S. HRG. 105–190

PRACTICES AND PROCEDURES OF THE INTERNAL REVENUE SERVICE

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

SEPTEMBER 23, 24, AND 25, 1997

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
43–781—CC WASHINGTON : 1997

COMMITTEE ON FINANCE

WILLIAM V. ROTH, JR., Delaware, *Chairman*

JOHN H. CHAFEE, Rhode Island
CHARLES E. GRASSLEY, Iowa
ORRIN G. HATCH, Utah
ALFONSE M. D'AMATO, New York
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
PHIL GRAMM, Texas
TRENT LOTT, Mississippi
JAMES M. JEFFORDS, Vermont
CONNIE MACK, Florida

DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
JOHN D. ROCKEFELLER IV, West Virginia
JOHN BREAUX, Louisiana
KENT CONRAD, North Dakota
BOB GRAHAM, Florida
CAROL MOSELEY-BRAUN, Illinois
RICHARD H. BRYAN, Nevada
J. ROBERT KERREY, Nebraska

LINDY L. PAULL, *Staff Director and Chief Counsel*
MARK A. PATTERSON, *Minority Staff Director and Chief Counsel*

CONTENTS

SEPTEMBER 23, 1997

OPENING STATEMENTS

	Page
Roth, Hon. William V., Jr., a U.S. Senator from Delaware, chairman, Committee on Finance	1
Moynihan, Hon. Daniel Patrick, a U.S. Senator from New York	4
Grassley, Hon. Charles E., a U.S. Senator from Iowa; member, The National Commission on Restructuring the IRS	6
Kerrey, Hon. J. Robert, a U.S. Senator from Nebraska; co-chairman, The National Commission on Restructuring the IRS	8
Graham, Hon. Bob, a U.S. Senator from Florida	12
Conrad, Hon. Kent, a U.S. Senator from North Dakota	14
Gramm, Hon. Phil, a U.S. Senator from Texas	16
Bryan, Hon. Richard H., a U.S. Senator from Nevada	17
Nickles, Hon. Don, a U.S. Senator from Oklahoma	19
Lott, Hon. Trent, a U.S. Senator from Mississippi	21
Rockefeller, Hon. John D., IV, a U.S. Senator from West Virginia	22

CONGRESSIONAL WITNESSES

Hoyer, Hon. Steny, a U.S. Representative from Maryland	10

PUBLIC WITNESSES

Lane, Joseph F., enrolled agent, chairman, National Government Relations Committee, the National Association of Enrolled Agents, Gaithersburg, MD	23
Woehlke, James A., Director, tax policy, New York Society of Certified Public Accountants, New York, NY	29
Goldstein, Robert L., chairman, Relations with IRS Committee, New York Society of Certified Public Accountants, New York, NY	29

SEPTEMBER 24, 1997

OPENING STATEMENTS

Roth, Hon. William V., Jr., a U.S. Senator from Delaware, chairman, Committee on Finance	33
Murkowski, Hon. Frank H., a U.S. Senator from Alaska	34

PUBLIC WITNESSES

Davis, Shelley, author of "Unbridled Power" and former historian for the IRS, Manassas, VA	35
Schriebman, Robert, author of eight books on IRS practices and procedures, adjunct professor of tax practice and procedure, University of Southern California Graduate School of Accounting, Rolling Hills Estates, CA	38
Burnham, David, author of "A Law Unto Itself: Power, Politics and the IRS"; co-director, Transactional Records Access Clearinghouse; associate research professor, Syracuse University's Newhouse School of Public Communication, Washington, DC	42
Hicks, Katherine Lund, Apple Valley, CA, accompanied by James Hicks	75
Savage, Thomas, Lewes, DE	82

Page

Ballweg, Monsignor Lawrence, New York, NY 85
Jacobs, Nancy, Bakersfield, CA 87
Strauss, Bruce A., Florida 105
Larsen, Darren, California 108
Patnoe, David, Camario, CA 112
Lilly, Lawrence, G., St. Augustine, FL 116
Long, Jennifer, current employee of the Internal Revenue Service 120

SEPTEMBER 25, 1997

Opening Statements

Roth, Hon. William V., Jr., a U.S. Senator from Delaware, chairman, Committee on Finance 141

Administration Witnesses

Dolan, Hon. Michael P., Acting Commissioner of the Internal Revenue Service, Washington, DC 198

Congressional Witnesses

Willis, Lynda D., Director of Tax Policy and Administration Issues, U.S. General Accounting Office, Washington, DC 245

Public Witnesses

Witness No. 1 142
Witness No. 2 146
Witness No. 3 150
Witness No. 4 152
Witness No. 5 155
Witness No. 6 156

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Ballweg, Monsignor Lawrence:
Testimony 85
Prepared statement 255
Bryan, Hon. Richard H.:
Opening statement 17
Burnham, David:
Testimony 42
Prepared statement 256
Conrad, Hon. Kent:
Opening statement 14
Davis, Shelley:
Testimony 35
Prepared statement 259
Dolan, Hon. Michael P.:
Testimony 198
Prepared statement 261
Letter to Senator Moynihan, dated September 30, 1997 280
Responses to questions from Senator Nickles 282
Goldstein, Robert L.:
Testimony 29
Prepared statement 283
Graham, Hon. Bob:
Opening statement 12
Gramm, Hon. Phil:
Opening statement 16
Grassley, Hon. Charles E.:
Opening statement 6
Prepared statements 286, 288

Page

Hatch, Hon. Orrin G.:
Prepared statement 288
Hicks, Katherine Lund:
Testimony 75
Prepared statement 289
Hoyer, Hon. Steny:
Testimony 10
Prepared statement 294
Jacobs, Nancy:
Testimony 87
Prepared statement 296
Kerrey, Hon. J. Robert:
Opening statement 8
Prepared statement 298
Lane, Joseph F.:
Testimony 23
Prepared statement 299
Larsen, Darren:
Testimony 108
Prepared statement 307
Lilly, Lawrence, G.:
Testimony 116
Prepared statement 309
Long, Jennifer:
Testimony 120
Prepared statement 311
Lott, Hon. Trent:
Opening statement 21
Mack, Hon. Connie:
Prepared statement 312
Moynihan, Hon. Daniel Patrick
Opening statement 4
Murkowski, Hon. Frank H.:
Opening statement 34
Nickles, Hon. Don:
Opening statement 19
Patnoe, David:
Testimony 112
Prepared statement 313
Reid, Hon. Harry:
Prepared statement 316
Rockefeller, Hon. John D., IV:
Opening statement 22
Letters from Lawrence Summers 317
Roth, Hon. William V., Jr.:
Opening statements 1, 33, 141
Prepared statement 323
San Francisco IRS District, chart relating to 325
Savage, Thomas:
Testimony 82
Prepared statement with attachments 326
Schriebman, Robert:
Testimony 38
Prepared statement 330
Strauss, Bruce A.:
Testimony 105
Prepared statement 332
Willis, Lynda D.:
Testimony 245
Prepared statement with attachments 334
Witness No. 1:
Testimony 142
Prepared statement 348
Witness No. 2:
Testimony 146
Prepared statement 350

Page

Witness No. 3:
Testimony 150
Prepared statement 352
Witness No. 4:
Testimony 152
Prepared statement 353
Witness No. 5:
Testimony 155
Prepared statement 355
Witness No. 6:
Testimony 156
Prepared statement 355
Woehlke, James A.:
Testimony 29
Prepared statement 283

PRACTICES AND PROCEDURES OF THE INTERNAL REVENUE SERVICE

TUESDAY, SEPTEMBER 23, 1997

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

The hearing was convened, pursuant to notice, at 9:00 a.m., in room SD–215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Grassley, Murkowski, Nickles, Gramm, Lott, Mack, Moynihan, Rockefeller, Breaux, Conrad, Graham, 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.

This morning we begin the first of 3 days of oversight hearings into the tactics, management, and inner workings of the Internal Revenue Service.

There is no other agency in this country that directly touches the lives of more Americans, nor is there any agency which strikes more fear into their hearts.

The threat of an audit, the awesome power of the IRS looms like the Sword of Damocles over the heads of taxpayers. As Chairman of the Senate Finance Committee, I want to know why. I wanted to understand where this fear came from. I wanted to know if it was justified.

Our committee's responsibility is to provide the oversight of this agency. This is a responsibility I take seriously. So in January of this year, with the support of my friend and colleague Senator Moynihan, I began an investigation into how this agency conducts business with the American people.

Let me assure you, there is no political bias, no partisan motive behind our investigation and these hearings. As I said, they were initiated some eight months ago. What we have discovered indicates that problems within the IRS are not recent, they cover several administrations.

Let me also say that the IRS is made up of many fine men and women, men and women of great character and integrity who perform a vital and difficult job for this country.

In reflecting upon our investigation, I found this to be especially true. I note that without the help of many such IRS employees, our investigation would have been incomplete.

There is no doubt that the powers of the Internal Revenue Service are extraordinary. The IRS can seize property, paychecks, and even the residences of the people it serves. Businesses can be padlocked, sometimes causing hundreds of employees who are also taxpayers to be put out of work.

In some instances, the first time a taxpayer is aware of any enforcement action by the IRS is when his or her bank calls to notify that funds have been frozen. The IRS can take these actions in many cases without giving the taxpayer notice or opportunity to be heard.

This is an awesome amount of power to place in the hands of any government agency. Is it appropriate? Perhaps. But with such power there must be an effective counterbalance of responsibility. Why? Because the greater the power, the more extensive the damage that can be done if that power is abused.

Any agency with such power must be above reproach, especially as that enormous power allows it to pervade the most sensitive aspects of our citizens' private lives. Congress has granted such power to the IRS. As a consequence, Congress has a fundamental responsibility to see that the IRS operates with the highest degree of integrity, honor, and ethics. As the Good Book says, where much is given, much is required.

Unfortunately, our investigation today has found that in many cases such high standards are not being upheld. Over the course of the next 3 days we are going to see a picture of a troubled agency, one that is losing the confidence of the American people, and one that all too frequently acts as if it were above the law. This is unacceptable.

Even high-ranking employees of the agency have come forward, at some risk to themselves and their careers, to speak with us. As a consequence of such risk, some employees who will testify have requested confidentiality, and we have honored that request.

We have also talked with many private citizens whose lives have been altered by IRS actions. These men and women have related their sometimes tragic experiences, not out of vindictiveness or mean-spiritedness, but out of deep concern and a fundamental belief that such a violation of their civil rights should not have taken place, not in America.

We have listened to these men and women and we are holding these hearings because one thing is certain: we cannot fix the IRS without knowing what ails the IRS.

What we seek is constructive criticism, criticism with the intent to improve, not destroy, to protect, not denigrate. This is not IRS-bashing, it is oversight. There will be no condoning of tax protestors or any others who would misinterpret our objective to legitimatize anti-government attitudes or behavior.

These hearings are about good government, about correcting problems within government, problems that are acknowledged by those whose lives are dedicated to public service.

Responsible oversight is the best way to ensure that not only is the government meeting the needs of the people, but is the surest way of letting the people know that they have influence over, and a strong voice in, their government. That is what these hearings are all about.

Just as the IRS is quick to say that no honest taxpayer should fear an audit, no government agency should ever fear a Congressional investigation into its activities.

While it is imperative that Americans pay their fair share of taxes in an effort to establish and maintain necessary government functions, it is equally imperative that the agency charged with the responsibility for this activity be fair, honest, open, and accountable. With this introduction, I believe it is important to outline how we went about conducting our investigation.

Our objective from the beginning was to keep our methodology fair, yet still be able to get inside the agency to uncover the facts. In reviewing the treatment of taxpayers we took various cases to the IRS and reviewed every document that we could obtain.

We interviewed the IRS employees involved in the particular cases. Over the next 3 days, we will hear about a number of these cases. We will hear from taxpayers, IRS employees. It is important to understand that these witnesses are typical of far greater numbers who have been moved to contact the committee. These individuals serve as a sampling that demonstrate the significance of problems and concerns with the agency. The facts will be startling.

For instance, while the use of pseudonyms is forbidden by the Internal Revenue Manual, except for those in the law enforcement areas, criminal investigations, and inspection divisions, many revenue officers have been issued false identification credentials.

While the IRS suggests that that is to protect agents from assault, I am concerned that it makes them unaccountable. Even members of the Metropolitan Police force here in the District of Columbia, despite substantial danger, wear their true names on their uniforms.

In the next 3 days, you will hear about an audit called Blue Sky Assessments. These are tax assessments made against Americans that have no basis in fact or tax law. They can either be designed to hurt the taxpayer or simply raise the individual statistics of an IRS employee.

You are going to hear a lot about statistics and quotas. We have learned that even at managerial levels the drive to achieve the appropriate statistic has caused problems in many areas of the country.

While the use of quotas is specifically prohibited in rating the success of agents or officers in their jobs, it appears to be commonplace. I believe this is outrageous, a major problem that has become part of the agency's culture.

Levies and seizures are also measurements of employee performance. In one case, we learned a revenue officer was counseled for not keeping his statistics up, so he seized several properties the next day. Some officers who are able to collect the full amount of taxes due are often rated lower than those who have seized property.

Seizures may be done for status and promotions as much as for enforcement. Not only are levies and seizures measures of an employee's performance, but so is the number of cases referred to the Criminal Division.

In other words, while there may be no basis in fact for a criminal referral, a taxpayer's life may well be turned upside down simply to keep an employee's or district's performance statistics up.

Liens and levies may be filed against those whom the IRS knows have no liability for a particular tax. Parents, relatives, a company employee may have liens filed against their property or have a paycheck levied in order to get the real taxpayer to comply. This is called the whipsaw technique. This practice was explained to us, when we go after everybody, we know somebody will pay.

Now, one of the most distressing things you will learn from this hearing is the preference to audit middle and lower income tax payers, as well as small mom and pop businesses. This is almost incredible to understand.

Certainly it is not for the high revenue that these kinds of audits bring to the Treasury. So why are these Americans audited? Because it is easy. Most often, these are the taxpayers who cannot afford to pay back.

Beyond learning about the fear taxpayers have concerning the IRS, I was very much concerned about how agency employees themselves feel. Many express fear of being retaliated against for speaking out against the kind of abuses I have mentioned here.

We have heard in our investigation that the use of false allegations of wrongdoing against targeted employees takes place. In fact, just the number of times we heard the term targeting in relation to harassment of employees was stunning, and certainly if this treatment bothers the front-line employees of the IRS, it is devastating to the American taxpayer.

Over the next 3 days we will hear more about these concerns, as Congress has given the IRS significant power in an effort to help the agency carry out its tremendous responsibility. It is also Congress' responsibility to ensure that such power is being used prudently, constructively, and with regard for the taxpayer employees of the agency.

What we are learning suggests that there are problems and begs that Congress address three fundamental questions. First, does the IRS have too much power? Second, if Congress were to limit that power, what expectations do we have that the new limits will be more effective than the old? Third, how do we go about changing the culture of the IRS?

What we seek to do is help the IRS get back to its mission statement. That statement reads, "The purpose of the IRS 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 performing in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness." Well, this is our desire, to be certain the IRS is not only good for taxpayers, but that it is also good for government.

It is now my pleasure to call on our very distinguished Ranking Member, Senator Moynihan.

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

Senator MOYNIHAN. Mr. Chairman, let me thank you and congratulate you on the hearings that we have now commenced. I have

been a member of the Finance Committee for getting on to 21 years, and I do not believe we have had an oversight hearing.

Oversight is our responsibility, and we are carrying it out. There is surely room for improvement in the Internal Revenue Service, and where we so determine, we should move legislation in a fairly rapid order.

But I think it is also important to point out that a great deal of the problems of the IRS come about because of legislation which we ourselves have passed. There are now 9,451 pages in the Tax Code. In August, as not many of you will forget, we added 820. I mean, you could hurt yourself if you tried to lift it. That is a pattern we do not seem to be able to break out of in order to address this as well.

I happened to have had the privilege for many years to know Erwin Griswold, who was dean of the Harvard Law School, Solicitor General, who wrote the book on American taxation.

He tells how, as a young man in the Solicitor General's Office in the 1920's, he found himself being asked to do some work on tax matters. He said he thought of going to the Solicitor General, telling him I did not know anything about taxes, but I decided to go to the library instead.

He would write to me, because he insisted right to the end of an old and distinguished age that he make out his own tax returns. He would tell me exactly how many hours it took. His last letter was April 12, 1994. It had taken him 98 hours to make out his relatively simple tax returns, and this was a man who knew as much about the subject as any man living.

Well, all those IRS employees face the same problems Erwin Griswold faced, and they need our help as well as our oversight. I am happy to offer both. I think your theme of power and responsibility is exactly right, sir.

Welcome, and let the games begin.

The CHAIRMAN. Thank you very much, Senator Moynihan.

There is no question but what the complexity of the tax laws make the job of administration and enforcement very complicated and difficult. At the same time, it must be administered in a way that is fair and civil to our American taxpayer.

Because we do have two votes coming roughly, I think, at 9:30, I thought we would call, next, upon our two colleagues who are going to speak, as well as Congressman Hoyer, because I know he has to go back. Then afterwards, we will call upon the members for their comments about these hearings.

At this time, it is with a great deal of pleasure that I call upon Senator Grassley, who was chairman of the Taxpayer Rights Tax Force of the Commission on Restructuring the IRS. Next, we will call on Senator Kerrey, who of course was chairman of that important commission.

Finally, as I said, it is pleasure to have here the Ranking Member of the House Appropriations Subcommittee on Treasury, Postal Service, and General Government.

Gentlemen, I would ask that each of you restrict your remarks for 5 minutes, as we do have a very full schedule.

Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA; MEMBER, THE NATIONAL COMMISSION ON RESTRUCTURING THE IRS

Senator GRASSLEY. Mr. Chairman, the issue is one of balance. The Federal Government, of course, needs to collect all of its revenue which taxpayers are obliged to pay. But taxpayers have certain rights that should not be abused. All of us should support a proper balance between the two. Yet, over the years such a proper balance has been lacking.

It is for this reason that some of us seem to be advocates for the taxpayers without being mindful of the importance of revenue collection functions of the IRS. Any serious objective observer should acknowledge the necessity of balance.

But when evidence mounts of IRS abuses and mismanagement, it is time to look beneath the surface and search for a systemic, cultural problem. We did that and we found them. A "we" versus "they" mentality seems to exist, and that is not a healthy situation.

This is not an indictment of the dedicated front-line IRS employees. Typically they do an outstanding, yet thankless job for the public. It is not they who should be the targets. Rather, it is the management culture, mindless of the fact that they are servants of the people.

If allowed to persist, such a mind-set often leads to arrogance, unresponsiveness, disregard of one's rights, and the very kinds of things that we have been hearing from our constituents.

When the Congress attempts to investigate, we are often derailed. A cloak of secrecy goes up. It is more veiled than even the most elaborate secrecy arrangements at Langley.

In the language of the Federal Government it is called 6103. That is the section of the Tax Code that prevents disclosure of taxpayer information. Designed to protect taxpayer privacy, it does much more. It also protects the privacy of those who abuse the taxpayers' rights, who mislead Congress, and who might use collection quotas in tax enforcement despite their illegalities.

Such abuses occur when independent oversight is lacking. Oversight has a rather antiseptic quality about it. Hence, the commission's recommendations for an independent board over the IRS. This board would set appropriate performance standards, would measure performance, then reward or discipline managers according to that performance.

Oversight means more general openness. The commission found that the IRS is a very insular organization. As a result, we have put forward a first step to make the IRS more open to the public and to the press. If we are to be successful in changing the culture of the IRS, a key ingredient is openness. The chairman of the commission, Bob Kerrey, was absolutely right when he noted at one of our hearings a point about the media. He said the media and the press are one of the key ways in which Congress finds out what is going on.

So the commission, to encourage more openness as well as more accountability, prescribed the following three remedies in S. 1096. The IRS must be more timely and responsive in FOIA requests. The IRS must not abuse its authority under 6103.

The commission found that the IRS did abuse its authority in hiding from the press the fact that the agency had provided false information to the Congress. The IRS must maintain and preserve records. It has not. Many requests by the commission for documents and data were met with a statement that such data no longer existed.

Addressing these three areas of openness may not be headline-grabbing, but in my experience, together with other measures, these will help bring more accountability to the IRS. The IRS should be held to the same high standards that the agency itself applies to the American taxpayer.

The commission did not call for the easy solution that often comes out of commission, to provide just more money. The IRS, until 2 years ago, had seen continual increases in its budget for 40 years. Indeed, the commission uncovered that hundreds of millions of taxpayers' dollars had been wasted. Clearly, the problem at the IRS is mismanagement, not money.

S. 1096 is designed to address many of these management failures. I urge the committee to look favorably upon it. Meanwhile, the commission did not conduct serious oversight investigations to root out IRS cultural pathology. This is where the commission's job ended and the job of this committee begins with this week's hearings.

Understandably, these are controversial hearings. The IRS is not used to be overseen. Untoward motives are assigned to our oversight efforts, like partisanship, but that is a tired argument. I intend to be an active participant in these hearings.

In the 1980's, I was hardly partisan when I clashed with the Republican administration over defense issues, the same with the chairman of this committee. I have been overseeing IRS abuses as far back as the Reagan and Bush Administrations.

In addition, I launched my efforts to oversee the IRS. I was joined by my close friend, David Pryor, a Democrat, and a close friend of the President's. We chose to make our critiques responsible instead of partisan. I believe the record reflects that. The charge of partisanship has no credibility with respect to oversight efforts. It will be a fair airing of questionable practices by an agency abusing its trust.

I have learned over the years, Mr. Chairman, that oversight of the IRS is a step-by-step process, a long-term commitment. We learned of the agency's quota system back in the 1980's and we outlawed it. Suddenly, we find there might be an unofficial backdoor quota system still in place. It seems like you put out a brush fire here and it pops up someplace else.

The moral of the story is, history teaches the need for constant vigilance over the IRS. So, Mr. Chairman, I commend you for your leadership in holding these much-needed hearings. I would also like to say publicly how much I appreciated working on the commission with Senator Kerrey. His guidance and leadership produced a solid, credible effort.

So, Mr. Chairman, I thank you for starting us down this road.

The CHAIRMAN. Thank you, Senator Grassley.

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

The CHAIRMAN. Senator Kerrey?

OPENING STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM NEBRASKA; CO-CHAIRMAN, THE NATIONAL COMMISSION ON RESTRUCTURING THE IRS

Senator KERREY. Thank you, Mr. Chairman. First of all, I want to congratulate both you and the Ranking Member for your balanced opening statements. I appreciate that very much. Holding these hearings is also very helpful. I would ask unanimous consent that my entire statement be a part of the record.

The CHAIRMAN. Without objection.

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

Senator KERREY. Mr. Chairman, this commission held 12 days of public hearings, we had hundreds of hours of testimony from taxpayers and tax experts, we had 300 private interviews with frontline employees. From my experience in oversight on both the Appropriations and on the Finance Committee, we had an unprecedented amount of access of the IRS.

We found a number of things. First, the IRS is relatively efficient compared to other tax collection agencies worldwide, spending about half of 1 percent of total collections, which is substantially less than many other nations do.

But there was a disconnect between that efficiency and the taxpayers' own view of this agency, and that is what we are dealing with here. It is very important to note that the dissatisfaction with the agency did not begin with our criticism of the agency, it began with the taxpayers' own evaluation of what the IRS was doing.

In the area of services being performed, there is a breathtaking gap between what the IRS can do and what the private sector can do.

Taxpayers do not compare the IRS with a tax collection agency in Australia or the Federal Republic of Germany, they compare it to what they can get with their ATM card. There is a tremendous difference between what the IRS can do and the private sector can do.

Another big area that comes in for criticism is secrecy. Senator Moynihan has a new book coming out. I read the galleys over the weekend. It really is a first-rate historical examination of how secrecy has been built up inside of agencies after laws have been passed.

Secrecy and power, it seems to me, Mr. Chairman, run hand-in-glove. So this issue of secrecy that Senator Grassley has talked about was heard from consumers. The complexity of the Code is obviously something that we create. Then layer onto that the inability to apply technology. What started this commission in the first place was the wasting of some $4–$6 billion of taxpayer money on a technology system that, in the end, did not work.

So that was the first finding, that there was a disconnect between apparent efficiency compared to other tax collection agencies and what the consumers thought. Blame was evenly balanced between Congress and the Executive Branch.

There was an awful lot of attention given to the fact that 85 percent of the American taxpayers voluntarily comply, 15 percent do

not. But the 85 percent who voluntarily comply are unwilling to give the IRS more enforcement power when they appear to be exercising that power sometimes in a very arbitrary and capricious fashion, and in a way that is difficult for us to examine because of the survey issue I have mentioned.

We recommended change in three big areas, Mr. Chairman, with S. 1096. First, we recommend the creation of an independent agency. Second, we recommend the creation of a complexity index against which we can measure our proposals dealing with tax proposals.

Third, we recommended a series of things that Senator Grassley has already dealt with in the area of shifting power to the taxpayer by giving the taxpayer more access to the information and what is going on inside the IRS, in other words, by shifting from secrecy to openness.

The common criticism that I have heard from opponents deals with the independent board in S. 1096. Those of us who sat on this committee and listened to the new commissioner of the Social Security Administration understand the value of having independence.

The value of independence is, you can be more accountable to what the people are asking for rather than succumbing sometimes to just an ideological view. This independent board, has been called a take-over by American CEOs, giving corporate executives the opportunity to run the IRS. You will hear that over, and over, and over, Mr. Chairman and members of the committee.

I want you to hear what our proposed law says. It says, "The composition of the board shall be 9 members, of whom 7 will be individuals who are not full-time Federal officers or employees who are appointed by the President by and with the advice and consent of the Senate, and who should be considered special government employees, one shall be the Secretary of the Treasury and one shall be a representative of an organization that represents a substantial number of IRS employees who is appointed by the President."

Mr. Chairman, our legislation has the support of not only the National Taxpayer Union, but also the National Treasury Employees Union. It has the support of professionals that work with taxpayers to fill out their tax returns, it has the support of the most recent IRS Commissioner Peggy Richardson, and it has the support of two former Treasury Secretaries.

We attempted to respond in a balanced way to critiques of our Board and our legislation. There may be ways to improve our legislation, but it is going to be difficult to improve the legislation unless, first of all, we get a chance to be heard in an accurate fashion rather than to be heard in a fashion that distorts the content.

Again, I congratulate you and I thank you for holding these hearings. I appreciate very much again your balanced opening statement, as well as the opening statement of Senator Moynihan.

The CHAIRMAN. Thank you very much, Senator Kerrey.

Now it is my pleasure to call upon our good friend, Congressman Hoyer.

STATEMENT OF HON. STENY HOYER, A U.S. REPRESENTATIVE FROM MARYLAND

Congressman HOYER. Mr. Chairman, Senator Moynihan, members of the committee, thank you very much for giving me this opportunity. I have spent about 13, 14 years as a member of the Appropriations Committee overseeing IRS, and I am very pleased to have this opportunity to be here.

I want to congratulate Senators Grassley and Kerrey for their work on the restructuring commission. I think an overwhelming majority of the work is very positive and I agree with it and hope to support most of that report.

Mr. Chairman and Senator Moynihan, and the 102,000 men and women of the IRS who are responsible for collecting 97 percent of the Nation's revenue have, as Senator Kerrey has pointed out, one of the most difficult jobs in government. They collect the funds that pay to defend our freedom, educate our children, and take care of the old.

At the same time Congress has flattened their funding and cut enforcement, we have also implemented new parts of their mission. The trend is asking the IRS to broaden its mission.

Recently, for example, the Congress instructed the IRS to help in the important work of recovering child support payments, an important objective but added work.

Against this backdrop, the commission wisely recommended "Congress provide the IRS certainty in its operational budget in the near future," and called for "greater stability with funding levels."

As the commission has pointed out, Congress' failure to pursue consistent policies, as Senator Moynihan, and you, Mr. Chairman, have pointed out, have undermined the IRS in the performance of its functions.

The vast majority of taxpayers in our country pay their taxes on time, voluntarily. Nevertheless, the IRS only collects about 84 to 85 percent of the taxes that are due.

There is currently a balance due of $216 billion. When some do not pay their fair share, this increases the deficit and raises the burden on all of the rest of us. From the point of view of fairness alone, it is necessary for the IRS to carry out its enforcement.

Nevertheless, in any large organization, however necessary enforcement is, the power that goes with that enforcement may be abused. Senator, you talked about power and responsibility, that being the focus of this hearing. Absolutely correct, in my opinion.

Two years ago, of course, Congress revisited the problem of IRS abuses with the passage of the Omnibus Taxpayer Bill of Rights. In its report, A Vision for the New IRS, the IRS Commission on Restructuring found that this law "had an important effect on changing the culture of the IRS." Mr. Chairman, you mentioned that. The commission has found that, in fact, the culture is changing.

The commission went on to find "very few examples of IRS personnel abusing power." None of us deny that it occurs, all of us believe we ought to eliminate it. But the good news that the commission found was that it is the exception. Even one instance, of course, is one too many.

IRS management has followed up on cases aggressively to determine what went wrong and to take appropriate action. But I believe that even appropriate action, after the fact, Mr. Chairman, as you, I am sure appreciate, cannot erase the pain that some taxpayers have experienced. I am encouraged, therefore, that the IRS is following up with a service-wide program to stop this kind of abuse before it happens.

This program includes centralizing and including training on the provisions of both the first and second Taxpayer Bill of Rights, creating taxpayer surveys that rate employees' treatment of taxpayer, and other efforts.

Treasury and IRS has reaffirmed their commitment to the original Taxpayer Bill of Rights. A joint Treasury/IRS National Performance Revenue Task Force is currently conducting a 90-day study of customer service. I am sure it will be spurred on by this committee's actions, Mr. Chairman.

Ultimately, however, I believe that a solution to the problem of taxpayer abuse cannot be separated from the larger task of building the IRS of the future. Senators Grassley and Kerrey have spoken of that.

The Treasury Department, the IRS, the Employees Union and the Commission on Restructuring have identified a common set of concerns. To build the IRS of the 21st century, they have identified the need for renewed focus on oversight, leadership, flexibility, improved budgeting and tax simplification. The IRS has been rightly criticized in recent years for its failure to manage well. Particular focus has been directed at attempts to modernize the information systems.

For the first time in the 15 years, Mr. Chairman, that I have been reviewing the IRS budgets, the Secretary of Treasury and the Deputy, for the first time, are giving personal attention to IRS management issues. This new focus is clearly making a difference.

I am encouraged that Secretary Rubin has identified a candidate in addition to that to head the IRS who has a non-traditional background in management and information technology, Charles Risotti. The Senate will be considering him soon.

Mr. Chairman, I will leave the balance of my statement, but let me conclude by saying this. It is important to point a spotlight on areas of abuse in the collection activities. Our constituents rightly expect us to protect us from abusive and legal actions.

This objective is particularly important when such actions are done in the name of law enforcement. At the same time, we must do so in a way that does not undermine those who are performing crucial law enforcement missions.

Mr. Chairman, you and I know there are scam artists, criminals, who are trying to place an additional burden on their fellow Americans by not contributing their fair share. Law enforcement is never easy. It is always subject to abuse.

It is important that those of us in public life oversee and ensure that the abuses are eliminated or, at the very least, kept to the absolute minimum. I congratulate you, Mr. Chairman, Senator Moynihan, and others for pursuing this worthy objective.

The CHAIRMAN. Thank you very much for appearing here today. We look forward to working with you in the future.

[The prepared statement of Congressman Hoyer appears in the appendix.]

The CHAIRMAN. Now, we are coming towards the end of the first vote, so I will recess the committee to enable us to go down and make two votes. I ask the members to come back as quickly as possible, because I am going to reopen the hearing to permit members to make their opening statements.

Senator KERREY. Mr. Chairman, may I with respect ask whether or not you intend to ask me, Senator Grassley, or Congressman Hoyer questions?

The CHAIRMAN. No.

Senator KERREY. No questions?

The CHAIRMAN. No questions today. We have such a full schedule.

Senator KERREY. I see.

The CHAIRMAN. The committee is in recess.

[Whereupon, at 9:46 a.m., the hearing was recessed and reconvened at 10:22 a.m.]

The CHAIRMAN. The committee will please be in order.

We will now turn to our fellow members of the committee for any opening statement that they make care to make. I would ask that they be limited strictly to 5 minutes since we have already lost a great deal of time because of the vote, and have, as I said, a full schedule.

I would also point out that we go down the list under the early bird rule. The next person I have that is here is Senator Graham.

OPENING STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman. I would like to express my appreciation to yourself and Senator Moynihan for holding these hearings today. I would like to start by placing a call. This is a call to the 800 number of the IRS, in order to give us a laboratory test of how long it takes to get a response to a citizen's message.

Senator GRAMM. Hold it up to the mike so we can hear it.

Senator GRAHAM. Mr. Chairman, this is obviously a critical agency. We have now reached the computer response. We are not interested in information on the new tax legislation. We know too much about that already. [Laughter.]

Senator GRAHAM. This is a critical agency. It is critical that it be competent, fair, respectful of people, capable of carrying out its function. It is also true that many aspects of the Federal Government are anonymous, unknown to the American people.

The activities of the IRS are often too well known to the American people and form the basis of the American people's assessment of how government, in general, operates, that which they have contact with, that which they cannot see.

Unfortunately, what the citizens of my State and the Nation are saying, is that they are having too many adverse impacts with the IRS.

What is your name, sir? Mr. McDowell, first, I want to thank you for having answered the phone in less than two minutes. I would like to get back in touch with you, if you could hold for a moment,

and discuss some specific issues. Could you hold? Good. Thank you. [Laughter.]

Senator GRAHAM. What I would like to talk to Mr. McDowell about are some of the concerns that have been expressed by my constituents, including the difficulty of getting someone on the telephone.

One lady from Ft. Meyers who says she is 69 years old said that frequently it had taken her up to 30 minutes in order to reach someone on the telephone. Another gentleman from Orlando said that he has been waiting for 6 months to get a response to a question, and that he has called the 800 number and has encountered not a human being, but frustration. Those are some of many examples of the response of citizens to their attempts to make contact with this critical Federal agency.

As we proceed with these hearings, Mr. Chairman, I think that it is important that we do a physician's quality assessment of this agency in order to diagnose, what are the components of its pathology. We will no doubt encounter, as the commission chaired by Senator Kerrey did, a number of those, but I would suggest, too, it might be particularly appropriate for our concentration.

One, is the human dimension, whether it is a large insurance company or Disney. Those firms which depend upon their ability to relate effectively with the public make a major commitment to the human beings within their organization who are that contact with the public. I am concerned that the IRS has not made that sufficient commitment in terms of the standards of training, support, and leadership for its people.

I am struck with the fact that the IRS is not unique in this circumstance. I have had the opportunity to have extensive dealings with the Immigration and Naturalization Service, and many of the same concerns that we have and will hear about the IRS are also said about that large Federal agency.

So we may, in the course of this set of hearings on the IRS, develop some concepts that would have broader application in the Federal service.

The second area is our primary responsibility, and that is the complexity of the Tax Code. Senator Moynihan has already dramatically illustrated the fact that we added another approximately 10 percent to the complexity of the Tax Code, at least in terms of pages, by the action that we took just a few weeks ago.

I would hope that, as a result of these hearings, the impact of that complexity on citizens' response would be fully understood, and again that we would develop some concepts as to how we might move towards the path of greater simplification.

It struck me as ironic that, whereas in 1996 one of the key discussions of the Presidential election, including Senator Dole's proposal for a 15 across-the-board reduction in tax rates, were completely ignored in 1997 when the Budget Agreement was struck and the tax reductions developed. Nobody talked about using tax reductions as an opportunity for simplification. They became the source of a fairly massive degree of additional complexity.

So Mr. Chairman, I commend you and Senator Moynihan for undertaking these hearings, and look forward to the diagnosis and ef-

fective prescriptions that the hearings will bring to our attention, and that we will then have the responsibility to implement.

Now, back to my phone call.

The CHAIRMAN. Thank you, Senator Graham. This is the first time I have seen anyone conduct business during a hearing, but I congratulate you for your effective use of time.

I think, Senator Conrad, you are next in line.

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

Senator CONRAD. Mr. Chairman, I am not going to call anybody. I am probably the only person here who was a tax administrator. I was the tax commissioner for my State before I was elected to the United States Senate. So I think I have an appreciation for——

Senator MOYNIHAN. That has got to be sort of a record, people rewarding a tax commissioner. [Laughter.]

Senator CONRAD. Well, both Senators from North Dakota are former tax commissioners, so that is a dual record. We were elected to the U.S. Senate, I think, because we gave good service to people. We were fair, we collected the taxes that were owed, but we gave very good service and we did not have to abuse people in order to collect taxes that were due.

Mr. Chairman and Senator Moynihan, I think most people understand that, as a society, we have an obligation to pay what is owed and due. That is how we support the common defense, that is how we educate our young people, that is how we support our elderly, that is how we build the roads, bridges, and airports that allow us to function as a society. So we have to collect the revenue that is necessary to pay the bills. Frankly, over the last 5 years we have seen quite a remarkable turnaround for the Federal Government.

The Federal Government was in a circumstance five years ago in which it could not pay its bills, was not even coming close. It was running record deficits. But because of actions that were taken, we are now on the doorstep of balancing the unified budget in this country, and that has led to an economic resurgence. I say this, because I think it is important to put into perspective what we are doing here today. Clearly, we must have a revenue agency, whether it is the Internal Revenue Service or some other such agency. We have to collect the money necessary to pay the bills.

On the other hand, nobody can tolerate abusive behavior. I think we also need to put that into perspective, because the vast majority of men and women that work for our revenue service do not abuse anyone. They go about their jobs quietly and in a dedicated way, and perform very well.

I had, when I was tax commissioner, many exchanges with the Internal Revenue Service and I found a high degree of professionalism, a high degree of commitment, many people who had dedicated their working lives because they believed what they were doing was in the public interest.

So I do not want to be a part, and I do not think anybody here wants to be a part, of some trashing of people who do not deserve it. But this is a very large organization and there are people who

have made mistakes, and they are serious mistakes, and that cannot be tolerated.

It is totally unacceptable that IRS staff abuse others, that they threaten them, and that they use coercive tactics. That is not acceptable and that should not be permitted. Those who are responsible for it ought to be punished. We should make that clear.

But, Mr. Chairman, I think we should also make clear there are some here with an agenda that is beyond fixing something that is broken, or at least in part is broken. There are some who come here with a political agenda, and I also find that troubling.

I note in a Washington Post story that there are some who have been sending out fund raising letters with statements like, "We want to end the IRS's reign of terror." Well, I do not think the IRS is engaged in a reign of terror. There have been abuses, certainly. Are those abuses unacceptable? Absolutely. I think to assert that the IRS has been engaged in a reign of terror is pretty loaded language.

Another fund-raising letter that went out from a colleague had the "People vs. IRS Survey" and said, "Armed with your responses and demands, GOP leaders can call for televised Senate hearings on the IRS."

A former IRS commissioner, Lawrence Gibbs, IRS commissioner under President Reagan, as a matter of fact, is concerned about any attempt to make a partisan issue out of this agency.

He said, and I think this is something for us to keep in mind, "Using highly partisan language to attack the IRS is very irresponsible and can lead to undermining the public's trust in the tax system, which is dangerous." Again, that is the former commissioner under President Reagan.

So I think in conducting these hearings that it is very important that we keep things in perspective. Where there are abuses, they ought to be stopped. People who use coercive tactics and who have violated the law ought to be punished.

But we also need to keep in mind we need a revenue agency in the United States to do the very difficult work of collecting those revenues that we as a Congress said people are responsible to pay. We have done that because those revenues support our National defense, they educate our young people, they assist our elderly.

In saying that, Mr. Chairman, I think we all need to move forward in a constructive way, identify what is wrong, figure out ways to fix it, and implement those changes. I very much appreciate the way the Chairman and Ranking Member began this hearing. I think you have sounded just the right note.

The CHAIRMAN. Well, thank you, Senator Conrad.

Again, let me emphasize, when we began these investigations 8 months ago, their purpose was to develop constructive criticism, constructive criticism that would result in reform to benefit the American public, as well as the employees of the agency itself. That is the way these investigations have been conducted. These hearings are not intended in any way to be partisan or political, they are in the interest of good government and that, I shall insist upon.

I think we will turn, at the suggestion of Senator Moynihan, to Senator Gramm.

OPENING STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM TEXAS

Senator GRAMM. Mr. Chairman, let me join everybody else in thanking you and Senator Moynihan for holding these hearings. I think it is important that we take a long, hard, close look at the IRS and how it works.

I do not think our dear colleague from North Dakota has to worry about anybody undermining the credibility of the IRS. I think if you look at what the witnesses are going to say here over the next 3 days, the IRS has done a very good job of doing that for itself.

I want to make three points in my opening statement. Number one, I do not have any sympathy for people who are trying to cheat on their taxes. I think the IRS not only has a license, but a mandate, to go after people who are engaged in fraud and who are cheating other taxpayers by not paying their taxes.

I hope that nobody gets confused here as to what we are concerned about. I want the IRS to use the full power of the law to make people pay the taxes they owe and to pursue people who are cheating.

Second, I think we are all concerned about stories that we hear every day from our constituents about how they are being abused, about how heavy-handed the IRS is, and how it uses tactics that we would view, and I think the average American would view, as inappropriate.

Now, one of the things I always try to do is to take such comments with a grain of salt, because I do not always know what the facts are. I have never been one of these people that automatically assumes the government is wrong because somebody says they are engaged in bad behavior, but provides no proof.

But I have followed enough cases in my State through the whole process to reach the conclusion that, while the vast majority of the people at IRS with a very difficult job are doing a good job at it, there are people who use the power to intimidate that obviously working for the IRS gives them the ability to do. We are all afraid of the IRS; I think every American is.

I think it is important to have some system, to have checks and balances, to oversee and hold people accountable for what they do. Now, how to do that, how to get the balance between going after people who are cheating and not abusing people who are simply trying to comply with a very complicated law, where most of us, even those of us who may have had at some time some expertise in these areas, find it impossible to do our own taxes? It is a very delicate balance. I came to the hearing because I wanted to discover how to do it, not because I wanted to tell anybody.

Finally, I would note the obvious point that today government is spending about 31 cents out of every dollar earned by every American. Next year we are going to have the highest tax burden in American history. If we do not change Medicare and Social Security, at an absolute minimum, within 25 years the payroll tax is going to be 30 percent, not 15 percent.

The average working family where husband and wife work, is in the 28-percent Federal tax bracket. So 25 years from now, with the status quo, at a minimum, the tax rate of the average working blue

collar family is going to be 56 percent. Obviously it is going to be very, very difficult to collect those taxes.

So I think while we are looking at the IRS and while we are looking at its abuses, part of the long-term reform is tax simplification where it is easier for people who want to comply, to comply.

But I think part of the reform is to look off in the future 25 years and say, is that the America we want? Do we really want to have an agency that is trying to take 56 cents out of every dollar earned by average working Americans? I think the answer to that is no. We need to begin to try to make those changes over the next 25 years to keep that from happening.

So, Mr. Chairman, this is a very difficult subject. It is clearly a subject that deserves intense Congressional scrutiny. I know what I would like to see us do. That is, use our resources to go after people who are violating the law and be sure we are respectful of people who are simply trying to comply with a difficult law, but trying to tell the difference between those two cases is very, very difficult.

Obviously, it is very difficult for a person at the IRS to know the difference between the two. Clearly, change in the code of conduct is due, and that is something that we ought to be leaders in trying to produce. So, for all of these reasons in a very difficult subject, I am very grateful for these hearings, and I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Gramm.

Now I would call on Senator Bryan.

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

Senator BRYAN. Thank you very much, Mr. Chairman.

No citizen should have to endure what Monsignor Ballweg, Ms. Jacobs, Ms. Lund, and Mr. Savage, who will testify tomorrow, encountered in their experiences with the IRS. There is no excuse for this kind of conduct, attitude, or treatment of law-abiding citizens who are attempting to comply with their legal obligation to pay their taxes.

Having said that, the tax collector has never enjoyed great public favor. From King Solomon's time, the tax collector has been despised and reviled, so it comes as no surprise that the IRS is an easy target for criticism and a convenient whipping boy.

As pollster Frank Lance points out in his widely distributed memo to Republican members of Congress, in the language of the 21st century, nothing guarantees more applause and support than the call to abolish the Internal Revenue Service. I expect Mr. Lance is probably right about generating applause, but that does not make it the right thing to do.

Unfortunately, someone needs to collect taxes. Federal tax collection is a task of monumental proportions. Last year, the IRS collected $1.4 trillion in taxes. It processed 209 million returns, including 119 million individual income tax returns. It disbursed $110 billion in refunds, and handled 105 million requests for information.

By any standard, this is a very difficult job. I believe that the great majority of the 102,000 employees of the IRS are neighbors,

our fellow citizens, who do their best to meet the demands of this often unpleasant task in the best manner that they can.

None of this is to suggest the kind of egregious conduct by the IRS that we will hear about this week is or can be justified, nevertheless, the IRS has made numerous improvements which have made the always unpleasant task of paying taxes a much less difficult ordeal for millions of Americans.

More than 19 million Americans filed their individual returns electronically in 1997, an option that results in faster, more efficient service and with greater accuracy. For the 4.7 million of those electronic filers that used Telefile, the annual ordeal of paying Federal income taxes amounted to only a simple, 10-minute toll-free phone call to the IRS.

While these successes do not excuse the serious problems the IRS needs to deal with in other areas, they do reflect a continuing effort to improve the culture of the IRS and to attempt to make it more taxpayer friendly.

The hearings before this committee this week will prove titillating, shocking, and to a large extent will accurately point out some very serious problems within the IRS.

Undoubtedly there are IRS personnel who behave badly, who abuse their position, who are vindictive and abuse the taxpayer. These employees ought to be identified and immediately terminated. There is much we can do to improve the management and operation of the IRS.

Senators Kerrey and Grassley led an important bipartisan commission to examine the problems in the IRS. While there is disagreement over some of the specific recommendations, the commission report is an important starting point for what could be a substantial reform of the IRS.

Many of the problems with the IRS, of course, as has been pointed out by a number of my colleagues, lies right here in the Congress. In many ways, the Congress has charged the IRS with an impossible task. The ever-increasing complexity of the Tax Code places enormous burdens on both taxpayer and IRS employees, both of whom oftentimes are trying to do the right thing.

This year's tax bill, of course, is no exception. The bill, which most of us supported, creates entire new mazes of confusing requirements that taxpayers will need to work their way through. Many of the provisions are effective starting this tax year, which means IRS personnel will need to have forms, guidance, and appropriate training in place by the end of this year.

Already we are told that we need to pass technical corrections, which will then need to be incorporated into IRS procedures.

The hearings before the committee this week will provide more fodder for the IRS's critics, and I fear that some may use these hearings to pursue partisan advantage in future political contest.

Reckless, inflammatory criticism of the IRS may be good political sport, but it can incite violence among tax protestors. Nevadans were shocked in December of 1995 by a botched attempt by so-called tax protestors to bomb the IRS office in Reno, Nevada. Despite the unpopularity of their duties, IRS employees are public servants who should not be forced to work in hostile circumstances

and should not be expected to work under circumstances and conditions that threaten their health and safety.

We do need to reform the IRS, get its computer system working better, institute better management practices, and terminate those in service who abuse their positions.

I am confident, Mr. Chairman, that you intend to use these hearings as a basis to pursue real reforms of the IRS, and I pledge to work with you as we undertake the business of reforming the IRS.

The CHAIRMAN. Thank you, Senator Bryan.

Senator Nickles?

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

Senator NICKLES. Mr. Chairman, thank you very much. I want to compliment you and Senator Moynihan for these hearings, and also compliment Senator Grassley and Senator Kerrey for the work that they have done in trying to reshape and rehabilitate the IRS.

Mr. Chairman, it needs to be done. The Tax Code is far too complicated, in many cases far too complex, and in many cases not fair. This committee has an opportunity, I think, to highlight some of the problems we have with the Code, maybe some problems in enforcement of the Code, and some injustices as well.

We have, as Senator Bryan mentioned, over 100,000 IRS agents. That is a lot. I would certainly concur with Senator Gramm's statement that most are very, very honorable and do an outstanding job. They are, indeed, public servants.

But clearly there have been some real abuses, and those need to be stopped and they need to be stopped now. The IRS has unbelievable authority to wreck lives, ruin businesses. They can cause anxiety.

There is not a phone call that can probably give people more anxiety, than the IRS wants to audit you, or they want to talk to you about your return. Automatically that sends chills down the spines of taxpayers, taxpayers, in most cases who have been very honest.

In some cases, maybe they are not honest and it is certainly justified. But we will hear some cases of abuses and those abuses need to be stopped.

Mr. Chairman, I believe we also need to make sure the IRS is not being used for political purposes. It bothers me when I read news accounts that organizations aligned philosophically the opposite of the current administration have been audited. I think we need to review that.

We need to find out and we need to make double-darn sure that is not happening for political purposes. But when you hear reports of audits of conservative groups and you do not hear it from opposite-minded groups, that bothers me.

Mr. Chairman, just look at the Code. The Internal Revenue Code, Senator Moynihan mentioned, I think, is 9,400 pages. We recently added several hundred pages. This is the IRS code. The Bible, to compare it, is quite a bit smaller. Senator Gramm was studying it, and I would encourage him to continue studying it. The Bible has something like 8,045 words. The IRS Code has over 5.5 million words of law and regulations. There is no comparison.

I might mention, there is a lot more wisdom and value in this book than there are in these books. We have added to the complexity. In the last tax bill that we passed, and I think most of us have said that it was a pretty good tax bill, we added 285 new sections to the Tax Code, we amended 824. So we made it even more complicated, more complex.

In my opinion, the tax code needs a significant overhaul. We need to really reduce this to something that most people can understand, and hopefully replace it with a fair, flat, and simple Tax Code.

Mr. Chairman, when you have something like 5.5 million words of rules and regulations, when you have 17,000 pages of rules and regulations, we have got a real problem. So we have 102,000 agents trying to enforce the law. We have 480 different forms.

Right now, the IRS sends out 8 billion pages of forms and instructions every year. 8 billion. That is phenomenal. Last year, the number of information forms exceeded a billion. That is a lot of 1099s that somebody is supposedly trying to keep track of. The number of corrections that were sent out are estimated to be over 10 million per year. The number of corrections. The number of penalty notices sent out in 1994 were 33 million.

In 1993, there were 8.5 million times that the IRS gave the wrong answer to taxpayers who were seeking some information. In 1987, the GAO said that 47 percent of the calls to the IRS resulted in inaccurate information. Congress recently spent $4 billion to upgrade IRS's computer capabilities. It has been a dismal failure.

Now, Senator Bryan mentioned the electronic filing. That has been a success. So, we have had some decent improvements in their technology. But, as Senator Kerrey mentioned in his opening statement, I think the IRS is way behind the 8 ball as far as keeping up with modern technology. The EZ–1040 that everybody is supposed to be able to understand and do so quickly and simply has 31 pages of instructions.

So, Mr. Chairman, I think this committee has a big challenge before us. I think we need to eliminate the abuses. We need to be sure the IRS is in check, that it is doing its job, that it is not abusing its power. I think we have a real challenge and responsibility to see if we cannot simplify this very complex and inequitable system. I thank you for your efforts.

Senator MOYNIHAN. Mr. Chairman, could I just take a moment?

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. I would just remind all of our committee members that you and I have asked the Joint Committee on Taxation to examine politically motivated audits, and we will have a report later this year.

Senator NICKLES. I appreciate that.

Senator MOYNIHAN. If there are, they had better stop, and fast.

Senator NICKLES. Thank you, sir.

The CHAIRMAN. Next on the list is Senator Lott.

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

Senator LOTT. Thank you, Mr. Chairman. I will be brief so that you can go to your panels that you have lined up. I ask consent that my entire statement be placed in the record.

The CHAIRMAN. Without objection.

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

Senator LOTT. I want to also join others in commending you, Mr. Chairman, and the Ranking Member for having these hearings. I have maintained for years, including this year, and will continue to push for it in the future, that as a matter of fact Congress should have a lot more of this type of hearing.

We should have investigative and oversight hearings into how the laws are working, how are the agencies' bureaus and departments functioning, not from the standpoint of trying to be punitive, but trying to find out how the laws are working so we can do a better job in changing them and making them better for the American people.

So I think we are performing our duty here in having this oversight hearing, trying to find out, what are the abuses at the Internal Revenue Service. No agency should be above the law, no agency should take matters into its own hands, regardless of whether it is convenient or not.

So we need to check into these allegations that we have heard about intimidation and pressure and threats. Because of these hearings, I have been receiving calls from around the country, including my own State.

Just yesterday I had one from a former IRS revenue officer, now a CPA. He pointed out a particular case where he said, "there was no doubt in my mind that the goal was not to find a way to get the taxes paid that were owed, the purpose was to put the business out of business."

I have had other calls that really alarmed me along those lines. I think that the purpose here should be to have a good, strong bipartisan hearing. I know that is the intent, and that is the way it will be. I hope it will not be the last step, but only the first step.

The next step would be leading us to the necessary changes, perhaps, in the law that will change the culture that maybe has developed over a period of years in this agency, and I hope that it can be the first of this type of hearing, that maybe we will look at other agencies by other committees.

So I think we have a worthy goal here, to find out what has been happening, where there are abuses, if any, what the problems are, and see what we could maybe do then in terms of legitimate, needed reform. I look forward to the hearings both today, on Wednesday and Thursday.

I am trying to cooperate by, in fact, the Senate not coming in until noon on Wednesday and Thursday so that we can have our full attention devoted to these very important hearings. I thank you, Mr. Chairman and Senator Moynihan.

The CHAIRMAN. Thank you, Senator Lott, for those words. Now I would call upon Senator Rockefeller.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman. I will be very brief.

I would join in what has been said, at least around this hall, in that I hope that these are bipartisan, I hope that they are fair. I note in the witness list that the General Accounting Office comes on panel number 6, which probably will take place at about 2:30 or 3:00, and they would be the only ones who would be trying to look at this in perspective.

Some of us have been Governors. Senator Graham has been a Governor, Senator Bryan has been a Governor, I have been a Governor. It is very interesting, when you get to the problem of bureaucracies, even at the State level, and the behavior within.

As Senator Nickles has said, and others, most people—and Senator Conrad, I am told, said that before I came in, and I know Senator Bryan said it—are trying to do the right thing in the most unpopular job in the history of the world, I think, being an IRS agent.

Unfortunately, not all Americans do pay the taxes which they owe and which is part of the cost of a democracy, to have your shores protected, your homes relatively safer.

The only way that can be achieved is to work through something called enforcement, and enforcement I think is what we are going to see has some flaws in it, because there are always cases where people go out and they do things the wrong way. Those people should be terminated and those people should be shown in these hearings to be what we mean when we say we are trying to straighten out the system.

I think it is also interesting that, over the last 5 years, there have been 3,200 cases of assaults or threats on IRS agents, and those folks are humans, too, the good ones, and then whoever the bad ones are, they have the right to do their jobs with some sense of security, except if they do them wrongly, in which case they should be fired.

I know that Secretary Rubin has done a whole series of things to try and correct this situation, and criticism of the IRS has an effect on our ability to enforce our tax laws, as has been noted by even President Reagan's IRS director. The IRS always has been an agency to criticize. So I hope we are going to get the whole picture. I have in my book letters from a variety of Senate and House leaders who have turned the issue, it seems to me, into a fundraising issue.

Each of the letters that they send out say some of the things that have been said here this morning, or will be said here this morning. Then they said, by the way, please send in $25, $50, or $100 to whichever national committee or to whichever Senate campaign committee is trying to raise money by IRS bashing. I find that distressing.

In other words, is this a real issue that we are trying to do something about or is this an issue that we are trying to make political capital off it? If it is the latter, I find that distinctly unuseful. If it is the former, I find it thoroughly worthwhile.

The two large volumes of the Tax Code and the regulations that Senator Nickles had in front of him are, in fact, caused by us. We

are the ones in the Congress who caused those to appear. It would be in that spirit then that what we are talking about here is not just the abuses, which is important and necessary for us to hear, but also, how can we fix it. That is the kind of thing which tends to engage my attention, and I am confident it would be the same with my colleagues.

I thank the Chairman.

The CHAIRMAN. Let me say once again that the purpose of the investigation and these hearings is not a partisan one. The purpose is good government, not partisan purposes.

Our focus is on whether the average taxpayer is being dealt with fairly by the IRS and the internal operation of the IRS, irrespective of what party may be in control of the Executive Branch. A number of our cases go back 17 years, so it covers several different administrations. This is an internal examination, as I say.

Let me set the record straight. Any fund-raising efforts are in no way connected with this investigation that we commenced some 8 months ago.

I think we are now to the point where we can turn to the first panel. The members of these associations, which I call the "view from the trenches," represent the public in all types of tax matters, as well as disputes with the IRS. In the case of enrolled agents, these are men and women who are licensed to represent taxpayers before the IRS, with many of their members being formerly with the IRS.

The panelists are Mr. Joe Lane, who represents the National Association of Enrolled Agents, representing the New York State Society of Certified Public Accountants; we have Mr. Robert L. Goldstein, chairman, and James A. Woehlke, Director of Tax Policy—if they would come forward.

Now, it is our practice in these oversight hearings to swear the witnesses, so I would ask each of you to stand and raise your right hand.

[Whereupon, the three witnesses were duly sworn.]

The CHAIRMAN. Do you so swear, Mr. Lane?

Mr. LANE. I do.

The CHAIRMAN. Mr. Goldstein?

Mr. GOLDSTEIN. I do.

The CHAIRMAN. Mr. Woehlke?

Mr. WOEHLKE. I do.

The CHAIRMAN. Please be seated.

Senator MOYNIHAN. You realize you are in a lot of trouble now.

Mr. WOEHLKE. Yes, indeed.

The CHAIRMAN. We will start with Mr. Lane. I would ask that your testimony be limited to 10 minutes in each case, but your full statement, of course, will be included as if read.

Mr. Lane?

STATEMENT OF JOSEPH F. LANE, ENROLLED AGENT, CHAIRMAN, NATIONAL GOVERNMENT RELATIONS COMMITTEE, THE NATIONAL ASSOCIATION OF ENROLLED AGENTS, GAITHERSBURG, MD

Mr. LANE. Thank you, Mr. Chairman, Mr. Moynihan.

It is a pleasure to be invited to appear before the Senate Finance Committee today to discuss these matters. We understand the focus of the hearings is to look into IRS practices and procedures.

Enrolled agents are uniquely positioned to provide some valuable insight to you, since our members deal with thousands of IRS employees every day in representing taxpayers. I was heartened to hear the opening comments about the bipartisan nature of these hearings. There has been a tremendous amount of media hype in connection with this hearing, and we were a little bit concerned about it ourselves.

We spoke to both the Majority side and the Minority side, and were assured by both parties that the intention of these hearings was to be a balanced approach to looking at the IRS, with the attempt to arrive at some constructive suggestions for change that would improve the tax administration system.

Mr. Rockefeller, I would be happy to assure you, we are here strictly to offer unbiased viewpoints. I think GAO has a view, but I think the rest of us also have viewpoints that are on an even keel.

I think probably the best way to demonstrate the bipartisan nature of this Commission would be to recommend out of this committee the Kerrey-Grassley bill. That was a year-long effort in the National Commission on Restructuring to arrive at informed viewpoints on how best to change the tax administration system this country has and to assure that we have taxpayer rights protected and we have an organization that is responsive to taxpayer input, and at the same time creates an effective work force that is able to collect the taxes this country needs to survive on. So the best way to ensure that you have bipartisanship, I think, is to enact that legislation, and we would urge that that be done.

We would like to start today by talking about some of the things IRS is doing right. I think the Service should be commended for the fact that it has embraced the majority of these recommendations that the Commission has given them, and they have announced that they intend to enact administratively whatever they are capable of doing from the commission.

I think that that probably has not been an easy pill to swallow for the IRS, but they have stepped up to the plate and done it. I think that is indicative of an agency that is willing to accept constructive criticism and change.

We also salute the selection of Bob Barr, the new Assistant Commissioner for Electronic Tax Administration. He is an outsider from the industry. He served previously as the vice president of the Intuit Software Company, and I think that the IRS is responding by going out and trying to recruit expertise they do not have in-house to market electronic filing, and that is a good development and I hope to see more of that continue.

We also applaud some of the initiatives the local field components of the IRS are doing. They are trying to bring in more practitioner input, and we praise those districts that are involved in that area.

We also think the IRS national office is making a concerted effort to have better communications with the practitioner community,

and that always improves relationships when problems can be discussed in an open manner and flushed out.

One of the biggest concerns we have today about the IRS is the status of employee morale in the Service. Our voluntary compliance system depends on both sides of the table being staffed by competent people. On the practitioner's side, we have a procedure for making sure our people are up to snuff and are competent and able to handle things, and we train them.

One of the concerns we have on the IRS side is this constant din of criticism and public attention and media barrages that we see that has the effect of making morale in that organization decline.

So we are concerned about that morale and we would like to see some additional focus on GAO looking into what they could do to instill some additional feelings of worth among some of these people in the Service, because if you have unhappy tax administrators you inevitably have unhappy taxpayers, because they have to deal with these people on a regular basis. That human element that Senator Gramm talked about is an extremely important element in any law enforcement capacity.

We have some specific issues that we would like to address with the committee today in the area of taxpayer rights, and particularly in procedures with collection and exam. Then we would like to go on and offer some additional suggestions for your consideration.

One, we believe the American Bar Association has drafted some legislation they will be submitting which bars the IRS from using statistically-generated average expenses in making collection case determinations. We support that legislation and we would like to see the Service consider the unique facts and circumstances of every taxpayer's case on a case-by-case basis.

We believe that the use of these expense statistics has increased the number of bankruptcies substantially in the last year. We had a 25-percent increase in bankruptcies in 1996, during a period of economic improvement throughout the country.

We think that a big component of that bankruptcy increase had to do with the collection division in October of 1995 implementing this procedure of using Bureau of Labor Statistics standard expenses allowances instead of allowing taxpayer to take the expenses they are actually incurring when they are making collection determinations. So we would like to see that investigated and we would like to see Congress act on that.

The other problem we always have is the perennial one of inconsistent enforcement policies around the Nation. We have 33 IRS districts and we frequently run into issues where the national office promulgates a policy or procedure, then we see deviation from the procedures. We need to see more attention paid to that, and that is particularly in the collection area.

The other issue we have problems with is the new procedure recently where the IRS has started to ask taxpayers for statute extension requests on collection cases, even though there might be nine and a half years of the 10 years left on the statute. That is an inappropriate use of the statute extension provisions. We think that the Congress ought to take a look at whether they ought to have a right to have a statute extension at all in collection.

Just in 1990, you extended their statutory period of collection from 6 years to 10, and now we have a situation where we have a taxpayer, by example in the testimony we gave you today, someone goes out and files a tax return, owes the money, and calls the IRS, tries to set up a payment agreement.

If the payment agreement that they could afford to pay each month is insufficient to full-pay the tax within the 10-year period, the IRS is asking for a 5-year extension today. We do not think Congress ever intended the IRS to go into the mortgage business or have a lifelong relationship with these people. Ten years ought to be sufficient. We do not think we want to see 15- and 20-year installment agreements with the IRS, and we urge Congress to take a look at that whole area.

The collection appeals process we think ought to be beefed up and allowed to be a true appellate review of the judgment and conduct of the revenue officers involved. Right now, it is strictly a procedural review and it does not have much of an impact. I think the lack of use by practitioners and taxpayers alike indicate that they view that as really not a legitimate forum.

In exam, we have the current exam program letter that evaluates districts based on yield per hour. I think one of the things you are going to focus on in this hearing is the inappropriate use of enforcement statistics.

If you look at how much money per hour is generated by revenue agents, then the first casualty you have in an environment with a quota system, like a traffic cop, is taxpayer rights. You should not have an environment where you evaluate people based on how much money you rake in per hour. We think that ought to be addressed by the Congress.

The other issue we are concerned about is the inappropriate use of the financial status audits, or the economic reality audits. We had a lot of publicity about this last year, a lot of hearings about it. The IRS issued a national directive saying they would only use this approach when there was an indication somehow in the case file that there was unreported income. We still see and get complaints from members and taxpayers alike that this procedure is being implemented when it is inappropriate.

I think one of the suggestions we would like to see to head this off is that the IRS ought to be required, whenever they send an audit notice to a taxpayer, to include with that audit notice all of the IRP data, the Information Returns Program data, that the IRS has on that taxpayer in the file. The reason for that, is it avoids the "gotcha" game in the audit process.

If taxpayer and practitioners alike, in preparation for going in for the audit, know that the IRS has been reported some income such as a dividend or miscellaneous compensation that was paid but it is not reflected on a tax return, they can prepare to argue either it is correct and was inadvertently omitted, or it was an erroneous filing to begin with. That is one of the issues we always run into as a justification for using this economic reality approach.

Another area we think the committee ought to look at in the hearings you are doing, is the market segment specialization program. This program is probably the best thing IRS has done in the last 25 years in identifying pockets of non-compliance in specific in-

dustries and focusing their efforts, going out and getting other State agencies and other Federal agencies together, bringing all the people to the table that are affected by it, and doing something about it.

Probably the best success story you can look at is out in the Central California district in Fresno, where they have focused on farm labor contractors. They have just accomplished a tremendous result as a result of the implementation of this approach, and I would suggest you hold a field hearing out there, if you have the time.

I extend an invitation to come out to California. Everybody in Washington likes to get an invite to come out to the coast, I know. Come out and see what they are doing out there. They are doing some terrific stuff and they ought to be commended for that.

With respect to exam quality review, one of the concerns we have about employee morale and the lack of IRS's ability to recruit quality people, is the quality of the work that is done at the initial stage in the audit process is declining.

One of the things that is interesting to us and I think is something else you ought to look at, is the Pacific Northwest district has just announced a test study which they are going to implement using a district conference staff. That is a positive development.

We would like to see, additionally, the committee consider protecting taxpayers' rights of confidentiality by enacting legislation that gives the taxpayer the right to protect from IRS summons the counsel and advice they have gotten from their tax advisers.

We would like to see all commercial tax return preparers registered. We have a ludicrous situation in this country today where the tax preparers that have made the most commitment to their profession, the enrolled agents, the attorneys and the CPAs, are the most regulated, and the ones that have no commitment to a professional organization, have not agreed to a code of professional conduct, have no code of ethics to adhere to, and could open up a card-table shop on January 1, and disappear on the 16th of April, are completely unregulated.

I think the most basic taxpayer right in this country ought to be that if you pay for advice on taxes to make sure you comply with the law, you ought to be confident you are dealing with a competent person.

Today, we regulate barbers more than we regulate commercial return preparers, and you can recover from a bad haircut in 3 weeks.

The other thing we have got to do is provide full credit for Social Security and self employment taxes that are paid in on delinquent tax returns. Taxpayers are not getting full credit for their Social Security, even though the IRS is collecting the taxes. That ought to be reversed.

The other thing we would like to see the committee do is decide that, as a general principle of tax administration, you will never have a situation where the penalties are allowed to exceed 100 percent of the tax due for a particular tax period. We would also like to see tax penalties not used for revenue raising.

Senator Nickles gave an excellent demonstration before with the Bible and the Code. That is because the good Lord, in his wisdom,

inspired four evangelists to write the Bible and not 535 members of Congress. We would have the same situation if we had 535 evangelists, I am sure. We would have a 5 million word Bible, and it would be just as difficult to figure out.

One of the things you have to review is the whole penalty structure in the Code. There are too many penalties for too many infractions and you cannot expect anybody to understand them.

The other thing we would like to see changed, is there were some recent changes in some court cases that developed where we saw elderly people make an estimated payment of $7,000 when it should have been $700. The person had Alzheimer's.

The court reviewed the case and said, we would like to be able to give this person a refund, but the daughter did not discover this until three or 4 years later. Therefore, the statute barred them from getting a refund. That law should be changed. There should be reasonable cause that allows a refund beyond the 3-year period.

The other thing we did in our testimony before the Commission last year was to offer a suggestion that perhaps one of the ways of approaching the problems we are dealing with in tax administration was to divide the IRS into two separate agencies, one for taxpayer service, and the other for tax law enforcement.

The Commission did not choose to follow that recommendation, but we would suggest to you that it might be an appropriate thing to discuss with the Commissioner-designate during the confirmation hearings to see if they could accomplish virtually the same thing within the umbrella of the organization, to set aside and provide a network and an organization within the IRS to provide for employment and promotion opportunities for people to move up in the organization, when they have a customer service attitude.

The IRS says 85 percent of taxpayers are in compliance. Eighty-five percent of their efforts ought to go towards taking care of those people in terms of focusing on making sure if someone calls in and wants a question answered, it gets answered in a courteous manner and they get the information they need as expeditiously as possible.

One of the problems you deal with in law enforcement is, the same personality that makes a good cop makes a lousy waiter, and vice versa. So you need to have more emphasis on customer service in that organization and a little less on enforcement.

We have outlined the specifics in the example. Senator Gramm made reference to the INS having the same problem. Thank you.

The CHAIRMAN. Your time has expired and we must move on.

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

The CHAIRMAN. Mr. Goldstein?

Mr. GOLDSTEIN. I will let Mr. Woehlke start.

The CHAIRMAN. I would point out it will be 10 minutes for the two of you, so I would ask that you keep within that time limit.

Senator MOYNIHAN. New Yorkers are notoriously fast talkers.

Mr. WOEHLKE. We can probably accommodate that, Senator, yes.

The CHAIRMAN. Please proceed.

STATEMENT OF JAMES A. WOEHLKE, DIRECTOR, TAX POLICY, NEW YORK SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS, NEW YORK, NY

Mr. WOEHLKE. Good morning, Mr. Chairman, Senator Moynihan, members of the committee.

I am James Woehlke, CPA, director of tax policy for the New York State Society of CPAs, and I am here with Robert Goldstein today, the chairperson of our Relations with the IRS Committee.

Our society is privileged to testify before you today about our day-to-day work with personnel at the IRS. But before we begin we must say that we have tremendous respect for the IRS in its gargantuan task of administering our Nation's tax system. We are supportive of the mission of the IRS and are not among those, unrealistically, we believe, calling for abolition.

Also, some of the media reports about this week's hearings indicated your witnesses would portray an IRS run amok. We are unable to corroborate that particular message. Quite frankly, the IRS has over 100,000 decent, dedicated employees who carry out their responsibilities without guile and to the best of their ability. It is both unfair and inaccurate to portray the entire agency as running amok.

This is not to say, however, that the IRS has no internal problems and challenges to face. Recent accounts for the $4 billion tax system modernization boondoggle and the IRS's complete inability to understand the degree of intrusiveness inherent in its financial status approach to auditing indicate that there is a disconnect between the inside and outside IRS views of what its appropriate function is. Our testimony before the National Commission to Restructure the IRS distilled a number of what we called root causes at the heart of the IRS's problems.

Mr. Goldstein will touch on several of those today because they are helpful to understanding the problems and challenges practitioners face in their day-to-day interactions with the IRS. The root causes we will be touching on are structural dysfunction, the IRS's self-image, and the IRS's siege mentality.

We went into much greater detail regarding these and other root causes in our testimony before the National Commission. Time today, of course, will not permit that to be related in detail, and we therefore respectfully request that you admit that testimony, along with today's testimony, into the hearing's official record.

[The information appears in the appendix.]

Mr. WOEHLKE. Let me now turn the microphone over to Mr. Goldstein.

The CHAIRMAN. Mr. Goldstein.

STATEMENT OF ROBERT L. GOLDSTEIN, CHAIRMAN, RELATIONS WITH IRS COMMITTEE, NEW YORK SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS, NEW YORK, NY

Mr. GOLDSTEIN. Good morning, Mr. Chairman, Senator Moynihan, and members of the committee. I am privileged to testify before you today.

In my practice I deal with the men and women of the IRS on almost a daily basis. In my experience and that of those of the colleagues I represent, we have found that the vast majority of IRS

employees are dedicated public servants who try to do the best job they have with the tools available to them.

In our region we have found the executives and staff of the service to be open to liaison meetings and, within limits, responsive to taxpayer and practitioner concerns. These liaison meetings and joint IRS practitioner forums have allowed the practitioner and service personnel to share their concerns, understand the problems of the other, and try to work through these problems before they reach the point of confrontation.

There are, however, problems which need to be addressed. That is why we are here today. I dare say that the majority of IRS personnel would also agree that these issues need to be addressed.

The decentralized management structure of the IRS has made coordination of some important functions, including employee training, tax administration, and education difficult to achieve.

We believe one case illustrates the gap between national level policy-setters and regional management. Regionally produced IRS pronouncements, including market segmentation specialization program papers and market segment understandings have been issued with strident commentary regarding worker classification, while at the same time new training methods and legislation on a national level are implemented expressing conciliatory and taxpayer friendly approaches to the worker classification issue.

Regarding the IRS's self-image, we noted that a number of IRS employees testifying before the National Commission referred to the IRS as one of law enforcement. We cannot disagree more with this perception.

We recognize that there is an important element of law enforcement in the role of the Service. But to view that as its primary function creates a level of insularity and heavy-handedness which often makes it impossible to achieve its core customer service objectives.

The mere existence of the Problems Resolution Program illustrates this point. The primary role of the taxpayer advocate is to resolve taxpayer issues which have floundered in the normal process.

The Problems Resolution Program has been extremely successful and praised by practitioners and taxpayer alike, and offers an example of how different attitudes by IRS personnel, taxpayers, and their representatives emerge when the customer service model is used.

The very success of this program points to the failure of the normal process because it means the IRS is succeeding the second time around.

An example of the enforcement mentality that we address or that we have problems with exists with the increasing use of bypass actions, wherein an IRS examiner contacts the taxpayer, in spite of the fact that that taxpayer has an appointed representative pursuant to a power of attorney.

In a recent survey by the AICPA, over a third of the agents whom the responding CPAs came into contact with insisted upon interviewing taxpayers directly, even after the first Taxpayer Bill of Rights should have eliminated this practice. We recognize as practitioners that there are times when bypass procedures are ap-

propriate. But these are drastic actions and require strict supervision. A one-third failure rate is inappropriate.

The IRS misconception regarding the primacy of its law enforcement role leads to our third root cause, the IRS's siege mentality. It is overly insular in nature. In our written submission we quote at some length the Deputy Secretary in the Department of Finance and Management of the Service as testify before the National Commission that the IRS is a law enforcement agency at heart. We disagree with that. We believe it is a customer service agency at heart, and has a tangential law enforcement element.

We would be remiss in any discussion of problems with the IRS if we did not address tax law complexity. Taxpayers primarily use professionals to prepare their tax returns and represent them before the IRS, in the event that such representation is required, because of the complexity of the tax law.

Over the past 11 years, we have had 8 years with tax law changes, significantly increasing the complexity of our tax system. The law that you gentlemen have just passed ranks near the top of the complexity scale.

The professional staff of the Congress should consult with practitioner organizations on a regular basis in connection with writing new tax legislation. In this way, they can better understand the compliance effect of the law that you pass. This becomes clearer to the members of your staff.

The examination and collection issues which we are going to discuss may appear mechanical, however, they are symptomatic of systemic problems that we see in the field. For example, we are aware of an S corporation audit that took in excess of 24 months and resulted in a minimal adjustment.

Another S corporation took in excess of 18 months from the date of the initial audit to the 30-day letter. An individual audit covering a period of 2 years endured for more than 20 months and has just been taken into the Problems Resolution Program.

IRS personnel who participate in the FlexiPlace program wherein certain personnel work at home for part of the work week, cannot be reached by telephone when they are at home. A modern voice mail system should be installed and such personnel working at home should be required to monitor that system.

We do have some suggestions. We believe that the interim extensions for partnerships, trusts, and individuals should be eliminated. They serve no useful purpose. They do not increase the government's cash flow, they cost the IRS time and money, and are a thorn in the side of extending taxpayers and practitioners.

We endorse the report of the National Committee for Restructuring. We think they did a very fine job. However, we definitely do not agree that the independent board they suggest should hire and fire the commissioner or set the IRS budget.

The CHAIRMAN. Mr. Goldstein, your time is up. I do have to announce, our time is up as well. The Democrats have objected to any committee continuing hearings at this time.

Senator MOYNIHAN. It is a rule that can be invoked.

The CHAIRMAN. So we will have to continue this later. I would like to recess and see if we cannot work that out, so I would urge everybody to stay here for the moment.

Senator MOYNIHAN. Mr. Chairman, at the risk of censure by the whole body, I am going to extend long enough to thank these witnesses. They have been very helpful. They have both endorsed the Kerrey-Grassley Commission report. The idea that we ought to consult with persons such as the CPAs and enrolled agents on questions of complexity before we pass another tax bill is a good idea.

The CHAIRMAN. No question about that, that complexity is a serious problem.

Senator GRAMM. Mr. Chairman.

The CHAIRMAN. Yes, Senator Gramm.

Senator GRAMM. Mr. Chairman, could we, before we adjourn, since this order has come over from an objection on the Senate floor, could we finish this round? It very seldom happens to me, but I have had an idea. [Laughter.]

Senator GRAMM. I would like to have an opportunity to ask some questions and make a comment. Could we at least finish this round before we shut down?

The CHAIRMAN. I think the answer to continuing has to be in the negative. I regret that.

Senator MACK. Do we know who objected? Can we raise a question here as to who objected, and what was the purpose?

Senator MOYNIHAN. It was Senator Daschle, but you will not get anywhere asking us why.

Senator MACK. It is an unfortunate situation. I think that this morning the tone was created that this was going to be a bipartisan effort.

Senator MOYNIHAN. Oh, it has nothing to do with this committee. Nothing to do with this committee.

The CHAIRMAN. The objection is to all committees meeting during the session of the Senate. I would like to continue, but I think we would probably lose our Democratic members. I am insistent upon this continuing as a bipartisan effort, so let us see if we cannot work it out.

I would point out, tomorrow there will be no Senate business in the morning. We will start at 9:00 and we will be able to continue at least until 2:00, and hopefully later.

I apologize to our witnesses who were to testify today.

Senator MOYNIHAN. We thank our witnesses, too.

The CHAIRMAN. Yes. But some are also here who have not had a chance to speak. So I just want to make it very clear, we appreciate your being here. Your testimony is important and we desire to secure it in full. I would ask that you stay around temporarily.

The committee is in recess.

[Whereupon, at 11:34 a.m. the hearing was recessed until Wednesday, September 24, 1997 at 9:00 a.m.]

PRACTICES AND PROCEDURES OF THE INTERNAL REVENUE SERVICE

WEDNESDAY, SEPTEMBER 24, 1997

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

The hearing was convened, pursuant to recess, at 9:00 a.m., in room SD–215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Grassley, Hatch, D'Amato, Murkowski, Nickles, Gramm, Lott, Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham, Moseley-Braun, 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.

Since we were cut short yesterday we will submit questions in writing to both the Enrolled Agents and New York State Society of CPAs, and their responses will be included as part of the hearing record.

So I would ask our members to provide the Finance Committee staff with their written questions by the close of business today. Of course, I do apologize to our witnesses for this change.

[The questions and responses appear in the appendix.]

The CHAIRMAN. This morning I would like to welcome three distinguished authors, each of which is an expert in the area of the workings of the Internal Revenue Service.

Ms. Shelley Davis has had the distinction of being the first and last IRS historian. She is the author of a book entitled "Unbridled Power."

Mr. Robert Schriebman is a practicing tax attorney who has written eight books on IRS practices and procedures, and he is also an adjunct professor at the University of Southern California Graduate School of Accounting.

Finally, we have Mr. David Burnham, who is an associate research professor at Syracuse University, and has written several books including "A Law Unto Itself: Power, Politics and the IRS." He is the former New York Times investigative reporter who wrote the Serpico police corruption series that led to the formation of the NAT commission.

I would ask these three witnesses to please come forward.

Senator MURKOWSKI. Mr. Chairman?

The CHAIRMAN. Yes.

Senator MURKOWSKI. I wonder if I may make a very short observation at this time. Yesterday the hearing was cut short and I would just like to add one short horror story to the list and commend you for holding this hearing.

The CHAIRMAN. All right. We will get back to the witnesses in just a minute. In the meantime, Senator Murkowski.

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

Senator MURKOWSKI. I thank you very much, Mr. Chairman.

I would like to share with you an Associated Press story of September 22, and I will read it as follows. It is just one page. "Hundreds of Alaskans have received notices from the Internal Revenue Service that their permanent fund dividends were being seized because of tiny back tax debts, some as small as 4 cents."

The IRS says the problem was a computer glitch, one that involved some 800 of my Alaskan constituents, who got the notices allegedly by mistake. "We are extremely sorry," the IRS spokesperson said.

"I thought it was a practical joke that one of my friends was playing," said Dan Coyne, owner of the Sourdough Sporting Goods in Wasilla when he received the notice Monday of his 4-cent debt seizure. But the notice looked official enough, and soon Coyne got mad. Can you imagine how much money this costs the taxpayers?

He tried to call the IRS office, but could not get past the readings and the hold music. He called the State Department of Revenue, he called his Congressman, and he called me. "I was up in arms," he said. The tax collectors had never told him he owed this 4 cents. "Well, it was all a mistake," said Kraft at the IRS. "A technical glitch was traced to an IRS computer in Ogden, Utah." No offense, Senator Hatch.

"The IRS normally does not levy permanent fund checks for any amount less than $25," Kraft said. "In some cases, these pennies were not even owed in the first place."

But Willie Bannon, a potato farmer in Sutton, received a notice saying he and his wife owed the government 7 cents. After 20 minutes on the telephone, and then on hold, Bannon finally received an IRS representative. "And she wanted to argue with me that it was not 7 cents," Bannon said. "Surely," the representative told him, "if the IRS was levying his check he must owe more."

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

I would say to each of our witnesses, we are indeed very pleased to have you here. I would ask that each of you in your opening statements limit it to 10 minutes. Your full statement will be included as if read.

It is our practice to have witnesses in these hearings to be sworn, so would you please rise and raise your right hand.

[Whereupon, the three witnesses were duly sworn.]

The CHAIRMAN. Ms. Davis?

Ms. DAVIS. I do.

The CHAIRMAN. Mr. Schriebman?

Mr. SCHRIEBMAN. Yes, I do.

The CHAIRMAN. Mr. Burnham?

Mr. BURNHAM. Yes, sir.

The CHAIRMAN. Thank you, and please be seated.

Ms. Davis, it is our pleasure to hear from you.

STATEMENT OF SHELLEY DAVIS, AUTHOR OF "UNBRIDLED POWER" AND FORMER HISTORIAN FOR THE IRS, MANASSAS, VA

Ms. DAVIS. Well, thank you, Mr. Chairman, and Senator Moynihan. I am glad to be here. I very much appreciate this opportunity.

I am going to start out by just telling you I read with great interest, as I am sure all of you did, an article in the Washington Post last Saturday announcing these hearings. But if this article is to be believed, these hearings are a partisan effort by Republican members of Congress to blacken the reputation of the IRS.

Even an unnamed Democratic Congressional staff member said in that article that much of what you hear over the next 3 days will be "for show," that hiding the identities of IRS employees who will testify before you is nothing but a ploy to generate media attention.

But I tell you, nothing could be further from the truth. I sit before you today in the open as a former employee of the IRS, because I have nothing to hide. My career is over.

But I have much to share with you about the IRS. I would like you to refer to my written testimony for a summary of my experiences with the arrogant and dangerous culture of the IRS; about how I discovered that the IRS does keep list of American citizens for no reason other than that their political activities might have offended someone at the IRS; about how the IRS believes that anyone who offers even legitimate criticism of the tax collector is a tax protestor; about how the IRS shreds its paper trail, which means that there is no history, no evidence, and ultimately no accountability. So, I urge you to read my written testimony.

But today I am going to speak to you from the heart. This is not a partisan witch hunt. To help you believe that, I will tell you up front that I am a lifelong Democrat. I do not come to you today with any kind of partisan agenda. I come to you today as a citizen who witnessed things that should never happen in our government that I saw during my more than 7 years as the first, last, and only official historian for the IRS.

As their former historian, I can sit here and tell you that abuse of taxpayers, abuse of authority, and abuse of power by the IRS happens on both sides of the political fence. There is evidence that both the Democratic and Republican administrations in the past have tried to use the IRS to further their political agendas. There is absolutely nothing in the current law to prevent this from happening.

There is also nothing to prevent the IRS from doing it on their own in an attempt to perhaps please or appease whatever party happens to be in power. It is important to remember that the IRS itself is not a particularly partisan agency, it has only one political appointee and that is the commissioner.

But it is an agency composed of career bureaucrats, bureaucrats who have spent their careers learning how to spin IRS arrogance

and abuse into an impenetrable defensive shield, who have learned how to hide behind the privacy laws that are meant to protect taxpayers to protect only themselves.

The bottom line, is that the IRS is the best secret-keeping agency in our government today. They are better than the CIA, better than the FBI. I mean, think about it. You and the American people do not have a clue about how the IRS goes about doing its job, and that is just the way they want it.

Nobody is more masterful at this spin than the current acting commissioner, Michael Dolan, who I worked with the IRS. Mr. Dolan actually succeeded in getting the media to air his patently absurd allegation that IRS computers should be blamed for many of the horror stories that you hear about. I am sorry, but can computers seize the entire inventory and shut down a business because they were insulted?

Can computers magically materialize early in the morning on your doorstep, as they did to taxpayer Shirley Barron? Not long after, her husband gave up on his fight with the IRS and took his own life. Can a computer accept a bribe from a Federal agent, setting in motion an armed invasion of an American corporation? No, computers cannot do these things, people do these things.

But by blaming those darn computers, Mr. Dolan deflects attention from the real perpetrators, the IRS employees who allow these actions to go forward, from the agents who participated to the executives in Washington, DC who did nothing to stop this abuse and nothing to discipline the perpetrators.

These hearings are about people, living, breathing entities, not computers. I mean, goodness knows, Congress has held enough hearings about IRS computers. It is time that the people have their say, people who have been harmed by their government, by people who are paid with their tax dollars, by an agency that seems to think it is all right if just a few taxpayers fall through the cracks.

I would like to turn, quickly, to something a bit more personal. Also in that same Washington Post article Mr. Dolan denied that the IRS punishes employees who speak out. I tell you today, Mr. Dolan is lying. The IRS punished and retaliated against me when I gathered up all my courage and went forward with allegations that the IRS was breaking the law.

But what I want to do today is, rather than telling you my story myself, I am going to read you a few excerpts from some correspondence that my father, a retired professor of economics, has had recently with the Democratic National Committee.

Earlier this year he received a solicitation from the DNC for money to help the Democrats, and he wrote back. He said, "As a lifelong liberal Democrat, my decision not to give financial support to the DNC at this time was not made lightly." He talks about campaign finance reform, which I will not bore you with here today.

Then he says the second reason that he has decided not to give money any further is more personal. He says, "This is the treatment my daughter received from the Clinton Administration, whose election in 1992 she, like me, greeted with high hopes and rejoicing. Soon after taking her position as historian for the IRS she discovered that through both neglect and design the agency, in

violation of Federal law, was destroying records pertaining to decisions and actions of the IRS throughout the 20th century. She sought continuously to bring these acts to the attention of the commissioner in the hopes that the practices would be stopped.

What a once in a lifetime political opportunity this administration let slip through its fingers. Here was an agency, much feared and hated by the American public in violation of Federal law, which a new, fresh administration could set right.

Unfortunately, this did not happen. Instead, the commissioner, Ms. Richardson, acting through her deputy assistant commissioner to whom my daughter was assigned, reprimanded her and launched an internal investigation against her.

With President Clinton's commissioner unwilling to support her, my daughter felt she had no choice but in good conscience to resign. Thus, for the sake of principle and a deeply-rooted belief in the worth and dignity of public service, her 16 years as an honorable Federal employee came to end."

Then he says, "I have been a Democrat for all my life because I always believed that the Democratic Party was about justice and fairness. This does not seem to be true when it comes to matters like this. I see no reason whatsoever for the Democratic Party or a Democratic President to be defending illegal practices of the IRS. This is a matter of simple justice."

I can just say, I hope that anonymous Democratic staffer is listening today. Everything that you see and hear here over the next 2 days will be a matter of simple justice, not partisan politics.

One final point on what happened to me. When I originally took my allegations of the legal document destruction I went to the IRS Inspection Service, which is supposed to be the internal watchdog for the IRS.

I took them to IRS Special Agent Steve Rashe. Agent Rashe promised me, looked me in the eye and told me he would look into my allegations, I took him at his work. But later I discovered that it was Agent Rashe himself that was masterminding the internal investigation of me on completely false and trumped up charges.

So then I went to the Treasury Department Inspector General to complain that the IRS was retaliating against me, and also to raise the issue that to have the very same agent to whom I had entrusted with my information about illegal activities at the IRS turn around and begin to investigate me was a conflict of interest.

Well, guess what the Treasury Department IG said. The Treasury Department Inspector General investigated my allegation by going to the IRS. They never came to me and they never asked me anything. They went to the IRS.

They went directly to Special Agent Steven Rashe and asked, well, is this a conflict of interest? Agent Rashe and the IRS Inspection Service shook their heads and said, no, this is not a conflict of interest. Of course, not. That was the end of the Treasury Department investigation of my allegation of retaliation.

This is how the IRS and the Treasury Department investigates internal allegations of wrongdoing. America, we have got a problem.

So to Mr. Dolan and to you I say that, yes, the IRS does retaliate against its own employees who speak out. Special Agent Rashe is

still hard at work, probably leading the charge to silence any other potential whistle-blowers inside the IRS.

Now, what you will see here over the next few days is not a show and it is not a media circus. What you will see are some incredibly brave Federal employees who do not want to end up where I am, unemployed, pensionless, and bitter. Seven years ago, another Congressional committee sat and heard testimony from IRS employees about ethical misconduct that reached to the highest levels of the IRS.

Very quickly, the key points of that investigation 7 years ago were that there has been a serious failure on the part of the IRS to manage employee integrity; wrongdoing by IRS managers is often ignored entirely or ineptly investigated; a pervasive fear exists among IRS employees that reported misconduct or cooperated in an investigation will result in retaliation against them. A mindset exists within IRS that seeks to preserve the agency's public image above all else.

Does any of this sound familiar? In 1989 I sat in the audience and I listened. I never imagined that I would be sitting here, testifying to you 7 years later. But 7 years ago, after listening to three days of very damaging and damning testimony about IRS ethical conduct, Congress went home and did nothing.

If you do that again, in another 7 years, if not before, we will be back here again. You have an opportunity to make a difference. Please do not let it slip through your fingers or get caught in diatribes of partisan politics.

I will end very quickly here with a plea to the American people who might be watching these hearings. I hope the people of this great country of ours will take a moment to call you, to write you, to send an e-mail and tell you how they feel about what they are hearing today, because that is the way for the message to get through. If the message comes through loud and clear, perhaps this will be the last time we have to listen to the anguish of wronged taxpayers.

I thank you very much.

The CHAIRMAN. Thank you, Ms. Davis.

[Applause.]

The CHAIRMAN. The committee will please be in order.

Mr. Schriebman?

STATEMENT OF ROBERT SCHRIEBMAN, AUTHOR OF EIGHT BOOKS ON IRS PRACTICES AND PROCEDURES, ADJUNCT PROFESSOR OF TAX PRACTICE AND PROCEDURE, UNIVERSITY OF SOUTHERN CALIFORNIA GRADUATE SCHOOL OF ACCOUNTING, ROLLING HILLS ESTATES, CA

Mr. SCHRIEBMAN. Mr. Chairman, Senator Moynihan, Senators, thank you for the opportunity to allow me to express my views on the current state of the Internal Revenue Service.

I am going to take a different tack here. I am a practicing tax attorney in the city of Rolling Hills Estates, which is a suburb of Los Angeles. I have been doing this for about 20 years, and my practice is limited exclusively to handling matters of tax litigation, tax collections, and tax audits. I represent people in all walks of life and in all tax brackets.

I am in the trenches every day, eye to eye with the IRS, with auditors, and tax collectors. I am the author of several books on IRS practice and procedure. I have written the first practitioners' manuals on IRS collection defense and California collection defense procedures.

If I can just correct for the record, I am a retired professor at USC. After a while, Mr. Chairman, those students get a little smarter than their professors, and I think maybe it is time to leave.

You know, Senators, most IRS tax collectors, they are called revenue officers, and they are distinguished from the tax auditors who audit you. They are decent people, they are overworked people, and they have a heck of an unpopular job. But I believe that they do their utmost to follow the law in the provisions of their internal manual known as the IRS Manual.

Unfortunately they do not keep current on changes within the IRS, and very often their internal libraries are seriously outdated.

Recently revenue officers have told me that the IRS is adopting a "get tough" attitude toward tax collections. Now, the first Taxpayer Bill of Rights that was passed in 1989 did away with the formal keeping of internal statistics on tax collections, but it still appears that the only way to really make a name for yourself within the collection division is by the number of seizures under your belt.

I brought with me today quite a horror story. It is in the record. It is in my formal opening remarks. I have other things to say that I think are equally as important as the horror story.

I want to point out to you some things that you might not be aware of regarding how the IRS works. I want to make it clear that I am talking about dealing with the IRS on a day-to-day basis, working with taxpayers who have problems.

The IRS has fixed standards relating to allowable living expenses in order to grant taxpayers an installment payment arrangement. You might be surprised to know that a taxpayer has absolutely no right under the Code, even under the first Taxpayer Bill of Rights, no right at all, to an installment payment arrangement.

The allowable living expense standards that the IRS sets out for people are really unrealistic. They do not take into consideration financial commitments made by people prior to their becoming delinquent in their taxes.

These same unrealistic IRS standards apply to the cost of owning and operating a car and other essential living expenses, such as food, clothing, personal maintenance. A taxpayer is not allowed educational expenses for a child's private school, or religious school education, or college education. A taxpayer is not allowed, under these standards, to support his or her place of worship.

These unrealistic expense standards have driven many taxpayers into unnecessary bankruptcy. Now, in bankruptcy they have something called an automatic stay. You get into bankruptcy, that stops the IRS cold. It is the only guaranteed way of really stopping the IRS cold.

However, what is happening here is you have productive taxpayers, solvent taxpayers, who would otherwise not be in bankruptcy but for these unrealistic expense standards.

Now, this causes not only myself by my colleagues around the country quite a disturbing concern, and it appears that the bottom line is that the IRS would rather force a taxpayer into bankruptcy than to accept a fair monthly installment payment arrangement or a settlement that is technically known as an offering in compromise.

The IRS can take a taxpayer's home by just the signature of the district director alone. The irony of that rule is that it was part of the first Taxpayer Bill of Rights.

There is no court hearing, there is no notice, there is no opportunity to litigate the merits of the IRS's claim. The IRS can close down a business, as Ms. Davis said, and take away a taxpayer's livelihood by merely filing a few papers in Federal court. The judge simply signs the seizure order. That is all there is to it. The taxpayer gets absolutely no notice, absolutely no opportunity to contest the legality of the assessment that the IRS claims is owed.

In so doing the IRS can commit perjury in these declarations and they can get away with it. What is sad, is this type of criminal conduct seems to be condoned by the tax collector supervisors. To me this violates not only the 4th and 5th amendments of our constitution, but one's basic civil rights as well. In other words, it is just plain not fair.

In order to obtain a court order to close down a business all that is needed is a formal application and a sworn declaration that the revenue officer followed a few specific procedures set forth by the U.S. Supreme Court in the case known as *GM Leasing, Inc.* vs. *United States.* It is all very secretive. The taxpayer is never given notice of these proceedings and is never afforded an opportunity to contest the merits of the IRS's claim.

The revenue officer simply obtains the seizure order represented by the U.S. Attorney, the judge signs the order, and then the taxpayer is served with the order and must immediately vacate his business premises.

The taxpayer's only recourse is a long and costly tax refund procedure which most likely will wind up in court. In the meantime, the IRS sells the assets of the business and the taxpayer's business is gone.

Some IRS auditors and tax collectors have taken the position that the Congressional directives that you have set forth in the Internal Revenue Code are simply guidelines, that they are free to accept or reject at will.

If IRS employees do not follow the law and if they commit perjury before Federal judges, their conduct is often condoned by their superiors, including those at the highest level.

With increasing frequency I find that I have to go over the revenue officer's head to the manager, and over the manager's head to the branch chief. It is getting increasingly more difficult to distinguish arrogance from bully tactics and over-zealousness. I do believe that revenue officers are being pushed by their superiors to undertake more seizures in order to achieve promotion within the system.

The examples that I have given you today reflect a lack of accountability within the system, to the taxpayer, to the American people, and reflect an institutional arrogance.

This is especially true in exceptional situations where a rogue or renegade tax collector throws aside the Code, throws aside the Internal Revenue Manual in order to achieve self-promotion and recognition by his or her superiors.

Now, I have a few suggestions for improvement of IRS and for improvement of taxpayer rights. If you will look at the letters IRS, they stand for Internal Revenue Service, Service, Service. We are not getting the kind of service as we should for our money these days.

Taxpayer abuse is not going to stop by just putting in new high-tech computer systems. While electronic technology is very important and it is necessary, we have to keep in mind that these are just machines and machines can further widen the distance and alienate the American people from their government.

Creating a new Board of Governors who will sit in their insulated ivory towers is not the answer either, a wheel within a wheel, a bureaucracy within a bureaucracy. We need something responsive to people's problems now, when they are in the field, when they have them.

So what I suggest, Mr. Chairman, is to put some real teeth into the Taxpayer Bill of Rights. Of primary importance, Mr. Chairman, the IRS should not be allowed to take any property of any kind from a taxpayer without notice and an opportunity for that taxpayer to be heard.

The IRS should pay damages, not only when its agents violate the written provisions of the Internal Revenue Code. That is the way things are now. But they should also pay damages for violating internal procedures of their own manuals. They should also pay punitive damages if they violate taxpayers' rights.

A taxpayer should be allowed a change of IRS auditor or a collector for reasonable cause. Right now, it is impossible. If you are not getting along with your collector or your auditor, you feel there are problems, a personality conflict, you are going to have a hard time to make a change. It is just not going to happen. They are not going to allow it.

What is needed is an external check and balance system where a taxpayer can afford to be heard without first having to pay what the IRS says is owed. Collection activity must immediately stop until the issue is heard and ruled upon, a forum where the burden of proof is shifted to the IRS, instead of the way things are now where taxpayers are presumed guilty until proven innocent.

May I respectfully suggest the institution of an independent administrative system of review of IRS collection and audit activities before they are allowed to be implemented. Taxpayers should be allowed to appeal IRS action to an administrative law judge and, if necessary, appeal that judge's decision to an Administrative Appeals Board. If that is too expensive, let us use the Tax Court. If that is too expensive, let us get some practitioners out there who will act as arbitrators.

In conclusion, let me say that not all people who owe the IRS deserve a kinder and gentler hand. Some of these people need a fist. Some do not take their obligations seriously, but most people do.

What we want is a level playing field. We want some respect, that is all. That is the bottom line, respect for our laws, our courts, and our constitution.

Thank you for the opportunity to address the Senate.

The CHAIRMAN. Thank you, Mr. Schriebman.

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

The CHAIRMAN. Mr. Burnham?

STATEMENT OF DAVID BURNHAM, AUTHOR OF "A LAW UNTO ITSELF: POWER, POLITICS AND THE IRS"; CO-DIRECTOR, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE; ASSOCIATE RESEARCH PROFESSOR, SYRACUSE UNIVERSITY'S NEWHOUSE SCHOOL OF PUBLIC COMMUNICATION, WASHINGTON, DC

Mr. BURNHAM. Mr. Chairman and members of the committee, thank you very much.

I would like to begin by commending this committee for having this hearing. At the same time, I would like to pick up on Senator Moynihan's remarks yesterday that this is the first time that the Senate Finance Committee has had an oversight hearing in the 21 years that he was with it.

I believe, actually, it is the first time that the Senate Finance Committee has ever had a full hearing on oversight. I think, if you think about that and you think about the impact of this agency on the American people, that this is not a great moment in the Senate's history. I think it is a really serious problem.

The record clearly demonstrates that the lack of effective oversight of the Internal Revenue Service by Congress, the courts, news organizations, tax practitioners, and other concerned individuals has done, I think, grievous harm to the American people for many years.

While it is now a worn cliche, it nevertheless remains a basic truth: the price of liberty is eternal vigilance; you have to keep looking at large, powerful institutions all the time.

Because we, all of us, have failed to hold the IRS accountable, I believe the agency has often operated in an abusive, sloppy, unresponsive, improperly political, and occasionally corrupt ways.

The IRS's continuing problems are dangerous to the Nation for two reasons. First, a badly managed agency does not collect as much as might be expected of the relatively small but still significant portion of Federal taxes that are owed by non-complying taxpayers.

The second cost is harder to measure, but probably much more important. A badly managed agency is unfair. Substantial numbers of individual citizens are radically subject to wrongful actions. Such treatment contributes to a corrosive public cynicism that undermines public confidence in the government in a dangerous way. We are now seeing some of this around the country, this cynicism.

My belief that strong oversight can have a positive impact on government is not theoretical. It is based on my direct experience. As a reporter who has investigated large, powerful bureaucracies like the New York City Police Department, the National Security Agency, the FBI, and the IRS for the last 30 years, I have seen

clear and certain examples where public exposure of serious government problems have led to genuine improvements in government operations. This can be done.

The IRS, of course, is the subject of the committee's hearings, not the New York City Police Department. More than 10 years ago, I began an investigative book and published it called "A Law Unto Itself: Power, Politics and the IRS." I found quota systems, I found horror stories. I found all of the stuff that you are going to be seeing in the next day or two. It was all there.

The book is unique, I do not think anyone has written like it, and was praised by many people, including Fred Goldberg, the IRS commissioner at the time. He surprised me by telling a national audience that my critique of the agency had got it right.

Perhaps one reason Commissioner Goldberg did not condemn my book, is I did not heap blame on the Bush Administration. My research, in fact, and this is a point that Shelley made, has found that the IRS has suffered mishaps and misadventures under almost every President, Republican and Democrat, going back at least to Herbert Hoover.

In the documents that I looked through I found examples. Herbert Hoover. He was irritated at the criticism of his budget-cutting policies by the Navy League, a conservative group that wanted to have the Federal spending continue on the Navy. So Herbert Hoover got the FBI and the IRS to investigate the Navy League. They tried to find out who the contributors were, they went after them.

Franklin Delano Roosevelt regularly used the IRS as a political hit squad. He ordered the agency to mobilize its enforcement powers against former Treasury Secretary Mellon, Senator Huey Long, the singer Paul Robeson, the Republican representative and neighbor Hamilton Fish, Father Charles Coughlin, and many others. I believe he was the champion abuser of the IRS, from my record.

During President Truman's watch, a massive and long-festering IRS corruption scandal erupted, during which hundreds of agency officials and agents were implicated, including one Treasury Secretary, one Commissioner, one Assistant Attorney General. The Assistant Attorney General went to jail for corruption, taking a bribe. A good number, hundreds of agents were convicted and sent to prison in that period.

With the full knowledge of President Kennedy and his brother, the IRS commissioner of that administration established a program to go after extremist organizations.

Although memos describing the program said the extremists of concern were on both the right and left, it appears that all those that lost their tax-exempt status in connection with this program were Fundamentalist conservatives who had been criticizing the President.

President Nixon, among other abuses, established the SSS, which we all know about. It was going after dissident groups and individuals.

During the Reagan years, the IRS forgot the lessons of corruption and there was a mini-ground swell of really quite widespread corruption in offices in Los Angeles, Philadelphia, and Chicago.

Although it may not at first be obvious to you, my point here is not that the IRS is inevitably a corrupt and badly run organization.

On the contrary, growing out of the exposure of the problem of both the Truman and Nixon Administrations came periods of serious public concern and genuine reform. This can be done with serious oversight.

Now, one reason there is not good oversight, it seems to me, is that there is not very much good information about what the agency is doing. I think Congress, the news media, and even the GAO do not look with sufficient rigor at what this agency is doing.

In 1989, I got interested in and formed an organization that is a part of Syracuse University, and we use the Freedom of Information Act and we get internal administrative data tapes out of the agency and we examine them, we add Census data, and then recently we have been putting this up on the World Wide Web so that citizens all over the country and news organizations, and Congress, you can look at what you are doing.

Now, that does not sound very interesting, but let me give you a couple of examples of the data. I think it fits into the horror stories that you are going to be hearing. It is going to show you a erratic enforcement, cowboys, districts going off and doing what they want to do.

From 1980 to 1995, IRS criminal enforcement underwent a dramatic shift in emphasis. That is during the Reagan, Bush, Clinton years. During this period in 1980, three-quarters of all IRS prosecutions were aimed at individuals accused of traditional tax crime, like failure to file, filing a fraudulent return.

By 1995, less than half of the IRS prosecutions were going after traditional tax violations. The IRS had moved into money laundering, drugs, and other criminal things.

Now, while one can argue that drugs is more important than tax cheating, one could also say, why is the DEA not doing that, why is the IRS not concentrating on the collection of taxes; is that not its responsibility?

Second, from 1988 to 1995, civil audit rates of non-business taxpayers with over $100,000 declined by a factor of four. The percentage of taxpayers over $100,000 has declined by a factor of four from 1988 to today. The percent of taxpayers being audited at $25,000, at $50,000, has doubled.

Why is the IRS auditing fewer and fewer $100,000, wealthy people, upper middle class people, you can define them as you want, and doing more relatively less affluent is the question. I do not know the answers, but it is a very good policy question. The Ways and Means Committee ought to be asking it, the newspapers ought to be asking it, and they are not.

I can give you a lot more example about the IRS performance that raised questions about erratic enforcement, about the median sentence if you are convicted of a tax crime in one city is 60 months, the median sentence in New York City is zero months for tax fraud. Why are we allowing this erratic enforcement effort to go on? I think it is unnecessary. I think if we pay attention to it we can make this agency work.

I think you need an IRS, I think you need a New York Police Department, but it has got to be held accountable. The hard numbers are there, the good questions are there. All that has been lacking are a skeptical group of Congressional committees, reporters, schol-

ars, and tax practitioners willing to invest the time and energy to understand the numbers and to ask the questions.

Thank you very much.

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

The CHAIRMAN. Thank you, Mr. Burnham.

We will now open the panel to questions from the members.

Let me ask you this question, Ms. Davis. You worked as an historian for how many years?

Ms. DAVIS. Just over 7 and a half. Well, it was 16 years as a Federal historian, 9 years for the Department of Defense, then 7 and a half for the IRS.

The CHAIRMAN. In what other divisions or departments did you serve?

Ms. DAVIS. Other than the IRS? I worked for 9 years in the Department of Defense. Most of those years were with the United States Air Force, and then a couple of years with the Defense Mapping Agency, one of the intelligence agencies of the government.

The CHAIRMAN. Did you have similar problems in the Defense Department?

Ms. DAVIS. Oh, absolutely not. In fact, I brought with me those years of experience. The Defense Department, for all of its other troubles, has a tremendous sense of the value of understanding its past and preserving its documents.

One of the things I like to point out to people is that, although we may hear complaints about government secrecy, and Senator Moynihan is very familiar with those and there is a serious problem with that, I did see, perhaps, a tendency in the Defense Department to take that rubber stamp, Top Secret, Top Secret, Top Secret, over and over again on documents that might not necessarily merit that.

There is a problem with over-classification. But there is a huge difference between what I saw in my years with the Department of Defense and what I saw at the IRS. There is a huge difference between putting a Top Secret stamp on a piece of paper to withhold it from the American people, from the media, from Congress for a period of time and simply shredding everything.

That was what I found most shocking at the IRS, and it took me really, I would say, probably a year and a half into my tenure to really believe this was happening. I spent the first period of time saying, I am just not asking the right people, I am not looking in the right places, because I, myself, could not believe that one of our government agencies had literally shredded its entire paper trail. But that was what was going on, because nobody was looking.

The CHAIRMAN. Let me ask you this question. As you I know appreciate, the privacy laws, of course, as you indicated, are used to protect the IRS from scrutiny. On the other hand, we do have a responsibility to protect, I am sure you will agree, the rights of taxpayer privacy. So how do we change the law to make the IRS more accountable, and yet at the same time protect the privacy of the American citizen?

Ms. DAVIS. I appreciate that question because it gets to the heart of part of the legislation that is currently pending before Congress.

One of the problem is, the section of the Internal Revenue Code that includes the privacy protections is Section 6103. Currently, there is no provision in that part of the Code which would allow the National Archives, which is the repository for the documents of our entire Federal Government, whether they be from the CIA or the IRS, whatever it might be, those records.

While the National Archives is permitted to hold and review and store documents from every other agency of our Federal Government, the IRS has stood fast and firm in saying, without an exemption, the National Archives cannot even look at our documents to evaluate whether or not they are historical.

Now, the problem that I did see, and I saw evidence of this and this is actually what led to my resignation from the IRS, is that the IRS claims that material that simply does not contain any taxpayer information, any 6103 information, does contain such information.

The problem is, there is no one but the IRS to look at what is true. You have the National Archives able to look at Top Secret information from other government agencies to store it, to protect it, but they cannot look at IRS records to determine whether or not it should be protected, it should be saved.

There is a provision in the legislation that came out of the Commission on Restructuring the IRS to allow the National Archives to have that access, and I think it is paramount that that section of the law, at least, be passed.

I have problems with other parts of that legislation, but that particular section, I think, is the most important because until we start having access to the information and stop allowing the IRS to control that access and to claim, wrongly, that everything they do has taxpayer information, nothing will change.

The CHAIRMAN. Mr. Schriebman, I agree with you when you talk about the importance of protecting the taxpayer, having the right to be heard, and an opportunity to participate in this process before his/herbusiness, his/her residence is seized.

How do you believe that Congress can protect taxpayers' rights when it comes to IRS seizures?

Mr. SCHRIEBMAN. There is a provision in the Internal Revenue Code, Mr. Chairman, I think it is Section 7402, that gives a Federal judge the right to sign—in fact, I brought it with me. If you would like, I can just read it. It is very short. It says basically they can sign any writs, any kind of orders.

But, you see, we have got to work within the framework of the 4th and 5th amendments here. I think that was troubling the Supreme Court in the GM Leasing case back in 1975. But if you have this section here, 7402 has to be amended to make it clear that the word "writs" where it says, "shall make and issue civil actions, writs, and orders of injunction," no ex parte writs.

This is the problem. You have got these ex parte writs where all the revenue officer has to do is knock on the taxpayer's door and say, hi, I am here to close you up; are you going to let me do it voluntarily, or am I going to have to get a court order?

Well, if the taxpayer has any sense at all he says, I am not going to let you come in here voluntarily. So the revenue officer says, all right, I have to get a court order. It takes about three or four

weeks to get this order. But what is involved in it? Very little. The U.S. Attorney's Office prepares a document called an "application," and cites some standard legalese.

But the heart of it is the revenue officer's "declaration," and that declaration says that on a certain date I went to the taxpayer, I asked the taxpayer if I could enter and seize the business premises, the taxpayer said no; ergo, your Honor, I want my writ.

The judge does not see anything else but these two pieces of paper. I do not know any judge that does not sign those things. I do not know any judge that says, "Wait a minute. I want to talk to that taxpayer. I want to see if you are right here. I want to see if the taxpayer owes what you say is owed. I want to see if the assessment that underlies this bill is correct here, Mr. U.S. Attorney." No, the judge just rubber stamps it and the taxpayer's business is gone. What I would like to see, is that this cannot happen.

I want to see notice being given to the taxpayer, I want to see a certain date set in court for the taxpayer to argue the merits of the assessment. If the taxpayer does not want to exercise those rights, that is up to the taxpayer, but at least he has them. He does not have that now, Senator.

