

MASS MARKETING OF ABUSIVE TAX SHELTERS



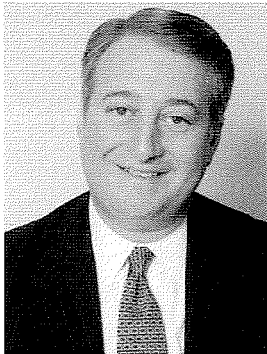
Remarks by Senator Carl Levin
Introduction by Howard P. Milstein

November 10, 2003

Citizens Crime Commission

OF NEW YORK CITY, INC.

THE MILSTEIN CRIMINAL JUSTICE POLICY FORUM



HOWARD P. MILSTEIN

Since 2002, the Citizens Crime Commission of New York City has presented a series of Criminal Justice Policy lectures sponsored by Edward L. and Howard P. Milstein through the Milstein Brothers Foundation. Each event features a nationally prominent speaker who addresses the Commission on such issues as crime, criminal justice or terrorism. The formal remarks are followed by a question-and-answer period. Each meeting is open to the media.

Attendance is limited to 150 invited guests drawn from the top ranks of the New York City business and law enforcement communities. Each lecture is printed and distributed to top business, civic and law enforcement leaders.

The Citizens Crime Commission of New York City is an independent, non-profit organization working to reduce crime and improve the criminal justice system in New York City. The Commission is supported by the business community; its board of directors is drawn from top corporate executives and members of major law firms. The Commission was established in 1978.

Howard and Edward Milstein are prominent New York bankers and real estate owners. They have a long record of working with the New York City criminal justice system to create and support innovative programs. They are also active in national crime prevention issues.

Introduction by Howard P. Milstein

Thank you, Tom. Once again, you've brought together a stellar group of leaders to meet with an exceptional criminal justice policy maker. Today's speaker, Senator Carl Levin, is known as a lawmaker who puts principle before politics. And he sure knows how to get to the bottom of things - whether it's tracing the web of deception that led to the collapse of Enron, the manipulation of gas prices in the US, or money laundering schemes that have tainted parts of our economy.

Senator Levin has been a leader in tough investigations of the white collar crime that can have such subversive and far-reaching effects. As an advocate of public/private partnerships, he understands the limits of government and the essential role the private sector must play in improving our communities and our society.

Senator Levin was elected to the United States Senate in 1978. Prior to that, he practiced law in his home state of Michigan. He served as Assistant Attorney General of that state and later as president of the Detroit City Council.

Senator Levin is currently the ranking minority member of the Senate Armed Services Committee, where he has earned a reputation as a strong supporter of our national defense and an effective waste fighter. In January 2003, the Secretary of the Navy cited Senator Levin for "exceptional service to the Navy and the Marine Corps," and presented him with its Distinguished Public Service Award - the highest award given to someone not a member of the Navy.

Senator Levin also serves as the ranking minority member of the permanent Sub-Committee on Investigations of the

Government Affairs Committee. In 2002, as chairman of that sub-committee, Senator Levin led Congress's most in-depth examination of the collapse of Enron. Senator Levin is also a member of the Small Business Committee and the Senate Select Committee on Intelligence.

Senator Levin is the author of the Competition and Contracting Act, which led to significant reductions in federal procurement costs. His Whistler Blower Protection Act protects federal employees who expose wasteful practices. He also helped alter the Taxpayers' Bill of Rights, which protects individuals and small businesses from IRS harassment.

Newspapers in his home state have described him as "a thoughtful, probing law maker," and, "the Senate's wise counsel on the nation's most precipitous issues."

Aside from all Senator Levin's public accomplishments that he has achieved since he first started out on the Detroit City Council in 1969, there are a few sides to him that particularly endear him to people like us.

Although he is magnificently qualified to be the President of the United States, he is one of the few members of the United States Senate who does not spend his waking hours telling everyone that he should be President.



