order to create a statistical advantage by im-

proving the district's closure rate. Yet, these actions created another situation that permitted inconsistent and unfair treatment of taxpayers.

I will add the following to my report that the investigation by internal audit found that these cases had indeed been closed improperly and should be reassigned for corrective action.

In another case, I learned from a number of female employees in the Georgia District that their male manager was sexually harassing his female subordinates and rewarding those who accepted his advances and punishing those who rejected him.

One case of rewarding behavior involved a female employee with whom he was having a relationship. She allowed a $320,000 collection statute to expire and her manager helped to cover it up. When she allowed the expiration of the collection date to occur, the IRS lost the ability to collect the $320,000 due the Department of Treasury. The manager, however, was able to and did make this almost one third of a million dollar mistake completely disappear.

As the acting manager of these employees, I reported this misconduct to both the regional and district executives and the district EEO officer. Following my action, the same female employees began their own formal complaints with EEO regarding their manager and charging him with discrimination and sexual harassment. The manager's superiors refused to take any action to protect these women from his retaliation or the hostile work environment he created.

In another case, I reported the presence of a striptease performance in the Atlanta Regional Office during office hours to the regional EEO officer. Instead of responding to my report in a reasonable and concerned manner, the EEO officer actually reported my contact with herself to my supervisor and attempted to discourage me from pursuing the matter.

When I persisted, the regional Commissioner's response was to subject the entire regional staff to sensitivity training. However, the person responsible for having a stripper in the office and the high-level executive manager who approved it, no action was taken.

The two individuals responsible for this are GS–15 executive assistants and the EEO officer are still in their positions today despite the reported improper conduct.

Currently, the Southeast Region is tracking the number of seizures made from October 1995 through 1998. They are ranking the districts and are comparing the number of seizures made in the Southeast Region between the respective districts and between the revenue officers.

This is being done in blatant disregard for Policy Statement P1-20 and the Taxpayer Bill of Rights. This seizure tracking report is titled "Seizures Southeast Region fiscal year 97" and it was prepared in January of 1998.

It contains pages showing charts with the number of seizures made in each district and graphs illustrating the number of seizures made per revenue officer in each district. The report clearly evaluates each district as improved when more seizures are made and slipped, failed, or disappointing when fewer seizures are made.

This is the second such seizure report issued by the region within the last year. As long as enforcement comparisons, such as sei-

zures, levies, and summons, etcetera continue to be applied and used as performance measures for revenue officers as well as districts, abuses in this area will naturally follow.

In light of the recent scrutiny of the IRS by your committee, I believe this is not a simply a challenge on the part of IRS, but a blatant disregard for recent Congressional actions taken to protect taxpayers.

Mr. Chairman, after I reported the improper closure of taxpayer cases and sexual harassment, I personally began to feel the pressure of management.

After 29 years of excellent service to the agency and being the recipient of awards and high ratings, I am now the recipient of various forms of retaliations, including a demotion. I have no doubt that I have been labeled as a disgruntled employee for reporting the abuses I have witnessed. After my appearance before you today, I firmly believe this retaliation will continue.

Mr. Chairman, no IRS employee should fear coming before this committee to testify, although I do. I am here because I, like so many of my colleagues, want so strongly to serve the taxpaying public with honesty and integrity absent the fear of management retaliation for doing the right thing. Thank you.

The CHAIRMAN. Well, thank you very much for being here today, Mr. Ayala. We appreciate your taking the time and having the courage to testify.

And now, I will, call on Ms. Jarvis.

Ms. JARVIS. Thank you.

The CHAIRMAN. Please proceed.

STATEMENT OF GINGER MARY JARVIS, ACTING TEAM COORDINATOR, MANHATTAN DISTRICT, INTERNAL REVENUE SERVICE

Ms. JARVIS. Thank you, Mr. Chairman. Good afternoon, Senators, Mr. Chairman, and members of the committee. My name is Ginger Jarvis. Thank you for the invitation to address you today.

In the interest of time, I am prepared to present a summary. However, I respectfully request that the text of the speech be admitted into the record in its entirety.

To briefly summarize my personal qualifications for you, I have earned the following degrees: a degree in business, a degree in accounting, master of science in taxation. I became enrolled to practice before the Internal Revenue Service in 1978. And I have 23 years combined tax experience in both the private and the public sectors.

Even the IRS has recognized by competence by selecting me as one of four agents from the Manhattan District to receive specialized training in partnership taxation.

Currently, I am an acting team coordinator for large case examination in the Manhattan District. As such, I am responsible for the coordinated examination program which examines the income tax returns of multi, multi-billion dollar, multi-international companies.

To effectively execute tax examinations of this magnitude requires a major team effort and expertise of economists, engineers,

computer audit, international audit, domestic tax specialists, to name just a few.

Senators, I appear before you today to inform you of what I considered to be outrageous abuses that flourish within the Manhattan District. These offenses are committed by IRS own management. And I truly believe the policy is more widely spread than I have personally witnessed in Manhattan.

At the sole discretion of individual managers, millions, even hundreds of millions of tax revenues owed to the U.S. Treasury by some of the largest taxpayers in the country are literally forgiven, zeroed out. This is an outrage predicated on the need of certain managers to improve statistics, to gain personal awards, or who seek solace in careers outside the IRS.

The Manhattan District is a haven for this type of behavior. And I will describe situations that I have personally witnessed during my tenure in this office.

As a member of an audit team, I was recently brought in to review the tax returns of an extremely large consolidated group of companies. My analysis strongly suggested that several hundreds of millions of dollars have been laundered. In addition, income from an installment sale in the range of several billion, that's B as in boy, billion dollars does not appear to have been reported for income tax purposes.

On numerous occasions over the 14 months that it took to develop these extraordinary findings, I attempted to discuss the issues with the IRS case manager. Without exception, each and every time I addressed the subject, he refused to look at my work papers, he refused to discuss the technical merits with me, and he just basically dismissed me.

Out of sheer frustration, I turned to the team coordinator and described what appeared to be a multi-billion dollar money laundering operation that was unreported for tax purposes.

The team coordinator then addressed my findings to the case manager, the same one who had previously refused to discuss the matter with me. The IRS manager's reaction to my raising these concerns was to throw me off the case.

Is it reasonable to assume that this manager's judgment may be impaired? He manages a professional prize fighter, teaches part-time, and operates what appears to be a tax law practice from a private office provided to him by the taxpayer. I ask you, at what cost?

Today, I implore each of you initially to initiate an investigation into this matter. I believe that I am imminently qualified to raise the specter of money laundering and tax evasion to which I now add collusion.

Another image that will remain indelibly engraved in my mind is the time that I witnessed three agents as they emerged frantically from a meeting in which that very same large-case manager had commented to the taxpayer, and please understand I am paraphrasing here, for a stated sum of money he might be able to make the specialist adjustment go away. If that remark had even remotely been made in jest, the agents would not have been quite so upset.

However, in that instance, the specialist ultimately prevailed in assessing a tax adjustment in the range of a few hundred million dollars primarily because he had received the full backing and support of his own manager and his own branch chief. In addition, that specialist proposed a penalty in the tens of millions of dollars.

A few years ago, I discovered an abusive tax scheme where nearly $400 million of taxable income was potentially unreported. I worked closely with IRS attorneys to develop the facts of the case over a two-year period.

Eventually, the Manhattan District counsel dropped the issue. And hundreds of millions of dollars literally went untaxed. It is important to understand that the participating taxpayers in that study were not limited to the Manhattan District. And as circumstances would have it, a related case was taken to court in another district where my position, as presented by the government, was upheld and is now considered to be a landmark case.

I am aware of many cases that have been ordered closed as no-change, a term describing the status assigned to a case where the Internal Revenue Service has determined that there will be no change to the figures as originally filed on the tax return.

Other cases have had huge adjustments drastically reduced as a result of what I believe to be improper influence within the district.

Another highly questionable activity that is taking place in the Manhattan District, and I believe is occurring around the country, is the return of former IRS senior managers who have elected a second career as tax advisors. Many of these retirees have elected to remain in or around the Manhattan District. And as such, they now represent taxpayers before the IRS.

Since many of these former senior executives and managers have only recently separated from the service, many of their former colleagues and friends are still actively employed. As a result, I believe the newly-established tax advisor can take his or her client before the former colleague with the expectation of receiving decisions favoring their clients.

One particular case comes to mind where I was prohibited by the case manager from proposing a $6 million adjustment to the company under examination. Earlier, that case manager had boasted to the team that he had gone to school with the owner.

The team later discussed the expectations that I would experience great resistance from him in enforcing the adjustment that I had spent months developing. As was predicted, the case manager refused to discuss the tax issues, refused to look at the work papers, and refused to permit the $6 million adjustment to be proposed.

Beginning with my current branch chief——

Senator MACK. Mr. Chairman, I wonder if I might ask a clarifying question here. Was that the same case manager that you referred to earlier in your testimony?

Ms. JARVIS. Yes, Senator Mack, it was.

Senator MACK. All right. Thank you.

Ms. JARVIS. My current manager—excuse me, not my current manager. Please, she is an exception. My current branch chief maintains monthly statistics of dollar yield per hour per agent by agent name. I believe the statistic is used as a tool to assign tax

returns to agents they wish to control or demote or downgrade or to promote those who do their bidding.

There are executives without college degrees who have attained the levels of at least grades 14 and 15. Last Sunday's News Day quoted Senator Moynihan in regard to the line item veto. And I quote, this is a formula for executive tyranny. End quote.

I believe the Senator's analysis is applicable to the situation I have just described. This is not said with malicious intent to disparage anyone. And there are exceptions to the rule. But the very nature of the job exceeds the limited capabilities of the executives without college degrees.

In stark contrast, there are agents stuck in the lower levels of grade 13 and below who have earned MBAs, CPAs, JDs, LLMs, are licensed attorneys. These highly qualified individuals appear to be deliberately held down and back because of their technical ability.

By virtue of simply opening their mouths to ask a question or express an opinion, they expose the weaknesses of those above them.

In one particular case, a $10 million adjustment was never assessed against the taxpayer because the statute of limitations ran out while the case was languishing in the processing department.

In its own self defense, the processing department claimed it was waiting for district counsel to obtain an extension. Counsel's response was that it was waiting for the processing department to secure the statute.

This internal squabbling took place under the nose of unfocused and inattentive management, rendered several years' worth of investigative work by a team of revenue agents a complete waste of time and caused $10 million of tax revenue to simply vanish in thin air.

Senators, at this time, it is worthy of note the Manhattan District is the lowest revenue raising district in the country.

A few years ago, an organization was established by several retired IRS senior executives from Washington. The stated purpose is to act as liaison between the service and its member body of large companies under the guise of the spirit of cooperation.

Remarks passed by IRS agents at meetings are reported in the organization's newsletter accompanied by photos of the agents. Profiles as to the agents' strengths and weaknesses are circulated among the membership. I believe the organization is intended for the purpose of spreading among its membership techniques to design to frustrate an audit.

The IRS has placed into practice in the spirit of cooperation a policy whereby at the completion of the examination of a company, the service is now requesting that the taxpayer under audit provide detailed evaluations of the agents assigned to the case.

Those evaluations are then returned to upper management for review. It is grossly unrealistic to expect the non-compliant taxpayer to return a survey thanking the agents for showing them the error of their ways.

Eventually, the surveys cascade down where they affect the agents' performance evaluations. Ultimately, the evaluation impacts negatively on work assignments, promotions, salaries, etcetera.

I believe the salaries in the New York IRS area are below that of other Federal agencies in the New York area. In Manhattan, we are no longer paid to do a job, but to take abuse.

Commissioner Rossotti has announced plans to restructure the IRS based on responses compiled from the survey feedback action. However, the results are flawed. Many of the agents and staff have not responded truthfully because the surveys were presented to their managers for review immediately upon completion.

I personally have experience reprisal as a result of the SFA. And I am aware of several others who have been castigated by management for their responses to the SFA as well.

On several occasions, I witnessed what I believe is the operation of a private tax law practice out of an audit site by a case manager. To this day, it is my understanding that he still avails himself of the taxpayer's facilities and the government staff to provide secretarial services for his own personal gain.

It is an openly discussed topic among agents that this manager has previously conducted his private tax law practice from the second floor of the IRS office building for several years before relocating to the taxpayer's facility in an upscale Manhattan area. The unreconcilable question is, at what price?

I really never had an alternative other than to blow the whistle regarding my concerns of money laundering, tax evasion, and collusion. I was simply doing my job.

Nevertheless, since reporting my findings, I have been subjected to a continuously pervasive, hostile, and often intimidating work environment.

Initially, I reported the facts to the regional inspection and provided them with copies of my work papers. I then notified the branch chief, the chief of exam, the union, the Office of Special Counsel, and several members of the House and Senate. I have circulated in excess of 100 memos.

In the final analysis, inspection division routinely reports back to the district they could not become involved in the case where the IRS manager refused to assess the adjustments because that type of complaint is not within their jurisdiction.

The branch chief looked back two weeks, reclassified leave as AWOL, and stopped my salary without notifying me. AWOL is an offense subject to termination. At the time, I had a physician's letter and I had accumulated a reserve of 250 hours of unused annual leave.

The district director did not answer my memos. And I am still waiting for a response to any one of the eight detailed reports that I have filed with the Office of Special Counsel.

The offices of several legislators responded to the effect that they regarded the subject matter of my letters to be covered under the Hatch Act and therefore were prohibited from intervening in the matter.

At this time, I respectfully request that those offices review the intent of the Hatch Act in light of the facts that I have just presented. I do not believe the Hatch Act was intended to protect management in the commission of a crime.

Senators, I fail to comprehend how the IRS is able to conduct a thorough investigation into any issue, an issue an IRS employee

raises involving collusion, money laundering, and tax evasion without someone in IRS management being compelled to interview the employee.

There are others within the IRS with the same knowledge that I possess regarding this case. However, I am the only one willing to come forward. It has been nearly two and a half years. And IRS management still has not questioned me about it. Appearing before you today as I am is my final resort.

There is an adage at the IRS: if you cannot attack the issue, then you attack the agent. I am not alone when I say kill the messenger mentality pervades the service on a country-wide basis.

Since blowing the whistle, I have been subjected as many others have to a continuously pervasive, hostile, and often intimidating work environment. I was suspended without pay because I blew the whistle. The assistant district director has notified me in writing and I present the letter here.

The assistant district director has notified me in writing that he is withholding the decision to rescind the January 1997 suspension without pay, and I quote, pending the results of the ongoing investigation. I ask, what does one have to do with the other? Justice delayed is justice denied.

Mr. Chairman, I could continue to list instances I have witnessed and personally experienced that parallel those I have already described to you today. I could also describe additional actions taken against me personally because of my reporting what I believed to be abuses committed by colleagues.

I have revealed what I believe are some very serious abuses occurring behind the one-way mirrors of the IRS. When our hands are tied by intimidating management and flawed practices, we are prevented from doing the job we were hired to do, that is ferret out the non-compliant.

The IRS must no longer conduct business in the same old way that turns a blind eye on the suspect and the blatantly dishonest actions of its own management. I ask for your help in shattering this one way, self-serving attitude of so many within the IRS management.

Senators, Senator, Mr. Chairman, quite frankly, I believe that I will experience further retaliation for appearing before you today. Therefore, I respectfully, Mr. Chairman, request that the guarantee of protection from reprisal be extended to include my small circle of family and friends.

The CHAIRMAN. Are you finished?

Ms. JARVIS. No, sir. I am asking for a response.

The CHAIRMAN. I say this to each of you on this panel, will take steps to ensure that you are not retaliated against.

Ms. JARVIS. I do not want my family's returns being examined or harassed or my friends as well.

In conclusion, I would like to express my gratitude for the opportunity to address this distinguished panel. Thank you, gentlemen, and have a good day. And I would be willing to entertain any questions that you may have.

The CHAIRMAN. Well, thank you for being here today. As you know, the purpose of these hearings is to help ensure that the kind of problems raised by you do not happen again.

[The prepared statement of Ms. Jarvis appears in the appendix.]

The CHAIRMAN. And I want to express my appreciation to each of you for being here to discuss some of your experiences. I will note again that each of you testified under oath. And I know it is not easy to do what you did. And you are all concerned about retaliation.

On your charges of money laundering, a very serious charge, we will take steps to see that that is investigated further, but thank you again for being here today.

During our hearings this week, several members have raised concerns over revenues lost to the government that should have been collected. In your testimony, you each described the zeroing out or arbitrary reduction by the IRS of monies owed the government. I would like to ask you, each of you, in your opinion, does this practice result in significant amounts of revenue lost to the U.S. Treasury because of uncollected taxes?

Ms. O'Dwyer.

Ms. O'DWYER. It does. Yes, it does.

The CHAIRMAN. Ms. Johnson.

Ms. JOHNSON. Yes, it does, sir.

The CHAIRMAN. Mr. Ayala.

Mr. AYALA. Yes, Senator, it does. There are no special rules for managers at any level to deviate from our laws, regulations, and standards of treating taxpayers fairly across the board. But this does happen. And sadly, the result is a lack of public confidence and trust for the service.

The CHAIRMAN. Ms. Jarvis.

Ms. JARVIS. Yes, Mr. Chairman, I believe that it does, particularly in the Manhattan District. It may account for the reason that Manhattan is the lowest revenue raising district in the country.

The CHAIRMAN. Mr. Ayala, you somewhat touched on my next question, but again, I would like to ask each of you. When an IRS auditor finds a large tax deficiency and decides to zero out or reduce that deficiency, what checks and balances exist on the auditor to ensure that their action is appropriate, or on managers? Mr. Ayala, do you want to answer?

Mr. AYALA. Sure. I am not aware of any checks or balances. I think there are some government checks and balances that are supposed to work that are in place that do not work.

The upper-level management to do various things, they have absolute power. There is nobody that is going to challenge their powers to do what they want to do as they want to do it.

I, too, have been the special counsel and written them a number of times for protection. And they have not responded or responding that it is just not whistle blower type things that they are going to protect employees from.

I do have, I brought with me a copy of a 1996 report to the Congress from the U.S. Office of Special Counsel. And it shows that in the thousands of complaints that they got from Federal employees in 1996, they ordered three stays of protection. And it shows in the past five or 6 years that they have issued 16 stays of protection for Federal employees. And that is about an average of three a year of the thousands that are filed.

This is adequate to protect employees and to keep some of these things that are going on in check or in balance.

The CHAIRMAN. If I could please interrupt. I appreciate what you said. But the question I was really trying to get at is where there is a deficiency. What checks and balances are there, on either the auditor or the supervisor to ensure if they are waived, that the action is appropriate? Is there any dollar limit, for example?

Ms. O'DWYER. No.

The CHAIRMAN. Ms. O'Dwyer.

Ms. O'DWYER. There is no dollar limit, no. It is actually an examiner does the examining of the case. The manager can review the case, discuss the adjustments with the agent. And he should generally go along because the examiner is the person who has the technical competence.

In my particular case, the manager just did it to meet a deadline. I cannot answer for the other cases. And the other case I quoted was also just to meet a deadline. They did not want overage cases. And there was no absolute reason other than that.

The CHAIRMAN. But you would agree that the supervisor has some responsibility for using independent judgment? It is just not to endorse whatever comes up?

Ms. O'DWYER. You mean, the supervisor is supposed to have an awareness of the case. The examiner, a good manager always has the knowledge of a case. We get reviewed constantly. They look at the cases. They ask questions on a case. They are fully aware of what is going on in the case.

If there appears to be no audit issue or if it will take an excessive amount of time to develop, you will get diminimus tax. That is when you decide to withdraw the issue. And you do not do it.

The responsibility for the case basically is the agent, but ultimately the manager assumes the responsibility for the case. It depends if it is a large case or small case also. It is different.

The CHAIRMAN. Ms. Johnson, did you want to comment?

Ms. JOHNSON. No, sir, because she states it correctly. And that is the same in the Los Angeles District, sir.

The CHAIRMAN. Well, the time is growing late. I think I will turn to you, Senator Moynihan.

Senator MOYNIHAN. I have no questions, sir. I have learned a great deal. And I want to say to Ms. Jarvis, repeat what Senator Roth, the chairman, said that no one is going to retaliate against you. Or if you think that is happening, you just call us up.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. First of all, I might owe Senator Moynihan an apology because it may have sounded like I was not supporting what he said about the fact that he would do what he just said he would do. And I believe that he will do everything he can to do what he said he would do. And I compliment him for that. And I would do the same thing for Iowa constituents.

The point I was trying to make is that this bureaucracy is so massive and the subtle ways in which people can be retaliated against, it is sometimes just practically impossible to keep on top of it all. So I want to apologize to Senator Moynihan.

Senator MOYNIHAN. Let me thank my colleague and friend for many years.

Senator GRASSLEY. I would like to get something straight. And it is repetitive. I suppose it is so obvious, I should not even repeat it. But you witnesses are telling us that millions and at least millions of dollars in taxes due are being forgiven by IRS managers each year. This is done, I think I get the impression, to boost careers, to make statistics look good?

Ms. O'DWYER. Correct. To meet a deadline, to meet deadlines.

Senator GRASSLEY. To meet deadlines.

Ms. O'DWYER. At one time when I first went into international, basically there was no deadlines. And that is what we were informed. And then, the deadlines became 36 months, then 24 months and then down to 18 months.

And managers have been called on the carpet if they have aging cases within the group. And the manager will take the brunt of it. Then, it will come down to the agent. And then, they will—if anything will delay a case.

And all managers do not do this. We are not saying all managers do this, but a manager basically who is more insecure will then order the case closed and no-change. You can have no—there is no protest. There is nothing you can do.

Senator GRASSLEY. So it is done just to make the IRS look good and the individuals at the IRS to look good. And who is really paying for this? It seems to me that the American taxpayer is paying for this. The constituents pay for it.

It seems that we hear from and I hear from the little guy. I hear from the taxpayer who works hard to make ends meet, ends up with a tax liability. And the IRS goes after his house, goes after his bank account. And if the tax is due, obviously they should. But the extent to which there is a harassment of the little guy and at the higher end, taxpayers, you are indicating to us, they get away with it.

My point is that the IRS always seems to be after the little person. We even had testimony on this I think back in September from one of the agents that said, we were told to go after the little guy. They do not have the resources to fight it.

And so we heard yesterday about how the IRS can threaten and seize and ruin lives in order to get less money, much, much less money than the millions that are owed by the larger taxpayers that you are talking about.

So the IRS seems to be squeezing the little guy to get the money while this set of four witnesses are telling us that the big tax liability is often forgiven. And the cause of this, of course, I think, and it is basic unfairness is the lack of accountability.

There is an environment within the IRS of intimidation of the little guy and within the top management, as you tell us, for careers to look good, for advancements to be made. It is okay to wink at the larger taxpayer basically is what is being done.

So I think it is an appalling situation, but one that I think that we can do something about. I think our legislation will do something about it. And I think future, ongoing oversight that the chairman of the committee has promised will do something about it.

And as I said in my statement that I was partially apologetic—or that I was apologizing to Senator Moynihan about, I went on to say earlier this morning that it is partly we tend to blame the IRS,

but there is an awful lot of fault that rests with Congress, not only for this bureaucracies that we do not do the proper job of oversight that we ought to do.

So I thank you, Mr. Chairman.

Senator MOYNIHAN. I thank you. And once again, I thank my friend and colleague. No apology was in order. I in fact knew what he meant.

Senator Kerrey, I believe you and Senator Grassley have been working together on this subject. And you are next on Senator Roth's time sheet.

Senator KERREY. Thank you, Mr. Chairman. First of all, let me reference Senator Grassley. And he is very much involved with the development of changes in the law, the Taxpayer Bill of Rights 1, the Taxpayer Bill of Rights 2 that I think has changed.

I think we have gotten a substantial number of improvements in the operation. And I just want to stipulate that. I think Congress has not been just sitting on its hands. We have responded in two very precise occasions. And this is an attempt to further take action.

I want to also inform my colleagues that the restructuring commission that was started in 1995 had interviews with over 300 IRS employees, many of which were conducted in public hearings.

I want to stipulate there is one area that we did not hear that I want to comment on. But a lot of things we heard today have been incorporated both into the House and the Senate bill.

And I want to make sure that our witnesses have the opportunity. And I will just give you the copies of the legislation. And if you will take special note of the Titles 1101, 1102, and 1103.

Those are the titles that reference the problems that attempt to create a resolution were the problems that you brought to us today that other employees have also brought to us are being addressed, in addition, in Titles 1204, 3421, 3701, 3706, and 3709.

And I urge you do not be intimidated by writing laws because some of you may not be lawyers. You say, well, I cannot do this. I am not a lawyer either. Senator Gramm is not a lawyer. We do just fine in writing laws. I urge you to give careful consideration to these things. And I will get it to you.

I will call to my colleagues' attention that I asked in a previous hearing, Mr. Epstein who is here, he is a tax practitioner, I asked him the same question. And I reiterate, one of the problems that I have with these hearings is that we are not asking the witness to comment on law that we have already reported out of the committee. And Mr. Epstein has identified two or three I think very, very good changes that would improve the legislation.

So I hope that you will take my offer in good faith, even though the time may be short. We have until next week when it is likely we will be taking this up on the floor.

If you, as a result of your personal experience with this, have some suggestions to us that would enable us when we pass the law to do something more than just to issue a press release saying we have fixed the problem. We hope that the law will show the same kind of progress that we have seen with Taxpayer Bill of Rights number 1 and number 2.

I will also point out to colleagues, I mean, we just sort of get whipsawed on this deal. And the witnesses yesterday said we are doing too much. What you are saying to us is we are not doing enough.

And I want to, Ms. Jarvis, accept your offer. I would intend, unless persuaded otherwise, that I should send a letter to the Inspector General asking to investigate the situation that you have described because the situation that you have described borders on fraud where individuals are essentially saying that I am going to give a hair cut to a claim as a consequence of believing that I might get employment out in the private sector. I have a special relationship of some kind.

And that is the one area in the restructuring commission. We hear none of this kind of an allegation. That is a very, very serious issue as far as I am concerned. And I accept your offer to follow up either with you directly or through the Inspector General's office.

And finally, Mr. Chairman, I would ask that approximately, I think it is 13 cases that we heard, there are some complaints about the Criminal Investigation Division, actually 14 cases, again, I call my colleagues' attention to these as well, 14 cases the Criminal Investigation Division handled. And I think they handled it quite properly and in all cases.

I mean, one guy runs Big John's Restaurant and Recreational Center in Jackson, Mississippi. No doubt, he could come before the committee and say he was abused, not according to the U.S. Attorney. He was laundering money.

No doubt, in the Middle District of Florida, the individual was running the Inner Circle Lounge would say that his rights were abused, not according to the U.S. Attorney. He was laundering money and involved with drugs. No doubt as well, all these other individuals would say that they have problems.

And I would urge my colleagues as we move to the floor to debate this and we are talking about making changes in the law to remember that in addition to some very good examples of abuse of power, we have some very good examples where the power was applied exactly as we intended it to with laws that we enacted in 1986, 1988, and 1994 to make certain that this problem of fighting the war on drugs is fully engaged.

And I would ask consent that all 14 of these be included as part of our record.

The CHAIRMAN. Without objection.

[The information submitted by Senator Kerrey appears in the appendix.]

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. At the outset, I want to thank Senator Gramm for allowing me to go ahead. I have a meeting to go to, but I did want to ask a couple of specific questions, if not to these witnesses, then to the witnesses who will come tomorrow.

I am very concerned about some of the procedural issues that have been raised by these witnesses. It is my understanding it is already against the law for agents to have dual employment.

And if indeed they are holding down second jobs and moonlighting and the like, I think we need to have some report from the department about this. I mean, IRS needs to respond to the level of enforcement on that score in terms of dual employment. That seems to me to be a terrible, terrible problem.

The second issue that I would like to have some responses to has to do with the issue of failure to respond to EEO and employment complaints. Mrs. Jarvis testified that she had not heard back on eight different cases that have been sent to the chief counsel's office. And that I do not understand why employees are not getting their specific issues addressed by management. And so I would like very much to get some responses to that.

A third area where I am very concerned and I would like some kind of analysis, and this seems to come through a number of our hearings, has to do with the notion that more time, energy, and money is put in chasing little guys, if you will, than going after the big tax cheats, the big corporations who are not paying their fair share. And I think that will obviously just undermine the confidence in the system overall.

I would like very much to know whether or not anyone in the IRS can tell us if there is any kind of cost benefit analysis in terms of what it is they do, how much time gets spent on the smaller taxpayers vis-a-vis the amount of time that is spent on the really big taxpayers.

Ms. Jarvis, you wanted to say something?

Ms. JARVIS. Yes, I do, Senator. The upper management maintains record on hourly rate of return per agent by agent name. So it is in the control, it is in the hands of management.

They can selectively choose tax returns that either will have no potential to give to a more qualified agent if they want to keep down or they can selectively choose a return before examination to give to someone who is technically more light just to get someone that might do their bidding so that they can promote that individual. That is in the choices, the freedom of the management.

Senator MOSELEY-BRAUN. Well, that is a very—that is yet another issue. And that is very important follow-up. And I would like again tomorrow some response to the frequency in which that practice takes place.

Ms. JARVIS. That is done on a monthly basis. The hourly rate of return per agent per name by agent name is d1 monthly.

Senator MOSELEY-BRAUN. But the selective assignment to order to hold back one employee versus another, that kind of——

Ms. JARVIS. Oh, that is done with inventory.

Senator MOSELEY-BRAUN. Right. Yes, Ms. O'Dwyer.

Ms. O'DWYER. I was just going to agree and say that is done consistently. And when she is done, I would like to answer each of your three questions.

Senator MOSELEY-BRAUN. All right. Well, I do not know that we—I hope that we will have a chance to.

Ms. O'DWYER. I want to correct some statements then.

Senator MOSELEY-BRAUN. All right.

Ms. O'DWYER. That is what it is.

Senator MOSELEY-BRAUN. All right.

Ms. O'DWYER. When you are ready.

Senator MOSELEY-BRAUN. All right. Then, why don't you do that right now? I mean, I am ready.

Ms. O'DWYER. You said that you thought that employees are allowed to hold outside employment.

Senator MOSELEY-BRAUN. No, no, are not. It is already the law that they are not allowed to hold. I have been advised it is already the law that employees are not allowed to hold outside employment.

Ms. O'DWYER. No. We have been informed that we are. And we cannot do anything that leads to tax, anything that will go, appear on a tax return. We will be kept away from doing financial accountings. If you wanted to sell shoes part-time on Saturday, you could do that.

Senator MOSELEY-BRAUN. Right.

Ms. O'DWYER. There are lines of employment that we are allowed to do, but there must be permission to do it. That is the first thing.

And then, the other thing you said, was there more time and energy spent on going after the little guy? I would say, no. He is much easier to do and it goes much faster. You spend a lot of time on large cases. And you spend a lot of resources, a lot of hours. And then, it is zeroed out. In that period of time, you could do 30, 40 or 50 little people.

And little people can be sometimes—little cases can be done quickly. If you are doing a certain project, like I mentioned the hobby loss project, that can be just done in 24 hours, 24 hours spent on it. You just go and just keep doing it.

Senator MOSELEY-BRAUN. Right. I appreciate that.

Ms. O'DWYER. That is what I wanted to say.

Senator MOSELEY-BRAUN. Well, I thank you for the clarification, Ms. O'Dwyer. I guess my question that I would like the Service to respond to tomorrow in terms of dual employment has to do with Ms. Jarvis spoke to someone who actually had a tax practice outside of the agency.

Ms. JARVIS. I have witnessed that.

Senator MOSELEY-BRAUN. Right.

Ms. JARVIS. And law practice.

Senator MOSELEY-BRAUN. And that is illegal.

Ms. JARVIS. Yes, correct.

Senator MOSELEY-BRAUN. All right. So that is what I would like to have again tomorrow if the service can respond to that.

And your point is very well taken about the time spent on the little guy.

Ms. O'DWYER. Not necessarily. It can go very quickly.

Senator MOSELEY-BRAUN. Right. Right. Right.

Ms. O'DWYER. And another thing, I would just like to say on the failure to reply to EEO or grievances, that is consistent. You can have grievances that are outstanding for 2 years. They will deep six them. They will ignore them. I have an EEO complaint I filed years ago. I never got an answer. I knew I did not have the time to continue. It was deep sixed because it was against an administrator.

Senator MOSELEY-BRAUN. Right.

Ms. O'DWYER. I never expected to hear from it again. And there are grievances right now out for two years, EEO complaints. They

do not bother to answer them. They just think if they ignore it, it will go away.

Senator MOSELEY-BRAUN. Well, I just want in closing to say that someone, one of your testimony said it is going to be business as usual when these hearings are over. That was you, Ms. Johnson.

I do not think so. I think if anything the fact that the committee has taken up its oversight responsibility. And the fact that there is public attention on this issue, and with Mr. Rossotti coming, I think we are going to see some real changes.

And certainly, everybody here is determined that you guys will not have to suffer any retaliation by virtue of your cooperating. This is just, you know, citizenship at its best what you are doing. And we are certainly going to see to it that you do not suffer as a result of it. Thank you very much. Thank you, Mr. Chairman. And thank you, Senator Gramm.

The CHAIRMAN. Thank you, Senator Moseley-Braun.

Senator MOYNIHAN. Mr. Chairman, can I just quickly ask to be excused? As I told you earlier, I am required to be on the floor at noon to offer an amendment on NATO expansion. So I will not be able to hear Senator Gramm, but I will look forward to an account of what he has said. And thank you for this very illuminating panel which the morning has only begun.

The CHAIRMAN. Thank you very much, Senator Moynihan.

Senator Gramm.

Senator GRAMM. Well, Mr. Chairman, I have to go over and oppose Senator Moynihan's amendment. [Laughter.]

But he has plenty of time to give a speech before I get there. I do not have any questions. I just want to make three comments that I move to make as a result of other points that have been made.

First of all, I think it is very important we do not get into this business of little guys and big guys when we are talking about tax cheats. I have no sympathy for little guys who cheat on their taxes or big guys who cheat on their taxes. They are all criminals. They ought to be pursued.

And quite frankly, if I had my way, I would be willing to marginally lose money pursuing tax cheats because that rewards people who comply with the law and it encourages people to comply with the law.

So I do not want to get into this business where, you know, we decide, we do not go after the little guy because we are not going after the big guy. Tax cheats are tax cheats. And we ought to be vigorously pursuing them.

I also want to thank you, Mr. Chairman. You know, you listen to these things. And every once in awhile you get ideas related to our bill. I think one of the conclusions, for example, yesterday I reached is it ought not to be legal for the IRS to force somebody to sign a legal document that prevents them from suing the IRS as a result of what they have done.

What we are letting them do is to legally intimidate people by saying we will stop making your life miserable if you will sign an agreement that you will not make our life miserable. I would like to see that illegal. I think it ought to be banned for the IRS to enter into this agreement and force other people to do it. I think

people ought to always preserve their right to sue the government and the Internal Revenue Service.

I would like to say finally what continues to bother me and it is clear through all of your testimonies is that we have in IRS a system which is basically a closed system where people are or they act is they are above the law and above the rules that apply to everybody else.

We hear over and over that complaints are made. I do not how you judge the quality of these complaints. I do not know whether they are valid or they are not valid, but I think it is interesting that nothing ever seems to happen.

We have people who steal 20 cars and they retire with their full benefits. We have people who commit or are substantially alleged to commit sexual harassment and they get promoted to EEOC officers. And then, they are released for sexual harassment.

I mean, it seems to me that one constant pattern here is abuse of power. And it all goes back to the point that is so easy to raise and I do not know the solution to it. And that is this agency has too much power. There are no checks and balances within this agency. There is no consistent review of what they do.

We had two of the senior Inspector General officials of the Treasury Department here yesterday just holding up their hands. Well, you know, we ask these questions. Nothing ever seemed to happen. We do not know what happened to these people. It seems as if no one has the power to hold this agency accountable.

And in each of your cases with threats of reprisal, people calling you up in the middle of the night, and Ms. Johnson.

Ms. JARVIS. Yes, sir.

Senator GRAMM. Somebody might get killed calling my wife up in the middle of night to harass her, you know. Where I come from, we do not put up with that stuff.

And let me just finally add that I am not sure you are not going to have retaliation against you. And I just add my voice to people who are concerned about it. And I am not convinced that these people are not so arrogant that they think they can do it and get away with it. And it is hard to measure it.

Ms. O'DWYER. And it is easy for them to do.

Senator GRAMM. And see, we do not know, you know. We do not have a way of judging your competence. We do not, you know. It is going to be very difficult for us to protect you. And we want to try to do it, but it is a very difficult thing. And again, I would just like to thank you for coming forward.

Yes, Ms. Jarvis.

Ms. JARVIS. Senator, I would just like to say that there is a way to measure my competence. The particular situation that I spoke of with the hundreds of millions of dollars of money laundering and the billions of dollars of unreported income from a sale, that statute is still open. Anyone can go in and look at those tax returns. They are under examination now under the supervision of that same case manager.

Senator GRAMM. Well, I appreciate that. And we should either do it or have staff look at it. I mean, these are the kind of things that we need to follow up on and try to find out exactly what is happening. I thank you, Mr. Chairman.

The CHAIRMAN. Senator Mack

Senator MACK. Thank you, Mr. Chairman. And to each of you who testified to us this morning, it is hard for me to even imagine what anxiety each of you has gone through in preparation for your testimony this morning. Just preparing the testimony under normal circumstances is a difficult thing.

Being here before the Senate is not an easy thing to do. And then, when you layer on top of that the fear of retaliation to yourselves and to your family, that is very, very difficult thing to do. And I commend you for making the effort and being here this morning.

We will do our best. As both Senator Moynihan and Senator have said, we will do our best to protect you from that.

There are a couple of questions I do want to ask. And let me start with Ms. O'Dwyer.

Ms. O'DWYER. Yes.

Senator MACK. In your testimony, you talked about I guess former members of the service who come back?

Ms. O'DWYER. Yes, I did.

Senator MACK. Are you personally aware of any instances in which former IRS employees improperly represented taxpayers before the IRS in matters that they were involved in while at the IRS?

Ms. O'DWYER. I personally have not had that when I dealt with them. I have dealt with representatives who have come back, but they have—they were not in that position, but they did attempt to intimidate. I was told by one.

When we conclude a case or we make an agreement, it is called a revenue agent's report or a 5701 proposed adjustments. They were dictating to me what I should put in it. And I said I am not beholden to you. I am doing what I should do. They would attempt, they will try to bypass you. They will go to the manger.

But there are other cases, including right now that have been in progress. Where former administrators, there is a two-rule they cannot come back.

Senator MACK. Right.

Ms. O'DWYER. They have come back. And they have attempted to do it. I am not involved with anything like that. But, yes, I do know it. And then, they attempt to intimidate the examiner or to claim that when the examiner will make a protest, they will go after the examiner. And they make phone calls to the branch chief and his manager and higher. These things do occur.

Senator MACK. And the intimidation that you experience is I guess, what, the understanding of the personal relationship that that individual has from his previous experience with the manager or the case?

Ms. O'DWYER. Oh, they do. They will make phone calls. They will go to your manager. They will go to your branch chief. This is a very common practice.

Senator MACK. Let me go next to Mr. Ayala, is it?

Mr. AYALA. Ayala.

Senator MACK. In your testimony, you talked about a study ranking property seizures.

Mr. AYALA. Yes, that is correct.

Senator MACK. And I understand that that study, that should not be done. Is that correct?

Mr. AYALA. Yes, it is a violation of a Policy Statement P1-20 which states that enforcement statistics, such as levies, seizures, summons cannot be used to rate performance of any kind.

Senator MACK. Do you have a copy of that?

Mr. AYALA. Yes, I do. I have a copy of that here.

Senator MACK. Senator Roth, do we already have a copy of that for the record? Or if not, I would like to have it included in the record.

The CHAIRMAN. Without objection.

[The information appears in the appendix.]

Senator MACK. All right. And what is the date of that? Is that something that has been done since September of last year?

Mr. AYALA. The graphs showing the number of seizures per revenue officer and per district are dated January 12th of 1998. Some of the statements in there talk about the district's range from a low of 1.2 seizures per revenue officer in the south of Florida to a high of 2.47 in Georgia, Delaware, and Maryland. The district improved from the lowest number of seizures per revenue officer in fiscal year 96 to seventh in fiscal year 97. In Georgia, they exceeded the regional average for all fiscal year 97 and finished the year at 2.47 seizures per revenue officer.

Senator MACK. And that would substantiate in a way Ms. Johnson's comments that IRS management has openly flaunted the fact that it is not concerned with the Finance Committee hearings. Would you agree?

Mr. AYALA. I would say it is business as usual. They will come up with some excuse of why this was done. However, it does attach evaluative measures and compare performance-wise. And it is a violation of Policy Statement P1-20 and the Taxpayer Bill of Rights.

Senator MACK. I thank you.

If I may, Mr. Chairman, ask just one?

The CHAIRMAN. Please.

Senator MACK. Ms. Jarvis, I want to ask you some questions related to the case that you referred to on your first page. And you say, "At the sole discretion of the individual managers, millions, even hundreds of millions of dollars of tax revenues owed to the U.S. Treasury by some of the largest taxpayers in this country are literally forgiven, zeroed out."

Ms. JARVIS. Yes, sir, that is correct.

Senator MACK. Is that, do they have sole discretion to do that?

Ms. JARVIS. Yes, sir, they do. As a matter of fact, I witnessed a branch chief comment the other day, well, I guess it was about two weeks ago to an agent.

Senator MACK. Help me for a minute, because——

Ms. JARVIS. Oh, we are agents.

Senator MACK. I need to get a sense of this organization. Where does this individual fit into this thing? How much power is that?

Ms. JARVIS. Two levels up.

Senator MACK. Okay.

Ms. JARVIS. I have a direct manager. Then, this other person is my current branch chief commented to another agent that management has supreme authority.

Senator MACK. I can respect that somebody has to, you know, ultimately make the decision.

Ms. JARVIS. Above that is an assistant chief of exam, a chief of exam, a district director, and assistant district director.

Senator MACK. All right. So where does this person fall?

Ms. JARVIS. About four levels down.

Senator MACK. Yes. All right. So that individual four levels down has the sole discretion about whether to zero out or not?

Ms. JARVIS. It goes below. It goes to the immediate case manager, my manager.

Senator MACK. All right.

Ms. JARVIS. On that particular case.

Senator MACK. Can you appeal that?

Ms. JARVIS. Yes, sir. I have written letters. And I have spoken to the branch chief of the section. I was thrown out of that, off the case. I was thrown out of that group. And I was thrown out of that branch which is a tremendous disgrace.

Up until all of that had happened, I had received awards, special act awards for the work that I had done, and for my contribution to my duty. Another branch chief had commented that my manager was in collusion with the taxpayer.

And no one will discuss it with me, no one. They all say to me it is someone else's responsibility. There is no place for us to turn. And I feel great compassion for regional inspection because they report right back to the people that I am complaining about.

Senator MACK. I thank you very much. Again, I appreciate the information that all of you have given us.

I wonder if it would be appropriate if I just direct a thought or a question to my colleague, Senator Kerrey. You have done great work in this. You have been a lot more involved in it than I have.

But this concept of zeroing out, I have a sense that when that individual makes that decision to zero out, somewhere along the line, somebody else has to approve that. I mean, I cannot imagine that much authority rests in such a low level I guess is what I am saying without some kind of oversight. Are you familiar with it at all?

Senator KERREY. I am not familiar with it.

Senator MACK. All right. I think we ought to look at that I guess. When I was a lending officer in a bank, each of us has, is given authority as to how much, how large a loan we can make with anybody else's approval. Eventually, they actually run past the board and the board has to approve it, but on a day-to-day basis, we have certain authority.

And it would seen to me that there ought to be, if there is not, some formal process, some formal identification of the authority of the individual to make decisions up to whatever level that we want to design.

Senator KERREY. I can tell you, Senator, one of the things that we did hear from both employees and from management is that there is an attempt, not just for the IRS, but in most other public and private organizations to push the decisionmaking authority

further out along the lines so that you do not get into a situation where a decision cannot be made. It has to be going back up the line. It is very frustrating to have somebody say, I cannot make a decision.

Indeed, one of the earlier restructuring plans that the IRS had was pulling more and more of the decisionmaking back up into——

Senator MACK. I am not suggesting that we push the decision back, but I am saying that we be very clear in the authority, who has the authority to do what, how large a case can they zero out.

So again, if you would be willing to work with me on that, I would like to.

Ms. O'DWYER. Excuse me.

Senator KERREY. Yes, sir.

Senator MACK. Yes.

Ms. O'DWYER. Doesn't there have to be a reason for zeroing it out?

Senator MACK. Well, I would think that would come with the authority, yes.

Ms. O'DWYER. Yes, but see, it is done to meet a deadline and for statistical goals. In my particular case, he said he had the authority of the branch chief behind him which he did. His branch chief was his very good friend. And upper management became aware of it and over him, over the branch chief. And the response was, my, even if we—why did this happen? Even if we got a portion of the tax, it would have been something. That was the only comment.

Senator MACK. All right. Thank you.

The CHAIRMAN. Well, let me say this discussion does raise a very serious question of checks and balances, one that has to be addressed. I am so pleased that Commissioner Rossotti is a management expert, and he can certainly help address these problems.

This is a problem of not only writing the law, but a problem of creating the kinds of checks and balances over management that are needed to ensure propriety of actions and accountability for said actions.

Let me say to this group again that I want to thank you for being here. It outrages me that each of you have to come here fearing retaliation. It is your responsibility as an employee and as a citizen to come forward and tell it as it is and as you see it.

And I applaud you for what you do. Again, like Senator Moynihan said, if you have any problems, please call us. I realize that is not a total answer.

I think Senator Gramm is right. I recognize that in many cases, some IRS officials over there say, well, just wait, you know, commissioners come and go. Senators come and go. And so that is a problem, but I applaud you for what you are doing. And please, if you have problems, let us know. Thank you all very much.

We will now proceed to the next panel.

Senator KERREY. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Senator KERREY. Yesterday, I raised the issue of waivers of witnesses. And since that time, I do not know who sent it to you. The Chief Counsel, Stuart Brown sent you, Mr. Chairman, and Senator Moynihan a letter detailing why that waiver would be difficult to

grant. In other words, why Mr. Rossotti would have trouble talking about it tomorrow when he comes forward.

