

HELPING LAW ENFORCEMENT FIND MISSING CHILDREN

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HELPING LAW ENFORCEMENT FIND MISSING CHILDREN

WEDNESDAY, MARCH 2, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar, Franken, Blumenthal, and Grassley.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. OK. We are going to call this hearing to order. Good morning, everyone, and thank you so much for being here. Senator Grassley is going to be joining us. He is just over at the Finance Committee hearing. We are also joined by Senator Blumenthal, and Senator Franken also was here and hopes to stop back. There are a lot of hearings going on at the same time.

Today's hearing will examine law enforcement's efforts to recover missing children, and we are going to hear today about law enforcement's efforts generally in this area. We have a panel that includes both Federal and local law enforcement representatives, but I would like to focus especially on the issue of family abductions and whether law enforcement has access to all the information that they need when it comes to recovering missing children.

I want to thank Chairman Leahy for generously allowing me to chair this full Committee hearing. Both Chairman Leahy and I are former prosecutors. He was, as you know, a State's attorney in Vermont, and I was the county attorney in Hennepin County, Minnesota, so we care a lot about law enforcement, and we want to make sure that they have all the tools that they need to protect public safety and combat crime. I would also add that Senator Blumenthal was the attorney general of Connecticut.

I want to thank Senator Grassley. He recently switched hats from being the Ranking Member on the Finance Committee to being the Ranking Member on the Judiciary Committee. He is a long-time member of both committees, and my staff has been working with his staff for a couple of months on some of the issues that we will be talking about in today's hearing. We are grateful for his expertise in both areas.

Today we are here to talk about the tools law enforcement uses to find missing children. This is an issue that probably a lot of us

think we already know everything about. We read about tragic cases of missing children. We learn sometimes of the joyous reunions that some of these children have with their families, and even in cases where there is not yet a happy ending, we know that law enforcement at the Federal, State, and local levels devote an incredible amount of resources to tracking down every possible lead.

I know about this issue mainly from my friend Patty Wetterling, who is here today to testify. Patty is a homegrown hero in Minnesota. She has become a tenacious national advocate for children's safety and particularly the plight of missing and abused children since her own son, Jacob, was abducted 22 years ago.

I became interested in holding a hearing on this issue last November when I read a newspaper article about an issue that does not always come to mind when we think about missing children: the problem of family abductions. The National Center for Missing and Exploited Children, which has done so much important good work in many different types of missing children cases, has also been instrumental in raising awareness about this issue as well.

According to a Department of Justice study, approximately 800,000 children are reported missing each year. That number is tragically high, but another statistic you might not expect is this: 200,000 of those cases are the result of family abductions, and approximately 12,000 of those cases last longer than 6 months. We might not think of these cases in the same light as we think of stranger abductions, but they are just as scary for the family members who are left behind. Those family members are just as frantic with worry.

The newspaper article pointed out that in many of these cases, the abductors continue to file Federal tax returns, believe it or not. And, indeed, in many of these cases—and this is the shocking part—the abductors continue to claim that child as a dependent on their Federal tax returns. For the most part, these abductors may be upstanding citizens in every other area of their lives, and they are not eager to add tax evasion to the list of laws they are otherwise breaking. But this also means that a Federal agency—the Government, the Internal Revenue Service—may unwittingly have more information about a missing child's location in its databases than law enforcement does.

A 2007 study by the Treasury Department examined the Social Security numbers of 1,700 missing children and the relatives suspected of abducting them. The study showed that more than one-third of those Social Security numbers had been used in tax returns filed after the abductions had taken place, and in half of those cases, the tax returns had new addresses for missing children.

Now, just think about this. At the same time you have a law enforcement agency, local law enforcement, a cop in Maplewood, Minnesota, running around trying to figure out where this child is, the IRS in a third of those cases has a Social Security number and in a third of those cases actually has the new address.

Right now it is incredibly difficult and in some cases impossible for the Federal Government to share this information with the police. As a general rule, this is good policy. We want to protect the

privacy of taxpayer information. But if you have abducted a child and are otherwise in violation of State or Federal law, you are no longer entitled to that privacy. If law enforcement could access the names and addresses on these tax returns, they might well be able to locate missing children and return them to their parents.

So I have introduced a bill to do just this: to untie the IRS' hands when it comes to disclosing critical information in missing children cases. The legislation is called the Access to Information about Missing Children Act, and it allows law enforcement officers working cases of missing children to request information like this from Federal agencies like the IRS. This is bipartisan legislation that I have introduced with Chairman Leahy and Senator John Cornyn of Texas, who serves on this Committee.

Because this issue involves the IRS, we have also been working with the Finance Committee, on which Senator Grassley has served for so long, and the Joint Committee on Taxation to make sure we allow law enforcement access to relevant information but still maintain appropriate safeguards for privacy.

Joining in this effort are Senators Casey and Enzi, who are also very interested in making sure we do everything we can do to help families of missing children. This means making sure that this information is not just available to Federal law enforcement. Although the FBI is involved in lots of missing child cases, they are almost always working in conjunction with State and local law enforcement, and State and local law enforcement officers are not always allowed access to things like Federal income tax returns.

My legislation allows Federal law enforcement to get a court order for information disclosure on behalf of State and local law enforcement and will work to make that possible in the final bill as well.

This means, of course, that State and Federal law enforcement will have to work together. I know when I was Hennepin county attorney, we had a great working relationship with the U.S. Attorney's Office, so I know this can be done. At a time of limited resources, it just defies reality that we would have one branch of the Government have information about addresses of missing children while we have another, local law enforcement, with very limited resources running around trying to find out where these kids are, in the computer. It makes no sense.

The important thing is that we get this critical information into the right hands so we can bring these children home. I am looking forward to hearing from all our witnesses about current law enforcement efforts to find missing children of all types—stranger abductions, family abductions, children who are abducted and subsequently victims of trafficking or exploitation—and to having a conversation about how we can ensure that law enforcement has the tools they need.

With that, it is a pleasure to have Ranking Member Grassley here back from his important Finance Committee hearing. Senator Grassley.

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you, Madam Chairman, for holding this very important hearing. More importantly, thank you for your personal involvement in this issue. And like you, I have been a supporter over the years of many efforts among many Senators to apprehend those who abduct children, exploit children, or otherwise harm children. Because many of these crimes involve transport over State lines or use of the Internet, there is a strong need, obviously, for the Federal Government.

In 2006, I was able to include in the Adam Walsh Child Protection and Safety Act a version of child protection legislation I previously introduced. The provisions were named for Jetseta Gage, a brave 10-year-old girl who was abducted, sexually assaulted, and murdered by a repeat sex offender. Jetseta's bill created mandatory minimum sentences for criminals who commit murder, kidnapping, and serious bodily harm against children. Today's hearing will help bring into perspective the children, many like Jetseta, who were abducted, assaulted, and murdered. Our children deserve to grow up in communities free from child predators.

One of the important points of today's hearing is to raise public awareness of the realities of missing children. Although parents rightfully fear that a stranger will abduct their child, that is not the common situation. Most abducted children were taken by people they know, often a parent. And much more than is commonly realized, these abductions involve force and violence.

Of course, much of the work in this area is done by State and local law enforcement. The Federal Government should assist the efforts of State and local government, and I know that at least one of the witnesses today has an idea to help improve the situation when parents claim conflicting custody orders.

One idea that will come up today is the use of the IRS data to possibly locate missing children. The Finance Committee will ultimately resolve that question. It is often said that if something can be done that might possibly rescue one missing child, that ought to be done.

I certainly want to provide all sensible help to law enforcement to find missing children. But even well-meaning proposals can implicate other important values that need to be considered. We will do our best, and I am pleased that we do have witnesses today who will bring insight to the reasons for confidentiality of tax returns and the practical realities that might be affected by a change in tax confidentiality rules. And, Madam Chairman, I ask unanimous consent to put in the record a letter from the Joint Committee on Taxation on this very subject.

Senator KLOBUCHAR. Without objection, that will be included in the record.

Senator GRASSLEY. Thank you very much.

[The letter appears as a submission for the record.]

Senator KLOBUCHAR. Thank you, Senator Grassley.

Senator Blumenthal, if you want to say a few words

Senator BLUMENTHAL. Thank you. Thank you, Madam Chairman, and I want to begin by thanking Senator Klobuchar for being such a champion on this issue and adding so much by having this

hearing, but even more important, through the bill that she has introduced, which I will be very proud to cosponsor, and for the work that she is doing in Minnesota. And I thank the folks who are here to enlighten us because each of them has really done such tremendous work in this area, and I am very proud to say I have worked with Mr. Allen and his work at the National Center for Missing and Exploited Children as attorney general, and I know the high regard and respect that attorneys general have for him and have had for him in the work that we have done on MySpace and Facebook and Craigslist and a number of other of the social networking sites.

I guess I would just say that this kind of reform falls into the area of sort of common sense. As Mr. Allen himself said in a New York Times article in November of 2010, it is one of those areas where you would hope that common sense would prevail. And I think that this measure is one of common sense. It makes eminent good law enforcement sense that State and Federal investigators should be able to share this kind of information, protecting the privacy concerns that legitimately have to be taken into account. We know why there are restrictions on the IRS sharing information that date from the Watergate days. But those kinds of concerns can be surmounted in a process that respects them and the rights of individuals whose information may be shared.

So I look forward to this hearing, and again, my thanks to the Chairman for her very good work on this issue. Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much.

Now we are going to swear in the witnesses here, so if you could stand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PERKINS. I do.

Ms. WETTERLING. I do.

Mr. ALLEN. I do.

Mr. KEIGHTLEY. I do.

Ms. PIRNAT. I do.

Senator KLOBUCHAR. Thank you. We are pleased to be joined today by, first of all, Kevin Perkins, who is the Assistant Director of the Criminal Investigative Division of the FBI and who has been in law enforcement for 25 years. You do not look that old.

Second, we have Patty Wetterling, who co-founded the Jacob Wetterling Resource Center in 1990 and who has been an advocate for families of missing and exploited children for more than two decades. And it is truly an honor to have Patty here from my home State.

We have Ernie Allen, who Senator Blumenthal just commended, who is the president and CEO of the National Center for Missing and Exploited Children. He is an expert in issues relating to missing and exploited children and has run one of the best respected private nonprofit organizations in the country since 1989.

We also have James Keightley here with us today. He is the founder of Keightley & Ashner and a 27-year veteran of the IRS General Counsel's Office.

And then, finally, we have Detective Thea Pirnat who works in the Fairfax County Police Department's Child Exploitation Unit.

I thank you, all of you, for arranging your schedules to be with us here today on this important topic. Each of you has 5 minutes, and we will begin with Assistant Director Perkins.

**STATEMENT OF KEVIN L. PERKINS, ASSISTANT DIRECTOR,
CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF
INVESTIGATION, WASHINGTON, D.C.**

Mr. PERKINS. Good morning, Madam Chairman, Ranking Member Grassley, and distinguished members of the Committee. I am very pleased to be here with you today to discuss the FBI's efforts to combat crimes against children.

Through our Child Abduction Rapid Deployment Teams, our Innocence Lost National Initiative, the FBI and its partners are working to make our world a safer place for our children.

When every minute counts, the FBI's Child Abduction Rapid Deployment team, or CARD team, program provides a quick and effective response.

CARD teams consist of highly trained investigators with significant experience and expertise working non-family child abduction matters. These teams are capable of quickly establishing an onsite command post to centralize investigative efforts and operations. In addition, they bring national and international lead coverage, sophisticated evidence response capacities, and are adept at implementing the FBI's Child Abduction Response Plan, a best practice, to guide investigative efforts. Representatives from the Behavioral Analysis Unit provide onsite interview and media strategies to round out the investigative effort.

Over the past 4 years, these teams have deployed 65 times, during which 70 children went missing. Of those 70 children, we were able to recover 27 of them alive. Unfortunately, 12 of them remain missing to this day. And in those cases where children remain missing, the CARD team and our evidence response teams provide forensic support for our local law enforcement partners and their prosecutors throughout the search for those children.

In June 2003, to address the growing problem of commercial sex trafficking of children within the United States, the FBI joined the Department of Justice Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children to launch the Innocence Lost National Initiative.

Driven by intelligence and using sophisticated techniques, the FBI's offices focus their resources on disrupting and dismantling the criminal enterprises that transport juveniles for the purposes of prostitution. Each of the initiative's 41 task forces and working groups throughout the U.S. include Federal, State, and local law enforcement agencies working in tandem with the various prosecutors within the United States Attorney's Offices. To date, operations sponsored by the initiative have resulted in over 600 Federal and State convictions and the location and recovery of over 1,300 children. Investigative efforts have increasingly resulted in substantial sentences for those convicted, including six life sentences and numerous others ranging from 25 to 45 years in prison.

It is important to recognize that we are not alone in our efforts to identify victims and bring their abusers to justice. As you know, few crimes bring law enforcement together as quickly as an endangered child. Even when the FBI is not the lead investigative agency, we provide significant resources to our State and local partners. We stand shoulder to shoulder, working to locate children and build cases against their offenders.

In today's toolkit, investigators will find cutting-edge forensic tools such as DNA, trace evidence, impression evidence, and digital forensics. Through globalization, law enforcement also has the ability to quickly share information with partners the world over, and our outreach programs play an integral role in prevention.

However, challenges do remain. For example, each year parents unlawfully abduct their own children from the custodial parent, leaving the left-behind parent to wonder if their child is safe and setting law enforcement into action to find both the abductor and the victim.

The FBI works closely with our State and local law enforcement partners in these arduous investigations to expend and exhaust all resources necessary to rescue a child. But oftentimes these abductors still elude us. I look forward to continuing discussions with the Committee on these challenges and others.

Today's FBI remains vigilant in its efforts to remove offenders from our communities and to keep our children safe. I appreciate the opportunity to discuss those efforts with the Committee, and now I am happy to answer any questions you may have.

Thank you, Senator.

[The prepared statement of Mr. Perkins appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Perkins.

Ms. Wetterling.

STATEMENT OF PATTY WETTERLING, CO-FOUNDER AND MEMBER OF THE BOARD OF DIRECTORS, JACOB WETTERLING RESOURCE CENTER, ST. PAUL, MINNESOTA

Ms. WETTERLING. Good morning, Senator Klobuchar, Senator Grassley, Senator Blumenthal, and thank you, all members of the Senate Judiciary Committee. I want to thank Senator Klobuchar for inviting me to participate today to talk about my experience as the mother of a missing child.

When you have a missing child, you enter a world that no one wants to know. Our world fell apart on October 22, 1989, when my son Jacob was kidnapped. He was biking home from a convenience store with his brother and his friend Aaron when they were confronted by a masked gunman a half a mile from our house. Although I had been a stay-at-home mom, and my husband and I knew a lot about things, all kinds of things related to children, we knew nothing about how to proceed in this situation.

The response from law enforcement was phenomenal. The FBI headed our search, but worked alongside the Minnesota Bureau of Criminal Apprehension, our BCA, the St. Joseph Police Department, the Stearns County Sheriff's Department, and the Tri-County Major Crimes Unit. As a parent, it was all very confusing. I did not understand the different jurisdictions—and I really did not

care. All I wanted to know was: Are you working together? Are you part of the team?

We had help and support from so many places: other agencies, law enforcement from across the State, the National Center for Missing and Exploited Children, the National Guard, search dogs, horses, helicopters, and Congressional leaders. Minnesota Senators David Durenberger and Rudy Boschwitz included Jacob's photo on their mailings to constituents. And even the IRS has circulated Jacob's and other missing children's photos in their tax booklets. That is the response we need for every missing child.

After Jacob's abduction, we started a parent-to-parent mentoring program called Team HOPE, and it was there that I met hundreds of searching parents—including parents who had lost their child through family abduction. I learned that so often these parents do not receive quite as much support as those with non-family abductions. I learned about the trauma of children who were parentally abducted. Eventually, many of these children grow up and find their searching parents, and they can speak painfully of the many challenges that they continue to face because of that abduction. The bottom line is: You cannot steal children.