Then when you read the Code, you read Section 6334(e) of the Code where it says the District Director can take somebody's house by just his signature. How would you like it? How would you like to have a situation where, let us say the computer sent you a bill.

You say, "I do not owe this money." And you're right, but the computer does not answer and people do not answer. One day a revenue officer shows up and says, "Say, Mr. Roth, when are you going to pay this bill?" You say, "I do not owe this bill." "Well, Mr. Roth, that is not my problem. I have got a collection notice here that says you owe this bill. Now, when are you going to pay it?" You say, "I am not going to pay it." Mr. Roth, he says "I am sorry, but I am going to have to ask the District Director to take your home. That is all."

I do not know of a District Director who does not sign the approval. I have not seen a case yet where the District Director says, "Hey, wait a minute, let us see what is going on here before we take somebody's home."

That does not happen, at least not in the Los Angeles, Southern California area where I am, or other areas, because I get calls from all over the country from practitioners asking for help. I have never seen one case yet where the District Director said, "Whoa, let us back up here." That is the problem we have.

The CHAIRMAN. I am going to ask the witnesses today to please be as concise as possible in your answers, because we have a full day and we want to get as many witnesses as possible.

Mr. SCHRIEBMAN. I am sorry, Senator. I get a little carried away by this issue. If I have an agenda here today, I think this is it.

The CHAIRMAN. I appreciate that.

Mr. Burnham, you make the very serious charge that increasingly the taxpayer that is audited is the middle class or low income one, increasingly less for those over $100,000. Why do you think that is the case?

Mr. BURNHAM. One part of the answer, Mr. Chairman, is that the number of taxpayers over $100,000 has gone up considerably in this period, so the percent goes down. That is part of the answer.

However, it is still fact that the percentage of people over $100,000 being audited has gone down a factor of four. They seem to be putting their effort on, as I understand it, the tax credit that was given for the people whose income is very low, and there apparently was a lot of fraud there. Well, if you are going to put a lot of effort into one area you do not have people to do another area.

So there are some good reasons, explanations for this, which would be worth asking the IRS. The IRS does not really speak to me very much when I come to them with this data. However, it also is true that the number of taxpayers being over $100,000 who are having face-to-face audits is just off the map. It has really just gone off the chart.

I think that really may be a problem in long-term compliance. I think you need some auditing going on. An increasing percentage of the audits for those over $100,000 are those done out of the service centers where they just sort of check the documents.

It is a good question. Is it policy? Did the Bush Administration, the Clinton Administration, say we want to go easy on wealthy taxpayers? I do not know. I cannot get that answer. You can get the answer.

The CHAIRMAN. We will wait and see. Well, my time is up.

Senator Moynihan?

Senator MOYNIHAN. I will take the liberty, Mr. Chairman, of predicting you will not get the answer. We have had wonderful testimony from a very thoughtful, scholarly panel. I am going to take the liberty, if I may, and ask the indulgence of my colleagues to read you a passage on the subject of secrecy, which you have all raised on one level or another.

It says, "Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be in administration secret sessions insofar as it can.

It hides its knowledge from action and from criticism. The pure interest of the bureaucracy in power, however, is efficacious far beyond those areas where purely functional interests make for secrecy.

The concept of the official secret is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude which cannot be substantially justified beyond those specifically qualified areas.

In facing a parliament, the bureaucracy, out of sheer power instinct, fights every attempt of the parliament to gain knowledge by means of its own, from experts, or from interest groups."

Mr. BURNHAM. Amen.

Ms. DAVIS. Hear! Hear!

Senator MOYNIHAN. All right. Come on, Mr. Schriebman, you were an adjunct professor. Who wrote that? Max Weber. In Wirtschaft and Gesellschaft, published after his death in 1920. Weber was a German professor, and I see my friend nodding down there, Dr. Gramm. He probably wrote this before the war. He was

describing the appearance of bureaucracy in Wilhemite Germany. This is the nature of this beast. If we do not pursue it, it will keep to its organizational instincts.

Mr. BURNHAM. Excuse me. It will pursue you.

Senator MOYNIHAN. Yes, it will pursue you.

Mr. BURNHAM. You do not pursue it.

Senator MOYNIHAN. I could not more agree. Sir, do you realize the list of people you read off to us about this organization and its secrets, Herbert Hoover checking out the Navy League, every one 100 percent Republican, but getting the IRS to find out if they had paid their bills; Franklin Roosevelt checking out Huey Long.

When an executive starts using the IRS to check out a Senator, Senators better pay attention or they will not be Senators long. I mean, there is a real institutional problem here. Do you recognize it?

Mr. BURNHAM. It is an institutional problem. I mean, the reality is that the bureaucracies in this town are responsive to the President in power, and they are supposed to be. I mean, the problem is, they are supposed to be, up to a point. That is why you elect a President. But it is so easy to go over the line, and we do go over the line.

Historically, we have gone over the line over and over again. You have to give them discretion. You cannot make rules. You cannot prevent this from happening, if you are going to have an IRS. But you have got to have oversight. That is the only thing, you have to have oversight.

Senator MOYNIHAN. We have to have oversight. You have to have some sunlight.

Mr. BURNHAM. And break up the secrecy.

Senator MOYNIHAN. Break up the secrecy.

Mr. BURNHAM. Yes.

Senator MOYNIHAN. You have to fight against it. You cannot issue a rule that says, no more secrecy, or not too much secrecy, then turn your back, because it will come right back at you; is that not right?

Mr. BURNHAM. Yes.

Ms. DAVIS. That is right. It is important to realize that all of the examples that Mr. Burnham is giving, the evidence for those does not come from IRS records, it comes from records that he ferreted out out of other historical files, Presidential libraries, other things, but not IRS. If you think about it, think about what the American people would think if we had no records at all from the Department of Defense for this entire century.

We would have no records of World War II, the Cold War, World War I, the growth of the defense industry, any of the Secretaries of Defense and their decisions. I think there would be a massive public outcry. CIA. We have access to CIA records many years later.

Senator MOYNIHAN. We have mostly access to CIA records that are found in Moscow. [Laughter.]

Ms. DAVIS. Right. This is true. I will not disagree on this. But it is just amazing. You go looking for the records of IRS commissioners. In my years at the Department of Defense, what an historian does, is you go and you research the records of the Secretary

of Defense, or the Secretary of the Air Force, or whomever it might be, and you gain all sorts of insights from even scribbles in the margins, drafts of documents, what the chief in charge of the agency did.

There is not a single collection of records from any IRS commissioner ever, from 1862 to the present, in the National Archives, so all that evidence that Mr. Burnham is talking about comes from other sources. He is a very diligent researcher and it is very hard work to find evidence of what the IRS does. We do not know what the commissioner is writing, we do not know what the commissioners are thinking, because they have gotten away with shredding everything.

Mr. BURNHAM. Senator Moynihan, the story about the Kennedy years. I went to visit a lawyer in this town who had worked for the IRS commissioner at that time and he had the copy of the memorandum describing this attack on the dissident groups, and he was afraid to give it to me because of the privacy laws.

But I came into his office and he said, well, I have to go out for lunch. He went out for lunch, and I assumed that he was letting me look at these documents, so I looked at them.

One of them was a memorandum describing this attack on dissident groups, and up in the left-hand corner there was a handwritten scribble saying, "The President called and says full steam ahead," in handwritten note. So this was approved by the President.

Senator MOYNIHAN. Mr. Chairman, I have nothing further to say. We had better start institutionalizing oversight, and I think a little history of what we have heard today would do no harm.

I think that is what we have investigators for, and that is what we have a Department of Justice for, but it is a bureaucracy too. I worry about that. You solve the details, I have set down the theory. Phil Gramm can do the rest.

The CHAIRMAN. We will call on Senator Grassley, next.

Senator GRASSLEY. I want to dwell on just a little bit of history, because I hear so much of it being repeated in these hearings. When I conducted oversight hearings of the Defense Department and the Justice Department in the 1980's, I, by the way, had near unanimous support from members of the Democratic party to do that. They obviously enjoyed seeing me as a Republican overseeing agencies headed by members of my own party.

Those Democrats thought that oversight was very important, very necessary, and very antiseptic back then. My Republican colleagues at the time defended those agencies. They saw that as their obligation, since an administration of their own party was being attacked. I viewed it differently, from my perspective of my constitutional responsibilities.

Here are some examples of how my Republican colleagues defended Reagan Administration mismanagement practices back then. You would hear accusations that all I was doing was defense bashing, or the excuse was that the real problem was Congress, or that it was an anomaly that there was $640 paid for a toilet seat, or we wished that we could explain why we have all these problems, but we cannot because it is classified to protect the national security.

Having gone through oversight battles in the past, I am now hearing kind of an echo. IRS bashing. These horror stories are anomalies. The real problem is the laws passed by Congress. There are no problems with IRS management, but we cannot demonstrate it because of 6103 secrecy.

Anyone who cannot see through this folly, this tired and weak defense of the IRS, is not a serious observer of the workings of government. That is my view, based on my experience. I guess it has got a longer history, based upon what Senator Moynihan just quoted for us.

There are those among us here who will feebly defend the IRS using the same old, tired defense. But the public can see right through it, because they are on the receiving hand first-hand of IRS abuses.

So let me ask four fairly general questions. I am going to ask them all at once, and you do not all have to answer each one, but collectively I hope you will respond to them.

Do you believe that these oversight hearings constitute IRS bashing? Is the real problem the laws passed by Congress? Are these horror stories that we are hearing only anomalies? Is the IRS Section 6103 authority abused and used too often to cover up mismanagement? Those are the four questions. I would like to have all of you speak to some of them.

Mr. BURNHAM. There are different answers to different parts, but clearly the laws passed by Congress have put a terrible burden on the IRS. I mean, it would be better if it were simpler. You have to give them more and more discretion. That contributes to the problem. I do not think that is the basic problem, and I clearly do not believe this is IRS bashing, to look at the IRS. I will let my colleagues respond.

Ms. DAVIS. I want to jump in with a quick story. I referred in my testimony to the 1989 hearings that were held on the House side. Back at that time, Fred Goldberg was the incoming commissioner, who I think had just been confirmed or was headed into confirmation hearings. Anyway, he was brand-new and ultimately could not be held accountable for any of the things that were going on as a result of that.

It is interesting that once again today we find ourselves between commissioners. Somehow, it is just an interesting little twist. I do not think there is anything behind it, but it is a twist because there is no one there to point fingers at when you have someone new coming in, hopefully.

But Mr. Goldberg sat there in 1989 and he told the House Committee on Government Reform that he felt that really it was not important to get into the real nitty-gritty of the horror stories that were heard at that time, that it was not that important to go and hold the individual IRS employees whose stories were being told at that time accountable for what they did. He sat there and he said, it is more important that we just move ahead, and I commit to you as the new commissioner of the IRS that I will take care of all this and I will turn it into the premiere ethical agency of our government today.

Well, we all know that did not happen. But therein lies the key problem to this whole thing, and primarily the answer to your

question about whether or not the horror stories are anecdotal. They are not anecdotal, they happen. They are recurring. It does not happen to the majority of taxpayers, but if it happens even once, I heard many of you say this yesterday, that is too much.

I think the gist of the problem is that the IRS itself does not hold its own employees accountable. Congress, with its oversight responsibilities, does not force the IRS to hold its own employees accountable.

So ultimately, until IRS employees are held accountable for their individual actions, I would like to see the IRS employees who falsely investigated me, were able to bring false charges against me, to be investigated seriously for what they did.

I would like to see every IRS agent who interacted with one of the taxpayers you will hear here investigated. I would like to know from the IRS what exactly they did to the employees who were the perpetrators in these tax cases. That is what we are not getting.

The IRS sends a message to its own employees when they do not discipline them that it is all right to do what you do. It is a tacit endorsement. Congress endorses the IRS's tacit endorsement by not demanding that level of accountability. So there is no question that, ultimately, if you get away with it and nobody does anything, it is a license to continue.

Senator GRASSLEY. Ms. Davis, you testified to our National Commission to Restructure the IRS. Based on that testimony, I have included in this legislation your idea to require the archiving of IRS records. Will that help?

Ms. DAVIS. Oh, without question it will help, because right now the IRS is using 6103 and abusing 6103 to withhold all information, information that does not have any tax information, information that may be simply embarrassing to the IRS. That is ultimately what led to the false investigation of me, and my resignation from the IRS.

I mean, I was attempting to respond to a wonderful Freedom of Information Request from a history professor who actually wrote this book. I brought it here just in case I needed it. It is a great book. It is an academic book about the Kennedy Administration.

This professor was doing what professors all over the country do, he was trying to research and write a book. He sent Freedom of Information requests to the IRS. They landed on my desk. I found just a tiny bit of documentation to support what he was looking for.

The CHAIRMAN. I am going to have to ask you to try to bring your response to a close.

Ms. DAVIS. Sure. What happened, was this information did not include any taxpayer information, but the IRS wrongfully withheld it from him because they did not want to be embarrassed.

The CHAIRMAN. We are allowing 10 minutes for each member to ask questions. We are going to have to strictly enforce that, because unfortunately we are still continuing with what was to be yesterday's hearing, so we have a very, very full day. So I do ask the witnesses to please not repeat, but to be as concise as possible.

Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman. One reason I ran for the Senate is because I tried a number of tax fraud cases, and

frankly they were so unjustly brought that I really got offended by it and got involved. I have not seen many changes since.

Your testimony here today has been very, very essential. It has been suggested by some that this committee is on a witch hunt. That could not be further from the truth. There is certainly no vendetta against the IRS. I will only say two things about that.

First, we are not here to destroy anyone or anything. We quite obviously need a strong and effective IRS. We are not here to burn anybody at the stake, but we are here to try to get the answers to some very serious and some very real questions, and you folks have been very helpful here this morning.

But the current regime of the IRS is feeling a little heat. I hope because of that they will remember this experience. It is exactly what they put the taxpayers through when the IRS calls and starts asking questions and requiring more information and more documentation.

For example, the IRS initiated an audit of a taxpayer who I know quite well, and assessed deficiencies for the tax year in question. During the ensuing period, the case was transferred to six different revenue agents, with several instances of agents not communicating or relying on the work already done by a previous agent.

With each new agent came a set of different adjustments and, naturally, delays. This went on for 8 years, two of which saw no IRS activity or attention at all. There were extensions of the statute of limitations.

The taxpayer made offers in compromise to resolve the disagreement. The IRS would not even discuss, let alone work, on any such resolution. You have been indicating that that is your experience, Mr. Schriebman, is it?

Mr. SCHRIEBMAN. Yes. Schriebman, Senator.

Senator HATCH. Schriebman. All right.

They would not even discuss it. Finally, the taxpayer was informed that all of the items under examination were disallowed and he owed a substantial amount. That was not all. Because of the long period of time that had elapsed for the audit to be completed, the interest was nearly three times the amount of the additional tax assessed. It now amounts to almost a million dollars.

Now, think about it. It was a legitimate question whether he owed the taxes to begin with. But the taxpayer is willing to pay, but they have, with penalties, interest, and delays, raised this almost triple what it was.

This taxpayer is now making payments, has made them faithfully, has paid faithfully more, as I understand it, or pretty close to the actual amount that was owed to begin with through regular payments, diligence, doing what was right and living up to the obligations that they had.

So the taxpayer is now making payments that amount to little more than interest on interest, with little chance that the debt will ever be paid. Now, that is not unusual, is it?

Mr. SCHRIEBMAN. Are you asking the question to me?

Senator HATCH. Yes, I am asking you as a tax practitioner, Mr. Schriebman.

Mr. SCHRIEBMAN. I hear this, I deal with this every day. First of all, this fellow made a mistake initially by signing the statute

extension. That is one of the things the IRS brainwashes the public about. You do not have to sign the statute extension.

Senator HATCH. Well, they threaten to indict you if you do not. They threaten to bring charges against you if you do not.

Mr. SCHRIEBMAN. If you would not have signed the statute extension, they probably would have run out of time to do it. This interest situation that your person has, that is part of the Taxpayer Bill of Rights, too.

Senator HATCH. It is not just interest, it is penalties and interest.

Mr. SCHRIEBMAN. I understand.

Senator HATCH. It is crazy.

Mr. SCHRIEBMAN. Well, your man should now again, under the new IRS liberal position on offers in compromise, now is the time to go into that offer in compromise. Now is the time.

Senator HATCH. Well, he has done it. I have done it. I have asked them to see what they can do to resolve this problem, and it is just a no. They are at least partially responsible for the interest and penalties that have been assessed.

Mr. SCHRIEBMAN. I certainly, under the Taxpayer Bill of Rights, too, would bring an interest abatement administrative claim and take it to the Tax Court.

Senator HATCH. They did. They did, and abatement was denied.

Mr. SCHRIEBMAN. Well, did they take it to the Tax Court? That is part of the Taxpayer Bill of Rights, too.

Senator HATCH. Well, the taxpayer court denied it also.

Mr. SCHRIEBMAN. The Tax Court denied it?

Senator HATCH. Yes. Then they filed for an additional abatement proceeding, and then of course was denied again. I mean, I have got to tell you, looking at the facts, it is very, very unjust.

Mr. SCHRIEBMAN. Somebody does not like your client, it is obvious. [Laughter.]

Senator HATCH. Well, this particular client is one of the most loved people in the whole world, but the IRS does not love him.

In another situation, a taxpayer attempted to work with the IRS to pay the amount that was owed. However, the IRS refused each one of her suggestions. Consequently, they lost everything, their cars, their home, and all other assets that they had.

The IRS was totally uncompromising with this taxpayer. Unfortunately, the seizure mentality is all too common, especially when agents seem to be evaluated and promoted based on dollars collected and property seized.

Let me give you another example. An elderly couple made some poor investment choices that led to the disallowance of certain deductions and losses. The tax is rightfully owed.

However, because of their age they have little income and their only asset is their home. As with so many of these cases, the interest on the debt has piled up to be a considerable amount compared to the actual tax debt.

Again, the IRS was unwilling to discuss a compromise to pay the debt over time. They had the option of getting a loan to pay part of the debt, however, the taxpayers would still be liable for not only the interest on the loan, but the penalties and interest on the tax debt as well.

Instead, these elderly taxpayers were forced to sell their home when faced with the threat of the IRS seizing the property and selling it for them at a cut-rate price in order to satisfy the tax obligation.

Now, where has all the reason gone? These are just some examples that highlight the need for the hearings that we are having, and I want to commend our Chairman and Ranking Member for being willing to do this. It is the first time ever, perhaps, but certainly the first time in my 21 years here, and I think it is about time.

Let me just ask one question to all of you on the panel. Each and every one of you have mentioned, and even painted a picture of a terrible culture at the IRS. Can you be more explicit for us in suggesting ways to change the IRS culture for the better? And maybe we could start with you, Mr. Burnham, Mr. Schriebman, and end with Ms. Davis.

Mr. BURNHAM. Well, several of the witnesses mentioned this yesterday, Senator. One of the basic problems is that the IRS has come to think of itself as a law enforcement agency rather than a service agency. How you change that, is very hard. If you did a careful analysis of the IRS budget, you will see a big chunk of their budget goes for enforcement and audit, very little goes for the service.

Comparatively little goes to the service part. Congress can change the budget. You can change the emphasis of the IRS. A lot of people who were in noncompliance overpaid. Did you know that? I mean, a lot of people overpaid. A lot of people underpay because they do not understand. The rhetoric yesterday when you referred to the people not paying, you say they are tax cheats. A lot of the people who do not pay or over-pay are not tax cheats, they do not understand.

I mean, did you know President Lincoln overpaid his taxes. There was an income tax during the Civil War. He overpaid them, and after he died they got a refund. The tax law is complicated and it is hard. The taxpayers need help and they need a lot of that.

It is this cop mentality, the "us" against "them." To fall into the easy use of the words "tax cheat" for everyone in noncompliance is very dangerous. You do it, the newspapers do it, and we ought to try to change it.

Senator HATCH. Mr. Schriebman?

Mr. SCHRIEBMAN. Senator, I heard your three stories.

Senator HATCH. Well, I can give you a lot more.

Mr. SCHRIEBMAN. So can I, believe me. But I have to say a couple of things, in all fairness, in all objectivity here. I think a lot of people get into trouble with the IRS because of their own ignorance. A lot of them get into the IRS because they are too penurious to get good advice.

The cases that you have mentioned here, while egregious, if these people might have gotten some good advice, I think some of the bankruptcy laws could have helped these people. I think that you in this room are part of the problem. You have written these provisions in the Code that allow the District Director to take a house on a signature. I am a grunt; I am not an investigative re-

porter and I am not an insider. I am a guy who was never with the IRS.

Everything I know, everything I have written about I have had to experience. I deal with these things every day. I will tell you something, a lot of what I see people go through—I mean, I have had a client, a widow, come to me when her husband had blown his brains out in the lobby of the Lawndale IRS field office. I have represented the widow. I want to say in that particular case the IRS could not have been kinder to the widow.

Senator HATCH. I guess my time is up.

The CHAIRMAN. The time is up, I regret. But we have to move on. I would point out that the members are called upon in the order they appear. We have the early bird rule. So we are not just letting the Republicans go first.

We have, next, Senator Gramm.

Senator GRAMM. Mr. Chairman, thank you.

I want to thank our witnesses. I had made the point yesterday when we had another panel that I wanted desperately to have a chance to ask them some questions. They are not here, but I want to refer back to their comments and then pose a question to you.

We had a panel yesterday that was made up of people who were representatives of major groups that interfaced with the IRS, such as the CPAs, and enrolling agents.

Maybe I am over-simplifying what they had to say, but their basic approach was a sort of a sociological approach which said that the problem at the IRS was that these people at the IRS think of themselves as law enforcement agents and not as people who are a service agency. In essence, what they were saying is that we need this massive effort to sort of change the thinking at IRS.

I profoundly disagree with that approach. I do not find that approach to be very successful because it does not change the basic parameters in which people work. I think one of the things that each of your testimonies has done today, is to make it very clear that what the problem is here is that the IRS has massive power, and power corrupts.

As a result of having no checks and balances, as a result of having an agency that investigates, prosecutes, and makes judgments all by itself, you do not have the checks and balances that you might have in the criminal justice system where a police officer makes the arrest, has a fact report, it goes to the district attorney's office, and so on through the courts.

There is to some extent a check and a balance in that the district attorney looks at what the police officer has done. Then you have the whole case go before a court that looks at what the district attorney has done and what the police officers have done.

So it seems to me that our problem is not a sociology problem. Our problem is not that the people that work at the IRS are bad people. My guess is that, by and large, they are good people, even the ones who act badly.

The problem is, these people have too much power, they have no checks and balances, we have no access to information, and people are afraid of them. The system that people operate under changes the behavior both of the people who have the fear, and the people who are feared. I think that is basically the problem.

Now, the question is, what can we do about it? That is what I want to focus my question on. But let me say that I think a couple of you have made the point that Congress is, to some degree, culpable, and I agree with that. I think we have written a very complicated code that not even we can comply with without expert assistance.

I have not forgotten all the budgets that were passed over the years where we added more money for the IRS compliance office and then counted it as generating additional revenues, which if that is not a clear indication——

Mr. BURNHAM. A quota system.

Senator GRAMM. That is right. If that is not a clear indication of what we want done, then I do not know what is. So I believe we need some fundamental changes in the system, structural changes. I think what should come from these hearings is a change in law and not just oversight, but changing the structure of the system itself.

I would like to ask each of you, as short as you can give the information and be brief, what structural changes do you believe should be made. If you could change the laws in only two or three ways, based on your individual experience, what changes would you make?

Let me start with you, Ms. Davis?

Ms. DAVIS. This is tough. I am going to give you a little bit of a very quick sociological answer to your very specific question. Last year in some of the early testimony before the Commission on Restructuring a former high-ranking IRS official told the commission that he believed from his, I do not know, about 30 years of experience with the IRS that the key to effective work of the IRS was mystery, to keep the tax system mysterious, I could not agree with that more, because mystery just breeds fear and distrust among the American people.

I guess during my 7½ years with the IRS I tried my own little sociological experiment, because one of the things I tried to tell them, I agree with everything you say, most IRS employees, if not all, are fundamentally good people. They do not mean to be bad people, and I am not totally opposed to the IRS. It is an agency that has an incredibly fascinating and interesting past and tradition and it is part of the sociological fabric of the United States.

What I did, was I tried to tell them, if we taught our own employees at the IRS and if we taught the American people about the role of the tax collector throughout the past, about how important it has been in the development of this great country, maybe taxpayers might be more inclined to comply. I do not think you make taxpayers comply only by beating them over the heads.

But when was the last time that the IRS, or even members of Congress, reminded the American people about the terribly important role—I mean, everybody does bash the IRS; it is great fun. But we do not talk about how important it is.

That is one reason I told them over and over again, you need an historian, you need an historian to gather the research and write the documents that will show people the importance of this. So I will just leave it at that, because I think that is just so very important.

Senator GRAMM. Yes, sir?

Mr. SCHRIEBMAN. You have asked for some concrete suggestions and I would like to give you some.

Senator GRAMM. Great.

Mr. SCHRIEBMAN. First of all, let us get rid of these ex parte writs.

Senator GRAMM. Tell us what that is.

Mr. SCHRIEBMAN. Well, "ex parte" is Latin. It means that you can go into court, close somebody's business down or take somebody's house without giving that taxpayer a notice.

What we need to do, is we need to give a taxpayer notice, the court needs to set a hearing date. Now, if a taxpayer does not use that, that is the taxpayer's problem. He has got a right to it, whether it is his house, his business, his bank account, his wage garnishment. We need that.

Now, where can we go to get that? Well, we have got the U.S. Tax Court. You probably need a few more tax court judges and you have to put them in residences in several cities.

Right now they travel in circuits, except for Larry Nameroff, who is based in Los Angeles permanently. We need more Larry Nameroffs. We need them in cities where they are permanently based instead of working out of Washington and traveling in a circuit.

Senator GRAMM. Is there a shortage of Tax Court judges?

Mr. SCHRIEBMAN. Big time.

Senator GRAMM. All right.

Mr. SCHRIEBMAN. I have some more suggestions. I will tell you, Senator, these will work, because I know my experience here.

Let the Tax Court have jurisdiction over employment tax cases. It does not have any jurisdiction over employment taxes. If somebody gets hit with this thing called the 100 percent penalty, now call the Trust Fund Recovery Penalty, big deal, it is the same thing. The Tax Court cannot hear that. There is no assessment.

See, the problem that you have is that you have got an internal conflict of interest within the IRS. They are their own judge and jury over people's lives. Let us remove that. This will cure the "Ivory Soap's" worth of taxpayer abuse.

Repeal Section 6344(e), where the District Director has the right to sign and take somebody's house. You should not be able to take anything from anybody without giving those people 4th and 5th amendment rights.

I say over employment taxes and collection problems, because the Tax Court does have a little jurisdiction over collection problems right now, but it is esoteric. They are all in Sections 6212 and 6213 of the Code. They are real esoteric stuff.

A person has a collection beef, has an assessment beef, whether it is with income taxes, excise taxes, employment taxes, estate taxes, let the Tax Court have jurisdiction over all of those. No assessment without a right to a hearing.

Senator GRAMM. Let me go to Mr. Burnham, because I see the yellow light on.

Mr. BURNHAM. In my high school year book, Margo Wood, I will never forgive her for it, wrote under me, "It is easier to be critical

than correct." I spent all my years criticizing, and it is hard to come up with a correct answer.

But, with due respect, I think I agree with the witnesses yesterday that said that the enforcement mentality dominates the IRS rather than the service, and that not that you can do away with enforcement, you have to have enforcement, there are bad people doing bad things and you need an enforcement arm, but maybe an idea would be to separate the IRS into an enforcement sort of cop arm and a service arm more than it is now. Maybe that would make sense.

Senator GRAMM. Well, I think that is the checks and balances we are looking for. But I think the idea of putting people through sociology training is not going to have any permanent impact.

Mr. BURNHAM. We are not talking about that.

Senator GRAMM. We respond to the world that we live in, we respond to the rules that exist. I think again here the problem is power corrupting.

The CHAIRMAN. The time of the gentleman is up.

I would point out to you that in our legislation that we recently adopted we did expand the jurisdiction of the Tax Court to employment taxes, but you might take a look and see whether you think it is adequate.

Mr. SCHRIEBMAN. But the only expansion on that, with respect, Mr. Chairman, is the determination whether somebody is an employee or an independent contractor. That is just not far enough.

The CHAIRMAN. Not far enough.

Mr. SCHRIEBMAN. No, sir.

The CHAIRMAN. Senator Lott.

Senator LOTT. Thank you, Mr. Chairman.

I have been very interested in your statements and your responses. We appreciate your time. I think you are giving us some very helpful suggestions.

One of you commented about, a lot of the problems with taxpayers is that they just do not know what is the right thing to do, or it is ignorance. But, as a matter of fact, some of the most egregious cases that I have been familiar with have been caused by actions by the taxpayers after having received so-called expert advice.

Mr. BURNHAM. That is true.

Senator LOTT. Tax lawyers and CPAs.

Mr. BURNHAM. They do not understand it.

Senator LOTT. And that is the problem, though. You are giving advice. You have got a little extra money, you work in a shipyard and you have got a farm on the side and you are given advice by a CPA or a tax lawyer that here is something you can invest in that would be beneficial to you, and it turns out it was on the margin, it turns out maybe IRS said maybe this is all right, and later they say it is not all right.

They wind up having their lives destroyed, losing their farm, and just about everything they have. What can we do about that? Expert counsel is not a defense, apparently, unless of course you then can come back and take action against them for incompetence.

Mr. BURNHAM. But are they expert? The law is so complicated.

Senator LOTT. Tax lawyers and CPAs are supposed to be experts.

Mr. BURNHAM. I know of a situation in New York. The editor of one of my books went to a very high-priced tax lawyer who did not know how the IRS functioned. He was not familiar with IRS procedures. He knew tax law. Those are two entirely different things. If you do not get the right advice, you are in trouble.

Mr. SCHRIEBMAN. I disagree.

Senator LOTT. What about the poor taxpayer? I mean, he has done his best to get expert advice, then he finds out later that it was not expert.

Mr. Schriebman, go ahead, sir.

Mr. SCHRIEBMAN. You are talking about the tax shelter wars of the 1980's, I presume, and hopefully those days are behind us.

But you know, Senator, there is an awful lot of greed in that equation. You can advise somebody any way you want. If you have got an inherent conflict of interest, if you are being retained by their promoter and you are getting a commission off of the investment, you have got a big greed equation there, especially in those days where you thought you could not get tapped by the IRS and they were all a bunch of buffoons.

Well, the IRS showed them. In all fairness, some of that stuff that people went into was ridiculous, and the attorneys who wrote the opinions were motivated, in my opinion, by greed. I do not know how you legislate greed.

Ms. DAVIS. I guess what I would say to that—were you done?

Mr. SCHRIEBMAN. Sure.

Ms. DAVIS. The growth of the tax preparation and help industry has exploded in recent years. I think one of the things I see as a very dangerous thing is, I guess, the hand-in-hand working of that community with the IRS. One of the things that bothered me, and I was one of the few people thinking this and talking about this, I think, was the development, as it was developed by the IRS, of the electronic filing program.

I saw this as a very dangerous precedent, because nobody was focusing on the fact that when IRS launched its electronic filing program this was the first time in the history of our tax system where taxpayers, in order to take advantage of a so-called increase in benefits or simplification of their filing, were literally forced into the arms of the tax preparation community. If you wanted to file your tax return electronically, you had no choice but to pay a professional tax preparer to do it. I went to the IRS in 1988, and they had launched electronic filing just a few years earlier in 1985. It was one of the first subjects I looked into.

I asked them the question, why did you not wait until you could offer this to taxpayers, first of all, at no cost, or in a way in which they did not have to use a tax preparer, because I was thinking of all those middle and lower income taxpayers who have simple tax returns who for years had prepared their own 1040's, 1040–A's, or EZ's all by themselves who were now, in addition to their tax liability, having to pay even more money to a tax preparer who may or may not, as you point out, know the law. I think that is one of the problems.

Senator LOTT. Let me ask two other questions. I know we have the Taxpayer's Bill of Rights I and II. One of the things I do not think we did, is when the IRS makes a mistake or when they have

some of your money improperly and hold it for a period of time and they eventually have to pay it back, they do not have to pay, on behalf of the government to the people that were wrong, interest and penalties. Why not? The government pays interest and penalties to the taxpayers?

Mr. SCHRIEBMAN. Oh, not penalties, no.

Senator LOTT. All I am saying there is, if you make a mistake you pay interest and penalties. If the government makes a mistake, they do not. Once again, I feel like for the taxpayers, there is not a level playing field there.

Ms. DAVIS. Well, that is definitely in the category of a law that you have not passed, and it is within your power to pass such legislation.

Senator LOTT. I guess that is what I want to ask you. Is that something worth doing, Mr. Schriebman?

Mr. SCHRIEBMAN. Well, Senator, I think it is a good idea. It is like the first two Taxpayer's Bill of Rights are good starts, but I think if you are going to do another Bill of Rights, let us put some real teeth into it.

Senator LOTT. All right. Now let me go to one other question before my time runs out. I believe Mr. Burnham, it was your testimony. Yes. You point out that it seems that IRS agents prefer to target less wealthy taxpayers because they are less likely to be able to afford the lengthy defense, and so forth. You note in here something that caught my eye.

On the civil side, taxpayers in the IRS's San Francisco district, Mississippi, Idaho, and New York City stood the highest chance of being audited. Now, that is very odd. The highest adjusted gross income and the lowest were represented in that group of only three areas. Now, why is that?

Mr. BURNHAM. I do not know, Senator. Again, it is a good question for you all to ask. When we put this data up on the World Wide Web the IRS denounced the data and said it was wrong, it was the government's data.

We asked, well, what is wrong with it, and would you meet with us, and will you come? They refused to meet with us. For a year and a half, we have sent repeated letters to them to discuss their problems with the data. There is nothing wrong with the data.

Senator LOTT. What would your speculation be as to how New York City and Mississippi would fall into that trap?

Mr. BURNHAM. I mean, one possible speculation is that the people of Mississippi, it is a much poorer district, less expert, is easier pickings. New York City is a more sophisticated city, more income, more lawyers, more accountants. It is harder work. But there may be others. I mean, I really do not know whether that was a policy decision or part of the ad hocracy of the IRS.

Senator LOTT. Anybody else want to comment on that? Ms. Davis.

Ms. DAVIS. Yes, I have a theory I will share with you. I think it all comes down to who the district director happens to be. There is tremendous power placed in the hands of individual district directors. I will tell you a quick story about the taxpayer Carol Ward, whose story you probably heard about on 60 Minutes this past weekend.

When I first became familiar with the outlines of her story I was unemployed by the IRS by that time, but I went to some old friends of mine who work at pretty high levels of the IRS. I outlined the case and I said, how could this happen? They told me, I do not think that that is right.

I do not think it really happened. We do not do things like that. They just denied it. These are people that I really trusted that I had had good working relationships with, and they were confiding in me. They said, I just cannot see that that could happen. So then I learned a little bit more.

I went back to one of my sources who was a former district director, and I said, well, here is the name of the person who was the district director in Denver at the time that this incident occurred. This former IRS district director, who is now working in Washington, said to me, oh, I did not know that. That explains everything.

In other words, what this IRS executive was telling me was, once he or she—to hide the identity of my IRS informant—once I told them who it was, they said, well, that was not surprising because they knew that person and that person had a personality to do that.

Senator LOTT. Mr. Burnham?

Mr. BURNHAM. I would like to add to that. Our data shows all this erratic business. From my research, I do not think the IRS commissioner and the upper echelon of the IRS look at these erratic, crazy patterns and find out if there is some legitimate reason for it. They just sort of sit there. It is not well-managed.

We do not want every district to be exactly the same, that would be wrong. Montana is different than Miami. But they do not look at it that way. There is a surprising lack of serious management at the top levels.

Senator LOTT. One last question, I think, that can be answered briefly. I have known a lot of people who were accounting majors and became CPAs and tax lawyers and wound up at IRS, nice folks, then something happens. [Laughter.]

Ms. DAVIS. Good thing I got out when I did.

Senator LOTT. Now, I guess the answer is, I presume there is a culture there, this law enforcement culture, or the arrogance that comes from power. Is that it, is that what happens to, in many cases, good people? All of a sudden they are the local agent in the hometown and they become nasty people.

Mr. SCHRIEBMAN. May I?

Senator LOTT. Yes, sir.

Mr. SCHRIEBMAN. I have a lot of contacts that are that way. Some of my students, of course, have gone that route. I think that it is not so much nasty people, I think it is some kind of insulation, because when you have a problem with an agent and you try to get their manager or you try to get their branch chief, they are always in a meeting. They have more meetings than President Clinton. They are always in a meeting. They never return your calls, never respond to your faxes.

There is one lady whom I think is so fantastic. She happens to be a branch chief in the Long Beach field office. There was a problem. She handled it right away. She met with me and the revenue officer, and she sat in the meeting. I was so impressed with that.

But she is about the only one. I do not know. They just feel like they do not work for us.

Senator LOTT. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lott.

Senator CONRAD. Thank you, Mr. Chairman.

Again, I believe I bring a special perspective to this as a former tax commissioner of the State that elected me to the United States Senate. I think one of the reasons they elected me was because we gave good service to people.

One of the things that I instituted when I was tax commissioner that I think paid great dividends, and it is a very small thing. We sent people out to audit, because there really are people who cheat, there really are people who abuse the system, there really are people who will go to great lengths to avoid paying what they legitimately owe. That is totally unfair to the vast majority of citizens who do pay what they owe and who do pay their fair share.

So there is a certain adversarial relationship with those who try to cheat and those who try to avoid paying their fair share. But one of the things we did when we sent out auditors, was send out a questionnaire after an audit was completed. It was very brief, and ask them, how are they treated?

Our people knew that we were going to engage in that process, that we were going to check on how they were treating people. I tell you, I think it made a great difference. There is a tendency by some to abuse their power. I want to again put this in perspective because I have dealt with the IRS in my previous career and I found the vast majority of people there were honest, were hardworking, and did not abuse people.

When we talk about a culture, that strikes me as kind of a condemnation of everybody there. I do not buy it. I have worked with these people, honest, hardworking, decent people. Are there people who are not? Absolutely. I have seen that, too. I have seen people who abuse their authority. I have seen people who got arrogant. The quickest way to stop that is to hold people accountable and to check on how they treat people.

I tell you, that simple device of sending out a very brief questionnaire. How were you treated? Were you treated with respect? Were the people on time? Did they answer your questions? At the end of the audit did they explain to you the findings of the audit?

Amazingly enough, we had some people who went in and would audit and would not tell the people the results of the audit. Well, that is arrogant and that is frightening to people.

Mr. BURNHAM. I do not believe I recall the IRS having such a questionnaire.

Senator CONRAD. And I tell you, I think maybe that is the kind of action that could come out of what we do here, that after an audit there be a procedure to ask people how they were treated.

I tell you, I think they would find what we found, that in fact you do have some people who get a little filled with themselves, and they are out there on their own, they had a bad day, they had a disagreement with their spouse, and by God, they are going to take it out on the taxpayer. Well, that is not acceptable.

One way to avoid that is to hold them accountable. One way to hold people accountable is to have information on how they acted.

You might find a taxpayer who misreports, who is one of those abusive taxpayers, because there are some abusive taxpayers out there too, but you can find a pattern.

If one person says the auditor did not treat them with respect and then you get subsequent reports that they did not treat them with respect, then you have a pretty good indication you have a problem, and it is time to deal with it.

The CHAIRMAN. Would you yield for a question?

Senator CONRAD. Yes.

The CHAIRMAN. You talk about filing the paper, which is a good suggestion. But did the people in North Dakota not know that there was a tax commissioner that was going to follow through and check those papers?

Senator CONRAD. Yes. Yes.

Senator GRAMM. And who was elected.

Senator CONRAD. I was elected as a tax commissioner, the only elected commissioner in the country. I think it has a tremendous impact, too, on accountability.

One other thing that has been said here today, I think, may have a fairly simple solution. I hear that, well, the IRS targeted lower income people. This committee has complained repeatedly about fraud and abuse in the Earned Income Tax Credit section of the Code. We have colleagues here who have talked about it repeatedly.

In fact, there has been fraud in the Earned Income Tax Credit and I would not be surprised if the IRS actually listened to this committee; sought to do something about it and focused on the whole question of fraud in the Earned Income Tax Credit. Well, of course, that would involve lower income people. Mississippi is, I think, perhaps the lowest-income State in the country.

It might not be surprising that you would see a disproportionate number of people who are in the Earned Income Tax Credit program being looked at because there have been suggestions by this committee of fraud in that program. In fact, it has been more than assertions by members of this committee, there has been pretty good evidence that there has been fraud in the Earned Income Tax program.

I would just like to ask the witnesses here, do you think something as simple as what I have suggested might do some good, that is, send out a questionnaire after people have been audited and ask them, "how were you treated?"

Mr. BURNHAM. I think it is a very good idea, assuming that someone at the IRS looks at them and acts upon them. That is not necessarily an assumption we can count on.

Senator CONRAD. Do you think there should be something like an ombudsman at the IRS?

Mr. BURNHAM. There is.

Ms. DAVIS. There is an ombudsman at the IRS. It is a career IRS employee.

Senator CONRAD. Do you think there should be somebody that has a specific responsibility for a program like this one, that maybe this would be an assignment given to the ombudsman?

Mr. BURNHAM. Maybe the ombudsman ought to just do that, have that kind of program going.

Ms. DAVIS. Let me jump in here. I cannot more strenuously disagree with that. I think your idea is an absolutely wonderful idea, but I think the surveys should not be sent to the IRS. That is the key to this kind of idea succeeding. If you send them to the IRS, they will go into the IRS black hole.

Have the surveys sent to the Senate Finance Committee, have the surveys sent to the Joint Committee, some oversight body that could review them. If you put them in the hands of the IRS, I will tell you very quickly, it is one thing to have information, it is another thing to make use of that information.

Senator CONRAD. To act on it. Yes, you have to act on it. It does not do any good to get information if you do not act on it.

Ms. DAVIS. The IRS conducted an internal survey program, which had this bizarre name of Survey Feedback Action, while I was there, and then continued after I left.

I will tell you, from my conversations with IRS employees, not executives but the IRS employees, the general sense was the results of that survey indicated that there was a serious morale problem at the IRS and the morale reflected IRS employee attitude towards the top executives of the agency.

When those results came in, because they were not what the IRS wanted to hear about its own employees felt about what was going on inside the agency, the results were quickly buried and nothing ever came of that. So, once again, have your survey, but have it sent to an outside, independent body.

Mr. BURNHAM. Senator Conrad, you know you all have an interesting survey. You all have State offices that take complaints about Federal service. As I understand it, the majority of those complaints coming in to offices in every State involve the IRS.

It would be interesting for you to pool, with the permission of the individual taxpayers, those complaints and examine them and see how valid they are. You have got 25 Senators, 25 offices. You could really look at the complaints coming into your offices in a systematic way and do not treat it as an individual thing, but look at it and see if there are patterns and trends. Get the Senate Finance Committee looking at that.

Senator CONRAD. Well, I would just say that my colleague Senator Moynihan has just given me something that apparently has begun along the lines of what I was suggesting, that is, a questionnaire sent to taxpayers who have been dealing with the IRS to ask them how they have been treated.

Now, perhaps Senator Moynihan can tell us when this was instituted.

Senator MOYNIHAN. I believe just in August.

Senator CONRAD. Just in August.

Senator MOYNIHAN. Yes. So we can follow-up on your idea.

Senator CONRAD. Well, I tell you, I know this is effective. Not only does the taxpayer have a chance to give feedback, but the person who is going out there to audit knows that they are going to be "audited." That has a real way of affecting behavior.

The CHAIRMAN. We are running out of time. We have got several members still needing to ask questions, and we have several panelists. So, I must move on.

Senator GRASSLEY. Could I have 30 seconds just on this point? Mr. Burnham brought up that they are now putting out a questionnaire of this type. This is another example of so many good ideas coming out of the IRS just since the IRS Restructuring Commission has been studying and making suggestions, because in our legislation on page 36 we call for this same survey. So it is nice that the IRS is waking up, but they are waking up because we are doing our oversight and not because they are good ideas.

The CHAIRMAN. Senator Nickles.

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

Mr. Burnham mentioned that he thought that this was the first time in the history of the Senate that we have actually had IRS oversight.

Mr. BURNHAM. By the Senate Finance Committee.

Senator NICKLES. By the Senate Finance Committee. I would guess that there might have been some when we have had commissioners nominated and come before the Senate, but Mr. Chairman, I would certainly think that this should be possibly a recurring activity, whether it is annual or by each Congress.

But I think there is a lot of legitimate necessity, frankly, to have oversight over all government agencies, and certainly the IRS, because it is one of the most important and it is also one of the scariest for our constituents. It is one that our constituents fear most. So I compliment you for doing it, and I hope that we do it regularly.

I will say also the very fact that we are having these hearings, I have been besieged. I have had Congressmen calling me saying, "I have something I would like for you to expose." I have had constituents come up and say, "I have got a horror story." I just read one that was about 15 pages.

Actually, the letter came from a person that I have been in business with for years, or actually did some of our work in my private sector days. He was talking about the relationship with an IRS agent. This is an accountant. He has been in business for 35 years, telling me about a horror story about an abusive IRS agent. He said, he had dealt with hundreds of agents over the years and never had a problem like the one that he described.

I mentioned in my comments yesterday, I do not have any doubt that most all of the 102,000 IRS employees do an outstanding job, but on occasion there are some people that abuse their power. I think we have to have some means of rectifying that situation. I think I heard Mr. Schriebman, maybe in your comments, you mentioned some actions that could be taken against the IRS if they have been abusive. Could you mention a couple of those again?

Mr. SCHRIEBMAN. Yes. Right now, the Taxpayer Bill of Rights, the first version, under Section 7430 of the Code provided monetary damages against IRS people who violate the provisions of the Internal Revenue Code. But they do not violate the provisions of the Internal Revenue Code very often. What they violate, are their internal manuals, press releases, things like that. See, those are not considered law under Section 7430.

I want to see an amendment to Section 7430 that does three things. Number one, provides taxpayer damages for violation of in-

ternal manuals and internal procedures, because they are taught those.

Number two, I would like to see some punitive damages, because there is only one place in the Internal Revenue Code where there are punitive damages, and that is for Privacy Act violations. There are not any punitive damages for violating basic taxpayer rights.

Also, I would like to see the ceiling raised. It was raised in the Taxpayer Bill of Rights II from $100,000 up to $1 million. I do not think there should be really a limit on that.

Senator NICKLES. All right. Let me thank you for those suggestions.

Mr. Burnham, you mentioned something in your opening comments that kind of made me step back. You mentioned historically—and Ms. Davis, you might want to comment on this too, or any of you—that there have been some abuses by the IRS by previous administrations.

I think you referred to the Hoover Administration and the Navy League, you mentioned FDR, I also think you mentioned President Kennedy, President Nixon. I do not know if you mentioned LBJ or not. Are all those correct, that you have uncovered evidence that maybe the administrations have abused the IRS?

Mr. BURNHAM. Absolutely. The IRS has been used for political purposes on quite a regular basis.

Senator NICKLES. Let me bring it up a little closer. You touched kind of briefly on Reagan, Bush, and I do not know if you mentioned Clinton or not. Did you find evidence that the Reagan Administration or the Bush Administration used the IRS for political purposes?

Mr. BURNHAM. During the Reagan Administration there were several groups that were opposed to the Reagan Administration position in Central American who were audited. Now, whether that was political harassment, they believed it was. An audit happens, and it may be done for a good reason.

There was also a very interesting case during the Reagan Administration, and I am sure President Reagan had nothing to do with this, where a group of teachers in Minnesota formed an organization to promote the idea of Darwinism, of evolution. They asked for tax-exemption, and they got a really incredible letter back from the IRS saying, who are you to say Darwinism is right? Are you going to show the other side? An IRS lawyer was apparently a Creationist and felt very strongly about it, and wanted this other side.

Now, these people had it together and they went to their Senator. It was a Republican Senator, I believe, from Minnesota at the time. He wrote a letter, and the thing disappeared. But this kind of thing happens.

Senator NICKLES. But be careful, because there are allegations being made on this administration and I have not really heard, and I was here during the Reagan and Bush Administrations, but I have not heard anyone say that either of those two administrations audited their enemies.

Ms. Davis?

Ms. DAVIS. I just want to add a quick historical note because it is important to understand what really happened. The two instances with which I am most familiar are the Kennedy era abuses

and the Nixon era abuses. In the Kennedy era the IRS had a program called the Ideological Organizations Audit Project. It was quite a mouthful to say.

In the Nixon years, it was called the Special Services Staff, or the SSS. These were the entities inside the IRS that performed the political targeted audits, if you will. But it is very important to understand that both of these organizations, from the historical record that does exist, did not come about as the result of someone at the White House directing the IRS to do this.

In both cases, the evidence that I see indicates that the IRS in the Kennedy era listened to a news conference that President Kennedy held in which he railed about the problems of the right wing, and we had to do something about these tax-exempt organizations, and by gosh, the only way to control them is through the IRS. It was shortly, if not immediately thereafter that the IRS internally created this organization. No one directed them to.

They were reacting to a perceived need of the administration. The same thing happened with the Special Services Staff, which was launched in 1969, quite some time before, if you look at the archival evidence, the term "enemies list" became in vogue in the White House.

They did it as a result of Congressional hearings in which concerns were raised about activities of extremist groups across America, and IRS bureaucrats got together, hunkered down, and said, well, gosh, we can do something about that here. That is the most important point I make when I talk about whether or not the Clinton Administration or any administration is conducting political audits.

It is not as simple as the White House calling the commissioner and saying, go get these guys, because if there is a perception inside the IRS that this it the type of activity the administration wants to protect its budget, to protect itself from this kind of scrutiny, then the IRS may very well do it on their own. It does not take direction from the White House. The IRS has the power on their own to do it. There is nothing to stop them from doing it now.

Mr. SCHRIEBMAN. Senator Nickles, may I just make one point?

Senator NICKLES. Yes.

Mr. SCHRIEBMAN. I would like you, if you have some time, to review an article in the Washington Times. I do not know when it came out, but it is Volume 434. I have copies for the committee. It talks about people who have gotten judgments against the IRS and the IRS keeps appealing and appealing and wearing them down so they do not have to ever pay anything. That is a very insightful article that I would direct your attention to.

Senator NICKLES. All right. I appreciate that.

Also, Mr. Schriebman, you mentioned one other thing. You said you thought we should change the section in the Code that allows, is it a district manager?

Mr. SCHRIEBMAN. District director.

Senator NICKLES. Director. To be able to seize assets.

Mr. SCHRIEBMAN. Yes.

Senator NICKLES. Right now, he is able to, over his signature, seize assets whether it is a paycheck, a home, a car, or other assets?

Mr. SCHRIEBMAN. The IRS does not need his signature to go after a car, a paycheck, or a business. The Code is specific. In order to take a home, just a home, a residence, the revenue officer cannot do it without his signature. But I know of no case where a revenue officer has gone to a DD and the District Director has refused to sign.

Senator NICKLES. In some areas of the country they have had a lot higher, I guess you would call it, seizures rates than in other. Maybe is that because of more aggressive district directors?

Mr. SCHRIEBMAN. I would only have to assume so, Senator.

Senator NICKLES. Are you saying they should not have that authority or they should have to go through a Tax Court before they could get that information?

Mr. SCHRIEBMAN. Yes, that is what I am saying. Let them go to a Tax Court or an independent forum in order for them to be able to seize anything, but let the taxpayer have a notice and a right to be heard under the 5th amendment.

Senator NICKLES. All right. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. I want to thank you and congratulate you for convening these oversight hearings. I think it is absolutely appropriate that this committee undertake to provide this kind of oversight. It is certainly part of our charge and our responsibility. It is important in order to be responsive to the public, generally.

I would take issue with Mr. Burnham. Mr. Burnham suggested that the most cases we heard from our constituents have to do with the IRS. I think it has been overtaken by immigration of late. But certainly we hear enough horror stories that this kind of oversight is very, very timely, and the work of the commission is to be commended and congratulated.

I think the point has been made that the taxes are what we pay to support our expectations as a society, and that most of the people who work for the IRS are honest, hardworking individuals who perform an important community service.

At the same time, I know taxpayers view with horror the prospect of having to come in contact with the IRS, and we do have a lot of difficulties getting through. The citizens generally are confused and upset about the mystery associated with the IRS, the seeming capriciousness of what they do, and the lack of accountability.

I think if there is one level of objection that we hear the most about, it is that nobody can figure out how to get through the maze of procedures or how to get through to where they need to go to get an answer.

I have, and I am going to pass this on to the people from the IRS here, again, a constituent issue from Fannie Woods about her military retirement. She goes A through Z of steps that she took to try to reconcile a problem with the IRS, that she could not get information, she even traveled to Kansas after being told that that is where her case could be resolved, only to be told that Kansas was the wrong place and that she should have gone to her local office.

She has gotten different phone numbers. Even this letter is directed to two different places.

So people do not know where to go, they do not know who to talk to, they do not know how to get through the process, and they wind up, in her case, having a bank account levied over a military retirement. Military retirement. This is somebody who had a service-connected retirement, and had to go through what seems like, just to be charitable, a catch 22.

Having said that, I want to focus in on Section 7430 and what, if anything, we can do about it. It is always easy to talk about the apocryphal stories, but the question is, how can we make this process work better?

I was looking at Section 7430(a), which has to do with the cost on appeal. Assuming for a moment that a taxpayer goes through the process and goes to Kansas when they could have gone to the hometown, or makes phone calls and cannot get through, has to hire a tax preparer or a tax assistant or an accountant to go through, has to order back copies of credit card bills, or whatever.

Section 7430 does not allow, on the face of it, for those costs to be recovered if they go through the process and win and it is determined, after administrative appeal, or alternatively after going to court, that the taxpayer really was right, they had paid their taxes, they had done an honest job of it, they had done the right thing, and they were not liable for the lien, the levy, or for the collection action that had been charged, and somebody had done something wrong with the computer.

Assuming that happens and the person appeals and wins, to what extent can these costs of the accountants, of the tax assistants, of the travel, of even attorneys fees—the section provides for a $75 an hour attorney fee.

Mr. SCHRIEBMAN. Which was raised.

Senator MOSELEY-BRAUN. Right. And not to put down legal assistance, but you cannot get legal assistance, even a paralegal, for $75 an hour.

So assuming you go through the process, you were right to begin with, you have gone through the aggravation, your mental health cannot ever be compensated for, but certainly your trips to Kansas, your telephone bills, your tax assistant's costs, your accountant's costs, and your legal fees ought to be recoverable.

So my question is, how can we provide taxpayers with some assurance that if they go through all of this and they are right, that they will not be further burdened and out of pocket for the costs associated with getting justice done to them?

Mr. SCHRIEBMAN. Well, it just so happens that I was at the Government Printing Office yesterday, and something told me I had better get a copy of the Taxpayer Bill of Rights II, that I might need it.

First of all, 7430 was amended by the Taxpayer Bill of Rights essentially to do two things, raise the hourly from I think $75 to $110, which you are not going to find anyone competent for $110 these days. So, I think that is unrealistic.

I think if you are going to put some teeth into the 7430, you should not put any dollar amount at all, the rate should be the prevailing professional fee in the community.

Number two, you have got a ceiling here that you had in Taxpayer Bill of Rights I, which I think was $100,000 and was raised to $1 million in the TBR II. But you do not get it, as you said. You are 100 percent right. You do not get it for every dollar of professional fees or costs that you incur because it starts, I believe, at the appellate level.

So the exhaustion of the administrative rights, Senator, you have to either get or ask the IRS to give you an appellate conference; you have to request an appellate conference. It starts with the appellate conference.

Anything that you have incurred prior to an appellate conference, you are out of pocket and I think that is wrong, I think, the money that you have incurred for an unjust audit should be awarded. Of course, in a collection action you do not get an appellate conference.

Senator MOSELEY-BRAUN. Would it be possible to break this down and give some additional authority to the appeals entity at the administrative, as well as at the court level? That is to say, if at the administrative level an individual could recoup his or her cost of defending him or herself, that might provide some balance in the situation.

You have unlimited resources on the IRS side, and the taxpayer is out of pocket. Sometimes I think that may go to the heart of why people feel so burdened, because they cannot in all cases continue to meet those costs on an ongoing basis.

Mr. SCHRIEBMAN. You are 100 percent right, Senator. The couple of flaws in 7430 are, number one, when it kicks in. It should kick in from the beginning when you are contacted by the service, whether it is an audit or a collection matter. I think the ceiling should be raised way beyond $1 million. After all, as the old joke said, $1 million does not buy what it used to.

The attorneys' fee provision, the accountants' fee provision, there should not be any ceiling at all, it should be whatever the prevailing fee is in your particular community. Now, maybe in Mississippi $110 an hour is the going rate. Where I come from it is a little higher. But it is an unrealistic dollar amount and I do not think it should hinge on whether or not you get an appellate conference. I think it should start from the initial IRS contact letter.

Senator MOSELEY-BRAUN. Ms. Davis?

Ms. DAVIS. Can I respond to that by sort of issuing a challenge back to you, the entire Senate Finance Committee. I think it would be interesting if you would, as a body, as the IRS to provide you with detailed information on the number of cases of taxpayers who have challenged the IRS and who have been successful in their challenge against the IRS who have actually been paid by the court system.

I can tell you that I did some background work with 60 Minutes on the piece they did last week, and one of the things they told me, is this is a question that they repeatedly asked the IRS, and the IRS simply refused to respond to their request for that information. But the IRS could not refuse you.

So, because we the American people cannot get that information, my guess is you are not going to find very many taxpayers who have ever been paid.

Senator MOSELEY-BRAUN. Well, I thank you.

Mr. Chairman, I would like to ask the service, and we can perhaps continue with this tomorrow, if they would give us some numbers, not only on the number of audits that are initiated, but the extent to which they go on further in the process, and then the extent to which taxpayers are able to recoup at least even the costs that are presently authorized after the conclusion of the appeals process. If we can get those numbers for our next set of hearings, I think it would be very helpful to this.

The CHAIRMAN. You will have that opportunity tomorrow when the representatives of the IRS will be here.

Senator MOSELEY-BRAUN. Well, if they are here, that way they will not come and say, well, we will have to get back to you. It would be really helpful to get it, if they could work on that today in preparation of the hearing tomorrow. Thank you.

The CHAIRMAN. Senator Hatch has asked for 30 seconds to make a correction.

Senator HATCH. I just want to correct the record. To correct the example I used in my earlier comments, the taxpayer did not go to the Tax Court to have the interest that was assessed abated. Unfortunately, this case began before the Taxpayer Bill of Rights II allowing the tax court review was effective. So it is a very unjust case and something that I think would upset most people who looked at it fairly. Thank you, Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chairman, 30 seconds indulgence before Senator Kerrey. If someone would take Ms. Woods' case and take a look at this, because it really is kind of a nightmare and I would like, if they would get started on this I would appreciate it.

The CHAIRMAN. All right.

Senator MOSELEY-BRAUN. I do not know who from the service is here, but if someone could take this. Thank you very much.

The CHAIRMAN. Senator Kerrey.

Senator KERREY. Mr. Chairman, one of the things I would point out is that one purpose of oversight is to answer the question, "What should the law be?" I mean, we are, in the main, writers of laws. There are laws governing the Internal Revenue Service today and I am prepared to argue strenuously that those laws need to be changed.

Senator Grassley and I have introduced legislation that has in it a long, detailed section dealing with many things that I have heard the panel discuss having to do with taxpayer protection rights, new penalties on the IRS, new rights for the taxpaying citizen.

We have a section dealing with accountability that gives us a greater capacity to do our oversight. I mean, one of the problems is, we just do not get a sufficient amount of information across the board to know what is going on over there.

In that section we deal with the funding of the date change to the year 2000, which is a huge problem and could create enormous friction between the IRS and taxpayers. We deal with the complexity of the Code as well. Very often we are the people, as Senator Moynihan indicated the other day, responsible for creating complexity in the Code and difficulty as a consequence for administering the Code.

We are not always as good as we were this year in enacting tax legislation early. It is not uncommon to pass a tax law around here late in October or early in November, well into the filing season, creating, obviously, some difficulties with filling out taxes.

We have a section on electronic filing, which I believe offers enormous potential for reducing costs and increasing service. The rate of errors with electronic filing is less than 1 percent, with a 25-percent error rate in the paper environment.

We do have a section as well on governance, as well as senior management policy. There is considerably less authority with the commissioner in making management decisions and management policy decisions than meets the eye, though I know that some regard the governance, I think one of the panel members said, as window dressing. I think it is a critical issue.

We saw with the Social Security Administration, with the new administrator that was nominated by the President, already a willingness to be independent of the President and say this is the problem, this is the situation.

I would love to see an IRS commissioner at some point in time say, great tax idea, Mr. President, great tax idea Senator Blowhard, but this is what it is going to cost the taxpayer, this is what it is going to do to our capacity to be able to get the job done. So this independence, in my judgment, is a critical issue in order to be able to get accountability to the taxpayer.

Again, in the interest of time, I appreciate very much the panel taking the time and exposing yourself to come up here and be witnesses. I would appreciate very much if you could look at the legislation that Senator Grassley and I have introduced, S. 1096, and all these various sections and just get back to us and give us your constructive input as to how to make this proposed law even better based upon your vast amount of personal experience in this area.

Senator MOYNIHAN. Mr. Chairman, could I just say one word here.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Would it not be a special moment when a commissioner of the Internal Revenue Service came before this committee and said, that provision is too complex, nobody can understand it, we will never be able to enforce it?

Senator KERREY. Yes.

The CHAIRMAN. Well, I want to express my appreciation to all three of you for being here today. I think the discussion this morning has been very helpful. It is only a beginning. We look forward to your continued advice and assistance.

Mr. SCHRIEBMAN. It is an honor, Senator.

Ms. DAVIS. Thank you.

Mr. BURNHAM. Thank you.

The CHAIRMAN. I would now like to ask our next panel, Father Ballweg, Mrs. Hicks, Mrs. Jacobs, Mr. Savage, to join us at the witness table.

Now, I would point out to the members of the committee that we will hear now from four taxpayers about their experiences in dealing with the IRS. There is a common theme in three of these cases: the inability of the IRS to perform a simple administrative task

and the lack of will by the IRS to correct the problem. Then a parade of horror is unleashed against the taxpayer.

We will hear from Monsignor Lawrence Ballweg, how he was unable to get a copy of his tax filing within a reasonable time so that he could respond to the IRS allegation that he owed thousands of dollars of tax.

We will hear from Mrs. Katherine Hicks how the IRS was unable to send her a bill for the out-of-court settlement she made with the IRS almost a decade ago.

Because of the IRS mistake and its inability to track her account, Mrs. Hicks has been subjected to tax liens against her house, levies against her husband's wages. She even took the drastic step of filing for bankruptcy and divorce to try to escape from the heavy hand of the IRS. She is accompanied today by her husband, Mr. James Hicks.

We will also hear from Mrs. Nancy Jacobs how the IRS was unable to straighten out the employer identification number for her husband Dr. Barry Jacobs' optometry practice. Their case spans 17 years, with the Jacobs being subjected to liens, interest, and penalties for someone else's taxes.

Each of these taxpayers attempted to deal with their problem in good faith for an extended period of time. The IRS made little effort to resolve their problems. Instead of treating them as customers, they were treated as if they were tax cheats.

Now, let me repeat. The problems were created by the IRS's inability to perform a simple administrative task and the lack of will to correct the problem. If these had been credit card disputes, they would have been resolved expeditiously. It is telling that these cases were resolved when this committee and the media began to probe.

The fourth case we will hear about is in many ways even more disturbing. It did not start with an administrative error. We will hear that the IRS intentionally went after Mr. Tom Savage and his company to collect taxes owed by an unrelated business. Faced with a choice between saving his business or fighting the IRS, Mr. Savage's company paid $50,000 in taxes that it did not owe. I find this absolutely indefensible.

I want to thank each of our witnesses for taking the time to come before the committee today. I will now administer the oath to each of you and I will ask you each to respond separately. Will you please rise and raise your right hand.

[Whereupon, the five witnesses were duly sworn.]

The CHAIRMAN. Mr. Hicks?

Mr. HICKS. I do.

The CHAIRMAN. Mrs. Hicks?

Mrs. HICKS. I do.

The CHAIRMAN. Mr. Savage?

Mr. SAVAGE. I do.

The CHAIRMAN. Monsignor Ballweg?

Monsignor BALLWEG. I do.

The CHAIRMAN. Mrs. Jacobs?

Mrs. JACOBS. I do.

The CHAIRMAN. Thank you, and please be seated.

We will now ask you, Mrs. Hicks, to proceed with your testimony.

STATEMENT OF KATHERINE LUND HICKS, APPLE VALLEY, CA, ACCOMPANIED BY JAMES HICKS

Mrs. HICKS. Thank you, Chairman Roth and members of the Senate Finance Committee. Thank you for allowing me this opportunity to appear here this morning to relate to you my experience with the Internal Revenue Service.

Like many women who have gone through a divorce, I was the one stuck with the tax bill for our last joint return for the tax year 1983. The IRS assessed that return for additional taxes of $7,000, but sent all the notices to my former spouse. Unfortunately, it took him over a year to notify me of the assessment.

I immediately contacted the IRS. The IRS had ceased to be willing to examine my records and was demanding that I pay them $16,000 instantly. At the time, my former spouse was earning in excess of $40,000 a year as a glazer and had no dependents. My income was approximately $15,000 a year as a newly-hired bank employee, with a dependent 14-year-old daughter. For the 2 years following my divorce, I was financially destitute. I had just managed to get an apartment, a real home for the two of us.

I mention this to remind you good people that when an IRS collection procedure gets out of control, the victim of that collection still has to deal with all the other traumas of their life.

An honest collection by the IRS with no snafus of an amount actually owed is incredibly stressful in itself. Therefore, it is critical that the IRS not be allowed, whether by design or accident, to pursue taxpayers for erroneous debts. At present, there are no effective protections against this.

In my case, I had to file a Tax Court petition to force the IRS to examine my records, which I did in 1988. This is not unusual if the IRS does not get a response to early requests for records and I did not feel resentful or persecuted.

However, it did cause problems and added to my stress. I had to use my rent money to pay the accountant and lawyer, and so I lost my apartment. My daughter and I were reduced to sharing a rented room. I consoled myself with the thought that we had survived worse, and we would get another apartment later.

It is important to note here that my ex-husband was not a party to this petition in Tax Court. We settled out of court and the IRS agreed to a reduced tax, from $7,000 to $2,709, a reduced total demand from about $16,000 to approximately $3,500.

I went to the meeting in July 1988 to sign the agreement and, checkbook in hand, prepared to pay the amount in full at that time. The IRS refused my payment until they had sent me a bill, because they would not have anywhere to credit the money without the bill. They claimed they needed time to calculate the exact interest due.

I wanted the payment properly credited, I wanted this to go well and to be permanently resolved. I thought, in a few weeks I will have a bill. But the IRS said that the bill would take 6 months to prepare and arrive no later than January 1989. Six months.

I recall asking if I was going to be charged interest for the 6-month waiting period, and the IRS attorney, through my accountant, said no, the interest would be calculated through the date of the agreement and as long as I paid it right away in January, there would be no additional interest.

He said it would be about $3,500 total. I never understood why they could not just whip out their calculator right then and there and tell me what I owed and get this whole thing over with. The bill never came. In February, 1989 I started calling the IRS, asking where it was.

I called the Fresno office and they suggested I also call Laguna Nigel. Both offices had no record of any taxes owed by me. I found this hard to believe. I wanted to be absolutely certain they were correct. I wanted to remarry and I did not want to bring this tax bill into the marriage.

I called both offices again in March and again before July. I was told the same thing, that I owed nothing for 1983. I asked for a receipt or something to show this was paid, because I was simple-minded enough to believe this was a reasonable request.

The IRS employees all said that they "don't do that." I had to take the word of the IRS that I owed nothing, and in this, I had no choice.

At the time, I was not aware that my account had been set up on a separate bookkeeping system to which the IRS employees with whom I spoke did not have ready access. It works like this. When you file a tax return it is recorded in a master file. This is what the IRS clerks pull up on their computer when you call and ask if you owe money.

However, at some point in 1989 the IRS split the master file of our joint 1983 return and transferred separate assessments into two non-master files in each of our individual names and respective Social Security numbers. This was due to the fact that I had gone to tax court and my ex-husband had not. The IRS set up separate accounts.

These non-master files do not show up on the computer when the IRS clerks check a taxpayer's Social Security number for a balance owed. According to the attorney who explained this to me in 1997, the master file continues to exist, but may show a zero balance until the IRS recombines those accounts.

It will then reflect the correct amount owed according to the agreement. Until that happens, every time the IRS clerk pulled up my or my joint signer's Social Security number they would see a zero balance owed and conclude that no taxes were due.

To add to the confusion, there is no notation in this master file that it has been split. Therefore, there is no way for the IRS clerk to know that you might have an outstanding collection in a non-master file.

As a result, I was repeatedly told by the IRS clerks that I owed nothing. So far as I know to this very day, these accounts have not been recombined and the master file continues to exist with a zero balance, while the non-master files show a balance owed.

Yet the IRS has been aware of this error at least since I notified them of it earlier this year, if not even earlier. I have made repeated requests of the IRS to recombine these accounts ever since I learned of the problem. As far as I know, it has not been done.

It is incredible to me that non-master files are allowed to co-exist with master files at all. It creates two accounts under the same name, with the same Social Security number that can reflect conflicting balances due for the same tax year for the same person.

Such a practice substantially increases the potential for error and confusion inside the IRS, while simultaneously making it impossible for a taxpayer to get reliable information from the IRS. The taxpayer either gets conflicting information, or in my case, consistent but incorrect information.

Every day the taxpayer is unable to get accurate information from the IRS about a balance owed is another day's interest added to the debt. Even while the taxpayer is wandering around in this IRS maze of multiple accounts, the clock never stops running. This is incredibly frustrating and unfair to any taxpayer.

Unable to overcome this obstacle to compliance through no fault of the taxpayer, he or she is charged penalties as well for their failure. Much of my misery was caused because the IRS could not accurately answer the simple question, how much money do I owe? As far as I know, that condition has not changed.

To add to the confusion, my former spouse telephoned my fiancee to complain that he had paid the tax and now the IRS was after him for it again. He refused to share his records with me, but his story and the IRS story both matched. Still, I had no independent records to prove either one.

I requested his payment records from the IRS in 1988, records to which I believed I was entitled. I made a second request for those records in 1997. The IRS has refused me these records, or even a statement as to their content.

Why, if my joint signer has never paid anything on this tax, is the IRS hiding that information from me? How can I know for certain what my liability is without the records of my joint signer? Perhaps he has paid nothing. But if that is so, then their refusal to share that information with me makes no sense.

Mr. Chairman, I did everything humanly possible to obtain correct information. I made every attempt to get this tax paid and every conceivable request for some kind of record to evidence what the IRS was telling me. I know of nothing else I could have done.

So after being wrongfully informed that there was nothing owed, I remarried in July 1989. I carried on business with the IRS without incident, and my new husband and I filed a joint return in 1990 and received a refund. We were not convinced, of course, that if I owed any money to the IRS, the IRS would never have issued a refund. So now we were confident that the IRS information was correct. It was not.

In September 1990, without any notice and without our knowledge, the IRS filed a tax lien against me. On December 19, 1990, the first lienholder on our home sued us as a result of that Federal tax lien in the sum of $6,161.41. The lender threatened to call our loan if we did not immediately get the IRS lien released.

We would have lost our home, a home, by the way, that my new husband bought for himself 6 years before he ever laid eyes on me. So the real damage was being done to him, an entirely innocent spouse. All of this, after I had been so careful to pester the IRS repeatedly for a bill and had been repeatedly told that no money was owed.

Worse than that, the lien did not reflect the terms of our earlier settlement agreement. The tax lien reflected an assessment nearly

twice that of the IRS agreement, and the IRS refused to discuss that fact with me.

Meanwhile, the assessment was ripening and it had gone up to over $8,000. I tried to reopen my tax case and was told that the Federal Tax Court did not enforce out-of-court settlements made with the IRS. How convenient this is. Only the taxpayer is held to the agreement, not the IRS. I was adamant that this was just morally wrong. I was very upset.

I fought this collection for two reasons. One, because based on information provided by the IRS itself I sincerely believed I owed nothing, and two, because I believed the IRS, even if they intended to collect twice, was obligated to calculate my collection in accordance with our agreement.

My new husband contacted the revenue officer who had filed the lien. The revenue officer informed my husband, and later me, that he had my former spouse's file right here on my desk, and he knew that my former spouse had paid the taxes, but that it was not relevant because these were separate collections.

He insisted that if we wanted my former husband's payments to offset my liability we would have to produce those records. Otherwise, we would have to pay it again; the duplicate payment would balance the IRS books, and he would help us file for a refund of the overage. Imagine my new husband's frustration at the prospect of effectively paying $8,000 that we believed had already been paid.

At this point, which was early 1991, I requested a problems resolution officer who, after some inquiry into my account, came to the conclusion that I, indeed, did not owe anything for the 1983 taxes and that, once she got written confirmation of this from the Fresno office, she could get everything abated to zero. Meanwhile, she said, the IRS agent should stop collection activity, which he did not.

However, I thought, great, this is all going to be straightened out soon. I was wrong. A few days later she called me and informed me that the IRS Fresno office had changed its mind about providing her with the necessary documents, and without those there was nothing she could do.

I made one final attempt at reasoning with the collection agent. He merely repeated that he knew the tax had been paid and he knew I did not owe the money, but it did not matter. The only way to get rid of the tax lien was to pay the $8,000, whether we owed it or not.

The collection agent then offered to assist us with regard to the refund application. He knew we were being sued by the bank because the IRS was a co-defendant, so he just refused to do anything and let the bank force us to pay what we did not owe. With the bank about to call the loan, we had no choice but to pay the IRS demand in full.

Mr. Chairman, although I am giving you a rather general description of these events for the sake of overall continuity, it is important for me to tell you that both my husband's and my own physical and emotional well-being suffered tremendously under the constant strain of these repeated attempts to get the IRS to honor their agreement and collect only what I owed.

It was physically exhausting. We almost never slept. Every conversation had to be memorialized in a letter. There were the visits to the attorneys and the accountants, their bills, and their depressing advice: pay it, it is cheaper than fighting, and the very real prospect of losing our home to the bank if they called the loan.

You do not eat, you do not sleep, you are afraid to talk too much to each other for fear you will take it out on your spouse. If you do talk, it is about the IRS. We were newlyweds. I cannot describe the guilt, knowing that I had brought my new husband into this.

My parents became so concerned for my health that they cashed in a retirement CD and loaned us the money to pay the IRS. Since they were living on a fixed income, this was a big deal for them to do. I know they made sacrifices to do this. It was a selfless act of love.

On February 21, 1991, we handed the collection agent a cashier's check for the entire amount they demanded, $8,194.73. Please keep in mind, the original underlying tax was $2,709, and that the original amount due was supposed to be no greater than $3,500. The balance was interest that accrued from July 1988 to February 1991, a period of 18 months.

In that time frame, the bill that I could not get anyone to give me to pay nearly tripled from the original amount. I was forced to pay $4,500 for their mistakes. In exchange for this payment we were given a Certificate of Release of Federal Tax Lien.

My cashier's check reflected my name, my Social Security, the tax year to which it was being applied, 1983, as well as my Tax Court docket number. In other words, the IRS had everything it needed to properly credit the payment. I could not have made it any clearer where to apply the proceeds of the check.

In February of 1992, a letter arrived from the IRS office in Maryland signed by a woman with the authoritative title of Chief, Accounting Branch. The letter said the IRS had received a payment, and if we had made this payment, please send the IRS a copy of the check with an explanation, which we did.

We also asked her in that letter not to refund the money or any portion of it unless she first made sure neither of us owed any money anywhere, for any year. In March 1992, we received an unsigned IRS form letter indicating that the payment had been applied to our 1990 joint return.

I actually telephoned the IRS and asked about this and was told simply that if the Accounting Branch determined that there were no taxes owed for any year, the only way to refund the money was to credit it to the most recent tax year. In other words, they could not credit the payment to my 1983 tax year unless there was a balance due.

Therefore, we logically concluded that the Accounting Branch did what we asked, checked out our taxes, found nothing owed, and was merely refunding us the overpayment in accordance with their own bookkeeping system. We had absolutely no reason to think that the refund was in any way erroneous.

In November of 1996, nearly 5 years later, out of the blue, without so much as one prior notice, we received a certified letter from the IRS containing a Notice of Intent to Levy. The particulars of the tax being levied were identical to the particulars of the tax lien

that had been released in 1991. For reasons unknown to us, they changed their mind and wanted more money again. Why?

I telephoned the agent who sent the letter and was told, it was a different assessment, because even though everything else was identical, the tax year, the amount, the assessment date, there was an "N" after my Social Security number on this assessment and, therefore, I had to pay it again. The "N," I later learned, is a tag for non-master file. Remember those, the separate collections that nobody seems to know about? Well, this was one of them.

Whether the IRS failed to close it at the time we paid it in 1991 or whether they reopened it because they wanted to get the refund back they gave us in 1992, does not really matter much to me. Whichever one occurred, the fact remains the IRS made yet another error. Once again, they demanded that I balance their books and pay for their mistakes.

How many times was this going to happen, I wondered? A tax attorney informed me that my Release of Lien was meaningless, adding, the IRS refiles these all the time. I cannot tell you how many people come in here clutching these things, Release of Lien, for dear life, thinking that they offer some kind of protection.

He stated the Taxpayer Bill of Rights did not allow the IRS to collect interest from the taxpayers based on its own errors, and even suggested that I write to my Congressman, but cautioned me not to expect a significant outcome because "they," Congress, he meant, "cannot really do anything. Congress is less than effective when dealing with the IRS on behalf of taxpayers."

I gave problems resolution another try. This time they were less an advocate for me than an arm of the IRS collection office. It was, in fact, the problems resolution officer who told me, you know, you kept a refund to which you knew you were not entitled, and her tone of voice was not friendly; keeping a refund that you know you are not entitled to is a crime. She demanded I pay back the refund. So much for the problems resolution office.

After a brief hospitalization for surgery resulting from a freeway pileup that totaled our car, my husband resumed work in January 1997, only to discover that while he was recovering from surgery the IRS had levied against his salary. My husband would be allowed to keep $18 a week to support me and the children for approximately two months.

Anyone entering a grocery store today knows that is tantamount to condemning us to a soup kitchen for our meals. Two months of being unable to meet our other financial obligations would have sent us into bankruptcy and foreclosure. Again, the innocent spouse was going to be published for my old tax problem.

To protect his ability to provide for his children and myself, my husband set up a separate residence in San Clemente and filed for divorce on February 3, 1997. In California, the day you file for a divorce your salary is your sole and separate property. The IRS ignored that fact and left the levy in place.

In an unusual determination, the county refused to comply with the second levy and my husband's income was safe. However, his retirement fund was not. That was community property, and we fully expected the IRS to swoop in the next day and take the whole thing.

So on the 5th of February, 1997, I filed bankruptcy to stop the IRS long enough for us to figure out what to do about this. The bankruptcy notice was hand-delivered the same day.

The following day, the IRS notified me that my Schedule Cs for 1993, 1994, and 1995 were questionable and asked me to reconsider them. We took this as a thinly veiled threat to punitively audit our returns. The IRS refiled the lien for which I had a release. We discovered this in March of 1997. I am informed that this is common practice.

The liens threatened my husband's residence, which was his separate property, but the IRS ignores this in community property States. I have been informed that the liens would survive the bankruptcy, as all liens do. So even though this was his sole and separate property, it was possible the IRS would take it.

My now widowed mother could not bear watching us go through this and took out a loan against her retirement so we could pay the IRS and get this over with. However, my husband and I knew that paying the demand would never resolve this. We tried that in 1991. They would screw this payment up too, and in a few years be back for more, with interest.

We needed closure, some way to end this forever. Since the real problem occurred back in 1989 and the IRS never correctly set up my account for $3,500, and because every penny over that amount was a result of their own error, we determined that under the Taxpayer Bill of Rights provision that the IRS could not make us pay interest for their mistakes. We should not owe more than $3,500.

If we could get the IRS to correct their errors, we should be able to pay $3,500 and be done with it. So, that is what we did. We made a directed, voluntary payment of $3,500. We put the rest of the money in a CD in case the IRS swooped in to destroy us unannounced. We waited.

Our lives are now forever altered. Joint tenancy, joint bank accounts, joint tax returns are no longer a part of our life. We will pay additional taxes every year as a result. Our confidence in the integrity of the IRS has been completely shattered.

This year we got a refund on our 1996 taxes, and it sits in a CD, as does the $3,500 that the IRS recently returned to us without any explanation. We do not dare cash refund checks anymore. My credit is completely destroyed, and my husband's credit is seriously damaged. We will suffer the effects of this IRS collection for the rest of our lives.

I originally wrote to you, Mr. Chairman, because the IRS should not be above the law. Couples should not have to divorce because of the IRS. Once you became involved, the IRS released all of the liens and sent us the $3,500 back.

Senator Roth, your effort saved us from being forced to live apart and preserved our ability to provide for our children and for this we will be forever grateful. However, the conduct of the IRS remains the same, and for thousands of other taxpayers there is no help. Ours is a hollow victory if the IRS is allowed to continue this type of conduct.

People tell us how terrified they would be to do what we have done. They are convinced that the IRS will target us for punitive audits. One person put it this way when she learned we had writ-

ten to Congress. She said, that is like painting a bull's eye on your chest and giving the IRS a loaded gun. She believes the IRS will never forget this, and some day get back at us in retaliation. Mr. Chairman, she could very well be right.

The IRS is judge, jury, and executioner, answerable to none. We do not believe that our experience is isolated. For over 10 years the IRS has conducted itself as a legalized extortion operation, willing to commit abusive acts to collect money, even that which they know is not owed.

An agency of the U.S. Government allowed such sweeping authority as that granted to the IRS should be held to the highest standards of honesty and integrity. The IRS is not. Those of us subject to that authority should be guaranteed an accessible and effective remedy for its abuse, and we are not. It is a disgrace to our Nation that an arm of our democratic government is allowed to behave as if it were an extension of a police state.

I hope that Congress can act to end this National shame. Thank you for allowing me this time.

The CHAIRMAN. Thank you.

[Applause]

The CHAIRMAN. The committee will please be in order.

Mrs. Hicks, I thank you for being here today. I apologize and regret that you and your husband have been put through this kind of an ordeal since 1983. It should not happen, and that is the reason we are here today.

Mrs. HICKS. Thank you.

[The prepared statement of Mrs. Hicks appears in the appendix.]

The CHAIRMAN. Next, I would like to call on Tom Savage for his testimony.

STATEMENT OF THOMAS SAVAGE, LEWES, DE

Mr. SAVAGE. Good afternoon, Senator. Thank you for allowing me to come here, and distinguished people on the panel, for being here to hear our case.

My name is Tom Savage. I run a small construction management company in Lewes, DE that my wife and I own. I want to thank the committee for the opportunity to share my story, which has been no less than a true horror story for my wife and me.

We were unfortunate to have been the subject of a zealous, unrelenting, and abusive pursuit by an IRS revenue officer, with assistance and complicity of the attorneys, particularly the lead attorney at the Department of Justice who was charged with advising the IRS. They were in a position to stop the abuse and yet permitted it to continue, perhaps even causing much of it.

In the interest of time, I will simply say that the emotional damage done to my wife and me outstripped the financial damages we suffered, which was not insubstantial. There were many sleepless nights. Believe me, when the resources of the government are unleashed on you, you are in trouble, no matter how good your case. Few people know what it is like to be in the cross-hairs of the IRS. We, unfortunately, do.

I am here today in hopes that by telling my story and by participating in these hearings I might help bring about the real and last-

ing changes at the IRS. For the sake of other taxpayers, I hope this happens.

The nightmare began when a subcontractor of Tom Savage Associates, or TSA, my company, fell behind paying his unemployment taxes. The case ended with an intense litigation in the U.S. District Court. Tom Savage Associates was forced to bring an order to recover a payment check issued by the State which had been wrongfully seized by the IRS.

In order to keep my company afloat, we had to settle the case. Much of this offended our desire to stand on principles. We allowed the IRS to keep $50,000 of the check that was seized in order to get the case over with, since the litigations were bankrupting our company financially and us emotionally.

We regret not having pursued the case to the end, but we had to save our business. The government has endless resources to drag the case out, we did not. In settling the case, the government extorted $50,000 before giving back the check. The government attorney knew that it was going to cost an additional $50,000 to litigate the case and use it as leverage on the IRS position.

In brief, the subcontractor had tax problems that surfaced during the period that he was working for my company, TSA, on a project for the State of Delaware. Unknown to TSA, the subcontractor had not been paying his employment taxes for approximately 1 year before the project commenced.

TSA, with the subcontractor's assistance, was building a women's correctional facility. The subcontractor performed the construction, while TSA oversaw the project and provided a performance bond for the project.

Towards the end of the job, the subcontractor's tax problems came to light. The IRS investigated the subcontractor, but quickly concluded that the amount of taxes due were uncollectible.

The revenue officer, in his zeal, set his sights on TSA. First, he attempted to hold me personally responsible for the unpaid taxes, asserting that I was a responsible person representing the subcontractor.

This approach failed when my tax advisor filed a legal memorandum explaining the severe deficiencies with this theory, so the IRS then went after my company. The IRS now asserted falsely that TSA and the subcontractor were partners, and that the employees of the subcontractor working on the project were actually employees of this fictitious association between TSA and the subcontractor.

My tax advisor pressed the revenue officer for some authority for asserting the existence of this fictitious partnership that he had established between TSA and the subcontractor. The revenue officer pointed to a non-tax Delaware case that was totally inapplicable.

Undaunted by the challenge to provide the authority in support of this fictitious partnership, the revenue officer caused the IRS to issue a 30-day letter which proposed an assessment against the fictitious partnership.

We immediately filed a written protest with the IRS appeals officer and eagerly awaited an appeals conference to put the case behind us. As things turned out, we were never given an opportunity to present our case to the appeals office.

While awaiting the appeals conference to be scheduled, the IRS seized a large check paid to my company by the State of Delaware for the project. At the time of the seizure, and this is significant, there was no assessment entered against either TSA or the fictitious partnership between TSA and the subcontractor.

Even if there was one, assuming the partnership existed, which is a generous assumption even for the sake of the argument, the only assessment on the books allowing the IRS to enforce the collection was against the subcontractor.

The seizure of this check thus constituted a wrongful levy, open and shut. Existing IRS revenue rulings clearly hold that "assessment of a partnership on another partner may not be seized to satisfy the debts of another partner."

It is a fundamental principle of the tax law that the government may not seize any taxpayer's property or undertake any type of enforcement action against the taxpayer until there has been an assessment entered against a taxpayer. For those of you not versed in tax procedure, an assessment is the administrative equivalent of a judgment.

In our case, the right to be free of the government collections action until such time as an assessment had been entered was flagrantly violated. Not only was this right violated, as will be explained in a moment, the IRS would now later attempt to sweep this fact under the rug in U.S. District Court.

Indeed, the government's attorneys were so hell-bent on winning that they waged a behind-the-scenes campaign during the proceedings in the District Court to sanitize the record presented to the judge.

The government requested an extension of time to respond to the plaintiff's brief in support of its motion for summary judgment, then during the extension in an assessment against the fictitious partnership between TSA and the subcontractor by hand-delivering a notice of demand the Saturday before the government's answer brief was due.

The government attorney had the audacity to argue in their answering brief that an assessment had been entered against the fictitious partnership, but no mention was made in the government's brief that the assessment was entered 25 weeks after the IRS seized the check, and literally days before the answering brief was filed. And these were the attorneys we thought would stop the abuse?

When we instituted the suit we were convinced that the case would be resolved quickly, that the government would concede the case once it got into the hands of competent attorneys. We guessed wrong. The government had my money and it was not going to give up without a fight.

Faced with this "win at all costs" attitude, we were clearly in a protracted battle with the IRS. As much as it offended my wife and me, we chose to settle the case and permit the IRS to keep $50,000 of the proceeds. We wanted to pursue the case to the end, but to do so would have destroyed our business.

On top of the $50,000 that the IRS kept, I had other financial losses. Although my attorney reduced her fee substantially, in encouraging me to settle the case their fees were substantial. We

spent $51,000 in legal fees in connection with this case. We lost approximately $600,000 in business during the proceedings with the IRS in its wake.

Finally, we lost our sense of well-being, confidence, and freedom from government intervention. I believe the IRS, the revenue officers, the district counsel's attorneys, and the attorneys with the Tax Division of the United States Department of Justice should be held accountable for their conduct.

Unless abuse of this type committed by the IRS and its representatives are met with strong responses including legislation to compensate the victims of these IRS abuses, they will continue. I thank the committee for the opportunity to be here today.

The CHAIRMAN. Mr. Savage, we thank you for being here today. Again, as I said to Mrs. Hicks, it is hard to understand how these occurrences do occur, and we apologize for the problems you have been put through.

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

The CHAIRMAN. Now I would like to call on the very distinguished Monsignor Ballweg for his testimony.

STATEMENT OF MONSIGNOR LAWRENCE BALLWEG, NEW YORK, NY

Monsignor BALLWEG. Good afternoon, Chairman Roth and members of the Senate Finance Committee. I found this to be a very interesting and educational experience, and I thank you for inviting me to come here this afternoon.

I am Monsignor Lawrence F. Ballweg. I have been a priest in the Catholic Church for over 57 years. I was retired in 1990 at the mandatory retirement age of 75.

My mother, Elizabeth Ballweg, died in August 1988, and in her will established a trust, the benefits of which go to charity. In the will I was named the trustee and, since her death, I have faithfully and conscientiously performed my duties as trustee. I have submitted an annual report of the trust activities to the IRS each year without any problem at all.

During the year 1995, I made more numerous transactions than in previous years. In order to record all the income of the trust I listed the various items on separate sheets entitled "Statement 1," "Statement 2," and so on, then placed the totals in the appropriate spaces on the IRS Form 1041.

I did this more for the convenience of the IRS than for my own convenience. Since I did not pay a professional to prepare the trust return, I spent hundreds of hours collecting the necessary papers and balancing the figures. I asked for an extension of time for 1995 so that I could be more confident that the report was as accurate as possible.

Two months later, the return that cost me so much time and effort was returned, requesting that I put all my figures on the appropriate forms that were enclosed.

My second report was done hurriedly and returned on July 7 to make sure that it reached the IRS office in the few days that were allowed. In my hurry to return this report on time it may not have been done as perfectly as the first, although the figures were exactly the same.

I spend 6 months in Florida and 6 months in New York. The day after I arrived in Florida, November 4, 1996, I received a letter from the IRS Atlanta office stating that I owed more than $18,000 in taxes and penalties for the trust.

Since I had left a copy of my final report in New York, I asked that a copy be sent to me. I was informed that I had, first, to request an application for a copy of my report, and then return the application with a check for $14. When the application arrived I filled it out and enclosed the check.

About 6 to 8 weeks later, I received a form that indicated that I could not receive the copy since my name, Lawrence F. Ballweg, was different from the name of the trust, which was Lawrence F. Ballweg, Trustee, under the Will of Elizabeth D. Ballweg, and reflected on line 1 of Form 1041, Elizabeth D. Ballweg, my mother, who had died 8 years before.

I wrote a long letter dated January 6, 1997, explaining that I had submitted annual reports since 1988 and that my name was the signature on each report. At the same time, I submitted another request for a copy of my file. The request was ignored.

Instead, I received a final notice dated January 20, 1997 in which I was told that the IRS intended to take steps to take my bank account, auto, and other property if they had not already done so.

I have read several stories about threats of this kind and how they have caused extreme physical and mental suffering to taxpayers, and now began to understand what those stories meant.

I must confess that I spent sleepless nights thinking of the possible consequences, not knowing where to turn, since by this time I was certain I would get no help from the IRS.

Mr. Chairman, it was at this time that I heard of your investigation into the conduct of the IRS. I immediately wrote to you and received prompt action. CNN presented my case on television.

The next day I received a call from an IRS taxpayer advocate who later received a copy of my file and advised me how to make the necessary adjustments. On March 24, 1997, I received notice from the IRS Atlanta office that I did not owe any tax.

For 8 months I lived in constant worry, if not fear, that the trust that my dear mother had established to help the poor would be penalized because of what I can only call the unprofessional, calloused, and indifferent behavior of IRS employees who are devious enough never to sign their names to any notice that they send out. The taxpayer is dealing with people who can do inestimable harm, and cannot even be identified.

I can only thank you, Senator Roth and the Senate Finance Committee, for trying to correct such abuses. I pray that as a result, conscientious citizens will be spared the humiliation, embarrassment, fear, and anxiety that I have experienced. Thank you very much.

The CHAIRMAN. Father Ballweg, again, I must apologize to you for what you were put through. This is the kind of treatment of a taxpayer that should never happen. While we are glad that it was finally resolved, you should not have had that emotional suffering.

[The prepared statement of Monsignor Ballweg appears in the appendix.]

The CHAIRMAN. It is now my pleasure to call on Mrs. Jacobs. Would you please proceed?

STATEMENT OF NANCY JACOBS, BAKERSFIELD, CA

Mrs. JACOBS. Good morning, ladies and gentlemen of the Senate, Mr. Roth. I just want to say a quick word, that it is a great privilege and honor to be here today speaking to the Senate, something I never thought I would ever do.

The CHAIRMAN. It is an honor to have you here, and we thank you for coming.

Mrs. JACOBS. Well, I am here on behalf of the people of the United States. I am not here on behalf of any Democrat or Republican, and I want everyone to know that. I am hoping that someone will see our stories here today will take a real grip on what their life is all about and give them some hope.

Chairman Roth, Senators of the Finance Committee, thank you for the opportunity to appear before you this morning to present my personal experience with the Internal Revenue Service. I am sorry.

The CHAIRMAN. That is all right. Just take your time.

Mrs. JACOBS. I am Mrs. Nancy Jacobs. My husband, Dr. Frederick Jacobs is a practicing optometrist from Bakersfield, California. We have operated for approximately 30 years.

When my husband first opened his practice in March 1965 in Stockton, California he was assigned an employer identification number, or EIN, for reporting purposes to the IRS. Between 1977 and 1979, my husband closed his practice.

But in November 1979, he reopened in a new location in Riverside, California. We applied for an EIN number at that time, because we were restarting the practice at a new site and we needed an EIN for tax reporting purposes.

What neither of us knew at the time was that the EIN is like a Social Security number; it never needs to be changed or renewed. The original EIN from the IRS had been assigned to us forever.

However, when we requested the new EIN from the IRS it complied with a request that the IRS provide us with a second number. What we did not know at the time is that the EIN that the IRS provided to us in 1979 actually belonged to someone else, someone that we would not be aware of until the year 1992.

By March of 1981, we were unexpectedly assigned yet a third EIN number from the IRS via a preprinted label on a quarterly 941 tax return. However, we continued to use the number we were assigned in 1979 on all of our quarterly tax payments.

In June 1981, out of the blue, without any warning, the IRS placed a lien against us for $11,000 for unpaid back payroll taxes. We could not find anyone at the IRS that would do us the courtesy of checking into the lien and to find out who the lien was for.

After attempting to deal with the IRS, my husband and I were so intimidated by the tactics used by the IRS that we agreed to pay $250 a week until the balance was paid. For anyone who has not had to deal with the IRS under such circumstances, you probably cannot understand why we agreed to pay $11,000 that we did not owe. Only after having experienced what my husband and I endured would you consider paying an IRS bill that you did not owe.

Even after the $11,000 was paid, we continued to receive subsequent liens from the IRS. My husband and I were forced to comply with these IRS demands under the penalty of experiencing further enforcement actions, with the possibility of the IRS closing down my husband's practice. We were forced into debt, our credit was damaged, and the mental stress was overwhelming.

During all this time we could not convince anyone at the IRS that we did not owe these taxes. In fact, during one of our visits to the San Diego IRS office we were flatly told by an IRS employee that she was too busy to help us any more. She refused any additional assistance in straightening out our account also.

We were then informed by her supervisor that this matter would be cleared up. It was a kind offer, but that was all it was. Our nightmare continued. By 1987, we had received additional liens totalling roughly $15,000.

In 1982, we did seek the assistance of a congressional representative. He contacted the IRS on our behalf, requesting that the IRS stop all collection efforts and for them to contact us in an effort to straighten out the problem.

We did hear from the IRS in 1982, and we met with someone from the Laguna Nigel office who told us that we had received four refund checks. We assured him that we had only received one for approximately $3,600. He promised that he would get copies of the other checks. Unfortunately, he never did.

The only consistent occurrence over the course of the years was the occasional appearance of the original EIN number on notices that we had received from the IRS, while all others reflected our second EIN number.

My husband and I began to wonder exactly where the taxes were going that we had been faithfully paying. No one with the California IRS office that we contacted could explain it either. But they were adamant that, whatever the reason, we owed those taxes.

By 1987, we again contacted a congressional representative, seeking intervention on our behalf. This time we heard from the IRS, but that too led to another dead end.

In 1992, a patient of my husband's, a tax attorney, agreed to review our case and was the one who discovered the confusing EINs going back to 1979. Someone with a name quite similar to my husband's, but with an entirely different Social Security number, shared the EIN.

Back in 1979, had the IRS employee properly informed us that we did not need a "new" EIN number, or at least checked the status of the number, this 17-year nightmare would have been avoided.

Mr. Chairman, since 1992 when we first discovered the mistake IRS had made my husband and I have been trying to get our money back from the IRS, money that was wrongfully taken from us by the IRS, but to no avail. We have never received the money from the IRS as we had been promised. We estimate the IRS still owes us $10,000, if not more, plus interest, stemming from the wrongful liens, penalties and interest.

Only in 1994 in an encounter with the IRS's Bakersfield office did we meet the first truly helpful person who was willing to work with us and investigate the cause of our problem. We were in-

formed that our problem was, indeed, due to a clear case of an erroneous employment identification number. Unfortunately, this employee became ill and our case was apparently lost.

After yet another congressional inquiry on our behalf in 1996, we learned that our "lost" case was not really lost, not at all, but had been referred to an IRS employee at the IRS's Fresno service center. Unfortunately, she was not responsive to our case and almost another year languished without any satisfaction.

Out of sheer frustration, my husband and I went to our local newspaper and told our story. Roughly two hours after this story appeared, the same IRS employee was on the telephone informing us, "we discovered that you were right," and proceeded to discuss how our money would be returned to us.

We then received a fax from her stating that all liens had been lifted and the IRS was at fault for the incorrect EIN number. However, when this IRS employee extended her "sincere apologies" in writing, she did not mention a refund of the money the IRS unfairly took from us.

She did state, however, "the liens previously filed under our employment identification number were not correct and should not have been on Dr. and Mrs. Jacobs' accounts. The liens were not for their liabilities. Within the next 6 to 8 weeks, Dr. and Mrs. Jacobs will be in full compliance on all taxes, both individual and business."

Mr. Chairman, both my husband and I are certainly pleased and greatly relieved that this 17-year confrontation with the IRS is almost over, but we cannot agree with the IRS that it is completely over. We would appreciate receiving our refund with the same enthusiasm and speed with which the IRS collected it.

However, the real reason I am here this morning is to bring to light what my husband and I feel is an attitude that permeates the IRS. It is one of manipulation and control of the taxpayer. Both my husband and I were met with indifference when dealing with the IRS offices. IRS employees were not interested in listening to us, much less investigating our assertions. They assumed we were guilty, that we did owe the money.

The IRS is beyond the law. Congressional inquiries on our behalf met with only limp response. Mr. Chairman, an agency with this type of power over American citizens requires someone to rid it of such abusive conduct. My husband and I commend you for the efforts here today in accomplishing that goal. Thank you.

[The prepared statement of Mrs. Jacobs appears in the appendix.]

The CHAIRMAN. Well, let me start out again by thanking each of you for being here today. I know it is not easy to appear before a Senate panel, but it is critically important, not only from your standpoint, but for the taxpayer as well. We are here to learn and each of your testimonies has been extremely helpful.

I am going to ask the members of the panel to try to limit their questions, but everybody will be given an opportunity to ask questions. I would hope that they could keep within a 5-minute rule, everyone but Senator Moynihan and me. [Laughter.]

The CHAIRMAN. Mrs. Hicks.

Mrs. HICKS. Yes, sir.

The CHAIRMAN. Did I correctly understand from your testimony that you separated from your husband?

Mrs. HICKS. That is correct.

The CHAIRMAN. Filed for divorce.

Mrs. HICKS. That is correct.

The CHAIRMAN. And eventually filed bankruptcy because of actions taken by the IRS.

Mrs. HICKS. Yes, sir.

The CHAIRMAN. Now, Mrs. Hicks, could you have avoided years of grief if the IRS had had a procedure to properly post your account and send you a bill which you could have paid in 1988?

Mrs. HICKS. Oh, yes. Yes. I would say if a taxpayer is ever faced with what I was faced with, and you are told by anyone at the IRS, do not pay us now, wait for a bill, do not wait for a bill. Send the money to the main office and sit on your canceled check. That is what I wish I had done now. I should have just paid it anyway, despite their advice.

The CHAIRMAN. Let me ask you this. Did you find that, in general, you confronted an agency not interested in helping you resolve your problem? How would you have been treated if you had had a glitch with a credit card?

Mrs. HICKS. Well, that is a different story because they generally care about whether or not they actually collect the debt. I am no longer convinced the Internal Revenue Service's primary goal with some of us is collecting the debt. They obviously did not want me to pay this debt. I kept giving them the money, they kept giving it back. They did not want the payments.

Yes, a credit card company would have taken my money for sure. If a credit balance showed up on my Visa card and I owed them money on another card that they held, they would snatch that credit balance over to the balance due. I mean, this is silly. They could have collected this three times over.

The CHAIRMAN. One of the important points, I think, to recognize is that your problem was not just one employee, it was the fault of the system.

Mrs. HICKS. Yes. Yes.

The CHAIRMAN. How many IRS employees and offices do you think you dealt with over the years that your problem lingered on with the IRS?

Mrs. HICKS. Well, I would not say I dealt with a large number of offices, but quite a few employees. The list is like three pages of different individuals that I dealt with.

The CHAIRMAN. Three pages.

Mrs. HICKS. Yes, it is about three pages.

The CHAIRMAN. Let me ask you this. How many times did you try to pay the taxes owed as a result of your settlement with the IRS?

Mrs. HICKS. Three. The first time when they would not even take my check, then I waited for the bill, then when they levied us the first time. When they liened me and the house was threatened, I paid it and then they did not keep the money, then recently again. So, three times. They did not keep that money either, by the way.

The CHAIRMAN. How many times did the IRS tell you that you owed no tax?

Mrs. HICKS. About six. About every 45 to 60 days, just that 6 or 7 months before I got married. So five or six times.

The CHAIRMAN. Five or six times.

Let me now turn to Mr. Savage. Thank you, Mrs. Hicks.

Mrs. HICKS. You are welcome.

The CHAIRMAN. I see you breathing a sigh of relief. I do not blame you.

Mr. Savage, is it your testimony that IRS employees fabricated a case against you by creating a false entity that linked your company and your subcontractor in a partnership?

Mr. SAVAGE. Yes, sir. The internal revenue agent created a totally false company, Tom Savage joint venture with such and such subcontractor partnership, gave a new EI number, established the EI number, sent a bill for roughly $177,000 the first time, $138,000 the second time. He created the company. It did not exist, it does not exist to this day, and it never existed, with my authority or anybody else but the internal revenue agent himself. He created the company.

The CHAIRMAN. Now, I want to be very clear about this. Was there any common ownership between you individually or your company and the subcontractor?

Mr. SAVAGE. None whatsoever. In fact, that was the first time I had ever worked with this man. I had been in business approximately at that time around eight years, and this is the first time I ever had any contact with this particular individual.

The CHAIRMAN. Now, if that is the case, why did you settle? Why did you settle with the IRS, allowing them to retain some of the funds that you say you did not owe, that they were not entitled to keep?

Mr. SAVAGE. As I explained a little earlier, basically what it amounts to is they seized a check of mine for $145,000 immediately. I had used that money. Actually, it was set aside to pay bills and so forth. So right then and there, I am out $145,000 to the Internal Revenue Service. I had to pay off my bills.

In turn, I had a line of credit. I borrowed $150,000 to keep my business going, paid interest on it during that period of time, paid attorney's fees during this period of time, trying to get this case settled for over a year and a half or 2 years, it has almost run.

In the meantime, anytime they send the assessments and so forth my attorney filed the proper papers to show we did not owe these taxes, it was not our company, it was a self-created company by an internal revenue agent. The company did not exist other than through his procedure of issuing an EI number, and so forth.

The CHAIRMAN. Now, as I understand what you are saying, that when they attached the lien there was no assessment of tax made against you, individually or against your company, and that is contrary to the rules and regulations.

Mr. SAVAGE. That is correct. There was no assessment whatsoever on the books against Tom Savage Associates, or Francis T. Savage, me, personally.

The CHAIRMAN. And you also testified that it is incorrect to seize the assets of a partner when another partner is liable.

Mr. SAVAGE. That is correct. That is the general tax law. I mean, my attorneys are competent attorneys in the State of Delaware for tax laws.

The CHAIRMAN. I would like to call your attention to an exhibit over there, a letter. This letter is from the U.S. Department of Justice addressed to the District Counsel of the Internal Revenue Service.

In that letter, this is the U.S. Department of Justice writing saying, "Specifically after reviewing the complaint, the motion for summary judgment, your defense letter, and all the information forwarded by revenue officer, we believe that the levy in question was wrongful."

Mr. SAVAGE. That is correct. That is the first time I have seen this morning, when it was presented to me by one of your staff. The only reason this letter has even come about is the fact that you had the authority to go into the Justice Department and the IRS and obtain this letter, or else God knows, nobody would ever receive it. What it amounts to is what we were arguing all along. From the day they seized our check, they had no legal right whatsoever to this check. That was totally wrongfully seized.

The CHAIRMAN. Let me reemphasize. What this letter from the Justice Department says is that the levy in question was wrongful. Now, if you had known that was the position of the Justice Department, would you have settled?

Mr. SAVAGE. No way. After all, look at some of the dates. Our case started in the eighth month of 1993 when we answered the brief. As of November 1, these attorneys representing the IRS knew they were legally wrong. They had been advised by the Justice Department they are wrong. They kept this case going on for another year and a half. They did not care for anybody but themselves.

Now, if I had known this was wrong, no way in the world. If you read further down, "We do not believe that the IRS can levy on a partnership for unpaid Federal taxes.

In fact, we read your defense letter to essentially concede that the levy was wrongful." I mean, these people, here they are getting a letter from the Department of Justice telling them, you are wrong going after this man and his money. But they did not care. They went and continued to do it.

I hate to lose my temper, but if you live under this and the pressures that we were under to do this, we have a business, we had an obligation to our subcontractors to keep them working, and so forth. I had an outstanding record. I had never owed taxes.

In fact, the first day the gentlemen—I use the word loosely—the internal revenue agent came to my house, we had our home up for sale because we planned on retiring. I am 69 years of age. Four years this has been going on.

I opened the door and said, who are you? He said, well, I am here to collect the taxes. What are you doing, trying to get out of town before you pay your bills? I said, what ails you? I do not owe any money. He explained what he was there for. I said, well, come in. Here are my books; look at them. I had no attorney or anybody at that time. I said, here are my books. He looked them over. He went over every page that I had, and I kept all of the records.

I said, I do not owe taxes. He said, no, I checked on you. You always paid your taxes monthly. I had never even paid them quarterly. Federal taxes have always been paid monthly. He left, then this harassment of letters started and so forth that I owed money. First he tried to hold me personally responsible, then he held the corporation responsible, then he created a corporation that does not exist and did not exist.

So, I mean, how illegal can they get? But here they have. Like I say, thanks to you today we have a letter that says these people knew they were acting illegally. Illegally. Let us stress that. They knew it and they deliberately did not care.

The CHAIRMAN. So you paid $50,000 you did not owe.

Mr. SAVAGE. That is correct, sir.

The CHAIRMAN. You have not been able to be repaid for that, is that correct?

Mr. SAVAGE. No way. In other words, this case itself, up to that time and I will give you a quick run-down as an example. My total settlement costs, counting attorney fees and so forth, $101,023.05.

During the period of time from 1994 to 1997, I have paid interest and lost interest on my accounts to keep this account going. For a total of over three and a half years, the Internal Revenue Service has cost me $167,16.32, and that is as of September of 1997. These people do not care.

They have cost me over $600,000 as far as income. Right now, I still have debts that I am paying off. I have worked 4 years longer than I planned to. When I retire, hopefully by the end of this year, I am going to have to take out $80,000 more to pay off the balance that I owe on this $167,000. So these people have cost me in excess of $250,000, and I want my money back.

The CHAIRMAN. Thank you, Mr. Savage.

Now I would like to turn to you, Father Ballweg. Again, I find this situation incomprehensible. Let me ask you this question. You probably do not deal with credit cards, but if this had been in the private sector, could your problem not have been solved by picking up the telephone?

Monsignor BALLWEG. Senator, this could have been solved with the simple telephone call that I made to the IRS office the day after I received the notice that I owed them $18,000. I called and I said, what is the problem? They would not tell me. So I said to them, I do not have my tax report or a copy of it down here, it is back in New York.

I had thoughts overnight of going back to New York just to pick up that thing so I would have it before me. But I called the next day and said, could you send me a copy of the report. They gave me a long lecture about being conscientious about making out your income tax for the trust. He then informed me that in order to get a copy of that report that I had submitted I would have to apply for an application and fill it out and return it with a check for $14, which I did.

I waited 6 weeks until I received a notice saying that I was not entitled to a copy of it because my mother's name was on the top of the trust, Elizabeth D. Ballweg, and it should have been Lawrence F. Ballweg under the Will of Elizabeth Ballweg. But I had sent in my reports all these years and my name was on it.

They do not sign anything at all, but all they do is highlight something. I had to look to find out what the problem was. On the back page there was something highlighted that indicated that since my name was different from my mother's name, they could not send me a copy.

So I sent a long letter back and I said, please bring this to the attention of the supervisor, because I thought it came from somebody or it would reach somebody who did not know how to handle this kind of thing. So I said, bring this to the attention of your supervisor. Well, the response to all of that is that I received the final notice shortly after that, telling me that they are going to levy my house, my car, and so on. That really scared the living daylights out of me. I called again and I was told that it was being reviewed. My case was being reviewed. But I wondered how it could be reviewed because there was no additional input into all of this, so how were they going to review it?

It was around this time that I read in the newspaper about your committee being organized and I wrote you immediately, and got a call the next day from Eric Thorston offering his assistance. The next thing I knew, CNN was on it. They did a little segment and put it on the news.

Apparently the tax advocate down in South Florida heard about this, and she was probably embarrassed that this poor, old man is being harassed by the IRS, and she tried to get in contact with me. She called my chancery office back in Rockville Center, and they heard it was the IRS and they would not even tell her where I was. [Laughter.]

Monsignor BALLWEG. So I was kind of a fugitive, you know. But she took a chance and addressed it to my address at 220 Main Boulevard in Boynton Beach. As soon as she caught up with me, things began to happen. She got a copy of my report and in a couple of days the whole thing was resolved.

Now, this went on from November until March until the things was finally resolved. All that was necessary was that I get copies of the K–1 form which I had not received and neglected to do. As soon as I filled those forms out, the whole situation was solved.

Now, in the meantime I went through all of those months of sleepless nights, worry, and anxiety, fear, and everything else. It could have been solved very, very simply. All of the persons in the Atlanta office had to do was tell me what the problem was. I needed the K–1 form. They would not tell me. They would not send me a copy of my file. No response at all. No response at all.