And I just want for the record to say this satisfies my concerns. I think it is important for the public to understand that there is a law called section 6103 that not only says a taxpayer can come and talk about the return, but the IRS cannot unless there is a right of waiver granted.

And in this case there was multiple taxpayers. There is also rules of grand jury secrecy that is referenced in this letter. And I do accept what the chief counsel of the Department of Treasury is saying. And I will not press this issue further.

The CHAIRMAN. We will now proceed to the next group of witnesses. These witnesses include current and former employees of the Criminal Investigation Division of the Internal Revenue Service. They will testify before us today about the serious abuses they have witnessed taking place both within CID as well as publicly involving taxpayers.

These witnesses will also address the unfair treatment they have experienced in the hands of their own colleagues while they struggled to deal honestly and fairly with IRS employees and the taxpaying public.

In addition, they will also provide us with testimony disclosing an actual case when an entire IRS story was a fabrication of lies to entrap an innocent but highly public figure in order for an employee to gain improved performance ratings on the job.

It is our practice in these hearings to ask each witness to be sworn. Will you please rise and raise your right hand?

[Whereupon, the three witnesses were duly sworn.]

The CHAIRMAN. Thank you. I appreciate very much your being here.

And I would call upon you first, Mr. Henderson, to testify.

STATEMENT OF TOMMY A. HENDERSON, SPECIAL AGENT, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE

Mr. HENDERSON. Thank you, sir. Mr. Chairman, my name is Tom Henderson. And I have been a special agent with the Criminal Investigation Division, Internal Revenue Service, IRS for over 25 years.

I graduated from the University of West Florida in Pensacola, Florida in June of 1972 with a degree in economics and began my career as a special agent in Orlando, Florida immediately after graduation.

I was also a group manager for the Criminal Investigation Division, CID, in Knoxville, Tennessee from 1983 until 1989.

I would like to share some of my experiences as a group manager in the Knoxville office with you today. But, first, I want to say that most of the employees and many of the managers within the Internal Revenue Service are hardworking Americans doing a very difficult job under adverse conditions.

Their job is complicated by an IRS management which is out of control and operating under a separate set of standards from the vast majority of the employees. The arrogance, vindictiveness, incompetence, and lack of ethics by certain managers and manage-

ment officials and management in general are a major detriment to IRS employees as well as American taxpayers.

IRS management does what it wants, to whom it wants, when it wants, how it wants with almost complete immunity. Each district director and chief appears to operate his own little kingdom and in some instances with little regard for the law and/or government rules and regulations.

Management then uses the unlimited resources of the Federal Government, that is taxpayer funds to cover up its acts and to destroy its opponents whether they be employees or taxpayers.

The greatest problem within the IRS today is that management has no accountability. When an IRS manager makes bad decisions, violates government rules and regulations, and/or violates the law, that person is usually promoted or the situation is covered up.

Shortly after being selected as the acting group manager in Knoxville, Tennessee, I arrived to start my new job. I arrived in Knoxville late in the evening at the same time the agents and chief of the Criminal Investigation Division were having a party at a local hotel.

Everyone was completely intoxicated. And my initial conversation with the chief occurred in his motel room with him so intoxicated he could not stand. This should have been a sign of things to come. However, I was young, naive, and enthusiastic. This would soon change.

I learned that the chief for the Criminal Investigation Division for the Nashville District which included all of Tennessee frequently showed up at outlying posts of duty like Knoxville with a car load of liquor in the trunk of his government car. He would then insist that the agents and managers join him in his motel room where significant amounts of alcohol were consumed.

The gathering would then adjourn to a local bar. However, that bar had to have facilities to serve food so the agents could justify driving their government cars to that location. The eating, drinking, dancing, and whatever would continue until the late evening. I found that some of my agents on several occasions were so drunk they could not find their government cars.

It should be noted that the chief was famous throughout the Southeast Region for this behavior. And it was also well known by the upper management circles. I was eventually able to put a halt to this practice while simultaneously contributing to my own demise.

I quickly learned that the chief ran the district like his own private police force. There are numerous instances that I can relate which demonstrate corrupt practices within the Internal Revenue Service. However, one experience in Knoxville stands out about all the rest. This experience ultimately resulted in my leaving IRS management and confirmed my distrust of management and the entire IRS system.

As the months passed, I began having some serious problems and misgivings concerning one of the senior agents assigned to my group. He was a close friend and drinking buddy of the chief of the Criminal Investigation Division and had been in the district for a number of years.

For more than 2 years, I had consistently expressed my concern to the chief of the Criminal Investigation Division that the senior special agent had a problem with alcohol and was allegedly disclosing tax and grand jury information in local bars in and around Johnson City, Tennessee area.

I also reported that he had conducted an authorized gambling and undercover investigation where he made bets after being told not to do so. I learned of this unauthorized investigation when he attempted to get reimbursed for his gambling losses from the IRS impress fund.

He was also arrested for driving while intoxicated while operating a government vehicle which resulted in the suspension of his driver's license. His conduct was covered up at the time by the chief of the Criminal Investigation Division.

In May of 1989, the agent's conduct reached intolerable proportions. He was intoxicated on the job for at least a week. During this period, the agent called me with information that a sitting U.S. Congressman and former U.S. Senator were involved in a bribery and money laundering operation.

I immediately called the chief of the Criminal Investigation Division with that information. According to the agent, the sitting United States Congressman and former U.S. Senator were both receiving $300,000 to $400,000 in currency every month for a period of seven years from a well-known national company for favorable legislation and/or political considerations.

The agent without authorization transmitted the information to the United States Attorney's office in Greenville, Tennessee and to the FBI. As a senior IRS special agent, he was attempting to establish a grand jury investigation without any authorization.

Before disclosing any information, the authorization to number the investigation was needed from the group manager, chief of the Criminal Investigation, and the national office in Washington since the investigation would involve a sitting United States Congressman.

Had it been true, this obviously would have been an enormous case of national importance and a tremendous boost to the agent's career. After I had some time to review my notes and consider the situation and the performance of the agent, I had another senior special agent verify the information with the alleged informant. From that I learned that all the information was bogus.

What I had uncovered was an attempt to create an unfounded criminal investigation on two national political figures for no reason other than to redeem the agent's own career and ingratiate himself with his superiors.

Incredibly, this entire situation was also covered up by the chief and assistant chief of the Criminal Investigation Division and later by the district director.

On June 1st, 1989, after I had discovered the agent's activities, I informed the assistant chief that the agent was out of control, that I believed him to be dangerous to himself, to the public, and to the Internal Revenue Service.

I recommended that we take his gun and credentials and place him on leave until he could receive professional help. I had seen

this happen once before to a prominent political figure when I was a new agent and I was not going to let it happen again.

This time, I was the immediate supervisor and it was my responsibility to take action. However, I was told by the assistant chief to say and do nothing. I was then informed that I was the one in trouble and was refused any information from the assistant chief.

This was the second time in my career that I had discovered what appeared to be criminal conduct by a special agent. And again, for the second time, I was being threatened for doing what was right.

On June 2nd, 1989, I had a conversation with an FBI supervisor who was familiar with the situation. The FBI supervisor stated that the agent was, and I quote, a 110 percent alcoholic and a security risk.

On June 5th, 1989, I was called to the chief's office and accused of numerous things. I was told that the entire Knoxville group had lost faith in my management, the whole group wanted me removed as group manager. I realized that the chief and assistant chief were going to again cover up the agent's activities.

I decided to resign my position as group manager because I was afraid that anything less could subject me to both criminal and civil liability. I had previously discussed in theoretical terms my possible liability with an attorney.

I was angry and hurt by management's lack of ethics and support and resigned from the position of group manager with the understanding that I would be transferred back to Florida. I knew that if I did not get out of the Nashville District, I would be fired or forced to resign on some trumped up charge.

I later learned that the chief and assistant chief had lied and that the whole situation was being orchestrated by the agent in question, along with the chief and assistant chief. The chief of the Criminal Investigation Division then created a cover story for my resignation from management in which he included praise during the announcement to the Knoxville group.

Shortly after my resignation, the chief and assistant chief with the help of others began a harassment campaign against me which I now know to be standard operating procedure within the Internal Revenue Service.

First, I was isolated from my group. I was not even allowed within my own group's office space. Secondly, I was ostracized by my fellow employees at the direction of the chief and assistant chief. Third, and the most devastating of all, my case inventory and ability to work as a successful special agent were destroyed.

Management creates a self fulfilling prophecy where an employee cannot succeed and is either forced to resign or be fired. The only relief for an employee or a taxpayer at odds with a corrupt IRS management is the Federal district court. Unfortunately, most of us have neither the time nor the money to fight the United States Government.

It seems that almost overnight a senior agent and former group manager can no longer do anything right. I had violated an unwritten law. I had exposed the illegal actions of another agent. What I had indeed done was break up a false criminal case against two

national political figures that would have been disastrous for them as well as the Internal Revenue Service.

After resigning as group manager, I started doing what I knew best, finding and working significant criminal cases. I developed two significant criminal cases in Gatlinburg, Tennessee while I was waiting to be transferred to Florida, this pursuant to my agreement with the chief of the Criminal Investigation Division.

I developed both cases to the point that I needed assistance in conducting surveillance and executing search warrants. As soon as the chief realized that I had developed two significant cases, the first case was reassigned to a fellow agent in the Knoxville office and the second was dropped.

The first case was completed by the new agent. And the case was written up in the Criminal Investigation Digest with other significant cases. My participation was never mentioned.

I considered the second case which required more work the more significant of the two. I had obtained information for the second case from the FBI espionage files. It related to a store being operated by an alleged Iranian intelligence cell in Gatlinburg, Tennessee which was allegedly funneling money to Iranian terrorists.

I had determined their method of skimming funds from the business they were operating. In addition, one of the subjects of the investigation was allegedly one of the Iranians responsible for holding the Americans hostage in Iran.

I could not believe that the IRS management was so desperate to destroy my credibility that they would drop this investigation. I now know that investigations, specifically ones conducted by agents no longer in management's favor regardless of their importance or how much money, taxpayer's money have been invested or the ethics involved mean absolutely nothing.

I was subsequently detailed out of the district to Tampa, Florida. There I spent numerous weeks on what I can only describe as a vacation at government expense since I was neither required or expected to do much work. Meanwhile, my family was being threatened. And the Internal Revenue Service refused any assistance.

It was after my resignation as group manager that I learned that the agent who conducted these illegal investigations had been involved in numerous other activities which had been covered up by the chief and assistant chief.

These included sexual harassment of a female special agent, attempted rape of another female special agent, unauthorized disclosure of tax and grand jury information, allegedly being drunk and pointed out FBI agents to criminal elements, threatening fellow agents, burglarizing a mini storage warehouse to obtain drugs, illegal electronic monitoring, bragging in bars that hew as going to get a U.S. Congressman and a Tennessee State district attorney, and association with known criminal elements.

Both the United States Congressman and the State district attorney were well aware of the agent's activities. And I had an opportunity to discuss the situation with the Congressman after my resignation.

I do not believe that the retired United States Senator until recently was aware of the attempt to investigate him.

The agent who generated all these problems and more was subsequently fired, no, not because of all the previous acts I have outlined. He was eventually fired only because he was arrested on a cocaine charge by the sheriff's office. And being public knowledge, it was impossible to cover up.

I managed to secure my transfer back to Florida where I again became a productive special agent. However, two employees left behind were not so fortunate. The first was Barbara Latham, my former assistant at the time and a tax fraud investigative aide.

Her only crime was that she refused to ostracize me at the direction of the chief and assistant chief and new group manager. She subsequently was literally railroaded out of her job and both her physical and financial health destroyed. However, Barbara can best describe what happened to her.

The second was special agent Patty Gernt. She made the mistake of turning the agent into the Inspection Division as required under the code of conduct. I believe she was harassed and ultimately railroaded out of her job simply to set an example for anyone else who even thought about crossing management.

After my resignation, I learned that special agent Gernt was being threatened, assaulted, and abused by this agent. The abuse continued at the hands of the chief, the assistant chief, and new group manager after my return to Florida. Patty can best describe her treatment and what happens to you when you go against the IRS power of structure.

The three of us were dedicated, hard working government employees who could not tolerate the terrible abuse of power against innocent people. Barbara and Patty have paid a terrible price for their honesty and convictions.

I am testifying here today at personal risk for all my fellow employees and taxpayers. It is imperative that situations like the one I have described never ever happen again. And everyone within the Internal Revenue Service, especially its management abide by the same rules, ethical and legal standards that govern and guide us all. Thank you, sir.

The CHAIRMAN. Thank you, Mr. Henderson.

Ms. Gernt.

STATEMENT OF PATRICIA J. GERNT, FORMER SPECIAL AGENT, NASHVILLE DISTRICT, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE

Ms. GERNT. Thank you. Mr. Chairman, members of this committee, my name is Patricia Gernt. I am a former special agent out of the Nashville District Criminal Investigation Division of the Internal Revenue Service. I graduated from East Tennessee State University with concentrations in accounting, biology, and chemistry. In 1987, I became an employee of the IRS.

At that time, for me the job was a dream come true, an opportunity to work for my country. I believed I would be carrying out the duties and mission of the Internal Revenue Service in enforcing the tax laws of this country.

However, as an employee of the IRS, I was also witness to incidents of extreme fraud, abuse, and waste of the taxpayer's hard earned money. I soon learned that abuse of these revenues was

considered general operating procedure and certainly a way of life within the Criminal Investigation Division.

Before continuing, I want to be very clear in noting the devotion and loyalty of many IRS employees who are hard workers fulfilling the public's trust in performing often difficult jobs.

But I as well as other employees found out far too quickly the IRS management operates under a separate set of standards and is virtually untouchable because it is not simply held accountable for its actions either by the national office or by Congress. I make this declaration with specific knowledge of incidents and further state that it is more the rule than the exception.

Members of management foster an atmosphere of retaliation, sexual harassment, fear, and arrogance in its employees to assure loyalty to themselves. Regrettably, there is little concern at all about the application of the taxpayer's dollars in funding the agency or indulging their own behavior.

Early my career, a former special agent who was my on-the-job instructor, an OJI, became involved in an extremely serious misconduct. He was arrested for driving a government vehicle while intoxicated, this according to the local Johnson City, Tennessee police department.

Although I am now personally aware of my former group manager Tommy Henderson's efforts to control this agent's renegade behavior, no other IRS administrative action was taken against him.

This agent was well known for his repeated outbursts disclosing protected tax and grand jury information in local bars in and around the Johnson City, Tennessee area. He was never once reprimanded by management for this outrageous and clearly career ending type of behavior.

Specifically, it was this same agent who threatened a seated Congressman, a former Senator, and a local Tennessee district attorney with criminal prosecution, publicly labeling them as, quote, crooks.

While he continued as my mentor, this special agent requested me to perform activities clearly outside of the IRS code. Among these demands on me were demands for sexual favors. He would often apologize later, but that was always followed by his telling me, you know, I can make you or break you in this job. I feared him because of his constant sexual harassment and certainly due to his position as a senior special agent.

I did not know at that time that I was not alone in this fear. I later learned that he had attempted to rape another female special agent just a few years prior to my arrival with the agency.

You may be wondering if things were so bad, why didn't I say anything to anyone? Why didn't I complain? Well, therein lies the heart of the problem.

To begin with, I was still a new employee with little influence or authority. I knew that management had been informed of that earlier incident involving a special agent and had chosen not to take adversary action against him for the assault.

In fact, the only relief provided this woman was from the new group manager, special agent Tommy Henderson. He was able to secure an assurance that the agent would never be allowed to work along with her on future cases.

Because the Nashville IRS management clearly ignored the widely circulated reports about this special agent, including his drinking problems, revoked driver's license, misbehavior around female co-workers, and dipping into IRS funds to compensate for his personal gambling losses, management had set the stage where I then found myself standing dead center and alone.

Certainly, this agent had serious personal problems. And I took the brunt for much of it. However, I want to be very clear on one point. And it is a major one. This agent needed help.

He had serious personal problems. Yet his own managers preferred to ignore the situation and sweep these breaches of professional conduct under what was becoming a very large rug.

By far the greater breach in professionalism was committed by a management that was clearly less interested in dealing with poor conduct than with the possibility of this agent's actually pulling in the big case.

By avoiding having to admit to a potential agency mess with the agent, management inadvertently chose to let him take a road that would ultimately lead to his tragic final fall.

In 1989, I broke my silence and shared my problems with group manager Tommy Henderson. Surprisingly, when he made my concerns relative to this renegade agent known to management, an investigation was instituted. However, of even greater astonishment was that the agent was not to be the target of this investigation, Tommy Henderson and I were.

For nearly 1 year, I was the target of an unrelenting internal investigation by the IRS management. My neighbors were questioned about me. I was followed by co-workers, incidentally who were also special agents acting outside the scope of their authority. My college transcripts were even pulled along with my tax returns and my divorce transcripts. I was even followed to the restroom.

It was during this investigation of Mr. Henderson and me that I became so stressed that for the first time in my life I sought professional counseling. All during this ridiculous and unproductive investigation, I continually tried to reassure management that all I wanted was an equal chance in the work place, but absent sexual harassment and threats of retaliation or retribution, not too much to ask for I thought.

What eventually happened to the special agent, my former mentor, was indeed pitiful. He was never fired by IRS management for sexual harassment nor for verbal threats against taxpayers nor for creating false cases against a Congressman, former Senator, or a Tennessee district attorney.

It ultimately took a local police agency catching the agent and his cousin outside of the IRS domain with cocaine, scales, and other drug paraphernalia to get the IRS management to terminate him. The agent's behavior was now in the public eye. And the IRS could no longer cover for him. Management's hands were finally tied, but only by the scrutiny of the public's knowledge.

For me, the final blow came in 1993. An incident occurred within the Knoxville Criminal Investigation Division office where a special agent had lost her service weapon. She had reported it missing on February 5th, 1993 from a storage safe to which only she had the keys. However, days after she announced the weapon was missing,

it was reported recovered from bushes located next to a restaurant that she and colleagues had frequented while conducting a search warrant.

Of paramount interest is that the particular search had been conducted on New Year's Eve over 1 month prior to her announcement that the weapon was missing. Although it was found, all Criminal Investigation Division employees including me were questioned about its disappearance.

However, for 2 days in March, I was interrogated by my manager and was then informed I had to, quote, clear myself of potential charges of theft or complicity. Although I explained that I worked over 120 miles away from the scene of the missing weapon, I did not have keys to either the Knoxville building or the CID premises, all reasons I felt were strong indicators of my innocence. I was now clearly the scapegoat to relieve the special agent of blame in losing her weapon.

As a result of having to clear myself, I obtained a criminal defense attorney. Prior to meeting with the IRS in Knoxville, Tennessee, my attorney and I agreed we would both carry recorders into the meeting.

When we arrived, both devices were in plain view. As we attempted to enter the CID offices, the group manager became outraged at my attorney's presence and physically shoved him twice.

When I attempted to leave their office, the same group manager came after me and struck me in the stomach. It was crystal clear to me at that point that management was going to protect its own and I was on my own. I was now branded a self-serving whistle blower by management and colleagues.

In 1993 having blown the whistle numerous times on a number of matters, I summoned the courage to drive seven hours in my own vehicle to Washington, DC hoping against hope I could get someone to listen to me at the national office.

What I ran up against was an IRS Commissioner who refused to see me and a head of CID who deflected me to one of his assistants. The assistant appeared unmoved about what he was hearing from me. I received no help that day.

To me the national office clearly had no interest in knowing about the chaos in Knoxville, Tennessee. But then again perhaps, all this was not at all new news to them.

I soon became seriously ill, both physically and emotionally. I assured management that I truly cared and wanted to get past all this and continue a career with the agency, but I could not endure the untenable conditions they had created in the work place.

With no consideration of the quality years I worked, their response to my request was termination with retirement just 4 years ago this month. Finally, just last year after 4 years of legal battling, a suit that I initiated against the Internal Revenue Service in 1994 was resolved in an out-of-court settlement.

Before I conclude my testimony, I would like to take this opportunity to mention another practice within the IRS that is of significant concern to me.

While not directly related to the main subject of my testimony, I would appreciate having a moment to address it.

The CHAIRMAN. Please proceed.

Ms. GERNT. In many situations when CID numbers or opens a case on an individual, they will also number family members, such as a spouse, son, daughter, etcetera.

Often in the end as part of a plea agreement with the primary subject, the IRS will negotiate to drop cases on the other family members if the primary target will plead to all charges at the initiation of the negotiating phase.

Or in other instances, CID may threaten at the initiation of an investigation to number family members. Threats of spouses are most common. And then, because these threats involve innocent parties, the primary taxpayer will negotiate a plea.

In addition to this, the number of other related cases boasts the IRS' statistics and CID. So by numbering the primary individual, the spouse, son, daughter, uncle, etcetera, the agent shows a hefty inventory of cases. We refer to these as related or spin-off cases.

The agent gets accolades and the manager has a full case load inventory which boasts his evaluations. CID looks on a national or district level as though it is bursting at the seams with cases when in fact most of those cases numbered will be dropped or referred to another division of IRS, but never worked to the end with a report of prosecution by the Criminal Investigation Division.

We have all read that the new IRS Commissioner is attempting to pursue a newly corrected course for this agency. There are many dedicated and honest employees who are looking to him for his straight and unimpeded guidance.

They simply want to know they can count on him for support when they do their jobs the right way, the honest way, and when they defy the abusive behavior of so many in management positions. On the other hand, there are employees who do not appreciate his efforts to correct the business as usual mentality.

I hope that what I have shared with you today will shed some light on what I believe are egregious conditions in which honest, public servants of the Internal Revenue Service are forced to endure in executing their jobs. I greatly appreciate this opportunity to appear before you today. Thank you.

The CHAIRMAN. And we greatly appreciate your being here. Thank you.

And now, I will call upon Ms. Latham.

STATEMENT OF BARBARA LATHAM, FORMER TAX FRAUD INVESTIGATIVE AIDE, NASHVILLE DISTRICT, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE

Ms. LATHAM. Mr. Chairman, members of the committee, my name is Barbara Latham. I was an employee of the Nashville, Tennessee District of the Internal Revenue Service for almost 17 years, 12 of them in the Criminal Investigation Division as a tax fraud investigative aide. It was a job that required me to render assistance to 12 special agents and a group manager in the investigation and persecution of cases of tax fraud.

There is a long history of dishonesty, chaos, and abuse of government time and funds in the CID work place among both management officials and employees. The waste and abuse is out of control.

During my career with the IRS, I witnessed many incidents of extreme fraud and abuse and waste of the taxpayer's money in the operation of this division of IRS. They operate under a different set of standards than other IRS employees.

The Criminal Investigation Division applies scant control over special agents, many of whom will not work under any circumstances. The special agents focus their investigations on smaller businessmen with smaller tax liabilities because they require less work than investigations involving larger tax deficiencies or serious criminal offenses.

They frequently increase statistics for work load inventories by opening five or six related investigations and closing them at the same time for lack of resources or insufficient personnel to work the cases.

The Criminal Investigation Division does not need more money. They need to use the money they have more wisely. They have all the investigative tools they need and unlimited funds of the taxpayers' hard earned dollars, but they fail to collect millions of dollars in delinquent taxes and manipulate those statistics to reflect otherwise.

When a number is used as an indicator of success, everyone will try to inflate that number as much as possible. Tommy Henderson from whom you have just heard became group manager of the Knoxville, Tennessee IRS Criminal Investigation Division in 1983.

He was excellent supervisor, well liked, and respected for his fairness to his subordinates. A conspiracy to remove group manager Tommy Henderson began in 1989 after he attempted to have a special agent under his supervision disciplined for misconduct.

Rather than risking embarrassment to themselves by prosecuting his allegations of sexual harassment, alcoholism, drugs, and fraud that had been so long repressed, IRS officials pressured Tommy Henderson into resigning from management.

After his resignation, Henderson was subjected to a campaign of ostracism, harassment, and retaliation intended to force him out of his job. When I refused to obey a direct order from the CID chief and Henderson's replacement to shun Henderson, I began to suffer different treatment which I managed to ignore out of fear for the safety of my job.

In January 1993, I suddenly found myself a middle-aged grandmother with an exemplary work record and impeccable reputation caught up in a patronage scheme to protect one immoral female when she reported that her service weapon had been stolen.

The truth was she had lost it, but preferred to accuse a co-worker, special agent Patricia Gernt who worked at a post of duty more than 120 miles away. Just days after the gun was reported missing, it was recovered under mysterious circumstances.

It was found by an employee of a fast food restaurant in a wet and rusted condition more than 100 miles from the IRS office. It also happened to be next door to a business where the special agent had assisted in a search warrant a month before.

It was simply not credible that the gun had been stolen. All evidence pointed to the gun having been carelessly lost. Not even Houdini himself were he alive today could have removed the gun from the locked cabinets with no signs of forced entry.

After the gun had been recovered, IRS officials set out on what can only be described as an after-the-fact witch hunt under the guise of an investigation. It seemed more important to conduct this type of investigation against employees than it was to pursue persons who may defraud the government out of legitimately owed tax dollars.

Patricia Gernt and I became the targets in the ensuing sham investigation. These pseudo investigations resemble a court martial in that they are basically closed proceedings, not subject to outside scrutiny. The catalyst for my involvement appeared to be my refusal to falsely implicate Patricia Gernt in any act of misconduct.

For my refusal, I was forced to work in a hostile and abusive work environment. I felt like I was being punished daily. My physical and mental health deteriorated. I endured 3 years of what can only be described as IRS hell.

I was even expected to participate in raids along side heavily armed agents wearing protective vests. The only difference was I given no vest, no weapon, or any other protection. This was clearly against IRS policy and was not at all what I had envisioned I would be doing in my career at the age of 60. I got the message and opted for early retirement in September 1996.

It is the practice of the IRS Inspection Division to use Gestapo-type tactics to intimidate and harass the targets of their investigations. They coerce them into giving false evidence and then offer them immunity in exchange for it. These employees are forced to provide false evidence of criminal misconduct against innocent colleagues included on the IRS hit list.

As a pretext to an investigation, the IRS Inspection Division subjected Patty Gernt and me to polygraphs and handwriting analysis. They also conducted interrogations during which they tried to get me to implicate her in the theft of the gun.

Monitoring devices were placed on my telephone at my home and in my work place. My activities were monitored both in and away from the work place. And anonymous phone calls were made to the Office of the Inspector General accusing me of tax fraud.

Both of us were denied access to documents. And files were shredded so that no paper trail existed of this harassment and retaliation.

The fiasco of the missing gun grew out of proportion and became a nightmare. Special agents were diverted from their cases and other employees kept from performing their jobs.

The controversy surrounding the investigation continued for more than 3 years and cost the taxpayers close to $1 million, including more than $100,000 in legal fees paid to two private attorneys hired to defend the supervisor, 3 years of lost manpower for more than a dozen employees and hundreds of thousands of dollars to settle employee complaints.

In the end, the total cost of this case to the taxpayers, including the resulting personnel disputes and all of the coverups of unethical conduct in the work place was in the millions of dollars.

There is no one in our society more powerful than the IRS. They assume they are above the law and do not have to obey the laws applied to private individuals. They have the power over the lives

of citizens that is theirs by virtue of their intimate knowledge of every single one of us.

Not even employees are immune from attack. Workers are afraid to voice concerns for fear of reprisal. Employees should be allowed to voice their opinions and to make those in power aware of what is happening to them and how their constitutional rights are being violated. It is time that the IRS is held accountable for their actions and performance.

Senator Roth, thank you for this opportunity to appear before your committee today.

The CHAIRMAN. Well, first of all, let me thank each of you for being here. I apologize for the kind of treatment you received as dedicated public servants. It should not have been.

And I would now like to introduce the three targets of the IRS investigation: former Senator Majority Leader Howard Baker, former Congressman James Quillen, and the District Attorney General for the First District of Tennessee, Mr. David Crockett.

I welcome you gentlemen. Please be seated. I would like to start out by publicly apologizing as to what happened to you. It should happen to no American. It should happen to no public figure. And I am outraged that it did.

I do want to point out that this did not happen during this administration.

It was back in the 1980's. We are concerned about an agency that is too often out of control. And I just want each of you to know we do feel outraged by your treatment. And we appreciate the fact that you are here today.

With that, I would like to call on you, Senator Baker, for any comments you may care to make.

STATEMENT OF HON. HOWARD H. BAKER, JR., FORMER U.S. SENATOR FROM TENNESSEE

Senator BAKER. Mr. Chairman and members of the committee, I thank you very much for the opportunity to be here. I commend you for having these hearings. My name is Howard H. Baker, Jr. I have had the honor of serving in the United States for 18 years beginning of January 1967 until January of 1985. And during that time, I had the privilege of serving as minority leader for two terms. And then, the last 4 years, my final term, I served as majority leader.

On leaving the Senate in 1985, I returned to my profession as a lawyer and have practiced law since then, except for a 16-month period in 1987 and 1988 when President Reagan asked me to serve as his chief of staff.

Mr. Chairman, a few weeks ago, I was visited in my law office here in Washington by a member of this committee's staff and was told that as a result of the committee's inquiry into IRS activity, it had learned that I was at one time the target of an investigation by an agent of the IRS criminal division, an investigation that based on totally fabricated facts.

I knew nothing of that investigation either before, during, or after the time it was terminated. I knew nothing of it until I was informed by this committee's staff. I must repeat, Mr. Chairman,

that the allegations were absolutely and totally without foundation and did not occur.

The CHAIRMAN. Inexcusable.

Senator BAKER. Mr. Chairman, I find it very disturbing indeed that the criminal division agent attempted to frame me and reported his bogus allegations to the FBI and to the Justice Department.

I may say that I am grateful in the extreme that others in the service, particularly including these three IRS employees who are here today were able to terminate this malicious plan.

And I regret, however, that apparently the three IRS employees who challenged another employee's fabricated criminal investigation themselves suffered retaliation. They should not have been retaliated against. They should have been commended.

I would like to express my profound appreciation to Special Agent Henderson, Ms. Gernt, Ms. Latham for standing up for justice and for my rights as a taxpayer and citizen really at the expense of their own career and for them to know that I am grateful.

Had this matter proceeded, I am confident that I would have been in a position to employ the best lawyers and accountants and to demonstrate the fallacy of these allegations. But Mr. Chairman, I am deeply troubled that others who are perhaps less fortunate but who might find themselves in a similar situation with such charges leveled against them might not have the resources. They might not be in a position to defend themselves.

And it is for that reason more than any that I commend this committee for inquiring into these matters, for ventilating these facts and to protect those American citizens who might in the future be subjected to such indignity and humiliation.

Mr. Chairman, may I add that I am not nor have I ever been one who sets out to savage government. I have enormous respect for public servants, members of the House and Senate, the bureaucracy, the executive department. It is the very essence of our Nationhood.

And I commend you, but I also commend in advance Secretary Rubin because I am confident that he will do what needs to be done or the new director of Internal Revenue. I have high confidence that he will undertake the measures that are necessary to rectify such a situation.

And I also express my admiration for other members of the IRS. They are by and large like other Federal employees and servants, dedicated, loyal, and honest people.

But I must tell you, Mr. Chairman, I have never been so infuriated about an event such as this.

The CHAIRMAN. With good reason.

Senator BAKER. Some may say, well, nothing happened. You did not know about it. So why are you concerned about it? This matter was referred to the Justice Department. There is an FBI file. That is a record in this government, notwithstanding that it is totally false. I have seen too many raw files of the FBI to think that those allegations are now totally obliterated, notwithstanding that I sit here and tell you there is not a scintilla of truth. There are still in somebody's file some place.

So that is the real danger, not that I could not defend myself, I think I could have. Not that I was not damaged finally because nothing happened. Regrettably because of the system in a pernicious, evil way victimized me in a way that cannot be totally eliminated.

I commend you, Mr. Chairman, for having these hearings. I commend the members of the committee on both sides of the aisle for their patience in going into this matter at this time.

The CHAIRMAN. Well, let me say again, Senator Baker, you have brought great honor by your service to the term "public servant". And to me, it is unbelievable that a man of your distinguished background could be the victim of this kind of false investigation. And if they would dare do it to you, what about the average American citizen who might be targeted? What chance do they have to protect themselves? This is not something that should ever happen in the United States of America. And I apologize.

The CHAIRMAN. Congressman Quillen, we welcome you as one of those most distinguished members of Congress. It is good to see you here, but I apologize for the circumstances.

Senator CHAFEE. Mr. Chairman, unfortunately due to a longtime commitment, I cannot stay throughout all of this. But I just wanted to join in your commendation of Senator Baker and to say when you have a person of the towering integrity of Senator Baker being attacked in one of these schemes, it just shows you the peril that an ordinary citizen would be subjected to because they do not have the known reputation of Senator Baker. And thus, that citizen could suffer terribly.

And I share in the indignation that Senator Baker voiced in what took place. I am sure Congressman Quillen will reiterate that indignation. But this has been very powerful testimony. And I want to thank everybody.

Senator CONRAD. Mr. Chairman,

The CHAIRMAN. I would like to give the three witnesses a chance to finish.

Senator CONRAD. Could I just make a mention? I, too, have an obligation.

The CHAIRMAN. Sure.

Senator CONRAD. On behalf of our side of the aisle, Democrats not only on this committee, Senator Baker, but Democrats in the United States Senate have extraordinarily high regard for the honesty and integrity of Howard Baker.

I do not know of anybody that is more respected on both sides of the aisle. I did not have the honor of serving with you in the U.S. Senate, but I can tell you your reputation is well known. And it is truly an outrage that anybody set out to frame you and to diminish your reputation based on totally false accusations. That is absolutely outrageous.

We have heard during these hearings a number of outrages. And I think the most important thing we can say to you and others who are similarly victimized we are going to bend our best efforts to stop it so that it is not permitted to ever happen again to anyone.

Senator Roth said so well, if it could happen to a Howard Baker, it could happen even more easily to an average American citizen, and as you said in your statement, Senator Baker.

But I do want to say on behalf of Senate Democrats if I could be permitted to speak on their behalf, Senator Roth, I think it is appropriate that your honesty and your integrity are without question. And we appreciate deeply that you have come here today to express your outrage.

I think it will help that we move the legislation necessary to correct this agency, but it is going to take more than legislation. It is going to take a change of attitude. And we hope that that helps in that regard as well.

Senator BAKER. Senator, I thank you very much.

The CHAIRMAN. Thank you very much, Senator Conrad. I appreciate those words. And as I noted, this is something that occurred back in the 1980's.

I would now return to you, Congressman Quillen. I would appreciate any comments you may care to make.

STATEMENT OF HON. JAMES H. QUILLEN, FORMER U.S. REPRESENTATIVE FROM TENNESSEE

Congressman QUILLEN. Thank you, Mr. Chairman. I appreciate the opportunity of being here with such a distinguished group. You do a great job as do the members of your committee.

I am James H. Quillen of Kingsfort, Tennessee. And I retired from the U.S. Congress as a member of the House of Representatives after 34 years of continuous service. I am one of the three targets referred to in this testimony you have just heard.

Earlier on in my Congressional career, a prominent businessman had been sued by the IRS. And he won the case. However, he had to pay the legal fees even though he won.

When this was brought to my attention, I introduced a bill which stated specifically in the event the IRS lost a case against a taxpayer, the government had to pay the legal fees of that taxpayer. Following this, the IRS sent a team in to audit my personal tax returns.

Later on in my Congressional career for reasons unbeknownst to me, I was targeted by a special agent of the Criminal Investigation Division of the IRS. He would often visit several local bars and after a few drinks would loudly state my name saying, "We're going to get that crook Congressman Quillen." This happened not just one time, but many times.

As a result of those verbal assaults, the IRS group manager, special agent Tom Henderson felt it was necessary to put the special agent's alleged charges to rest. As a result special agent Henderson conducted a preliminary investigation to determine there was absolutely no basis of the fact in the special agent's claim.

That, however, did not stop him. Not only did he not lose his job, but continued to boast that he was still going to bring me down.

I so greatly appreciate the efforts of special agent Tom Henderson on my behalf as well as those of former IRS employees Patty Gernt and Barbara Latham for having the courage to stand up against what they knew was wrong despite the considerable cost to their own careers and future livelihood.

Special agent Henderson, Ms. Gernt, and Ms. Latham, I would like to express my utmost respect for you and for the values you uphold.

Mr. Chairman, I know there are other agents who have the character and integrity of those three fine people. I hope and trust that with the Senate Finance Committee's continuing oversight of the IRS that these employees will prevail.

Mr. Chairman, experiencing that dramatic charge against me as a former businessman before I came to the Congress and before I served 8 years in the State legislature was very, very shocking indeed.

I cannot believe that a branch of this government which we all respect would stoop so low to have an employee like the one in Johnson City who criticized me and tried to bring me down.

It was a feeling inside. And it has not gone away. It probably never will. But the courage of those IRS individuals who stood by me is a shining example of what could happen.

I often hear from former constituents and friends, why not abolish the IRS and go to a flat tax? I think the IRS needs something done, if not abolish it altogether, abolish what has been happening in the past to individuals like Senator Baker and those of whom you have heard today. Thank you for the opportunity of being here.

The CHAIRMAN. Well, again, let me thank you for being here and apologizing for the ordeal you were forced to endure. I had the honor and pleasure of serving with you. And you, too, bring great honor to the term "public servant".

I would just like to echo what you said to these three individuals. They characterize the best in public service. And I am a believer that the vast majority of employees in the IRS are dedicated, well meaning, hard working citizens. And we are all here because we want to make sure that these kinds of practices do not happen in the future.

So thank you for taking the time to join us.

Congressman QUILLEN. Thank you, Mr. Chairman

The CHAIRMAN. And now, it is my privilege to call upon David Crockett who is, I believe, District Attorney General for the First Judicial District.

STATEMENT OF DAVID CROCKETT, DISTRICT ATTORNEY GENERAL, FIRST DISTRICT OF TENNESSEE

Mr. CROCKETT. Thank you, Mr. Chairman. It is good to be here. We appreciate your interest in our problems. I am David Crockett, named incidentally after a distant relative of mine who once served in Congress from Tennessee.

The CHAIRMAN. We are impressed. [Laughter.]

Mr. CROCKETT. Well, the voters at home seem to like it. [Laughter.]

I have served as District Attorney General of the First Judicial District in the State of Tennessee for the past 16 years. I am presently engaged in a campaign seeking my third consecutive term in that office. Prior to that time, I served for 10 years as an assistant district attorney. I am a graduate of East Tennessee State University, the University of Tennessee College of Law. I served 4 years during the Vietnam conflict as a captain in the Judge Advocate General's Corps of the United States Army, concluding my service as the Chief of Military Justice at Ft. Jackson, South Carolina.

I, like Congressman Quillen and Senator Baker, was a target of an IRS agent who was assigned in East Tennessee in the mid-1980's. I first became aware of this particular agent when his automobile hit another car as he came out of a bar onto North Roan Street in Johnson City. The agent was charged with DUI.

He refused a breathalyzer test and with the testimony of other Federal employees and some other agents who swore that he was not under the influence when this hit this lady head on was successful in defending his DUI case. But a member of my staff at my direction had prosecuted him in this case.

And this agent apparently at that time included me in a plan that he had formulated apparently for revenge directed at me and perhaps career advancement as to Congressman Quillen and Senator Baker.

Shortly after his acquittal, he became proclaiming publicly in local bars and restaurants that we were tax cheats. That is Congressman Quillen, Senator Baker, and I were all tax cheats and were somehow defrauding the Federal Government and that he would see that he got us.

Frankly, being the least in that crowd certainly politically and powerwise, I was somewhat flattered to be included with those allies. [Laughter.]

I thought that if worse came to worse, I had some pretty stout support. See, after this agent made these repeated allegations and this was done frequently when he was drinking, it eventually led to an investigation of me that dragged on for several years, first by the IRS and then later by some of his friends with other Federal agencies.

No charges were ever placed against me. No action was ever taken for any alleged wrongdoing. In fact, the investigation just simply died without anyone ever formally advising me that it did in fact occur.

I knew it had occurred because this agent would frequently go to local sheriff's offices or other places and proclaim that I was about to be indicted as the district attorney in the First District by Federal grand juries and I was under investigation and it was only a matter of time before I was removed from office.

And even though nothing was done, the damage even today remains. It still lingers, particularly around election time. I would make the observation, Senator, that reputations are delicate things and once lost or tarnished are very difficult to ever totally regain.

I know now that these courageous agents who have been here today and testified did in fact intervene or attempt to intervene. And some sacrificed their careers to stop this particular rogue agent.

To them, I want to today formally say thank you and express my deepest appreciation to them for what they did for us.

As for this IRS agent, this particular agent, his drinking seemed to get worse. Yet, he continued on his job until one night in Knoxville, Tennessee early in the 1990's, he and a relative were caught with a quantity of cocaine in their vehicle.

The agent tried to bluff his way out of trouble by telling the local deputy who had stopped him that his relative who was a nephew, as I recall, were engaged in some kind of an undercover operation

for the IRS. And that was the reason they possessed the cocaine. The local deputy persisted and contacted the agent's superior who knew nothing of such an operation that he was maintaining.

And so after that episode, the agent's friends in the IRS and his supporters there could no longer protect him. And he was subsequently fired from his position. Somehow, he did avoid prosecution for the cocaine possession charge in Knoxville which incidentally is not within my judicial district or I think the result would have been different. [Laughter.]

In any event, I can say this, this agent's ambition to get some big people to advance his own career was wrong and the failure of those in management to keep him in check was disgraceful, particularly when that management turned their animosity upon the few agents of integrity who tried to bring that particular agent to their attention. These agents of honor are in my opinion the true heroes of this story.

If anything can be learned from this episode it is that we average Americans who work every and pay our taxes still fear the IRS agents who can by virtue of their positions destroy lives and ruin careers. If our story can help prevent others from being targeted unjustly and help ensure better supervision of IRS field agents, then our time here today will be well spent.

I sincerely hope this committee will set aside partisan differences and partisan politics in an effort to craft legislation to bring in check the abuses of power that so many of us have endured. Thank you for having me here.

The CHAIRMAN. Thank you very much for being here today, Mr. Crockett.

Let me make just one additional comment that, as shocking and unbelievable as this whole incident is, I also find it unbelievable that the agent involved and responsible for this was in no way punished by the IRS for his misdeeds. Rather than he suffer, those who tried to do what was right were the victims. And that was wrong.

Now, we will go to the questions we have of the three witnesses. Let me be very clear about the three IRS employees who have testified here today. Is it your testimony that a special agent of the IRS framed these three gentlemen seated next to you in a completely false criminal case?

Mr. HENDERSON. Yes, sir.

The CHAIRMAN. Mr. Henderson.

Mr. HENDERSON. He attempted to do it.

Ms. GERNT. Yes, sir, that is correct.

Ms. LATHAM. Yes.

The CHAIRMAN. And is it also true that the three of you experienced severe retaliation for your efforts in breaking up that false criminal case?

Mr. HENDERSON. Yes, sir.

The CHAIRMAN. Ms. Gernt.

Ms. GERNT. Yes, sir.

Ms. LATHAM. Yes.

The CHAIRMAN. Do any of you have any fear of retaliation for your testimony today before this committee?

Mr. Henderson.

Mr. HENDERSON. Absolutely.

The CHAIRMAN. Ms. Gernt.

Ms. GERNT. Certainly.

The CHAIRMAN. Ms. Latham.

Ms. LATHAM. Yes.

The CHAIRMAN. Ms. Gernt, you stated that you came here to Washington to inform the IRS leadership about this case and others. Do you feel you received retaliation for that effort?

Ms. GERNT. Yes, sir, I did.

The CHAIRMAN. Mr. Henderson, I have to assume that the case you described was a work of a single agent who was out of control. However, you said in your statement that you had seen something like this case earlier in your career. Please explain.

Mr. HENDERSON. Yes, sir. When I was a brand new special agent, I ran across what appeared to be a bribe from a defendant to another special agent who was working a prominent political figure at that time.

I turned that information over as we were required to do it. And again, I was placed under investigation and lived under an investigation for almost a year until they finally decided they had better cover the whole thing up. And I was allowed to transfer out and to another POD. And the whole affair was quietly swept under the rug.

The CHAIRMAN. Have you ever been aware of CID agents who have created other false cases against either taxpayers or employees? Would you say this has happened with some frequency?

Mr. HENDERSON. Yes, sir, it has happened with frequency.

Ms. GERNT. Yes, sir.

Ms. LATHAM. Yes, sir.

The CHAIRMAN. Have you ever been made aware of agents conducting illegal wiretaps or surveillances against either taxpayers or employees, Mr. Henderson?

Mr. HENDERSON. Yes, sir, in Knoxville, Tennessee, the chief of CID used the agents in our group to pull surveillance on each other. They pulled surveillance on Patty. They pulled surveillance on Barbara. They pulled surveillance on me. They used their badges and credentials and government cars all illegally. And it is well documented.

The CHAIRMAN. Have you ever been aware of the destruction of evidence that may have benefitted a defendant, Mr. Henderson?

Mr. HENDERSON. Yes, sir, in the same case, the handwriting exemplars that inspection took from Barbara and Patty were destroyed. This was evidence that they destroyed. That is what they are talking about, about not leaving a paper trail so that they could not prove using the same evidence what happened. Yes, so they did destroy evidence. That is unprecedented. You do not destroy evidence in a criminal case of any kind like that.

The CHAIRMAN. Ms. Gernt.

Ms. GERNT. That is correct, sir. They did destroy the questionnaires. And contrary to the Internal Revenue Code, when I left my position in 1994, I was allowed to take personal items from my office. And in a very short time, special agents were sent to Johnson City from the Knoxville, Tennessee office.

And my cases, including tax cases which should normally be kept for a period of 7 years were shredded by two special agents over a matter of days with continually running the shredder to shred any information that I had collected, any notations, and therefore potentially destroying evidence possibly of an exculpatory nature.

The CHAIRMAN. Ms. Latham.

Ms. LATHAM. Yes, sir, this evidence was destroyed by the IRS Inspection Division. And they did this to cover up any evidence of harassment and retaliation against us.

The CHAIRMAN. This will be my last question on this round. Are you aware of any instances where the IRS has lied in court, Mr. Henderson?

Mr. HENDERSON. No, sir.

The CHAIRMAN. Ms. Gernt.

Ms. GERNT. Yes, sir, I am.

The CHAIRMAN. Ms. Latham.