An abducted child has everyone taken from them. They lose their other parent and sometimes siblings, their homes, their pets, their toys, their friends and relatives, their teachers. Everything familiar about their lives is gone. Sometimes they are told their other parent is dead. They live in isolation, in sadness, and in fear. They live a lie.

In both types of abductions, we always have felt that someone knows where our children are, and we hope and pray that someday that person will come forward, and any additional piece of information that might bring our children home is welcome.

In the case of family abductions, there is a Government agency that may have additional information, and that is the IRS. We know that law enforcement needs to work together, and I believe that there is a solution to this gap in the search.

It needs to be fixed. All searching parents want to know that everybody is working together and reinforcing that message that you cannot steal children, not your own and not someone else's.

I know Senator Klobuchar has introduced the Access to Information about Missing Children Act to help law enforcement get limited taxpayer identity information from the IRS. I am supportive of all efforts to give Government agencies the authority they need to share information with law enforcement in these cases. I know personally how critical it is, the information sharing, between Federal, State, and local law enforcement.

As a country, we are getting better and better at responding, thanks to things like the AMBER Alerts, better training of law enforcement, and we can all thank the National Center for Missing and Exploited Children for their steadfast commitment to our children and their high recovery rate of finding children.

I know that somebody knows something, and I will fight always for the world that Jacob believed in. It is a world that knows that there are more good people than bad, and that when good people pull together, amazing things happen. I am grateful for all of you

good people pulling together, seeking to address this hole in the search for missing children.

You can have a tremendous impact by ensuring that all agencies are able to work together to find our children. Again, we need to make a clear statement that you cannot steal children, not your own and not someone else's.

As Senator Grassley said, if this legislation can save just one child and that child is yours, you will know that it is worth it.

Thank you for inviting me to testify.

[The prepared statement of Ms. Wetterling appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

Ernie Allen.

STATEMENT OF ERNIE ALLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, ALEXANDRIA, VIRGINIA

Mr. ALLEN. Madam Chairman, Senator Grassley, Senator Blumenthal: In 2007, the Treasury Department's Inspector General for Tax Administration conducted a study using the National Center's family abduction cases. The IG analyzed containing Social Security numbers for missing children and alleged abductors to identify new addresses—addresses that were different from where the child and the abductor lived at the time of the abduction.

Senator Klobuchar, as you pointed out, 34 percent of the abductors' addresses were found by the IG in tax information, and in addition to that, nearly half of the missing children were listed in those tax forms. So we found new addresses for 46 percent of the missing children in the sample.

We alerted the FBI so it could request disclosure under 26 U.S.C. 6103 and recover the children. To our knowledge, the new addresses in the IRS database have never been disclosed. The barrier, as you point out, is privacy law.

Now, let me emphasize, like all of you, that we support strong protections against the misuse of confidential taxpayer information. Yet there are 22 exceptions in 6103 allowing the IRS to turn over information in child support cases, for the repayment of student loans, to help Federal agencies determine whether an applicant qualifies for benefits, and 19 additional exceptions. Surely missing and exploited children warrant such an exception. And the taxpayers in question here are fugitives with felony warrants issued for the arrest.

Current law forbids the IRS from turning over data from tax returns unless a parental abduction is being investigated as a Federal crime and a U.S. district judge orders the information released. But most parental abductions are investigated by State and local authorities, and even when the FBI does intervene, requests for IRS data are rarely granted.

The problem is exacerbated by skepticism about parental abductions. The kid is with a parent. How bad can it be? Well, as Patty pointed out, it can be pretty bad. These kids suffer real harm, social, emotional harm. And even some judges do not view parental abduction as very serious, feeling that it is better suited for family court rather than criminal court. Yet these abductions are

criminalized under Federal law and the laws of every State. Congress recognized the severity of these crimes when it passed the Parental Kidnapping Prevention Act of 1980. And I realize that it may seem far-fetched, as you pointed out, that an abductor with felony warrants would include detailed information about himself and his victim on tax returns. Yet the IG's pilot demonstrates that many do just that.

Let me mention one other scenario briefly in which access to such data is essential. Although not typical missing child cases, some child pornography victims are missing in that they have not told anyone about their abuse, and as a result have little chance of being identified and rescued. At the National Center's Child Victim Identification Program, our analysts review 250,000 images and videos each week in the effort to identify and rescue children. Most of the victims are abused by a parent or someone who knows them. But we believe there are thousands of hidden victims, sexually exploited children who are unknown and will continue to suffer until they are located. Access to IRS information is vital in enabling law enforcement to identify and rescue these victims. One quick example.

Our staff recently saw many images of one little girl. In some of them a small plaque was visible on the wall with a first name and a date. Surmising that this might be the victim's first name and birth date, we alerted Federal law enforcement which served legal process on the Social Security administration and obtained addresses of girls born on that date with that same first name. The information provided was current as of the date of the Social Security application, but not current in terms of where the child was currently living. This required law enforcement to seek current address information. Federal prosecutors sought an ex parte order from a judge and obtained up-to-date address information from the IRS. As a result, law enforcement identified and rescued the child. It worked, but it was complicated and time-consuming.

Senator Klobuchar, the Treasury IG has confirmed that the IRS database contains information that will enable us to find and rescue many more children. We believe that the law should be modified to allow for the disclosure of this information to law enforcement in missing and exploited child cases.

Thank you.

[The prepared statement of Mr. Allen appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very, very much.

Mr. Keightley.

STATEMENT OF JAMES KEIGHTLEY, PARTNER, KEIGHTLEY & ASHNER LLP, WASHINGTON, D.C.

Mr. KEIGHTLEY. Senator Klobuchar, Senator Blumenthal, it is a pleasure to be here today. My name is Jim Keightley, and the reason I am here—I am really a pension lawyer by current background and do a great deal of work with defined benefit pension plans. I was general counsel at the Pension Benefit Guaranty Corporation for 10 years. And even there I encountered disclosure problems with the Internal Revenue Service, so I have been on

both sides of this issue, either giving it out or trying to get it from the IRS.

I am not going to read my testimony. I am going to try and go through and just hit the highlights of what is going on.

I think everybody has come to the conclusion that the IRS really does not have the authority to cooperate directly and fully in these requests. The reason for that, for people who do not know the history, was that in 1976 the Congress took away from the executive branch the authority to determine who could receive tax information. And when they did that, they enacted what is now known as Code Section 6103. It is probably one of the longest code sections in the Internal Revenue Code. When I just printed it out recently, it was 26 pages long.

Originally, it was intended to limit disclosure almost only to the Internal Revenue Service. I think that was consciously done to build a wall around the Internal Revenue Service, for a number of administrative reasons.

It was intended to be the comprehensive and exclusive disclosure provisions. Tax information it covers everything from White House disclosures to Congressional committees to the Joint Committee on Taxation. It really is quite thorough.

Its definition of "tax information" is dramatically broad. It includes name and address, all sorts of different little things. It even covers investigative disclosures by an agent who goes out and, in order to obtain information, an agent has to say who he is investigating, what transaction he is interested in looking at. So it is comprehensive. In addition to being the exclusive way to do it, they also put in safeguard requirements.

Finally, just to make sure people took it really seriously, they clarified the criminal provisions and ended up putting in civil damage provisions, which did not exist prior to that time. So it was basically limited to tax administration as I say, intentionally.

Now, there is this policy tension which Congress has had to deal with as it has moved through these various provisions with the tension between a voluntary tax system where we are coercing and forcing people to file tax returns and to whom and when do we give tax information out.

So that is the issue. I am sure Senator Grassley on the Finance Committee has had to thrash with that issue in many cases.

My personal recommendation—and I am fully supportive of the idea that some solution has to be figured out here. One point I want to clarify was why does an abducting parent fill a tax return. Well, one, if you do not file a tax return and you are working and you have income, the IRS is sooner or later going to get a 1099 or a W-2 and they are going to say—Where are you? What are you doing? So you are going to get caught. In addition, you get the earned income tax credit, you get the dependency deduction. You also may have child care deductions. So it is perfectly rational for a person who is not a complete Lindbergh-type kidnapper to file a tax return and try and get the benefits of the finances for the benefit of the child and whatever unit they are currently -you know, they are a family unit—supporting at that time.

My personal recommendation—and I have not had a chance to review all the proposed legislation that has been put out—would be

to allow a disclosure by the SSA. There is currently a provision for the Social Security Administration to disclose to State and local child support agencies. It seems to me that locating these people is the most important thing, whether they deduct the child or not on the return. So there is a provision that allows disclosure for child support purposes, but I think that could be expanded. The reason I try and keep it tied to the 6103 provision is it also allows the recordkeeping and safeguarding provisions that are currently in existence in the Social Security situation to be available.

Now, I guess my bottom line is I think that narrow solution should be adequate. It should cover the location of just anybody who are people are looking for. And the idea that they did or did not deduct them on the tax return is not terribly important to finding the people you are looking for here. And another solution might entail a much greater disclosure and intrusion into the confidentiality of tax information.

So, with that, that is where I am coming out, and it is a pleasure to be here. Thank you.

[The prepared statement of Mr. Keightley appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Keightley.

Ms. Pirnat.

Ms. PIRNAT. Detective Pirnat.

STATEMENT OF THEA M. PIRNAT, DETECTIVE, FAIRFAX COUNTY POLICE, CRIMINAL INVESTIGATIONS BUREAU, CHILD EXPLOITATION UNIT, FAIRFAX, VIRGINIA

Ms. PIRNAT. Senator Klobuchar and Senator Blumenthal, thank you very much for allowing me to be here. I am here obviously because I am local law enforcement, and these are the type of cases that I particularly investigate: parental abductions and missing juveniles. And I am fortunate enough to work for a police department that has more resources than most. We have over 1,400 sworn officers in addition to patrol and investigative personnel. We have our own computer forensics and crime scene units; our own helicopter and K-9 unit, complete with bloodhounds; a marine patrol unit and even a dive team, just to name a few.

We are conveniently located just outside of Washington, D.C., giving us easy access to multiple Federal law enforcement agencies and invaluable resources like the National Center for Missing and Exploited Children. This affords us the opportunity to secure convenient and top-notch training and to establish positive multi-agency working relationships.

Even with all these resources, we still cannot always locate every missing child in a timely manner. In some sad cases, we cannot locate them at all. Time is the enemy in cases involving missing and abducted children. The longer a child is unaccounted for, the more likely that they are being harmed. The most important thing we can do is recover these children and as quickly as possible.

Every detective in my unit dreads the occasional notice we get about an unidentified young body being found. We are asked for information on our active missing juvenile cases that may match the description of the unknown remains. We all understand the importance of being able to identify the body for what is likely now a

homicide investigation. However, we never want to be a detective whose missing juvenile case is closed in that manner.

At the end of our shifts, we already wondering if there is another phone call we should make, another location we should check, or another court order we should write before we head home that night.

We do carry these cases with us on a personal level. I do not know any career law enforcement officer that does not have a case or perhaps several cases that will haunt them for the rest of their lives. That is especially true for investigators that work cases involving crimes against children. There are horrible images I can still see, awful sounds I can still hear, and tragic stories I will never forget.

There is no tool that local law enforcement is not willing to learn and use if given lawful access. We want to find missing children, and we want to find them without any delay. We are too much aware of what happens to them when they are not located and not located quickly.

I encourage you to support any and all measures that provide local law enforcement with access to information that would help us recover our missing and abducted children.

I am thrilled by the pending bill to allow IRS to release information to local law enforcement on abducted children being claimed as dependents and hope that moves forward successfully. That is the type of measure that we truly do need. We have a situation where we have in parental abductions known victims with known offenders and known addresses. I see no reason why we not want to identify them and make for happy endings possibly in those cases.

I am encouraging you to continue to find ways to share information that may already be at the Federal level with local law enforcement, such as flight and other travel itineraries. Even though we cooperate with Federal agencies, there is sometimes a delay as we wait for callbacks and confirmation that our case meets their investigative criteria.

I also encourage you to facilitate methods for local law enforcement and courts to share information with each other, such as implement a nationwide child custody database. Parental abductions—they often continue to debate child custody and they will continue to file child custody orders in different jurisdictions which essentially muddies the water in our criminal investigation when we do make recoveries.

In closing, I would like to thank you for taking testimony on this important issue and your continued leadership and assistance to local law enforcement. Thank you.

[The prepared statement of Ms. Pirnat appears as a submission for the record.]

Senator KLOBUCHAR. Thank you so much, Detective.

I also want to put in the record a statement by Senator Leahy, which will be included in the record, no objections.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator KLOBUCHAR. Also the article that was in the New York Times November 12, 2010, which I referenced as well as Senator

Blumenthal, by David Kocieniewski about this issue. A thorough report.

[The article appears as a submission for the record.]

Senator KLOBUCHAR. I wanted to start our questions here with you, Mr. Perkins, and we talked about, I think, the Federal kidnapping law came about because of the Lindbergh baby kidnapping case, that that was a driving force behind the passage of that act, which, of course, makes transporting kidnapping victims over State lines a Federal offense. I guess my first question was what Mr. Keightley referred to, that these cases are not like Lindbergh-like cases with strangers. But could you explain how some of these family abductions can be just as plotted out and manipulative and difficult to solve as well as very heart-breaking for the families as any other stranger abduction?

Mr. PERKINS. Yes, Senator. Thanks. Exactly, and I think it goes to some of the testimony of Ms. Wetterling talking about any child going missing. You are exactly right. It causes tremendous heart-ache, concern, and tragedy for the family who has lost a child, whether it is a stranger abduction or whether it is a parental abduction. There is on many occasions significant advance plotting to make this happen.

You have to begin with the premise initially that the parent taking the child, the case has already been adjudicated in a court and custody has been established for specific reasons. So there are reasons why that parent does not have custodial rights at that point in time. When that child is taken away, it totally disrupts that child's life, as has been mentioned earlier, and it sets into motion a number of different issues for law enforcement.

In our particular case, the FBI becomes involved in these types of investigations more often than not through invitation from State and local law enforcement. We can bring to bear a number of forensic techniques, advanced investigative and laboratory processes. We also bring in, obviously, the international scope.

There is a Federal statute that allows us to become involved in one of these cases where—I am sorry, ma'am.

Senator KLOBUCHAR. Just there are time constraints here. Do you know, are a lot of these cases handled by local law enforcement? I am just picturing my own life when I was county attorney and you guys got really busy with huge money cases and thefts. I mean, are still most of these cases handled on the local level?

Mr. PERKINS. The vast majority of these cases are initially handled at the State and local level. That is where the 911 call comes in when your child goes missing, and that is where the immediate call should be. But based upon requests from the State and local law enforcement or specific Federal violations where the FBI can become involved, we involve ourselves in any missing child where there is a potential danger to the child, yes.

Senator KLOBUCHAR. Mr. Keightley mentioned this existing part of the code. First of all, I was actually kind of surprised that there are these 22 exceptions that Mr. Allen discussed for things like student loans. I just do not understand why we would say it is OK to have those exceptions for student loans to track them down but not for missing children, and that is what bothers me here. But Mr. Keightley did raise the issue that there is an exception for child

support orders, and it would seem to me—do you know what percentage of these families have outstanding child support orders where we could use that? I do not quite understand why we would not just slightly tweak that to include missing children information as opposed to just saying, well, part of them have child support orders so why don't we use that.

Mr. PERKINS. I think part of what you just mentioned would be an excellent solution to where if we could potentially tweak that exception to allow State, local, and Federal law enforcement to have access to the address information, and that is really all we are looking for here.

Senator KLOBUCHAR. You do not need to see what their taxes are or anything.

Mr. PERKINS. No. We need the latest and greatest and most accurate address for the offender.

Senator KLOBUCHAR. And do you know what percentage would have these standing child support obligations?

Mr. PERKINS. No, ma'am, I do not have that percentage, but I could find that for you.

Senator KLOBUCHAR. Mr. Allen? Mr. Keightley?

Mr. KEIGHTLEY. Could I make a comment on that? One of the reasons I was pushing toward Social Security, I believe that information would be more quickly available. If you wait for somebody to file a tax return, on extension until the IRS puts it all in the computer base and all of that, it can be 18 months or more until it is really easily available. So one of the advantages I did not mention was with Social Security is that I think it would be more quickly available.

Senator KLOBUCHAR. Maybe we can do both.