The CHAIRMAN. Would you characterize your experience with the IRS as being consumer friendly, or would you call it bureaucratic us against them; how would you characterize it?

Monsignor BALLWEG. Adversarial, no question about that. Not consumer friendly at all. They made no effort at all to help me. I had been a pastor for 14 years and I was director of the Propagation of the Faith for 12 years. If I treated people like that when I was pastor, you can be sure the pews in my church would be empty. The people would not bother coming if I treated people like that, ignored them.

If somebody came to me and said, Father Ballweg, could I have a report, an annual statement, about my contributions to the

church during the past year and I ignored that person, the person made another request, I ignored that request again, the person would look for another parish, I am sure of that.

I am sure the Senate here, if they did not respond to people, they would not be holding office too long either. So it could have been solved very easily, that is all I can say.

The CHAIRMAN. The thing that is so much a matter of concern is the emotional distress this kind of situation causes the taxpayer. We cannot just say it is one case as some would do. The fact is, these situations can create not only great emotional problems, but the kind of problems as Mrs. Hicks has pointed out of even having to file for divorce and other actions. These circumstances are not the result of just one single anecdote.

Monsignor BALLWEG. Mine is not a horror story. I listen to these stories and I say, what am I doing here. Mine is just a little situation where all they had to do is send me a form and they did not do it, so my story does not compare with their stories. I feel for these poor people here.

The CHAIRMAN. Finally, I would just like to say, basically, was any additional information submitted after we got involved here?

Monsignor BALLWEG. No, everything was basically the same. I think they started off the whole thing by saying in the first notice that I received from them that there was a little error in arithmetic, but when I checked on it I found out that the error was in my favor, so substantially there was no change at all.

I had distributed all the funds that should have been distributed, and they recognized that fact. The only thing is, I failed to send the K–1 form to the IRS and they got me for that.

The CHAIRMAN. Well, again I apologize, Father. I thank you for the good work you are doing.

Monsignor BALLWEG. Thank you.

The CHAIRMAN. Thank you for administering your mother's estate for the good of the people.

Mrs. Jacobs, in your testimony you state that you were so intimidated by the IRS tactics that you agreed to pay, even though you did not owe a debt. Would you please explain, why would you pay something you do not owe?

Mrs. JACOBS. Well, when you have someone come to you from the IRS and tell you they are going to take your home, your vehicles, whatever you own, close your business so you have no way of making a living, you do what they tell you to do.

The CHAIRMAN. And these threats were made directly to you and your husband?

Mrs. JACOBS. Yes, they were.

The CHAIRMAN. By more than one?

Mrs. JACOBS. By more than one person? Oh, yes.

The CHAIRMAN. How many would you say?

Mrs. JACOBS. I have worked with 18 people, and I was harassed by every one of them.

The CHAIRMAN. Over a period of how many years would you say this harassment took place?

Mrs. JACOBS. It has covered basically from the year 1981.

The CHAIRMAN. Mrs. Jacobs, is this a copy of the letter of apology you received from the IRS?

Mrs. JACOBS. Yes, it is.

The CHAIRMAN. It stated, as I understand it, that you are in compliance with all taxes.

Mrs. JACOBS. Yes, sir.

The CHAIRMAN. Now, did you ever receive a full refund from the IRS?

Mrs. JACOBS. No, we have not.

The CHAIRMAN. What reason has the IRS given you?

Mrs. JACOBS. They have not given me any at all.

The CHAIRMAN. Have you requested——

Mrs. JACOBS. We requested information on the disbursement that they did give to us, and we have yet to receive that information at this time.

The CHAIRMAN. And how much do you estimate is still owed you?

Mrs. JACOBS. About $26,000.

The CHAIRMAN. A total of $26,000.

Mrs. JACOBS. Yes, sir.

The CHAIRMAN. And you have received no part of that $26,000?

Mrs. JACOBS. We received a portion of approximately $12,000 from the IRS with no explanation, not really telling us much of anything other than just giving us the checks, with some interest, but with no explanation as to where they came from or what they were for.

The CHAIRMAN. Again, I have to tell you, Mrs. Jacobs, I appreciate your coming here today. You are among friends. I hope that justice is done before this matter is completed.

Senator Moynihan?

Senator MOYNIHAN. Well, briefly, Mr. Chairman, I think the most revealing information we have learned all morning is that the chancery at Rockville Center, when they learned that the IRS was after a monsignor, clams up. [Laughter.]

Senator MOYNIHAN. But you are very generous to say how relatively mild your experience is compared to the duration of much of your other fellow panelists. But that relation was adversarial throughout and that speaks of an organizational culture.

Senator Kerrey and Senator Grassley have asked about this matter of, is the IRS a law enforcement agency or is it a service agency. They would wish it to be the other. The most difficult thing you run into in civic life is, what do you do when law enforcement offices break the law? David Burnham, who spoke earlier today, was very much involved in these matters in New York City some 10 years ago or so.

I mean, it seems to me, Mr. Savage, that that letter in 1993 to the district counsel with a line-up that says immediate response requested, says the levy in question was wrongful. It could mean that that could extend to being criminal.

Mr. SAVAGE. I was not aware of this letter until this morning.

Senator MOYNIHAN. Yes. Yes.

Mr. Chairman, I think we are going to have people from the IRS before us. We have to ask, what disciplinary measures have been taken or will be taken.

It is just the famous bit of lore from the Napoleonic wars in which an Admiral Bing, who retreated too quickly from Maorca, was shot on board his flag ship on the way back by executive order,

an order from the admiralty, and it was said, "Pour encore a jais le sault," to encourage the others to do better.

I hope we will ask for accountability. We are deeply in your debt. You have had some awful experiences. I hope it makes a difference to you that you are being heard in the Senate Finance Committee and we have learned a lot from you.

I thank you very much.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Grassley.

Senator GRASSLEY. Yes. We cannot help but feel shame that our government would carry on this way. It is a sad situation that we have stories like yours, because it is obvious that you as taxpayers have not been shown the same respect and the same speed of resolution of your problems that they expected of you and every other taxpayer in America to pay their taxes.

They really have a double standard. They expect right now you pay up. They want you to respond right now on everything that they say. They want you to meet the law. If you do not meet the law, you get a letter from them. They want you to respond right now. But when you want resolutions and answers to your questions, you are not able to get that.

So obviously that sort of double standard in our society is not right. I do not know what we can do about it. I know that within every bureaucracy there is a great deal of peer pressure to go along, to get along. We are lucky to have a few people coming up in the next couple of days to testify who, from within, want to tell us what is wrong.

There are probably a lot of other people that would like to do that, except that they just know that if they were being right to the taxpayers the same way that the agency expects the taxpayers to deal right with the IRS, they would probably lose their job.

I would say that if the IRS is going to come up here and testify, that one of the ways that they can show their good faith efforts to admit that something is wrong and changes are going to be made, every one of the wrongs that are still unresolved here ought to be righted. There is no reason for them not to be.

That would be a good faith effort showing on the part of the IRS leadership to those of us that have oversight responsibilities that they are really sincere in their efforts.

Now, for every one of you I suppose there are thousands of others out there that I could say that about that ought to have their cases righted, and they would not have time between now and the time they come before this committee to do this. But they surely ought to have the time and the capabilities of taking care of five very obvious cases of wrongdoing, and to do those things.

Then following up on what Senator Moynihan said, we ought to have the name of every person you have dealt with and, where your rights have been wronged, what sort of contrary action has been taken by the agency to make sure that there has been discipline taken? Because when there is that sort of discipline taken, when heads roll, then it sends a clear signal to other people that this sort of action will not be tolerated.

Anything short of that, it seems to me, is going to show that this sort of action is all right and it can be done by others as well. We ought to have that as well before our committee.

Mr. Savage, if you were an IRS senior manager and the people who asserted this unlawful levy in your case worked for you, what would you do to make sure that there were no more unlawful levies?

Mr. SAVAGE. They would be fired the next day, without question. But I know the Federal procedures. As far as that goes, that could take 20 years to get rid of a bad agent. But I do agree with Senator Moynihan, Senator Roth, and yourself, sir. I regret to say, I do not know if you are a Senator. Correct?

Senator GRASSLEY. Yes.

Mr. SAVAGE. I mean, I see so many gentlemen up there, but I thought everybody up there was a Senator, but I do not recognize all of you.

Senator GRASSLEY. Some people might wonder whether we are. [Laughter.]

Mr. SAVAGE. But what I was speaking about is, yes, we must correct these people who have abused their position. I assume right now we can send them to Timbucktoo. That would be the easiest way to get rid of them.

But also, we must be reimbursed fully for all of our expenses, interest, lost business, and so forth. I mean, that is the only way. Unless you hit a person with penalties such as this for their incompetence, nothing will ever be resolved.

So I will be definitely keeping in touch with yourself, Senator Roth, Senator Moynihan, and anybody else on this committee to let you know as to the status of the Internal Revenue Service. I expect to hear from them very soon. My two attorneys who represented me completely are still present, and we will be glad to see them even this afternoon. But I want to take home a big check.

Senator GRASSLEY. Mrs. Hicks, I will say that you must have in the world the most understanding husband. Second, I want to say that it appears that you were a victim of incompatible computers at the IRS. You were also a victim of poor IRS customer service.

For Senator Bob Kerrey of Nebraska over there and me, these are two things that we have been listening to from over 600 contacts of the IRS of the Commission to Restructure the IRS. He was chairman of it, I was a member of it.

So what you are telling us about computers, what you are telling us about lack of customer service, were the most oft repeated problems that we heard at the IRS. So did you know that we gave the IRS, for instance, over the last few years $4 billion for new computers and they still have computers that do not talk to each other.

Mrs. HICKS. Yes.

Senator GRASSLEY. Which was greater in your case, which created the most anxiety for you, your IRS computer problem or your IRS personnel/customer problem?

Mrs. HICKS. Personnel.

Senator GRASSLEY. Personnel.

Mrs. HICKS. You can understand, because a computer does not have the capacity for meanness. It is a machine. When you deal

with people that behave the way some of the people I dealt with behaved, then that is very distressing.

I would like to say right up front though, I have relatives and friends who work for the service, as they call it, and I am acutely aware that most of the people employed there are folks like us and equally subject to the same abuses and problems we are subject to, but not as likely to speak out because of where they are employed. I would like to say that I think most of the personnel problems taxpayers encounter with the IRS are with a small number of employees that directly deal with collections.

Once you leave that master file for some reason and become a case not being collected automatically by a computer and being processed by nice, smiling clerks, and there are a lot of them who answer the phones with sweet voices and are very helpful, once you leave that arena and they shift you over to this non-master file system or any other special form of collections, that is where I think I see a culture difference, not in the first part, but in the second part.

So I would not be able to say all IRS people are this way or that way. They are people. But the ones I dealt with out of collections could be extremely nasty.

The second thing I would like to say is that I did note that every time collections agents looked at my case and said, after a couple of telephone conversations, you know, I am going to check this out, this looks odd, that agent disappeared and the IRS transferred my case to a new agent.

So if you do not like the agent because he or she is nasty, you cannot get away from that person. If the agent is offering you help when someone does not want them to, you cannot keep that person. So this is a dilemma. I do not know. It is your job to figure out how to fix it.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Senator Kerrey.

Senator KERREY. Mr. Chairman, I thank the panel for their willingness to come before this committee and present these problems. As Senator Grassley said, these are not new. These are problems we have heard repeatedly for the past year on our IRS Restructuring Commission that actually began as a result of the observation that we had spent a lot of money for tax system modernization, but had not gotten much benefit.

So my hope is that we are able, as a consequence of this hearing, to take action. There are things that we can do to change the law, to give immediate relief to these individuals and others.

We reached the conclusion that relief should be provided so that they can go on with their lives. We, it seems to me, could fashion relief if we choose to do so, and I would suggest that we not act as if we were powerless and exercise the power that we have to try to provide relief where we think relief is deserved.

Second, I want to say that I have received over the last 24 hours, Mr. Chairman, as a result of your first day of hearings, lots of additional notes and faxes from citizens in Nebraska who are facing problems. I would like to, if I could, read one, or at least a couple of paragraphs from one.

This is from a small business person, someone just starting business out in Nebraska. It says, "My biggest problem in business today is not new accounts, it is not my computers, it is not changing technology. My biggest problem in business is dealing with the IRS.

"As a small business owner, I spend countless hours on the phone trying to work out the problems associated with these 941 payments being credited to the wrong quarter." He said, "If we all must pay taxes, we should not have to hire someone just to tell us how." As a small business owner he files 14 times a year. He says he has got clients he does not talk to that often.

We have, it seems to me, an accumulation of evidence that we need to change the law, both, it seems to me, to provide some long-term opportunity for the IRS to operate more efficiently, and perhaps in the short-term.

If nothing more, it seems to me that we ought, as representatives of the people, with a change in the law provide some relief to individuals we have concluded deserve to have relief, demonstrate to the IRS that we are willing to stand up to them, that we are not intimidated.

Instead, we find ourselves not being able to intervene on behalf of a constituent out of fear that we are going to be identified as having done something unfair, unjust, and so forth.

So it seems to me, Mr. Chairman, that just what we have heard thus far has provided us with a sufficient amount of evidence both to change the law for the long-term, but also, to change the law in the short-term to try to provide some relief to individuals and demonstrate that this Congress is writing the laws of the land and that we are prepared to stand and intervene on behalf of citizens whom we believe have been treated unfairly and unjustly.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Mr. Chairman, let me commend you for these hearings. I think that you have touched a very real point of contention and one of the reasons that people are so angered at times at the whole government, because they feel that they pay their taxes, then they wind up getting abused.

It is pretty tough to figure out even how to pay, when to pay. If you run a business, a small business in particular, and I am looking at two of our witnesses who give ample testimony to that, and I think that Senator Kerrey touched on something that is rather important.

Number one, I think, Mr. Chairman, we have to look at, how do we empower the Congress with the proper kind of oversight, because I know even the Chairman has had to jump through all kinds of hoops, get various permission in order to be able to put these cases here. Here you have the resources, and I want to commend you for them, to bring to light these horrific stories.

We have been getting e-mail now of examples since your hearing of these kinds of things, and we cannot even intercede, so to speak, to make an inquiry. We have got to get a release from the person, and by the time with the back and forth, it is incredible.

So I join with the Senator in saying I hope that we would look at that, because proper oversight and people knowing that there are consequences for their acts will more aptly be held accountable.

In every one of the cases here, they put human faces on the story and it is not just a number. That is why it is so important that we get hold of that. But right now there is no oversight, were it not for these hearings that you have conducted. What a story, Mr. Savage, in terms of what you went through, where the Justice Department itself said, do not pursue this case.

You know what? You will now undoubtedly have a situation where, under the law, they will say, well, you agreed to a settlement, therefore you will be precluded from getting your money back because you settled this by way of a quasi-judicial, or even a judicial, proceeding. Therefore, it would take a special act of Congress, Senator Kerrey and I were talking about it, in order to get your money.

Mr. SAVAGE. That is all right with me. [Laughter.]

Senator D'AMATO. But you are one person. But think of how many thousands of others that may have been before you and continue to be in this process. How do we assure them that you do not need a special act of the Congress and that there is a special committee hearing where this one person comes forth? How do we get you justice, and Mr. or Mrs. John Q. Public, all of those nameless faces?

You put a face to this and you were able to come forth, fortunately, and so did others. Mrs. Hicks, really an incredible tale of how many years. Imagine having to go through a divorce so as to keep your new spouse from having his assets seized, et cetera. Again, you demonstrate just how horrific.

Of course, the good Monsignor, whom they chased from our Rockville Center diocese down to Florida, when he has paid his taxes repeatedly. There has got to be a better way.

I hope, Mr. Chairman, that we will be able to make some meaningful reforms and not only simplify the process as it relates to the little guy, the small businessman and entrepreneur, the homemaker, but in addition see to it that people are not abused and that, where they are abused, that there is proper action. I understand the person involved in this case against Mr. Savage, the agent who fabricated a business relationship that did not exist and pursued this, is still working for the IRS. I am wondering and I would like to know, when the lawyer got this, this was sent to a district counsel, Mr. Kesselman, we ought to put his name out there, how did he respond to this memo that was up there in 1993? How did they respond when they said you do not have a case? Even viewing this in the most favorable light, that is what they said. In other words, if we were to look at everything you said, you still do not have a case. Just to bring these people up here, and I commend you, this is a start, I think we have got to go further. Then I think we have to say to Kesselman, what did you do, why did you do this, and was there somebody else involved? Otherwise, this culture is going to continue.

So I applaud the Chairman. I think we have an obligation to see to it that this horrific system is changed where it can be, recognizing, and I think Mrs. Hicks put it well, that there are some tremendously competent, gracious, good, hardworking, talented people in the IRS. But when it reaches a certain level, there are some that just go out of control.

Well, how do we protect the American taxpayer from those who were out of control and who were accountable to basically no one? The stories here I think have put faces to this problem.

So Mr. Chairman, let me commend you. I look forward to working with you, Mr. Chairman, and Senator Kerrey, in seeing if we cannot bring about some legislative reform that will help curb these abuses so that honest, good, decent citizens are not treated as if they have committed a crime.

Again, the Monsignor's testimony as to how he was treated, I think, is an example of all too often that kind of attitude, that you are guilty, you are wrong, and people going after them. So we commend you, Mr. Chairman, and look forward to working with you.

The CHAIRMAN. Thank you, Senator D'Amato.

Let me thank each of the individuals who came forward.

Senator D'AMATO. Excuse me, Mr. Chairman.

Monsignor, did you want to say something?

Monsignor BALLWEG. I just wanted to say that I think that the best kept secret of the IRS is that taxpayers have an advocate. I do not know of anybody who pays taxes who ever heard of an advocate. I would not have known about the existence of such a person until that person contacted me.

So I think the IRS should be made to publicize the fact that there are advocates available, and how you get in touch with them. Now, this person happened to be somebody in South Florida in Ft. Lauderdale. I think if you looked her up in the telephone book I do not think there would be any listing at all. You do not even know these people.

That is one of the big problems with the IRS, they are all phantoms. Nobody signs a name to anything, any documents that I received. You talk to somebody on the phone and they do not identify themselves. You feel very helpless in a situation of that kind.

The CHAIRMAN. Father, you raised a very good point about the taxpayer advocate. I would just like to ask, the others here, did you have any contact with a taxpayer advocate, were you aware of that, and were they of any help?

Mrs. HICKS. I had contact with problems resolution officers. If there is another advocate office, I do not know about it. They behaved like a collection arm. The first time they did not, but the second time they behaved like a collection arm of the IRS. So I think that somewhere in here the IRS has kind of snatched them up and now they do not belong to us anymore, they belong to the IRS.

Some years back they were as helpful as could be expected and very nice, but this time they were like, ready to come out and get me. So I do not know of another office. Is there another one besides the problems resolution office?

The CHAIRMAN. Well, this is a change, I think, in name and title.

Mrs. HICKS. Oh, maybe. It might be the same office.

The CHAIRMAN. But my concern is, how independent are they, and what kind of service, in fact, they are offering.

Mrs. HICKS. Right. I would not call them very independent, not the people I dealt with. I think this may vary from region to region, district to district, State to State. I do not think that it is as homogeneous.

It would be simpler if it was more homogeneous because we could say you are all evil and we are lining you up and we are going to let God make a decision, but we cannot do that. But you know what you could do? You could get rid of this double bookkeeping. That thing could go. That would be a huge help. I would not have had any of these problems without that.

The CHAIRMAN. I understand your problem.

Mr. SAVAGE. Regretfully, Senator Roth, I do not think that a tax advocate that is anywhere connected with the Federal Government can be effective. He has to be totally independent because he cannot be affected otherwise. You had best have a good tax lawyer. A tax advocate has got to be totally independent, salary and everything else. It would be nice to do it, but I do not think it will work because it is just like the IRS agents, they answer to nobody.

The CHAIRMAN. Mrs. Jacobs, in your 17-year ordeal did you have any contact with an advocate?

Mrs. JACOBS. No, we had never encountered an advocate. In fact, to mention to you that just prior to coming to DC my husband received a call at his office from an IRS advocate, stipulating that he wanted to really help us solve our case after all these years that we had suffered. And my husband basically asked the question like, well, why now, why not before? But I think a lot of it had to do with what was happening here today.

Senator KERREY. Mr. Chairman.

The CHAIRMAN. Yes.

Senator KERREY. Mr. Chairman, during the deliberations of our commission——

The CHAIRMAN. I would ask you to be brief because we have to move on.

Senator KERREY. During the deliberations of our commission we considered actually recommending in statute that the problems resolution officer be made independent of IRS. We took a step in that direction, and it is something that this committee needs to look at very carefully as to whether or not it needs to be made independent.

Another good suggestion that was made that we did not incorporate into the legislation, but I certainly think it has merit in this whole question of taxpayer powers dealt with in Title 3 of our bill, is establishing a citizen committee at the local level that would enable these kinds of problems to be examined in a responsible fashion and for common sense to be brought to bear and a resolution to occur in a low-cost, expeditious fashion.

I mean, that is really the problem here. These cases drag on forever, and ever, and ever, and you really cannot get a resolution. So if it there is one recommendation in this area that I would make, it is to change the law that would require an expeditious, community-based resolution of these kinds of problems.

The CHAIRMAN. Ladies and gentlemen, again I want to thank you for being here. You have made a very significant contribution to what I hope is good government. I know for many of you it was truly an ordeal to even get here, but it was very important for the purposes of these hearings and I want to thank you for making this contribution.

Mrs. JACOBS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mrs. HICKS. Senator Roth, be sure to come back and do this again often, all right?

The CHAIRMAN. Thank you, Mrs. Hicks.

There has been a lot of discussion about the IRS employees and I want, once again, to emphasize that the vast majority of employees of the IRS are competent, dedicated, well-meaning employees.

So today I am very pleased to have before us four former IRS employees and one current employee who have been very helpful to our investigation. These individuals all represent many years of experience and we are privileged to be hearing from them today.

Will you all please come forward and take your seats. Mr. Bruce Strauss had been with the agency for 31 years. He was the senior division chief within the Collection Division of the IRS at the time of his retirement. He is now an enrolled agent practicing in Florida.

Ms. Darren Larsen was an attorney with the IRS for 14 years. Her last 3 years were as an assistant district counsel and acting district counsel. Her expertise was in collection issues. Today she is a practicing attorney representing taxpayers with tax matters.

The next witness is Mr. David Patnoe, who is now an enrolled agent having over 10 years experience as a revenue officer in the Collection Division of the IRS. While working for the IRS he was an instructor for revenue officers and an expert in the area of offers in compromise.

Next, we have Mr. Lawrence Lilly, who was both an attorney and special agent with the Criminal Division for 28 years. For the last 9 years of his service with the IRS, Mr. Lilly was the assistant district counsel in Miami and the district counsel in San Jose, CA.

Ms. Jennifer Long is currently a revenue agent with the IRS, with 14 years of experience. She joins the panel today after originally intending to keep her identity concealed.

The only condition she asked of the Chair and the Ranking Member was that her identity be protected until she took her place at the table. Senator Moynihan and I agreed to that condition and her statement is now being released.

We want to welcome each and every one of you. We appreciate your being here today.

As you know, we swear in all witnesses. So would you please rise and raise your right hand.

[Whereupon, the five witnesses were duly sworn.]

The CHAIRMAN. Mr. Strauss?

Mr. STRAUSS. I do.

The CHAIRMAN. Ms. Larsen?

Ms. LARSEN. I do.

The CHAIRMAN. Mr. Patnoe?

Mr. PATNOE. I do.

The CHAIRMAN. Mr. Lilly?

Mr. LILLY. I do.

The CHAIRMAN. Ms. Long?

Ms. LONG. I do.

The CHAIRMAN. Thank you. Please be seated.

I do want to remind the witnesses and my colleagues that the witnesses are prohibited from disclosing confidential taxpayer in-

formation which is protected under Internal Revenue Code Section 6103.

Mr. Strauss, we will start with you.

STATEMENT OF BRUCE A. STRAUSS, FLORIDA

Mr. STRAUSS. Thank you, Mr. Chairman. I do have a larger, more in-depth presentation or document for the record if you do not mind, Senator.

The CHAIRMAN. I would say to each of you, your full statements will be included as if read.

Mr. STRAUSS. Thank you, Mr. Chairman.

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

Mr. STRAUSS. My name is Bruce A. Strauss. I am currently an enrolled agent licensed to represent taxpayers before the IRS. I have been president of the enrolled agents in our five-county area in Florida for the past 3 fiscal years.

I retired from the Internal Revenue Service after 31 years, the last 18 years of which I held the position of division chief within the Collection Division. I also received nine consecutive performance awards from 1983 through 1991. At the time of my retirement, which was April 1992, I was senior division chief in the collection function.

I tell you this, trusting that you will accept the fact that I have considerable expertise regarding the operations of the IRS. This includes its history, its authorities, its personnel practices, and also its problems.

Just beginning my practice representing the public as an enrolled agent, I have been increasingly concerned about the ability of the IRS to be fair and objective in dealing with the American public. I am also concerned with the public's fear of the IRS. This environment of fear must change. This is why I sit, primarily, before you today.

The IRS has been very successful in its primary mission of collecting taxes, bringing in over $1.5 trillion in fiscal year 1996 as a role model for other countries to follow and has played no small role in the economic success of this Nation. Obviously, I do not believe that the system is broken.

However, my experience and the feedback I received in my work tell me that the public's confidence in the IRS is being eroded by the perception that it is losing its ability to apply the Internal Revenue Code and the resulting morass of regulations in a fair and objective manner.

When a dispute with the IRS arises, the current systems in place to deal with the dispute are cumbersome, expensive, time-consuming, and oftentimes ineffective. The result is that the fear of the IRS continues to grow, and this is an unacceptable condition.

In a democracy, the first condition that must be met is that the government must respect the citizens it serves. I am not sure that condition exists today within the IRS. My purpose today is to assist in restoring the confidence of the American public in the Internal Revenue Service.

One of the problems which affect the way the IRS personnel interact with the taxpayer is the drive to achieve statistical oper-

ational objectives. One of the primary drives, if not the primary drive, for the examination function is dollars recommended for assessment.

The statistic does not measure how much money was actually collected, nor does it measure how much additional tax was actually assessed by the examination process. It only measures what the examination function proposes to assess against a taxpayer with their 30-day letter.

The examination function made this measurement one of the operational objectives for branch managers and above, as I recall, in fiscal year 1990. About the same time, the formal quality review cases being issued 30-day letters was ceased.

A fundamental principle of any organization is that employees will give their managers what their managers tell them what is important. Or, expressed in a different manner, an organization is driven by the objectives on which the managers are evaluated.

As a result, an environment or culture has emerged within the IRS that has made its employees often callous to the rights and concerns of taxpayers. Statistical objectives for any agency with the power of the IRS are inappropriate. But when one considers the IRS has a measurement of what is recommended for assessment, this drive to achieve specific objectives becomes untenable.

I have significant compassion for the IRS employees in their most delicate responsibility of ensuring that each citizen files and pays their fair share of taxes. But, based on my knowledge, the primary problem lies with the ineffectiveness of the top management of the IRS. Instead of assessing the current problems and taking appropriate steps to ensure correction of these problems, what I see taking place is a "circle the wagons" mentality.

This management approach has led to significant problems which include denial of mistakes which then lead to integrity issues, using a sledgehammer to resolve compliance problems, for example, IRS files are returned to the taxpayer with the tax is significantly overstated, use of Bureau of Labor Statistics to assign additional income or to arrive at additional income, and not applying Internal Revenue Code sections which benefit the taxpayer. There is a mentality in the IRS that mistakes are rare. Those that do gain notice are blown out of proportion.

In fact, I would not be surprised if, as a result of this hearing, you hear that any complaints by a taxpayer that may arise, while unfortunate, is statistically irrelevant due to the 200 million returns that are successfully processed each year.

Based on my knowledge, such a statement would not be factual. The truth of that is, in the examination function cases that I have seen as a representative of the taxpayer, the IRS often does not operate within its proper authorities.

When called on these matters, the IRS response is often a denial or a spin is put on the issue in an attempt to protect their position. Such conduct shows a complete disregard for the taxpayer and their fundamental rights as citizens. The concept shown above that the IRS now has the authority to assign additional income to a taxpayer at its discretion, without any basis in fact, is frightening and absolutely unacceptable.

I admire the current efforts of Congress, such as the Commission on Restructuring the IRS, to encourage the IRS to become more responsive to the public.

I also appreciate the opportunity to contribute to this process by testifying at this important hearing, and I commend you, Mr. Chairman, for the courage to engage in this effort.

But I do believe that Congress must share some of the blame for what has happened. Funding must be consistent, with a long-term philosophy. The oversight of the IRS must be significantly improved. This hearing today is a great start, but long overdue.

For each of you dealing with your constituents, I would offer the fact that the ability of any single congressional staff to resolve a taxpayer issue with the IRS is extremely remote.

I can testify on a personal basis on that on some client issues. I will suggest forming a single staff of highly-trained and skilled individuals that could be a central clearinghouse for all taxpayer complaints received by Congress.

This would also provide a database of problems that one noticed to be widespread, could be used to take certain system-wide corrective actions. It is only in this way that the management of IRS could be held accountable to the Congress and to the American people.

I know in numerous cases where the IRS has specifically exceeded its authority. One of the most egregious examples, the IRS collections apparently predetermined that 637 taxpayer were liable for employment tax.

They did not conduct legitimate investigations. Instead, they used extortion tactics to have taxpayers sign returns which the IRS prepared. They did not use any Internal Revenue Code sections which benefitted the taxpayer, and disregarded established law, authorities, and procedures. And 630 taxpayers were also denied their due process rights.

When I brought this matter to their attention, instead of taking corrective action, they circled the wagons. After 3 years, Mr. Chairman, 3 years of my pursuing a resolution in this matter, the IRS has boxed itself into a position with significant integrity issues in question. The current status, is that I have been unable to obtain a legitimate response from the regional commissioner.

Another example is the tactic of assessing a tax twice for the same 1040. This tactic involves accepting a Schedule C income, but disallowing all the related business expenses.

When the taxpayer requests the case to be reopened, in this case I am using as an example, the deductions were allowed. But then the IRS reopened the income issue, which was in direct contrast with the Code, and assesses additional taxes based on the Bureau of Labor Statistics information to boost the income of taxpayers. Then the taxpayer was informed he had no appeal rights to contest the additional resulting tax.

I am submitting a more comprehensive statement for the record which includes some of my recommendations to remove the fear of the public when dealing with the IRS. I sincerely hope that my 31 years of experience with the IRS has helped in some small way to create a clearer picture of the agency. The many good people at the IRS who perform a difficult task every day and the taxpaying pub-

lic deserve your best efforts by cleaning up this important national asset.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Strauss. We do, indeed, appreciate your testimony today.

Next, I would like to call on you, Ms. Larsen.

STATEMENT OF DARREN LARSEN, CALIFORNIA

Ms. LARSEN. Good afternoon. Thank you for the opportunity to allow me to address the committee today.

I began working for the Office of Chief Counsel for IRS in 1981 and I was there until 1994. During that time I dealt with all of the different functions of the IRS, examination, collection, criminal investigation, and disclosure.

I also served as a special assistant United States attorney representing the IRS in bankruptcy court. I was a nationwide instructor for attorneys, and I also instructed IRS at their continuing education. Because I specialized in collection matters, I did spend a lot of time with collection groups in various places and I really developed a good relationship with the collection agents, for the most part.

I come to the committee today as a tax professional who has spent many years representing the IRS in court, not only bankruptcy court but Tax Court, and I was involved in District Court actions as well. I worked with and advised IRS personnel on many cases and on many issues.

Then over the past 2½ years I have had the opportunity to represent taxpayers and deal with the IRS as an adversary in some cases, but generally as a representative of taxpayers who have problems that need to be resolved.

Overall, from my experience I have to say that my feelings toward the IRS as an institution are mixed. It is sometimes very easy to express frustration and outrage at IRS conduct. But I have to state at the outset that there are many individuals whom I have dealt with over the years who are currently employed there, and some who are no longer employed there. But they have, I would have to say, superior technical knowledge. They are devoted to their jobs, they work hard, and they really are committed to fairness.

But at the other end of the spectrum there are employees who do not really possess these qualities. I have encountered them both when I was a government attorney, and also now as a practitioner.

Some of these people, I would say, lack technical skills that I think are necessary. They really are not concerned with justice or fairness, they are bureaucratic in every sense of the word and are focused primarily at just maintaining their jobs and collecting their paycheck.

But, having said that, I would like to move on to some more specific areas or some examples of problems within the IRS that I have seen.

As an attorney for IRS I was often appalled by the lack of basic technical knowledge on the part of the front-line collection managers that I dealt with.

Now, that is not to say that they were all in that situation, because I knew some group managers who were excellent. They used their own initiative to gain knowledge and to make sure they kept up with the law, and they wanted to make sure they knew that their revenue officers were doing, that they were doing it correctly.

However, I did know group managers who really did not understand the basic requirements for such things even as issuing summonses, the service requirements or content requirements for summonses.

I knew one manager I ran across who really did not understand the distinction between a lien and a levy and basically said, well, lien, levy, whatever, which in some instances can cause problems.

The revenue officers who worked for these managers usually knew that the managers were deficient. The result of that was that the revenue officers would either choose not to consult the managers for assistance, or the revenue officers who were not experienced enough to realize that their managers did not know this would still consult them, then they would be possibly led astray.

Also, within the Collection Division they often use on-the-job instructors to help the newer revenue officers, and some of the on-the-job instructors were also missing some of the basic understanding of some of the basic elements of tax law, especially in the tax collection area.

The problem with the on-the-job instructors having this deficiency is that they then passed their techniques or their beliefs onto the new revenue officers, and some of these problems are perpetuated.

In addition to simple lack of knowledge, I also ran across revenue officers who understood the legal and procedural requirements, but they chose not to follow them, or they consciously bypassed some of these things.

I have known of revenue officers who, on more than one occasion, would issue nominee or alter ego liens without going through the procedures that are set up in their manual for review.

Typically, this revenue officer would end up receiving payment of the tax, would close the file, and that would be the end of it. If there was a problem, only then would this revenue officer go through the required steps.

He was considered to be a good revenue officer in that he collected a lot of tax and closed a lot of cases. Consequently, he was given a lot of latitude in how he worked his cases. He felt justified in taking shortcuts because he felt that he had good instincts and he got what he felt were the right results, meaning that the taxpayer pays the tax.

Later on, this person was promoted to a group manager and it was my feeling that the revenue officers in his group sort of had the same attitude, that they were allowed to work their cases in this manner as long as they did not make any mistakes.

I felt that there was a prevailing notion in some of these groups that if a particular procedure was not exactly followed to the letter, that first of all, the taxpayer probably would not know the difference.

Second of all, the manager might not even know the difference. As long as everything turned out all right, as long as the tax was collected, then there was really no harm done.

In fact, the revenue officer would probably feel they were doing a good job because they were collecting the tax without using a lot of resources. They were getting the right result. In essence, it was a matter of the ends justifying the means.

In one district in California, I became aware that some IRS managers blatantly disregarded the law, even though I believe they understood it. This had to do with the ownership of personal residences in California.

In California, if married people hold title to property as joint tenants it is presumed under State law that they mean to have it be joint tenants, so that if only one spouse owes tax the IRS is only entitled to seize half of the house.

This presumption of joint tenancy can be overcome by a factual showing that, in reality, it was held as community property. If the house is held as community property, the IRS can seize the whole house.

In this particular district the IRS took the position that all joint tenancy property would be presumed to be community, even though this was not what State law prescribed. They set up a procedure where it was up to the taxpayer to prove otherwise.

The result was that the IRS was treating 100 percent of the residents as being subject to the tax lien and subject to seizure and sale rather than one-half. The reality is, I believe, that most taxpayers do not know really the difference between joint tenancy and community property and they rely on the IRS in this case to do the right thing.

The IRS, on the other hand, in this situation was really taking advantage of the fact that most taxpayers do not know the difference and that the general public is ignorant on what may be considered a technical legal issue. This would be to the detriment of the non-owing spouse, the spouse that did not owe the tax.

Now, these people that I spoke with in IRS admitted that they knew that the law was otherwise, but they justified this policy by saying, well, we believe that most people, even if they hold their property as joint tenancy, they really believe it is community anyway so this is just more expedient for us to do it this way. It is this mind-set of IRS that really concerns me.

I also found that in the bankruptcy area I was privileged to work on a national task force involving IRS procedures in handling bankruptcy cases, and I had the opportunity visit several different districts around the country and interview people in and out of IRS regarding bankruptcy.

We found that in some offices in the country the IRS was basically ignoring the bankruptcy law regarding the IRS obligations regarding bankruptcy discharge, the automatic stay, and they justified it based on the fact that they really did not have the staffing to do it, and since it was not exactly a program area that they were directed to follow, they just did not do it, they used their resources for other things.

I should add also though the fact that the IRS did not really tend to these basic tasks also was detrimental to the IRS. In some cases

they were unable to collect taxes that they rightfully had, or should have been, collecting.

As a taxpayer representative in my current position, I am now even more aware of how important it is for the IRS representatives to follow the procedures that are set up by the IRS manual and the Internal Revenue Code in collecting taxes.

I found that for the most part taxpayers are intimidated by the IRS and they will do whatever is asked of them. Because most taxpayers do not know much about tax law, they rely on the IRS with respect to many issues and they put their trust in them as public servants. After today, maybe not so many of them will.

But even if the taxpayer feels that the IRS is not acting properly in their case, it is often too costly for the taxpayer to hire representation to fight the IRS. The end result is that many taxpayers are paying more tax than they rightfully should, and some individuals are paying tax that they are not personally liable to pay.

I do believe, based on my experience, that if a taxpayer is right and a taxpayer presses an issue and takes it up through the system, that ultimately the taxpayer will prevail.

However, the process is very costly in terms of fees, time, aggravation. Because of this, it is very important for the IRS to avoid taking procedural shortcuts, and the IRS should treat the taxpayers fairly up front so that mistakes are not make and taxpayers are not put in the position of choosing whether to pay the wrong amount of tax or to pay for assistance to fight it out, because either way the taxpayer loses.

As an organization, the IRS has excellent technical resources which it really does not use to its best advantage. Tax collection is a complex process, given the number of Federal laws and regulations that apply. Revenue officers can be expected to require assistance in some cases.

The special procedures function is set up within the Collection Division of the IRS to provide technical assistance to the tax collectors in the field. I found that in those districts where special procedures is given the staffing and the funding it needs, it has proven to be very valuable.

But each district is given the discretion to decide how much funding and how much emphasis it wants to put on special procedures, and how they will staff it and how it will operate.

I found that in some districts special procedures is not effective at all. In fact, the people who are assigned there are inexperienced. They are put there because possibly they have other problems in their jobs. That is even true for some of the managers who end up there.

In those cases, the field revenue officers have little confidence in special procedures and they do not really rely on the advisors for technical assistance.

On the other hand, the districts with excellent special procedures staffs have advisors who have worked in their program areas for many years, they work well together, they learn from each other, they work closely with district counsel and they are respected by the field officers and they do provide assistance to them so that they do not make as many mistakes.

The IRS would be well served by requiring all districts to step up the level of their special procedure staffs so that the IRS nationwide can more effectively and justly collect the taxes owed.

In conclusion, the IRS, in my view, has much room for improvement in the way it deals with taxpayers and in collecting delinquent accounts. While there are many positive, productive forces and individuals at work within the IRS who are constantly trying to make improvements, some of the chronic problems remain.

The IRS is there to enforce the tax laws. However, it is also there to ensure that the law is applied fairly and consistently. The IRS representatives wear two hats. When dealing with willfully noncompliant taxpayers they are adversaries, but at the same time they are public servants. There is no excuse for cutting procedural corners or legal corners or establishing presumptions which place citizens at a practical or economic disadvantage.

Better training of revenue officers, as well as their managers, and in tolerance of blatant violations of the law, would go a long way toward improving the overall quality of tax collection and improving the level of public trust in the IRS.

The CHAIRMAN. Thank you very much, Ms. Larsen, for your helpful testimony.

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

The CHAIRMAN. Mr. Patnoe?

STATEMENT OF DAVID PATNOE, CAMARIO, CA

Mr. PATNOE. Good afternoon, Mr. Chairman and members of the Senate Finance Committee.

My name is David Patnoe. I am currently an enrolled agent in Camario, CA, representing taxpayers before the Collection Divisions of the Internal Revenue Service for over 7 years.

Prior to this I was a revenue officer for the Internal Revenue Service for over 10 years. During my tenure with the IRS I was a revenue officer, and on-the-job instructor for trainee revenue officers, an instructor for revenue officer training schools, Phase I and Phase II sessions, and an offer and compromise specialist and an advisor in the special procedures function.

I have worked in the Anchorage, Alaska, Shreveport, Louisiana, and Brooklyn, New York IRS offices, which provided me with a great opportunity to see how collection worked in different areas of the country.

Now working as a taxpayer's advocate I have had the opportunity to see things from the other side. It is from this wide range of experience that I speak to you today. Despite what I believe to be a rather unique background, I have found dealing with the IRS personnel to be quite disturbing in a few cases, and downright maddening in others.

In particular, I have had my worst experiences with people I believe had insufficient training to be performing the jobs they were assigned. In some instances, these actions were outright illegal and highly abusive. The trouble with discussing abusive tax collection is that there is no line drawn between regular tax collection and abusive tax collection.

When you consider that the very act of a revenue officer imposing their will on a taxpayer by the use of a levy on wages or retire-

ment funds, or the seizure of assets such as a personal residence will probably be considered by a lot of people, and surely by the taxpayer themselves.

My definition of abusive tax collection is the illegal use of certain collection tools, or when the collection tool used is not warranted in that given situation. Let me give you an example that I think will demonstrate what I believe is occurring far more frequently than people may realize.

I was hired to assist in a matter involving the improper use of a levy. A levy is generally the seizure of a money in some form. The IRS had issued a levy on one of my client's receivables owed to his business, a sole proprietorship. But the tax that the IRS was trying to collect on the levy was not owed by my client, but was in fact owed by a company that my client had worked for at one time as an employee with no ownership interest whatsoever.

The revenue officer, who at the time was acting as an on-the-job instructor for another revenue officer, went to my client's business with seizure papers in hand. The client, being faced with a seizure of his new business, became very afraid and paid a payment of $7,000 to forestall the seizure.

Now, he paid this despite the fact that he did not owe any tax. The IRS basically scared this person, or extorted him, into paying money that he did not owe with the threat of seizing his business for the debt of a company that he had at one time worked for.

After the initial payment of $7,000, the same revenue officer issued a levy on one of the client's accounts receivables for roughly $21,000. That money was going to be used to pay the client's payroll, and the seizure of those funds would have effectively put the client out of business.

The levy itself was an amazing flight of fancy by that revenue officer. Remember, there was no relationship nor common ownership between these companies. The client simply had been an employee of the company that owed the tax.

The IRS was well aware of these facts. Despite having the explanation laid out in black and white, the revenue officer would not release the levy nor refund the $7,000 she had collected illegally by scaring the taxpayer when she first showed up at his door.

In fairness, let me add there are instances when a tax can be collected from someone other than the taxpayer. A third party can become liable if there was a transfer of assets for less than fair consideration or if a party is holding property in their name simply to evade the seizure of these assets for taxes due.

However, prior to collecting from a transferee or nominee, the IRS must go through a number of steps involving a group called special procedures in the Office of District Counsel.

In this particular instance, none of this had been done. I informed the revenue officer that she had not taken any of the required steps and had acted without benefit of legal counsel. I added that her actions were not just abusive, but blatantly illegal. The revenue officer responded with one word, "and?"

Only when the revenue officer realize that we would make every effort possible to expose this action did she come back with a release of the levy. When you consider that this was an experienced revenue officer acting with her group manager's approval, and not

to mention also trains other revenue officers, her actions were absolutely beyond comprehension.

It is this type of action that is designed to intimidate and instill such fear that the IRS's actions can succeed without question. I would also like to say that this type of action did not occur while I was a revenue officer. Unfortunately, it did. I know of seasoned tax collectors who were well aware of the law and took actions that were out of the realm of legal tax collection.

In one instance, a revenue officer who made up a seizure document titled "Nominee Levy on the Spot," prior to seizing assets from someone who was not the taxpayer was soon after made a group manager.

In another case I dealt with, a revenue officer who had access to the IRS computer system to get information on a case I was assigned. When I questioned the revenue officer why he was accessing information on my case he stated, my wife works for this company, and if I can help her straighten this out, the company problem, it will be a real feather in her cap. I told the revenue officer, put the print-outs away. That revenue officer also became a group manager.

These actions were particularly annoying because I believe both these revenue officers knew what they were doing was outside the scope of correct tax collection.

When I left the IRS in December 1989, I considered writing my own thesis about tax collection. I wanted to suggest that IRS tax collectors be held to some standards of training prior to promotion.

Not only should they be held to standards of training, but they should also demonstrate their knowledge on proficiency tests. No revenue officer should be promoted or allowed to train others until they are able to pass increasingly difficult proficiency test.

While I was working at IRS I was seriously concerned about the agency's escalating tendency to place unskilled collectors into management positions. I used to call these people the 90-day wonders, 90 days being the span of time they spent during revenue officer work between Phase I and Phase II revenue officer training classes.

Basically, I found that people hired as revenue officers would be detailed to do special projects. Usually these projects were thought up by either first-line managers or by upper level managers. More often than not, the project was to justify some type of statistic related to cases closed or money collected.

The projects were administrative work that did not lead to a knowledge of collection procedures or requirements put on a revenue officer by the laws and regulations. Because management had put these revenue officers on these projects, these same managers would not hold them back when it came time to be considered for promotion.

Many times, someone who had only attended the two phases of revenue officer training was promoted, even though that individual may never have actually knocked on a door, collected tax, or worked with others in the process of collecting taxes.

This led to people being promoted who, in turn, qualified to be management based solely on the fact that they were at the right grade level. I cannot remember the number of times I heard, you

do not have to know how to collect taxes to be a manager, you just have to know how to manage.

It is amazing that someone who does not know much about collection is put in charge of people who are sent out to collect. The person the revenue officer is supposed to depend on for their first level of advice for difficult cases only needs to know how to manage, but not how to collect taxes.

It is especially frightening because these managers are required to review and approve certain actions of revenue officers based on their own understandings of what action is appropriate under the IRS policies, as well as the law.

As a result of this training and promotion practice, new revenue officers have become less and less effective, while many of the current managers do not know what the revenue officers are supposed to do.

Additionally, many of these managers are basing day-to-day decisions on whatever they determine important to their own supervisors in order to look good. What were these managers judged on? Sheer numbers. How many dollars collected, how many cases are closed? That is the bottom line.

Make no mistake about it, there are goals, quotas, that may be unstated but well-known to the agent or revenue officer that are driving many of the actions you will hear about today. So what we have now are managers who are not thoroughly schooled in the collection of taxes, but making decisions based on how they can get their numbers up.

Now the cycle is complete. Managers knowing little about what their employees are supposed to be doing are evaluating their employees on how they could collect more tax or close more cases. Since these managers do not know enough about tax collection, they have a tendency to require the revenue officer to take actions that might not be correct, but which the manager feels would lead to a higher closing rate or a higher dollar collection.

Sometimes the action might even be illegal, but the managers did not know it, simply recognizing that a particular action resulted in more closures. The newer revenue officers might not know a particular action is illegal because they have not been around long enough or are simply not sufficiently trained.

The new revenue officers who have been taking direction from these managers get promoted and are now placed in the position of an on-the-job instructor. So you see, the cycle continues and the quality of tax collection gets worse. As it gets worse, Congress gets more complaints from irate taxpayers.

In closing, I would like to add one thing. I know too many people who collect taxes for the IRS that are fine, hardworking honest people to paint the IRS tax collection with a broad brush.

To a great number of employees at IRS these abuses are not more tolerable than they are to this committee. It is a shame that these abuses can cast a cloud over these same people. The number of abuses compared to the number of cases is still small. It nonetheless is way too large to be acceptable. No abuse is acceptable.

There are many people with great technical knowledge and skill whose talent would better be utilized teaching and aiding others. The managers who did not have the knowledge or skill to direct tax

collection could learn a great deal from some of these people. They might not learn anything about management, but they need to learn about tax collection.

This may mean a reduction in production as far as closures or dollars collected for a few months, or even a year. But over the course of one to 2 years it should result in an increase in collection of revenues and less complaints for the members of Congress to address.

The Office of the Ombudsman and the Office of Problem Resolution Program should be manned with highly-skilled tax collectors who are capable of resolving these issues before they become highly contentious issues argued at higher levels.

I want to thank you, Mr. Chairman and members of the committee, for allowing me to speak here today about a few things that have been on my mind for the last several years.

The CHAIRMAN. Thank you, Mr. Patnoe.

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

The CHAIRMAN. Mr. Lilly?

STATEMENT OF LAWRENCE G. LILLY, ST. AUGUSTINE, FL

Mr. LILLY. Mr. Chairman and committee members, my name is Lawrence G. Lilly. I am a tax attorney living in St. Augustine, FL at this time.

I have been a tax attorney for more than 30 years. For 28 years I was an employee of the Internal Revenue Service. For the first 4 years of my employment I was a special agent, which is, as you know, a criminal investigator. I then went on and became an attorney in the Office of District Counsel in Atlanta.

Ultimately, I progressed up through the chain of command in the counsel's office, became a special attorney for criminal tax, an assistant district counsel, and ultimately the district counsel in one of our larger districts, that being in San Jose, California.

A fair and efficient tax collection agency is recognized by everyone as being vital to the future of this country. Although no one likes to pay taxes, all reasonable people know that our taxes are the price that we pay for our liberty. No one can properly voice a legitimate complaint about shouldering a fair share of paying for our system of government.

Now, I strongly believe in honesty in government, as I think each of us here does. In that vein, I make a recommendation to the committee at this time. That is, that you rename the agency which collects our taxes. You should add an "A" at the end of its title and drop the word "Service," because they render no service. You should rename the agency the Internal Revenue Statistical Agency. That summarizes the problem, lack of service and too much statistics.

My purpose today is to present constructive criticism of the IRS for consideration by the committee. It is my hope that, with your guidance, the credibility of the service can be restored to the high level which prevailed at earlier times. It is vital to our system of taxation that the citizens who are paying the taxes have trust and confidence in the fairness of the system.

I personally was extremely proud to be an employee of the Internal Revenue Service for the major portion of my career. I worked with good people.

During the 1980's, however, I began to note what I considered to be significant deterioration of the service and its concern for serving the public. It appeared to me that the Internal Revenue Service had consciously or unconsciously dropped the service aspect of their job in order to focus exclusively on making upper management look good statistically.

This, I fear, has led to undermining the culture of the organization, lowered the self-esteem of many employees, and caused the organization to become unfair and oppressive in its treatment of some taxpayers.

Before proceeding, I want to make it clear to you that I was not technically an employee of the Internal Revenue Service for most of my career. Organizationally, the attorneys who work with the IRS are not subordinate to the district directors, or even to the commissioner of the Internal Revenue Service.

Attorneys work within a parallel organizational structure which reports to the chief counsel and to the general counsel of the Treasury Department. This is intended so that the attorneys will be able to render objective opinions and give good advice to the functional people on the commissioner's staff. Certainly, that separation of powers is very good.

In view of this distinctive organizational structure, I had the opportunity to see the IRS from a viewpoint that is quite different than that of most former IRS employees, or indeed most present IRS employees.

Whereas most employees, present or past, worked within a particular area such as examination, collection, or criminal investigation, I, as a manager of attorneys, was involved with each and every one of those functional areas.

From this perspective, I had the opportunity to make detailed observations about the service's operations and also had the time to develop what I hope are a few solid recommendations for its improvement.

I do not intend to tell you any horror stories as I progress. I could do so, but I think other witnesses have served that purpose. Certainly, I have seen many.

I believe there is far too much focus set on achieving statistical goals set by upper management. These are generally known as the SES, or senior executive service, goals.

Now, I want to make it clear that goals are important and necessary in the management of any organization. The problem is not in having goals, the problem is how you define your goals. The goals, as currently drafted by management, focus on how many levies you make, how much tax you assess, how many returns you examine, things which are readily measurable. They are taking the easy way out.

Those goals should be rearticulated to measure quality. What is the quality of the service they are rendering? That is what they have forgotten. The goals which they now have are generally not sensitive to the perceptions of the average American taxpayer at all.

The organizational structure of the IRS is still too decentralized. Directives from the top are implemented or not implemented in the manner decided upon locally. Directives with which local employees or managers disagree take considerable time before they are implemented.

As just a single example, some time ago Peggy Richardson, the commissioner at that time, announced publicly with great fanfare that there was going to be a newer and fresher, more taxpayer-sensitive approach to offers and compromise. They welcomed offers and compromise, they encouraged people to apply.

The district in which I reside did not favor that policy, evidently, for several months later they were still applying the old procedures and were being very hard-nosed about offers and compromise.

I had one which I submitted for review and it met all of the criteria. I got it back from a revenue officer in the SPF staff saying, simply, we will not consider this offer and compromise. They did not even look at it. It was just rejected out of hand.

I wrote a letter to the district director personally and stated that it appeared to me from this experience that the commissioner of the Internal Revenue Service apparently had no jurisdiction over the management of that district, since that district could do what they wished to do in spite of the commissioner's direction.

The regional offices of the Internal Revenue Service, or at least the regional offices of the chief counsel with which I am most familiar, serve little or no purpose except to dilute the authority of the national office and to delay the implementation of national directives.

I recommend that consideration be given to eliminating these last four regional offices or, if there is some reason why they cannot be eliminated, move them to Washington. Let them sit in the same building as the commissioner where the commissioner can control what they do. If the span of control is such that regional organization is necessary, it could be accomplished in that manner.

Right now, and during all of my experience with the service, the regions were functioning as fiefdoms, where the person in charge, the regional commissioner or the regional counsel in the appropriate case, was considered a prince, whereas the commissioner or the chief counsel was the king. They were like royalty. They decided what they wanted to do, and they did it.

Now, selections for managerial positions is another problem area. They are made based solely upon whether the employee has performed well in his current position. Was the person being considered for promotion a good attorney, was he, theoretically, a good revenue officer, or was he a good agent? It is my opinion that they give little or no consideration to whether the person has people skills which would enable them to be good managers.

Being a good revenue officer does not mean you will be a good manager of revenue officers. What you do, is you take your better technical people and you promote them into management positions. By doing that, you have lost a good technical person and you have not necessarily obtained a good manager. We need a way to identify people with management skills.

Now, I share the opinion which I heard from the gentlemen who spoke before me that it is important that the managers of the reve-

nue officers be technically knowledgeable. It is absolutely essential at that level. The higher up you go, however, the less important is it they have that technical knowledge and the more important it becomes that they have management skills. But that is not the way the organization runs at this time.

The IRS organization is too insular. It has little infusion of new blood. Traditionally, everybody is promoted from within. While that is good, it is very good that management is loyal to its employees, it leads to the situations where, as I heard one of the Senators say, people go along to get along. You wind up that you are elevating people based upon their willingness to go along with the entrenched views. Innovation and imagination are frowned upon within the Internal Revenue Service.

I would like to indicate at this time that it has been my feeling for approximately as long as I have been an attorney that the American Bar Association has much, too much influence over determining who the commissioner of the Internal Revenue Service is.

I am very pleased to see that we are hopefully going to have a commissioner in the near future who does not come from that background. You can be a very fine attorney and not be a good manager. The commissioner should be a manager more so than a good attorney.

You do not even need to be, at the commissioner's level, an expert in taxation. You have all kinds of advisors to give you advice on tax. If you can manage your assets and use them fairly, that is what a commissioner should do.

Employee satisfaction with the IRS has been on a downward spiral due, at least in part, to the slavish attention to the numerical goals. Employees are given mandates by management to take positions known to be incorrect in order to obtain preordained results.

I know many people who have retired from the Internal Revenue Service or who have left before retirement, but I do not know a single one of them who regrets that they no longer work for the organization. I personally left the organization 8 or 9 years before I had intended to leave because I found that the management was so deplorable at that time.

It is my considered opinion that a few of the problems which I have addressed can be readily resolved. As I indicated, the four remaining regional offices should be completely eliminated, if possible. If not, they should be relocated to Washington. What that will do, is it will permit the commissioner to more readily make any needed changes in the direction of the organization.

With the condition of the organization at this time, whatever changes are implemented will need to be implemented quickly and the existence of those regional offices will not assist in that.

IRS management or this committee can take action to ensure that the goals in the future place greater focus on the quality of performance by IRS managers and employees. This should cause all IRS employees down to the lowest level to become more cognizant of the sensitivity of their work and result in fair and equal treatment of all taxpayers.

Selection boards for all positions above the first-line management level, above the group manager level, should include at least one

representative skilled in management outside the IRS. They should learn how real organizations manage assets and employees. This will result in a greater focus on management skills and at the same time be a step in opening the organization to an infusion of new blood.

I personally commend the many dedicated and responsible employees of the Internal Revenue Service for their valiant attempt to fairly administer the laws in an even-handed manner.

The culture of the IRS organization, however, has eroded to the point where the dedicated employees are leaving the agency as fast as possible. You will find very few employees who are eligible for retirement who remain within the agency. They leave. They go on to different things. The management of the IRS must stop sacrificing the employees in order to make themselves look good.

One last thing that is not in my prepared statement but which I would like to call to your attention, is that one of the problems I have noted within the IRS is that there is nobody under the district director who has any cross-functional authority to resolve problems.

You have somebody who knows examination, you have somebody who knows collection, but it seems like there is nobody who has the authority to really solve problems. You need somebody who can resolve a problem in any function.

When I was a district counsel it was my practice to have all disgruntled taxpayers referred to me personally. I found that as long as I was willing to put it in writing I could accomplish most anything, so I was able to resolve a lot of problems. But I do not know of many, or any, other managers within the Internal Revenue Service who have that same approach.

Mr. Chairman, thank you for this opportunity to appear before you and this committee. I greatly appreciate being able to offer what I hope are constructive and positive comments regarding the future role of the IRS.

The CHAIRMAN. Well, thank you, Mr. Lilly, for your very helpful suggestions and comments.

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

The CHAIRMAN. Now it is my pleasure to turn to Ms. Long, who I would point out is a current employee of the IRS. I want to thank her for appearing here today. I know that doing so, at least in many people's judgment, puts a future career at great risk. But I admire her courage and willingness to come here because of her dedication to the IRS.

Ms. Long?

STATEMENT OF JENNIFER LONG, CURRENT EMPLOYEE OF THE INTERNAL REVENUE SERVICE

Ms. LONG. Thank you. Mr. Chairman, Senators, thank you for allowing me to come before you this afternoon to provide an accounting of activities within the Internal Revenue Service.

As you know, my name is Jennifer Long and I am currently a revenue agent. Please be assured that I do not take any pleasure in what I am about to say. I regret that the untenable conditions permeating the IRS have compelled me to this point.

I am here today, along with my colleagues who will be speaking tomorrow, in hopes that by exposing some of the unauthorized but tolerated procedures that I personally have witnessed by members of the IRS management, congressional oversight will bring a positive change.

I can personally attest to the use of egregious tactics used by IRS revenue agents which are encouraged by members of the IRS management. These tactics which appear nowhere in the IRS manual are used to extract unfairly assessed taxes from taxpayers, literally ruining families lives and businesses, all unnecessarily and sometimes illegally.

The IRS will often pursue a taxpayer who is viewed to be vulnerable. To the IRS, vulnerabilities can be based on a perception that the taxpayer has limited formal education, has suffered a personal tragedy, is having a financial crisis, or may not necessarily have a solid grasp of their legal rights.

Please understand, many agents are encouraged by management to pursue tax assessments that have no basis in tax law from individuals who simply cannot fight back. However, if that taxpayer does object or complain, every effort will be made by the IRS to run up their tax assessment, deplete their financial resources, and force them to capitulate to IRS demands.

The IRS's mission of examination states: "Reduce non-compliance by identifying and cost effectively allocating resources to those returns most in need of examination and taxpayer contact."

As of late, we seem to be auditing only poor people. The current IRS management does not believe anyone in this country can possibly live on less than $20,000 per year, insisting anyone below that level must be cheating by under-stating their true income.

Currently, in a typical case assigned for audit there are no assets, no signs of wealth, no evidence that would support a suspicion of higher unreported income. So when the IRS does initiate and audit on these people, these individuals are already only one short step away from being on the street.

Clearly, such actions do not encourage or promote voluntary compliance, even in legitimate cases. Before we began to ruin their lives, these people were at least paying something. However, because of the tactics used in auditing and condoned by the IRS management, abject fear compels many of these individuals to go completely underground and, as a direct result, pay nothing at all.

In other cases, IRS management can determine that a particular taxpayer is simply "someone to get." In other words, they become a target of the IRS. Management will go about fabricating evidence against that taxpayer to demonstrate that he or she owes more taxes than was originally claimed.

Clearly, it goes without saying that evidence should never, ever be fabricated. It also goes without saying that any evidence used against a taxpayer should be examined first before guilt or innocence is established, not the other way around.

In certain instances, the IRS management has even employed its authority to intimidate the actual taxpayers into fabricating evidence against its own IRS employees. In return for their compliance, the taxpayer may be offered a reduction in their taxes or a no change case.

I also know that management uses this same power to extort fabricated evidence from IRS employees against their own colleagues by offering cash awards, promotions, and lightened work loads as rewards for their compliance.

The unfavorable information assembled by management against its own employees is used against those whom the IRS has identified as someone who is unsupportive of its unwieldy methods of collection.

The IRS Inspection Division, which is somewhat akin to Internal Affairs in a police department, has also been used as tool by management to harass and intimidate its employees. However, complaints to the IRS Inspection Division about possible management misconduct are routinely ignored, but often result in retaliation against the IRS employee reporting the problem. This is due to the fact that employees' identities are disclosed when the Inspection Division reports the infraction to management.

The IRS mission statement states, "The purpose 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."

I have actually witnessed IRS management manipulate income tax return figures just to increase their office collection or division collection statistics. It did this through various means, including not permitting valid changes in a tax return that would favor a taxpayer.

To allow those changes would wipe out the assessment placed by the IRS and run counter to the management's collection numbers. For those who choose to fight, it automatically guarantees a significant financial and emotional toll.

Mr. Chairman, the American taxpayers are not stupid. They clearly recognize unfairness. Under present IRS management it has become so distorted that, when reviewing a tax case, it is now our job to "stick it" to the taxpayer rather than determine a substantially correct tax assessment for that taxpayer.

In the past, the latter was our job. If our present task has changed, then the IRS mission statement needs to be revamped to reflect what the service's current mission really is, and God help the taxpayers.

The IRS mission statement of the IRS Examination Division states, "Examination supports the mission of the service by encouraging the correct reporting by taxpayers of income." Yet, in reality, when valid changes could be made by the IRS on a taxpayer's return that favored that taxpayer, we are instructed not to make those changes.

However, on the other hand I know of certain IRS employees that have been instructed by IRS management not to conduct audits of particular taxpayers who happened to be personal friends of someone in management.

Far too often, the IRS management automatically assumes that everyone is a criminal. When a taxpayer comes to the IRS office to negotiate a tax payment issue in good faith, they are subjected to provocative behavior on the part of the IRS in order to set them

off. Management will then use the taxpayer's response as proof that they are, in fact, a reactionary, saying, see, this person is a troublemaker, a real hot-head.

Based on this pretext, the IRS can then justify taking severe action contrary to the law in order to pursue the collection. The immediate and direct consequences of these actions is the deprivation of the taxpayer's lawful rights.

I look forward to your questions, and I hope that in some way I will have assisted you in restoring the IRS to a level of integrity that will regain the respect of the American people.

The CHAIRMAN. Thank you very much, Ms. Long.

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

The CHAIRMAN. I have to say to each of you, your testimony is certainly indicative of a troubled agency. It is a matter of real concern to this committee that the agency be seen by the American people as serving them.

I have a series of questions I would like to ask each one of you to answer. I would ask that you try to be as brief as possible because the hour is growing late.

One of my concerns is the IRS' use of goals and statistics. Any number of you have indicated that that is the practice. Now, by use of goals, quotas, statistics, I am talking about employees being evaluated on the number of dollars assessed or collected, the number of cases closed, the number of liens and levies imposed. How widespread is this practice? Mr. Strauss.

Mr. STRAUSS. Senator, it has already been testified to that that specific action does not occur. What is occurring is that this culture drives the organization in determining what is important.

The question is, how do you get promoted or how do you retain your job? If the managers are being evaluated on specific operational objective goals or statistical goals, then that is what dictates the issues. I have never seen, from all my years, any specific employee evaluated on achieving specific statistical objectives. That does not mean the influence is not there, Senator.

The CHAIRMAN. Ms. Larsen?

Ms. LARSEN. As Mr. Lilly stated earlier, I was an employee in the Office of Chief Counsel, so I was never actually an employee of the Internal Revenue Service. So my impressions and my beliefs about how the Internal Revenue Service operates really comes sort of indirectly, either from people I have known that have worked for IRS or my conversations with other managers and such.

But my understanding is, at least with respect to the Collection Division, is that individual employees are not evaluated based on the number of seizures that they make or the number of dollars they collect. I do not even believe that they keep those statistics by employee.

However, my understanding is that the managers themselves as you go up the line, they are evaluated based on overall efficiency of their group or their division, and then they do look at total number of cases closed, the total number of dollars per staff year, that kind of thing.

So even though each individual employee is not told, go out and collect $10,000 today, there is always this pressure, their job as a

revenue officer is to collect taxes, close cases, and move things along. So, there is always that pressure to do that.

But I do not have any specific examples of where they have told people to go do certain things, to meet a certain statistical goal.

The CHAIRMAN. Mr. Patnoe?

Mr. PATNOE. Senator, having been evaluated many times as an employee, I was never evaluated on how many seizures I did, although I did plenty. I was never evaluated on the basis of, well, you closed so many cases per hour.

But what was interesting were the group meetings when the quarterly or the monthly reports would come out, and it would be pointed out to the employees of the group where that group stood in relation to other groups in the district and where that branch stood in relation to other branches, and you would see where you sat on this chart that showed you are the last one.

The manager would say, nobody wants to be the last one because it does not look good. So I never knew of anybody that was just pulled aside and said, you really need to get your numbers up. It was not that way.

Basically, Congress itself has got to evaluate the IRS on something. One of the things it evaluates the IRS on is, hey, we have so many dollars uncollected, we have so many cases open; what are you going to do to improve this?

That is a direct statement to the IRS saying, we want you to produce, we want you to do something. You have got to find a way to get the very bottom employee to produce and they cannot really say, boy, we want you to go out and close 20 cases today. But our group sits right here, and we cannot stay there. We have got to do something. That is the way it is done.

The CHAIRMAN. Mr. Lilly?

Mr. LILLY. I think the prior speakers have put their finger on the way it is done. The lower ranking agents, revenue officers, and attorneys do not receive goals, per se. Their higher managers receive quite definite goals of what to accomplish. Then when they talk to their subordinates, they talk to them in the terms of what their goal is.

Now, if I am a manager and I have a goal to obtain 10 of a certain item and I have 10 agents working for me, I think you know what I am going to do, I am going to tell each of my subordinates that I want them to do one of these actions. If one of them does three, then I am going to praise that person. So what is happening, is that the goals are being used indirectly because it is forbidden to use them directly.

The CHAIRMAN. Ms. Long?

Ms. LONG. Well, just in the last month I was told I would be getting a cash award because I had closed and collected the third-highest amount of tax in cases in the group. In the last meeting I was in, it just seems like every meeting with upper management all we are talking about is hours per case, dollars collected. I do feel like the statistics are definitely kept on all the agents and that they are used in evaluating the agents.

Mr. PATNOE. Senator, may I say one additional thing, please.

The CHAIRMAN. Yes.

Mr. PATNOE. The RD issue, the accounts receive delinquency inventory that has been around between Congress and the Internal Revenue Service since the early 1980's and the continuing growing of that delinquency or the growing of that inventory, which was stated earlier was $216 billion currently, if you include the interest and the penalties.

That has been a major drive for the IRS. They have been very defensive about it and have not been able to solve it, obviously. So we may have to think about what kind of issues we bring up from the congressional side.

The CHAIRMAN. I have put up a chart, and I am asking that it be passed around to all the people on the panel. This is a chart that I requested from the IRS. The document pertains to the San Francisco district and certainly appears to suggest quotas and goals. Now, we have a revenue agent here, although she is not from San Francisco. I wonder if you could explain what this chart appears to mean.

[Chart appears in appendix on p. 325.]

Ms. LONG. Well, it just tells you what the dollars per hour are, the average dollar per hour on 1040 cases, individual tax cases. It tells you what the average dollar per hour is on 1120 corporate cases. It is from the revenue agent's side, then it tells also what the tax examiner's 1040 individual dollars per hour are. It tells what the goal is and what the average collections were.

The CHAIRMAN. Let me make sure that I understand what this is saying. On the left-hand side it says, "Category RA." That is revenue agent?

Ms. LONG. Yes, RA is revenue agent.

The CHAIRMAN. 1040 dollars per hour. It says, "Goal: $1,000." Now, what does that mean, $1,000 goal?

Ms. LONG. That means that the goal is to collect $1,000 per hour.

The CHAIRMAN. At what level is a revenue agent?

Ms. LONG. I guess Grade 5. You start out as a Grade 5, Grade 7, Grade 9, probably up to a Grade 13.

The CHAIRMAN. So is it fair to say that this is setting a goal as to how much revenue agents should assess?

Ms. LONG. Well, we talk about this in our district and I certainly try to beat the goal. To me, that is the way to be considered a good performer or doing a good job.

The CHAIRMAN. And you have the same thing, it says "TA." You say that is tax auditor?

Ms. LONG. Tax auditor.

The CHAIRMAN. The goal is for them to collect $1,012 per hour.

Ms. LONG. Yes.

The CHAIRMAN. Below that it says, "For both RA and TA 1040 dollars per hour, a general improvement is needed. A large improvement can be made by bringing down hours per return."

Mr. Lilly, I think you spoke about quality, or one of you gentlemen talked about quality. Does creating goals, incentives of this type make for quality treatment of the taxpayer, or does it provide other incentives?

Mr. LILLY. No, Senator, this would not provide quality. What you are saying is, spend less time with each taxpayer, produce more

dollars. That means that you have to look quicker at what the taxpayer has to offer. You may not have time to consider it fully.

Now, they are setting goals here measured in dollars. I again remind the committee that I believe similar goals to measure quality can be established. That is what is needed.

The CHAIRMAN. Well, does the emphasis on quota and statistics for employee evaluations put pressure on IRS employees to artificially inflate taxpayer income or to focus on taxpayers whose cases will not take much time? Mr. Strauss?

Mr. STRAUSS. Well, certainly that has to be the result of this type of approach to managing the employee. This is the first time I have seen something like this, quite honestly. Again, I have been gone for 5 years so I do not know what is currently going on in the organization, per se. But this is wholly unacceptable. I do not know how this is being used, but if it is being used and given to the first-line employee, that is wholly unacceptable and we see the results in the testimonies.

The CHAIRMAN. Ms. Larsen?

Ms. LARSEN. Well, I think that if the goal of the IRS is to become more efficient, and by setting up these figures they are telling their employees, we want you to work smarter, I mean, they have some kind of a sense of how productive an examiner should be and they have come up with this $1,000 an hour as being a goal to reach, I think that it could be worked out where if the work is reviewed by the manager and they see that they are not artificially creating numbers but they actually are working more efficiently, they are more skilled at what they are doing, they are able to review returns quicker without sacrificing anything, then I think this could work. But again, I have never seen this either, so this is something that may be relatively new.

The CHAIRMAN. Mr. Patnoe?

Mr. PATNOE. Indirectly, it could be a way to put pressure on employees. I mean, I did not deal with the exam side that much, I just dealt with collection all the time I was there. When it came out that other people were closing cases at a certain rate, then it would be nice if the group I was in closed cases at that rate.

It just turned out, if the revenue officers got out there and closed cases over that rate they seemed to do a little better than revenue officers that seemed not to be working.

The CHAIRMAN. Mr. Lilly?

Mr. LILLY. Mr. Chairman, if I may, I do think this puts undue pressure on the agents. The best place to resolve tax issues is at the agent level. The agent has more discretion basically in determining issues than anybody else in the whole process.

But by having such a goal as this, what you are doing is you are saying, agent, do not resolve it, set it up as a deficiency, let us make the assessment and get our statistics up. It works directly contrary to providing service and quality to the taxpayers.

The goal of the Internal Revenue Service is to collect every penny to which the government is entitled, but they forget the other aspect of it: not a cent more.

The CHAIRMAN. Ms. Long?

Ms. LONG. Well, I think in doing these goals, and I agree that you do need some idea of what you are supposed to be collecting

and the mission statement of examination says that we are going to cost effectively allocate resources to those returns most in need of examination. But the problem is, as a revenue agent I do not have that much control any more about a choice of cases.

Before, I did have a much wider choice of cases that I could choose from and I could do that. Now I do not know how the cases are being chosen, but the quality of the cases, like I said, I feel like there are a lot of poor people that are being chosen, or lower income people.

Just because someone does not report a high level of income does not mean that there is not something there, but the type of people I am auditing are not people I would think would have anything. It would not be cost effectively allocating resources to audit the type of people I have been sent out to audit.

The CHAIRMAN. I have a number of separate questions.

Mr. Strauss, in your prepared statement are you stating that on its own initiative the IRS can simply inflate a taxpayer's stated income based solely on Bureau of Labor Statistics figures?

Mr. STRAUSS. I have one case in progress where that specifically happened, and I know of at least two other cases where that specifically has happened. So my answer to you is, yes.

The CHAIRMAN. If you impose a stated income on BLS, how does the taxpayer defend himself, prove to the IRS that he or she did not earn that much?

Mr. STRAUSS. Well, obviously he cannot, certainly not to the satisfaction of the IRS. The fundamental concept of taxation when it goes to an examination issue should be that the taxpayer has the responsibility to prove the deductions and the IRS should have the primary responsibility to prove any additional income. Obviously, that appears to be no longer the case regarding the income issue.

The CHAIRMAN. Let me ask you this. I have heard vocabulary I never expected to hear, words like blue sky, or box car assessments, water, whipsaw. What do they mean; are they commonly used among IRS employees?

Mr. STRAUSS. Whipsaw I am not fully familiar with. Blue sky, box car, water, I am. They have been around the agency for years.

The CHAIRMAN. What do these terms mean?

Mr. STRAUSS. It goes to the issue of inflating taxes, proposed taxes, what I testified about, Senator, taxes which they know are not owed. The motivation is primarily to try to have the taxpayer come in. That is one of the motivations if, in fact, a taxpayer is uncooperative or has not filed.

The other issue is, what we testified about regarding what drives the organization—the statistical figures and operational goals. I have several examples. If you have got time, let me just cite a couple of examples.

There is a process that has been going on for years in the service center called Substitute for Return. These are prepared for folks who have not filed 1040's per the records of the IRS, and include data as to wages, 1099 data, interest, whatever.

The program was set up in the early 1980's. The concept has been for years that, we will go ahead and prepare returns for the taxpayer. But if we have a joint return being filed with four or five exemptions, we will file the taxpayer as married filing single, with

no other exemptions and no dependents, and then they go ahead and send those out to the taxpayers. Most of those wind up not being signed and it goes into the collection process, and very, very few of those are ever collected.

The CHAIRMAN. Do any of you others have any comment on those terms, are they fairly commonly used? Mr. Lilly.

Mr. LILLY. Mr. Chairman, those terms are quite common. There is always water in every statutory notice. I have never seen one which correctly stated the amount of tax due. As an attorney who was involved in managing a great deal of litigation before the Tax Court, I can tell you that it was indeed a rare situation where we were able to prevail 100 percent if we had to settle the case out for lower numbers. We did win some, of course, 100 percent. But there is water in all assessments, for the most part.

Ms. LARSEN. I would like to add though that often the reason why there is water is because, at the previous levels, at the revenue agent level, that the taxpayer has not been totally forthcoming with their own information because the taxpayer ultimately does have the best information about his or her own income.

Where that information is not there, the IRS will proceed to set up the tax based on the best information it has. In the substitute for return situation especially, the IRS really does not have any option if the taxpayer is not cooperating. If the taxpayer does provide the information, obviously that is a different story.

Mr. STRAUSS. Let me debate the issue just briefly with my colleague. If, in fact, a taxpayer has historically filed married with four dependents, for example, and for whatever reason he has not filed for a given year, there is absolutely in my mind no reason and no authority to take a position that we are going to water this case and over-assess a tax. That, to me, is wholly unacceptable.

Ms. LONG. I would like to say something on that, too.

The CHAIRMAN. Yes.

Ms. LONG. The taxpayer does not know that this is inflating, that in this part of the process we are inflating the adjustment. It is very frightening to them because they think, my gosh, I can never pay this. I never even made this much. So that does happen, even when the taxpayer is cooperative. I feel like now, with the problem with the lack of response to legitimate complaints, it is really happening a lot.

The CHAIRMAN. Any further comment? Mr. Lilly.

Mr. LILLY. Could I relate a horror story which exemplifies the problem. I am currently representing a taxpayer who was subjected to an examination that took approximately 5 years, which is inexcusable. It started out as a criminal investigation because this taxpayer had not filed tax returns, so he was wrong in that respect.

He pleaded the 5th amendment and declined to furnish his records to the Internal Revenue Service. Of course, that was his constitutional right to do that while he was under such criminal investigation. The criminal investigation was concluded because it was determined that he had not willfully violated the tax laws.

The records which had been accumulated by the internal revenue agent were then transferred to yet another revenue agent, who set up the deficiency for civil purposes. The civil agent set up the gross

income. This happened to be a restaurant operator, and all the money taken in and deposited is treated as gross income.

While this agent had, or at least the service had, the records indicating the expenditures, there was no money allowed for food. No deduction for food in a restaurant. This was based upon information before the agent.

That is a situation where you have water in a statutory notice of deficiency. The service knew that the man was selling prepared meals. The service knew that he had to buy food, but allowed no deduction for food. They had the records with which to do it.

The CHAIRMAN. Let me ask you this question, Mr. Lilly. Do you believe that regions and districts determine their own directives and ignore those from the national office if they prefer not to implement?

Mr. LILLY. I do not want to say they will basically ignore it. They will be dilatory in implementing. They determine how much manpower they will give to these things and how quickly they will do them. I do not want to say that they would flat violate a directive, but they might not be very aggressive about doing it.

The CHAIRMAN. Let me ask you this, Ms. Long. You stated that some managers actually use their position to influence subordinates into fabricating evidence against fellow employees who have been targeted for dismissal. Have you witnessed such behavior?

Ms. LONG. I have been asked to do that against fellow employees.

The CHAIRMAN. You yourself have been asked to do that against fellow employees.

Ms. LONG. Yes.

The CHAIRMAN. Have you any idea, is this a common practice?

Ms. LONG. It has been my observation that it is being done, that people are promoted for doing this.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I was thinking as you were talking about water, Mr. Chairman, is it not ironic that your constituent, Mr. Purdue, has the water that he can put in his chickens regulated by the USDA, but we do not have any government regulation in the amount of water that the IRS can put into a tax assessment.

The CHAIRMAN. That is ironic.

Senator GRASSLEY. I am not going to take a lot of time because there are a lot of other people who want to go here. So I am just going to ask Ms. Long not really some in-depth questions, but I have got some observations and basically I am just asking you to say whether or not I have got this figured out right or wrong.

But first of all, I think we have to acknowledge your courage in coming forward today at a very great risk to your career to help us understand the questionable practices of IRS management.

I know this is a very anxious moment for you. But I would like to put you somewhat at ease this way, because often when people like you show the courage to come forward, their agencies retaliate. I have been dealing with people who have been willing to talk like you are for a long period of time in other agencies, and I know that is true.

Now, I am not alleging that the IRS will retaliate against you, but I also was not born yesterday when it comes to understanding how the government operates. So I want you to know that, as a

witness of this committee, we will not tolerate retaliation by the IRS, and you can be sure that if it happens we will take action. In fact, not only that, we have a responsibility to take action. There are codes protecting people like you who are willing to talk to the Congress of the United States.

You have described, in essence, a system of incentives that might explain IRS managers' behavior. As you describe it, they are motivated to pursue the collection, as you said. In the process of pursuing the collection, I get the impression that the taxpayers' rights are trampled on.

In other words, a citizen's rights which he or she enjoy vis-a-vis other law enforcement agencies like the FBI or your typical police department are simply in the way of the collection process, and that is why there is allegedly so much abuse by the IRS. Is that a fair description of your testimony?

Ms. LONG. I do feel like taxpayers' rights are being violated. I think, to speak in defense of employees, we are terrified by what is going on. It is terrifying. We are afraid to turn in a case that we cannot find an adjustment on.

The chart that you have up here, I mean, this is shown to us frequently and you feel that pressure to turn in cases with more than what the goal is. You try to find technical ways that are correct to do it, but you are evaluated poorly if you spend time reading IRS manuals or reading the Code to try to find legitimate adjustments to make.

Senator GRASSLEY. In other words, there are certain rights that a person has if they come in contact with the FBI that they obviously do not have with the IRS. To me, this is the real key to our understanding of why things work as they do at the IRS.

There is a parallel that we have found with the FBI. You may have read about problems with the FBI crime lab, as an example. The lab managers were getting careless about the use of good science in the laboratory, and instead they would pursue a conviction rather than just pursuing the truth.

They would often cut corners with science and with the truth just to get a conviction, and that is an abuse of power and obviously of civil liberties. Is that FBI parallel not somewhat what we are talking about here as it relates to the things that have been described on this panel?

Ms. LONG. I see many, many similarities with that case and with the IRS. When I was reading the articles about that I thought about the work situation where I am.

Senator GRASSLEY. Yes. Now, you have made some very serious statements and charges in your opening statement. I would like to ask you if you are prepared to document and back up these charges. That is, for instance, the fabrication of evidence, the manipulation of collection numbers, the incentive to pursue collections, and there are others. Could you help us with documents in regard to this?

Ms. LONG. Now, some of this information, I would have to have the proper disclosure release to help you with.

Senator GRASSLEY. Yes. Well, I know what you are talking about there.

The CHAIRMAN. I think it is important that everyone understand that.

Senator GRASSLEY. That is a 6103 situation.

The CHAIRMAN. That is correct.

Senator GRASSLEY. But, Mr. Chairman, I think then this is something that I should ask you. It is a problem and we have got to make sure that the privacy rights of the taxpayers are protected, I understand that.

The CHAIRMAN. That is correct.

Senator GRASSLEY. I would not argue otherwise. But could I ask you, if under the proper people with the proper credentials that could pursue this, if we as a committee should not be pursuing these documents so we get a chance to look these over, it seems to me that that is what we should do.

Ms. LONG. I wanted to say something else just on an issue basis. But one of my problems with what they are doing is they are making these assessments on these people that I feel like are not honest and are unfair, and this money will never be collected. Then what happens, is these people are encouraged to file or do an offer and compromise.

When the offer and compromise comes in, it is like, Collections does not want to deal with it, so they pass it to Exam. Exam does not want to deal with it, so they pass it back to Collections. Basically, they are going to have to write off the assessment and nobody wants to write off the assessment because it will hurt the statistics. It is just something that has gone on for a long time.

Senator GRASSLEY. Did you ever raise your concerns and the charges contained in your statement with the appropriate officials at the IRS?

Ms. LONG. Yes, I have.

Senator GRASSLEY. This is my last question. Why did you decide to come forward today with your identity known as opposed to coming forward tomorrow when your identity could be protected?

Ms. LONG. Well, on the advice of my attorney I decided to do it openly.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

Senator GRASSLEY. I do hope you will think about what I said about 6103, because we need as many documents that we can legally have where the taxpayer can be protected to back up what has been said here today.

The CHAIRMAN. Senator Gramm.

Senator GRAMM. Thank you, Mr. Chairman.

Ms. Long, I want to join Senator Grassley in making it clear that we are not going to tolerate anybody retaliating against you. Now, obviously we expect you to be judged like any other employee, based on your performance and what you do, but I think it ought to be clear that when somebody is willing to come forward publicly and do what you have done today, that we are not going to tolerate people trying to take reprisal against them. I want to thank you for coming, and I want to thank all of our witnesses.

Ms. Long, you say on page 4 of your testimony, "I know of certain IRS employees that have been instructed by IRS management not

to conduct audits of particular taxpayers who happen to be personal friends of someone in IRS management."

Now, that is a very, very serious charge, it seems to me, and I would think any IRS manager that issued such a directive ought to be fired, at a minimum, and probably ought to be prosecuted for obstructing justice.

Let me go back to Senator Grassley's question. Is this one of the areas that you have shared with whatever internal mechanism IRS has in terms of self-policing?

Ms. LONG. I was not personally involved in this case, but it was reported to the Inspector's office and no action was taken against the manager who did this.

Senator GRAMM. Now, was this something that somebody heard or something someone was told?

Ms. LONG. The person that was told this made a very big scandal about it and it is very hard to be around these two people together because it is a very tense, unspeaking situation. You cannot be around them without asking someone, what is the problem here, what happened. It is commonly known that this happened.

Senator GRAMM. Well, one of the two of them ought not to be there. That would be the solution to that problem. I would like to just say, Mr. Chairman, I know somebody in this audience is from the IRS. I would like to ask that these accusations be looked at, that there be an investigation, that there be a report to this committee.

If we have got somebody who is a supervisor in the IRS that is ordering people not to audit the tax returns of their friends, I think that is criminal activity and something ought to be done about it.

I would like to ask the IRS officials that are present to look at this, to go through this testimony, to look at each and every one of the points raised and try over the next 30 days to at least give us a cursory review of what is going on here and is there substance to each of these charges, or any of these charges.

I think, at an absolute minimum, that is what ought to be done. I would like to make the request to whoever is here that something be done, and 30 days from now I am going to follow up to find out what has been done.

You talk about the types of people that are being audited. Now, let me make it clear, I think poor people, not-so-poor people, and rich people ought to all pay their fair share of taxes.

Ms. LONG. So do I.

Senator GRAMM. I have no sympathy for tax cheats of any kind.

Ms. LONG. I do not, either.

Senator GRAMM. But I want you to tell me, Ms. Long, more about this singling out low-income people. Do we do it based on somebody buying a Cadillac or something? How are these people singled out?

Ms. LONG. Well, Senator Gramm, the last, I would say, 6 months to a year—and you are from around Houston. I have been going out to people's homes that do not have air conditioning. In my opinion, you are going to get air conditioning before you get the Rolls Royce in a city like Houston. I cannot see any signs of wealth.

I cannot find any resource that would indicate that these people had assets that they would be hiding from me. If maybe I was sent

out to one person like that I would think, well, maybe something has come to someone's attention, but it is common.

Senator GRAMM. Who sends you? Who makes this decision?

Ms. LONG. Well, the cases are assigned to you and you are told to work them. I do not know why there is this small amount of inventory, but I really do not have anything else to work on and I am not going to just charge my time to nothing. I have to account for my time, and this is all I have to work on. So, I go and work on it.

Senator GRAMM. Well, do you think that is an indication that we have got too many people, or what kind of agenda can you imagine anyone would have? God knows, if you live in the Houston area and you do not have air conditioning, it is hard to imagine that you have got any money for anything. I cannot think of anything——

Ms. LONG. Anything that would be before air conditioning.

Senator GRAMM [continuing]. Other than food and tickets to the Texas A&M football games, I cannot imagine what would be more important than air conditioning.

Ms. LONG. Yes.

Senator GRAMM. Do you have any theory as to why you get these assignments?

Ms. LONG. Comments have been made, and I have asked agents in other areas like in International. In the past, I would audit people that would hire, like, someone from a large accounting firm downtown or a well-known attorney to defend them. That is the type of people I would deal with. I do not see that anymore. I do not know what has happened to those people. It is like, they are afraid to audit people that can hire a big-name attorney or a big-name accountant to defend them.

Senator GRAMM. But you have no theory as to why you are auditing people who do not have air conditioning.

Ms. LONG. Well, I feel like it is because they are defenseless, they cannot fight back.

The CHAIRMAN. Could I just interject a question there.

Senator GRAMM. Sure.

The CHAIRMAN. Is that true of the other employees that hold the same position you do, is that common practice?

Ms. LONG. This is commonly being said all around the office.

The CHAIRMAN. Thank you.

Ms. LONG. It is something that is hard for me to do this to somebody. I mean, this is not the kind of person that I am. I can be very tough on someone who is not following the tax law, but to go out to somebody who is in their 60's, who has worked very hard all their lives and they do not have air conditioning, they are old, their employees are like in their 80's, they are providing jobs for people that would have a hard time getting a job someplace else, and to just harass this person, and I am encouraged to harass them, I do not like it. I do not think it is right, I do not think it is ethical.

Senator GRAMM. Not only do you not like it, but it just does not make any sense.

Ms. LONG. I agree.

Senator GRAMM. I mean, I have always assumed, and maybe I am naive, Mr. Chairman, that when you audit somebody, that you

have got a reason. You have got somebody who is reporting $18,000 worth of income and they bought a Cadillac. I would say that is a good reason to audit, and they ought to be audited.

Ms. LONG. I assume that myself. But when I actually go out there and look at the books and records and look at the evidence, I am wondering why I am out there. But I am also getting an enormous amount of pressure not to bring that case back in without making some kind of an adjustment.

Senator GRAMM. Well, I do not get it. If the objective is to collect money, and I understand it——

Ms. LONG. And I have actually asked in training classes members of upper management, what are we looking for with someone who does not have air conditioning? I do not see a way. He said, well, there is a way, there is a way. I am like, well, where is it? Where are the procedures that we would use with somebody like this? And he just ignored me.

Senator GRAMM. Well, maybe we can find out.

Ms. LONG. Maybe so.

Senator GRAMM. My time is up Mr. Chairman.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. At the outset, I would like to thank the panel and the panels that have gone before for the courage that they have demonstrated and the public service nature in which you have come forward, because this really is a public service that you are performing today.

Particularly, I was an assistant United States Attorney when I started off in my career, and I know the kind of sense of camaraderie and the closeness that you feel when you are engaged as a member of the service.

It is kind of like a family. You almost feel hesitant. You generally would feel hesitant to say anything outside of the family. But the fact is, here the family is the American people. We are all in this together and we have to try to find and strike some balance here.

The service feels a little beleaguered. I mean, you kind of get that from the sense in all the employees who are sitting there saying, I am working hard, trying to do my best, why are they picking on us like this. But the truth is that this testimony and this effort, I think, is a reality check for all of us. It is a reality check for the service in the first instance, but it is also a reality check for the Congress.

Rather than seeing it as an assault on the IRS, I hope that we all see this as an opportunity to try to correct some of the abuses and to fix what is broken, particularly as it pertains to the administration.

Quite frankly, we in the Congress tend to focus more on the global big picture issues of tax policy and the Tax Code and not on the administration. We do not focus in on the details. It is absolutely the truth, the devil is in the details and this may be where he is to be found.

Because the testimony today, some of it—I was talking with one of the staffers, Senator, your staffer in fact, and she was saying how it almost brought tears to her eyes. I said, well, it did bring tears to mine and I had to leave the room for a minute because the horror stories are just heart-wrenching.

Again, I hope that this is not only a reality check for the Congress, but that we will be vigilant in making certain that there is a conclusion to what we do, because the worst thing we could do here would be to open up this Pandora's Box, rummage around in it a little bit, then go away.

I think there is more than a little suspicion that the politicians will hit on this issue and then move off and do something else, and the bureaucracy will still be there, the people will still be there, there will be hard feelings, there will be some anxiety, a little moving the deck chairs around, but essentially the ship will not have been radically refigured. There is no question but that we have to do some reform here. There is no question but that we need to take these stories as reality checks.

There is no question but that we all have, I think, an investment in seeing to it that the true facts come out, the true facts with regard to the cases, the true facts with regard to practice and procedure as part of the administration.

In fact, every time you look at something like your chart over there, Mr. Chairman, more questions get raised, and I will ask a couple of them. But I would just say to all of you, I very much appreciate your helping us.

I believe that the Chairman and the members of this committee are trying to find common ground between a fair and honest effort to support the service on the one hand so that it can collect taxes where due, but then to make certain that the controls and the checks and the balances are there so that the service does not overbear, does not mistreat, and does not treat unfairly with any, any taxpayer of any sort.

So, having said that, Mr. Chairman, again, I just hope that we make certain that not only that Ms. Long does not get drawn and quartered when she goes back to work, but also that any other Ms. Longs out there, any other people who are willing to help us, are not penalized by virtue of their public service.

The CHAIRMAN. Let me say to my distinguished colleague and friend that this investigation is only a beginning. I intend to follow through. We have heard some facts and figures of discussions that are, indeed, troublesome. I think it is important that we shall continue to investigate.

I want to emphasize that maybe there has not been any monitoring or oversight hearings in the past, that this is the first one, but I can assure you, we will make it a continuing practice. I think that is the one way we have that can effectively bring about change.

I will not be satisfied until every American feels that they are going to get fair and civil treatment by the IRS, as well as other agencies.

So your point is well taken and we will continue these hearings to ensure that. We want an IRS that operates like Congress and the President intends, and nothing short of that will be satisfactory.

Senator MOSELEY-BRAUN. Well, I very much appreciate that, Mr. Chairman, again, because the transparency has to be achieved here so there can be some accountability. We have a bureaucracy, and what is coming out is nobody exactly knows how it works. I mean,

that is kind of a fundamental problem, and particularly if you have got different pieces of it working different ways.

I have got a few questions.

The CHAIRMAN. Please proceed.

Senator MOSELEY-BRAUN. This actually goes to the IRS, because I know they are going to testify tomorrow, but with regard to your chart I am interested to know, it says in the first paragraph, "Below are the goals for fiscal year 1996." Where do these goals come from; is there some internal circular that goes to all the districts or is this just within this particular district? Mr. Strauss, you apparently have something to say.

Mr. STRAUSS. Well, historically you had a functional program letter being issued which becomes part of each executive and upper level management officials' operational objectives for the year. That is traditionally how the goals are set, Senator.

Senator MOSELEY-BRAUN. Which gets to my next question. The upper executives then, are they accountable for the horror stories that we have heard? If within a department some people get put out on the street, Ms. Long, to use your analogy, if they wind up being put out on the street, is that district director accountable for that? Who in the organization is accountable for the mistakes and the problems?

Mr. STRAUSS. That is an excellent question. It is not quite that simple, as I recall the process.

Ms. LONG. I wanted to comment on that. I have known of employees who have been harassed and their rights violated by members of management. They have taken the case to court, won the case, got their jobs back, got something in writing that would say that management would not harass them or bother them again, and nothing changed. It continued.

Nothing happened to those managers, nothing happened to the people that perpetrated the problem with the employee. The employee comes back to work and the same thing goes on and it continues, and it is just like with these taxpayers, that it goes on for years, and years, and years.

It is my observation that several employees have died as a result of this treatment, either from a heart attack or committed suicide. I do not have any actual proof of that, but it just seemed like that is what happened. That is being said around the district.

Mr. PATNOE. Senator, I would like to just say something about that. You are talking about assigning responsibility for these acts. Well, unfortunately some managers are insulated by silence. For instance, upper level management, in many cases, will never hear what happened. They never know that an illegal act or an abusive act has occurred because the taxpayer will not come forward.

The reason a taxpayer will not come forward, is if you just had somebody harass you, take away half your live savings, but you still owed tax and it was still in the hands of that person, are you going to come forward knowing what that person just did and was capable of? So you will find managers who are totally ignorant of what has happened at the lower levels.

This fear by the taxpayers, some of it rightly earned because people have done things that are outrageous, some of it has been earned just by rumor, keeps the taxpayer silent. For every case you

hear today and you have been reported, there are hundreds that have not come forward. Upper management, a lot of times, they do not know it has even gone on, and they will not know. All they know is, the numbers have improved.

Ms. LONG. Well, I disagree with that because I think that they do know. My personal experience is that there is a total lack of response to legitimate complaints. I have observed it and I have personal experience with it.

No matter what proof you bring to them, no matter what you do, there is just no response. If they are forced into a situation where they have to answer for their mistake, I just cannot think of any other description but cowardly. They have a cowardly way to address their own mistakes.

I cannot understand it. They have more power than any other entity in our society. They have a fiduciary responsibility and a higher level of responsibility to admit and correct their mistakes in an honorable and professional way.

My experience is that, instead of doing it in an honorable and professional way, they try to discredit and harm the unfortunate person who accidently gets involved in one of their mistakes.

Mr. STRAUSS. Senator, could I just add one last thought. The answer to your question is, yes, upper level management is responsible ultimately, and they ought to be understanding and knowing what is taking place if they are actually engaged as to what is taking place at the lower levels, and that is part of their responsibility.

If you read my statement, you find that I cite in several examples where they have been alerted to the issues and they are still stonewalling the issues. So I am just looking for the resolution.

Mr. PATNOE. My experience has been, if I may, that lower level managers, sometimes if they find a mistake that has been made, they will do their best to sweep it under the carpet. They do not want to report it because, heaven knows, you do not want to report that inside your group you have got an employee causing problems. It does not make you look good.

Senator MOSELEY-BRAUN. Again, I did not mean to cut you off, but I do not want to run out of time either, Mr. Chairman, unless you want to indulge me my questions in this area.

But I guess my question to the service is, what happens if an employee, for example, takes a complaint to the commissioner? What happens to it? Or is there some intermediate to whom a complaint will be taken; what happens to it? Does that get tracked and evaluated?

Ms. LONG. When I have had a problem I went to every single level, and I never got a single response until I went to Congressman Bill Archer.

Senator MOSELEY-BRAUN. Well, that will be a campaign ad for him, I am sure. [Laughter.]

Ms. LONG. But, I mean, you could have gone to any Congressman. But I have known taxpayers that have gone to every single level and they never got a response. When they went to their Congressman they might get a response that was just for show, and then calls were stopped.

Sometimes they would not even call back the Congressman anymore. They had clear evidence that a mistake was being made and

nobody would acknowledge the mistake on the record. What these taxpayers said today, it is true.

Senator MOSELEY-BRAUN. It is a reality check, that is right.

Well, Mr. Chairman, I know I am running out of time here. I just have a couple of questions that I hope we can get answers to when the service testifies tomorrow. Part of it touched on in these witnesses' testimony and other parts touched on it before.

As to this chart, it would be very helpful to know, again, what goals are they referring to, what categories in the last paragraph it mentions, or the penultimate paragraph, "The percent above delineates the district's effectiveness rating in the categories." What categories, is this standardized or is it just for this district?

The second, is does the calculation include all the time that is devoted to a given 1040, a given person's filing? That is to say, are there investigators involved or is this just the agent who is being evaluated as to this thing? I mean, I would like to know specifically with regard to this form if it exists in other districts and how the calculation is arrived at.

Then finally, an issue raised by Ms. Long when she talked about the cases, how cases are chosen, the exercise of discretion in the first instance in terms of what goes forward.

Everything I have heard suggests that more than a computer is involved. But if it is just a computer involved, if it is all kind of randomly cranking out the names, then what are the determinants that go into that computer? I mean, people program computers.

What are we asking the computers to tell us? Are those recommendations reviewed once the case has been burped out by the computer? Where are they reviewed and the decision made, does the discretion to go forward with a case simply reside with the agent? I thank you for your indulgence, Mr. Chairman.

The CHAIRMAN. I would urge you to be here tomorrow.

Senator MOSELEY-BRAUN. I will.

The CHAIRMAN. We will have a representative from the IRS, and I think a number of those questions would be very appropriate to propound then.

Senator MOSELEY-BRAUN. Well, I thought if they got the questions now then they could not just sit there and say, well, we will get back to you.

The CHAIRMAN. Thank you very much, Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you.

The CHAIRMAN. Again, I want to express my appreciation to each of you. I know that there is significant risk for any of you to appear here under these circumstances, but I think it is critically important.

I want to underscore what Senator Grassley and others said to you, Ms. Long, that you are only doing your civic duty by being here today and we will watch with interest your future opportunities and career.

Ms. LONG. Well, I thank you very much for your assurances.

The CHAIRMAN. I thank all of you again. We undoubtedly will be in contact with you later as we proceed with these hearings. Thank you very much.

The committee is in recess.

[Whereupon, at 3:27 p.m. the hearing was recessed, to reconvene at 9:00 a.m. on Thursday, September 25, 1997.]

PRACTICES AND PROCEDURES OF THE INTERNAL REVENUE SERVICE

THURSDAY, SEPTEMBER 25, 1997

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

The hearing was convened, pursuant to recess, at 9:06 a.m., in room SD–106, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, Hatch, D'Amato, Murkowski, Nickles, Gramm, Lott, Mack, Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham, 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. This is the third day of this set of hearings.

And I want to say I was pleased to read this morning in a press release that Deputy Treasury Secretary, Larry Summers, in an interview Wednesday, agreed that there is a need for a cultural change in IRS.

I am pleased to read that, because I think in order to bring about the kind of reform—the kind of change that is essential—it's going to be important for all bodies of concern to recognize the problem.

And we are particularly pleased to welcome today our first panel which is made up of five current IRS employees and one former employee.

These people have come before the committee to relate from their own experiences how the agency works, a view from the inside.

In fairness, we recognize that these individuals speak only for themselves, not for the IRS, but what they bring to this hearing is a cross section of several different segments of the agency itself.

You will hear from collection officers, auditors, lawyers, and even inspection personnel, the IRS' form of internal affairs.

And another reason to listen well to the statements of these witnesses is that they range from 8 years of service to over 35 years of service with the majority of the witnesses having served the IRS for over 20 years.

I am grateful for their cooperation and appearance today.

These witnesses have asked for their identity to be protected, but have provided their credentials to a member of both the majority and minority staff.

I want to say to each and every one of them how much I appreciate their being here today.

I know it takes a great deal of courage to come here and testify. I want them to know that they will have our continued support for being here.

What they are doing is discharging their public responsibility as a responsible civil servant.

And to each one of you, thank you for your contribution.

Now, because of the height of the screen, I would ask that you remain seated while I administer the oath.

[Whereupon, the six witnesses were duly sworn.]

The CHAIRMAN. Thank you.

Now, we will proceed with the testimony.

I do want to remind the witnesses, as well as my colleagues that the witnesses are prohibited from disclosing taxpayer information which is protected by Internal Revenue Code, section 6103.

I just call that to your attention, to the members of the committee because it is a matter of concern in their questions.

At this time, it is my pleasure to call on Witness No. 1.

STATEMENT OF WITNESS NO. 1

WITNESS NO. 1. Mr. Chairman, thank you for the opportunity to appear before you and this committee.

The CHAIRMAN. Would you let me just interrupt?

A number of witnesses have asked that we use a mechanism which also distorts the voice. And that's the reason that you will get the sound in certain instances.

Please proceed.

WITNESS NO. 1. I spent the last 25 years either working for the Internal Revenue Service Collection Division or representing taxpayers before the IRS Collection Division.

I have collected taxes for the IRS from thousands of taxpayers. And I have also represented hundreds of taxpayers with tax problem before the Collection Division.

It is my sincere hope that my testimony today will serve to improve the operation of the IRS for the benefit of the taxpaying public.

The Internal Revenue Code does not abuse taxpayers. A complicated tax code may result in some unfair taxation, but rarely is the cause of abuse while multi-page tax forms also do not in themselves cause abuse, frustration maybe, but not abuse. Even an audit while certainly stressful should not result in taxpayer abuse.

What then has been the outcry of American citizens about the abuse from the IRS and the many media reports of the heavy hand used by the IRS?

Abuse of the taxpaying public occurs when the IRS improperly and sometimes illegally uses its vast power in the process of implementing some type of enforcement of the tax laws.

Enforcement is the levy of a paycheck or bank account, the seizure of a car, a home, or a business.

It can also result in the forced liquidation of a taxpayer's life savings, IRA, or retirement account.

There is only one small part of the IRS that implements all of these types of enforcement. And that is the IRS Collection Division.

The Collection Division is charged with the collection of unpaid taxes and the securing of un-filed delinquent tax returns.

The Collection Division serves wage and bank levies, files tax liens, seizes cars, homes, and businesses to enforce the collection of unpaid taxes.

The Collection Division takes literally hundreds of enforcement actions every day. Yes, that's hundreds of actions against taxpayers every day.

This results in some abuse of taxpayers on a daily basis.

It is the Collection Division of the IRS that is responsible for the overwhelming majority of enforcements and actions.

Enforced collection of unpaid taxes is a necessity. As a result, the danger of taxpayer abuse is both inherent and inevitable.

Many taxpayers will feel they have been abused simply because they do not like the fact that they are being compelled to pay their fair share.

We understand that that comes with the territory when enforced collection of taxes is part of one's every day job.

So how does one fair out the true cases of taxpayer abuse? The answer to that question is the important issue to be addressed.

First of all, does the IRS correct abuses when they become aware of them? Oftentimes, they do.

However, the more important question is, does the IRS cover up abuses? The answer is, yes.

If the true number of incidence of taxpayer abuse were ever known, the public would be appalled.

If the public also ever knew the number of abuses covered up by the IRS, there could be a tax revolt.

Why do we not know of these covered up abuses? The answer is simple. The IRS protects itself by management support of management actions whether those actions are right or wrong.

This acceptance of abusive actions by management is the root cause of taxpayer abuse.

The initial cause of taxpayer abuse is IRS employees who actually implement enforcement actions, many of which are approved by management in advance.

The enforcement may be necessary. However, it is the improper or sometimes illegal enforcement that causes unnecessary abuse.

Sadly, some employees repeatedly do not follow proper collection policies and procedures and thereby repeatedly abuse taxpayers.

There are several reasons why this occurs. One, many IRS tax collectors, revenue officers, but more importantly, managers are not properly trained in IRS policies and Internal Revenue Manual procedures.

Many revenue officers, but more importantly managers often respond that the Internal Revenue Manual policies and procedures are guidelines only and do not the carry the force of law.

Three, many revenue officers learn the general perception from management that most tax debtors are trying to cheat the government, are crooks or flakes and are generally not willing to pay their fair share of taxes.

Many revenue officers capitalize on the taxpayer's inherent fear of the IRS and the intimidation that they can inflict on taxpayers without any consequence for their improper enforcement.

Five, revenue officers often with management approval use enforcement to punish taxpayers instead of trying to collect the most money for the government.

There is an IRS policy statement on collecting principles, P–5–2 No. 7 which is the most often ignored.

In part, it states "We should help taxpayers who try to comply with the law and take appropriate enforcement actions when taxpayers resist complying."

Good judgment is needed in selecting the appropriate collecting tool.

The key word here is "resist" complying. If this one policy statement were properly applied, it would eliminate most all taxpayer abuse, but it is IRS management that must lead the way.

The most important factor in all the foregoing information is that occasional front-line employee errors in judgment, violations of the Internal Revenue Manual, and lack of understanding of policies statements are to be expected.

However, what is not acceptable is front-line management's support of these mistakes.

What is unconscionable is upper management's support or tolerance of front-line management abuse of taxpayers.

The bottom line is that the abuse of taxpayers by the IRS is most often caused by the Collection Division. And the problem with the Collection Division is mismanagement.

The following are some general scenarios of Internal Revenue Manual violations and taxpayer abuse that I have personally encountered.

One, on far too many occasions when a taxpayer fails or forgets to supply one or two items of a long list requested by the revenue officer, the officer's response is the heavy hammer of a paycheck or bank levy.

Two, even when a taxpayer is represented by a power of attorney, the representative is quite often treated more aggressively than the taxpayer.

Revenue officers generally learn from management the perception that most representatives intentionally try to delay the resolution of a case.

This attitude is what causes the greatest animosity between the tax representation community and the IRS.

Disregarding the policy statement that I read to you earlier results in damaging the credibility of the IRS and the integrity of the revenue officer.

Three, quite often, the revenue officer finds a specious reason to serve levies on the very source of income or assets that the taxpayer disclosed to the IRS.

Again, this only serves to undermine the credibility and integrity of the IRS.

It is no wonder that the taxpaying public has an aversion to providing any information to the IRS.

It is an aversion created by the IRS' repeated misuse of information provided to them by the cooperative taxpayer.

Four, when a levy is served in error or prematurely, even when the IRS admits that the levy was improperly served, the routine

IRS response is that when the taxpayer provides additional information, the IRS will consider releasing the levy.

When the information is provided, the IRS adds insult to injury by not releasing the levy.

The IRS cannot seem to grasp the concept that when it makes a mistake, it should reverse the error immediately, no matter what the consequence to the IRS.

Five, revenue officers routinely violate the relationship with the taxpayer representative by contacting the taxpayer directly.

It is also a common practice of revenue officers and front-line managers to try to intimidate a taxpayer representative into thinking that the IRS has the right, false though it may be, to interview the taxpayer personally.

Six, I have heard of revenue officers trying to discourage taxpayers from hiring representatives and making disparaging and slanderous statements about representatives.

Today, many taxpayer representatives know IRS collection procedures better than the revenue officers. And this becomes a threat to the revenue officer.

In many instances, I have heard and experienced more harsh treatment of representatives simply because the representative was former IRS. And this leads to violating the rights of the taxpayer.

Seven, the Internal Revenue Manual states that reasonable, necessary living expenses are always allowed.

However, on more than one occasion, I have seen the IRS punish a taxpayer by not allowing reasonable, necessary living expenses, even current tax payments.

Why? Because the revenue officer and the manager did not think the taxpayer obeyed their commands appropriately and simply felt that the taxpayer could somehow survive without reasonable, necessary living expenses.

Eight, a revenue officer with the IRS District Counsel concurrence can serve what are termed "nominee liens" and levies against third parties whom the IRS believes are in possession of assets belonging to the taxpayer.

The problem is that the IRS is not required to provide documentation to the taxpayer or the third party supporting the basis of their beliefs.

The IRS basically has the attitude, sue us to prove that we are wrong.

I have seen more violations of IRS procedures and policies than I can count.

The most appalling aspect of the foregoing examples is that in most every instance, IRS management supported the erroneous actions of the revenue officer.

The Problem Resolution Office or the taxpayer's advocate is responsible for protecting the taxpayer from IRS abuse.

But having appealed many taxpayer abuses to the PRO, I found them to be useless.

If the public thinks that the PRO is being objective in assisting with abuse cases, the public is being hoodwinked.

What are the solutions to end this suffering of repeated abuses? I have two basic answers.

First, require the IRS to follow its Internal Revenue Manual as though it were law.

The IRS should be required to follow the manual to the letter.

Taxpayers are required to follow complicated tax return instructions. So why shouldn't the IRS be required to follow their own procedures?

Second, make the IRS and management responsible for violations of manual procedures. By that, I do not mean holding front-line employees responsible for accidental or unintentional mistakes.

However, when upper management condones the violations which bring great detriment to taxpayers, then management should be held personally responsible.

As only one taxpayer representative out of thousands across the country, I have seen dozens of taxpayers severely damaged and even made homeless by the IRS Collection Division.

The true bottom line solution to resolving taxpayer abuses is IRS management.

Restitution by an administrative claim as opposed to court action for erroneous or improper actions would be a giant step in the right direction.

But who will decide when the action is improper? If left in the hands of the IRS, you will have an IRS proud of the fact that they paid out a minimal amount of restitution funds over the course of the year.

The culture of the IRS must change. And it will not change on its own.

Thank you.

The CHAIRMAN. Thank you very much.

I now turn to Witness No. 2. Please proceed.

[The prepared statement of Witness No. 1 appears in the appendix.]

STATEMENT OF WITNESS NO. 2

WITNESS NO. 2. Mr. Chairman and respective members of the Finance Committee——

The CHAIRMAN. Would you pull the microphone a little closer, please?