Ms. LATHAM. Yes, sir, I am.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I do not think I am going to make any statements. I think that I need to applaud these three very brave IRS employees who are willing to do what is right. And obviously, I cannot say it better than Senator Conrad or Senator Roth did, the very strong statements of apologies to our colleagues and to Mr. Crockett for what has happened to them.

And I would follow up on what Senator Baker said to the three of you, his commendation to you for being brave and for helping him personally, but also for standing up for what is right which is even more important, and the problems that you face as a result of this, the problems you have faced as a result of this.

And Senator Baker's commendation reminds me to repeat things that I have said in the past about whistle blowers that nobody has ever followed my advice. And maybe, it is not as good advice as I think it is.

But I work hard in the false claims bill, for instance, to protect whistle blowers. There was a whistle blower protection act. It was the first bill that President Bush signed in his new presidency to protect whistle blower. And I know you do not have a lot of confidence in this legislation, but it still is a better climate than it was before there was some protection for whistle blowers.

But I do not think any amount of respect we show in our statement for whistle blowers or any laws we pass to protect you is going to do the good when a President of the United States be he a Republican or Democrat, and I have said this in presidencies of both parties, until we have a rose garden ceremony honoring whistle blowers from time to time.

As Senator Baker said, you are truly patriotic. And that does not apply just to you. That applies to other people who have done more and less than you have done because you are considered within the bureaucracy as an outlaw, as a skunk, at a picnic would be respected.

And when are we going to admit that whistle blowers are going to help us do our job of oversight, to make sure that the taxpayer's money is used wisely, to see that the rule of law is respected?

We in Congress and prosecutors around the country cannot do the job without the help of people like you who know where the skeletons are buried and what closets they are in and to help us find them. And I hope some day, some president will honor people like you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you very much. I want to thank all of our panelists, especially the IRS agents.

And Mr. Henderson, you are still employed by the IRS?

Mr. HENDERSON. That is correct.

Senator NICKLES. Ms. Gernt, are you still employed?

Ms. GERNT. Retired.

Senator NICKLES. Retired. And Ms. Latham.

Ms. LATHAM. Retired.

Senator NICKLES. Retired, both of you are retired. I have been reading your statements. And I apologize. I was not here when you presented them. I had to step out. I very much appreciate our friend and colleague, Senator Baker and Congressman Quillen for their statements and also for the Assistant Attorney General.

I am bothered by this kind of abuse. And I am bothered I guess in reading the statement. We had one really bad agent, but you all complained. And so I am bothered that justice was not brought about to this person until I guess he was found with cocaine in the car.

Mr. HENDERSON. That is right.

Senator NICKLES. But what really bothers me is why didn't his supervisor do something? What has happened to the supervisor when those complaints were made, and this was in one or two of your statements that you had alluded to.

So when these allegations were made against this one person that obviously had a gambling, a drinking problem, maybe a sexual harassment problem and so on, when complaints were made, why didn't they do sometimes? What has happened to the supervisor in this process?

Mr. HENDERSON. I was his immediate supervisor. And I tried to stop him when I found out what was going on. And I went to my chief and assistant chief and wanted to take his credentials, his gun, and actually get him professional help. But at that time, I did not know the extent of what he was doing. And I was told to sit down and shut up, that I was under investigation.

And I subsequently was put in a position where I had to resign as group manager or face possible criminal and legal problems of my own because it was obvious that the people above me, no matter what I said would lie, just flat out lie. And I would sitting betwixt and between a rogue agent and a management that would not cough up the truth.

And you have to understand that when I got to east Tennessee as group manager, this agent had been there a long time. Everybody knew what he was doing. I was just the only manager that tried to stop it. And that is what got me into trouble.

Senator NICKLES. Well, let me ask you a question. So you took this to your supervisor?

Mr. HENDERSON. That is correct.

Senator NICKLES. And they, he or she refused to do anything about it?

Mr. HENDERSON. I took it to my supervisor. The agent went around me. And they got together. And I assume and I can only assume this because of all the things that I had heard that had happened in that district prior to me becoming a manager, there were a lot of skeletons in the closet that they just could not allow to come out.

And of course, when I tried to stop this agent, I assumed he threatened them with those skeletons.

Senator NICKLES. Well, let me ask you. I am interested. Your immediate supervisors, are they still employed by the IRS?

Mr. HENDERSON. One of them is. I might add, he has a management position with no real position in the Nashville District today.

Senator NICKLES. And what is his name? You can write it out to me. You can give it to me in a minute. I am meeting with the Commissioner shortly. And I am concerned about a bad apple, but I am concerned about the fact that once it was brought to the attention of the higher ups that they were not willing to take action.

Mr. HENDERSON. Let me add something here. During this process, after I had left Tennessee—and I got out of Tennessee because I knew what was coming. I had a little more experience and I guess a little more savvy as to what will happen. And Barbara and Patty did not. And they did not make it out.

But Patty called me and was just horrified that the group manager who was in the process of railroading her and Barbara out of their jobs at the time was using a government vehicle on government time going to the Holiday Inn with his secretary on a regular basis. And inspection would not investigate it.

So she was just horrified, what can I do? Here is this guy running me out of my job and my career. And every day, he is picking up his secretary in a government car, every other day or so, and they are going to the Holiday Inn for two or three hours.

So I told her hire a private investigator. I think it took a second day. They have—we have a videotape of it.

Senator NICKLES. He is still an employee?

Mr. HENDERSON. Oh, yes. They created a grade 14 position for him in Atlanta. That is where he is at today.

Senator NICKLES. If you would give me that name and information, I would appreciate it.

Mr. HENDERSON. Glad to.

Senator NICKLES. Let me ask on kind of a related subject, Ms. Gernt, you are no longer employed. Did you have to retire or you retired as a result of this?

Ms. GERNT. I retired as a result of it.

Senator NICKLES. When did you retire?

Ms. GERNT. 1994.

Senator NICKLES. And Ms. Latham, when did you retire?

Ms. LATHAM. I retired in 1996 after reaching an out-of-court settlement of a lawsuit that I filed in 1994 and opted for early retirement.

Senator NICKLES. Related to these events?

Ms. LATHAM. Oh, yes, because of those events, I spent 3 years there that destroyed my mental and physical health.

Senator NICKLES. And Ms. Gernt, when you retired, you mentioned it was a result of the conflicts I guess you were having with superiors?

Ms. GERNT. That is correct.

Senator NICKLES. In reading your statement, including sexual harassment as well.

Ms. GERNT. It runs rampant. This was—these were a series of events that occurred frequently. They are not or were not isolated incidents. In 1993, as I said, when I—and I believe the constitution says I have a right to an attorney in a criminal situation. But when I attempted to bring my attorney to the CID office to lay things out, let us find out what is going on and why, we were not allowed to enter the Criminal Investigation Division.

And this manager at the time physically struck my attorney. And I become so upset and ill that I attempted to leave the Criminal Investigation Division. And the group manager struck me in an attempt to hold me back, thus separating me from my attorney. That is the incident that Ms. Latham referred to.

The government attorney's were not good enough for this manager. And in an attempt to cover up numerous lies, numerous lies that we now have in my possession and the possession of my attorney through the discovery process in my litigation regarding these matters, the government hired two, not one, but two private attorneys for its own manager.

The events that followed were that we were able to work out a settlement agreement in which I was instructed not to disclose the terms of the settlement and to never relate to anyone the reasons for the lawsuit, but according to what I know Mr. Rossotti has waived that, the nondisclosure clause. And I am able because of him and his help to discuss this today. Otherwise, I would not be permitted to discuss anything.

Senator NICKLES. The settlement, did you agree not to sue the IRS or those agents in the future, either of you as part of your settlement?

Ms. LATHAM. We both had to agree to that.

Senator NICKLES. We learned of that yesterday. Let me just touch on one other thing, Ms. Gernt, that you mentioned in your statement. You mentioned that in several cases, the Criminal Investigation Division would open a case not only on an individual, but maybe several family members?

Ms. GERNT. Yes.

The CHAIRMAN. And then, use that as leverage? Let me ask you, when you were trying to draw these cases to a close, if the person that CID had the complaint against would settle, then CID might be willing to drop the cases on other family members? Did that occur frequently?

Ms. GERNT. That occurs frequently.

Senator NICKLES. You think that is an abuse or intimidation in the process?

Ms. GERNT. It is all of those.

Senator NICKLES. I concur. But it is a frequent occurring event?

Ms. GERNT. Yes, we have had one agent who had numbered so many cases, related cases, aunts, uncles, brother, sister, friends, neighbor that the computer would not take the number of cases

this special agent numbered because they were literally pages. The entire Southeast Region in the Criminal Investigation Division could never have worked those.

Senator NICKLES. Wow! Well, Mr. Chairman, I compliment you for these hearings. And I am amazed. This is the third day of this second round of hearings that we have had. And each day, some of these stories about IRS abuse of power and again by a few people, not all agents, but a few people and particularly in the Criminal Investigation Division are shocking, absolutely shocking. When you have to hire investigators and/or prosecutors to be investigating the criminal investigators, we have a real problem. And I think we do have a problem.

And I compliment these three agents for their courage. And an apology is necessary. It is a shame that these things happen to government servants. And to think that they also have targets who happen to be popular, political figures just makes it worse. That should not happen to anybody period.

And I am shocked to think that one or two of the people that might have been in the chain of the command that was aware of this did not take action, but he is still on the government payroll. That is not acceptable. Hopefully, it will be remedied very, very shortly.

So I appreciate the statements that our panelists have made. I think these hearings have been very enlightening on cases where some people clearly have abused their power.

And they should be prosecuted. Some people, termination is not satisfactory punishment for this type of abuse of power that can destroy lives, destroy careers, spent untold millions of dollars, not only that, but the anxiety level for the duration of some of these cases and so on is just an unbelievable hardship.

So I thank all of our panelists. And Mr. Chairman, thank you for having these hearings. It has been very enlightening.

The CHAIRMAN. Thank you, Senator Nickles.

I want to thank Commissioner Rossotti for lifting the gag rule so that people like Ms. Gernt could testify today.

Again, I want to thank each and everyone of you for being here today. You have given another example by your testimony of public service. And I applaud you for what you have done. Thank you very much.

The committee is in recess.

[Whereupon, at 1:35 p.m., the hearing was recessed to reconvene at 9:30 a.m. on Friday, May 1, 1998.]

IRS OVERSIGHT

FRIDAY, MAY 1, 1998

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to recess, at 9:41 a.m., in room SD–216, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Gramm, Mack, Moynihan, Conrad, and Bryan.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please be in order. First, let me begin by welcoming IRS Commissioner, Charles Rossotti. We very much appreciate your appearance today, as well as the leadership and tremendous effort of reform that you have already initiated within the Internal Revenue Service.

I want you to know that I am pleased with the seven-step plan announced this week for the agency, including your support for the creation of a new Inspector General for Tax Administration. As I have commented before, I wholeheartedly approve of the appointment of William Webster, whose task it is to report back on the proper role of the criminal investigative division.

The purpose of the hearings in September and this week is to uncover problems in the IRS that require either legislative or management changes.

And consequently, last Friday, when Commissioner Rossotti and I met, we agreed that because IRS reform would best be served by focusing on solutions and not adjudication of specific problems we have heard during the course of our oversight, I suggested that these matters be referred to the General Accounting Office, in the short-term, and thereafter be assigned for further investigation by the new Inspector General for Tax Administration, which is contained in the legislation the Senate is expected to act on next week.

Today, we will focus on solutions, solutions to the serious concerns our oversight has raised, rather than address specific cases. I believe this is the best use of our time and will be most productive to the accomplishment of our objectives.

There is a second purpose to these oversight hearings, and that is to strengthen the hand of the Commissioner in dealing with the

IRS bureaucracy, a bureaucracy that in my judgment has been too long outside the control of any commissioner.

Oversight is a painful process. It means focusing on things that go wrong. It means seeing things you would not wish to see and hearing things you would prefer not to hear. But once that process is underway, real change becomes possible.

I think that all of us have a better understanding of the problems with the IRS than we did only nine months ago.

Commissioner Rossotti, you have one of the toughest jobs in Washington. This committee wants you to be successful, and we welcome you here today.

Senator Moynihan.

OPENING STATEMENT OF DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Yes. Well, to paraphrase another member of the administration, Commissioner, how was your week?

We have had a traumatic time here and do not really know how general a problem we are dealing with or how much there are isolated events that are horrors, but are, in some sense, isolated and not systemic. It is the kind of thing you are good at, and we like to hear you about.

I would like to make one request, sir, which is that we have had these specific named public civil servants come before us and speak of troubles they have had and their concern for retaliation.

I think it would be helpful, Mr. Chairman, if we could get—in due time—a case by case report from the IRS about this person and those charges. Could we do that, sir?

Commissioner ROSSOTTI. Yes, sir.

Senator MOYNIHAN. And one thing that—I am sorry, Mr. Chairman. I am going to have to raise it again. A month ago, March 31—today is May Day, my golly, and all over Europe there are no parades.

You wrote us—you personally wrote, as we understand—a long six-page letter. A seven-page letter on the problems of implementing the legislation that we have reported out in a time frame that diverts you from the year 2000 problem with the agency's work generally, and you gave us specific dates that you could get this provision in and get that provision in.

In the interval, we have created a select committee here in the Senate on this issue. Two years late perhaps, but even so, with our very distinguished colleague, Senator Bennett, as chairman, and he has been going around. He had breakfast yesterday with the Secretary of Defense, who thinks things are better than the GAO had reported last year.

I do not think the Chairman would mind, Senator Bennett, by my saying that the GAO had reported last year things were a disaster. So, if they are better than a disaster, well, so much for weapons systems.

If you could speak to that subject, because we have to have a government-wide program. We have not had yet. We have, in you, someone who understands the subject and will get on top of things.

So, we welcome you, sir, and look forward to your comments.

Commissioner ROSSOTTI. Thank you.

The CHAIRMAN. Again, Commissioner Rossotti, it is a pleasure to welcome you, and please proceed with your statement.

STATEMENT OF HON. CHARLES O. ROSSOTTI, COMMISSIONER, INTERNAL REVENUE SERVICE

Commissioner ROSSOTTI. Thank you, Mr. Chairman, and thank you for your kind comments about me, and also, for the opportunity to appear here. I also want to thank you and Senator Moynihan and the whole committee for your leadership in insuring that our taxpayers are treated fairly.

Mr. Chairman, at my confirmation hearing last fall, I pledged to bring about fundamental change at the IRS and to improve, in the broadest sense, the way the agency serves the public, and I just want to reaffirm that commitment today.

I think the hearings of this past week further demonstrate that fundamental change at the IRS is needed. I also think that every American who heard the testimony would be disturbed, as I was, at that testimony, and we simply must change the conditions that lead to the situations described by your witnesses.

We have to help provide better service to taxpayers who willingly comply with our obligations, and we have to have absolute respect for the rights of all taxpayers. We must insist on fairness and accountability throughout the agency, and to do this, we have to have a quality work place which provides every employee a positive environment that is needed for them to be able to be productive and to provide quality service to taxpayers.

Mr. Chairman, as you and others on the committee have noted, the overwhelming majority of IRS employees are honest and hard-working and dedicated people, and I believe that they are just as upset about allegations of misconduct and mistreatment of taxpayers as we are.

Now, as you noted, Mr. Chairman, I am prevented from speaking about the individual cases discussed this week, and we agreed that would not be the most productive way for me to spend my time. But I do want to tell the committee today that the abuse of even one taxpayer or one employee is one too many for me.

Senator MOYNIHAN. Commissioner, could you just, in the interest of the many people watching, tell why you are prevented?

Commissioner ROSSOTTI. Yes.

Discussing any information matter of a taxpayer, even so much as acknowledging that a taxpayer has filed a return or that we had any interaction with a taxpayer is completely prohibited by law, and all of us are bound by those laws, unless we were to get a waiver. Not only from the individual taxpayer, but in most cases there is more than one person involved.

Senator MOYNIHAN. And this is meant to protect the individual taxpayer.

Commissioner ROSSOTTI. Yes. And equally, there are other laws. For example, there are grand jury rules that, on the criminal matters, also prevent any disclosure. And also, even with respect to employees. There are privacy laws.

So, without a great deal of prior consultation and legal activity, it really is not possible to comment on an individual case. I should

also mention that for good reasons, we did not even know what these cases were going to be until we heard them at the same time.

So we have not had an opportunity to research each individual case. Quite apart from the legal restrictions.

But I do want to stress, even though I am not commenting on the individual cases—and I have said this in a couple of statements this week—from my point of view, any kind of mistreatment, of one taxpayer or one employee, is one too many.

And I very much welcome your suggestion, Mr. Chairman, that the GAO be given the responsibility to investigate and get the facts on each and every one of these investigations. And I promise you that when we get the results of those investigations, we will act accordingly and take disciplinary actions where the allegations are substantiated.

Now, looking to the future, the modernization that I have proposed will require a dramatic break from past practice in almost every facet of the agency. From the internal structure, the technology, management roles and responsibilities and recruiting of senior executives.

However, a change of this magnitude will take time, and there is not a magic formula or easy solution that will quickly solve the IRS' problems and transform it into a quality service organization. Fundamental change requires a comprehensive, systematic and sustained approach.

We will make progress, Mr. Chairman, but it will be step by step, over a period of years. And we must set priorities as to which problems we first turn our attention to.

As Senator Moynihan noted, much as we wish we did not have to spend our time on it, we must do whatever is needed to solve the century date change problem, and this massive problem does consume a great deal of management time.

And even while we are addressing this problem and addressing the changes to the IRS, we must also operate the IRS, which even in normal times is a demanding and risky task.

Effecting meaningful change at the IRS will also require help from Congress, and especially the restructuring legislation that the Senate will soon debate. The bill that was reported out of your committee, Mr. Chairman, contains initiatives that are the key to our modernization effort, from changing the organizational structure, to establishing an oversight board and expanding and enhancing taxpayers' rights and providing essential personnel flexibilities.

Mr. Chairman, as part of my ongoing review and systematic study of all parts of the IRS, one of the techniques that I am relying on is to engage the services of some highly respected individuals to assist in my efforts.

In February of this year, former Controller General, Charles Bowsher, accepted my offer to head up an independent review of the inspection service to advise me how it can best perform its essential mission. Mr. Bowsher and his team of investigators, drawn from outside the Treasury Department, are currently investigating any and all aspects of the inspection service.

This includes a review of the organization and methodology used to plan and deliver audits and investigations, the relationship be-

tween the inspection service and IRS management and the relationship between the inspection service and the Treasury IG.

Now, although the Finance Committee bill will move most of the inspection service to the Treasury Department to form the New Treasury IG for Tax Administration, which is a plan that both Secretary Rubin and I do support, nevertheless, I believe that Mr. Bowsher's recommendations will be useful in the future.

And although his review is not complete, his interim reports have already indicated to me that there is a need to improve the process for investigation and action on allegations of misconduct by managers, when those allegations fall short of the threshold for treatment as a criminal offense.

Therefore, I have taken certain near term steps. As an interim step, I have set up a special panel of officials from outside the IRS to act on possible misconduct cases, arising from the misuse of statistics cases that have been under investigation since last fall.

In addition, I am now about to set up a special task force, overseen by another outside expert, to insure that the IRS has sufficient procedures in place to identify, evaluate and take consistent action on the results of investigations of allegations and of complaints by IRS employees.

Now, the second major law enforcement unit of the IRS is the Criminal Investigation Division (CID). It plays a vital role by investigating tax evasion, enforcing our tax laws in cases of willful noncompliance and insuring the overall fairness of our tax system.

The best estimates available indicate that non-compliance with the tax laws, of all kinds, costs about $1,600 per year for every taxpayer return filed. So, given the enormous importance of the CID, I proposed, as the Chairman indicated earlier this week, a seven-point action plan to improve CID.

First, and probably most basic, I launched an independent review of this division that will be headed by former FBI and CIA director, William Webster. And his review will examine all aspects of CID, including operations, procedures, case outcomes, case review practices, discipline and performance measures.

I have also asked Judge Webster and his team to examine the cases involving CID that were brought before this committee this week in order to learn what we can from those cases.

Second, as mentioned with regard to the inspection service, I support the creation of the new Inspector General for Tax Administration, which is in your legislation. And like all Inspectors General, the new IG for Tax Administration will report directly to Congress and will have the independent authority to investigate all allegations of employee misconduct, including those at CID.

Third, we will move quickly to centralize the disciplinary process for CID managers and employees within the IRS. This will insure appropriate and consistent discipline in CID misconduct cases. A specified group of labor relations experts will review all such cases and recommend action.

Fourth, we are creating a new complaint system for taxpayers who have complaints about CID investigations. It will be managed by the new Treasury IG for Tax Administration.

Fifth, we will institutionalize the oversight of CID within the Treasury's Office of Enforcement. To the extent permissible by law,

the Under Secretary for Enforcement will insure that CID's policies and procedures are fully consistent with those of Treasury's other law enforcement bureaus.

Sixth, I am requesting that the Joint Committee on Taxation join with the Treasury and the IRS in conducting a study of willful non-compliance. This review will examine the sources and extent of taxpayer non-compliance and measures that might address this problem.

Finally, more generally, we must promote a culture of openness, quality and integrity within CID, consistent with my vision for the entire agency. I have recently issued a directive to all IRS employees about their obligation to report misconduct, fraud, waste and abuse and to guarantee employees freedom from reprisal when they report any misdeeds.

Mr. Chairman, I have made clear, every way I can, that there will be no reprisals for any witness that appeared before you. Or actually, any employee who comes forward to report problems or misconduct.

Mr. Chairman, after 28 years of management, I have to say I am also very troubled by the reports of discrimination and harassment in the IRS work place, and I have heard some of these complaints from employees in my travels, not only from your hearings.

I cannot emphasize enough the importance that I place on creating a positive working environment that is free of discrimination, reprisal and harassment, and a work place that insists on accountability and open and honest communication among employees and management.

I am committed to addressing each and every complaint, and I also believe that the Inspector General, as proposed by your legislation, will prove to be a valuable resource in addressing these concerns. In addition, the disciplinary task force that I mentioned will also prove helpful in our efforts to combat discrimination and harassment.

I have also taken some other steps. I recently issued a memorandum to all IRS employees, stating that they have an obligation to report misconduct, fraud, waste and abuse. In that memo I have made it clear that the IRS has a stringent policy that guarantees employees freedom from reprisal when they report such action.

IRS employees were also provided with a description of a variety of avenues for reporting misconduct.

I also recently issued new performance standards for executives and managers on equal employment matters. This standard comes after consultation with the Departments of Justice and Treasury, and reaffirms our commitment to progress in eliminating discrimination, promoting employees based on merit and qualifications and encouraging a diverse work force to better serve taxpayers.

On a broader scale, the modernization process which I have proposed calls for a management structure and a working environment that, over time, will create a far more positive working environment. These fundamental changes include stronger and more direct internal communications, open employee communications with management and the ability of employees to grow to their full potential; a flatter management structure that will foster better

communication and a team approach and a high quality and more tailored training.

Finally, Mr. Chairman, I would like to briefly address the topic of audit selection and execution, and first I want to stress that this is a new area for me. I think that is actually a distinct advantage for me and that my perspective is that I will personally not believe that we are doing the right thing with respect to audits until I feel I can explain the process to the average American taxpayer.

I must say that the audit process and our published statistics are confusing. I mean, they were confusing to me. So, I imagine they are also confusing to other people, and I think, in some cases, the process is unnecessarily frightening for taxpayers.

Over time, we must de-mystify the audit process and make it clear that an audit is not a signal that a taxpayer has done anything wrong. An audit should be used only to determine whether a taxpayer has paid the correct tax liability.

Audit selection should never be punitive and audits should never be aimed at generating any specific amount of revenue.

Concerns have also been raised—and have bothered me a great deal when they were raised—that IRS audits, in some way, unfairly target poorer taxpayers. I believe, based on what I have been able to research, that this concern reflects poor communication about IRS compliance activities.

In my written testimony, I have included a table of audit statistics, which I hope will begin to shed some light on this. One of the confusing points in the past is that there are two special categories of activities, which comprise 45 percent of what the IRS reported last year as audits.

One category is audits of taxpayers who filed no return at all. The second is taxpayers who claimed the earned income tax credit, which is an area that the Congress has asked the IRS to pay special attention to because of the historically high rates of over-claims in that area.

So, for the remaining 55 percent of what were classified as audits, which actually comprise all audits of the individual taxpayers who filed returns and did not claim an earned income tax credit, the statistics and the tables show two important points.

One, the chance of a low income taxpayer being audited is only about one-half of 1 percent. And second, the chance of a taxpayer with income over $100,000 being audited is about four and a half times as high as for a low-income taxpayer.

Audit coverage also varies widely from district to district, as you heard in some earlier testimony, and this is partly because incomes and compliance vary widely. The population is not homogeneous from district to district. This is a matter that we need to do a better job of explaining as well.

And with respect to the conduct of individual audits, ultimately proper management and supervision, in which quality standards are the paramount concern, is of utmost importance. As with all areas of the IRS, the role of the new independent Inspector General investigating any instance of improper influence of an audit will also be essential.

And once again, I am convinced, Mr. Chairman, that the long-term solution to some of the audit concerns lies in the moderniza-

tion concept that I have advanced. I believe it will allow better management of compliance resources on a nationwide basis, and our focus on helping customers comply will stress preventing problems before they occur and intervening as early as possible, through such things as problem prevention days and other forms of assistance.

I pledge to the committee that in designing the new organization we will place great emphasis on control over audit selection.

Mr. Chairman, last October I commented that the renewed interest of Congress in IRS management issues is an essential force for positive change. Six months later, I still firmly believe that.

I realize that so far we have only taken some first steps towards addressing some very large problems. Much more needs to be done and will be done. Fundamentally changing the way the IRS does business is a long-term process requiring a long-term commitment from both the Congress and the management.

I am here today, again, to pledge myself to that goal and to our partnership. Thank you, Mr. Chairman.

[The prepared statement of Commissioner Rossotti appears in the appendix.]

The CHAIRMAN. Thank you, Commissioner Rossotti.

Let me again stress the importance of all of us working together to bring about the kind of change we want to see in this organization, and I congratulate you for the steps that you have already taken. As you know, they are only a beginning.

You are absolutely correct. We are talking about changing the culture of a major organization consisting of roughly 100,000 employees. So, it is going to take cooperation and working together between the executive and Congressional group to get the job done.

I have a couple of questions that you did cover in your opening statements, and we will include your full statement as if read. But I think these two areas are of sufficient interest and importance. It is worthwhile going over them again.

As you know, one of the major concerns that came out, particularly from the employees as well as the taxpayers and taxpayer representatives, was concern about retaliation. Many of the employees really were extraordinarily fearful of coming before us; that they would face, when they went back to their jobs, retaliation, abuse, and possible loss of jobs. That should not be the case.

Any employee should have the right to appear before the appropriate committees of Congress without fear, and I know you feel as strongly about that as I do.

Commissioner ROSSOTTI. Yes, Mr. Chairman. I do. I have made that clear in every way that I can. I do plan, next week, to reinforce that in a specific way, which is to send a memo around to the right offices, specifically reinforcing that with respect to the employees that appeared here.

I will do that, and we will send you a copy of that. But I think, more generally than that, I have been trying, through my own activities, to reinforce the notion that all employees should be free to speak. Not only to your committee, but to me and to other people inside the agency that they want to speak to to raise problems, because as I said in my confirmation hearing, it is the only way we

are going to ever solve problems, is to acknowledge them and bring them out into the open.

The CHAIRMAN. I know that you feel as strongly as I do about this. I just think it is important that we make it clear that all of us, to the best of our ability, will take steps to insure that those who come before us, whistleblowers, whomever, do so without fear of retaliation.

Nobody, frankly, can guarantee 100 percent that that will happen, but we will do our level best to protect them.

Commissioner ROSSOTTI. Yes, sir. Yes, sir, Mr. Chairman. I pledge that to you, and I have said that internally, and I will reinforce it again next week.

The CHAIRMAN. A second matter of concern is that there were a number of problems raised, and initially, you talked about having them investigated by the Inspection Office. Frankly, that is the only alternative you have.

But again, I think it is important for everybody to understand that we all agree that the questions that have been raised in some of these cases ought to be investigated by the Comptroller General.

Commissioner ROSSOTTI. Mr. Chairman, I welcome that. I think that is a very appropriate way to go, and I will pledge to work with them any way that I can to make sure they get the information they need and get access to anything that they need.

And, of course, after they finish their investigations, they will have to provide a report, and we will have to take actions, if there are substantiations of misconduct.

And I also pledge that we will insure that that is done very rigorously.

The CHAIRMAN. We think that assurance is critically important, and I appreciate that.

Let me turn to what I consider a primary message of the hearings this week.

Senator MOYNIHAN. Mr. Chairman, could I just, for a moment, add to your problems by saying it is all very good to have the Conptroller General look into these matters, but we do not have a Conptroller General.

The CHAIRMAN. You are correct. But we do have a General Accounting Office.

Senator MOYNIHAN. That is your next set of hearings, sir.

The CHAIRMAN. Right. It is critically important that we have a new Conptroller General, but we do have a General Accounting Office, and we will refer these matters, as you say.

That has to be done by us. It cannot be done by you. But I think it is important that the record be clear that we agree that this is the way to proceed.

Commissioner ROSSOTTI. Yes, sir.

The CHAIRMAN. Now, I would like to go back to the question of management, of which you are an expert. But, as I said, I think the primary message that has come out from the hearings we have had these last several days is that there has been a very serious failure for the managers of this agency.

And we are not talking about your administration. You have just been here a brief time. We are talking about the past.

As I have already indicated, there is an internal climate of fear, retaliation that, frankly, demoralizes the employees. The statistical indicators of agency performance have been shown to be unreliable.

Paramilitary techniques are being used against non-violent citizens, racial discrimination, sexual harassment appear to be commonplace, and we have even heard evidence of what appears to be, in a sense, extortion, framing and zeroing out of high dollar liabilities.

So this tells me that management, the managers responsible for the day-to-day operations of IRS, are not doing their jobs. I do not know how else to account for the state of affairs.

As you know, I feel you will not be successful in your efforts to turn this agency around until you have new people in top management positions that you trust and in whom you have confidence, and I have, of course, expressed this concern on several different occasions. The committee has placed, in the new reform bill, additional tools for you to accomplish this goal, which we will take up next week.

But the point I want to make very strongly is that it is time for a change. You have been in your job a few months now. I would appreciate hearing from you what progress you are making in this regard and what are your plans for the future.

Commissioner ROSSOTTI. Mr. Chairman, first of all, I want to commend the work that you have done in putting additional provisions in the legislation, because I think that is going to be very helpful.

Of course, the most important thing that we need to do to improve the agency is to get the right people in the right jobs, and this is the thing that I probably spend more time on than anything else.

Of course, this is not a matter that is so easy to do, because even getting people from the inside, finding the right people from the inside to move to right jobs is difficult, but it is even more difficult getting people from outside to come into the IRS. It is something that takes some time and is a challenge.

So, it is going to take me some time to make these kinds of moves; however, I will tell you—I think as I said in my confirmation hearing—that I agree that getting the right kind of people, the right people that I select personally into the right jobs ultimately is paramount; of paramount importance, and I have been working on that in a number of different directions.

In terms of specific positions, I have, at this point, only filled a few. I did appoint, just within the last couple of weeks from inside the IRS, a person I have considerable confidence in as representative of what I consider the new IRS of the future. He has been appointed to the position of Chief of Operations, which is a key position.

I am working on three other positions right now that I am personally recruiting on, one of which I hope will be filed fairly soon. But this is also going to require a sustained level of effort really over a couple of years.

It is not something, to find people and to put people in the right place, that is going to be done overnight. So, I certainly would con-

cur with your observation that getting the right people in the right jobs is paramount.

And as I pledged at the beginning here, that is the thing that I will spend probably as much time on as anything else.

And finally, let me just say, once again, the legislation will really be very helpful in doing this because I have found already it is quite challenging, especially when you have to bring in people from outside. Not everybody wants to work for the IRS right now, and you have to find ways to attract them.

The CHAIRMAN. Not everybody wants to work for government right now I believe.

Commissioner ROSSOTTI. That is right. But there are people who are attracted to the challenge. I mean, truthfully, it is remarkable that there are people who really have no reason to want to come, other than because of the public service opportunity that they see. We just have to find a way to grease the skids a little bit to make it as easy for them as possible.

Senator MOYNIHAN. Mr. Chairman, I think we have one such person before us.

The CHAIRMAN. Absolutely. As both of us have said before, Senator Moynihan, we are fortunate to have this individual in what I think is, without question, as difficult a job as there is in government this time. That is also part of the fun and the challenge I would say.

Commissioner ROSSOTTI. This is my selling point when I am trying to attract these people.

The CHAIRMAN. You are right. We are trying to give you the tools that will help you with that. I understand it is difficult. I know that it is difficult to get people in the private sector, many times, to come into government.

Unfortunately, at the same time, there is nothing more important, as I said, than having a new team in place to bring about the kind of changes that you and I want. I recognize your problems, but I want to keep pushing you as fast as I can.

Commissioner ROSSOTTI. Mr. Chairman, I think I welcome not only you pushing me, but also, you helping me with some of these other provisions. All I can say is that I am working as hard as I possibly can to do that, and I think we are making some progress.

I really hope that within the next few months we will have some additional results. I think we have made some progress, but there is more in the pipeline than there is to show out of the pipeline so far, I have to say.

The CHAIRMAN. Let me turn to another thing, if I may, Commissioner Rossotti, which you did make some reference to in your opening comments, and that is my concern about the intrusive type of investigation that has been made with non-violent taxpayers.

As you said, and I agree strongly, one case is one case too many. We had one witness who pointed out that 15 years ago we processed and succeeded in indicting and convicting those that were evading paying their taxes without these extreme measures.

The charge has been made, for example, that part of the problem is that CID, in some of its activities of money laundering, organized crime and so forth, have to use some pretty extreme measures, but

that somehow that practice has been carried over to the non-violent, and that is outrageous if it is even one.

Now, Congress may be partly responsible for that, because if you go back, as I understand it, we expanded the jurisdiction, the requirements of IRS, into some of these other fields where you are involved with drug dealers, violent organized crime and things of that sort.

But as I said, 15 years ago we did not do this. What are we going to do about that? What do you see as the solution?

Commissioner ROSSOTTI. Well, first of all, Mr. Chairman, I think that this is another area that is new to me, and so I am learning about it. But one of the things that I have learned is that even in the Internal Revenue Manual, as it exists today, it does say and it does state that the policy, which I think is certainly appropriate, is that any investigation, even of a person who is suspected of criminal activity, should be done with the least intrusive techniques that are available, that are possible.

And I think the questions that were raised in your hearings certainly throw in the question of whether that policy was being followed. Now, why that came about is something that I do not know, but this is precisely why I decided, some time ago, that for this complicated area we needed to do a thorough review, a really thorough review of what techniques, among other things, the CID was using.

Judge Webster will be leading that review, together with, by the way, a very able colleague, a former colleague of his that will assist him, Mr. Shaheen, who is the head of the Office of Professional Responsibility, together with people from other agencies, not from the Treasury Department, to help them.

They are going to look precisely at those kinds of questions. How are the decisions made to decide whether search warrants or undercover activities, or those kinds of things, should be——

Senator MOYNIHAN. Or body armor and automatic weapons.

Commissioner ROSSOTTI. Yes.

Senator MOYNIHAN. That is what surprised, I think, Mr. Chairman.

Commissioner ROSSOTTI. I think all of the questions that were raised in your hearing, whether the techniques were appropriate, as you put it, whether the arming of agents was appropriate, what should be done in tax cases, which are about 60 percent of the cases, the other 40 percent being the illegal income cases—I really believe that with this review we will get a very thorough review of that and recommendations as to how we can insure that the policy of using the least intrusive techniques would be applied in every investigation.

And, of course, that will be a recommendation, but I have promised Judge Webster—he did not want to take on this job unless he was really convinced that it was a serious review that was really going to be acted upon based on what he found.

Both Secretary Rubin and I have met with him, and based on that, he did agree to accept, because he, I think, concluded that we are serious about looking into this and taking action on the results of what he finds.

The CHAIRMAN. I also talked with Bill Webster. It is a good selection. The number two man is excellent. So that is an extraordinarily important initiative.

Let me turn to another matter, which I find unbelievable. I think it is intrusive.

We heard from witnesses this week; that in order to pressure a taxpayer to plead guilty, CID would open cases against uninvolved family members in order to extract a plea agreement from the primary suspect. In other words, they would include innocent members of the families as means of bringing pressure on the taxpayer from whom they seek to take corrective action.

All of us consider our family our most precious asset. That bothers me very much. I wonder what you think of that approach.

Commissioner ROSSOTTI. Again, I think, as with all of the IRS' activities, they should only be taken with the specific purpose that they are designed to be. If there is an investigation of an individual, it should be designed because there is reason to believe that that individual has potentially committed some crime, not as some kind of corollary tactic.

And I think that this is another matter that will be included within the scope of Judge Webster's review.

The CHAIRMAN. I would urge that, because I, frankly, think it is outrageous that such intrusive pressures can involve an innocent child, spouse, or other family member.

Let me ask one more question, and then I will turn to Senator Moynihan.

We have received information, again, that I find disturbing. Are you aware of any undercover operations where CID agents have posed as certified public accountants to the general public? Do you feel that is appropriate?

Commissioner ROSSOTTI. I do not know about that matter, Mr. Chairman. I simply do not have information on that. I don't know.

The CHAIRMAN. I wish you would investigate, because it bothers me, Pat; that you go to a CPA that person may not be what they're representing.

Senator MOYNIHAN. Entrapment.

The CHAIRMAN. It is entrapment. Yes. Under our legislation next week, we are providing that CPAs maintain confidential information in the same manner that attorney/client relationships do. And to have them use this, what I call a very intrusive practice, I think is, frankly, outrageous, un-American, and I would hope that you look into it.

I have taken considerable time, and I will turn to my good friend and colleague, Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman. I have two questions, neither of which I have answer. That is why I put them to you.

On the Year 2000 matter, in March 31st, I mentioned earlier, you sent us a long letter with very specific dates about specific provisions. Do I take that as still your view and that we ought to discuss the matter on the floor?

Commissioner ROSSOTTI. I do not know where you should discuss the matter.

Senator MOYNIHAN. Yes. Yes.

Commissioner ROSSOTTI. I know that the Chairman has committed to working with us on this. I do believe that very much, Senator Moynihan. I do believe that we have to work out a realistic schedule. It is very regrettable.

It is very regrettable that we have to devote our resources to something that, in essence, just keeps us even. It does not get us ahead.

Senator MOYNIHAN. And you are hardly alone.

Commissioner ROSSOTTI. No. I know we are not alone, but the consequences are visible in this letter because we are seeing that there are desirable provisions that all of us would like to see implemented earlier.

But when I look at the situation we are in at the IRS, and I am only focusing on the IRS, we have almost a $1 billion program over a multi-year period of time, which is——

Senator MOYNIHAN. This is to get your computers in compliance so that they can move from the 20th century to the 21st century without going all array, because we only have two letters designating the year in the current programs.

Commissioner ROSSOTTI. Right. But doing that at the IRS, especially with the old systems we have, is going to cost, over the whole period, close to $1 billion. Now, it is not just the money.

The public companies are now required to report how much they are spending. So, I happened to see, in the press the other day, that General Motors reported to the SEC they are spending between $360 million and $500 million.

Our program is twice the size of General Motors, and I know that we do not have twice the management resources of General Motors. Not close to it.

That being the case, we have to add to that, by the way, for this calendar year, the next 8 months, about 800 changes that are stemming form last year's tax bill, the 1997 tax bill.

Senator MOYNIHAN. You don't say.

Commissioner ROSSOTTI. We have to put those in this summer.

Senator MOYNIHAN. There were 820 pages. So that is about right.

Commissioner ROSSOTTI. Well, it translates to about 750, 800 computer changes. I mean, individual changes to different parts of the system. Those are the same people that are doing the century day change.

So, for this calendar year, we have no choice but to be absolutely focused on this problem. I have to tell you this consumes time, too. Even during this week, when we were doing these hearings, I had to have meetings with people to sort out what could be done and what could not be done.

The letter that I wrote was simply an attempt to be realistic, from a practical standpoint of when it is likely that we would be able to address additional changes.

Senator MOYNIHAN. The letter said, we are happy to comply, we want to comply, but the time pressures are such that there are certain dates we cannot get to.

Commissioner ROSSOTTI. Yes.

Senator MOYNIHAN. One other question, sir. And here, you are talking to someone who has no legal qualifications. Whatever.

If I am troubled by any one thing that we are doing, if I am told I am ought to be, it is this question of the burden of proof in civil procedures, and it is so easily misunderstood when we are told the burden of proof is on you and not the government.

But we had four of your predecessors, respected persons all; tax lawyers, saying that if we shift the burden of proof to the government, where, of course, it does exist in a criminal proceeding, the auditing process would become much more intrusive, and the taxpayer will find life is more difficult, not less, because of the record keeping required.

Do you have any thoughts?

Commissioner ROSSOTTI. Again, I am not a tax lawyer either. So, this is a new topic to me.

Senator MOYNIHAN. There are some lawyers behind you.

Commissioner ROSSOTTI. Yes. I know. Well, I have been trying to learn about it, from a practical standpoint, and I do not claim to be an expert in this.

But I think the way I understand it is that the risk that you cite, Senator Moynihan, of it potentially backfiring, does exist, and it depends on the details of how it is done.

If what is meant by the burden of proof is that when a matter arrives for adjudication in court say, the issue is if both parties, the IRS and the taxpayer, have roughly an equivalent case, then the taxpayer should win. That does not seem to present any problem. I mean, that is fine.

I think there are some other interpretations here though, which I think the Chairman and the staff are trying to work with the IRS to deal with, which could give rise to a broader interpretation of what is meant by this burden of proof, which could imply, for example, that taxpayers might believe that simply by not retaining their records or not retaining as many records, that therefore, they would have an advantage.

That, I think, is where the risk comes in, because then you would have nothing to do except have the IRS go in and try to find this information, which then leads down a path which I do not think any of us want.

So, it is a matter which requires careful and pretty technical work, I think, to make sure that you get it right. I think there certainly is a legitimate concern that there should not be a case where the taxpayer has equal proof, so to speak, and loses the case. That should not be.

But this matter of making sure it does not become more intrusive, that is very important also. So that is going to have to be worked very carefully. I think at the staff level.

Senator MOYNIHAN. Good. I can indicate, sir, that there are some wise heads nodding in the first row behind you.

Commissioner ROSSOTTI. Well, if I got through that one, then I am in pretty good shape.

Senator MOYNIHAN. Mr. Chairman, I have a statement by Senator Bob Kerrey about the hearings, which includes a number of proposals, of which the one you will, no doubt, be appreciative of; that we should require that the committee meet every year on a set date, say the second Tuesday of May, to do the kind of oversight that we have been doing this year.

I would like to place this in the record at this point.

The CHAIRMAN. Without objection.

[The letter of Senator Kerrey appears in the appendix.]

Senator MOYNIHAN. And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Gramm.

OPENING STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM TEXAS

Senator GRAMM. Mr. Chairman, let me first note that our provision, transferring the burden of proof, has been well reasoned, and, in fact, a condition for getting the transfer of the burden of proof is turning over full data to the IRS and keeping data that a prudent person could be expected to keep.

When I look at our bill, that is one of the provisions I feel strongest about. In fact, after the hearings this week, I am convinced that our bill is inadequate to meet the task.

Mr. Chairman, I hope we are going to get at least two rounds, because I am going to use this first round as an opening statement.

I want to begin by congratulating you. If these reforms are successful, I think that it will be one of the things in your career that you are going to be remembered for, and you did it. There were a lot of people who were very skeptical about these hearings, and I would have to say that I was among them.

I expected to hear a group of malcontents complain. In an organization of 100,000 people, you have always got people who are unhappy. I expected some isolated abuses, but I would have to say that these hearings have totally changed my viewpoint.

I have no confidence in the Internal Revenue Service of this country. It is not that I am so unhappy to find that people do bad things. People do bad things. Smart people do stupid things.

But what has totally undermined my confidence is that nothing seems to be done about it. There seems to be a system, which more than anything else, was designed to protect wrongdoers; to see that people are not held accountable, and I think this is critically important.

If you get a new team, that may produce short-run changes in the system. But you have got to have a change in the system. Let me tell you what I think is wrong at IRS.

I think the system is a bad system. I think you are dealing with human beings, and you have got some people who do bad things; some people who do dumb things. We experience that here where we work.

But the difference between a good system and a bad system is a good system rewards good behavior and punishes bad behavior, and a bad system does the reverse. I believe you have a bad system.

I do not think you are going to change the system permanently by simply having new management, though I believe you need it in the short-term. And I believe that you need to take a long, hard look, and we need to take a long, hard look, at how the Internal Revenue service is structured.

I am still totally convinced that the problem is this agency has too much unchecked power. An agency in a free society should

never have the ability to investigate, evaluate and basically prosecute, all wrapped up into one. There clearly is an absence of checks and balances within this agency, and I think it needs to be changed.

I also believe that we need to take a long, hard look at the things that I have happened, and I am concerned, quite frankly, that you do not have, even under our new bill, the ability to do some of the things that need to be done.

So, I think we have got to have fundamental changes. And one of the things that I am doing, as we get ready to go to the floor with our bill, is to look back and see how we might address this problem with a lack of check and balance.

I am not sure how you do it, but all I know is that compared to the criminal justice system, where you have got checks at each level, where the police do the investigation and then their investigation is evaluated by a grand jury and by a prosector, that by the very nature of the two being from different departments of government, they valuate each other.

They represent checks and balances on the behavior of each other. And then, if you are in the criminal justice system, you get to go into a court where you have got an elected judge; you have got 12 jurors who hopefully are independent of the whole process.

So, you have got checks and balances at each phase of the process. With the Internal Revenue Service, you have no external checks, and I think, basically, that is the problem. But it very difficult to fix it.

I guess I have used up my first round, but that basically is the sad, but firm conclusion that I have reached as a result of sitting through the vast majority of these hearings.

This is going to be very difficult to fix, but I am convinced that we have got to undertake the process. And again, I want to thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Gramm.

Senator Mack.

OPENING STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM FLORIDA

Senator MACK. Thank you, Mr. Chairman. I, too, as I have indicated several times this week, want to commend you and Senator Moynihan for these hearings. And I also want to commend the staff for the work they have done on these hearings.

