

the United States Court of Appeals for the First Circuit, *United States v. Czubinski*, No. 96-1317, 1997 U.S. App. LEXIS 3077 (1st Cir. February 21, 1997) and to request your support for legislation to clarify the criminal sanctions in the Internal Revenue Code for the unauthorized access of taxpayers' accounts by Internal Revenue Service employees.

Since becoming Commissioner, I have repeatedly stated that the IRS will not tolerate violations by employees of the rules against unauthorized access. The Service's zero tolerance policy prohibits any employee access to (and use of) tax information, except to the extent necessary for an employee to perform assigned duties.

In the *Czubinski* case, the First Circuit reversed the conviction of a former IRS employee for improperly accessing taxpayer information in the IRS database. That person had been indicted and convicted of several counts of violating 18 USC §§1343 and 1346 (wire fraud) and 18 USC §1030(a)(4) (computer fraud). In reversing the conviction, the court stated that "unauthorized browsing of taxpayer files, although certainly inappropriate conduct, cannot, without more, sustain [a] federal felony conviction [under 18 USC §§1343, 1346 and 1030(a)(4)]."

This decision and a 1996 acquittal, by a Memphis, Tennessee jury of another former IRS employee who had been indicted for improper access of taxpayer accounts under 26 USC §7213 (Unlawful Disclosure of Tax Return Information), *United States v. Patterson*, Cr. No. 96-20002 (W.D. Tenn. April 10, 1996), are very troubling and make it more difficult for the Service to appropriately discipline employees who violate our policy against unauthorized access.

In the past several years, the IRS has taken a number of steps to ensure that unauthorized access of taxpayer information by IRS employees does not occur. For example, each time an employee logs onto the taxpayer account database, a statement warns of possible prosecution for unauthorized use of the system. All new users receive training on privacy and security of tax information before they are entitled to access the Integrated Data Retrieval System (IDRS). The Service has also installed automated detection programs that monitor employees' actions and accesses to taxpayers' accounts, identify patterns of use, and alert managers to potential misuse. Employees are disciplined according to a Guide for Penalty Determinations that includes dismissal. In the *Czubinski* opinion, the court noted that "the IRS rules plainly stated that employees with passwords and access codes were not permitted to access files on IDRS [the database] outside of the course of their official duties."

In addition to the internal actions, the IRS has recommended and supported legislative efforts to amend the Internal Revenue Code and Title 18 to clarify the criminal sanctions for unauthorized computer access to taxpayer information. A recent amendment to 18 USC §1030(a)(2)(B) by the Economic Espionage Act of 1996, Pub. L. No. 104-294, 110 Stat. 3488 (1996), provides criminal misdemeanor penalties for anyone who intentionally accesses a computer without authorization or who exceeds authorized access and thereby obtains information, including tax information, from any department or agency of the United States. I have been advised by counsel that had this amendment been in effect and applicable to the *Czubinski* and *Patterson* cases, the government very likely would not have lost those cases.

Although the recent amendment to 18 USC §1030(a)(2)(B) will hopefully serve as a significant deterrent to unauthorized computer access of taxpayer information, this statute only applies to unauthorized access of com-

puter records. It does not apply to unauthorized access or inspection of paper tax returns and related tax information. Legislation such as S. 670, introduced in the 104th Congress, would achieve that result. By clarifying the criminal sanctions for unauthorized access or inspection of tax information in section 7213 of the Internal Revenue Code, whether that information is in computer or paper format, the entire confidentiality scheme respecting tax information and related enforcement mechanisms would be appropriately found in the Internal Revenue Code.

An amendment to section 7213 such as was proposed in the 104th Congress would serve important tax administration objectives. (Of course, as is currently the case under section 7213 for convictions resulting from the disclosure of tax information to unauthorized third parties, a conviction of federal officers and employees for the unauthorized access or inspection of tax information would, in addition to imprisonment and fine, continue to result in dismissal from office or discharge from employment.)

We would like to work with you and your staff to assure that improper access can be dealt with appropriately.

Sincerely,

MARGARET MILNER RICHARDSON.

JERRY PACT, IN MEMORIAM

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 8, 1997

Ms. HARMAN. Mr. Speaker, every Member here has a story about the beginning of his or her interest in politics. Mine begins with an extraordinary pixie of a man named Jerry Pacht, who died last week in Los Angeles at age 75.

Before embarking on a distinguished career on the Los Angeles Municipal Court followed by decades on the L.A. County Superior Court, Jerry ran for Congress, twice. His campaigns were high principle and low budget, and he recruited and excited a large band of volunteers.

I was a high school student in 1960, the first year Jerry ran, and led what he called the kiddie brigade. Our colleague, HOWARD BERMAN, then president of the UCLA Young Democrats, played a far more senior role in the campaign.

I learned a lot. My role was confined in substantial part to stuffing envelopes and mimeographing materials, but I saw how valuable those tasks were. In the days before television ads, communication of Jerry's message and his passion depended on people like me. Even in these slicker and more cynical times, the hub of campaigns still is centered on volunteers. Without them, candidates don't win.