WITNESS NO. 2. It's a pleasure to be able to address you here today. Currently, I am a Criminal Investigator for the Internal Revenue Service's Internal Security Division.

IRS' Internal Security Division has a multi-functional purpose. In a broad sense, we're like a Federal office of Inspector General or a local police department's internal affairs unit.

Our main responsibilities conducting investigations into allegations of IRS employee misconduct, outside attempts to correct the administration of Internal Revenue laws, and employee safety.

I am here to speak about some of the problems I have observed in performing my work for the Internal Security Division.

By the nature of our mission, it is imperative that we be unencumbered in opening and investigating violations of the law within the scope of our office.

However, the culture and climate of the Internal Revenue Service often prevents Internal Security from fulfilling our responsibilities.

In addition, the distrustful and secretive nature of the IRS often hinders an investigation.

A lack of independence from district and regional forces intent on not tarnishing IRS' image has reduced administrative sanctions against employees to a point where they have no effect on controlling employee conduct.

IRS does not want bad press on employee conduct at a time when the agency's public image is at a low point.

This has affected who we investigate and what happens after an investigation has been completed.

Allegations against Internal Revenue Service managers and National Treasury Employee Union officials have not been investigated.

The IRS is aware of the administration's favorable view of the unions. The NTEU greatly benefits from this.

High-level internal security employees do not want to take on a case involving union or union officials.

Allegations against IRS managers, including Criminal Investigation Division managers are only worked when an allegation is serious and internal management cannot find a way out of assigning a case, as when it has made the newspaper or other people are aware of it.

Some internal security managers believe that there is a bond between IRS managers that should be maintained in the name of working relations.

There have been violations concerning the taxpayer's attorney/client privilege. IRS management often knows of these violations for months before reporting them to Internal Security. These types of cases can involve compromises of privileged communications.

Investigation into serious allegations are shortened by nature of a 180-day baseline.

Six months is insufficient time to conduct a complex investigation, especially when new allegations are developed during the investigation.

After 180 days, the investigator and the immediate manager start to feel pressure on closing a case.

This is where the IRS' bean counter mentality hurts us. And employee cases are considered an actionable case.

That means prove it or not, opening the case earns the agent credit or a stat.

A case not involving an employee only gets a stat if there is judicial action.

In other words, hypothetically, a case involving armed militia or anti-government forces get less credit for the Inspection Division than a case involving the misuse of a government car by an IRS employee.

Management feels that since the stat is obtained just by opening an employee case, there is no justification to have any case older than 180 days.

Proven violations of criminal misconduct against an employee have been whitewashed by Internal Revenue Service managers and labor relations. Serious violations, such as browsing, unauthorized access to taxpayer's records, and unauthorized release of taxpayer's information have received nothing more than counseling letters.

These letters are often removed from the employee's personnel file after a year. This kind of action does not serve as a deterrent for misconduct.

The IRS can and does investigate its own employees when it is suspected that an employee has acted improperly or illegally.

However, Internal Security management has improperly notified and kept the IRS district management officials abreast of these investigations.

Such investigations are supposed to be kept confidential. However, more often than not, if these investigations target employees who are friends of management, they will be informed of the probe in time to quit the agency before adverse personal action can be initiated against them.

Another example would be someone who is a rising star that is favored by management. When they are notified, they can take steps to minimize the consequence of their actions.

Once an employee resigns, it's rare that a U.S. attorney will accept the case for prosecution.

At the same time there is outside interference on the Internal Security's mission, there are internal pressures that correct our ethical standards and place morale at low levels.

Internal Security managers exhibit arrogance while they themselves violate laws and commit prohibitive personal practices.

Investigators have been told by Internal Security managers to record conversations of other IRS employees without the Attorney General's approval.

In other words, we have been directed to make non-consentual recordings of other employees without filling Justice Department requirements.

Investigators are often not able to share taxpayer information on a multi-agency investigation.

Yet, Internal Security managers have unofficially provided taxpayer information to managers at other agencies.

IRS Internal Security managers are notorious for committing prohibitive personnel practices. After an employee litigates, settles out of court or obtains a favorable grievance or a Merit System Protection Board ruling, the agency takes the corrective action without consequence to the offending manager.

In other words, a manager violates an employee's rights. The employee seeks and obtains redress from the agency. But the manager is never sanctioned for violating the employee's rights in the first place.

There is no consequence of the offending manager's action.

Internal Security managers are aware of how difficult it is for an employee to litigate against the agency.

After all, the agency and their managers do not pay for legal representation. If a manager does not like an employee for personal reasons, there is nothing to stop the manager from violating the employee's rights.

This is an "us versus them" mentality that is more flagrant at this agency than anywhere else that I've seen.

The corporate culture at 1111 Constitution Avenue is not conducive towards independent, well-worked criminal investigations.

In general, IRS pushes employees to open and close a tax or collection matter as quickly as they can.

Often getting the proper tax is secondary to reducing overall case load as quickly as possible.

For Internal Security, this "bean counter" mentality means numbers, numbers, numbers, cases opened, cases closed. Let's count them up so we can report at the end of the year what a good job we've done.

Quality, where is that found in the accountant's book?

Matters that were never investigated before because they did not warrant investigation are now opened as cases just so we have more numbers to report.

In a way, this has created an atmosphere that has given us many of our employee misconduct cases.

However, criminal law does not afford us the opportunity to work an investigation in the same manner.

As long as Internal Security is part of the IRS, there can be no real oversight or independence. We are just part of the greater problem.

Over my 20 years of service, I've become painfully aware of the ability of IRS to retaliate against employees who dare to speak out.

Many of the witnesses you will have before you in this hearing could be retaliated against for their testimony before this committee.

At times, I have been assigned an employee case and been told that management does not like that employee.

I've been told I need to find something that they can use to terminate their employment.

In the IRS, retaliation is swift and severe. I know of three cases off the top of my head where employees have spoken out.

During prior reorganizations, the IRS eliminated a prior manager's job. He had to fight, litigate to some sort of a safety net for him to continue to retirement.

Another manager that spoke out and asked questions inappropriately was counseled to go to an employee assistance program for counseling because he dared to rock the boat.

Another person complained to their Congressman. And it was held the against the employee during promotion and advancement.

I hope you will respect the risk that these witnesses took to appear before you and protect them from any act of revenge by IRS management. We all have families.

I came here today not to harm this agency, but to help it heal. You must decide the best method to accomplish the goal.

The IRS cannot heal itself, so others and I have taken the chance that you are serious about changing and improving this agency.

I thank you for the opportunity to participate in the healing process.

The CHAIRMAN. Well, I want to thank you for your testimony today. I recognize that you have served 20 years in the service of the IRS.

I can assure you that I and this committee will do everything in our power to protect those of you who have had the courage and public sense of duty to come here and testify. And I appreciate your testimony.

WITNESS NO. 2. Thank you.

[The prepared statement of Witness No. 2 appears in the appendix.]

The CHAIRMAN. I will now call upon Witness No. 3.

STATEMENT OF WITNESS NO. 3

WITNESS NO. 3. Good morning Mr. Chairman and members of the Finance Committee. I am presently a grade 12 Revenue Officer which is also identified——

The CHAIRMAN. Would you move the microphone a little closer, please?

WITNESS NO. 3. Which is also identified as a Field Collection Officer with the Internal Revenue Service.

I have worked as a Revenue Officer for over 35 years, having begun my career with the IRS when John Kennedy was President.

I am here this morning to cite numerous incidents that I have observed in the course of my career as a Collection Officer with the IRS.

I hope to use these examples to assist you and the committee in making our agency a better place and ensure greater fairness for the American people.

Over the last few months, you have heard a great deal about browsing of taxpayer files. Allow me to focus on this problem for a moment and describe to you specific situations that I have personally observed in the IRS work place which I once considered commonplace.

Tax data being accessed by IRS employees to check on prospective boyfriends.

Tax data being accessed by IRS employees to check ex-husbands for increasing income in order to receive increased child support payments.

Tax data being accessed on people with whom IRS employees were having some kind of personal disagreement.

Tax data being accessed on locally prominent or newsworthy individuals, public figures, even team coaches.

Tax data being accessed out of simple curiosity about a friend, a relative or an employee's neighbor.

Tax data being accessed on individuals who are perceived as critical of the IRS, such as people labeled tax protestors or, as in one case, a person who had simply written a letter to the editor.

The following instances, which I consider to be institutional misuse of taxpayer information, are cases in which the IRS has tacitly sanctioned looking up data on citizens who are not the subject of any investigation being conducted.

Tax data being accessed on relatives and acquaintances of the subject taxpayer, such as cases where the taxpayer is suspected of using friends and relatives to hide income or assets.

Tax data being accessed on potential witnesses in government tax cases.

Tax data being accessed on jurors sitting on government tax cases.

Senators, there is no excuse for this type of action.

Until recent years, the agency had an almost casual attitude about privacy and misuse of taxpayer records.

It has tightened up now to the point that good employees, who never think of browsing or gaining illicit tax accesses, are fearful that they may be subjected to investigation for an innocent error.

I have witnessed other serious abuses by the IRS. While these are separate incidents, they are indicative of a pervasive disregard of law and regulations designed to achieve production goals for either management or the individual agent.

One particular incident that occurred in 1994 shows how at least some managers figure they can get away with almost anything.

A listening device was discovered to exist in our IRS office. Its ostensible purpose was a public address system, but the users—managers and secretaries, had a receiving capability as well.

With the receiving capability in place, they could press a button and overhear conversations taking place in the employee break room.

While I have no personal information of the existence of similar devices, I understand from others that some indeed existed in conference rooms used by taxpayers and their representatives.

A co-worker and I found the device in the break room and learned how it worked.

Learning of our discovery, higher-level officials immediately had the devices removed and attempted a reprisal by initiating an investigation of those who brought the matter to light.

Another instance involved what would be called fraud if it were perpetuated by any other institution.

And I still cannot believe it was done in the face of my objection. This was the case of a fake tax lien.

While I made the matter known to superiors, they did not even seem to want to hear about it.

When a taxpayer gets a notice a tax due from the IRS, a lien on the taxpayer's property arises under the Internal Revenue Service Code.

To be effective against third parties and lenders, a notice of lien must be filed in the local court house.

The public accepts that the IRS files only legitimate notices, but this is the case a notice was filed by the IRS when there was no assessment and no legitimate lien.

Mr. Chairman, there must be an assessment of tax due in order to file a lien. That is the law.

And if that wasn't bad enough, the IRS asserted its seemingly correct lien against a third party. And that third party, a bank, had no way of knowing that the lien was not legitimate.

The amount involved was not large, only a few thousand dollars, but the collection employees were motivated to close the case rather than take the correct and legal action and lift the false lien.

In this case, the Service acted illegally by collecting money from the taxpayer and quietly closing the case.

I believe this instance is indicative of a systematic problem plaguing the agency.

It's original mission of collecting tax revenues has now become incidental to the production of statistics.

A case that is written off as uncollectible, a Form 53, is counted as a closed case just the same as if it were fully collected.

When I started with the IRS in the early 1960's, warning flags went up if uncollectible accounts amounted to more than 15 percent.

I have now seen months in which over 60 percent of case closures were "53'd" closed as uncollectible.

Senators, I have voluntarily come before you today to relate to you some of the deep concerns I have regarding the current mindset of the IRS.

I have been in a position to watch the gradual changes taking place among IRS management and agency attitude.

These are not positive changes. And I'm very concerned about the Service's future role.

Although my comments today may appear negative and anti-agency, it is my sincerest hope that they will help to bring about the opposite result.

I hope you will come to the aid of the IRS with the positive and forthright oversight it so badly needs.

The IRS needs help. It needs careful attention it cannot possibly provide itself.

The help must come from the outside through effective and forthright oversight of an ailing system.

It is my deepest hope that this hearing will initiate these badly needed steps.

The CHAIRMAN. Thank you very much.

Again, I would remind the members of the panel of the committee that this witness has had over 35 years of experience with the agency.

And I can assure him that what we seek to do is to bring about reform that will be fair to the taxpayers and fair to the IRS employees.

[The prepared statement of Witness No. 3 appears in the appendix.]

The CHAIRMAN. It is now my pleasure to call on Witness No. 4.

STATEMENT OF WITNESS NO. 4

WITNESS NO. 4. Mr. Chairman, Senators, thank you for allowing me to appear before you today and share with you some personal observations I have made during the more than 25 years I have been employed by the Internal Revenue Service.

For the majority of these years, I have served as a Revenue Officer in the IRS Collection Division.

Until very recently, I felt a great sense of pride in my job. I actually looked forward to going to work.

Over this past year, however, I have seen dramatic changes take place in this organization. And in my opinion, most were not for the good of the Service or the public that we are supposed to serve.

In the past, with few exceptions, I felt that management truly cared for its employees.

I find this no longer to be the case. I have never seen overall morale in the IRS as low as it is right now.

Many of my fellow colleagues have expressed to me recently that they no longer feel motivated. And many are feeling the physical and emotional effects of constant stress.

Management fails to acknowledge employee concerns as evidenced by the fact that they refuse to hear grievances or address work-place concerns.

Managers fail to realize that if the employees are under stress or disillusioned with the Service, their attitude will surely flow to the taxpayers, the people we are paid to serve.

I have recently seen many abuses by IRS managers, as well as first-line employees. These abuses range from the deception of taxpayers to gross misuse of travel funds.

I could write a book on the subject of IRS abuse of both its employees and of the American taxpayers. Please allow me to provide some brief examples.

But before doing so, allow me to point out that I have never had a performance problem during my employment with the IRS.

To the contrary, I have received numerous annual performance awards. So I am not here today because I have an ax to grind.

I truly hope that by appearing before you that I can contribute positively to restore pride in our organization and reestablish the confidence of taxpayers.

The area that causes me significant concern is the widely varied treatment that taxpayers can and do receive.

The IRS approach for the taxpayer can vary dramatically, depending upon the IRS group manager, whose group is assigned the case, depending on the employee working the case, and/or depending on the Collection Division policy in effect at the time the case is received.

For example, you may have one business owner who is allowed to make monthly payments on delinquent employment taxes, while another business owner with the same set of circumstances is put out of business or forced into bankruptcy.

One taxpayer may have their taxes written off as uncollectible, while another taxpayer under the identical conditions may be forced to pay their taxes in full or risk losing a home or business.

Taxpayers deserve a consistent and fair policy when it involves the survival of their businesses.

Another concern I have is based on the fact that the collection initiatives change regularly.

It appears that management is more concerned about maintaining high statistics than the quality of work being performed or even whether the taxes are collected are simply written off.

Whenever there is pressure to maintain high statistics and the performance levels of the different departments within the organization are a source of constant comparison, you can be certain that someone is going to suffer the consequences of such an explosive situation. And it's usually going to be the taxpayer.

Recently, a revenue officer planned an elaborate sale to dispose of assets seized from a taxpayer. Many IRS employees were invited to help in the effort. The group manager was also present.

Even though the revenue officer failed to achieve the minimum bid, as required by law, before selling the assets, he went ahead and sold the property at a significant loss to the taxpayer.

Property which had a minimum bid of at least $40,000 was sold for roughly $7,000.

Although this wrongdoing was found out and the revenue officer now faces possible disciplinary action, the real victim is the uncompensated taxpayer.

In terms of travel abuse, I know of situations where managers arrange travel to outlying IRS offices simply to accommodate their own personal travel.

They charge the government mileage and occasionally even a night's lodging in their effort to get to their final vacation destination.

A previous district director who had a condo at the beach would frequently make brief appearances at the outlying IRS offices while his family waited for him in the car.

When his visit was over, he and his family would simply continue their drive to the beach.

All of this was done at the taxpayer's expense while management was telling employees that they had to conserve on official travel and that overnight lodging was not permitted.

While this may seem minor compared to many other things that you will hear in this hearing, trust me when I say that these activities by management have a devastating effect on morale.

In another abuse of travel funds, a Collection Division chief assigned a revenue officer in their office to travel out of state in an effort to check up on the work habits of other IRS employees.

Extensive travel was involved. And the secret investigation of one of our agents caused significant confusion among taxpayers and IRS employees alike.

When contacted by this IRS employee who was following up behind the work of the real case agent, some taxpayers called their local IRS offices.

Some local officials initially thought that an impostor was at work.

In fact, a taxpayer with whom I had been working with was contacted by this spy employee and contacted me wanting to know what was going on.

Fortunately, in this case, nothing detrimental occurred to effect my taxpayer's case.

But the manner in which this secret study was conducted was underhanded and humiliating to the rest of the employees involved.

In addition, if this information was determined to be of such importance to this out-of-state Collection Division chief, why not inquire about such information in a professional, above-board manner, not deceptively behind employees' back.

The effort undoubtedly would have been far more effective, less disruptive, and certainly far less costly to everyone involved, taxpayers and IRS employees alike.

Mr. Chairman, I greatly appreciate being afforded this opportunity to inform this committee of what I have observed while working with the IRS, and the great disservice the actions of some of my colleagues have brought upon unsuspecting and undeserving taxpayers, not to mention each other.

When the American taxpayer is defrauded of their due rights, we all stand to suffer.

It is not a pleasure for me to share such stories with you. These stories are about my colleagues, those with whom I work.

But my intention to do so is simple. I, too, am an American taxpayer. And I'm asking this committee to return the Service's management and operational standards to the level that will again earn my own trust, as well as all the trust of the taxpaying American.

Thank you very much.

The CHAIRMAN. I appreciate very much your testimony today.

Again, I would point out that you have served in the IRS for 25 years. And we take very seriously what you have to say today.

[The prepared statement of Witness No. 4 appears in the appendix.]

The CHAIRMAN. Now, I will call upon Witness No. 5.

STATEMENT OF WITNESS NO. 5

WITNESS NO. 5. Good morning. I am a long-term employee of the Internal Revenue Service, employed as a Revenue Officer.

I am appearing before you today to bring to your attention concerns shared by many of the employees in my district.

In the past 2 years, all of the standards of ethics by which we have been led to believe were an integral part of our job and responsibility in dealing fairly with both taxpayers and employees have been replaced with practices that were widely viewed as not only unethical, but often illegal.

To elaborate on this statement, let me refer you to IRS policy statement P–1–20 which essentially states that employees will not be evaluated on statistics.

This mandate was made in an effort to ensure that taxpayers would be treated fairly by the Internal Revenue Service so as to curtail the IRS from being overly zealous in their collection activity.

However, our office has taken to disregarding this policy and has unfairly targeted long-term, good employees in an effort to motivate others into making more seizures.

We are told that if we are to justify our jobs, we must prove that we are willing to take strong enforcement action.

I would like to point out to you that my evaluations over the years have always been very high.

I am considered to be one of the most effective collection officers in my district.

However, I find it disturbing to learn that even though I collect more money with a substantially high number of my cases paying in full that I am now evaluated on my number of seizures rather than my overall effectiveness.

The message we are receiving from upper management is let's take the action that will get us noticed. Don't worry about whether it's the right thing to do or not.

Many other issues have come to my attention over the course of time that have created a threatening environment for myself and many other employees.

Examples of these issues are: managers are targeted for termination on the basis of who their friends are.

Statistics are manipulated to make it appear that our office is producing much higher statistics than what is factual.

Selected employees are encouraged to file EEO complaints on the basis of trumped up charges with the promise that their claim will be settled so they can then be promoted unfairly without having to compete for the job against more qualified employees.

Revenue officers have been directed to release seized assets because management personally feels indebted to the taxpayer's representative, a former IRS employee and a friend of management.

The list of code and ethics violations is too long and cumbersome for me to further elaborate on at this time.

I will be happy to provide the committee with further documentation and information under proper disclosure guidelines.

However, I am willing to answer any questions you may have.

I am not revealing my identity here today for fear I would run the risk of retaliation, not only for myself, but for my colleagues with whom I work.

However, I am thankful that you permitted me this opportunity to come before you to make my concerns for the agency known to you.

If I did not believe in this agency, I would not have dedicated many years of my life working for it.

However, motivation to execute one's responsibility should not be based on statistics at the expense of quality, nor should motivation be based on unfair competition among colleagues for promotion, nor for any other reason I sadly offered to you today.

I hope you can bring integrity back to the IRS and allow the good and ethical employees to do their jobs well while serving the American taxpayers with a fairness they deserve.

You have an opportunity to take an action which would improve the integrity of the Service, relieve stress on employees who are already in a position classified as one of the most stressful in the country, provide for more fair and equitable treatment of the taxpaying public, while encouraging more efficient collection of outstanding taxes to support our country.

I thank you for your efforts to address this issue.

The CHAIRMAN. Thank you for your testimony.

Again, we are much concerned and interested in ensuring the employees of IRS of working in a fair and equitable environment.

[The prepared statement of Witness No. 5 appears in the appendix.]

The CHAIRMAN. Finally, it is my pleasure to call on Witness No. 6.

STATEMENT OF WITNESS NO. 6

WITNESS NO. 6. Mr. Chairman and honorable members of this committee, I thank this committee for the light of day it is attempting to shed at the IRS.

I am a Criminal Investigator in the Inspection Division of the IRS which is responsible for investigating among other things allegations of IRS employee misconduct and responding to and investigating threats and assaults perpetrated against IRS employees.

I have over 24 years of law enforcement experience. I am appearing here today at great personal risk to my career with the IRS.

But given the current climate in the IRS, I feel a need to bring to light and express my concerns.

I have personally seen how vindictive IRS management can be in retaliating against those who express conflicting opinions, different to their own or do not conform and blindly follow and agree with the corporate mentality and attitude.

I know only too well how IRS management has tried to kill the messenger while ignoring the message.

I am not here today to hurt or bash this agency or the vast majority of hard working, dedicated, career public servants who staff IRS services and serve the public well.

But I have seen the efforts by IRS management to try and heal itself. And they are just window dressing to appease you in Congress, while behind the shield of taxpayer secrecy, they shun public accountability and oversight. And so it's business as usual.

The IRS and the public need and deserve no less than a strong independent, fully staffed and fully funded inspection division, able to carry out its investigative mission independent of interference or manipulation, subtle or otherwise, from within or without.

A track record of falsehood and misrepresentation, poor or nonexisting communication, and a service-wide distrust of management has taken its toll in the IRS and perpetuates from the top down.

The current atmosphere of impunity or arrogance and indifference, three generations of nationwide surveys of IRS employees bears this out.

For example, during IRS all manager training conducted in the late 1980's, one of the blocks of instructions dealing with employees stated that it was acceptable and permissible to lie or mislead as long as it accomplished the goals and missions of the agency.

This was told to me by a former manager who attended this training and could not believe the IRS condoned and instructed its managers to do this.

He very vocally questioned the ethics and appearance of such a course of action. And subsequently, his position with the IRS, coincidentally or not, was later eliminated in one of the IRS' reorganizations.

These reorganizations did no more than change job titles and upgrade middle and first-line managers' salary levels.

It did nothing to improve conditions or staffing for the field agents.

The current proposed office closures and RIFS being proposed for field personnel with Inspection are in stark contrast to the apparently super human, gerrymandering efforts employed to retain displaced inspection managers' positions whose positions were abolished in the 1992 and 1995 reorganization and restructuring.

Ad hoc and previously nonexisting positions were created, as well as extended, long-term acting assignments on full per diem as golden parachutes to reward these managers when viable candidates existed to immediately fill any vacancies without undue taxpayer expense.

No such efforts or special dispensation is now being offered for field personnel who since February have been put on notice that their positions are targeted for elimination and their offices being shut down.

With the closure of these offices, the nearest investigator could be hundreds of miles or states away.

Three members of this committee are having Inspection offices in their areas closed or severely gutted, losing valuable liaison with local law enforcement and other Federal law enforcement agencies.

Criminal investigations cannot be conducted in the same methodology and goals as audits. In criminal investigations, many factors outside the agent's control dictate and affect—I'm sorry. I've missed a page.

A track record of falsehood—in criminal investigations, many factors outside the agent's control dictate and affect duration and scope of the investigative process, such as the availability of witnesses, documents, the United States attorney's office, vacations, training, etcetera.

By ascribing artificial time constraint to criminal investigations as is now the practice has a chilling effect on creativity and depth of an investigation and sends out the message to the investigator to open and close cases as soon as possible.

The message received by the investigator is that quality is sacrificed for quantity, numbers, and stats.

The attitude is "big cases, big problems, little cases, little problems." This atmospheres fosters mediocrity.

For example, in a long-term investigation, a manager told the case agent to close out the current case and reopen it with a new case number so it wouldn't hurt the group or the region average and get it off the over-age case list.

Senior special agents in the Criminal Investigation Division have told me that CID management encourages and emphasizes opening and closing traditional tax cases what they refer to as "mom and pop" cases which are easy stats and can be opened and closed quickly in order to bolster CID's open case day's average and numbers rather than investing time in the large cases which require more time and resources to prove.

Big cases are often put off or overlooked in deference to small, quick ones.

The agents complain that their experience and expertise is being wasted in playing this statistics game.

And many become frustrated with this bean counter mentality and leave the Service for more traditional, Federal law enforcement jobs. The tail is wagging the dog.

Morale among inspection and CID investigators is at its worse level I have ever experienced in my 24 years in law enforcement.

Inspection is losing trained, veteran investigators who are frustrated and disgusted and not waiting around for the RIF hammer to fall again at the same time that managers' jobs are being insulated and protected and are taking positions in other law enforcement agencies.

Ironically, the Inspection Service will probably have to hire and train at great expense new investigators to replace those who have left or are riffed at a cost to taxpayers far greater than retaining experience personnel and keeping field offices open to provide service to IRS employees and the public.

Another issue is the independence of Inspection from IRS management. The Inspection Division's budget is directly controlled by IRS.

By depleting or denying budget dollars, subtle limitations are placed on who and what is investigated, as well as what resources we get.

To give you an example, the last 2 months, August and September, field investigators have been told there are no travel funds to perform investigations that require overnight travel.

Yet, not a week ago, all inspection managers met in a resort in St. Simon's Island for one week at great taxpayer expense.

Field agents believe that Inspection management is too close and cozy with IRS management to effectively investigate without subtle interference or pressure or the potential for compromising an investigation.

Investigation into allegations of misconduct by IRS management or a union official are not encouraged or pursued. Management takes care of management.

By detaching the Inspection Division's criminal investigative function, Internal Security, from Internal Audit and realigning our function either under the Treasury Office of Inspector General or the Office of the Under Secretary of the Treasury for Enforcement or by remaining within IRS, but reporting to an independent board and permanently fencing our budget, this trend can be reversed.

An example of this manipulation was related to me about an IRS commissioner who did not get the desired answer from inspection last year and retaliated by threatening to cut the funding for Inspection's forensic crime laboratory.

At a time when most other Federal law enforcement agencies are expanding, why then IRS Inspection one of the only Federal law enforcement agencies downsizing, closing field offices, and proposing RIFS?

This is especially troubling to the field personnel when case loads are increasing. Militia and tax protester activity is at a violent, all-time high.

And new, anti-browsing legislation, out-sourcing of IRS functions, and credit card tax payments promise to generate additional work load nationwide.

A recent Chief Inspector's memo reports that although fiscal year 98 budget funds 1,214 full-time positions, Inspections is still planning to close field offices and do a RIF to get down to 1,150 FTEs.

In fiscal year 99, this figure goes down to 1,035. This is directly due to IRS rating the Inspection budget to bolster and support the failed TSM Project and Year 2000 Project.

In a conversation with a member of Congress, it was his opinion that Congress' mandate to the IRS was to streamline its bloated management structure, not reducing service to the public by reducing field positions and closing IRS field offices.

The proposed Inspection restructuring targets only experienced field personnel positions, while only one management position in the entire Nation is slated for elimination.

The field investigators ask, how can 105 field investigator positions be eliminated without a corresponding reduction of management positions?

This was simply accomplished by adjusting the span of control in order to jealously horde and retain Inspection management positions at the expense of field personnel and offices and service to the public.

The issues which this committee and the public find most distressing are the very focus of the Inspection Division: unauthorized browsing and disclosure of taxpayer information and egregious misconduct by IRS employees.

A reduction of field investigator personnel can only negatively impact the IRS' ability to combat these problems.

An atmosphere of lack of consequences and non-accountability contributes to escalating or instigating many of the threats, assaults, resistance, and lack of cooperation experienced by many IRS employees in their interaction with the public.

I do not tolerate or condone resorting to the use of threats or violence directed towards any government employee who is doing the job we citizens empower them to do.

However, I have an understanding on how someone can be driven to the edge with feelings of anger and frustration and hopelessness when trying to deal with inflexible, indifferent, impersonal bureaucracy.

As an IRS employee, I've experienced some of these frustrations. I have observed a lack of "meet and greet" skills necessary for dealing with the public.

I have observed little or no accountability for misconduct, for mistakes, and/or errors whether innocent or intentional.

And seldom, if ever, does the IRS or the responsible employee apologize to the taxpayer for errors that are the fault of the IRS, thus, again displaying an attitude to the citizen of aloof indifference or plain arrogance.

Only recently, with all the media attention and scrutiny have I heard an IRS employee apologize for a mistake.

Most of the complaints from taxpayers regarding abuse or misconduct on the part of IRS employees do not arise to the level of criminality or egregiousness at which my section would normally get involved.

Such cases should be swiftly handled by the management of the involved employee.

However, a desire to look good and meet dollar and time ratio goals and a lack of resolve and initiative by management create difficulty in disciplining abusive employees beyond much more than a reprimand or a slap on the wrist.

Inspection is many times used as a tool by local IRS management to get a troublesome employee, relieving that employee's manager of their responsibility of having to deal with this employee.

This another example of the bedfellows, cozy relationship between Inspection management and local IRS management and appearances of the lack of independence.

Mr. Chairman, I thank you for the opportunity to testify before you today. As employees, we are the IRS.

And unless you get views and input from the field, relying entirely upon information supplied from 1111 Constitution, you can-

not possibly get a true picture of the problems or atmosphere that exists and what needs to be changed.

I am grateful that you sought out the feelings, opinions, and experience of the field personnel for this hearing.

As I stated when I began, it is not my desire to injure the IRS in any way.

However, for the record, I am not a disgruntled or bitter employee, but rather by informing you of some of the problems that exist, you and this committee hopefully will provide the IRS with the necessary tools, means, and much more importantly the motivation to correct them.

Thank you.

The CHAIRMAN. Thank you for being here today.

[The prepared statement of Witness 6 appears in the appendix.]

The CHAIRMAN. I think we have a good cross section of the agency and number of witnesses from different regions.

The one thing that is impressive is the number of years that each of you have served with the government.

I would first like to ask each of you some general questions. And then, I have a few individual questions that I will propose.

I would say to the members of the committee, when you direct a question to a particular witness, will you please make it clear so that those behind the screen know who's being questioned.

My first question is, how prevalent is the use of retaliation by the IRS against its employees?

Witness No. 1.

WITNESS NO. 1. Senator, I've been gone quite a long time. And I don't know what they're doing on the inside at this point.

The CHAIRMAN. Okay. No. 2.

WITNESS NO. 2. I would say very.

The CHAIRMAN. Very?

WITNESS NO. 2. Very prevalent.

The CHAIRMAN. Witness No. 3.

WITNESS NO. 3. It is almost a knee-jerk reaction.

The CHAIRMAN. Witness No. 4.

WITNESS NO. 4. It's very prevalent.

The CHAIRMAN. No. 5. Do you want to pass that other one down so the three of you can use it?

WITNESS NO. 5. The retaliation that occurs in our office is almost on a daily basis, depending upon your individual relationship with upper management.

The CHAIRMAN. Witness No. 6.

WITNESS NO. 6. It is very prevalent. And it depends on whether you're liked by management.

I would like to just read you a short paragraph from the Treasury Inspector General's Semi-Annual Report that was just issued recently.

"At the request of the former Under Secretary for Enforcement, the Office of Inspector General, Office of Oversight initiated a review of allegations involving the IRS Mid-Atlantic Region, Office of Internal Security. The allegations concern possible unethical, unprofessional discriminatory practices by management officials. The complainant also maintained that he had been fired in retaliation

for reporting the allegations. The review disclosed there was merit to these allegations."

That is very prevalent, sir.

The CHAIRMAN. My next question is, how widespread is the use of goals, quotas, and statistics for the evaluation of IRS employees?

And let me further ask the question, how does the use of statistics adversely affect the taxpayer?

Witness No. 1.

WITNESS NO. 1. It appears that statistics have become very important based on the fact that we see more and more levies and seizures made that should not have been made and the numbers of releases of those levies and seizures that we are pushed into asking the IRS for.

So there's got to be pressure coming from somewhere just to achieve these statistics.

It hurts the taxpayers across the board, as I said, on a daily basis. I literally see taxpayer abuse by levies and seizures on a daily or weekly basis.

The CHAIRMAN. Witness No. 2.

WITNESS NO. 2. We're driven by numbers. And it's picked up over the last couple of years. Our evaluations are directly tied in.

It adversely affects the public in general because our evaluation equates to money awards, and pats on the backs.

The average employee tries to do his job well. The carrot is stuck out there. Here is what you have to do to get the carrot. Go, get it.

And it puts an extra dollar in their pocket or an extra award and recognition. If you're doing good, your manager has a hands-off approach in managing you.

So for the most part, you try to give them what they want.

The CHAIRMAN. No. 3.

WITNESS NO. 3. Not long after I came to work, the Service established a policy that said that you would not use production statistics to evaluate employees.

And I think it was in 1972—62. That was routinely ignored.

When they passed the Taxpayer Bill of Rights I, I remember how it was introduced at the meeting that we had. The branch chief said it was not as bad as it could have been.

The written material put out by the National Office stated that under the new Taxpayer Bill of Rights, this is the first one, there would not even be a suggestion to first-line managers or their employees about statistics and production statistics, number of seizures and what have you.

And they are very careful to keep it out of the record. You will not find them writing down in an evaluation that you did so many seizures, that you collected so much money.

It's done on a one-to-one basis. And all levels of management know who their best producers are.

Some of these best producers are good people.

Some of them are the people we are having trouble with. They make too many seizures. They are what we call cowboys. And you just have trouble with some of them.

As to the effect on taxpayers, it can be devastating. I mean, you take away their homes, their cars, and their jobs.

But it also has an effect on the government. The revenue that government collects because—while this is not exactly taxpayer abuse, except in that it treats taxpayers in a disparate manner, the pressure for statistics leads to lots of accounts being written off as uncollectible. That means you don't get any money.

But writing off the account as uncollectible gets the revenue officer, the collection officer just as much credit as if he had collected it.

The CHAIRMAN. Witness No. 4.

WITNESS NO. 4. Numbers are extremely important. It really doesn't matter how you close the case, whether it's a full pay or whether you simply write it off. What matters is that you close the case.

I know at group meetings, we are regularly given a sheet which shows the statistics in all the different areas.

And they are broken down by groups throughout the different states in our district.

And notes are written in the margin by the branch chief where they say, "very good," or "needs improvement."

But they are constantly comparing one group to the other group and one employee to another employee.

This type of behavior leads to very reckless collection practices. And so therefore, the taxpayers are adversely affected.

The CHAIRMAN. No. 5.

WITNESS NO. 5. Senator, in my office, seizures are looked at as being all important for a revenue officer in order to prove their value to the Service.

As a result, the taxpayer suffers from a heavy hand that is often unnecessary. We have premature seizures.

We are instructed that even if we're aware that the taxpayer will pay us in full within a short time and they have an asset that has sufficient equity, we are to go out, seize that asset, and demand payment at that time, following seizure, not before, in order to ensure that we secure a statistic to increase our report of number of seizures for our district.

The CHAIRMAN. Witness No. 6.

WITNESS NO. 6. Again, statistics are what drive the organization. The tail wags the dog, Senator.

We are very well made aware of what our statistics individually, not as a group or as a region.

We are told how many products are produced per FTE. We are also in our evaluation told how many cases you open, how many cases you close, and how many arrests you've made.

And you cannot be fully successful unless you have made an arrest.

As far as how does this impact the taxpayer, quantity is being sacrificed for quality.

The CHAIRMAN. Let me ask you this question, can the problems that you have addressed in your testimony be resolved simply with a more modern or sophisticated computer system?

Witness No. 1.

WITNESS NO. 1. I can't see how a computer system is going to help.

The CHAIRMAN. Pull the microphone closer, please.

WITNESS NO. 1. I don't know how a new computer system is going to help teach IRS employees how to treat the taxpaying public.

The CHAIRMAN. No. 2.

WITNESS NO. 2. The only way that can help would be if it was such a simple tax system where there would be no discretion or subjectivity.

You would send the form in. It would be scanned in. The computer would compute the tax. And you would pay it.

Once you interject a subjectivity and somebody reviewing, that computer is only as good as how somebody is going to interrupt the results.

The CHAIRMAN. No. 3.

WITNESS NO. 3. With respect to browsing, a better computer system or reprogramming of the current system could help out if by the simple expedient of programming the equipment so that people could not pull up accounts, except those that were assigned to them.

The other problems are going to have to be taken care of by more supervision, better supervision.

I did not say more supervisors. We need more supervision.

The CHAIRMAN. No. 4.

WITNESS NO. 4. I believe that the problem starts with management at the very top. I believe we need a complete overhaul of managers. We need a new way of selecting our managers.

Right now, if you don't follow the program, if you're not a numbers person, it just really doesn't matter. They don't want you as a manager.

So I think the problem starts with management.

The CHAIRMAN. No. 5.

WITNESS NO. 5. The current computer system is very antiquated and behind the times, resulting in burdensome—a very burdensome process for the revenue officer to conduct their functions and their responsibilities and carry out their jobs.

How—whether or not a new computer system would help us to deal more fairly with the taxpayers, no, that would not impact the taxpayers in that way whatsoever, other than it would free up a lot more time per officer or agent to individually help taxpayers when they are faced with a tax problem that requires a lot of time, to look into and correct.

As it stands, right now, we are so pressed to turn numbers that when we deal with a complex issue, we tend to just move it aside and tell ourselves we will get to it later and never have the time.

The CHAIRMAN. No. 6.

WITNESS NO. 6. The current computer system that's in place is so antiquated as almost to obviate its use.

The only advantage to a new computer system would be to give the employee that's dealing with the taxpayer more updated information on the person he's dealing with. And that does cause problems currently.

But as far as would that solve the problems, no, sir.

The CHAIRMAN. I would like to ask Witness No. 1, have you ever witnessed situations where a revenue officer has played on the tax-

payer's fear to collect revenues that were not owed? Is this common?

WITNESS NO. 1. I don't see as it common, but I've seen it done, yes.

The CHAIRMAN. With any regularity or just very rarely?

WITNESS NO. 1. Not to collect taxes that are not owed.

The CHAIRMAN. Why do you believe that revenue officers often feel most taxpayers are trying to cheat the government?

And how does that attitude by the revenue officers translate to treatment of taxpayers?

No. 1.

WITNESS NO. 1. It's taught in training when the revenue officers are first trained. And then, it's fostered by management throughout the system.

The result is that this attitude treats—forces revenue officers to treat all taxpayers alike.

They are not looking at a taxpayer's individual financial situation. It seems like every revenue officer I deal with thinks that every taxpayer is hiding a small fortune. And it's ridiculous.

It doesn't take a brain surgeon to see when a taxpayer is in financial hardship.

The CHAIRMAN. Witness No. 2, in your statement, you spoke about IRS management impeding internal investigations of employees.

Have you ever personally experienced IRS superiors interfering or attempting to stop an internal investigation while you were investigating internal violations within the IRS?

WITNESS NO. 2. Yes, I have one of two ways. One way would be when Internal Security management goes to the district and asks the district, should we—here are the allegations. Here is what we have. Do you want us to continue looking into this?

And the district management says, no, let's let it drop. And we're told—I'm told to let it drop.

The other way is when my management would go to district management to notify them of an ongoing case.

And before I know it, the employee being investigated knows about the investigation.

And they take various steps. If it's an ongoing violation they're doing, they stop if they have any smarts or they are able to cover up what they've done at times.

So the answer is, yes. And it's not only against employees. We've been—it's happened where we've have criminal allegations against managers and union officials.

The CHAIRMAN. Witness No. 3, you talked about tax data being assessed on jurors.

Are you personally aware of jurors or government witnesses being compromised by IRS employees using threats of possible audits?

WITNESS NO. 3. No. I'm not personally aware of that. The only thing I saw was the access. I don't know what it was used for or if it was used at all, except to satisfy maybe the curiosity about a juror or a witness.

The CHAIRMAN. Does that occur often or——

WITNESS NO. 3. I've seen it several times.

The CHAIRMAN. Several times where a—would you spell it out, what happened?

WITNESS NO. 3. The criminal agents would come to our Collection Division and ask the people to access accounts. They really don't give reasons most of the time. They just give the taxpayer's Social Security number and name.

And some employees will pull it up for them. These people don't have direct access to the computers with one exception.

I knew of one who did. And probably, that person was more vocal about what she was doing and who she was looking up. She was a special agent herself.

The CHAIRMAN. Witness No. 4, are you aware of IRS revenue officers using false identification when dealing with the taxpayer?

WITNESS NO. 4. No, sir, I'm not.

The CHAIRMAN. No. 5, are you?

WITNESS NO. 5. When dealing with the taxpayer, no, sir.

The CHAIRMAN. Witness No. 5, you mentioned a list of code and ethics violations that are too long to further elaborate at this time. That was your testimony.

WITNESS NO. 5. Yes, sir.

The CHAIRMAN. Could you cite some examples of such without identifying the specific taxpayers?

WITNESS NO. 5. Yes, sir. I'm sure all of you are aware of the Taxpayer Bill of Rights 2. Under this bill of rights, the taxpayer is required to receive notice of default on an installment if he has entered into payment agreement with the Internal Revenue Service and then fails to meet the terms of his agreement.

Once the agreement defaults, we are required by law to send him a notice of the default prior to taking enforcement action.

However, in our district, we were instructed by our division chief that he was going to waive this mandate.

We were to ask taxpayers upfront at the signing of the payment agreement to sign a waiver, waiving their right to this notice in the event that their installment agreement defaulted.

As a result, we could then take immediate enforcement action without notice to them.

This was often unfair to a taxpayer who subsequently failed to get his payment correctly applied or had a subsequent assessment that had been pending and was meant to be included in the payment agreement.

It would create a default of the installment agreement. And then, we would go out and enforce without justification.

The CHAIRMAN. Finally, I would like to ask you, Witness No. 6, we have heard from another witness that the IRS will target what it determines to be a vulnerable taxpayer.

You've stated that the Criminal Investigation Division of the IRS will pursue taxpayer cases that are pursued to be easy hits in order to bolster its numbers.

Are the smaller cases generally considered easy because the taxpayers are less able to defend themselves?

WITNESS NO. 6. Senators, they have less resources at their disposal as far as attorneys or accountants. And they are intimidated by the IRS.

And for this reason, those cases are opened and closed quicker. And they are able to bring days open average way down.

Agents told them that if a case is going to take a year or more, they don't even want them to pursue them.

The CHAIRMAN. My final question is, do you feel—Witness No. 6, do you feel that by granting greater independence to the Inspection Division and that by having it report only to the Commissioner, you could perform your job of investigating questionable employee conduct to a fuller and fairer degree than you can under the present arrangement?

WITNESS NO. 6. Well, the present arrangement is supposedly that we report only to the Commissioner.

But unfortunately, because of inbreeding and coziness with local management, that is not the reality.

Possibly, by removing the function from under the Commissioner and either move it to the Inspector General or the Under Secretary of the Treasury for Enforcement which are more law enforcement oriented, we could possibly reverse that coziness.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman. And I want to thank our witnesses individually and collectively. They have been hugely informative.

I find myself a little puzzled about the performance of the Internal Revenue Service over the last 35 years.

And I would direct my first question to Witness No. 3 and then to anybody who might want to add to it.

You mentioned, sir, that you became a revenue officer over 35 years ago, having begun your career at the IRS when John F. Kennedy was President.

And at that time, I was in the Labor Department. And we had a—there was a big issue in the labor field which was automation. Would automation put everybody out of work?

And we were beginning to see computers down here on Pennsylvania Avenue. The IBM Company, IBM had a little street level display of what you could do with these things.

Now, in 1962, there were 60,000 employees in the IRS. And today, there are 102,000 which is an increase of 70 percent.

In that time, our population has only increased 43 percent.

And yet in 1962, I would say to my friends on the committee and colleagues, it's pretty serious. I think this is a subject we need to get an answer to.

In 1962, 97 percent of taxes were paid voluntarily by self-assessed taxpayers, almost perfect compliance.

Today, it's 83 percent. That's not very—that's good, but not very good. It sounds to me like the French might come up with something like that.

And yet, we've——

Senator CONRAD. Voluntary compliance in some countries is about 40 percent.

Senator MOYNIHAN. Okay. It says that you would know better.

Somewhere maybe between where the French are and where we were. And we're heading back in the French direction.

And yet, the number of employees has increased. The computers have come on-line.

Could you help? Do you have a sense of why this might have happened, why compliance has dropped even as employees have increased very considerably?

WITNESS NO. 3. I do, yes. We know more about the public and taxpayers now than we did in 1962. We have a lot more information documents.

And even in 1962, they processed very few information documents, if they got it, if any at all. That's the first year, the '62 year that we went on the computer.

So we find ourselves now dealing with lots and lots of lower income and low middle income people who may not be complying and who may not have been complying in 1962, only we didn't know about it.

Now, I don't know if that's the explanation or not, but we are certainly dealing with lots more taxpayers.

Back then, we could go out—accounts were issued for collection if the taxpayer owed $10. Now, in our district, before an account comes out for full collection, generally, they can pull them out.

But before they are issued, generally, our cut-off score is I believe $40,000.

Senator MOYNIHAN. You are saying, sir, that when you started out, the Internal Revenue Service would go after a taxpayer for $10, but today it has to be a much larger sum?

WITNESS NO. 3. It must be much larger. Accounts do come out for less than $40,000, but they have established what they call the queue for a delinquent account.

And trying to match work load with staffing, then they hold accounts in the queue.

And I don't think that's been good for either the Service or the taxpayer because their thing is to allow these to sit there.

You may have a taxpayer who would have owed $5,000 if you could have gotten to him a quarter or two after he became delinquent.

But they let those accounts sit there, stagnate, grow for a long period of time. When you go to contact the taxpayer——

Senator MOYNIHAN. The growth is interest rate?

WITNESS NO. 3. It's more tax. They've incurred another quarter, another quarter, another quarter.

Senator MOYNIHAN. Okay.

WITNESS NO. 3. The taxes are huge.

But we deal—the people that we deal with in collection are generally people who are not capable of properly managing.

They are not crooks. They don't study the code. They have no idea of our procedures. That's what enables the Service to get away with abuses.

Their abuses sometimes are illegal. This is kind of off your subject, but I heard this yesterday, the huge assessments that are made against taxpayers by exam.

They will charge them income tax, such as the restaurant owner you heard about on his gross income. They can do this with low and middle income taxpayers because they cannot afford professional help.

And they are—some of them are terrified of the Service. I've seen them where they are afraid to open their mail.

And if they don't reply, then the tax goes up. It may never be collected, but it will hang over their head encumbering their property and their jobs for years. I've had lots of these accounts.

Senator MOYNIHAN. I would just like to see if we could leave this unresolved, but it's a matter that Senator Kerrey and Senator Grassley I know would be concerned with.

Why has the voluntary compliance rate declined so?

Now, we just heard that there was a time—and it would appear from what you say is that taxpayers are being treated more leniently today than they were a generation ago.

If $10 would bring you an IRS action, but today it has to be 5,000 or whatever, then that suggests that we are not collecting. Maybe, that's why we're at 83 percent. I don't know the answer.

Mr. Chairman, there is a question. We have brought in the computers. We have almost doubled the size of the work force. And the compliance level declined.

Is that something to do with the culture of the IRS, as our Witness No. 1 said?

Or does it have something to do with the culture of the United States and citizenry?

I don't know the answer. I put the question. I think our inquiry should persist in it. We will no doubt ask Mr. Dolan.

So I thank you, sir.

The CHAIRMAN. Thank you, Senator Moynihan.

Senator Grassley.

Senator GRASSLEY. I'm going to—I want you folks to reflect on 6103. But before I ask a specific question, I would like to set a little bit of background, but most importantly let you know that without your being here, unlike a lot of other agencies where there is an opportunity to get information, this is about the only way we can get information from the IRS. So you need to be complimented.

One of the most important functions of Congress, of course, in bringing about reform is the oversight function that this committee is performing because that is the means by which we discover what is really going on.

We have two methods for getting our information. One is through routine review of documents and reports, but that method has been virtually closed off as far as IRS is concerned because we heard yesterday that they don't keep records.

Second, whatever records they keep, Congress cannot routinely see because of the 6103 restrictions that management often misuses to hide embarrassing or revealing information.

I'm not sure how many people know this, but only two people in Congress have access and can use 6103 authority. And that's the chairman of this committee and the Chairman of the Ways and Means Committee in the House.

And that simply is a unmanageable situation on a case-by-case basis, the chairman can delegate authority to staff—some staff at least as he did for these hearings.

But that's in really sharp contrast to how we handle even the Nation's top military secrets or security information.

We have hundreds of staff and not to mention almost every member of Congress who has access to national security information.

So our oversight function of the IRS is really hampered by our inability to get ready access to documents.

So that's make the second method of information collection so much more necessary and important. And, of course, that is the function you do by willingly coming forward.

And so obviously, we thank you for doing that.

But people like you who do come forward, I want the public to know and I think it's been said very much by our chairman, you do so at great risk.

And so we still need to get documents and records more readily available from the IRS so that we can exercise more vigilance.

That's why Senator Kerrey and I have produced a bill to reform the IRS. And we included in that reviewing the 6103 restrictions and also secondly making the IRS to keep records and archives.

I didn't hear any of you discuss problems that you have experienced with abuse of 6103 authority or with records disappearing.

Do any of you have any experiences in this area?

WITNESS NO. 1. Yes, sir. We routinely request a taxpayer's——

Senator GRASSLEY. This is Witness No. 1.

WITNESS NO. 1. We routinely request a taxpayer's file for the taxpayer so the taxpayer can see what's going on.

And the IRS routinely blocks out large sections or large numbers of pages of documents, claiming it is protected under 6103.

It's the taxpayer's file. What can they not see that's in there? How can the IRS put something in there that can't be revealed to the taxpayer?

And we're talking about a civil matter, not criminal.

Why can't the taxpayer see every word that the IRS writes about them in their file?

And we see this happen routinely by the disclosure office.

Senator GRASSLEY. Are any of the—Witness No. 6.

WITNESS NO. 6. From an investigator's standpoint, 6103 prevents us from fully working the case with other agencies, whether state, local or Federal.

And it really puts a chilling effect or bottleneck on the investigation.

Several U.S. Attorneys have complained to me about the problems dealing with IRS.

When they see an IRS investigator walking in the office to discuss a proposed case, they walk the other way because of the inherent problems with 6103.

From my standpoint, 6103 would prevent me—if someone walked in our office and threatened to commit suicide, I've been told I cannot call the local police. I have to call the state police.

The state I'm from does not have a state police. It has a highway patrol. I could not call the highway patrol and say that someone threatened to commit suicide.

Senator GRASSLEY. Does any of the other witnesses have experiences with 6103 being abused?

WITNESS NO. 3. I think that the Congress has furnished the agency a shield. If things go wrong in a case, they just say we can't talk about it.

And maybe, that's a good idea. If you let them talk about that, perhaps you could talk about the case to anybody.

But it has acted as a shield for the government to cover up its mistakes.

Senator GRASSLEY. Okay. That's what the Restructuring Commission heard so much in testimony about it being a shield.

Do any of the other three of you who have not commented have any experience to back that up?

[No response.]

Senator GRASSLEY. By that then, are you saying it's not abused?

Witness 2, 4 or 5.

WITNESS NO. 2. No. The sentiments that Witness 6 expressed, I've had similar situations where I've worked a case with an AUSA that said don't ever bring me a case again because I won't work it.

IRS is just a maze. It's too complicated. It's ridiculous.

We have received different opinions from Inspection Disclosure, District Counsel, the various other bodies and divisions within the IRS.

It's like calling up and getting different advice. You have an assistant calling and being given different legal advice.

And we've had witnesses that have been injured, assaulted where because they weren't serious bodily injury, the U.S. attorney won't prosecute.

And we've been precluded in the past from helping them deal with the state authorities because they would have to divulge to the state authorities that they were doing some sort of IRS business.

And that would be disclosure because you're naming the taxpayer.

Senator GRASSLEY. I have a more general question. It's more to find out if there is a composite point of view.

And that is that you have—you have listened to each other's testimony. And I assume that maybe you didn't have any contact before you came here.

But either way, as you sit there listening to the testimony of your colleagues, do you all generally agree with the testimony of your other colleagues?

Or do you any of you want to voice a point of disagreement with something you've heard from another person on the panel?

We need to kind of know. I want to know.

Witness No. 1.

WITNESS NO. 1. I heard what these folks have said for the past 25 years. And there's nothing new. It's been going on.

Senator GRASSLEY. That's——

WITNESS NO. 1. And nothing has been done about it.

Senator GRASSLEY. That's an even more sweeping statement than I intended to hear.

Without speaking—if any of you voice disagreement with that, I would like to have you voice it.

Otherwise, I would like to assume that all six of you agree.

Witness No. 5.

WITNESS NO. 5. The only statement that I disagree with is when one of the Senators asked the question why it takes more agents to handle a smaller population than in 1962?

And my response to that would be that the tax code is so complex that it takes us longer to deal with the issues.

The other fact is that in 1962, the number of the population was a result of the baby-boomer era in which most—well, a large number of the population was not yet income earning individuals.

As a result, those people are now in the work force making money. And we now have to deal with them.

So I submit that in the past, although the population percentwise may have been at a smaller ratio, now the wage-earning population is truly at a greater ratio of wage earners to agents and revenue officers.

Senator GRASSLEY. Witness No. 3.

WITNESS NO. 3. I agree. There is nothing new about any of this. I've seen it ever since I've been here. And you would think periodically it was going to be attended to, but it has not been.

Also, I think to clarify something that was asked awhile ago I think by Senator Roth, it was about using fictitious names.

There are collection officers in particular who adopted what we call pseudonyms under which they operate.

They have to register these names. You always know who they are. And there is some good reasons for allowing people to use pseudonyms.

In one case I know of, one revenue officer had a very odd last name. The pronunciation of the name was easy if you converted it into an English word and hear about the pseudonym.

In other cases, revenue officers have used pseudonyms because they have experienced the tax protesters filing liens against them and harassing them.

And if they're using a pseudonym, the taxpayers cannot go to the telephone book and look them up.

But they are fictitious names, but they are registered. And credentials are issued in the fictitious names.

Also, there was something about collection initiatives. One of the latest is direct orders that came in our district.

And in group meetings with revenue officers where revenue officers were directed to give taxpayers 30 days to pay up or close them down.

If you ask Mike Dolan about that this afternoon, he will say, as they always do, they weighed their policy statements and their manual provisions and say we have a policy against that.

And they do. P–5–133 I think is the number. And it says that before you close a going business, you will try everything before you close it down because when you close down a business, you're not just affecting the man who owns it, who ran up the tax, you're affecting the people who work for him who are thrown out of work.

And in some areas, in the rural area where I work, when you close down particularly a sizable business, these people are just thrown on unemployment or welfare.

But revenue officers now are not given the time to collect the tax. Sometimes, it takes months. Sometimes, it takes years.

That's why you all gave us a 10-year statute. But we're told to go out there and collect in 30 days or shut them down.

It's going to be impossible to do that. It's going to be impossible for the taxpayer to pay.

In my experience, the people we contact for unpaid taxes are not flush with funds. If they had the money, they would have already paid their taxes.

It's a situation where you're going to have work with the taxpayer over a period of time, keeping him current so that he's making his current deposits and let him pay up.

And generally, that is what I have done for most of the time that I have worked, but the new collection initiative want seizures apparently.

Also, with respect to collection initiatives, I think that sometimes they deploy the resources unwisely.

For instance, they have decided that retired Federal employees and Federal employees have a much higher obligation to comply with tax laws than anybody else.

I think everybody is supposed to comply with the tax laws equally. But they send out sometimes nominal accounts, people retired making $8,000 a year. And the collection initiative requires that you collect or close the account.

Some of these people are in much worse financial shape than other taxpayers who get their accounts written off.

Also, they will not follow the clear intent of the law in some cases. In our district, to save postage, they issue the directive that the notices that went to the taxpayer which we call final notices, this is the notice that Congress provided for.

I don't remember the year. But it was so that we just didn't appear on somebody's steps and take their car which I have done.

And this says you will send them a certified notice. It doesn't say just mail the notice. It says certified or registered.

The CHAIRMAN. Would you bring your answer to a close because time is running out?

WITNESS NO. 3. Very well. And they began sending these notices uncertified. After I mentioned the law to them, I think they may have changed that.

But they didn't notify those people to whom they had sent uncertified notices.

The CHAIRMAN. We next have Senator Kerrey.

Senator KERREY. Let me first of all stipulate that it seems to me that you six as well as the individual, Jennifer Long, yesterday who testified are part of a group of outstanding employees who are here because they want to see the IRS become better, the integrity restored, and the operational procedures more consistent, both with the IRS' own manual and with U.S. values, that these are not anecdotes.

They are not—this is not seven employees who have an ax to grind, who have employee-manager problem, nor were the taxpayers who were here before us yesterday.

I would argue that one of the reasons that voluntary compliance has dropped is the way the IRS has been managed over the past 30 years.

It is true that we have made it more difficult at times particularly by making our tax laws more complicated.

It is true that there are times when we have not provided a sufficient amount of resources, but these issues that you have raised are not resource issues. They are not complexity issues.

It's a question of, are we going to manage according to the law, according to your own manual, and according to U.S. values?

And the answer today as I hear it is, no. And I would like to ask you individually. I've heard a couple of you in your testimony say this.

But do you think the IRS and the current law as it's structured with the Deputy Secretary of the Treasury and the Treasury Secretary, do you think that the current law will enable the IRS to fix itself?

I'll just ask—go down the line Witness 1, 2, 3, 4, all the way through.

WITNESS NO. 1. The IRS won't fix itself. It can't. In helping taxpayers, it has set up a Problem Resolution Organization, the Collection Appeals Program.

None of that is going to work until the taxpayer can put his plight in front of an independent third party to make the decision as to whether the IRS is right or wrong.

As long as you have IRS employees policing IRS employees, the IRS will not improve.

WITNESS NO. 2. The forces that exist to their benefit, they maintain the status. It's called people resist change in general.

You have a lot of employees, management set in their ways. People who have been at the top so long, they don't understand what it's like working out in the field, how the people perceive you and how you have to deal with people daily.

It's a monster.

I assume that your question, lead it to a trough, it will drink. But I don't know how that is going to happen.

WITNESS NO. 3. No, sir, I do not believe that the Internal Revenue Service will substantially change.

They put out directives all the time. And if you read the directives, if you read the policy statements, if you read the manual provision, and if they were followed, then you would not see these problems.

But a whole lot of what is d1 day-to-day is done with a wink and a nod. And nobody is called to task for the things that they do wrong.

WITNESS NO. 4. No, sir, I don't believe the IRS can correct its own problems. I believe things have gotten too far out of control.

As everyone has said today, it's really a numbers game now, the only thing that management cares about.

And as long as you're interested only in statistics rather than how you're actually treating the taxpayer, then things are never going to change.

WITNESS NO. 5. I believe that if it's left up to the Service, you will get a lot of lip service, more training, and then business as usual.

WITNESS NO. 6. I feel that left to their own devices, there is no motivation for any change. They are self perpetuating.

And unless given the impetus to change, they will not.

Senator KERREY. Well, let me just say in response, I hope that this committee is able to change the law relatively quickly.

We have a choice here. We can either assume that these are just anecdotes and not emblematic of more serious problems at the IRS.

I appreciate the IRS and the returns it does a year, 90 million tax refunds. They've got 10 million contacts a year of some kind for compliance.

They've got a lot of work. And it's very difficult work.

But in our hearings and contacts with employees over the past year, we've just reached the conclusion that the current law won't allow the IRS to improve itself.

And my hope is that we can reach—this committee can reach some conclusion sooner rather than later.

The first witness indicated hundreds of new collections per day are going to be issued. There are 10 million contacts a year of audits or some other kind of compliance. That's nearly 800,000 a month.

I mean, every single day we wait, we're creating more of the problems we heard about yesterday of taxpayers who have not just legitimate complaints, but complaints that occur as a consequence of the way the IRS is managed and the way the IRS is organized.

And it's going to create further taxpayer dissatisfaction and a further number of citizens concluding that government by and for the people doesn't work.

My own conclusion on this, is that while the Department of Treasury wants to improve, I regret that they continue—for those who have made legislative proposals, they continue to misrepresent what we've proposed.

It causes me to suspect that they are not really for change. I mean, we've got a legislative proposal out.

The Treasury continues to say it puts private sector individuals in charge of the IRS.

That's not true. It's not just inaccurate. It's not true.

They say our bill puts private-sector people in charge of law enforcement. It's not true. We prohibit it. It goes on and on and on.

I mean, Mr. Chairman, I think that this committee has got to decide. Do we think these are anecdotes? Do we think these are small problems? Or do we think they are big?

I've concluded that they are big, not just in terms of our capacity to collect taxes, but in terms of our ability to be able to say to the people that we have government by and for the people.

We are going to enforce the law as the law is written. We are going to carry out and implement the manual in a fair fashion.

All of your courage in the statements you've made create I think an overwhelming conclusion, as well as Ms. Long's testimony yesterday.

I mean, these are not the rantings of mad individuals, of angry individuals, of dissatisfied employees who didn't get a pay raise or who weren't advanced.

These are people who want to make the IRS a better organization.

And I will just say, Mr. Chairman, under current law, that is not likely to happen.

So I'm hopeful that we can take action sooner than later.

The CHAIRMAN. Senator Murkowski

Senator MURKOWSKI. Thank you, Mr. Chairman.

Witness No. 1, you indicated that the Problem Resolution Office, the so-called PRO is, I think you used the word, utterly useless in protecting the taxpayers.

And you indicated that there is a conflict of interest—because the PRO employees are evaluated for promotions from the same Collection Division management they are supposed to police when they are assigned to PRO.

So obviously, you have a conflict.

I'm wondering if any of the witnesses, other than you would comment on that and if you care to comment because I totally agree that the solution is simply to separate the two?

And then, you would get a functioning problem resolution office as opposed to the inability to get it under, as you say, an utterly useless system that doesn't protect the taxpayers.

WITNESS NO. 1. Problem Resolution is effective resolving cross-functional problems between audit and collection, CID and collections.

But when it comes to protecting the taxpayers from abuse, when we take the case to the Problem Resolution Office, the first thing they do is pick up the phone and call the IRS manager that approved the enforcement and ask him what to do.

They're not looking at it objectively.

And these people go to Problem Resolution. And then, they go back to the Collection Division for promotion. So they go back and forth.

Again, you've got IRS employees making decisions over other IRS employees.

Senator MURKOWSKI. They are coming from different areas of responsibility.

WITNESS NO. 1. Correct. If you took——

Senator MURKOWSKI. Well, why don't you separate them?

WITNESS NO. 1. Well, if you took the budget for the Problem Resolution Office and the Collection Appeals Program and set up a separate Administrative Law Judge who's trained in either audit or collection to hear these complaints from taxpayers.

And this person doesn't have to be an employee of the IRS. They can be an employee of the Treasury. And they have to meet certain experience requirements.

And let them rule as the third party so they don't have to go—depend on the IRS for anything.

Senator MURKOWSKI. Does anybody else want to comment on that particular area?

WITNESS NO. 2. I just want to say I concur wholeheartedly with Witness 1. And I hope it's not too strong a term, but probably Problem Resolution is a farce.

It doesn't work. It rubber stamps decisions that have already been made.

Senator MURKOWSKI. Anybody else?

[No response.]

Senator MURKOWSKI. Mr. Chairman, it seems to me that——

The CHAIRMAN. Can I just make one comment?

Senator MURKOWSKI. Sure.

The CHAIRMAN. If a witness wants to testify, please give your numbers so that people know who is talking.

Please proceed.

Senator MURKOWSKI. Mr. Chairman, as we move on corrective action, I think the bottom line should be a simplification of the Tax Code as our objective goal.

What you want to be very careful of though is you've got an industry built up out there, an industry of attorneys, an industry of accountants that depend on the complexities.

And when and if we get, Mr. Chairman, down to the point of trying to simplify, you're going to find you're going to hear from this group. They are not worried right now.

Senator GRAMM. No, they are not worried at all.

Senator MURKOWSKI. And, you know, as we look at ourselves, I would venture to say that most of us don't do our own taxes for a couple of reasons.

One of them is we want the protection of having the CPA sign on the line because of the exposure we have. And the other reason is it is too complex.

But yet, we're expected to relate and take action to cure deficiencies in the IRS.

We have certainly not done our job as far as simplification of the process is concerned.

I can't recall how many pages are in the book and how many books are in the bookcase, but, you know, clearly this could be a challenge.

And I think simplification, averaging out, would go a long way to reducing the difficulties of the IRS to function as an agency responsive to collecting revenue, as well as to the individual rights of the taxpayer.

So I commend you for this process. We're on a long road, but I think that we've got to start somewhere.

And I want to commend the witnesses for coming forth and giving us a better idea of just what's going on behind the IRS and, you know, what corrective action simply has to be taken.

The CHAIRMAN. Senator Gramm.

Senator GRAMM. Mr. Chairman, let me first thank our witnesses. And I want to thank Jennifer Long yesterday.

I think what you have done is very courageous. And I think you're giving government employees the good name that most of them deserve. And I want to thank you very much.

I have to say, Mr. Chairman, that I started these hearings to some degree skeptical especially of people from the IRS who were going to be here.

I read Jennifer Long's testimony. And I quite frankly didn't know what to expect.

But I think in our business, part of what we do is judge credibility of people in arguments.

And I want to begin by saying that, beginning yesterday with Jennifer Long and today with our witnesses, I have listened to everything that they have said and I have found them extremely credible.

I think this problem is a very real problem. And I would like to pursue in the time I have a couple of avenues.

Number one, our Witness No. 4 says, "Over this past year, however, I have seen dramatic changes take place in this organization.

And in my opinion, most were not for the good of the Service or the public that we are supposed to serve."

Witness No. 5 says, "In the past 2 years, all the standards of ethics by which we have been lead to believe were an integral part of our job and responsibility in dealing fairly with both taxpayers and employees have been replaced with practices that were widely viewed as not only unethical, but often illegal."

And Witness No. 6 ad-libbed a lot. And I'm sorry I didn't have my pencil in my hand when you said it. But he in essence made the same point that the problem has gotten worse.

Now, I would like to ask each one of the witnesses to say very briefly because I've only got a limited amount of time.

Do you believe the problems we're talking about here today have gotten substantially worse in the last couple of years, have gotten worse in the last couple of years or just no different?

WITNESS NO. 1. They've gotten much worse over the past couple of years. And the reason is simple.

Senator GRAMM. I don't want the reason.

WITNESS NO. NO. 2.

WITNESS NO. 2. The complexity has gotten much worse in the last few years.

Senator GRAMM. Witness No. 3.

WITNESS NO. 3. Yes, the problems are worse within the last year or two.

Senator GRAMM. Witness No. 4.

WITNESS NO. 4. Absolutely, it's much worse.

Senator GRAMM. Witness No. 5.

WITNESS NO. 5. I concur that it's much worse.

Senator GRAMM. Witness No. 6.

WITNESS NO. 6. I agree with my colleagues, much worse.

Senator GRAMM. Now, Witness No. 2, you say on page 2 of your testimony, "The IRS is aware of the administration's favorable view of unions. National Treasury Employee Union officials greatly benefit from this. High level Internal Security officials do not want to take on a case involving the union or union officials."

I'd like to ask each one of you in this growing code of misconduct, this growth of what you perceive and I think the public would perceive is unethical or illegal activities, do you see this is an example of where politics is playing a role in it?

Have our other witnesses seen examples where they believe political favoritism is being played in this process or is it a general process?

Maybe, I should be more specific. Have you seen any incident in your service where you believe politics is playing a role in the policy of the IRS?

Witness 1.

WITNESS NO. 1. Politics is always playing a role. It always has, depending on who the division chief is and what they want.

If they want something than what the policy statements and the manual says, they'll just issue an edict, like the other witness said. It happens all the time.

Senator GRAMM. Witness No. 2.

WITNESS NO. 2. Beyond the reference to the union, it's the local people make the rules. They interpret things.

And they find—you're asked a question. If you're not asked that specific question, you didn't get the answer the person wants to give.

They interpret things to their benefit. And they find a loophole. And they exploit.

Senator GRAMM. Now, Witness No. 2, you've been with the agency how long?

WITNESS NO. 2. Since 1993.

Senator GRAMM. And you gave us your example about the public employee labor union.

Witness No. 3, let me repose the question to you. Do you see the presence of politics in many of these problems we're talking about?

Do you see a political sensitivity or favoritism being played by the IRS in anything you have personally witnessed?

WITNESS NO. 3. Oh, yes. But politics in the generic sense of politics within the agency, not a Democrat/Republican type thing.

But it is these people have promoted each other all the way to the top. And you're not going to get them to address any problems with their high-level subordinates.

Senator GRAMM. Witness No. 4.

WITNESS NO. 4. I agree with Witness No. 3. Management definitely sticks together.

Senator GRAMM. Witness No. 4—no, 5.

WITNESS NO. 5. Internal politics is definitely prevalent in our district.

NTEU, in recent years, in the past 2 years, has become very close with upper management, leaving the employees at their own device to deal with the unethical issues as they come up.

Senator GRAMM. Witness No. 6.

WITNESS NO. 6. Sir, it's strictly internal politics. Management clones other management like themselves. That's who gets promoted.

Senator GRAMM. Do each of you believe that there is—that there clearly is favoritism present in the promotion process?

I think it was No. 5 who mentioned or maybe No. 4 that people were encouraged to file discrimination suits as a vehicle to get promoted.

Is it generally your belief that there is a lot of political favoritism and promotion within the IRS?

Let me go down the line on that, starting with 1.

WITNESS NO. 1. Yes. But like I say, the internal politics.

Senator GRAMM. No. 2.

WITNESS NO. 2. Almost exclusively using the promotion process. There's too many managers that aren't capable and experienced to do the job, but their inadequacies are covered up for.

When their—when the employee files a grievance or a complaint and the employee wins the process, there is never retaliation to the manager because the other managers above them realize the person is their friend and a colleague of management.

It's that us versus them. If you want to be part of the club, you've got to play ball.

Senator GRAMM. Witness No. 3.

WITNESS NO. 3. Of course, there is some politics in promotion within lower graded employees. I'm talking about people who are the field agents and work in the offices.

It seems to be an almost exclusive way if you're dealing with managers. If you're not playing the game, you have no shot at getting into management.

If you're outspoken, you don't have a prayer. They don't want to hear the thing that are going wrong.

And I think they—it's a large part of our problem. They've promoted people who really don't know what they're doing.

Senator GRAMM. Witness No. 4.

WITNESS NO. 4. If you are an independent thinker and you won't go along with what they say, then you're not going to get promoted.

On the other hand, I've seen them create positions where one was not needed in order to promote a friend.

Senator GRAMM. Witness No. 5.

WITNESS NO. 5. We have seen instances wherein when a first-level manager gets into trouble, upper management, depending upon their comfort level or their friendship with the upper level, upper-level management will step in and often move them or promote them to bring them out of the trouble.

Managers and employees that have been direct or outspoken about unethical practices, when faced with the same troublesome issue, find themselves in a position where these issues are used against them.

So there is no equity in treatment.

Senator GRAMM. Witness No. 6.

WITNESS NO. 6. In case you couldn't tell, Senator, I'm very outspoken. And when putting in for a management position, I was told that if I wanted to be in management, you have to go along to get along.

This agency has created ad hoc, nonexisting positions to take care of its management.

Senator GRAMM. Let me go back to Witness No. 2. I don't know how we could do this while preserving your anonymity, but I would like to see this accusation about protecting the National Treasury Employee Union from being subject to the same kind of review as everybody else investigated.

Would you be willing to try find a way to see that we could get enough information to some authority at the IRS to give them an opportunity under our supervision to investigate these assertions? They seem to me to be very serious.

WITNESS NO. 2. The authorities at IRS know of it.

Senator GRAMM. Say that again.

WITNESS NO. 2. The authorities that eventually I answer to are aware of these accusations. It was a decision not to open the cases because they didn't want to take on the union.

Senator GRAMM. Well, it seems to me that this gets back to the point that was made yesterday, Mr. Chairman.

And in the case yesterday, it was someone giving orders not to audit people who were buddies of the supervisor.

In your case today, it is people because they are politically sensitive to the position of the administration giving orders not to audit individuals or unions.

It seems to me that if that's not criminal behavior, it certainly borders on it.

And we need to investigate not just the accusation, but the fact that people are actually playing politics in these decisions.

And my view is that anybody who is doing that ought to be fired at a minimum and probably should be prosecuted.

So what I'd like to try to do is when the hearing is over is to try to get in contact with you to see what we can do about it.

The CHAIRMAN. Your time is up. Let's see.

[Pause]

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman. And I think really what we have heard over the past 3 days has been absolutely amazing, including what we've heard from this panel here this morning.

The very essence of the survival of any democracy is that the people have faith in the fair and impartial treatment that they receive from their government.

And after hearing the stories for 3 days, I'm reminded of the saying in Louisiana and I guess everywhere else about the three greatest lies ever told.

I think after hearing everything today, I would add a fourth. And that is, I'm from the IRS. And I'm here to help you—because I think an awful lot of people in this country are really intimidated and are afraid of an agency of our own government and would like to know that someone is on their side and not have to think that the only way they can get help is through the Federal court system which goes on and on for years and generations and decades.

I think that—I mean, I know as a member of the United States Senate and a member of the Senate Finance Committee that I feel a little intimidated myself when I've had constituents come to me about a problem that they are having with the IRS.

I'm a little afraid to just find out who do I call because I'm afraid someone will say—would tell me, don't call me. This is an IRS problem.

So I'm even fearful and intimidated myself to try and intervene in a case that is before the IRS when someone feels that they are mistreated.

So if I'm intimidated as a member of the United States Senate, I know that others have even a greater fear in that regard of intimidation by people who work for all of us.

And I know that there are literally thousands and thousands of outstanding Internal Revenue Service agents that work very hard and do their job.

And in talking about the difference in the number of employees, 41 percent increase in population, 71 percent increase in employees at the Treasury Department.

I would imagine that the tax code is probably 1,000 percent more complicated than it was when we had fewer employees. And that has got to be part of the problem as well.

I'm really convinced that we need to have something on the nature of an ombudsman type of operation that people will know that there is a board or something that they can go to that really is on their side.

An ombudsman types of operations are very common. I mean, the Washington Post and New York Times and papers have an ombudsman that's supposed to protect the rights of readers and ensure that everybody is being treated fairly.

I think that the recommendations from the Kerrey Commission I think are appropriate and proper. I think we ought to give them a great deal of consideration.

We need a commissioner. I mean, we don't have a commissioner.

I mean, the administration has sent over the name of Charles Rossotti I guess to be the commissioner.

And we haven't had the nomination that long. I think it came over at the end of July. And I think that we need to move expeditiously on getting a strong and tough commissioner who is aware of these complaints and these charges in order to take action.

Whenever there is an agency of government that has to have the support and confidence of the people if it's going to work, it has to be the Treasury Department.

And I think that that confidence, like I've tried to say, I think is dramatically lacking at this time.

We had a leader in our committee, David Pryor, who worked very hard to get legislation passed.

And I would want to ask a question of the panel. What effect do you all think that the adoption of the legislation that Congress passed, the Omnibus Taxpayer Bill of Rights and the Taxpayer Bill of Rights 2 have had on the operations overall of the IRS?

I ask that question because the Kerrey Commission's findings in looking at the hearings that they had point out that the commission found that the passage of the Omnibus Taxpayer Bill of Rights and the Taxpayer Bill of Rights II had had an important effect on changing the culture of IRS.

The agency spends significant resources educating personnel to treat taxpayers fairly.

And the commission found very few examples of IRS personnel abusing power. And that was a finding of the commission.

To a large extent, it's contrary to what you have presented to this committee today.

And so my question is, we've tried to help by the bills we've passed. And I wish I could pass a bill that says thou shall be nice to people and that everybody would in treating taxpayers fairly and impartially.

And obviously, we need to do more than that. We thought we had done that with the Omnibus Taxpayer Bill of Rights.

So the question I would like each of you to comment on is what effect that legislation had on the conduct of the people you work for?

No. 1.

WITNESS NO. 1. It's had very little effect on the conduct of the IRS. The Taxpayer Bill of Rights is very positive, both I and II, but who's going to enforce this for the taxpayer?

If you're go to sue the IRS, it would take $30,000, $40,000, $50,000.

And if you go to the IRS Problem Resolution or Collection Program——

Senator BREAUX. So there's not—number one, there is no outside organization or ombudsman or whatever to enforce what we passed?

WITNESS NO. 1. Absolutely not. That's why you need an independent third party to help rule on these things to let the common taxpayer go and say I've been mistreated.

Senator BREAUX. Witness No. 2, comment.

WITNESS NO. 2. There is no way I could add.

Senator BREAUX. Witness No. 3, has the bill changed the culture of the Internal Revenue Service?

WITNESS NO. 3. Well, somewhat it has, but the agency—I told you how they introduced the Taxpayer Bill of Rights 1 was it's not as bad as it could have been.

They didn't like to see it. And they looked for ways around some of the provisions or they tried to ignore the provisions. They certainly never enforced the provisions.

And on the Taxpayer Bill of Rights 2, in my district, we've not had any training, any significant training.

A couple of the changes have been brought to light in meetings, but there has been no real training in the area.

Senator BREAUX. Witness No. 4.

WITNESS NO. 4. I really don't see improvement at all I think if all the witnesses have stated within the past year things have actually gotten worse.

And also, in my district, we have not had training. They passed out a brochure for self-study.

But that just shows you the lack of emphasis that is placed on this.

Senator BREAUX. Witness No. 5.

WITNESS NO. 5. I have nothing additional to add to what my colleagues have stated.

Senator BREAUX. Do you agree with them?

WITNESS NO. 5. I do.

Senator BREAUX. Witness No. 6.

WITNESS NO. 6. The two Taxpayer Bill of Rights bills affected public perception at least on the surface, the face they show to the public, I think they cleaned up their act.

What hasn't changed is the corporate mentality and drive for figures, performance, and statistics. That has not changed.

And so until you change that mentality, nothing is going to change.

Senator BREAUX. Well, I thank all of you very much for being here. And you do it at the risk of your job security and everything else.

And I thank each and every one of you because I really do think you are making a very important contribution to the American public in trying to let us know what is happening.

I know one witness talked about random looking at files. I bet you, if we found out that they were looking at the files of the members of the Finance Committee, we would probably pass a new law this afternoon.

But we ought to take it as seriously as if we are personally affected because in a sense we are.

And I commend the Chairman, the ranking member for conducting this hearing in the manner in which I think it has been conducted.

We have a real challenge here. And, you know, you've heard the statements. And now, it's kind of upon us to try and find out a way to help solve the problem. And I appreciate your contribution.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman. Let me say to each of the witnesses and those who have appeared before us over the last couple of days that this has been very, very helpful.

I think in hearing firsthand from you what you experience day-to-day and the years of experience collectively that you bring to bear places each of us on notice that we have an obligation not only in terms of our oversight responsibilities, but we really have an obligation to the American public who we all represent to do whatever we possibly can to take corrective action.

And so the focus of my questions are, first, and taking each of the witnesses in order, what specific things can we do?

And I say that in the context that a lot of these problems that you've encountered on a day-to-day basis, as members of Congress, we're not able to address the day-to-day kinds of problems that you're talking about to the extent that the problems are structural.

And I know Witness No. 1 has specific reference of a structural. And I want to give him a chance to comment on that.

But what specifically can we do?

And as you are frustrated and as the American people are frustrated, I think we are frustrated as well.

Most of us are strong advocates and supporter of the Taxpayer Bill of Rights. We thought we were doing the right thing.

It was passed in a bipartisan spirit with the expectation that we had done something to protect the American public and to establish a more level playing field as the American citizen interfaces with his or her tax collector.

Your testimony is in essence that it really hasn't had much impact at all.

So with that frame of reference in the background, Witness No. 1, I appreciate specifically your recommendation and comment with respect to a separation of the problem resolution system.

That's a specific thing that we can do legislative. And I believe that is something that you would recommend that we do based upon your previous comment.

WITNESS NO. 1. That's correct. And, of course, as I said in my statement, no, Senator, you can't mandate that the IRS employees be polite, but the least they should do is follow their own procedures.

If they do it the right way, you are going to eliminate 80 percent of the abuse. You won't need problem resolution. You won't need the collection program.

Senator BRYAN. I don't mean to be argumentative there. They should do it the right way. And we can say give a sense to the Congress and direction everybody act responsibility, act ethically, follow the rules and procedures.

I think all of you know that those pronouncements, if the Taxpayer Bill of Rights did not improve the culture or climate, that kind of statement is going to be in the wind.

So I'm interested because you all have had a great deal of experience, specifically what can we do structurally?

And the problem resolution thing, that is something specific. You're talking about separate. Give that a level of independence and adequacy of funding so it can't be subject to the whim and facisitude of the supervisor who in effect wants to reduce the effectiveness of that office.

WITNESS NO. 1. Some states have a system where they have an administrative law judge making decisions.

The state has to put forth their position. The taxpayer puts forth their position. And an administrative law judge makes the decision, basically interpreting any violations of the code, the Bills of Right, and the Internal Revenue manual.

And then, you require the IRS to pay penalties when they violate their procedures or the code.

Senator BRYAN. Okay. Witness No. 2, anything specifically from a structural point of view, something that we can enact in law, other than these feel good pronouncements which I don't think is going to solve the problem that you called to our attention or frankly improve the relationship?

WITNESS NO. 2. When the law is as complex as it is, the procedures are going to be complex. To get employees trying as best they can, being as knowledgeable as they can.

Just like you can't know or anyone can know the whole tax code, you're not going to have an employee knowing all the procedures. It's just too complicated of the system.

When a family of three or four making $30,000 or $40,000 a year gets a letter from the IRS and they are a wage earner, they can't come out, quit work, take off without pay, come down, and deal with us.

Maybe, if you mandated that problems could be held—most of us like working days I guess, but if problems could be handled during the evening when taxpayers are home.

Senator BRYAN. Okay.

WITNESS NO. 2. At least the wage earner so they are not going to have a financial wage loss in dealing with us.

Senator BRYAN. You know, parenthetically, we do that at the municipal court in dealing with traffic citations and violations.

I mean, that's a very helpful—again, it's not going to revolutionize the system, but it will make it more friendly to the taxpayer.

Witness No. 3, specifically anything that you would call to our attention that we can do structurally by way of enactment or by the appropriation process?

WITNESS NO. 3. I agree with No. 2 in that you need an independent advocate, somebody outside the Service so someone who is not beholding to people within the Internal Revenue Service for his job, for his evaluation, for his budget.

And I also agree that it's going to have to be something that is accessible to low and middle-income people who cannot afford representation. Even $500 or $1,000 is a lot of money.

Senator BRYAN. Sure it is.

WITNESS NO. 3. To people who have a middle income and a family to support. And these people have no idea really how to do it themselves.

So this advocate is really going to have to be acting on behalf of these taxpayers.

Senator BRYAN. Does the concept that Senator Breaux just talked about, the ombudsman, is that what essentially you have in mind?

WITNESS NO. 3. That, yes.

Senator BRYAN. I appreciate that. Thank you very much.

Witness No. 4.

WITNESS NO. 4. Initiatives change on a regular basis.

Senator BRYAN. Yes.

WITNESS NO. 4. And this makes it extremely difficult for agents to perform their duties and do a good job.

So I think things need to be simplified. I think that would help a lot.

Senator BRYAN. Can you be a little bit more specific?

I don't think there is a single member on this committee who would not agree with that proposition or a single American citizen.

But simplification like beauty tends to be in the eye of the beholder. And although I am a strong supporter of the provisions that we enacted earlier this year, no one could contend that our actions earlier this year, bipartisan though they were in this committee under the capable leadership of the chairman of the ranking member, they have certainly not been simplifying the tax code.

They have frankly made your job more difficult. If you got 110 million calls last year, after what we did, I predict that you will have 150 million calls this year.

So can you be more specific than just simplifying? I don't disagree with you.

WITNESS NO. 4. The way that we do business, I think we have so many different ways of getting the information out to the field.

We have E-mail. We have memorandums. We have the manual. It's just it is no way you keep up with things.

And I think you could ask six employees within the same office how to do something, and you would get a different answer from all of them. That's how rapidly the procedures change.

Senator BRYAN. I thank you.

Witness No. 5.

WITNESS NO. 5. Most of the abuse that occurs against taxpayers occurs because of the initiative that upper management has taken to enforce their particular position or views as to how the tax laws are to be carried.

If you were to establish a separate entity by which misconduct or ethics violations within management or at the employee level could be reported and then investigated without the influence of upper management, then I think that we would see a tremendous improvement toward the treatment of taxpayers.

Senator BRYAN. Now, I take it this is your Internal Security position. Is that currently the function that ostensibly performs that review?

WITNESS NO. 5. Yes.

Senator BRYAN. And that, as some of you have testified, is fatally flawed in your judgment because it's not truly independent. It's subject to the pressures of management, the same people.

WITNESS NO. 5. Correct.

Senator BRYAN. So in other words, if we could build in some kind of structure to provide a greater measure of independence and separation, and you believe that would be helpful.

WITNESS NO. 5. Yes, I do.

Senator BRYAN. That's a very helpful comment. Thank you very much.

Witness No. 6.

WITNESS NO. 6. Senator Bryan, I would agree that separating and making the Inspection Division more independent would be very important.

Separating the criminal and the civil tax divisions would also help public perception of the service. And——

Senator BRYAN. Could I get you to amplify on that, Witness No. 6?

I am familiar as one-time lawyer, but—that there is a difference between the two divisions.

But when you are talking about separating the divisions, can you be a little bit more specific as to what you would propose?

WITNESS NO. 6. What I would suggest is having—this country has to have a tax collection agency, no matter what you call it, whether you call it the IRS or the bureau of revenue.

Senator BRYAN. Correct.

WITNESS NO. 6. You have to have to have a tax collection agency, but make it a civil agency not a criminal agency.

Canada is a civil agency. It is not a criminal agency. And then, have a division within the Treasury where criminal tax violations, gross criminal tax violations are then investigated and pursued, not wearing that same hat as an IRS agent.

That is what intimidates the hell out of people.

Senator BRYAN. It scares the hell out of me. [Laughter.]

WITNESS NO. 6. I would also commend this committee for the initiative its taken in its oversight efforts.

Senator Moynihan said that it hadn't been done in 20 years. I think it needs to be done much more often.

Senator BRYAN. Did I interrupt you when I asked you to further explain the separation concept that you were advocating between civil and criminal?

You were about ready to say something else. And rudely I interrupted you, but I didn't want to miss the point.

WITNESS NO. 6. The only thing I was going to suggest was again the Inspection Division be moved and separated from that inbreeding and cozy relationship that it shares with IRS management.

Senator BRYAN. No. We are talking about the Inspection Division and the Internal Security. Is that one and the same? Or are those two different functions?

WITNESS NO. 6. Okay. The Inspection Division is the parent organization which is made up of Internal Audit and Internal Security.

Internal Security is the criminal investigative arm. Internal Audit does the management control reviews.

Senator BRYAN. Thank you very much.

Thank you, Mr. Chairman. I think our witnesses have been very helpful. And I thank them.

The CHAIRMAN. Thank you, Senator Bryan.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. I would very much agree with something that Senator Murkowski said when he was here.

And that is that part of the ways I think we can be helpful is to simplify the tax code. I mean, I think that the piles and piles of paper.

The budget bill we passed last year, I think we've added 800 new pages. In other words, Congress itself makes your job more difficult.

I am also very aware of the fat that we are all Federal employees. We are called Senators. You are called IRS employees, but we are all public employees.

And therefore, we all have a responsibility to do everything that we can to protect the rights of the taxpayers and to make the job of government working better—work better. And that's more easily said than done.

I've been through this recently in an unrelated, but in some ways related manner with the Department of Defense on the Persian Gulf War veterans and their so-called mystery illness syndrome which I think is certainly an illness, but certainly no mystery, but it's still referred to as that.

And trying to get the Department of Defense to admit what they clearly had done wrong and withheld from the public was an extraordinary process.

The culture of bureaucracy, it's just stunning. It's terrifying.

And frankly, if we hadn't had in the veterans committees hearings, such as Chairman Roth and ranking member, Senator Moynihan, are having, I don't think we would be any farther along in helping the 100,000 or so sick Persian Gulf veterans who got sick through no fault of their own, but through frankly actions, unwise actions on the part of the government.

If we hadn't had those hearings, nobody would be any better off.

So I think these hearings are very, very important and what you're saying, just the act of what you're saying which I take—which I believe is important.

Now, but the other side of the coin is that as public servants, we all are responsible. I mean, I'm accountable to the people I represent which are particularly the people in West Virginia, but in the larger sense the people in the country. And so are you.

And we all have certain procedures to follow, you know, ways in which we are meant to try to bring things forward into the public light, such as the abuses.

And I'm struck because some of you have been with the IRS a long time. Others have been employed more recently.

But I'm struck that you have not talked, I don't think, about having made these complaints yourself to your supervisors.

And let me explain just a bit. There's a hotline, for example, that is anonymous that could be used. Now, it might end up in nothing.

But have any of you ever used the hotline at the IRS?

Witness No. 4, well, you said it. You said, yes. Was there any response to that?

WITNESS NO. 4. Absolutely not. I've reported things on several occasions. And it was just swept under the rug. So I don't think it's working.

Senator ROCKEFELLER. All right. Have you—have—all of you I assume then have made complaints directly to your supervisors or to senior management about abuses that you saw taking place towards the taxpayer?

WITNESS NO. 3. Everything I've said before you, I have said to my superiors.

Senator ROCKEFELLER. All right. And from that, let me draw this conclusion, too. It will appear to the public as though you are in a sense about to sacrifice your jobs or have your heads cut off because you are surrounded by screens and, you know, you're not known.

I would argue you're probably the safest people at the IRS, the safest six people that exist because if we don't now, we will all know who you are.

And I just wonder about all the IRS employees who are off sick today and if there are people who are worried about whether they are up here testifying.

I think you're very safe, you see. In other words, I don't consider you're taking a risk. I consider you're doing something which is patriotic. You want to do something for the IRS.

But I don't consider you're putting yourself at risk. You may. I don't.

There is something called the Whistleblower's Act. And the Whistleblower's Act, well, even within the IRS itself, it says there is a requirement that all IRS employees are to report promptly and directly to the Inspection Service or the Treasury Inspector General.

Have any of you reported to the Treasury Inspector General?

WITNESS NO. 3. Yes. And I could tell you what it was. It was our director, when they merged the three districts, was going to lose his job.

This was common knowledge that they had on the books a new district office for him with a nice suite of executive offices for his staff.

When they announced that there was not going to be a district there, he went right ahead and built or had GSA build that district office which is now having to be—they've vacated part of it.

GSA is still paying rent on the whole building. And they're going to have to renovate it in order to rent it to other tenants. And I don't think GSA has any other tenants.

Senator ROCKEFELLER. Okay. I understand what you're saying. The National Commission which we've been discussing here conducted over 300 field interviews with IRS employees.

And they evidently came away with the impression, the overall impression of competent, hard-working people who wanted to deliver a high-quality product to the American taxpayer, page 11.

They also concluded the agency has spent significant resources educating personnel to treat taxpayers fairly.

And, as I understand it, the commission found very few examples of IRS personnel abusing power. Now, this is Senator Kerrey's Commission.

I'm trying to get a sense here of what our mutual obligations are. I think we have to help you do your jobs better.

I think, you know, the Whistleblower Protection Act of 1989 came out of precisely situations like this that if people came forward and stated your complaints because you've been rebuffed by your supervisor or you've been, you know—which all of us have.

I worked for the executive branch of government for 4 years. And I was rebuffed by my supervisor, but I wasn't dealing with taxpayers like you are in the same manner.

Have any of you considered using the Whistleblower Act which provides specific protections for whistleblowers?

Witness No. 2.

WITNESS NO. 2. I would just like to advise you that the Office of Special Counsel has about a year backlog in looking at those complaints when somebody makes one.

And I have known other people who have called the IG hotline numbers where they have caller ID and were able to call the person back at his number for additional information.

So there is some weaknesses and loopholes in this umbrella that people report things to.

Senator ROCKEFELLER. I understand what you're saying. In other words, if you use the hotline there may not be a change.

What I was referring to was the whistleblower procedure.

WITNESS NO. 2. I said that has about a years backlog when a person makes a complaint.

Senator ROCKEFELLER. All right. But does that make it——

WITNESS NO. 2. The office is either under staffed or——

Senator ROCKEFELLER. But I think Witness No. 1 said that this process of abuse of taxpayers has been going on for 25 or 35 years.

So in other words, a year is a long time. But 25 or 35 years is a lot longer. I would like to have seen some of these reports of abuse come to light sooner through procedures like internal IRS reporting or whistleblower protection.

I'm just trying frankly and honestly to search out how can I as a Senator, how can IRS employees as employees, but Federal public servants pay their salaries, paid by the taxpayers, how is that we can bring forward these matters without having to have, you know, something of this sort.

If it's not possible, then something of this sort we must have.

But it seems to me that you all have an obligation to press.

If you're angry enough to come here, you must have been just as angry 55 other times or more over the last 5, 10, 25, 35 years.

How do you see your responsibility in terms of protecting the taxpayer from abuse by the IRS?

Maybe, I will just ask Witness No. 3.

WITNESS NO. 3. What was the question again?

Senator ROCKEFELLER. The question was, how do you see your responsibility in terms of protecting the taxpayer?

I mean, is it required that you have to wait for a hearing like this with lots and lots or camera that are just photographing the back of the empty——

WITNESS NO. 3. Well——

Senator ROCKEFELLER. How do you this?

WITNESS NO. 3. Lots of times, you can just do it. I've intervened with other collection officers when I thought that they were mishandling a case or treating the taxpayer badly.

And then, lots of times, they will listen. And they'll straighten it out.

Senator ROCKEFELLER. And they——

WITNESS NO. 3. Most of the people I work with are the finest folks in the world. We have some SOBs, but most of the folks are—would make friends, neighbors.

Senator ROCKEFELLER. No. I understand. I understand.

Mr. Chairman, I would end simply by two things which I would like to put into the record. One is the Internal Revenue Service employees disciplinary action.

In other words, it just says how much disciplinary action has been applied towards IRS employees as a whole.

And it lists eight different categories of punishment. And in 1997, there were 172 out of 102,000 employees.

That's one thing I would like to answer—put into the record. In other words, my point there, is the panel the, you know—because there are other forms of penalty than punishment.

And I understand that. There is a sort of bureaucratic psychology punishment. And I understand that.

But the other thing I would like to put in the record is a letter from the Deputy Secretary of Treasury, Lawrence Summers, in which he describes a variety of things that they are doing.

And it makes an interesting point. It says, "Not a single staff member or member of Congress expressed any concern about the IRS' use of revenue measurement." That is the so-called enforcement matters we are talking about here, "or suggested there should be less emphasis on revenue-related goals."

That is a way I think of my saying that I bear responsibility. We all bear responsibility for what's happening.

And that I think in a mature and methodical way, we have to get the management to understand we have to get somebody to run the agency, get that person appointed, and—because we don't want to see the Persian Gulf experience repeated.

And I don't think you do. I know I don't. And I think working together intelligently, we can make a lot of improvement.

And so I submit these two for the record.

The CHAIRMAN. Without objection.

[The information submitted by Senator Rockefeller appears in the appendix.]

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. In going through all this, my question—I have several questions. The first is other than retribution or reigning by the numbers, what other actions has management taken to try to motivate personnel?

I'm talking about on a positive basis. That is praising people who do a good job.

I mean, is there some way to motivate people other than by the numbers or through a peer factor?

I am just curious the degree to which the agency has spent a considerable amount of time in trying to figure out a positive way to motivate people into better performance.

WITNESS NO. 6. Senator, I wish I could say that there was positive motivation. But the only factor that is used is fear.

Senator BAUCUS. Would most of you agree with that? Is there anybody who disagrees with that?

Okay. There's—yes, No. 5.

WITNESS NO. 5. Although fear has been used to motivate, the fear is coming from upper management.

Our first-line managers in the district in which I work, there are a couple of excellent managers who have a method of dealing with employees fairly.

They look at their cases. They praise them when praise them when praise is due. They criticize them when criticism is due.

These managers, however, are very outspoken when they see taxpayer abuse. They have been very vocal to upper management.

Upper management has now targeted them and has made it clear that because of their lack of support of upper management's position in dealing with issues like this, they will not be tolerated for future employment.

Senator BAUCUS. Is there general agreement that more of the problem is so-called upper management than lower management?

WITNESS NO. 5. Yes.

Senator BAUCUS. You all in general agreement.

Now, what do you mean? Could you describe for us, define upper management? Who is upper management? What are we talking about here?

WITNESS NO. 5. Within my district, we would define the upper management as anybody above the first-line manager.

Senator BAUCUS. Anybody above the first-line manager.

Could anybody else add a little more flesh and blood to that?

WITNESS NO. 2. Grade 15.

Senator BAUCUS. Grade 15.

WITNESS NO. 6. And above.

Senator BAUCUS. And above.

And how many upper managers are we talking about? Roughly, how many are there?

WITNESS NO. 2. Half a dozen or so just within the region.

Senator BAUCUS. In the country, how many? You know, somebody? You must have some idea, a rough guess, just rough?

[No response.]

Senator BAUCUS. You don't know.

WITNESS NO. 6. Fifteen's and above, I'd say 50 to 100.

Senator BAUCUS. Roughly, 50 to 100 upper management. Okay.

Now, another point strikes me, very often when there is a problem, Congress holds a hearing maybe like this.

We pass a law hopefully to correct the problems. And often, not much happens for lots of reasons, primarily culture inertia. That is that the bureaucracy is just too big and large that not a lot happens.

I'm concerned, although these hearings are very good and although we ought to pass some legislation that's going to help, potentially correct some of this, and although I suppose some senior

management listening on this are going to try to perform a little bit and issue some directives and so and so forth, but maybe not a lot is going to happen that's positive as a consequence of all this.

And after, you know—and that is after about two or 3 months, five to 6 months, it will be business as usual.

And it seems to me that in order to prevent business as usual, one way is to have a very strong independent, very independent sort of inspector general who lots of powers, who can go in and get the information he or she needs, and who is truly independent of the Service and similar to some of the IGs and perhaps some of the departments.

I'd like maybe No. 6 to comment on the degree to which we need a stronger, more powerful, more independent inspector general.

WITNESS NO. 6. You are preaching to the choir when it comes to that suggestion. I think that a strong, fully funded, independent inspector general could only help.

Senator BAUCUS. And how much would that help?

Say we've got—say we have just what you want, how much would that help?

WITNESS NO. 6. As long as it's not the same inbreeding that we have now, as long as it's a different independent organization.

Senator BAUCUS. Yes. Independent, you know, lots of powers, you know, basically what you would like to set up yourself, how well would that work?

How much of that would solve the problems we're now talking about?

WITNESS NO. 6. I can't say it's going to be a panacea and solve all our problems, but it's better than the current situation.

Senator BAUCUS. But you do think that's probably the essential condition. That is we need to do something like that so we're not always back here.

WITNESS NO. 6. Yes, sir, I do. But I also think that as long as the IRS knows that they're accountable and that other people are watching and that there is strong oversight, many of these abuses and lapses of ethics won't take place.

Senator BAUCUS. Does anybody have any other comment on that subject?

[No response.]

Senator BAUCUS. You generally agree with No. 6?

WITNESS NO. 5. I believe that if upper management knows that they will be held accountable, that there will be penalties to pay for their infractions, then things will change.

As it stands right now, upper management knows that if there is an inspection issue that comes up in which they've been reported for wrongdoing that their manager will support them and ask that inspection disregard the issue and overlook it.

If you have an independent agency, then they are not going to disregard the issue.

Senator BAUCUS. You, No. 6, used the word that I think is also important here. And that is "oversight."

I believe that Congress generally fails at one of its responsibilities. And that is oversight.

That we have lots of hearings, lots of new legislation, passed lots of legislation out of committees and so forth, but we do not do enough oversight.

And by oversight, I mean, calling up some of these Grade-15 folks and asking them about this and that, so on and so forth with significant frequency.

Again, I would like your comment on the degree to which that might help us prevent from us buying ourselves 6 months from now from doing business as usual.

WITNESS NO. 6. If upper management knew that they could not hide behind the shield of taxpayer secrecy every time a member of this body called them and that they would be personally held accountable, I think that would go a long way to moving this issue along.

Senator BAUCUS. No. 2.

WITNESS NO. 2. No. 6 stole my words. Disclosure is a big problem. You have to have access to the information to be able to delve into complaints, number one.

And then, the people responsible for the abuse have to be held accountable. They need to pay for their own attorney.

The government affords managers an attorney because the agency has something to protect. And maybe, managers would think twice about following the regulations.

Senator BAUCUS. Mr. Chairman, I don't have anymore questions.

I want to thank all of you very much for the service you're performing here. It's you're true Americans.

We live in a democracy. You're doing what people in a democracy should do. And I very much—and I think I can speak for the entire committee and say how much we thank you for all of your efforts.

And it's my hope, Mr. Chairman, too, that we can in legislation that we hopefully will pass provide for a very strong, independent IG or something similar because that will help.

And it's also my hope that we can have some much more frequent oversight hearings because I do believe oversight is a good part of the solution here. Thank you.

The CHAIRMAN. Well, I would say to my distinguished friend and colleague, of course, that's the reason I began these oversight hearings now.

Senator BAUCUS. Right. And I compliment you for that.

The CHAIRMAN. I agree very strongly that there should be continued monitoring of the organization to ensure that it is operating as intended by the Congress and by the President.

Senator BAUCUS. Thank you.

The CHAIRMAN. I would also say that as one who is very much involved creating the inspector generals, I think that is also something that needs to be looked upon because there has to be some independent check to ensure that the agency is functioning as intended.

Senator BAUCUS. Mr. Chairman, if I might ask one more question if possible very briefly?

The CHAIRMAN. Sure.

Senator BAUCUS. And this might not be appropriate because the sponsor is not here. And that is your judgment of the degree to which the proposed commission to oversee——

Senator KERREY. Yes.

Senator BAUCUS. Is a solution to this problem.

WITNESS NO. 1. This is Witness 1. I am from the outside. I represent taxpayers before the IRS. And I don't see how the restructuring is going to protect taxpayers from abuse.

As another has said, there is always going to be IRS collections. And as long as you've got people out there enforcing collections, you're going to have abuse.

The restructuring I don't believe is going to help protect taxpayers from abuse.

Senator KERREY. Mr. Chairman, just in the interest of wanting to respond, first of all, the bill that we've introduced has governance and management as the first section. The third section is protection and rights.

There is much more in the bill than just the restructuring.

And I have here a letter that the Deputy Treasury Secretary Summers has written to Senator Rockefeller, saying that not a single staff member has asked about use of revenue measurements as goals, as has been mentioned by a number of these employees.

The letter says, "Not a single staff member or member of Congress expressed any concerns about the IRS' use of revenue measurements or suggested there be less emphasis on the revenue measurement goals."

That simply isn't true. Our commission both staff and members and in our final report called for a complete redesign of this system.

He is saying essentially, we sent a report to Congress and Congress didn't express any concern about the use of measurement.

And I would just—I would say that that makes the case that there is a bunker mentality over there trying to protect the status quo rather than trying to engage in a useful debate about how to improve the system.

The CHAIRMAN. Let me just intercede once again because time is moving on. As I started to say, I think an independent inspector general is one approach to the problem.

There is no question that there have to be some checks and balances built into the system that do not exist currently.

I would say to my distinguished colleagues that I think it is a mistake to think that any one or two changes are going to make the kind of cultural change that I think is necessary.

It's going to be important to look at the organization.

I commend the Commission for what it did. And I think that's something that we are going to have to wrestle with in the very near future.

I think we have to do something about correcting the computer problem.

The availability of information and data to this committee is an important part of opening up the system.

But I have to say that by coming here today, I think what you people have demonstrated beyond question that much of the problem is management, that there has to be a change in the outlook of the organization. It is not right for this agency to look upon itself as a law enforcement agency—as too many people currently do.

Yes, there are some areas in which that is the agency's responsibility, and its duty. But its primary responsibility is to serve the American people, the taxpayer, and I believe this is something of which we must never lose sight.

I want to——

Senator MOYNIHAN. Mr. Chairman, can I make just one comment?

The CHAIRMAN. Oh, yes, of course.

Senator MOYNIHAN. Just that it is my experience, it's curious that you always learn something if you ask how they do it in Canada?

And sometimes, you know, it's better and sometimes not, but you learn something.

Revenue Canada is not a law enforcement agency at all. Law enforcement is done by their equivalent department of justice if they decide that there is some legal action needs to be taken.

The CHAIRMAN. Perhaps, you and I should go to Canada and look at the system.

Senator MOYNIHAN. It would be called—as long as the weather is bad, we can get away with it. [Laughter.]

The CHAIRMAN. But I want to thank each one of you for being here today. I think you can see the interest, the questions that you have made a very, very real contribution to good government and that you have demonstrated that this is an agency that needs change.

We all seek the same thing. And that is constructive reform. I want to commend you.

I have to say I disagree with those who say that you have no reason to fear. I will assure you——

Senator MOYNIHAN. Well, if they do, they can always call you, can't they?

The CHAIRMAN. They can always call you and the distinguished ranking member, as well as members of the committee because you have done two things.

You've made, as I said, a major contribution to good government. And you also have demonstrated that by your presence and by your testimony that the vast majority of Federal employees are good, hard-working American citizens.

And I just want to thank you for your contribution.

We now have to clear the hearing room to allow the witnesses to exist. I ask the witnesses to remain seated until directed to exit by the Capitol police.

I would ask that the Capitol police clear the room at this time.

I would ask that the cameras be turned away from the dias. There would be no photographs or video recording of the witnesses leaving the room or building.

And it's my intent to reconvene the committee at 1:00 o'clock.

[Pause.]

The CHAIRMAN. Again, I would ask that all the cameras be turned away from the dias.

[Whereupon, at 12:27 p.m., the hearing was recessed and reconvened at 1:15 p.m.]

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. Before I welcome our next witness, I want to take a moment to express our sincere appreciation for the witnesses who have testified thus far.

These hearings would have been impossible without the contributions of the men and women have come forward, particularly those who work on the front lines of the IRS itself.

These witnesses have painted a troubling picture of the one government agency that touches all our lives.

And their testimony has put a tremendous responsibility on the Senate Finance Committee, the committee responsible for the IRS.

And as these hearings have progressed, I have been overwhelmed by the number of calls, letters, and faxes we have received.

Americans are looking to us, to this committee to ensure that integrity and fairness are the foundation of the IRS.

We have identified many egregious problems these last 3 days, problems that have devastated the lives of honest taxpayers, problems that raise serious concerns among IRS employees themselves.

Now, this certainly is not the purpose of the Internal Revenue Service.

But as Deputy Treasury Secretary Lawrence Summers confirmed today, there is a problem within the culture of the IRS.

We must get the agency back to its mission statement to, and I quote, perform in a manner warranting the highest degree of public confidence in the IRS' integrity, efficiency, and fairness.

Targeting vulnerable taxpayers, treating with them with hostility and arrogance, using unethical and even illegal tactics to collect money that sometimes is not even owed, using quotas to evaluate employees, and retaliating against men and women who work within the IRS do not agree with this mission statement.

It is behavior that not only is unacceptable, but reprehensible. And the problems we've heard are multidimensional.

The solutions will require a careful study, continued oversight, and a combined bipartisan effort, an effort that must include the Senate, the House, the Secretary of the Treasury, the commissioner, taxpayers, and most importantly the employees of the IRS.

Together, we must work for a solution. We will work for a solution. And I won't be satisfied until Americans see a real difference.

As long as I am chairman of this committee, public confidence in our tax system and its administration will remain the highest priority.

Now, after 3 days of often emotional hearings, none can doubt that serious problems exist.

Those few who still may be in denial need only reread or review what has taken place in this committee room. We have listened to disturbing truth.

Now, let these hearings begin a process that leads to necessary and lasting change, change that will protect the taxpayer, change that will create a better environment for employees within the agency, and change that will emphasize service in the IRS.

I would now like to welcome the Acting Commissioner of the Internal Revenue Service, Mr. Michael P. Dolan.

Mr. Dolan, thank you for testifying today to provide agency insight into the troubling problems within the IRS.

Now, it is our practice in these oversight hearings to swear in all witnesses.

Will you please rise?

[Whereupon, the witness was duly sworn.]

The CHAIRMAN. Thank you. And please be seated. Mr. Dolan, please proceed.

STATEMENT OF HON. MICHAEL P. DOLAN, ACTING COMMISSIONER OF THE INTERNAL REVENUE SERVICE, WASHINGTON, DC

Mr. DOLAN. Good afternoon. Mr. Chairman and Senator Gramm, I appreciate the invitation to come on this the third day of hearings.

It is the first opportunity I have had to appear before the Senate Finance Committee in your oversight role.

And I think I would like to start out, if you will, where you left off, Mr. Chairman.

I don't come here in denial. And I come here having taken you seriously on the day that you announced these hearings and on the day that you opened this week, in the sense that I believe that the committee looks for an opportunity to help solve the problems that have been identified both this week and that collectively we know exist.

And so what I hope to do this afternoon is offer some perspective on how it is I think that certainly we in the service and maybe we collectively have the capability of getting at some of the issues that have been identified this week.

I also guess I have to tell you that as somebody who has spent his career in public service and specifically in the IRS, these have been a very painful 3 days, painful because it distresses me greatly to see the mistakes we've made, to see the impacts of those mistakes, and perhaps more distressed to sit and watch this morning's testimony where men and women, my colleagues, sat before the committee.

And even where I might not understand the facts as they do or where they might have a perspective different from mine, I couldn't help but be taken by the seriousness of their comments, the genuineness of their willingness to come forward.

And so my accounting of the facts almost becomes immaterial to the extent that they've got that concern.

And one of the things that concern me is in the questioning that the members did this morning.

There seemed to be a reluctance on whether or not there would be a process by which those people could come forward and perhaps share more insight into things that they thought needed addressing.

And, Mr. Chairman, with your permission, I would like to work with you and the staff to find some way either through the intervention of the Treasury Inspector General or some other means by which we can invite those employees and any other employees that have been in contact with the committee to come forward with the things that we should hear and we must hear.

What I would like to do at the beginning though is stipulate that in the course of the week, you heard from taxpayers whose cases we handled very badly.

And for that, as I have said earlier and I say today, I am extraordinarily sorry.

As I listened to the statements that both the members of this committee made and witnesses during the week, it struck me that there were three basic themes that were sounded in the course of the week's hearings.

The first one is clearly, as I said, individual cases were identified that were handled badly. It caused the affected taxpayers to suffer in ways they should not have.

We were a part of disrupting their lives. And this is wrong. There's no excuse for it. It's unacceptable.

The second theme that I think I heard this week has to do about the IRS culture. And I think the discussion that we——

The CHAIRMAN. I'm sorry. The what?

Mr. DOLAN. The IRS culture.

The CHAIRMAN. Oh, okay.

Mr. DOLAN. And as I at least listened to the week's witnesses and tried to glean from what you've heard, it strikes me that those who have asked you to concentrate on the culture prompted the question of whether something about the IRS culture indeed causes us to deal with taxpayers in a callous form, an overly aggressive form, or perhaps a form of even more seriousness.