I think that they have been extremely enlightening. I find myself agreeing with Senator Gramm in the comments that he has made. I think one of the things that kind of shook me was the realization—or at least my understanding of it, and I must admit that that is a limited understanding.

My understanding of what we heard this week is, again, that there are limited checks and balances that are in place. And I think one of the things I would suspect that you are taking a look at, being someone known for his management capabilities, is what kind of a system do you put in place; what kind of levels of authority do individuals have; what kind of limits are placed on their authority; what kind of controls are in place to evaluate those limits are being lived up to.

So again, I commend you and the staff for the work that you have done. These have been outstanding hearings. I think that the suggestion that Senator Kerrey apparently made and Senator Moynihan mentioned a few minutes ago; that the only way there is going to be a guarantee in place that we are going to continue this oversight effort is to, in essence, kind of require that it be done in a systematic way, and I think that is a very important suggestion.

Mr. Rossotti, there is really only kind of one area for me to pursue. The Chairman has kind of asked us, really, not to go into individual cases that were raised, and I had really come here intending to look at those and raise questions in those individual areas.

You have an incredibly difficult job. You know that better than we do, and it is probably a lot more difficult than you thought when you accepted the position.

But one of the messages that we heard this week is that it is business as usual though with the IRS. In fact, one of the people who testified this week said—in fact, a couple of them did. In essence, they said everything is continuing to happen as it has been happening all along. The oversight hearings aren't bothering us.

We heard that the southeast region may still be evaluating districts according to their number of property seizures, and as I understand, this is not supposed to happen. But this was a report dated January of this year, after the September hearings.

So this leads me to this point and question: How many of the top executives are still in place? And I am going to be fairly specific. I am going to name one name, Michael Dolan.

We heard in the testimony that the Inspector General investigated and substantiated allegations of travel fraud, abuse of subordinates, sexual harassment, fraudulent performance appraisals and orders to cover up illegal actions, all against IRS executives.

Yet, in each and every case, the report from the IG was sent to the deputy commissioner's desk—I believe Michael Dolan—and no disciplinary action was taken. And here is my point. My intention is not to go after individuals.

But how are you going to get a message to the people throughout the organization that things are going to be different if nothing is changing?

Commissioner ROSSOTTI. First of all, Senator, I think even before I got in office, when I was here before this committee for confirmation, I pointed out that getting across a message and actually effecting change in a place as large as the IRS, while you have to continue to operate every day, isn't like building it from scratch and just moving into it. You have to keep running.

We just finished a filing season, for example, that processed quite a few tax returns. For these reasons, it does take some time and change has to be done step by step.

From the point of view of the message though, I think that at least for most of the people at the IRS there is a message that it is a new day at the IRS. Now, there are always going to be some people who do not get the word, and there may have been somebody down in the southeast region who did not. We are going to track that down and find out what it is.

But to really change it, it is not just a matter of what you stop or what you tell people you are going to do. It is actually putting

in place new things; positive things that actually are different than what the other ones were.

Part of this, as the Chairman mentioned, is putting people in place. I have been doing that incrementally. I have got one new regional commissioner that I have selected. I have got a new person I have just put in for chief of operations. I have got several people that I am getting in from the outside, if I can recruit them in from the outside.

This is not something that we can do instantly while continuing to operate an organization, but I am working on it every day.

On the matter of statistics, if there is anybody at the IRS who does not understand that we are not going to use enforcement statistics as a measure of individual employee performance, then that is a person who has not heard a pretty loud message.

We do, however, on that matter have a problem, and it is a very significant problem, which I think is worth my mentioning to the committee, and that is that you cannot run an organization like the IRS without having some kind of measures in place that measure how things are going.

So we have said we are going to take away a lot of measures. We have not yet been able to come forward with very good guidance, very precise guidance, as to how we should be measuring performance, which leaves it, in a sense—it leaves a vacuum to some degree.

We are working very hard to devise a new set of measures that will be appropriate. We have a task force working. We have an outside consultant. I am hoping that we can get some very short-term interim guidance out fairly quickly. But in reality, we won't really have even an interim set of reasonable measures out until fiscal 1999.

And this is just one of many different areas of change that we are working on that take time to do. So, your basic observation is how do we effect change in this kind of a large organization. It is, of course, the big question that I am trying to address, and I think the answer to that question is that it will be done step by step, over a period of time, by systematically working through each of these areas.

Getting the right people in the right jobs. If necessary, where there is misconduct or if there are substantiations of allegations, most certainly getting people out of jobs or taken action against them is substantiated. But even that takes time.

Since I have gotten here, I have initiated investigations that so far have produced 14,000 pages of reports of investigation of potential misconduct. They have just started to be delivered to me, and we have just submitted those to this independent panel. I could go on.

The question of performance measures and getting rid of performance measures that are inappropriate, such as saying we won't use measure of enforcement action to evaluate any employee or manager, we have done that.

There may be some people who didn't get the word. We will take care of that. But we have to put something in its place. We have to have something to measure how performance goes in a 100,000 person organization. Step by step.

Senator MACK. My question though, I think, is more has anyone lost their job as a result of both the hearings from last September and your initial review?

I mean, Senator Gramm talked about the need to change the system. In many of the things that you have said today, you talked about policies being violated. A violation of policy generally is the result of an individual choice, a decision made by a manager.

My point for pressing this is the sense around the country is that it always business as usual in Washington. And so, if the team that created the mess that we are pursuing is still in place, the message has got to be, both to the people in the country, and I would think to those in the IRS who have been violating these polices, it is business as usual.

Commissioner ROSSOTTI. The issue of individual responsibility for misconduct is, in the IRS, in Federal Government, as well as even in private sector, something that has to be substantiated.

I mean, to put something on an individual person you have to go through a process of investigation to determine, in a very factual way, exactly what those allegations—whether those allegation were substantiated and then you have to take action based on that.

In order to eliminate the possibility that people could assume that it was business as usual, that it was a white-wash, I set up an entire process to try to deal with that. Now, it takes time. It takes more time than I would like in some cases.

I have no other way to do it. I have to set up investigations, I have to get them done, I have to go through the process and then we have to take action. And all I can say is that I can assure you, and I can assure the rest of the committee, that we are committed to doing that.

I cannot assure you that I can do it any faster than the process allows.

Senator MACK. Well, I am going to let it go at that, Mr. Chairman. I think I have made my point.

The CHAIRMAN. Thank you, Senator Mack.

Senator CHAFEE. Thank you, Mr. Chairman. I want to join Senator Gramm in saying you have had a good year, Mr. Chairman, in these hearings, plus the previous action. Now your name is a noun. We see advertisements: "Do you have your Roth yet?"

You have had a significantly successful 6 months or so.

Mr. Rossotti, I think it is important that we stress that while you are trying to make these changes, the organization has to go on. We have just completed now the collection of—what is it? Your organization has collected $1.5 trillion. Is that right?

Commissioner ROSSOTTI. I think it might be 1.6 or 1.7.

Senator CHAFEE. That is not billions. That is trillions.

Commissioner ROSSOTTI. Yes, sir.

Senator CHAFEE. And you processed something like 120 million tax returns in the past couple of months. So, you have got a heavy duty. And one, I want to commend you and the people you have selected to help you from outside, Judge Webster and Charles Bowsher, whom both of us had very fine experiences, as you recall and I recall.

Let me say this: I can only believe that in your efforts to deal with personnel you are having to struggle with civil service regulations. Is that true?

Commissioner ROSSOTTI. Yes, sir.

Senator CHAFEE. I had a very fine staffer who went up to my home state to become head of the largest department, and she reported to me later that she could not hire and she could not fire anyone. So, it is a lot hard to bring reforms about. That is under the state civil service system.

But what about you? Do you have struggles? It is one thing to say we are going to replace a head of this division or that area, but I suspect it is a lot harder than you had it with AMS.

Commissioner ROSSOTTI. Yes. It is harder, but I think a part of it is a matter of—what it boils down to is a matter of time. Senator Mack indicated some impatience. I have to share it, having come from the outside; that we ought to be able to move faster on some of these points.

I suppose that that is just part of the character of being in public service, but I do not think it makes it impossible. I think it just changes the time frame. If you are willing and you are committed to make changes, you can do them, but it does take longer.

The other point that I think is important is that the new legislation that this committee has recently approved, and which I hope will go on the floor soon, will give us some great help on these areas. Particularly with respect to bringing in people from the outside in the senior ranks and also making some other changes in how performance is measured. So it will be very helpful.

I do want to thank you for your comment about the operational aspect of the agency. I mean, the other limiting factor, in terms of change, is that we have to continue to run. I mean, this is an enormous, enormous organization, in terms of the money it processes, and it does work from an operational standpoint.

So, while there are very serious problems and major changes that need to be done, we have to do them in such a way that is carefully calculated to not upset something that has to be done. You just don't run a tax season with 120 million tax returns without anybody managing it.

I certainly can't do that by myself, and I can't instantly change around all the people that are doing this. So it does require some attention to operations while you are continuing to make these changes.

Senator CHAFEE. I was shocked, as was the other members of this committee, by the testimony we have had and the incidents that were accounted. It just dumfounded me.

One of the things that deeply bothered me that has been touched on here before is the fact that the members of the Criminal Investigative Division carry firearms. That has been touched on before. It just seems totally unnecessary. I do not think they are going to engage in a gun fight, are they, as they come in to get somebody's records.

I didn't understand it at all. What is the rationale for them having guns?

Commissioner ROSSOTTI. Rather than my giving a rationale, since I haven't been here long enough to know what the history of

it is, I think it is better for me to say what I think we need to investigate that question.

Senator CHAFEE. All right.

Commissioner ROSSOTTI. Which is exactly why I have got somebody with the experience of Judge Webster, who even though he is from law enforcement, was a judge and who I think has very broad experience in determining what——

Senator CHAFEE. And he is going to report back on that? He is going to look into that?

Commissioner ROSSOTTI. He is going to look into all the questions that are really fundamental to how the CID, Criminal Investigative Division, should operate. Certainly what kind of weapons they should carry and in what circumstances would be an appropriate part of that.

Senator CHAFEE. You come from a management background. Indeed, the very name of your was American Management Systems. I am curious, and you touched on this a little bit in your testimony.

All right. So we do not want to judge the productivity of the unit by the number of enforcement results that they have had, but how else? You have got to have some criteria by which you can judge the productivity of a unit. What else are you going to do?

Commissioner ROSSOTTI. Senator, this is exactly what I was trying to get to in my previous answer. This is a very, very difficult question. How do we manage an agency, which basically has the job of collecting money, without getting down to what I think has caused significant problems? What people broadly refer to as quotas.

I think there are some ways to do that. The most important way, at the individual employee level—let's take an examination or a collection employee—is to develop measures of case quality and inventory management, which is getting somebody to rate how well you are doing on a sample of cases and focus on the quality, which takes into account not only how well you have collected, but how well you have treated the customer and so forth.

These are all new things for the IRS. I mean, this is why it isn't so fast. I mean, it has taken years and years. I think I have got something that says at least 25 years things have been done a certain way. Now we have said we are not going to use these kind of quotas, but we are still going to, of course, track information about how much money we collect.

So what we have is some confusion. Frankly, we have confusion in the near term over exactly what we can manage by and what we cannot manage by. We tried to give out some interim guidance. What we are working on, which we hope we will have at least preliminary results for next fiscal year, is some guidance that will give managers more explicit guidance over what it is that they are allowed to measure and how they would measure it, and more explicitly, what they are not allowed to measure.

As long as we are in this vacuum where we said you can't do this, but we haven't been explicit about what you are supposed to do, we have a problem. I am being very honest about it. It is not a simple problem to solve. If it was that simple, I would have already done it. But I do not think it is impossible.

It is like a lot of things. I do not think it is impossible to do this. I think we need to use some creativity. There are some techniques.

I think generally we know which direction we want to go in, but getting them in place for the huge range of activities that exist at the IRS is not something that one can do overnight.

So, I think what I would like to do at certain points in time, when the Chairman thinks it is appropriate, is to not only come and talk about what we have stopped doing, but be able to come in and say, look, here is how we are going to try to solve the problem that you have identified and get the reactions of the committee and other people because this will be an evolving solution over several years.

Senator CHAFEE. Well, it seems to me that you have got to some indicia, some criteria by which you go by.

Commissioner ROSSOTTI. We do.

Senator CHAFEE. And like so many things, you are dependent upon the quality of the supervising people to differentiate between what just is mass statistics and what is a capable employee who is solving the problem and getting on with things.

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

The CHAIRMAN. Thank you, Senator Chafee.

And, Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman. Thank you, Commissioner Rossotti, for being here, and thank you for taking the job, because this is, as everybody has indicated, a very tough challenge. But, in a way, that can be exhilarating as well.

But I know for somebody of your background who has been so successful in the private sector, building a company as dramatically as you did, there must be days when you wake up and say, why did I do this? Or your wife says it for you.

Commissioner ROSSOTTI. That is a more accurate commentary. Yes, sir. I guess I didn't take an oath, but I still can't deny what you said.

Senator CONRAD. I am sure. I just know that you must be going through that, and this week must have been that kind of a week.

Nonetheless, this is critically important to our country, and the challenge that you have taken on is a very important one. I think we could all agree that the vast majority of IRS employees are honest and hardworking. That was certainly my experience.

As you know, I was tax commissioner of my state. I elected and served in that position for 6 years before coming to the United States Senate. So I had a long history of involvement with the Internal Revenue Service. And I must say, in the district that I worked and the state that I worked, my experience with the Internal Revenue Service was very positive.

I found lots of very dedicated career employees who genuinely wanted to do a good job and treat people appropriately. But it is also true that, from time to time, we found IRS operations that we found baffling, in terms of treatment of people.

I think we can also acknowledge that there is some problem from the type of hearing format we have here, because we have heard, in essence, one side of the story. We have heard the complaints of people, but we have not been able to hear the other side of the story because of the secrecy provisions of Federal law.

So that makes it difficult to render a full judgment on what is really going on, but we have got to press ahead and do our best because that is our responsibility.

I think we can also acknowledge that there are a certain number of taxpayers out there who really don't have any intention of paying their fair share. In fact, they don't have any intention of paying what they legally owe, and they go, sometimes, to great lengths to avoid paying. I have always been impressed by the creativity of some people in avoiding their tax obligations.

With all that said, there were things that we heard here this week that were outrageous. I know you were outraged, from a conversation that you and I had just the other day. I can tell you I was angered.

I must say, the day before yesterday, after hearing some of the testimony, I do not show it very much because I am Scandinavian, but I tell you I was very angered by treatment of taxpayers. This kind of cowboy attitude that we are going to go in and intimidate people. That is just unacceptable and that has got to stop.

I was especially struck yesterday, when we heard Senator Baker, who is as fine a man, I think everyone here would acknowledge, that ever served in the United States Senate. Somebody who is beyond question in terms of personal integrity and honesty.

I mean, that somebody would go to great lengths to frame him, that is outrageous. And it goes to individual tax preparers. We heard this Mr. Gardner, and he has got people, armed people, coming to him. This is a tax preparer. This is not a violent threat. And they have got armed people coming, with their law enforcement jackets emblazoned with the seal, and calling him out and threatening him. That is just totally inappropriate.

So, this is the abusive tactics in some of these cases, the arrogance, and the lack of accountability I found especially troubling.

Senator Gramm and I talked, before the hearing began, about this lack of accountability, in many ways, being the most troubling. I do not know if Senator Gramm pursued that during his questioning period, but I share that view.

There is a sense, among some anyway, within the IRS—and I stress some, because again, I do not want to besmirch this entire agency. I know full well how many really excellent people are there who do care deeply about doing a good job.

But among some, one gets the sense that they feel free to engage in inappropriate behavior, and there is no sense that anybody is watching the store. There is no sense that they are going to be held accountable.

So my question is how much of this do you see as systemic? How much of this do you see as cases that represent exceptions?

Commissioner ROSSOTTI. Well, I think some of the more egregious cases—I hope we do not have very many situations like we found with Senator Baker. I mean, I cannot imagine that we do.

But I think really, in some ways, my feeling is that even one case is too many. We really cannot be in a situation where we say, well, it is okay to have—you know, like we are running an airline and every once in a while we have plane crashes and people get killed, and we say, well, statistically we are pretty good. We run a safe airline. At least that is not the way I view it.

Each and every time, if there is anything that happens, we have to try to figure out what went wrong, if there is something that went wrong, and do something about it.

However, I will say what I think I have said in my early testimony and again today, that apart from dealing with individual misdoers or misconduct, which we will certainly follow up on—with the aid of GAO we will follow up on those—if it were simply a matter of getting rid of some wrongdoers, or getting rid of a few people and replacing them, my job would be a whole lot easier.

It really is more fundamental than that, and I think that, in some respects, I do agree with Senator Gramm. We really have to deal with the whole structure of the way the agency runs.

The technology, believe it or not, actually has something to do with this because the better technology you have, the better you can track what really goes on, the better you can manage individual transactions, as you know from your previous experience. As it is now, it is almost impossible.

I went through some of the cases, for example, that were here at the Senate Finance Committee, and I won't mention a particular case because we are not allowed to do that. I was looking at what can we do to follow up where there were clearly some indications that taxpayers were mistreated. Badly treated, as indicated here.

Well, here is one that went on for 17 years. There were nine different organizational units that had major transactions that went wrong in this unit over a period of time, and that is organizational units. We really don't know how many employees it was.

Many of these, in this particular case, involved some error prone systems that did not necessarily cause the problem, but contributed to the cause of the problem. If I look at that kind of situation and say, what do I do about it, yes, I want to try to go back and find out which employee made a mistake.

But really, if I have a system like this that has this set of transactions on it, no matter what I do to find the individual employees, it is not going to solve the problem. Therefore, what do we do?

We clearly have to follow up on these individual cases, and we will, and we have to provide appropriate disciplinary action where individuals can be found to be responsible.

But I believe that is why I proposed a very, very fundamental set of changes that deals with completely revamping the organizational structure to get much more accountability and a much flatter organizational structure that redefines the management role so we can actually have accountability, so that we don't have to go back and look over 17 different organizational units to figure out who was responsible.

To revamp these performance measures, update the technology and combine all of these things as well, I must say, these are the only things we are doing internally. There are also the legislative changes, which are very important.

There is a whole series of provisions that Senator Roth added to the House bill, which deal with things like collections and examinations, the kinds of activities that have the most effect on taxpayers in that regard.

It is really the combination of all these things, which is going to take time, which I think can dramatically improve the way that the

IRS treats individual taxpayers. I am afraid that was a little bit of a long winded answer to your question, Senator, but that is the way I see.

Senator CONRAD. Well, if I could just conclude, because my time has ran out.

I believe a flatter management structure is important to delivering services. One of the things that we learned in our operation is flatter management structure does a better job both ways. Second, the technology does need a dramatic upgrade.

One of the things that always struck me when I was dealing with the IRS is our information systems, at the state level, were far superior to the Revenue Service's. Far superior. We tried to be on the cutting edge of technology because it did help us manage the case load in a way that allowed us to be more responsive and more effective.

But the final point that I want to make to you is I also think, from what I have heard, that there has got to be improved feedback systems and monitoring systems to hold people accountable.

There is something wrong right at the heart of the Revenue Service with respect to feedback systems, and you can't be a manager, and you can't hold people accountable unless you have feedback systems. I know that you will direct your attention to those as well.

The CHAIRMAN. Let me get back, if we might for just a few minutes to some specifics. Yesterday, or a couple of days ago, we heard from the Transactional Records Access Clearinghouse, TRAC, about the inaccuracy of the figures.

In a way, it goes to a question that you have raised, Senator Conrad. Really no one knows how widespread some of these practices are. So it is very difficult to evaluate each of these problems, how widespread they are.

I was shocked by TRAC, which, of course, is associated with Syracuse University, saying that the CID statistical figures—or rather, the IRS reporting of statistical figures, such as indictments, prosecutions, convictions, were not accurate. They accused the IRS of hyping those numbers.

This is a very serious charge because it makes it very difficult, as you well know, for us to have effective oversight, if we cannot trust the figures coming from there. Do you have any suggestions?

I would certainly hope that this would be a matter that Judge Webster would look into, because I think it is critically important.

Commissioner ROSSOTTI. Well, actually, I think that we can even move faster than that. I happen to h ave met with Mr. Burnham and Ms. Long, who are the people who are the sponsors of TRAC, a couple of weeks ago and found out that they have been studying the IRS for a long period of time.

We didn't try to sort out precisely what the difference was in these numbers, but I think I understood why there was this issue. I view this as something that is totally unnecessary for us to have, this difference in numbers between the Justice Department and between the TRAC figures.

And one of the things that I committed to do is to work with them to try to come up with a more transparent set of numbers, which may not be totally reconciled with the Justice Department,

because there are some differences in the definitions of what is accounted, but I think that the idea—it is similar to what I said on the audits, although we do publish statistics.

They are just not clear. They are just not transparent, and there really has not been, in my view, a sufficient effort to work with groups like TRAC to make them more transparent.

So, I think we can do that. That is a relatively easy one, as a matter of fact. It may take a little bit of time to do it, but we will do it.

The CHAIRMAN. Now, some of our witnesses, as well as members of Congress, have advocated legislation which would provide a private right of action against IRS employees for misconduct. I would appreciate your point of view.

Should IRS employees be held personally liable for damages caused by their conduct?

Commissioner ROSSOTTI. As I understand it, there are some limited circumstances. And again, this is an area I am just learning about. But, as I understand it, there are some limited circumstances in which individual employees can be sued, and then it is up to the Justice Department to determine whether they would be defended by the government or not.

But I really think that that, on the whole, is not the way to go to answer these problems. I think that the answer is that the agency should take responsibility, should be accountable and should have better processes in place to hold employees and managers accountable.

We have to be concerned also about how we actually attract and retain employees. I mean, if we make it too onerous, then we have, again, one of these unintended consequences where the best people will not come.

So, I think that the more general answer to that, in my view, is to simply make the agency better managed to hold people accountable and certainly taxpayers have recourse, and more so in your bill, against the agency. But if there are problems with individual employees, we should, for the most part, be dealing with them ourselves in the agency.

The CHAIRMAN. Well, some have raised the specter that if you have personal liability on the part of the employees, they will not actively support enforcement. An easy way to protect their own interest is to do nothing.

Commissioner ROSSOTTI. Well, that risk does exist with a lot of the things that happened here. Senator Chafee really made some excellent points there.

We have to come up with a new way of managing it, new ways of measuring it and new ways of doing it. It is not simply a matter of saying we have to get rid of all these things, otherwise, we will not have an agency at all.

We have a really creative building job here, not just a tearing down job, and that is why it takes a while.

The CHAIRMAN. Let me turn to anther practice that came out of these hearings that deeply disturbed me. Some of our witnesses indicated that the IRS forced taxpayers to sign waivers that they would not sue the IRS or an IRS employee.

Are you aware of this practice? Are there any written IRS policies or procedures which relate to the process of seeking waivers?

Commissioner ROSSOTTI. I honestly do not know the answer to that. I have to get back to you on that one, Mr. Chairman.

The CHAIRMAN. Do you have any judgment on the practice itself? Should such waivers be permitted?

Commissioner ROSSOTTI. I think that is a very good question to look into. That certainly sounds like that is a practice that ought to be reviewed if it does exist, but I do not have that information to really answer that question.

The CHAIRMAN. A number of witnesses did raise that.

Commissioner ROSSOTTI. We will get back to you with some views on that, Mr. Chairman.

The CHAIRMAN. Let me make one comment. Earlier I talked about the problems of CID investigating and using intrusive measures, and I said that was partly because Congress broadened the jurisdiction of the IRS to money laundering and drug running and so forth.

In saying that, I would hope you would investigate and give us your recommendation, or have your task forces do that, as to whether there should be some legislative correction in this area.

Commissioner ROSSOTTI. I will.

The CHAIRMAN. I do not want you just to say, well, it is required of us.

Commissioner ROSSOTTI. That is an excellent suggestion, Mr. Chairman. We had not thought of that, but we will put that down and do it.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Yes. Two things. One must have a little cheer here. This legislation that we will be bringing up Monday does do something that we have heard about, which is the disparity between what you can earn in civil service and what the lawyers and accountants we are up against are earning, and we create 40 individuals who you can pay up to the level of the Vice President's salary, which is $175,400. You can't pay yourself that.

Commissioner ROSSOTTI. That is all right.

Senator MOYNIHAN. I think, frankly, sir, the Commissioner ought to be at grade two in the civil service industry.

Commissioner ROSSOTTI. That is not important.

Senator MOYNIHAN. I know, but the next person might care. You are going to have the opportunity to bring some people in at a pay scale that is the highest in the government.

Commissioner ROSSOTTI. Senator, I sure hope that legislation passes because I am already recruiting people based on what is in that bill.

Senator MOYNIHAN. One question which you do not have to answer, but you might want to think about and give us a note about some time, is it is very clear that the practice of the confidentiality of tax returns, which is meant to be a protection for the individual becomes a complication in which nobody can find out what is going on or those who know cannot say.

And when you cannot say, you frequently find out you do not bother to know; to learn. Is there some adjustment of confidential-

ity that would make for a greater transparency in what happens in the agency while it is protecting the individual?

The CHAIRMAN. Could I make a comment on that?

Senator MOYNIHAN. Would you make a comment. Yes. You are Chairman.

The CHAIRMAN. Senator Moynihan raises, I think, a very, very significant factor. The secrecy provisions were developed, of course, to protect the taxpayer. None of us have any disagreement with that. It is important.

But the fact is that the right of privacy has been used as shield to protect the agency from real meaningful oversight.

I can tell you we have been criticized because we only have a few cases, but, Senator Moynihan, to try to investigate those few cases is such a tedious, detailed, impossible task because of privacy, that it has been very difficult to have effective oversight. So you have hit right on the head one of the key problems.

Commissioner ROSSOTTI. Far be it for me to say I have a solution to this problem. I certainly acknowledge it. From my personal point of view, since I personally believe that one of the most basic principles to improve any organization is getting information out, I am interested in making as much information public as I can.

Take this matter of the TRAC. I mean, t here isn't any reason why we should have these differences. When I got into it, and I met with Ms. Long and Mr. Burnham, one of the problems is that in order to reconcile their data and the Justice Department data and our data, you have to get down and identify, at least to some degree—you do not have to have all the data, but you have to have some degree on the individual cases.

Well, right there, we are blocked from being able to do this. So we are going to try to figure out a way around it. It is an impediment to having open communication. Unfortunately, I am not sure how to reconcile that. I really have, frankly, not even had time to study that problem, and I certainly do not have any suggestions today.

Senator MOYNIHAN. But, sir, may we hope that you will, and when you have some thoughts, you will share them with us?

Commissioner ROSSOTTI. Sure.

Senator MOYNIHAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Let me just make an observation. Someone commented earlier, rightfully, that the legislation that we are going to take up this coming week is not the total answer. I could not agree more.

But we have got to start somewhere. The thing I want to emphasize and have the public understand, because I think it is important, Senator Moynihan, is that we are going to work together. The executive branch, the commissioner, this committee are going to be a team in trying to get the job done, because that is the only way we will get permanent changes.

Let me tell you that we have evidence and information about what's being said in some parts of the IRS organization such as—well, we will just outlast the Commissioner. Or, we is only going to be here a couple of years and, you know, the Finance Committee, they will turn to something else tomorrow.

That is not going to happen. We are going to work together, and we are going to work together over the long term because that is the only way you are going to correct the situation. One piece of legislation is not going to be the ultimate answer. We are going to have to continue to look at these problems.

It is not a partisan matter. These problems go back to other administrations.

What we are trying to correct is to make sure that this agency, when you and I leave, is the kind of organization that the public trusts and the employees are proud of.

Senator MOYNIHAN. Well said, sir.

The CHAIRMAN. Senator Gramm.

Senator GRAMM. Mr. Chairman, let me say that I want to identify myself with both the things that you said and Pat said. I do think we are going to pass the bill, and so anything we know now that should be done, I think we ought to try to get it in this bill.

I think it is clear that the confidentiality provisions are used to protect the agency, and I am not sure that some of it wasn't designed for that purpose. And I think, if we can find a way to fix it, we should.

Let me also say, Pat, I strongly agree with you. We do not ever want to make it where public service is something that only rich people can do. I would be interested in working with you in looking at this salary structure. I think there are some people who are willing to do these jobs virtually for nothing, but they ought not have to.

I have three questions. First of all, Mr. Rossotti, over and over again in listening to people in these cases where they were arguing that the IRS had been abusive—and, boy, the evidence seemed overwhelming to me—they made the point that in order to get the IRS to stop ruining their lives, they had to, among other things, sign an agreement that they would not sue the IRS.

I am looking, very strongly, at offering an amendment to our bill banning those agreements. Can you tell me why I should not?

Commissioner ROSSOTTI. Well, I think we would have to look at the details of that. I think that is probably an area where some improvement can be made. I honestly cannot provide, precisely, the answer to that question.

Senator GRAMM. Well, if you would, and I am not trying to pressure you today.

Commissioner ROSSOTTI. Yes.

Senator GRAMM. But look at it over the weekend, because it is my plan now to offer this amendment.

Commissioner ROSSOTTI. We will.

Senator GRAMM. If the IRS comes into your place of business and is shutting you down and you are going to go broke, and they figure out, somewhere along the way, they made a mistake, and one of the ways you can get them to stop is to give up your rights to sue them, who would have a choice except to sign that? I think we ought to ban it.

Commissioner ROSSOTTI. From a personal standpoint, not having completely staffed this out everywhere throughout the government, I agree that there is something that should be looked at there, and I will get back to you.

Senator GRAMM. All right. We will try to be sure we are easy to reach. We will contact you.

Commissioner ROSSOTTI. Yes, sir.

Senator GRAMM. One of the things that worries me—I do not doubt your sincerity at all, and I am not saying this is an easy thing to solve. But it has to do with the difficulty of firing people.

I guessed, from what you had said or did not say in response to Connie Mack, that there is no evidence of anybody that has been fired as a result of any hearing we have had. Is that right?

Commissioner ROSSOTTI. Let me just give you a statistic that I found out in preparing for these hearings. In terms of actually firing people, in the entire history of the senior executive services, about 7,000 senior executives in the entire Federal Government—and it was created in its current form in 1979. So that is 19 years.

My statistics, I think are right. I have got it in here. There have been 16 people fired, actually fired for misconduct.

Now, does that mean there were only 16 people that were removed or in other ways gotten out? I do not think so, because I think, as in most organizations, in reality, in practical terms, most of the time, when there is somebody—unless they have really serious criminal misconduct, what happens is that they retire or they are moved out, and you just get them out of the way one way or another.

So, when you really get down to the point of how many people are fired, if there were only 16 in the entire Federal Government in 19 years, it is pretty obvious that firing, in the narrow sense of the term, is not the main thing that happens.

I think that the most important thing is can we move aside people that are not performing or not performing correctly, and can we bring in people that we need, which is actually the second part. It is the harder part.

My conclusion is that it is very slow, but it can be done. And if you are determined to do it and you really make a distinct effort, you can do it. Some of the provisions in your bill will actually make it a whole lot easier.

Senator GRAMM. Well, any suggestions you have as to what we could do to make it easier for you to fire people who are abusive and who violate the procedures, would be very important.

I would like your staff to get for me, if they could, what kind of penalty would be imposed, as a normal course of functioning, for an IRS agent who threatened a police officer who stopped him for a speeding ticket; that he would be audited if he wrote you the ticket?

Commissioner ROSSOTTI. We can get you that. I do not have it with me, but there actually is a guide.

Senator GRAMM. My view is that ought to be a firing offense. If that is proven, that is exactly the kind of thing—I mean, it seems like a little thing, but it is a statement of a mentality that is bread by this closed system.

And I think that at IRS, from the point of view of retribution, he who threatens to use an audit, that that single offense ought to get somebody fired.

Commissioner ROSSOTTI. Well, I can get you information.

Senator GRAMM. If you will get me what the penalty is so I can look at it.

Commissioner ROSSOTTI. Yes. We will get it for you.

Senator GRAMM. It probably ought to be a firing offense, and I know that sounds pretty strong and maybe there are extenuating circumstances——

The CHAIRMAN. No. It does not sound strong. It sounds perfectly right.

Senator GRAMM. Well, I appreciate that. I think it is a real problem.

Let me just say, in conclusion—and I want to thank you, Mr. Chairman for giving me the second round—I know that you have got to be torn between trying to run an agency that has got to collect money.

And the one thing that I tried to say throughout these whole hearings is that I want to tough on tax cheats. It always make me nervous when we get in this business of rich people and poor people.

I have got no sympathy for people that cheat on their taxes, whether they are rich or poor and whether they cheat 10 cents or $10 million. They are both criminals, and they ought to be vigorously prosecuted, and we ought to go after them, unmercifully, within the law and within a system of checks and balances.

But I know you have got to be torn between trying to collect this money, which we are spending pretty fast here, and wanting to do something about the problem.

I would just like to say, in conclusion, as an outsider and in terms of morale of the IRS, I think firing about 50 of these people who are clearly abusing the system would be a good thing, if I worked for the IRS. Fifty 50 people who were clearly bad actors and who had brought disgrace on a profession that I cared enough to dedicate my life to. I would feel good about it.

In trying to measure the terribly difficult job that you have of maintaining the morale of an agency that is being beat up on television every day, and you have got to go and tell your children, well, yeah, I work there, but I am not like those guys and that is not the way real people are there, I think that going through these cases and identifying these bad people and firing a whole bunch of them would be well received by your employees.

I think they would appreciate it, and I think the American people would. So, I am not saying let's have a hanging just for display purposes, but I think——

The CHAIRMAN. You are from Texas, aren't you?

Senator GRAMM. I think where hangings are due, after a fair trial, that they are justified. And I would think, if I were working at the IRS and all these accusations had been made, and if some of them checked out to be true, I would feel better if those people were fired.

Commissioner ROSSOTTI. All I can say is what I said in the testimony, is that although it is a laborious process, we are going to investigate every one of these allegations, as well as others, by the way, that I have initiated. And the Chairman's suggestion of having GAO help us with this is an outstanding suggestion.

And when we get the results of this, through some process that we have, we will take action, and we will take the strongest that we can, recognizing there are all these guidelines and there are rules as to what we can do.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman.

You have got 110,000 employees. It is one of the largest enterprises in the world. Do you have any sense of—now, we have had a number of cases presented over this week in our previous hearings.

In any large enterprise, private sector, public sector, we would anticipate a certain number of cases like this. Certainly you would find people within the agency or within the enterprise that feel aggrieved, feel they have been mistreated, feel they have been harassed, feel they have not been promoted when they should have been. That is true in any large enterprise.

Do you have any sense, based on your private sector experience, if given the scale of this enterprise, if the Revenue Service is different in terms of employees operating inappropriately?

Commissioner ROSSOTTI. That is really a hard question to answer in any kind of statistical sense. I mean, for one thing, I do not have a way of answering, honestly, that question.

I think that what we do about it though is probably not totally influenced too much by that. What my view is, using my airplane analogy, even if we have a few crashes, that is too many. We may recognize that statistically we will—using the airplane analogy again—some day have another air crash. But that doesn't mean we ever want to forecast it or anticipate it or accept it.

We want to try to do everything we can to prevent it. So, I think that that is the answer.

With respect though to the employees, I really want to make a comment about that, because I have had the time. I have probably talked to at least 1,000 of the IRS employees, either in large groups or small groups.

They are, as the Chairman and others have said, for the vast majority of them, very dedicated employees, and they are very, very worried about where the IRS is. And that is one of my tasks, to reassure them.

I think that in addition to the specific problems that we have heard here, you do have some normal stresses like other organizations have had. I mean, the IRS has been downsized. We have 10,000 fewer employees than we had 3 years ago.

That creates stresses. There are not as many promotions, there are not as many replacements. There has been a consolidation of overhead in districts.

As you know, in some of the districts it was very unpleasant and people had to lose their jobs or be reassigned to other places. We have had the public pressure, and the employees do really care about this.

In addition to that, we are also going through, as in any large organization in America, the stresses that are part of the changes in society. We have different kinds of relationships than perhaps were traditional 10, 15 years ago between women and women; between people of different races.

These create certain kinds of stresses in the IRS, as they do in other places. You add to that the more specific things, the more specific kinds of problems that have been identified here, and you do have an organization that I would say is highly stressed. And those come out in a number of different ways.

Our challenge, and what I am hoping to do is, is to set this forth in a positive way to say, look, we can turn this around. We can build a new IRS.

And if you look at my testimony, one of the three goals, which I absolutely believe is critical to making this work, is creating a work environment, a quality work environment, that provides the right kind of environment for the employees to be successful, because we won't provide good service to taxpayers unless we have a working environment that provides satisfaction for the employees.

This is part of the challenge of moving this whole organization ahead, and it is a very difficult time, but I believe, with the help of the Congress, it can be done.

Senator CONRAD. Can I just go into one other matter, Mr. Chairman, that I think is important? Briefly.

The CHAIRMAN. Briefly. Yes.

Senator CONRAD. This is a delicate area, but I think it is very important, and that is the use of statistical measures to determine what individuals and working entities within the Revenue Service due in terms of performance.

It is totally inappropriate, in my judgment, to have quotas. When I ran a tax agency, we never had quotas. Ever. I never thought they were appropriate. But I must say there have been some developments in some things I have heard that strike me as throwing the baby out with the bath water.

I mean, there is no way that I know to run any enterprise without the statistical measures on what people are doing in terms of performance. And if you are in collections, one measure of performance is how much you collect.

Now, another measure ought to be that you do not abuse people and you do not cross the line in terms of the treatment of taxpayers. If you are in audit, there are statistical measures that are simply critical to evaluating whether a unit is performing or failing to perform; is using their resources effectively.

Can you tell me how you approach this question of the use of statistical measures in evaluating performance? What is your intention on that?

Commissioner ROSSOTTI. Well, you are quite right, this is one of the most difficult areas that we are addressing and is one in which it is very unsettled right now.

We are stopping doing things that were inappropriate, such as giving people, if not quotas, at least things that could be very closely interpreted as quotas, in the sense that you would have a very concrete goal of so much money per person down at the individual level or even the first line manager level, which is what was prohibited by the taxpayer bill of rights.

So, we have stopped that. As I say, maybe there are a few people who didn't get the word, but that has stopped. The problem is we have somewhat of a vacuum right now because we have not devel-

oped the more appropriate kinds of measures, which are more balanced between the kind of thing that you were talking about—case quality; treatment of taxpayers; how the employee sees it.

We know that we have to do that, but when you look at it in terms of the complexity of the IRS for all the different functions, examinations of all the different kinds of taxpayers, the geographical regions, this is not something that we do overnight.

So where we are today is that for this fiscal year we have a very unclear situation—I am being very honest about this—by people around the agency as to what they are supposed to do and what they are not supposed to do, and we are going to try, even in the next few months, to at least do some clarification of that because it leaves a vacuum.

More basically, we have a task force working with, again, another outside set of experts that are working on developing on interim set of measures for fiscal 1999 that will attempt to do those kinds of balancing, and even that will be far from perfect.

I believe it is going to take two to 3 years to actually develop the right kind of measures for all the different functions, and even then it will not be perfect because we have got to do some even more basic things that relate to how the organization is structured and how we measure compliance and other things before we really get to where we want to go.

So, I sound like a broken record, but we have got some short term things that we are doing. We do have a problem in this area. I really have to be honest with the committee.

There is a certain amount of confusion. While we have gotten rid of things that have been ingrained for 25 years, we haven't put the new things in place. That is where we are right now.

Senator CONRAD. If I could just say, I think this is one of the most important things to do. You cannot manage an enterprise of this scale without statistical measures, and I would just urge you, as one idea, to go to some of the states to see what they are doing.

Commissioner ROSSOTTI. We will.

Senator CONRAD. Whether it is California or Massachusetts; that are well run, large enterprises and see how they are doing it.

I thank the Chairman.

The CHAIRMAN. Well, I think we all agree that it is important that you develop new performance standards. I do have to say it does concern me when you have individuals, under oath, coming forward and saying, for example, even now in the southeast area I believe it was, there were statistics being developed and people were being graded by how many seizures they made. If they didn't have enough, it was negative.

Commissioner ROSSOTTI. That shouldn't be. I was going to track that one down. I heard that testimony, and I am going to track it down. I mean, I think that we are getting close to stamping those kinds of things out, but it may be that there are some people who just didn't get it. But we will get rid of those.

The CHAIRMAN. I have a couple of quick questions I would like to ask.

Yesterday, we heard from IRS employees who testified that in certain cases potential tax liability has been zeroed out for reasons

unrelated to their merits. Have you previously heard of this problem? Do you have a plan to address this problem?

Commissioner ROSSOTTI. In terms of that specific allegation, I think that is the one that should be checked out, if it was improper. I have not heard of that specific problem. I think that that gets to the question of, again, basic management.

I mean, the purpose of a manager in managing an audit activity is to know what is going on and be accountable and there is, of course, data that tracks what those settlements are that is available to people up the line.

I have not heard of that as a widespread problem or a particular problem, but we will look into that particular allegation. Not only follow up on that particular one, but see if there is something we can learn from it.

The CHAIRMAN. Let me ask you this: As you know, we have heard a lot of serious allegations. You are familiar with the legislation that we are taking up next.

Do you have any further recommendations or suggestions at this time as to how that legislation can be improved?

Commissioner ROSSOTTI. Well, the only specific one I have at this time is just the one that we have already sent you in the letter, which is just a practical issue of the effective dates on some of the provisions so we can get the computer systems in.

There are a few minor tune ups, I would call them, on some of the personnel flexibilities that I would like to work with your staff on, basically so we can get the new people in.

And then, of course, there are some issues that the staff is working on and some of the taxpayer rights issues that the Treasury is taking the lead on that I know we are working with you on. But my main statement on the legislation is that I think it is going to help a lot in terms of improving the IRS, and I really hope we can get it passed.

The CHAIRMAN. I wish to announce that the record will remain open until 5:00 today for members who wish to pose written questions to the Commissioner. Members should send their questions to the chief clerk.

We thank you for being here——

Senator MOYNIHAN. Mr. Chairman?

The CHAIRMAN. Yes, sir.

Senator MOYNIHAN. Before we close, not to spoil things, but could I offer a positive note?

The CHAIRMAN. Absolutely.

Senator MOYNIHAN. You put together a wonderful week of hearings, the second round. We have heard some horror stories, we have heard some great many charges, but no one has ever come to us to say that the Internal Revenue Service was used for political purposes by the administrations of any president in the past 20 years.

The charges, the efforts to frame Senator Baker, Mr. Quillen, were just wholly specific to that particular office and this deranged agent.

But whatever else it is, this could not be more important. It is clear that the Internal Revenue Service has kept itself out of Amer-

ican politics completely, and that is a badge of honor that we should not hesitate to display.

The CHAIRMAN. There is actually a study going on concerning that matter. As far as I know, what you say is absolutely correct. And, of course, that is one of the reasons, I think, we are in the situation where an administration can only appoint one or, at most, two employees. The Commissioner and the counsel is the other one. And frankly, I think that is a problem.

Senator MOYNIHAN. Not enough political input.

The CHAIRMAN. There is not enough oversight.

Senator MOYNIHAN. Yes.

The Chairman. It is impossible for one commissioner and one chief counsel to adequately overview, and that is the reason I think it is important that he be given the opportunity to have his team there; that he can appoint people. Frankly, much of the problem is restructuring, legislation, the code. The code is too broad. It leaves too much discretionary power in the agency.

But it is also the question of culture and management, and that is the reason we are lucky in having an individual with this background.

Commissioner Rossotti, I want to thank you for being here. Thank you for taking on this heavy responsibility. I cannot say how important I think it is that everybody work together in trying to bring the solution. We can and will do the job with your assistance.

Commissioner ROSSOTTI. Yes, sir.

The CHAIRMAN. I thank you again.

Commissioner ROSSOTTI. Thank you, Mr. Chairman.

Senator MOYNIHAN. Thank you, sir.

The CHAIRMAN. The committee is in recess.

[Whereupon, at 11:49 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MAX BAUCUS

Mr. Chairman: One of the earliest controversies facing the newly independent United States of America involved the taxing powers of the federal government. After all, unjust taxes were among the chief causes of the War for Independence.

But our founding fathers had fresh memories of raising an army and running an embattled government mostly on borrowed funds. They knew they would need revenue to provide for the common good. So, in an act passed by the very first Congress, we gave the central government the power to collect tariffs and taxes, so long as they were fair and uniform.

During the last couple of months, in every household across the country, Americans went through an annual rite. They sat down at the kitchen table, pulled all their financial records together, and figured out what they owed the government.

Nobody likes doing their taxes. And they probably dislike paying them even more. Yet the vast majority do it. And they do it honestly. Americans realize they have a bargain with their country, which it is their duty to uphold.

They pay their taxes so that their money, when pooled together with the money contributed by all their friends, neighbors and fellow citizens, is used wisely "for the common good."

Americans expect their money to defend their families from hostile nations. To educate their children. To provide for a clean and healthful environment. To improve their highways. To help keep them healthy. To help provide for them in their old age. And to give a helping hand to those going through hard times.

In short, Americans expect their money to be used to pay for all of the things that help make this nation great. In return, though, the American people want their government to do two things.

First, the American people want their government to treat them with respect and dignity as the revenue is collected. They expect to have their privacy respected, and to be treated fairly.

Second, Americans expect that everyone else who enjoys the benefits taxes pay for will shoulder their share of the burden. That their neighbor down the street isn't hiding part of his income, and thus avoiding paying his fair share of the tax. That everyone is filing returns, and that the amounts claimed on those returns are accurate and true.

Mr. Chairman, I truly believe the American people have the right to have both of these expectations met. And I believe we here in the Senate shoulder a great deal of the responsibility for making sure of it.

We were placed on this Committee because, presumably. we understand the need for revenue to keep this country running. We also understand the grave responsibility that goes along with the power to tax.

John Marshall said: "The power to tax involves the power to destroy." It is our duty as members of this committee to make sure this country does not use its power in that fashion.

How do we do that? We must stay above partisan politics and petty squabbles. We must make sure our laws reflect good public policy—that the tax code is used for the benefit of the American people.

That is why I have watched the process we have gone through in anticipation of these hearings with a measure of personal regret and disappointment. I do not believe these hearings are balanced. I believe they fail to rise above partisan politics. And I do not believe they will ultimately benefit the American people.