Mr. Allen.

Mr. ALLEN. Yes, a couple of points. Our sense is that very few of these cases have child support orders. I am not sure we have data on that, but the nature of the parental abduction case is that research shows that in 80 percent of them, the motivation is anger or revenge. In many of these cases, the child is taken before there is a custody order. So many of the victim parents, the left-behind parents, really do not think their ex-spouse would do that and are not prepared to deal with it.

So, ultimately, I think it is really important that there be a very specific exception or some other statutory authorization to deal with these unique kinds of cases.

Senator KLOBUCHAR. OK. Very good. My time is up here. I am going to turn it over to Senator Grassley.

Senator GRASSLEY. Thank you very much.

Mr. Keightley, I am going to ask you a question that not only the Judiciary Committee but the Finance Committee ought to be very interested in your answer. Mr. Allen argues for an exception to the Tax Code privacy rules to help locate missing children. He states that Congress must examine whether a fugitive's privacy is more important than a child's safety. Understandably, Mr. Allen's focus is the safety of the child, and I think we all agree with that sort of a pronouncement.

However, it is not just an abductor's privacy that is at stake. There may also be criminal investigations of the abductor. We may

also set a precedent that may lead to other requests to relax the IRS data. There have already been some exceptions, admittedly. In addition, I am concerned about a government agency, in this case the IRS, being the largest repository of data on individuals.

So would you, Mr. Keightley, please provide your thoughts on the use of IRS data in criminal investigations. Also, what are your thoughts on the precedent this sets for other similar uses?

Mr. KEIGHTLEY. Thank you, Senator Grassley. In my testimony, I did try and draw the distinction—and it is true—that there is no broad access to State and local criminal investigators. But I do think in this case—and I think Senator Klobuchar's point is correct—that if the Congress has gone so far as to allow access to information for child support, it would seem to me not too big a jump to say that the Tax Code should allow access for purposes of locating and providing assistance just in locating. And I also narrowly tried to confine my suggestion not to the whole tax return, to say all we are doing really is best address information.

So I understand the tension between tax administration and various disclosures because we force people to file these tax returns. We force great amounts of information out of them. And we need to strike that balance so that people continue to file and have confidence in the confidentiality provisions.

Senator GRASSLEY. Just my last question would be to Mr. Allen. You have testified today and also before the Sentencing Commission about the harms caused by possession of child pornography. Disturbingly to me, the Sentencing Commission and too many Federal judges seem to think that the possession of child pornography is not a serious offense that deserves real punishment. Instead, they seem to think it involves an offender who suffers from a mental illness that requires treatment.

So please comment on the accuracy of that view and what Congress should do in light of the weak sentences now being imposed for the possession of child pornography.

Mr. ALLEN. Senator Grassley, a couple of thoughts.

The Sentencing Commission is currently re-examining guidelines. We are supportive of a re-examination of the guidelines. Based on the *Booker* decision of the Supreme Court a few years ago, guidelines are now advisory rather than controlling. Congress has not enacted a mandatory minimum sentence for the possession of child pornography. More than half of current sentences for the possession of child pornography depart below the minimum of the guideline. The Justice Department's Child Exploitation and Obscenity Section has done an excellent analysis of sentencing patterns. We do not support disparity in sentencing, but the sentences for child pornography possession are not more extreme than sentences for contact offenses.

The issue—and we have been working with the Sentencing Commission on this—is to ensure that criteria for enhancing sentences from 10, 12 years ago, like the use of a computer, are re-examined because all of this content now involves the use of a computer.

The answer to your question is we are concerned that there are growing numbers of minimal sentences, there are growing numbers of judges who are talking about mere possession of child pornography. This is an issue that has nothing to do with free speech.

These are crime scene photos. These are images of the sexual abuse of a child. We think this is a serious crime and it needs to be dealt with seriously.

Senator GRASSLEY. I did not think I would have time for a last question, but this involves Federal judges making tax return information available to law enforcement in a parental abduction case if requested. Few judges do this. Any of you, could you speak to the point, how well do you think the Federal judges have used their current authority to order IRS to make tax return information available? And what do you think can be done to raise their awareness that so many parental abductions are violent crimes?

Mr. KEIGHTLEY. I tried to get some information on the case that was alluded to in the newspaper article, and I was unable to find any detail on it. So I am not sure what the answer to that question is, Senator.

Senator GRASSLEY. OK. Do any of you have an answer? If you do not, that is OK. Or if you can supply for an answer in writing, that would be OK.

Ms. WETTERLING. Senator Grassley, I would just like to say that addressing this makes the statement that it is illegal to abduct children, and so it is a baseline of awareness for everyone out there. And I think that judges will be receptive to the opportunity, when law enforcement makes the request, that there will be a process for that to be honored in a timely fashion.

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR. OK. Thank you very much, Senator Grassley.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairman.

I think to give some context to the line of questioning that Senator Grassley has been very correctly and well pursuing, part of the problem here is the priority that law enforcement and judges give to this crime. I can remember as United States Attorney back in the late 1970's when the FBI and, frankly, Federal prosecutors and even local prosecutors gave very little priority to this crime because it was regarded as purely a domestic dispute and not really worthy of the criminal justice apparatus. So I want to commend both the FBI and Detective Pirnat, your office and other local and State offices around the country, for the heightened priority you have given it, but at the same time really again pursue the line of questioning that has been raised here about maintaining and even enhancing the priority. Because even with this information, even knowing where the abductor lives and works, there still has to be investigation and there still has to be a prosecution, and that requires resources.

So my question to Mr. Perkins and Ms. Pirnat is: Do you believe that the resources now are sufficient? And do you think they can and should be increased?

Mr. PERKINS. Thank you, Senator, for the very good question on these areas. In a time of limited resources, in a time when we are struggling with our own budgetary resources to meet the various priorities, you are correct, this has risen in its level of priority.

As the Assistant Director of the Criminal Division I have almost 50,000 pending criminal investigations across the United States in

a variety of areas. As a parent, as a parent of two children, nothing surpasses for me personally the priority of a child going missing. That is my own personal belief on this. But it is also one that is shared within the Bureau and within the Department.

As far as resource, every day we work to get the best and most efficient means we can to investigate these cases. The issue at hand here today, talking about a more efficient, a quicker way of getting information to rescue these children is really the focus of what I am working on, trying to get this information in a quicker manner, a more efficient way to use the resources that we have.

Sure, more resources are always better, but my job is to use those resources as efficiently as I can and make the best use of them, and that is what we are trying to do here today.

MS. PIRNAT. I do believe that with limited resources we are doing the best we can. Unfortunately, sometimes these cases are getting screened out by the first responder because there is a misunderstanding by the officer responding about a parental abduction, whether or not it is actually a crime or a civil matter. We constantly do training to make sure we are getting the right information out there.

When it comes time for prosecution, because of the number of cases that are being prosecuted, those are the cases that are getting bumped down. I did have a parental abduction where both the grandmother and the father took the children to California. I was able to make a successful recovery. And when it came time for court, they dropped it down to a misdemeanor for the father, and for the grandmother they actually dropped it down to a trespassing, of all things. And I was very disappointed with that outcome. But it is because they prioritize their cases, and those are not getting the type of attention I think they should be as far as the potential damage to the children.

Senator BLUMENTHAL. And let me ask another question, and, by the way, I think this issue is hugely important because the reason, the main reason in my view, that the abductor puts this information on a tax return is he does not believe anybody cares. He does not believe anybody will follow up on it, even if there is disclosure. And he probably assumes there will be because he does not know about this 26-page section in the IRS Code. He just kind of thinks he is halfway across the country or all the way across the country, and no one is going to track him down. And that is why the priority given to this serious felony crime has to be maintained and increased.

I am out of time, but I would like to know from all of you what information you feel should be provided, whether it is the location on the tax return that is given, the employer. What specific information should be disclosable? Because I think that is important, and I am not sure that the legislation will go into that detail. But I think knowing from you what specific information should be disclosable I think would be useful to the Committee.

Thank you.

Mr. KEIGHTLEY. I think that is a very important point because, as Senator Grassley pointed out, the tension between confidentiality and whatever is needed by the investigators, it should be the

narrowest access to information that serves their purposes. As I said, that needs to be thought through.

Senator KLOBUCHAR. OK. And, Senator Blumenthal, I am going to have the witnesses answer that in writing for us because the vote has been called, if that is all right with you.

Senator BLUMENTHAL. Sure. I expected that would be the case, and I thank you in advance for your answers.

Senator KLOBUCHAR. And we will get that information.

[The questions appear under questions and answers.]

Senator KLOBUCHAR. It seems clear to me that a lot of the witnesses have pointed to the address information as the key and an acknowledgment of these privacy concerns. But I just wanted to just finish up here with just a few concluding questions, and that would be, first of all of Ms. Wetterling. You know, you have come into countless contacts with families who have suffered both stranger and family abductions. What do you believe to be the biggest difference between the stranger abduction cases and the family abduction cases?

Ms. WETTERLING. It is the level of support from community, from law enforcement, from Federal agencies. And what is most important to every family is that there is this collective energy that we are all holding hands and combing this country to find our child. And I think that this is one of the ways that we are closing a gap. As we discover holes in the process, we need to fill them.

Senator KLOBUCHAR. OK, very good.

Then for our detective there, I thought that was a good example that you had of those kinds of cases. But just maybe following up on Senator Blumenthal's question, for someone who is on the front line there dealing with those cases, you know, having to have limited resources, what information would be most helpful to have if you think there is a family abduction and you cannot find the person?

Ms. PIRNAT. Well, in addition to the actual addresses, I would say the employer information with the employer address and also phone numbers and e-mail addresses would be helpful for us because that physical address they provide may not be the most accurate. So anything else that we could have to actually track them down would be great. We do not need to know income or anything along those lines.

Senator KLOBUCHAR. And how does it feel to hear about the study that Mr. Allen worked on that showed that a third of these family abductions actually are filing some kind of information and half of those actually have updated addresses?

Ms. PIRNAT. I am not surprised just because of the mentality of the parental abductors that they are entitled to the children. So that information is out there, and they are continuing to file tax returns, and that information could successfully lead to us being able to close out our cases. I just see no reason why we would not move forward with sharing that so that we can hopefully, like I said, reunite some families.

Senator KLOBUCHAR. Any closing remarks, Mr. Allen, since you have been spending a lot of time on this?

Mr. ALLEN. I think the only point in addition I would want to make in response to Senator Blumenthal's point is that in a time

of scarce resources, in a time when numbers are challenged, when there are not going to be the numbers of agents or police officers that we have had in the past, it is more important than ever that the police that are there have the kinds of tools and information to find these kids and be able to move quickly. This is just basic management that will enable them to maximize the impact of the resources we have.

Senator KLOBUCHAR. All right. Well, I want to thank all the witnesses. It has actually been a very helpful hearing, and I thank you, Mr. Keightley, for your tax expertise and coming into our criminal hearing with that piece of it, and everyone's willingness to acknowledge that we are balancing these privacy concerns with the enormous need to solve these cases. And thank you, Patty Wetterling, for the passion you bring to this issue. That has motivated me to get involved and stay involved because I truly believe there has got to be a way to work this one out. I know it is important to collect those student loans, and right now we are dealing with a time in government budgets that we have to do everything. But here we have something where there are already exceptions, if we could just make some changes to get this information so Mr. Perkins and his agents and some of the local people have it. I am just so aware of these limitations with some proposals out there with cutting 4,000 FBI agents, which I do not think will come to fruition. We have got to do everything we can to make this as efficient as possible while still protecting privacy rights.

So I want to thank you all. The record will remain open for 2 weeks, and we will be following up with you on this important issue and this important bill.

The hearing is adjourned.

[Whereupon, at 11:09 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]



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QUESTIONS AND ANSWERS

March 25, 2011

The Honorable Patrick Leahy
U.S. Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for the opportunity to testify at the hearing before the Senate Committee on the Judiciary on March 2, 2011 entitled "Helping Law Enforcement Find Missing Children". Per your request dated March 21, 2011, I am responding to the question from Senator Richard Blumenthal for inclusion in the formal Committee record.

Senator Blumenthal asked "[W]hat specific information do [the witnesses] feel the IRS should provide to law enforcement, and under what circumstances?" As you know, the National Center for Missing & Exploited Children (NCMEC) is congressionally authorized to operate the nation's clearinghouse on missing and exploited children. NCMEC is not a law enforcement agency. As such, we defer to law enforcement experienced in conducting investigations involving missing and exploited children regarding the specific IRS information that would help them resolve these cases.

In general, however, NCMEC believes that the IRS should provide to law enforcement any information that could help determine the geographic location of the abductor or the child. However, this should not necessarily include information about salary earned or taxes paid. To further address the Senator's question, NCMEC feels that the IRS should provide this information to law enforcement investigating a case involving a missing or sexually exploited child. As I stated in my testimony at the hearing, law enforcement should be able to obtain information that could help them recover these children as expeditiously as possible. The goal is to find these children and bring them home.

Please contact me or my staff if you have any questions or if NCMEC can be of additional assistance.

Sincerely,

Ernie Allen
President and CEO

**Response from Jim Keightley to Senator Richard Blumenthal
Hearing on *"Helping Law Enforcement Find Missing Children"*
March 2, 2011**

"When considering legislative changes to allow law enforcement agents to access information that may help lead to missing children, it would be useful to know what specific information held by the IRS you feel is appropriately disclosable in this limited context. With due regard for the legitimate privacy concerns of ordinary citizens, what specific information do you feel the IRS should provide to law enforcement, and under what circumstances?"

The simple answer to this question is that the last known/ most recent address of the abducting parent is all that needs to be disclosed to the local child welfare officials. Whether the abducting parent deducted the child on a tax return is not really relevant to the location of the missing parent and child. Do the local officials only want to find abducting parents who have deducted the stolen child on a tax return? No, they want to find ALL abducted children, whether deducted on a tax return or not. Then they can apply whatever pressure, legal or social, they have available to protect the child.

I would also limit any disclosure of recent address information to responsible law enforcement officials because of the emotional issues surrounding such abductions.

Finally, I would change IRC Section 6103 to authorize such disclosures. If disclosures can be made to locate spouses avoiding their financial support obligations, locating abducting spouses should be an easy policy step.

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the March 2, 2011, Hearing Before the
Senate Committee on the Judiciary
Regarding "Helping Law Enforcement Find Missing Children"**

Questions Posed by Senator Blumenthal

When considering legislative changes to allow law enforcement agents to access information that may help lead to missing children, it would be useful to know what specific information held by the IRS you feel is appropriately disclosable in this limited context. With due regard for the legitimate privacy concerns of ordinary citizens, what specific information do you feel the IRS should provide to law enforcement, and under what circumstances?

Response:

Address and employment information, along with other contact, location, and identification information that the IRS may have relating to an abducted or endangered child and/or to those responsible for abducting or endangering the child, can be of critical value. Experience shows that IRS records often contain this information, as well as information related to those who may have, or may have had, custody or control of such children or knowledge of their locations. Although we understand there may be some concern that taxpayers will be less inclined to file tax returns if they know location information is provided to investigators attempting to locate missing children, we believe such a narrow use of location information is unlikely to have a broad effect on taxpayers generally and we would be pleased to work with the IRS and others to address these concerns.

While the FBI uses the existing legal process to obtain court orders in appropriate circumstances, a streamlined process would enable law enforcement officials to obtain this critical information more quickly. The value of obtaining this information very quickly is great because time is critical when we are attempting to identify a child's location in order to secure the child's safe return. It is also critical that this information be disclosed in all cases of abducted or endangered children in which law enforcement requests are made to the IRS, regardless of whether the case is being investigated by federal, state, or local authorities (most child abduction or endangerment cases are investigated at the state or local level). We would be pleased to work with the Committee to develop appropriate legislation for this purpose.

In contrast to information relating to location and identity, as described above, the FBI currently does not seek, and sees no value in obtaining, financial information held by the IRS because this information will not assist us in locating or recovering missing children. Consequently, legislation addressing this issue would not need to provide for the disclosure of financial information.