The third issue that strikes me that came out in the course of the week was one where I would lump two kinds of concern I heard.

One was on basic fairness. And that was manifest in the form of several concerns about whether smaller taxpayers as contrasted with larger taxpayers were focused on disproportionately.

And the second part of that fairness issue I think had to do, Mr. Chairman, with something I think you mentioned in your opening, the business of quotas and goals.

And so you probably could stack the week's testimony differently, but those are three themes that I believe at least from my listening were ones that summarize some of the more crucial points and are the ones that I would like to address as directly as I can this afternoon.

Maybe, before I do that, I'll tell you something that I think you probably both know. In preparation for these hearings, it's been real clear to me that both Secretary Rubin and Deputy Secretary Summers are vitally interested, not only in the hearings, but the issues that underlie the committee's attention.

They have had some considerable interest in the last several years with improving our customer service capacity and treated it actually as one of their central priorities.

Upon the close of this hearing, I will clearly share with them both the assessments we've made of how cases got botched and in addition will talk to them on a forward-going basis about the things that need to be done.

With respect to the specific cases, you heard from four taxpayers that were legitimately frustrated about the way the IRS dealt with them.

These taxpayers didn't receive the treatment that they deserved.

And while each of the cases was different, the end result was indisputable. We were wrong in the way we handled many aspects of the cases.

And I appreciate that at this stage in their ordeal, an apology does little to correct the frustration they felt.

But I would hope that perhaps in apologizing for them, they may take some solace in the fact that we will deal with their cases and the outcome of their cases in a way that will hopefully result in others being kept from that same experience.

You said something though, Mr. Chairman, at the beginning. And I think others have repeated it.

I think in all fairness to the work force of the IRS who succeed in doing a very complex job well, these hearings have to be placed ultimately in a larger context, the context of the millions—the millions of successful taxpayer interactions that IRS has each year.

And many of you urged that in your statements. And I know appreciate it. And I know my colleagues appreciate it.

Notwithstanding that fact, I think there are a number of actions we've got to take immediately to try to preclude the kind of case incidents that you saw before this committee earlier this week.

And in preparing to come before you, a series of us have spent a lot of time with these cases, perhaps not as much time as some of your staff, but a lot of time.

And in so doing, I think we've gotten a very graphic sense for some of the frustration the taxpayers experienced in these instances.

And one of the things I think is incumbent on me is to demonstrate in some visible way what the impacts of this frustration have been to the rest of our organization so that the organization doesn't treat this as a set of 3 days of hearings and four taxpayers, but as a device by which we find out how to do things differently, find out how to not cause these problems to recur.

As a consequence, I'm in the process of doing several things related directly to what this hearing has brought to bear.

In the first instance, what I'm doing is asking each of the regional commissioners under whose jurisdiction those four cases reside to take the transcript of this hearing, to take the witness' testimony, to take the case file we assembled, and to take that back to the individual office in which the case originally arose.

And to the extent there was more than one office, as there was in several occasions, to take it, break the case down, understand from the first moment what happened in the case, understand where the errors were made, and perhaps more importantly identify the places at which somebody could have fixed it. Because as I looked at these cases, as objectionable in many instances as the original error was, perhaps more troubling was the opportunity that people had along the way to recognize something off the track or to recognize that there was a capability to fix it.

The second thing that we are going to do in connection with that is—and I make this kind of an invitation to you, Mr. Chairman.

I know you have said on several occasions when you made your announcement last year, you had a lot of people pick up the phone,

fax you, write you. Even in the course of these hearings you talked about other cases.

I would like to make to you the offer that for any one of those cases or any number of those cases that the committee staff feels they want to turn over to us, I will put together a special task force under one of the best project managers I can find. And we will work those cases to conclusion.

And while they are in our custody and while we are working to solve them, I will make a report back to the committee every 30 days on the status of them. And we won't quit until we're done.

The third issue is that I'm asking this afternoon our 33 district directors and our 10 service center directors to take the last several months of correspondence into their office, not necessarily the correspondence that found its way to the Problem Resolution Office or found its way to them, but take and look at the correspondence that has come in the last several months and look for the cases, look for evidence that things are off track, look for the indicia that something, some taxpayer, some practitioner, some Senator or Congressman for that matter has registered something that may well not be getting attention.

I think out of that, we will do two things. Hopefully, we will identify some cases that we can put under control and solve.

And secondly, I think it will create an even higher energy level at the most senior levels of the organization to be attentive day in and day out for the cases that in some early stage are ones that we can take and do something about.

By these actions, I think we will not only take the lessons such as they are from the four cases that you all examined earlier in the week, but I also think that it will give us an opportunity to dramatize back to the organization that we are serious, not about getting four cases behind us, but serious about doing some things that will help us prevent these kind of cases from recurring and hopefully avoid some of the frustration and stress that was evident in each of the taxpayers that you brought before your committee.

The second area is this area of culture. And to me, that's a far more complex issue. And you as well as I know some of the issues.

The CHAIRMAN. I'm sorry. I couldn't hear you.

Mr. DOLAN. The second issue was culture. I'm sorry.

The CHAIRMAN. Okay.

Mr. DOLAN. I think that when you look at a culture, I think again it's a matter of putting, as you said your first day, things into perspective.

If you think of our system as a whole, the vast majority of Americans meet their tax obligations.

In most cases—and there was some discussion I heard this morning—and Senator Moynihan was positing the difference in compliance rates.

But roughly speaking, we think there is an 83–85 percent level of compliance which means an awful lot of people are meeting regularly their tax obligation.

For those millions of people, their normal interaction with the Internal Revenue Service is the act of filing, paying, getting a refund millions of times a year.

And for those people, what the Internal Revenue Service has been trying to do, particularly in the last several years, is make it easier.

Those are folks for whom the burden of staying compliant, for whom the burden of operating effectively within the tax system, ought to be a priority.

And we have tried increasingly to make it a priority at the Internal Revenue Service to make it easier to file.

And you see such instances as the kinds of progress we've been able to make. And one of the Senators mentioned the other day, in our electronic filing, the capability of allowing next year up to 26 million Americans to satisfy their tax filing obligation with a 10-minute, push button telephone interaction.

We've looked for ways to put the forms, the publications, the information that you used to have to go to a bank or a post office or one of our offices to get, available on the net now; 117 million times during the filing season last year, people came there and got what they needed.

We've looked to beef up our ability to handle things over the telephone. Last year, we got in excess of 100 million live assistor and automated telephone calls.

I believe we will get many more this year with the introduction of a major piece of tax legislation.

That's going to create a tremendous interest in how those benefits extend to me, how those obligations extend to me.

My point is not necessarily to over dramatize that, but to suggest that in terms of this culture that people have commented upon, I believe if you look at it in the context of the last couple of years, there is evidence that the IRS has tried very hard to make a priority of serving the taxpayer that is compliant, of serving the taxpayer that is wrestling day in and day out to meet their obligations.

Now, on the other side of that are taxpayers who do not file. I've heard again, from almost every one of the members of this body—Senator Gramm, the other day, you said quite eloquently that you don't stand for the proposition of people who ought to pay and do not pay.

And I don't think anybody on this committee does or in the Congress does.

In those cases, I think we clearly are compelled to use the enforcement tools that you have given us almost out of fairness to the people who do comply.

Now, the question that has been before this committee is, are those tools used as you want them to be used?

Are they used with the sensitivity and with the care and with the precision the Congress authorizes to use them?

I think there have been some very valid questions raised in the course of the many people you've heard from about whether in each and every case they are.

I think that's a very serious issue. And it's an issue that either in the context of this oversight, certainly in the context of the IRS' overall responsibility, we need to pay absolute care that those kinds of tools are used with, not only the utmost of precision, but with respect for the individual taxpayers.

One of the things that may have bothered me the most, both in this morning's discussion and some others, has been the notion that wrongdoing exists and the wrongdoing doesn't get surfaced, doesn't get dealt with or some climate exists where it's not desired to be dealt with.

That's not my experience. And I don't think it's the culture of the Internal Revenue Service.

Our rules of conduct are fairly explicit, are very explicit. And the rule of conduct, and I quote, says, "Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the Rules of the Standards of Conduct shall properly convey such information to the Inspector General or to the IRS Inspection Service."

One of the things I heard this morning were some questions about did those values work as they should? Were people as comfortable as they should be?

And I think that's a fair question and one that I certainly will walk away from this morning's discussion wanting to know more about, wanting to look more about.

But I say to you also, it does work to some extent. In the last 3 years, 475 employees have been disciplined as a result principally of the kind of referrals that come through those devices, the 475 employees in the area of some form of taxpayer mistreatment.

Now, I can't tell you that that's the universe. I can't tell you that every one of those was handled exactly like I might handle it in retrospect.

But I think the culture in place suggests it's an obligation to make those violations known. And the culture suggests that once known, the Inspection Service does take them and investigate them.

And the culture is that once those investigations come back to management, action is taken when those kinds of transgressions occur.

I don't put this before you as a perfect chapter in a perfect book, but I put it before you as evidence of a part of the culture that I do believe leads us in the direction that both you and we would have us go.

Beyond the code of conduct, I think there are a variety of other things, some of which this body has actually caused to be which helps with this culture.

I heard some conversation this morning that frankly doesn't square with the way I have seen the taxpayer advocate in the organization.

I think there were some fair questions this morning, for example, about how collection personnel are used on detail or used as adjuncts to the advocate's office.

We've looked at that almost every year since I can remember to make sure that we do have the right kind of balance there.

But I think if you would do a poll and I suspect many of you have this information from your home staffs, I believe the advocate's office in the eyes of many frustrated taxpayers and in the eyes of many practitioners has been the kind of window of access, the kind of window of problem resolution that I believe stands for the kinds of things that this committee wants more of.

And I believe it is not evidence of a culture that's callous, but evidence of a culture that recognizes that's an obligation we have.

Again, I don't put before you a perfect picture of something without need for improvement, but I think it's an element that suggests that we invite those kinds of instances for resolution.

Beyond that, there are a variety of things that again this committee helped put into place. Last year's TBOR 2 brought with it a complete process.

That complete process for the first time has us categorizing the various and sorted complaints that we receive along lines that, not only will help us deal with perhaps somebody who misbehaved or conducted themselves inappropriately, but more importantly will allow us to group the reasons and will allow us to identify over periods of time, over quarters, over months that this kind of thing has happened too often.

This part of the process, this officer perhaps, this transaction, this use of one of these enforcement tools is showing up far more frequently than it should.

And so again, I make the point that I believe there are a number of processes that either have been put in place with the help of the Congress or that have gone in place as part of dealing with the culture issue in a way that I believe is positive.

Now, despite the existence of these systems, I've heard many concerns during the 3 days that, as I said at the outset, disturb me.

The outcomes that are demonstrated in some cases don't represent the kind of professional standard or performance that I'm telling you our culture is all about.

So clearly, there are problems. Clearly, there is evidence that this is not a chapter that needs to be read through quickly.

It's a chapter that needs to be kept open. It needs to be improved.

And regardless of how small that minority of employees might be that are associated with some of those cases, it's no less offensive, the misuse of judgment, the poor handling of a case. Whether it's in a few cases or several cases it's objectionable. And it's not right.

These kinds of instances I think, as again, Mr. Chairman, you said pretty eloquently, erode the confidence of the whole system.

If IRS personnel are not viewed as doing their job as absolutely professionally as possible, this erodes the confidence in the entire system.

Again, I think we have to look for ways to engage the organization in the lessons learned out of this hearing, and there are two or three things that I'm doing in this arena again as a direct outgrowth of the kind of dialogue we've had both in preparation for this hearing and in the hearing.

In the first instance, what I'm doing is taking a page out of a couple of our district directors' books that seem to work pretty well.

And what I'm doing is asking every one of the 33 district directors to devote 1 day of the month exclusively to the business of that director being out with key staff in his or her district and advertise it as the day bring your problem cases to the district director.

And so you can be an individual taxpayer. You can be a practitioner. You can be anybody who believes you have one of these

cases that's been out there in your judgment flopping around too long.

This is something that we've seen work in a couple of districts. And I believe if we ask each of our district directors to do it, it will give one more point of access to people who have felt frustrated by their ability to get those cases solved.

Secondly, what we are going to do in the next month to 45 days is bring to town every one of our heads of office.

We're going to bring to town everybody who runs our collection, our examination, our customer service activities.

Again, we are going to put in their hands transcripts as well as videos from this hearing.

We're going to break down the cases that was examined in preparation for this hearing.

We're going to go over the testimony that was given by our employees, by our former employees, by practitioners.

And we are going to engage that group and their ideas, both about perception and about reality and again try to solve this, not as something that somebody comes to a hearing table and makes promises about, but as something that an organization gets engaged around.

Thirdly, what I want to do is reinforce with every employee in the organization. I will do that early next week. I will write to every employee in the organization, reminding them of their obligations regarding the Problem Resolution Program.

We have a very specific set of instructions that are out. Some of what I heard in the last couple of days suggests to me at a minimum that folks need to be reminded that when you're in an interaction with a taxpayer and see you it going off the track, the Problem Resolution Program is a place to get that case referred. So we will do that early next week.

And two last things, something we have done earlier this year in both our appeals activity and in our general audit program.

We have begun to send out customer satisfaction surveys essentially at the end of the transaction, at the point that somebody's appeal was complete or at the point that an examination was complete.

And the examination is a good example because typically what we have done in the past in the examination is pull a sample of audits.

And we would pull a sample for purposes of internal quality review. And we would examine the results of that case against the auditing standards. And we would essentially grade our effort.

Well, in the past, that exercise did not include any input from the taxpayer. This past year, we began to do that in the general examination program.

In the next 6 months, we will extend that same approach to the collection program. You heard an awful lot about collection cases in these 3 days.

It strikes me that that will be a very valuable device for us to ask at the end of my case being closed in collection, whether it's closed by full payment, whether it's closed by an installment agreement, whether it's closed by being written off.

I think we will get valuable feedback from people about their interaction with the Internal Revenue Service.

And the last thing I think we need to do, Mr. Chairman, in addition to getting the leadership on board and engaged, as is particularly evident after this morning's panel, we need to have a device that makes it easy for people to get the perspective from the front line into the equation.

And so I have asked the National Treasury Employees Union and their leader, Bob Tobias, to partner with us in putting together a nationwide assembly of front-line people where we will take the results of this hearing and many of the things you've heard in this hearing to that group.

And we will ask that group, what about the goal setting process? What about your interaction with management?

What about all these things that have come out in these 3 days? What about those things that are dysfunctional?

What about those things that you recommend should be changed? What about those things where you need help in doing a better job for the taxpayer you serve?

And so at the end of the day, I believe that we are able to piece both elements of that together, the folks with the responsibility to run large parts of the organization, as well as the people who day in and day out are on the front line encountering the difficulties of their job, encountering hopefully many instances of effective use of these tools that will get them in the business of helping deal with the problems that have been identified this week, as well.

I'm going into the third area, Mr. Chairman. And you could have called this probably different things.

I set it up as a kind of a fairness and measures issue because the two things I heard the loudest were in the first instance the issue on fairness.

And typically, although people used various kinds of colorful language, the way I heard that come back was that somehow or the other it is a strategy of the Internal Revenue Service to devote more of its enforcement resource on the lower-income taxpayer rather than the higher-income taxpayer.

My personal perspective on that is that the data just doesn't bear that out. And I guess what I would like to do over the interim is have some dialogue with the staff about particularly this usually comes back as a commentary on the audit process.

And I believe I could be—notwithstanding what I understood yesterday from Ms. Long to be different testimony.

And I have taken, by the way, what Ms. Long said to you yesterday and referred that to the Inspector General because I believe there are some elements in what she said that need to be run down.

But notwithstanding what she said yesterday, I think I could satisfy your concerns that that's not happening as some have suspicioned it might be.

The second part of this is the business of quotas and goals. It's a little more problematic to me because while I might sit here and want to tell you that we are clearly following the law as written, you heard from a lot of people in the course of the 3 days that even if that is the case, there is an extreme concern about the way goals

and measures and statistics have found their way into the lives of every front-line employee and presumably their managers.

And so without question, I think there's work that has to be done there. I think without question, there have been allegations made that the law has been violated.

As you've been having your hearings and had people come before you, I've had people call me up. I've had people fax me. I've had people tell me that they believe there are violations in that arena.

And so I don't sit before you to discount that at all. I think it has to be examined much more carefully than perhaps we've examined it in the past.

In this arena, I do think that again it's important to remember as I sit before you today that we want to be very careful about the way measures find their way into the organization.

But I will also sit before you some time in the future and you will want to hold me accountable under GPRA for the outcome measures that I submitted in my 1998 budget.

And those outcome measures in the 1998 budget will be very specific. You will have appropriated or helped to appropriate funds for very specific purposes, many of them with very specific revenue assumptions behind them.

And so I think the challenge for us as an organization is how to make that GPRA process work in the way that Congress intended it, how to set outcome measures, how to deploy those outcome measures in the organization, and yet at the same time not do it in a way that people will report the sense of artificial pressures, the sense of taking judgment, taking actions that their judgments would dictate otherwise.

In this particular arena, again it's important that we do some things after what we heard in the last couple of days.

And notwithstanding my obligation and our obligations as an organization to perform as we said we would perform in 1998 under GPRA, what we are going to do is take some actions that I think will insulate some of what people said they felt.

In the first instance, what we're going to do is we have a process in the Internal Revenue Service that people alluded to.

I'm not sure anybody ever came right out and talked about it in great detail in the hearing. But we have a field office performance index.

That performance index is the way that we have typically taken our performance measures. And at the end of a process of weighting and evaluating comparatively, we have ranked offices.

And if some office knew an index of all of the measures that we're accountable to Congress for, they might be one or they might be five or they might be 10 or they might be last.

And it's clear to me from both what you've heard and what I've heard that that's producing a dysfunctional outcome.

I have terminated that and will not use that relative ranking because it's producing the wrong outcome.

Secondly, we have had a practice of taking our GPRA goals and distributing them down into the organization, so that a district office or a center would get its piece of the GPRA goal.

Again, what I think I heard in the last couple of days is there is some parts of that deployment that are problematic.

And so what I have done is suspend the part of those goal deployments that have to do with allocating any specific dollar requirement.

So while I will be on the hook to the Congress to perform as I've said I would perform with respect to revenue, I will not deploy those revenue-specific goals down to the districts or centers again as a way of taking what is even the perception of the wrong kind of pressure on folks.

Lastly, maybe one other thing. And it came up by reference of one of your witnesses.

One of the things that has happened from time to time in our examination activities, people have thought that when we added penalty revenues to the tax assessment revenues, perhaps we were sending a wrong signal.

Perhaps, we were saying to people that penalties are designed to be revenue raisers.

And that's not why you wrote them. And that's not how we should implement them.

And so another one of the things that I will do immediately is stop including any penalty revenues in the ways that we report the assessment activity for examination.

We will be accountable to impose the penalties correctly. We will be accountable to collect them and pay them over.

But we are going to take them out of our measures because again, I think what we've heard is there is the potential that that sent the wrong message.

And lastly, you heard a number of times and even when you didn't hear it, I've heard it loud and clear that people question whether this prohibition on goals and quotas is really working as it's intended.

Now, again, one of the things that I can tell you is that quarterly, we do, as the Taxpayer Bill of Rights suggests we should do, ask every head of office to certify that it's working as it should.

We ask them to surface any examples of it not working as it should.

Up until the last 3 days I would have had confidence that that was producing the end result that I thought it was producing.

What I've heard in the last 3 days makes me question that. And so what I'm going to do is ask the GAO to come in and work to see whether this self-certification process that we've had in place since the inception of this provision in 1988 in the Bill of Rights, whether that certification process is working.

And if not, to propose an alternative way of ensuring that we enforce that provision in the way that the Congress intended and taxpayers deserve.

I've probably gone longer than you expected me to go. And I apologize for that.

But I think in accordance with 3 days, there have been a lot of things out there that warranted my providing you some response. I've not tried to be exhaustive by any means.

I look forward in the future to some further opportunity to work some of these deeper.

But before I close, I will tell you that again as a 26-year civil servant who sat through three days of this and, as I said at the

outset, it has been pretty painful, I'm disappointed that we handled the cases—many of the cases the way we did.

I think it's important to recognize collectively and individually that we've erred. And it's important to know where we need to improve.

I haven't spent much time, except for a couple of brief glimpses, talking about the millions of things that work right week in and week out.

Not unlike any other business or any other enterprise, the thing that gets the activity, that gets the attention is typically not the millions of transactions or the millions of interactions that are going right.

But I would certainly not represent well the 100,000 employees of the Internal Revenue Service or the tax administration process in general if I didn't again ask you to work with us in this larger context.

Clearly, there are problems. Clearly we are before you, not to be defensive, not to suggest they didn't occur, but to do it in a context that hopefully respects that many, many things about today's system work well and also particularly the many men and women who do such a complex job well.

I think we're an organization that without question is in the midst of a tremendous amount of change.

Much attention has been paid to modernizing our computer systems. We're in the business of modernizing the entire process.

Clearly, the computer systems are now at a point where with the architecture and the blueprint that have been released in the last 6 months, I think we're on the verge of bringing to bear some of the technology that will help in many of these areas.

Maybe as importantly, we are about 30 days away from what I think is a very exciting set of efforts where we have joined the Treasury Department and the Vice President and NPR to look at the entire customer service focus in the Internal Revenue Service.

In the middle of October, a group of about 50 or 60 front-line people will come back to us with what I think are some promise of even better ways of serving the American taxpayer.

I guess I close with saying we've not only heard you this week, we've heard the taxpayers, the employees, the many people who have come before you.

I would also like to tell you in hearing that that we understand our obligation to improve. We understand our obligation to act constructively on the information that you've helped bring before us.

And I would welcome the ongoing opportunity to work both with the members and the staff of this committee in an oversight role or in any other role you choose to see that we make the progress that the American taxpayer deserves.

Thank you. I have some colleagues with me.

To the extent that your questions go in areas that I get out of my depth, I would like to have the ability to bring them to the table. But I'm now prepared to respond to your interests as best I can.

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

The CHAIRMAN. Thank you very much, Mr. Dolan. Let me start out by saying that I think in order to remedy what I think is a

very, very troublesome situation it is critically important to recognize that the problem exists. I am pleased, in part, that you agree there is a problem. But I have to say, in all candor, I am concerned that you do not understand the depth of the problem.

You talk about culture. In the case of culture, you use the language "serving the public." I think it is important for you to understand that the perception on the part of the public that the numerous witnesses that appeared before our committee, whether they were the experts, the authors, the individuals who have been studying the IRS, the taxpayer cases we presented yesterday, or whether it is past or present employees, they all expressed a very deep-rooted concern that in the IRS the culture is not based on service, it is not even citizen friendly, but you—the IRS—are viewed as an enforcement agency.

I think in many ways that is the very root of the problem. Service has to be the basic characteristic of this organization. As you mentioned, most of the Federal employees are good employees, and with that I agree. I would also say that the majority of American citizens are law-abiding taxpayers.

But what we are so concerned about is that there are too many instances, far too many cases that demonstrate otherwise. I think we are going to have to look at your organization, and how it is structured.

I think we are going to have to look at the question of power, and whether all the power that has been delegated to you is necessary. But most importantly, I think, is this question that the organization has to be turned around to recognize that the basic purpose in dealing with the American people is to be consumer friendly. I cannot stress that too much.

Mr. DOLAN. Mr. Chairman, if I might. I appreciate your candor, and I know you want me to be equally candid in return.

The CHAIRMAN. Please proceed.

Mr. DOLAN. I understand what you have said, and I think an awful lot of my colleagues understand. One of the dilemmas I have is that frequently people go down a road of discussion of culture and we all operate, perhaps, at different levels. Some of us are anthropologists and we are very sophisticated, and others of us are operating at a different level. One of the things we frequently do is set this up as if they are poles. On the one pole is service, and on the other pole is enforcement. I do not believe that is the case. I believe it is a spectrum.

I believe that what you do is invest in the front-end kinds of service, the taxpayer friendly aspects that you talked about, with an objective in mind. The objective is having a system where people are able to be, encouraged to be, as compliant as possible.

At some point in time though, if I am here and I am compliant, I think that person expects the Internal Revenue Service to deal with somebody who is not pulling their load. So I hope over time that we do not have to talk about this as if it is a right brain or left brain, but as if it fits together in some kind of a spectrum where we have to be sure we balance right.

The CHAIRMAN. The point I am making is that the principal purpose of the IRS is taxpayer service. You are absolutely right, there is unfortunately a minority of individuals who do cheat, and do not

want to pay their fair share of taxes. No question, but that we have to go after them on an enforcement basis. We all agree on that.

But what I am concerned about, is the organization appears to characterize itself too much as being a law enforcement agency rather than taxpayer friendly.

Mr. DOLAN. I accept that feedback, and I appreciate you giving it to me. One other thing that I think you know, but just maybe as an antidote to this, and I think some of the other members may know, is last year we made a very conscious decision that I think put us in the direction that you have in mind.

We took a fairly significant percentage of our people that would normally have been working in our service center compliance operations and we moved them over to try to move up our phone access, because the budget we had for telephones was only going to put us to a point. We knew that was not satisfactory.

We knew taxpayers needed to get in during the filing season, so we took people that would otherwise have had compliance activities and moved them over for the very purpose that you have in mind. So you will not get an argument from me, Senator, about that being a very key part of why we are in business.

The CHAIRMAN. I have a series of questions I would like to propound to you and I want you to have adequate time to answer them, but I would ask that you be as concise as possible.

As you know, we had a number of your employees appear before us yesterday and today. Will you give me your personal assurance that no one involved in this hearing will ever suffer any form of retaliation by IRS?

Mr. DOLAN. Unequivocally I will give you that assurance.

The CHAIRMAN. Unequivocally.

Mr. DOLAN. Unequivocally.

The CHAIRMAN. We have talked about the use of goals and quotas. Is that a basis of evaluating employees' performance?

Mr. DOLAN. Well, as you heard me say, Mr. Chairman, the law, the policy, the practice, I believe, is that goals and quotas are not used. But what you heard is the same thing I have been hearing the last couple or 3 days, is that might be all well and good, but there are other measures at work in the organization that are either being used as surrogates for or are having the same effect. That is why I took the series of actions I did to take that set of potential other measures, albeit not goals or quotas, and if they are producing the same net pressure we ought to do something about them. That is why I have suspended the measures and changed the ones I have mentioned to you.

The CHAIRMAN. Mr. Dolan, it concerns me, to be candid, and that is the purpose of this discussion.

Mr. DOLAN. Absolutely. Absolutely.

The CHAIRMAN. It concerns me that you learned about this only over the course of the last 3 days.

Mr. DOLAN. I did not say that, sir. I said that with what I heard the last two or 3 days, I am not comfortable with the devices I talked about earlier, the quarterly certification, the reemphasis of the policy statement and managerial training, employee training. You had people come before you that at least make me want to go be sure that what I have been relying on as verification is accurate.

The CHAIRMAN. Let me ask this question. Are you aware of the use of goals, quotas, and statistics to evaluate employee performance?

Mr. DOLAN. I have had several allegations made to me, which I have referred to Inspection. I am aware of the ones that have been made to you this week. I am also seeing in the quarterly certifications that come forward to me, there have in several of those certifications been one, two, three instances where somebody identified in a performance review or a branch review something that they thought violated the policy and they corrected it and reported it. So, I am aware of those instances.

The CHAIRMAN. I would like to have them put up the San Francisco division examiner chart over there. Can you give him a copy of the sheet, too? Mr. Dolan, I will give you a minute to look at it.

Mr. DOLAN. Thank you.

[Pause.]

The CHAIRMAN. Let me ask you this. Would you comment on the San Francisco district mid-year report on goals for revenue agents?

Mr. DOLAN. I have about three or four pages of management information that are routinely gathered and maintained in the organization. About a third to a half of them represent the output measures that GPRA requires me to not only put in my budget, but to execute my budget against. What you have in some part here is the deployment of some of those GPRA measures, first to the western region, then subdivided within the western region to the San Francisco district.

So what you have here is that. This does not represent a goal for a front-line revenue agent to go do X or a front-line revenue officer to go do Y. This is the thing I told you that I have suspended because some people in the course of your hearing or other venues have said, well, this may not be a goal, it may not be a statistic, it may not be a quota, but it is too easy for somebody to infer one.

The CHAIRMAN. Just let me point out that this document has on it a category RA, that is revenue agent, of course.

Mr. DOLAN. Correct. Correct.

The CHAIRMAN. The goal. The next column says, "Goal: $1,000." Below that you have two others. Finally, "TA." The goal is $1,012.

Now, RA stands for revenue agent.

Mr. DOLAN. That is correct.

The CHAIRMAN. Let me just point out. Now, I heard you, Mr. Dolan.

Mr. DOLAN. All right.

The CHAIRMAN. I would just like for you to note that, for both RA and TA, "A general improvement is needed. A large improvement can be made by bringing down hours per return." I do not care how you dress that up, that is setting a goal.

If you give that to the employees, they are going to understand that they are obligated, if they want to do a good job, they have got to meet those goals. There is no way, in my judgment, that you can explain away this kind of chart. It is a failure to recognize what the purpose of this chart is.

Mr. DOLAN. I do not seek to explain it away and I am not trying to dress it up. What I would do is invite also your attention to things like cycle time, required filing checks.

What this represents for the San Francisco district, and I do not know at my fingertips how many agents there are there, but the agents in the Examination Division of the San Francisco district have a wide sort of work.

I mean, it makes no sense to say to somebody on each and every case in the San Francisco district, $1,000 or some other number. What this does is invite the San Francisco district to look at the work that is in inventory, look at how the hours are being applied, look at how the issues are being examined.

The CHAIRMAN. Well, I would just point out that that is not the way your employees interpret it. I think that is the problem.

Mr. DOLAN. I agree with you. That is why I said what I did. I can sit here and explain this to you all day, but you have had people say to you, that is nuts. I am inferring a goal from that. That is why I suspended it. I do not want that result.

The CHAIRMAN. And all I say, if you are an employee, if you are an RA and you see this chart, I do not know how you could interpret it any other way but being a goal for the success of your performance. But let us move on.

Does the use of such goals violate the Taxpayer Bill of Rights?

Mr. DOLAN. Mr. Chairman, again, the way that I have tried to explain this——

The CHAIRMAN. I am not asking you to explain.

Mr. DOLAN. All right.

The CHAIRMAN. I said, does the use of goals——

Mr. DOLAN. In terms of the use of this goal at the division level to set a division allocation, I do not view this as a violation of either the law or the policy statement. The law is quite specific about using this as a goal or quota for a front-line enforcement person or their manager.

The CHAIRMAN. Let me ask you this question. Do you see any problems in using goals?

Mr. DOLAN. Absolutely. Absolutely.

The CHAIRMAN. What are those?

Mr. DOLAN. The problems are that I can sit here and tell you, as I just have, that this was not designed——

The CHAIRMAN. I would like you to answer my question.

Mr. DOLAN. All right. I am sorry. I think I am trying to agree with you.

The CHAIRMAN. Why is the use of goals not in the interest of the taxpayer?

Mr. DOLAN. Because it produces absolutely the wrong results. If somebody is chasing a goal instead of looking at the individual fact pattern, choosing a course of action based on that fact pattern, it is absolutely wrong. It is not the way they should operate.

The CHAIRMAN. Let me turn to my next question, as time is moving on. Monsignor Ballweg testified yesterday that IRS correspondence did not include any name to which to respond.

My question to you is, how does this promote accountability? Is it not essential that an employee be held accountable for his actions and deeds? If the taxpayer does not know who it is, who does he hold accountable?

Mr. DOLAN. You are right on two scores, Mr. Chairman. One is the accountability, and the other is the plain, common customer

interaction. Our notices need a lot of work. Last year we took 25 or 30 of them and redid them from top to bottom because they do not communicate well, they are not customer friendly, and they fail on the accountability side as well.

We are in a process today of trying to go top to bottom with our notices and correspondence and do more of what the Monsignor and you suggest. You are right, they should be different than they are today.

The CHAIRMAN. My question is, this is not a very complicated request. Are you requiring the employees to sign their statements when they are sent to the taxpayer so the taxpayer not only knows who to contact to resolve his problem, but who to hold accountable?

Mr. DOLAN. Senator, we do not sign all of the correspondence. We do have a requirement that the letters be signed. We do have a requirement in law that deficiency assessments be signed. There is a series of notices that are not signed. Some of those notices today also do not have a name on them, only a telephone number.

The CHAIRMAN. If we are going to hold employees accountable, should their name not be on it?

Mr. DOLAN. I think that is a fair question. I guess I would like to be able to come back to you and maybe talk about the entire universe and maybe draw some distinctions between one kind of a notice and another.

The CHAIRMAN. Now, let me ask this, Mr. Commissioner. Are you aware that the data of the Bureau of Labor Statistics are used by IRS employees to create phantom income or inflate a taxpayer's income? Is it appropriate, in your judgment, to use national average statistics to indicate the income of a specific taxpayer?

Mr. DOLAN. I think it is hard to make an absolute answer to that question, and here is the reason. You heard in one of your panels the same thing that has been debated fairly significantly over the last couple of years.

There is at one and the same time a need to create a consistency and an even-handedness with the way the law applies across the land. There is, on the other hand, a need to have the flexibility to take into account individual taxpayer circumstances.

We have used these Bureau of Labor standards as a way of finding some metric that would create for a particular geographical area a standard that would represent a fair way of looking at everybody in that geographical area.

I have had people raise questions about whether, if you push that too far, you get the wrong result. I think it is possible you do, but that is how they are used and that would be what I think would be a legitimate usage.

The CHAIRMAN. But, again, is it fair to a taxpayer to state his income or his expenses as what are shown to be the national average; are you not supposed to have their actual income, their actual expenses?

Mr. DOLAN. Typically it comes to bear, and if you ask me one more question I will get out of my depth here, so I am going to take my last shot at my depth. But I think in terms of two instances where this would come to play, one would be potentially an instance where we have sought a return, gotten no answer to a series of four or five inquiries, have information that the person either

had a W–2, 1099, or something else, so we have to set out to create what we call a substitute for return. So it could enter there.

The other place it could enter is if someone were to come to us and say, I cannot pay this whole thing. I either cannot full pay it and I want an installment agreement, or I cannot pay it and I want to compromise my liability.

In both those instances we have to have some way of projecting, what are the living expenses, how are we to deal in some fair way with what the expenses are associated with that taxpayer so we do not compromise one way in one part of the country and another way in another part of the country.

The CHAIRMAN. Just let me say that I think the Bureau of Labor Statistics would be shocked if they knew for what purpose their figures are being used. My concern is that it is much broader than what you are indicating now. I think that is a matter that ought to be looked at carefully and corrected.

Mr. DOLAN. I would be interested in pursuing, Mr. Chairman, further discussion of this so that I am sure that I am picking up on the concerns you have.

The CHAIRMAN. Are you aware of instances where IRS employees have been instructed by their superiors to frame taxpayer or other IRS employees?

Mr. DOLAN. Absolutely not.

The CHAIRMAN. You have no acquaintance with any?

Mr. DOLAN. No. Zero. None.

The CHAIRMAN. Mr. Dolan, if it came to your attention that an employee of the IRS engaged in illegal wire tapping or had fabricated a case against a taxpayer or had framed another employee to gain a promotion, what disciplinary action would you take?

Mr. DOLAN. Well, the first thing I would do is make sure it got investigated so I had the facts. If those facts were the facts, they would be fired.

The CHAIRMAN. Of course. Of course. You would fire them.

Mr. DOLAN. Absolutely.

The CHAIRMAN. Are you aware of any such cases?

Mr. DOLAN. I am not personally aware. I did not examine our disciplinary logs to see whether there was such a case, but I am not, as I sit here before you, personally familiar with such a case.

The CHAIRMAN. Are you aware of instances where IRS inspection employees have been instructed to use unauthorized wire taps or engage in other illegal activity?

Mr. DOLAN. I am not.

The CHAIRMAN. Did you listen to the testimony of the last 3 days?

Mr. DOLAN. Yes. Well, let me qualify it. I said in my opening comments that a number of things that were said in the first 3 days are things that we have made referrals regarding your investigation to the IG to have them pursued because they were issues coming to our attention for the first time.

The CHAIRMAN. Are you aware of instances where IRS employees have browsed confidential taxpayer information of jurors or witnesses?

Mr. DOLAN. No, I am not.

The CHAIRMAN. You are not aware?

Mr. DOLAN. I am clearly aware of the browsing challenge, and many of you know that I have been in the middle of that for the last couple of years, but I am not familiar with the juror/witness issue.

Again, I heard it said in this room and we will pursue that as best we can. That is why I asked you at the beginning, too, if we could find some way for the people that appeared before you this morning to get that information into some hands you and they trust so that we can pursue it.

The CHAIRMAN. Just let me say, I would like to have you pursue it within the organization.

Mr. DOLAN. I would be happy to.

The CHAIRMAN. I think it is extremely important. If true, it is a most serious charge.

Mr. DOLAN. I could not agree with you more. I believe that was an allegation made this morning. If that person is either comfortable making his or her identity known to me, or if you will have the staff somehow get the information to me, I am more than happy to pursue it.

The CHAIRMAN. Are you aware that the General Accounting Office found that there is inadequate information to show the extent of the proper or improper use of liens, levies, or seizures authority or collection enforcement authority?

Mr. DOLAN. I believe I am familiar with what is a draft report out at the moment that was done at your request in this area. Yes, I am familiar with that.

The CHAIRMAN. The study was of course only within this area, but as a practical matter, what concerns me about this, what it really means, is that no one, but no one, not you, not I, or anyone else, are really able to evaluate or judge how serious a problem it is because the records are not adequate for that purpose.

Mr. DOLAN. I think, clearly, the records are not adequate for all of the purposes that you and I would both like them to be. I think that is different though, Mr. Chairman.

The CHAIRMAN. The purpose of the study, the GAO specifically found that the records are not adequate to determine the extent of the improper use of liens, levies, or seizures authority. So I think that is an important finding and something that ought to be looked at by you.

Mr. DOLAN. I think, Mr. Chairman, not to argue a point, but there are some aspects of that report where the GAO found that it would be very difficult to go back, and very costly to go back, and in some other places they found that it would be impossible to make the kind of association that you asked them to make. So you have got both kinds of instances at work there.

The CHAIRMAN. Are you aware of instances where IRS Inspection employees have been used to intimidate or harass other employees?

Mr. DOLAN. I am not personally aware of that, no. As a matter of fact, I think my view of the Inspection Service is quite a lot different from what I heard this morning described, and that is part of what concerned me. I have known the Inspection Service to do a very good job of taking many serious allegations and, in the case where they are substantiated, helping us prosecute them. In many

other instances they help exonerate the employee's conduct. So I have come over my career to respect the Inspection Service.

The CHAIRMAN. Now, I would point out that the employees this morning were under oath.

Mr. DOLAN. I understand that. I do not belittle that for a moment.

The CHAIRMAN. Are you saying they were not being honest in their answers?

Mr. DOLAN. Not at all. I am repeating what I said at the outset. Where my understanding of the facts might differ from theirs, I am going to treat their statements this morning and their concerns seriously and pursue them.

The CHAIRMAN. Are you aware of IRS employees engaging in whipsaw efforts, that is, attempting to collect tax from someone they know does not owe the tax?

Mr. DOLAN. I do not know about employees who are trying to collect tax that is not owed. The term "whipsaw" gets applied to a couple of different transactions, and to the extent you would like to pursue that further, I would like to have either Tom Smith or John Dalrymple help me on that. So I am happy to do that now.

The CHAIRMAN. My time is running out, so we will not do that at this time.

Mr. Dolan, the taxpayers that testified yesterday need to move on with their lives and close the chapter that is relating to the IRS. I am sure you will agree with me, they need to be treated equitably. Can you make a definitive statement that you will send a letter to the four taxpayers equitably resolving their disputes with the IRS?

Mr. DOLAN. Mr. Chairman, I am going to be unequivocal about three, and I am going to tell you that in the fourth case, and I think you may be familiar with this, in the fourth case, I have only limited disclosure authority.

I feel certain that in two cases we are already there and I would have no trouble at all writing a letter. In the third case, we have offered to send to the taxpayer's residence one of our problem resolution officers, because the taxpayer believes there may still be an amount that was not correctly credited somewhere over a period of years. So I will certainly commit to working that through to conclusion.

At this point I am not sure what I will be committing to you about equitable. I mean, if equitable means getting it to the right substantive result, I will certainly commit to that.

The CHAIRMAN. Let me ask you this specifically. Is the IRS in a position to send the Hicks' a letter indicating that they do not owe tax liability relating to Mrs. Hicks' 1983 joint tax return?

Mr. DOLAN. Such a letter is on its way, Mr. Chairman.

Senator GRAMM. That is fast. That is good service. You have about 100 million more to write. [Laughter.]

The CHAIRMAN. I would have to point out to my friend, the ordeal lasted 17 years.

Senator GRAMM. I understand. I understand.

The CHAIRMAN. In the Jacobs' case, how much money does the IRS owe the Jacobs'? Has the entire amount been refunded, with

interest? If not, why? Does the IRS intend to make a prompt refund?

Mr. DOLAN. If you do not mind, this would be the point, there are a couple of gentlemen who worked these cases pretty closely. I would like to not misspeak on that, if I could invite them to the table.

The CHAIRMAN. Anybody that is going to answer will have to be sworn in.

Mr. DOLAN. All right. Mr. Chairman, can I make sure I understood your question? I think when I told you the letter was on its way, I think we believe we resolved the Jacobs' case in every facet. But I want to make sure I am not misunderstanding your question.

Senator GRASSLEY. He was asking about the Hicks' in the case of the letter.

Mr. DOLAN. I am sorry.

Senator GRASSLEY. I am right, am I not? You asked about the Hicks' being sent a letter.

The CHAIRMAN. Yes, I did. However, regarding the Jacobs, I was asking how much money.

Mr. DOLAN. I am sorry. All right.

The Jacobs' case is the case in which I mentioned that we believe it is solved. The Jacobs' have suggested they believe that they possibly are due a refund. That is the one where we have asked a problem resolution person to go to their home and walk through any records. We have a mountain of records we got as a result of looking at those.

So I would say the Jacobs' may still have a question, and that is what we will seek to resolve. I am told that the Jacobs' have not decided whether they want us to come out or not. [Laughter.]

The CHAIRMAN. You do not know the answer?

Mr. DOLAN. I will not know the answer until we have a chance to talk with the Jacobs'.

The CHAIRMAN. Mr. Dolan, let me point out one of these things. In talking about these cases, they are not merely statistics.

Mr. DOLAN. Absolutely.

The CHAIRMAN. They involve people.

Mr. DOLAN. Absolutely.

The CHAIRMAN. And to me it was shocking to sit here and listen to these cases. In the case of the Hicks' it went on something like 17 years, roughly the same for the Jacobs'. The emotional stress, what it does to an individual life is unbelievable. There is no rationale or excuse for that kind of treatment.

Mr. DOLAN. You are absolutely right.

The CHAIRMAN. So it is important that we put these to a close.

Mr. DOLAN. You are absolutely right.

The CHAIRMAN. I would like to turn to the Savage case. I would like to direct your attention to a letter relating to this case which was discussed yesterday. The letter was written to the district counsel handling Mr. Savage's case on November 1, 1993 by the chief of the Civil Trial Section, Eastern Region of the Justice Department. The thrust of this letter is that the levy against Mr. Savage's business was wrong.

Let me read you what the Justice Department, through Mr. Snyder, wrote. Specifically he writes, "After reviewing the complaint,

the motion for summary judgment, your defense letter, and all the information forwarded by the revenue officer, we believe that the levy in question was wrongful, even assuming the facts in their most favorable light at the time of the levy, the IRS had assessed and only," the point there they had not made a proper assessment.

"No assessment existed against TSA or the alleged joint venture partnership. We do not believe that the IRS can levy on the partnership property for the unpaid Federal employment tax liability of one of the partners."

Further on it says, "In fact, we read your defense letter to essentially concede that the levy was wrongful." Yet the matter was pursued notwithstanding the fact that the U.S. Department of Justice's Tax Division wrote that it was wrongful.

What possible rationale is there for having proceeded in that case?

Mr. DOLAN. Mr. Chairman, I have to answer your question in two ways. The first, I believe you, or at least the staff, is conscious that this is a transaction that has more taxpayers involved than Mr. Savage.

It is a transaction that, when we first began to examine this, we asked for releases for all the parties. We have only a release for Mr. Savage. I am happy to do an executive session and a more thorough discussion of this, but I am not able to do it in this setting with the limits on my disclosure ability.

Second, regarding the issue of this letter, when this letter came up in Mr. Savage's testimony, I have asked the Justice Department to write me with their perspective on the context of the letter and what they believe this letter should mean to me in the context of that case.

The CHAIRMAN. I find that very difficult to understand. After the fact at this late date, you are writing the Justice Department to give further explanation. I think this is very clear.

Mr. DOLAN. On this letter. On this letter, Mr. Chairman.

The CHAIRMAN. The letter, without question, says that the action was wrongful. You do not need another letter to interpret that.

Mr. DOLAN. Mr. Chairman, what I——

The CHAIRMAN. Let me just say, that is what concerns me. It is no wonder a taxpayer is feeling badgered, that he is not being dealt with fairly. In effect, you can almost call it extortion. Do you agree with that?

Mr. DOLAN. No, I do not agree with that.

The CHAIRMAN. You think it is——

Mr. DOLAN. Mr. Chairman, let me just restate the case. We have spent months trying to work these cases and put everything we could on the table. This is a case that has at least two other parties. I do not have the ability to talk about either of those two other parties, so I cannot explain what transaction might have had this amount to something other than what it looks like on its face.

The CHAIRMAN. For example, you say you need a release, when the one party does not exist. The problem is, the agency tried to claim there was a partnership that did not, in fact, exist.

Senator CONRAD. Mr. Chairman, could I inquire about the rules of the committee here? I mean, are other members of the committee going to get a chance to ask questions?

The CHAIRMAN. I have got one more question and that would be all.

Mr. DOLAN. Mr. Chairman, we have tried to be forthcoming on this case. The staff and our staff have talked about the case. I would be happy to go into executive session in any setting that you choose and work this in a more responsive way. I just cannot do it in this setting.

The CHAIRMAN. I have to say, I find this case and the treatment totally incomprehensible. It is no wonder.

[Applause]

The CHAIRMAN. I would ask the audience, you are guests of the committee. Applause is not appropriate.

My time is running out, so I will turn at this time to Senator Gramm.

Senator GRAMM. Mr. Chairman, thank you. How much time do I have, 10 minutes?

The CHAIRMAN. Ten minutes.

Senator GRAMM. Well, Mr. Dolan, let me first say that I for one am appreciative of the attitude that you have brought before this committee. I think had you come here today in a defensive posture, that we would have had tremendous confrontation which would not have served the IRS or the committee well. I think your basic approach is the right approach, and I would like to begin by thanking you for that.

Let me also say that I try to be fair in dealing with government agencies in assuming that people often have ulterior motives, that there are always people who have axes to grind. When I read the testimony of your former and mostly your present agents, in reading the testimony it was hard to judge. But I would have to say that, in listening to their testimony, I found their testimony extremely compelling.

Here is the problem, as I see it. Next year, the tax burden on the average American worker is going to be the highest it has ever been in the history of America. Next year we are going to use the power of government to take 31 cents out of every dollar earned by every American, on average. That will be the highest tax burden that we have ever tried to impose on the American people.

Now, it seems to me that this system is going to break down if people become convinced that it is not fair, that part of the ability to collect taxes is based on people believing that they are being treated fairly.

Now, I hear people talking about a consumer friendly IRS. Forgive me, I do not think either I or my constituents could ever view the IRS as customer friendly. I mean, basically your duty is to get money for the government to spend.

So I think much of the idea that somehow we are going to make people love the tax collector. St. Paul was not successful before he went on that road to Damascus.

I guess we are hoping to take the whole agency down that road, toward the bright light, and the conversion. But the point is, we cannot guarantee everyone that they are not going to have bad experiences with the IRS, and if they are cheating I do not want them to have good experiences.

I do not want to do anything that will reduce your ability to collect money from people who are cheating, because part of fairness is being assured that cheats are going to be prosecuted and that they are going to pay like everybody else.

But what is most damaging, it seems to me, in the testimony we have heard, is the very real picture, compelling picture that the system is not fair and that, in fact, in the last few years the level of unfairness has grown, and grown rapidly.

We had six of your current agents here today, and I asked each and every one of them, in the last two or 3 years is it your perception that the problems you are talking about, problems of people being pursued for money they did not owe, problems of political favoritism or personal favoritism, very severe charges, it seems to me.

Very serious charges, that we are not going after members of a union because they are politically favored, or that personal friends of a supervisor are not being audited because they are exerting influence. I think people ought to go to jail for doing things like that.

But the perception of each one of those six individuals was that these problems were getting worse, that actually these problems were growing. It seems to me that what is called for here is a dramatic change in the way the IRS operates.

It seems to me that we have got to do this not just for fairness, not just for accountable government, but I think it is going to become increasingly hard to collect the revenues that the country claims it needs if people do not believe it is fair.

Now, I have heard, and I will get to my questions, a lot about this culture of the IRS. It seems to me there are two ways you can look at this. One, is you have got a culture problem and people basically have taken on sort of a calloused facade and they are running over people and you need to get them together and convince them not to do it anymore. I do not buy that. I think the systems make people behave as they do. I think the problem with the IRS is a very simple problem: power corrupts.

I think what we have got to do is to find some way of having a separation of power, either within the agency or breaking the agency apart. I think we have got to have some checks and balances. I think maybe we need to bring more senior people into the service who did not come up through the ranks. I think you need a blending of the two.

But I do not think we are going to solve this problem by just viewing it as sociology. I think the problem is, there is something very wrong with the system and I think that, especially in the last couple of years, it has clearly gotten off track.

What I would like to ask you is, as a person who is acting director, who obviously is a man of considerable ability and is a person whose career is probably going to be judged on the outcome of the changes that we make in the next couple of years, whether that is fair or unfair, I think that is the case.

What kind of changes, based on what you have seen in the last few days and what you know from 26 years of experience, if you were sitting where I was sitting and you really wanted to fix this problem and, sitting where I am, you know what you know from 26 years and having at least superficially looked into these ques-

tions that have been raised, what kind of changes would you want to see made?

Mr. DOLAN. That is the $64,000 question. That is a great question. Let me try to tick off some of them and tell you that I will probably wake up tonight and wish I had given you four better pieces of it.

But first let me start by agreeing with you. I think when something is right or wrong it is typically not just somebody out there operating on their own. They are products of systems, they are a product of the way operations are designed, the way they are managed. So good, bad, or indifferent, the front-line person is a product of the system we ask them to operate in.

We have got a number of challenges. Maybe the one I did not answer to the Chairman's satisfaction is that there is some tension. There has been historical tension.

The tension exists not only within the IRS, but the IRS's relationship with the Congress. We can sit as you suggested, and talk about customer this or more of this, and some ability to better, over the long haul, reconcile, what is the expectation of the Congress with respect to the revenue raising, with respect to the capability of providing first-class customer service. There are some core choices and reconciliation of views that maybe in the past we have not done as smoothly as we might.

So if I were going to reinvent the world, I would find some mechanic to get the tax administrators, the administration, the Congress' reconciled views of what do we want out of this system. Is it a system that we mostly value because it puts $1.5 trillion in the bank every year, is it a system that we mostly value because it is one of the principal faces to our citizenry, is it both those things, how do we want to balance it.

Senator GRAMM. Well, let me tell you, you may get a lot of people who are going to give you a flowery answer, but we would not have an IRS if we did not need the $1.5 trillion a year.

Mr. DOLAN. Right. Right.

Senator GRAMM. So we are sure not doing this to be consumer friendly.

Mr. DOLAN. And I am making too much of this one point.

Senator GRAMM. Let me also say, there are three problems as I see it, and two of them are not your creation. No. one, to get people to pay taxes, they need to be convinced that we are taking a reasonable amount of their income. They are not. Number two, they need to be convinced that we are not wasting their money, and they are not. They are right on both those counts. The one you have the ability to control is that at least maybe we are taking too much and maybe we are squandering it, but the burden is falling fairly on everybody.

We are clearly failing on the other two, in my opinion. It is the third one here that I think has been called into very real question. Not only do the American people believe the system is unfair, according to the polls, but in listening to these people who are on the inside it is obvious the people are right. The question is, how can you fix that problem?

Another thing I thought about, let me try to direct the question a little better. In the criminal justice system, for example, you have

got police officers who go out and investigate and then you have a DA who takes their work product, then that DA prosecutes. Then you have got a judge and jury, so there are checks on each other. I do not see that same system. Now, I do not know the IRS. I mean, I do not want to know it a lot better, personally. [Laughter.]

Senator GRAMM. But is there some way within the IRS we might replicate this system of checks and balances? Is this part of the problem? As many of our witnesses have said, are you the judge, the jury and executioner all put together?

Mr. DOLAN. I hope not. I say that not to be facetious, because I do believe that when you probably spend more time than either of us has today to spend on it, look over time at the way the processes have been designed.

For example, the appeals process. The appeals process and the tax system, I think, by a lot of measures, is one of the most effective dispute resolution mechanisms that keeps the lion's share of controversy that comes out of tax audits.

It is one of the most controversial things that a person can be involved in. That appeals process resolves a remarkable percentage of those disputes, short of ever having to be in the more litigious, long, drawn out ones.

So I think my suggestion would be, Senator, there are elements of today's system that I think provide extraordinarily effective checks and balances. On the other hand, I think in terms of some of the examinations that have been done recently, just exactly where do we bring this more customer-sensitive capacity, what kind of capacity do we bring to the table when we deal with somebody's account?

Do we have the same facility to give you a straight answer, a timely answer, closure to your transaction that you would experience if you dealt with your bank, your credit card companies?

Those are not customer friendly, frilly things at the margin, those are core capacities. If we did them better than we do today, I think you would take a tremendous amount of the frustration out of some of the interactions that occur today.

So I am not so sure it is a matter of finding a brand-new structure. I think it is a matter of taking some parts of these capacities and going from 1 to 10 on the scale that we are today.

I think your suggestion about bringing in insight from the outside, bringing people in. We are in a complicated world, a complicated business, and you cannot grow it all from the ground up, you need expertise from the outside.

Senator GRAMM. Well, Mr. Chairman, I know my time is up. I just want to say that I am totally convinced that we need to pass legislation that is aimed at changing the structure of this system in such a way as to deal with the problems we have heard today and to at least give an assurance that, while we may or may not fix the unfairness, that at least we care and that we want to fix it.

I think it is going to require not just another little Taxpayer Bill of Rights. It had a great title, but it had limited impact.

I think we need a substantial amount of work from this committee and from this Congress to change the system to bring in checks and balances, to bring into IRS management outsiders who have

been out in the world dealing with the IRS, while preserving, obviously, the experience of people who have been there 26 years.

But I think we need to change the system. Not do pep rallies or hire psychologists. So, obviously, that affects you.

The CHAIRMAN. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Mr. Chairman, to pick up on the last comments from Senator Gramm, it would seem to me a good place for this committee to take a next step would be to hold a confirmation hearing for the nominee to be the permanent INS commissioner.

As I read over some of the background of Mr. Charles Rossotti, who has been nominated, it sounds as if he has the kind of characteristics that we are looking for. He founded and led his own company for 27 successful years, the American Management System, a multi-million dollar computer system and consulting firm. As someone said, he does not come out of the kind of background that has typified previous IRS commissioners, for better or worse.

I would suggest and urge, Mr. Chairman, that we hold a confirmation hearing in order to solicit the ideas of this fresh person and, if he meets our test, to get him on the job as quickly as possible, because he has sure got a lot of work to do.

Second, Mr. Chairman, I would like to use as the basis for some of my questions a specific case which came to the attention of our office. I might state, we have received the appropriate release of confidentiality statements, which I can make available to whoever would like to see them, in order to talk about this case.

In fact, the taxpayer has actually urged us to talk about her case. This is a case of a lady named Betty Bryant who lives in Opa Locha, FL. We get approximately 50 IRS issues raised in our office every week. This is one of those 50.

In fact, Ms. Bryant, who is a single mother with one child, she is a 25-year State of Florida employee. She operated a group home for developmentally disabled adults. In the summer of 1995, she entered into a series of contacts with the IRS relative to whether she owed the IRS money or was due a refund.

After approximately 6 months of this, in frustration, on January 29, 1996 she contacted the Governor of Florida, Governor Chiles, who in turn referred her to our office. So we have been dealing with this case since early 1996.

Just to briefly recount some of the highlights of this, we referred the case, after having received the appropriate Privacy Act forms, to the problem resolution office in March of 1996. It took the better part of 2½ months to get a response from the problem resolution office.

The office first closed the case because Ms. Bryant was unable to provide all of the information necessary. Part of the reason she was not able to do it is because some of her records had been destroyed in Hurricane Andrew, which had occurred in August of 1992. The case was then reopened, transferred from one office to the other. In the course of this, her wages were garnished at $100 every bi-week.

Finally, in April of 1997 it was determined that she was, in fact, due a refund. A refund was sent to the wrong address. She requested an explanation of the refund. That request resulted in a

notice that, in fact, the refund was inappropriate and she did, in fact, owe taxes.

Finally, in July of 1997, 2 years after the case started, it was resolved. Not only was it found that she was deserving of the first refund, she got a second refund. That, in summary, is her case.

Now, what are some of the broader ideas or principles that come out of this case? One of them is that it seems as if this is an agency which has entities that sound as if their purpose is to help the taxpayer provide services, but where the taxpayers are extremely discontent with the service they receive.

Complaints such as this, that phone calls are not answered, mail is not responded to, it takes 2 years to get a relatively simple answer and a resolution of the case. This is not an aberrant case, this is one of hundreds of thousands of cases.

My first question, looking to the organization of the IRS, is how has the organization gotten so far away from its clients that it took a Congressional hearing to understand the severity of this case? If Burger King or McDonald's was so far away from their clients that they did not understand that they were putting out a bad hamburger, they would be out of business.

How does the IRS institutionally try to avoid this failure to understand and be sensitive to its clients and the quality of service it is delivering?

Mr. DOLAN. Senator, let me take a crack at your basic question. Then if the Chairman would permit, I would like to have Lee Monk sworn in. Lee is our taxpayer advocate. I think you framed, by the facts of the case, a question of, why did it take such a long time and why did somebody not pick up on this earlier.

I do not have an easy answer. It should have been picked up earlier. It should have been picked up upon the first set of correspondence. If it was not then, it sure should have been resolved perhaps more quickly when it got into problem resolution. I think Lee has a more full understanding of the actual case, Senator, if we could get him sworn in and he could react to it.

Senator GRAHAM. Yes. We will send you all the details in this actual case. But one of the principles that I think this case stands for is an agency that has lost touch with the people that it is intended to serve. I am really asking a diagnostic question: why did that happen?

Mr. DOLAN. Senator, I do not want for a second to suggest your conclusion is wrong with respect to this case, that we lost touch of the taxpayer in this instance. I think on a daily basis some 330,000, 340,000 cases went through the Problem Resolution Program last year, and I think in large part they went through to the satisfaction of the taxpayer.

We have a variety of ways where we attempt to elicit problem cases, concern cases and I do not think we are as effective as we should be. That is why I ticked off those things. I may have done it before you came in the room. I ticked off a series of things that I want to see us do beyond where we are today, because putting these kinds of gaps between the taxpayer's problem and the ability to solve them is not good for the taxpayer and not good for the faith in the system that so many of the other Senators have talked about.

Senator GRAHAM. What about the question of, how did it happen institutionally that this agency, at least has created the appearance in this case, and I would suggest hundreds of thousands of others like it, that there is a disconnect between it and the people that it is intended to serve, the "S" in the Internal Revenue Service?

Mr. DOLAN. I think the only way to institutionally answer that is that you have to posit that we have placed inadequate resource and management attention on the processes that ensure that when we generate notices to taxpayers, someone is satisfied that you have the capacity to take the response call, to take the letter back. In some cases, our match of capacity in taking inbound calls or taking reply correspondence has not matched the volumes of outbound notices. We are trying today to fix that.

You move on up the chain and you get into some of the things I was talking about in my opening statement. When a case in the early stages reflects itself as off track, do enough people feel that they own the responsibility to take that case and get it into problem resolution? I think we have failed in some respects, having a greater sense that no matter who you are in the organization, you have an obligation to get it over in problem resolution.

I think clearly in your case you raise the question of, once in problem resolution, does it work as effectively as it should. So I think those would be the three aspects of the system and each of which leaves something to be desired about our past performance that would have to be improved.

Senator GRAHAM. Before these hearings this week, was the leadership of the agency aware that there were these problems?

Mr. DOLAN. Absolutely. We have a significant amount of effort, Senator, in each of those areas. I mentioned again, perhaps before you entered the room, a joint effort that has been ongoing for the last 3 or 4 months with the Treasury Department and NPR that is going to produce in middle October an entire suite of proposals. Several of them are going to be involved in just this area of how the notice process works, how we staff it, and how we respond to people who are replying back to our notices, which was the case in this taxpayer's instance.

Senator GRAHAM. This is a collections case. But the collection cases ought to be the rare ones, as you state. Eighty to 85 percent of the cases should be handled without the necessity of IRS intervention.

Mr. DOLAN. Correct.

Senator GRAHAM. So for those vast numbers of cases that do not get to collection, the basic things, answering the telephone promptly and with credible information, being able to provide the forms and those forms being understandable to the taxpayer citizen, explaining the instructions.

At the beginning of this case this lady wanted to sit down with somebody and just say, here are all my records, tell me what I need to do. It took her the better part of 24 months to get to that point. People basically want to do the right thing, but in this complicated tax system and the complications of life, they need help to do what they and the American government wants them to do.

Mr. DOLAN. Senator, I agree with you. One of the things you highlight is a very significant challenge for us, which is making the

notices and the information we send to people clear on their face, because some of what we send today certainly fails that test.

Would you prefer that Mr. Monks deal separately on that?

Senator GRAHAM. I think maybe we could deal separately on the specifics of this case.

Mr. DOLAN. All right.

Senator GRAHAM. I was trying to use it to illustrate a broader issue.

Mr. DOLAN. I appreciate that.

Senator GRAHAM. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dolan, I did not hear your statement. How many people or how many cases are involved in the problem resolution process?

Mr. DOLAN. Last year there were just over 300,000 in the problem resolution program.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman.

Thank you, Mr. Dolan, for being with us. I would imagine there is probably no person in the entire city of Washington that would have hoped that this committee would have already confirmed the commissioner of the IRS than you.

Mr. DOLAN. I was inclined to give an amen to Senator Graham's comment a moment ago.

Senator BREAUX. Well, I appreciate your being here as acting commissioner, and for your testimony. We have heard a lot of bad things for the last 3 days, but I think the best thing we have heard in the 3 days is your statement that the IRS is in the middle of a tremendous amount of change.

I think that that, in itself, is very encouraging, recognizing that change is necessary, particularly after hearing the problems of the last 2 and 3 days. Hopefully, you and whoever will be the commissioner will learn from these hearings, as I think all of us are learning, about the things that need to be done.

Let me ask just a couple of questions. How many tax filers are there in our country each year, approximately?

Mr. DOLAN. We have, I think, just over 200 million returns, of which about 119 million of them are individual tax returns.

Senator BREAUX. And of the 200 million plus tax filers, how many are audited each year, approximately?

Mr. DOLAN. It runs right around 2 percent, I think, Senator. I can put my hands on the number.

Senator BREAUX. So about approximately 2 percent of the 200 million are audited. Is that a ball park figure? I am not looking for the actual number. I mean, it is about 2 percent of the 200 million?

Mr. DOLAN. 1.6 percent, I am told, Senator.

Senator BREAUX. So of the 98 percent that, I take it, are not audited, they would presumably have no additional dealings with the Internal Revenue Service after they have filed their tax return.

Mr. DOLAN. That vast majority, you are right, Senator. You file your tax return, either get one of the 85 to 90 million refunds that will be issued, or your check clears and pays the balance that is outstanding.

Senator BREAUX. How many employees does the IRS have?

Mr. DOLAN. It is 102,000.

Senator BREAUX. We heard from six today. How typical of the 102,000 do you think the six we heard from are?

Mr. DOLAN. That is a tough one for me, Senator, because I want to tell you that I think you heard some differences this morning than what you might hear if you sampled more broadly. I want to say that, though in a way not for a moment to discount what those men and women have said, because there are clearly some things that need to be said, need to be heard, and need to be followed up on.

We do have a couple of processes. We are just in the process of doing the third cycle of something we call survey feedback action. This is a process we have used internally now for about 6 years. On a regular cycle, we survey our employees about a whole series of things and typically look at cycle-to-cycle changes.

Senator BREAUX. What type of surveys do you conduct among your employees; do you ask them to respond in writing if they have complaints?

Mr. DOLAN. Well, we do have a specific request. This survey is essentially one that asks you to place gradations on a series of maybe 40, 50 questions. The questions are compared to the prior cycle and the prior cycle to look at where——

Senator BREAUX. What is the purpose of that questionnaire?

Mr. DOLAN. It is for the purpose of finding out about the expectations of the job, about quality customer service impediments, about interactions with management. It is a general workplace survey that is both supposed to identify issues that are impediments and pluses to getting the job done, as well as environmental issues about the organization.

Senator BREAUX. Do the people that respond to those questionnaires do so without any fear of having action taken against them by the IRS?

Mr. DOLAN. They are done anonymously, Senator.

Senator BREAUX. So they are not identified and pretty much have a free shot at saying what they want.

Mr. DOLAN. That is correct. That is correct. That information is then played back. We distribute back to a group the profile so that the manager in that group has a way of saying anonymously, here is how the people in my organization feel about the elements of their job, this is the place to work.

Senator BREAUX. How long has that process been in place?

Mr. DOLAN. We have just administered the third cycle of it. I think it probably covers about a 6-year period; 5 to 6 years. This is the third time we have administered it.

Senator BREAUX. The Chairman read a letter from the U.S. Attorney, Department of Justice tax attorney, that basically said that a particular case did not have any merit, and suggested that the IRS not proceed on that case.

Does the IRS ever get letters from the Department of Justice that suggest you should proceed on a case when the IRS feels you should not and therefore you do not take action, or does the Justice Department call the shots in all cases?

Mr. DOLAN. Well, typically we are making a recommendation to the Department of Justice, who has the final call on whether the case goes forward on behalf of the United States.

Senator BREAUX. The question, I guess, before it gets to Justice for prosecution or proceedings, does justice ever suggest that they do not think, or do think that a case should be pursued, that IRS determines that it should not be and, thus, is not proceeded against? Does it work both ways?

Mr. DOLAN. I am not coming up with an example right away, but I think it would work both ways, Senator. I probably could, if I thought long enough, could come up with an example where it could work both ways.

Senator BREAUX. The commission that Senator Kerrey chaired stated that the Omnibus Taxpayer Bill of Rights and Taxpayer Bill of Rights II had an important effect on changing the culture of the IRS. We had one of the witnesses say, their reaction was something to the effect of, well, they thought it could have been a lot worse, not as bad as it could have been, a branch manager said. The impression was that it did not mean a lot of anything to the IRS, what we passed in Congress. Can you comment on that?

Mr. DOLAN. That is clearly not the perspective that most of the people that I know have either towards the Taxpayer Bill of Rights or other enactments allowed by the Congress. When I listened to that gentleman this morning, I do think in the early days of the Taxpayer Bill of Rights, if I compared the Taxpayer Bill of Rights I and Taxpayer Bill of Rights II, in terms of Taxpayer Bill of Rights I, I think there was a lot of tension between the Congress and the IRS about what might be the underlying objectives and what should be the right result.

Taxpayer Bill of Rights II struck me as an entirely opposite transaction where the Congress and administration chose to work hand-in-glove to effect that. But I am one that thinks that Bill of Rights I and II have had a decided impact on the way the men and women of the Internal Revenue Service do their business.

Senator BREAUX. Has there been occasion for specific explanation of what that Bill of Rights legislation requires IRS to do that had been for the benefit of IRS employees so they would understand what they were required to do under that?

Mr. DOLAN. Yes. Yes, there has, Senator, both in written form and in instructional form.

Senator BREAUX. Is it more than just posting it on the water cooler or where people can pass by and read it if they would like?

Mr. DOLAN. Yes. Yes, Senator, it is more than that.

Senator BREAUX. It has been suggested, and I would guess I might have been one of them, that with regard to the Problem Resolution office it was reported out that most of the people in that office are career people passing through different departments, they know they are going to be back in the Collection section as soon as they finish the problem resolution part of their career, and that it is not really going to work because they are going to be doing something else and their promotions are based on how much they do for the IRS and not how much they do for the taxpayer.

So it has been suggested that what we establish is some type of ombudsman type of department agency, office, or something that would be on behalf of the taxpayer, that they would know there is someplace they can go, other than to court, where they could have somebody who is really on their side working for them and trying

to represent their opinion to the IRS instead of having to go to the IRS to represent their position to the IRS.

So I would like to ask, what are your thoughts about that suggestion?

Mr. DOLAN. Senator, I have heard a lot of really good discussion on both sides of that. The argument for independence has all the attributes that you describe.

I have two concerns about that, however. One, at the end of the day, I certainly want a district director or service center director to be accountable for what is going on in their operation, so I think it is important that when mistakes get made in the district or center, the ownership, the person who is accountable for getting them fixed, is the person who runs that entity. You run some risk if you put your problem-solving process totally outside the line that it becomes somebody else's.

Senator BREAUX. I am not so much advocating that the penalty be done by someone from the outside.

Mr. DOLAN. All right.

Senator BREAUX. I am more concerned about, in determining whether they were treated rightly or wrongly, that it is not the people who have done the right or wrong that makes the decision of whether it was right or wrong.

Mr. DOLAN. All right. I am sorry. Let me suggest what we have just done within the last year in terms of offering administrative appeals to the Appeals Division, which does sit outside. It is a totally different organization from the district or center management.

Today the liens, levies and seizures, which were all areas of considerable controversy in the collection cases, were things that we put into that administrative appeal process last year and I think they bring some of the separation or independence that you have in mind.

Senator BREAUX. I have one final question. How much does the IRS hate, when you get a letter from a member of the United States Senate or a member of Congress on behalf of a taxpayer? I mean, do they just go ballistic and say, we will show that taxpayer, we will show that member of Congress for trying to interfere with what we do as our job? Be honest about it.

Mr. DOLAN. Well, what I would like to do, is turn that back around to you and have you tell me that your home staffs think that they have pretty good relationships with the districts and the State. When the case worker calls the IRS Problem Resolution and says, I have got this problem, that frequently you feel like you are getting pretty good service.

At least anecdotally, what I am generally told, and I have a lot of members of Congress say, I do not care too much for you, Dolan, here at the national office, but do not mess with the problem resolution officer, because that is my bread and butter back in the district or back in the State.

So not only do we not have that reaction, I think we believe that those are pretty important portals through which we learn about taxpayer cases and try to get them solved.

Senator BREAUX. Does the taxpayer's case get a notation made on it that a member of Congress has made an inquiry?

Mr. DOLAN. As a problem resolution case, it does not. We do have a correspondence tracking process in almost every office that would identify an inbound Congressional and be sure that the response gets back. We have got a set of response dates for congressionals, and we control it for that purpose.

Senator BREAUX. Well, again, I thank you for being here. Number one, we have got to get the commissioner approved, and number two, the best thing you said was that the IRS is undergoing a tremendous amount of change and I congratulate you for that.

Mr. DOLAN. Thank you.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Dolan, it is clear to me that the agency has a lot of problems. I agree with the observation generally of Senator Graham, but I think they are structural in nature. We are not going to be able to legislate a code of personal conduct unless we change the fundamental structure of the agency itself.

It strikes me that one of the redeeming qualities, the great genius of the American constitution is it recognizes the inherent propensity for the abuse of power, so therefore it diffuses power across three branches of government, with a series of checks and balances. That system has served us well, it seems to me, over the past two centuries.

What I think our challenge will be, is without in any way diminishing your ability to collect the revenue from those taxpayer who owe money under our Tax Code to the Federal Government, is to provide a series of checks and balances so the excesses which have been testified to by those who appeared before us today as employees of the IRS and those taxpayer who shared with us with some degree of specificity the problems that they faced on the day before, to build on that series of checks and balances.

We are never going to make a trip to the IRS like a trip to Disneyland. That will never be one of the most pleasant encounters an individual will have in his or her life, no matter what changes we made. Inherently, your job is to collect money from us. That is something that does not put you on the high road, so to speak. That is something that everybody resists because we would all like to pay less money. That is the nature of the system.

Some of the employees offered some suggestions here and I just want to get your visceral reaction to them and say, as my colleague Senator Breaux did, I hope you will work with us as we try to look at this restructuring of the agency. You have got 26 years of experience. That is helpful.

The new commissioner, whom I hope will get a hearing early on and will be approved and confirmed by this Congress, comes from a different background, and hopefully he will be able to provide a different perspective.

But a comment that seemed to run through several of the witnesses' observations this morning, it is for your internal security operation. That clearly has to have not only an appearance, but a reality of separation so that it can act without fear of reprisal or the perceived fear of reprisal. We need to take a look at that. Again, I hope that you will work with us, as a number of us are going to try to put some of these things together.

A suggestion which I think may have some merit, and obviously I want to welcome your and other response, is perhaps we need to separate the Criminal Division from the Civil Division and provide its functions in a different agency so the IRS is not both a civilian enforcer as well as a criminal enforcer of the Revenue Code. Do you have any initial reaction to that?

You heard the testimony that, indeed, it is the fear of potential criminal prosecution that gives the heavy hammer that comes down, in some cases, far too heavily and imposes the sense of fear that, my gosh, my case is going to be turned over for criminal prosecution unless I agree with everything the IRS wants me to do on this particular matter that may be in dispute.

Mr. DOLAN. Senator, both of the examples you used, as raised this morning in the witnesses' testimony, I think would benefit from further examination. We have looked at that in the past and there are a set of issues that would also argue for the continued strong relationship between the civil and criminal. So I do not know that it is a slam dunk. I think it is one where thoughtful engagement on both of those would be productive.

Senator BRYAN. Well, I appreciate your response. I do not know that that is the answer either, but I thought the comments made by the witnesses were thoughtful and I found them constructive when I asked specifically what to do.

I mean, the concept of some kind of an administrative law judge, some fair, even-handed person who is not part of the IRS, not a former IRS agent who has been promoted from the system, but some sense that the taxpayer, before getting involved in the expensive process of litigating, or going to tax court, or paying money under protest and then suing to recover that money, some kind of an administrative process where the taxpayer can go and have some of these issues resolved expeditiously and at minimal cost. Is that a concept worthy of pursuing?

Mr. DOLAN. I do not care what walk of life we are in, Senator. That is a great concept.

Senator BRYAN. Yes.

Mr. DOLAN. What I would be inclined to do, though, is also advance again the comment of a couple of minutes ago. Our appeals function has had some unique success in that and I think before I created a brand-new box I would want to see if there are other ways of looking at expanding its jurisdiction, because it creates the kind of checks and balances you talked about.

Senator BRYAN. Right. And I am sure that you have had successes. But I think what we are hearing and what we hear from our constituents, there are clearly examples of great success that you have had. Our office, as well as every member, has had to contact them on behalf of a constituent and the issue is resolved quickly and satisfactorily to the constituent, you do not hear much about those because those are good news cases, but there is a perception out there, and a perception in our line of work as well as your line of work becomes reality.

Mr. DOLAN. I agree.

Senator BRYAN. That it is broken, that somehow we need to change the structure so that, indeed, the perception as well as the reality is that people can get a fair break if they have an honest

difference of opinion with the revenue agent about whether or not additional revenue is owed based upon an interpretation of the Code or an honest dispute between the revenue agent and the taxpayer.

Well, finally, Senator Breaux's comment, some kind of an ombudsman, somebody who can, in effect, speak on behalf of the average person who comes in there with a case that may not be monumental in terms of the magnitude of cases that you deal with at the top level, but for a modestly situated taxpayer, a few hundred dollars in his or her life can make a tremendous difference. Is that a concept that we can talk with you about?

Mr. DOLAN. Senator, I would like to talk further about it. Obviously in the two Taxpayer Bill of Rights we have sought to create in the taxpayer advocate this kind of capacity. I think there is now legislation moving in both Houses that will deal with another set of additional employee rights, and it may well be in the context of that that some of these ideas would profitably be considered.

Senator BRYAN. Yes. In other words, somebody that is on their side. Again, I think the appearance is terribly important. It just cannot be somebody that is assigned previously from the Criminal Division or the Revenue Collection Office has assigned to represent.

It has got to be somebody who clearly is recognized by the taxpayer, that this is somebody that really does not have any ties, that this person does not eventually wind back into the system and, depending upon how he or she performs, he can have your job somebody, Mr. Dolan, for example. I mean, this has got to be a separate position.

Mr. DOLAN. I think you are dead on, Senator. I think perception is every bit as big as reality in these cases, and I think you are right.

Senator BRYAN. Good. Now, these are not monumental. These are not earth-shaking. We will not see these on the front page of the papers tomorrow. But, I mean, the suggestion that the offices be open in the evening, that is not a radical notion.

I happen to represent a State in which our two principal cities operate 24 hours a day, but our municipal courts all over America operate in the evening, recognizing that most people work 8:00 to 5:00, 9:00 to 6:00. I mean, that does not require an act of Congress, does it?

Mr. DOLAN. No.

Senator BRYAN. If you found that meritorious, even on a trial basis to see if we could not try to make the office hours more responsive to the working schedules of average people.

Mr. DOLAN. Senator, that is also right on the money. Two weeks ago, we had all of our Customer Service Division Chiefs in looking at doing exactly that with our phone site. Potentially on some basis we have 24-hour access, and in some others, at least 16 hours. I think moving down that road and making ourselves available at points that work for the taxpayer is exactly the right way to go.

Senator BRYAN. And to do so on a trial basis, and recognize that every one of these pearls of wisdom that I am sharing with you may, in fact, sound better than they actually work out in practice, but to try it on a prototype basis. Municipal court systems that

have a night court, that has been immensely helpful. Those are very, very convenient for the public.

Finally, one thing that, if true, you should change immediately. That is, if your hotline has called ID so the individual who calls in can be traced immediately as a result of the call, that is something I would suggest, Mr. Dolan. We do not need an act of Congress for that.

I would hope if that, in fact, is true, that you would issue an order, retroactive to this morning at 0800, whenever your people come in, that that has got to be dropped. That is just pretty outrageous.

Mr. DOLAN. Senator, let me say, as I heard that this morning I believe that was a concern raised about the Inspector General's hotline. I intend to be sure that she is aware of that.

For the very reasons you mentioned, even in tax cases, our call sites do not use caller ID for that very reason. We do not want the average taxpayer worrying that we are going to pick up telephone numbers that way and call back. I will clearly take that issue to the Inspector General and be sure that she has been apprised.

Senator BRYAN. But the assurance that you are giving is that, at least within the area of your jurisdiction, people can call and there is not a caller ID.

Mr. DOLAN. I will satisfy myself before the day is out that that is the case in the Inspection Service as well. I believe it to be the case that there is no caller ID there.

In terms of the case this morning, I think I am going to learn for sure whether there is right now. Doug tells me there definitely is not in our Inspection Service. I will take the concern to the Inspector General about the 800 number and see whether she needs to react or not.

Senator BRYAN. Yes. I appreciate that.

One last point that I wanted to make. You, in responding to Senator Roth and Senator Breaux on the Savage case, that is the case where you got the letter from the Department of Justice, and you were reluctant to testify about it because you only had one release. Now, most folks out there do not know what the devil you are talking about, so let me give you an opportunity to tell them. You are talking about a privacy release.

Mr. DOLAN. Thank you, Senator.

Senator BRYAN. Senator Graham had a privacy release and emphasized that point. But you are not able to testify about the implications for the other two taxpayers that may have some relevance to the decision that you made or did not make in the Savage case, because you do not have a privacy release from them and, therefore, it would be against the law for you to discuss that in a public setting.

Mr. DOLAN. Thank you for cleaning up my act. I should have been more clear. That is exactly the case.

Senator BRYAN. But if you had those privacy releases you would be more forthcoming with our able Chairman and the committee?

Mr. DOLAN. Correct. And without it I would be capable of talking about it, but only in executive session.

Senator BRYAN. I appreciate that.

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

The CHAIRMAN. I would just point out to my distinguished friend from Nevada, that one of the parties does not, in fact, exist.

Senator BRYAN. So we only had one more tax release that we need.

The CHAIRMAN. I have been corrected. Neither party exists.

Senator D'Amato?

Senator D'AMATO. Mr. Chairman, let me pursue that, if I might. Now, Mr. Dolan, if we are talking about a fictitious party, are we talking about needing a privacy release for one additional person or two? If, indeed, you have asserted to the Chairman that there are two other individuals, I think it is important that we know. Now, how many individuals are there?

Mr. DOLAN. Senator, there are not two other individuals. There is at least one other actual——

Senator D'AMATO. Well, it is not at least. That would be a misstatement, would it not?

Mr. DOLAN. I am sorry. Thank you. It is getting late in the day and I am not doing this very well. There is one other taxpayer and I am told by counsel that if we had had the release of that other taxpayer we would have been able to continue the conversation.

Senator D'AMATO. All right.

The CHAIRMAN. I would point out that the other party is no longer in business.

Mr. DOLAN. Senator, as I would understand it, that would still require me to have a release.

Senator D'AMATO. Let me tell you where I have some problem. I am going to go beyond that, but I do have a problem with the manner in which that was answered.

Earlier today, and I was not here and I apologize, because we had a transportation bill, the ISTEA bill reauthorization for the next 6 years, and I chaired that hearing so I was not able to be here, Mr. Chairman.

But I want you to know that the American people are vitally interested. I have received scores of e-mail letters. Let me share with you just two. I will only read parts of them.

One from Dave Finger Lakes. "Dear Senators D'Amato and Moynihan: The types of mismanagement and abuse being chronicled before your committee show a pervasive attitude towards disregard of the constitution and due process." It goes and says, "Accountability has been talked of this morning, now it is time to put that, with the necessary consequences, into practice."

I would suggest that anyone who paid just a little bit of time and took the time to hear the witnesses yesterday would have to come to that conclusion, and not just with respect to the Savage case. It almost appears to me that, once again, we are not participating in the kind of manner this is.

Let us get down to the bottom of this, what happened, who was responsible, and how are we going to correct not only those cases that took place in the past, but set about a mind-set and an attitude that we are not going to operate in that manner. Every one of those cases was more shocking than the other. More shocking than the other.

A simple, humble optometrist. Now, let me say, you said to the Chairman today, am I not right, when he asked you to comment

on the particular cases, that you had directed the district directors of each of these areas to report to you so that you could look into the file to ascertain what had taken place; is that right?

Mr. DOLAN. I said something a little bit different, Senator.

Senator D'AMATO. Well, tell me what you said.

Mr. DOLAN. Sure. What I said is, in the context of the last 5 or 6 months, we have worked with the committee staff. We have assembled here in each of the four cases, at least, a fairly significant file and worked that with the staff.

Senator D'AMATO. Right.

Mr. DOLAN. Understand here what went on.

Senator D'AMATO. Yes.

Mr. DOLAN. What I said I wanted the directors to do is take those files. In addition, I want them to do as you suggested. I want them to see the tape and I want them to read the testimony of the taxpayers so that as they go back in their organizations and look at the ways they might have done it differently, it is used constructively.

Senator D'AMATO. All right. Here is the problem I have. As you said, these cases were not brought forth newly to you for the first time, but, indeed your staffs and the committee staff here had developed them and knew about them even before the members of the committee had an opportunity to hear their stories. I do not know which one was more chilling, to be quite candid with you.

The story of the Jacobs', the optometrist, I found it just absolutely unconscionable. It seems to me that you must have had, in the 17-year history of torturing those people—and that is exactly what took place—somebody had to have seen that there was another file and have known what was taking place in the course of that.

Now, one of the problems is accountability. If you send out forms and you say, here is a lien, or you owe so much and no one signs, and I can understand why you might not want a particular person's name, because then they might become a person who is harassed. But there should be some code, some number, 126–A, so that in the organization when a person calls and says I got a letter, I mean, do you not believe that that is necessary?

Mr. DOLAN. Senator, I agreed with an earlier question, and I think we do need to do more of that, yes.

Senator D'AMATO. You see, now, look. I feel totally inadequate as it relates to suggesting the kinds of things that can or should be done. But it seems to me, in fairness to the committee and to the American public, that these are the kinds of things that you should be prepared today to have discussed with us.

Let me tell you what we have learned, not only from these four cases, but I have to tell you, it does not take a rocket scientist, in listening to those four cases, to say, this is obviously one of the problems, accountability.

We do not want to put our tax people in the position where they can be harassed, so I understand why you might not put a person's name, address, and home telephone number on it.

But certainly there should be the ability for whoever is making a legitimate inquiry to know they are speaking to more than just a piece of paper that says you now have a tax liability of $2,752

and you better send the money in, so they can call and there is somebody that they can speak to.

Then after they have, they know that this is number 126–A, or whoever that person is, so they can follow it. That is one of the things that Monsignor Ballweg talked about. The Jacobs; they never knew who they were talking to. Mrs. Hicks, in terms of her situation.

So it seems to me that even in your response, and I do not mean to personalize this, when you say, well, we are sending these files back to the district office and telling them to look at this, that they can do better, I mean, that is incredible.

I mean, have you not analyzed each and every one? Of course you have. You have analyzed these cases, have you not? I mean, your counsel was able to tell you, there is one party more, there are two people who have not signed. So you have looked at them, right?

Mr. DOLAN. Correct.

Senator D'AMATO. You know them down to the "T."

Mr. DOLAN. I do not know them to the "T," but I have looked at them pretty thoroughly.

Senator D'AMATO. Well, your people have, have they not?

Mr. DOLAN. Correct.

Senator D'AMATO. You are darn right. When you showed up this morning you knew you were going to be on the hot seat, so to speak, right?

Mr. DOLAN. Every indication.

Senator D'AMATO. Right. So tell me, what happened with the Monsignor? I mean, how did that happen? You have a chart there someplace that tells you what took place.

Mr. DOLAN. Senator, I do not have a chart, but I did say earlier that I have a couple of people with me who have been deeper in the case, and if you would like to talk with them, I would be happy for you to do that now.

Senator D'AMATO. Well, you see, if you came along and said to us, this is what took place there and this is what we are going to do to see to it that it does not take place again. This poor lady Jacobs, who did not know there was another number that existed when she opened up her new business account and did not know that the first one was with her until death do them part.

How could it take 17 years; can somebody tell me how that took 17 years and how, year after year, she got hit with penalties, and how they told her, if you do not pay $11,000 and some odd hundred dollars we are going to basically put you out of business? I mean, do you want to have somebody talk about that?

Mr. DOLAN. I would like to, if you would like.

Senator D'AMATO. I would like to know how that happens, Mr. Chairman, would you not?

The CHAIRMAN. Absolutely.

Senator D'AMATO. I do not know if you would. You have been here a long time, putting in lots of hours. I just think you are being tremendously accommodating. But, I mean, how did that happen? I know you are going to testify to the best of your ability.

The CHAIRMAN. Anybody that testifies has to be sworn in.

Senator D'AMATO. All right, Mr. Chairman.

Mr. DOLAN. Mr. Chairman, this is Ronny Rhodes, our Assistant Commissioner for Collection.

The CHAIRMAN. Would you state your name and position?

Mr. RHODES. Mr. Chairman, my name is Ron Rhodes. I am the Assistant Commissioner for Collection.

[Whereupon, Mr. Rhodes was duly sworn.]

Senator D'AMATO. Ron, did you have an opportunity to take a look at this Jacobs case?

Mr. RHODES. Yes, sir, I have.

Senator D'AMATO. You studied it?

Mr. RHODES. Yes, sir, I have.

Senator D'AMATO. And did she testify truthfully and accurately?

Mr. RHODES. Yes, sir.

Senator D'AMATO. She did. So when she got this bill for $11,000 and told people, look, we paid every single time, why are you sending me this, what happened, how did that fall through the cracks?

Mr. RHODES. Senator, there are about five things when you look at this case, and there are nine pages of chronological history that I looked at.

Senator D'AMATO. Seventeen years.

Mr. RHODES. That is correct. It is a very complicated case and a lot has happened to this lady. This whole issue of this particular case revolves around, in my mind, five failures, if you will, on the part of the organization.

First of all, obviously the length of time that it took us to resolve the case. That absolutely has to be looked at, and we did look at it. What complicated this particular case is the fact that the service actually ended up issuing multiple employer identification numbers. That was brought about by not having the right kind of checks in place at that time.

There are a couple of things that we believe have been in place for a number of years that will prevent those kinds of things from happening today. When a person goes into business, we would like them to keep that same number, even if they stop business and then start up again.

In this particular case, we issued an additional identification number. We should not have. Today, we cross-reference the Social Security number of the individual when they make application for an identification number so that we end up assigning the original number. That is something that we have in place.

Senator D'AMATO. Let me go to this, and I see the little red light is on and I will come back to it. Have we figured out how much of a refund the Jacobs' are entitled to at this point in time?

Mr. RHODES. In terms of the Jacobs', based on the information that we have at this point, I believe we resolved the discrepancies in relationship to how much we believe that they owe and how much money we owe them.

What we are in the process of doing right now is attempting to offer to the Jacobs' an opportunity to get with us if they believe that there are other monies owed and due them. We are more than happy to sit down and work with them, take a look at what information they have, trace it back, take whatever time that it takes to deal with any other questions that they might have.

Senator D'AMATO. Well, Mr. Chairman, you have been most indulgent. You have been here a long time, and you have got a General Accounting Office witness that is going to come up here. I think this makes the point, though.

Here these people have been going through 17 years, and the fact is, they still have not, at least to their satisfaction, and I have to come down on their side, had justice. After they had gone through, all kinds of incredible problems, paying monies that they never had to pay to stay in business, worrying day and night, you could not help but feel the sincerity of Mrs. Jacobs and the torture that she and her husband had to go through, and no one there to really look at this and get this situation cleared up.

Even at the present time, the question is, were refunds made to the proper taxpayers? We really do not know and I do not believe you are in a position to indicate that you know that. How much was refunded?

I would just commend to you that we undertake that, even with this individual at this late time. But I think all of their stories illustrate very serious shortcomings. Very serious.

Certainly people have a right to know, who did they last speak to, what number was it, where was it. You just cannot send them out a piece of paper and nobody is held accountable for it. I think that is pretty basic. Pretty basic. It should not take this hearing.

So, Mr. Chairman, I commend you. I think we are just scratching the surface. This is an enormous problem, I know it is complex. I think the American people, in terms of some of the letters that I have gotten, say accountability has been talked about, but it is time to put it into practice. That is our obligation and also that of the service, because we just cannot legislate it, as Senator Bryan has indicated. It has got to be part of the culture as well. Thank you.

The CHAIRMAN. Thank you, Senator D'Amato.

Senator Kerrey?

Senator KERREY. Thank you very much, Mr. Chairman.

Mr. Dolan, first of all, good to see you again. I appreciate very much and was not surprised, nor disappointed, with your presentation here today, which reflects well on the 102,000 people that work for you at the IRS.

You were very cooperative, as were many others at the IRS during our commission's examination of this very important agency. I am very grateful for your service and the way you conduct yourself in front of these hearings like this.

Mr. DOLAN. Thank you, Senator.

Senator KERREY. I would like to ask you a few questions about the legislation that came from that commission, and I will not, just so you know and you do not have to sit there and squirm, talk about this board at all, which is the hot button issue and the one that has caused a lot of heartburn.

Mr. DOLAN. Thank you.

Senator KERREY. Unfortunately, it is the only thing that has been given much attention by some. But there is a full range of recommendations that came from that. The first section deals not only with governance, but also with senior management changes. The second section deals with electronic filing. The third section deals

with taxpayer protection and rights. And the fourth section deals with congressional accountability, with three sets: oversight, budget, and the third being tax complexity.

First of all, have you had a chance to review this bill at all?

Mr. DOLAN. Yes, Senator.

Senator KERREY. All right. So it would be fair to engage in a little bit of dialogue.

Mr. DOLAN. I might not be able to go section by section, but I have clearly got the——

Senator KERREY. And I will not ask for the administration's views on this at all.

Mr. DOLAN. Sure. Sure.

Senator KERREY. I would like to get into some of the stuff that is relatively uncontroversial.

Mr. DOLAN. Sure.

Senator KERREY. In the first section, the issue, again, that is drawing all the heat, which is the oversight board. To be clear on this, my goal here is not to pull the tooth out of the Department of Treasury so that they lose authority. I am not trying to get them to relinquish authority.

I still see IRS as an executive branch agency similar to what we have now with the Social Security Administration. There is no corporate CEO language in here, although that has been run around the block a few times.

We are trying to get to a point where the commissioner is sufficiently independent to give us both the good news and the bad news and to get a long enough period of time on the job that some longevity can occur and a person can begin to apply the kind of expertise that is needed to run this agency. But, again, I will leave that alone.

In the area of management, Mr. Dolan, let us say that you are before us right now, as Acting Commissioner. You know what authorities you would have the first day on the job and what authorities you do not have. Would you describe for the committee who you can hire and fire, as a commissioner?

Mr. DOLAN. Well, I think if I were the commissioner today, ultimately I have the ability to hire and fire the people who immediately report to me.

Senator KERREY. Define ultimately.

Mr. DOLAN. Well, it would work this way. If it were a senior executive service person who reports to me, I would hire them through the senior executive service application process, for the most part. This would envision an announcement, would go both within government and outside government and come in through the rules of the senior executive service.

They would be set within the rules of the senior executive service. I would have a reasonably narrow salary band within which to attract somebody into the senior executive service. So that is how I would hire them.

Senator KERREY. The flexibility provisions that we have in this piece of legislation, former Commissioner Richardson looked at it very carefully, and most, I think, if not all of the previous commissioners looked at it as well and have talked about the lack of flexibility as a problem.

What we are talking about here, as I see it, is you have got 102,000 employees. Maybe at any one point in time, let us say 4,000 or 5,000 are willing to abuse power, willing to do things wrong. Pick a number. It is a small number.

Your problem is, it has got to have zero tolerance. Your problem is, you have to manage for zero error. You cannot afford to have a single violation of personnel policy, because one violation creates tremendous problems for everybody else.

I suspect taxpayers watching this thing are going to get turned off entirely, presuming that this is going on throughout the entire agency. So the flexibility provisions of this bill were written in there so that you are better able to manage.

Mr. DOLAN. Senator, there is a ton of benefit in that flexibility section. I mean that I think it is hard to beat.

Senator KERREY. Pay, hiring. I mean, there are a lot of Federal laws that make it difficult for you. I am not talking about coming in and lopping off heads, I am just talking about, the taxpayers need to understand that the commissioner is restricted. They cannot manage as well as a consequence of legal restrictions that are in place.

Mr. DOLAN. Something you know very well from your time on the commission is that some of the places where we are most challenged to bring talent to the table is where you have to go out and compete in the marketplace in a way that today's structures and today's flexibility, salary, benefit, and everything else put you out there with one hand behind your back, frequently.

Senator KERREY. So your answer is yes. I am not going to ask you to endorse the language in here, but there is no question the answer is yes.

Mr. DOLAN. The elements of that section have got almost all up sides, and maybe there is something in the language that somebody would want to worry about, but what it strives to give to the commissioner, it seemed to me, is fundamentally right-headed.

Senator KERREY. I mean, in the last couple of weeks we have had a very nasty incident in Nebraska with a hamburger processing plant that produced about 20 illnesses, and they do not even know if it is 20, it might be 4 or 5. But 20 people got sick as a result of eating beef that they believe was contaminated in this plant.

Well, I know from my experience in the restaurant industry, which is what I did before here, is that all I need is to make one customer sick. If one customer gets sick, my business is shut off. So there is zero tolerance.

I think the taxpayers need to understand that one of the urgent changes that is needed, and I think it is urgent, I think there is an urgency attached to this, is we have got to give whoever the commissioner is a sufficient amount of management authority that can actually run the agency. I think you do a good job of managing inside of the current law, but the law makes it difficult for you to do everything that you need to do. Is that fair?

Mr. DOLAN. I think it is a fair statement.

Senator KERREY. Can you comment on a couple of other things. I mean, have you had, first of all, a chance to examine the third section of my bill dealing with taxpayer protections?

Electronic filing is fairly uncontroversial, I presume you would say. Although, again, some people understand the error rate in electronic filing is less than 1 percent and paper filing is 25 percent.

You are talking about real dollars and a real issue here and we need to support you in that effort. It is relatively uncontroversial, but it is a very important part of managing this thing, especially in the new economic paradigm of electronic commercial transactions.

Mr. DOLAN. We are signing on to that 1,000 percent. The thing we have squabbled some about were the potential impacts on filing dates.

Senator KERREY. I understand.

Mr. DOLAN. I think there is some work to be done there potentially, but the thrust of that and what it invites by way of the objective to get electronic with the filing and the payment, is entirely, again, right-headed, I think.

Senator KERREY. I appreciate that.

Under the taxpayer protection and rights section, which is the third section, and that is much of what we have heard today, and it is a tough balance. It is a very tough balance between giving the taxpayer a sufficient amount of rights and authority so that they cannot be unfairly abused. While maintaining your ability to collect taxes owed.

The taxpayers also need to understand that there has been no claim of corruption inside of the IRS, that is to say, somebody taking a bribe. Fifty years ago, that was quite common.

One of the things we have done with the law is we have reduced the amount of discretion that a revenue agent has to bring common sense to bear upon a judgment and, as a consequence, the law looks very rigid out there on the other end of the line. To a taxpayer, it gets very, very rigid because there is not much discretion.

That lack of discretion came as a consequence of wanting to make sure that we have zero tolerance for bribes, which we have. As I said, it is one of the few tax collection agencies in the world that can lay claim to that rather high standard and that rather high quality.

One of the suggestions that was made that we did not actually include in your bill, and I liked your comment on it, was to provide for an exemption from anti-injunctions acts so that a person could go into a district court and get a temporary injunction against the IRS, and it would have to be temporary, against the IRS attaching a lien, and all that sort of thing. We heard a number of people earlier talking about it, and in our deliberation we also heard that.

Can you comment on that authority?

Mr. DOLAN. I think my worries would run a little bit along the lines you just described. It is this delicate balance of creating access and relief and remedies, while at the same time not inviting, by definition the way you style those remedies, another level of litigation, in effect.

So what I think I would want to be circumspect about is something that rose to injunctive relief and invited more process into the courts, as contrasted with looking either at the appeals process or looking at some of the other devices that might——

Senator KERREY. You have to shorten up the time in which the documents have to be produced and the thing has to be settled.

I wanted to talk a little bit about the problem resolution officer and the advocate. That has also been an issue raised. What about the idea, and we did not include it in the legislation but we did, by the way, as you know, remove the Problem Resolution office and create even more independence than it currently has.

What about the idea of creating some kind of national problem resolution team that could, in the 100, 200, or 300 cases where the possibility of an override is needed, that this team could come out there and make some kind of a quick evaluation and resolve these things a bit faster?

Mr. DOLAN. You know, I do not know we have ever worked the idea of a team, Senator. But certainly the notion of the advocate getting increased ability to intervene, step in, override, stop, look at, I mean, really would be the kind of independent intervention that I think both Taxpayer Bills of Rights envision. That is something that we generally are pretty supportive of.

Senator KERREY. Well, I appreciate that. My time is up. The case I am trying to make, and I am trying to make with you and the committee as well, is though I am in 100 percent agreement with the Chairman when he earlier this morning said that no single piece of legislation is going to solve all this, and I could not agree with you more, but I do think there are some things that we know—there is broad agreement, by the way, between the executive branch and the legislative branch—will work and would improve the operations of the IRS.

I am hopeful that these 3 days of hearings, which have shown the American people we have got problems as well as shown the American people we have got dedicated employees trying to do the job right, my hope is that we can change the law so that we can say that these three hearing actually produced something in the short term, even though it does not solve every problem, but did something towards solving those problems that we know we can get at. Thank you.

The CHAIRMAN. Thank you, Senator Kerrey.

Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, just one thing which we touched on this morning, Senator Kerrey touched on this morning, Mr. Dolan.

Mr. DOLAN. Senator.

Senator MOYNIHAN. Which is that we go back at least to 1962 when we had a 97 percent voluntary compliance rate, and some 40,000 members of the IRS 35 years ago, and we are down to an 83 percent voluntary compliance rate, with 72,000 employees.

Could I ask you, not off the top of your head but if someone would think about that and give us a feeling for what may have happened? It speaks to a difficulty which can be complex, probably more than one thing, but I think we would like to know more about it as we proceed to the legislation that Senator Kerrey is talking about.

Mr. DOLAN. Senator, I appreciate your kindness. I heard you frame the question this morning and I thought I was going to get an open book test here this afternoon. I would gladly take you up

on your offer of maybe giving you something more thoughtful than what I would come up with off the top of my head this afternoon.

Senator MOYNIHAN. Sure. We appreciate it very much. It is the kind of thing I know you care about, and maybe you can figure out for us.

Mr. DOLAN. Thank you.

Senator MOYNIHAN. There will not be a simple answer, I am sure.

Mr. DOLAN. Thank you.

Senator MOYNIHAN. Thank you, sir.

[The information appears in the appendix at page 280.]

The CHAIRMAN. Mr. Dolan, you are almost at the end of your ordeal.

Mr. DOLAN. Thank you, Senator.

The CHAIRMAN. But let me ask one final question on the Savage case. You started your testimony today by apologizing for the four cases we heard about yesterday. My question is, are you prepared to make restitution to Mr. Savage for taxes wrongfully collected from him now? I do not think that this question in any way violates Section 6103.

Mr. DOLAN. No, I do not think it does either. But I think there would be a need, Senator, for me to understand better the theory by which Mr. Savage believes the restitution is due.

I do not for one second take back anything I said about the way these cases were handled, and I understand and saw very graphically in his testimony how he felt about this. So the concern I have is that the settlement or the dollars involved, the dollars that flowed to the government in this case, were dollars associated with the liabilities about which I am not able to speak here.

I think the conclusion was that those dollars appropriately flowed there as a result of the court settlement. As a consequence, I am hard pressed, if restitution is meant to reverse that, I think my answer at this point would have to be that I am not prepared to do that.

The CHAIRMAN. Just let me make it very clear that I think it is outrageous what happened to him. Totally unfair, inequitable. You had a letter—not you, personally, but the local IRS people—from the Justice Department saying that the lien was wrongful. That may have been the basis of the settlement.

Mr. DOLAN. Senator, if you would permit me, when I get a response from the Justice Department to the letter I mentioned earlier, I would clearly want to share that with you and with the staff.

The CHAIRMAN. Well, I just think the facts are such that it is outrageous treatment of a very responsible taxpaying individual. I hope you will get back to me promptly.

Mr. DOLAN. I will, sir.

The CHAIRMAN. I do want to thank you for being here today. I think these hearings are important, not only for the American taxpayer, but I think for the welfare and future of the agency and its employees.

I appreciate, as I said, that you have at least agreed, in part, that there are some serious problems that have to be addressed and I cannot tell you how important I think it is that we seek to work together, the Secretary of the Treasury, yourself, the House

and the Senate, the administration, in taking what steps are necessary to make this a service-oriented agency in fact, and not just in name.

Mr. DOLAN. Senator, I take your invitation very seriously, and I know Secretary Rubin does as well.

The CHAIRMAN. So, in closing, as far as you are concerned, I do want you to know that these oversight hearings will periodically continue, because we think it is important that the Congress make certain that the agency is operated in a manner of the best interest to the taxpayer and the American government.

So thank you very much for coming here today.

Mr. DOLAN. Thank you.

Senator MOYNIHAN. Thank you, Mr. Dolan.

Mr. DOLAN. Thank you, sir.

The CHAIRMAN. Our final witness, and we will have to be relatively brief because I have other appointments, but I am particularly pleased to welcome Ms. Lynda D. Willis, who is the Director of Tax Policy and Administration Issues for the General Accounting Office here in Washington.

Ms. Willis, will you please come forward. I want to apologize to you. You have been shifted around from time to time in these hearings. It is not a lack of any interest or importance we attach to your work, because the study you accomplished was most important.

Would you raise your right hand?

[Whereupon, Ms. Willis was duly sworn.]

The CHAIRMAN. Please be seated and proceed.

STATEMENT OF LYNDA D. WILLIS, DIRECTOR OF TAX POLICY AND ADMINISTRATION ISSUES, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Ms. WILLIS. Thank you, Mr. Chairman. I appreciate being invited here today to talk about the work that we have done for this committee related to IRS's use of liens, levies and seizures.

I will make my statement brief. We will continue working with your staff through the upcoming months as we pursue this issue with IRS.

Briefly, let me summarize the points that my testimony makes, and then I will be ready to answer any questions that you may have. You asked us to look at the extent of use, and potentially inappropriate use, of IRS's collection enforcement authorities. Basically, we found that, while IRS has some limited data about its use and misuse of collection authorities, that data is not complete.

Because that data is not complete and because of certain recordkeeping inadequacies within the IRS, we are unable to go in and determine either the extent of IRS' misuse of its collection authorities or the characteristics of the taxpayers, as you requested, who have been subjected to inappropriate use of these authorities.

We looked at data from a variety of sources, including that from the taxpayer advocate, the Office of the Inspector General, et cetera, and found that IRS does not require that information on the resolution of the complaints be recorded, as well as some other specifics, such as whether it was an inappropriate use of an enforcement authority that generated the complaint.

Finally, I would just like to say that because of these inadequacies it is impossible for us, IRS, or the Congress to have the data that would permit us to readily resolve reasonable questions about IRS's use of collection enforcement authorities, the causes of any misuse or the characteristics of taxpayers involved.

We discussed this with IRS and at that time they told us that they believed that they had adequate checks and balances in place to identify misuse of collection authorities and that they did not need to put additional systems or data gathering efforts in place to further pursue these cases.

We disagree with that. We testified a number of years ago, I think in 1988, as well as in reports issued in 1994, and a report to you in 1996, that we thought IRS needed to improve its recordkeeping systems on potential agency employee misconduct so that they would have the ability to track these allegations and to determine root causes of the problems and devise ways to deal with them effectively.

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

The CHAIRMAN. Thank you, Ms. Willis.

Are you telling me, in effect, that not only Congress, but the agency itself, really does not have the records to enable us to determine whether or not the collection tactics are proper or improper?

Ms. WILLIS. It would be very difficult to go systematically and determine whether IRS across the board is using these enforcement authorities appropriately.

The CHAIRMAN. Now, you mentioned that locating closed collection files sent to the Federal Records Center is impractical.

Ms. WILLIS. Yes, sir.

The CHAIRMAN. With the state of records as you have described, is it possible for anyone to determine how widespread the problems regarding liens, levies, and seizures really are?

Ms. WILLIS. Not without a great deal of work. It would take an extended period of time and a lot of resources to be able to identify and find enough case files that you could make that determination, and even then you would be dependent upon the information being in the case files, and that is not always the case.

The CHAIRMAN. Senator Moynihan?

Senator MOYNIHAN. Yes. Being conscious of your pressing time now, I just want to make one comment and ask one question. We have a voluntary system of tax payment and a still high level of compliance at 83 percent. It is declining, but it is high.

Most of the taxes owed that are not paid voluntarily, some resolution takes place and they are collected, 93 percent, I gather. But then to get the remaining 7 percent——

Ms. WILLIS. I think it is actually about 87 percent that is owed is actually collected.

Senator MOYNIHAN. Oh, I see. Then to get up to a little higher number, there are 750,000 liens, 3.1 million levies, and 10,000 seizures. That is an annual rate?

Ms. WILLIS. That was the number for 1996. Now, not all of those liens and levies resulted in additional money flowing into the Treasury. Not all of those enforcement actions are productive.

Senator MOYNIHAN. But that is about 4 million families getting caught up in essentially punitive action by the Federal Government, is it not?

Ms. WILLIS. It is a high number. You cannot directly translate the number of enforcement actions taken to taxpayers. You might have more than one levy on one taxpayer.

Senator MOYNIHAN. On one taxpayer.

Ms. WILLIS. More than one lien on one taxpayer.

Senator MOYNIHAN. But one could attempt to get a number of that sort, could you not? Yes, the GAO could attempt to do anything.

Ms. WILLIS. We could attempt to look at that number through the IRS systems, but that would require a lot of programming because IRS' recordkeeping systems are not set up to produce that information.

Senator MOYNIHAN. All right. But we could ask you to do it on the back of an envelope someday and get a feel for it.

Ms. WILLIS. I could talk to IRS about it and see what we could do.

Senator MOYNIHAN. Yes. Yes.

Now, what did you say, we have 87 percent of taxes owed that are now collected?

Ms. WILLIS. Right. The numbers that I have seen, indicate that about 83 percent are paid without enforcement action.

Senator MOYNIHAN. They open the mail, and there it is.

Ms. WILLIS. And another 4 percent comes in as a result of IRS enforcement actions.

Senator MOYNIHAN. Really, I do not want to sound absurd here, but we have 70,000 IRS employees to collect 4 percent of the taxes. In a sense, the 83 percent gets mailed in and the enforcement procedure, or whatever, produces a rather small result. But perhaps, absent of that, it would be a different situation.

Ms. WILLIS. Senator, that is one of the reasons why we think it is very important that IRS know which of its enforcement actions are effective in which cases. We have testified any number of times that IRS does not have this information, that we do not know which enforcement actions are most productive, under which circumstances.

Senator MOYNIHAN. Good questions.

Ms. WILLIS. Right. And until we know more about both the systemic causes of the problems, and we heard some interesting testimony over the last 3 days about causes, such as erroneous assessments, as well as mishandling after that. But until we know more about where the problem is originating and what works to fix the problem, it is difficult to target resources most effectively.

Senator MOYNIHAN. Right. So the first thing to do is to ask the question.

Ms. WILLIS. The first thing to do is to ask the question.

Senator MOYNIHAN. Yes. Yes.

Would you have some feeling for those numbers I recited this morning, that in 1962 we had a 97 percent compliance rate, and we are now down to 83 percent voluntary compliance.

Ms. WILLIS. Senator, I have never heard the 97 percent compliance rate figure before, so I do not know what that is based on. I

am familiar with where the 83 percent comes from, but not the 97 percent.

Senator MOYNIHAN. I am just informed by Mr. Giardano that that is IRS data.

Ms. WILLIS. I would be more than happy to look at that and provide an answer for the record.

Senator MOYNIHAN. Excuse me just a second. The person who knows all about this is sitting behind me.

[Pause.]

Senator MOYNIHAN. Oh, I see. There is a publication here called "The Income Tax of 1862–1962: A History of the Internal Revenue Service." It is obviously an official history. So it says, at this point we have a 97 percent compliance rate.

Ms. WILLIS. I am not familiar with the number. I would be happy to look into it and see what the difference is.

Senator MOYNIHAN. Our copy comes from the Legislative Research Service.

That speaks of a decline. It could speak to the question of complexity, it could speak to the question of trust in government, it could speak to the question of the quality of grammar school education, do people learn to add or learn to use adding machines, which is different. I do not know. But it is a question we should address.

I think that one of the indicators of social and political vitality is that the citizens assume that their taxes are owed and pay them. When they stop doing that, you have trouble. You often have revolutions. We had one in the first instance. You would agree on that, I am sure.

Ms. WILLIS. Senator Moynihan, having a high compliance rate is very important and having people pay their taxes when they are due is key, obviously, to the economic well-being of this country.

Senator MOYNIHAN. Oh, I would go much further than that. No, no. I would say the social fabric and vitality of a country is, do you know what your duties as a citizen are, accept them, and comply. That speaks to the morale of a society.