Of course it matters what the message is, and whether the messenger is credible. Though Jerry's runs for office may not have persuaded a majority of the voters, the qualities in him that excited me and others were on full display during his long and successful judicial career that followed.

Son of a judge, Jerry's interest in a judicial career became known to Gov. Pat Brown who appointed him to the local bench in 1965 and promoted him a year later.

He was a beloved figure—always insisting that the law be fairly applied, even if the cause it benefited was unpopular. No one ever accused Judge Pacht of any motive other than

serving the public. In a press interview, he once said: "I am not into making money. I always wanted to make some kind of mark, to change my society, do something to make it run better * * *." He surely achieved his goal.

In his obituary in the Los Angeles Times, I learned that Jerry had visions of becoming a singer, and was delighted to be asked to sing the national anthem at a Dodger game. Jerry, I heard your song. I still do. I always will. My interest in politics goes back to my early experience on your campaign. It goes forward with your melody in my head.

Godspeed.

TRIBUTE TO MARJORY STONEMAN DOUGLAS

HON. PETER DEUTSCH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 8, 1997

Mr. DEUTSCH. Mr. Speaker, I rise to recognize the contributions of Marjory Stoneman Douglas—an American hero who turned 107 years old yesterday. Mrs. Douglas is one of the mightiest protagonists of the Florida Everglades who led the first efforts to raise public awareness of Florida's River of Grass.

In 1947, Mrs. Douglas wrote her landmark book on Florida's largest wetlands ecosystem "The Everglades: River of Grass." This pioneering work was the first to highlight the plight of the everglades and ultimately served to awaken public interest in restoring its health. Still going strong in her 107th year, Mrs. Douglas has dedicated her life to the defense of the Everglades through her extraordinary personal effort and by inspiring countless others to take action. Recognizing these accomplishments, President Clinton awarded her the Medal of Freedom in 1994, the Nation's highest civilian award.

Mr. Speaker, I have introduced legislation which honors Mrs. Douglas' legacy by creating the Marjory Stoneman Douglas Wilderness in Everglades National Park. The Marjory Stoneman Douglas Wilderness will serve as a permanent and natural monument to the American hero who helped save North America's greatest wetland ecosystem. This year, as we commemorate the 50th anniversary of the park and the first publishing of "The Everglades: River of Grass," I believe it is fitting that we permanently honor Mrs. Douglas' legacy through this legislation.

THE HOPE AND OPPORTUNITY ACT OF 1997

HON. WILLIAM CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 8, 1997

Mr. CLAY. Mr. Speaker, I am pleased to introduce the Hope and Opportunity Act of 1997 proposed by President Clinton. The bill creates a Hope scholarship tax credit of up to \$1,500 per student for tuition and fees in the student's first year, and another \$1,500 in the second year if the student earns at least a B average. The credit will help 4.2 million students next year and will save families \$18.6 billion over 5 years. The HOPE scholarship is

designed to make the first 2 years of college as universal as a high school degree.

The act includes a tax deduction up to \$10,000—\$5,000 maximum in 1997 and 1998—for tuition and fees paid for undergraduate and graduate education, or job training or retraining. The deduction would be "above the line" so it is available even if the taxpayer does not itemize. Some 8 million Americans would benefit from this deduction next year, and it will save families \$17.5 billion over 5 years.

The act increases the maximum Pell grant from \$2,700 to \$3,000, which would be the largest increase in Pell grants in 20 years. Also, some 218,000 older students would become newly eligible for Pell grants by increasing the Pell grant living allowance.

I commend President Clinton for including a Pell grant increase in the bill; however, I think it is critical to demonstrate an even greater commitment to helping low-income families obtain educational opportunities. I propose

that Pell grants spending be made mandatory for the next 5 years, with a commitment to restore the maximum Pell grant to its full value by 2002 and will introduce my own bill to do that shortly.

The President's bill cuts student fees in half for 4 million low- and middle-income students, saving them \$2.6 billion over 5 years. It also reduces the in-school interest rate for 2 million students, saving them an additional \$1 billion.

The bill extends section 127 of the Internal Revenue Code through December 31, 2000, and reinstates the application of that section to graduate students. The provision, scheduled to expire this year, excludes employer paid educational assistance from an employee's gross income and wages. The bill also creates a tax credit for employer provided educational assistance, and provides income exclusion for student loan forgiveness.

The act proposes a number of measures that will level the playing field between the Direct Lending and Federal Family Education

Loan [FFEL] programs so they can fairly compete and operate efficiently. It recalls \$2.5 billion of Federal moneys currently held in reserve by student loan guaranty agencies by clarifying that the Department of Education is the ultimate insurer of all FFEL guarantees. The bill also standardizes repayment plans for the Department of Education loan programs, and increases the percentage lenders and guaranty agencies must bear for student loan defaults.

Unlike proposals made by Republicans who want to give tax breaks to the wealthy, the Hope and Opportunity Act of 1997 gives tax relief to middle-class families struggling to pay for college. It is critical to ensure that middle- and low-income students not face insurmountable barriers to higher education. I believe we should move the President's higher education plan to the top of our legislative agenda.