**Questions from Senator Richard Blumenthal
Response from Det. Thea Pirnat
Hearing on "Helping Law Enforcement Find Missing Children"
March 2, 2011**

"When considering legislative changes to allow law enforcement agents to access information that may help lead to missing children, it would be useful to know what specific information held by the IRS you feel is appropriately disclosable in this limited context. With due regard for the legitimate privacy concerns of ordinary citizens, what specific information do you feel the IRS should provide to law enforcement, and under what circumstances?"

If a child is entered into NCIC as missing or abducted and their social security number is claimed as a tax dependent with the IRS, then the following information should be provided to law enforcement by the IRS to help locate the missing child:

- Name, date of birth and home address of person claiming child as dependent.
- Name and date of birth of all other household members listed on the filing.
- Name and address of the employers for the person claiming the child.
- All phone numbers and email addresses provided by person claiming the child.

If there is a local or federal outstanding warrant for felony child abduction and the known child abductor files a return with the IRS using their own social security number, then the following information should be provided to local law enforcement to help apprehend the wanted child abductor and possibly locate the missing child even if the child is not listed on the tax filing:

- Name, date of birth and home address of person filing the claim.
- Name and date of birth of all other household members listed on the filing.
- Name and address of the employers for the known child abductor.
- All phone numbers and email addresses provided by the known child abductor.

This response is based on the understanding that those whom abduct children may have assistance from family and/or friends. The known child abductor may or may not be the one claiming the child on the return; however, they may be listed as another household member. It also takes into consideration that the child abductor may not stay in one location long or there may be a delay in securing the information from the IRS resulting in outdated information being provided to law enforcement. It is also likely that the child abductor will not be providing completely accurate information. By having complete employment information, phone numbers, email addresses and other household members information, law enforcement will have other leads to pursue if the address provided is not accurate or outdated. It is also possible that the known child abductor has the abducted child with him, but is not claiming him as a tax dependent.

Response provided by:
Detective Thea Pirnat
Fairfax County Police Department, Child Exploitation Unit
4100 Chain Bridge Road, Fairfax, Virginia 22030

**Question from Senator Richard Blumenthal
Response of Patty Wetterling
Hearing on “*Helping Law Enforcement Find Missing Children*”
March 2, 2011**

“When considering legislative changes to allow law enforcement agents to access information that may help lead to missing children, it would be useful to know what specific information held by the IRS you feel is appropriately disclosable in this limited context. With due regard for the legitimate privacy concerns of ordinary citizens, what specific information do you feel the IRS should provide to law enforcement, and under what circumstances?”

I believe if law enforcement has a legitimate missing child and has reason to believe that they are being claimed by the abductor that law enforcement could go through the defined process of finding out if either the child’s or the abductor’s social security numbers have been filed with the IRS.

In most instances, I believe the information needed should be determined by law enforcement investigating. As respectful as I am about legitimate privacy, in most instances, these are individuals with a felony warrant out for their arrest so law enforcement would be seeking information that can help to locate them which would probably include address and place of employment. There may be special circumstances where they request some other piece of information.

**Respectfully,
Patty Wetterling**

SUBMISSIONS FOR THE RECORD

TESTIMONY OF

ERNIE ALLEN

President & CEO

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

for the

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

“Helping Law Enforcement Find Missing Children”

March 2, 2011

Mr. Chairman and members of the Committee, I welcome this opportunity to appear before you to discuss the use of Internal Revenue Service data by law enforcement to locate children. Chairman Leahy, we are deeply grateful for your long history of advocacy for children and for your leadership on these issues.

As you know, the National Center for Missing & Exploited Children is a not-for-profit corporation, authorized by Congress and working in partnership with the U.S. Department of Justice. NCMEC is a public-private partnership, funded in part by Congress and in part by the private sector. For 26 years NCMEC has operated under Congressional authority to serve as the national resource center and clearinghouse on missing and exploited children. This statutory authorization (see 42 U.S.C. §5773) includes 19 specific operational functions, among which are:

- operating a national 24-hour toll-free hotline, 1-800-THE-LOST® (1-800-843-5678), to intake reports of missing children and receive leads about ongoing cases;
- operating the CyberTipline, the “9-1-1 for the Internet,” that the public and electronic service providers may use to report Internet-related child sexual exploitation;
- providing technical assistance and training to individuals and law enforcement agencies in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;
- tracking the incidence of attempted child abductions;
- providing forensic technical assistance to law enforcement;
- facilitating the deployment of the National Emergency Child Locator Center during periods of national disasters;
- working with law enforcement and the private sector to reduce the distribution of child pornography over the Internet;
- operating a child victim identification program to assist law enforcement in identifying victims of child pornography;
- developing and disseminating programs and information about Internet safety and the prevention of child abduction and sexual exploitation; and
- providing technical assistance and training to law enforcement in identifying and locating non-compliant sex offenders.

Our longest-running program to help prevent the sexual exploitation of children is the CyberTipline, the national clearinghouse for leads and tips regarding crimes against children on the Internet. It is operated in partnership with the Federal Bureau of Investigation ("FBI"), the Department of Homeland Security's Bureau of Immigration and Customs Enforcement ("ICE"), the U.S. Postal Inspection Service, the U.S. Secret Service, the Military Criminal Investigative Organizations ("MCIO"), the Internet Crimes Against Children Task Forces ("ICAC"), the U.S. Department of Justice's Child Exploitation and Obscenity Section, as well as other state and local law enforcement. We receive reports in eight categories of crimes against children:

- possession, manufacture and distribution of child pornography;
- online enticement of children for sexual acts;
- child prostitution;
- sex tourism involving children;
- extrafamilial child sexual molestation;
- unsolicited obscene material sent to a child;
- misleading domain names; and
- misleading words or digital images on the Internet.

These reports are made by both the public and by Electronic Service Providers ("ESPs"), who are required by law to report apparent child pornography to law enforcement via the CyberTipline (18 U.S.C. §2258A). The leads are reviewed by NCMEC analysts, who examine and evaluate the content, add related information that would be useful to law enforcement, use publicly-available search tools to determine the geographic location of the apparent criminal act, and provide all information to the appropriate law enforcement agency for investigation. These reports are triaged continuously to ensure that children in imminent danger get first priority.

The FBI, ICE, Postal Inspection Service and the MCIOs have direct and immediate access to all CyberTipline reports, and assign agents and analysts to work at NCMEC. In the 13 years since the CyberTipline began, NCMEC has received and processed more than 1 million reports. ESPs have reported to the CyberTipline more than 8 million images/videos of apparent child pornography. To date, more than 44 million images and videos have been reviewed by the analysts in our Child Victim

Identification Program ("CVIP"), which assists prosecutors to secure convictions for crimes involving identified child victims and helps law enforcement to locate and rescue child victims who have not yet been identified.

NCMEC's Case Analysis Division provides analytical support to law enforcement agencies to assist in their efforts to recover missing and abducted children, track attempted abductions and locate noncompliant registered sex offenders. NCMEC receives information from a variety of governmental data sources, such as the FBI's National Crime Information Center (NCIC), the Federal Parent Locator Service and the U.S. Department of Housing and Urban Development. Private companies including Appriss, LexisNexis, Thomson Reuters, and TLO donate their commercial data sources to NCMEC, and we provide this information to law enforcement for free.

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A family abduction occurs when a child's relative takes or keeps the child in violation of the legal rights of the child's custodial parent or guardian. In the vast majority of cases, the child is abducted by one or both of the child's biological parents who do not have legal custody of the child. However, family abductions also include cases where a child is abducted by a grandparent, aunt, uncle, or other relative.

Family-abducted children are a subset of all the children who are missing under a variety of circumstances. These children have been abducted but often their whereabouts are known or suspected. Sometimes the custodial parent knows where the child is physically located, but the abducting parent refuses to return the child or allow the child to see the custodial parent, in violation of law.

There is a common misconception that family abductions are merely custody disputes. On the contrary, these abductions are criminalized under federal law and the laws of all 50 states and D.C. Congress recognized the severity of these crimes when it passed the Parental Kidnapping Prevention Act of 1980. This law, codified at 28 USC §1738A, requires every state to enforce child custody orders issued in another state in order to keep abducting parents from obtaining a different custody order. Congress found that the effects of this crime demanded a federal response in order to prevent "harm to the welfare of children and their parents and other custodians."¹ Congress made international parental kidnapping a

¹ P.L. 96-611.

federal offense in 1993, noting “these parental kidnappings seriously affect both the children and the parents deprived of rightful custody. Some child psychologists believe that the trauma children suffer from these abductions is one of the worst forms of child abuse.”²

Family-abducted children suffer extreme emotional abuse, ranging from lack of identity to grief over the loss of a parent. In many instances the abductor tells the child that the left-behind-parent is dead or no longer wants the child. Abductors frequently move the child from city to city, or take the child to another country, making it difficult for law enforcement and the searching parent to locate and recover the child, and inflicting emotional harm on the child. In addition, in an effort to evade detection, abductors may change the child’s name, teach the child to lie to authorities, or not enroll the child in school. All of these cause incalculable harm to the abducted child. Because of the unique nature of this crime and the damage inflicted on family-abducted children, a group of former abducted children founded the non-profit organization Take Root (www.takeroot.org) to provide peer support to other family-abducted children.

NCMEC case data demonstrates that family abducted children are also at risk of physical harm. Young children are at an even higher risk. An in-depth analysis of children who died at the hands of their parents shows that 96% of these children were under the age of 10.³

Most of the AMBER Alerts in the last four years were issued for children who were abducted by family members. Although each state sets its own guidelines specifying when an AMBER Alert may be issued, AMBER Alerts are always used in only the most serious child-abduction cases. I would like to share two examples.

April 25, 2009 AMBER Alert (Passaic, NJ). A man abducted his three-year-old niece in Passaic, New Jersey, after having an argument with the child’s mother. The suspect grabbed the child, told relatives to “watch the six o’clock news,” and fled the residence. The suspect’s vehicle was located a short time later, abandoned in the middle of a bridge. As the AMBER Alert was being issued, the child’s body was recovered in the Passaic River.

² House Report 103-390.

³ Analysis conducted of missing children intaked by NCMEC and subsequently recovered deceased; children last seen between October 15, 1975 and May 24, 2002.

November 9, 2009 AMBER Alert (Sanford, ME). A 2-year-old girl was abducted by her non-custodial father after he broke into her home. He physically and sexually assaulted the child's mother at knife point, stole her cellular phone, and stated that he had nothing to live for. An AMBER Alert was quickly issued. A hunter heard the AMBER Alert, memorized the vehicle and registration number of the truck, and found the abductor and the child inside the abductor's truck on a tote road in the woods. The little girl was safely rescued.

What is the scope of the problem of family abduction? In 2002 the Department of Justice published the second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children. This survey of a one-year period found that an estimated 203,000 children are the victims of a family abduction each year. Of these children, almost half are younger than age 6. Approximately 78% are abducted by their biological father or mother.⁴ Of the family-abduction cases surveyed by the Justice Department, 15,000 involved the use of force and 2,700 of them involved the use of a weapon.⁵

NCMEC assigns missing-child cases into five different categories, including Family Abduction.⁶ We have intaked the cases of more than 32,000 children abducted by family members. Of these, 1,486 children are still missing. Based on NCMEC data, family-abducted children remain missing longer than children in any other missing-child category. Approximately 20% of our family abduction victims were

⁴ Hammer, Heather, Finkelhor, David and Sedlak, Andrea J., *National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, October 2002.

⁵ *Ibid*

⁶ NCMEC's missing-child categories are as follows:

ERU (Endangered Runaway) - Any missing individual between 11 and 17 years of age, who goes missing on their own accord, without permission from their parent or legal guardian.

FA (Family Abduction) - A family abduction is defined as the taking, retention, or concealment of a child or children, younger than 18 years of age, by a parent, other family member, or his or her agent, in derogation of the custody rights, including visitation rights, of another parent or family member.

LIM (Lost, Injured or Otherwise Missing) - Lost, Injured, or Otherwise Missing is defined as any missing child younger than the age of 18 where there are insufficient facts to determine the cause of the child's disappearance or any child 10 years of age or younger who is missing on his or her own accord. These children are also referred to as "Endangered Missing."

NFA (Nonfamily Abduction) - A nonfamily abduction is defined as the coerced and unauthorized taking of a child younger than the age of 18 or the luring of a child for the purpose of committing another crime by someone not related to the child by blood or marriage.

5779 (Section 5779) - A Section 5779 case, derived from 42 U.S.C. § 5779, is designated for the classification of missing persons reported to NCMEC by a law-enforcement agency when the individual is 18 years of age or older but younger than the age of 21.

still missing after one year. Approximately 1,000 children were still missing after five years, including children whom we are still searching for.

As the nation's resource center on missing and exploited children, NCMEC has partnered with a number of private-sector companies to develop tools and resources that can help law enforcement locate missing children. We are proud to report that of the missing child cases reported to NCMEC, 97.5% have been resolved.

First, NCMEC operates a 24-hour, toll-free missing child hotline, 1-800-THE-LOST. In 27 years, NCMEC has received more than 290,000 calls from individuals reporting "sightings" of missing children. This information is forwarded to the NCMEC Case Manager assigned to the case who refers the information to the relevant law enforcement agency for investigation.

Second, since 1984 we have worked with private-sector partners to distribute more than 519,000 photographs of missing children. More than 4,100 children are known to have been recovered by law enforcement as a direct result of this photo distribution program.

Third, we have access to donated private commercial databases as well as governmental data sources and we provide all of this information to law enforcement at no cost. To date, 808 missing children have been located as a direct result of information gained from various governmental and commercial data sources.

All of these tools have proven effective in helping to find children. The Internal Revenue Service (IRS) database is yet another resource that could provide key information to help law enforcement locate and rescue missing and exploited children.

In 2007, the Treasury Inspector General for Tax Administration (TIGTA) conducted a study using a subset of NCMEC family abduction cases to determine whether the IRS database contained useful address information.⁷ TIGTA analyzed those NCMEC cases that contained Social Security Numbers for the missing children and/or the alleged abductors in order to identify new addresses – that is, addresses

⁷ Treasury Inspector General for Tax Administration Report Number 2007-40-029.

that were different from those where the children and/or alleged abductors lived at the time of the abductions. New addresses were found for 46% of the missing children (237 out of 520) and 34% of the alleged abductors (104 out of 305). TIGTA asked NCMEC to inform the FBI of these results immediately so they could request disclosure of the new addresses under 26 U.S.C. § 6103 and recover these abducted children. To our knowledge, these new addresses in the IRS database have not been disclosed to law enforcement.

Of course, maintaining the confidentiality of information stored by the IRS is of critical importance. However, exceptions to non-disclosure have been carved out over the years when it became apparent that IRS information could be useful in certain cases – for example, cases involving child support or determination of federal benefits. It has now clearly become apparent that IRS information could help law enforcement investigating cases involving missing and exploited children. We believe a clarification in the law is necessary to ensure the disclosure of IRS data that could lead to the recovery of a missing child.

The IRS law already permits disclosure to federal law enforcement investigating violations of federal law. However, this exception has proven to be of limited use for missing child cases. Federal law enforcement investigating missing child cases face significant and often insurmountable hurdles in trying to use this exception to access to IRS information. Also, perhaps more significantly, most family abduction cases are investigated by state and local law enforcement. Although it may seem irrational, parents who break the law by stealing their children will nonetheless often comply with the IRS laws and file a federal tax return each year. This is a golden opportunity for an investigating officer, especially in cases where the trail has gone cold.

Some of the abductors in the TIGTA study are the subjects of felony warrants – fugitives from justice. The details provided by these fugitives on their tax returns, such as a home address or work history, could provide the key to finding the children they abducted. Congress must now examine the question of which is more important: a fugitive's privacy or a child's safety?

Moreover, the disclosure of IRS data could help law enforcement rescue other child victims. Although not typical missing-child cases, some child pornography victims are "missing" in the sense that they

have not told anyone about their abuse and, as a result, they have little chance of being identified and rescued. Experts estimate that of the children who are sexually victimized, just 1 in 3 will tell anybody about it.⁸ NCMEC's Child Victim Identification Program was created to help law enforcement identify and rescue these child pornography victims who otherwise would remain in their abusive situations. More than 3,400 child victims have been identified by law enforcement. The majority of them have been abused by a parent or someone with similarly legitimate access to them.⁹ We believe that there are thousands of sexually exploited children who are unknown and who will continue to suffer until they are located. IRS information can be the key to helping law enforcement identify and rescue these victims of child pornography.