Pictured left, Howard P. Milstein and right, Senator Carl Levin

Instead, he simply undertakes the business of the nation and performs his job as our leading military expert in the Senate with total competence and collegiality.

He has a great sense of humor and he never takes himself too seriously. Come to think of it, Carl, maybe you *should* run for the Presidency. In a time of such rank partisanship on both sides of the aisle, with members of Congress almost coming to blows over their differences, Senator Levin is from the old school of politics. He works closely with his Republican colleagues and treats them with respect.

Senator Levin maintains his dignity in the midst of the most rancorous debates of our time. One has only to observe his relationship with Senator John Warner, the current chair of the Armed Services Committee, to understand one of the most important reasons for his effectiveness in the Senate – whether the Democrats are in or out of power. I wish that more Senators went to that same old school.

Maybe one of the reasons for his well-documented humility has to do with being the kid brother of another high achiever and wonderful public servant. Some of you might not be aware that there are two extraordinary Levins in public life. Each of them with a list of accomplishments that would satisfy the most determined Jewish mother in America.

Sandy Levin is a respected member of the House Ways and Means Committee and has served in Congress for more than 20 years. Without diminishing GW and Jeb, Carl and Sandy may be the greatest one-two family punch in public life today.

It's my pleasure to introduce Senator Carl Levin.

Remarks by Senator Carl Levin

Thank you for inviting me here today to address this distinguished gathering. You are a unique mix of law enforcement officials and concerned citizens, leaders in our legal and business communities and public life. Your tradition of coming together in this forum to put a spotlight on the critical issues facing the law enforcement community is truly a worthy public service.

There are a lot of financial scandals today that pollute the business climate. Accounting fraud. Mutual fund misconduct. Price manipulation in energy markets. Phony corporate offices opened in offshore tax havens to avoid paying taxes while the corporation continues to use American services. But I'd like to talk today about a serious scandal that hasn't received the attention it deserves, largely because it is so complicated - namely, the design and mass marketing of so-called "abusive" tax shelters.

Unlike legitimate tax shelters, abusive tax shelters are very complicated transactions promoted to provide large tax benefits unintended by the tax code. Abusive tax shelters are marked by one characteristic: there is no real economic or business rationale other than a tax deduction. As Judge Learned Hand put it in *Gregory v. Helvering*, they are "entered upon for no other motive but to escape taxation."

Crimes like terrorism, murder, fraud and embezzlement produce instant recognition of the immorality involved. Abusive tax shelters are MEGOs - that means "My Eyes Glaze Over." Those who cook up these concoctions count on their complexity to escape scrutiny and public ire. And the anti-tax climate contributes to the lack of public anger. If tax is spelled B-A-D in right-wing dictionaries, how

can concocting tax shelter schemes to avoid paying taxes be bad?

But complicated or not, MEGOs or not, the fact is that the mass marketing of abusive tax shelters by respected accounting firms, law firms, banks, and investment advisers who are hawking these so-called "tax products" to thousands of people like late-night, cut-rate TV bargains, is surely scandalous, just as Enron was scandalous.

And it is massive. It involves tens of billions of dollars each year. It goes on across the country and around the clock. It undermines the fabric of American society by depriving our government of funds needed to strengthen homeland security, support our troops, care for the sick, educate kids, and more. It is corrupting some of our most talented professionals in law, accounting and finance. And it leaves honest taxpayers to make up the difference.

Last year, the Permanent Subcommittee on Investigations, of which I'm now the ranking Democrat, opened an in-depth investigation into the development and marketing of abusive tax shelters by professional firms like accounting firms, banks, investment advisors, and law firms. I was then the Subcommittee chairman and initiated this effort due to our Enron investigation which, among other misconduct, disclosed that company's use of elaborate tax dodges.