Mr. Chairman, if you look in Webster's New World Dictionary, under the word "oversight," you will find it described as "vigilant supervision." As Members of the Senate Finance Committee, we must be vigilant that individual taxpayers are being treated right by the Internal Revenue Service. However, it is every bit as important that we are vigilant to make sure taxpayers are treated fairly.

Let me make it clear: I do not object to investigating the IRS to make sure it is operating correctly and treating taxpayers right. That is part of our responsibility. But I also believe we have a responsibility to look at the whole picture, not just place a spotlight on the issues that give political advantage to one party or another.

How can we spend four days talking about a handful of cases that the IRS might or might not have mishandled, yet not spend a single minute talking about how some Americans are flouting the tax laws? Our entire system of collecting revenue would unravel if taxpayers stopped paying their fair share because they believed everyone else is cheating.

Estimates of tax avoidance are soaring, with many believing the numbers could reach *$100 BILLION per year*. How can we ignore this issue, or ignore the dangers that IRS employees face every day as they try to do the job we have hired them to do?

Mr. Chairman, we have a new Commissioner of the IRS, Charles Rossotti. He is an honorable man, and a good public servant. We have given him a mighty challenge—to reform an agency that has resisted reform in the past.

He has asked us for a few simple tools to make the IRS work better. Changes in personnel rules, so he can put a good working team in place. The ability to reorganize the agency, so he can eliminate layers of duplication. Most of these provisions are included in the IRS restructuring bill that the House passed six months ago by a vote of 426-4. That bill still awaits action by the full Senate.

Mr. Chairman, if we are going to spend our time on these hearings, I wish they could be balanced. But since that apparently is not possible, I urge you to move quickly to pass a good IRS restructuring bill through the Senate.

Passing a solid restructuring bill will do more to get the IRS on track than a hundred of these hearings where we sit, posture, pontificate and play politics.

It is our responsibility as Members of this Committee. And, more importantly, it is our responsibility to the American people.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. KENT CONRAD

Thank you, Mr. Chairman. The series of hearings we begin today will be useful if they help us find ways to help the IRS become more responsive to the needs of taxpayers—a task the committee has been pursuing for many months.

We know the IRS has had management problems. Commissioner Rossotti is bringing a professional manager's approach to the agency, and we look forward to hearing from him later this week to find out what he has been able to do in solving the problems that this committee's hearings have uncovered.

If we are going to be serious about helping taxpayers, the best thing the Senate could do would be to pass the IRS reform bill that this committee approved unanimously almost a month ago. Personally, I am disappointed that we have delayed getting this bill to the floor.

Finance Committee bill would provide more protection for innocent spouses pursued by the IRS for tax liabilities they never knew about. It would provide significant relief in the tax penalty area. It would also give the Commissioner the tools he needs to deal quickly with IRS employees who engage in abusive and coercive behavior.

When IRS employees cross the line, the Commissioner needs to put a stop to it. Abusive behavior should not and cannot be tolerated. When IRS personnel violate the agency's rules and standards of conduct, swift punishment and correction must follow.

We have an important national interest in an IRS that is efficient, well managed and fair to citizens who must deal with it. When it fails to respect the taxpayers—who, after all, are paying for the agency—it breeds disrespect for the system.

I expect to see this committee insisting on more accountability when it comes to overseeing the IRS. Government agents who deal with citizens as directly as IRS agents do must be held to the highest possible standards.

It is a shame that taxpayers have gone through yet another filing season without the benefit of those additional protections our bill would provide. We worked with Commissioner Rossotti in shaping that bill to respond to what he—as well as tax-

payers themselves—have been telling us face-to-face about how the agency could be improved. Enacting that bill ought to be our top priority.

PREPARED STATEMENT OF DAVID CROCKETT

I am David Crockett, named after a distant relative of mine who once served in Congress. I have served as District Attorney General for the First District of Tennessee for the past 16 years. I am presently engaged in a campaign seeking election to my third eight year term in that office. I previously served 10 years as an Assistant District Attorney. I am a graduate of East Tennessee State University and the University of Tennessee College of Law. I served 4 years as a Captain in the Judge Advocate General's Corps of the United States Army during the Vietnam Conflict, concluding my service as Chief of the Military Justice Division at Ft. Jackson, South Carolina.

I, like Senator Baker and Congressman Quillen, was a target of an IRS agent who was assigned to East Tennessee in the mid 1980's. I first became aware of this agent when his car hit another automobile on N. Roan Street in Johnson City, Tennessee, after he left a local bar. The agent was charged with DUI. He refused a breathalyzer test and successfully defended the charge aided by the testimony of several other federal agents and employees who swore that he was not under the influence of an intoxicant.

Since a member of my staff prosecuted him, thin agent apparently included me in a plan he formulated for revenge and career advancement. He, shortly after his acquittal, began proclaiming publicly in bars and restaurants that he was going to get Senator Baker, Congressman Quillen and me. He said that we were "crooks and tax cheats." Frankly, I was a bit flattered to be included in such distinguished company as Senator Baker and Congressman Quillen. However, the repeated accusations by this agent, frequently when he was drinking in bars, eventually led to an investigation of me that continued for several years, first by the IRS and later by some of his friends with other federal agencies. No charges were ever placed nor was any action ever taken, in fact, the investigation simply died without me ever being formally advised that it had ever existed. Yet even today, the damage done by this agent still lingers, particularly around election time. Reputations are delicate things which once lost are difficult to regain.

I know now that these courageous agents and employees of the IRS who are here today and who previously testified did intervene and some sacrificed their careers to stop this rogue agent. To them today, I want to publicly and formally express my deepest appreciation and gratitude for what they did.

As for this IRS agent, well his drinking seemed to get worse, yet he continued in his job until one night in Knoxville when he and a relative were caught with a quantity of cocaine in their vehicle. The agent tried to bluff his way out of trouble by telling the local deputy that he and his relative, (a nephew I believe), were engaged in an undercover operation for the IRS The local deputy persisted and contacted the agent's superior, who, of course, knew nothing of such an "operation." After this episode, the agent's friends could no longer protect him and he was subsequently fired from his position. Somehow, he avoided prosecution for cocaine possession in Knoxville, which is not within my district. This agent's ambition to get some "big people" to advance his own career was wrong and the failure of those in management who protected him was disgraceful, particularly when management turned their animosity upon the few agents of integrity who tried to bring this agent to their attention. These agents of honor are the true heroes of this story.

If anything can be learned from this episode it is that we average Americans, who work every day and pay our taxes, still fear the IRS whose agents can, by virtue of their positions, destroy lives and ruin careers. If our story can help prevent others from being targeted unjustly, and insure better supervision of IRS field agents, then our time here today will have been well spent.

PREPARED STATEMENT OF HON. ALFONSE D'AMATO

Mr. Chairman, I commend you for your leadership in holding additional oversight hearings on the practices and procedures of the IRS. Our past hearings exposed major problems within the agency, including abuses of power and egregious mistreatment of taxpayers. And, although the IRS reform legislation, passed unanimously by this Committee, goes a long way to bring about the change needed to restore taxpayer confidence in our system, in the final analysis, what is truly needed is continued Congressional oversight of the IRS.

Besides continued oversight, we must ensure that IRS officials who encourage or mandate taxpayer mistreatment are held accountable and removed from their positions of authority. The stories relayed in yesterday's hearing were as shocking as those heard in past hearings. Targeting a taxpayer's representative for audit or other investigation because he vigorously defends his client, and blatantly ignoring policy that requires contact with a taxpayer's representative is conduct beyond comprehension. But, to intentionally put a very ill taxpayer in harms way, is totally reprehensible. Until the agency and its responsible employees are held accountable for these egregious acts, this Committee's oversight role must not end.

I applaud Commissioner Rossotti's efforts to improve the IRS. His recent announcement to appoint Judge William Webster (the former FBI Director) to review the Criminal Investigation Division (CID) is further evidence of his commitment to effect fundamental change at the IRS. I trust that these efforts will also include a careful look at top management officials to ensure that fundamental change to the IRS culture is of paramount consideration.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF ROBERT EDWIN DAVIS

Mr. Chairman and members of the committee:

Identification and Personal Background

My name is Robert Edwin Davis. I am an attorney, and I have practiced law in Dallas, Texas for almost 40 years. During most of those years, the greatest part of my practice has been devoted to representing taxpayers in civil and criminal tax litigation and controversies with the Internal Revenue Service (IRS) and the Department of Justice. During the years 1982 and 1983, however, I served as Deputy Assistant Attorney General in the Tax Division of the Department of Justice in Washington, D.C. I was then responsible for overseeing the functions of the Criminal Section and Review Section (large civil case settlements) of the Tax Division. I think it would be fair to say that there are few attorneys in the United States who have handled more civil and criminal tax cases on behalf of taxpayers than I have since 1960.

Description of Issues to be Discussed

Tax collecting has always been an unpopular calling. From biblical times to the present, there have been few—or no—warmly regarded tax collectors. Most of the employees in the IRS are sincere and honorable people, going about their thankless work of administering the rules and policies adopted by Congress, the Treasury Department and senior IRS officials.. However, my personal experience is that all is not well with our tax system, and I believe that (1) the IRS has, to a significant extent, strayed from its proper path; (2) there is excessive use and misuse of intrusive and even oppressive investigative techniques within the Criminal Investigation Division (IRS CID); and (3) there are sometimes serious integrity issues within the agency, but that the IRS Inspection Service (IRS-Inspection) is simply not up to the task of investigating and correcting IRS agent misconduct when it does occur. I would like to present my views on these subjects to the Committee over the next several minutes, and in a supplemental written statement.

Excessive Use and Misuse of Intrusive Investigative Techniques by the IRS CID

Fifteen years ago, when I was the Criminal Deputy in the Tax Division, criminal tax enforcement practices were almost totally different from those which are encountered today.

- "Undercover" investigative techniques were almost entirely unknown in criminal tax matters;
- Search warrants were used in criminal tax cases only a dozen times in an entire calendar year;
- Grand jury investigations were a rare exception, and administrative investigations were the rule.

Today that is dramatically changed, and the use of these much more intimidating and intrusive techniques is commonly encountered. For example, search warrants are executed in criminal tax investigations today some twenty times as frequently as they were then.

It is not surprising that these changes have occurred. As the IRS CID has been increasingly used in the suppression of drug and organized criminal activity, its special agents have learned the investigative techniques which are employed by the DEA, the FBI and local law enforcement to deal with violent and dangerous criminals. These investigative strategies are then "borrowed" and used by IRS CID in

routine criminal tax investigations of taxpayers who are neither dangerous nor violent. Many of us believe that this is a very bad tax enforcement policy. Today, we see too many "cowboy" agents, as they are called, who are undisciplined and inadequately controlled, and who think that the end (putting away the "bad guys") justifies the means (intrusive, intimidating and oppressive investigations). Let me give you an example of the kind of abuses which concern me.

An Example: Executing A Search Warrant to Obtain An Appraisal of Residential Furnishings

One summer morning in June of 1994, approximately ten IRS special agents appeared at a private residence at 7:30 a.m. They knocked on the door, which roused the only resident of the home from her bath. This resident, "Sally," was a 45-year old woman who was living in a home which had formerly been owned by her grandmother. She put on a bath robe and responded to the knock at the door. There were approximately ten IRS special agents in her yard and on her porch, one of whom presented a warrant to search her house. The agents then entered her house. She was told she could either leave or stay, but if she left she would not be permitted to return so long as they were at the house. She elected to remain, and she was confined to one bedroom, where she remained in the presence of a female IRS agent. The remaining agents searched her home for about eight hours, and then left. The only property which they "seized" and took with them when they left were some 86 old family photographs, many of them taken at Christmas gatherings. Sally was very upset by this forceful intrusion into her home. She missed an entire day of work, and had no idea why the ten agents had entered her house and taken the family photographs.

Later, Sally discovered the real reason for the invasive search. It was not to seize contraband, weapons, drugs or evidence of any crime. Instead, the agents had brought with them a furniture appraiser who went from room to room valuing the beds, sofas, chairs, tables and other personal effects which had been left in the house by her grandmother at the time of her death two and one-half years earlier. The Internal Revenue Service agents believed that Sally's father, the executor, had undervalued the furniture on her grandmother's estate tax return. Sally was not a suspect or in any way involved in the estate tax issues, and her father did not live in the house with her. The criminal investigation of Sally's father was later abandoned by IRS CID.

The extravagant loss of agent time in preparing for and executing this "raid" on the home of an admittedly innocent party who was not a suspect at all was utterly needless. A simple telephone call to Sally would have resulted in consent for the IRS appraiser to inspect and appraise the furniture. Intimidating and intrusive "searches and seizures" are wholly unnecessary to develop valuation cases involving household furnishings. That was, in my opinion, one "search and seizure operation" which should never have been authorized or executed.

Several years later, after I demanded their return, the IRS belatedly gave back the 86 family photographs.

Intrusive Investigative Techniques Should Not Be Used in Routine Criminal Tax Investigations.

I believe, as do many others, that kicking down doors, wearing body armor, carrying automatic weapons and bursting into people's homes with large raiding parties are techniques which should—if used at all—be reserved for investigations of dangerous and violent criminals. IRS CID should do what it was created to do: pursue the enforcement of the internal revenue laws, and it should leave violent and dangerous criminals to the DEA, FBI and local law enforcement authorities. The exceptions to this rule should be very limited.

I would also like to speak briefly on the subject of undercover operations. Some of us also believe that the deceit and misrepresentation which are inherent in undercover investigations and "sting" operations have no proper place in routine criminal tax investigations. Successful criminal tax prosecutions have long been made in this country without them. The IRS does serious and needless damage to its image and relationship with the public—and government as a whole—when it lies to and deceives taxpayers in routine criminal tax investigations.

One Final Appeal: Simplify Our Tax Laws

There is a pervasive national frustration with our federal income tax system, which is far too complex and unintelligible to be fairly and uniformly administered by the IRS. Further, our tax laws cannot be understood or complied with by the great majority of our taxpayers. Indeed, it is my observation that even well-trained tax professionals frequently cannot comprehend and work competently with the In-

ternal Revenue Code. I would respectfully urge that it is time for a major simplification, or some other fundamental change in our income tax laws.

SUPPLEMENTAL STATEMENT OF ROBERT EDWIN DAVIS

Mr. Chairman and members of the committee: I would like to submit for the consideration of the Committee and its staff some additional information which it is hoped may be useful in your deliberations regarding IRS integrity and conduct issues. In this supplement to my oral statement, I will briefly describe some actual matters which have been presented in my practice. They are described in a way which deletes any reference to the names of either individual taxpayers or IRS personnel.

The IRS Inspection Service (IRS-Inspection) and the Office of Inspector General of the Treasury (OIG-Treasury) Should Not Have Exclusive Authority Over IRS Agent Misconduct Issues

My professional experience has taught me to be seriously skeptical about the capacity and resolve of the IRS-Inspection to identify, investigate and fairly evaluate claims made by taxpayers and their representatives regarding IRS agent misconduct and abuse. I will acknowledge at the outset that many taxpayer complaints about IRS agent misconduct are unfounded, or at best, are only partly justified. I am personally satisfied, however, that serious agent misconduct has occurred and does occur today. I am also fully satisfied that IRS-Inspection is not the place to repose the exclusive power and responsibility to investigate and resolve these issues.

It is my opinion that IRS-Inspection investigators are often too close to the very personnel and offices which they are assigned to investigate. Further, some IRS-Inspection investigators seem to feel that their own agency suffers a "black eye" when agent misconduct is identified or confirmed. As a result, they often cannot and do not view taxpayer reports of agent misconduct with objectivity, and do not pursue them with appropriate zeal. I believe that is especially true regarding allegations of misconduct by IRS CID personnel.

Our national experience with police departments across the nation confirms one conclusion: the public does not have confidence that police investigators will objectively investigate allegations of misconduct by their own fellow officers. That public skepticism is justified. Similarly, "letting the IRS investigate its own" has not worked satisfactorily in the past, and it should not be relied upon in the future. I would like to provide the Committee with an example.

IRS-Inspection Punishes Taxpayer Complainant

Several years ago, I represented a taxpayer in a criminal tax case whom I shall call "Joe Smith." Mr. Smith and two of his employees provided me with affidavits asserting serious misconduct on the part of two IRS special agents, including perjury. Because I was skeptical about these claims, I asked these three witnesses whether they would agree to submit to a polygraph examination. Thereafter, Mr. Smith and the two employees individually passed separate polygraph examinations administered by a highly-skilled polygraph operator. I was assured by the polygraph operator that, in his professional opinion, my client and his two employees were telling the truth. The client and I believed that this serious agent misconduct should be presented to the IRS-Inspection. Because a criminal indictment of Mr. Smith was then pending, we negotiated a direct and explicit agreement with the IRS-Inspection: that it would consider the taxpayer's complaint, including photographs, affidavits of Mr. Smith and his staff, as well as the results of three polygraph examinations, but that none of these materials would be disclosed either to the special agents or the Office of the United States Attorney prosecuting the case until after the criminal case was concluded. Not only did the IRS-Inspection accept that information, they also interviewed Mr. Smith and asked for other information as well. All information the IRS-Inspection requested was provided.

Notwithstanding the direct and explicit agreement that the materials provided by Mr. Smith would remain confidential until after the trial, investigators for the IRS-Inspection very promptly violated that agreement, and delivered over all of these materials they had obtained from Mr. Smith to the prosecutors and the special agents in order to aid them in prosecuting Mr. Smith. Thus, the IRS-Inspection served as a conduit of information harmful to the complainant in violation of its clear promise that it would not do so.

That same special agent misconduct was a major issue in the criminal trial of Mr. Smith. Fortunately, the jury correctly assessed the evidence, and found the testimony of Mr. Smith and his two employees was truthful. As a result, Mr. Smith and his codefendant were found to be innocent of the tax crimes charged after less than one hour of jury deliberation.

Both the jury and the polygraph operator believed Mr. Smith and his two employees when they accused the two agents of perjury and other wrongful conduct, yet it is evident that no thorough investigative effort was ever pursued by IRS-Inspection, and apparently no corrective action was ever taken with respect to the two agents. Furthermore, no disciplinary action was taken to punish the IRS-Inspection investigators who promised that the information given to IRS-Inspection would not be given to the special agents and prosecutors until after the trial, and then consciously and deliberately violated that promise. OIG-Treasury also later reviewed the case and met with Mr. Smith. No corrective action was ever taken by OIG-Treasury.

PREPARED STATEMENT OF J. EARL EPSTEIN

Mr. Chairman, my name is Earl Epstein. I am a practicing lawyer and a member of a small law firm in Philadelphia, Pennsylvania. I appreciate the invitation to testify before this Committee.

For the past 35 years I have been engaged in the private practice of tax law and during that period of time have represented numerous taxpayers before the Internal Revenue Service. Of particular importance today is my experience in representing taxpayers who have been subject to collection proceedings by the Collection Division of the Internal Revenue Service.

As I am sure you are aware, the stated "Mission" of the Internal Revenue Service is ". . . to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness." The Services' "Statement of Principles" goes on to say that administration should be conducted "with great courtesy and considerateness . . . should never try to overreach, and should be reasonable within the bounds of law and sound administration." These statements of principle are well publicized and can be found posted in Internal Revenue Service waiting rooms around the country. Unfortunately, taxpayers and their advocates have not always found these principles to be followed with any degree of consistency by the Collection Division.

By these remarks I do not mean to suggest that all Internal Revenue Service Agents harass taxpayers, nor do I mean to suggest that all lie or overreach. Indeed, most IRS personnel that I have dealt with over the years are hardworking, honest people who give their best efforts to administer a confusing and difficult system in a fair and honorable manner. However, it is also clear to me that harassment and overreaching by the Collection Division of the Internal Revenue Service is far from isolated and that. indeed, it could not continue at the rate that I have seen over the years without institutional approval of these practices, whether that be an active approach or by passive approval.

Following your hearings on abuses of the Internal Revenue Service last year I was somewhat chagrined at the contention of the Service that reports of their misbehavior were "exaggerated examples of rare instances of inappropriate actions." This has not been my experience with the Collection Division. In that context I would like to relate to you just a few examples of the kind of unfortunate experiences which I have faced in my years of practice before the Collection Division of the Internal Revenue Service:

- Just a few months ago the Internal Revenue Service filed a lien against a joint bank account held by a husband and wife as tenants by the entireties. The debt for taxes, however, was only that of the husband. Under Tennessee state law, which applies in this instance, the lien is improper and may only be filed against the survivorship interest of the husband, not the present interest of the wife in the joint account. The controlling case issued by the Tennessee Supreme Court was cited to the Collection Division in Memphis. Nevertheless they refused to release the lien, thereby placing a hold on the funds of the wife, my client, which she sorely needed to feed her children. Short of litigation, which was not economically feasible in this instance, nothing could be done to persuade the collection people in Memphis to release the lien.
- About two years ago a Collection Agent, attempting to collect unpaid withholding tax, told my client that he could pay the tax by a check from the attorney representing him at that time and that, if he would do so, he would receive credit against his personal withholding tax liability. After the payment was made as directed, the Collection Agent instead credited the payment to the corporate debt, rather than the personal liability of the taxpayer. When I later brought this matter to the attention of the agent, he denied his promise to credit the personal liability and then, when I confronted him with his oral agree-

ment, he laughed and told me that "it wasn't in writing." This forced my client to pay an additional $30,000 in tax with no recourse under the law.

- A few years ago a Collection Agent appeared in my office and told my secretary that he wanted to consult with me on a personal matter. When I invited him into my office he proceeded to identify himself as an agent of the Collection Division of the Internal Revenue Service and demanded access to my files on one of my clients, a clear violation of the attorney client privilege and clearly not a consultation on a "personal matter." When I asked him why he had lied to my secretary he merely laughed and told me that "sometimes we have to do that." Of course, I threw him out of my office and wrote to the Commissioner of Internal Revenue to report his action. I was later advised by the office of the Commissioner of Internal Revenue that the Agent received an unspecified disciplinary action.
- Some years ago I represented a woman who owned and operated a small beauty shop. The Collection Division had placed a lien on her shop for unpaid taxes of approximately $175 and proceeded to sell her shop equipment at auction, thereby putting her out of business and embarrassing her in front of her customers and friends. At the auction she had displayed to the Collection Agent her canceled check with which she had paid the claimed tax. The agent refused to listen to her and proceeded with the sale. Subsequently I was retained as her counsel. I obtained copies of the computer records of her account from the Internal Revenue Service and was able to show how they had made an erroneous double entry of the tax due on their computer system, thereby making it seem that the taxpayer owed tax when, in fact, this was not the case. Although the Service acknowledged the error to me, they refused to make any effort to make my client whole, even refusing to repay the excess tax which they had collected by the sale of her property on the grounds that the Statute of Limitations had expired on the refund. Since the amount did not justify the expense of a refund action in the United States District Court, and since the law at that time did not permit an award of damages, there was little I could do for her other than to write to her Congressman to describe to him what had occurred. As a result of that letter a private bill was introduced in the House of Representatives which would have permitted her to bring an action against the United States for damages in order to compensate her for her loss. Unfortunately, the bill died in committee. She was never compensated and never received an apology. Her only solace was her ability to display the draft of House Bill to her friends.
- For years a particular Collection Agent in Philadelphia lied to me repeatedly on a number of cases. In order to protect the guilty I will refer to him as Agent "M." I reported his actions to his supervisor on each occasion. On at least one case he was thereafter removed from the case and another agent assigned. Nevertheless Agent "M" appeared again and again on cases I was handling and was obviously never sufficiently reprimanded or dismissed for his conduct.
- Some years ago I represented a taxpayer who had been severely harassed by the Government over a period of some ten years, first by bringing two criminal actions against him, both of which were dismissed by the Court, and then bringing a civil action against him alleging income tax fraud, to collect tax on the very allegations which were the subject of the dismissed criminal suits. The matter was brought to the United States Tax Court.
- In an effort to settle the Tax Court case we submitted an Offer in Compromise along with the required statement of assets and liabilities, executed under penalties of perjury. Our friend, Agent "M" then instituted a criminal investigation against my client but refused to tell me why he had done so, or on what grounds he felt a crime had been committed. In a hearing to quash a subpoena issued against my client a Judge of the United States District Court in Philadelphia forced Agent "M" to disclose the grounds of the criminal investigation. It turned out that Agent "M" had decided on his own that my client had failed to list a number of stocks on the Offer in Compromise submission and therefore proceeded to push the criminal investigation for lying under oath on the Offer form. When informed of the grounds of his investigation I was able to easily produce the stock certificates in the name of my client as custodian for his children under the Uniform Gifts to Minors Act, thereby showing that my client had no legal right to the stocks and did not own them. As a result, my client had not lied under oath on the Offer in Compromise submission. Agent "M" had no compunction about harassing my client on false grounds which could have been easily explained had he been forthright and open in his dealings with me. My client, of course, had to bear the cost of these proceedings.

During the course of the previously described hearing in the District Court, Judge Norma Shapiro Court ordered Agent "M" to cease all efforts at collection and investigation and specifically forbade the agent from any contact with the taxpayer or his family pending a ruling by the Court on the validity of the claim which, of course, she later determined to be invalid. Blatantly ignoring the order of the Court, Agent "M" visited the home of the taxpayer's 80 year old mother at five AM the next morning, threatened her, and demanded entrance to search her garage. When the Court was advised of his actions Judge Shapiro severely reprimanded Agent "M" in open court.

When the civil fraud case was eventually tried in the United States Tax Court, the Court found for the taxpayer and criticized the Internal Revenue Service, stating that the actions of the Government could well have been viewed as a personal vendetta against him. But, of course, that criticism, although welcomed by the taxpayer, did nothing to repair the damage that years of harassment caused him, nor did it compensate him for the cost of two criminal trials, one suppression hearing, and a Tax Court trial.[1]

In 1977 the Congress amended the Consumer Credit Protection Act to include a new section known as the "Fair Debt Collection Practices Act."[2] That Act provides for a standard of conduct for debt collectors of "consumer debt," is designed to prevent "abusive, deceptive, and unfair debt collection practices . . ."[3] and provides for prevent civil penalties and damages for violation of the Act.[4]

Among other things it regulates the kind and place of communications with the debtor[5], defines and prohibits false or misleading representations,[6] and defines and prohibits unfair practices.[7] Unfortunately, the Act does not cover actions by an officer or employee of the United States to the extent that collecting any debt is in the performance of his official duties.[8] This exclusion is unfortunate in that, by implication, it permits an employee of the Internal Revenue Service to engage in "abusive, deceptive and unfair debt collection practices" that is prohibited in the private sector.

I would urge this Committee to give careful consideration to legislation making the Internal Revenue Service subject to the same rules of conduct which the Congress has imposed on the private sector, an interesting sidelight of which is a requirement of annual reports to the Congress assessing the extent to which compliance is being achieved.[9]

ENDNOTES

[1] You may read the report of that affair, and the opinion of the Court in *Apothaker v. Commissioner,* T.C. Memo 1985-445.
[2] Public Law 95-109, 95th Congress; 15 USC § 1692 et seq.
[3] 15 USC § 1692(a).
[4] 15 USC § 1692k.
[5] 15 USC § 1692c.
[6] 15 USC § 1692e.
[7] 15 USC § 1692f.
[8] 15 USC § 1692a(6)(C).
[9] 15 USC § 1692m.

EXHIBIT SUBMITTED BY MR. JARVIS

[EXHIBIT A]

This agreement is made this [9th] day of [November] 1993, by [Billy W. Jarvis] hereinafter known as the informant) and the Internal Revenue Service (hereinafter known as the IRS) by and through the Commissioner of the Internal Revenue Service.

WHEREAS the Informant has possession of, or access to, certain knowledge and information relating to an alleged violation of the Internal Revenue laws; and

WHREREAS the Informant shall provide information in a written form which may lead to the collection of a substantial amount in unpaid taxes from the persons and entities identified on Exhibit "A" hereto (hereinafter "Taxpayers" when not identified by name) for the tax years set forth on said Exhibit "A"; and

WHEREAS the Commissioner of the IRS is authorized, pursuant to Internal Revenue Code (hereinafter IRS) Section 7623 and Treasury Department Order 150-10, to approve payments for information assisting in the detection of violations of federal statues administered and enforced by the IRS:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Informant and the Commissioner agree as follows:

1. The Informant agrees to be debriefed by representatives of the Internal Revenue Service within thirty (30) calendar days of the execution of this agreement regarding the violations of the Internal Revenue laws referenced above. The Informant shall at that time, and thereafter provide information and evidence in a written form consisting of memoranda, letters, books, records, accounting work papers, summaries, tax returns, and any other items that are considered common evidence in matters of tax fraud and other financial crimes.

2. The Informant shall assist the IRS in any criminal investigation or civil examination relating to a violation of the Internal Revenue laws by the taxpayers.

3. The Informant shall, upon reasonable request by the IRS, wear a surveillance device for the purposes of monitoring conversations between the Informant and other persons concerning or related to violations of the Internal Revenue laws and related to the taxpayers.

4. The Informant shall be identified only as "Informant" in any affidavits for search warrants relating to information provided by the Informant.

5. The Informant shall testify before the Tax Court, District Court, Grand Jury, or any other forum investigating such allegations and shall testify at any hearing, trial, administrative proceeding or other judicial proceeding which may arise therefrom.

6. The Informant understands that at some point in the judicial or administrative process the Informant's true identity may become public knowledge. No IRS official will disclose the Informant's identity unless required by law or ordered by a federal judge or magistrate to do so.

7. The IRS will pay to the Informant amounts per the below-outlined schedule of the net taxes, fines and penalties (but not interest) collected from the Taxpayers as a direct result of information provided by the Informant that caused the investigation and resulted in the recovery:

10% of first $10,000,000.00
15% of first $10,000,000.00
20% of first $10,000,000.00
25% of amount over $30,000,000.00
With a maximum reward not to exceed $25 million

No payment shall be made if any of the conditions set forth in this agreement are not met.

(a) Payment to Informant under this paragraph shall not be made until after the taxes, fines, and penalties are finally determined to be owed to the IRS, and have been collected from the Taxpayers by the IRS. For purposes of this Agreement, a final determination of tax liability is defined by Code § 7481, and includes the expiration of the statutory period for a taxpayer to file a claim for refund and to initiate legal proceedings against the United States for said refund; provided, however, if the Taxpayers, or any one or more of them, and IRS enter into a Closing Agreement(s) determining liability, then, with respect to each such Taxpayer, payment to Informant shall be made within a reasonable time following collection of said sums pursuant to the Closing Agreement(s).

(b) In calculating the amount of the reward to be paid to the Informant under the formula described above, the sum of the net taxes, fines and penalties collected from the Taxpayers:

(i) will be reduced by the amount of any corresponding reduction of each taxpayer's taxes for any tax year covered by this Agreement; and

(ii) will be reduced by the amount of any corresponding reduction of any related Taxpayers' taxes for any tax year.

PREPARED STATEMENT OF HON. ORRIN G. HATCH

[APRIL 28, 1998]

Thank you Mr. Chairman. Today we start an important series of hearings in our ongoing oversight of the Internal Revenue Service. For too long, Congress has been lax in their oversight function. The hearings this week illustrate that the Chairman and the Committee are not just paying lip service to the important role we have regarding IRS oversight.

There has been a lot of talk lately about the IRS becoming a service-oriented agency—and I agree with that completely for the bulk of the taxpayer assistance,

compliance, and collection activities. However, we must remember that the IRS is also a law enforcement agency. The Criminal Investigation Division is a very important part of the IRS. Let's not forget that it was through enforcement of the tax code that we were able to put Al Capone in prison—not all tax cheats are benign.

Throughout the debate on IRS reform, we have heard stories of abuses from IRS employees. Because there have been some bad apples in the barrel, it would be easy to get the picture that all IRS employees are somehow mistreating the taxpayers they serve. This is not true. The vast majority of the IRS employees are honest, hard-working individuals doing their best in an unpopular job. In my own state of Utah, we have the top service center in the nation. The criminal investigations and collections divisions are the same.

Are there mistakes being made or abusive situations allowed to occur? The testimony we will hear this week shows us that there are. These abuses are serious and must be stopped. But, what we need to get a clearer picture of is whether the stories we hear today are the exceptions or the rule.

As a law enforcement agency, the IRS must be subject to restrictions on their authority and action to ensure adequate protection of individuals rights. A strong system of checks and balances must be built into any agency responsible for law enforcement activities. This has also been my position relative to law enforcement agencies under the jurisdiction of the Judiciary Committee. But, at the same time, we must be very careful to ensure that any limits placed on the law enforcement—in this case, the IRS—will still allow the agency to conduct thorough, professional, and fair criminal investigations and bring those who are willfully disobeying the law to justice. The millions of honest taxpayers in America should not be rewarded for their honesty by government's allowing those who cheat to get away with it.

I look forward to the testimony we will hear this week. These hearings will help us to ensure that the IRS is enforcing the laws fairly and justly. This is what the American people want. They do not want tax cheats to go free. Several recent polls have shown that as much as the public dislikes the IRS, they hate the tax cheats more. We must make sure that in our quest for a kinder, gentler IRS we do not unduly hamper the important law enforcement role that it plays in our society.

PREPARED STATEMENT OF HON. BOB KERREY

[APRIL 28, 1998]

Mr. Chairman, good news came to American taxpayers on November 5, 1997, when historic IRS reform legislation, based on the work of the bipartisan, bicameral National Commission on Restructuring the IRS, passed the House of Representatives 426-4. However, the bad news has come every day since to the American taxpayers, because, five months later—and eight months since this committee had its first hearings on this matter—IRS reform legislation has not yet passed in the Senate.

While I was encouraged by the general thrust of the proposal that passed out of this committee unanimously last month, I am disappointed in the time it has taken for the Senate to act. We have taken months to pass legislation that is not unlike what the National Commission on Restructuring the IRS's final report recommended, or what was passed by the House of Representatives.

The one major difference is the cost: the Senate bill costs nearly $20 billion over ten years, and nearly half of that is not paid for.

While these additional hearings serve the public good—the American people already know what the IRS is capable of and want and deserve action. These hearings will mean nothing if we do not change the law.

I am not an IRS apologist. It is an agency that has been left to its own devices for far too long—50 some years—and has functioned under a culture that presumes taxpayers are guilty until proven innocent, even though 85% of Americans voluntarily file their taxes willingly and without incident. That is why Congressman Portman and I, and Senator Richard Shelby and I before that, embarked on reform efforts to begin with—we knew there was a dire need to overhaul the IRS.

According to statistics compiled by the National Commission on Restructuring the IRS, the IRS receives roughly 238,000 calls per day—but half of those callers do not get through to an IRS representative. Of the callers that do get through, nearly 19,000 are given wrong information. In addition, the IRS sends out roughly 114,000 notices per day, but does not have an internal management mechanism in place to ensure that what is in those notices is completely accurate.

It would be easy to blame the new IRS Commissioner, Charles Rossotti for these short comings. But the reality of the situation is that he lacks—as did commis-

sioners before him—the statutory authority to make the significant technological, personnel and management changes to correct most of what is wrong with the IRS. And the fault for that lies with Congress.

Congress created the IRS, Mr. Chairman, not the other way around. The IRS is not Sears & Roebuck. We wrote the laws, we changed the tax code, we were responsible for oversight—535 members of Congress serve as the board of directors. It is no wonder we are so eager to point the finger elsewhere. But the American taxpayers are not fooled. When the National Commission on Restructuring the IRS held our field hearings the people who we talked to—taxpayers, accountants, lawyers, IRS employees—all knew that Congress had a big hand in this mess. In fact a majority of them thought Congress was more of a problem than the IRS.

From those hearings and from that experience, language was created for IRS reform legislation that not only benefits American taxpayers by improving IRS service and procedures—but also changes the way our tax laws are written.

In both the House Bill and the Senate Finance Committee legislation there are key Congressional accountability provisions that are vital to reforming the IRS and the way Congress adopts changes to the tax code. Both plans require a Tax Complexity Analysis of all new tax legislation so that every new tax proposal will be evaluated on its complexity and cost for taxpayers and to the IRS before it is voted on in Congress. A Tax Complexity Analysis will discourage tax complexity and stop the tendency of Congress to constantly alter and complicate the tax code without considering the ramifications to taxpayers and the IRS.

The just passed Coverdell Education IRA bill, which would be the 64th tax law added to the books since 1986, is an example of how Congress passes tax law without considering the cost of administering this new tax law and its real impact on the American taxpayers it is supposed to help. The prospects are dizzying.

This legislation allows for tax-free withdrawals from education accounts for room and board, uniforms, transportation expenses or supplementary items or services—but only if these things are required or provided by the school. So this new law will not only require families to have a pretty sophisticated understanding of the law before they take their money out, it also appears that to be on the right side of the law, parents would need to be able to justify their expenditures with detailed records.

The questions then are: Who is going to be checking those records? Will the IRS be asking taxpayers to submit bus fare receipts and clothing bills with their tax returns? Will these receipts be required in an audit situation?

Also, the bill would sunset in 2002. If the President signs this legislation, we will have established three separate rules governing education savings accounts. This year, we have education savings accounts that can be used for higher education but not K-12. Next year and through the year 2002, we have different rules which allow tax-free withdrawals from these accounts. After 2003, K-12 withdrawals could be made, but only from the contributions and earnings from 1999 to 2002.

How will taxpayers know how much of what they take out is tax-free? How will the IRS know? How will the IRS attempt to explain these new rules to taxpayers and who will understand them? Will anyone understand?

Passing legislation like this, while complaining about how the IRS administers the tax code and services the taxpayer is the wrong direction to head. And while Commissioner Rossotti and American taxpayers wait for IRS reform legislation to be passed by this body, they are left to suffer the consequences of an agency in critical need of reform and a Congress that can pass tax law without considering the law's ramifications on taxpayers or the agency.

I am also troubled that there are no taxpayer compliance issues on the agenda for these hearings. We will hear more stories about IRS abuses—which we already know exist—but we will not hear any testimony on how a small percentage of American taxpayers continue to abuse our voluntary system at a great price to the large percentage of Americans who do not.

Willful noncompliance with our nation's tax laws cost taxpayers an estimated $100 billion annually. According to a special Harris Poll conducted on April 15th, "[t]ax evasion is believed by most people to be more widespread than harassment by the IRS." The poll found that by a margin of 50% to 33%, Americans believe more people "get away with not paying all the taxes they should" than pay "all their taxes and are unfairly harassed by the IRS."

Yet we will not hear testimony about tax cheats such as the one reported in the Washington Post on April 23 in which a husband and wife team, who owned a tax business in Maryland, filed 333 fraudulent tax returns and wound up pocketing nearly $700,000—until the IRS caught up with them.

If we are going to shine a spotlight on the problems of our tax system let's shine the light everywhere, not just on the areas that make the most convenient headlines.

The simple fact is, more Americans pay taxes than vote. How the IRS operates and treats taxpayers is a direct reflection of how Americans feel their government treats them—and by most accounts the treatment they receive is not good. Action on legislation will not only put the IRS on the right track and provide American taxpayers with an agency that more resembles a financial institution than a law enforcement entity, it will also go a long way toward repairing the public's perception that we truly are a government of, by and for the people.

PREPARED STATEMENT OF HON. BOB KERREY

[MAY 1, 1998]

Mr. Chairman, I first want to thank you for holding these hearings, and although I will state again for the record my disappointment that these hearings were too one sided in their content and that the witnesses through no fault of their own were woefully unprepared to discuss the legislation we will be debating next week, these hearings will have yielded some positive results.

I want to thank Commissioner Rossotti for not only coming forward and talking to the Committee today after a tough week, but I also want to thank him for agreeing to take on the monumental task of overhauling this agency. I have been at this reform effort since 1995 and can appreciate his task. I think his willingness to serve his country in this manner deserves our full recognition and appreciation.

Mr. Chairman, a consistent theme of your hearings and of our report out of the National Commission on Restructuring the IRS is how can we change the culture of the IRS to make it more taxpayer service oriented? In order for this change of culture to be real and lasting, it will take time. My concern has always been that we hold these hearings, receive a lot of press, the IRS hunkers down for a time, and then they go back to business as usual.

The question, really, before us is how do we make lasting change?

The legislation we reported out a few weeks ago should go a long way towards making sure that the IRS really undergoes a fundamental and permanent change of culture. We want the oversight to be real and lasting.

One of the provisions in the legislation attempts, and maybe it does not go far enough, to consolidate and institutionalize annual Congressional oversight. Nothing changes a bureaucracy more than knowing that Congress will be asking them to come before them annually to discuss problems and prod them in the right direction. *But, Congress should not be exempt from reforms.*

Mr. Chairman, I would like to suggest to you that the Committee consider changes to its own internal bylaws to institutionalize our oversight.

- First, we should require that the Committee meet every year on a set date, say, the second Tuesday of May. The Committee would meet with the Commissioner of the IRS and the Chairman of the Oversight Board to review a select number of the cases that have been referred by the IG, under our IRS restructuring legislation, to the Oversight Board.
- Second, we should give the particular IRS employees a chance to respond to the accusations raised by the IG report. It should be voluntary, but they should have the chance to explain their actions.
- And third, we need to institutionalize Committee follow up to these IG reports. We need to know what actions did the agency take on a specific case? What policies were changed?

Indeed, perhaps we should change the legislation to require a follow up report from the IRS Oversight Board to this Committee.

Mr. Chairman, my hope is that after both of us are long gone from this institution that some future Finance Committee doesn't suddenly wake up to the importance of IRS oversight. One of your greatest legacies for this Committee could be the regular, institutionalized oversight of this important agency. I will do everything in my power to see that this legacy comes to pass.

Thank you.

Attachments.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
April 30, 1998

Hon. DANIEL PATRICK MOYNIHAN,
Ranking Minority Member,
Committee on Finance,
U.S. Senate,
Washington, DC.

Dear Senator Moynihan: A number of witnesses at this week's Senate Finance Committee hearing presented testimony alleging improper actions by the Internal Revenue Service in specific cases. Following this testimony, several members of the Committee noted that the IRS was prohibited by law from responding to these allegations. This letter summarizes the limitations the IRS may face when asked to respond in public to allegations made in specific cases by witnesses who appear before the Committee.

Disclosure Restrictions Under IRC Section 6103. As you are aware, section 6103 of the Internal Revenue Code requires the IRS to protect the confidentiality of tax returns and return information. A witness may discuss his or her own tax information before the Committee in a public hearing; the IRS, however, may not discuss that same case in a public hearing unless the taxpayer specifically authorizes the IRS to do so. Moreover, any given case may involve taxpayer information not only of the witness who appears before the Committee, but also information about other taxpayers; and some cases may involve a multitude of taxpayers. In order to present a case fully, a separate authorization would have to be obtained from each taxpayer whose information is to be discussed.

Rules of Grand Jury Secrecy. Under Rule 6(e) of the Federal Rules of Criminal Procedure, grand jury information may not be disclosed by government personnel except under very limited conditions. In general, the limitations imposed by Rule 6(e) are even more restrictive than section 6103; for example, government personnel who are authorized to receive grand jury information are prohibited even from disclosing the information to their supervisors (unless the supervisor is separately included on the list of authorized personnel). Violations of grand jury secrecy are punishable by imprisonment for criminal contempt of court. The prohibition against disclosure of grand jury information continues even after the investigation is closed, and cannot be waived by the target of the investigation.

Cases Pending in Litigation. Public comment about cases pending in litigation can prejudice the proper resolution of the matter and adversely affect the rights of the parties. If a case is pending in court, it should be resolved through judicial process, according to the rules of evidence and procedure. For this reason, the IRS has maintained a longstanding practice not to discuss publicly cases that are pending in litigation, even if the taxpayer chooses to make public statements about the matter. This policy against public comment about cases pending in litigation effectively precludes the IRS from addressing a number of the matters raised by witnesses before the Committee this week.

In addition to these legal and policy considerations, there are also practical limitations on the IRS' ability to respond in public sessions to allegations regarding the handling of specific cases. The IRS must have time to retrieve and review case files in order to prepare its testimony; this process is complex and time consuming. We believe the IRS generally best serves the needs of congressional oversight by providing a wider systemic perspective on issues that other witnesses may raise in the context of individual cases.

Sincerely,

STUART L. BROWN.

* * * *

INTERNAL REVENUE SERVICE CRIMINAL INVESTIGATION

ASSET SHARING

The asset forfeiture program has become an effective tool in the Federal Government's anti-crime strategy against drug trafficking, money laundering and organized crime. The IRS and other government agencies use the forfeiture laws to dismantle criminal enterprises by seizing and obtaining title to their assets. The Comprehensive Crime Control Act of 1984 created the legal tools to mount an aggressive national forfeiture program. Passage of the Anti-Drug Abuse Acts of 1986 and 1988 enhanced the use of these tools.

The Anti-Drug Abuse Laws of 1986 and 1988 provided IRS with civil and criminal statutes to seize and forfeit assets used in unlawful activities. These assets include the proceeds from drug trafficking and money laundering and any assets used to commit these crimes. For example, persons selling drugs from their home would not only forfeit the drugs and the money they received from their home drug sales; but they would also forfeit their home.

JACKSON, MISSISSIPPI

IRS special agents utilized their financial expertise of following money and identifying assets while working a major narcotics investigation in Jackson, Mississippi. As a result a building, located at 901 N. Parish Street, was seized in the Edward Charles Johnson case. This building, known as Big John's Recreational Center, was seized in late 1994 a part of a federal prosecution of drug charges. IRS-CI found that Johnson intentionally omitted over $390,000 in gross income from his federal income tax return during the years 1988-1991 and attempted to conceal his income by laundering the money through nominee names and businesses.

In a dedication ceremony on August 16, 1995, the former Big John's Recreational Center was presented to the YMCA to be converted into a YMCA Teen Crisis Center as part of the federal government "Weed and Seed" program. The Crisis Center welcomes pregnant teens, teenage dropouts, runaways, teens on drugs or teens facing any other crisis. The former Center was a place neighbors remember because of its noise, fighting shooting and drug dealing. All agencies participating in the investigation were praised for taking a thorn in the side of the neighborhood and turning it into something positive.