NCMEC believes that law enforcement should have access to any information that could lead to the recovery of a missing or exploited child. The TIGTA study confirmed that the IRS database contains information that would help law enforcement investigating these cases. The law must allow for the disclosure of this information to law enforcement in missing and exploited child cases. Doing so will help bring children home.

Thank you.

⁸ David Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse.* "The Future of Children: Sexual Abuse of Children, 1994, Volume 4.

⁹ 66% of identified child victims were abused by a parent, guardian, other relative, neighbor, family friend, guardian's partner, babysitter or coach. Abuser data based upon victim information submitted to NCMEC by law enforcement, as of December 31, 2010. The data represent the known relationships from 3,341 identified victims.



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March 7, 2011

The Honorable Charles Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley,

I appreciated the opportunity to address the issue of child pornography sentences at the Senate Judiciary Committee hearing on March 2. I would like to expand on my response with some additional information.

As you know, the National Center for Missing & Exploited Children (NCMEC) is congressionally authorized to operate the CyberTipline, the reporting mechanism for online crimes against children. Most of these reports involve apparent child pornography. As a result, we have unique knowledge of the nature of these images. Although there are those who minimize the severity of the crime of "mere" possession, this misconception is due to a fundamental lack of understanding of the child pornography industry. Child pornography images are crime scene photos that memorialize the sexual abuse of a child. The children in these images are re-victimized every time the image is viewed. In addition, child pornography possessors create demand for new images. This demand for images drives their production and, hence, the sexual exploitation of children to create the images.

Despite the heinous nature of this crime, the federal statute criminalizing possession of child pornography has no mandatory minimum sentence. This, combined with the advisory nature of the federal sentencing guidelines, allows judges to impose light sentences for possession. Congress passed mandatory minimum sentences for the crimes of receipt, distribution, and production of child pornography. We don't believe that Congress intended to imply that possession of child pornography is less serious than these other offenses.

In addition, the study conducted of prisoners in a sex offender treatment program at the Butner Federal Correctional Facility found that offenders imprisoned for non-contact child pornography offenses had, in fact, molested hundreds of child victims that were unknown to law enforcement. This strongly suggests a correlation between possession of child pornography and hands-on sexual abuse of children.

Because NCMEC feels that possession of child pornography is a serious crime and deserves a serious sentence, we support a reasonable mandatory minimum sentence. Please do not hesitate to contact me or my staff with any questions.

Sincerely,

Ernie Allen
President and CEO

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

MAR 01 2011

Senator Charles Grassley
United States Senate
SH-135
Washington, D.C. 20515

Dear Senator Grassley:

This letter is in response to your request for background information regarding section 6103 of the Internal Revenue Code¹ (the "Code"), which governs the confidentiality of tax returns and return information. In addition to general background, you have requested background concerning the use of tax information for criminal purposes unrelated to tax administration. It is our understanding that you have requested this background information in connection with a hearing to be held by the Senate Committee on the Judiciary regarding law enforcement efforts regarding the location of missing children.

This letter provides an overview of the rules governing the confidentiality of tax information, general historical information relating to section 6103, the use of tax information for non-tax criminal matters, and information relating to Internal Revenue Service ("IRS") efforts with regard to missing children.

Background

Through the filing of tax returns, information received from third parties, and its own audits and investigations, the IRS has a significant amount of information about U.S. taxpayers. Tax returns generally cover the previous year and may not represent the most current information regarding a taxpayer. Circumstances, such as employment or address may change, making tax data inaccurate. However, there are continuing proposals to allow the disclosure of tax information for non-tax purposes to strengthen existing programs or to implement new initiatives.

¹ Unless otherwise stated, all section references and reference to the "Code" are to the Internal Revenue Code of 1986, as amended.

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General historical background²

Congress reviewed the tax information disclosure rules in depth in 1976. At that time, the rules had not been reviewed by Congress for 40 years and a growing number of rules allowing disclosure of tax information had been established by executive order. In addition, tax information apparently had been provided to the White House pertaining to a number of well-known individuals for non-tax purposes. There was substantial controversy over whether the extent of actual and potential disclosure of returns and return information to other Federal and State agencies for non-tax purposes breached a reasonable expectation of privacy on the part of the American citizen with respect to such information. This led to the concern as to whether the public's reaction to such an abuse of privacy would impair compliance with our Federal voluntary tax assessment system. In addition, questions were raised about whether tax returns and tax information should be used for any purpose other than tax administration.

In reviewing each of the areas in which returns and return information were subject to disclosure, Congress sought to balance a particular office or agency's need for the information with the citizen's right to privacy and the related impact of the disclosure upon the necessary continuation of voluntary compliance with our country's tax assessment system.

Thus, we have the rule that returns and return information generally should be treated as confidential and not subject to disclosure except in those limited circumstances set forth in section 6103 in which Congress determined that disclosure was warranted.

Historical background relating to disclosure for non-tax criminal purposes³

Section 6103 provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to such information except as provided in the Code. Section 6103 contains a number of limited exceptions to this general rule of nondisclosure that authorize disclosure in specifically identified circumstances (including non-tax criminal investigations) when certain conditions are satisfied.

² This background generally is based on Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1976* (JCS-33-76) December 29, 1976 at 314; 1976-3 C.B. 314 (Vol. 2) at 326.

³ This background generally is based on Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1976* (JCS-33-76) December 29, 1976 at 322-323; 1976-3 C.B. 314 (Vol. 2) at 326.

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Under prior law, pursuant to Treasury regulation, a U.S. Attorney or an attorney of the Justice Department could obtain tax information in any case "where necessary in the performance of his official duties." Tax information obtained by the Justice Department could be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United States was a party. Tax information obtained by both the Justice Department and U.S. Attorneys was used in investigating and prosecuting criminal activities. In addition, in connection with the enforcement of non-tax criminal statutes, tax information was made available to each executive department and other establishments of the Federal government in connection with matters official before them, on the written request of the head of the agency. Tax information so obtained could be used as evidence in any proceedings before any "department or establishment" of the United States or any proceedings in which the United States was a party.

In making the access to tax information for non-tax criminal purposes more restrictive, Congress noted that Federal agencies had almost unfettered access to tax information for non-tax criminal purposes and such non-tax access was inconsistent with the premise that the American citizen's tax information should be afforded a degree of privacy similar to that given to private papers in a private home. The information "that the American citizen is compelled by our tax laws to disclose to the Internal Revenue Service is entitled to essentially the same degree of privacy as those private papers maintained in his home. [Prior] law and practice [did] not afford him that protection -- the Justice Department and other Federal agencies, as a practical matter, being able to obtain that information for nontax purposes almost at their sole discretion."⁴

Thus, to afford the taxpayer with the appropriate degree of privacy and balance the need for tax information in the investigation and prosecution of non-tax criminal matters, the Congress decided that the Justice Department and any other Federal agency responsible for the enforcement of a non-tax criminal law should be required to obtain court approval for the inspection of a taxpayer's return or return information. However, Congress did not require the court approval procedure with respect to information which is derived from a source other than the taxpayer or filed on behalf of such taxpayer.

⁴ S. Rep. No. 94-938 (94th Cong. June 10, 1976) at 328; 1976-3 C.B. (Vol. 3) 49 at 366.

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Overview of Section 6103

General rule: returns and return information are confidential

Section 6103 provides the general rule that returns and return information are confidential. Section 6103 also states that returns and return information are not to be disclosed unless such disclosure is specifically authorized in section 6103 or other provision of the Code.⁵ Criminal and civil sanctions apply to the unauthorized disclosure or inspection of returns and return information (secs. 7213, 7213A, and 7431).

Definition of return

A "return" means any tax or information return, declaration of estimated tax, or claim for refund which, under the Code, is required (or permitted) to be filed on behalf of, or with respect to, any person. It also includes any amendment, supplemental schedule or attachment filed with the tax return, information return, declaration of estimated tax or claim for refund. For example, Form W-2, Wage and Tax Statement, is an information return, and is the return of both the employer who filed it with the IRS and the employee with respect to whom it was filed.

Definition of return information

The Code defines "return information" broadly. It includes a taxpayer's identity (the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (TIN or SSN) or a combination thereof). In addition to taxpayer identity, return information includes any information gathered by the IRS with regard to taxpayer's liability under the Code:

⁵ See section 6103(c) (disclosure by taxpayer consent); 6103(d) (disclosure to State tax officials); 6103(e) (disclosure to persons having material interest); 6103(f) (disclosure to committees of Congress); 6103(g) (disclosure to the President and certain other persons); 6103(h) (disclosure to Federal officers and employees for tax administration purposes); 6103(i) disclosure to Federal officer and employees for administration of Federal laws not relating to tax administration; 6103(j) (statistical use); 6103(k) (disclosure of certain returns and return information for tax administration purposes); 6103(l) (disclosure for purposes other than tax administration); 6103(m) (disclosure of taxpayer identity information); 6103(n) (tax administration contractors); and 6103(o) (disclosure of return and return information with respect to certain taxes).

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- the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;
- whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;
- any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
- any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110;
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement; and
- any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)).

The term "return information" does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. However, return information with the identifiers (name, address, SSN) simply removed is still protected by section 6103.

Definition of taxpayer return information

"Taxpayer return information" is another defined term for purposes of section 6103 and is a subset of return information. Taxpayer return information means return information that is filed with, or furnished to, the IRS by or on behalf of the taxpayer to whom such return information relates. For example, information filed with the IRS by a taxpayer's attorney or accountant is taxpayer return information. Information transcribed directly from a taxpayer's return is taxpayer return information. The distinction between return information and taxpayer return information is significant for the disclosures of non-tax criminal matters for which a court order generally is required to obtain taxpayer return information.

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Recordkeeping and safeguards

Section 6103 requires that certain recordkeeping and safeguard requirements be met by the recipient of tax information (section 6103(p)(4)) as a condition of receiving such information. These requirements establish a system of records to keep track of disclosure requests and disclosures, ensure that the information is securely stored, and that access to the information is restricted to authorized persons. These requirements and restrictions are intended to ensure that an individual's right to privacy is not unduly compromised and the information is not misused or improperly disclosed. The IRS also must submit reports to the Joint Committee on Taxation and to the public regarding requests for and disclosures made of returns and return information 90 days after the close of the calendar year (sec. 6103(p)(3)).

Overview of disclosure authority for non-tax criminal purposes

Section 6103 provides for the disclosure of tax information for Federal non-tax criminal investigation purposes. As discussed above, generally, a court order by a Federal district court judge or magistrate is required to obtain returns and information submitted by the taxpayer or the taxpayer's representative to the IRS (taxpayer return information). The court order process is ex parte, meaning that there is no right of notification or participation of the defendant in the proceeding.

The order can be granted upon a determination (1) there reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed, (2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and (3) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source. With respect to terrorist activities, an order may be granted if there is (1) reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to a terrorist incident, threat or activity and (3) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat or activity. Pursuant to ex parte court order, returns and return information may be disclosed for purposes of locating a fugitive from justice.

A court order is not required for the disclosure of tax information obtained from a source other than the taxpayer. This authority allows the IRS make disclosures of return information (other than taxpayer return information) to apprise the appropriate Federal officials of possible

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violations of Federal criminal law, and to respond to requests the head of any Federal agency and certain other Federal officials responsible for non-tax Federal criminal purposes. The IRS may also disclose return information to Federal and State law enforcement agencies in cases of imminent danger of death or physical injury.

IRS/National Center for Missing and Exploited Children Partnership Efforts

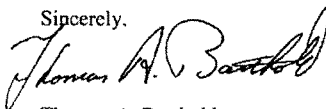
Since 1999, the IRS, in partnership with the National Center for Missing and Exploited Children ("NCMEC") has worked to expand the distribution of photos of lost, abducted and runaway children through the "Help Us To Picture Them Home" initiative.

Each fall, and as needed to replenish supplies, NCMEC provides the IRS with an electronic file containing hundreds of photos of various sizes. As tax products are prepared for release to the public, pages and portions of pages that would otherwise be left blank are replaced with photos taken from the photo inventory. The IRS tracks the names of the children, the tax product, and the page on which the child appears.

NCMEC notifies the IRS of the photos that need to be removed from the photo inventory as a result of recovery or other reasons. According to the IRS, since the inception of the IRS/NCMEC partnership in 1999, one child (in 2004) was verified to have been recovered as a result of a person having seen a child's picture in an IRS tax product.⁶ For the 2010 filing season, 425 photos appeared in 149 different tax products, which are available to the general public. According to the IRS, the published volume of these products totals in the millions.

I hope that this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,



Thomas A. Barthold
Chief of Staff

⁶ It is our understanding from the IRS that in most cases it is not known whether the recovery was the result of a NCMEC photo being seen.

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APPENDIX A

SECTION 6103 EXCEPTIONS FOR NON-TAX CRIMINAL PURPOSES

1. Disclosure of returns and return information for use in general non-tax criminal investigations - by ex parte court order

Disclosure of returns and return information for use in criminal investigations

A Federal agency enforcing a non-tax criminal law must obtain an ex parte court order to receive a return or taxpayer return information (i.e., that information submitted by or on behalf of a taxpayer to the IRS) (sec. 6103(i)(1)).⁷ Only the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for the order.

For a judge or magistrate to grant such an order, the application must demonstrate that:

- there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;
- there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act;
- the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act; and
- the information sought reasonably cannot be obtained, under the circumstances, from another source.

Pursuant to the ex parte order, the information may be disclosed to officers and employees of the Federal agency who are personally and directly engaged in (1) the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party, (2) any investigation which may result in such a proceeding, or (3) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party.

⁷ Return information other than that submitted by the taxpayer may be obtained by *ex parte* court order under this provision as well.

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Disclosure to locate fugitives from justice

A Federal agency may obtain, by ex parte court order, the return and return information of a fugitive from justice for purposes of locating a fugitive from justice (sec. 6103(i)(5)). The application for an ex parte order must establish that (1) a Federal felony arrest warrant has been issued and the taxpayer is a fugitive from justice, (2) the return or return information is sought exclusively for locating the fugitive taxpayer, and (3) reasonable cause exists to believe the information may be relevant in determining the location of the fugitive. Only the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for this order. Once a court grants the application for an ex parte order, the return or return information may be disclosed to any Federal agency exclusively for purposes of locating the fugitive individual.

2. Agency request procedure for disclosure of return information other than taxpayer return information to the IRS for use in criminal investigations

For non-tax criminal investigations, Federal agencies can obtain return information, other than taxpayer return information, without a court order. For non-tax criminal purposes, the head of a Federal agency and other persons specifically identified by section 6103 may make a written request for return information that was not provided to the IRS by the taxpayer or his representative (sec. 6103(i)(2)). The written request must contain:

- the taxpayer's name, and address;
- the taxable period for which the information is sought;
- the statutory authority under which the criminal investigation or judicial, administrative or grand jury proceeding is being conducted; and
- the reasons why such disclosure is or may be relevant to the investigation or proceeding. Unlike the requirements for an ex parte order, the requesting agency does not have to demonstrate that the information sought is not reasonably available elsewhere.

3. Disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances

Criminal activities

Section 6103 permits the IRS to disclose return information (other than taxpayer return information) that may be evidence of a crime (sec. 6103(i)(3)(A)). The IRS may make the

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disclosure in writing to the head of a Federal agency charged with enforcing the laws to which the crime relates. Return information also may be disclosed to apprise Federal law enforcement of the imminent flight of any individual from Federal prosecution. The IRS may not disclose returns under this provision.

Emergency circumstances

In cases of imminent danger of death or physical injury to an individual, the IRS may disclose return information to Federal and State law enforcement agencies (sec. 6103(i)(3)(B)). The statute does not grant authority, however, to disclose return information to local law enforcement, such as city, county, or town police.