In December 2002, the Subcommittee held a hearing which examined an abusive tax shelter known as Slapshot, which J.P. Morgan Chase had designed and sold to Enron for \$5 million. Enron had calculated Slapshot would produce tax benefits exceeding \$120 million. As detailed in a Subcommittee report, this tax shelter relied primarily on a sham \$1 billion loan that was arranged and financed by J.P. Morgan Chase, and concealed within a mind-boggling array of loans, stock swaps, and

structured finance transactions, many of which occurred within minutes of each other. The shelter's complexity was designed in part to prevent tax authorities from finding out what really happened.

We pierced the Slapshot veil only by subpoenaing hundreds of boxes of documents; reading thousands of emails, conducting numerous interviews, and spending months unraveling how that tax shelter worked.

We figured out Slapshot. But it took a huge effort. The larger issue, which we have spent the last year investigating with the full support of our new Subcommittee Chairman, Senator Norm Coleman, is how respected U.S. professional firms act like schlock-houses, hawking shoddy, abusive tax shelters and enlisting the help of other professionals in the marketing effort.

Our investigation found what could be called a target-rich environment - numerous accounting firms, investment advisors, banks, and law firms developing the internal and external infrastructure necessary to aggressively design, market, and implement hundreds of complex tax shelters that people would otherwise be unable, unlikely, or unwilling to employ. These products are so dubious that some of their developers even had clients take out insurance policies in case the IRS caught up with them! And they are doing it in exchange for hundreds of millions of dollars in fees and other compensation, some of it contingent, while robbing the U.S. Treasury of billions of dollars in revenues each year.

The Government Accounting Office reports that an IRS database tracking unresolved, abusive tax shelter cases over a number of years estimates potential tax losses of \$85 billion. The GAO also reports that the IRS

has identified almost 300 firms that appear to have promoted abusive tax shelters and other abusive tax products.

The scrutiny of abusive tax shelters has been mainly on the taxpayers using the shelters. If we are going to rid our tax system of this abusive infestation, we must extend that scrutiny beyond the taxpayers to the highly skilled professionals who design and market these schemes.

Many abusive shelters, for example, utilize layers of corporations, trusts, and special purpose entities that only a trained financial professional could devise and establish. Others rely on intricate financial transactions involving derivatives, warrants, and little known financial instruments that only a sophisticated investment professional could arrange. Still others utilize deceptive, multi-million-dollar loans that only our largest financial institutions could finance. And most rely on complex and novel interpretations of tax law, complete with obscure tax code references and convoluted tax opinions, that only a determined tax lawyer could construct.

Our investigation found that the professionals marketing highly questionable tax shelters were trading on their reputations as respected names in American business. Part of their sales pitch has been to assure potential clients that they can use complex financial transactions which those clients barely understand to reduce or eliminate their tax bills, and then rely on the firm's expertise, vast resources, and reputation to fend off IRS scrutiny and penalties.

Another thing we learned is that the character of the professional tax shelter industry has changed fundamentally. It used to be that individuals and corporations went to an accounting firm or lawyer to ask how to structure their business affairs to

minimize taxes. In response, their tax advisors would provide legitimate tax planning, or in some cases, abusive tax shelters. This tax advice was sought and provided on a one-to-one basis.

That's not the heart of the professional tax shelter industry today. Our investigation found that it was not individuals and corporations visiting their tax advisors, but a horde of tax advisors cooking up one complex scheme after another, packaging them up as generic "tax products" with boiler-plate legal and tax opinions, and then devising and undertaking elaborate marketing schemes to peddle these products to literally thousands of persons across the country.

Some of the professionals peddling these tax dodges have the audacity to claim that they are not tax shelter promoters. If they admitted that they do what they so blatantly but secretly do, they would be subject to IRS regulations requiring tax shelter promoters to disclose their activities. Listen to this email from a senior tax professional to his staff who just finished designing a tax shelter in a company that denies it promotes tax shelters:

"I want to personally thank everyone for their efforts during the approval process of this strategy. It was completed very quickly and everyone demonstrated true teamwork.

Thank you! Now let's SELL, SELL, SELL!!!"