MIDDLE JUDICIAL DISTRICT OF FLORIDA

As a result of an OCDETF investigation in the Middle Judicial District of Florida in the early 1990's, numerous individuals were prosecuted. The investigation also resulted in the seizure and forfeiture of a night club and liquor store known as the Inner Circle Lounge. This bar had been utilized by several major narcotics traffickers over the years. A special agent with the IRS—Criminal Investigation in the South Florida District testified at length during the forfeiture trial of the night club. As a result of this testimony, a guilty verdict on the property was received. The verdict was appealed all the way to the Supreme Court. The Supreme Court chose not to hear the appeal and the forfeiture verdict was upheld. The IRS—Criminal Investigation was instrumental in the final disposition of the property. The forfeiture became part of the federally funded "Weed & Seed" program. The government identified "The Quality Life Center of Southwest Florida", which operated out of rented space for over six years and was in desperate need of expanding its operation. The non-profit center offers programs for youths such as martial arts, swimming, tutoring and educational programs all designed to teach self-reliance. In September of 1997, United States Attorney Charles Wilson presented the deed for the property to the director of the Quality Life Center in a ceremony held at the 7500 square foot facility. The director described the new facility as a "an oasis of opportunity, learning and growth."

* * * *

WEST VIRGINIA STATE POLICE ACADEMY TO EXPAND
U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF WEST VIRGINIA

"The Internal Revenue Service, CID's office in West Virginia and the West Virginia State Police have forged one of the most collective working relationships in law enforcement today, "stated United States Attorney Rebecca Betts. "The financial expertise of the Internal Revenue Service, coupled with the experience and manpower of the State Police in drug trafficking cases, has produced some of the Office's finest best drug trafficking cases."

United States Attorney Rebecca A. Betts, Chief, Criminal Investigation Division Barbara A. Hurley, and Roger Burgess, District Director of the Internal Revenue Service for the Virginia/West Virginia District, presented to the West Virginia State Police the title to a 147-acre farm in Mason County, West Virginia. The 147-acre farm was previously owned by Jerry Wandling, a long-time cultivator and trafficker in marijuana in Kanawha, Mason and Patnam Counties. Wandling forfeited the farm to the United States in connection with his conviction in Federal court on charges of money laundering, and the filing of a false Federal tax return.

The State Police were presented the farm based on their active participation in the IRS-led investigation of Jerry Candling, which included assistance in the execution of a financial search warrant on Jerry Wandling's property. Pursuant to a plea agreement to forfeit property worth approximately $500,000 consisting of a Cadillac Allante, a Mercedes Benz 300 E, a houseboat, $6,000 in cash, a 16-acre farm in Mason County, and the 147-acre farm in question.

United States Attorney Betts noted that, with the release of the Wandling farm to the State Police, the Department of Treasury Asset Forfeiture Fund has now distributed an estimated $940,000 in monies and assets to law enforcement agencies throughout West Virginia over the past three years.

In addition to the Wandling case, notable examples of money laundering investigations resulting in significant forfeitures distributed this year include Charles "Tucker" Morgan, also involved in marijuana distribution, Jerry Jenkins, owner of M&J Electric, a coal company supplier, and Edward Laughley, an employee of Eastern Associated Coal, who was convicted for filing false tax returns and conspiracy to defraud the IRS.

"Tracing the proceeds of criminal activities is painstaking work, but well worth the effort," stated Betts.

$32 MILLION FROM BOGUS DIAPER SALES—NORTH FLORIDA

According to United States Attorney Charles Wilson, Middle Judicial District of Florida, these funds "*represented one of the largest health care fraud recoveries in the United States to date.*"

On November 17, 1997, more than $32 million seized from a Kissimmee, Florida businessman in a Medicare fraud scheme was returned to the taxpayers in Orlando, Florida. U.S. Attorney Wilson, accompanied by U.S. Attorney Wilson, accompanied by U.S. Senator Bob Graham, D-Fla. and Ross Lawson, Chief IRS-CID, North Florida District. presented the check to Rose Crum-Johnson. the Regional Administrator for the Health Care Financing Administration in Atlanta, Georgia. Crum-Johnson. whose agency makes policy and helps finance the federal share of Medicare and Medicaid, called it a "*wonderful day*" for taxpayers and said the recovered funds would be used to finance other medical claims in Florida.

The return of the $32 million was the culmination of a three year investigation into the alleged false billing practices of Ben O. Carroll through his Kissimmee, Florida based companies, Bulldog Medical of Kissimmee, Inc. (BMK) and MLC-Geriatric Health Services, Inc. (MLC). Carroll set up these businesses as medical providers through which he marketed incontinent care medical supplies to nursing home patients throughout the limited States. The fraud in the case was based on false claims for reimbursement submitted by Carroll's business, BMK and MLC, to a Medicare insurance carrier. None of the items claimed were legally reimbursable by Medicare.

Medical supplies were sold as a disposable "pouch" for which he charged at least $5 that was nothing more than a .50 cent adult diaper. The items marketed by Carroll's companies cost approximately $4 to $9 and were fraudulently billed to Medicare as prosthetic devices and catheter maintenance supplies for amounts up to $40.

Carroll's businesses had billed Medicare for over $70 million in claims during the period under investigation for which at least $56 million was reimbursed to Carroll's businesses. IRS Special Agents traced money through 69 bank and brokerage accounts used by Carroll. Almost two tons of records were seized from Carroll's businesses and over $32 million was seized from the 12 bank and brokerage accounts.

In 1996, Carroll was charged in Florida and Kansas with mail fraud, interstate transportation, money laundering, witness tampering, conspiracy, aiding and abetting, and criminal forfeiture. Pursuant to a plea agreement, Carroll pled guilty to conspiracy to defraud Medicare of $70,846,973.85 and mail fraud, and agreed to forfeit the $32 million previously seized. He also agreed to pay over an additional $5 million in additional assets. On March 10, 1997, Carroll was sentenced to 10 years in prison without the possibility of parole. He was also ordered to pay $4.1 million in restitution which is over and above the $32 million forfeited.

Gehl case
Northern District of NY

U.S. Attorney Thomas J. Maroney of the Northern District of NY stated that, "*This check underscores the importance of the excellent working relationship between state and local law enforcement and federal agencies.*"

On March 10, 1998, the IRS-Criminal Investigation (IRS-CI) presented the New York State Department of Environmental Conservation (DEC) with a federal asset forfeiture check totaling $381,021.80. This check represented proceeds of laundered money in connection with a joint investigation conducted by the DEC and IRS-CI into the sale of contaminated salmon eggs taken out of Lake Ontario and sold as caviar.

Since 1978 New York State Law has banned the sale of certain Lake Ontario fish because of chemical contaminants, including P.C.B.'s (polychlorinated biphenols), and Mirex, a chlorinated pesticide.

Robert J. Gehl, and his corporation Tempotech Inc., were found guilty of federal violations relating to the illegal sale and transportation of the illegal caviar. On February 10, 1995, Gehl was sentenced to 87 months in prison and fined $250,000.00. As a result of structuring the money received from the sale of illegal caviar, which was traced through numerous bank accounts by IRS special agents, Gehl and Tempotec Inc. were ordered to forfeit $482,400.00.

United States Attorney
U.S. District Court, District of Nevada

SECURITIES FRAUD TAKES NEARLY $50 MILLION OF US INVESTORS MONEY

"Because of the labyrinth of interlocking corporate shells and the intricate flow of funds, this has to ranked as among the most complex of telemarketing scams I've seen"—Leand Prosecutor Christopher Bruno.

Jeffrey Jolcover pleaded guilty to securities fraud and money laundering and he agreed to cooperate with the government in a criminal investigation. Mr. Jolcover and others used a number of complex telemarketing schemes designed to defraud the investing public of millions of dollars between October 1990 and mid-1995. They targeted investors throughout the United States, enticing them to invest between $35 million and $50 million by making, false statements and omitting facts.

Most of the funds raised from defrauded investors were obtained through the sale of interests in wireless cable TV systems in Texas, Nebraska, Alabama and Wisconsin. In one of the schemes, operated from April 1994 through early 1995, 1,579 individuals invested approximately $16.7 million.

None of the victims have received any return on their investments. The attorney for the victims also said he doubts if the victims will recoup their losses.

The money laundering charge stems from an October 1994 incident in which Mr. Jolcover caused $275,000 illegally raised from investors to be deposited into a brokerage account in Reno. A substantial portion of these funds were then transferred to and deposited into an offshore bank account—the transaction was designed to conceal the ownership of the transferred funds.

Mr. Jolcover faces an estimated prison term of 57-71 months. His sentencing is scheduled for June 15 before U.S. District Judge Howard McKibben.

February 19, 1998
Buffalo Assistant U.S. Attorney

TELEMARKETING FRAUD CHEATS 1,700 SENIOR CITIZENS—TWICE

"I hope you will rise this time in prison to think about all the damage you caused by cheating senior citizens, some of them 75 or 80 years old"—U.S. District Judge Richard J. Arcara.

Thomas Pantano and Maurice Jordan operated Capital Punishers Recovery Agency and Western New York Industries, Inc., companies that claimed they could get money back or people who were cheated by sweepstakes telemarketing companies.

Capital Punishers and Western New York would obtain lists of individuals who had sent money to other telemarketing companies. They would promise that, for a fee, they would recover their money. They stated that they knew where the lost money was and had investigators and attorneys on staff to recover the lost money. In fact, they would make no attempt to recover the money, other than sending letters asking for the money back. Over 1,700 victims lost $500 to $3,000 and did not get back the money that was previously lost. Jordan and Pantano scammed victims out of $1.9 million over a two year period.

Mr. Pantano pleaded guilty to mail fraud, conspiracy and halo tax charges (tax evasion and false statements); he owes the Internal Revenue Service $75.000 in taxes on his unreported income from this telemarketing scheme; was sentenced to

16 months in prison and ordered to make restitution of $108,000 to his victims. Mr. Pantano told authorities that he is broke.

Mr. Jordan, who was ordered to make restitution of $474,646 to his victims, pleaded guilty to money laundering, engaging in a monetary transaction in excess of $10,000 which were proceeds of the fraudulent telemarketing activity, conspiracy to commit mail and wire fraud and was sentenced to 52 months in prison.

Fourteen employees of the enterprise have entered guilty pleas. These employees were named in the indictment with Jordan and Pantano or were charged in felony informations.

April 9, 1998
United States Attorney, Central District of California

UNITED STATES TAXPAYERS ARE THE VICTIMS OF TAX SCAM RUN FROM PRISON

Eight people involved in a fraudulent tax scheme run out of the California Men's Colony state prison in San Luis Obispo have pleaded guilty to charges of filing numerous fraudulent federal tax returns.

Inmates and others at the Men's Colony filed false tax returns with the Internal Revenue Service in order to obtain income tax refunds to which they were not entitled. In most cases, the defendants would use the names of other inmates on the tax returns and would create false documents to reflect wages earned and taxes withheld from those wages to support their claim for an income tax refund. Refunds were issued on several of the returns.

Carl Goosman and Shawn Meyers pleaded guilty to a scheme in which they filed approximately nine tax returns with the IRS and sought refunds totaling more than $40.000. In addition, Goosman filed approximately 27 additional returns, claiming refunds of more than $111,500.

In a second part of the scheme, two prisoners and an outside accomplice filed approximately 11 tax returns claiming refunds of nearly $40,000. They received approximately $12,313 in refunds. One of the two prisoners filed an additional 42 returns in which he claimed refunds totaling $136,441.93.

In another scheme, Shannyn Turner and Victor Matchem filed four tax returns claiming refunds of $6,218 and Turner filed an additional 19 returns claiming refunds of $40,000.

In the final case, Norman Hunt filed five false tax returns. All defendants pleaded guilty to making false claims to the United States.

December 1997
United States Attorney, Southern District of Ohio

OPERATOR OF MENTALLY RETARDED GROUPS HOMES CONVICTED FOR THEFT AND MONEY LAUNDERING

"*This was not a matter of bookkeeping errors, this was a systematic effort by Mr. Peterson to steal money. The money Peterson stole could have been used to serve other mentally retarded people*"—Assistant U.S. Attorney David J. Bosley

U.S. Attorney Edmund A. Sargus Jr. said, "*This case demonstrates the need for federal and state cooperation in safeguarding the taxpayer dlollars.*"

Carl Peterson submitted false cost reports to the Ohio Department of Human Services, Medicaid Program for costs relating to the operation of four group homes for mentally retarded residents in Cincinnati Ohio. Mr. Peterson submitted cost reports that included claims for non-existent expenses and for personal expenses that were not actual costs of running the group homes. The fraudulent cost reports caused the Ohio Medicaid Program to pay Mr. Peterson over $400,000 to which he was not entitled. Mr. Peterson also created a false company which enabled him to divert a portion of these stolen funds for his personal use.

IRS agents were able to show that instead of using the subsidies to serve the 40 retarded people in the homes, Mr. Peterson spent the money on himself and friends. He spent $5,282 of the stolen money on beer and wine. He also hired a go-go dancer as a group home consultant and bought a car for another exotic dancer. Mr. Peterson spent $5,807 in Medicaid money to buy and install a stereo sound system for a go-go nightclub. The conclusive evidence convinced a jury to find him guilty of 44 counts of money laundering theft and mail fraud.

October 14, 1997
United States Attorney, District of New Jersey

NUMEROUS CITIZENS ARE VICTIM OF UNLICENSED LAWYER

"Even imprisonment couldn't stifle Alevras' criminal conduct; seven weeks after he was sentenced, he began submitting forged claims for New York state income tax refunds on behalf of fellow inmates"—Assistant U.S. Attorney Andrew Schiff

Chris G. Alevras, a law school graduate but not licensed to practice law, held himself out as an attorney associated with a firm. In 1991, the firms' lawyer suffered a stroke and in 1995 he died. In the name of the law firm, Mr. Alevras carried out a number of fraudulen schemes, representing a total attempted loss of more than $800,000.

Mr. Alevras kept funds that he should have disbursed to or on behalf of clients. In count one, Mr. Alevras was representing the plaintiff in a civil rights lawsuit. He settled the lawsuit without the plaintiff's knowledge and kept the proceeds of $36,000 for himself. It count four of the indictment Mr Alevras represented two persons who were refinancing their home mortgages. The mortgage company transferred funds into an account Mr. Alevras controlled in the name of the deceased attorney but instead of using the monies to pay off the existing mortgages on the homes, Mr. Alevras kept the monies for himself. As a result, the mortgage company's title insurer suffered a loss of approximately $140,000. Other counts in the indictment included separate bank frauds involving Mr. Alevras's negotiation of worthless checks totaling $365,000 causing financial institutions to suffer the loss in $240,000 of that amount and individuals to suffer the loss of the remainder.

Mr. Alevras also filed 31 separate false claims with the IRS seeking income tax refunds totaling approximately $290,000. These counts were dropped in exchange for his plea but were used in considering his sentence. However, in his plea, Mr. Alevras admitted filing a false tax return and receiving $41,478 refund that was issued as a result of the filing of this return.

Mr. Alevras plead guilty and was given an 87 month federal prison sentence.

September 23, 1997
United States Attorney, Eastern District of Pennsylvania

PROMINENT FUNDRAISER TAKES MONEY FROM 500 NONPROFIT ORGANIZATIONS

"This is a very sad day for someone who rose to such influence and promise"—U.S. District Judge Edmund V. Ludwig

John G. Bennett. Jr., president of the Foundation for New Era Philanthropy, was able to get 500 nonprofit organizations to entrust a total of $354 million of their money to him promising to double it in six months with matching contributions from other rich people who wanted to remain anonymous. There were no such anonymous benefactors. The foundation was a pyramid scheme that shuffled money from newer participants to the earlier ones. Mr. Bennett also used $7 million for his private businesses and personal accounts, using some of the cash to buy an expensive home, a luxury car and first-class travel for his family.

Organizations named as victims in the indictment include the American Red Cross, the Salvation Army, the United Way, World Harvest Mission, the Juvenile Diabetes Foundation, Mission to the Americas, the Franklin Institute, the Free Library of Philadelphia, the Detroit Institute of the Arts, the Philadelphia Orchestra and Drexel University.

Mr. Bennett plead no contest to 82 counts of money-laundering, fraud and tax violations. He was sentenced to 12 years in prison and returned $1.5 million to make partial restitution to the charities he defrauded.

February 26, 1998
United States Attorney, Eastern District of Wisconsin

FORMER GUARD HOLDS UP BANK IN GORILLA COSTUME

"Raszkiewicz's gorilla-gram get-up was so convincing that one guard chased down a runaway balloon for Raszkiewicz in the bank's lobby while he was in the vault stealing cash"—Assistant U.S. Attorney Christian Larsen

The FBI could not develop sufficient proof against bank security officer Timothy Raszkiewicz to charge him with a $141,000 bank robbery that occurred in December 1991.

In 1995, IRS criminal investigation division conducted an investigation and found that Timothy Raszkiewicz conducted a financial transaction which involved the pro-

ceeds of the robbery of the First Financial Bank of Milwaukee, Wisconsin. This was done in violation of the money laundering statutes in Title 18 United States Code 1956. According to the Fact of Finding filed with the court, IRS special agent William Gardiner followed the proceeds of a bank robbery which lead to the defendant Timothy Raszkiewicz.

When Mr. Raszkiewicz was arrested in March 1997, he could not be charged with the bank robbery because of a five year statute of limitations on bank robbers, for which the FBI has statutory authority. But he pleaded guilty to money laundering after IRS agents were able to show how he used the money from the robbery to buy rental property and pay for other real estate enterprises.

Mr. Raszkiewicz was sentenced to 6½ years in prison and ordered to pay $35,717 to the First Financial Bank. The government is seeking the forfeiture of about $141,000 from Mr. Raszkiewicz.

January 29, 1997
New Orleans, Louisiana

UNITED STATES ATTORNEY, EASTERN DISTRICT OF LOUISIANA

6,000 LASALLE UNIVERSITY STUDENTS MISLED

"In my opinion, Mr. Kirk, yours has been the most callous of frauds"—Judge Martin Feldman

From 1989 to 1996, the World Christian Church (LaSalle University) grossed $36,000,000 in receipts from students wanting degrees from this mail order university. La Salle was organized under the protection of an alleged church, and its President Thomas Kirk II took a vow of poverty.

LaSalle told students that it was accredited by an organization called the Council on PostSecondary Christian Education. In reality, however, the council was merely a shell organization with a post office box and answering machine. Mr. Kirk admitted that he set up LaSalle under the World Christian Church to avoid regulatory oversight and review. The school made $36 million which Kirk and other officers funneled through the church to avoid personal income tax. Mr. Kirk also claimed a vow of poverty while he had access to a chauffeur-driven limousine, a $1.5 million home, expensive cars and other luxuries.

In order to recruit students Mr. Kirk advertised LaSalle University throughout the USA in publications including USA Today and various other magazines and newspapers. The advertisements stated that La Salle offered degrees at the bachelors, masters and doctorate level in numerous areas including Engineering Computer Science Law Education. It was further part of the scheme to defraud that Kirk hired very few faculty members to grade papers and at times five faculty members graded the work of more than 6,000 students. Often, faculty graders were asked to evaluate work in which they had no qualification. Certain graders admitted that they simply provided a grade based on the volume and weight of the submission.

Mr. Kirk was sentenced to five years in prison and ordered to pay a $125,000 fine. The sentence was the maximum that could have been imposed. He pleaded guilty to tax evasion, conspiring to commit wire fraud, and credit card fraud.

As part of the plea bargain, Mr. Kirk had to forfeit the mansion, and the school had to forfeit more than $10.75 million in cash. That money and any future restitution collected from Mr. Kirk, is to be given to LaSalle students who want refunds. The U.S. Attorney's office is attempting to identify victims of the LaSalle fraud and to aid the court's administration of the $10.75 million restitution fund.

March 25, 1998
Portland, Maine
United States Attorney, District of Maine

FATHER AND SON SENTENCED IN $2 MILLION TAX EVASION CASE THAT LEFT 125 VICTIMS

"An offense like this has more victims than even a violent crime has"—U.S. District Judge D. Brock Hornby

Clifford Levesque was the owner and president of Mainely Payroll, Inc. a company that provided payroll services to approximately 125 client businesses. Mainely Payroll computed employee wages, withholding taxes, retirement contributions and other benefits. Clifford Levesque instructed his employees at Mainely payroll to fill

out the clients' quarterly income and FICA tax withholding forms in pencil. He then selected some of the forms, erased the tax calculations, and entered new figures to report a smaller tax amount due. He kept the difference between the sum his clients gave him to pay their taxes and the figure shown on the forms. The funds he kept were used to pay personal expenses and were also invested in his son, Michael Levesque's business.

When clients began receiving notices of tax deficiencies, Clifford Levesque blamed an "IRS computer glitch."

The total tax loss as a result of the Levesques' criminal activities was approximately 52.3 million. Both Levesque's were ordered to make $2.3 million restitution to 80 individuals. Most of those individuals sat quietly in the back of the Augusta Civic Center and listened as the United States Attorney explained the details of the guilty pleas of the Levesques. They realize that their money is gone and restitution will probably never be made.

Clifford Levesque was sentenced to 5 years and 11 months in prison. Michael Levesque was sentenced to 3 years and 1 month. The IRS waived the penalties for the affected companies but not the taxes.

PREPARED STATEMENT OF HON. CONNIE MACK

[APRIL 28, 1998]

I commend Chairman Roth and the Finance Committee staff, for keeping a spotlight focused on the IRS. The culture of waste, fraud, and abuse that was uncovered when our oversight hearings began last September was no surprise to the millions of taxpayers who have had unpleasant interactions with the IRS.

The arrogant and abusive IRS has been a long time in the making. It is the result of years of inadequate oversight by past IRS Commissioners, by past Treasury Secretaries, and by past Presidents. But the Congress must share in the blame. As the people's voice, eyes, and ears, the Congress through its oversight powers has a crucial role in keeping our society free.

Congress is in the best position to check the misuse of Executive power. Mr. Chairman, by revitalizing the oversight function of this Committee, you are providing a crucial service to our citizen taxpayers. We cannot allow this oversight to wane. The IRS interacts with more Americans than any other government agency in the country, and these interactions are not limited to April 15th. Indeed, taxpayers have greater reason to be upset with Congress than with the IRS at this time of the year, as the record amount of taxes being taken by the federal government, and the complexity of the tax code (caused in large part by the current Administration's obsession with income caps and phase-outs), cannot be blamed on the IRS.

But there is a lot that can be blamed on the IRS. Our hearings last September exposed a rogue agency that was literally out of control. We learned about the illegal use of enforcement statistics to evaluate IRS employee performance—in other words, judging employees based on how much they say the taxpayers owe. We heard testimony that IRS management encourages IRS employees to mislead and lie to taxpayers about their rights, and to fabricate evidence against taxpayers and fellow employees. We learned that IRS management encourages IRS employees to ignore tax code provisions that would result in a favorable adjustment to taxpayers, and to violate the laws concerning taxpayer privacy and the commencement of liens, levies, and seizures. This was shocking. Taxpayers who spend more than $8 billion to run the IRS deserve at least honest service.

But our September hearings revealed that the IRS views itself more as a law enforcer rather than a service provider. We heard that many IRS managers believe that all tax debtors are tax cheats that must be punished. This is hard to accept. IRS employees, of all people, should recognize that our complex tax code can easily lead to innocent mistakes on the part of well-meaning taxpayers. The attitude of antagonism toward the taxpayer must end.

The IRS restructuring and reform bill will begin to correct many of these problems—particularly by increasing taxpayer confidentiality, correcting the presumption that the IRS is always right and the taxpayer always wrong, and treating the Service as it treats the taxpayer by making it pay for its mistakes.

The IRS cannot operate in a vacuum and disregard the rights and needs of taxpayers. Fiscal mismanagement and negligence only undermine taxpayers' faith in the fairness of any tax system. Outright abuse and harassment destroy this faith. We cannot tolerate an IRS that treats regular citizens like violent criminals, and that acts itself as if it were the collections arm of racketeers.

The problems existing at the IRS have been decades in the making, and we cannot expect them to go away without constant vigilance on the part of this Committee. We must continue to provide the oversight necessary to get the IRS back in line.

Attachments.

Insert 496501.eps here.

Insert GPO SCAN 496502–14.eps here.

RESPONSES OF WILLIAM A. MONCRIEF, JR., TO QUESTIONS FROM SENATORS KERREY AND MACK

LAW OFFICES, WILLIAMS & CONNOLLY,
Washington, DC.

May 7, 1998

Hon.WILLIAM V. ROTH, JR.,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Re: Hearings on IRS Misconduct

Dear Chairman Roth: This firm is counsel to William A. Moncrief, Jr., one of the non-government witnesses who testified at last week's hearing concerning the activities of the IRS. During the course of Mr. Moncrief's appearance before the Committee on Finance, Senators Kerrey and Mack asked for his comments on the Internal Revenue Service Restructuring and Reform Act of 1998, Approved by Senate Finance Committee as Substitute for House-Passed Version (H.R. 2676). In particular, Mr. Moncrief was asked during his formal testimony on Wednesday, April, 2-9, 1998, to comment on Titles I, III, and IV of the Finance Committee's version of the legislation. He asked for, and was given, an opportunity to review the legislation and to discuss it with his counsel. This letter constitutes his response to the Senators' questions about the legislation during the hearing.

Title I of the Bill concerns reorganizing the structure and management of the Internal Revenue Service. It would create a six-member board to oversee the management, administration, conduct, direction and supervision of the Service. Three of those members would be affiliated with Treasury or the IRS, and would include: the Secretary or Deputy Secretary of Treasury; the IRS Commissioner; and a representative of the IRS employees' union. A quorum would consist of five members and it would conduct business by a simple majority vote.

If the purpose of these provisions is to provide active independent oversight of the Service and its management, the board would be heavily weighted in favor of the agency and agency interests, rather than taxpayers. Greater independence could be achieved with fewer Treasury-affiliated members or more outside members representing the taxpaying public's interest. As in the corporate world, a board of directors heavily weighted in favor of directors affiliated with management is likely to be a rubber-stamp for management decisions. It is essential that the insular IRS culture that has made it insensitive to the taxpaying public be meaningfully counterbalanced by a board having greater independence from the agency than is contemplated in the current legislation.

In addition, the current legislation contemplates the oversight board's review of "procedures of the Internal Revenue Service relating to financial audits required by law." Under this statutory wording, the IRS could contend that the oversight board lacks jurisdiction to review or even consider procedures relating to criminal tax investigations. The Criminal Investigation Division would be emboldened to feel, therefore, that it has a mandate for treating its procedures and actions as essentially unreviewable. This mandate could subject more, rather than fewer, taxpayers to the kind of stomach-turning investigative overkill suffered by the Moncriefs.

Title I of the Bill would also create the Office of the Taxpayer Advocate under the supervision of the National Taxpayer Advocate. This office would have the power to assist taxpayers by proposing "changes in the administrative practices of the Internal Revenue Service" and by identifying "potential legislative changes which may be appropriate" to mitigate taxpayer problems in dealing with the IRS. This mandate includes a broad catchall to report to the House Ways and Means Committee and the Senate Finance Committee "such other information as the National Taxpayer Advocate may deem advisable." This advisory role does not explicitly include criminal investigations, the use of paid informants, or the use of search warrants. However, the statutory language may be broad enough to include oversight of the Service's "paramilitary" activities. If there is any doubt, Mr. Moncrief would favor clearly giving the National Taxpayer Advocate authority to advise Congress and make legislative recommendations concerning inappropriate uses of such law enforcement tools against nonviolent taxpayers.

Title I also creates the new, independent office of Treasury Inspector General for Tax Administration. Its purpose is to conduct auditing and investigating functions concerning the activities of the Internal Revenue Service. This would be a welcome change, if it results in real investigations of the conduct of IRS personnel not per-

functory whitewashes of agent wrongdoing. One major problem Mr. Moncrief had after the investigation ended was getting the IRS Inspection Division to take a serious, honest, and thorough look at the conduct of the agents who had initiated the massive raid on his business and had pursued the investigation long after it was clear that the Moncriefs had committed no crime. This bill could change all that.

Title III addresses a whole series of new taxpayer protections and rights. This title contains a number of welcome safeguards for taxpayers, but it does not include any protections against making outrageous payments to informers, using search warrants against nonviolent taxpayers in criminal tax cases, or demanding releases from civil liability for illegal searches and other wrongful conduct. Although this title would help some taxpayers, it would not put any restriction on the activities of the Criminal Investigation Division. Mr. Moncrief urges the Committee to place statutory restrictions on the use of search warrants in routine criminal tax investigations involving nonviolent taxpayers and to limit the rewards paid to informers.

The major lesson of the Moncrief investigation is that it was simply too easy for a greedy disgruntled employee to retaliate by generating a full-scale criminal tax investigation on the basis of false or misleading information. Accordingly, the taxpayer rights portion of the legislation should limit the ability of informers to generate criminal investigations of other taxpayers or, at a minimum, require the IRS to investigate such leads thoroughly with less intrusive means than a search warrant. Finally, there is no question that the Committee should include a provision barring the government from resolving any tax case in exchange for a release from statutory or other liability for its investigating agents.

The Internal Revenue Code currently affords IRS criminal investigators broad authority to obtain evidence using summonses. The Service should not be permitted to use more drastic means—such as search warrants—to obtain information from taxpayers without demonstrating that the use of summonses would be unavailing. Finally, court rulings have held that the IRS need not follow its internal procedures for handling investigations. IRS criminal investigators should be required to adhere strictly to internal review procedures and not be permitted routinely to inflict the tools of the Drug War on nonviolent taxpayers. Mr. Moncrief believes that the taxpayer rights portion of the legislation would be substantially improved, if it included such safeguards relating to the handling of criminal tax investigations.

Finally, Mr. Moncrief favors the congressional accountability provisions in Title IV of the Bill. Certainly the Internal Revenue Code is very complicated and these provisions would make simplification a congressional priority. One area, which is not mentioned in the proposed legislation, concerns statutory amendments relating to the conduct of criminal investigations by the IRS. In all such instances, proper respect for taxpayer rights should be an important consideration and the Commissioner should be required, as with all other tax legislation, to report on such matters to the House Committee on Ways and Means and the Senate Committee on Finance. The IRS should not be permitted to urge legislation infringing or limiting taxpayer rights before other Committees in Congress in a way that might result in insufficient consideration of taxpayer rights. Several of the Senators noted in the hearing that the use of the statutory weapons used to fight the Drug War were never intended to be used against nonviolent and non-drug-related taxpayers. Yet Mr. Moncrief's experience shows that they, in fact, are.

We appreciate the opportunity to comment on Mr. Moncrief's behalf on the pending legislation, and, as he stated at the hearing, he greatly appreciates the Committee's time and gracious consideration of his case. We believe that great strides are being made properly to balance taxpayer rights against IRS powers. Please do not hesitate to contact me, if the Committee needs anything further.

Sincerely,

JAMES A. BRUTON, III.

PREPARED STATEMENT OF DANIEL PATRICK MOYNIHAN

Mr. Chairman: We thank you for your continuing commitment to oversight of the Internal Revenue Service (IRS). The United States began as a Nation in protest against taxation that was improper and illegal, and for more than two centuries the issue has never been far from our concerns. However, not until last September had the Finance Committee exercised its oversight jurisdiction. It is our duty to know what is going on in this large public agency, which was founded in 1862 when the Federal Government for the first time imposed an income tax.

Since our hearings last September, the Committee has taken two important actions to address the problems at the IRS. First, we approved unanimously the nomination of Charles O. Rossotti to be Commissioner of Internal Revenue. He was then

confirmed unanimously by the full Senate. I join with the Chairman in congratulating Commissioner Rossotti for his leadership since being sworn in not quite six months ago. That agency needs energy, and Commissioner Rossotti is providing it. He has put in motion a plan to modernize the agency by reorganizing according to type of taxpayer or tax (e.g. individual, small business, large corporate, excise taxes), rather than according to function (e.g. examination, collection, customer service) or geography. Mr. Rossotti has also appointed former Comptroller General Charles Bowsher to perform an independent review of the IRS Inspection Service; established programs to improve the treatment of taxpayers; and has announced a comprehensive plan to improve the IRS Criminal Investigation Division that includes an independent review of its activities and operations to be led by an expert in Federal law enforcement. This is important because, as we are about to hear, there are some real problems in the Criminal Division. I would think today's testimony by the tax attorneys may lead to disciplinary action or even dismissals for some Criminal Division employees.

In addition to getting a strong Commissioner in place, the Committee also reported out, by a vote of 20 to 0, the IRS Restructuring and Reform Act of 1998. We look forward to that legislation's early approval by the Senate and its enactment as soon as possible.

Two further points. We must continue to attend to problems of abuse and other organizational matters. But until we simplify the Internal Revenue Code, we will fail to address the heart of the problem. I continue to be concerned about the effects on taxpayer compliance and on tax administration of increasing tax code complexity resulting from frequent statutory changes enacted by Congress. Mr. Chairman, we would like to work with you to try to reduce tax evasion in the United States, which according to some estimates costs taxpayers more than $100 billion per year. Finally, I thank the Chairman and Commissioner Rossotti for the attention they have devoted to the Year 2000 computer conversion at the IRS. The Chairman's request that $50 million in unspent IRS funds (from fiscal years 1993–1997) be made immediately available to the IRS for reprogramming will help insure that the IRS has the resources necessary to address this problem. I also appreciate the Chairman's willingness to look at the effective dates of provisions in the IRS Reform bill and consider moving some beyond January 1, 2000. The Commissioner has made the Y2K problem his highest priority, as well it should be. This could be a crisis, both in the IRS and in the economy generally. As the Commissioner has said, "twenty-one months from now, there could be 90 million taxpayers who won't get their refunds, and 95% of the revenue stream of the United States could be jeopardized." Economists are concerned about the possibility of worldwide recession, and just last week Andrew Grove, the CEO of Intel Corporation, stated that "the Federal government faces an ugly situation if it does not step up efforts to correct the Year 2000 programming error in its agencies' computers." I am pleased that the Senate is forming the Special Committee on the Year 2000 Technology Problem to oversee the progress both in government and in the private sector on this matter.

I thank the Chairman and look forward to hearing from our witnesses.

PREPARED STATEMENT OF HARRY G. PATSALIDES

Mr. Chairman, members of the Committee, I appear before you today to discuss our investigative work at the Internal Revenue Service (IRS) since the September IRS hearings before this Committee. As the Deputy Assistant Inspector General for Investigations, I have overseen our office's investigations of the IRS, and will discuss some of these recent investigations.

The hearings held before this Committee last September produced several groups of allegations which were referred for investigation to the Treasury Office of Inspector General (OIG). Telephone calls to the OIG hotline more than doubled in response to those hearings. This provided a serious challenge to our investigative resources as the OIG Office of Investigations has the responsibility for investigating all employees at the eight non-law enforcement bureaus, as well as senior level officials and all employees in the Offices of Inspection, Internal Affairs and Chief Counsel at each of the four law enforcement bureaus. The OIG staffing was insufficient to conduct the number of significant cases that warranted investigation. Because of this, many issues had to be returned to the bureaus for action because we lacked the resources to pursue all allegations.

As a result of the September 1997 hearings, this office received four significant allegations involving misconduct by IRS officials. All of the allegations were investigated. However, due to our limited resources, we could only independently conduct one of the investigations, and we had to commit most of our investigators, for five

months, from one of our three regional offices to conduct the investigation. We requested IRS Inspection to conduct two investigations. The fourth investigation was conducted by the OIG, but assistance was needed from three IRS Inspectors and two Bureau of Alcohol, Tobacco, and Firearms (ATF) agents.

The four allegations pertained to a series of complaints involving IRS mismanagement and mistreatment of taxpayers, the use of collection statistics by IRS Collection Division managers to determine employee and group ratings, the establishment of an IRS national policy regarding the use of collection statistics, and reprisals against IRS employees who testified before this Committee.

Because of its large scope, we referred the allegation regarding the questionable use of collection statistics to the IRS Chief Inspector's Office. Subsequently, we reviewed their work with the assistance of experienced investigators on detail to us from the other Treasury law enforcement bureaus—ATF, the U.S. Secret Service, and the U.S. Customs Service.

Our office investigated the allegations made by Jennifer Long regarding the IRS Houston office. This was a substantial investigation involving most of our Houston office.

Senator Nickles in the February 5th Finance Committee hearing, requested that we investigate a group of allegations he received regarding the Internal Revenue Service. We obtained the assistance of investigators from ATF and the IRS to work under OIG supervision on these allegations.

BACKGROUND

The difficulties we encounter in performing our investigative mission are the result of a unique oversight structure. The result, developed over the last 20 years, hampered procedurally and in terms of resources. When the Inspector General Act of 1978 was being debated, the question of having an Inspector General for the Department of the Treasury was discussed extensively. A major item of debate was the Inspector General's access to the programs, activities and functions of the Department of the Treasury law enforcement bureaus: the ATF, the Customs Service, the Secret Service, and IRS. Initially, it was decided not to have a statutory OIG for the Treasury, but this debate continued for the next 10 years.

In the meantime, the Treasury Department established an administrative Inspector General, but it was small and did not include the internal audit and internal investigative units of the four law enforcement bureaus. In 1986, GAO recommended that the Congress establish a statutory Office of Inspector General at the Department of the Treasury. The GAO also suggested that Congress consider special legislative provisions to accommodate the Department's concerns over the possible disclosure of sensitive law enforcement and tax information.

When the Inspector General concept was expanded with the Inspector General Act Amendments of 1988, Congress created a statutory Inspector General in Treasury despite continued concerns about access to the law enforcement bureaus. As with other Departments that handle sensitive matters, Congress acknowledged that some special provisions were required. Accordingly, Congress created a unique structure for the Treasury Inspector General. Under the 1988 Amendments, the internal audit functions of the Bureau of Alcohol, Tobacco and Firearms, the Customs Service and the Secret Service were transferred to the Department of the Treasury's Office of Inspector General. However, those three bureaus retained their internal investigative units. The Office of Inspector General was given oversight, but not supervisory authority, for those internal investigative units.

INVESTIGATIVE PROCESS

With respect to the IRS, the internal audit and investigative functions were retained by the IRS Chief Inspector. As defined by the Congress and the Department's implementing procedures, the Inspector General's authority is carried out through an oversight, as opposed to supervisory, function that determines the degree of compliance with applicable professional standards and with Departmental and Service policies and procedures.

The IRS Office of the Chief Inspector performs one of the most important audit and investigative functions in the Government, but has none of the elements of independence provided to the Presidentially-appointed Inspectors General. The OIG, in order to ensure the most comprehensive coverage, routinely investigates alleged misconduct by senior-level IRS officials (officials in positions at the grade 15 level or higher) and employees in the Office of Inspection and the Office of the Chief Counsel. As the Chief Counsel reports to the General Counsel for the Department of the Treasury, the Office of Inspector General has sole audit and investigative jurisdiction of that office. Usually, the Office of Inspector General refers allegations

involving IRS employees who are in positions at the grade 14 level, and sometimes 15, or below, to the Internal Revenue Service for appropriate action. Since most taxpayer complaints are made against employees at this level, currently, our office has only minor involvement in taxpayer complaints against the IRS.

The result of this action is that the IRS Chief Inspector has primary cognizance for internal audit and investigative activities in the Service. The Chief Inspector pursues his mission through two major organizational components Internal Audit and Internal Security. The IRS Office of the Chief Inspector carries out its duties with approximately 1200 FTEs located in the four IRS regional offices and its National Office.

ORGANIZATIONAL STRUCTURE AND RESOURCES FOR OVERSIGHT COMMITMENTS

Within our Office of Investigations, we have approximately 46 FTEs, which include 33 criminal investigators, to conduct investigations at the twelve Treasury bureaus. With this staffing, we have responsibility for investigating all employees at the eight non-law enforcement bureaus, as well as senior level officials and all employees in the Offices of Inspection, Internal Affairs and Chief Counsel at the four law enforcement bureaus. The Office of Inspector General has an Oversight unit with a current staff of 11 which conducts oversight reviews of the four law enforcement bureau's internal investigative functions, including IRS. In addition, this unit handles most of our special reviews which result from congressional requests and hotline complaints. Currently, almost all of that unit's staffing is devoted to issues involving IRS.

The Treasury OIG's Office of Investigations receives and processes complaints of alleged misconduct involving employees in each of the twelve Treasury bureaus. The complaints are evaluated by Office of Investigations management officials who initiate appropriate investigative action.

When the Office of Inspector General conducts an investigation, an investigative report is issued and referred for prosecutive and/or administrative action. The administrative action imposed on Treasury employees is a management decision. The OIG has neither the authority nor any influence in determining the extent or the nature of the administrative action imposed on Treasury employees.

The OIG Office of Oversight is currently performing a mult bureau review of investigative statistics reported by the four Treasury enforcement bureaus. The objective of the review is to assess the accuracy of investigative statistics sent to the Inspector General by these bureaus with reference to reports of investigation pending management adjudication. The review was structured to determine the dependability of reported statistics and, to a limited extent, to evaluate the adjudication processes at the enforcement bureaus and to identify possible causes for delay.

In dealing with the Internal Revenue Service, this office has encountered its share of case-related problems. The Internal Revenue Service has failed to timely refer complaints to this office, the Internal Revenue Service has been slow to take administrative action against certain IRS employees, and this office has viewed some adjudicative actions taken by the IRS as weak decisions.

Treasury Directive 40-01, Part I, 5, Duties and Responsibilities of Heads of Internal Affairs and Inspection Offices, requires the immediate referral of allegations involving "senior officials" and "employees of Internal Affairs and Inspection Offices." IRS has violated this directive. For example, Inspection referred an allegation of possible misconduct by a senior IRS official to the OIG, seven or more months after they received it. In the interim, Inspection conducted inquiries allegedly to assess the validity of the allegation and determine if a pattern of such conduct existed. As part of that investigation, Inspection questioned the senior official about the employee's conduct.

Another example of the problem was identified during an OIG investigation of an allegation involving a senior Treasury official. An OIG special agent found a note prepared by an IRS senior official. The note showed that two IRS senior officials met with the then-acting Chief Inspector concerning "possible/potential attempts to influence IRS action" by a Departmental official. However, no referral was received by the OIG on this matter.

Subsequently, by memorandum dated approximately 16 months later, an IRS senior official notified the Chief Inspector of allegations regarding possible bribery, graft and conflict of interest involving a Treasury official. The allegations were related to the prior referral made to the acting Chief Inspector. Again, no referral was received by the OIG from the IRS. The allegations eventually were reported to the OIG. This delay, of over two years, in reporting allegations to the OIG, has seriously impacted on the effective and timely resolution of the allegations.

These delays by the Office of the Chief Inspector are not only a disservice to the OIG, but are a disservice to the Treasury Department and to the public we serve.

ACCESS TO TAX INFORMATION

The Office of Inspector General must provide IRS management with a "Notice of Intent" to access tax information, which must be authorized by IRS, before IRS employees will provide the Office of Inspector General with tax information. The following is an example of the difficulties that can result from this procedure.

As part of our review of the Chief Inspector's investigative coverage, we requested two Reports of Investigation that had not been issued. Our request to review both of these reports was initially refused. However, with regard to one of the reports, our efforts to review the report continued for about 30 days, at which time the Chief Inspector indicated that he would allow us to review the report but we could not make copies.

In yet another case, after making arrangements with the Chief Inspector's personnel to review the report, we were informed that our initial Notice of Intent to Access was not sufficient. Further, we were informed that IRS needed another Notice of Intent if we wanted to review the document. In total, it took 45 days to access the report.

INVESTIGATIVE RESULTS

The OIG Office of Investigations has its 33 criminal investigators assigned in six cities to conduct investigations across this country. During FY 97, with these limited investigative resources, the Treasury's OIG Office of Investigations closed a total of 112 cases which resulted in 7 successful prosecutions, 41 administrative actions and the debarment of two contractors. During FY 1995, 1996 and 1997, the Office of Investigations closed a total of 413 cases which resulted in 31 successful prosecutions, 158 administrative actions and the debarment/suspension of 9 contractors.

During these three fiscal years (1995-1997), the Office of Inspector General received a total of 846 complaints related to the IRS, and initiated 111 cases based on these complaints.

We have not been able to conduct needed investigations of all significant allegations involving IRS officials due to our limited investigative staff. Consequently, we had to refer several significant allegations to the IRS Chief Inspector's Office for investigation. The Chief Inspector reports back to us on the results of these investigations.

JENNIFER LONG'S ALLEGATIONS

On October 23, 1997, the Office of Inspector General initiated an investigation regarding the allegations raised to the Senate Finance Committee by IRS employee Jennifer Long.

The OIG reviewed Long's testimony before the Committee and summarized her testimony into eight separate allegations. The OIG limited the scope of its investigation to Long's allegations as they pertain to the IRS Houston District. Although Long's allegations of IRS problems raised before the Committee were broad in nature, the OIG requested Long to provide specific examples of each allegation. An investigative report was prepared that examines in detail, the facts surrounding her specific allegations. The information in the report cannot be extrapolated to the IRS nationwide.

The results of this report relate only to the findings of the examples Long provided to the OIG. For example, the report states that the OIG did not substantiate Long's allegation that IRS Inspection is a tool of the District Director. That statement relates to the Houston District only. The OIG did not examine that issue in any other IRS District. In addition, Long alleged that IRS managers harass and retaliate against IRS employees. Although the report does not substantiate her specific allegations of harassment, it cannot be concluded that IRS managers do not harass or retaliate against employees in the Houston District or in other Districts.

During the investigation of the allegations raised by Jennifer Long, additional issues were identified which have led to possibly six new cases being opened.

As a result of the investigation of Long's allegations, several areas of significant concern were noted by the OIG. IRS management appears to treat managers differently than employees when it pertains to disciplinary action. OIG was advised that IRS managers are allowed to "voluntarily" step down from their management position rather than being involuntarily removed. IRS management stated this is done to save money in case of a lawsuit. An Inspection manager also stated that IRS managers are punished less severely than IRS employees. This manager was of the opinion it is based on human nature since most managers, to have attained

their position, have probably worked well over a long period of time with little or no prior disciplinary action.

Also, if an employee files a grievance, an EEO complaint, or a lawsuit against an IRS manager and the employee wins the settlement, usually no disciplinary action is taken against the manager for allegedly violating the rights of the employee. This process could allow managers the freedom to "harass" an employee since no action is taken against them. This process could give employees the perception that they cannot take any action against a manager who harasses them or retaliates against them.

Employees may feel they are retaliated against by management for reporting complaints to Inspection. A supervisor, Internal Security, Houston, TX, said employees may feel they are routinely ignored after providing the information to Inspection, because the office does not notify the complainant of the action taken by Inspection.