4. Disclosures regarding terrorist activities

In general

Among the disclosures permitted under the Code is disclosure of returns and return information for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning terrorist incidents, threats, or activities. The term "terrorist incident, threat, or activity" is statutorily defined to mean an incident, threat, or activity involving an act of domestic terrorism or international terrorism, as both of those terms are defined in the USA PATRIOT Act.⁸ In general, returns and taxpayer return information must be obtained pursuant to an ex parte court order, however, the standards for granting such an order are somewhat lower than those discussed above in connection with general non-tax criminal matters. Return information that is not taxpayer return information generally is available upon a written request meeting specific requirements. The IRS also is permitted to make limited disclosures of such information on its own initiative to the appropriate Federal law enforcement agency.

⁸ 18 U.S.C. 2331.

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Disclosure of returns and return information for terrorist activities - by ex parte court order

Ex parte court orders sought by Federal law enforcement and Federal intelligence agencies

The Code permits, pursuant to an ex parte court order, the disclosure of returns and return information (including taxpayer return information) to certain officers and employees of a Federal law enforcement agency or Federal intelligence agency. These officers and employees are required to be personally and directly engaged in any investigation of, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These officers and employees are permitted to use this information solely for their use in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceeding, pertaining to any such terrorist incident, threat, or activity.

The Attorney General, Deputy Attorney General, Associate Attorney General, an Assistant Attorney General, or a United States attorney, may authorize the application for the ex parte court order to be submitted to a Federal district court judge or magistrate. The Federal district court judge or magistrate would grant the order if based on the facts submitted he or she determines that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity; and (2) the return or return information is sought exclusively for the use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

Special rule for ex parte court ordered disclosure initiated by the IRS

If the Secretary of Treasury possesses returns or return information that may be related to a terrorist incident, threat, or activity, the Secretary of the Treasury (or his delegate), may on his own initiative, authorize an application for an ex parte court order to permit disclosure to Federal law enforcement. In order to grant the order, the Federal district court judge or magistrate must determine that there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity. The information may be disclosed only to the extent necessary to apprise the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity and for officers and employees of that agency to investigate or respond to such terrorist incident, threat, or activity. Further, use of the information is limited to use in a Federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. Because the Department of Justice represents the Secretary of the Treasury in Federal district court, the Secretary is permitted to disclose returns and return

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information to the Department of Justice as necessary and solely for the purpose of obtaining the special IRS ex parte court order.

Disclosure of return information related to terrorist activities other than by ex parte court order

Disclosure by the IRS without a request

The Code permits the IRS to disclose return information, other than taxpayer return information, related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The IRS on its own initiative and without a written request may make this disclosure. The head of the Federal law enforcement agency may disclose information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity. A taxpayer's identity is not treated as taxpayer return information for this purpose, and may be disclosed under this authority.

Disclosure upon written request of a Federal law enforcement agency

The Code permits the IRS to disclose return information, other than taxpayer return information, to officers and employees of Federal law enforcement upon a written request satisfying certain requirements. A taxpayer's identity is not treated as taxpayer return information for this purpose and may be disclosed under this authority. The request must: (1) be made by the head of the Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and (2) set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. The information is to be disclosed to officers and employees of the Federal law enforcement agency who would be personally and directly involved in the response to or investigation of terrorist incidents, threats, or activities. The information is to be used by such officers and employees solely for such response or investigation.

The Code permits the head of a Federal law enforcement agency to redisclose return information received, in response to the written request described above, to officers and employees of State and local law enforcement personally and directly engaged in the response to or investigation of the terrorist incident, threat, or activity. The State or local law enforcement agency must be part of an investigative or response team with the Federal law enforcement agency for these disclosures to be made.

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Disclosure upon request from the Departments of Justice or Treasury for intelligence analysis of terrorist activity

Upon written request satisfying certain requirements discussed below, the IRS is to disclose return information (other than taxpayer return information) to officers and employees of the Department of Justice, Department of Treasury, and other Federal intelligence agencies, who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence or investigation concerning terrorist incidents, threats, or activities. Use of the information is limited to use by such officers and employees in such investigation, collection, or analysis. A taxpayer's identity is not treated as taxpayer return information for this purpose and may be disclosed under this authority.

The written request is to set forth the specific reasons why the information to be disclosed is relevant to a terrorist incident, threat, or activity. The request is to be made by an individual who is: (1) an officer or employee of the Department of Justice or the Department of Treasury, (2) appointed by the President with the advice and consent of the Senate, and (3) responsible for the collection, and analysis of intelligence and counterintelligence information concerning terrorist incidents, threats, or activities. The Director of the United States Secret Service also is an authorized requester.

Statement of

The Honorable Chuck Grassley

United States Senator

Iowa

March 2, 2011

Statement of Ranking Member Chuck Grassley
U.S. Senate Committee on the Judiciary
"Helping Law Enforcement Find Missing Children"
Wednesday, March 2, 2011

Madam Chairman, thank you for holding this hearing on efforts to help law enforcement find missing children. Like you, I have been a supporter over the years of many efforts to apprehend those who abduct children, exploit children, or otherwise harm children. Because many of these crimes involve transport over state lines or use of the internet, there is a strong need for federal involvement.

In 2006, I was able to include in the Adam Walsh Child Protection and Safety Act a version of child protection legislation I previously introduced. The provisions were named after Jetseta Gage, a brave 10-year old girl who was abducted, sexually assaulted and murdered by a repeat sex offender. Jetseta's Bill created mandatory minimum sentences for criminals who commit murder, kidnapping, or serious bodily harm against children. Today's hearing will help bring into perspective the children, many like Jetseta, who were abducted, assaulted and murdered. Our children deserve to grow up in communities free from child predators.

One of the important points of today's hearing is to raise public awareness of the realities of missing children. Although parents rightfully fear that a stranger will abduct their child, that is not the common situation. Most abducted children were taken by people they know, often a parent. And, much more than is commonly realized, these abductions involve force or violence.

Of course, much of the work in this area is done by state and local law enforcement. The federal government should assist the efforts of state and local government, and I know that at least one of the witnesses today has an idea to help improve the situation when parents claim conflicting custody orders.

One idea that will come up today is the use of IRS data to possibly locate missing children. The Finance Committee will ultimately resolve that question. It is often said that if something can be done that might possibly rescue one missing child, that it ought to be done.

I certainly want to provide all sensible help to law enforcement to find missing children. But even well-meaning proposals can implicate other important values that need to be considered.

We will do our best, and I am pleased that we do have a witness today who will bring insight to the reasons for confidentiality of tax returns and the practical realities that might be affected by a change in tax confidentiality rules. And Madame Chairman, I ask unanimous consent to place in the record a letter from the Joint Committee on Taxation on this subject.

I look forward to today's testimony.

Testimony of James J. Keightley

Partner

Keightley & Ashner LLP

Washington, D.C.

March 2, 2011

Chairman Klobuchar, Ranking Member Grassley and members of the Committee, my name is Jim Keightley. For 27 years I was in the Chief Counsel's Office of the Internal Revenue Service (IRS), and I was for many years involved with issues surrounding the disclosure of tax information under the Internal Revenue Code, particularly Code section 6103. Based on my experience at the IRS, I hope to clarify for the Committee the disclosure limitations facing the IRS in providing data to investigative organizations attempting to locate missing and abducted children. The views I express are my own, and my testimony has not been reviewed by any governmental organization.

I left the IRS in 1995 to become the General Counsel for the Pension Benefit Guaranty Corporation (PBGC). For those of you not familiar with the PBGC, it is a multi-billion dollar government corporation that guarantees the defined benefit pensions of millions of Americans, and currently pays 5.6 billion dollars annually in pension benefits to retirees whose pension plans have been taken over. As PBGC General Counsel, I continued to address taxpayer confidentiality issues. In 2005 I opened a law firm, Keightley & Ashner LLP, that specializes in defined benefit issues.

Brief History of the Taxpayer Confidentiality Provisions Prior to 1976

Prior to 1976, federal tax returns were treated as a "public record" but only made available outside the IRS when authorized by Presidentially approved regulations, or, on occasion, by a specific "Executive

Order.” As I recall, for example, the Warren Commission investigating the assassination of President Kennedy was authorized by a specific Presidential Executive Order to obtain tax information in connection with its investigation. While that was noncontroversial, there were a number of instances in the mid-1970s of inappropriate disclosures authorized by the Executive Branch, including disclosures involving White House access. Congress changed the law in 1976 to limit severely access to federal tax returns and closed the so-called IRS “lending library.” After 1976, only Congress could authorize access to tax returns and tax information.

The Dramatic Changes in 1976

Congress in 1976 adopted the predecessor of the current Code Section 6103, and much of the structure remains the same today. In making the changes, Congress drafted a comprehensive exclusive disclosure provision controlling virtually all disclosures to be made by the IRS. The opening language of Code Section 6103 says: “Returns and the return information shall be confidential, and except as authorized by this title . . . no officer or employee of the United States . . . shall disclose any return or return information” Code Section 6103(a). This language requires that a disclosure be authorized somewhere in the Internal Revenue Code. (Although most authorized disclosures are found in Section 6103, there are some minor disclosure provisions in other sections of the Code.)

The definition of protected material is expansive. While the provision protects tax returns themselves as we would expect, it also covers “return information.” That is defined to include “any other data received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return” Code Section 6103(b)(2)(A).

In addition to the broad definitional scope of the statute, it also covers "functional disclosures." For example, the statute covers routine Investigative disclosures made by an agent who needs to disclose information in order to obtain information. (Just asking a question would disclose that an individual was under investigation, and a specific question regarding transaction could disclose the amount and nature of an item on a tax return). It even covers the disclosure of tax return information to the White House. It was felt to be unconstitutional to deny the President access to Executive Branch material, so a compromise was developed. Under the compromise, any disclosure to the White House would require a report by the disclosing official to Joint Committee on Taxation. Congressional access was also restricted: only tax-writing committees could request and receive tax information, and access by other committees had to be authorized by the full House or Senate.

Safeguarding Tax Information

While allowing access to some agencies, stringent requirements were included to ensure that the information was only used for the purposes for which it was given and protected from illegal or accidental disclosure. The IRS was given the authority to audit these safeguards and to cut off access if the safeguards were inadequate. These provisions included burdensome record keeping and documentation requirements.

Newly-added Enforcement Provisions

To ensure the efficacy of these new limitations, Congress made clear that violations would be prosecutable under a new criminal provision, Code Section 7213, and that civil damages could be sought under another provision, Code Section 7217 (now Section 7431).

Exclusively For Purposes of Tax Administration

The overall intent of the 1976 changes when viewed as a whole was to limit the use of tax information to tax administration. The 1976 changes did not authorize use for any nontax federal civil law enforcement purposes. While that was the original goal, you will find that has been changed by Congress over the years. Under Code Section 6103(l), there are now 20 subparagraphs dealing with "Disclosure of returns and return information for purposes other than tax administration." Each permitted use was specifically authorized by Congress.

Tax Confidentiality Policy

It is a reasonable question to ask why we afford taxpayers such a high degree of confidentiality. The answer lies in our self-assessment system. The implicit contract between the government and the taxpayers is that in exchange for you voluntarily providing extensive personal data, we will provide very limited access from the IRS. That arguably is why we have the best tax administration system in the world. That secret is voluntary compliance.

Access to Tax Information to Locate Missing Children

While it is clear to me that the IRS lacks the authority to disclose tax returns or return information to state and local investigative bodies under the current IRC provisions, in my view it is not clear how helpful the data would be in any event. It takes considerable amount of time for the IRS to compile comprehensive data for a given tax year allowing it to search to the SSN of the dependent who is missing or abducted. As a result the data may be out of date. In addition, once the disclosure is authorized by Congress, the abducting parent may simply stop taking the deduction or stop filing altogether. I also think some cost benefit analysis needs to be done regarding the cost burden in

complying with the disclosure requests. The more difficult question regarding a disclosure's impact on the voluntary assessment system is virtually impossible to measure, but should be kept in mind as proposals are considered.

Why does the abducting parent file a tax return?

There are a number of reasons. First, it is a crime to fail to file a return if you have taxable income. Second, it is easy for the IRS to determine if you have a taxable income because your wages and investment income are reported to the IRS by third parties. Third, in order to get credit for social security, you need to have a record of your contributions either through your employer or through self-employment taxes. Remember social security provides lifetime benefits in case of disability of the parent, or financial benefits for the dependent in the event of parental death. Finally and probably most important, the presence of the dependent on the return would allow the filer to qualify for the "earned income tax credit" which can be paid as a refund even you have not paid in any federal taxes.

In other words, it is very difficult not to file a federal income tax return and not get caught, and there is a strong financial incentive to file a return to get the benefit of the dependency deduction, as well as the earned income tax credit. The question becomes should Congress enact a disclosure law that discourages a taxpayer from filing an income tax return and penalizes the dependent and the parent financially?

Permitted Disclosures by Social Security Administration to State and Local Child Support Agencies

Congress has already provided significant federal disclosure authority in Code Section 6103(l)(8), a copy of which is set forth below.

(8) Disclosure of certain return information by Social Security Administration to Federal, State and local child support enforcement agencies

(A) In general

Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a Federal or State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) Restriction on disclosure

The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) State or local child support enforcement agency

For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

It is unclear to me why this authority does not allow state and local child enforcement agencies to obtain information on the locations of individuals evading child support obligations. Whether or not the child is deducted as a dependent is not particularly relevant in searching for the elusive parent. There would seem to be no need to see the entire tax return of the elusive parent. Since Congress has already set a disclosure policy in this area, possibly a broader interpretation of the provision or minor change to this provision would be a solution to the problem confronting us today.

Change to Enforce Local Criminal Laws

It has been the policy adopted by Congress to preclude the use of federal tax information for purposes of enforcing local and state non tax criminal laws. To the extent that Congress were to authorize such access in this situation based on the existence of a criminal warrant, it would represent a major change in the philosophy reflected in the current disclosure provisions. In 1976, Congress closed the tax return "lending library" when it was administered by the Executive Branch. The question for Congress is whether they are prepared to reopen the library without regard to its impact on tax administration.

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
“Helping Law Enforcement Find Missing Children”
March 2, 2011**

I want to thank Senator Klobuchar for holding this important hearing to discuss a topic critical to the safety of our Nation’s children. Today, the Committee will explore whether law enforcement has the tools it needs to quickly locate missing and exploited children.

I was concerned to learn recently that there is a gap in the law that prohibits state and local law enforcement from obtaining information from the Internal Revenue Service that could be used to investigate cases involving missing and exploited children. I am pleased to cosponsor Senator Klobuchar’s bipartisan Access to Information about Missing Children Act. This important legislation will close this gap.

According to the Department of Justice, approximately 200,000 children in the United States are abducted by family members each year. Many of these cases involve custody disputes between estranged spouses who may assume false identities and travel the country to escape detection. We must remain vigilant to ensure that law enforcement has the necessary tools to protect our children, without compromising the personal privacy of Americans. I hope that the witnesses today will share their thoughts on how to strike the proper balance.

When the Federal Government has information critical to protecting children, it should be shared with the proper authorities. I thank Senator Klobuchar and Senator Cornyn for their leadership on this bipartisan issue, and I look forward to working with them on this important matter.

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<http://www.nytimes.com/2010/11/13/business/13missing.html>

November 12, 2010

I.R.S. Sits on Data Pointing to Missing Children

By **DAVID KOCENIEWSKI**

For parents of missing children, any scrap of information that could lead to an abductor is precious.

Three years into an excruciating search for her abducted son, Susan Lau got such a tip. Her estranged husband, who had absconded with their 9-year-old from Brooklyn, had apparently filed a tax return claiming the boy as an exemption.

Investigators moved quickly to seek the address where his tax refund had been mailed. But the Internal Revenue Service was not forthcoming.

“They just basically said forget about it,” said Julianne Sylva, a child abduction investigator who is now deputy district attorney in Santa Clara County, Calif.

The government, which by its own admission has data that could be helpful in tracking down the thousands of missing children in the United States, says that taxpayer privacy laws severely restrict the release of information from tax returns. “We will do whatever we can within the confines of the law to make it easier for law enforcement to find abducted children,” said Michelle Eldridge, an I.R.S. spokeswoman.