That's the tax shelter industry of today, aggressively mass marketing its self-named "tax products". We have uncovered disturbing evidence of tax professionals convincing clients to buy complicated tax schemes resulting in hefty profits for the so-called professionals. In too many cases, the firm pushing the tax product advised its staff of tax professionals - I'm talking about CPAs and lawyers - to use high-pressure sales tactics to close the

sales. Some firms are even using telemarketing. For example, one firm that now claims its tax products were specialized and available only for limited distribution, made cold calls to thousands of people across the country to market one particular shelter. The firm set sales goals for its employees and offered rewards for those who met these goals. These are the tactics you might expect of a boiler room operation selling phony land deals, but here they are coming from people in our top professions.

Some people are trying to claim that the worst tax shelter abuses are already over, so there is no need for investigations, reforms, or stronger laws. But that's not what our investigation found. What we found is that, while a few promoters are calling it quits, the tax shelter industry as a whole is still going strong, targeting new opportunities and market segments, intensifying the pressure on lawyers and accountants to become tax shelter hucksters, continuing to cheat the treasury and, in the process, victimizing tax professionals who don't hawk these abusive tax products but have to compete against those who do.

Next week in Washington, the Senate's Permanent Subcommittee on Investigations will hold two days of hearings that will peel back the curtain and provide an inside look, with detailed case histories, at how respected accounting firms, banks, securities firms and lawyers develop, market, and implement abusive tax shelters. We plan to present evidence on the corporate culture and the personal attitudes involved, and what happens when someone doesn't want to go along with approving or peddling, such tax shelters. We will also show the extensive, indeed highly aggressive, marketing operations behind the modern tax shelter industry and the push to sell, sell; sell.

We are determined to do everything we can to expose, condemn, and stop the unethical and illegal conduct involved in the peddling of abusive tax shelters. Here are some actions we need to take:

- **First**, we need to tighten the law on what is known as the "economic substance" test. This test involves examining whether, from an objective standpoint, the transaction had a business purpose and was intended to produce economic benefits aside from a tax deduction. This test is the primary anti-abuse tool that tax officials use to penetrate bogus transactions. The Senate has twice passed provisions offered by Senators Grassley and Baucus that would codify and strengthen this judicial doctrine to provide the IRS a stronger set of tools to set aside transactions whose only real purpose is tax avoidance, but these provisions have not yet been enacted into law.
- **Second**, we need to increase the penalties on those who produce and peddle illegal tax shelters. The current penalties are a joke. \$1,000 for promoting an illegal tax shelter, \$1,000 for aiding and abetting another person's tax evasion. These are the penalties on a firm selling a tax shelter generating fees totaling hundreds of thousands or even millions of dollars. In one email we reviewed, a senior tax professional advised his firm not to worry about failure to comply with the shelter disclosure requirements, because the penalties for noncompliance with the registration requirement were so low. This so-called professional concluded that an average deal resulting in fees of \$360,000 had a maximum penalty exposure of only \$31,000. That's some deal - if you get caught stealing, you only have to give back 10% of what you stole! It's not hard to see where the incentive is.

- **Third**, we need to get rid of the conflicts of interest that are so rife in this area. Last month I introduced S. 1767, with the co-sponsorship of Senator McCain and Senator Baucus, to end the conflicts of interest that now arise when an accounting firm sells a tax shelter to an audit client and then audits that client's financial statements - in effect auditing its own work. Our proposed Auditor Independence and Tax Shelters Act would bar an accounting firm from auditing the books of a publicly traded company to which it has sold a tax shelter.
- **Fourth**, we need to increase enforcement dollars for the IRS so they can go after these abuses. Every dollar invested in tax enforcement returns many times over to the Treasury.
- **Finally**, the key regulators - the IRS, the Public Company Accounting Oversight Board, the SEC, and the bank regulators - need to get together and brainstorm about how they can use their existing authority to put a damper on the mass marketing of illegal or abusive tax shelters. New regulations are needed, such as prohibiting contingency fees, and doing so on a nation-wide basis, as over 20 states now do.