Ms. WILLIS. The compliance rate varies over time and it also varies amongst different groups of taxpayers. As the economy changes, that may be part of the reason why the compliance rate changes.

Senator MOYNIHAN. Yes.

Ms. WILLIS. When you look at wage earners who file tax returns, they have a very high compliance rate, over 95 percent.

Senator MOYNIHAN. Yes.

Ms. WILLIS. That is primarily because of withholding and information reporting. When you look at income that is subject only to information reporting you still have a high compliance rate. But when you move away from income that is subject only to either withholding or information reporting, the compliance rate drops.

So if we have shifts in our economy where we have less of the tax base subject to withholding or information reporting, that is one possible reason.

Senator MOYNIHAN. Right. And a good subject, something the IRS should be interested in in the first instance.

Ms. WILLIS. Something they are very interested in.

Senator MOYNIHAN. Yes. I was surprised. In my early life on this committee I would cite that 97 percent rate and say, what a good republic we have here, only to look up and find, well, something has gone astray.

It may be the complexity of the Tax Code. The numbers of the employees has increased 70 percent since 1962. The population has increased by about 43 percent, so it is disproportionate, not just following the number of taxpayer. Well, we are embarked on this.

One last question if I can, Senator Grassley. The year 2000. This is a subject that just preoccupies me and to which more attention is beginning to be paid. The present computers, which were just going on-line in 1962, will not work unless they are reprogrammed, and we are hours away. I do not have to tell you about. I think Joel Woolenson is working on it there at the GAO.

But one of the problems with saying the year 2000 is you get the impression that, by the year 2000, you better have done something. No. By January 1, 1998 it may be your drop-dead date, because after that there is just not enough time to catch up.

What is your feeling about the IRS?

Ms. WILLIS. Senator, the group that I head is doing the IRS work related to the year 2000 problem for GAO, and we are within a couple of weeks of being ready to brief the various committees on what we are finding. It is a very, very large problem for IRS.

I believe IRS is the largest civilian agency year 2000 conversion, at least in this country, and possibly in the world, and they are dealing with very old computers. They have established a project office which is aware of the severity of the problem, but obviously they face major challenges in successfully converting their systems, in part because some of the systems are going to have to be replaced. They are so old, they cannot be made compliant. They are going to have to go through and replace hardware as well as operating systems.

IRS has a large team of people working on this. They are aware of the problem, but they have a very long way to go and time is running out. Like I said, in a couple of weeks we will be in a better position to come back and give you a better assessment.

Senator MOYNIHAN. All right. I hope you will, because this could bring the whole system crashing down.

Ms. WILLIS. It could be catastrophic.

Senator MOYNIHAN. Yes, it could be catastrophic. Now, the General Accounting Office does not use words like that often, but we have a catastrophe facing us. It is not going to happen for 3 years. Grown-ups do not say, oh, well, let us go out to dinner. Maybe we could get some sense of what you think is needed. They are going to need billions of dollars, are they not?

Ms. WILLIS. The last numbers I saw were about $800 and some million, but not all of the mission-critical systems have been identified yet.

Senator MOYNIHAN. So it is a billion dollars.

Ms. WILLIS. It rounds to a billion.

Senator MOYNIHAN. Yes. Yes. If we do not do this, we will have the whole system crash, what has just been described by Ms. Willis as a catastrophe. It is one of those nice problems, because it does not have to happen.You can do everything you need to do, you just

do it on time. But there comes a moment where it is too late to have gotten it done on time and the catastrophe comes no matter what you do then.

Senator GRASSLEY. We are almost there.

Senator MOYNIHAN. I would think we are getting close to there. Gardania, the economist in New York, says there is a 35 percent chance of a global recession just for the whole world not being up to speed on these things. But our job is to see to the U.S. Government. Well, not just the U.S. Government, but certainly the Internal Revenue Service. The Defense Department must have a tremendous problem. But there you are.

In about 2, 3 weeks you will let us know?

Ms. WILLIS. Yes.

Senator MOYNIHAN. I certainly appreciate that.

Ms. WILLIS. We will be able to give you a status report.

Senator MOYNIHAN. We will get some of your thoughts on, why the compliance rate at the time.

Ms. WILLIS. Yes.

Senator MOYNIHAN. I have to admit that, for such a young person, 1962 seems a long way in the past, but they do start then and we were obviously in a very different order of public attitudes towards the Revenue Service.

Ms. WILLIS. Senator, I think the other question is whether that number is calculated the same way that we calculate it today.

Senator MOYNIHAN. Of course.

Ms. WILLIS. And we will look at that as well.

Senator MOYNIHAN. All of those good, orderly questions.

Ms. WILLIS. We will look at that and see if we cannot give you a comparison and some suggestions.

Senator MOYNIHAN. Yes. Thank you very much.

Thank you, Mr. Chairman.

Senator GRASSLEY. Before I ask one question, and I only have one, there are a couple of administrative matters to take care of for Senator Roth, the Chairman of the committee.

Ms. Willis, your statement will be included in the record, your entire printed statement.

Ms. WILLIS. Thank you.

Senator GRASSLEY. Then also I would request from the committee that the various exhibits discussed during our hearing, and that would be for the 3 days, be included in the record.

First of all, before I ask one question, I should compliment the General Accounting Office, you, and others who helped us on the Restructuring Commission through your testimony and a lot of hard work there, and I think you contributed a great deal towards the Kerrey-Grassley bill and the report of the recommendations of that commission so that we will be able to follow up on this hearing with some real changes at the IRS to make it more user-friendly and more responsible and have better management.

Ms. WILLIS. Thank you.

Senator GRASSLEY. But the question is this, and it comes from your testimony. You mentioned that even if collection records contained relevant information, there are still obstacles to retrieving those records for a systematic review. Explain what those obstacles are.

Ms. WILLIS. Well, basically part of the problem is finding the case files, and once you find them, making sure that the information is in there and that you are able to build an entire case file for a particular enforcement action.

I recall over the past couple of days one of the issues has involved erroneous assessments. A collection case file will not contain information on the origin of the assessment. That would be in a different location, in a different office where the assessment was made. It is very difficult to tie those case files together and also make sure that you have the complete record.

Senator GRASSLEY. So the problem is basically the inability to find all of the information available in the file.

Ms. WILLIS. To pull it all together in any kind of timely fashion, yes.

Senator GRASSLEY. I call on Senator Murkowski.

Senator MURKOWSKI. I will be very brief. Let me thank you, Senator Grassley, and thank you, Senator Moynihan.

Ms. Willis, I am going to have one question that has probably got a couple of parts to it. But on page 2 of your testimony you say, "The IRS system, both manually and automated, have not been designed to capture and report comprehensive information on the use and possible misuse of collection authorities." So it was not designed. So we assume it was designed intentionally as opposed to having been designed unintentionally. But it was not designed to do that.

Then on page 11 you say, "IRS cannot readily produce data on the overall use or misuse of collection enforcement authorities or on the characteristics of affected taxpayers," which reinforces that you have a system that was not designed to do what we are concerned about.

On page 13 you say, "If a taxpayer complains about enforced collection actions, the complaint is to be handled initially by the office responsible for the action. These offices do not routinely keep automated or even summary records on the complaints or on the appropriateness of lien, levy, or seizure actions taken," which again suggests there is some intentional effort here in the way the system is set up.

So my question is, in effect are you not saying that the system that the IRS has put in balance is really designed to ensure that there is no way—no way—for the IRS personnel to be held accountable for any erroneous actions?

Ms. WILLIS. Senator, I do not believe they were designed with that intent. The systems were designed as financial accounting systems, so they are transaction-based. They are designed to determine whether the taxpayer owes money, whether the money has been paid.

They are not designed to collect information on how the money came in or whether there was an effective lien, levy and seizure. The basic accounting system of the IRS is like that.

That is one of the reasons why it is difficult to determine how many taxpayers are involved, it is because their systems are transaction based, not taxpayer-based. So you may have 10, 12, 15 modules for an individual taxpayer on an account which are separate and individual transactions.

In terms of these systems within the offices on collecting information on misconduct, those systems were never designed to collect that type of information, they were designed to collect information in a more aggregate sense in terms of complaints, et cetera.

Senator MURKOWSKI. Perhaps you are being more charitable than I am, but it would seem to me that they are clearly not designed for accountability; is that a fair statement?

Ms. WILLIS. They are not designed for that, no.

Senator MURKOWSKI. And one would wonder why there should not be some consideration given for accountability because, as I understand it from your testimony, there is no way to determine how many times the IRS has made a mistake perhaps in sending out a collection notice, no way to determine how many complaints may have been received.

You wonder if this was the way managers at IRS set up the system or set it up so that no one can trace questionable behavior because there is no accountability designed in it.

Ms. Willis, if an agency wanted to cover up and hide its inappropriate behavior, would the IRS system not be one that would be appropriate to use as a model?

Ms. WILLIS. I think as the statement says, with the IRS systems it would be very difficult to go in and identify cases systematically where there has been inappropriate behavior.

I do not know if it would be the best system for avoiding that, but it certainly is not a system that facilitates identifying that type of behavior which, as I stated earlier, is why we have recommended on several occasions that IRS develop this capability, because only when people are held accountable and know they are going to be held accountable and know that complaints against them are going to be tracked do you send the message that this is important.

Senator MURKOWSKI. Yes. Well, it appears to be designed so that there is no paper trail of any consequence, records. If there is no accountability, why, you have the inconsistencies arising that we unfortunately see here today. You can imagine how a business, Mr. Chairman, would operate under that kind of a similar practice.

I used to be in the banking business. When I became president of one organization I noticed that all of the notes that the loaning officers were making, they would initial because we wanted to know who made that loan, because all loans are good when you make them. But then I noticed that they were in pencil. So we changed that policy and put them in ink. You would be amazed. They got a little more careful.

I want to thank you, Ms. Willis.

Ms. WILLIS. Thank you.

Senator MURKOWSKI. Thank you, Senator. I think it has been revealing and rewarding. Hopefully the Finance Committee, under the chairmanship of Chairman Roth and the rest of us, are up to the challenges ahead.

Thank you.

Ms. WILLIS. We look forward to working with you and continue to support the efforts of this committee as you continue your oversight, especially in this area.

Senator MOYNIHAN. Well, we thank you, Ms. Willis.

Senator Roth having had to go another matter, I will just presume on the occasion to declare the hearing closed.

Again, great thanks to you. We look forward to, early on, that 2000 report.

Ms. WILLIS. Yes. Yes, sir.

[Whereupon, at 4:23 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MONSIGNOR LAWRENCE F. BALLWEG

Good morning Chairman Roth and Members of the Senate Finance Committee. I am Monsignor Lawrence F. Ballweg. I have been a priest in the Catholic Church for over 57 years. I was retired in 1990 at the mandatory retirement age of 75. My mother, Elizabeth Ballweg, died in August 1988 and, in her will, established a Trust—the benefits of which go to charity. In the will I was named the Trustee and since her death I have faithfully and conscientiously performed my duties as Trustee. I have submitted an annual report of the Trust's activities to the IRS each year without any problems. During the year 1995, I made more numerous transactions than in previous years. In order to record all the income of the Trust, I listed the various items on separate sheets entitled Statement 1, Statement 2, etc., and then placed the totals in the appropriate spaces on the IRS Form 1041. I did this more for the convenience of the IRS than for my own convenience. Since I did not pay a professional to prepare the Trust's return, I spent hundreds of hours collecting the necessary papers and balancing the figures. I asked for an extension of time for 1995 so that I could be more confident that the report was as accurate as possible. Two months later the return that cost me so much time and effort was returned requesting that I put all my figures on the appropriate forms that were enclosed. My second report was done hurriedly and returned on July 7 to make sure that it reached the IRS office in the few days that were allowed. In my hurry to return this report on time, it may not have been done as perfectly as the first although all the figures were the same.

I spend six months in Florida and six months in New York. The day after I arrived in Florida (November 4, 1996) I received a letter from the IRS Atlanta office stating that I owed more than $18,000 in taxes and penalties. Since I had left a copy of my final report in New York, I asked that a copy be sent to me. I was informed that I first had to request an application for a copy of my report and then return the application with a check for $14.00. When the application arrived I filled it out and enclosed the check. About 6-8 weeks later, I received a form that indicated that I could not receive the copy since my name, Lawrence F. Ballweg, was different from the name of the Trust which was Lawrence F. Ballweg Trustee U/W Elizabeth D. Ballweg, and reflected on line 1 of Form 1041, Elizabeth D. Ballweg, my mother who had died 8 years before. I wrote a long letter, dated January 6, 1997, explaining that I had submitted annual reports since 1988 and that my name was the signature on each report At the same time I submitted another request for a copy of my file. My request was ignored. Instead I received a "Final Notice," dated January 20, 1997, in which I was told that the IRS intended to take steps to take my bank account, auto or other property if they had not already done so. I have read several stories about how threats of that kind have caused extreme physical and mental suffering to taxpayers in the past. I now began to understand what those stories meant.

I must confess that I spent sleepless nights thinking of the possible consequences and not knowing where to turn since by this time I was certain that I would get no help from the IRS.

Mr. Chairman, it was at this time that I heard of your investigation into the conduct of the IRS. I immediately wrote to you and received prompt action. CNN presented my case on television and the next day I received a call from an IRS Taxpayer Advocate, received a copy of my file and was advised how to make the necessary adjustments. On March 24, 1997, I received notice from the IRS' Atlanta Office that I did NOT owe any tax.

For eight months I lived in constant worry, if not fear, that the Trust that my dear mother had established to help the poor would be penalized because of what I can only call the unprofessional, calloused, and indifferent behavior of IRS employees who are devious enough never to sign their names to any notices that they send out. The taxpayer is dealing with people who can do inestimable harm but cannot even be identified. I can only thank you, Senator Roth and the Senate Finance Committee, for trying to correct such abuses and I pray that, as a result, conscientious citizens will be spared the humiliation, embarrassment, fear and anxiety that I have experienced.

PREPARED STATEMENT OF DAVID BURNHAM

Mr. Chairman and members of the committee, thank you for requesting my testimony. I very much appreciate the opportunity to appear before this distinguished body

The record clearly demonstrates that the lack of effective oversight of the Internal Revenue Service—by Congress, the courts, reporters, tax practitioners, and other concerned individuals—has done grievous harm to the American people for many years. While it has become a cliche, it nevertheless remains a basic truth: the price of liberty is eternal vigilance.

Because we have routinely failed to hold the IRS accountable for its actions, the agency has too often operated in abusive, sloppy, unresponsive, improperly political and occasionally corrupt ways that are a threat to our society.

The IRS's continuing problems are costly to the nation in two ways. First, a badly managed agency does not collect as much as might be expected of the relatively small, but still significant, portion of the federal taxes owed by noncomplying taxpayers. The second cost is harder to measure, but probably more important. A badly managed agency is unfair: substantial numbers of individual citizens are erratically subject to wrongful actions. Such treatment contributes to the growth of a corrosive public cynicism that undermines public confidence in government in a fundamentally dangerous way.

My belief that strong oversight can have positive impact on government is not theoretical. It is based on direct experience. As a reporter who has investigated large powerful bureaucracies like the New York City Police Department, the National Security Agency, the FBI and the IRS for the last 30 years, I have seen clear and certain examples where public exposure of serious government problems has led to genuine improvements in government operations. We need the New York Police Department, we need the FBI, we need the IRS. But when such powerful organizations are allowed to operate without continuous constructive review, history tells us that almost certainly they will go wrong, sometimes in very serious ways.

The IRS, of course, is the subject of the committee's hearings. More than ten years ago, I began an investigation of that agency that led to the 1989 publication of *A Law Unto Itself: The IRS and the Abuse of Power*. This book was a unique and highly praised examination of the agency's historic and continuing failure to well serve the American people. To my astonishment, shortly after its publication, Fred Goldberg, the IRS commissioner at the time, told a national television audience that my critique of the agency had got it right.

Perhaps one reason the commissioner did not condemn my book is that it did not heap blame on the Bush Administration alone. My research, in fact, found that the IRS has suffered mishaps and misadventures under almost every president, Republican and Democrat, going back at least to Herbert Hoover. I found authoritative government documents clearing showing numerous multiple abuses:

- Herbert Hoover, irritated by political criticism of his budget-cutting policies by an organization of weapons manufacturers, ordered a secret FBI investigation of the group that was partly based on supposedly confidential tax information.
- Franklin Delano Roosevelt regularly used the IRS as a political hit squad. He ordered the agency to mobilize its enforcement powers against former Treasury Secretary Mellon, Senator Huey Long, the singer Paul Robeson, Republican Representative and neighbor Hamilton Fish, Father Charles Coughlin and many others.
- During President Truman's watch, a massive and long-festering IRS corruption scandal erupted during which hundreds of agency officials and agents were implicated, including one secretary of treasury, one commissioner and one assistant attorney general. A good number were convicted and sent to prison for taking bribes or forced to resign from government service.
- With the full knowledge of President Kennedy and his brother, the IRS Commissioner of that administration established a program to go after "extremist

organizations." Although the memos describing the program said the extremists of concern were on both the right and the left, it appears that all of those who lost their tax exempt status in connection with this program were fundamentalist conservatives who had been criticizing the president.

- President Nixon, among other abuses, established within the IRS the SSS—the Special Service Staff—to use tax records to track "dissident groups and individuals." One of the impeachment counts approved by the House Judiciary Committee involved the president's misuse of the IRS.
- During the Reagan years, the IRS forgot the lesson of the Truman era, and cut back on agency efforts to discover and punish corruption. The result was what appears to have been a mini-surge in willingness of IRS officials and agents to use their governmental powers for private gain in cities like Philadelphia, Chicago and Los Angeles.

Although it may not at first be obvious to you, my point here is not that the IRS is inevitably a corrupt and badly-run organization. On the contrary, growing out of the exposure of the problems of both the Truman and Nixon Administrations came periods of serious public concern and genuine reform.

This truth—that large and powerful organizations desperately need outside review by informed critics—is one that Congress has often ignored. As the chairman and members of the Senate Finance Committee know, the historical record proves that oversight of the IRS has rarely been a major concern of this committee. It must be acknowledged—and it should be celebrated—that the breadth and depth of this hearing on the basic performance of the IRS is unusual, although perhaps not unprecedented. I contend that the record of the House Ways and Means Committee and the Joint Tax Committee and the General Accounting Office is not much better. For Congress, re-writing tax laws and imposing new sanctions to enhance the collection of tax dollars have almost always overwhelmed concerns about the fairness and effectiveness of the IRS.

In America, however, oversight is not a Congressional monopoly. Thanks to the First Amendment of the Constitution, news organizations are free to investigate and publicize the failures of government. But when it comes to the IRS, the media has rivaled Congress in its failure to audit America's largest and in some ways most powerful enforcement agency. More than twenty years ago, two very good reporters from the Philadelphia Inquirer undertook a ground breaking and prizewinning investigation of the IRS. Very recently, the New York Times has assigned David Cay Johnston to focus on the agency and its enforcement activities. Other than that—and the flurry of IRS reporting after Watergate—coverage of this agency that touches the lives of almost every American has for many years been largely ignored by both print and television reporters.

In some ways, the lack of effective oversight is not all that surprising. The IRS is a very large and very complicated agency that is not easy to understand. And there are many people—especially within the beltway—who truly do not understand that the nitty-gritty of how the government rubs up against individual citizens is more significant in many ways than the grandest and most publicized federal "initiative." A couple of years ago, the senior lobbyist for a major national organization in Washington made the astonishing statement to me that he was only interested in government "policy," not government "enforcement."

This curiously obtuse attitude was a central reason why Susan Long, a professor at Syracuse University, and I decided in 1989 to form the Transactional Records Access Clearinghouse (TRAC). Our basic idea was that if Congressional committees, reporters, public interest groups, scholars and businesses were able to obtain comprehensive information about the day-to-day activities of federal enforcement agencies, they would undertake serious oversight studies. Since that time—with the support of Syracuse University, the Knight Foundation, the Rockefeller Family Fund and The New York Times Company Foundation and other organizations—TRAC has obtained internal administrative data tapes from the Justice Department and a number of federal enforcement agencies and provided it to the public in new and innovative ways.

In the spring of 1996, and again in 1997, for example, TRAC created a special site on the World Wide Web that gave viewers all over the nation many thousands of pages of maps, charts, graphs and tables about the civil and criminal enforcement activities of the IRS. The address is http://trac.syr.edu/tracirs. For the first time ever, TRAC's site gives taxpayers, reporters, public interest groups, and scholars easy access to comprehensive and authoritative information about how, where and when the IRS is enforcing the law. With this information, it now is possible to examine and question the basic policies of the agency.

DATA FACTS: From 1980 to 1995, IRS criminal enforcement underwent a dramatic shift in emphasis. In 1980, more than three quarters of all IRS pros-

ecutions were aimed at individuals accused of traditional tax crimes like failure to file or the filing of a fraudulent return. By 1995, less than half of IRS prosecutions involved traditional tax violations, with crimes like money laundering, drugs and currency violations taking their place. From 1988 to 1995, civil audit rates for individual nonbusiness taxpayers with incomes over $100,000 declined by a factor of four.

POLICY QUESTIONS: The sharp decline in IRS activities against wealthier individuals and traditional forms of tax violations is a striking change in national tax enforcement policy that has gone on under the Reagan, Bush and Clinton administrations. Why were these changes instituted? Was this important shift the product of conscious decisions by top policy makers or an accident? Is there any evidence that the change has resulted in the collection of more revenue? Or less?

DATA FACTS: Government data show wide variations in the civil and criminal enforcement patterns of the IRS, some of which appear to make very little sense. The taxpayers in Manhattan, Brooklyn and Las Vegas, for example, all have something in common with taxpayers in northern Florida and the comparatively rural areas around the North Carolina cities of Greensboro and Ashville. In 1995, on a per capita basis, they all ranked among the ten most active districts when it came to the prosecution of IRS criminal cases. On the civil side, taxpayers in the IRS's San Francisco district, Mississippi, Idaho and New York City stood the highest chance of being audited. One curious fact about the taxpayers in these very different districts concerned their income. New York had the highest adjusted gross income and Mississippi had the lowest.

POLICY QUESTIONS: Does the IRS have an effective national program to make sure that areas with the most problem taxpayers have most enforcement resources? Or is the effort in fact a random one involving the relative energy levels of different district managers? Has the *combined* impact of various forms of IRS enforcement actions—notices, audits, criminal indictments—ever been studied? Given the high cost of moving IRS staff, has the agency developed a plan to continually use the natural forces of attrition to shift auditors and examiners to areas where they are most needed?

DATA FACTS: In March 1996, TRAC mounted its first web site on the patterns and trends of IRS criminal enforcement. The information was based on data obtained from the Justice Department under the Freedom of Information Act. Although both the IRS and the Justice Department were given access to the site before it became publicly available, neither raised any questions. When news organizations began to publish articles based on the data, however, spokespersons for both agencies questioned the validity of the government's own information. The curious tactic of impeaching your own material prompted us to separately ask the agencies to meet with us to resolve whatever problems they had with our data analysis. Both refused. At this point, we undertook a new study in which we compared—where it was possible—the enforcement information from the Justice Department, the courts and the IRS. This study found that the portrait of criminal tax enforcement painted by the Department and court data were highly consistent. Surprisingly, however, the department and court data patterns were very different than reported by the IRS. In 1995, for example, the IRS claims it sent twice as many persons to prison as was recorded by the department and the courts. This discrepancy—and several others—led us to conclude that important information provided the public in the IRS's annual report about its criminal enforcement effort was "substantially misleading and inaccurate."

POLICY QUESTIONS: Why is the IRS, of all agencies, unable to properly balance the books on what is in fact a low-volume part of its activities? Given the failure of the IRS to account for its criminal enforcement activities—even with parallel information available from the Justice Department and the courts—what faith can be placed in its accounting of civil audits? If the IRS enforcement information is in fact seriously flawed, how can Congress judge its basic competence? Has the General Accounting Office ever conducted a detailed audit of IRS enforcement counts published each year in the agency's annual report?

The hard numbers are there. The good questions are there. All that has been lacking are skeptical Congressional Committees, reporters, scholars and tax practitioners willing to invest the time and energy to understand the numbers and to ask questions.

PREPARED STATEMENT OF SHELLEY L. DAVIS

Mr. Chairman and Members of the Senate Finance Committee, I am pleased to be able to share a few of my thoughts and experiences with you today as you explore specific issues of IRS abuse of those the tax agency likes to call its "customers"—American taxpayers. For 16 years I worked as an historian for the federal government. Nine of those years were with the Department of Defense and the final seven were spent as the first and unfortunately, the last, official historian for the Internal Revenue Service. At the end of 1995, I resigned from my federal career in protest over the unwillingness of the IRS, or the Treasury Department Inspector General, to investigate my complaint of illegal document destruction by the IRS. I learned that the same federal investigator to whom I originally reported my concerns regarding this, had turned around and opened an investigation of me on unfounded and false charges of "wrongful release of confidential information." Later, I learned that this is a common tactic used against IRS employees who dare to speak up against management. I knew then that I had no alternative but to resign and try to raise awareness of the intransigence, arrogance, and abusive patterns of behavior that I found all too common inside the headquarters of the IRS. I decided to write a book which was published earlier this year entitled, "Unbridled Power."

My testimony today will touch briefly on three areas:

1. The cultural climate of the IRS;
2. List keeping at the IRS;
3. The IRS definition of "tax protester."

My introduction to the culture of the IRS came during my earliest days with the tax agency, in the fall of 1988. Although I had been hired as the first historian for the IRS, I found little interest or support for my efforts. I found even less history. By history I mean both an awareness of the heritage of the IRS as well as the raw material (the documentation) from which narrative history is distilled. Neither the documents nor the heritage were to be found. Initially, I found this curious. Later, I found it alarming.

At the IRS National Headquarters, there seemed little connection between the work of employees and actual tax collection—what I presumed to be the mission of the IRS. Rather than possessing any basic curiosity about the past, the IRS employees I encountered exhibited a wariness, a suspicion—assuming that anyone looking for records must have some definite agenda. An agenda presumed to be negative.

This reluctance to think about the past translated into routine day-to-day operations, meaning that all documents were tossed, shredded, whatever, when a program was completed—or shut down, as in the case of many IRS computer projects. No records. No paper trail. No history.

As time went on, I realized that this not only made my job as historian virtually impossible, but that it guaranteed that the IRS could never be held accountable for its actions.

With a sense of historical development, I came up with my own interpretation of this phenomenon. One could easily pass off the reluctance of the IRS to acknowledge its past as a reaction to a constant barrage of criticism. But the IRS is certainly not the only federal agency subjected to criticism from the press, Congress, or the public.

Instead of reflecting on positive actions in response to criticism, the IRS proclaims that any criticism of the agency is "IRS bashing" and "will only lead to more tax protesters."

Rather than respond with solid information, historical examples, and analysis, the IRS jumps around skittishly, telling Congress that this reorganization, or that new position, or another new task force will remedy the current problem. The IRS has learned that its most effective response to inquiring questions from Congress, from the press, or from the American people is to hide behind the privacy laws. These are the laws meant to protect taxpayers. But by endlessly citing restrictions on its authority to comment on taxpayer cases, the IRS deflects criticism for any and all actions. In essence, the response of the IRS to question about anything and everything is, "Trust us. We're doing the right thing. We just can't tell you what that is because we're protecting American taxpayers."

A corollary to this defensive shield is the penchant of the IRS to destroy its paper trail. There were virtually no records of IRS actions throughout the twentieth century in any of the repositories where one would normally find federal records: the IRS itself, the National Archives (including the permanent archives in Washington, D.C., the 10 records centers around the country, or the Presidential libraries.)

In my early years with the IRS, a good question to ask was, "Where are the records?" What I learned was shocking. The records had been destroyed. Gone. Shredded. Tossed. They no longer exist due to a lack of attention to, or concern for,

the law which requires all federal agencies to preserve records of what they do. It is as though the IRS assumed that laws which apply to the FBI, to the CIA, to every other part of the federal establishment can be ignored.

No other agency of our government could get away with this. I questioned the reason why it had taken so long for anyone to realize that the records were not just missing, but destroyed.

I believe the answer is based on fear. As taxpayers, why would we ever question the one agency that can truly bite back? Our fear of suffering a personal attack from the IRS generally keeps most of us in check. Our fear of being audited has allowed the IRS to theoretically eliminate any potential smoking guns by trashing its own records. This ensures that it can never be held accountable for its actions. How can you prove any wrongdoing when the evidence is already destroyed?

The IRS has learned that the privacy protections are its best weapon in its war against its "customers." There is an "us against them" mentality which is far too common among IRS employees. 1 witnessed and experienced this attitude firsthand for over seven years working at the IRS headquarters. When I questioned the lack of record keeping by the IRS, it was made clear to me that I was a "lone ranger," a "loose cannon," and "not a team player." Is it any wonder they investigated me?

I'll conclude this section with a stark example from my personal experience. After my protest resignation at the end of 1995, admittedly I was not on the "most favored" list of IRS. But when I went to the IRS National Office on Monday, April 15, 1996, to meet a friend who had invited me for lunch to celebrate my birthday, I did not expect to be threatened with arrest. But that is what happened.

While waiting for my friend to meet me at the entrance of the building, I was pulled aside by an IRS internal security agent who told me to leave immediately because I was officially "banned" from the building.

I thought this was odd as I was standing in the front entrance, a public space. When I asked for an explanation, I was told that I was "banned" because I "did not turn in my official identification badge when I resigned four months earlier."

This was untrue.

When the agent detaining me prepared to call for Federal Protective Service agents to carry out her threat to arrest me, I knew I had to make a quick decision: let them carry through with this absurd threat, or turn and leave. I left. To this day, I wish I had stayed and made them carry through with their threat.

The IRS brought false charges against me, used government resources to pursue a false investigation of me, and continued to harass me even after I had resigned. With the IRS, as I am sure you will hear from others today, retaliation is prompt, swift and catastrophic.

My years with the IRS were spent exclusively in the National Office, the headquarters of the tax agency. Throughout my tenure at the IRS, I often heard stories that different types of codes were used to identify taxpayers and returns.

I have specific knowledge of one type of list maintained inside the IRS. It is a product of a secretive, cloistered unit of the IRS which existed from 1969 through 1973, known by the name "Special Services Staff," or SSS.

The SSS list had approximately 11,000 individuals and organizations designated as possible audit targets by the IRS. Who were these people and organizations? Some were names you will recognize: Shirley MacLaine? Joan Baez, John Lindsay, the Black Panthers, and the Student Nonviolent Coordinating Committee (SNCC).

But most of those who made it onto the list were not household names but were individuals the SSS determined were of questionable character as determined by the SSS.

Ten employees of the SSS dutifully clipped newspaper articles each day. The FBI willingly sent over its own files on political dissidents and protesters, an subscriptions were taken to radical publications which were perused for names and other leads. All in all, the SSS targeted individuals with no known tax problems for audit simply because of their political activities.

The commissioner who abolished the SSS, Donald Alexander, actually testified before Congress in 1975 that he believed the SSS records should be taken "out on the mall and burned."

Yet, despite the fact that the SSS files remain intact at the IRS (at least through my resignation at the end of 1995), the IRS steadfastly refuses to release the files to researchers or even to the National Archives for safekeeping. Why? Because they contain "taxpayer information." Who is protecting whom, one has to wonder?

What has all this got to do with the present? Today I believe there exist thousands of names of American taxpayers whose Master Files are coded as TC-148, which brands them as "Illegal Tax Protesters." Whether this is a list, or compilation of files which bear that designation, is semantics. Just how many Americans bear this designation?

At the very least, we need to know if we are on that list. We reserve that right. The IRS says we can't know and don't have a right to know while simultaneously claiming Congress wants it this way.

The only thing being protected in this scenario is the IRS.

Just what is a tax protester? Your definition, like mine, is probably different from the IRS definition. I learned that while inside the IRS.

A tax protester, in my definition, is not someone who may oppose our system of taxation, **but pays his taxes nonetheless.** A tax protester is not someone who says that our tax system is broken and must be dismantled, **but still files a Form 1040.** A tax protester is not someone who merely criticizes the IRS. A tax protester is not someone who challenges an IRS assessment.

But in the mind of the IRS, all of the above ideas fit the unofficial IRS profile of a tax protester. In the cloistered environment of the IRS, criticism of the IRS, or the income tax, equals tax protester. Anyone who has the misfortune of bearing that title is most likely going to witness first hand just what "taxpayer abuse" really means.

Don't get me wrong. I am not in any way condoning the actions of those who, by one manner or another, attempt to cheat or not live up to their financial responsibilities as a U.S. citizen. But I do recognize the use of the label of "Illegal Tax Protestor" as another powerful weapon of the most powerful agency in America.

It is time for Congress to compel the IRS to be more forthcoming about its audit procedures, even though the IRS would like us to believe that our system of taxation will collapse if the American people know how their tax collector goes about his or her business.

The IRS gains too much benefit from the privacy laws to come clean on its own. The culture of the IRS, built over decades of learning to hide behind the privacy laws, will not change on its own. Without intervention from Congress, it will not happen.

Last year, a top career IRS executive testified before Congress that, "There is the general view that the more mysterious tax enforcement is, the more likely taxpayers will voluntarily comply." Mystery breeds distrust and contempt. It also breeds fear, which compels many taxpayers to comply with the tax laws because they are afraid of the consequences, but it does not breed voluntary compliance or trust.

The arrogance of the IRS is outrageous and harmful. We lose more than gain by allowing the IRS to operate in this manner. Congress must demand accountability from the IRS. Congress must shine the spotlight on the IRS and never switch the power off.

Thank you.

PREPARED STATEMENT OF MICHAEL P. DOLAN

Chairman Roth and Distinguished Members of the Committee:

With me today are Lee Monks, the Taxpayer Advocate, and Ron Rhodes, the Assistant Commissioner for Collection. We appreciate the opportunity to appear today and discuss important aspects of the way the Internal Revenue Service performs the mission which the Congress has assigned it. Given its jurisdiction and role in the establishment the nation's tax policy, it is crucial that this Committee be provided as complete a picture as possible of the way today's tax administration processes work.

The IRS has worked hard during the past months to be responsive to the requests of the Committee's investigative staff. Early in their deliberations the investigators identified several cases for which the IRS has provided extensive case information, as well as access to the pertinent field and national office IRS employees. In the past few weeks, four of those cases were identified as probable subjects for this hearing. As we have reviewed those four cases, we identified mistakes in the way that two of the four cases were handled, and in a third case, we didn't provide the kind of assistance we should have in helping the taxpayer rectify an error they made when they filed their return. I am sorry we made those mistakes. The taxpayers involved certainly deserved better treatment than they received. In one instance we have had a chance to formally apologize and in the other two we have either solved the original problems or offered to help resolve a remaining taxpayer concern. Beyond wishing that we had not made the original mistake, I am also concerned that it took too long to identify and correct the errors. I intend to share these concerns and others identified in our preparation for this hearing when I meet with our key senior executives next month.

As unacceptable as any mistake is, I hope this Committee will consider them in the context of IRS's performance of its overall responsibilities. During the days that

have immediately preceded these hearings, a variety of allegations have found their way into the media. Unfortunately it is far too easy for an allegation of wrong doing or even an actual error to be mis-characterized in a way that impugns an entire organization and all its employees. As a career IRS employee, I know my IRS colleagues not only understand, but take very seriously the significant responsibilities with which we have been vested. Most chose careers in public service because they believed they could make an important contribution to the success of their country.

This Committee is in a unique position to understand the complexity and sensitivity of the mission that has been assigned to the IRS. Each year the Service receives nearly 200 million tax returns, collects and accounts for well in excess of a trillion dollars, generates nearly 90 million refunds and receives millions of calls, letters and visits from taxpayers in need of help. In addition, a normal year will find the IRS involved in approximately 10 million "compliance contacts" ranging from tax audits to collection of delinquent accounts and reconciliation of discrepancies between information supplied by third parties (i.e., employers, banks, mortgage companies, etc.) and the information reported on tax returns. Each of these millions of transactions is sensitive, whether it is the processing of a routine refund return or a compliance contact. The impact of these interactions on taxpayers is clearly influenced by the way in which the IRS performs its responsibilities. There are also a variety of issues outside the IRS control which influence the difficulty or ease with which these interactions occur. The economy, for example, often bears directly on the ease with which some taxpayers are able to pay the tax they owe. Likewise the introduction of significant tax law changes frequently challenges some taxpayers' abilities to correctly meet their tax obligations. Few organizations, public or private, perform their responsibilities in as sensitive an environment as that confronted daily by the employees of the Internal Revenue Service.

One of the true strengths of the United States "self assessment" system is that the vast majority of U.S. taxpayers file their returns on time and pay the tax they owe. These taxpayers account for the 83-85 percent compliance rate that exists today. For the most part, the contacts between these taxpayers and the IRS involve receiving the forms, assistance and education required to maintain their compliance. Because these taxpayers represent the backbone of our system, IRS has increasingly sought to offer them simpler ways of filing, paying and obtaining assistance. Likewise in the case of taxpayers who may owe tax but strive to resolve their non-compliance, the Service has significantly expanded its ability to solve problems over the telephone, improved the tone and clarity of correspondence it sends and increased the alternatives available to resolve tax delinquencies. In addition to these improvements, there is currently underway a major effort to further improve the customer service effectiveness of the IRS. A group of front-line employees and managers from the IRS, Treasury and the Vice President's National Performance Review staff have spent the last three months reviewing virtually every aspect of customer service and will next month present a comprehensive set of improvement options.

In contrast to the majority of compliant taxpayers, however, are those people who do not meet their tax obligations. Out of fairness to those taxpayers who do, the IRS seeks to collect overdue taxes from those who have not voluntarily filed and paid.

We do not treat all who have not complied the same. The type of IRS contact and the enforcement actions we use depends upon the willingness and ability of taxpayers to correct their noncompliance.

NONPAYMENT OF TAXES OWED

While a minority overall, a significant number of taxpayers do not pay the full amount of taxes owed. At the end of FY 1996, the cumulative unpaid taxes owed which we record as accounts receivable exceeded $216 billion. Payment delinquency can occur for a variety of reasons. A taxpayer may file a return on time but not pay the full liability. A taxpayer may make a math error on the return that increases the tax liability. In addition, examinations and matching of information returns to tax returns frequently identify a liability which is not fully paid.

The first contact with a taxpayer who owes back taxes is a notice or a "tax bill" which is sent to all taxpayers who owe. Currently, individual taxpayers who owe can receive up to 4 notices issued over a 16 week period before the IRS attempts to contact the taxpayer by telephone or in person. Business taxpayers who owe can receive up to 2 notices issued over 6 weeks. Recently, these notices were re-written in clearer language so that taxpayers would be able to easily understand what they have and have not paid. With any notice of a balance due, taxpayers also automatically receive a publication entitled "Your Rights As a Taxpayer" (Publication 1). A publication entitled "Understanding the Collection Process" is sent with the final no-

tice (Publication 594). (These publications are included as an appendix to my testimony.)

NONFILING OF TAX RETURNS

Another group of taxpayers fail to file tax returns for which they are liable. Some do not file because they are not aware that they need to file. Others fail to file because of a traumatic event in their life, such as a divorce or loss of a job. Still others do not file because they cannot pay the entire amount they owe. We estimate that over $13 billion is owed annually by taxpayers who do not voluntarily and timely file required tax returns; this is known as the nonfiling gap.

The IRS identifies potential individual nonfilers primarily from information documents showing payments made by third parties, such as Forms W–2 and 1099. Potential business nonfilers are identified based on information the business provided when it applied for an employer identification number and its prior return filing history. When information documents reflect that an individual taxpayer had income sufficient to require a return but did not file a return or when our information indicates a business has not filed a required return, we send a notice requesting that the taxpayer either file the required return or explain why they are not required to file. Those we believe should have filed but did not receive either 2 notices over an 8 week period or 1 notice depending on the amount of tax likely due.

THOSE WHO WILL CORRECT NONCOMPLIANCE

Many taxpayers respond when they receive one or more notices from the IRS regarding their nonpayment of taxes owed or their nonfiling of required tax returns. For example, in FY 1996, taxpayers paid $14.7 billion after receiving a notice; $11.7 billion was similarly paid in FY 1995. In FY 1995 and in FY 1996, over 1.1 million delinquent returns were filed each year by taxpayers receiving a nonfiler notice.

Other taxpayers will call us after receiving a notice because they do not have the money to pay the tax due. If the taxpayer cannot fully pay, telephone assistors will work with the taxpayer to help resolve the problem. Taxpayers may be asked to provide financial information so that the correct course of action can be determined. Our telephone tax assistors have the authority to recommend adjustments to the tax bill, to allow the taxpayer additional time to secure funds from a bank or third party, to temporarily suspend collection action, or to establish a payment agreement; known as an installment agreement.

Installment agreements offer the IRS a unique opportunity to keep taxpayers in the tax system who would otherwise not be able to meet their full tax obligations while assisting taxpayers in correcting the cause of the delinquency. In FY 1992, 1.52 million taxpayers entered into installment agreements. As a result of IRS efforts to expand the use of installment agreements, the number entering into installment agreements increased to 2.67 million taxpayers in FY 1996.

When the tax debt cannot be resolved through an installment agreement, an Offer in Compromise may sometimes be an appropriate way to satisfy the debt. By law, taxpayers can submit an application for an Offer in Compromise when there is "doubt as to liability for the amount owed" or "doubt as to ability to pay the full amount owed." In FY 1992, we modified the Offer in Compromise policy and streamlined procedures to make it easier for a taxpayer to submit an offer and have it accepted. Reflective of this change is the comparison between FY 1991 when the IRS accepted 1,995 offers from taxpayers to compromise their tax debt, and FY 1996, when this increased to over 27,600 accepted offers. Our rate of accepting offers submitted has also steadily increased from 25 percent in FY 1991 to 48 percent in FY 1996. An offer is a reasonable alternative to declaring a case currently not collectible or to proposing a lengthy installment agreement. Our ultimate goal is to collect what is collectible as early and inexpensively as possible—reaching agreements that are in the best interest of both taxpayers and the government. Accepting reasonable offers not only resolves past delinquencies; it gives taxpayers a "fresh start" from which to manage their future filing and payment requirements. As a condition for accepting an offer, taxpayers who have an offer accepted agree to comply with all filing and payment requirements for five years—thus, enhancing voluntary compliance.

SOME TAXPAYERS MAKE NO ARRANGEMENT TO COMPLY

There are, unfortunately, some taxpayers who choose not to take advantage of these arrangements, and who continue to refuse to pay their taxes. In their unwillingness to pay their fair share of taxes, these taxpayers impose extra—and unfair—loss on those who do comply with the law.

When a taxpayer does not respond to our notices by filing a delinquent return, paying the full amount owed, establishing a payment agreement or filing an offer in compromise, the IRS attempts to make further contact with the taxpayer either through telephone or face-to-face contact. Upon contact with the taxpayer, we will try to work with the taxpayer to resolve the nonfiling and/or the delinquent tax debt.

In addition to the various ways in which arrangements can be made to pay delinquent tax, collection personnel can determine, at any step in the process, that the tax debt is not currently collectible because such collection would result in a significant hardship. A significant hardship may occur if the taxpayer cannot maintain necessities, such as food, clothing, shelter, and medical treatment. At the end of FY 1996, collection personnel determined that taxpayers could not currently pay $29.2 billion of the $216 billion in accounts receivable due to hardship.

If we cannot contact the taxpayer, or the taxpayer is unwilling to make arrangements to pay or unwilling to file a delinquent return, we utilize enforcement tools that the Congress has authorized. In the case of nonpayment, we may place a lien or levy on the taxpayer's assets. We may levy against wages, funds on deposit at a bank, rental income, dividends, demand notes or securities. Before the IRS takes levy action, however, we must send the taxpayer a final notice of intent to levy at least 30 days in advance of the levy. We may give this notice in person, leave it at the taxpayer's dwelling or usual place of business, or send it by certified or registered mail. We must release a levy if: the amount owed is paid in full; documentation is provided to us to determine that releasing the levy will help collect the tax; the taxpayer enters into an approved, current installment agreement and the IRS and the taxpayer have agreed to release the levy; or the levy is creating an economic hardship.

In appropriate situations and usually after other collection actions have been exhausted, the seizure and sale of property may be used to collect delinquent tax debt. Among other rights, a taxpayer has the right to an administrative review of our seizure action. Before selling the property, public notice usually appears in a newspaper in the county where the sale will be held. The original notice of sale is personally delivered to the taxpayer or sent by certified mail. We must wait at least 10 days after giving notice before conducting the sale. Before the sale, the property can be released if the taxpayer: pays the amount of the government's interest in the property; enters into an escrow arrangement; provides an acceptable bond; or makes an acceptable agreement for payment of the tax. Taxpayers can "buy back" personal property at any time before the sale by paying the tax due, including penalties and interest, and paying the expenses of seizure. Taxpayers can also request that we sell the seized property within 60 days. Seizure of a personal residence requires the approval of the District Director and taxpayers have 180 days to redeem their personal residence after the sale. In FY 1996, $164.7 million was collected from approximately 10,000 seizures. Notably, in only about 2500 of these seizures, were the taxpayers' assets required to be sold. Over the past 5 years, the number of seizures has remained fairly constant—about 10,000 seizures per year. Seizures were used in less than 0.2 percent of the 6.6 million delinquent cases closed in FY 1996.

In those cases in which no return has been filed despite the issuance of several requests to the taxpayer, our enforcement efforts may include "substitute for return" assessments. In a "substitute for return" assessment, we determine the taxpayer's liability based on available third party information and write to the taxpayer proposing assessment of this amount unless they respond by filing a correct return; by explaining they are not required to file a return; by explaining that some of the income reported by their parties is not their income; or by appealing our proposed assessment. A taxpayer can appeal the proposed assessment within the IRS through our Appeals Office. Most differences can be settled through the appeals system without expensive and time-consuming court trials. If the matter cannot be settled to the taxpayer's satisfaction in Appeals, the taxpayer can take the case to court. If the taxpayer fails to respond to our letter, we pursue assessment using deficiency procedures.

COLLECTION APPEALS PROCESS

At any step of the collection process, taxpayers who believe that they have been treated unfairly have administrative remedies available to them. Taxpayers can request an administrative review of the employee's actions with the employee's manager.

On April 1, 1996, the IRS put into place additional administrative appeal rights by establishing new procedures that give taxpayers the right to appeal liens, levies, and seizures proposed by the IRS. Also, the Taxpayer Bill of Rights 2 required the

IRS to provide an independent administrative review of terminations of installment agreements for taxpayers who request such a review. This new appeal right was made effective January 1, 1997. Taxpayers subject to a lien, levy, seizure or termination of an installment agreement receive Publication 1660, "Collection Appeal Rights for Liens, Levies, and Seizures," which explains their right to make such an appeal and the procedures for requesting an appeal. Publication 1660 and Form 9423 (Collection Appeal Request) are included as appendix to my testimony. The IRS has trained its collection personnel in this new appeals procedure. Since April 1996, approximately 1,800 taxpayers have utilized this administrative appeals process. Our Appeals function has fully sustained the collection action in 75 percent of these cases and fully reversed the collection action in 13 percent of these cases.

TAXPAYER ADVOCATE PLAYS KEY PROBLEM RESOLUTION ROLE

The Service has had a Taxpayer Advocate (formerly called the Taxpayer Ombudsman) since 1979. As the current advocate for taxpayers within the Service, Mr. Monks' responsibility is to ensure that taxpayers are provided the assistance necessary to resolve their issues or, at least, are provided the information they are seeking on their inquiry. Taxpayers who are experiencing problems that they cannot clear up through normal channels, or that may be experiencing significant hardship as a result of IRS action, or that want to register a complaint about treatment by IRS can contact the local taxpayer advocate in the district in which they reside or at the service center with which they may be corresponding. Taxpayers may also communicate directly with Mr. Monks here in Washington, D.C. In helping resolve difficult individual cases, the Taxpayer Advocate's office compiles and tracks data on the types of problems taxpayers experience with the IRS and then works with appropriate IRS officials to correct any system deficiencies contributing to those problems.

The Advocates' office is also frequently involved in cases in which complying with the law may constitute a hardship for an individual taxpayer. In those instances, taxpayers can apply for hardship relief by filing an application (Form 911) for a Taxpayer Assistance Order. In addition, employees can refer a taxpayer's case to the advocate's office for hardship consideration. Approximately 35 percent of all Taxpayer Assistance Orders are initiated by employees. A local taxpayer advocate will review the application and, if appropriate, takes steps to relieve a hardship or to stop a collection action until a review determines that the action is appropriate. In addition, our problem resolution program provides an avenue for taxpayers who have been unable to resolve their problem with IRS; when a significant matter or event is not being considered; or if their rights have been violated.

As you are aware, Mr. Chairman, in February 1997, after reading the announcement that this Committee was establishing an investigative team to review IRS' treatment of taxpayers and that a number of taxpayers had come to the Committee with a variety of problems that they had experienced with the IRS, Mr. Monks wrote you offering the assistance of his office in handling any of the taxpayer issues identified by the Committee. The Committee did refer one case to the Taxpayer Advocate and I was pleased that the advocate's office was able to resolve this taxpayer's matter expeditiously.

SPECIFIC TAXPAYER CASES

In May and June 1997, the Chairman requested that IRS provide to designated Committee staff the tax returns and other relating to disagreements between the IRS and taxpayers associated with the cases that I mentioned earlier in my testimony.

Section 6103 of the Internal Revenue Code, which prohibits disclosure of taxpayer information, prevents my discussing the specific facts of each of these cases in a public hearing without a taxpayer's written consent. It is anticipated, however, that the Committee staff will obtain authorizations which will permit me to respond to questions that Committee members may have about the specific cases which we have reviewed. Before I respond to any specific case, however, I do want to stress that we strive to maintain consistent and fair treatment of all taxpayers. At the same time, given the very specific nature of many of the cases our employees encounter, we consciously vest employees with sufficient discretion to treat each taxpayer's situation on its own merit. There is obviously some tension between wanting absolute guarantees of consistency and empowering front-line employees to use their professional judgment. I would like to be able to tell you today that all 100,000 IRS employees—myself included—always exercise our judgment correctly in every one of the millions of taxpayers' cases we work. We do make mistakes just like employees in other government agencies or in any other large business that deals with the

public. As I said earlier, three of the cases submitted to the Committee staff include mistakes which we made. I am both disturbed and sorry for how our failure to correct these mistakes timely has disrupted these taxpayers' lives. While I want to apologize for the frustration, inconvenience, and hardship caused by our actions, I also want to commit to doing everything possible to see that other taxpayers do not experience what these taxpayers experienced. The Service does take these situations seriously and we do want instances like these brought to our attention.

CONCLUSION

Day in and day out, our employees confront a very challenging job. In the vast majority of cases, I believe they exercise their responsibilities with extreme care and concern for the rights of taxpayers. Through their efforts, we ensure that the millions of Americans who willingly meet their tax obligations are required to pay only their fair share. Their efforts also help ensure that the tax revenues contemplated by our tax laws are collected and made available to enable our nation to meet its crucial spending and deficit management objectives. On behalf of my colleagues at the IRS, I commit to you a redoubled effort at ensuring that we exercise our responsibilities with the utmost professionalism and respect for the public we serve.

Mr Chairman, that concludes my remarks. We would be happy to answer any questions.

Attachments.

DEPARTMENT OF THE TREASURY • INTERNAL REVENUE SERVICE

YOUR RIGHTS AS A TAXPAYER

THE FIRST PART OF THIS PUBLICATION EXPLAINS SOME OF YOUR MOST IMPORTANT RIGHTS AS A TAXPAYER.

THE SECOND PART EXPLAINS THE EXAMINATION, APPEAL, COLLECTION, AND REFUND PROCESSES.

DECLARATION OF TAXPAYER RIGHTS

I. Protection of Your Rights

IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.

II. Privacy and Confidentiality

The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information.

III. Professional and Courteous Service

If you believe that an IRS employee has not treated you in a professional manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to your IRS District Director or Service Center Director.

IV. Representation

You may either represent yourself, or with proper written authorization, have someone else represent you in your place. You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examination or collection personnel, provided you tell us in writing 10 days before the meeting.

V. Payment of Only The Correct Amount of Tax

You are responsible for paying only the correct amount of tax due under the law—no more, no less.

VI. Help From The Problem Resolution Office

Problem Resolution Officers can help you with unresolved tax problems and can offer you special help if you have a significant hardship as a result of a tax problem. For more information, write to the Problem Resolution Office at the District Office or Service Center where you have the problem, or call 1-800-829-1040 (1-800-829-4059 for TDD users).

VII. Appeals and Judicial Review

If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the IRS Appeals Office to review your case. You may also ask a court to review your case.

VIII. Relief From Certain Penalties

The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee.

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayer's returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. If you give us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand. If you cannot resolve a question through the mail, you can request a personal interview with an examiner.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. At the end of your examination, the examiner will give you a report if there are any proposed changes to your tax return. If you do not agree with the report, you may meet with the examiner's supervisor.

Repeat Examinations

If we examined your tax return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can determine if we should discontinue the repeat examination. Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, will give you more information about the rules and procedures of an IRS examination.

Appeals

If you do not agree with the examiner's findings, you can appeal them to our Appeals Office. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases.*

If you do not wish to use our Appeals Office or disagree with its findings, you can take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If the court agrees with you on most issues in your case, and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through our appeals system, and you gave us all the information necessary to resolve the case.

Collections

Publication 594, *Understanding The Collection Process*, explains your rights and responsibilities regarding payment of federal taxes. It is divided into several sections that explain the procedures in plain language. The sections include:

1. *When you have not paid enough tax.* This section describes tax bills and explains what to do if you think your bill is wrong.
2. *Making arrangements to pay your bill.* This covers making installment payments, delaying collection action, and submitting an offer in compromise.
3. *What happens when you take no action to pay.* This covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property. Publication 1660, *Collection Appeal Rights (for Liens, Levies and Seizures)*, explains your rights to appeal liens, levies and seizures and how to request these appeals.

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, has more information on refunds.

Tax Information

The IRS provides a great deal of free information. The following are sources for forms, publications and additional information:

- **Tax Information:**
  1-800-829-1040
- **Forms and Publications:**
  1-800-829-3676
  (1-800-829-4059 for TDD users)
- **IRS FAX Forms:** From your FAX machine dial **703-487-4160**
- **Internet:** World Wide Web - http://www.irs.ustreas.gov
  FTP - ftp.irs.ustreas.gov
  Telnet - iris.irs.ustreas.gov

*U.S. Government Printing Office: 1996 - 411-062

Department of the Treasury
Internal Revenue Service
Publication 1 (Rev. 5-96)
Catalog Number 64731W

Publication 594

Understanding The Collection Process

Mission

The purpose 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.

Existe una versión de esta publicación en español, la Publicación 594S, que puede obtener en la oficina local del Servicio de Impuestos Internos

KEEP THIS PUBLICATION FOR A REFERENCE

Department of the Treasury
Internal Revenue Service
Publication 594 (Rev. 7-97)
Catalog Number 46596B

Introduction

This publication explains your rights and responsibilities regarding payment of Federal tax. This information applies to all taxpayers, including individuals who owe income tax and taxpayers who owe employment tax. Special rules that apply only to employers are covered in separate sections of this publication.

Although this publication discusses the legal authority that allows the Internal Revenue Service (IRS) to collect taxes, it is not intended as a precise and technical analysis of the law.

Do not ignore your tax bill. **If you owe the tax shown on a bill, you should make arrangements to pay it.** If you believe it is incorrect, contact the IRS immediately to suspend action until the mistake is corrected. See the following discussion titled "If you believe your bill is wrong," on page 3.

Important reminder about child support. By law, the IRS can collect certified child support obligations. The collection and payment of these debts, with certain exceptions, follow the same process as the collection of unpaid taxes.

Highlights

The answers to the following questions are found in this publication. After each question, you will find the appropriate heading where the topic is explained. These commonly-asked questions relate to the bill you received for your unpaid taxes.

- What if I disagree with the amount of tax that IRS says I owe?

  See "If you believe your bill is wrong," on page 3.

- What is the best way to contact the IRS and explain my situation (why I haven't paid)?

  See "Numbers to Call for Assistance," on this page.

- What do I do if I disagree with the IRS employee and want to appeal?

  See "When you do not agree with decisions of IRS employees," on page 2.

- What are my rights to appeal if I disagree with an IRS decision?

  See "When you do not agree with decisions of IRS employees," "Administrative review," and "Your Appeal Rights," on pages 2, 7, and 8.

- I have tried to get the IRS to resolve my tax problems but can't.

  See "Problem Resolution Program," on page 2.

- Can I make monthly payments on my account?

  See "Making installment payments for individuals or businesses," and "Simplified installment agreements" on page 3.

- Can I settle my tax account for less than what I owe?

  See "Offer in Compromise," on page 4.

- What if; I can't pay any amount? Will you take money out of my wages?

  See "What Happens When You Take No Action to Pay," and "Levy on wages," on pages 5 and 6.

- Can I postpone paying my taxes until my financial condition improves?

  See "Delaying collection if you cannot pay," on page 3.

- I'm an employer. What happens if I cannot pay my employment taxes?

  See "What Happens When You Take No Action to Pay," and "Trust Fund Recovery Penalty Assessments for Employers," on pages 5 and 8.

- How do I make a tax deposit if I do not have tax deposit coupons for employment taxes?

  See "Paying employment taxes," on page 4.

- What happens to my tax refund if I owe taxes for prior years?

  See "If your current Federal and State tax return shows a tax refund and you owe back taxes," on page 4.

- Does owing taxes have an effect on my credit?

  See "Lien," on page 5.

Numbers to Call

Tax Information & Assistance
Call Specific number if listed, otherwise call toll free
1-800-829-1040
(1-800-829-4059 for TDD users)
Tax Forms and Publications
1-800-829-3676
(1-800-829-4059 for TDD users)

FAX: 703-487-4160

Internet: World Wide Web-
http://www.irs.ustreas.gov
FTP-ftp.irs.ustreas.gov
Telnet-iris.irs.ustreas.gov

▶ *What do I do if I disagree with an IRS employee's decision and want to appeal?*

See "When you do not agree with decisions of IRS employees."

▶ *How can I have my case transferred to another IRS office?*

See "Transferring the location of your tax case."

▶ *How can I get help on unresolved tax problems?*

See "Problem Resolution Program."

Your Rights

When dealing with the IRS, you have the right to be treated fairly, professionally, promptly, and courteously by IRS employees.

Publication 1, Your Rights As A Taxpayer. This publication explains some of your most important rights as a taxpayer. It also explains the Examination, Appeal, Collection and Refund processes.

You received a copy of Publication 1 with your initial bill, which is also called a *"Notice of Tax Due and Demand for Payment."* You may also request a copy of Publication 1 from an IRS employee at or before your first in-person interview with an IRS employee.

▶ ***When you do not agree with decisions of IRS employees.*** If at any step of the Collection process you do not agree with the decision of an IRS employee, you have the right to an administrative review with the employee's manager. You also have a right to appeal many collection actions including Liens, Levies and Seizures to the Appeals Office and effective January 1997 the termination of installment agreements. At your request, the employee will either arrange for you to meet with the manager or tell you the manager's name and where to contact him or her. Publication 1660, Collection Appeal Rights for Liens, Levies, Seizures, and Installment Agreements), explains how to request an appeal and your rights to appeal liens, levies, seizures, and termination of installment agreements.

Innocent Spouse Provision. Under certain circumstances, you may not be liable for the tax, interest, and penalties on a joint income tax return. Through facts and circumstances, you must be able to establish that you did not know, and had no reason to know, that your spouse substantially understated the amount of tax due. There are certain dollar limitations and other criteria which must be met. For Additional information, see Publication 17, *Your Federal Income Tax*, Publication 501, *Exemptions, Standard Deduction, and Filing Information*, Publication 504, *Divorced or Separted Individuals*, and Publication 556, *Examination of Returns, Appeal Rights and Claims for Refund.*

Who can represent you in IRS matters. You may represent yourself or you may have an attorney, certified public accountant, enrolled agent or any person enrolled to practice before the Internal Revenue Service represent you. For example you may want your tax preparer to respond to a tax bill that you believe is not correct.

To authorize another person to have access to your Federal tax information, you can use Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8821, *Tax Information Authorization*, or any other properly written power of attorney or authorization. You can get copies of these forms from your local IRS office or by calling the toll-free number shown on page 1.

Sharing your tax information. Under the law, we can share your tax information with city and state tax agencies, and in some cases, the Department of Justice, other federal agencies, and persons you authorize. We can also share it with certain foreign governments under tax treaty provisions.

▶ ***Transferring the location of your tax case.*** You have the right to request that we transfer your tax case to another IRS office. Generally, we will transfer your case if you have a valid reason for making the request, such as a change of address.

If you move, send Form 8822, *Change of Address*, to any IRS office, so you will receive any notices sent to you.

Receiving receipts for payments you made to IRS. IRS must provide you with a receipt (Form 809) when you pay in cash. You have the right to ask for and receive a receipt for all payments you make. You should ask for a receipt at the time you make a payment. You also have the right to receive copies or confirmation of all contractual arrangements (such as an installment agreement) that you make with us.

▶ Problem Resolution Program (PRP)

PRP is a program designed to help taxpayers who have been unable to resolve their tax problems after repeated attempts to do so with another IRS department.

Before contacting PRP, you should first request assistance from an employee or manager in an IRS Collection office. If the problem is still not resolved, you should contact your local IRS district office and ask for PRP.

PRP provides an avenue to help resolve your problem when you believe that: 1) your account information is incorrect, 2) a significant matter or event is not being considered in your case, or 3) your rights as a taxpayer have been violated.

If you suffer a significant hardship. If you have or are about to have a significant hardship because of the collection of your tax debt, additional assistance is available. A significant hardship may occur if you cannot maintain necessities such as food, clothing, shelter, transportation, and medical treatment.

To apply for relief, you can submit Form 911, *Application For Taxpayer Assistance Order (ATAO) to Relieve Hardship*, or contact the district Taxpayer Advocate's office if the employee assigned to your case cannot or will not take action to relieve your hardship. Any IRS employee can help you apply for ATAO handling. We can help you obtain and complete the form, take the information by telephone, or you can contact the district Taxpayer Advocate's office in order to obtain and complete the form and submit it to PRP.

The Taxpayer Advocate or a District Taxpayer Advocate will review your application and if appropriate, take steps to relieve your hardship.

When You Have Not Paid Enough Tax

If you do not pay the full amount of tax you owe, you will receive a tax bill. This bill begins the collection process. The length of the process depends on how soon you respond and pay the bill. We encourage you to pay your bill by check or money order.

Understanding your tax bill. When you file your tax return with the IRS, we check it to make sure the math is accurate and to see if you have paid the correct amount of tax. If you owe tax and have not paid all of it, we will send you a bill which is called a *Notice of Tax Due and Demand for Payment*. The bill will include the tax due, plus penalties and interest that we have charged on the unpaid balance of your account from the date you should have paid your taxes.

What you can do to avoid having overdue taxes. If you owe taxes because not enough tax was withheld from your wages, you should file a new Form W-4, *Employee's Withholding Allowance Certificate*, with your employer(s) to claim a lower number of withholding allowances. If you need help computing the correct number of withholding allowances, see Publication 919, *Is My Withholding Correct?*

If you are self-employed and owe tax, you should increase your estimated tax payments. These payments are explained in Publication 505, *Tax Withholding and Estimated Tax*, and are reported on Form 1040ES, *Estimated Tax for Individuals.*

If you are an employer, see "Paying employment taxes," discussed on page 4 of this publication. For other types of taxes, see the tax instruction booklet that was mailed with your tax forms.

▶ ***If you believe your bill is wrong.*** If you believe your bill is wrong, please let us know, as soon as possible, by calling the telephone number identified on the bill or by writing to the IRS office that sent you this bill. You may also call the IRS or visit the IRS office nearest you.

To help us correct the problem, please include in your correspondence explaining the problem: 1) a copy of the bill, and 2) copies of any records, canceled checks, etc., that will help us understand what you believe is wrong.

Here is a sample format you can use for a letter:

Date

Internal Revenue Service
Address

- Your name, address, and daytime telephone number.
- Taxpayer identification number (social security number or employer identification number) as stated on bill.
- Tax form number as stated on bill.
- Tax period as stated on bill.

State your reason(s) why you believe your bill is wrong. Enclose copies of any information supporting your statement, such as copies of canceled checks or a copy of your tax return and a copy of the tax bill.

Your signature

If we find that you are correct, we will adjust your account, and if necessary, we will send you a corrected bill.

Making Arrangements to Pay Your Bill

This section explains what happens if you are unable to pay your bill in full. All taxpayers are expected to pay their taxes in full; however, if you cannot pay your tax bill in full, we will analyze your ability to pay and then try to find the best way for you to pay the bill.

We will consider different methods of payment, such as paying in installments.

Note: The first part of this section applies primarily to individuals. However, many of the procedures also apply to employers. The last part of this section explains the rules that apply only to employers and payment of employment taxes.

When you pay your tax bill or send us correspondence, please do the following:

1) Include a copy of the most recent tax bill,
2) Identify the tax form number, the tax year or period, and your taxpayer identification number, as shown on your bill, in all your correspondence with us.
3) Also, write your taxpayer identification number (social security number or employer identification number, as appropriate) on your check, and
4) Enclose your payment if you owe tax.

If you can pay only part of your bill. If you cannot pay your bill in full, you should pay as much as you can and immediately call us, write us, or visit your nearest IRS office to explain your circumstances. Whenever you write, be sure to enclose a copy of your tax bill and on your letter, print your name, taxpayer identification number, and the tax form and period shown on your bill.

After we receive your explanation, we will try to find the best way for you to pay your tax bill.

1) We may ask you to complete a Collection Information Statement. We use this form to review your financial condition to determine how you can pay the amount due.
2) We can ask you to sell or mortgage any assets to secure funds to pay the taxes.
3) We will ask you to secure a commercial loan if we determine that you are able to do so. A benefit of obtaining a loan is that you will avoid penalties and interest that we will continue to charge on your unpaid balance until all tax, penalties, and interest are paid.
4) We may take enforced collection action, such as issue a levy on your bank account, levy your wages, or take your other income or assets if you neglect or refuse to pay or make other arrangements to satisfy your bill in full.

▶ ***Making installment payments for individuals or businesses.*** We will help you complete a *Collection Information Statement*, Form 433A or 433F for individuals, or Form 433B, for businesses. We use these forms to help us compare your monthly income with your expenses, determine if you qualify for an installment agreement, and the amount you can pay.

You can use these methods to make installment payments:

1) Personal checks, business checks, money orders, or certified funds,
2) Payroll deductions that your employer agrees to take from your salary and send to the IRS in regular payments, or
3) Electronic transfers from your bank account or other similar means.

If you have an installment agreement, you must make each payment on time. If you cannot pay on time, let us know why immediately.

Caution: You will be charged a fee if your installment agreement is approved or needs to be reinstated. Also, while you are making installment payments, we will continue to charge your account with interest and penalties on the unpaid balance of taxes you owe plus interest on the unpaid balance of penalties and interest you owe.

Other actions that we may take include:

- Filing a Notice of Federal Tax Lien to secure the Government's interest until you make the final payment (See the section on "Liens" on pages 5-6),
- Requiring you to provide current information on your financial condition to determine any change in your ability to pay, and
- Ending the installment agreement if you do not provide financial information when requested or if you do not meet the terms of the agreement, such as paying late, missing a payment, or not filing or paying all required tax returns. If this happens, we may take enforced collection action. See "What Happens When You Take No Action To Pay," on page 5.

Note: Because your agreement is based on your financial circumstances, it could change. However, you will receive a letter 30 days in advance of any change we would make to your plan.

Simplified installment agreements. A simplified process enables many taxpayers to qualify for a streamlined installment agreement. In most cases, applying requires little paperwork and a Federal tax lien may not be required. To apply, call or visit your local IRS office for details about completing Form 9465, *Installment Agreement Request*.

▶ *What if I disagree with the amount of tax that IRS says I owe?*

See "If you believe your bill is wrong."

▶ *Can I make monthly payments on my account?*

See "Making installment payments for individuals or businesses," and "Simplified installment agreements."

▶ *Can I postpone paying my taxes until my financial condition improves?*

See "Delaying collection if you cannot pay."

▶ *Can I settle my tax account for less than what I owe?*

See "Offer in Compromise."

▶ *How do I make a tax deposit if I do not have tax deposit coupons for employment taxes?*

See "Paying employment taxes."

▶ ***Delaying collection if you cannot pay.*** If we determine that you cannot pay any amount of your tax debt, we may temporarily delay collection until your financial condition improves. If we delay collection, the amount of your debt will increase because we will continue to charge a penalty for late payment and interest on your debt. During a delay, we will review your ability to pay. We may also file a Notice of Federal Tax Lien (explained on page 5) to protect the Government's interest in your assets and send you a reminder to pay.

If your current Federal and State tax return shows a tax refund and you owe back taxes. If you are entitled to receive a tax refund while you still owe unpaid taxes, we will automatically apply the refund to pay the unpaid tax debt and refund the remaining balance to you.

If you are bankrupt. If you are involved in an ongoing bankruptcy proceeding, contact your local IRS office. While the bankruptcy proceeding may not eliminate your tax debt, it will temporarily stop IRS enforcement action to collect a debt related to the bankruptcy.

▶ ***Offer in Compromise.*** The Service may accept an offer in compromise to settle unpaid tax accounts for less than the full amount of the balance due when the facts support the likelihood that the Service will be unable to collect the debt in full. This applies to all taxes, including any interest and penalty or additional amount(s), arising under the Internal Revenue laws. The amount you offer must reflect your maximum ability to pay, taking into consideration the total value of your equity in all your assets and future income.

How to file an Offer in Compromise. You can get Form 656, *Offer in Compromise*, and Form 433A, *Collection Information Statement for Individuals*, Publication 1854, How to Prepare a Collection Information statement (Form 433A), or Form 433B, *Collection Information Statement for Business*, plus additional information regarding the filing procedure, at any IRS office. You may also call the toll-free numbers listed on page 1 for assistance or to receive tax forms or publications.

Additional Payment Procedures for Employers

Throughout this publication, we will refer to Employer's Quarterly Federal Taxes as employment taxes. This tax is reported on Form 941, *Employer's Quarterly Tax Return. Form 940, Employer's Annual Federal Unemployment Tax Return*, is used by employers to report Federal unemployment tax.

Note: If your business receives funds from the Small Business Administration or a Small Business Investment Company, you should notify that organization about your unpaid taxes.

General information. Employment taxes are:

- The amounts you withhold from your employees for income tax and social security tax, plus
- The amount of social security tax you pay as an employer on behalf of each employee.

Although your bill includes all of the amounts above, the amounts that you have withheld from your employee's earnings are referred to as "trust fund taxes." They are called "trust fund taxes" because they are actually the employee's money which you hold in trust until you make a Federal tax deposit in that amount.

Degree of taxpayer cooperation. When we collect these unpaid taxes, we distinguish between those taxpayers who show a sincere effort to meet their tax obligations and those taxpayers who show little or no evidence of cooperation. We make this distinction because we believe that taxpayers who ar making an effort to comply should be given an opportunity to resolve their bill, over a short period c time.

On the other hand, we believe that "repeater" or "chronic delinquent" trust fund cases require a swift and decisive IRS response for the following reasons:

1) The taxpayer (employer) is using "trust fund" monies as operating capital and thereby gains an unfair competitive advantage over other businesse who are complying, and
2) The taxpayer has been warned and yet continues t divert the "trust fund" monies.

Caution: The amount owed can increase dramatical if the taxpayer ignores the federal tax deposit and/or filing requirements, thus making it increasingly diffic to recover from the tax debt.

▶ ***Paying employment taxes.*** In general, you must deposit your taxes directly to the Federal Reserve Ba in your area or to an authorized financial institution.

Electronic Funds Transfer. Some taxpayers are required to deposit by electronic funds transfer. If yc are subject to this requirement, you must make electronic deposits for all depository tax liabilities th occur after December 31, 1997 or be subject to a penalty. If you were required to make deposits by electronic funds transfer in prior years, continue to c so.

To make electronic deposits, you need to use the Electronic Federal Tax Payment System (EFTPS). W EFTPS, deposits can be made by ACH debit using a telephone or personal computer or by initiating an A credit payment through your financial institution. Instructions for making payments are in the Paymer Instruction Booklet that you receive when you enro EFTPS. EFTPS changes the method of paying taxes- not the date payments are due or the amounts owe

If you are not required to make electronic deposits, you can voluntarily participate in EFTPS. For information on EFTPS, call 1-800-945-8400 or 1-800-555-4477. (These numbers are for EFTPS information only.)

Federal Tax Deposit (FTD) Coupon. If you do not make deposits by electronic funds transfer, use Form 8109, FTD Coupon. If any of the preprinted information on your Form 8109 is incorrect, follow t instructions in the coupon book for correcting it. Ma your deposits directly to the Federal Reserve Bank in your area or to any financial institution authorized to accept Federal tax deposits.

Reordering forms. The IRS will keep track of th number of FTD coupons you use and will automatic send you addition coupons when you need them. If you do not receive your resupply of FTD coupons, c 1-800-829-1040, or visit the IRS and request Form 8109-B, Federal Tax Deposit Coupon.

Caution: Penalties may apply if you make deposits an unauthorized financial institution or pay directly the IRS. Penalties may also apply if you are requirec deposit by electronic funds trans and you do not us EFTPS.

More information on Depositing Taxes. For more information about making federal tax deposits obtain a copy of Circular E, Employer's Tax Guide, from any IRS office.

More information on Form 8109. For more information about making federal tax deposits, you c obtain a copy of Circular E, *Employer's Tax Guide*, c Notice 109, *Information About Depositing Employm and Excise Taxes*, from any IRS office.

If you do not deposit taxes on time. If you do not timely pre-pay your tax using deposit coupons or if you were not required to make any deposit and/or did not include your payment when you filed your return, we will charge you interest and penalties on any unpaid balance.

We may charge you penalties for not depositing employment taxes timely up to 15% of the amount not deposited, depending upon how many days late you make the deposit.

If you do not pay withheld trust fund taxes, we may take additional collection action.

- We can require you to file and pay your taxes on a monthly rather than quarterly basis.
- We can also require you to open a special bank account and deposit the amounts required to be withheld within two banking days after you pay wages to your employees. If, after you are required to do so, you do not open a special account and make timely deposits, you may be found guilty of a misdemeanor.

What Happens When You Take No Action to Pay

You will not need to read this section if you have already paid your tax. Please note that before we take any of the actions explained in this section, we try to contact you and give you the opportunity to pay voluntarily.

If you do not take some action to pay your tax bill, we may take any of the following actions:

- File a Notice of Federal Tax Lien,
- Serve a Notice of Levy,
- Seize and sell your property (personal, real estate, and business property),
- Notify payers of your interest and dividend income to begin backup withholding, or
- Assess a trust fund recovery penalty, if you owe employment taxes. (See "Trust Fund Recovery Penalty Assessments for Employers," discussed on page 8).

Some of these actions are referred to as "enforced collection actions" because they are the means by which the IRS can enforce the notice and demand for tax.

Lien

This section gives information to help you understand what a lien is, how it affects your credit rating, and how it is released.

Before the IRS files a Notice of Federal Tax Lien, three requirements must be met:

1) The IRS must assess the liability,
2) The IRS must send you a notice and demand for payment, and
3) You must neglect or refuse to fully pay the liability within 10 days of notice and demand. Entering into an installment agreement does not preclude the filing of a notice of lien.

Once these requirements are met, a lien is created for the amount of your tax debt. This lien attaches to all your property (such as your house or car) and to all your rights to property (such as your accounts receivable).

A lien is not valid against the claims of other creditors until the IRS files a Notice of Federal Tax Lien with an appropriate official to establish priority status among these creditors. An example of this is filing a lien in the county where you own property or in the state where you conduct business. By filing a Notice of Federal Tax Lien, the Government is providing a public notice to your creditors that the Government has a claim against all your property, including property that you acquire after the lien was filed.

Caution: Once filed, a lien may harm your credit rating.

Releasing a Lien

The IRS will issue a Release of the Notice of Federal Tax Lien:

1) Within 30 days after you satisfy the tax due (including interest and other additions to the tax) by payment or adjustment, or
2) Within 30 days after we accept a bond that you submit guaranteeing payment of the debt.

In addition, you must pay all fees charged by a state or other jurisdiction for both filing and releasing the lien. These fees will be added to the balance you owe.

Publication 1450, *Request for Release of Federal Tax Lien*, describes how to request a release of a Federal tax lien.

Automatic release of a Federal Tax Lien. A lien will release automatically if we have not refiled it before the time expires to legally collect the tax. This is usually a period of 10 years.

What you can do if IRS does not release a lien. If the IRS knowingly or negligently does not release a Notice of Federal Tax Lien when it should be released, you may sue the Federal government, but not IRS employees, for damages.

Before you file a lawsuit, you must first exhaust all administrative appeals. Also, you must file the suit within 2 years from the date when the IRS should have released the lien.

If you win a civil lawsuit, you may be awarded payment for any losses that you had because the IRS did not release the lien. You may also be paid for your share of the costs of the lawsuit. However, any costs that you could have reasonably reduced will be subtracted from that payment.

Special Release of Tax Lien — Application for a Discharge of a Federal Tax Lien against Property

Each application for a discharge of a tax lien releases the effects of the lien against one specific piece of property. If you are giving up ownership of property, such as when you sell your home, you may apply for a Certificate of Discharge.

You may receive a Certificate of Discharge if any of the following circumstances apply:

- You have other property, subject to the lien, that is worth at least two times the total of the tax you owe, plus any additions to the tax you owe and any other debts you owe on the property, such as a mortgage.
- The IRS receives the value of the government's interest in the property and you are giving up ownership.
- The IRS determines that the government's interest in the property has no value at the time you are giving up ownership.
- The property in question is being sold, and there is a dispute as to who is entitled to the sale proceeds, and the proceeds are placed in escrow while the dispute is being resolved.

When applying for a discharge, you must send your written application in duplicate to the IRS district director where your property is located.

For assistance in requesting a discharge of a Federal Tax Lien, see Publication 783, *Instructions on How to Apply for a Certificate of Discharge of Property From the Federal Tax Lien.*

I'm an employer. What happens if I cannot pay my employment taxes?

See "What Happens When You Take No Action To Pay" (this page) and "Trust Fund Recovery Penalty Assessments for Employers" (page 8).

Does owing taxes have an effect on my credit?

See "Lien."

When the IRS Lien Is Secondary to Another Lien — Subordination

Subordination is made at the discretion of the IRS. It means that the IRS has allowed its lien to take a lower place than someone else's lien.

The IRS may let its lien take a lower place than a "junior lienor" (someone whose lien originally had a lower place then the IRS lien) if it receives the dollar value of the lien in the property that the junior lienor is acquiring, for example, a second mortgage.

We may also subordinate a lien if we believe that doing so would speed collection of the tax. For example, we may subordinate a lien that would allow a farmer to receive a loan to harvest a crop.

For assistance in requesting subordination of a Federal Tax Lien, see Publication 784, *How to Prepare Application for Certificate of Subordination of Federal Tax Lien.* When making this request, you should submit a written application in duplicate to the District Director in whose district your property is located.

Withdrawal of Liens —Internal Revenue Code 6323(j) and Taxpayers Bill of Rights 2 allows the withdrawal of a filed notice of tax lien if:

- the notice was filed prematurely or not in accordance with IRS procedures,
- the taxpayer has entered into an installment agreement to satisfy the liability on the notice of lien unless the agreement provides otherwise),
- the withdrawal will facilitate collection of the tax, or
- the withdrawal would be in the best interests of both the taxpayer (as determined by the Taxpayer Advocate) and the Government

The IRS must provide a copy of the withdrawal to the taxpayer and, upon written request of the taxpayer, to other specified institutions.

Incorrect Lien — Your Administrative Appeal

You may appeal the filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. A lien is incorrect if:

- You paid the entire amount you owed the IRS before we filed the lien,
- We assessed the tax and filed the lien when you were in bankruptcy and subject to the automatic stay during bankruptcy,
- We made a procedural error in making an assessment, or
- The time to collect the tax (called the statute of limitations) expired before we filed the lien.

Note: You may not appeal this Notice of Federal Tax Lien if you are challenging the underlying debt that generated the filing of the lien.

If we agree with your appeal, we will release the lien within 14 days after we determine that the lien was filed incorrectly. we will issue a certificate of release of an incorrect lien that includes a statement that we filed the Notice of Federal Tax Lien in error.

What effect can a levy have on my salary and bank accounts?

See "Levy."

What must happen to release a levy?

See "Releasing a levy."

Levy

A levy is one method the IRS uses to collect tax that you have not paid voluntarily. It means we can, by legal authority, take property to satisfy a tax debt. Levies can be made on property that you hold (such as your vehicle, boat, or house) or on property that is yours, but is held by third parties (such as wages or funds on deposit at a bank).

For example, IRS may levy your wages (salary), commissions, the cash value of life insurance, licer or franchises, securities, contracts, demand notes, accounts receivables, rental income, dividends, retirement accounts, etc.

Also, in most states that have state income taxes, t IRS can levy a state refund check and apply the sta refund to a federal tax debt.

A levy is different from a lien. A lien is a claim used security for the tax debt, while a levy is used to actually take the property to satisfy the tax debt.

Authority to levy. Generally, the IRS does not ne court authorization to take levy action. However, w are required to have court authorization to enter private premises, if this is necessary, to seize prop

Generally, before IRS takes levy action, three legal requirements must be met:

1) The IRS must assess the tax and send you a "N and Demand" for payment,
2) You must neglect or refuse to pay the tax, and
3) The IRS must send you a Final Notice of Intent Levy at least 30 days in advance of the levy.

We may give you this notice in person, leave it at dwelling or usual place of business, or send it by certified or registered mail to your last known add The bill that usually accompanies this publication such a notice.

Caution: If we conclude that collection of your tax threatened, we may take immediate collection act before all three requirements have been met. For example, if a taxpayer is planning to quickly leave country, we may believe that collection is threaten or in jeopardy.

If we make a decision that collection of your tax is threatened or in jeopardy, you may seek IRS managerial or court review, or both. These proced are explained in the letter you will receive when th demand for payment is made.

Levy on wages. If the IRS levies your salary or wages, the levy will end when one of the following occurs:

- The levy is released,
- You pay your tax debt, or
- The time expires for legally collecting the tax.

If we levy your salary or wages, contact the person whose telephone number is listed on the Notice of Levy for assistance.

Levy on your bank account. If the IRS levies y bank account, your bank is required to hold funds have on deposit, up to the amount you owe, for 2 days. This period allows you time to resolve any problems about the levy or make other arrangeme to pay. The bank is then required to send the mon plus interest if it applies, to the IRS.

To discuss your account, you should contact the by calling the person whose name is shown on th Notice of Levy.

Releasing a levy. We must release your levy if a of the following occur:

- You pay the tax, penalty, and interest that you o
- The time for collection (statute of limitations) expires before the levy is served.
- You provide documentation for the IRS to determine that releasing the levy will help collec tax.
- You have, or entered into, an approved, current installment agreement for the tax on the levy. (However, if you and the IRS have agreed that a

current levy will continue while installment payments are made, we will not release it.)
- The IRS determines that the levy is creating an economic hardship.
- The fair market value of the property exceeds the levy and releasing part of the seized property would not hinder the collection of tax.

Property that cannot be levied. Certain types of property are exempt from seizure (levy) by Federal law. They include all of the following items:

- Wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy).
- Fuel, provisions, furniture, and personal effects for a head of household, that total up to $2,500 (indexed for inflation after 1996).
- Books and tools you use in your trade, business, or profession, that total up to $1,250 (indexed for inflation after 1996).
- Unemployment benefits.
- Undelivered mail.
- Certain annuity and pension benefits.
- Certain service-connected disability payments.
- Workmen's compensation.
- Salary, wages, or other income that have been included in a judgment for court-ordered child support payments.
- Certain public assistance payments.
- Assistance under the Job Training Partnership Act.
- Deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees who are on permanent duty assigned outside the United States or its possessions.
- A minimum weekly exemption for wages, salary, and other income based on the standard deduction plus the number of allowable personal exemptions divided by 52. In the case of no response to the certification of exemptions, the exempt amount will be computed as if you were married filing separately with one exemption.

Publication 1494, *Table of Figuring Amount Exempt from Levy on Wages, Salary and Other Income* (Forms 668-W and 668-W(c)), can be used to determine the amount of earned income exempt from levy.

Returning levied property. We can consider returning property that has been levied if:

- We levy before the two required notices are sent to you or before your time for responding to them has passed (10 days for the Notice and Demand; 30 days for the Notice of intent to levy).
- We do not follow our procedures.
- We agree to let you pay in installments, but we still levy, and the agreement does not say that we can do this.
- Returning the property will help get the tax paid.
- Returning the property is both in your best interest and the government's.

How to file a claim for reimbursement when IRS made a mistake in levying your account or misplaced your check. You may be entitled to be reimbursed for fees your bank charged you because IRS made a mistake when we levied your account.

To receive this reimbursement, you must file a claim with the IRS within one year after the bank charged you with the fee. To file your claim, use Form 8546, *Claim for Reimbursement of Bank Charges Incurred Due to Erroneous Service Levy or Misplaced Payment Check.*

Seizures and Sales

If you do not pay (or make arrangements to resolve) your tax debt, we may seize and sell any type of real or personal property that you own or have an interest in (including residential and business property) to satisfy your tax bill. Seizure of a primary residence requires the approval from an IRS district director or assistant district director except if the collection of the tax is in jeopardy.

If we seize or levy your property, you should contact the IRS employee who made the seizure or levy for assistance.

When property cannot be seized or levied. We may not seize any of your property when the estimated cost to seize and sell the property is more than the fair market value of the property to be seized. In addition, we may not seize or levy your property on the day you attend a collection interview because of a summons.

However, we can seize or levy your property on this date if collection of the tax is in jeopardy. You may contact the IRS employee who made the seizure or levy if you have any questions.

Administrative review. You have the right to an administrative review of our seizure action when we have taken your personal property that you need to maintain your business. See "When you do not agree with decisions of IRS employees," on page 2 for information about how to apply for this review.

Notice of proposed sale. After we seize your property, we must give public notice of a pending sale. Public notice usually appears in a newspaper that is published or circulated in the county where the sale will be held. We will personally deliver the original notice of sale to you or send it to you by certified mail. After we give notice, we must wait at least 10 days before conducting the sale.

However, if the property is perishable and must be sold immediately, we are not required to wait 10 days before holding the sale.

Minimum bid. Before the sale, we will compute a "minimum bid price." This is the lowest amount that we will accept for the sale of the property to protect your interest in that property. We will tell you the minimum bid price we set, which is usually 80% or more of the forced sale value of the property, after any liens are subtracted.

If you disagree with this minimum bid price, you can appeal it by requesting that the price be recomputed by either an IRS valuation engineer or a private appraiser who can assist the IRS engineer. If you still disagree with the revised appraisal, you may obtain a second appraisal.

Release of property. Before the date of sale, we may release the property that we seized from you if you:

1) Pay us the amount of the Government's interest in the property,
2) Enter into an escrow arrangement,
3) Furnish an acceptable bond, or
4) Make an acceptable agreement for payment of the tax.

What types of property can the IRS seize?

See "Seizures and Sales."

Your right to "buy back" the property. You have the right to "buy back" your personal property at any time before the sale. To do this, you must pay the tax due, including interest and penalties, and pay the expenses of seizure.

How can I obtain a release of the seized property?

See "Release of Property."

For real estate, you (or anyone with an interest in the property) may redeem it at any time within 180 days after the sale by paying the purchaser the amount paid for the property plus interest at 20% annually.

Sale procedures. You may request that we sell the seized property within 60 days. For information on how to make this request, you should contact the IRS employee who made the seizure. We will grant your request unless it is in the Government's best interest to retain the property. We will inform you in writing of our decision whether or not we are able to grant your request.

My business is closed. Can I be held responsible for unpaid "trust fund" taxes?

See "Who is a responsible person for trust fund tax."

After the sale, we use the proceeds first to pay the expenses of the levy and sale. We then use any remaining amount to pay the tax bill.

If the sale proceeds are less than the total of the tax bill and the expenses of levy and sale, you will still have to pay the remaining unpaid tax.

If the sale proceeds are more than the total of the tax bill and the expenses of the levy and sale, we will notify you about the surplus money and provide you with instructions about how to request a refund. However, if a person, such as a mortgagee or other lienholder, submits a claim superior to yours, we will pay that claim before we refund any remaining funds to you based on your request.

Backup Withholding

You are legally required to report your interest, dividend, or patronage dividend income on your individual income tax return. You must report the correct amounts, and these amounts must match the amounts that the payers report to IRS. You are also required to provide your correct taxpayer identification number to all payers of interest, dividends and miscellaneous income.

Usually, there is no withholding of tax on interest and dividend payments. However, if you do not report this interest and dividend income or provide the correct taxpayer identification number as required, you may be subject to backup withholding. This occurs when we notify all those who pay you interest or dividends to begin withholding income tax on these payments. You may also be subject to backup withholding if you do not provide your correct taxpayer identification number.

How to prevent backup withholding from starting. Before we notify your payers to withhold, we will send you at least four notices over a period of at least 120 days to give you a chance to correct the underreporting and pay any additional tax to avoid backup withholding.

Stopping backup withholding. Once backup withholding begins, we will stop it when:

1) The income is properly reported,
2) The income tax is paid in full,
3) You furnish the correct taxpayer identification number, and
4) The IRS notifies the payer to stop withholding.

Generally, we will notify payers to stop withholding at the end of the year if we receive full payment of the tax by October 15. If we receive full payment after October 15, they will continue withholding through the following year.

While you are subject to backup withholding, you must certify to any new payers that you are subject to backup withholding. If you falsely certify that you are not subject to backup withholding, you will be liable for a penalty of $1,000 or imprisonment for up to one year, or both. For additional information, see Publications 1281 and 1679 which contain information about backup withholding and taxpayer identification numbers.

Trust Fund Recovery Penalty Assessments for Employers

To encourage prompt payment of withheld income and employment taxes, including social security and railroad retirement taxes or collected excise taxes, Congress passed a law that provides for the trust fund recovery penalty. This penalty is used as a tool for collection of unpaid employment taxes. The penalty also applies to those excise taxes which are commonly referred to as "collected" excise taxes.

If you are a "responsible person," we can apply this penalty against you immediately after you do not pay trust fund taxes in response to a notice and demand for payment. Also, we can apply this penalty regardless of whether you are out of business or without assets.

Caution: Once we assert the penalty, we can take collection action against your individual assets, such as filing a Federal tax lien if you are the responsible person(s).

Figuring the penalty amount. The amount of the penalty is equal to the unpaid trust fund tax. The penalty is computed based on two amounts which constitute trust fund tax:

1) The unpaid income taxes withheld, plus
2) The employee's portion of the FICA taxes withheld.

For collected taxes, the penalty is based on the unpaid amount of collected excise taxes.

Who Is Subject to the Penalty

We may impose the penalty against any person who is responsible for collecting or paying withheld income and employment taxes or for paying collected excise taxes AND who willfully fails to collect or pay them. Therefore, the two key elements that support this penalty assessment are **responsibility** and **willfulness**.

Who is a responsible person for trust fund tax. A responsible person is one who has the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes. Therefore, responsibility involves status, duty, and authority.

This person may be:

- An officer or an employee of a corporation,
- A member or employee of a partnership,
- A corporate director or shareholder,
- A member of a board of trustees of a nonprofit organization, or
- Another person with sufficient authority and control over funds to direct their disbursement.

In some situations the responsible person may be a person who is not directly affiliated with the delinquent business. For example, the penalty may be assessed against an official or employee of a bank or other financial institution who has the authority to direct the financial affairs of the business and:

- Furnishes funds to a business and directs how the funds are to be distributed, or
- Directs the business not to pay the taxes.

Proof of willfulness. By willful, we mean conduct that is intentional, deliberate, voluntary, and knowing — as opposed to accidental conduct. YOU are considered to have a willful attitude if you have free will or choice and yet either intentionally disregard the law or are plainly indifferent to legal requirements.

For willfulness to exist, the responsible person must:

1) Have known about the unpaid taxes, and
2) Have used the funds to keep the business going or allowed available funds to be paid to other creditors.

Willfulness does not imply that you had acted for personal gain. For example, the courts ruled in one case that the actions of a corporate officer, in permitting withheld taxes to be used for operating expenses of the business (whether at the officer's direction or with his tacit approval) is sufficient evidence of willfulness that a trust fund recovery penalty can be charged to that officer.

In addition, if an employer meets payrolls, we can infer that sufficient funds were available to pay the tax, regardless of whether the funds were actually set aside otherwise specifically identified for tax purposes.

Your Appeal Rights

The appeal process is outlined clearly in Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases*. If we recommend that you pay the trust fund recovery penalty amount, you can attempt to resolve the matter informally through a discussion with the group manager of the IRS employee in your district. If you disagree with the decision the group manager, you may request a conference before the Regional Director of Appeals.

Printed on recycled paper

☆ U.S. GOVERNMENT PRINTING OFFICE 1997-429-8

How to Appeal One of These Actions If You Have Been Contacted By A Revenue Officer

1. If you disagree with the decision of the Revenue Officer, and wish to appeal, you must first request a conference with a Collection manager.

2. If you do not resolve your disagreement with the Collection manager, you may request Appeals consideration by completing Form 9423, Collection Appeal Request.

3. On Form 9423, list the Collection actions you disagree with and explain the reasons why you disagree. You must also include your solution to resolve your tax problem. **YOUR REQUEST FOR AN APPEAL MUST BE RECEIVED BY THE COLLECTION OFFICE WITHIN 2 DAYS OF THE MANAGER CONFERENCE OR COLLECTION ACTION WILL RESUME.**

What Will Happen When You Appeal Your Case

Normally, we will stop the collection action you disagree with until your appeal is settle, unless we have reason to believe that collection of the amount owed is at risk.

You May Have A Representative

You may represent yourself at your Appeals conference or you may be represented by an attorney, certified public accountant or a person enrolled to practice before the IRS. If your representative appears without you, he or she just file a Form 2848, Power of Attorney, before receiving or inspecting confidential material, You can get a Form 2848 from your local IRS office.

Decision On The Appeal

Once the Appeals Office makes a decision on your case, that decision is binding on both you and the IRS. This means that both you and the IRS are required to accept the decision and live up to its terms.

Note: False information, omitting pertinent information, or fraud will void the decision.

Department of the Treasury
Internal Revenue Service
Publication 1660 (Rev. 1-97)
Catalog Number 14376Z

Collection Appeal Rights

for Liens, Levies, Seizures & Installment Agreement Terminations

Collection Issues You Can Appeal

- **Notice of Federal Tax Lien** - You may appeal before or after IRS files a lien. You may also appeal denied request to withdraw Notice of Federal Tax Lien filing, and denied discharges, subordinations, and notattachments of lien.
- **Notice of Levy** - You may appeal before or after IRS places a levy on your wages, bank account or other property.
- **Seizure of Property** - You may appeal before or after IRS makes a seizure. However, if you request an appeal after IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you or left at your home or business.
- **Terminations of Installment Agreement** - You may appeal when you are notified that the Service intends to terminate your installment agreement.

How to Appeal One of These Actions If Your Only Collection Contact Has Been A Notice or Telephone Call

1. Call the IRS at the telephone number shown on your notice. Be prepared to explain which collection action (or actions) you disagree with and why you disagree. You must also offer your solution to your tax problem.

2. If you cannot reach an agreement with the employee, tell the employee that you want to appleal their decision. The employee must honor your request, and will refer you to a manager. The manager will either speak with you then, or willreturn your call within 24 hours.

3. Explain the actions you disagree with to the manager who will make a deci_sion on the case. If you do not accept the manager's decision, we will send your case to an Appeals Officer for review.

Collection Appeal Request

1. Taxpayer's Name			2. Representative: (Form 2848, Power of Attorney attached)
3. SSN/EIN	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone	6. Representative's Phone
7. Taxpayer's Street Address			
8. City	9. State	10. Zip Code	
11. Type of Tax (Tax Form)	12. Tax Periods Being Appealed		13. Tax Due

Collection Action Appealed

14. Please Check the Collection Action You're Appealing:

- ☐ Federal Tax Lien
- ☐ Levy or Notice of Levy
- ☐ Seizure
- ☐ Termination of Installment Agreement

Explanantion

15. Please explain why you disagree with the collection actions you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct, and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Representative's Signature	17. Date
18. Collection Manager's Signature	19. Date Received

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

September 30, 1997

The Honorable Daniel Patrick Moynihan
United States Senate
Washington, DC 20510-3201

Dear Senator Moynihan:

I am writing to you regarding your comments about tax compliance at the Committee on Finance Hearing on Practices and Procedures of the Internal Revenue Service on Thursday, September 25, 1997. At the hearing you stated that compliance had declined from 97 percent in 1962 to 83 percent today. We at the IRS are obviously familiar with the 83 percent figure -- it is our estimate of the voluntary compliance rate. However, neither our tax gap estimates nor our Taxpayer Compliance Measurement Program studies, the two usual sources of compliance estimates, go back as far as 1962. We have looked into this issue and have determined that these figures are estimates of different concepts and, therefore, are not comparable. I would like to pass along to you the information we found.

Only the 83 percent figure reflects the concept of voluntary compliance. The IRS defines the voluntary compliance rate as the percentage of *true tax liability* that is paid voluntarily and timely by taxpayers. The 83 percent figure is the IRS's most current estimate of this measure. We surmise that the 97 percent figure you reference for 1962 was not an estimate of the voluntary compliance rate, but rather the percentage of *total taxes collected* that were voluntarily paid by taxpayers. (The remaining three percent of total taxes collected were obtained as a result of IRS enforcement activities.) We found a citation to a 97 percent figure in the "Annual Report of the Commissioner of Internal Revenue" for fiscal year 1961. The report stated that "approximately 97 percent of total revenue collections are voluntarily paid by taxpayers under our self-assessment system."

While today the concept of voluntary compliance (and the voluntary compliance rate) is universally understood, our review of some old documents suggests this may not have been true in the 1960s. A 1968 IRS study entitled "Role of Sanctions in Tax Compliance" states that "The statement is sometimes made that about 97% of the income taxes collected are the result of voluntary compliance, and only 3% the result of enforcement activities." The report then goes on to note the potential for misunderstanding stemming from using "taxes actually collected" as a base in calculating a percentage rather than "taxes which should be collected." It is this latter base, which we now refer to as "true tax liability," that we use to measure the current compliance rate of about 83 percent. Our earliest estimate of the voluntary compliance

The Honorable Daniel Patrick Moynihan

rate is for tax year 1973 and is approximately 82 percent. Thus, the compliance rate has remained relatively constant over time.

On a related point, you were correct in stating that the IRS workforce has grown considerably since 1962 -- by our calculations it has increased by about 180 percent between 1962 and 1996. However, our workload has increased even faster as the number of returns filed has increased by about 216 percent over the same period.

I am aware that our staffs have been in contact over these issues. Hopefully, this explanation will help to clarify any misunderstandings concerning compliance. If we can provide any additional information, please let me know.

Sincerely,

Mike Dolan

Michael P. Dolan
Acting Commissioner

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR NICKLES

Re: Shelley Davis—

Question: Mr. Dolan, this committee heard sworn testimony yesterday from Shelley Davis, former historian for the IRS, that the agency routinely destroys documents relating to critical management decisions. She further testified that when she tried to stop this practice, she was attacked from within the agency and left with no option but to resign. How do you respond to these claims?

Answer: The IRS has **not** routinely destroyed documents relating to critical management decisions. Admittedly, there have been records management problems, however, in December 1995, the National Archives and Records Administration (NARA) made 58 recommendations to improve our records management practices and in May 1997, NARA agreed that we had successfully implemented 47 of the recommendations. As of September 1997, we reported to NARA that we took actions to implement the remaining 11; however, NARA has not yet concurred. Also, in response to the Chairman of the House Committee on Ways and Means and the Chairman of the Subcommittee on Oversight who requested that the General Accounting Office evaluate how IRS carries out its records management responsibilities, the GAO stated in an October 1997 report, that "Nara's 1995 review of the IRS records management program found that IRS had managed its overall records program according to NARA requirements."

As a result of the NARA evaluation, IRS has been working very closely with NARA to strengthen our records management responsibilities. In this regard, we have taken aggressive actions to ensure all records documenting changes in policy, organizational structure, and programs are identified, scheduled with NARA, and transferred to NARA according to each approved disposition authority.

Some of the most proactive actions involve the preservation of approximately 790 cubic feet of records. The details of each action are set forth below:

1. One valuable collection of historical records was maintained by the former Historian (300 cubic feet). Unfortunately, during her tenure, no actions were taken to catalog, inventory, or schedule these records for eventual transfer to NARA. After her resignation, it took 9 months to complete a massive inventory because the records were left in such disarray. Since the completion of the inventory, a Request for Disposition Authority was submitted to NARA and the appraisal process, which was initiated by NARA recently, will take several months to complete.
2. Program, policy, and reading files of former Commissioners (1950–1992) have been retired to the Washington National Records Center (240 cubic feet) and will be transferred to NARA according to their approved disposition authority.
3. Records created and maintained by former Chief Information Officers and the Information Systems organization (1983–1990) documenting Tax Systems Modernization (TSM) and other management decisions are being prepared for retirement to the Washington National Records Center (50 cubic feet). Additional records created by Information Systems (1970–1990) in the former Historian's collection are pending appraisal by NARA. (The volume of 53 cubic feet is included in Item No. 1.)
4. Reading Files and Subject Files of the former Modernization Executive/Associate Commissioner (Modernization) (1991–1996) have been appraised by NARA and are being prepared for retirement (40 cubic feet).
5. The records of the former Special Services Staff (1968–1973) are pending appraisal by NARA (140 cubic feet).
6. Strategic Planning Documentation (1947–1960) has been transferred to NARA (one cubic foot) and an additional cubic foot (1960–1980) is being prepared for retirement.
7. We have also offered for immediate transfer to NARA early directives which document the policies and procedures of the Service from 1861–1953 (19 cubic feet). These records are awaiting NARA's approval for transfer.

I have no knowledge nor evidence of Ms. Davis' claim that she was "attacked" from within the agency and it is my belief that her decision to resign was one made of her own volition.

Re: Oklahoma City office & seizures—

Question: Mr. Dolan, according to information received by my office, the average number of seizures per revenue officer per year in the Oklahoma City office is 3.9, when the national average is 0.5. Can you explain this statistical anomaly? Does your office ever review these numbers and investigate their cause?

Answer: The National Office does not maintain statistics on the average number of seizures per revenue officer. The total number of seizures nationwide and by district office are maintained by fiscal year. My office does review the seizure program, including the number of seizures by district office, to identify trends. Many variables impact the program's statistics, such as the demographics of the district, the economy, and taxpayer compliance. Other variables include state laws that impact property ownership and equity in assets, support from other agencies such as the United States Attorneys, and state governments' support. I believe the numbers quoted were developed locally by the Arkansas-Oklahoma District. Since we are not aware of the methodology used for the computation, we have been unable to arrive at the quoted numbers using data that is available to us. Thus, I am unable to explain the statistical anomaly. The number of seizures are not, in and of themselves, indicators of success or failure. They need to be considered in the context of individual case decisions and district trends.

PREPARED STATEMENT OF ROBERT L. GOLDSTEIN, CPA AND JAMES A. WOEHLKE, CPA, LL.M. (TAX)

Introduction

The New York State Society of Certified Public Accountants (hereinafter "Society" or "NYSSCPA") is the nation's largest and oldest state CPA professional associations, serving over 32,000 members. (We are celebrating our centennial this year.) Our members practice locally, regionally, nationally, and internationally as primary tax advisers to millions of individual and business taxpayers. It is our belief that the Congress, the Internal Revenue Service ("IRS") and we have a common constituency: The American Taxpayer. It is from this unique vantagepoint that we appear here today.

We are supportive of the basic mission of the IRS and are not among those calling for its abolition or the substantial weakening of its role. Though we have occasionally criticized and disagreed with the IRS, the Service plays a vital role in our self-assessment tax system. Through local liaison groups, we have been able to discuss our disagreements with the Service, point out systemic problems, which come to our attention, and resolve certain issues before they become major points of contention. For example, we recently were able to alert the Brookhaven Service Center to a problem concerning the IRS computer module for Federal Unemployment Insurance for household employees. Through this cooperation, the IRS was able to quickly correct the module and we were able to alert our members to the problem and the suggested manner in which to deal with it.

We do, however, believe that the Congress' and the public's confidence in the Service's ability to carry out its mission has deteriorated. One has only to follow the newspaper and magazine articles and news broadcasts over the past several years, to read about billions spent on computer systems that do not meet their specifications or about "economic reality audits" (now called financial status audits) designed to "persecute" the American taxpayer. Even allowing for the excessive amount of hyperbole, the criticism has been intense. The IRS, more than almost any other government agency, must maintain Congressional and public trust. It must be viewed as fair, effective, and impartial. The Service cannot audit taxpayers and be unable itself to be audited. The IRS should only engender fear in those who flout the tax laws and thereby place an undue burden on their fellow citizens.

As tax practitioners, we are in a unique position to testify both about the many IRS employees who perform their tasks admirably and those instances where the Service demonstrates an inability to carry out its mission.

Taxpayer Representation and Tax Law Complexity

Taxpayers primarily choose to use a tax professional to prepare their tax returns and represent them before the IRS (in the eventuality that such representation is required) because of the complexity of the tax law. From 1986 to 1997, there have been eight yours with significant changes to the tax laws (1986, 1987, 1988, 1989, 1990, 1993, 1996 and 1997). The *Taxpayer Relief Act of 1997* alone contains:

- 36 retroactive changes
- 114 changes effective August 5, 1997
- 69 changes effective January 1, 1998 and 5 changes effective thereafter
- 285 new sections and 824 Internal Revenue Code amendments

This new law even makes estimated tax requirements for individuals more complicated by changing the safe harbor provision for individuals with adjusted gross income of more than $150,000 from 110% of last year's liability to:

- 100% of last year's liability for years beginning in 1998;

- 105% of last year's liability for years beginning in 1999, 2000, and 2001; and
- 112% of last year's liability for years beginning in 2002.

While the complexity of the tax law is not at the root of controversies between the IRS and the practitioner community and taxpayers, it does serve to exacerbate the Service's challenges in administering the tax system and the taxpayers" responsibilities in meeting their tax obligations.

It should he noted that there is a very large backlog of Treasury Regulations. The IRS needs to issue regulations and other guidance so that taxpayers and representatives know the Service's position on issues to make compliance both more likely and consistent.

Such complexity probably leads to inadvertent noncompliance and the creation of an adversarial atmosphere between the taxpayer and the Service. Over the past decade, the CPA and legal professions have submitted numerous, meaningful simplification proposals to the Congress. The AICPA developed a "complexity index" for use by policy makers in designing tax laws. Proposed tax law changes should not be enacted without Congress first securing from the IRS a draft of the tax form changes, which would be required. This procedure could help avoid complexity for both IRS administration and taxpayer compliance. The professional staffs of the Congress should consult with practitioner organizations, on a regular basis, in connection with writing of new tax legislation so that the compliance effect of dealing with such new legislation will be clearer to members of the staff. We suggest that such issues and procedures be revisited.

Responsibilities of Taxpayer Representatives and of IRS Personnel

Treasury Department Circular 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Assents, Enrolled Actuaries, and Appraisers before the Service,* sets out ethical and procedural matters governing tax practitioners. Of most immediate interest to practitioners is Subpart B, which outlines, (1) information to be furnished to the IRS (Section 10.20(a)), (2) knowledge of client's omissions (Section 10.21), (3) diligence as to accuracy (Section 10.22), and (4) the prompt disposition of pending matters (Section 10.23). The professional organizations that govern those practitioners listed in the title of Circular 230 each have their own additional ethical rules (for example, the AICPA has its *Code of Professional Conduct* and *Statements on Responsibilities in Tax Practice).*

The National Commission on the Restructuring of the IRS ("National Commission") stated that the workforce of the IRS should be of the highest quality and that the U.S. taxpayer deserves the highest-quality, courteous service from the Internal Revenue Service. Former Commissioner Richardson identified the IRS Mission for the National Commission as follows:

> 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.

While there appears no conflict between what practitioners and Service personnel should expect from one another, problems arise when the Service misconceives its own mission and role. Two recent examples are the testimony before the National Commission by the Deputy Chief, Taxpayer Service who said, the IRS is in the "law enforcement business . . . combating financial crime" and the Deputy Assistant Secretary (Departmental Finance and Management) who testified that as "[a] law enforcement agency at heart, the IRS has been protected from improper influence on how it does its job. While such insulation is appropriate, the down side is that it can foster an inwardly focused culture . . . ." It is clear from these examples that the IRS believes its primary role is law enforcement rather than the "taxpayer service." We recognize that there is an important element of law enforcement in the role of the Service, but to view that as its *primary* function creates a level of insularity and heavy-handedness, which often makes it difficult to achieve its core customer service objectives. The success of the Problems Resolution Program others an example of how different attitudes by IRS personnel and taxpayers (and their representatives) emerge when the customer-service model is used. Our profession commended the work of Former Commissioners Gibbs, Goldberg, and Peterson to alter the IRS's culture by viewing the taxpayer as a "customer" and not a "tax cheat."

An example of this enforcement mentality exists in the increasing use of by-pass actions wherein the IRS examiner contacts the taxpayer in spite of the fact that a representative has been appointed pursuant to a power of attorney on file. We do recognize that, in certain circumstances, there are legitimate reasons for the use of by-pass letters, telephone calls or visits to taxpayers, such as undue delay in the process by the practitioner or failure of the practitioner to supply requested information in a reasonable amount of time. However, the bypass action is drastic, consider-

ing what should be a cooperative atmosphere between IRS examiners and representatives, and should be structured to apply when there are demonstrable circumstances of neglect.

Training Issues

We understand that in the past, entry-level personnel were subjected to an examination and that this policy has been abandoned. While we understand that the IRS budget is stretched thin, we reject the thinking a reduced budget should lower the standards for hiring. Without an adequate number of properly skilled and highly trained employees, the success of the IRS's customer service mission will be impossible.

An example of inappropriate training is the Financial Status (formerly Economic Reality) auditing program. Agents in this program were trained to use highly intrusive auditing techniques. Agents were indoctrinated using role-playing and game-training techniques that impugned the honesty of the average taxpayer.

The tax law is taught to the professional practitioners by educators, including practicing CPAs and attorneys and other professional instructors. The IRS should reach out to universities, foundations, and processional organizations to assist in the development and teaching of continuing education programs.

In those instances where the IRS has reached out to the practitioner community in its educational efforts, such as practitioner forums and workshops planned with collaboration between the IRS and practitioner groups, there has been tremendous benefit to all parties concerned. These programs unfailingly promote dialogue and increased understanding by each group of the other's positions and problems. These joint efforts go a long way toward dispelling the perception, and in some instances the reality, of insular paranoia attributed to the Service.

The Problems Resolution Program has been a resounding success, winning plaudits from professional groups all over the country. It should he used as a model for training other IRS personnel. The very success of this program points to failures in the normal process. The IRS, then, is succeeding the second time around. With improved training and a customer service orientation, might it be possible to get it right the first time and avoid this duplication of effort?

The examination and collection issues that we are going to discuss below may appear to be merely mechanical issues; however, they are symptomatic of the problems that exist within the service. For example, some of the issues indicate lack of devotion of proper resources or establishment of the proper attitudes to bring to a speedy and efficient conclusion. Addressing these issues will reduce the amount of redundant time required by both Service personnel and practitioners in dispatching taxpayer concerns.