The privacy laws, enacted a generation ago to prevent Watergate-era abuses of confidential taxpayer information, have specific exceptions allowing the I.R.S. to turn over information in child support cases and to help federal agencies determine whether an applicant qualifies for income-based federal benefits.

But because of guidelines in the handling of criminal cases, there are several obstacles for parents and investigators pursuing a child abductor — even when the taxpayer in question is a fugitive and the subject of a felony warrant.

“It’s one of those areas where you would hope that common sense would prevail,” said Ernie Allen, president and chief executive of the National Center for Missing and Exploited Children. “We are talking about people who are fugitives, who have criminal warrants against them. And children who are at risk.”

About 200,000 family abductions are reported each year in the United States, most of which stem from custody disputes between estranged spouses. About 12,000 last longer than six months, according to Justice Department statistics, and involve parental abductors who assume false identities and travel the country to escape detection.

But, counterintuitive as it may seem, a significant number file one of bureaucracy's most invasive documents, a federal tax return. A study released by the Treasury Department in 2007 examined the Social Security numbers of 1,700 missing children and the relatives suspected of abducting them, and found that more than a third had been used in tax returns filed after the abductions took place.

Criminologists say it is unclear what motivates a child abductor to file a tax return: confusion, financial desperation for a refund or an attempt to avoid compounding their criminal problems by failing to pay taxes. Whatever the reason, the details in a return on an abductor's whereabouts, work history and mailing address can be crucial to detectives searching for a missing child.

"It doesn't make a whole lot of sense," said Harold Copus, a retired F.B.I. agent who investigated missing child cases, of why abductors provide such information. "But if they were thinking clearly, they wouldn't have abducted their child in the first place."

The law forbids the I.R.S. from turning over data from tax returns unless a parental abduction is being investigated as a federal crime and a United States district judge orders the information released. But the vast majority of parental abduction cases are investigated by state and local prosecutors, not as federal crimes, say investigators and missing children's advocates. Even when the F.B.I. does intercede in parental abduction cases, requests for I.R.S. data are rarely granted.

When the Treasury Department study identified hundreds of suspected abductors who had filed tax returns, for instance, a federal judge in Virginia refused to issue an order authorizing the I.R.S. to turn over their addresses to investigators. The judge, Leonie M. Brinkema, declined to discuss her decision.

Advocates for missing children say that federal judges often argue that parental abductions are better suited to family court than criminal court.

"There's this sense that because the child is with at least one of their parents, it's not really a problem," said Abby Potash, director of Team Hope, which counsels parents

who are searching for a missing child. Ms. Potash's son was abducted by a relative and kept for eight months before he was recovered. "But when you're the parent who's left behind, it is devastating. You're being robbed of your son or daughter's childhood."

In Ms. Lau's case, her search for her missing son dragged on for two years after the I.R.S. refused investigators' request for her ex-husband's tax return. She actually got the tip from the I.R.S., which disallowed her request to claim the boy on her own tax return because someone else had. The boy was eventually found in Utah, after his photo appeared in a flier distributed by missing children's groups, and he was reunited with his mother at age 15 — five years after they were separated.

I.R.S. officials are quick to point out that they have worked closely with missing children's advocates in some areas. The I.R.S.'s "Picture Them Home" program has included photos of thousands of missing children with forms mailed to millions of taxpayers since 2001. More than 80 children were recovered with the help of that program.

Still, attempts to change the law to give the tax agency more latitude have sputtered over the last decade. Dennis DeConcini, a former Democratic senator from Arizona, lobbied for the change in 2004 on behalf of a child advocacy group, but said that it never gained traction because some members of Congress feared that any release of I.R.S. data could lead to a gradual erosion of taxpayer privacy. In recent years, much of the legislation involving missing children has focused on international abductions.

One problem missing children's advocates have wrestled with in proposing legislation is determining how much information the I.R.S. should be asked to release from a suspected abductor's tax return. Should disclosure be required only if a child's Social Security number is listed on a return? Should child abduction investigators be given only the address where a tax return was mailed? Or the location of an employer who has withheld taxes on a suspected abductor?

Griselda Gonzalez, who has not seen her children since 2007, holds fleeting hope that some type of information might reunite her family. Diego and Tammy Flores were just 2 and 3 years old when their father took them from their home in Victorville, Calif., for a weeklong visit and never returned. After Ms. Gonzalez reported their disappearance, a felony warrant for kidnapping was issued for the father, Francisco Flores. His financial records suggest he meticulously planned his actions for months — withdrawing money

from various accounts and taking out a second mortgage — so Ms. Gonzalez doubts he would claim the children as dependents on a tax return.

But it gnaws at her that some federal laws seemed more concerned with the privacy of a fugitive than the safety of children.

“When your kids are taken from you, the hardest part is at night, thinking about them going to sleep,” she said. “You wonder who’s tucking them in, who will hug them if they have a bad dream or taking them to the bathroom if they wake up. And you ask yourself whether you’ve done everything possible to find them.”

“It would be good to know that you tried everything,” she said.

Missing children’s advocates see the I.R.S. data as a potentially powerful resource.

“There are hundreds of cases this could help solve,” said Cindy Rudometkin of the Polly Klaas Foundation. “And even if it helped solve one case — imagine if that child returned home was yours.”



Department of Justice

STATEMENT OF

**KEVIN L. PERKINS
ASSISTANT DIRECTOR
CRIMINAL INVESTIGATIVE DIVISION
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**SENATE JUDICIARY COMMITTEE
UNITED STATES SENATE**

ENTITLED

“HELPING LAW ENFORCEMENT FIND MISSING CHILDREN”

PRESENTED

March 2, 2011

Good morning, Chairman Klobuchar, Ranking Member, and distinguished Members of the Committee. I am pleased to be here with you today to discuss the FBI's efforts to combat crimes against children.

Seventy-nine years ago this month, the FBI and its partners embarked upon an investigation into one of the most notorious crimes of the last century. On the evening of March 1, 1932, the twenty-month old son of famed aviator Charles Lindbergh was taken from his bedroom in the night. Two months later, the body of Charles Lindbergh, Jr., was discovered a short distance from his family's home in Hopewell, New Jersey. Our work on that case was the genesis for Congressional consideration and ultimate passage of the Federal Kidnapping Act, which made transporting kidnapping victims over state lines a federal offense.

The investigation, conducted in support of the New Jersey State Police, saw the FBI's use of partnerships and other innovative tools of the day to solve that crime. When fingerprint, handwriting analysis, and other investigative tools failed to unveil the suspect, the FBI and its partners at the Treasury Department and the New York Police Department tracked the proceeds of the crime directly to the killer. In September 1934, Bruno Richard Hauptmann was arrested for the kidnapping and murder. Just four years after little Charles Lindbergh, Jr., was taken from his crib, Hauptmann was executed for his crimes.

In the last seven decades many things have changed. We now live in a world where cell phones and laptops abound. This globalization of our society clearly has its benefits, allowing us to learn, communicate, and conduct business in ways that were unimaginable just 20 years ago. However, an increasingly global world has also provided child predators with ready access to our most innocent citizens.

In that time, much has also changed in the way the FBI conducts its investigations. Ready response teams are stationed across the country and able to quickly respond to abductions. In today's toolkit, investigators will find cutting-edge forensic tools such as DNA, trace evidence, impression evidence and digital forensics. Through globalization, law enforcement also has the ability to quickly share information with partners the world over and our outreach programs play an integral role in prevention.

The FBI has several programs in place to both educate parents and children about the dangers posed by violent predators and to recover missing and endangered children should they be taken. Through our Child Abduction Rapid Deployment (CARD) Teams, Innocence Lost National Initiative (ILNI), Innocent Images National Initiative (IINI), Office of Victim Assistance (OVA), and numerous community outreach programs, the FBI and its partners are working to make our global world a safer place for our children.

Let me discuss a few of these programs in my testimony today.

CARD Teams

When every minute counts, the FBI's Child Abduction Rapid Deployment (CARD) program provides a quick and effective response.

Nationally, the FBI's CARD Teams are comprised of 60 members; all experienced personnel capable of providing on-the-ground investigative, technical, and resource assistance to the investigating FBI Field Division as well as our partners in state and local law enforcement.

Each CARD Team consists of Crimes Against Children investigators who work closely with FBI Behavioral Analysis Unit representatives, National Center for the Analysis of Violent Crime Coordinators, and Crimes Against Children Coordinators. Relying on their expertise and experience, team members ensure that investigations move quickly, efficiently, and thoroughly.

In addition to their unique expertise, CARD Teams are capable of quickly establishing an on-site command post to centralize investigative efforts and operations. Other assets they bring to the table include a new mapping tool to identify and locate registered sex offenders in the area, national and international lead coverage, and the Child Abduction Response Plan to guide investigative efforts. Representatives from the Behavioral Analysis Unit provide on-site interview and media strategies to round out the investigative effort.

Over the past four years, our CARD teams have deployed 65 times. In cases where children remain missing, the CARD Team and our Evidence Response Team have provided forensic support for our local law enforcement partners and their prosecutors.

Innocence Lost National Initiative

While it is difficult to imagine, the average age of a child targeted for prostitution in the United States is between 11 and 14 years old. Once in the custody of a pimp, everything the child earns goes to the captor and attempted escapes often result in brutal beatings or even death.

In June 2003, to address the growing problem of commercial sex trafficking of children within the United States, the FBI joined the Department of Justice Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children (NCMEC) to launch the Innocence Lost National Initiative (ILNI).

Each of ILNI's 41 task forces and working groups throughout the U.S. include federal, state and local law enforcement agencies working in tandem with U.S. Attorney's Offices. Additionally, the program brings state and federal law enforcement agencies, prosecutors, and social service providers from all around the country to NCMEC for joint training opportunities.

Task Force operations usually begin as local actions, targeting such places as truck stops, casinos, street "tracks," and Internet websites, based on intelligence gathered by officers working in their respective jurisdictions. Initial arrests are often violations of local and state laws relating to prostitution or solicitation. Information gleaned from those arrested often uncovers organized efforts to prostitute women and children across many states. FBI agents further develop this information in partnership with the U.S. Department of Justice's Child Exploitation and Obscenity Section (CEOS) and file federal charges where appropriate.

For its part, the FBI's Crimes Against Children Unit also coordinates a national sting operation to combat domestic sex trafficking of children entitled *Operation Cross Country* multiple times throughout the year. ILNI task forces and working groups in 54 cities have participated in the operation by targeting venues such as the street tracks, truck stops, motels, and casinos where children are typically prostituted. Every case initiated through the ILNI is reviewed for possible federal violations, and where applicable, cases are presented to the United States Attorney's Office for prosecution.

Over 2,100 law enforcement officers have joined together to rescue child victims and apprehend those who victimize them. As a result, 248 child victims have been safely recovered during Operation Cross Country I-V and 322 pimps engaged in the commercial sexual exploitation of children have been arrested. Operation Cross Country V was held in November 2010 during which 70 children were recovered and 885 arrests were executed, including 99 pimps.

To date, the ILNI has resulted in over 600 federal and state convictions and the location and recovery of over 1300 children. Investigative efforts have increasingly resulted in substantial sentences for those convicted, including three life sentences and numerous others ranging from 25-45 years.

One such example, the "*Precious Cargo*" investigation, targeted pimps involved in the sex trafficking of children and adult women to and from the truck stops of Harrisburg, Pennsylvania. Over 150 victims were identified during the investigation, of whom 45 were identified as having been exploited while underage, the youngest of whom were 12 years old. In December 2005, eighteen individuals were indicted for the sex trafficking of children, conspiracy, transportation, and money laundering. In December 2008, Terrance Williams, aka "Sleazy T" was sentenced to 45 years for his role in the enterprise; Eric Hayes, aka "International Ross" to 35 years; and multiple other defendants to sentences exceeding 25 years in length.

Innocent Images National Initiative

The Innocent Images National Initiative (IINI), a component of FBI's Cyber Crimes Program, is a proactive, intelligence-driven, multi-agency investigative operation to combat the proliferation of online child pornography/child sexual exploitation (CP/CSE).

The mission of the IINI is to reduce the vulnerability of children to acts of sexual exploitation and abuse which are facilitated through the use of computers; to identify and rescue child victims; to investigate and prosecute sexual predators who use the Internet and other online services to sexually exploit children for personal or financial gain; and to strengthen the capabilities of federal, state, local, and international law enforcement through training programs and investigative assistance.

Between 1996 and 2009, there was a 2535% increase in child exploitation investigations throughout the FBI. IINI currently has over 6,000 open child pornography cases. During FY2009 and FY2010, we have made more than 2,000 arrests and achieved over 2,500 convictions. In addition and just as important, the FBI has identified 246 new children featured in child pornography in FY2010.

In 2004, the FBI launched the Innocent Images International Task Force, which brings together law enforcement from around the world to address the global crime problem of online child exploitation. Currently, nearly 100 international officers from 42 countries participate on the task force, which allows for the real-time transfer of information and coordination of cases.

One such investigation, dubbed *Operation Achilles*, involved our partners in the Queensland Police Department in Australia and authorities in Canada, New Zealand, Belgium, Italy, and Britain. The three-year international investigation uncovered suspects who traded more than 400,000 images of children, from infants to adolescents, many depicting acts of violence and torture.

In all, forty children were rescued, four web sites were shut down and twenty-two members of the ring were arrested. Fourteen of those were prosecuted using new statutes provided by our Congress. Seven of the fourteen prosecuted received life sentences. An additional 100 individuals were ultimately arrested for allegedly buying material depicting sex with children.

Victim Services

In addition to its many investigative efforts, the FBI's Office for Victim Assistance (OVA) ensures that victims of crimes investigated by the FBI receive the services and notification required by federal law and the Attorney General Guidelines on Victim and

Witness Assistance. The OVA manages the day-to-day operational aspects of the Victim Assistance Program (VAP) in our 56 FBI field offices across the country as well as in the FBI's international offices. In addition, OVA is responsible for providing training and information that helps to equip FBI agents and other FBI personnel to work effectively with victims.

Among its many programs, OVA coordinates assistance and notification services for child victims of pornography and their guardians as part of the Child Victim Identification Program (CVIP).

The OVA Forensic Child Interviewing Program ensures that investigative interviews of child victims and witnesses of federal crimes are tailored to the child's stage of development and minimize any additional trauma. FBI child interview specialists directly assist with some interviews and provide detailed training to special agents and other law enforcement personnel on child interviewing.

The OVA also devotes special resources to ensure that child victims of sexual abuse, physical abuse, and neglect have access to assistance and services. Currently, 43 Victim Specialists are dedicated to serving victims of crime in Indian country.

Partnerships

It is important to recognize that we are not alone in our efforts to identify victims and bring their abusers to justice. As many of you know, few crimes bring law enforcement together as quickly as an endangered child. Even when the FBI is not the lead investigative agency, we provide significant resources to our federal, state, local, and tribal partners. We stand shoulder to shoulder, working to locate children and build cases against their offenders.

Any success that we have achieved has been through those partnerships and those relationships we continue to develop with our law enforcement partners and one of our greatest allies, NCMEC.

FBI personnel work at NCMEC and have access to the Cyber Tip Line, the "9-1-1 for the Internet." The public and electronic service providers use that line to report Internet child sexual exploitation. In fiscal year 2010, FBI personnel assigned to the center have reviewed more than 75,500 tips—a 100 percent increase from 2009's activity.

At the FBI, we also seek to educate young people through a program we refer to as the Safe Online Surfing Challenge, an interactive online quiz that teaches middle school students about

Internet safety. Since 2006, nearly 60,000 students from almost 400 schools in 39 states have participated.

Over 1,000 law enforcement officers have been trained through the Protecting Victims of Child Prostitution Course at the National Center for Missing and Exploited Children which supports the Innocence Lost National Initiative.

In cases where children are taken by non-custodial parents and believed to be located internationally, we work closely with our FBI Legal Attaches stationed throughout the world and the U.S. Department of State/Office of Children's Issues to pursue all remedies for the safe return of the child.

Conclusion

Just as we worked so hard to solve the Lindbergh case all those years ago, today's FBI remains vigilant in its efforts to remove predators from our communities and to keep our children safe. I appreciate the opportunity to discuss those efforts with the Committee and am now happy to answer any questions you might have.