Regulation, of course, is but part of the answer, and it is not the ideal answer. We need to restore professional pride. Professionalism should mean high standards, codes of conduct, avoidance of conflict of interest, and a sense of fiduciary duty. Justice Louis Brandeis, in speaking at Brown University's Commencement in 1912, spoke about how a profession differed from other occupations:

"A profession is an occupation in which the amount of financial return is not the

accepted measure of success." He continued: "[Recognized professions] select as their test, excellence of performance in the broadest sense-and include, among other things, advance in the particular occupation and service to the community... In them a large income is the ordinary incident of success; but he who exaggerates the value of the incident is apt to fail of real success."

We also need our professionals to offer their services to our communities by showing leadership on the role of taxes in supporting our civilization. I'm afraid the opposite message was transmitted by former President Reagan when he said in his State of the Union Address in 1985 that "Every dollar the Federal Government does not take from us...will make our economy stronger, our lives more abundant, our future more free."

Some tax dollars are wasted, Lord knows, but not most. Taxes are a price of progress, freedom and security. Some extreme anti-tax activists would have us celebrate Tax Freedom Day, the day of the year when all dollars we earn are kept and no more goes for taxes. This day should also be recognized by more responsible people as the End of Government Services Day. A Day without clean air or homeland security. A Day when we do not have the protection of our police or firefighters or our air traffic controllers. A Day when food is no longer inspected or our borders guarded.

But I'm not sanguine about this. Until all of us share Franklin D. Roosevelt's belief that "Taxes, after all, are dues that we pay for the privileges of membership in an organized society," there will be the hucksters and the hustlers who peddle tax havens and tax shelters. For them we'll need tough penalties and regulations with teeth that have the full support of our leaders.

And I frequently remember an incident in my father-in-law's life, Barb's dad, who recently passed away at the age of 101 who was an immigrant. And who came to this country with very little and he did all right. Went into small business. Worked hard. Ended up with an estate which was adequate but wasn't gonna be enough to pay any estate taxes.

And he knew that. And he decided he owed so much to this country that he wanted to make a statement. And so he left a bequest to his Uncle Sam of \$10,000. We gotta remember what this country's all about to immigrants particularly like my father-in-law. But hopefully to all of us whether we're immigrants, family of immigrants or otherwise. We should be inspired.

I want to close by recognizing an unsung group of heroes in this area. First, there are those whose mission it is to enforce laws governing business conduct. Folks like District Attorney Robert Morgenthau and Attorney General Eliot Spitzer, who are tackling issues as complex as many of these tax shelters. And like William McDonough, Chairman of the new Public Company Accounting Oversight Board, who testified before the Senate Finance Committee as to just how troubling these tax shelters are to the accounting profession. Their work is aimed at more than enforcement - it is also aimed at changing the cultural norms.

Our unsung heroes also include the many professionals who struggle for meaningful self-regulation inside their professions, those who follow ethical principles, even when it puts them at a competitive disadvantage. And the professors who teach our future leaders the principles of business ethics. There are many of these unsung heroes in this effort here in this room today. To each of you, I say we are in your debt. Thank you. ■

Questions & Answers Senator Carl Levin

Thank you for the invitation. I'd be happy to try and answer some questions on this subject. Or, perhaps to the relief of many of us who are MEGOs when they look at this, just about any other subject you might want to throw at me. Thank you so much.

Q. My question is this. When you have the largest law firms and accounting firms involved in this kind of misbehavior how do you proceed?

A. Well, happily everyone isn't participating. Too many people are. But happily there are some who refuse to participate in the abusive tax shelters and limit their tax advice to *legitimate* tax advice to people who want to reduce their taxes in an *honest* way, which has a business purpose or an intentional purpose in the tax code.

We have a lot of ways in which people can legitimately reduce the burden of taxes on them that are intended or planned by the tax code. So we're talking here about the ones that are unintended and the transactions that have no economic purpose at all except to, again, reduce taxes. But you put your finger on a huge challenge because of the complexity of this scheme. Not *this* scheme, but of *these* schemes.