Examination Issues

Too much time is still required to complete audits. For example:

- An "S" corporation audit took in excess of 24 months. resulting in a minimal adjustment.
- An "S" corporation audit has taken in excess of 18 months from the initial audit notice to the issuance of the 30-day letter.
- An individual audit covering a period of two tax years has endured over 20 months and has just been taken into the Problems Resolution Program.
- An examination was put on hold pending the decision in a test curse involving prior years. The IRS waited thirteen years after the test case was decided before it contacted the taxpayer to conclude the examination.

IRS personnel participating in FlexiPlace, the program wherein certain IRS personnel work at home for part of the workweek, cannot be reached by telephone while they are working at home. Often their office phones go unanswered. A modern voice mail system should be installed and personnel working at home should be required to monitor the voice mail several times a day. If such employees are out of the office for a significant time, provision should be made for them to receive their mail. (In this way, documents forwarded by a practitioner will not sit on a desk.)

Netting of multi-year deficiencies and overpayments, for purposes of interest calculation, is almost never done on the initial processing. This then requires complicated corrections after the fact.

Collection Issues

IRS personnel often refuse to deal with a problem (tangential or related period) which is not officially on their desk, despite the fact that the adjustments to such year are a direct product of the case settlement involving a year which is on that IRS agent's desk.

The automated collection system (ACS) is particularly frustrating. When dealing with ACS, the practitioner rarely gets the same person on the telephone more than

once. Each time that the practitioner needs to speak to the IRS to either impart requested information or to request the status of the matter, the practitioner must wait for the agent to read what the previous agent has entered into the computer and often the same ground must be covered again. If the ACS person responding is from a different area than the one with whom the practitioner previously dealt, communications may be even more difficult. This procedure is hardly an efficient use of either IRS personnel or practitioner time.

Suggestion Box

Address, with all due speed, the issues raised by the National Commission. The National Commission's extensive hearings and deliberations resulted, in the main, in a well-reasoned report identifying a number of serious issues at the IRS. You should not permit the fine effort of the Commission, its witnesses, and staff go for naught.

Interim extensions (July 15, for partnerships and trusts and August 15, for individuals) should be eliminated and the initial extensions should be for 6 months. There is already only one six-month extension for corporations. This change would have no cash flow effect to the government, as any tax due for trusts or individuals is paid with the initial extension. Second extensions create no pressure for early filing, as the practitioner can sign them and they are routinely granted. These second extensions must be signed and mailed by the practitioner, received by the IRS, posted to the system, stamped approved, and mailed back to the taxpayer or the representative. This entire process is a complete waste of time and cost for both the IRS and the practitioner. The elimination of these extensions would also be consistent with the Paperwork Reduction Act.

Powers of Attorney are a perennial source of irritation in relations between the Service and the practitioner community. We recognize the absolute right of every taxpayer to privacy and confidentiality, as well as the great care the Service must give to these issues. These issues are problems nonetheless. Consideration should be given to a "check the box" power of attorney or "tax information authorization," whereby the taxpayer can check a box on the tax return at the time of filing giving the IRS permission to discuss the contents of the tax return with the preparer who has signed the tax return. In the event that the taxpayer changes accountants and such communications are required, a standard power of attorney can he filed superseding the one on the tax return.

We thank the committee for allowing the NYSSCPA to present the views and suggestions of our members. We are prepared to assist you in any way that you deem relevant to reform the IRS into a true taxpayer service agency.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY

[SEPTEMBER 23, 1997]

Mr. Chairman, members of the Committee, thank you for the invitation to share my views with you. I do so as a senior member of this committee, as a senior member and active participant of the National Commission on Restructuring the IRS, as a chief sponsor of Taxpayer Bill of Rights I and II, as a Senator representing millions of taxpaying constituents, and as a taxpaying citizen myself.

In a sense, I represent both sides of the equation. As a member of the United States Senate, I am part of the functioning of government. And part of that functioning is the raising of revenues to finance the goods and services provided for the public. Yet, I also pay taxes, and I represent millions in my state who also pay or should pay their fair share.

The issue is one of balance, in my view. The Federal Government needs to collect its revenue, which taxpayers are obliged to pay. But taxpayers have certain rights that should not be abused. All of us should support a proper balance between these two needs. Yet, over the years, it appears such a proper balance has been lacking.

It is for this reason that some of us seem to be advocates for the taxpayers, without being mindful of the importance of the revenue-collection functions of the IRS. Any serious, objective observer should acknowledge the necessity of balance. But when evidence mounts of IRS abuses and mismanagement, it's time to look beneath the surface and search for systemic, cultural problems. We did that and we found them. Both on the Commission, and, I believe, on this Committee as we will see later this week. A "we vs. they" mentality seems to exist. And that is not a healthy situation.

Having said that, this is not an indictment of the dedicated, front-line IRS employees in the field. Typically, they do an outstanding yet thankless job in the serv-

ice of the public. It is not they who should be the targets of scorn. Rather, it is a management culture mindless of the fact that they are servants of the people. If allowed to persist, such a mindset often leads to arrogance, unresponsiveness, disregard for one's rights, and the very kinds of things we have been hearing from constituents for decades.

When we in the Congress attempt to investigate, we're often derailed. A cloak of secrecy goes up. It's more veiled than even the most elaborate secrecy arrangements at Langley. In the language of the federal government, it's called "6103." That's the Section of the Tax Code that prevents disclosure of taxpayer-related information. Designed to protect taxpayers' privacy, it does much more. It also protects the privacy of those who abuse taxpayers' rights, who mislead Congress, and who might use collection quotas in tax enforcement despite their illegality.

In my experience, Mr. Chairman, such abuses occur when independent oversight is lacking. Oversight has a rather antiseptic quality about it. That is the concept behind the Commission's recommendation for an independent oversight board over the IRS. This board would set appropriate performance standards, would measure performance, and then reward or discipline managers according to their performance.

An important part of oversight is more general openness. The Commission found that the IRS is a very closed and insular organization. As a result, we have put forward a first step to make the IRS more open to Congress and to the press. If we are to be successful in changing the culture of the IRS, a key ingredient is greater openness.

I think my colleague and Chairman of the Commission, Senator Bob Kerrey, was absolutely right when he noted at one of our hearings a point about the media. He said the media and press are one of the key ways in which Congress finds out what is going on at government agencies.

And so the Commission, to encourage more openness, as well as more accountability, proscribed the following three remedies in the IRS Restructuring and Reform Act (S. 1096):

(1) The IRS must be more timely and responsive in Freedom of Information (FOIA) requests;

(2) The IRS must not abuse its authority under Section 6103. The Commission found that the IRS did abuse this authority in hiding from the press the fact that the agency had provided false information to Congress. We would call on a panel of experts to recommend changes to prevent such abuses;

(3) The IRS must maintain and preserve records. It has not. Many requests by the Commission for documents and data were met with a statement that such data no longer existed, or the documents could not be found.

Addressing these three areas of openness may not be headline grabbing. But in my experience, together with other measures, these will help bring more accountability to the IRS. The IRS should be held to the same high standards that the agency itself applies to the American taxpayer.

I am also pleased that the Commission did not call for the easy solution—more money. The IRS, until two years ago, had seen continual increases in its budget for 40 years. Indeed, the Commission uncovered that hundreds of millions of taxpayer dollars have been wasted. Clearly, the problem at the IRS is management, not money.

One Treasury official admitted privately that the IRS wouldn't be serious about reform if Congress kept throning more money at them. This has been my experience as well in overseeing federal agencies over the years.

S. 1096 is designed to address many of the management failures we detected. I urge the Committee and my colleagues to look favorably upon it. Meanwhile, the Commission did not conduct serious oversight investigations to root out cultural pathologies within the IRS. That is where the Commission's job ended, and the job of this Committee begins, with this week's hearings.

Understandably, these are controversial hearings. The IRS is not used to being overseen Untoward motives are assigned to the oversight efforts. Like partisanship. But that's a tired argument. I intend to be an active participant in these hearings. In the 1980s, I was hardly partisan when I clashed with a Republican Administration over defense issues. The same with the Chairman of this Committee. And I've been overseeing IRS abuses as far back as the Reagan and Bush Administrations as well.

In addition, when I launched my efforts to oversee the IRS, I was joined by my close friend David Pryor, a Democrat and a close friend of the President's. We chose to make our critiques responsible instead of partisan. I believe the record reflects that.

The charge of partisanship has no credibility with respect to this oversight effort. It will be a fair airing of questionable practices by an agency abusing its trust.

I have learned over the years that oversight of the IRS is a step-by-step process, and a long-term commitment. We learned of the agency's quota system back in the 1980s and we outlawed it. Suddenly, we find there might be an unofficial, back-door quota system still in place. It seems like you put out a brush fire here, and it pops up somewhere else. The moral of the story is, there's a need for constant vigilance over the IRS. History teaches us so.

Mr. Chairman, let me conclude by commending you for your leadership in holding these much needed hearings. I would also like to say publicly how much I appreciated working on the Commission with my colleague, Senator Kerrey. His guidance and leadership produced a solid, credible effort, and I am pleased to have served with him.

Again, Mr. Chairman, thank you for the opportunity to express my views. I look forward to any questions you may have.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY

[SEPTEMBER 24, 1997]

Mr. Chairman, thank you for this second day of hearings to reform the IRS. My goal in these hearings, like yours, is to trigger meaningful legislative reform. Congress must foster a new culture of IRS respect for taxpayers. It is up to Congress to reshape the culture of the IRS. We need to go from a culture of intimidation, and to a culture of customer service. Congress must again make the IRS a place where talented people will want to work and serve. Congress must also make the IRS a place where honest taxpayers will want to go to solve their problems.

Let me solve one problem right now. Some people have been saying, in the press and elsewhere, that these hearings "bash" the IRS. They have said that we undermine taxpayer confidence in the system . . . They are wrong.

It isn't our *speaking about IRS abuse* that undermines public confidence in the system, it's *the IRS abuse* that undermines public confidence in the system. Indeed, as elected officials, we have a duty to look for abuse, speak about it when we see it, and then end it.

The process started in the National Commission to Restructure the IRS, on which I served with Senator Kerrey. Based on the *bi-partisan* Commission report, we have introduced reform legislation. Now, this committee has picked up the baton, as has our sister committee in the House. There will be more hearings. I anticipate that we will ultimately report out legislation. This legislation will eventually become law and change the way things are done at the IRS. No one inside-the-beltway can avoid real IRS reform. The people want it.

I have a message for anyone who opposes reform. *If you are not part of the solution, then you are part of the problem.* You can either join us, or get out of the way. Either way, the taxpayers will have their reform.

PREPARED STATEMENT OF HON. ORRIN G. HATCH

I commend the Chairman for holding this series of hearings. The question of the practices and procedures of the Internal Revenue Service is a serious one that will require a comprehensive review before we can adequately evaluate proposals for change.

The most common complaint that I hear from my constituents in Utah is about the policies and procedures of the IRS. Whenever I meet with Utah families, whether it be in town meetings or other forums, I hear about both real and perceived abuses suffered at the hands of the IRS. I am sure my colleagues on this Committee hear the same thing. You don't have to go very far to hear these horror stories—it seems that everyone has either experienced this rough treatment by the IRS or knows someone who has.

The problem is not unique to Utah. Taxpayers throughout the country are complaining of a checklist mentality, regional inconsistencies in interpretation and enforcement, and Service personnel who coerce, mislead, or misinform the taxpayers.

The behavior of the IRS is not a new problem. The IRS has been accused of, and is sometimes guilty of, operating in an abusive, unresponsive, improperly political and occasionally corrupt way for decades.

The so-called "voluntary" tax system we operate in this country does not seem to be so voluntary. Indeed, it seems to be based on fear. It has been said that there

is hardly an American citizen above the poverty level whose tax conscience is so clear that he isn't scared of being audited. The fear of suffering a personal attack by the IRS is the thing that seems to be keeping most of the taxpayers in this country in line.

This is a particularly serious problem. The IRS plays a vital role in our tax system. As such an important part of a tax system based on self-assessment, the IRS must maintain both Congressional and public trust. One needs only to read the newspaper or listen to taxpayer accounts, to see that this is not the case. The IRS must work harder to be perceived as fair, effective and impartial.

While some of my colleagues have argued that the only way to do this is to dismantle the IRS, I do not agree. The IRS should not be abolished. It is a necessary tool in the collection of taxes. The American taxpayer is not going to fork over a chunk of his hard earned money without some sort of focused collection and enforcement system in place. For example, just look at how many of the drivers on our highways comply with the posted speed limits.

Like the drivers on the roads, not all American taxpayers should be treated in a gentler, kinder fashion. Those willfully ignoring the rules should be handled with an iron fist. Most Americans, however, are trying to comply with the complicated tax laws and are acting in good faith. These taxpayers should be treated with respect and have a level playing field.

Because of its role in collecting taxes, there will always be complaints about the IRS. It will always be an unpopular place. The IRS is a very large and complicated agency that few understand. Its workload is staggering. Like the taxpayers, most IRS tax collectors are decent, yet overworked people with an unpopular job who are trying to do the best they can.

However, there is an aura of unaccountability that must be changed. The process is broken and must be fixed if we are to maintain public faith in the government. There must be little or no room for the type of abuses I am hearing about from my constituents on a regular basis. I am extremely concerned about the lack of good judgment that is being exhibited in these cases.

The problem of fixing the system is further compounded by the fact that there is not sufficient data to evaluate the extent or depth of the improper actions taken by the IRS. We will hear testimony today stating that this information is just not collected at all, destroyed, or simply unable to be retrieved. This is not the way to run a public agency. How can Congress adequately evaluate the validity of the complaints we see if the data is not available? Both Congress and the Administration need these tools to evaluate the behavior of the IRS. We must be able to determine if these complaints are isolated instances, the acts of a few rogue agents, or the result of some systemic problem at the Agency itself. Without this data, we are left to assume that the improper actions are somewhat proportionate to the complaints we are receiving.

I am looking forward to hearing from the witnesses we will hear this week. Their testimony will expand the information we have at hand to aid us in our evaluation of the Internal Revenue Service, its role and place in the federal government structure, and how to reform the Agency to ensure fair and efficient tax collection in the future.

PREPARED STATEMENT OF KATHERINE LUND HICKS

Chairman Roth, and Members of the Senate Finance Committee, thank you for allowing me this opportunity to appear here this morning to relate to you my experience with the Internal Revenue Service.

Like many women who have gone through a divorce, I was the one stuck with the tax bill for our last joint return for tax year 1983. The IRS assessed that return for additional taxes of $7,000, but sent all the notices to my former spouse. Unfortunately, it took him over a year to notify me of the assessment. I immediately contacted the IRS. The IRS had ceased to be willing to examine my records and was demanding that I pay them $16,000 instantly. At the time, my former spouse was earning in excess of $40,000 a year as a glazier and had no dependents. My income was approximately $15,000 a year as a newly hired bank employee with a dependent 14 year old daughter. For the two years following my divorce, *I was financially destitute.* I had just managed to get an apartment—a real home for the two of us.

I mention this to remind you good people that when an IRS collection procedure gets out of control, the victim of that collection still has to deal with all the other traumas of their life. An honest collection by the IRS, with no snafus, of an amount actually owed is incredibly stressful in itself. Therefore, it is critical that the IRS

not be allowed, whether by design or accident, to pursue taxpayers for erroneous debts. At present, there are no effective protections against this.

In my case, I had to file a Tax Court Petition to force the IRS to examine my records, which I did in 1988. This is not unusual if the IRS does not get a response to early requests for records, and I did not feel resentful or persecuted. However, it did cause problems and added to my stress. I had to use my rent money to pay the accountant and lawyer, and so I lost my apartment. My daughter and I were reduced to sharing a rented room. I consoled myself with the thought that we had survived worse and we would get another apartment later.

It is important to note here that my ex-husband was not a party to this petition in tax court. We settled out of court and the IRS agreed to a reduced tax from $7,000 to $2,709, a reduced total demand from about $16,000 to approximately $3,500. I went to the meeting in July 1988 to sign the agreement and, check book in hand, prepared to pay the amount in full at that time.

The IRS refused my payment until they had sent me a bill because they would not have anywhere to credit the money without the bill and they claimed they needed time to calculate the exact interest due. I wanted the payment properly credited. I wanted this to go well and to be permanently resolved. I thought, in a few weeks, I'll have a bill. But, the IRS said that the bill would take six months to prepare and arrive no later than January 1989. Six months! I recall asking if I was going to be charged interest for the six month waiting period and the IRS attorney, through my accountant, said no. The interest would be calculated through the date of the agreement and as long as I paid it right away in January, there would be no additional interest. He said it would be about $3,500 total. I never understood why they could not just whip out their calculator and tell me what I owed right then and get this whole thing over with.

The bill never came and in February 1989, I started calling the IRS asking where it was. I called the Fresno office and they suggested I also call Laguna Niguel. Both offices had no record of any taxes owed by me. I found this hard to believe. I wanted to be absolutely certain they were correct. I wanted to remarry and I did not want to bring this tax bill into the marriage. I called both offices again in March and again before July. I was told the same thing, that I owed nothing for 1983. I asked for a receipt or something to show this was paid because I was simple minded enough to believe this was as a reasonable request. The IRS employees all said that they "don't do that." I had to take the word of the IRS that I owed nothing. In this, I had no choice. At the time, I was not aware that my account had been set up on a separate bookkeeping system to which the IRS employees with whom I spoke did not have ready access.

It works like this: when you file a tax return, it is recorded in a Master-File. This is what the IRS clerks pull up on their computer when you call and ask if you owe money. However, at some point in 1989, the IRS "split" the Master-File of our joint 1983 return and transferred separate assessments into two Non-Master Files, in each of our individual names and respective social security numbers. This was due to the fact that I had gone to tax court and my ex-husband had not. Therefore, the IRS set up separate files.

These Non-Master Files *do not* show up on the computer when the IRS clerks check a taxpayer's social security number for a balance owed. According to the attorney who explained this to me in 1997, the Master-File continues to exist, but may show as a zero balance, until the IRS recombines those accounts. It will then reflect the correct amount owed according to the agreement. Until that happens, every time the IRS clerk pulled up my or my joint signer's social security number, they will see a zero balance and conclude that no taxes are owed. To add to the confusion, there is no notation in the Master-File that it has been "split." Therefore, there is no way for the IRS clerk to know that you might have an outstanding collection in a Non-Master File. As a result, I was repeatedly told by IRS clerks that I owed nothing. So far as I know, to this very day, these accounts have not been recombined and the Master File continues to exist with a zero balance while the Non-Master Files shows a balance owed. Yet, the IRS has been aware of this error at least since I notified them of it earlier this year—if not even earlier. I have made repeated requests of the IRS to recombine these accounts ever since I learned of the problem. As far as I know, it has not been done.

It is incredible to me that Non-Master Files are allowed to co-exist with Master-Files at all! It creates two accounts under the same name with the same social security number, that can reflect conflicting balances due for the same tax year for the same person. Such a practice substantially increases the potential for error and confusion inside the IRS while simultaneously making it impossible for a taxpayer to get reliable information from the IRS. The taxpayer either gets conflicting information, or in my case, consistent but incorrect information. Every day the taxpayer is

unable to get accurate information from the IRS about a balance owed, is another day's interest added to the debt. Even while the taxpayer is wandering around in this IRS maze of multiple accounts the clock never stops running. This is incredibly frustrating and unfair to any taxpayer. Unable to overcome this obstacle to compliance through no fault of the taxpayer, he or she is charged penalties as well for that failure! Much of my misery was caused because the IRS could not answer accurately the simple question, "How much money do I owe?" As far as I know, that condition has not changed.

To add to the confusion, my former spouse telephoned my fiance to complain that he had paid the tax and now the IRS was after him for it again. He refused to share his records with me, but, his story and the IRS story both matched. Still, I had no independent records to prove either one. I requested his payment records from the IRS in 1988, records to which I believed I was entitled. I made a second request for those records in 1997. The IRS has refused me these records or even a statement as to their content. Why, if my joint signer has never paid anything on this tax, is the IRS hiding that information from me? How can I know, for certain, what my liability is without the records of my joint signer? Perhaps he has paid nothing, but if that is so, then their refusal to share that information with me makes no sense.

Mr. Chairman, I did everything humanly possible to obtain correct information. I made every attempt to get this tax paid and every conceivable request for some kind of record to evidence what the IRS was telling me. I know of nothing else I could have done.

So, after being wrongfully informed that there was nothing owed, I remarried in July 1989. I carried on business with the IRS without incident and my new husband and I filed a joint return in 1990 and received a refund. We were now convinced, of course, that if I owed any money to the IRS, the IRS would never have issued a refund, so now we were confident that the IRS information was correct. It was not.

In September 1990, without any notice and without our knowledge, the IRS filed a tax lien against me.

On December 19, 1990, the first lien holder on our home sued us as a result of that Federal Tax Lien in the sum of $6,161.41. The lender threatened to call our loan if we did not immediately get the IRS lien released. We would have lost our home. A home, by the way, that my new husband bought for himself 6 years before he met me. So, the real damage was being done to him, an entirely innocent spouse.

All of this, after I had been so careful to pester the IRS repeatedly for as a bill and been repeatedly told that no money was owed!

Worse than that, the lien did not reflect the terms of our earlier settlement agreement! The tax lien reflected an assessment nearly twice that of the IRS agreement and the IRS refused to discuss that fact with me. Meanwhile, while the assessment was "ripening" it had gone up to over $8,000!

I tried to reopen my tax case and was told that the Federal Tax Court did not enforce out of court settlements made with the IRS! How convenient this is! Only the taxpayer is held to the agreement, not the IRS! I was adamant that this was just morally wrong! I was very upset!

I fought this collection for two reasons: (1) because, based on information provided by the IRS itself, I sincerely believed I owed nothing and (2) because I believed the IRS, even if they intended to collect twice, was obligated to calculate my collection in accordance with our agreement.

My new husband contacted the Revenue Officer who had filed the lien. The Revenue Officer informed my husband, and later me, that he had my former spouse's file ". . . right here on my desk . . . " and he knew that my former spouse ". . . had paid the taxes . . ." but that it was not ". . . relevant . . ." because these were separate collections. He insisted that if we wanted my former husband's payments to offset my liability, we would have to produce those records, otherwise we would have to pay it again. The duplicate payment would balance the IRS books and he would help us file for a refund of the overage.

Imagine my new husband's frustration at the prospect of effectively paying $8,000 dollars that we believed had already been paid.

At this point, which was early 1991, I requested a Problems Resolution Officer who, after some inquiry into my account, came to the conclusion that I, indeed, did not owe anything for the 1983 taxes and that, once she got a written confirmation of this from the Fresno office she could get everything "abated to zero." Meanwhile, she said, the IRS agent should stop collection activity—which he did not. However, I thought, "Great! This is all going to get straightened out soon!" I was wrong. A few days later she called me and informed me that the IRS Fresno Office had changed its mind about providing her with the necessary documents and, without those, there was nothing she could do.

I made one final attempt at reasoning with the collection agent. He merely repeated that he knew the tax had been paid, and he knew I didn't owe the money, but it didn't matter. The only way to get rid of the tax lien was to pay the $8,000 whether we owed it or not.

The collection agent then offered to assist us with regard to the refund application. He knew we were being sued by the bank because the IRS was a co-defendant. So, he just refused to do anything and let the bank force us to pay what we did not owe. With the bank about to call the loan, we had no choice but to pay the IRS demand in full.

Mr. Chairman, although I am giving you a rather general description of these events for the sake of overall continuity, it is important for me to tell you that both my husband's and my own physical and emotional well being suffered tremendously under the constant strain of these repeated attempts to get the IRS to honor their agreement and collect only what I owed. It was physically exhausting. We almost never slept. Every conversation had to be memorialized in a letter. There were the visits to the attorneys and the accountants, their bills and their depressing advice, "pay it, it's cheaper than fighting" and the very real prospect of loosing our home to the bank if they called the loan. You don't eat, you don't sleep, you're afraid to talk too much to each other for fear you'll take it out on your spouse. If you do talk, it's about the IRS. We were newlyweds! I cannot describe the guilt, knowing that I had brought my new husband into this.

My parents became so concerned for my health that they cashed in a retirement CD and loaned us the money to pay the IRS. Since they were living on a fixed income, this was a big deal for them to do. I know they made sacrifices to do this. It was as a selfless act of love.

On February 21, 1991, we handed a cashier's check for the entire amount they demanded, $8,194.73. Please keep in mind the original underlying tax was $2,709 and that the original amount due was supposed to be no greater than $3,500. The balance was interest that accrued from July 1988 to February 1991, a period of 18 months. In that time frame, the "bill" that I could not get anyone to give me to pay nearly tripled from the original amount! I was forced to pay $4,500 for their mistakes!

In exchange for this payment, we were given a Certificate of Release of Federal Tax Lien. My cashier's check reflected my name, my social security number, the tax year to which it was being applied—1983, as well as my tax court docket number. In other words, the IRS had everything it needed to properly credit the payment. I could not have made it any clearer where to apply the proceeds of the check.

In February, 1992, a letter arrived from the IRS office in Maryland signed by a woman with the authoritative title of "Chief, Accounting Branch." The letter said the IRS had received a payment and, if we had made this payment, please send the IRS a copy of the check with an explanation, which we did. We also asked her in that letter not to refund the money or any portion of it unless she first made sure neither of us owed any money anywhere for any year.

In March 1992, we received an unsigned IRS form letter indicating that the payment had been applied to our 1990 joint return. I actually telephoned the IRS and asked about this and was told simply that, if the Accounting Branch determined that there were no taxes owed for any year, the only way to refund the money was to credit it to the most recent tax year.

In other words, they could not credit the payment to my 1983 tax year unless there was a balance due. Therefore, we logically concluded that the Accounting Branch did what we asked, checked out our taxes, found nothing owed and was merely refunding us the overpayment in accordance with their own bookkeeping system. We had absolutely no reason to think that the refund was in any way erroneous.

In November of 1996, *nearly 5 years later,* out of the blue without so much as one prior notice, we received a certified letter from the IRS containing a Notice of Intent to Levy. The particulars of the tax being levied were identical to the particulars of the tax lien that had been released in 1992. For reasons unknown to us, they changed their mind and wanted more money again. Why? I telephoned the agent who sent the letter and was told it was a different assessment because, even though everything else was identical—the tax year, the amount, the assessment date—there was an "N" after my social security number on this assessment and therefore, I had to pay it again. The "N," I later learned, is a tag for "Non-Master" File. Remember those? The separate collections that nobody seems to know about? Well, this was one of them. Whether the IRS failed to close it at the time we paid it in 1991, or whether they reopened it because they wanted to get the refund back they gave us in 1992 doesn't really matter much to me. Whichever one occurred, the fact remains, the IRS had made yet another error. Once again, they demanded that I

balance their books and pay for their mistakes. How many times was this going to happen, I wondered? A tax attorney informed me that my release of lien was meaningless adding, ". . . the IRS refiles these all the time. I cannot tell you how many people come in here clutching these things (release of lien) for dear life thinking that they offer some kind of protection . . . ." He stated the Taxpayers Bill of Rights did not allow the IRS to collect interest from the taxpayers based on its own errors, and even suggested that I write to my Congressman but cautioned me not to expect a significant outcome because, ". . . they (Congress) can't really do anything . . . ," Congress is less than effective when dealing with the IRS on behalf of taxpayers.

I gave Problems Resolution another try. This time, they were less an advocate for me than an arm of the IRS collection office. It was, in fact, the Problems Resolution Officer who told me ". . . you know, you kept a refund to which you knew you were not entitled . . . ." Her tone of voice was not friendly. Keeping a refund that you know you are not entitled to is a crime. She demanded I pay back the refund. So much for the Problems Resolution Office.

After a brief hospitalization for surgery resulting from a freeway pile up that totaled our car, my husband resumed work in January 1997, only to discover that while he was recovering from surgery the IRS had levied against his salary. My husband would be allowed to keep $18 a week to support me and the children for approximately two months. Anyone entering a grocery store today knows that is tantamount to condemning us to a soup kitchen for our meals. Two months of being unable to meet our financial obligations would have sent us into bankruptcy and foreclosure. Again, the innocent spouse was going to be punished for my old tax problem.

To protect his ability to provide for his children and myself, my husband set up a separate residence in San Clemente and filed for divorce on February 3, 1997. In California, the day you file for divorce your salary is your sole and separate property. The IRS ignored that fact and left the levy in place. In an unusual determination, the county refused to comply with the second levy and my husband's income was safe. However, his retirement fund was not. That was community property and we fully expected the IRS to swoop in the next day and take the whole thing. So, on the 5th of February 1997, I filed bankruptcy to stop the IRS long enough for us to figure out what to do about this.

My bankruptcy notice was hand delivered the same day. The following day the IRS notified me that my schedule C's for 1993, 1994 and 1995 were "questionable," and asked me to reconsider them. We took this as a thinly veiled threat to punitively audit our returns.

The IRS refiled the lien for which I had a release. We discovered this in March of 1997. I am informed that this is common practice. The liens threatened my husband's residence which was his separate property but the IRS ignores this in community property states. I have been informed that the liens would survive the bankruptcy, as all liens do. So even though this was his sole and separate property, it was possible.

My now widowed mother could not bear watching us go through this and took out a loan against her retirement so we could pay the IRS and get this over with. However, my husband and I knew that paying the demand would never resolve this. We tried that in 1991. They would screw this payment up too and in a few years be back for more "with interest." We needed closure, some way to end this forever.

Since the real problem occurred back in 1989, and the IRS never correctly set up my account for $3,500, and because every penny over that amount was a result of that error, we determined that under the Taxpayer's Bill of Rights provision that the IRS could not make us pay interest for their mistakes. We should not owe more than $3,500. If we could get the IRS to correct their errors we should be able to pay $3,500 and be done with it. So, that's what we did. We made a directed voluntary payment of $3,500. We put the rest of the money in a CD in case the IRS swooped in to destroy us unannounced. We waited.

Our lives are now forever altered. Joint tenancy, joint bank accounts, joint tax returns are no longer a part of our life. We will pay additional taxes every year as a result. Our confidence in the integrity of the IRS has been completely shattered. This year we got a refund on our 1996 taxes and sits in a CD as does the $3,500 that the IRS recently returned to us without any explanation. We don't dare cash refund checks anymore. My credit is completely destroyed, and my husband's credit is seriously damaged. We will suffer the effects of this IRS collection for the rest of our lives.

I originally wrote to you, Mr. Chairman, because the IRS should not be above the law. Couples should not have to divorce because of the IRS. Once you became involved, the IRS released all the liens and sent us back the $3,500. Senator Roth, your effort saved us from being forced to live apart, and preserved our ability to pro-

vide for our children. For this, we will be forever grateful. However, the conduct of the IRS remains the same, and for thousands of other taxpayers, there is no help. Ours is a hollow victory if the IRS is allowed to continue this type of conduct.

People tell us how terrified they would be to do what we have done. They are convinced that the IRS will target us for punitive audits. One person put it this way, when she learned we had written to Congress, ". . . that's like painting a bull's eye on your chest and giving the IRS a loaded gun . . . ." She believes the IRS will never forget this and someday get back at us in retaliation. Mr. Chairman, she could very well be right. The IRS is judge, jury and executioner—answerable to none. We do not believe that our experience is isolated. For over 10 years the IRS has conducted itself as a legalized extortion operation willing to commit abusive acts to collect money, even that which they know is not owed.

An agency of the United States Government, allowed such sweeping authority as that granted to the IRS, should be held to the highest standards of honesty and integrity. The IRS is not. Those of us subject to that authority should be guaranteed an accessible and effective remedy for its abuse. We are not.

It is a disgrace to our nation that an arm of our democratic government is allowed to behave as if it were an extension of a police state. I hope that Congress can act to end this national shame.

Thank you for allowing me this time.

PREPARED STATEMENT OF HON. STENY HOYER

Mr. Chairman, Senator Moynihan, and Members of the Committee, pleased to be able to testify today on the practices and procedures of the Internal Revenue Service. As Chairman, and now as Ranking Member of the House Appropriations Subcommittee on Treasury, Postal Service, and General Government, have spent a great deal of time on the issues of tax compliance, IRS management, and customer service.

It is a subject where the Members of this Committee have shown great leadership. I would like to commend Senator Kerrey, Senator Grassley, and the other members of the Commission on Restructuring the IRS for their leadership on this issue.

IRS employees are called upon to do an extremely difficult job. The 102,000 men and women of the IRS who are responsible for collecting 97 percent of the nation's revenues have one of the most difficult jobs in government.

They collect the funds that pay to defend our freedom, educate our children, and take care of our old. At the same time that Congress has constrained their funding, it has also broadened their mission.

It is often said that it took an accountant to catch Al Capone. In recent years, because the profits of illicit activities such as drug smuggling and money laundering are often the best trail to those who perform them, the IRS has been given responsibility for assisting in criminal investigations.

Each year, the IRS participates in some 5,000 criminal investigations.

If anything, the trend is asking the IRS to broaden its mission further.

Recently, for example, Congress instructed the IRS to help in the important work of recovering child support payments from deadbeat parents who have refused to pay chisel support.

Against this backdrop, the Commission wisely recommended that "Congress provide the IRS certainty in its operational budget in the near future" and call for "greater stability" with funding levels.

As the Commission has pointed out, Congress' failure to pursue consistent policies regarding funding, its frequent changes of the tax code, and its efforts to micro-manage the IRS have all undermined the ability of the agency to manage efficiently in the long or short term.

In recent years, attacks on the agency's budget, while partially restored in Conference, have hurt morale and distracted management from the task at hand.

THE CHALLENGES FACED BY THE IRS

The vast majority of taxpayers pay their full taxes on time. Nevertheless, the IRS only collects about 83 percent of taxes owed through voluntary compliance. There is currently a balance due equal to $216 billion. When some do not pay their fair share, this increases the deficit and raises the burden for everyone else. From the point of view of fairness alone, it is necessary for the IRS to carry out enforcement.

Last year, of 119 million individual returns filed, 2.1 million or 1.6 percent of the total were selected for examination.

Of the 89.4 million corporate returns filed, only 2.38 percent were selected for examination. In general, the vast majority of taxpayers are not subjected to any examination or collection measures at all.

Nevertheless, in any large organization with significant powers there will be instances each year where individuals behave improperly. Such abuses cannot be tolerated.

Two years ago, Congress revisited the problem of IRS abuse with the passage of the Omnibus Taxpayer Bill of Rights 2. In its report, "A Vision for a New IRS," the IRS Commission on Restructuring found that this law has "had an important effect on changing the culture of the IRS." The Commission went on to find "very few examples of IRS personnel abusing power."

Yet even one instance of abuse is one too many.

The IRS, the IRS employee's union, and the Department of the Treasury have stated that they are committed to a policy of zero-tolerance for taxpayer abuse. IRS management is following up on cases aggressively to determine what went wrong and to take appropriate action.

But I believe that even appropriate action after-the-fact cannot erase the pain that some taxpayers have experienced.

I am therefore encouraged that the IRS is following up with a Service-wide program to stop this kind of abuse before it happens.

This program includes centralizing and improving training on the provisions of both the first and the second Taxpayer Bill of Rights; creating taxpayer surveys that rate employees' treatment of taxpayers; eliminating unnecessary notices and clarifying those that remain so that taxpayers clearly understand their responsibilities; and implementing the modernization blueprint which will prevent the kinds of systems glitches that made these and other cases far more painful than they ever needed to be.

Treasury and IRS have reaffirmed their commitment to the original Taxpayer Bill of Rights which made it illegal to use records of tax enforcement results to evaluate employees or their supervisors.

A joint Treasury, IRS, National Performance Review task force is conducting a 90-day study of customer service.

And evaluations of both revenue officers and agents include measures of performance against a customer relations standard.

These changes underway are clearly steps in the right direction.

GOVERNANCE

Ultimately, however, I believe that a solution to the problem of taxpayer abuse cannot be separated from the larger task of building the IRS of the future.

The Treasury Department, the IRS, the employees' union, and the IRS Commission on Restructuring have identified a common set of concerns. To build the IRS of the 21st Century, they have identified the need for a renewed focus on Oversight, Leadership, Flexibility, Improved Budgeting and Tax Simplification.

The Internal Revenue Service has been rightly criticized in recent years for its failure to manage its operations well. Particular focus has been directed at the attempt to modernize its information systems, an area severely criticized by the General Accounting Office until quite recently.

The Treasury has also taken a new role in exercising oversight of the IRS. For the first time in the fifteen years that I have been reviewing IRS budgets, the Secretary of the Treasury and his Deputy are giving personal attention to IRS management issues.

This new focus is clearly making a difference.

I am encouraged that Secretary Rubin has identified a candidate to head the IRS who has a non-traditional background in management and information technology—Charles Rosotti. New leadership at the IRS that focuses on modernization will help create the systems and practices needed to stop abuse of taxpayers before it happens.

The enhanced oversight that the Treasury has begun to exert through the IRS Management Board and will exert through the new IRS Advisory Board will provide continuity, accountability and access to outside input from the public and private sectors.

By preserving the ability of the Secretary of the Treasury, who is accountable to the President, to choose the Commissioner, Treasury's plan preserves accountability to the American people.

This program is embodied in legislation that I introduced together with Senator Moynihan, Congressman Rangel, Congressman Coyne, Congressman Waxman, and others at the Administration's request.

This legislation incorporates many of the findings of the IRS Commission on Restructuring and will give the IRS the new leadership and flexibility it needs to prepare for the future. Our legislation shares many provisions with legislation proposed by Senator Kerrey, Congressman Portman, and others.

And, based on conversations yesterday, we will soon be adding taxpayer rights provisions to our legislation. One example of that is equitable tolling, or in layman's terms, relaxing the expiration of the right to claim refunds after three years.

Let me note, however, that I am frankly concerned about one proposal embodied in their legislation. That provision would remove the IRS from Treasury oversight and make it accountable in part to private sector executives with loyalties to organizations other than the IRS.

This proposal would raise difficult constitutional and conflict of interest concerns that might well provoke litigation. I am concerned that this proposal would place at risk the 97 percent of our federal revenues that are collected through taxes, at a time when we have just completed a historic agreement to balance the budget and put an end to federal deficits.

CONCLUSION

In conclusion, Mr. Chairman, the abuses that have come to light are intolerable and steps must be taken to end them.

At the same time, however, these abuses should not keep us from recalling the valuable service provided by the 102,000 dedicated men and women of the IRS who perform one of the most difficult jobs in government. It is important to point a spotlight on areas of abuse in tax collection activities.

Our constituents rightly expect us to protect them from abusive and illegal actions. This objective is particularly important when such actions are done in the name of law enforcement. At the same time, we must do so in the way that does not undermine those who are performing crucial law enforcement missions.

As I stated, I believe that the measures underway at the IRS are an important step in the right direction.

Ultimately, these problems cannot be separated from the broader challenge of continuing to reform the Service in which the Treasury Department, the IRS, the IRS employees' union, and the Congress are now engaged. I therefore thank the Committee for its leadership in this arena and for the opportunity to testify this morning.

I would be happy to answer any questions that you may have.

PREPARED STATEMENT OF NANCY JACOBS

Chairman Roth, and Senators of the Finance Committee, thank you for this opportunity to appear before you this morning to present my personal experience with the Internal Revenue Service.

I am Mrs. Nancy Jacobs. My husband, Dr. Fredric Jacobs, is a practicing optometrist from Bakersfield, California and we have operated an office for approximately 30 years.

When my husband first opened his practice in March 1965, in Stockton, California he was assigned an Employer Identification Number, or EIN, for reporting purposes to the IRS.

Between 1977 and 1979, my husband closed his practice, but in November 1979, he re-opened in a new office in Riverside, California. We applied for a new EIN number since he was re-starting the practice at a new site and knew we needed an EIN for tax reporting purposes. What neither of us knew at the time was that an EIN is like a social security number, it never needs to be changed or renewed. The original EIN had been assigned to us forever. However, when we requested a new EIN from the IRS, it complied with the request and the IRS provided us with a second number. But what we didn't know at the time was that the EIN the IRS provided to us in 1979 actually belonged to someone else, someone we would not be aware of until 1992.

By March of 1981, we were unexpectedly assigned yet a third EIN from the IRS, via a pre-printed label on a quarterly 941 tax return. However, we continued to use the number we were assigned in 1979 on all of our quarterly tax payments.

In June 1981, out of the blue—without warning, the IRS placed a lien against us for $11,000 for unpaid payroll tax deposits. We couldn't find anyone with the IRS who would do us the courtesy of checking the lien against the EIN we had been using.

After attempting to deal with the IRS, my husband and I were so intimidated by the tactics used by the IRS that we agreed to pay the IRS $250 a week until the balance was paid. For anyone who has not had to deal with the IRS under such

circumstances, you probably cannot understand why we would agree to pay $11,000 that we knew we did not owe. Only after you have experienced what my husband and I endured would you consider paying an IRS bill that you don't owe.

Even after the $11,000 was paid we continued to receive subsequent liens from the IRS. My husband and I were forced to comply with these IRS demands under the penalty of experiencing further enforcement actions with the possibility of the IRS closing down my husband's practicer We were forced into debt, our credit was damaged and the mental stress was overwhelming. During all this time we could not convince anyone at the IRS that we did not owe these taxes. In fact during one of our visits to the San Diego IRS Office we were flatly told by one IRS employee that she was too busy to help us anymore and refused any additional assistance in straightening out our account. We were then informed by her supervisor that this matter would be cleared up. It was a kind offer but that was all it was. Our nightmare continued. By 1987, we had received additional liens totaling roughly $15,000.

In 1982, we did seek the assistance of a Congressional representative. He contacted the IRS on our behalf requesting that the IRS stop all collection efforts, and for them to contact us in an effort to straighten out the problem. We did hear from the IRS in 1982. We met with someone from the Laguna Nigel office who told us that we had received four refund checks. We assured him that we had only received one for approximately $3,600. He promised that he would get copies of the other checks, but unfortunately he never did.

The only other consistent occurrence over the course of the years was the occasional appearance of the original EIN number on notices we received from the IRS, while all the others reflected my second EIN number. My husband and I began to wonder exactly where the taxes were going that we had been faithfully paying. No one with the California IRS offices that we contacted could explain it either, but they were adamant that whatever the reason, **we owed those taxes!**

By 1987, we again contacted a Congressional representative seeking intervention on our behalf. This time we did hear from the IRS but that, too, lead to another dead end.

In 1992, a patient of my husband's, a tax attorney, agreed to review our case and was the one who discovered the confusing EINs going back to 1979. Someone with a name quite similar to my husband's but with an entirely different social security number shared the EIN. Back in 1979, had the IRS employee properly informed us that we didn't need a "new" EIN, or at least checked the status of the number, this 17 year nightmare would have been avoided.

Mr. Chairman, since 1992, when we first discovered the mistake IRS had made, my husband and I have been trying to get our money back from the IRS—money that was wrongly taken from us by the IRS—but to no avail. We have never received the money from the IRS as we had been promised. We estimate the IRS still owes us over $10,000, if not more, plus interest, stemming from their wrongful liens, penalties and interest.

Only in 1994, in an encounter with the IRS' Bakersfield Office did we meet the first truly helpful IRS employee who was willing to work with us and investigate the cause of our problem. We were informed that our problem was indeed due to a clear case of an erroneous Employment Identification Number. Unfortunately, this employee became ill and our case file was apparently "lost."

After yet another Congressional inquiry on our behalf in 1996, we learned that our "lost" case file was really not "lost" at all but had been referred to an IRS employee at the IRS' Fresno Service Center. Unfortunately, she was not responsive to our case and almost another year languished without satisfaction. Out of sheer frustration, my husband and I went to our local newspaper, and told our story.

Roughly 2 hours after the story appeared, that same IRS employee was on the telephone informing us that, ". . . We discovered that you were right . . ." and proceeded to discuss how our money would be resumed to us.

We then received a fax from her stating that all liens had been lifted and the IRS was at fault for the incorrect EIN. However, when this IRS employee extended her ". . . sincere apologies . . . ," in writing, she did not mention a refund of the money the IRS unfairly took from us. She did state, however, ". . . The Liens previously filed under Employer Identification Number XXXX were not correct and should not have been on Dr. & Mrs. Jacobs' account. The liens were not for their liabilities. Within the next 6 to 8 weeks, Dr. & Mrs. Jacobs will be in full compliance on all taxes both individual and business. . . ."

Mr. Chairman, both my husband and I are certainly pleased and greatly relieved that this 17 year confrontation with the IRS is almost over. But we cannot agree with the IRS that it is *completely* over. We would appreciate receiving our refund with the same enthusiasm and speed with which the IRS collected it. However, the real reason I am here this morning is to bring to light what my husband and I feel

is an attitude that permeates the IRS. It is one of manipulation and control of the taxpayer. Both my husband and I were met with indifference when dealing with the IRS Offices. IRS employees were not interested in listening to us, much less investigating our assertions. They assumed we were guilty—that we owed the money! The IRS is beyond the law. Congressional inquiries on our behalf met with only limp responses. Mr. Chairman, an agency with this type of power over American citizens requires someone to rid it of such abusive conduct. My husband and I commend you for your effort here today to accomplish that goal.

PREPARED STATEMENT OF HON. J. ROBERT KERREY

Mr. Chairman, Americans do not have confidence in the IRS, and for good reason.

The National Commission on Restructuring the Internal Revenue Service, which I co-chaired, was given unprecedented access to the inner workings of the IRS and its employees. After 12 days of public hearings, hundreds of hours of testimony from taxpayers and tax experts, and over 300 private interviews with front-line employees, the Commission found an agency that could not answer its phones, had no clear management strategy, and lacked technological sophistication.

In short, we found an agency that was not serving the best interests of the American taxpayer.

This agency—which ranks below the CIA in popularity with the American people—is responsible for collecting 95% of the nation's revenue. However, it is given little if any oversight from the Treasury Department and has murky lines of leadership and accountability. And although law enforcement measures are used to bring in only 3% of what is collected, the IRS's culture and atmosphere are such that all taxpayers are treated as if they were guilty of something, no matter the reason for contact.

Our commission found, for the most part, that IRS employees were hardworking public servants. But with baffling management and oversight procedures and flawed computer systems, these employees are operating under stifling working conditions and are paralyzed by a monstrous tax code that has grown from a quarter inch thick when the IRS was created, to over a foot tall today.

Mr. Chairman, it is important to point out that the growth of size and complexity is the product of both Republicans and Democrats and both Congress and Administrations past and present. We have written and passed the laws that create the code.

For example, the alternative minimum tax (AMT), which was created to prevent affluent taxpayers from using tax shelters and deductions to avoid paying income tax, may raise the tax burden on middle-class single parents and families earning $50,000 to $75,000 under the new tax bill. No doubt, all involved had the best of intentions—to allow family and education tax credits to hardworking middle American taxpayers. Unfortunately, neither Congress or the Administration bothered to explore the effects this credit would have on the tax code and taxpayers. Thus, the result is a mess for the American Taxpayer and the IRS.

Complexity is made worse by inconsistent management and oversight. The Commission did not find a distinct pattern of corruption with IRS employees or operations. We did find a culture and atmosphere which is ripe for the kind of harassment and inappropriate audits and seizures this Committee will hear about.

We found that performance measures do not encourage employees to treat taxpayers fairly and respectfully. Furthermore, the computer system makes it nearly impossible for front line employees to assist taxpayers with their problems. If a taxpayer receives an erroneous notice from IRS and calls them for help and clarification, the IRS employee must access up to nine databases to get the taxpayer the needed information. An interaction with IRS is often like a wrestling match with a faceless, nameless computer, rather than an interaction with a helpful representative, aiming to serve the taxpayer.

Senator Grassley and I are proposing legislation—S. 1096, the IRS Restructuring and Reform Act of 1997—that will comprehensively restructure and reform the IRS from customer service to oversight and management.

Our goals are simple. We believe a citizen in Omaha, Nebraska, or Lincoln, Hastings, Kearney, Scottsbluff or any other city in America should get a helpful voice, not a busy signal, when they call the IRS for help. We believe it should be easy to file a tax return. And we believe the culture at the IRS should reflect a believe that the IRS works for the people, not the other way around.

The abuses we will hear about this week are symptoms of a larger problem: The IRS is insulated from the citizens it is supposed to serve. For that reason, we propose making the IRS independent from Treasury to become more accountable to the

people. We propose the forming of a citizen oversight board that would work with the Treasury Secretary and the Administration to ease the administrative and oversight burden placed on a Treasury Department already responsible for 11 other major operations, including the Secret Service and customs, not to mention our nation's economic policy.

Critics of the oversight board have been misleading the public about the makeup of the board and have given false impressions of the content of the legislation.

The oversight board is not designed to run the IRS, that is the job of the Commissioner. Rather, it would assure public accountability and assist the Treasury Secretary on oversight, management and budgeting issues. The IRS and Treasury have operated for too long in the shadows, unaccountable to the people. This public oversight board would ensure that knowledgeable citizens continually monitor the agency.

A major—and false—criticism of the board is that it would turn the IRS over to a board of corporate CEO's. That is simply untrue.

Our legislation clearly states: "the Composition of the [oversight] board shall be nine members of whom seven shall be individuals who are not full-time Federal officers or employees who are appointed by the President, by and with the advice and consent of the Senate and who shall be considered special government employees. One shall be the Secretary of the Treasury, one shall be a representative of an organization that represents a substantial number of IRS employees who is appointed by the President."

Our legislation, as you can see, does not specify or mention "CEOs." The President would make the appointments and the Senate must confirm—plain and simple. I suggest that perhaps Treasury's concerns that our recommended board would be filled with corporate self-interested CEOs is more of a statement of whom Treasury thinks our President will appoint, than on our legislation.

This would be an oversight board made up taxpaying citizens, who aside from representation in Congress, have been denied a say in the tax collecting process for far too long.

Treasury, on the other hand, recommends the appointment of an advisory board that would consist of 20 government officials and another board that would have no influence or power. And while our legislation attempts to give citizens a say in IRS oversight, the Administration feels that more government input—not citizen input—is the way to reform the IRS.

It is important to note that our legislation, based on recommendations supported by a bipartisan majority of the Commissioners on the IRS Commission, has the support of a broad base of groups from the National Taxpayers Union to the IRS employees union—the National Treasury Employee Union (NTEU). They support it for the simple reason that more of the same will not take the IRS where it needs to go—into the 21st Century.

Roughly 85% of Americans pay their taxes without IRS intervention, Mr. Chairman. Yet the IRS treats most taxpayers who come in contact with it as if 85% of Americans DO NOT pay their taxes unless the IRS intervenes.

Americans don't have to like paying taxes, but it is not too much that the simplest of questions—what we owe, why we owe it, and how we should pay—get answered. Unfortunately for the past 50 years, nobody's been able to give those simple answers. Our legislation goes a long way toward doing just that, and I hope that after these hearings this Committee will begin proceedings on S. 1096, the IRS Restructuring and Reform Act of 1997.

We can criticize the IRS all we want, Mr. Chairman, but Congress played a role in the agency's demise. So if we don't like what is going on at the IRS, we need to change the laws governing the IRS. These hearings are a good first step towards making IRS more accountable. But, we need structures in place which ensure IRS is accountable in the years to come.

Our tax collector does not have to be our friend, but it should not be our enemy either. More Americans pay taxes than vote, and perhaps that is why so few Americans have faith that our system of government works for them.

I believe reforming the IRS—improving phone service, payment options, filing procedures, management and oversight—will not only enhance compliance and customer service, but go a long way toward restoring faith that we truly are a government "of, by and for the people."

PREPARED STATEMENT OF JOSEPH F. LANE

Chairman Roth, Ranking Member Moynihan, Committee Members, my name is Joseph F. Lane and I am an Enrolled Agent engaged in private practice in Menlo

Park, California. I am appearing today on behalf of the National Association of Enrolled Agents.

Enrolled Agents are tax professionals licensed by the Department of the Treasury to represent taxpayers before the Internal Revenue Service. The Enrolled Agent designation was created by Congress and signed into law by President Chester Arthur in 1884 to ensure ethical and professional representation of claims brought to the Treasury Department. Members of NAEA ascribe to a Code of Ethics and Rules of Professional Conduct and adhere to annual Continuing Professional Education standards which not only equal but exceed IRS requirements. Today, Enrolled Agents represent taxpayers at all administrative levels of the IRS.

We understand the focus of the Committee's hearings over the next three days will be the practices and procedures of the IRS. The members of NAEA work with the employees of the Internal Revenue Service's Examination and Collection Divisions on a daily basis. Since we represent individuals and small business owners before the IRS, Enrolled Agents are uniquely positioned to provide substantive input to the Service on the effect its policies have on the average taxpayer and to provide feedback to Congress on the practical feasibility and administrability of the tax code sections it enacts into law. We offer in our statement today, some observations about what is working well within the Service as well as areas we feel need to be improved. We also offer some suggestions about possible structural realignments for the Committee to address with the new nominee for Commissioner of IRS in the upcoming confirmation hearing.

We are pleased that the legislative recommendations of the National Commission on Restructuring the IRS are pending before the House and Senate tax writing committees at present. Representatives of NAEA testified at five public hearings conducted by the National Commission on Restructuring the IRS and we submitted written testimony for the record for a sixth hearing. In addition, our National staff attended numerous informal meetings with Commission staffers and Commissioners. We praised the work done by the Commission in focusing on constructive ways of improving our tax administration system and making the IRS more responsive to taxpayer input. We support the Commission's recommendations which have been incorporated into the pending legislation. We believe the true bipartisan nature of the Commission's deliberations and the earnest give and take of the democratic process have produced a set of recommendations which are carefully woven together and interdependent upon each other to bring about the change all agree is necessary in the way our tax administration system works. We urge the Senate to pass S. 1096, the Grassley-Kerrey bill, so the restructuring of our tax agency can proceed as soon as possible.

WHAT IS GOING RIGHT WITH IRS?

We believe the Service should be commended for the way it has embraced the recommendations for improvement which were contained in the National Commission's report. We understand that not every recommendation was welcomed with enthusiasm but we have been impressed with the open and nondefensive stance the Service has exhibited in deciding to implement as many recommendations of the Commission as are administratively permissible.

We applaud the recent selection of Bob Barr as the new Assistant Commissioner for Electronic Tax Administration. The willingness to recruit knowledgeable outside expertise to fill critical positions is a mark of an agency willing to change. We hope to see more efforts to bring the best minds and best systems to bear in resolving the problems confronting the Service.

We welcome the recently published Request for Proposals for ways to expand the electronic filing program. We believe as a result of the National Commission's efforts the IRS will now consider to a far greater degree and with much more responsiveness the feedback it receives from the tax practitioner community regarding the great potential of widespread electronic filing. We are concerned about the delay inherent in any RFP process and believe the Service could implement several recommendations already before it which would impact next year's filing season immediately.

We can also applaud some of the initiatives the IRS field components are undertaking to increase their responsiveness to local practitioner and taxpayer input. In the past month, our Members have attended many sessions around the country with local IRS officials and reported back to us that they have seen some new willingness to open up the decision-making process where possible to factor in outside stakeholder input. We have seen this concept work very well for the past several years in the Central California District with its Win-Win teams composed of Service employees and tax practitioners. We are starting to see it work in the Pacific North-

west District with the Small Business Laboratory and in the Gulf States District's renewed practitioner outreach efforts.

We can also report to you that the Service's National Office is making a concerted effort to communicate better with NAEA and all national tax professional organizations. Better communication creates a more positive atmosphere for constructive resolution of disputes and differences of opinion.

EMPLOYEE MORALE ISSUES OF CONCERN TO NAEA

We would like to discuss the current state of employee morale in the IRS. We have noted over the past several years an increasingly deteriorating esprit d'corps among Service employees.

In our testimony before the House Ways and Means Oversight Subcommittee and the National Commission on Restructuring the IRS, we urged that Congress request that GAO study this issue. The reason we are concerned about this problem is that our voluntary compliance system depends on both sides of the table being staffed by competent, motivated individuals who share a responsibility to ensure that the laws are administered consistently and fairly. This means that individual taxpayers are entitled to the best representation possible before the Service when their individual tax returns are being audited or their individual taxes collected. It also means that all taxpayers, as a group, are entitled to the best possible people representing the public interest to ensure correct returns are filed and the correct amount of taxes are assessed and paid.

The perception of all taxpayers about the fairness and impartiality of the tax administration system is dependent on confidence that their interests are adequately represented by the officers and agents of the Service. We believe the current state of employee morale is so low that it jeopardizes this perception of adequate representation of the public interest.

Our Members continually provide us with information about dispirited employees and how their attitudes have detrimental effects on taxpayers. Government agents who feel put upon and victimized by continual criticism and harping in the media and political arenas easily develop a callousness when dealing with taxpayer cases assigned to them. This is a human reaction and is very understandable but it is as serious a threat to our voluntary system as anything else confronting it today.

By the very nature of its function, the IRS is not a popular place to work and will always encounter problems in recruiting the best talent available. It is further hampered in its effort to bring in new talent when the esprit d'corps falls to the level where employees cannot recommend employment with the Service. This leaves the Service with the unenviable task of revising job criteria to fill jobs with the people available rather than recruiting choice personnel. Often those who are selected have limited promotion potential within the organization.

We believe Congress should study the whole issue of employee morale and task the GAO to address what incentives could be pursued to bolster the IRS recruitment of competent, well educated, promotable individuals for government service. One suggestion might be to explore the possibility of paid internships for tax and accounting students to work within the Service for several years prior to commencing private practice. This would provide excellent on the job training and development experience of future practitioners; insure a steady supply of well educated government employees; regularly give the Service an infusion of new viewpoints with the end product being increased taxpayer confidence and satisfaction.

COLLECTION ISSUES

There are several Collection program policy areas we feel need to be reviewed by the Committee.

The Use of Standard Expense Allowances in Determining Collection Actions

We have reviewed the legislative proposal drafted by the American Bar Association's Tax Section and concur with the concept that the Service should be barred from using statistically generated average expenses in favor of considering the unique facts and circumstances of each taxpayer's case in making collection case resolution decisions.

We understand the Service's position that using the Bureau of Labor Statistics data provides a level playing field among all taxpayers. The Service maintains that the standards were developed to answer taxpayer and practitioner complaints about inconsistent treatment of taxpayers. We agree that if the result of the use of standards was consistent treatment it would be an acceptable result, but we are increasingly concerned about the lack of good judgment being exhibited in cases reported to us by our Members. Service employees, especially Revenue Officers, are com-

pensated based on the complexity of their cases. When the National Office dictates that standard allowances be used, then more often than not the standard amount becomes the final answer despite the fact that the Internal Revenue Manual permits some deviation from the standards in exceptional cases with supervisory approval. This "checklist mentality" approach leads to as many inequities as the prior system of evaluating each taxpayer on their actual expenses and has caused some new concerns to crop up, notably in the areas of bankruptcy and offers in compromise.

There has been a dramatic increase in the number of personal bankruptcies since January, 1996. The increase last year was in excess of 25% despite a very strong economy in almost every part of the country. In our opinion, many of these increased bankruptcies were the direct result of the IRS imposition of National and Local standard expense allowances for use in reaching Collection case determination decisions in October 1995. In many instances, these limits on what a taxpayer may claim as a necessary and reasonable monthly expense has benefitted the Service to the detriment of other unsecured creditors and, in some cases, secured creditors who enjoyed lien priority to the IRS liens. This is especially true with respect to real estate holdings of taxpayers.

We do not believe this effect was ever intended by Congress when enacting the Federal Tax Lien statutes. These standards have a pervasive effect as they impact any case resolution decision relating to the ability of the taxpayer to secure an offer in compromise, an installment agreement or a determination that the tax is currently not collectible.

In many geographical areas, the standard expense allowances for housing, utilities, property taxes, homeowners or renters insurance, association fees and property maintenance and repairs are absurdly low. As a consequence, many practitioners have been forced to recommend that their clients seek the protection of the bankruptcy court as there simply is no way to resolve the matter administratively within the IRS.

When we raised this issue with IRS National Office Collection officials last summer, we were advised that their new policy had no impact they could discern on bankruptcies. We believe there is ample indication that there is a direct cause and effect and urge the Committee to ask that GAO examine the problem.

Inconsistent Enforcement Policies Across the Nation

The Service explained that the purpose for imposing the use of the reasonable and necessary expense allowances was to eliminate inconsistencies in application of enforcement criteria. We have long complained about these regional inconsistencies and we agreed with the Service that some effort at uniformity was needed at the national level.

We now find, however, that new inconsistencies keep cropping up in the way the local districts are choosing to interpret the "standards," as if the term standard was open to debate. For example, some districts now hold out a policy that they will not permit an installment agreement to pay off back payroll tax obligations, even if the debtor business is now current and complying. This causes unnecessary business failures and bankruptcies, not to mention grievous equity losses to the small business owners involved.

The Service made a point of restricting the allowable expense criteria to individual taxpayers, rightfully deciding that business entities had too diverse a group of necessary expenses to ever arrive at a fair allowance number. Despite this wise National Office policy, it has not prevented local districts from proceeding to limit expenses on business taxpayers who are self-employed.

We have had complaints that Revenue Officers have not allowed legitimate business travel expenses where the taxpayer failed to secure a sale on the trip in question. This is a prime example of why decisions of field Revenue Officers need to be subjected to a real appellate review process.

We have also heard of Revenue Officers allowing only the amount authorized by the local housing and utility standard to taxpayers who ran substantial businesses out of their homes and should have been permitted a higher amount of expense allowance to reflect the true cost of the business activity.

We have also had complaints about Revenue Officers not allowing business expenses for automobile and truck costs incurred in the course of the taxpayer's business—but rather limiting the taxpayer to the local transportation standard expense allowance developed for individuals.

All of these examples indicate we have a "standard" that is not a standard in the eyes of many local Revenue Officers.

Collection Statute Extension Authority Questioned

The Internal Revenue Code permits the Service to request taxpayers' agreement to extend the statutory period for collection of their tax debts. The current statutory period for collection is ten years from the date of the assessment. This ten year statute was increased from six years in October, 1990. In our opinion, current IRS procedures for seeking statute extension approvals from taxpayers need a total overhaul. It should be an exceptional case where the Service is not able to collect the assessment within the ten years permitted by statute.

One would be reasonable to assume that requests for taxpayers to extend statutes were rare. In fact, the Collection Division Automated Collection Service (ACS) has begun requiring taxpayers who request installment agreements and cannot fully pay their tax obligation within ten years to sign extensions on the collection statute now even though there may be as much as 9.5 years left on the statute. For example, a taxpayer filed a 1996 return on April 15, 1997 owing $10,000.00. The IRS review of the taxpayer's financial condition revealed an ability to pay installments of $55.00 per month. The taxpayer was asked to sign an extension until the year 2012! In a contrasting situation, a taxpayer with no ability to pay monthly would have their case reported as "currently not collectible" and suspended without being asked for the statute extension. We question if the current statute permitting extensions is still needed in light of the 10 years permitted to collect. After all, the Service always has the right to reduce its lien to a civil judgment if it feels additional time is warranted to effect collection.

Congress should examine the whole issue of permitting the extension of Collection statutes and at the very least should consider establishing some dollar criteria threshold before a statute extension request could be made of a taxpayer. In the interim, we suggest that the Service be required to provide every taxpayer asked to sign a statute extension with a publication specifically addressing the implications of signing or refusing to sign such requests. Additionally, we think Service requests for extension ought to be in writing and that the taxpayer should be provided with a 5 business day "cooling off" period to seek professional advice concerning the request for extension. Finally, in the event Service personnel coerce, mislead, or misinform taxpayers about the consequences of statute extensions then taxpayers should have the right to revoke the extension and the original statute date should be reinstated even if that means the Service becomes effectively barred from further Collection efforts. These changes would go a long way towards making taxpayers feel the Service is adhering to both the spirit and the letter of the law.

Collection Appeals Process Isn't an Appeals Process

The Service introduced an "appeals" process for Collection cases last winter and made much to do about how it afforded taxpayers the opportunity to seek an appellate review of such matters as the filing of the notice of federal tax lien, withdrawal or denial of a request for an installment agreement, and seizures of taxpayer assets.

The scope of this program is so circumscribed by the procedural limitations imposed that it really does not constitute a true appellate process. The appeals function is limited to reviewing whether or note the decision by the Collection officer adhered to the procedural requirements of the Internal Revenue Manual only. It does not permit any appellate review of the judgment or conduct of the Collection officer.

The one beneficial aspect of this process from our viewpoint is that it requires the involvement of the Collection group manager prior to the case going up to Appeals. This is a welcome sign that the National Office wants group managers to become more involved in the taxpayer case management and negotiation process, something which has been sorely neglected in the past decade.

We believe the lack of taxpayer and practitioner use of this "appeals" process is ample evidence that this program is not perceived as a fair and independent appellate procedure and believe the Committee ought to examine its intent and practice.

EXAMINATION ISSUES

Use of Enforcement Statistics for Evaluative Purposes Jeopardizes Taxpayer Rights

We are very concerned about some provisions of the most recent Examination Program Letter issued by the Service for the current year. The program letter spells out for the field organization the goals and objectives established by the National Office for examination divisions nationwide. In the latest version at Appendix F, there is a discussion of new performance measures to be used in evaluating local district directors by using the amount of additional tax, penalty and interest proposed by their examination division, regardless of the validity of the assessments.

We must point out the danger of this approach. Whenever an enforcement agency resorts to using production statistics for evaluative purposes, be they audit yields or traffic tickets, the first casualty is citizen rights. This is especially critical given our perception of the current state of employee morale in the Service.

The Committee should inquire about the impact this emphasis has caused thus far this year and, we believe, should recommend to Congress that the Service be barred from using this data in the way suggested.

Inappropriate Use of Financial Status Auditing Techniques

We are still hearing complaints from our Members and taxpayers about the insistence of local Examination Division personnel using "economic reality" auditing procedures when there is no information provided to the taxpayer or representative as to why the Service believes there is evidence to indicate unreported income. We are aware that the National Office issued instructions to the field organization in May, 1996 to use the financial status audit procedures only when appropriate but feel that this is being observed on a sporadic basis by the districts across the nation. We urge the Committee to delve into this problem during these hearings.

One way of informing taxpayers and their representatives of the potential for this type of audit would be to require that the Service provide every taxpayer with a printout of all of the Information Returns Program (1099s, W92s, CTRs, etc.) data it has for the tax year in question along with the original examination notice sent to the taxpayer. This would permit taxpayers and their representatives to be prepared for any inconsistencies between the return and the reported information in the possession of the Service and eliminate the audit "gotcha" game.

Market Segment Specialization Program Audits

We believe the Service should be recognized for the efforts it has made in the development of the Market Segment Specialization Program. In our opinion, it is one of the best approaches to identifying the root causes of taxpayer noncompliance introduced into tax administration in the past twenty-five years.

The best example of the effectiveness of the MSSP approach is the important compliance program the Central California District has underway in the Central Valley of California. This program, which focuses on a major source of noncompliance with tax, labor and immigration laws by farm labor contractors, has yielded dramatic results in a relatively short time. The best thing about this program is that it has aided the legitimate businesses in the Central Valley who for years have been at a competitive disadvantage when faced with competitors who, by not paying taxes and offering benefits, were able to underbid them. This is exactly the type of program the Service should be focusing on to restore its reputation as a premier government agency and to reestablish their credibility with the legitimate business community. They should be applauded for this effort. We urge the Committee to hold a field hearing in the Fresno, California area to permit a first hand look at this success story.

The traditional assumptions the Service made about its impact on taxpayer compliance behavior patterns have always been questionable in the minds of many tax professionals and academics. For the first time, through the use of the MSSP examination process, patterns of compliance and noncompliance can be tracked by industry and enforcement efforts targeted in appropriate directions.

We think this is good news for taxpayers who are complying and paying their fair share as well as presenting the Service in the favorable light of channeling its enforcement dollars into those areas most in need of its attention.

Examination Quality Review

One of the consequences of the morale problem we discussed earlier in our statement is evident in the assessment of the outcome quality of entry level examinations. When the Service has to fill jobs with the bodies available rather than the best candidates the quality of the work product declines.

We are consistently being told by our Members and by taxpayers via our Web site and America OnLine Tax Channel that they cannot resolve basic issues with the entry level examination staff; that group managers will not meet with them or, if they do, they always back the position taken by the subordinate; that the only way to resolve anything in favor of the taxpayer is to by-pass the examination staff and proceed to appeals on every case.

These are disturbing complaints because there will never be enough staffing available for every case to proceed to appeals. We would like to see the Service make a renewed effort to involve Examination group managers in an informal conference process prior to a case going unagreed. We feel it would be in the best interests of the Service to resolve these cases at the lowest possible level and we know it would save taxpayers millions of dollars annually in representation fees. We have been de-

lighted to learn that the Pacific Northwest District is proposing a pilot test of a district conference staff to help resolve exam cases more expeditiously. This is now a concept which has come full circle as district conference is where many exams were resolved in the 1960s and 1970s before it was abolished. We will be watching this pilot closely and will keep the Committee informed of the results from the practitioners' perspective.

TAXPAYER RIGHTS ISSUES

Protecting a Taxpayer's Right to Confidentiality

We would like to see the Committee recommend legislation protecting a taxpayer's right to confidentiality for any tax counsel and advice. It should be a basic right of taxpayers not to have their own advisors used as witnesses against them. We believe that the IRS has overly broad summons authority which permits it to inquire into a taxpayer's thought processes and the tax advice they received. This violates the taxpayer's reasonable expectation of privacy and confidentiality and goes beyond IRS needs for factual information to determine proper tax liability. Under current law, taxpayers can protect nonfactual information such as analyses, advice and opinions only if they have the financial resources necessary to obtain legal counsel. This practice results in unequal treatment of taxpayers based on their financial status or choice of tax professional.

We propose that the Committee consider the following proposal to provide all taxpayers fair and equal treatment:

1. For all taxpayers, permit the IRS access to all factual information upon which a return is based;
2. if the IRS has a reasonable suspicion based on evidence that the taxpayer failed to fully report income, the Service would have authority to summon other factual information relevant to the taxpayer's income; and
3. if a taxpayer became the subject of a criminal investigation, the IRS could employ the same broad summons authority available today.

This proposal removes the conditions and ambiguities regarding whether a taxpayer may keep tax advice confidential by linking that protection to the taxpayer, rather than the identity of the tax advisor. Taxpayers remain fully obligated to report every dollar of income and prove every deduction, exemption, expense, and credit claimed on the return. However, the IRS would not have access to nonfactual information, such as opinions, analyses, thoughts, theories, and mental impressions of the taxpayer and his or her advisor, without the taxpayer's consent.

Register All Commercial Tax Return Preparers

We would like to see the recommendations of the IRS Commissioner's Advisory Group (CAG) regarding the registration of all commercial tax return preparers enacted into law. We believe that a fundamental taxpayer right is to be able to rely on the expertise of the individuals who assist in helping citizens meet their tax obligations. We have, for too long, had an uneven playing field where those tax professionals who have made the most significant commitment to their profession—Enrolled Agents, attorneys and Certified Public Accountants—are the most regulated. Only those professions require continuing professional education. Only those professions have developed standards of professional practice and published standards of professional ethics. The tax laws of this country are too complex to permit commercial tax return preparers to offer services to taxpayers without requiring that they maintain a minimum level of technical proficiency and stand by their product in the event of error. Taxpayers deserve no less. We regulate barbers more than we regulate commercial tax preparers in this country and you can recover from a bad haircut in three weeks!

Provide Full Credit for Social Security and Self-Employment Taxes Paid In

Current procedures followed by the IRS and the Social Security Administration (SSA) with respect to properly crediting the Social Security (FICA) and self-employment (SE) taxes paid by delinquent taxpayers need to be corrected by statute. If a taxpayer fails to file a tax return for more than three years, even if there is a refund due and all taxes are paid in timely, the taxpayer is not credited by the SSA for the FICA and SE taxes paid in, yet the IRS insists on collecting these same taxes. If the government is paid the taxes, it should credit the taxpayer's account.

The Total Amount of Penalties Should Never Exceed 100% of the Tax

As a general principle of fair and reasonable tax administration, we believe Congress should declare that the total amount of penalties asserted against taxpayers should never exceed the tax amount for the same period.

Tax Penalties Should Not be Used for Revenue Raising

We believe the current penalty statutes should be subject to a top down Congressional review. There are too many penalties for too many infractions and no one could reasonably expect taxpayers to comprehend their applicability. We think the current Code's proliferation of penalties has accomplished nothing but to create taxpayer perceptions of a system run amok and acts like a "hidden tax rate." This feeling is reinforced by the fact the tax committees have taken to scoring penalties for revenue raising.

The Number of Years to Claim Refunds Should be Lengthened

We have seen some recent tax law cases where ample reasonable cause existed to permit longer periods for taxpayers to claim refunds and the Courts found themselves bound by statute to deny the claims. We believe this is wrong and Congress should extend the right to refund claims for a period longer than three years.

ORGANIZATIONAL STRUCTURE OF THE IRS

As we stated in our opening remarks, we strongly endorse the recommendations of the National Commission. We originally proposed during testimony before the Commission last April that the Commission consider the division of the IRS into two separate agencies. While we recognized that was a radical suggestion, we made it to point out significant problems with the organizational culture of the Service. We think it would be beneficial for the incoming Commissioner to study the possibility of accomplishing the organizational schema we proposed within the existing agency. This could be accomplished by establishing two Deputy Commissioner positions—one filled by the Presidentially-appointed Taxpayer Advocate and the other, also Presidentially appointed, to serve as Deputy Commissioner, Tax Enforcement. We could envision these two appointees serving the following roles:

Deputy Commissioner, Taxpayer Advocacy

The new Taxpayer Advocacy organization would be headed by the Taxpayer Advocate, nominated by the President and confirmed by the Senate. This would bring the degree of independence to the Advocate's role sought by Congress and the public. The field component would be headed by local Taxpayer Advocates under the local District Directors. This organization would be responsible for:

—Taxpayer Advocacy function (taxpayer intervention, systemic monitoring and legislative advocacy);
—Taxpayer Communications (TDA and TDI notices, correspondence examinations, information returns programs such as document matching, underreporter program, etc.);
—Taxpayer Service function (telephone assistance, taxpayer education, small business education clinics, local walk-in services);
—Tax Forms (design, printing and distribution);
—Electronic Tax Administration (electronic filing initiatives, electronic tax payment programs, web site maintenance, electronic commerce applications, electronic communications applications);
—Data Processing and Information Technology functions;
—Appeals function, for resolution of disputed collection and examination cases;
—Technical function for issuance of Revenue Procedures, Rulings, Technical Advice memorandums and private letter rulings—in short anything that has to do with interpretation of the Internal Revenue Code; and
—Internal Audit and Internal Security Functions.

Legal services to the Taxpayer Advocacy organization would also be provided by the Chief Counsel of the Treasury's Chief Counsel for Tax Administration function, thereby assuring coordination on Tax, District, Appeals, and Supreme Court cases as they progress through the system.

The benefits derived from separating these functions from enforcement functions are numerous:

—It permits recruitment of creative individuals with the temperament for taxpayer service and provides a promotion ladder for advancement up the taxpayer advocacy and customer service line;
—It permits technology issues to be addressed by individuals with technology expertise and broader business experience than traditional IRS managers;
—It permits technology decisions to be driven by overall business judgment as it affects 200 million taxpayers;
—It permits taxpayers to seek answers to their questions from an organization the Congress has appropriately funded with an adequate budget to serve citi-

zens and it populates the technical tax law interpretation function with individuals driven by customer service motivations and not enforcement attitudes;

—It places the ability to enforce the Taxpayer Bill of Rights legislation in the hands of truly independent Taxpayer Advocates who will have the right to intervene in Tax Enforcement organization cases when appropriate; and

—It provides taxpayers with a truly independent appellate process thereby improving perceptions of fair and impartial administration of the tax laws.

Deputy Commissioner, Tax Enforcement

The tax law enforcement functions of Examination, Collection, and Criminal Investigation should be all that comprise the new Tax Enforcement organization. The head would also be nominated by the President and confirmed by the Senate. Its field component would be headed by local Tax Enforcement Chiefs under the local District Directors. The organization would take over responsibility for Collection cases once those cases have completed the notice cycles and the taxpayer had not adequately responded. The existing Automated Collection Service (ACS) would be part of this entity. The responsibility for examination cases would be assumed when the case required the taxpayer or his/her representative to appear. Thus, correspondence examinations questioning one or two items would remain with the Taxpayer Advocacy organization. Obviously, all criminal cases would originate in and be worked by the Tax Enforcement organization only. The Chief Counsel of the Treasury would still provide legal support services through a Chief Counsel for Tax Enforcement function. This organization would not have its own data processing operation, but would secure its information technology services from the Taxpayer Advocacy organization.

The benefits of locating all law enforcement functions under one roof and permitting one organizational focus to dominate direction should improve morale of the individuals working in the agency, should concentrate efforts in combating the growing problems of taxpayer noncompliance, and permit innovative solutions to targeting law enforcement.

SUMMARY

We hope these ideas have proven useful to the Committee in its deliberations. I would be very happy to respond to questions you may have regarding our views.

PREPARED STATEMENT OF DARREN LARSEN

My name is Darren Larsen. I am an attorney in private practice in Southern California, specializing in tax controversies and bankruptcy matters. From 1981 through 1994, I was employed as an attorney In the Office of Chief Counsel for the Internal Revenue Service in three different districts. I served my last three years in the position of Assistant District Counsel, including extensive duty as Acting District Counsel. I was personally involved in matters concerning all functions of the IRS: Examination, Collection, Criminal Investigation and Disclosure. From 1986 through 1994, I represented the IRS in Bankruptcy Court as a Special Assistant United States Attorney in the Alaska District and the Central District of California. I frequently served as a nationwide instructor for attorneys and managers as well as for IRS training and continuing education. I was a member of a joint Chief Counsel—IRS national task force on bankruptcy procedures through which I visited several districts throughout the country. Because of my particular expertise concerning IRS collection issues, I maintained close relationships with many individuals in the IRS, particularly revenue officers and managers in the Collection Division.

I speak to you today as a tax professional who has spent may years representing the Internal Revenue Service in court and working with and advising IRS personnel on their cases. Over the past 2½ years I have also had the opportunity to deal with the IRS as a taxpayer's representative. My feelings toward the IRS as an institution are mixed.

While it is sometimes easy to express frustration and even outrage at IRS conduct, I must state at the outset that there are many outstanding individuals currently employed by the IRS who have superior technical knowledge, commendable devotion to their jobs and a commitment to fairness. At the other end of the spectrum, however, are those employees whom I have encountered both as a government attorney, and as a practitioner, who lack technical skills, lack any sense of justice or fairness, and are interested only in remaining employed to receive a paycheck. That having been said, I will now move on to more specific examples of problem areas within the IRS as an institution.

As an attorney for the IRS, I was often appalled by the lack of technical knowledge on the part of the front line managers. I knew group managers who had the responsibility to review and sign off on administrative summonses who did not know the basic requirements for content of the summons or the rules for service. The less experienced revenue officers unfortunately learned from these managers and consequently made mistakes. I knew one manager who did not understand the distinction between a lien and a levy. The revenue officers who knew the manager had these shortcomings were forced to use other resources for assistance. I was also dismayed at some of the "on-the-job instructors" who were lacking in some of the legal fundamentals and passing on their incompetence to newer revenue officers.

In addition to simple lack of knowledge, I also knew of revenue officers who understood the legal and procedural requirements for certain actions but consciously bypassed them. Specifically, I dealt with a revenue officer over a period of several years who, on more than one occasion, issued nominee or alter ego levies without the required pre-review. Typically he would receive payment of the tax and that would be the end of it. If there was a problem, only then would he go through the required steps. He was a "good" revenue officer in that he collected a lot of tax and closed a lot of difficult cases and, consequently, he was given a great deal of latitude in how he worked his cases. He felt justified in taking shortcuts because he felt he had good instincts and got what he felt were the right results, i.e.: payment of the tax. When he was later promoted to group manager, the revenue officers in his group were allowed to work their cases in a similar manner, as long as they didn't make a mistake. There was often a prevailing notion in the collection groups that if a summons or some other procedure was not exactly handled in accordance with the law that the taxpayers probably would not know the difference. And, if the taxpayer didn't comply and there was a problem down the road, it could always just be done over. The same attitude was taken with respect to other actions: if someone's watching, I'll take the time to do it right; otherwise I will do it the easiest way because it's unlikely my manager or the taxpayer will catch it.

In one district in California, IRS Collection managers blatantly disregarded the law with respect to ownership of personal residences because they felt it was unlikely many taxpayers would know that the law protected them. In California, if married people hold title to real property as joint tenants it is presumed, under State law, that they do hold as joint tenants rather than as community property. The presumption may be overcome by a factual showing that the couple actually intended it to be community. The difference for IRS is significant: when only one spouse owes tax, only ½ of joint tenancy property may be seized, while 100% of community property may be seized. In the district, the IRS took the position that all joint tenancy property would be presumed to be community, and it would be up to the taxpayer to prove otherwise. The result was the IRS treating 100% of a personal residence as being subject to the tax lien and insisting on payment accordingly, whether by seizure and sale or by settlement. The reality is that most taxpayers do not know the law regarding community property and they rely upon the IRS to "do the right thing." However, in this situation the IRS was taking advantage of the ignorance of the general public on a technical legal issue to the detriment of the non-owing spouse. The IRS advisors and managers I spoke with admitted knowledge of the State law, but justified this policy by stating that people usually think their property is community anyway so this is just more expedient. It's the "mindset" that allowed this to go on that concerns me.

While reviewing the procedures followed in many districts in handling bankruptcy cases, it became apparent that in some offices the IRS was ignoring the law regarding the automatic stay in bankruptcy and the discharge injunction. Because it was not designated as a program area, and training was insufficient, some managers devoted few—if any—resources to stopping collection action upon filing of a bankruptcy petition, to monitoring bankruptcy cases for issuance of the discharge order, to properly adjusting taxpayer accounts after issuance of a discharge, or to the releasing of liens after discharge. This inattention to the most basic of tasks was also detrimental to the collection of the revenue.

As a taxpayer representative, I am now even more aware of how important it is for the IRS representatives to follow the procedures established by the IRS and the law in collecting taxes. For the most part, taxpayers are intimidated by the IRS and will do whatever is asked of them. Because most taxpayers do not know much about tax law they rely on the IRS with respect to many issues and put their trust in them as public servants. Even if the taxpayer feels the IRS is not acting properly it is often too costly to hire representation to contest the action. The end result is that some taxpayers are paying more tax than they rightfully should and some individuals are paying tax which they are not actually liable to pay. I do believe that if a taxpayer presses an issue and takes it up through the system, and if that tax-

payer is right, he or she will ultimately prevail. It's just that the process is costly in terms of fees, time and aggravation. It is important for the IRS to avoid procedural shortcuts and treat the taxpayers fairly up front, so that mistakes are not made and taxpayers are not put in the position of choosing whether to pay the wrong amount of tax or pay for assistance to fight it out. Either way the taxpayer loses.

As an organization, the IRS has excellent technical resources which it does not use to its best advantage. Tax collection is a complex process given the number of applicable federal and state statutes. Revenue officers can be expected to require assistance in some cases. The Special Procedures function is designed to provide technical assistance to the tax collectors in the field, and in those districts where it is given the staffing and finding it needs, it has proven to be very valuable. However, each district is given the discretion to determine how its own Special Procedures will be staffed and how it will operate. In some districts, Special Procedures is under-achieving because the advisors have little experience and little support. Some districts view Special Procedures as a dumping ground for revenue officers and even managers who have had problems elsewhere. Some districts view Special Procedures as less important than the field groups so they rotate revenue officers in for only 18 months at a time. Consequently there is little institutional expertise. New advisors have nobody to train them. The field revenue officers have little confidence in their advisors. On the other hand, the districts with excellent Special Procedures have advisors who have worked in their program areas for many years, they work well together and learn from each other, and they are respected by the field officers. They maintain close communication with the field and provide effective assistance. The excellent Special Procedures staffs typically have close working relationships with District Counsel and have programs which allow them to stay current on developing issues. The IRS would be well served by requiring all districts to step up the level of the Special Procedures staffs so that the IRS, nationwide, can more effectively and justly collect the taxes owed.

In conclusion, the IRS in my view has much room for improvement in the way it deals with taxpayers when collecting delinquent accounts. While there are many positive, productive forces and individuals at work inside the organization constantly trying to make improvements, some of the chronic problems remain. The IRS is there to enforce the tax laws. However, the IRS is also there to ensure that the law is applied fairly and consistently. The IRS representatives wear two hats: they are adversaries of the willfully non-compliant taxpayer, but they are at the same time public servants. There is no excuse for cutting procedural corners or establishing presumptions which place citizens at a practical or economic disadvantage. Better training of revenue officers, as well as managers, and an intolerance of blatant violations of the law would go a long way toward improving the overall quality of tax collection and improving the level of public trust in the IRS.

PREPARED STATEMENT OF LAWRENCE G. LILLY

Mr. Chairman and Committee members, my name is Lawrence G. Lilly. I have been a tax attorney for more than thirty years and I am currently in private practice in St. Augustine, Florida. Prior to opening my office in Florida, I worked for the IRS for 28 years in several different capacities. First, I was a Special Agent in the Intelligence Division (now known as the Criminal Investigation Division.) Then, I became a Criminal Tax attorney, an Assistant District Counsel in Miami, and I retired in 1990 from my final position as District Counsel for one of the larger districts, in San Jose, California.

A fair and efficient tax collection agency is recognized by everyone as being vital to the future of our country. Although no one likes to pay taxes, all reasonable people know that our taxes are the price we pay for our liberty! No one can properly voice a legitimate complaint about shouldering a fair share of paying for our system of government.

My purpose today is to present constructive criticism of the IRS for consideration by the Committee. It is my hope that, with your guidance, the credibility of the Service can be restored to the high level which prevailed at earlier times. It is vital to our system of taxation that the citizens who are paying the taxes have trust and confidence in the fairness of the system.

I was extremely proud to be an employee of the IRS for the major portion of my career. During the 1980's however, I began to note what I considered to be significant deterioration of the Service and its concern with serving the public. It appeared to me that the IRS had decided, *consciously or unconsciously,* to drop the Service aspect of their job and to focus exclusively on making upper management

look good statistically. This, I fear, has led to undermining the culture of the organization, lowered the self-esteem of many employees, and caused the organization to become unfair and oppressive in its treatment of taxpayers.

Before proceeding, I should make it clear that I was not technically an employee of the IRS for most of my career. Organizationally, the attorneys who work with the IRS are not subordinate to the District Directors or even to the Commissioner of the IRS. IRS attorneys work within a parallel organization structure, which reports to the Chief Counsel of the IRS and the General Counsel of the Treasury Department.

In view of this distinctive organizational structure, I had the opportunity to see the IRS from a viewpoint that is quite different than that of most former employees. Whereas most former employees worked within a particular area, such as Examination, Collection, or Criminal Investigation, I, as a manager of attorneys, was involved with all of those functional areas. From this perspective, I had the opportunity to make detailed observations about the Service's operations and also had the time to develop what I hope are a few, solid recommendations for its improvement.

I believe there is too much focus set on achieving statistical goals set by upper management generally known as the Senior Executive Service (SES) goals. Goals are important and necessary in the management of the organization, but the goals, as currently drafted by management, too often focus on those things which are readily measurable numerically, such as the number of dollars collected or the number of cases closed. Generally, the goals do not place adequate focus on the quality of the work performed, or the acceptance of that work by the general public. The goals are not always sensitive to the perceptions of the average American taxpayer.

The organizational structure of the IRS is still too decentralized. Directives from the top are implemented, or not implemented, in the manner decided upon locally. Directives with which local employees or managers disagree take considerable time before they are implemented. As just a single example, some time ago Commissioner Peggy Richardson issued a public announcement indicating that the Service would thereafter be more liberal in its consideration of Offers in Compromises. Several months later, the district in which I reside had not implemented her directive and it was necessary for me to directly confront local officials and to chastise them for failing to implement the Commissioner's directive.

The regional offices of IRS, or at least the regional offices of the Chief Counsel, serve little or no purpose except to dilute the authority of the National Office and to delay the implementation of national directives. I recommend that consideration be given to eliminating all of these offices, or if they cannot be eliminated, they should all be physically located in Washington where they can become more responsive to national direction. At this time, each of the regions operates as a fiefdom, rather than as a necessary cog in the wheel of a national organization.

Selections for managerial positions are made based upon whether the employee has performed well in his or her current position, i.e. was he or she was a "good" attorney, or a "good" agent. Little consideration is given to the "people skills" of the applicants or whether they are likely to be effective and skilled managers. This too frequently leads to situations where you loose a good employee and obtain a poor manager. Management skills of persons being considered for appointment to higher positions should receive greater scrutiny.

The IRS organization is too insular, with little infusion of new blood. Traditionally, the Service promotes from within. While it is good for management to be loyal to employees, this frequently leads to situations where people are elevated based upon their willingness to go along with the entrenched views. Innovation and imagination are frowned upon.

The Tax Section of the American Bar Association has too much influence over the selection process for the IRS Commissioner. Until recently it appeared that only those who were active in that selection had a realistic chance of being nominated for one of the topmost positions. Management skills rather than skills in other areas should be emphasized.

Employee satisfaction with the IRS has been on a downward spiral, due at least in part to the slavish attention to numerical goals. Employees are given mandates by management to take positions known to be incorrect in order to obtain preordained results. I know many people who have retired from the IRS, or left before retirement, but I do not know of a single person who regrets that they no longer work for the organization. I personally left the Service at least eight years prematurely because of the poor management practices that were in vogue at that time and which, I understand, continue to this day.

It is my considered opinion that some of the problems that I have addressed can be readily resolved.

(1) The four remaining regional offices should be completely eliminated or physically relocated to Washington. This will enable the Commissioner to more readily make any needed changes in the direction of the organization.

(2) IRS Management, or this Committee, can take action to insure that the SES goals in the future place greater focus on the quality of performance by IRS managers and employees. This should cause all IRS employees to become more cognizant of the sensitivity of their work and result in fair and equal treatment of all taxpayers

(3) Selection boards for all positions above the first line management level should include at least one representative skilled in management skills and, at the same time, be a step in opening the organization to an infusion of new blood.

I personally commend the many dedicated and responsible employees of the IRS for their valiant attempt to fairly administer the laws in an evenhanded manner. The culture of the IRS organization, however, has eroded to the point where the dedicated employees are leaving the agency as fast as possible. The management of the IRS must stop sacrificing the employees in order to make themselves look good.

Mr. Chairman, thank you for this opportunity to appear before you and this Committee. I greatly appreciate being able to offer what I hope are constructive and positive comments regarding the future role of the IRS.

PREPARED STATEMENT OF JENNIFER LONG

Mr. Chairman, Senators, thank you for allowing me to come before you this morning to provide an accounting of activities within the Internal Revenue Service. My name is Jennifer Long. I am currently a Revenue Agent with the IRS.

Please be assured that I do not take any pleasure in what I am about to say. I regret that the untenable conditions permeating the IRS have compelled me to this point. I am here today, along with my colleagues, in hopes that by exposing some of the unauthorized, but tolerated, procedures that I personally have witnessed by members of the IRS Management, congressional oversight will bring a positive change. I can personally attest to the use of egregious tactics used by IRS Revenue Agents which are encouraged by members of the IRS Management. These tactics—which appear nowhere in the IRS Manual—are used to extract unfairly assessed taxes from taxpayers, literally ruining families, lives, and businesses—all unnecessarily and sometimes illegally.

The IRS will often pursue a taxpayer who is viewed to be vulnerable. To the IRS, vulnerabilities can be based on a perception that the taxpayer has limited formal education, has suffered a personal tragedy, is having a financial crisis, or may not necessarily have a solid grasp of their legal rights. Please understand, many agents are encouraged by management to pursue tax assessments that have no basis in tax law from individuals who simply can't fight back. However, if that taxpayer does object or complain, every effort will be made by the IRS to run up their tax assessment, deplete their financial resources and force them to capitulate to IRS demands.

The IRS's Mission of Examination states, ". . . Reduce noncompliance by identifying and cost effectively allocating resources to those returns most in need of examination and taxpayer contact . . . " As of late, we seem to be auditing only poor people. The current IRS Management does not believe anyone in this country can possibly live on less than $20,000 per year, insisting anyone below that level must be cheating by understating their true income. Currently, in a typical case assigned for audit, there are no assets, no signs of wealth—no evidence that would support a suspicion of higher, unreported income. So, when the IRS does initiate an audit on these people, these individuals are already only one short step away from being on the street. Clearly, such actions do not encourage or promote voluntary compliance, even in legitimate cases. Before we began to ruin their lives, these people were at least paying something. However, because of the tactics used in auditing and condoned by the IRS Management, abject fear compels many of these individuals to go completely underground and, as a direct result, pay nothing at all.

In other cases, IRS Management can determine that a particular taxpayer is simply someone "to get." In other words, they become a target of the IRS. Management will go about fabricating evidence against that taxpayer to demonstrate that he, or she, owes more taxes than was originally claimed. Clearly, it goes without saying that evidence should never, ever, be fabricated. It also goes without saying that any evidence used against a taxpayer should be examined first, before guilt or innocence is established. Not the other way around.

In certain instances, the IRS Management has even employed its authority to intimidate the actual taxpayers into fabricating evidence against its own IRS employ-

ees. In return for their compliance, the taxpayer may be offered a reduction in their taxes or a "no change case." I also know that Management uses this same power to extort fabricated evidence from IRS employees against their own colleagues by offering cash awards, promotions, and lightened work loads as rewards for their compliance. The unfavorable information assembled by Management against its own employees is used against those whom the IRS has identified as someone who is unsupportive of its unwieldy methods of collection.

The IRS Inspection Division, which is somewhat akin to Internal Affairs in a Police Department, has also been used as a tool by Management to harass and intimidate its employees. However, complaints to the IRS Inspection Division about possible Management misconduct are routinely ignored, but often result in retaliation against the IRS employee reporting the problem. This is due to the fact that employees identities are disclosed when the Inspection Division reports the infraction to Management.

The IRS Mission Statement states, "The purpose 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." I have actually witnessed IRS Management manipulate income tax return figures just to increase their office or division collection statistics! It did this through various means including not permitting valid changes in a tax return that would favor the taxpayer. To allow those changes would wipe out the assessment placed by the IRS and run counter to the Management's collection numbers.

For those who choose to fight, it automatically guarantees a significant financial and emotional toll.

Mr. Chairman—the American taxpayers are not stupid. They clearly recognize unfairness. Under present IRS Management, it has become so distorted that when reviewing a tax case it is now our job to "stick it" to the taxpayer, rather than determine a substantially correct tax assessment for that taxpayer. In the past, the latter was our job. If our present task has changed, then the IRS Mission Statement needs to be revamped to reflect what the Service's current mission really is. And God help the taxpayers.

The IRS Mission Statement of the IRS Examination Division states, ". . . Examination supports the mission of the Service by . . . encouraging the correct reporting by taxpayers of income . . . "

Yet, in reality, when valid changes could be made by the IRS on a taxpayer's return that favor that taxpayer, we are instructed not to make those changes.

However, on the other hand, I know of certain IRS employees that have been instructed by IRS Management not to conduct audits of particular taxpayers who happen to be personal friends of someone in IRS Management.

Far too often, the IRS Management automatically assumes that everyone is a criminal. When a taxpayer comes to the IRS to negotiate a tax payment issue in good faith, they are subjected to provocative behavior on the part of the IRS in order to "set them off." Management will then use the taxpayer's response as proof that they are, in fact, a reactionary saying, "See, this person's a troublemaker, a real hot head." Based on this pretext, the IRS can then justify taking severe action contrary to the law in order to pursue the collection. The immediate and direct consequence of these actions is the deprivation of the taxpayer's lawful rights.

I look forward to your questions and I hope, that in some way, I will have assisted you in restoring the IRS to a level of integrity that will regain the respect of the American people.

PREPARED STATEMENT OF HON. CONNIE MACK

Mr. Chairman, I thank you for holding these important hearings. I look forward to participating in this bipartisan effort to clean up the IRS (a goal that is too important for politics). The IRS interacts with more Americans than almost every other government agency or private business in America. Therefore, it is critical that the word "service" in Internal Revenue *Service* returns as a top priority.

Unfortunately, too often we discover that hard-working American taxpayers do not receive topnotch professional service. This is unacceptable. We will not tolerate taxpayer abuse by the IRS. Examples of IRS snooping, billions of dollars in unjustified penalties, and wrong answers to taxpayers' questions are all too common. Simply stated, taxpayers who spend $8 billion to run the IRS deserve better service.

Just like taxpayers are subjected to an audit, I think it is time we *audit the IRS*. We need to do a top to bottom inspection of what works and what doesn't—no stone should be left unturned. The work and recommendations of the Kerrey-Portman IRS

Commission has been an important first step in this process. I trust these hearings will further our understanding of what needs to be done to make the IRS taxpayer-friendly.

It's true that our complicated income tax system adds to the difficulties of administering and collecting taxes for both taxpayers and the IRS. Congress must also do its part to ensure the tax laws we enact are not overly complex. People should be able to calculate their tax liability with ease. Americans currently waste some $200 billion dollars and 6 billion man hours just to comply with the tax code. That's about equal to the amount of man hours it takes to produce all the cars, trucks, and airplanes in this country each year.

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.

I'm glad this committee has the chance over the next few days to hear from witnesses that will help us in our efforts to correct the many problems with the IRS. We are fortunate to have public-spirited former and current IRS employees who are willing to discuss candidly the corrosive culture of the IRS. As my Florida offices are flooded with telephone calls from taxpayers who are having a difficult time with the IRS, I am particularly thankful that we will be hearing from two former IRS employees from Florida, Mr. Lawrence G. Lilly and Mr. Bruce A. Strauss, who can shed some light on the source of these problems for my constituents.

It is no surprise that legions of taxpayers have offered to tell their stories in public to this Committee, although it takes no small amount of courage to do so. The men and women who were selected to testify are performing a public service and deserve our commendation, although it hardly makes up for the circumstances that gave rise to this testimony. I welcome in particular Monsignor Lawrence Ballweg, who lives both in my state and the state of New York and thus can count four Finance Committee members in his corner.

Over the next few days we will be hearing from historians and scholars, taxpayers and practitioners, IRS agents and apologists. These hearings promise to be both enlightening and infuriating. This is one story, however, in which we all know the ending before the first page has been read: The IRS has to be cleaned up for the sake of the American people.

PREPARED STATEMENT OF DAVID PATNOE

Good morning Mr. Chairman and members of the Finance Committee. My name is David Patnoe. I am currently an Enrolled Agent in Camarillo, California, representing taxpayers before the Collections Division of the Internal Revenue Service for over seven years. Prior to this, I was a Revenue Officer for the Internal Revenue Service for over ten years.

During my tenure with the IRS, I was a Revenue Officer, an On-the-Job Instructor for trainee Revenue Officers, an Instructor for Revenue Officer training schools Phase I and Phase II sessions, an "Offer in Compromise" Specialist and an advisor in the Special Procedures function. I have worked in the Anchorage, Alaska; Shreveport, Louisiana; and Brooklyn, New York IRS offices which provided me a great opportunity to see how collection worked in different areas of the country. Now working as a taxpayer's advocate, I have had the opportunity to see things from the other side. It is from this wide range of experience that I speak to you today.

Despite what I believe to be a rather unique background, I have found dealing with IRS personnel to be quite disturbing in a few cases, and downright maddening in others. In particular I have had my worst experiences with people I believe had insufficient training to be performing the jobs they were assigned. In some instances their actions were outright illegal and highly abusive.

The trouble with discussing "abusive" tax collection is that there is no line drawn between regular tax collection and abusive tax collection. When you consider that the very act of a Revenue Officer imposing their will on a taxpayer by use of a levy on wages or retirement funds or a seizure of assets, such as a personal residence, will probably be considered abusive by a lot of people, and surely by the taxpayer themselves. My definition of "abusive" tax collection is the illegal use of certain collection tools, or when the collection tool used is not warranted in that given situation.

Let me give you an example that I think will demonstrate what I believe is occurring far more frequently than people may realize. I was hired to assist in a matter involving the improper use of a levy. A levy is generally the seizure of money in some form. The IRS had issued a levy on one of my client's receivables owed to his business, a sole proprietorship. But the tax that the IRS was trying to collect on

the levy was not owed by my client, but was in fact owed by a company that my client had worked for at one time as an employee, with no ownership interest whatsoever.

The Revenue Officer, who at the time was acting as an On-the-Job Instructor for another Revenue Officer, went to my client's business with seizure papers in hand. The client, being faced with the seizure of his new business, became very afraid and paid a payment of $7,000 to forestall the seizure. Now he paid this despite the fact that **he did not owe any tax.** The IRS basically scared this person or "extorted" him into paying money that he didn't owe with the threat of seizing his business for the debt of the company he had at one time worked for.

After the initial payment of $7,000, this same Revenue Officer issued a levy on one of the client's accounts receivable for roughly $21,000. That money was going to be used to pay the client's payroll, and the seizure of those funds would have effectively put the client out of business. The levy itself was an amazing flight of fancy by that Revenue Officer. Remember, there was no relationship nor common ownership between these companies. The client simply had been an employee of the company that owed the tax. The IRS was well aware of these facts. Despite having the explanation laid out in black and white, the Revenue Officer would not release the levy nor refund the $7,000 she had collected illegally by scaring the taxpayer when she first showed up at his door.

In fairness, let me add that there are instances when a tax can be collected from someone other than the taxpayer. A third party can become liable if there was a transfer of assets for less than fair consideration, or if a party is holding property in their name simply to evade the seizure of those assets for taxes due. However, prior to collecting from a transferee, or a nominee, the IRS must go through a number of steps involving a group called Special Procedures Function, and the office of the District Counsel.

In this particular instance, none of this had been done. I informed the Revenue Officer that she had not taken any of the required steps and had acted without benefit of legal counsel. I added that her actions were not just abusive, but blatantly illegal. The Revenue Officer responded with one word: "AND?"

Only when the Revenue Officer realized that we would make every effort possible to expose this action, did she come back with a release of the levy. When you consider that this was an experienced Revenue Officer acting with her Group Manager's approval, and not to mention also trains other Revenue Officers, her actions were absolutely beyond comprehension. It is this type of action that is designed to intimidate and instill such fear that the IRS' actions can succeed without question.

I would like to say that this type of action did not occur while I was a Revenue Officer. Unfortunately, it did. I know of seasoned tax collectors who were well aware of the law, take actions that were out of the realm of legal tax collection. In one instance, a Revenue Officer who made up a seizure document titled Nominee Levy on the spot prior to seizing assets from someone who was not the taxpayer, was soon after made a Group Manager. In another case, I dealt with a Revenue Officer who had accessed the IRS computer system to get information on a case I was assigned. When I questioned the Revenue Officer why he was accessing information on my case he stated, ". . . my wife works for this company and if I can help her straighten this (company problem) out it will be a real feather in her cap . . . ." I told the Revenue Officer to put the printouts away. That Revenue Officer also became a Group Manager. These actions were particularly annoying because I believed both these Revenue Officers knew what they were doing was outside the scope of correct tax collection.

When I left the IRS in December of 1989, I considered writing my own thesis about tax collection. I wanted to suggest that IRS tax collectors be held to some standards of training prior to promotion. Not only should they be held to standards of training, but they should demonstrate their knowledge on proficiency tests. No Revenue Officer should be promoted or allowed to train others until they are able to pass increasingly difficult proficiency tests.

While I was working for IRS I was seriously concerned about the Agency's escalating tendency to place unskilled collectors into management positions. I used to call these people the "ninety day wonders"—ninety days being the span of time they spent doing Revenue Officer work between Phase I and Phase II Revenue Officer training classes.

Basically, I found that people hired as Revenue Officers would be detailed to do special projects. Usually these projects were thought up by either first line Managers or by upper level Managers. More often than not the project was to justify some type of statistic related to cases closed or money collected. The projects were administrative work that did not lead to a knowledge of collection procedures, or requirements put on Revenue Officers by the laws and regulations.

Because management had put these Revenue Officers on these projects these same Managers would not hold them back when it came time to be considered for promotion. Many times someone who had only attended the two phases of Revenue Officer training was promoted, even though that individual may never have actually knocked on a door, collected tax, or worked with others in the process of collecting taxes. his led to people being promoted who, in turn, qualified to be in management based solely on the fact that they were at the right grade level. I can't remember the number of times I heard, "You don't have to know how to collect taxes to be a Manager, you just have to know how to Manage!" It's amazing that someone who doesn't know much about collection is put in charge of people who are sent out to collect. The person the Revenue Officer is supposed to depend on for the first level of advice on difficult cases only needs to "know how to manage," but not how to collect taxes. It is especially frightening because these Managers are required to review and approve certain actions of Revenue Officers based on their own understanding of what action is appropriate under the IRS policies, as well as the law.

As a result of this training and promotion practice, new Revenue Officers have become less and less effective, while many of the current Managers do not know what the Revenue Officers are supposed to do. Additionally, many of these Managers are basing day to day decisions on whatever they determine important to their own supervisors in order to "look good." And what were these managers judged on? Sheer numbers. How many dollars collected or how many cases closed was—and is—the bottom line. Make no mistake about it, there are goals, quotas, that may be unstated but well known to the agent, that are driving many of the actions you will hear about today. So what we have now are Managers who are not thoroughly schooled in the collection of taxes but making decisions based on how they can get their numbers up.

Now the cycle is complete. Managers, knowing little about what their employees are supposed to be doing, are evaluating their employees on how they could collect more tax or close more cases. Since these Managers do not know enough about tax collection, they have a tendency to require the Revenue Officer to take actions that might not be correct but which the Managers feel would lead to a higher closing rate or higher dollar collection. Sometimes the action might even be illegal but the Managers did not know it, simply recognizing that a particular action resulted in more closures. The newer Revenue Officers might not know a particular action is illegal because they haven't been around long enough, or are simply not sufficiently trained.

The new Revenue Officers, who have been taking direction from these Managers, get promoted and are now placed in the position of an "On the Job Instructor." So you see, the cycle continues and the quality of tax collection gets worse. As it gets worse, Congress gets more complaints from irate taxpayers.

In closing I would like to add one thing. I know too many people who collect tax for the IRS that are fine, hard working, honest people to paint the IRS tax collection with a broad brush.

To a great number of employees at the IRS, these abuses are not more tolerable than they are to this Committee. It's a shame that these abuses can cast a cloud over these same people. The number of abuses compared to number of cases worked is still small. It nonetheless, is way too large to be acceptable. No abuse is acceptable.

There are many people with great technical knowledge and skill whose talent would be better utilized teaching and aiding others. The Managers who don't have the knowledge or skill to direct tax collection could learn a great deal from some of these people. They might not learn anything about management but they need to learn about tax collection. This may mean a reduction in production as far as closures and dollars collected for a few months or even a year, but over the course of one to two years, it should result in an increase in collection of revenues and less complaints for the members of Congress to address.

The office of the Ombudsman and the offices of the Problem Resolution Program should be manned with highly skilled tax collectors who are capable of resolving these issues before they become highly contentious issues argued at higher levels.

I want to thank you Mr. Chairman, and members of the Committee, for allowing me to speak here today about a few things that have been on my mind for the last several years.

PREPARED STATEMENT OF HON. HARRY REID

Mr. Chairman, thank you giving me the opportunity to submit testimony today during these hearings on IRS oversight. Ever since I have served in this body, I have been very concerned about the rights of the American taxpayer. I have listened with great interest to the testimony of the witnesses of the past few days and I would like to take this opportunity to offer my thoughts as to why the American taxpayer feels so much anger towards the IRS.

The IRS is a huge, powerful bureaucracy with enormous control over American lives. The power vested in the IRS has led to overzealous tax collectors. As a member of the House of Representatives, I introduced a "Taxpayers' Bill of Rights" to put taxpayers on equal footing with the Internal Revenue Service. In my maiden speech on the Senate floor, I continued my call for IRS reform.

During debate of the bill, I reviewed countless horror stories of flagrant abuse by an overbearing and overzealous IRS. One Las Vegas motel manager had her salary garnished and a lien placed on her house because the IRS was trying to recover money her ex-husband incurred when she wasn't even married to him!

One man had filled out 200 forms with the IRS, only to receive a bill for $50 PER FORM because he did not use a ten pitch typewriter. This man's company only owned one 12 pitch typewriter. The result of the IRS action: $10,000 in fines and $150 for a new typewriter.

Yet another Nevada woman was audited because she filed late. She had misclassified expenses, so in August 1986 the IRS told her she owed between $4,000 and $6,000 without penalties. She waited to hear from the IRS for an exact amount, but no word came until January 1987, when she got a $22,000 IRS bill for reassessment and penalties.

But perhaps the one of the most outrageous IRS abuses I ever witnessed was the failed IRS sting operation known in Las Vegas as "Project Layoff." From April 1984 to March 1985, the Reno office of the IRS wagered $22 million in Las Vegas as part of a sting operation designed to nab tax cheats and organized crime figures. But it turned out the only thing that got nabbed was thousands of dollars in profits by those running the operation. Thousands of dollars went unaccounted for, the IRS attempted to cover up its mistakes and lie to investigating authorities, documents were destroyed . . . it was a classic example of how not to run an investigation and the IRS's credibility was seriously impaired.

After years of harping about IRS abuse, Congress passed my Taxpayers' Bill of Rights, and in 1988 it became law.

The landmark law guarantees taxpayers the right to have an attorney represent them before the IRS, requires the IRS to clearly explain taxpayers' rights to them; forbids the IRS from using quotas for audits or property seizures; and allows taxpayers to recover financial damages caused by the IRS, among other provisions.

The Taxpayer Bill of Rights has made great strides to put average, working Americans on a level field with the IRS. Now, we have expanded the original mandate to further strengthen taxpayer rights. The Taxpayer Bill of Rights II, written by Senator Grassley and Senator David Pryor, further strengthens citizens rights with the IRS by providing relief from retroactive Treasury Department regulations and setting up a taxpayer advocate office dedicated to enforcing the rights of taxpayers being pursued by tax collectors.

I worked on the Taxpayer Bill of Rights I and II to give taxpayers more power in dealing with the collection agency. I am happy that Congress and the President have acted on these necessary measures. The door remains open for future improvements at the IRS and I count on receiving ideas and suggestions from this Committee to help make this agency more accountable to tax-paying Americans.

Who knows, we could have the beginnings of a Tax Payers Bill of Rights III being written right here.

But all the laws in the world won't fix what I believe is the real problem with the IRS . . . our current income tax system. We have a system which rewards the lazy and hurts those who work. Our tax code is so complex that we have built up an entire cottage industry of financial planners to decipher for us each year.

It is a flawed system which is broken and I believe we need to start seriously exploring a new way to collect taxes. I favor a consumption based tax and have been researching several plans circulating through the halls of the Capitol.

Mr. Chairman, oversight is a very important part of our job here in the Senate and I applaud you for providing the opportunity for the American people to air their grievances with the IRS. This kind of intense public scrutiny coupled with laws like the Taxpayers Bill of Rights I & II, and the support of both Democratic and Republican Presidents, will help keep the IRS on its toes and focused on its mission of serving the taxpayers, not serving them up.

But I would also encourage you and your committee to explore ways to change a system which may be damaged beyond repair. Let's not be afraid to consider scrapping what we have in favor of something which will work for all of us.

SUBMITTED BY HON. JOHN D. ROCKEFELLER IV

SUBMITTED BY HON. JOHN D. ROCKEFELLER IV

THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

September 24, 1997

The Honorable John D. Rockefeller
Senate Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Rockefeller:

Thank you for requesting information about IRS's consultations with Congress on its strategic plan, and in particular, about any negative feedback the IRS received about its revenue goals during those consultations.