**Testimony of Detective Thea M. Pirnat
Fairfax County Police
Criminal Investigations Bureau
Child Exploitation Unit
Fairfax, VA**

**Senate Judiciary Committee
“Helping Law Enforcement Find Missing Children”
March 2, 2011
SD-226 Dirksen Senate Office Building**

Chairman Klobuchar, Ranking Member Grassley, and members of the Committee.

My name is Thea Pirnat. I am a detective currently assigned to the Child Exploitation Unit of the Fairfax County Police Department. My unit investigates parental abductions, missing and runaway juveniles, child pornography, sex offender registry violations, underage prostitution, juvenile human trafficking, and the use of communication devices to solicit minors as part of the Internet Crimes Against Children (ICAC) Task Force. Prior to working in the Child Exploitation Unit, I was assigned to the Child Abuse Squad where my investigations involved the physical and sexual abuse of children.

If there is anything that I can share with you from my experience in law enforcement and in investigations, it is that there are real monsters out there that walk among us and prey upon our children. They are difficult to spot. It would be nice to believe that the only monsters out there that would harm our children are creepy guys wearing masks and hiding in bushes. Those monsters are indeed out there, but more likely than not the monsters preying upon our children are not hiding in the bushes, but are hiding in plain sight. The monster may be your daughter's new boyfriend, your son's little league coach, your niece's daycare teacher, or your nephew's new online chat friend. More disturbing, the monster may be someone who shares the same DNA and last name as your child; a trusted family member – even a parent.

In the cases involving runaway juveniles, the assumption is that these children left voluntarily and will return voluntarily. The majority of them do return on their own when they are ready; however, that does not mean that they return home unharmed. Some are fortunate and are taken in by trusted friends or other family members, but others end up sleeping on the streets, or, as in one particular case that I had, in the woods as part of a homeless camp. Others are taken in by those they think they can trust, but cannot. They are introduced to criminal activities like gangs, drugs and prostitution. They are used for sex and sometimes return pregnant or report sexual assaults upon their return. Sadly, sometimes they never come home. In some of these instances, we have confirmation that they have become victims of a homicide. This was the case for a fourteen year old female reported missing to us in October 2008. She was found in Maryland in November 2008, after being handcuffed, strangled and stabbed by the thirty-three year old male that she had been staying with. In other instances, we never know what becomes of these juveniles because they are never seen from or heard from again.

Whenever a child is reported missing, there is an urgent need to act as quickly as possible. This is never in doubt with so called "stranger" abductions, but in the cases of parental abductions, there is a myth that the child will be safe because he is with a parent, not a stranger. On any given day, you can check the national headlines to find out that this is not true.

In the fall of 2008, I went to Florida to assist in the extradition back to Virginia of a woman who had abducted her children nearly fifteen years earlier. I was asked to assist on the extradition in order to interview the previously abducted children, now adults aged twenty and nineteen, on allegations of sexual abuse made against their father.

Prior to absconding with her daughters, ages five and six at the time, in violation of existing court orders, the mother had made a series of allegations of sexual abuse against the father involving the daughters which were all considered unfounded at that time. Child Protective Services had suspected the mother of coaching the children when they found her in possession of an anatomically correct doll. The mother also took with her a ten year old son she had from a previous relationship. There was no known custody order between the mother and the son's biological father and no complainant ever came forward about her leaving with him. The mother was assisted in this abduction by family members who believed the allegations of sexual abuse. She left the country with her children for a number of years before returning to the United States and residing in Florida where she was finally located. I interviewed the two daughters and I also interviewed their older half-brother who was twenty-five at the time of my interview with him. He did not know much about his own biological father other than what his mother had told him which was that he did not want anything to do with his son. He had memories of his step-father which were mostly positive except that he believed his step-father had been sexually abusing his half-sisters. This belief was based on information that his mother told him when he was ten years old.

Despite the fifteen year lapse and suspected coaching by the mother, I conducted a very standard sexual abuse investigation. I took their statements about the sexual abuse. One of the daughters agreed to participate in a controlled phone call to her father and confront him about the alleged abuse while I listened. This was a very difficult step in the investigation for all parties involved. We had not yet notified the father that his children had been located because we wanted to conduct a thorough investigation into the sexual abuse. The first time this father heard from his daughter in fifteen years, she accused him of sexually abusing her. Both the father and daughter cried on the phone as he begged her to believe him that the sexual abuse never happened, that her mother had lied to her, that he just wanted to know where she was, and that he still loved her. The phone call ended with the daughter hanging up on her father.

Upon returning to Virginia, we notified the father that his daughters had been located and that we had an active sexual abuse investigation that we needed to conclude. The father cooperated in our investigation by coming in for an interview and also taking a polygraph examination. He passed the polygraph examination, but the results did not surprise me. I

did not believe the disclosures of sexual abuse to be consistent with valid allegations based on my experience and training.

I had no doubt that these three young individuals believed the sexual abuse to be true and were not intentionally lying to me. However, I believed these memories to have been created falsely for them by their mother. All three young individuals were disappointed and angry when I advised them that there would be no criminal charges brought against their father. They were adamant that their father got away with something.

All three of the children stood by their mother when it was time for her to face the criminal charges of abduction. They believed that she was protecting her daughters and did not deserve any negative consequences for her actions. Even the father agreed to leniency in this case, resulting in a plea deal where the woman was sentenced to two years in prison with the entire two year sentence to be suspended. This, in my opinion, is the judicial equivalent of a "slap on the wrist." The father agreed to this in the hopes that he would be able to restore his relationship with his children by showing their mother mercy. When I spoke to them all last, there was no family reunion. No happy ending. I doubt they will ever have the relationship that the father craves and probably deserves. They still believed the father to be the villain in their life story.

Their mother took them away from their father and other family members. She took them away from their friends, school and other support networks. Their mother had them use new names and lie about their identities. The daughters believed themselves to be victims of sexual abuse, but were unable to discuss it with others or get counseling services. The daughters told me that they never even discussed it with each other because they did not get along or were no longer on speaking terms. One of the daughters admitted to me that she had become a drug addict by the time she was sixteen; using marijuana, alcohol, mushrooms and pills. She did not stop her drug use until she was pregnant at the age of seventeen. This mother robbed her own children of what may have been a perfectly healthy childhood and delayed them starting off their lives as normal adults. I believed the abducting mother to be the villain in this story, leaving in her wake four destroyed lives: the life of a father, the life of the two daughters and the life of one son.

As awful as this situation was for this father and his two daughters, I felt the most sadness for the son. When I sat in the interview room down in Florida, I sat across from a very masculine young man who openly sobbed as he talked of things that had transpired over the last fifteen years. He was saddened by his mother's arrest, but there was also a slight sense of relief that the truth had come out and his current situation was over. This devoted son and loyal brother had maintained his secret identity years into his adulthood believing that he was protecting his mother and sisters. He had worked as a plumber's apprentice, but was unable to get his own work license or secure college credits in his real name because his mother had maintained the paperwork with his true identity at a location that was not disclosed to him. He expressed his regrets about not being able to participate in organized sports or secure a driver's license. He hoped that his mother

would release this paperwork to him now, so that he could move forward with his life under his real name.

Only when I talked to this young man about his biological father whom he had never met and believed did not want anything to do with him, did I recognize a moment of fleeting doubt in the stories his mother had been telling him. I was concerned that even though this young man had never been reported as abducted as far as we knew, that he may very well have been taken away from his biological father also. I promised this young man while in Florida that I would try to locate his father and allow him to hear from his father himself about why he had not been part of his son's life.

When I returned to Virginia, I was successful in tracking down his biological father only to learn he was already deceased. I did not want to call this young man with only bad news so I continued my search and was able to locate a paternal first cousin to this young man living in Virginia. I called his cousin and explained to her who I was and why I was calling. She was overcome with joy and could not wait to speak with him. She talked of cousins that wondered what had happened to him and cousins that never met him. I asked for my own personal curiosity why this young man's relationship had been severed from his biological father and his biological father's family. The cousin explained that the biological father had been repeatedly threatened by the son's mother and her relatives and ultimately backed out of his son's life out of the fear of bodily harm.

It is no secret that time is the enemy in cases involving missing and abducted children. The longer a child is unaccounted for, the more likely that they are being harmed. Sometimes they are victims of physical abuse or neglect. Sometimes they are victims of sexual abuse and exploitation. Or, like in the case example I provided, they are victims of various forms of emotional abuse. There is nothing that I know of that can undo or make right the kind of harm that is being done. No prison sentence truly equates to justice. The most important thing we can do is to recover these children as quickly as possible.

I can tell you that local law enforcement is doing everything possible to locate missing and abducted children as quickly as we can. We get personally and emotionally involved while maintaining our professionalism. We utilize any and all resources made available to us. We partner with other local law enforcement agencies, federal law enforcement agencies and resources such as the National Center for Missing and Exploited Children. We learn constantly evolving technologies and how to apply them in our investigations. We rely on tried and true investigative techniques like interviews and area canvasses. We embrace the use of the media and Amber Alerts when appropriate in our cases.

I submit to you that there is no tool that local law enforcement is not willing to learn and use if given lawful access. No one should be able to hide behind "right to privacy" claims when it means locating our abducted and missing children. If children are reported missing and entered into NCIC as missing or abducted, why should local law enforcement be denied notice when these missing children's names or social security numbers are being used? I see no logical reason that local law enforcement would be

denied information when the names and social security numbers of those wanted for child abduction are being used either. We search public databases and write court orders to get information from private companies sometimes resulting in dangerous delays in our investigations. If there are Federal agencies that have information that could possibly lead to the successful recovery of missing and abducted children, this information needs to be shared without consequence. It is, after all, for the greater good of protecting our children.

I would also like to explain another obstacle in parental abduction investigations and suggest a possible solution. There is usually a need to verify custody paperwork if it exists. This is not possible to do immediately when the complaint is coming in on the weekend, in the evening, or over a holiday as they usually do. This often results in a delay of deploying the proper resources to start an investigation, make an apprehension of an abductor and recover the abducted children. One parent is claiming that the other parent is not returning their children and the other parent is claiming that they do not have to. Officers may act in good faith by enforcing the custody orders they are shown by the complaining party. However, I have seen where the defendant then shows up in criminal court with a contradictory custody order issued in a different jurisdiction.

This type of situation often results in the criminal charges being dismissed until civil courts can resolve the jurisdictional issues. Officers are left confused and disgruntled about how to handle these situations in the future. Many officers end up feeling like child custody disputes, and unfortunately parental abductions, are better off being handled simply as a civil matter with no law enforcement intervention or action. Officers then will sometimes wait until courts are open during regular business hours to secure and see certified copies of custody orders. This delay may only be a day or two, but it provides the abducting parent a huge head start to their intended destination which unfortunately may be outside the country.

I believe a nationwide secure child custody database which law enforcement and the courts can access twenty-four hours a day would help eliminate some of these issues. Law enforcement personnel and court personnel would be able to search for existing child custody orders by the child's name and date of birth; furthermore, courts would be able to find out the existence of child custody orders in other jurisdictions prior to setting new hearing dates and issuing competing orders. Law enforcement personnel would be able to confirm the existence of a child custody order and the basic parameters for enforcement purposes. It should include the basics on who are the custodial parties and their visitation schedules. This would result in law enforcement being able to more confidently and rapidly confirm that a violation of law exists and take immediate enforcement action ultimately resulting in quicker and more successful rates of recovery of abducted children.

In closing, I would like to thank you all for taking testimony on this important issue and for your continued leadership and assistance to law enforcement nationwide.

**Testimony of Patty Wetterling
Senate Judiciary Committee
Hearing on "Helping Law Enforcement Find Missing Children"
March 2, 2011**

Good morning, Senator Klobuchar, Senator Grassley, and other members of the Senate Judiciary Committee. I want to thank Senator Klobuchar for inviting me to participate today to talk about my experience as the mother of a missing child.

When you have a missing child, you enter a world that no one wants to know.

On October 22, 1989, our world fell apart when my son Jacob was kidnapped. He was biking home from a convenience store with his brother Trevor and best friend Aaron when they were confronted by a masked gunman – only a half-mile from our house. Although I had been a stay-at-home mom, and my husband and I knew a lot about many things related to children, I knew nothing about how to proceed in this situation.

The response from law enforcement was phenomenal. The FBI headed our search, but worked alongside the Minnesota Bureau of Criminal Apprehension, the St. Joseph Police Department, the Stearns County Sheriff's Department, and the Tri-County Major Crimes Unit. As a parent, it was all so confusing. I didn't understand the different jurisdictions...and I didn't care. Instead, every searching parent only cares about one thing: Are you part of the team? Are you looking for my child?

We had help and support from so many places: other agencies, law enforcement from across the state, the National Center for Missing and Exploited Children, the National Guard, search dogs, horses, helicopters, and congressional leaders. Minnesota Senators David Durenberger and

Rudy Boschwitz included Jacob's photo on their mailings to constituents. Even the Internal Revenue Service (IRS) circulated Jacob's and other missing children's photos in their tax booklets!

That is the response we need for every missing child.

After Jacob's abduction, I helped start a parent-to-parent mentoring program called Team HOPE, which is now a program offered by the National Center for Missing and Exploited Children. Through Team HOPE, I met hundreds of searching parents – including parents who had lost their children through family abductions. I learned that often, parents whose children are taken through family abductions get less support than those of us who suffered non-family abductions. I learned about the trauma of children who were parentally abducted. I met adults who were kidnapped as children who finally found their searching parent when they grew up, and who spoke painfully of the many challenges that they continue to face because of the abduction. The bottom line is... you can't steal children.

An abducted child has so much taken from them. Even in parental abduction cases, we cannot forget how much those children lose: They lose their other parent and sometimes siblings, their homes, their pets, their toys, their friends and relatives, their teachers, all their familiar surroundings; in some cases, they even lose their identities because their abducting parent changes their name and birth date. Sometimes they were told their other parent died. They live in isolation, in sadness, and in fear. They live a lie.

In both family and non-family abductions, we searching parents have all felt that someone knows where our children are. We believe that one day, someone might sense something strange or unusual. We hope and pray every day that someone will call in the lead that we need to return our children. We believe that any lead, any additional piece of information might help bring our children home.

In the case of family abductions, there is a government agency that might have additional information about missing children. In some cases, we know that abducting parents continue to file tax returns where they claim the missing child as a dependent. In these cases, the IRS might have more recent address information for a missing child than law enforcement does. However, because we have very strict taxpayer privacy laws, the IRS is not currently able to share that information with law enforcement.

I believe this is a problem that needs to be fixed. I know how important it is for parents of missing children to believe that every government institution that can help them get their child back is able to do so. We must send a message that you cannot steal children – not your own and not someone else's.

I know that Senator Klobuchar has introduced the Access to Information about Missing Children Act to help law enforcement get limited taxpayer identity information from the IRS in cases involving missing and exploited children. I am supportive of all efforts to give government agencies the authority they need to share information with law enforcement in these cases. I also know it is important to be able to share critical information between federal, state, and local law enforcement. As I mentioned earlier, parents of missing children don't care about jurisdictional boundaries – they care about getting their child back.

As a country, we are getting better and better at responding...thanks to improvements like AMBER Alerts, and better training and heightened awareness, more children are returning home. We should all thank the National Center for Missing and Exploited Children for their steadfast commitment to our children and their high recovery rate.

Through my personal experience and my interactions with countless families who have also suffered the pain of a missing child, I have come to know this: Somebody almost always knows something that could

help us find the missing child. We need to let the whole world know that we will never stop looking for our children and our hope will not die. My family and I hope to see Jacob again. We hope that the man who took him will be stopped from ever harming a child again. We hope that our children's children will be allowed to grow and flourish in a world where they know that there are more good people than bad and that they will have the knowledge that when good people pull together, amazing things happen.

I am so grateful for every one of you; good people who are pulling together, seeking to address this hole in the search for missing children. You can have a tremendous impact by ensuring that all agencies are able to work together to find our children. Again, we need to make a clear statement that you cannot steal children, not your own and not someone else's. If legislation can save just one child and that child is your own, it is worth it!

Thank you for inviting me to testify today.