Long alleged that Inspection advises IRS management of allegations provided to them, and who provided the information. When employees make a complaint to Inspection, they usually are not advised whether the information will be investigated by Inspection or referred to IRS management for action. If management addresses the allegation, management does not advise Inspection of the action taken regarding the employee's allegation. If an employee complains about a manager to Inspection and Inspection refers the information to management for action, the manager may be advised of the complaint and the complainant's name. When employees are questioned about their complaints by management, an employee may feel that the manager will retaliate against the employee for complaining. There appears to be confusion on the part of IRS Inspection managers and employees regarding the process of providing complainant's names to IRS management. Several of the Inspection employees interviewed said the complainants' names are provided to management, while others indicated the names are not provided to management.

CONCLUSION

In summary, although there are serious difficulties we work through in performing our investigative mission at the IRS, we believe the Treasury Office of Inspector General has performed a significant amount of investigative work in response to the September 1997 hearings on the IRS.

The Office of Inspector General was able to obtain needed investigative resources from other organizations to meet the challenges. Our efforts have established that there are significant concerns yet to be addressed by the IRS.

Thank you for the opportunity to share my thoughts with you. I will be happy to answer any questions that you may have.

PREPARED STATEMENT OF CHARLES O. ROSSOTTI

Mr. Chairman, I want to thank you for this opportunity to appear before the Committee. I also want to thank you and Senator Moynihan for your leadership in ensuring that our taxpayers are treated fairly and receive quality service.

I remember the Chairman's opening statement at my confirmation hearing last October. You said that the Congress will remain a committed and vigilant ally of the American people, and I am grateful for that resolve.

We understand that the duty of Congress, and specifically the Finance Committee, to exercise its oversight responsibility of the IRS. You must identify problems and weaknesses at the agency. You must ensure that we are doing our job properly, and when we are not, point out the mistakes and suggest remedies to correct them.

Mr. Chairman, at my confirmation hearing, I pledged to bring about fundamental change at the IRS to improve in the broadest sense the way the agency serves the public. I reaffirm that commitment today.

The hearings of the past week further demonstrate that fundamental change at the IRS is needed. I think every American who heard the testimony would be disturbed, and we must change the conditions that lead to the kind of situations described by your witnesses. We must help and better serve taxpayers who comply with their obligations. We must have absolute respect for the rights of all taxpayers. We must insist on fairness and accountability throughout the agency. We must have a quality workplace which provides every employee the positive environment needed for them to be productive and to provide quality service to taxpayers.

As you, Mr. Chairman, and others on the Committee have noted, the overwhelming majority of the IRS workforce are honest, hardworking, dedicated employees and they are just as upset about allegations of misconduct and mistreatment of taxpayers. After all, we are all taxpayers.

And although I am legally prevented from speaking about the individual cases discussed this week, I want to tell the Committee today that the abuse of even one taxpayer or one employee is one too many. I promise you today that we will investigate every allegation and take appropriate disciplinary action where the allegations are substantiated.

The changes I have proposed will require a dramatic break from past practices in every facet of the agency, from internal structure and technology, management roles and responsibilities to recruitment of senior executives. And I stress that in many cases, this top-to-bottom review of operations and modernization requires the help of outside experts.

However, change of this magnitude will take time. There is no magic formula that will instantly solve the IRS' problems and transform it into a quality service organization. Fundamental change will require a comprehensive, systematic and sustained approach. We will make progress, Mr. Chairman, but it will be step by step over a period of years. And we must set priorities as to which problems we first turn our attention. For example, much as we wish we did not have to, we must do whatever is needed to solve the Century Date Change problem, and this massive problem consumes much management time. And while we are changing the IRS and managing the Century Date change, we must also operate the IRS, which even in normal times is a demanding and risky task.

Effecting meaningful change at the IRS will require help from the Congress, especially the IRS restructuring legislation that the Senate will soon debate. The bill reported out of the Finance Committee contains initiatives that are key to our modernization effort, from changing the organizational structure to establishing an oversight board and expanding and enhancing taxpayers' rights and providing essential personnel flexibilities.

On a basic level, reform of this magnitude requires a total rethinking of the IRS's goals and guiding principles which point the way to essential cultural change. The Senate Finance Committee legislation is on target by directing the IRS to revise its mission statement to provide greater emphasis on serving the needs of taxpayers. That service credo must be instilled throughout the agency.

In my testimony before this Committee on January 28, 1998, I articulated the three goals by which we should measure our success at the IRS: first, service to each taxpayer by making filing easier and providing prompt, professional and helpful treatment to those who may owe money; second, service to all taxpayers by ensuring that compliance is fair; and third, productivity through a quality work environment.

In the same testimony, I also stated the five principles that should guide the operations of the modernized IRS: (1) understanding and solving problems from the taxpayer's point of view; (2) expecting managers to be accountable; (3) using balanced measures of performance; (4) fostering open, honest communications; and (5) insisting on total integrity. You may recall the large chart included again as Exhibit 1 which pointed the future direction of the IRS and which has been widely distributed inside the IRS.

This week's hearings directly reinforce the need to integrate these goals and principles throughout the IRS's organization and operations. For example, proper treatment of individual taxpayers means that the Criminal Investigation Division must always follow proper procedures and be ever mindful of the impact of its investigation techniques on those taxpayers. The goal of a quality work environment clearly requires no toleration of discrimination and one which we give the best to each employee so the taxpayers can get the best from each employee.

My challenge is to fit all of these pieces together and to implement—not just articulate—the changes needed to make them a reality.

LAW ENFORCEMENT

Mr. Chairman, as part of my ongoing review and systematic study of all parts of the IRS, I concluded that a particular approach was needed for the agency's specialized law enforcement operations. Because of these units' special authority and unique characteristics as well as their importance to the integrity and functioning of the IRS, I concluded it was important to engage the service of some highly respected experts to assist in my efforts.

First on my list was how the IRS polices itself. The IRS' Inspection Service, consisting of Internal Audit and Internal Security, performs a vital role in protecting the agency against external attempts to corrupt the tax system or threaten its employees. It is also charged with detecting and deterring fraud and abuse in our internal operations.

For example, since FY 1990, the Internal Audit function performed 64 reviews of criminal investigation activities, and from FY 1995 through FY 1997, Internal Security investigations resulted in administrative actions against 173 Criminal Investigation Division employees and eight criminal actions.

In February 1998, former Comptroller General Charles Bowsher accepted my offer to head up an independent review of the Inspection Service to advise me how it can best perform its essential mission. He is being assisted by a staff of experienced auditors and investigators on detail from agencies outside the IRS. When Mr. Bowsher completes his report, which I expect to receive in June, I will make it public and I will be very much guided by his findings and recommendations.

Mr. Bowsher and his team are currently investigating any and all aspects of the Inspection Service including: (1) a review of the organization and methodology used by Inspection to plan and deliver its audits and investigations; (2) the relationship between the Inspection Service and IRS management; and (3) the relationship between the Inspection Service and Treasury Inspector General. The Senate Finance Committee bill will move most of the Inspection Service to the Treasury Department—a plan which Secretary Rubin and I both support—in order to create greater independence. Mr. Bowsher's report will, nevertheless, be quite useful.

For example, Mr. Bowsher's interim reports have already indicated to me that there is a need to improve the process for investigation and action on allegations of misconduct by managers—when those allegations fall short of what would be a criminal offense. As indicated in some of the testimony in your hearings, this problem must be addressed.

As an interim step, I have set up a special panel of officials from outside the IRS to act on possible misconduct cases arising from the misuse of statistics cases that have been under investigation since last fall. This will ensure a fair and objective resolution of these important cases. The panel has recently received the final investigational reports on certain cases and has begun its deliberations.

Mr. Chairman, in an organization as large and geographically dispersed as the IRS, it should some as no surprise that there are instances of inconsistent action with regard to employee discipline.

The legislation reported out of your committee strengthens our actions by clearly establishing removal from one's position for serious misconduct. While I still have some concerns about how this will be administered, the message is clear. Serious wrongdoings involving either a taxpayer or another IRS employee will be dealt with swiftly and harshly.

In addition, in order to improve the fundamental process, I am setting up a disciplinary task force to ensure that the IRS has sufficient processes and procedures in place to identify, evaluate and take consistent and timely action on allegations and complaints against IRS employees. It will also ensure that complaints or allegations of misconduct lodged by employees are identified, evaluated and acted upon in a consistent and timely fashion. This task force will also be advised by an experienced outside expert.

My next action concerned the second major specialized law enforcement unit of the IRS is the Criminal Investigation Division. The ClD's primary mission is to foster voluntary compliance with our tax laws. It plays a vital role by investigating tax evasion, enforcing our tax laws in cases of willful non-compliance and ensuring the overall fairness of the tax system. Our tax system depends on each taxpayer having confidence that neighbors or competitors are paying their fair share of taxes. Although our specific measures of non-compliance are outdated, the current extrapolations indicate that non-compliance of all varieties, commonly known as the "tax gap," now is approximately $195 billion/year, which equates to more than $1600-per-year for every tax return filed by compliant taxpayers. It is critical that the public have confidence in IRS' ability to fight tax evasion and the CID be beyond reproach.

At the direction of Congress, ClD's statutory authority was also expanded to include not only criminal violations of the Internal Revenue Code, but also money laundering and currency reporting violations. The CID also has an important role in combating narcotics trafficking.

The testimony you heard this week raised questions about whether CID is observing taxpayer rights in all instances, and whether appropriate investigative techniques are being employed. Given the enormous importance of the Criminal Investigation Division to the IRS and to the nation, I proposed the following seven-point action plan in conjunction with Secretary Rubin and the Treasury Department.

One, I launched an independent review of the Criminal Investigations Division that will be headed by former FBI and CIA Director William Webster. Judge Webster's integrity and years of experience in Federal law enforcement make him an ideal candidate for the job. He will be assisted by Mr. Michael Shaheen Jr. and a

group of personnel with criminal investigatory and law enforcement experience within the federal government. Mr. Shaheen is Chief Counsel and Deputy Executive Director of the Commission on the Advancement of Federal Law Enforcement. Until recently, he also served as Counsel/Director of the Office of Professional Responsibility of the Department of Justice.

Like the independent evaluation of the IRS Inspection Service being led by Mr. Bowsher, the CID review is part of my overall strategy to assess the full range of IRS operations. This review will examine all aspects of CID—including operations, procedures, case outcomes, case review practices, discipline, and performance measures for managers and employees.

Mr. Chairman, I want to stress that as part of his evaluation, I have asked Judge Webster and his team to examine the cases involving the CID that were brought before the Committee this week.

Two, as I mentioned with regard to the Inspection Service, I support the creation of a new Inspector General for Tax Administration at the Treasury Department. Like all Inspectors General, the new IG for Tax Administration will report directly to Congress and will have the independent authority to investigate all allegations of employee misconduct, including those at the CID.

Three, we will centralize the disciplinary process for CID managers and employees. To ensure appropriate and consistent discipline in CID misconduct cases, a specified group of labor relations experts will review all such cases and recommend disciplinary actions.

Four, we are creating a new complaint system for taxpayers and employees who have complaints about CID investigations. The new Treasury IG for Tax Administration will accomplish this task by performing the following functions.

The IG will designate officials within the office of the IG for Tax Administration to specialize in Criminal Investigations. They will be responsible for tracking and following up on complaints. The CID specialists will be expected to make prompt initial contact with the complainant. The CID specialists will also identify problems, recommend solutions, and track the implementation of these solutions. The IG will also publicize its 1-800 number, fax line, and E-mail address to ensure that taxpayers and employees know how to register complaints about the CID. It will also work with local Taxpayer Advocates and Citizen Advocacy Panels to help achieve this goal. In addition, the IG will establish clear procedures to ensure that taxpayer and employee complaints, including anonymous ones, are taken seriously, properly reviewed, and kept confidential. Penalties will be established for IRS employees who violate confidentiality.

Five, we will institutionalize oversight of CID within Treasury's Office of Enforcement. To the extent permissible by law, the Under Secretary for Enforcement will ensure that ClD's policies and procedures are fully consistent with those of Treasury's other law enforcement bureaus (Customs, Secret Service, and ATF). The Office of Enforcement will conduct periodic reviews to ensure compliance with policies and procedures.

Six, I am requesting that the Joint Committee on Taxation join the Treasury and the IRS in conducting a study of willful noncompliance. This review will examine the sources and extent of taxpayer noncompliance and measures that might address this problem.

Seven, we must promote a culture of openness, quality, and integrity within the CID, consistent with my vision for the entire agency. I have issued a directive to all IRS employees about their obligation to report misconduct, fraud, waste, and abuse, and to guarantee employees freedom from reprisal when they report any misdeeds. The directive will apply, of course, to CID employees, as well as the IRS work force.

In addition, as indicated in the testimony of Mr. Burnham and Ms. Long, there is no reason whatsoever for IRS statistics on investigations, prosecutions and convictions to be suspect. We will work with Justice to reconcile our statistics and we will work with outside groups to publish the maximum amount of statistical data permissible under our disclosure laws.

Mr. Chairman, these actions are focused on near-term problems. Another longterm issue is the proper organization and management structure for CID. Judge Webster's review, together with the study being conducted by Booz Allen, will speak to these larger issues, such as the proper structural placement of CID in the modernized IRS. Thus, we will end up with a thorough review and proper and effective organization and management of CID, both in the short- and long-term.

WORK ENVIRONMENT ISSUES

Mr. Chairman, as a manager with 28 years of experience, I am also deeply troubled and distressed by reports of discrimination and harassment in the IRS workplace. I cannot emphasize enough the importance I place on creating a positive working environment free of racial discrimination, reprisal and harassment, and a work place that insists on accountability and open and honest communications among employees and management.

As I previously stated, one of the three goals for my modernization plan is productivity through a quality work environment. It is key to creating an organization that places a premium on service. From my experience, there is a direct relationship between customer service and employee satisfaction. Those companies and organizations that excel in customer service invariably have employees who feel respected as individuals and valued by management for the contribution they make to the overall service effort.

As we seek new ways to work together in a diverse environment, the IRS reflects many of the challenges and divisions that our society as a whole faces. In a nationwide organization of more than 100,000 employees, some serious incidents occur. I am committed to addressing each and every complaint and I believe the new Inspector General, as proposed by the restructuring legislation, will prove to be an invaluable resource in addressing these concerns. In addition, the new Disciplinary Action Review Task Force that is conducting a study on the complaint and disciplinary processes for all IRS operations should also prove to be helpful in our efforts to combat discrimination and harassment.

The employee complaints are also symptomatic of some broader IRS management and work environment issues. There are specific stresses upon the organization and its work force, such as downsizing, an archaic, heavily-layered organizational structure and antiquated technology. In addition, the IRS' mission is changing from one of pure collection to focusing on taxpayers rights and service. For some, it is not an easy adjustment to make. Our employees are also sensitive to the public criticism of the agency. Most of them had nothing to do with many of the well-publicized cases discussed in these hearings and the media, but nevertheless, many employees internalize this criticism.

Mr. Chairman, there are no quick fixes to these problems, but that does not diminish my commitment to solving them. Once again, I will ensure that each of the cases that were presented during this week's hearings is examined. I have also recently issued guidelines and information on specific aspects of these issues. On April 28, 1998, I issued a memorandum to all IRS employees stating that they have an obligation to report misconduct, fraud, waste and abuse. I made it clear that the IRS has a stringent policy that guarantees employees freedom from reprisal when they report such action. IRS employees were also provided with a description of different reporting avenues.

On April 29, I issued the new performance standard for executives and managers on EEO matters. This new standard comes after consultation with the Departments of Justice and Treasury, and reaffirms our commitment to further progress in eliminating discrimination, promoting employees based on merit and qualifications, and encouraging a diverse workforce and to better the taxpayers.

On a broader scale, the modernization process calls for a management structure and working environment that will over time create a more positive working environment. These fundamental changes include:

> (1) Stronger and direct internal communications; (2) open and direct employee communications with management and the ability of employees to grow to their full potential; (3) a flatter management structure that focuses on broad goals and a team approach; and (4) high-quality and tailored training.

AUDIT SELECTION AND EXECUTION

Mr. Chairman, the final area I want to address is audit selection. First, I stress that I am new to this area. I am not a CPA or a tax attorney; I look at audits much like the average business person does. And there is a distinct advantage in that perspective in that I will not believe that we are doing things right until I feel I can explain it to the average taxpayer.

The audit process and our published statistics are terribly confusing and in some cases, frightening for taxpayers. For example, how many taxpayers know the difference between a correspondence audit and a field audit? Very few, I would guess. Some taxpayers also believe that they are being audited when they receive a letter from the IRS trying to match a 1099 or W-2 form. Math errors also no longer count as audits, when they once did, making historical trends hard to understand.

Once again, it's a classic problem of focus. For too long, the IRS expected taxpayers to understand our terminology and our way of doing things. Mr. Chairman, that business philosophy no longer works. We must demystify the audit process and make it clear that an audit is not a signal that a taxpayer has done anything wrong. An audit should be used only to determine whether taxpayers have paid their correct tax liability; audit selection should never be punitive and audits should never be aimed at generating any specific amount of revenue. And all audits should be conducted in a thoroughly professional manner.

Concerns have also been raised that IRS audits unfairly target the poorest taxpayers. This can be broken down into two parts. As shown in Table 1, included in audit statistics are two special categories of activities, comprising 45% of what the IRS reported last year as audits. One category is audits of taxpayers who filed no return for the year. The second is taxpayers who claimed Earned Income Tax Credits (EITC) an area that Congress has asked the IRS to pay special attention to because of historically high overclaim rates.

For the remaining 55% of audits, which comprise all audits of individual taxpayers who filed returns and did not claim ElTCs, the statistics indicated two important points: One, the chance of a low-income taxpayer being audited is only about 1/2 of 1%, and second, the chance of a taxpayer with income over $100,000 being audited is actually higher.

This set of statistics is a small indicator of the work that needs to be done to provide the public a greater understanding of the IRS compliance activities.

Audit coverage also varies from district to district. This is partly because incomes and compliance vary widely; the population is not homogeneous from district to district. To be fair and efficient, we must audit taxpayer returns that have the greatest probability of error, and they are not uniformly distributed in each district. For example, the eight districts with the consistently highest audit rates had a much larger concentration of business returns than those with low audit rates—7.6 percent of the returns filed versus 5.6 percent. Studies also show that taxpayers tend to be less accurate in reporting their business income-typically due to the absence of third party information reporting—than in reporting wages, interest, dividends and pension. With respect to conduct of individual audits, proper supervision—in which quality standards are the paramount concern—is of the utmost importance. As with all areas of the IRS, the role of the independent IG in investigating any instance of improper influence on an audit, is essential.

I am convinced that the long-term solution to many audit concerns lies in the IRS modernization concept that I have advanced. It will allow better management of compliance resources on a nationwide basis. Its customer focus will stress preventing problems before they occur, such as EITC Awareness Days and Problem Prevention Days. Proper measurement which focus on quality and the taxpayers' viewpoint will be an essential element.

This reorganization, which would streamline the IRS' complex structure, would allow for a better explanation of how we allocate our resources, in terms of activities, personnel and location. Moreover, by designing the IRS around taxpayer groups, we would have a much better mechanisms for managing and controlling compliance activities. I pledge to the Committee that in designing the new organization, we will place great emphasis on the control over audit selection.

CONCLUSION

Mr. Chairman, last October, I commented that the renewed interest of the Congress in IRS management issues is an essential force for positive change. Six months later, I still firmly believe that.

The first round of Senate Finance Committee hearings produced positive results for taxpayers, as I hope these will. The IRS stopped the practice of ranking the 33 districts on enforcement results. We prohibited the use of enforcement results to evaluate employees. We established new procedures requiring a higher level of approval for seizure of property for non-payment of taxes to ensure that collection enforcement tools, such as seizures are only used in appropriate cases. We spent over 8,600 staff days and $3.4 million investigating and auditing the use of enforcement statistics in collections.

We also put more muscle behind the Taxpayer Advocate's recommendations to IRS functions. There is now a new authority to mandate that administrative or procedural changes requested by the Advocate be implemented.

We also created the new Taxpayer Treatment and Service Improvements Program to implement the hundreds of recommendations that will improve our treatment of taxpayers and the service we provide them. I stress again that appropriate disciplinary action will be taken if allegations of misconduct and mistreatment prove true.

Since the September hearings, the IRS has also created a number of initiatives to improve taxpayer service and help taxpayers comply with the law. Last November, we began hosting monthly Problem Solving Days which did not end with the conclusion of filing season but will continue to be offered across the country to help taxpayers clear up longstanding tax problems.

As part of our Saturday Service Days, we also hosted Problem Prevention Days—keeping with my commitment to assist taxpayers in preventing problems—and sponsored an Earned Income Tax Credit Awareness Day to help taxpayers determine if they are eligible for the credit and then show them the correct way to fill out the tax return.

Mr. Chairman, I realize that these are small, first steps addressing some very large problems. Much more needs to be done, and will be done. Fundamentally changing the way the IRS does business is a long-term process requiring a long-term commitment from both the Congress and the IRS. I am here again today to pledge myself to that goal and to our partnership. Thank you.

Attachments.

Modernizing America's Tax Agency

Internal Revenue Service

Help People Comply with Tax Laws, Ensure Fairness of Compliance

Guiding Principles
- Understand and solve problems from taxpayer's point of view
- Expect managers to be accountable - knowledge, responsibility, authority, action
- Use balanced measures of performance
- Foster open, honest communication
- Insist on total integrity

Goals

Service to Each Taxpayer:
- Make filing easier
- Provide first quality service to each taxpayer needing help with his or her return or account
- Provide prompt, professional, helpful treatment to taxpayers in cases where additional taxes may be due

Service to All Taxpayers:
- Increase fairness of compliance
- Increase overall compliance

Productivity Through a Quality Work Environment:
- Increase employee job satisfaction
- Hold agency employment stable while economy grows and service improves

Revamped business practices aimed at understanding, solving and preventing taxpayer problems
- Customer education - work with preparers, volunteers and industry groups - tailored services
- Customer service - easier access; clear responsibility for each account; more attractive electronic filing
- Collections; early help for people with payment problems
- Compliance - more focus on identifying and preventing recurring problems

4 Operating Units

Each dedicated to helping taxpayers with like needs:
Wage and Investment Income
Small Business/Self Employed
Large Business
Employee Plans/Exempt Orgs.
- Services tailored to needs of taxpayers
- Knowledgeable management team who can act to solve problems
- Many fewer layers
- Makes it clear who's responsible
- Pattern similar to private sector
- More independent taxpayer advocates

Management roles with clear responsibility
- Jobs defined in manner similar to private sector
- Broader range of experience, external as well as internal
- Management teams
- Jobs more attractive to internal and external candidates

Balanced measurement of performance
- Tied to goals
- Externally validated
- Financial management tied to plans and goals

New technology
- Central, professional management
- Common standards and architecture
- Partnership among business owners, CIO and private sector contractors
- Flexible evolution driven by business goals

Table 1.—Examinations and Related Activities

FY 1997

Programs	Examinations			Related Activities			
	Correspondence Examinations	District	Total Examinations	Underreported	ASFR	Math Error	Total
	RETURNS						
Earned Income Tax Credit (EITC)	360,101		360,101	903,941	1,264,042		
Dependent Taxpayer Identification Number (TIN) Issue						1,300,000	1,300,000
Nonfiler	217,141	111,701	328,842		392,598		721,440
All Contacts excluding EITC TIN and Nonfilers	226,386	603,914	830,300	931,354			1,761,654
Total	803,628	715,615	1,519,243	931,354	392,598	2,203,941	5,047,136
All Contacts excluding EITC TIN and Nonfilers—Business vs Non-Business Analysis							
Non-Business:							
Under $25,000	292,586	178,985	271,571	319,376			590,947
$25-$100K	61,521	205,034	266,555	434,969			701,524
$100 K & Over	36,659	73,923	110,582	102,620			213,202
Business:							
Under $25,000	8,870	32,887	41,757	10,869			52,626
$25–$100K	13,661	56,094	69,755	34,792			104,547
$100 K & Over	13,089	56,991	70,080	28,728			98,808
All Contracts excluding EITC TIN and Nonfilers	226,386	603,914	830,300	931,354			
						1,761,654	
EITC, Dependent TIN & Nonfiler Tolal	577,242	111,701	688,943	0	392,598	2,203,941	3,285,482
Total	803,628	715,615	1,519,243	931,354	392,598	2,203,941	5,047,136
EITC, Dependent TIN & Nonfiler Total as %	72%	16%	45%	0%	100%	100%	65%

Table 1.—Examinations and Related Activities—Continued

FY 1997

Programs	Examinations			Related Activities			
	Correspondence Examinations	District	Total Examinations	Underreported	ASFR	Math Error	Total
COVERAGE							
Earned Income Tax Credit (EITC)	00.00%	0.00%	0.76%	1.07%			
Dependent Taxpayer Identification Number (TIN) Issue	0.00%	0.00%	0.00%	0.00%	0.00%	1.10%	1.10%
Nonfiler	0.18%	0.09%	0.28%	0.00%	0.33%	0.00%	0.61%
All Contacts excluding EITC TIN and Nonfilers	0.19%	0.51%	0.70%	0.79%	0.00%	0.00%	1.49%
Total	0.68%	0.60%	1.28%	0.79%	0.33%	1.86%	4.26%
All Contacts excluding EITC TIN and Nonfilers—Business vs Non-Business Analysis							
Non-Business:							
Under $25,000	0.16%	0.30%	0.46%	0.54%	0.00%	0.00%	1.01%
$25-$100K	0.13%	0.44%	0.58%	0.94%	0.00%	0.00%	1.52%
$100 K & Over	0.70%	1.41%	2.10%	1.95%	0.00%	0.00%	4.05%
Business:							
Under $25,000	0.36%	1.33%	1.69%	0.44%	0.00%	0.00%	2.14%
$25–$100K	0.38%	1.56%	1.94%	097%	0.00%	0.00%	2.90%
$100 K & Over	0.64%	2.79%	3.43%	1.41%	0.00%	0.00%	4.84%
All Contracts excluding EITC TIN and Nonfilers	0.19%	0.51%	0.70%	0.79%	0.00%	0.00%	1.49%

Glossary

Correspondence Examination: Examinations performed in the Service Center through correspondence.

District: Examinations performed by Revenue Agents and Tax Auditors in the field.

Underreporter: Document matching program that matches third party information (wages, interest, etc.) with the amounts reported on returns.

ASFR (Automated Substitute For Return): Process in which Information Reporting Program (IRP) documents are matched to establish a tax liability where no return is filed and a substitute return is generated by the Service.

Math Error: Process that allows the IRS to correct certain EITC/Dependent TIN errors made by taxpayers on their returns. This does not reflect the 3.73 million math error contacts that are not EITC or Dependent related.

TIN: Taxpayer Identification Number.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, COMMUNICATIONS DIVISION,
Washington, DC.

NEWS RELEASE—4/27/98

SEVEN-POINT PLAN TO IMPROVE THE IRS CRIMINAL INVESTIGATION DIVISION

WASHINGTON—Commissioner Charles O. Rossotti today announced a seven-point plan to improve the Internal Revenue Service's Criminal Investigation Division (CID).

"This is part of my long-term commitment to effect fundamental change at the IRS—to ensure fairness of treatment and give the American people the quality service they deserve," Rossotti said.

The seven-point action plan is part of an ongoing assessment of IRS activities that Rossotti began when he assumed office in November 1997. In February, Rossotti appointed former Comptroller General Charles Bowsher to head an independent review of the IRS Inspection Service. In March, he created a special program to implement the hundreds of recommendations to improve the IRS's treatment of taxpayers and the service it provides them.

In recent months, concerns have been raised about the activities of CID. "The Criminal Investigation Division of the IRS plays a pivital role in fighting tax evasion, and it is critical that its operations be beyond reproach," Rossotti said. "We must address these concerns in a thorough, fair and objective fashion."

"I fully support Commissioner Rossotti's efforts to take aggressive actions to improve the Criminal Investigation Division at the IRS," said Treasury Secretary Robert E. Rubin. "These steps will increase accountability and openness at the IRS and are a part of our continuing commitment to delivering to the American people the IRS they deserve an agency that respects taxpayer rights while collecting the revenue due."

The plan the IRS announced today is attached.

Plan to Improve the Criminal Investigation Division at the IRS

1. Launch an independent review of the Criminal Investigation Division (CID). This effort will be led by an expert in federal law enforcement. Like the independent evaluation of the IRS Inspection Service being led by Charles Bowsher, the former head of the GAO, the CID review is part of the Commissioner's overall strategy to review the full range of IRS operations. This review will examine all aspects of CID-including operations, procedures, case outcomes, case review practices, discipline, and performance measures for managers and employees.

2. Support the creation of a new Inspector General for Tax Administration at the Treasury Department. Like all Inspectors General (IG), the new IG for Tax Administration will report directly to Congress and will have the independent authority to investigate all allegations of employee misconduct, including abuse of force and Equal Employment Opportunity (EEO) complaints.

3. Centralize the disciplinary process for CID managers and employees. To ensure appropriate and consistent discipline in CID misconduct cases, a specified group of labor relations experts will review all CID misconduct cases and recommend disciplinary actions. In addition, Commissioner Rossotti has requested that a new Disciplinary Action Review Task Force conduct a study on the complaint and disciplinary processes across the entire IRS. This study will be conducted with the assistance of a qualified outside expert.

4. Create a new complaint system. The new Disciplinary Action Review Task Force will closely examine all types of complaints and their tracking systems across the IRS, including CID. In addition, the new Treasury IG for Tax Administration will:

- Designate officials within the office of the IG for Tax Administration to specialize in Criminal Investigations. Specialists. who will have a background in law enforcement but cannot be former CID employees. will be responsible for tracking and following up on complaints The CID specialists will be expected to make initial contact with the complainant within three business days of receiving the complaint
- Identify systemic problems within CID. The CID specialists will monitor all databases containing information on special agent performance to identify trends and systemic problems recommend solutions, and track the implementation of those solutions.
- Publicize the IG's 1-800 number, fax line and E-mail address to ensure that taxpayers and employees are aware of how to register complaints about CID. Work

with local Taxpayer Advocates and Citizen Advocacy Panels to help achieve this goal.

- Establish clear procedures to ensure that taxpayer and employee complaints, including anonymous ones, are taken seriously, properly reviewed, and kept confidential. Penalties will be established for IRS employees who violate confidentiality.

5. Institutionalize oversight of CID within Treasury's Office of Enforcement. To the extent permissible by law, the Under Secretary for Enforcement will ensure that ClD's policies and procedures are fully consistent with those of Treasury's other law enforcement bureaus (Customs, Secret Service, and ATF). The Office of Enforcement will conduct periodic reviews to ensure compliance with those policies and procedures.

6. Request that the Joint Committee on Taxation join the Treasury and the IRS in conducting a study of willful noncompliance. This review will examine the sources and extent of taxpayer noncompliance and measures that might address this problem.

7. Promote a culture of openness, quality, and integrity within CID, consistent with Commissioner Rossotti's vision for the entire acency:

- Commissioner Rossotti has issued a directive to all IRS employees about their obligation to report misconduct, fraud, waste, and abuse, and to guarantee employees freedom from reprisal when they report any misdoings. The directive will apply to CID employees, as well as all other IRS employees.
- Education and training programs will provide detailed information to employees and managers—including within CID—on whistleblower policies, procedures and protections.

COMMUNICATIONS

STATEMENT OF TERRY BJERKE

Mr. Chairman and Honorable Members of this Committee. I present this information to you in the hopes that corrective laws and measures would be instituted regarding the IRS that would prevent what happened to me from occurring to anyone else.

I would like to present the attached letter to District Director of IRS, Jack Cheskaty as evidence of my treatment by the IRS.[1]

As you can see the IRS has manufactured bogus liens and spent almost eight years trying to collect over $1,600,000 from me.

Following this letter and the increased pressure being applied by Congress, the IRS wrote me on March 4, 1998 that, "The taxes for '83–'87 should have been discharged in your Chapter 7 Bankruptcy proceeding that was concluded on February 3, 1993," and "We apologize for the inconvenience this matter has caused you." No response to the fact that I never owed the taxes dismissed.

I certainly believe that without Congress' investigation into the Internal Revenue Service this bogus tax lien would still be enforced against me. Therefore I thank you and others in Congress for your efforts as this is finally put behind me.

I would like to propose the following legislative changes:

1. The IRS must serve in person any assessment notice on the taxpayer and not just mail it out to any address they deem appropriate.
2. Any taxpayer should have the right to have a court set aside a lien while the merit of the lien is being pursued not as it currently is. The taxpayer paying off the lien and then suing the IRS for incorrect seizures.
3. The IRS is mandated to adhere to present Bankruptcy Laws and Orders of Discharge, not just continue to collect as they have been doing.
4. Financial compensation should be available to the taxpayer for actions taken by the IRS and any law should be retroactive at least ten years. The basis of 10 years should be applied as that is the current amount of time the IRS has to collect from the taxpayer. This should now be reduced to 6 years.
5. Errors and emissions insurance should be required for all IRS employees which would allow for compensation to the taxpayer for wrongful actions taken by the IRS. Agents without insurance would be terminated.
6. The taxpayer can record any meeting with IRS employees.
7. Internal Revenue employees should be fired for their wrongful actions.

STATEMENT OF SAMUEL J. GRANATA III*

I. IRS RETALIATION AGAINST OVERSIGHT

Background. The IRS has demonstrated its ability to overpower its overseers by instilling fear of retaliation. Over the years, the IRS has investigated members of Congress who held hearings concerning IRS abuses, leaked information to the press to damage reelection bids of congressmen that were openly critical of the agency, investigated the President of the United States, and remarkably, in one case, initiated an investigation of a congressman that led to his wrongful incarceration.[1]

In 1924, Senator James Couzens, chairman of a committee charged with investigating the Bureau of Internal Revenue, was approached while leaving the Senate

[1] Letters and attached tax forms were retained in the committee files.

*Thesis Summary, prepared for Congressional Record. Copyright 1998—All Rights Reserved. Samuel J. Granata III, B.A., Grove City College, 1991; Master's Degree Candidate in Public Policy; Robertson School of Government, Regent University, Virginia Beach, VA.

floor by Bureau Commissioner Blair with notice that he was being assessed $10,861,131.50 in back taxes. Couzens continued his investigation despite the apparent retaliation and later was awarded a refund of $989,883 for his overpayment of taxes by the Board of Tax Appeals.[2] Then, in 1972, Senator Joseph Montoya announced his plan to hold hearings on the agency's performance. Shortly after his announcement, the IRS launched an investigation against Senator Montoya. Commissioner Donald C. Alexander eventually canceled the investigation. Nevertheless, a leak to the press that the agency had begun to investigate the Senator, contributed to Montoya's defeat at the polls in 1976.[3] Also, in 1973, a leak to the press brought into question President Nixon's tax records. This led to an investigation of his 1969 to 1972 tax returns, the results of which became a factor in Nixon's resignation in August of 1974. The investigation concluded that Nixon owed a total of $432,787.13 in back taxes for the years in question.[4]

Another example of retaliation against oversight is the story of Congressman George Hansen. Hansen, an outspoken critic of IRS abuses, narrowly won his 1976 reelection bid after his political opposition charged that irregularities appeared in his tax history. After criminal proceedings over three years, the IRS found no wrongdoing and issued him a $10,000 refund. But, this was not the end of Hansen's troubles with the agency. The Congressman remained an outspoken critic of the IRS, and, in 1980, published an expose called *To Harass Our People: The IRS and Government Abuse of Power*. In 1984, in another apparent case of retaliation, the Congressman was charged with and convicted of one count of "Willful Failure to File" under 18 U.S.C. 1001 for the content of filings under the Ethics in Government Act and fined $40,000. He served out this conviction by spending four years in federal prison over a ten-year time span. Surprisingly, George Hansen was the only congressman ever prosecuted under this law. In 1995, the Supreme Court declared his conviction a wrongful prosecution and summarily vacated the ruling against him. His $40,000 was returned but the ten years of legal fees and loss of income was financially devastating.[5]

Recommendations. These examples show that the agency's extensive powers of investigation can be used to attempt to suppress oversight. Tax historian Charles Adams, in his book *For Good and Evil: The Impact of Taxes on the Course of Civilization,* recommends making Congress and all federal judges immune from the IRS.[6] Congress should adopt this recommendation. Additionally, all congressional staff level employees working on IRS oversight committees—the President, the Vice President, and all others in position of IRS oversight or governance—should be immune from the agency. However, these individuals must still file tax returns. Thus, Congress will need to establish an alternate system of filing tax returns for those declared immune from IRS examination powers.

II. DUE PROCESS AND TRIAL BY JURY

Background. Tax laws and regulations have been written that deny taxpayers due process. The Fifth Amendment to the United States Constitution declares that in criminal cases the accused will not "be deprived of life, liberty, or property, without due process of law," and the Sixth Amendment declares that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury.to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

Nonetheless, the IRS deprives taxpayers of property by pursuing seizure of assets under civil, not criminal actions, thereby avoiding the letter of the Fifth Amendment due process clause and the Sixth Amendment right to trial by jury. Additionally, the provision in the Seventh Amendment for jury trials in common law civil cases is likewise treated as non-applicable since the Tax Code is statutory law, not common law. The result is the IRS seizes property, shuts down businesses, or levies bank accounts without granting taxpayers a trial at all.

Recommendations. Lawmakers should draft legislation granting taxpayers a right to trial by jury where a home, business, means of transportation, bank account, or any other asset over a certain dollar value (to be set by Congress) has been tagged for seizure. Trial by jury mitigates the injustice and conflict of interest where the government is both plaintiff and judge in matters involving the seizure of taxpayers' assets. In such matters, a jury could confirm the legitimacy of actions taken by government, thus strengthening the government's position, or it could act to protect taxpayers against collection actions considered too harsh by the jury. Eventually, lawmakers will need to amend the Constitution to include a specific declaration of the right to trial by jury in property seizure cases prosecuted under civil statutory law.

Also, the main factor determining the applicable standard of justice in a tax case, civil or criminal, is the judgment of the revenue agent. This situation leads to different and arbitrary standards of treatment. Charles Adams recommends decriminalizing the Tax Code in order to establish one civil standard of law enforcement for tax crimes. His suggestion is buttressed by words of the great writers, William Blackstone, and Adam Smith. They wrote that tax evasion is a natural response to excessive taxation, and that governments should not resort to excessive punishments by making capital offenses of common crimes

III. PERSONAL RECOMMENDATIONS

A. *Taxpayer Protection Agency.* Congress should codify legislation that creates an independent body called the Taxpayer Protection Agency. This new agency should be placed under Legislative Branch management, not under Treasury or Executive Branch control. The Taxpayer Protection Agency would provide checks and balances against efforts by the IRS to enforce the Tax Code. It should not be under Treasury management because the Treasury could conceivably benefit financially from overlooking IRS abuse of taxpayers. Although under Legislative Branch control, it could still provide regular reports and recommendations to both the President and Congress. Moreover, like all other IRS overseers, employees of this new agency should file tax returns to Judicial Branch auditors, not to the IRS.

The independence of the Taxpayer Protection Agency from Executive Branch management guarantees its effectiveness. An example of the importance of independence in oversight is the Office of the Comptroller of the Currency's (OCC) relationship with private banking institutions. The OCC, a Treasury Department bureau that is entirely independent of private banks, regularly audits banking institutions' debt collection practices to ensure compliance with consumer protection statutes. If the Department of the Treasury does not trust private banks to police their own debt collection practices, then the Department of the Treasury should not be trusted to solely police its own collections agency, the IRS. The Taxpayer Protection Agency as proposed would be independent of the Treasury chain of command, and therefore, would guarantee taxpayers effective, independent oversight of the IRS.

B. *Political misuse.* If anyone within the IRS seeks to audit any political or religious group, whether it be tax-exempt or not, the agent or management official seeking the audit should first submit a request to the independent Taxpayer Protection Agency. This proposed agency would then track all requests, have approval authority over such requests, and track the conclusion of all approved audits. Congress would receive regular statistical reports on these audits. Furthermore, the Taxpayer Protection Agency should have power to discipline agents or executives found to have political agendas in their selection of audits.

C. *Secrecy and accounting.* Congress should grant the Taxpayer Protection Agency full immunity from the taxpayer privacy restrictions found in the Tax Code, section 6103. Furthermore, this new agency should be given authority to review all IRS internal documents. All requests for information such as freedom of information requests should be submitted to the Taxpayer Protection Agency for review of taxpayer privacy concerns and monitoring of the agency's timeliness in meeting approved requests. Standards should be set for the handling and retention of documents to be enforced by the Taxpayer Protection Agency, and the General Accounting Office should be staffed with accounting specialists whose sole responsibility is the ongoing review of and assistance in producing IRS financial reports and budget requests.

D. *Enemies Lists.* Congress should enact legislation that would make it illegal for the IRS to label taxpayers based upon their political views or to keep lists of taxpayers based upon such information. Also, lawmakers should establish penalties against individuals found to have violated such a law. For enforcement purposes, Congress should charge the independent Taxpayer Protection Agency with the responsibility to investigate and punish this type of activity.

E. *Taxpayer Advocacy.* The legislature should make the Office of Taxpayer Advocate independent of Treasury management.[7] Lawmakers should make this change by creating an advocacy office within the independent Taxpayer Protection Agency. This new agency would use its authority to view all taxpayer confidential data to quickly assist taxpayers with their problems. Also, it would work closely with IRS management to resolve taxpayers' concerns.

F. *Inspection Service.* Having the Department of the Treasury solely police the IRS is a conflict of interest. The Treasury may benefit financially from overlooking IRS abuse of taxpayers. Therefore, the Treasury should not be solely responsible for policing the agency. In order to establish independent and more objective external policing of the IRS, Congress should move the twelve hundred member IRS Inspec-

tion Service to the proposed Taxpayer Protection Agency. The Office of Inspector General should remain under Treasury control; however, two thirds of its staff should move to the Taxpayer Protection Agency as well. Inspectors that move from Treasury management to this new agency would retain their current responsibilities until the new agency determines if a reallocation of responsibilities will take place. The remaining one hundred inspectors working in the Office of Inspector General should remain available to Treasury management for investigations of broad organizational concerns.

G. *Performance measures.* The IRS should establish quality of work and efficiency standards, and monitor quality of performance. In addition to management monitoring, Congress should provide resources to the Taxpayer Protection Agency for monitoring live collection calls and audits, and for joint monitoring with management. Employees should be held accountable to their performance on these audits.

The Internal Revenue Service has already taken steps to halt the improper use of statistics in employee evaluations. Lawmakers should guard against the resurfacing of this problem by passing legislation that prohibits Congress or the IRS from establishing any organization-wide dollar goal under the Government Performance and Reporting Act of 1993. The IRS should be held to the goal that assessments are to be made for the amount the law requires—no more, no less.

H. *Penalties and interest.* Too many penalties exist in the Tax Code. Lawmakers should vastly reduce the number of penalties present in the Code. A reduction would improve the tax complexity problem and would support the IRS's policy that penalties are applied to encourage compliance, not to raise revenues.

In the credit card industry, the law requires creditors to present a bill showing the amount due prior to assessing interest and/or penalties to debtors. Although it should, this standard does not apply to federal tax collections. Often, the amount of interest that taxpayers are required to pay varies greatly depending upon the time it takes the IRS to identify and notify taxpayers of the amount that is owed in back taxes. This practice is too arbitrary. As in the private sector, it should be illegal to assess interest charges for the period between the occurrence of an error and notification of the amount due.

Finally, the IRS is not in the banking business; the agency collects taxes. Congress should place a percentage cap on the total increase that can be added to an assessed underpayment of taxes. In Ancient Israel, the penalty for false swearing was 20 percent. Israelites were required to pay the value of whatever was sworn falsely about plus a fifth of its value.[8] This 20 percent rule would make a good standard for capping the assessment of interest and penalties. For instance, a taxpayer is hypothetically assessed $200,000 dollars for an underpayment of taxes. Applying the rule of 20 percent, this taxpayer's total tax bill from the assessment could never exceed $240,000. This rule would eliminate the horror stories of tax bills growing exponentially until they drive taxpayers into bankruptcy or financial destitution and would retain the agency's ability to assess penalties and interest as a means to encourage accurate and timely compliance.

I. *Bureau of Labor Statistics.* The Bible contains words that apply to the issue of fair tax assessment. First, in the Gospel of Luke, tax collectors approached Jesus with a question. Luke 3:12-13 reads, "And some tax-gatherers also came to be baptized, and they said to him, 'Teacher, what shall we do?' And he said to them, 'Collect no more than what you have been ordered to.'" Second, Proverbs 20:10 reads, "Differing weights and differing measures, both of them are abominable to the Lord." The practice of inflating income and assessment, by whatever means, violates these time-honored principles found in Scripture. Congress should bar the use of statistically generated average expenses to inflate taxpayer income in all cases, except perhaps where a taxpayer refuses to file a tax return altogether.

J. *Extensions and waivers.* H.R. 2676 requires the agency to provide notice to taxpayers of their right to refuse signing a waiver of the statute of limitations. Providing notice is not enough protection. Congress should completely bar this and any other practice involving the waiver of taxpayer rights.

K. *Whipsaw Technique.* The whipsaw technique is the seizure of property belonging to a third party to a tax dispute, issuance of nominee liens (liens against a third party without prior notification), or the levying of a third party's paycheck. This tactic is usually employed when an IRS agent has reason to believe a third party is protecting assets for a delinquent taxpayer or assets were transferred for less than fair consideration. However, David Patnoe, a former revenue officer and current representative of taxpayers before the Collections Division, testified that he represented taxpayers in cases where agents used this technique in an extortive fashion.[9]

On its face, this practice clearly violates a basic tenet of contract law. Under contract law, individuals are not liable for contracts to which they are not a party. Before taking action against third parties, the government should have to prove in Tax

Court the validity of such actions and third parties should enjoy the due process right of trial by jury. Otherwise, the Fair Debt Collection Practices Act (FDCPA) forbids creditors collecting on delinquent accounts on behalf of another party from demanding payment of third parties in an effort to collect debts. FDCPA does not apply to the IRS because the agency collects its own delinquent accounts. However, Congress should draft legislation that directs the IRS to fully comply with all third-party provisions in the Fair Debts Collection Practices Act. Likewise, the courts should recognize the rights of third parties to a delinquent debt specified in this act. Like the adopted provision from the Republican Contract With America that declares Congress should not be exempt from the laws it has passed, so should the IRS not be exempt from existing standards enacted by Congress that apply to private banking institutions' debt collection practices.