The IRS submitted drafts of its strategic plan to this Committee and others early this summer. Strategic planning executives from IRS and the Department met with staff of the Finance Committee on September 4, 1997 and have made themselves available to answer any questions or respond to any concerns by members and staff during the entire strategic planning process. During these consultations with Congress, we discussed with the staff our mission, our goals, *and our performance metrics.*

Let me briefly describe that measurement system. The IRS employs a balanced performance measurement system, including measures of compliance, customer service, and productivity. Because the IRS is responsible for collecting the revenues that fund the Federal government, the system includes revenue measures such as the following:

- Total Net Revenue Collected;
- Total Collection Percentage;
- Total Enforcement Revenue Collected; and
- Collection Dollars Per FTE

The measurement system also includes customer service metrics, such as Taxpayer Burden, Telephone Service Level of Access, Problem Resolution Program Cycle Time, and Refund Timeliness.

Not a single staff member or member of Congress expressed any concern about the IRS's use of revenue measurements, or suggested that there should be less emphasis on the revenue-related goals. In fact, the feedback from these consultation sessions included a number of positive comments about the Service's strong commitment to measure the outcomes of its programs.

The IRS's use of revenue measures is not a new phenomenon. For years, the IRS has consistently presented performance measures -- including revenue measures -- in its budget and strategic plan submissions to Congress. The Service has seldom been criticized for including them, and has often been complimented for measuring its performance using hard numbers that can be monitored. GAO has even asked the IRS to be *even more aggressive* in using revenue metrics, so that the agency would be even more accountable for its performance as the nation's tax collector.

We take very seriously any public concern that IRS might be using revenue targets to rate individuals' performance, for doing so clearly violates the law. The IRS and the Department are determined to follow up on cases where there is evidence of such an illegal practice. Despite our conviction that revenue goals are not the right way to evaluate individual employees, however, we continue to believe that the IRS must be held accountable for its tax collection responsibilities -- and therefore must have some revenue collection objectives.

The IRS's measurement system has been evolving and improving over the last few years. The Service and Treasury both recognize that further improvements are needed. We are particularly interested in developing more sophisticated customer satisfaction measures, and in improving the precision of the data underlying some of our measures. We will continue to work toward this end, and would welcome any advice and feedback from Congress and other stakeholders about how we can improve our efforts. Thank you again for your interest in this important issue.

Sincerely,

Lawrence H. Summers

INTERNAL REVENUE SERVICE EMPLOYEE DISCIPLINARY ACTIONS

The chart below lists employee disciplinary actions taken by the Internal Revenue Service over the past three years for cases involving:

- **misuse of position or authority;**
- **taxpayer complaints or charges; or**
- **rude or discourteous conduct.**

Disposition of Cases	FY 1995	FY 1996	FY 1997	Totals
Admonishment	26	27	27	80
Reprimand	42	37	38	117
Suspension, 14 days or less	41	34	40	115
Suspension, more than 14 days	13	3	9	25
Reduction in Pay or Grade	3	2	2	7
Separation of Temporary Employee	1	0	1	2
Probation Separation	6	8	12	26
Removal, Probation Complete	18	12	17	47
Resig., Retire, etc., SF50 Not Noted	12	7	19	38
Resig., Retire, etc., SF50 Noted	6	5	7	18
Total Number of Employees Disciplined	168	135	172	475

THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

September 26, 1997

The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Roth:

In my letter of September 24 to Senator Jay Rockefeller (D-WV), I discussed the Department's consultations with Congress on its strategic plan under the Government Performance and Results Act (GPRA).

I am writing to clarify my letter with respect to the issue of IRS performance measures. Separate from main Treasury's GPRA consultations with Congress, Donna Steele Flynn of the Ways and Means Committee has very helpfully expressed concern about certain examination measures with the IRS. I am also attaching helpful comments on the IRS's performance measures from the National Commission on Restructuring the IRS. I regret that my letter did not reference these comments. I have asked my staff to verify whether there were other comments.

I ask that the Senate Finance Committee include this letter in its hearing record.

Sincerely,

Lawrence H. Summers

cc: The Honorable Daniel Patrick Moynihan
The Honorable Jay Rockefeller
The Honorable Robert Kerrey
The Honorable Rob Portman
Ms. Donna Steele Flynn

Attachment

that employees will execute orders and follow directions. The negatives are that the IRS environment often does not encourage personal or organizational growth, and stifles creativity, innovation, and quick problem resolution.

The IRS provides minimal incentive for managers or front-line workers for achieving mission. Most managers interviewed said that rather than use their judgment to assist taxpayers, they document changes they think will help the system, and send them through the chain of command for approval. Most managers indicated that this is often discouraging due to the time lag caused by the multiple layers of management approval required to override systems. Front-line employees and managers rarely receive a response to their suggestions. In addition, Congress, Treasury, GAO, and the press tend to focus on failures without acknowledging successes. Both internal and external forces foster an environment in which employees value rules over outcomes, and do little to encourage the use of judgment in handling taxpayer problems. While the IRS traditional career path develops good managers of labor intensive operations, it does not produce enough business strategists or innovative leaders of technology based process change.

The lack of structure to improve operations based on input from front-line personnel and managers is mirrored at the highest levels of the organization. Senior managers expressed frustration that the infrastructure and decision making process at the IRS does not encourage a full airing of issues. Dissent often is frowned upon, and top level decision makers are not always given the best options for making strategic decisions. Often, the institution views even constructive criticism, whether internal or external, as an attack, blunting the opportunity to have a full review of issues and solutions.

Internal Performance Measures

The IRS has a formal system for reviewing and evaluating its front-line employees and managers based on "critical elements" for every job description. Employees are rated by their managers on their performance in each of these elements on a five point scale. In addition to understanding that they must meet a certain level of performance for the critical elements, field employees are aware of the numerical performance goals that must be met by their group, division, and District or Service Center. Current law prohibits Revenue Agents, Tax Auditors, and Revenue Officers from being evaluated by numerical goals. Congress created this rule to ensure that taxpayers would be treated fairly and not be subject to dollar quotas that field employees might feel pressure to meet.

The Commission applauds the IRS for its attempts to develop a measurement system that influences employee behavior in a positive way. While measures have consistently improved over the past five years, they still need further refinement and development. Most employees interviewed at the IRS are concerned that the internal measurement systems (the Field Office Performance Index (FOPI), Service Center Operations Index (SCOI), and the formal system for evaluating employees that the agency uses as a vehicle to influence employee behavior) are ineffective and encourage perverse behavior. Employees believe that the numerical standards of the FOPI and SCOI do not measure long-term quality performance accurately. Consequently, employees put an emphasis on short-term performance and meeting goals of efficiency (as measured by the FOPI and SCOI), rather than on a balanced focus on efficiency, quality, and

taxpayer service. Many employees and outside observers believe the result is that the performance measures do not align with the ultimate objectives and mission of the IRS.

The Commission encourages the IRS to ensure that day-to-day measures of employee performance and behavior align with organizational goals. One of the most significant efforts that the IRS must undertake is to redesign its internal measurement system to encourage behavior which makes it easy for taxpayers to interact with the IRS. A prerequisite to building internal measures is buy-in among IRS, those responsible for governance and oversight of the agency, and external stakeholders. Once priorities are set, the IRS should use private sector experts to help it further refine its internal measures.

Constraints on management

IRS management feels that it is very difficult to realign management and front-line personnel in order to deal with workload and priority changes. In the last few years the IRS budget has decreased, and there is a growing perception that management is constrained in managing the IRS workforce. Most notably, management prioritizes keeping employees on the payrolls. From what the Commission has been able to discern, a combination of the federal civil service rules, labor relations, and management's unwillingness to make difficult decisions causes the organization to feel constrained in its ability to move workers to priority areas and remove ineffective workers. The Commission encourages the IRS to hold all workers—from senior mangers to middle managers to front-line employees—accountable for carrying out the IRS mission.

The Commission recommends that Congress enable the IRS to attract and train a qualified workforce. To do this, the IRS needs the flexibility to recruit employees from the private sector, to redesign its salary and incentive structures to reward employees who meet their objectives, and to hold non-performers accountable. We suggest that the new IRS leadership work with its Board of Directors and Congress to redesign current incentive systems. In this regard, Congress should consider providing the IRS with similar flexibility that it provided the Federal Aviation Administration. In addition, the IRS must increase its commitment to training personnel, and should encourage new ideas and approaches to serving taxpayers, increasing compliance, and increasing productivity.

Again, the Commission is convinced that the necessary changes in training, culture, measures, and quality of workforce need to be driven by IRS leaders. The Commission's recommendations in governance and management, as outlined in Section 1 of this Report, set the stage for fundamental organizational change, and are necessary prerequisites to the successful implementation of the changes recommended in Section 2.

PREPARED STATEMENT OF HON. WILLIAM V. ROTH, JR.

This morning we begin the first of three days of oversight hearings into the tactics, management, and inner workings of the Internal Revenue Service. There is no other agency in this country that directly touches the lives of more Americans. Nor is there any agency which strikes more fear into their hearts. The threat of an audit—the awesome power of the IRS—looms like the sword of Damocles over the heads of taxpayers.

As Chairman of the Senate Finance Committee, I wanted to know why. I wanted to understand where this fear came from. I wanted to know if it was justified. Our Committee's responsibility is to provide the oversight of this agency. This is a responsibility I take seriously. So, in January of this year—with the support of my friend and colleague, Senator Moynihan, I began an investigation into how this agency conducts business with the American people.

There is no political bias—no partisan motive—behind our investigation and these hearings. As I said, they were initiated some eight months ago, and what we have discovered indicates that problems within the IRS are not recent. They cover several Administrations.

Let me also say that the IRS is made up of many fine men and women—men and women of great character and integrity, who perform a vital and very difficult job for this country. In reflecting upon our investigation, I found this to be especially true, and I note that without the help of many such IRS employees, our investigation would have been incomplete.

There is no doubt that the powers of the Internal Revenue Service are extraordinary. The IRS can seize property, paychecks, and even the residences of the people it serves. Businesses can be padlocked, sometimes causing hundreds of employees, who are also taxpayers, to be put out of work. In some instances, the first a taxpayer is aware of any enforcement action by the IRS is when his or her bank calls to notify that funds have been frozen. The IRS can take these actions, in many cases, without giving the taxpayer notice, or opportunity to be heard.

This is an awesome amount of power to place in the hands of any governmental agency. Is it appropriate? Perhaps. But with such power there must be an effective counterbalance of responsibility. Why? Because the greater the power, the more extensive the damage that can be done if that power is abused. Any agency with such power must be above reproach—especially as that awesome power allows it to pervade the most sensitive aspects of our citizens' private lives.

Congress has granted such power to the IRS. As a consequence, Congress has a fundamental responsibility to see that the IRS operates with the highest degree of integrity, honor and ethics. As the Good Book says, "Where much is given . . . much is required."

Unfortunately, our investigation to date has found that in many cases such high standards are not being upheld. Over the course of the next three days we are going to see a picture of a troubled agency, one that is losing the confidence of the American people, and one that all too frequently acts as if it were above the law.

This is unacceptable.

Even high-ranking employees of the agency have come forward at some risk to themselves and their careers to speak with us. In consequence of such risks, employees who will testify have requested confidentiality, and we have honored that request. We have also talked with many private citizens whose lives have been altered by IRS actions. These men and women have related their sometimes tragic experiences, not out of vindictiveness, or mean-spiritedness, but out of deep concern and the fundamental belief that such a violation of their civil rights should not have taken place—not in America.

We have listened to these men and women, and we are holding these hearings because one thing is certain: we can't fix the IRS without knowing what ails the IRS. What we seek is constructive criticism—criticism with the intent to improve, not destroy—to protect, not denigrate. This is not IRS bashing; it is oversight. There will be no condoning of tax protestors, or any others who would misinterpret our objectives to legitimize anti-government attitudes or behavior. These hearings are about good government, about correcting problems within government—problems that are acknowledged by those whose lives are dedicated to public service.

Responsible oversight is the best way to ensure that not only is the government meeting the needs of the people, but it's the surest way of letting the people know that they have influence over, and a strong voice in, their government. That's what these hearings are all about. Just as the IRS is quick to say that no honest taxpayer should fear an audit, no government agency should ever fear a Congressional investigation into its activities.

While it is imperative that Americans pay their fair share of taxes in an effort to establish and maintain necessary government functions, it is equally imperative that the agency charged with the responsibility for this activity be fair, honest, open and accountable.

With this introduction, I believe it's important to outline how we went about conducting our investigation. Our objective from the beginning was to keep our methodology fair, and yet still be able to get inside the agency to uncover the facts. In reviewing the treatment of taxpayers, we took various cases to the IRS and reviewed every document that we could obtain. We interviewed the IRS employees involved in the particular cases.

Over the next three days, we'll hear about a number of these cases. We will hear from taxpayers and IRS employees. It is important to understand that these witnesses are typical of far greater numbers who have been moved to contact the committee. These individuals serve as a sampling which demonstrates the significance of problems and concerns within the agency.

The facts will be startling.

For instance, while the use of pseudonyms is forbidden by the Internal Revenue Manual—except for those in the law enforcement areas of Criminal Investigations and Inspections Divisions—many Revenue Officers have been issued false identification credentials. While the IRS suggests that this is to protect agents from assault, I'm concerned that it makes them unaccountable. Even members of the Metropolitan Police Force here in the District of Columbia, despite substantial danger, wear their true names on their uniforms.

In the next three days, you will hear about an audit term called "Blue Sky Assessments." These are tax assessments made against Americans that have no basis in fact or tax law. They can either be designed to hurt the taxpayer, or simply raise the individual statistics of an IRS employee.

You will hear a lot about statistics and quotas. We have learned that even at managerial levels, the drive to achieve the appropriate statistic has caused problems in many areas of the country. While the use of quotas is specifically prohibited in rating the success of agents or officers in their jobs, it appears to be commonplace. And this, I believe, is outrageous—a major problem that has become part of the agency's culture.

Levies and seizures are also measurements of employee performance. In one case we learned a revenue officer was counseled for "not keeping his statistics up" so he seized several properties the next day. Some officers who are able to collect the full amount of taxes due are often rated lower than those who have seized property. Seizures may be done for status and promotion as much as for enforcement.

Not only are levies and seizures measurements of an employee's performance, but so is the number of referrals of cases to the Criminal Division. In other words, while there may be no basis in fact for a criminal referral, a taxpayer's life may well be turned upside down simply to keep an employee's, or district's, performance statistics up.

Liens and levies may be filed against those whom the IRS knows has no liability for a particular tax. Parents, relatives or a company employee may have liens filed against their property, or have a paycheck levied, in order to get the real taxpayer to comply. This is called the "whipsaw technique." This practice was explained to us as, "When we go after everybody, we know someone will pay." We will present an example of that method during the course of this hearing.

One of the most distressing things you will learn from this hearing is the preference to audit middle- and lower-income taxpayers, as well as mom and pop small businesses. This is almost incredible to understand. Certainly it's not for the high revenues that these kinds of audits bring to the Treasury. So why are these Americans audited? Because it's easy. Most often, these are the taxpayers who can't afford to fight back.

Beyond learning about the fear taxpayers have concerning the IRS, I was very much concerned about how agency employees, themselves, feel. Many expressed fear of being retaliated against for speaking out against the kind of abuses I have mentioned here. We have heard in our investigation that the use of false allegations of wrongdoing against targeted employees takes place. In fact, just the number of times we heard the term "targeting" in relation to harassment of employees was stunning. Certainly if this treatment bothers the front-line employees of the IRS, it's devastating to the American taxpayer.

Over the next three days we will hear more about these concerns. As Congress has given the IRS awesome power in an effort to help the agency carry out its tremendous responsibility, it is also Congress's responsibility to ensure that such power is being used prudently, constructively, and with regard for the taxpayer and employees of the agency. What we are learning suggests that there are problems and

begs that Congress address three fundamental questions: First, does the IRS have too much power? Second, if Congress were to limit that power, what expectations do we have that the new limits will be more effective than the old limits? Third, how do we go about changing the culture of the IRS?

What we seek to do is help the IRS get back to its mission statement. That statement reads: "The purpose 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."

This is our desire. Improving the IRS is not only good for taxpayers; it's good for government.

SAN FRANCISCO EXAM DIVISION EXAMINER

ISSUE 96-31

Midyear Report

March marked the halfway point through FY 96 and is an appropriate time to look at how the Examination Division is doing in achieving its goals. Below are listed the goals for FY 96 and accomplishments to date. Also listed is the Western Region average and in some circumstances where the San Francisco District falls in relation to other Districts in the Region.

Category	*Goal*	*Current Through 3/30/96*	*Regional Average*
RA 1040 $ per Hour	$ 1,000	$ 771	$ 980
RA 1120 $ per Hour	$ 2,215	$ 1,787	$ 1,105
TA 1040 $ per Hour	$ 1,012	$ 664	$ 722

For both RA and TA 1040 dollars per hour, a general improvement is needed. A large improvement can be made by bringing down hours per return.

RA 1040 Cycle Time			
Business	335	248 (3rd best in Region)	326
Non-Business	337	348	402

TA 1040 Cycle Time			
Business	251	187	274
Non-Business	194	175 (3rd best in Region)	225

RA 1120 Cycle Time	376	405	375

We need to improve our 1120 cycle time but this is not of overriding concern because these returns have been productive and may take a little longer to turn over. Our cycle

per return should be one factor which is considered in all examinations when determining if they will be productive or not. If we can improve in this area it will have a dramatic effect on our overall productivity.

EQMS Standards RA	*Current Accomplishment*	*Goal*
#3 Require Filing Checks	56%	66%
#9 Time Span	26%	26%

EQMS Standards TA		Goal
#3 Require Filing Checks	60%	44%
#9 Time Span	74%	76%

The percents above delineate the District's effectiveness rating in the categories. As can be clearly seen, we need to improve in RA time span on cases, RA required filing checks, and TA time span. Previous issues of the GPE have stated why we fail these standards and what needs to be done to pass the standards on each examination. If you are unsure of what is needed to pass a standard, please consult your manager.

Overall the District has had a moderately successful half year in meeting objectives. Our hope is that if we keep the organizational goals in mind we can have an exceptional second half of the year.

PREPARED STATEMENT OF TOM SAVAGE

Good morning/afternoon. My name is Tom Savage. I run a small construction management company in Lewes, Delaware, which my wife and I own. I want to thank the Committee for the opportunity to share my story which has been no less than a true "horror story" for my wife and me.

We were unfortunate to have been the subject of a zealous, unrelenting, and abusive pursuit by an IRS Revenue Officer with the assistance and complicity of attorneys, and particularly the lead attorney at the Department of Justice, who were charged with advising the IRS. They were in a position to stop the abuse and yet permitted it to continue, perhaps even causing much of it. In the interest of time, I will simply say that the emotional damage done to my wife and me outstrips the financial damage we suffered, which was not insubstantial. There were many sleepless nights. Believe me, when the sources of the government are unleashed on you, you are in trouble, no matter how good your case. Few people know what it is like to be in the cross-hairs of the IRS. We unfortunately do.

I am here today in the hope that by telling my story, and participating in these hearings, I might help bring about real and lasting change at the IRS. For the sake of other taxpayers, I hope that this happens.

The nightmare began when a subcontractor of Tom Savage Associates or TSA, my own company, fell behind in paying its employment taxes. The case ended with intense litigation in the United States District Court, which TSA was forced to bring in order to recover a payment check issued by the State which had been wrongfully seized from it by the IRS. In order to keep my company afloat, we had to settle the case, much as this offended our desire to "stand on principle." We allowed the IRS to keep $50,000 of the check that was seized in order to get the case over, since the litigation was bankrupting our company financially and us emotionally. We regret not having pursued the case to the end but we had to save our business. The government had endless resources to drag the case out. We did not. In settling the case, the government extorted $50,000 before giving back the check. The government attorneys knew that it was going to cost an additional $50,000 to litigate the case and used it to leverage the IRS' position.

In brief, the subcontractor had tax problems that surfaced during the period it was working for my company, TSA, on a project for the State of Delaware. Unknown to TSA, the subcontractor had not been paying its employment taxes for approximately one year before the project commenced. TSA, with the subcontractor's assistance, was building a women's correctional facility. The subcontractor performed the construction while TSA oversaw the project and provided the performance bond for

the project. Toward the end of the job, the subcontractor's tax problems came to light. The IRS investigated the subcontractor, but quickly concluded that the amount of taxes due were uncollectible. Since the IRS was unable to collect the money from the subcontractor, the Revenue Officer, in his zeal, set his sights on TSA. First he attempted to hold me *personally* responsible for the unpaid taxes, asserting that I was a "responsible person" representing the subcontractor. This approach failed when my tax advisors filed a legal memorandum explaining the severe deficiencies with this theory, so the IRS then went after my company. The IRS now asserted, falsely, that TSA and the subcontractor were partners and that the employees of the subcontractor working on the project were actually employees of this fictitious association between TSA and the subcontractor. My tax advisors pressed the Revenue Officer for some authority for asserting the existence of this fictitious "partnership" that he had established between TSA and the subcontractor. The Revenue Office pointed to a non-tax Delaware case that was totally inapplicable.

Undaunted by challenges to provide authority in support of the fictitious "partnership," the Revenue Officer caused the IRS to issue a "30 day letter," which proposed as assessment against the fictitious "partnership." We immediately filed a written protest with the IRS Appeals Office and eagerly awaited the Appeals Conference to put the case behind us. As things turned out, we were never given an opportunity to present our case to the Appeals Office. While waiting for the Appeals Conference to be scheduled, the IRS seized a large check paid to our company by the State of Delaware for the project. At the time of the seizure, and this is significant, there was no assessment entered against either TSA or the fictitious "partnership" between TSA and the subcontractor. Even if one were to assume that the partnership existed, which is a generous assumption even for the sake of argument, the only assessment on the books allowing the IRS to enforce collection was against the subcontractor. The seizure of the check thus constituted a "wrongful levy." Open and shut. Existing IRS revenue rulings clearly hold that the assets of a partnership or another partner may not be seized to satisfy the tax debts of another partner.

It is a fundamental principle of the tax law that the government may not seize any taxpayer's property, or undertake any type of enforcement action against a taxpayer until there has been an assessment entered against the taxpayer. For those of you not versed in tax procedure, an assessment is the administrative equivalent of a judgment. In our case, the right to be free of government collection action until such time as an assessment has been entered was flagrantly violated. Not only was this right violated, as will be explained in a moment, the IRS would later attempt to sweep this fact under the rug in the US District Court. Indeed, the government attorneys were so hell bent on "winning" that they waged a behind-the-scenes campaign during the proceedings in District Court to sanitize the record presented to the judge. The government requested an extension of time to respond to the plaintiff's brief in support of its motion for summary judgment and then, during the extension, entered an assessment against the fictitious "partnership" between TSA and the subcontractor by hand delivering a "notice of demand" the Saturday before the government's answering brief was due. The government attorneys then had the audacity to argue in their answering brief that an assessment had been entered against the fictitious partnership. No mention was made in the government's brief that the assessment was entered 25 weeks after the IRS seized the check and literally days before the answering brief was filed. And these were the attorneys we though would stop the abuse!

When we instituted the suit, we were convinced that the case would be resolved quickly, that the government would concede the case once it got into the hands of a competent attorney. We guessed wrong. The government had my money and was not going to give it up without a fight. Faced with this "win-at-all-costs" attitude, we were clearly in for a protracted battle with the IRS. As much as it offended my wife and me, we chose to settle the case and permitted the IRS to keep $50,000 of the proceeds. We wanted to pursue the case to the end, but to do so would have destroyed our business.

On top of the $50,000 that the IRS kept, I had other financial losses. Although my attorneys reduced their fee substantially in encouraging me to settle the case, their fees were substantial. We spent $51,000 in legal fees in connection with the case. We lost approximately $600,000 in business during the proceedings with the IRS and in its wake. And finally, we lost our sense of well being, confidence, and freedom from government intervention.

I believe the IRS, the Revenue Officer, the District Counsel attorneys, and the attorneys with the Tax Division of the U.S. Department of Justice should be held accountable for their conduct. Unless abuses of this type committed by the IRS and its representatives are met with strong response, including legislation to compensate victims of IRS abuse, they will continue.

I thank the Committee for the opportunity to be here today.

Attachments.

U.S. Department of Justice
Tax Division

PLEASE REPLY TO: P. O. Box 227
Ben Franklin Station
Washington, D.C. 20044

Facsimile No. 8-202-514-6866

MLP:EJS:MJK:RSClarke
5-15-1052
CMN: 9391444

FEDERAL EXPRESS

IMMEDIATE RESPONSE REQUESTED

November 1, 1993

Answer Filed
11/3/93

H. Stephen Kesselman
District Counsel
Internal Revenue Service
Mellon Independence Center
701 Market Street, Suite 2200
Philadelphia, Pennsylvania 19106

Re: Tom Savage Associates, Inc. v. United States, et al.
Case No. 93-421-SLR (USDC D. Del.)
Your ref: CC:PHI-GL-180-93-B PKarrHarrison

Dear Mr. Kesselman:

Enclosed please find for your information the plaintiff's Motion for Summary Judgment and Opening Brief in the above-captioned case. Please review the motion and provide us with your views regarding any possible opposition. Our response is due to be filed on November 16, 1993. Accordingly, we request your views by no later than November 9, 1993.

Specifically, after reviewing the complaint, the motion for summary judgment, your defense letter and all of the information forwarded by Revenue Office [redacted], we believe that the levy in question was wrongful. Even assuming the facts in their most favorable light, at the time of the levy the IRS had assessed [redacted] and only [redacted]. No assessment existed against TSA or the alleged joint venture/partnership. We do not believe that the IRS can levy on the partnership property for the unpaid federal employment tax liability of one of the partners. In fact, your February 9, 1993 memorandum to the Chief, Advisory Unit seems to recognize that an assessment would be required against the joint venture before undertaking any collection activity from partnership assets. If you are aware of any authority which supports the levy which was served, please inform us. In fact, we read your defense letter to essentially concede that the levy was wrongful. You have requested our views regarding an immediate assessment against the joint venture after which you would have us file a foreclosure counterclaim against the interpled funds. Whether to proceed with the assessment is within your purview.

Accordingly, we request that you provide us with authority which supports the levy in the first instance. We recognize that you have classified this case as "standard" and, therefore, request your views as quickly as possible. The plaintiff has already offered to dismiss the case with the parties to bear their respective attorney's fees. This may be a prudent course of action.

As you know, this case has been assigned to Mr. R. Scott Clarke of this office who may be reached at [redacted]

Sincerely yours,

MICHAEL L. PAUP
Acting Assistant Attorney General
Tax Division

By: Edward J. Snyder
EDWARD J. SNYDER
Chief, Civil Trial Section,
Eastern Region

cc:

William C. Carpenter, Jr., Esquire
United States Attorney
District of Delaware
1201 Market Street, Suite 1100
Chemical Bank Plaza
Wilmington, Delaware 19899-2046
ATTN: Patricia C. Hannigan, AUSA

PREPARED STATEMENT OF ROBERT S. SCHRIEBMAN

Thank you for the opportunity to be of service and to express my views on the current state of the Internal Revenue Service. I am a practicing tax attorney in a suburb of Los Angeles. For the past 20 years, my practice has been primarily limited to matters of tax collections, audits and tax litigation. I represent clients in all walks of life and in all tax brackets. I'm in the trenches everyday, eye-to-eye with IRS auditors and tax collectors.

One of the high points of my legal career was the obtaining of U.S. veterans recognition for the American Volunteer Group, commonly known as the Flying Tigers of World War II fame. I am the author of several books on IRS practice and procedure with emphasis on audit and collection practices of the IRS. I wrote the first practitioner's manuals on IRS and California collection defense practice. I have also written books for business and individual taxpayers who are having IRS problems. I frequently speak at major tax institutes throughout the country such as the NYU and USC Tax Institutes, Northwest Tax Institute and annual meetings of the American Society of Attorneys-Certified Public Accountants. I am continuously educating and writing for attorneys, CPAs and tax practitioners on IRS and California practice and procedure.

Most IRS tax collectors (Revenue Officers) are decent overworked people with an unpopular job. However, they do their utmost to follow the law and the provisions of the IRS Manual. Unfortunately, they do not keep current on changes within the IRS and very often their internal libraries are seriously outdated.

Recently, Revenue Officers have informed me that the IRS is adopting a get-tough attitude with regard to tax collections. While the first Taxpayer Bill of Rights of 1989 did away with the keeping of formal internal statistics on collection, it still appears that the only way to make a name for yourself within the Collection Division is by the number of seizures under your belt. The remainder of my testimony will address an unpleasant example of this which I have been involved with over the course of the past few months.

The IRS has fixed standards relating to allowable living expenses in order to grant the taxpayer a payment arrangement. A taxpayer has no right to a payment arrangement. These standards are unrealistic and do not take into consideration financial commitments made by people prior to their becoming delinquent in their taxes.

The same unrealistic IRS standards apply to the cost of owning and operating a car and other essential living expenses such as food, clothing and personal maintenance. A taxpayer is not allowed educational expenses such as a child's private school or college education. A taxpayer is not allowed to support his or her place of worship.

These unrealistic expense standards have driven many taxpayers into unnecessary bankruptcy in order to take advantage of the automatic stay from IRS seizures and wage garnishments and to work out long-term payment plans, some available without interest. However, these otherwise productive taxpayers now have the stigma of bankruptcy on their record. My colleagues around the country have expressed the same frustrations. The driving of normally solvent and productive taxpayers into bankruptcy because of unrealistic IRS expense standards is a national tragedy.

The bottom line is the IRS would rather force a taxpayer into bankruptcy than to accept a fair payment arrangement or a settlement known as an offer in compromise.

The IRS can take a taxpayer's home on just the signature of the District Director alone. There is no court hearing, no notice and no opportunity to litigate the merits of the IRS' claim.

The IRS can close down a business and take away a taxpayer's livelihood by merely filing a few papers in federal court. The judge simply signs the seizure order and that's all there is to it. The taxpayer gets absolutely no notice or opportunity to contest the legality of the assessment or the amount the IRS claims is owed. In doing so, the IRS can commit perjury and get away with it. What is sad is this type of criminal conduct seems to be condoned by the tax collectors' superiors. To me, this violates not only the Fourth and Fifth Amendments and of our Constitution, but one's basic civil rights as well, it's just plain not fair!

As an example, let me tell you about "Joe." Joe operates a small business. In the early 1990's he owed the IRS. Because he couldn't pay in full, he made a deal with the IRS known as an offer in compromise. This was accepted by the IRS on the condition that regular payments be made. The IRS claims Joe breached the terms of the deal; Joe claims he paid in full. The IRS did not send Joe the required default warning letter. This IRS error entitles Joe to have the offer reinstated. Since the beginning of the year, the IRS, through seizures and wage garnishments, has taken

more than the terms of the original offer allowed. Although repeated requests have been made for a copy of the warning letter, to date it has not been produced.

For the past several years, Joe has been current on his filings and tax payments. When a taxpayer is current, the IRS directives require that the IRS work with the taxpayer in suspending collection due to economic hardship or establishing an installment payment arrangement.

But Joe's assigned Revenue Officer does not want to discuss a hardship suspension or an installment payment arrangement. The Revenue Officer wants to close down Joe's business while Joe and his wife are barely able to provide an income to support their two children.

In order to obtain a court order to close down a business, all that is needed is a formal application and a sworn declaration that the revenue officer followed very specific procedures to protect a taxpayer's Constitutional rights. It's all very secretive. The taxpayer is never given notice of these proceedings and is never afforded an opportunity to contest the merits of the IRS' claim. The Revenue Officer simply obtains the seizure order through the Court, represented by the U.S. Attorney's Office and serves the final court order along with the seizure notice to the taxpayer who must immediately vacate the business premises. The taxpayer's only recourse is a long and costly tax refund procedure which most likely will wind up in court. In the meantime, the IRS sells the business assets and the taxpayer's business is gone!

One day I was negotiating a payment arrangement, and the very next day the Revenue Officer, without warning, showed up at Joe's place of business together with several IRS personnel and padlocked the entire premises. Two court orders were obtained against Joe personally and his wholly-owned corporation. Joe was not shown the court orders and the several attempts to request copies of the orders from the Revenue Officer and his supervisor went unanswered and still go unanswered!

Two court orders were finally obtained from the District Court Clerk. Both supporting Revenue Officer declarations revealed blatant perjury. The Revenue Officer represented to the Court that he met with Joe and asked his permission to enter and seize his business. It was on these representations that two District Court judges issued the seizure orders. Joe never met with the Revenue Officer. In fact, during that week, Joe was out of the state and never spoke to anyone from the IRS.

In obtaining perjured court orders, the IRS violated Joe's civil rights and rights under the Fourth and Fifth Amendments of the Constitution.

The IRS allowed Joe back in his business a few days later but not before Joe paid $6,400 which he had to borrow from friends, a most humiliating experience. Before handing Joe back the keys to his business, and dangling the keys in front of Joe's face, the seizing Revenue Officer, the fellow who committed the perjury, insisted that Joe revoke my power of attorney and sign a paper waiving his rights to complain about any IRS misconduct. Feeling helpless, Joe complied but under duress.

One week, the IRS told Joe he owed a little over $160,000. But, just three weeks later, Joe was told he owes close to $314,000—with no explanation.

Some IRS auditors and tax collectors have taken the position that the Congressional directives set forth as statutes in the Internal Revenue Code are simply guidelines that are free to be rejected at will. If IRS employees do not follow the law and if they commit perjury before federal judges, their conduct is often condoned by their superiors, including those at the highest level.

With increasing frequency, I find that I have to go over the Revenue Officer's head to his or her manager and even over the manager's head to the Branch Chief. It is getting increasingly more difficult to distinguish ignorance from bully tactics and overzealousness. I do believe that Revenue Officers are being pushed by their superiors to undertake more seizures in order to achieve promotions within the system.

The example I have presented here today reflect a lack of accountability within the system, to the taxpayer, and to the taxpaying public and reflect an institutional arrogance. This is especially true in exceptional cases where a maverick or renegade tax collector throws aside the law and internal IRS procedures in order to achieve self-promotion and recognition by his or her superiors.

SUGGESTIONS FOR IMPROVEMENT OF IRS SERVICE AND TAXPAYER RIGHTS

I.R.S. stands for Internal Revenue **Service.** We're not getting as much service as we should for our money these days. Taxpayer abuse will not stop by just putting in a new high tech computer system. While electronic technology is very important and necessary, we must keep in mind that these are just machines and machines can serve to further widen the distance and alienate the American people from their Government. Creating a new Board of Governors that sits in its insulated ivory towers is not the answer either.

We need to put some real teeth into the Taxpayer Bill of Rights. Of primary importance, the IRS should not be allowed to take any property of any kind from a taxpayer without notice and an opportunity to be heard. The IRS should pay damages not only when its agents violate the statutes in the Internal Revenue Code, but should also pay damages for violating internal procedures set forth in their own Manuals. Punitive damages should also be awarded to taxpayers whose rights have been violated.

A taxpayer should be allowed a change of IRS auditor or collector for reasonable cause.

What is needed is an external check and balance system; a forum where small business owners and the American taxpayer can afford to be heard without first having to pay what the IRS says is owed and where all collection activity must immediately stop until the issue is heard and ruled upon. What is needed is a forum where the burden of proof is shifted to the IRS instead of the way things are now where the taxpayer is presumed guilty until proven innocent. This forum must not be part of the IRS.

May I respectfully suggest the institution of an independent administrative system of review of IRS collection activities before they are allowed to be implemented. A taxpayer should be allowed to appeal IRS action to an Administrative Law Judge and, if necessary, appeal that Judge's decision to an Administrative Appeals Board.

CONCLUSION

In conclusion, let me make it clear that not all taxpayers who owe the IRS deserve a kinder and gentler hand. Some of these people need a fist. Some do not take their tax obligations seriously, but most people do. Most Americans want to do the right thing by the IRS and get back on track. The IRS should not be abolished, but the machine definitely needs a tune-up. Taxpayers deserving respect must be treated with respect; they must be given a level playing field. Our laws, our courts and our Constitution must have the highest level of respect.

On this date in 1779, a Scottish born American commanded an old French ship he renamed the Bon Homme Richard in honor of Ben Franklin. He got into quite a fight and was out-gunned by a larger British ship known as the Serapis. When the British captain asked him to surrender, he replied, "Sir, I have not yet begun to fight." That man was John Paul Jones, the Father of the American Navy. Ladies and gentlemen of the Senate, you must show the American people that you, too, have not yet begun to fight!

Thank you for this opportunity to appear before you.

PREPARED STATEMENT OF BRUCE A. STRAUSS

My name is Bruce A. Strauss and I'm currently an Enrolled Agent licensed to represent taxpayers before the IRS. I have been President of the Enrolled Agents in our five county area in Florida for the past three fiscal years. I retired from the Internal Revenue Service after 31 years, the last 18 of which I held the position of Division Chief within the Collection Division. I also received nine consecutive performance awards from 1983 through 1991. At the time of my retirement (April, 1992), I was Senior Division Chief.

I tell you this trusting you will accept the fact that I have considerable expertise regarding the operations of the IRS. This includes its history, its authorities, its personnel practices, and also its problems. Since beginning my practice representing the public as an Enrolled Agent, I have become increasingly concerned about the ability of the IRS to be fair and objective in dealing with the American public. I am also concerned with the public's fear of the IRS. THIS ENVIRONMENT OF FEAR MUST CHANGE. That is why I sit before you today.

The IRS has been very successful in its primary mission of collecting taxes, bringing in over $1.3 trillion dollars in FY '95. It is a role model for other countries to follow, and has played no small role in the economic success of this nation.

Obviously, I do not believe this system is broken. However, my experience and the feedback I receive in my work, tell me the public's confidence in the IRS is being eroded by the perception that it is losing its ability to apply the Internal Revenue Code and the resulting morass of regulations in a fair and objective manner. When a dispute with the IRS rises, the current systems in place to deal with the dispute are cumbersome, expensive, time consuming, and often times ineffective. The result is that the fear of the IRS continues to grow. THIS IS AN UNACCEPTABLE CONDITION.

In a Democracy, the first condition that must he met is that the government must respect the citizens that it serves. I am not sure that condition exists today within

the IRS. My purpose today is to assist in restoring, the confidence of the American public in the Internal Revenue Service.

One of the problems which affects the way the IRS personnel interact with the taxpayers is the drive to achieve statistical operational objectives. One of the primary drives, if not THE primary drive, for the Examination Function is, "dollars recommended for assessment". This statistic does not measure how much money was actually collected nor does it measure how much additional tax was actually assessed via the examination process. It only measures what the Examination Function proposes to assess against the taxpayer (30 day letter). The examination function made this measurement one of the operational objectives for Branch Managers and above, as I recall, in FY 90. About the same time the formal quality review of cases being issued 30 day letters was ceased. A fundamental principal of any organization is that employees will give their managers what their managers tell them is important. Or expressed a different way:

AN ORGANIZATION IS DRIVEN BY THE OBJECTIVES ON WHICH THE MANAGERS ARE EVALUATED

As a result, an environment or culture has emerged within the IRS that has made its employees often callous to the rights and concerns of the taxpayers. Statistical objectives for any agency with the power of the IRS are inappropriate, but when one considers the IRS has a measurement of what is "recommended for assessment", this strive to achieve specific objectives becomes intolerable.

I have a significant compassion for the IRS employees in their most delicate responsibility of ensuring that each citizen files and pays their fair share of taxes. But based on my knowledge, the primary problem lies with the ineffectiveness of the top management of the IRS. Instead of assessing the current problems and taking appropriate steps to ensure correction of these problems, what I see taking place is a "circle the wagons" mentality. This management approach has lead to significant problems which include:

1. Denial of mistakes which lead to integrity issues;
2. Using a sledge hammer to resolve compliance problems:
   a. IRS files a return for the taxpayer, with the tax significantly overstated;
   b. Use of Bureau of Labor Statistics to assign additional income; and
   c. Not applying Internal Revenue Code sections which benefit the taxpayer.

There is a mentality within the IRS that mistakes are rare, and those that do gain notice are blown out of proportion. In fact, I would not be surprised if, as a result of this hearing, you hear that any complaints by taxpayers which you may raise, while unfortunate, are statistically irrelevant due to the 200 million returns that are successfully processed each year. Based on my knowledge, such a statement would not be factual. The truth is that of the Examination Function cases that I have seen as a representative of the taxpayer, the IRS often does not operate within its proper authorities. When called on these matters, the IRS response is often a denial, or a "spin" is put on the issue in an attempt to protect their position. Such conduct shows a complete disregard for the taxpayer and their fundamental rights as citizens.

I know of numerous cases where the IRS has specifically exceeded its authority. In one of most egregious examples, the IRS (Collections) predetermined that 637 taxpayers were liable for employment tax [they did not conduct legitimate investigations] used extortion tactics to have taxpayers sign returns which the IRS prepared; did not use any IRC sections which benefit the taxpayer; and disregarded established law, authorities and procedures; 630 of these taxpayers were also denied their "Due Process Rights." When I brought this matter to their attention, instead of taking corrective action, they "circled the wagons." After 3 years of my pursuing a resolution of this matter, the IRS has boxed itself into a position with significant integrity issues in question. The current status is that I have been unable to obtain a legitimate response form the Regional Commissioner.

Another example is the tactic of assessing a tax twice for the same 1040 tax form. The tactic involves accepting the Schedule C income, but disallowing all the related business expenses. When the taxpayer requested the case to be reopened, the deductions were allowed, but then the IRS reopens the income issue (in direct conflict with the IRC) and assesses additional taxes based on the Bureau of Labor Statistics income information to boost the income of the taxpayer. Then the taxpayer was informed that he has no appeal rights to contest the additional resulting tax.

The advent of the concepts, as shown above, that the IRS now has the authority to assign additional income to a taxpayer at its discretion, without any basis in fact, is frightening and absolutely unacceptable.

I admire the current efforts of Congress, such as the "Commission on Restructuring the IRS" to encourage the IRS to become more responsive to the public. I also appreciate the opportunity to contribute to the process by testifying at this important hearing, and I commend you Mr. Chairman for the courage to engage in this effort. But I do believe that Congress must share some of the blame for what has happened. Funding must be consistent with a long term philosophy, and the oversight of the IRS must be significantly improved. This hearing today is a great start, but long overdue.

For each of you dealing with your constituents, I would offer that fact that the ability of any single Congressional staff to resolve a taxpayer issue with the IRS is extremely remote. I would suggest forming a single staff of highly trained and skilled individuals that could be a central clearinghouse for all taxpayer complaints received by the Congress. This would also provide a database of problems, that when noticed to be widespread, could be used to make systemwide corrective actions. It is only in this way that the management of the IRS can be held accountable to the Congress and to the American people.

I am submitting a more comprehensive statement for the record, which includes some of my recommendations to remove the fear of the public when dealing with the IRS. I sincerely hope that my 31 years of experience with the IRS has helped in some small way to create a clearer picture of the agency. The many good people of the IRS, who perform a difficult task everyday, and the taxpaying public deserve your best efforts at cleaning up this important national asset.

PREPARED STATEMENT OF LYNDA D. WILLIS

Mr. Chairman and Members of the Committee:

I appreciate being invited here today to discuss the availability of information on the Internal Revenue Service's (IRS) use of its enforcement authorities to collect delinquent taxes. In general, if taxes remain unpaid after IRS gives appropriate notice and demand for payment, IRS is authorized by the Internal Revenue Code to seize the delinquent taxpayer's property either through direct action or through demand (referred to as a notice of levy) made on third parties, such as banks or employers, to turn over the taxpayer's assets or earnings to IRS.[1] IRS is also authorized to file liens against the delinquent taxpayer's property.[2]

According to data IRS pulled together from various internal management systems, in fiscal year 1996, IRS (1) filed about 750,000 liens against taxpayer property, (2) issued about 3.2 million levies on taxpayer assets held by third parties, and (3) completed about 10,000 seizures of taxpayer property. These enforcement actions can have severe financial consequences for taxpayers, and the potential exists for such actions to be taken in error or improperly. Accordingly, you asked us to determine if information existed that could be used to determine whether collection enforcement authorities were properly used.

To determine whether information existed to evaluate IRS' use of collection enforcement authorities, we (1) asked IRS to provide us with available basic statistics on its use, and misuse, of lien, levy, and seizure authority from 1993 to 1996; (2) reviewed a small and subjectively selected sample of seizure, revenue officer, appeals, and problem resolution case files to identify the types of information that may be available from those files; and (3) interviewed IRS employees involved in these areas to determine how and when collection enforcement authorities were used, the controls for preventing misuse of those authorities, and the results of taxpayer complaints about the inappropriate use of the authorities.

In summary, while IRS has some limited data about its use, and misuse, of collection enforcement authorities, these data are not sufficient to show (1) the extent of the improper use of lien, levy, or seizure authority; (2) the causes of the improper actions; or (3) the characteristics of taxpayers affected by improper actions. The lack of information exists because IRS' systems—both manual and automated—have not been designed to capture and report comprehensive information on the use and possible misuse of collection authorities. Also, much of the data that are recorded on automated systems cannot be aggregated without a significant investment of scarce programming resources. Some information is available in manual records, but—because collection enforcement actions can be taken by a number of different IRS offices and records resulting from these actions are not always linked to IRS' automated information systems—this information cannot be readily assembled to assess the use of enforcement actions. Also, data are not readily available from other po-

tential sources, such as taxpayer complaints, because, in many circumstances, IRS does not require that information on the resolution of the complaints be recorded. IRS officials told us that collecting complete data on the use of enforcement actions that would permit an assessment of the extent and possible causes of misuse of these authorities is unnecessary because they have adequate checks and balances in place to protect taxpayers. However, IRS does not have the data that would permit it or Congress to readily resolve reasonable questions about the extent to which IRS' collections enforcement authorities are misused, the causes of those occurrences, the characteristics of the affected taxpayers, or whether IRS' checks and balances over the use of collection enforcement authorities are working as intended.

USE OF LIENS, LEVIES, AND SEIZURES IN COLLECTING TAXES

The magnitude of IRS' collection workload is staggering. As of the beginning of fiscal year 1996, IRS reported that its inventory of unpaid tax assessments totaled about $200 billion. Of this amount, IRS estimated that about $46 billion had collection potential.[3] In addition, during the fiscal year, an additional $59 billion in unpaid tax assessments were added to the inventory.

To collect these delinquent tax debts, IRS has established a graduated enforcement process. The process starts once IRS identifies taxpayers who have not paid the amount due as determined by the tax assessment.[4] In the first stage of the process, a series of notices are to be sent to the taxpayer from one of IRS' service centers. Collectively, these notices are to provide the taxpayer with statutory notification of the tax liability, IRS' intent to levy assets if necessary, and information on the taxpayer's rights. If the taxpayer fails to pay after being notified, the Internal Revenue Code authorizes a federal tax lien to be filed to protect the government's interest over other creditors and purchasers of taxpayer property.

The second stage of IRS' collection process involves attempts to collect the taxes by making telephone contact with the taxpayer. IRS carries out this stage through its Automated Collection System (ACS) program. During this stage, IRS may levy taxpayer assets and file notices of federal tax liens.

In the final stage of the collection process, information about the tax delinquency is referred to IRS' field offices for possible face-to-face contact with the taxpayer. During this stage, IRS may also levy taxpayer assets and file notices of federal tax liens. Additionally, as a final collection action, taxpayer property, such as cars or real estate, may be seized. Attachment I presents a flowchart that provides additional detail about the collection process.

At any time in the collection process, IRS may find that a taxpayer cannot pay what is owed or does not owe the tax IRS assessed. In such situations, IRS may enter into an installment agreement with a taxpayer, compromise for an amount less than the original tax assessment, suspend or terminate the collection action, or abate an erroneous assessment. Also, if the taxpayer is having a problem resolving a collection action with the initiating IRS office, the taxpayer may go to IRS' Taxpayer Advocate or to IRS' appeals program for resolution. If an enforcement action is taken that involves a reckless or intentional disregard of taxpayer rights by an IRS employee, a taxpayer may sue for damages. In the case of an erroneous bank levy, a taxpayer may file a claim with IRS for reimbursement of bank charges incurred because of the levy in addition to a refund of the erroneously levied amount. If a taxpayer believes that enforced collection would be a hardship, the taxpayer may request assistance from the Taxpayer Advocate.

IRS HAS SOME LIMITED DATA ON THE USE AND MISUSE OF LIEN, LEVY, AND SEIZURE AUTHORITY

IRS produces management information reports that provide some basic information on tax collections and the use of collection enforcement authorities, including the number of liens, levies, and seizures filed and, in the case of seizures, the tax delinquency that resulted in the seizure and the tax proceeds achieved. Also, some offices within IRS collect information on the misuse of these collection enforcement authorities, but the information is not complete.

Overall, IRS' management reports show that IRS' collection program collected about $29.8 billion during fiscal year 1996, mostly without taking enforced collection action. In attempting to collect on delinquent accounts, the reports show IRS filed about 750,000 liens against taxpayer property, issued about 3.2 million levies on taxpayer assets held by third parties, and completed about 10,000 seizures of taxpayer property. Attachment II presents this overall information on IRS' use of lien, levy, and seizure authority during fiscal years 1993-96. Attachment III presents a summary of the distribution of seizure cases by type of asset seized in fiscal year 1996.

For the seizure cases completed in fiscal year 1996, the average tax delinquency was about $233,700, and the average net proceeds from the seizures was about $16,700. Although complete data were not available on tax delinquencies and associated net proceeds for liens and levies, the best information available from IRS indicates that about $2.1 billion of the $29.8 billion was collected as a result of lien, levy, and seizure actions. The remainder was collected as a result of contacts with taxpayers about their tax delinquencies.

The best data that IRS has on the potential misuse of collection authorities are from the Office of the Taxpayer Advocate.[5] However, those data alone are not sufficient to determine the extent of misuse. The data show that about 9,600 complaints involving allegations of inappropriate, improper, or premature collection actions were closed by the Advocate in fiscal year 1996, as were 11,700 requests for relief from collection actions because of hardship. Although the Advocate does not routinely collect data on the resolution of taxpayer complaints, it does collect data on the resolution of requests for relief. According to the Advocate, during fiscal year 1996, the requests for relief resulted in the release—either full or partial—from about 4,000 levy and seizure actions and 156 liens.

These Taxpayer Advocate data are not sufficient to determine the extent to which IRS' initial collection actions were appropriate or not for several reasons. First, the release of a lien could result from a taxpayer subsequently paying the tax liability or offering an alternative solution, or because IRS placed the lien in error. Although the Taxpayer Advocate maintains an information system that accommodates collecting the data to identify whether IRS was the cause of the taxpayer's problem, the Advocate does not require that such information be reported by the IRS employee working to resolve the case or be otherwise accumulated. Thus, about 82 percent of the taxpayer complaints closed in fiscal year 1996 did not specify this information. Of the remaining 18 percent, about 9 percent specified that IRS' collection action was in error either through taking an erroneous action, providing misleading information to the taxpayer, or taking premature enforcement action.

In addition, the Advocate's data do not cover the potential universe of cases in which a collection action is alleged to have been made improperly. The Advocate requires each complaint that is covered by its information system to be categorized by only one major code to identify the issue or problem. If a complaint had more than one problem, it is possible that a collection-related code could be superseded by another code such as one covering lost or misapplied payments. Also, complaints that are handled routinely by the various IRS offices would not be included in the Advocate's data because that office was not involved in the matter. For example, appeals related to lien, levy, and seizure actions are to be handled by the Collection Appeals Program (effective April 1, 1996).

For fiscal year 1996, the Appeals Program reported that of the 705 completed appeals of IRS' enforced collection actions, it fully sustained IRS actions on 483 cases, partially sustained IRS in 55 cases, did not sustain IRS actions in 68 cases, and returned 99 cases to the initiating office for further action because they were prematurely referred to the Collection Appeals Program. According to IRS Appeals officials, a determination that Appeals did not sustain an IRS enforcement action does not necessarily mean that the action was inappropriate. If a taxpayer offered an alternative payment method, the Appeals Officer may have approved that offer—and thus not sustained the enforcement action—even if the enforcement action was justified. In any event, the Collection Appeals Program keeps no additional automated or summary records on the resolution of appeals as they relate to the appropriateness of lien, levy, or seizure action.

FURTHER ASSESSMENT OF EXTENT OR CAUSES OF MISUSE OF LIENS, LEVIES, AND SEIZURES IS LIMITED BY IRS' RECORD-KEEPING PRACTICES

IRS' record-keeping practices limit both our and IRS' ability to generate data needed to determine the extent or causes of the misuse of lien, levy, and seizure authority. Neither IRS' major data systems—masterfiles and supplementary systems—nor the summary records (manual or automated) maintained by the IRS offices responsible for the various stages of the collection process systematically record and track the issuance and complete resolution of all collection enforcement actions, i.e., liens, levies, and seizure actions. Moreover, the detailed records kept by these offices do not always include data that would permit a determination about whether an enforcement action was properly used. But, even if collection records contained information relevant to the use of collection enforcement actions, our experience has been that obstacles exist to retrieving records needed for a systematic review.

Major Information Systems Do Not Contain Data Necessary to Assess Enforcement Actions

IRS maintains selected information on all taxpayers, such as taxpayer identification number; amount of tax liability by tax year; amount of taxes paid by tax year; codes showing the event triggering the tax payment, including liens, levies, and seizures; and taxpayer characteristics, including earnings and employment status, on its Individual and Business Masterfiles. Also, if certain changes occur to a taxpayer's account, such as correction of a processing error in a service center, IRS requires information to be captured on the source of the error, that is, whether the error originated with IRS or the taxpayer.

Although some related data are recorded in the Masterfiles, those data are currently not readily accessible because IRS does not have retrieval programs and IRS officials told us that developing such programs would take considerable time because scarce programming resources are unavailable due to higher priority information management systems work. Moreover, the data that are recorded do not include some key aspects of enforcement actions. For example, the Masterfiles do not contain information on attempted levies—IRS' most frequently used enforcement authority. Also, IRS does not maintain automated information showing all tax payments received as a result of lien or levy actions taken. While IRS procedures provide for coding tax payments according to the event triggering the payment (which could include liens, levies, and seizures), IRS advised us that controls are not in place to ensure that the automated data are complete, and, in a recent limited review, IRS found wide discrepancies between the automated information and actual collections. As a result of the lack of such key data, IRS cannot readily produce data on the overall use or misuse of its collection enforcement authorities or on the characteristics of affected taxpayers. The lack of such data also precludes us from identifying a sample of affected taxpayers to serve as a basis for evaluating the use or misuse of collection actions.

Offices With Authority to Initiate Liens, Levies, and Seizures Do Not Keep Summary Records Related to Appropriateness of Actions

As I noted earlier, the IRS tax collection process involves several steps, which are carried out by different IRS offices that are often organizationally dispersed. Since authorities exist to initiate some of the collection actions at different steps in the process, several different offices could initiate a lien, levy, or seizure to resolve a given tax assessment. In addition, our examination of procedures and records at several of these offices demonstrated that records may be incomplete or inaccurate. For example, the starting point for a collection action is the identification of an unpaid tax assessment. The assessment may originate from a number of sources within IRS, such as the service center functions responsible for the routine processing of tax returns; the district office, ACS, or service center functions responsible for examining tax returns and identifying nonfilers; or the service center functions responsible for computer-matching of return information to identify underreporters. These assessments may not always be accurate, and as reported in our financial audits of IRS, cannot always be tracked back to supporting documentation.[6] Since collection actions may stem from disputed assessments, determining the appropriateness of IRS actions would be problematic without an accurate tax assessment supported by documentation.

Further, offices responsible for resolving taxpayer complaints do not always maintain records on the resolution of those complaints that would permit identification of instances of inappropriate use of collections authorities. We found several examples of this lack of data during our review.

—If a taxpayer complains about enforced collection actions (other than allegations of criminal or serious administrative misconduct by specific IRS employees), the complaint is to be handled initially by the office responsible for the action. These offices do not routinely keep automated or other summary records on the complaints or on the appropriateness of lien, levy, or seizure actions taken. If this information is recorded, it would be included in the affected taxpayer's collection case file and, as I will discuss later, systematically obtaining these files is impractical. Also, in cases involving ACS, where an automated system is used for recording data, specific information about complaints may not be maintained because the automated files have limited space for comments and transactions.

—If a taxpayer complaint is not resolved by the responsible office, the taxpayer may seek assistance from the Taxpayer Advocate. As noted earlier, the Advocate has some information on complaints about the use of collection enforcement authorities, but those data are incomplete. In addition, starting in the last quarter of 1996, the Advocate was to receive notification of the resolution of taxpayer complaints involving IRS employee behavior (that is, complaints about

IRS employees behaving inappropriately in their treatment of taxpayers, such as rudeness, overzealousness, discriminatory treatment, and the like.) These notifications, however, do not indicate if the problem involved the possible misuse of collection authority.

—If a taxpayer's complaint involves IRS employee integrity issues, the complaint should be referred to IRS' Inspection Office. According to Inspection, that office is responsible for investigating allegations of criminal and serious administrative misconduct by specific IRS employees, but it would not normally investigate whether the misconduct involved inappropriate enforcement actions. In any event, Inspection does not keep automated or summary records on the results of its investigations as they relate to appropriateness of lien, levy, or seizure actions.

—Court cases are to be handled by the Chief Counsel's General Litigation Office. Internal Revenue Code sections 7432 and 7433 provide for taxpayers to file a claim for damages when IRS (1) knowingly or negligently fails to release a lien or (2) recklessly or intentionally disregards any provision of law or regulation related to the collection of federal tax, respectively. According to the Litigation Office, a total of 21 cases were filed under these provisions during 1995 and 1996. However, the Litigation Office does not maintain information on case outcomes. The Office has recently completed a study that covered court cases since 1995 involving damage claims in bankruptcy cases. As a part of that study, the Office identified 16 cases in which IRS misapplied its levy authority during taxpayer bankruptcy proceedings. IRS officials told us that the results of this study led IRS to establish a Bankruptcy Working Group to make recommendations to prevent such misapplication of levy authority.

Existing Records Cannot Always Be Retrieved

Even if collection files included information relevant to an assessment of the use of enforcement authorities, obstacles exist to the reconstruction of records that would permit an assessment of the use or possible misuse of collection enforcement authorities. As we have learned from our prior work, IRS cannot always locate files when needed. For example, locating district office closed collection files once they have been sent to a Federal Records Center is impractical because there is no list identifying file contents associated with the shipments to the Records Centers. On a number of past assignments, we used the strategy of requesting IRS district offices to hold closed cases for a period of time, and then we sampled files from those retained cases. However, the results of these reviews could not be statistically projected to the universe of all closed cases because we had no way to determine if the cases closed in the relatively short period of time were typical of the cases closed over a longer period of time.

IRS OFFICIALS SAID THAT COLLECTING DATA TO ASSESS ENFORCEMENT ACTIONS IS IMPRACTICAL AND UNNECESSARY BECAUSE TAXPAYERS ARE PROTECTED THROUGH CHECKS AND BALANCES

We discussed with IRS the feasibility of collecting additional information for monitoring the extent to which IRS may have inappropriately used its collection enforcement authorities, and the characteristics of taxpayers who might be affected by such inappropriate actions. IRS officials noted that, although IRS does not maintain specific case data on enforcement actions, they believed that sufficient checks and balances (e.g., supervisory review of collection enforcement actions, collection appeals, complaint handling, and taxpayer assistance) are in place to protect taxpayers from inappropriate collection action. The development and maintenance of additional case data are, according to IRS officials, not practical without major information system enhancements. The IRS officials further observed that, given the potential volume and complexity of the data involved and the resources needed for data gathering and analysis, they were unable to make a compelling case for compiling the information.

We recognize that IRS faces resource constraints in developing its management information systems and that IRS has internal controls, such as supervisory review and appeals, that are intended to avoid or resolve inappropriate use of collection authorities. We also recognize that the lack of relevant information to assess IRS' use of its collection enforcement authorities is not, in itself, evidence that IRS lacks commitment to resolve taxpayer collection problems after they occur. However, the limited data available and our prior work indicate that, at least in some cases, these controls may not work as effectively as intended.[7]

IRS is responsible for administering the nation's voluntary tax system in a fair and efficient manner. To do so, IRS oversees a staff of more than 100,000 employees who work at hundreds of locations in the United States and foreign countries and

who are vested, by Congress, with a broad set of discretionary enforcement powers, including the ability to seize taxpayer property to resolve unpaid taxes. Given the substantial authorities granted to IRS to enforce tax collections, IRS and the other stakeholders in the voluntary tax system—such as Congress and the taxpayers—should have information to permit them to determine whether those authorities are being used appropriately; whether IRS' internal controls are working effectively; and whether, if inappropriate uses of the authorities are identified, the problems are isolated events or systemic problems. At this time, IRS does not have the data that would permit it or Congress to readily determine the extent to which IRS' collections enforcement authorities are misused, the causes of those occurrences, the characteristics of the affected taxpayers, or whether the checks and balances that IRS established over the use of collection enforcement authorities are working as intended.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you may have.

ENDNOTES

[1]: Under the Internal Revenue Code, levy is defined as the seizure of a taxpayer's assets to satisfy a tax delinquency. IRS differentiates between the levy of assets in the possession of the taxpayer (referred to as a seizure) and the levy of assets such as bank accounts and wages that are in the possession of third parties such as banks and employers (referred to as a levy).

[2]: A lien is a legal claim that attaches to property to secure the payment of a debt. The filing of a lien would prevent the taxpayer from selling an asset, with clear title, without payment of the tax debt.

[3]: The $46 billion figure is based on IRS' analysis of a sample of unpaid tax assessments that, according to IRS' financial statements, consist of balances due where IRS has demonstrated the existence of a receivable through information provided directly from the taxpayer or through actions by IRS that support or validate IRS' claim, such as securing a taxpayer's agreement. Excluded from the receivables are financial write-offs, allowance for doubtful accounts, and compliance assessments where the taxpayer has not responded to validate the claim, i.e., there is not an established claim with the taxpayer.

[4]: IRS tax assessments may result from a number of actions ranging from the self-assessment of taxes by a taxpayer on a tax return filed voluntarily to an IRS assessment of a tax deficiency identified in an audit.

[5]: The Office of Taxpayer Advocate is responsible for helping taxpayers to resolve problems they may be having with any of IRS' various offices, including Collections.

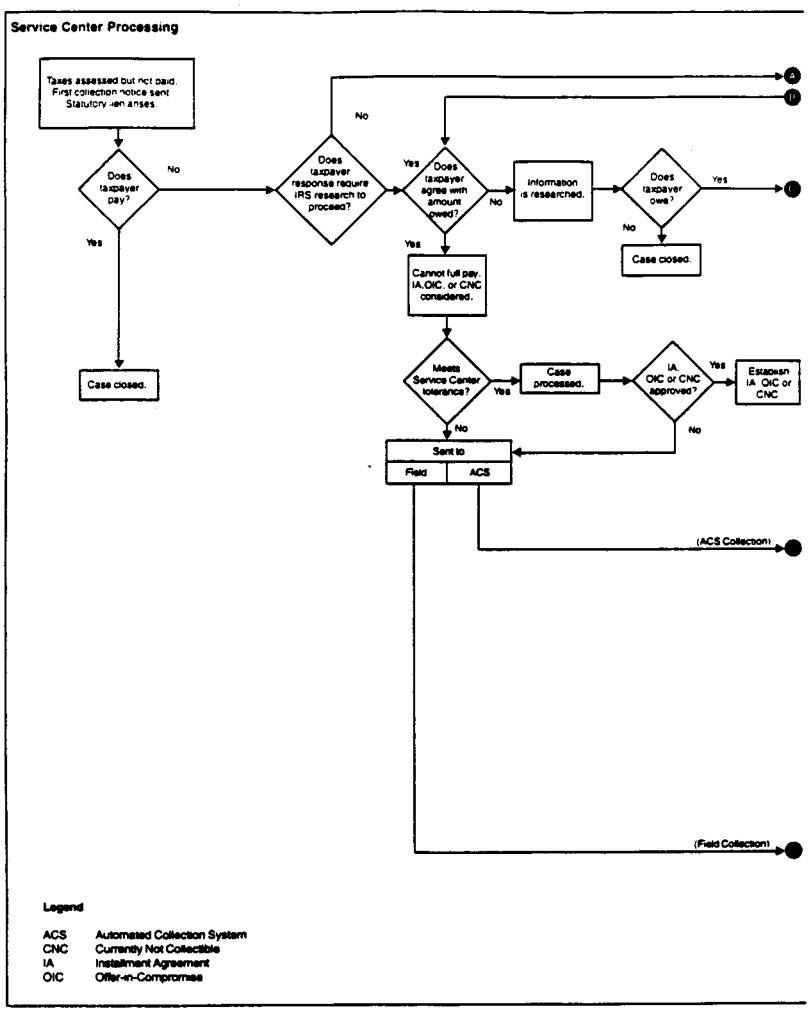
[6]: See *Financial Audit: Examination of IRS' Fiscal Year 1995 Financial Statements* (GAO/AIMD-96-101, July 11, 1996) and *Financial Audit: Examination of IRS' Fiscal Year 1994 Financial Statements* (GAO/AIMD-95-141, Aug. 4, 1995).

[7]: See *Tax Administration: IRS Is Improving Its Controls for Ensuring That Taxpayers Are Treated Properly* (GAO/GGD-96-176, Aug. 30, 1996) and *Tax Administration: IRS Can Strengthen Its Efforts to See That Taxpayers Are Treated Properly* (GAO/GGD-95-14, Oct. 26, 1994).

Attachments.

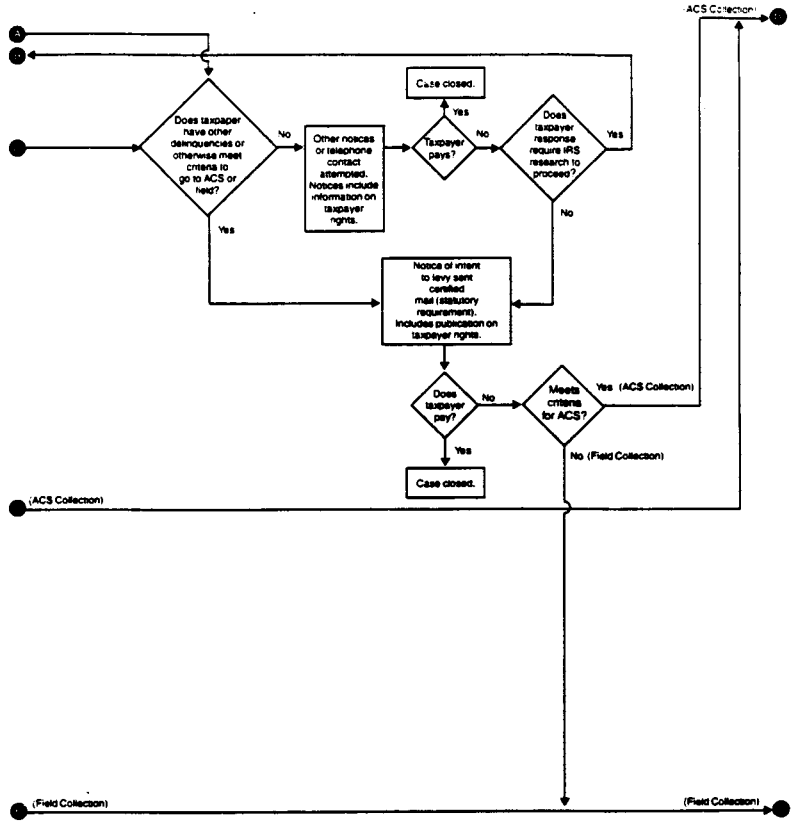
ATTACHMENT I

FLOWCHART OF THE COLLECTION PROCESS



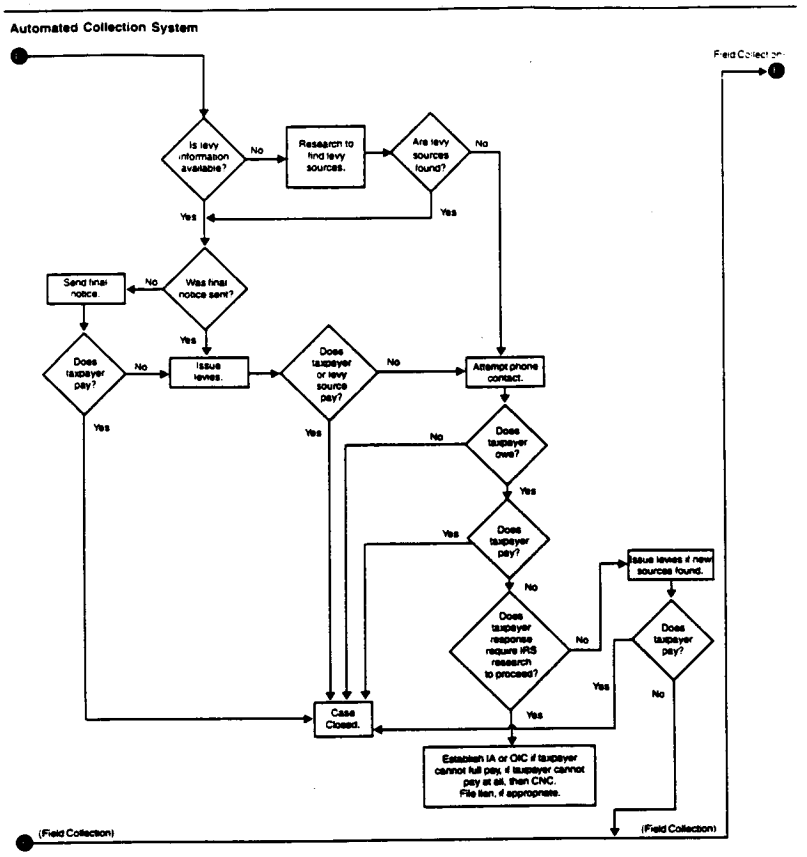
ATTACHMENT I

FLOWCHART OF THE COLLECTION PROCESS (Cont.)



ATTACHMENT I

FLOWCHART OF THE COLLECTION PROCESS (Cont.)

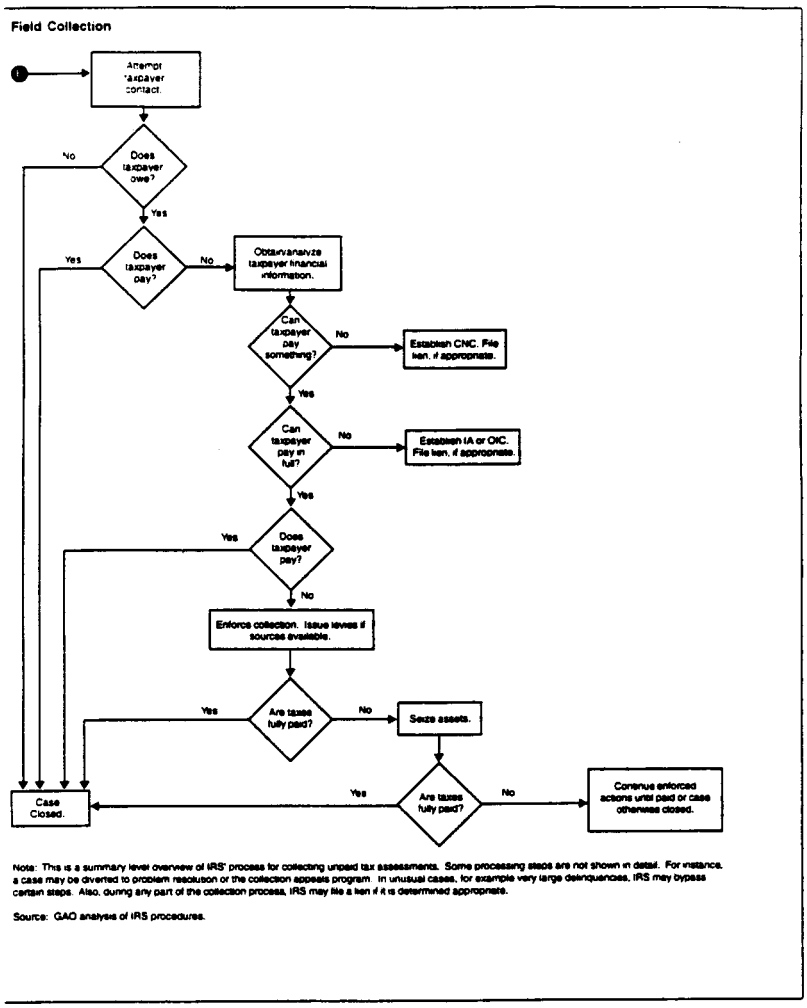


Legend

ACS	Automated Collection System
CNC	Currently Not Collectible
IA	Installment Agreement
OIC	Offer-in-Compromise

ATTACHMENT I

FLOWCHART OF THE COLLECTION PROCESS (Cont.)



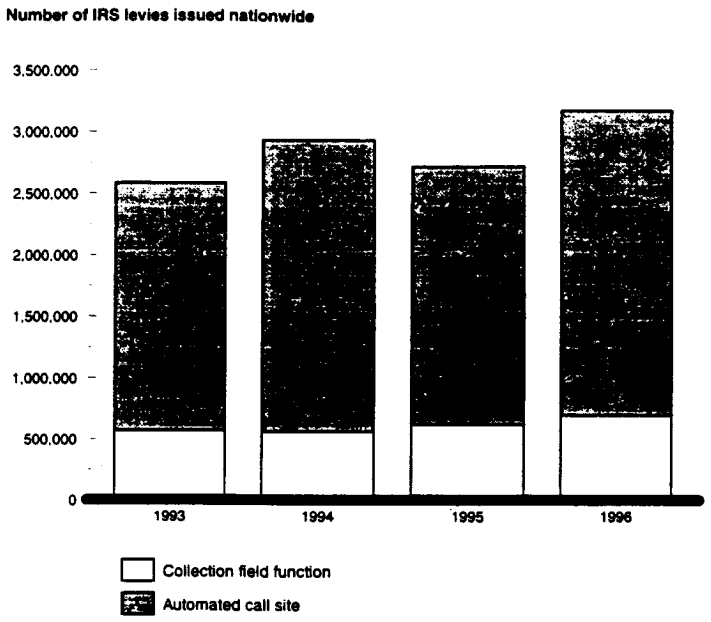
Note: This is a summary level overview of IRS' process for collecting unpaid tax assessments. Some processing steps are not shown in detail. For instance, a case may be diverted to problem resolution or the collection appeals program. In unusual cases, for example very large delinquencies, IRS may bypass certain steps. Also, during any part of the collection process, IRS may file a lien if it is determined appropriate.

Source: GAO analysis of IRS procedures.

ATTACHMENT II

IRS COLLECTION ENFORCEMENT ACTIONS

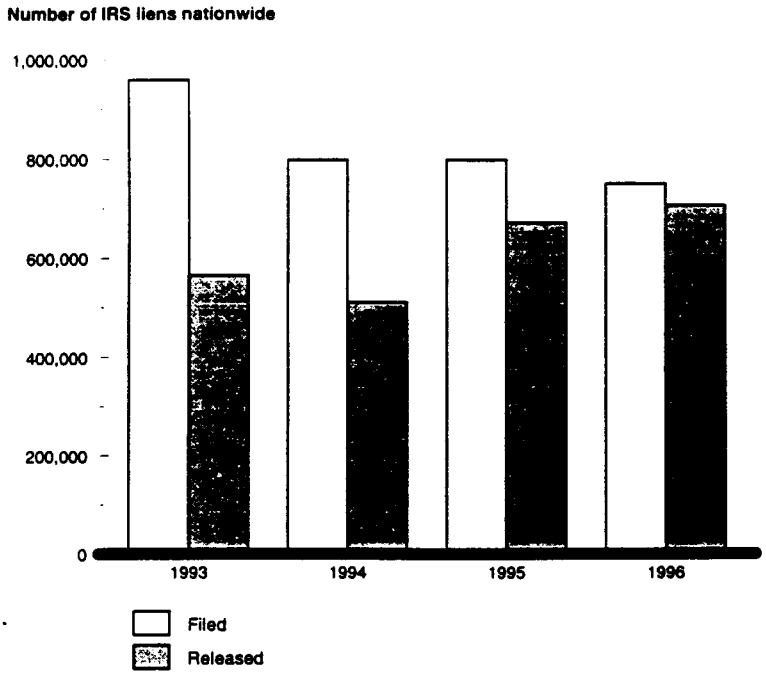
Figure II.1: IRS Levies, Fiscal Years 1993 Through 1996



Source: IRS data.

ATTACHMENT II

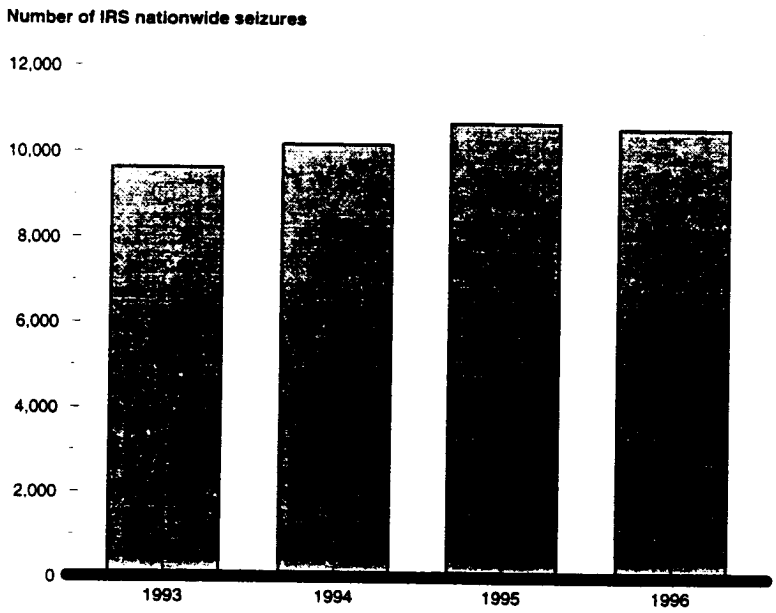
Figure II.2: IRS Liens, Fiscal Years 1993 Through 1996



Source: IRS data.

ATTACHMENT II

Figure II.3: IRS Seizures, Fiscal Years 1993 Through 1996



Source: IRS data.

ATTACHMENT III

DISTRIBUTION OF SEIZURE CASES BY
TYPE OF ASSET SEIZED, FISCAL YEAR 1996

Type of asset	Percent[a]
Personal residence	10.4
Other real property	26.0
Vehicles	31.2
Licenses	3.7
Cash register contents	7.4
Office equipment/furniture	7.5
Machinery	8.0
Inventory	6.0
Safe deposit boxes	1.4
Other business property	7.1
Other personal property	6.6

[a]Percentages add to more than 100 because multiple types of assets may be involved in a single seizure case.

Source: IRS data.

PREPARED STATEMENT OF WITNESS NO. 1

Mr. Chairman, I thank you for the opportunity to appear before you and this Committee today. I have spent the last 25 years either working for the Internal Revenue Service Collection Division or representing taxpayers before the IRS Collection Division. I have collected taxes from thousands of taxpayers and I have also represented hundreds of taxpayers with tax problems. It is my sincere hope that my testimony today will serve to improve the operation of the IRS for the benefit of the taxpaying public.

The Internal Revenue Code does not abuse taxpayers. A complicated tax code may result in some unfair taxation, but rarely is it the cause of abuse. Long multi-page tax forms also do not in themselves cause abuse. Frustration maybe, but not abuse. Even an audit, while certainly stressful should not result in taxpayer abuse.

What then has caused the outcry of American citizens about abuse from the IRS, and the plethora of media reports of the heavy hand used by the IRS?

Abuse of the taxpaying public occurs when the IRS improperly, and sometimes illegally, uses its vast power in the process of implementing some type of enforcement of the tax laws. Enforcement is the levy of a paycheck or bank account, the seizure of a car, or home, or business. It can also result in the forced liquidation of a taxpayer's life savings, IRA, or retirement account.

There is only one small part of the IRS that implements all of these types of enforcement—the IRS Collection Division. The Collection Division is charged with the collection of unpaid taxes and securing unfiled delinquent tax returns. The Collection

Division serves wage and bank levies, files tax liens, seizes cars, homes and businesses to enforce the collection of unpaid taxes. The Collection Division takes literally hundreds of enforcement actions *every day!* Yes, *hundreds* of these actions against taxpayers every day. It is the Collection Division of the IRS that is responsible for the overwhelming majority of IRS enforcement actions.

Enforced collection of unpaid taxes is a necessity. As a result, the danger of taxpayer abuse is both inherent and inevitable. Many taxpayers will feel they have been abused simply because they do not like the fact that they are being compelled to pay their fair share. We understand that "comes with the territory" when enforced collection of taxes is part of one's every day job. So how does one ferret out the true cases of taxpayer abuse? The answer to that question is the important issue to be addressed.

First of all, does the IRS correct abuses when they become aware of them? Often times, they do. However, the more important question is, does the IRS cover up occurrences of abuse? The answer is, **yes!** If the true number of incidences of taxpayer abuse were ever known, the public would be appalled. If the public also ever knew the number of abuses "covered up" by the IRS, there could be a tax revolt.

Why do we not know of these "covered up" abuses? The answer is simple. The IRS protects itself by management support of employee actions whether those actions are right or wrong. This acceptance of abusive actions by management is the root cause of taxpayer abuse.

As I mentioned earlier, the initial cause of taxpayer abuse is IRS employees who actually implement enforcement actions, many of which are approved by management in advance. The enforcement may be necessary, however, it is the improper, or sometimes illegal, enforcement that causes unnecessary abuse. Sadly, some employees repeatedly do not follow proper collection policies and procedures and thereby repeatedly abuse taxpayers. There are several reasons why this occurs:

1. IRS tax collectors, Revenue Officers, but more importantly managers, are not properly trained in IRS policies and Internal Revenue Manual (IRM) procedures.
2. Revenue Officers, but more importantly managers, often respond that IRM policies and procedures are "guidelines" only and do not carry the force of law.
3. When management condones the abuse, the Revenue Officer believes the mistake is acceptable and is free to repeat the error again.
4. Revenue Officers learn the general perception from management that most tax debtors are trying to cheat the government, are crooks or flakes, and generally not willing to pay their fair share of taxes.
5. Revenue Officers capitalize on the taxpayer's inherent fear of the IRS and the intimidation that they can inflict on taxpayers without any consequences for their improper enforcement.
6. Revenue Officers, often with management approval, use enforcement to "punish" taxpayers instead of trying to collect the most money for the government.

There is an IRS policy statement on Collecting Principles P-5-2 #7,which is the most often ignored. In part, it states:

"We should help taxpayers who try to comply with the law, and take appropriate enforcement actions when taxpayers resist complying. Good judgment is needed in selecting the appropriate collecting tool."

If this one policy statement were p**roperly applied,** it would eliminate most all taxpayer abuse. But it is IRS **management** that must lead the way.

The most important factor in all of the foregoing information is that occasional frontline employee errors in judgment, violations of the Internal Revenue Manual and lack of understanding of policy statements are to be expected. However, what is not acceptable is frontline management support of these mistakes. What is unconscionable is upper management's support or tolerance of frontline management errors. The bottom line is that the abuse of taxpayers by the IRS is most often caused by the Collection Division—and **the problem with the Collection Division is mismanagement.**

The following are some general scenarios of Internal Revenue Manual violations and taxpayer abuse that I have personally encountered:

1. On far too many occasions, when a taxpayer fails or forgets to supply one or two items on a long list requested by the Revenue Officer, the Officer's response is the heavy hammer of a paycheck or bank levy.

2. Even when a taxpayer is represented by a Power of Attorney, the Power of Attorney is quite often treated more aggressively than the taxpayer. Revenue Officers generally learn from management the perception that most Powers of Attorney intentionally try to delay the resolution of a case. This attitude is what causes the greatest animosity between the tax representation community and the IRS. Disregarding the policy statement that I read to you earlier results in damaging the credibility of the IRS and the integrity of the Revenue Officer.

3. Quite often, the Revenue Officer finds a specious reason to serve levies on the very source of income or assets that the taxpayer disclosed to the IRS. Again, this only serves to undermine the credibility and integrity of the IRS. It is no wonder that the taxpaying public has an aversion to providing any information to the IRS. It is an aversion created by the IRS' repeated misuse of information provided to them by the cooperative taxpayer.

4. When a levy is served prematurely, even when the IRS admits that the levy was improperly served, the routine IRS response is that when the taxpayer provides additional information, the IRS will "consider" releasing the levy. When the information is provided, the IRS adds insult to injury by not releasing the levy. The IRS cannot seem to grasp the concept that when it makes a mistake, it should reverse the error immediately, no matter what the consequence to the IRS.

5. Revenue Officers routinely violate the relationship with the Power of Attorney by contacting the taxpayer directly. It is also a common practice of Revenue Officers and frontline managers to try to intimidate a Power of Attorney into thinking that the IRS has a right, false though it may be, to interview the taxpayer personally.

6. I have heard of Revenue Officers trying to discourage taxpayers from hiring representatives and making disparaging, and slanderous statements about representatives. Many taxpayer representatives know IRS collection procedures better than the Revenue Officers. In many instances I have heard and experienced more harsh treatment of representatives simply because the taxpayer's representative was former IRS.

7. The Internal Revenue Manual states that, ". . . reasonable necessary living expenses are *always* allowed." However, on more than one occasion I have seen the IRS punish a taxpayer by not allowing reasonable necessary living expenses, even current tax payments. Why? Because the Revenue Officer and the manager did not think the taxpayer obeyed their commands appropriately and simply felt that the taxpayer could somehow survive without reasonable necessary living expenses.

8. A Revenue Officer, with IRS District Counsel concurrence, can serve what are termed, "nominee" liens and levies, against third parties whom the IRS "believes" are in possession of assets belonging to the taxpayer. The IRS is not required to provide documentation to the taxpayer. The IRS is not required to provide documentation to the taxpayer or the third party supporting the basis of their "beliefs." The IRS basically has the attitude "Sue us to prove that we are wrong."

9. I have witnessed Collection Division Branch Chiefs, Assistant Division Chiefs, Division Chiefs, Problem Resolution (PRO) employees, and even an As-

sistant District Director, violate or ignore Internal Revenue Manual procedures and Treasury regulations simply because they wanted to punish a taxpayer.

I have seen more violations of IRS procedures and policies than I can count. The most appalling aspect of the foregoing examples is that in most every instance, IRS management supported the erroneous actions of the Revenue Officer.

The Problem Resolution Office (PRO) is responsible for protecting the taxpayer from IRS abuse. But having appealed many taxpayer abuses to the PRO, I have found them to be utterly useless. PRO employees are typically Revenue Officers who came from Collection Division and who may very well return to the Collection Division after spending some time in the PRO. The PRO employees must depend on their evaluations and promotions from the same Collection Division management which they are required to police while assigned to the PRO. If the public thinks that the PRO is being objective in assisting with abuse cases, the public is being hoodwinked!

What are the solutions to end this suffering of repeated abuses that I have just outlined? I have two basic answers.

First, require the IRS to follow its Internal Revenue Manual as though it were law. The IRS should be required to follow the manual to the letter. Taxpayers are required to follow complicated tax return instructions, so why shouldn't the IRS be required to follow their own procedures?

Second, make the IRS and management responsible for violations of Manual procedures. By that I do not mean holding frontline employees responsible for accidental or unintentional mistakes. However, when upper management condones the violations which bring great detriment to taxpayers, then management should be held personally responsible.

As only one taxpayer representative out of thousands across the country, I have seen dozens of taxpayers severely damaged, even made homeless, by the IRS Collections Division. The true bottom line solution to resolving taxpayer abuses is IRS frontline management. Restitution by an administrative claim as opposed to court action for erroneous or improper actions would be a giant step in the right direction, but who will decide when an action is improper?

If left in the hands of the IRS, you will have an IRS proud of the fact that they paid out a minimal amount of restitution funds over the course of the year.

The culture of the IRS must change and it will not change on its own!

Thank you.

PREPARED STATEMENT OF WITNESS NO. 2

Mr. Chairman and respective members of the Senate Finance Committee, it is a pleasure to be able to address you here today. I have been a law enforcement officer for approximately twenty years. Currently, I am a criminal investigator for the Internal Revenue Service's Internal Security Division.

IRS' Internal Security Division has a multi-functional purpose. In the broad sense, we have a mission similar to that of a Federal Inspector General or internal affairs in a police department, along with some additional duties. Among our main responsibilities are conducting investigations into allegations of IRS employee misconduct, outside attempts to corrupt the administration of internal revenue laws, and employee safety.

I am here to speak about some of the problems I have observed in performing my work for the Internal Security Division. By the nature of our mission, it is imperative that we be unencumbered in opening and investigating violations of law within the scope of our office.

However, the culture and climate of the Internal Revenue Service often prevents Internal Security from fulfilling our responsibilities. In addition, the distrustful and secretive nature often hinders an investigation.

A lack of independence from District and regional forces intent on not tarnishing the IRS' image has reduced administrative sanctions against employees to a point where they have no effect in controlling employee misconduct. IRS does not want bad press on employee misconduct at a time when the Agency's public image is at a low point. This has affected who we investigate and what happens after an investigation has been completed.

Allegations against Internal Revenue Service managers and National Treasury Employee Union (NTEU) officials have not been investigated. The IRS is aware of the administration's favorable view of unions. NTEU greatly benefits from this. High level Internal Security officials do not want to take on a case involving the union or union officials.

Allegations against IRS managers, including Criminal Investigation Division managers, are only worked when an allegation is serious and Internal Security management can not find a way out of assigning the case (i.e.: too many people are aware of an allegation). Some Internal Security managers believe that there is a bond between all IRS managers that should be maintained in the name of working relations.

There have been violations concerning the taxpayer's Attorney/Client privilege. IRS management often knows of these violations for months before reporting them to Internal Security. These types of cases can involve compromises in privileged communications.

Investigations into serious allegations are shortened by nature of a 180 day baseline. Six months is insufficient time to conduct a complex investigation, especially when new allegations are developed during the investigation. After 180 days the investigator and the immediate manager start to feel pressure on closing the case. This is where the IRS "bean counter" mentality hurts us. An employee case is considered an "actionable" case. This means proven or not, opening the case earns the agent credit for what we call a "stat." A case not involving an employee only gets a "stat" if there is judicial action. In other words, hypothetically, a case involving an armed militia is of less credit for the Inspection Division than a case involving the misuse of a government car by an IRS employee. Management feels that since a "stat" is obtained just by opening any employee case, there is no justification to have any case older than 180 days.

Proven violations of criminal misconduct against an employee have been "whitewashed" by Internal Revenue Service managers and labor relations. Serious violations such as browsing, unauthorized access to taxpayer's records, and unauthorized release of taxpayer's information have received nothing more than counseling letters. These letters are then removed from the employee's personnel file after one year. This kind of action does not serve as a deterrent for misconduct.

The IRS can, and does, investigate its own employees when it is suspected that an employee has acted improperly or illegally. However, Internal Security management has inappropriately notified and kept IRS District management officials abreast of these investigations. Such investigations are supposed to be kept confidential. However, more often than not, if these investigations target employees who are friends of management, they will be informed of the probe in time to quit the agency before adverse personnel action can be initiated against them. Once an IRS employee resigns, it is rare that the U.S. Attorney will accept that case for prosecution.

At the same time there is outside interference on Internal Security's mission, there are internal pressures that corrupt our ethical standards and place morale at low levels.

Internal Security managers exhibit arrogance while they themselves violate laws and commit prohibited personnel practices. Investigators have been told by Internal Security managers to record the conversations of other IRS employees without the Attorney General's approval. In other words, we have been directed to make nonconsensual recordings of other IRS employees without fulfilling Justice Department requirements.

Investigators are often not able to share taxpayer information on multi-agency investigations, yet Internal Security managers have "unofficially" provided taxpayer information to managers at other agencies.

IRS Internal Security managers are notorious for committing prohibited personnel practices. After an employee litigates, settles out of court or obtains a favorable Merit Systems Protection Board ruling (MSPB), the Agency takes the corrective action without consequence to the offending manager. In other words, a manager violates an employee's rights. The employee seeks and obtains redress from the Agency, but the manager is never sanctioned for violating the employee's rights in the first place.

Internal Security managers are aware of how difficult it is for an employee to litigate against the Agency. After all, the Agency does not have to pay for legal representation. If a manager does not like an employee for personal reasons, there is nothing to stop the manger from violating the employee's rights. This is a "us" vs. "them" mentality that is more flagrant at this Agency than I've ever seen anywhere else.

The "corporate culture" at 1111 Constitution Avenue is not conducive towards independent, well worked criminal investigations. In general, IRS pushes employees to open and close a tax or collection matter as quickly as they can. Often getting the proper tax is secondary to reducing overall case load as quickly as possible.

For Internal Security this "bean counter" mentality means numbers, numbers, numbers! "Cases open, cases closed—let's count them up so we can report at the end

of the year what a good job we've done!" Quality, where is that found in an accountant's book?

In a way, this has created an atmosphere that has given us many of our employee misconduct cases. However, criminal law does not afford us the opportunity to work an investigation in the same manner. As long as Internal Security is part of the IRS, there can be no real oversight or independence; we are just part of a greater problem.

Over my 20 years of service, I have become painfully aware of the ability of the IRS to retaliate against employees who dare to speak out. Many of the witnesses you will have before you in this hearing could be retaliated against for their testimony before this Committee. At times, I have been assigned an employee case and been told that management does not like that employee, and I have been told that I need to find something that they can use to terminate their employment. In the IRS, retaliation is swift and severe. I hope you will respect the risk that these witnesses took to appear before you, and protect them from any act of revenge by IRS management.

I came here, today, not to harm this Agency, but to help it heal. You must decide the best method to accomplish that goal. The IRS cannot heal itself, so others and I have taken the chance that you are serious about changing and improving my Agency. I thank you for the opportunity to participate in that healing process.

PREPARED STATEMENT OF WITNESS NO. 3

Good morning Mr. Chairman and Members of the Finance Committee.

I am presently a GS-12 Revenue Officer, which is also identified as a Field Collection Officer, with the Internal Revenue Service. I have worked as a Revenue Officer for over 35 years, having begun my career with the IRS when John Kennedy was President.

I am here this morning to cite numerous incidents that I have observed in the course of my career as a Collection Officer with the IRS. I hope to use these examples to assist you and the Committee in making our Agency a better place, and ensure greater fairness for the American people.

Over the last few months, you have heard a great deal about "browsing" of taxpayers' files. Allow me to focus on this problem for a moment and describe to you specific situations that I have personally witnessed in the IRS workplace which I once considered commonplace:

- Tax data being accessed by IRS employees to check on prospective boyfriends;
- Tax data being accessed by IRS employees to check ex-husbands for increasing income in order to receive increased child support payments;
- Tax data being accessed on people with whom IRS employees were having some kind of personal disagreement;
- Tax data being accessed on locally prominent or newsworthy individuals, public figures—even team coaches;
- Tax data being accessed out of simple curiosity about a friend, a relative or an employee's neighbor;
- Tax data being accessed on individuals who are perceived as critical of the IRS, such as tax protestors or, as in one case, a person who had simply written a Letter to the Editor.

The following inquiries, which I consider to be "institutional" misuse of taxpayer information, are cases in which the IRS has tacitly sanctioned looking up data on citizens but who are not the subject of any investigation being conducted:

- Tax data being accessed on relatives and acquaintances of the subject taxpayer, such as cases where the taxpayer is suspected of using friends and relatives to hide income or assets;
- Tax data being accessed on potential witnesses in government tax cases;
- **Tax data being accessed on jurors sitting on government tax cases. Senators, there is no excuse for this type of action!**

Until recent years, the agency had an almost casual attitude about privacy and misuse of taxpayer records. It has tightened up now to the point that good employees, who never think of browsing or gaining illicit accesses, are fearful that they may be subjected to investigation for an innocent error.

I have witnessed other serious abuses by the IRS. While these are separate incidents, they are indicative of a pervasive disregard of law and regulations designed to achieve production goals for either management or the individual agent.

One particular incident that occurred in 1994 shows how at least some managers figure they can get away with almost anything. A listening device was discovered

to exist in our IRS Office. Its ostensible purpose was a public address system, the users—managers and secretaries—had installed a receiving capability as well. With the receiving capability in place, they could press a button and overhear conversations taking place in the employee break room. While I have no personal knowledge of the existence of similar devices, I understand from others that some indeed existed in conference rooms used by taxpayers and their representatives. A co-worker and I found the device in the break room and learned how it worked. Learning of our discovery, higher level officials immediately had the devices removed and have attempted a reprisal by initiating an investigation of those who brought the matter to light.

Another incident involved what would be called fraud if perpetrated by any other institution, and I still cannot believe it was done in the face of my objections. This was the Case of a Fake Tax Lien. While I made the matter known to superiors, they did not even seem to want to hear about it.

When a taxpayer gets a notice of tax due from the IRS, a lien on the taxpayer's property may arise under the Internal Revenue Code. To be effective against third party purchasers and lenders, a Notice of Lien must be filed in the local courthouse. The public accepts that the IRS files only legitimate notices, but in this case a Notice of Lien was filed by the IRS when **there was no assessment and therefore no legitimate lien.** Mr. Chairman, there must be an assessment of tax due in order to file a lien—that is the law!

And if that wasn't bad enough, the IRS asserted its seemingly correct lien against a third party—and that third party, a bank, had no way of knowing that the lien was not legitimate. The amount involved was not large, only a few thousand dollars, but the Collection employees were motivated to close the case rather than take the correct and legal action and lift the false lien. In this case the Service acted illegally by collecting money from the taxpayer and quietly closing the case.

I believe this incident is indicative of a systemic problem plaguing the Agency—its original mission of collecting tax revenues has now become incidental to the production of statistics. A case that is written off as uncollectible, a Form 53, is counted as a closed case just the same as if it were fully collected. When I started with the IRS in the early 1960's, warning flags went up if uncollectible accounts amounted to more than 15%. I have now seen months in which over 60% of case closures were "53'd"—closed as uncollectible.

Senators, I have voluntarily come before you today to relay to you some of the deep concerns I have regarding the current mind-set of the IRS. I have been in a position to watch the gradual changes taking place among the IRS management and Agency attitudes. These are not positive changes and I am very concerned about the Service's future road. Although my comments today may appear negative and anti-Agency, it is my sincerest hope that they will help bring about just the opposite result. I hope you will come to the aid of the IRS with the positive and forthright oversight it so badly needs. The IRS needs help, it needs careful attention it cannot possibly provide itself. The help must come from the outside—through effective and forthright oversight of an ailing system.

It is my deepest hope that this hearing will initiate these badly needed steps.

PREPARED STATEMENT OF WITNESS NO. 4

Mr. Chairman, Senators, thank you for allowing me to appear before you today and share with you some personal observations I have made during the more than 25 years I have been employed by the Internal Revenue Service. For the majority of these years, I have served as a Revenue Officer in the IRS' Collection Division.

Until very recently, I felt a great sense of pride in my job. I actually looked forward to going to work. Over this past year, however, I have seen dramatic changes take place in this organization and, in my opinion, most were not for the good of the Service, or the public that we are supposed to serve.

In the past, with few exceptions, I felt that management truly cared for its employees. I find this no longer to be the case. I have never seen overall morale in the IRS as low as it is right now. Many of my fellow colleagues have expressed to me recently that they no longer feel motivated, and many are feeling the physical and emotional effects of constant stress.

Management fails to acknowledge employee concerns as evidenced by the fact that they refuse to hear grievances or address workplace concerns. Managers fail to realize that if employees are under stress or disillusioned with the Service, their attitude will surely flow to the taxpayers, the people we are paid to serve.

I have recently seen many abuses by IRS managers as well as first line employees. These abuses range from the deception of taxpayers to gross misuse of travel

funds. I could write a book on the subject of IRS abuse of both its employees and of the American taxpayer. Allow me to provide some brief examples.

But before doing so, allow me to point out that I have never had a performance problem during my employment with the IRS. To the contrary, I have received numerous annual performance awards, so I am not here today because I have any axe to grind. I truly hope that by appearing before you that I can contribute—positively—to restore pride in our organization and re-establish the confidence of taxpayers.

The area that causes me significant concern is the widely varied treatment that taxpayers can, and do receive. The IRS' approach toward a taxpayer can vary dramatically depending upon the IRS Group Manager whose group is assigned the case; depending on the employee working the case; and/or depending on the Collection Division policy in effect at the time the case is received. For example, you may have one business owner who is allowed to make monthly payments on delinquent employment taxes, while another business owner, given the same set of circumstances, is put out of business or forced into bankruptcy. In other words, one taxpayer may have their taxes simply "written off" as uncollectible, while another taxpayer under the identical conditions, may be forced to pay their taxes in full, or risk losing a home or business. Taxpayers deserve a consistent and fair policy when it involves the survival of their businesses.

Another concern I have is based on the fact that collection initiatives change regularly. It appears that management is more concerned about maintaining high statistics than with the quality of work being performed, or even whether the taxes were collected, or were just written off. Whenever there is pressure to maintain high statistics, and the performance levels of the different departments within the organization are a source of constant comparison, you can be certain that someone is going to suffer the consequences of such an explosive situation—and it is usually the taxpayer.

Recently a local Revenue Officer planned an elaborate sale to dispose of certain assets seized from a taxpayer. Many of the IRS employees were invited to help in the effort. The Group Manager was also present. Even though the Revenue Officer failed to achieve the minimum bid, as required by law, before selling the assets, he went ahead and sold the property at a significant loss to the taxpayer. Property which had a minimum bid of at least $40,000 was sold for roughly $7,000. Although this wrongdoing was found out and the Revenue Officer and his manager now face possible disciplinary actions, the real victim is the uncompensated taxpayer.

In terms of travel abuse, I know of situations where managers arrange travel to outlying IRS offices simply to accommodate their own personal travel. They charge the government mileage and occasionally, even a night's lodging, in their effort to get to their final vacation destination. A previous District Director, who had a condo at the beach, would frequently make brief appearances at the outlying IRS offices while his family waited for him in the car. When his visit was over, he and his family would simply continue their drive to the beach. All this was done at taxpayer's expense while management was telling employees that they had to conserve on official travel, and that overnight lodging was not permitted. While this may seem minor compared to many other things you will hear in this hearing, trust me when I say these activities by management have a devastating effect on morale.

In another abuse of travel funds, a Collection Division Chief assigned a Revenue Officer in her office to travel out of state in an effort to check-up on the work habits of other IRS employees. Extensive travel was involved and the secret investigation of our own agents caused significant confusion among taxpayers and IRS employees alike. When contacted by this IRS employee, who was following up behind the work of the real case agent, some taxpayers called their local IRS offices. Some of the local officials initially thought that an IRS impersonator was at work. In fact, a taxpayer with whom I had been working was contacted by this "spy" employee, and contacted me afterward, wanting to know what I thought was going on. Fortunately, in this case, nothing detrimental occurred to affect my taxpayer's case, but the manner in which this secret study was conducted was underhanded and humiliating to the rest of the IRS employees involved. In addition, if this information was determined to be of such importance to the out-of-state Collection Division Chief, why not inquire about such information in a professional, above board manner, not deceptively behind employees' backs. The effort undoubtedly would have been more effective, less disruptive and certainly far less costly to everyone involved—taxpayers and IRS employees alike.

Mr. Chairman, I greatly appreciate being afforded this opportunity to inform this Committee of what I have observed while working with the IRS, and the great disservice the actions of some of my colleagues have brought upon unsuspecting and

undeserving taxpayers, not to mention each other. When the American taxpayer is defrauded of their due rights, we all stand to suffer.

It is not a pleasure for me to share such stories with you. These stories are about my colleagues, those with whom I work. But my intention to do so is simple. I, too, am an American taxpayer, and I am asking this Committee to return the Service's management and operational standards to the level that will again earn my own trust, as well as that of all tax paying Americans.

Thank you.

PREPARED STATEMENT OF WITNESS NO. 5

I am a long term employee of the Internal Revenue Service employed as a Revenue Officer. I am appearing before you today to bring to your attention concerns share by many of the employees in my District office.

In the past two years all of the standards of ethics by which we have been lead to believe were an integral part of our job, and responsibility in dealing fairly with both taxpayers and employees, have been replaced with practices that were widely viewed as not only unethical, but often illegal.

To elaborate on this statement let me refer you to IRS policy statement, P-1-20, which essentially states that employees will not be evaluated on statistics. This mandate was made in an effort to insure that taxpayers would be treated fairly by the IRS so as to curtail the IRS from being overly zealous in their collection activities. However, our office has taken to disregarding this policy and has unfairly targeted long-term, good employees in an effort to "motivate" others into making more seizures. We are told that if we are to "justify" our jobs, we must "prove" that we are willing to take strong enforcement action.

I would like to point out to you that my evaluations over the years have always been very high. I am considered to be one of the most effective collection officers in this district. However, I find it disturbing to learn that even though I collect more money with a substantially high number of my cases paying in full, that I am now evaluated on my number of seizures rather than my over all effectiveness. The message we are receiving from upper management is let's take the action that will get us noticed. Don't worry about whether it's the right thing to do or not.

Many other issues have come to my attention over the course of time that have created a threatening environment for myself and many other employees. Examples of these issues are:

- managers are targeted for termination on the basis of who their "friends" are
- statistics are manipulated to make it appear that our office is producing much higher statistics than what is factual
- selected employees are encouraged to file EEO complaints on the basis of trumped up charges with the promise that their claim will be settled so they can then be promoted—unfairly—without having to compete for the job against more qualified employees
- Revenue Officers have been directed to release seized assets because management personally feels indebted to the taxpayer's representative—a former IRS employee and a friend of management.

The list of code and ethics violations is too long and cumbersome for me to further elaborate in on at this time. [I will be happy to provide the Committee with further documentation and information under proper disclosure guidelines] However, I am willing to answer any questions you may have.

I am not revealing my identity hear today for fear I would run the risk of retaliation, not only for myself but for colleagues with whom I work. However, I am thankful that you permitted me this opportunity to come before you and make my concerns for the Agency known to you. If I did not believe in this Agency, I would not have dedicated eight years of my life working for it. However, motivation to execute one's responsibility should not be based on statistics at the expense of quality, nor should motivation be based on unfair competition among colleagues for promotion, nor for any other reason I sadly offered to you today. I hope you can bring integrity back to the IRS and allow the good and ethical employees to do their jobs well while serving the American taxpayers with the fairness and integrity they deserve.

Thank you.

PREPARED STATEMENT OF WITNESS NO. 6

Mr. Chairman, Honorable Members of this Committee, I work in the Inspection Division of the IRS which investigates employee misconduct and responds to and

investigates threats and assaults perpetrated against IRS employees. I am appearing here in front of you at great personal risk to my career with the IRS. I have seen too many times how swift and severe the IRS can be in retaliating against those who do not conform and agree with its own corporate mentality and attitude. I have seen how the IRS management attempts to kill the messenger, but ignores the message. I do not appear here today to try and hurt this Agency or the majority of dedicated career government workers who staff the offices, but I have seen the efforts by the IRS to try and heal itself. The result is but dismal window dressing to appease you in Congress while they continue with business as usual. The IRS and the public need and deserve a strong, independent, fully staffed and fully funded Inspection Division, able to carry out its investigations without interference, subtle or otherwise, from within. I do not see how this is possible given the IRS' current climate.

In the IRS' nationwide all-manager training in the late 80's, one of the messages delivered was that it is permissible to lie or mislead the public and/or IRS employees as long as it accomplishes the goals and mission of the Agency. This information was relayed to me by a former IRS manager who attended this training session and could not believe that the IRS was instructing its managers to do so. He questioned this policy. Coincidently, his position was later eliminated.

A 1992 Inspection Division re-organization memo addressed Regional management structure and other issues regarding the Inspection Division having at least 1 to 2 excessive levels of management. The Inspection Executive Committee voted to retain that same management structure. Coincidently, the Inspection Executive Committee is composed of the same people occupying the very positions that were identified as excessive.

Criminal investigations cannot be worked with the same auditor mentality and goals as audits are conducted. In criminal investigations, leads generally dictate where and how long the investigation and case go on. Applying an artificial time limit to cases severely stifles the creativity and progress of an investigation, and sends the wrong message to the investigator to get the cases closed ASAP. The attitude is "big cases, big problems; little cases, little problems!" Quantity not quality is the message. According to Special Agents in the Criminal Investigation Division, (CID) emphasizes opening the traditional tax cases, the "Mom and Pop" cases, which are easy "hits" and can be opened and closed quickly to bolster CID's average and numbers, rather than investing time in the large cases which take longer and require more resources. Big cases are often put off or overlooked in deference to the small, quick ones.

Mr. Chairman, it has been my observation and experience that taxpayers are treated as being "guilty until proven innocent." Based on my experience, this attitude coupled with an arrogant and indifferent manner in which citizens are sometimes treated, directly contributes to, and in some instances instigates many of the threats, assaults, resistance to and lack of cooperation experienced by IRS employees when dealing with the public. If police officers displayed this same attitude when interacting with the public, they would be fired! Why is this attitude tolerated and encouraged by the IRS?

The Inspection Division's budget is directly controlled by the IRS. Therefore, by depleting or denying budget dollars, subtle limits and boundaries are placed on who and what is investigated, as well as what resources we get. We are dependent upon the very people and Agency we investigate for our budget resources, and every year have to go hat in hand to get money. Field Agents feel that there is too close a relationship and that we are too cozy with IRS Management to impartially and effectively investigate internal IRS matters without interference or pressure. Investigations into allegations of misconduct by IRS Management are generally not opened. Only by detaching the Inspection Division's Criminal Investigative Function from the Internal Audit Division and then moving our function under the Department of the Treasury's Office of Inspector General, or under the office of the Under Secretary of the Treasury for Enforcement, or permanently fencing our budget, will this pattern be broken. Every other federal law enforcement agency is hiring and expanding, why is Inspection the only federal law enforcement agency that is closing field offices and downsizing and proposing RIF's? A recent Chief Inspector memorandum reports that FY98 budget funds 1214 Full Time Equivalents, (FTE) yet we are still planning to close offices and do a RIF to get down to 1150 full time employees. The IRS is also in contempt of Congress for only reducing field positions and closing field IRS offices and not reducing its Management structure. The current restructuring eliminates field investigator positions only. Only one Inspection Management position has been slated for elimination. There was a jockeying and gerrymandering of the span of control in order to retain every Inspection Management position, at the sacrifice and expense of field investigator positions.

I have observed little or no accountability for misconduct, mistakes and/or errors, whether innocent or intentional, and seldom—if ever—does the IRS or the responsible employee ever apologize to the taxpayer for the errors committed by the IRS. Again, this displays an attitude of indifference or arrogance to the public it serves.

During my experience with the IRS I have observed a real lack of "meet and greet" qualities and people skills among IRS employees, as well as an arrogant attitude which originated with, and is perpetuated by, IRS Management down to the field level employees.

Most of the complaints from taxpayers regarding abuse or misconduct on the part of the IRS employees do not rise to the level of criminality or egregiousness, the level at which my section would get involved. Such cases do not usually reach us and are thus handled by the Management of the involved employee. Union agreements and concessions by the IRS, create difficulty in disciplining employees beyond much more than a reprimand and slap on the wrist. This, too, must be strengthened to have any deterrent effect.

Mr. Chairman, allow me to thank you for inviting me to testify before you today. As employees we are the "IRS," and unless you get views and input from the field and do not rely entirely on the views from 1111 Constitution Avenue, you will not get a true picture of what needs to be changed. I am grateful that you sought out the feelings and experience of the street level agents for the Committee. As I stated earlier, it is not my intent to hurt the IRS in any way. It is my sincere hope that by informing you of some of the problems I have had the opportunity to personally observe from within the IRS, you and your Committee will provide the Agency with necessary help and motivation to correct them.