The complexity makes it extremely difficult to pierce through the layers of clothing that are put on these bodies in order to try to hide what is not going on. If there is no economic substance to the transaction, if there's no economic business purpose to

the transaction, there are incredible lengths which are taken to try to hide that fact and to make it appear as though there *is* an economic purpose.

And, again, there'll be three or four tax shelters a few weeks from now that we will be exploring and trying to analyze, laying out for the public, before we have our witnesses try to defend them. But I think there are just two ways to do it that I know of, or three ways to do it. One is inside the profession. That is, for people to take action against those in their own profession who are abusing the rules and taking advantage of the difficulty and the complexity to hide things they're doing, which they shouldn't do. That's an internal matter, internal to the professions. And professions do that. Every one of our professions has an internal mechanism to try to go after the abusers.

We need to strengthen their hand, the folks that make that effort. And there are two ways that I know of to do it. Increase penalties so that they are a deterrent. What we have now in the abuse of tax shelter area - for the aiders and abettors, the people who put these together and market them - is a joke. A \$1,000 fine is completely irrelevant. And so you have to have a deterrent that is real in terms of the law.

And secondly, through our oversight process and through making public what is going on. Trying to get the public awareness up to the point where people will - internally in the professions; their clients and the public itself, acting through elected officials and appointed officials - take action against them. So all three of those things are necessary. It's a constant battle.

I think if we win this battle there'll be someone here, probably speaking to another group ten or 20 years from now, who have a

similar problem or problems. It's the reason why you need the Morgenthau and the Spitzers and folks like that, who are willing to take on this kind of an issue - which is a dry issue, complicated, and difficult to make come alive for people.

Again, the difficulty is reinforced as I mentioned in my remarks. If you're in an environment which is, in this case, an anti-tax environment, a lot of people's instinct would be opposed to taxes. And that's fueled and fed by some of our top leaders in this country as a matter of fact. We're in that environment where taxes are viewed by a segment of our community and fueled by some of their leaders, who I consider to be irresponsible in this regard, and it makes it more difficult to do what needs to be done.

And that's why you need the people who talk about why taxes are the price of civilization. But you need all that together. But you don't go over the goal line for good. You don't win this football game for good. This is the annual football game between Michigan and Ohio State or Notre Dame and Navy.

Q. Senator, I was really struck by your candid view of taxation in this country. I'm wondering how a public official can promote and espouse taxation without committing political suicide?

A. Well, first of all, you make your speeches so damn dull no one can understand them. It's so that no headline writer can say, "Levin Favors Taxes." Actually, I voted against both the Reagan and the Bush tax cuts because I thought they were fiscally irresponsible and deficit creators and so forth.

It's a challenge to survive in that environment. But I think if you're straightforward

and honest, you also let people who are paying taxes know that they're going to be left holding the bag if folks who should be paying taxes don't pay their share. That connects to that average voter, that average person out there.

When people hear, "Hey, let's go after the folks who pretend to open their new office at some tax haven," they actually keep their business here, thank God. But they aren't paying taxes because they've created a new a fiction that they're now totally owned by some new entity that's off-shore and, therefore, don't pay taxes here - although they're using our police and fire and schools and everything else.

If you're willing to go after those, and sometimes there's some powerful interests there, then that average voter out there, when you tell them, "Hey, I oppose this President Bush tax cut because I think one, two and three," they'll be a little more forgiving. Even though they weren't otherwise inclined, they think you're willing to go after some powerful interests as well on the same subject.

But I think people like honesty. I really do. There are a lot of folks. My colleagues will tell you the same thing, how reassuring it is in a way. How you look forward to the folks who come up to you on the street and say, "We don't agree with you on this issue but we think you're honest." If I didn't get votes from people who disagreed with me on a lot of issues, but who voted for me anyway because they thought I would tell them straight what I was going to do or what the issue was, I wouldn't be in the U.S. Senate.