L. *Other recommendations.* The Taxpayer Protection Agency should monitor the sale of seized assets to ensure that the IRS receives the minimum bid required before selling seized property. Moreover, certain protocols exist within the IRS for a revenue agent to obtain authorization to use a pseudonym. However, the Senate Finance Committee heard testimony that these protocols are being loosely followed. The result is, at times, taxpayers are unable to get in contact with agents who are handling their cases or they are unable to find and report abusive revenue officers. Therefore, Congress should forbid the use of pseudonyms by revenue officers and should require agent names to be on all written correspondence with taxpayers. Also, legislators should establish maximum allowable length of audits for four distinct entities: small businesses, large corporations, tax exempt organizations, and single or joint filers. Beyond the prescribed maximums set by Congress, investigations should cease and desist. Furthermore, any regulation written by the Internal Revenue Service or change in the Internal Revenue Manual should be approved by Congress prior to implementation.

IV. RESPONSE TO ROTH AMENDMENTS TO H.R. 2676

On March 25, 1998, Senator Roth, Chairman of the Senate Finance Committee, issued a press release with recommendations to alter H.R. 2676.[10] Overall, the recommendations made in this press release are consistent with the recommendations and findings of this study and should be adopted by the Senate. Specifically, Congress should adopt banding of pay scales and bonus compensation plans for cost-saving, innovative ideas. Also, Congress should adopt proportionate liability for joint filers and the provisions for automatic termination of IRS employees where employees have committed perjury, assault and battery, fraudulent destruction of documents to hide wrongdoing, or violations of policies or procedures for the purpose of harming another. However, there are a few items that could be improved.

First, giving the Oversight Board "big picture" authority over law enforcement and collection activities will negate the Board's objectivity over time. Instead, the Oversight Board should be a review board only. Second, Senator Roth's proposal to make the Office of Taxpayer Advocate "more" independent of IRS management does not go far enough to ensure taxpayers get fair and objective assistance. Congress should make this Office completely independent of the Treasury chain of command.

Third, transferring IRS Internal Security and portions of Internal Audit to the Treasury Office of Inspector General will not cure the Internal Revenue Service's self-policing ills. In the current environment, Internal Security is already under Treasury management since the IRS is a Treasury branch agency. Therefore, moving the Inspection Service so that it reports directly to the Office of Inspector General is not a significant change. Furthermore, having the Department of the Treasury solely police the IRS is a conflict of interest. The Treasury may benefit financially from overlooking IRS abuse of taxpayers. Therefore, the Treasury should not be solely responsible for policing the agency. Fourth, following this logic, the Treasury Inspector General should not be solely responsible for tracking and reporting the status of taxpayer complaints; nor should the Inspector General be ultimately responsible for monitoring the use of statistics in performance measures or ensuring that taxpayer rights are not being violated. These types of policing responsibilities should reside in an agency that reports directly to the Legislative Branch, not to the Department of the Treasury.

Fifth, making the burden of proof in tax court rest on the IRS when the agency uses Bureau of Labor statistics to determine a taxpayer's income would be an improvement. However, greater steps should be taken to protect the taxpayer from being assigned income unfairly by the IRS. The practice of using Department of Labor statistics to determine income should be discarded entirely, except perhaps where the taxpayer refuses to file a return altogether. Sixth, the provision to allow civil damages for unauthorized collection actions against third parties falls well

short of the standard established in the Fair Debt Collection Practices Act. In this act, collection actions against anyone other than the debtor are illegal. This standard should also apply to collection of federal taxes. If an agent of the government feels a third party is unfairly sheltering assets for a delinquent taxpayer, the government should have to prove its case before a judge and jury.

And lastly, the provision calling for the suspension of interest and penalties on delinquent taxes after one year if by that time the IRS has not brought the matter to the taxpayer's attention, does not sufficiently protect taxpayers. Senator Christopher Bond (R-Missouri) sponsored Senate Bill S. 1669, which has language that comes closest to the private sector standard that interest should not accrue on the amount due until notice is given of the amount owed. Congress should adopt Christopher Bond's language as found in Senate Bill 1669.[11]

V. AUTHOR'S RECOMMENDED NEW TAXPAYER BILL OF RIGHTS

Congress should draft a new taxpayer bill of rights that includes the following provisions:

1. Taxpayers have a right to know that the Internal Revenue Service cannot intimidate overseers of the agency from performing their oversight responsibilities through retaliatory audits or the threat thereof. All members of the Executive, Congressional, and Judicial Branches involved in oversight of federal income tax collections should be immune from accountability to the IRS. If this policy is adopted, lawmakers will need to arrange an alternate system for processing these members' tax returns.
2. Taxpayers have a right to independent policing of the IRS. Congress should move the twelve hundred member IRS Inspection Service and two thirds of the three hundred member Office of Inspector General—along with Office of Taxpayer Advocate—under the control of a new, independent organization to be established by Congress called the Taxpayer Protection Agency. This agency should report directly to the Legislative Branch of government, not to the Department of the Treasury. It should investigate taxpayer complaints, conduct investigations of IRS personnel, monitor the quality of work done by IRS agents, and provide regular reports to Congress.
3. Taxpayers have a right to a Tax Code that is simple and clear to understand, is not arbitrary as to the amount to be paid, is enforceable without the employment of an army of tax collectors whose salaries consume a large part of public revenues, and is not so intrusive as to require frequent examinations. Congress should not fashion it with many penalties and exorbitant interest rates so that delinquent taxpayers cannot satisfy outstanding tax debts amicably, or with many loopholes and special provisions so that marginal tax rates must be excessively high on taxpayers not benefiting from such provisions. Also, it should be progressive in that it excludes the impoverished from paying the tax and fair in that it treats various classes of taxpayers equally.
4. Taxpayers have a right to a cap on the total amount of additional tax that the IRS can legally place on a delinquent tax debt through penalties and interest or by any other means.
5. Taxpayer's due process rights should include a right to a trial by jury in all cases where a home, business, means of transportation, bank account, or any other asset over a certain dollar value (to be set by Congress) is to be seized. An amendment to the Constitution guaranteeing this right should be submitted to all fifty states for ratification.
6. Taxpayers have a right to restitution for all expenses incurred, including lost wages, when the government falsely accuses the taxpayer, is negligent in its collection practices, or acts in violation of the law.
7. Taxpayers have a right to equal justice under the law. Criminal charges are filed against delinquent taxpayers quite arbitrarily, and in more than half of the Internal Revenue Service's criminal cases, charges filed by the agency were for matters that could have been handled by other government agencies. Legislators should establish one standard of justice in tax matters by decriminalizing the Tax Code. This change will ensure that all classes of taxpayers are treated equally.
8. Taxpayers have a right to know that the IRS rates tax collectors based on their ability to determine the correct amount due, not based upon statistics, such as dollars collected or total number of properties seized.
9. Taxpayers have a right to know the basis in the Tax Code for the disallowance of deductions or increase of income. The Internal Revenue Service should bear the burden of proving the validity of any disallowance or increase in court.

Bureau of Labor statistics should never be considered adequate proof, except perhaps in cases where the taxpayer refuses to file a tax return altogether.

10. Taxpayers have a right not to be asked to waive their rights.

ENDNOTES

[1] Dick Bachert, *The George Story: No Good Deed Goes Unpunished* (visited 10 December 1997) <http://www.techmgmt.com/restore/hensen.htm>

[2] David Burnham, *A Law Unto Itself: Power, Politics, and the IRS* (New York: Random House, 1989). 291–294.

[3] Burnham, 296–302.

[4] Congress, House, Committee on the Judiciary, *Impeachment Inquiry, Book III,* 93rd Cong., 2nd sees., 20 June–23 July 1974, 2242.

[5] Bachert, 1–6.

[6] Charles Adams, *For Good and Evil: the Impact of Taxation on the Course of Civilization* (New York: Madison Books, 1993), 466–467.

[7] Congress, Senate, Committee on Finance, Practices and Procedures of the Internal Revenue Service, 105th Cong., 1st sess., 23, 24, and 25 September 1997, 103 (testimony of Thomas Savage).

[8] Leviticus 6:1–5.

[9] Hearings, supra note 7, at 113 (testimony of David Patnoe).

[10] Congress, Senate, Committee on Finance, *Roth IRS Reform Proposal the "Most Comprehensive Overhaul of the IRS Ever Proposed,"* Press Release No. 105–274, 25 March 1998, <http://www.senate.gov/~finance/105-274.htm>.

[11] Congress, Senate, *The Putting the Taxpayer First Act of 1998,* 105th Cong., 2nd sees., S. 1669, *Congressional Record,* vol. 144, daily ed. (24 February 1998), S924.

STATEMENT OF THE INTERNATIONAL COALITION FOR RELIGIOUS FREEDOM

[SUBMITTED BY PASTOR TONY ALAMO]

The following case is respectfully submitted for inclusion in the record of the U.S. Senate Finance Committee's IRS Oversight Hearings of April 28, 29 and May 1,1998. We bring to your attention the religious persecution case of Pastor Tony Alamo (Bernie LaZar Hoffman). Pastor Alamo was the subject of a twenty-year IRS investigation that violated his First Amendment rights and his rights to due process under the law.

In June of 1994, Pastor Tony Alamo was wrongly convicted of filing a fraudulent income tax return for 1985 in violation of 26 U.S.C. 7206 (count one) and failing to file income tax returns for years 1986 through 1988 (counts two through four), in violation of 26 U.S.C. 7203. He was sentenced to an unduly harsh six-year prison sentence, which will end in December 1998.

Recently released Freedom of Information Act documents (described later in this statement), however, expose that Mr. Alamo, pastor of Alamo Christian Ministries and the Music Square Church (MSC), was the victim of improper conduct by IRS investigators who went to great extremes to secure a conviction against him. New evidence proves that the IRS lied to the jury, withheld information and pertinent documentation from the defense, intimidated witnesses, and relied on unreliable witnesses and anti-religious organizations who had ulterior motives and used the IRS, a supposed neutral government agency, for their own ends. In addition, the IRS staged an unnecessary armed raid on church members, all citizens of this country, who were neither dangerous nor violent and did not possess arms.

IRS unconstitutionally "determined" that Pastor Alamo's church was illegitimate, and took away its tax exemption; and then set out to "prove" that all church income was generated solely for the benefit of one person, Pastor Alamo. The IRS claimed Pastor Alamo was the "owner" of numerous businesses that were, in reality, owned by Music Square Church, and that he had diverted funds from MSC and its businesses for his own use. In order to convict Pastor Alamo, the IRS had to establish that he exerted absolute control over both the members of the church and the businesses of MSC. To prove this theory, the IRS readily adopted the language and theories of the Cult Awareness Network (CAN), an anti-religious organization, that attacked churches and religions that they deemed were illegitimate.

A Brief History

Pastor Alamo and his wife Susan Alamo (now deceased) built a fundamentalist orthodox Christian ministry by going out on the streets of California and preaching to young people, many of whom were drug-addicts, criminals and hippies. In 1969,

they incorporated the Tony and Susan Alamo Foundation (TSAF), which was granted tax-exempt status in 1973. As a result of their work, hundreds of youth turned to the church for salvation, and the church grew quickly. As it grew, Alamo also attracted the attention of CAN. CAN, acting as the "almighty" arbiter of religious correctness, made a fortune "cult-baiting" churches that they did not like, and CAN psychologists charged susceptible parents thousands of dollars to "deprogram" their children. CAN has since been forced into bankruptcy for these practices, after a jury fined them $4 million for religious persecution, and for illegally kidnapping and deprogramming a young man.

While there is nothing illegal, per se, with the government seeking CAN's help, what is illegal is for the government to adopt the perspective of an organization like CAN when that perspective is an attack on constitutionally protected religious practices and beliefs. Over the past several years, major religious scholars and leaders have attested to Pastor Alamo's deep religious convictions, whether or not they agree with these convictions. At the same time CAN's "cult/brainwashing" construct has been debunked by the American Psychological Association, the Society for the Scientific Study of Religion, and the American Sociological Association. Furthermore, the courts have repeatedly ruled that anti-cult and brainwashing testimony is inadmissible in court because it does not rely upon a generally or even substantially accepted scientific foundation.

The IRS, however, never consulted with religious scholars or leaders to determine the validity of Pastor Alamo's religious theories, or, for that matter, CAN's theories. They ignored a Supreme Court decision, which recognized the legitimacy of the church, and they ignored the protections provided to First Amendment activities against government interference or persecution. The IRS completely disregarded the missionary activities of the church, and the fact that the church provided food, clothing, lodging, schooling, and jobs for its followers. The church's good works, such as taking young people off drugs, and giving them faith in God and a reason to live, were also completely ignored. The IRS spent close to 20 years devising (and imaginatively building) a criminal case against Pastor Alamo.

The IRS launched its investigation. They initiated two criminal investigations of Pastor Alamo, the first from 1973 to 1975, and the second from 1977 to 1980, both of which were dropped after no criminal liability was found. Yet this didn't stop the IRS—they initiated a third investigation.

In the middle of its criminal investigation, two former church members, Robert and Carey Miller, hooked up with CAN and attorney Peter Georgiades, and sued the church for supposedly stealing their trucking business. In actuality, the Miller brothers had been forced to leave the church after it was discovered that they embezzled over $100,000 of church money. However, the judge in the trial was apparently taken in by a frenzy of "cult hysteria" and sensationalized hostile news accounts about Pastor Alamo, and took the case to trial without Pastor Alamo or any representatives from the church present. He issued a $1.4 million default judgement against Alamo, stating that church workshops and businesses, including the trucking business, were "alter egos" of Pastor Alamo. In other words, Alamo followers were brainwashed, and Pastor Alamo controlled all church-run activities.

After the trial, the government went a step further, and indicted Alamo for threatening to kidnap the judge in the case, Morris S. Arnold. The government literally based their case on one newspaper account. Alamo had merely publicly criticized the judge's decision, but the media hype was bordering on hysteria. The case went to a jury trial, and Alamo was immediately acquitted.

The Millers were to become the government's key witnesses against Pastor Alamo. And as we will see later, the IRS withheld from the defense its financial relationship with the Millers.

IRS Storms Church Property

With this as a backdrop, in June of 1990, the IRS issued a jeopardy assessment, claiming Pastor Alamo owed $745,000 in personal income tax for the years 1977-1980, and church-owned workshops owed $5 million in corporate income taxes, and $1.6 million in unpaid employees' withholding taxes. On June 11, the IRS seized all church property in Nashville, Tennessee and Alma, Arkansas, including the famous "Alamo of Nashville" store along with its inventory, and all church records. Alamo challenged the IRS in court and Judge Thomas Wiseman abated the seizure, and ordered the merchandise and records resumed. However, instead of resuming the property, the IRS turned everything over to the Miller's attorney, Peter Georgiades, toward the $1.4 million judgement.

Even though more than a million dollars worth of property and merchandise had already been seized, the IRS staged a second raid. On February 13, 1991, 60 U.S. Marshals with guns drawn, accompanied by Peter Georgiades and IRS officials,

stormed the church's Alma and Georgia Ridge, Arkansas communities, where over 200 families lived. They confiscated their homes, businesses, personal possessions, and all church property, including two large office buildings containing all church records from beginning of ministry to the present. An estimated $50 million worth of property was taken. Several hundred families, including countless young children, were thrown out on the street, with only what they could carry. They lost all their personal belongings—their private homes, furniture, clothing, all their cash, food, toys, school materials, etc. One can only speculate that the government viewed these children as "worthless brainwashed zombies" who did not deserve a roof over their heads.

The church made seven legal attempts in five different courts to get back their records in order to properly defend Pastor Alamo. They failed. The government disingenuously claimed that the church abandoned the records. However, church members were not allowed back on church property to get the records. Armed guards were at the gates, telephone lines were cut, and offices were sealed.

Newly Discovered Documents Expose IRS Abuses

The Alamo Christian Churches recently received approximately 40,000 pages of IRS documents through the discovery process and through FOIA requests.

1. New IRS documents make plain that the IRS prosecuted Alamo because they decided he was a "cult" leader and not a real religious leader.

The IRS attitude toward Alamo was made clear at an IRS policy meeting of 617190. IRS Group Manager Ed Campbell counseled 16 fellow agents on how to deal with "cults" and on "the nature of Tony Alamo's organization's followers as to their cult, brainwashing nature" (page 24003).

The IRS issued a "Background" paper on the Tony and Susan Alamo Foundation which stated: "Through brainwashing, Tony and Susan Alamo required the associates to provide increasing amounts of free services to the Foundation . . . " (p. 53255).

IRS documents reference meetings between IRS agents and Cynthia Kisser, chair of CAN, Pricilla Coates, Director of Los Angeles Chapter of the Cult Awareness Network, and the Cult Committee of the Jewish Federation (p. 51399, 51506, 52390-2, 52395-6, 52387-8 -9, 51419-61, 58423-58425).

By the time the trial began, however, the IRS obviously recognized the First Amendment implications of their cult-baiting, and agreed to have the term "cult" stricken from the court records. Nonetheless, the cult/brainwashing construct dominated the trial and was used by the probation office to write Pastor Alamo's Pre-Sentence Investigation report (PSI). The probation officer inserted all the unsubstantiated allegations made against Pastor Alamo at the trial by members of CAN. The PSI has plagued Alamo through the prison system. He has been de-facto jailed for crimes he has never been accused of or tried for in a court of law. He has been denied parole because of allegations in the PSI, and prison authorities refused to move him to a prison camp because of the PSI.

2. Newly discovered documents prove that the prosecutor knowingly concealed exculpatory material that he had a duty to disclose.

Robert and Carey Miller, crucial government witnesses, submitted applications to the IRS for reward money. Applicants submitted Form 211 to supply information to the IRS in exchange for a portion of the taxes, penalties and fines recovered as a result. The prosecutor, Assistant US Attorney, J. Christopher Belcher, failed to notify the defense. If the jury knew that the Millers were getting $21,000 each for assisting in Alamo's conviction, they may have listened to the brother's testimony differently, and would have gotten a more complete picture of why they were testifying. As it was, the jury had mixed feelings, and took three days before issuing a verdict.

During the trial, Prosecutor Belcher knowingly elicited perjurious material and misleading testimony from these government witnesses. Belcher asked Robert Miller and the two IRS agents responsible for the investigation, Larry Howlett and Charles Beuregard, whether they knew of any deals made with government witnesses. All three witnesses denied these accusations. This testimony was false. All the witnesses knew it was false, and the prosecutor knew it was false.

3. New documents expose that the government misled the jury by portraying Alamo as an obstructionist in its efforts to investigate him and the MSC for withholding of the church's financial ledgers. New documents show that the IRS agents lied and were in possession of the ledgers long before the trial.

During the trial, Prosecutor Belcher asked Agent Howlett if he ever received any ledgers from MSC. Howlett answered, "No, sir." Newly discovered documents proved

that the IRS had recovered these records from the church. Howlett knew this to be true, and Prosecutor Belcher actually had these ledgers in his custody before the trial. Yet, the government portrayed Alamo as attempting to derail its investigation by the fact that the IRS was unable to retrieve ledgers from the church. Judge McCalla chose to believe IRS agents and used Alamo's supposed failure to turn over these ledgers as the major reason for sentencing him to the maximum time allowed.

A notation in Howlett's IRS Case Chronology Record February 22, 1991 reads: "There are more ledgers than expected . . . .To safeguard all the ledgers and journals, we moved all ledgers and journals . . . and sent them to the IRS office and stored them in their property room" (p. 51380-2).

In a July 21, 1993, IRS memorandum written by Howlett to case file, he indicated possession of MSC ledgers and that Prosecutor Belcher knew about them: "I explained that there was one such box, and that was box 16 containing the general ledgers. I mentioned that I was through with ledger [sic] and far as I was concerned they could take them, however, they were under the control of Chris Belcher."

In an October 3, 1990 letter to Alamo Attomey Neal Pendergraft, Howlett acknowledged that the ledgers had been received for some church activities. Alamo had no knowledge of such an agreement. Documents further show that arrangements to move the records were done with the assistance of US Marshall Rick Bean.

4. New evidence reveals that the prosecutor failed to turn over IRS memoranda of previous investigations of Alamo and MSC, which were discontinued for lack of wrongdoing.

The IRS did not reveal information of prior IRS investigations of Pastor Alamo that should have been turned over in pre-trial discovery. Such evidence would have allowed the defense to explore why previous investigations did not produce formal charges of criminal or civil liability and would have supported the defense's allegations of government harassment.

The IRS also did not reveal a 9/23/82 memorandum by the Civil Rights Division of DOJ that a DOJ/FBI criminal investigation of Alamo for involuntary servitude was dropped after concluding there was no basis to pursue criminal charges.

5. New evidence exposes that the IRS hid pertinent interviews with Alamo accountants from the defense.

The IRS conducted two interviews with Alamo's accountant in 1981. IRS notes establish that the accountant knew of no wrongdoing. On 3/6/81, IRS Agents Erickson and Clarke interviewed two New York CPA's, Arthur Appleman and A.B. Wiener, who had worked on Alamo's financial books. Appleman stated that during the course of the firm's work, nothing was brought to his attention indicating that Alamo was paying personal expenses from Foundation funds, and that "nothing was brought to his attention regarding improper handling of cash receipts." While not directly related to the years in questions, this could have helped Alamo's attorney prepare more thoroughly for cross-examination of former church members and in terms of possible witnesses for the trial.

IRS documents show that on 10/01/90, Agent Dan Brautweiller contacted CPA Bill Bealle who had done work for the Tony and Susan Alamo Foundation (TSAF). Bealle stated that he did not feel Alamo was required to file with the IRS. The content of this interview was withheld from the defense.

The IRS quotes from an interview with former TSAF attorney Stanley Rader: "We considered [church] associates to be volunteers; and businesses were rehabilitation facilities and Form 990-T would not be required."

6. Agent's Howlett and Beauregard testified that no deals were made with any witnesses. Besides Robert and Carey Miller, at least three other witnesses who agreed to cooperate with the IRS filed for reward money.

These witnesses included, Chris Coie, the estranged daughter of Susan Alamo. IRS documents reveal that the IRS worked with Chris Cole for 17 years.

Another witness was Elizabeth Caldwell (a former wife of Alamo). Howlett wrote of his efforts to retrieve her furniture, which had been taken along with hundreds of others when the IRS raided Georgia Ridge (p. 23877).

IRS notes reveal they gave immunity to Diana Williams at her grand jury testimony in the western District of Tennessee, March 10, 1993 (p. 51369-71). Williams testified against Pastor Alamo.

7. IRS documents expose that agents knew, but did not disclose, that information they received from former disgruntled church members was less than reliable.

Howlett wrote that the [church's] Tyne Blvd house "did not look as good as witnesses had said that it would." Former church members claimed the Tyne Boulevard property was a mansion, and that Alamo lived a lavish lifestyle (p. 23975).

Dave Kroopf, a former church member, stated in an affidavit to the IRS that Alamo had guns on various church sites. IRS agents discovered this not to be true, nonetheless, relied on Kroopf for important information regarding church business.

The IRS relied on information from a private investigator hired by the Millers and Elizabeth Caldwell. The investigator claimed that Alamo had fled the country with large sums of money. The IRS never checked the information, and used this as an excuse to levy a jeopardy assessment against Alamo. All the merchandise at the church's Nashville store was seized. While the judge ordered the assessment abated, and ruled that there was no basis for it, the merchandise was never returned (p. 51401-2, 23872-23882).

The IRS relied on pertinent information from Chis Coie, Susan Alamo's estranged daughter whom she had disowned. Coie's accusations had to be suspect when she claimed that her mother did not have cancer and was using it as a ploy to solicit money from sympathetic people. Susan Alamo died of cancer in 1982. At one point, based on Coie's recommendation, the IRS ordered a doctor to release Alamo from a hospital. The doctor refused.

8. IRS documents reveal that agents used "persuasive means" to get witnesses to talk.

Documents expose that the IRS met several times with Birgitta Gyllenhammer (a former Alamo wife) to convince her to reverse her decision not to talk with them. While there is no mention of how Gyllenhammer suddenly became a government witness, there is a handwritten note from Howlett reminding himself to check her 1040's. Gyllenhammer had substantial tax liens on her clothing business (p. 51453-55, 51459, 61570-61572).

In another instance, Howlett wrote, "I explained to him [Larry LaRoche, a former church member who refused to cooperate with the IRS] that my purpose was to determine who benefited from monetary transactions in which he was involved and to determine the source of the funds." Howlett later wrote, "I explained that by having an explanation of the fund transfers we wouldn't have to prepare tax returns on him individually." The IRS did not reveal the content of their interview with LaRoche to the defense, which could have impeached testimony from CAN witnesses.

STATEMENTS OF THE NATIONAL AUDIT DEFENSE NETWORK, INC. (NADN)

****ASSIGNMENTS/PRODUCERS**
FOR IMMEDIATE RELEASE
April 27, 1998

ROUND TWO: THE IRS vs. TAXPAYERS

This week the Senate begins another round of taxpayer testimony of IRS abuse . . . but will it make a difference the second time around?

Washington, DC—As many Americans breath a sigh of relief after filing their 1997 tax returns, others are holding their breath in fearful anticipation of a note from the IRS. Many hoped that the hearings from last September would bring swift reform, relieving the anxious fear or existing problems millions of Americans suffer through when dealing with the IRS every year. But so fare little has changed.

So . . . can a second round of taxpayer testimony help? This is the question everyone will be asking when the Senate Finance Committee spends four days this week listening to the horror stories and complaints of American taxpayers—and NOW is the time to answer this question.

NADN, a network of 1,000 former IRS agents, will be corresponding nationwide during the hearings. Take this opportunity and schedule one of our national speakers for your show. Don't settle for news bytes, this is your chance to get an inside look at the hearings, hear the story of John Coloprete, who was held at gun point by IRS agents. Mr. Coloprete, an NADN member, will be offering his testimony to the Finance Committee on Wednesday.

National Audit Defense Network President Robert Bennington, who is a Senate option for expert testimony, will be on Capitol Hill throughout the hearings.

NADN's technical staff is also available for comment, including Former IRS District Director for Southern California Jesse Coda, Former IRS Chief of Examination, Martin Halko, and Former IRS Chief of Compliance, Richard Flakus.

NADN has been profiled on *ABC World News Tonight, CNN, FOX News Channel, CBS News, CBN News, National Public Radio. The Bob Grant Show, The Michael Reagan Show, The G. Gordon Liddy Show,* and thousands of other radio and television programs.

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NATIONAL AUDIT DEFENSE NETWORK PRESIDENT ROBERT BENNINGTON'S REMARKS: "TAXPAYER DAY OF OUTRAGE" WASHINGTON, D.C.

WASHINGTON—Robert Bennington,* President & CEO of the National Audit Defense Network—the nation's leading tax audit experts—remarks for the April 15th annual Taxpayer Day of Outrage" news conference held directly across from the White House:

"My name is Robert Bennington and I am President & CEO of the National Audit Defense Network—a network of over 1000 former IRS agents who have switched sides and now defend the American taxpayers against unwarranted & often abusive audits by the Internal Revenue Service.

"Traditionally, April 15th is the day Americans focus on taxes & the dreaded IRS. Congress, last summer finally focused it's attention to the hundreds of stories of abuse & harassment of honest American taxpayers by the IRS, and this is a good start.

"I am here to point out the fact that while Congress may be talking about reforming the IRS, the system has not changed and is out of control. Even the IRS in a recent press release acknowledges that any reforms would not take effect for at least another two or three years. But there is no more pressing a problem for honest Americans today than when the IRS abuses innocent taxpayers Their stories need to be told so that the American people will understand that any taxpayer, at any time, can be audited and subjected to abuse & harassment by the IRS."

The National Audit Defense Netvvork seeks to balance the scales of justice between the American taxpayer & the IRS. To do so, NADN has put together a network of nearly 1000 of the nation's top tax and audit specialists—most of whom are former IRS employees—to give NADN members an extremely high "win" rate over the IRS.

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NATIONAL AUDIT DEFENSE NETWORK

The National Audit Defense Network (NADN) seeks to balance the scales of tax justice between the American taxpayer and the Internal Revenue Service. To do so, the NADN has put together a network of nearly 1000 of the nation's top tax and audit specialists—most of whom are former employees of the IRS—to give NADN members an extremely high "win" rate over the IRS.

Over seventeen years ago, NADN's founder Pat Cavanaugh—a successful accountant and veteran in dealing with the IRS developed the concept of a prepaid audit defense representation network. NADN, located in Las Vegas, Nevada, has represented thousands of members who come from all income levels: from a struggling single mother who was questioned when she reported an income that the IRS considered too low to companies & professionals who have more complicated tax consid-

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*Robert Bennington is a nationally recognized expert, author and speaker on taxation, the Internal Revenue Service, tax saving strategies & how to prevail if audited by the IRS. A frequent and sought after guest on political and general interest television & radio programs, Mr. Bennington provides expert advice for anxious taxpayers. A successful businessman, Mr. Bennington has provided his knowledge and advice on taxation & the IRS to thousands of American taxpayers.

Mr. Bennington's considerable business experience enabled him to successfully lead the National Audit Defense Network, located in Las Vegas, Nevada, as the front line defense between American taxpayers and the IRS. NADN is a network of former IRS agents, Certified Public Accountants, and attorneys who provide members with tax audit defense services.

Prior to becoming President & CEO of National Audit Defense Network, Inc., Mr. Bennington was a management executive with extensive business experience. Bennington's ability to build highly successful sales teams allowed him to help develop and expand a national medical supplies company. As national vice president of sales, he opened three regional sales departments for the firm. Each new office grossed In excess of 3.5 million in sales in less than a year's time.

Originally from Los Angelea, California, Mr. Bennington has resided in Las Vegas, Nevada for the past eight years.

erations, NADN vigorously defends its members. While NADN staff are not attorneys and do not provide legal services, they will appear before the IRS on your behalf.

NADN membership is "pre-paid" and for a nominal fee, members are defended through the completion of any state or federal taxing authority audit. NADN assigns a team of former IRS agents to manage your case, develop a strategy, and if necessary, will negotiate a settlement on your behalf.

NADN membership benefits include:

- Audit defense service
- A tax hotline
- NADN newsletter
- Pre-audit

For further information contact Diana Banister or Nick Thimmesch at Craig Shirley & Associates (703) 739-5920.

STATEMENT OF THE SCHILLER INSTITUTE, INC.

During four days of recent public hearings by this Senate committee, the American public was presented with stunning evidence of political targeting and other criminal misconduct by officials of the Criminal Investigative Division (CID) of the Internal Revenue Service. The April 30, 1998 testimony of former Sen. Howard Baker, who also served as President Reagan's Chief of Staff, was particularly chilling, as was the April 29, 1998 daylong testimony of three small businessmen, who found their enterprises decimated, their finances ruined, and their personal lives shattered, as the result of the outright criminality of IRS agents. At one point, Sen. Daniel P. Moynihan queried the three men about the role of federal prosecutors and the U.S. Department of Justice in their ordeals. Sen. Moynihan correctly pointed out that, once the IRS action moved into a phase of grand jury deliberation and criminal prosecution, the IRS was necessarily abetted by U.S. Attorneys and officials in the Criminal Division of the Main Justice Department in Washngton. He pressed for the Webster Commission probe into abuses by the IRS to be broadened to include the inter-relationship between IRS agents and federal prosecutors.

The Lyndon LaRouche case, which is the subject of this testimony, has been described by former U.S. Attorney General Ramsey Clark as "about as close as a case gets to the potential perfidy of justice . . . In what was a complex and pervasive utilization of law enforcement, prosecution, media, and non- governmental organizations focussed on destroying an enemy, this case must be number one. There are some, where the government itself may have done more and more wrongfully over a period of time; but the very networking and combination of federal, state and local agencies, of executive and even some legislative and judicial branches, of major media and minor localmedia, and of inluencial lobbyist types, the ADL preeminently; this case takes the prize." Indeed, the LaRouche case represented far more than a run-away action by rogue agents of the IRS. In the LaRouche case, the IRS played a pivotal role, in a concert of action, involving prominent and powerful political figures, typified by former Secretary of State Henry Kissinger; elements of the national security establishment; politically-driven U.S. Attorneys and high-ranking officials of the Criminal Division of the U.S. Department of Justice; elements of the national media, who committed the equivalent of witting perjury, by transmitting, through television and the print news media, slanders and fabrications, provided by the IRS and the DOJ, to mislead the American public and create a climate conducive to a railroad prosecution of an entire political movement. Again, to quote former Attorney General Clark: "The purpose can only be seen as destroying—it's more than a political movement, it's more than a political figure; it is those two. But it's a fertile engine of ideas, a common purpose of thinking and studying and analyzing to solve problems, regardless of the impact on the status quo, or on vested interests. It was a deliberate purpose to destroy that at any cost." As the accompanying chronology will show, the political targeting of Lyndon LaRouche for frame-up and jailing—or worse—began in ernest in August of 1982, when Henry Kissinger wrote a personal note to then-FBI Director William Webster, demanding that the FBI and Department of Justice take action against the LaRouche political movement. Throughout the autumn of that year, there was correspondence back and forth between Kissinger, his attorneys and officials of the FBI and Department of Justice. Kissinger's lawyers were, in effect, coached on how to frame their complaints against LaRouche, to trigger a national security probe of the LaRouche movement, using broad authorities prescribed in Executive Order 12333, which was ostensibly aimed at combatting foreign espionage, international terrorism and international narcotics trafficking—none of which applied to LaRouche and his associ-

ates. By January 1983, Kissinger's efforts resulted in a formal authorization, from members of the President's Foreign Intelligence Advisory Board, for an E.O. 12333 probe of LaRouche's finances. The Kissinger-instigated action led to a decade-long nightmare, culminating in two events:

- On Oct. 6, 1986, over 400 federal, state and local law enforcement officers—including, prominently, officials of the IRS/CID—staged a dawn raid on the publishing offices of Lyndon LaRouche. The ostensible purpose was to execute two search warrants, and four arrest warrants against individuals who had never been previously charged with anything more serious than a speeding ticket. The raiding party, it was later learned, was backed up by armored personnel carriers, helicopters, fixed wing aircraft, and, for good measure, special counter-terror units of the U.S. military. Fortunately, cool heads prevailed, and a Waco-style bloodbath was averted, although court testimony later revealed that there were federal law enforcement officials who were anxious to trigger such an outcome. Wildly fabricated "informant" information, that led to the near-bloodbath, was provided, in large part, by individuals working closely with the lead IRS agent in the federal-state "Get LaRouche" task force.
- Between Jan. 1989-1992, Lyndon LaRouche and a dozen of his political associates were sent to federal and state prison on a range of frame-up white collar and tax charges; a tax exempt foundation and three commercial enterprises were illegally shut down by a fraudulent federal bankruptcy action, that the courts later ruled was "constructive fraud upon the court." Lyndon LaRouche was sentenced to fifteen years in federal prison. Several LaRouche associates, prosecuted in the Commonwealth of Virginia, were sentenced to up to 77 years in state prison—on first offense white collar crimes!

As you will see below, the Internal Revenue Service played a central role in this travesty of justice. In addition to this written testimony, the Schiller Institute will provide the Committee with background documentation on all of the matters highlighted here. Among the material to be provided is:

- the statements, quoted above, from former Attorney General Ramsey Clark. Clark delivered those comments during testimony at a two day public hearing, Aug. 31-Sept. 1, 1995, before an independent commission co-chaired by former Congressman James Mann of South Carolina, and J.L. Chestnut, one of the foremost civil rights lawyers in America today.
- the correspondence between Henry Kissinger, his attorneys, former FBI Director William Webster, and other senior officials of the Justice Department and the FBI, all of which were obtained under the Freedom of Information and Privacy Act. A memorandum from the President's Foreign Intelligence Advisory Board (PFIAB), also obtained under FOIPA.

To summarize the pattern of abuse and criminal misconduct by agents of the IRS in the LaRouche case, IRS officials:

- Targeted LaRouche for politically motivated reasons and allowed political opponents of LaRouche to utilize the power of the IRS for their political aims.
- Systematically leaked confidential taxpayer information and false allegations to the media and private individuals.
- Allowed its agents to illegally gather information on LaRouche and his political associates without any investigative authorization.
- Issued baseless assessments of taxes to LaRouche and companies associated with his political efforts, which were indefensible in a court of law.
- Engaged in all the above types of activities for the stated purpose of creating financial harm to companies and individuals who were political associates of LaRouche.

The summary of illicit IRS actions in the LaRouche prosecution which follows, has been constructed from independent investigations, FOIPA documents, and the public record of court proceedings. It represents the information concerning IRS abuses which could be obtained by these limited means. Only by further investigation of the events listed below can Congress assure itself that the IRS is no longer employed as an instrument of political prosecution.

September 1982–January 1983. Henry Kissinger initiates action against LaRouche. President's Foreign Intelligence Advisory Board takes formal action.

1983–1984. A series of meetings is convened at the Manhattan apartment of New York investment advisor John Train. According to a participant, Michael Hudson, the purpose of these meetings was to "coordinate national magazine stuff about you guys and work with federal law enforcement to deny you funding and tax exemption is the delicate way to put it." Other participants include Roy Godson, then a consultant to the National Security Council and PFIAB; John Rees, a longtime FBI informant; representatives of the Anti-Defamation League of B'nai B'rith ("ADL"); representatives of Freedom House, a private research organization headed by PFIAB

chairman Leo Cherne; financier and propagandist Richard Mellon Scaife; NBC producer Pat Lynch; Dennis King, a paid propagandist against LaRouche funded by the ADL and the Smith-Richardson Foundation; reporters and editors from the Wall Street Journal, Reader's Digest, Business Week and the New Republic.

One participant in the Train salon, Chip Berlet, has stated that he was introduced to many other individuals at Train's apartment who were identified only as "gentlemen with a government connection." At the time, the Fusion Energy Foundation, a leading proponent of beam weapons ballistic missile defense, was a tax exempt foundation under the Internal Revenue Code. FEF was considered by LaRouche's political opponents to be a major source of respectability and funding for LaRouche's ideas. According to Hudson, he was put into contact with the Baltimore regional office of the IRS to further the slander and unwarranted prosecution campaign detailed at the Train salon meetings. That office had purview over exempt organizations. In response to FOIPA requests, the IRS disclaims that it has a file concerning these events or any file at all concerning the Fusion Energy Foundation.

November 1983–March of 1984. NBC producer Pat Lynch, a participant in the Train meetings, produces two major smear pieces on LaRouche, a declared presidential candidate, which air in January and March of 1984. According to its sworn responses to civil discovery requests in a subsequent lawsuit, NBC received nonpublic IRS investigative information about LaRouche. The broadcasts promote the idea that LaRouche should be investigated by the IRS. Other than a one line reference to contacts with Lynch, IRS documents released under the FOIA contain no information about these events.

November of 1984. Boston U.S. Attorney William Weld launches a grand jury investigation of LaRouche's presidential campaign based upon allegations of credit card fraud. These allegations are first publicly aired by Boston NBC affiliate WBZ in collaboration with the FBI and receive national media attention.

February of 1985. Following a request for IRS investigation of LaRouche by IRS Agent Larry Lucey of the Criminal Investigation Division of the Richmond District, the IRS Richmond Director ordered that any investigation of Lyndon LaRouche's non-filer status be handled as a civil examination matter. LaRouche declared publicly throughout his campaign that he had not filed taxes. LaRouche's attorneys had advised him that based upon the unusual circumstances in which LaRouche lived and worked because of repeated threats to his life by terrorists, he had no taxable income. No civil audit of LaRouche, as recommended by the Richmond Director, was ever undertaken however. Such an audit would have readily resolved any actual issues concerning LaRouche's income tax liability.

November of 1985. Following a year of grand jury testimony, covering every aspect of the finances of the LaRouche movement, Boston U.S. Attorney Weld seeks a national tax investigation. The central allegation concerns whether it was proper for associates of LaRouche to claim independent consultant status for paid political organizing activities. Following a February 1986 law enforcement conference called by Weld to discuss "prosecutive theories" against LaRouche, the national tax task force approach is rejected by other prosecutors.

September of 1985–June of 1986. The IRS through CID agent Larry Lucey employs the Loudoun County Sheriff's Department and Loudoun Sheriff's Deputy Donald Moore as confidential informants in a rogue investigation of LaRouche. No crimimal investigation of LaRouche by the IRS had been authorized at the time of these activities—in fact authorization had been specifically declined.

Sheriff's Department personnel stated that the purpose of their investigations was to destroy LaRouche's electoral aspirations. During the course of their IRS sanctioned activities, the Sheriff's Department illegally obtained social security numbers on members of LaRouche's political movement when they registered to vote, and engaged in black bag jobs, bank account monitoring, and warrantless electronic surveillance against LaRouche and his associates. Deputy Donald Moore admitted many of these activities to an FBI informant, Douglas Poppa, in 1994, subsequent to LaRouche's trial and conviction. The ADL was at all times working with Moore and the Loudoun County Sheriff and, in all probability, also functioned as a confidential informant to the IRS.

February of 1986–August of 1986. The participants in the John Train salon launch an unprecedented wave of black propaganda and dirty tricks against LaRouche and his associates. In an international effort, later proved to be the work of the East German intelligence services, LaRouche is accused of involvement in the assassination of Swedish Prime Minister Olaf Palme. In the wake of the victories of two LaRouche associates in the Illinois statewide Democratic primaries for governor and lieutenant governor, there are numerous illegal leaks of information from the Boston grand jury and the IRS which receive nationwide airing in the Wall

Street Journal, Reader's Digest, the Associated Press, the Washington Post, Newsweek and NBC.

A central lie repeated throughout the propaganda campaign concerned LaRouche's alleged "lavish" lifestyle for which he paid no taxes. In reality, LaRouche lived on rented properties during this period and had no lavish lifestyle, a fact which the IRS well knew. Prominent among the defamations during this period were NBC TV news broadcasts in April of 1986 for which the IRS provided information and which ended with the assertion that there was "an open IRS investigation of LaRouche and individuals associated with him."

June of 1986. Newly appointed U.S. attorney Henry Hudson declares LaRouche to be an investigative priority in the Eastern District of Virginia. He creates a task force which includes the IRS. The declared purpose of the task force is to "create as much probable cause as possible" for search warrants against LaRouche and entities and individuals associated with him. Thus, after two years of investigation and illegal operations, the government has to create a task force in order to obtain a broad license to fish for any crime they can fabricate against LaRouche.

September 1986. Boston U.S. Attorney William Weld is appointed to head the Justice Department Criminal Division.

September of 1986. The IRS falsely claims to the Associated Press that the Fusion Energy Foundation's tax exempt status has been revoked and releases other information about the FEF to reporter William Welch. As a result, the Associated Press, in a national wire, claims that solicitors for the FEF are committing tax fraud by stating that the FEF is tax exempt. After threats of legal action, the IRS claimed that it had made a "mistake" concerning FEF's status when discussing the FEF with reporter Welch and that the FEF was, indeed, still tax exempt. As previously noted, in response to FOIA requests, the IRS has disclaimed that it has any file on the Fusion Energy Foundation. "Law enforcement sources" bragged to the Washington Post during September, 1986 that the massive negative publicity in the wake of the Illinois primary victories by two LaRouche associates had devastated the LaRouche movement financially.

October 6–7, 1986. IRS agents, along with FBI, ATF, and Virginia State Police participate in a 400 person armed raid on offices of entities associated with LaRouche. Documents obtained during the raid are initially taken to a military facility for examination as a result of top secret negotiations with the Pentagon.

April of 1987. The United States launches an unprecedented bankruptcy liquidation of Campaigner Publications, Caucus Distributors, and the Fusion Energy Foundation, the principal publishers of LaRouche's ideas. IRS Agent Lucey, who was subsequently described in government documents as the "elder statesman" of the federal criminal task force and the "resident expert" on LaRouche plays an active role in assisting the civil bankruptcy action. The bankruptcy action is later dismissed as illegal by Federal Judge Martin Bostetter who likened it to a "constructive fraud" upon the Court. The bankruptcy ends any ability to repay the loans at issue in the subsequent federal indictment of LaRouche for loan fraud.

June of 1987. LaRouche is indicted for conspiracy to obstruct justice in Boston as a result of Boston U.S. William Weld's two and one/half year investigation.

May of 1988. The Boston criminal case ends in a mistrial amid hearings airing major prosecutorial misconduct. Federal Judge Robert Keeton in a written decision characterizes law enforcement misconduct in the LaRouche case as "systemic."

February 1987–October 14, 1988. Following examination of voluminous financial records seized during the October raid and grand jury investigation, the U.S. attorney concludes that no evasion charges can be brought against LaRouche or the companies paying LaRouche's expenses because such charges lack prosecutive merit. Instead, a conspiracy charge will be brought against LaRouche alone and unnamed co-conspirators, a charge which the U.S. Attorney described as "novel." The conspiracy charged is that LaRouche conspired to conceal his income from the IRS. In addition LaRouche is charged with a loan fraud conspiracy and as an aider and abettor in the obtaining of other fraudulent loans. LaRouche's trial occurred— days after indictment. Major defenses, including any reference to the fact that the federal government brought the bankrutpcy, were banned by the trial judge. His jury which had been saturated with propaganda about his alleged lavish lifestyle. The conviction on the nebulous conspiracy charges was a foregone conclusion.

January 1989–1991. The IRS commences civil enforcement actions against individuals and companies associated with LaRouche as part of a strategy to drive the LaRouche movement out of existence in the wake of LaRouche's conviction and jailing. These actions again are widely publicized by NBC national news. The most prominent IRS actions involve assessments against PGM, the financial management company associated with the LaRouche movement and LaRouche personally. The IRS initially claimed that PGM owed $2,773,882 in unpaid taxes, an assesment the

IRS knew to be without merit. After years of litigation and legal fees incurred by PGM, in which the IRS repeatedly took indefensible positions in the Tax Court, the IRS has agreed, after a review of documents which had been available to it all along, that PGM has no tax liability. The IRS has taken a similarly outlandish position with respect to LaRouche personally. Originally the IRS claimed that LaRouche owed $5,844,074 in taxes, interest and penalties. After years of litigation, the IRS now states that the figure to be $353,444. LaRouche disputes the entire amount. That case is presently scheduled for trial in the tax court.

In conclusion, the Schiller Institute wishes to thank the Senate Finance Committee for the opportunity to present this testimony. We will be happy to provide the Committee with any further documentation that may be required in the course of the ongoing investigation into the abuses by the IRS.

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