I've taken an unpopular position on lots of issues including taxes during the Reagan years. But people thought I was being straight with them. And I was also willing to take on some of the powerful interests, which that

average voter wanted to be taken on in this area. And that combination I think persuaded enough people in a couple of my elections – not by big margins, but enough people to keep me in office.

Q. Senator, how deep do you think this diseased part of our economic tree goes in terms of the Enrons of the world? In other words, I think there's a sense within business communities that these are very bad apples but that the barrel is sound. What is your sense? Where do you sit in terms of corporate ethics?

A. It's a deviling question. What we see are the problems and it's hard for us to get the whole picture. People who are in it, who are honest, have a much better assessment as to what the whole picture is than we do. But what is particularly troubling to me, frankly, are some of the major institutions in our country – the pillars of this country financially. I mean Citibank, Chase Bank, Merrill Lynch who are involved in Enron and schemes that are deceptive schemes.

I'm not saying Chase and Citibank are deceptive companies. I'm saying that they were willing to engage. And we showed how conscious, at least, the people who were involved were and how they cover up stuff. These are pillars of our community. These are banks and you know that. You say, "My God, that's where my account is." These are the folks we rely on.

And these are some of the best names. And I assume, for the most part, these are honest companies. We had a major bank that was engaged in helping some of the most crooked leaders in the world hide their money. Major institutions. Does that mean the

whole institution is polluted? No, I don't believe that's true.

And yet when you've got some of the names, these are proud names with huge reputations that then will go about with leadership cleaning up their act. Firing people where they need to fire people and so forth. But how deep it permeates? I cannot give you an honest assessment, other than to say there's too much of it. But I can't tell you it's five percent, ten, 20, 30. I just don't know. I guess, I'm like a police officer in this regard.

You know, somebody who sees bad things going on all the time, sooner or later you just wonder if you're a police officer. "My God, is this the way the world is?" I mean, everyday just constantly arresting the drug runners and the bad guys. But that's not the way the world is. That's five percent or two percent of the world.

And yet to that police officer it's his life's work. It's like the judge. You got a judge sitting here who sees case after case after case in front of her where there are bad things happening. And she has, somehow or other, got to separate that from her world and her family so that it doesn't affect that. But then she'll make a judgment. If I asked Judge Uviller right now, what percentage of the world are like the people that come in front of her, I'd be interested in her answer. But I'm not going to embarrass her here because it would look like I'm ducking the answer to the question.

But it's kind of the same thing, you know? We all have to do that, whether we're judging people or enforcing the law, or in my position. I hope it's a small percentage. But whatever it is - because of the tremendous reputation of some of the institutions that are involved here – it's too deep and too discouraging.

Q. Senator, you mentioned the fine is \$1,000. Have you formulated what you think might be a more appropriate penalty and can you name a specific figure?

A. I have not. Actually, I've reviewed them personally just in the last couple of weeks as we're preparing for these hearings. We look, and the taxpayer actually has some real jeopardy here, the taxpayer himself or herself – because *there* you can get the money back. The IRS can get all the money back and impose a penalty.

It's all the aiders and abettors – all the people who concocted this scheme, peddled them, marketed them, sold them to the taxpayer - who get not even a slap on the wrist, in terms of any realistic assessment. And so I don't know what our bill will do in terms of new penalties to try to deter this kind of behavior by the accounting firms and the lawyers and the investment banks and so forth that participate in the abusive shelters.

I don't know where we're going to land on that, except to say what's there now is totally inadequate. And it's something, frankly, which shocked us. We should have known it. I guess we should know everything that's in all of our law books. But this came as a real surprise to us. And I'd say of all the things we've learned, I'd say *that*, plus the marketing, including the telemarketing, of these tax shelters.

The way in which, instead of the taxpayer coming into the accountant seeking advice, it's this peddling of these generic shelters with cold phone calls going to thousands of people. That is a pretty stunning shift in the way tax advice should be given and used to be given. ■