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NOMINATIONS

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HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF IVAN A. NESTIGEN, UNDER SECRETARY
OF HEALTH, EDUCATION, AND WELFARE-DESIGNATE,
ALANSON W. WILLCOX, GENERAL COUNSEL, DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE-DESIGNATE,
AND MORTIMER M. CAPLIN, COMMISSIONER OF
INTERNAL REVENUE-DESIGNATE

FEBRUARY 1, 1961

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NOMINATIONS OF IVAN A. NESTIGEN, UNDER SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE-DESIGNATE; ALANSON W. WILLCOX, GENERAL COUNSEL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE-DESIGNATE; AND MORTIMER M. CAPLIN, COMMISSIONER OF INTERNAL REVENUE-DESIGNATE

WEDNESDAY, FEBRUARY 1, 1961

**U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.**

The committee met, pursuant to call, at 10:40 a.m., in room 2227, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Long, Smathers, Gore, Douglas, Fulbright, Williams, Carlson, Butler, and Morton.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order.

The first witness is Mr. Ivan A. Nestigen of Wisconsin, to be Under Secretary of Health, Education, and Welfare.

Will you come forward, sir, and make your statement.

STATEMENT OF IVAN A. NESTIGEN, NOMINEE TO BE UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE

The CHAIRMAN. I am placing your biographical sketch in the record. (The sketch referred to follows:)

BIOGRAPHICAL SKETCH OF IVAN A. NESTINGEN, UNDER SECRETARY-DESIGNATE, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Born: Sparta, Wis., September 23, 1921.

Education: University of Wisconsin, 1949. Two degrees: Ph. B. in history and LL.B., June 1949.

Married: To Geraldine A. Krawczak. Three children, Laurel, age 8; Leslie, age 6; and Marcia, age 2.

Experience: Practiced law in Madison, Wis. 1949 to April 1956. Member and partner in the law firm of Arthur, Dewa, Nestigen & Tomlinson. Left law practice when elected mayor of Madison, April 1956.

Governmental experience: Member of Madison Common Council, April 1951 to January 1955, resigned when elected member of the Wisconsin Assembly. Elected member of the Wisconsin Assembly, November 1954. Resigned from Wisconsin Assembly in April 1956, when elected mayor of Madison, Wis. Elected mayor of Madison in April 1956 for unexpired 1-year term of predecessor. Reelected 1957 and 1959. As member of Madison Common Council was chairman and member of about seven different boards, committees and commissions.

Other activities: (1) Active with Democratic Party in Wisconsin since 1949. (2) Chairman, Kennedy for President Club of Wisconsin, 1959-60. (3) Chairman, Citizens for Kennedy-Johnson of Wisconsin, 1960.

Military service: World War II, 1943-46, oversea duty, South Pacific. Honorable discharge as first lieutenant, Corps of Engineers.

Mr. NESTIGEN. Mr. Chairman and members of the committee, I have no particular comments that I feel to be in order, but I will be glad to answer any questions that the membership may desire to ask.

I do have a very keen interest in the field for which President Kennedy has submitted my name, I have a keen interest in it and have participated in it in Wisconsin in a number of ways, and I have quite strong feelings about the importance on the domestic scene of the particular field.

The CHAIRMAN. Do you want to make a statement about your experience?

Mr. NESTIGEN. My experience with regard to the type of position and the type of matters involved in this particular field would be the experience I have had with the government in Wisconsin. In that respect I have been active with the Madison Common Council as a member, active as a member of the Wisconsin Legislature, and I have served as a mayor of the city of Madison for 5 years.

The CHAIRMAN. Any questions?

Senator Douglas?

Senator DOUGLAS. Mr. Chairman, may I say that I am very glad to see someone from local government proposed for high national office. Frequently we take people who are experienced in National affairs, and sometimes people who are experienced in State affairs, but not so often men or women who are experienced in local affairs.

Madison is well known as one of the best governed cities in the Middle West. And Mayor Nestigen is well known as one of the best mayors that the city of Madison has ever had.

And I think he will bring to the Department of Health, Education, and Welfare a degree of grassroots concern and knowledge which is very badly needed in Washington. And I am sure that he has the good Middle West stamina to be able to resist the onslaught of the "Potomac fever" which seems to attack a good many people who come to Washington.

"Potomac fever" has been defined as "a disease which causes men to swell without growing."

I think Mr. Nestigen, Mr. Chairman, both by experience and character, can resist these temptations. And I think the administration is to be congratulated upon his appointment.

Mr. NESTIGEN. Thank you, sir.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. No questions.

The CHAIRMAN. Senator Fulbright?

Senator FULBRIGHT. Mr. Chairman, I met Mayor Nestigen in Madison some time ago, last year, and I can testify that he is held in the highest respect by the citizens of that community, both Republicans and Democrats, by the citizens of the community as well as the faculty of the university.

I join Senator Douglas in saying that we are very fortunate to have a man with the experience on the local level that the mayor has had.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Mayor Nestigen, all I want to say is that you come from a good State from which to be appointed in Health, Education, and Welfare. I remember back in 1935 we were very much dependent on Dr. Altmyer and others from the State of Wisconsin and Wisconsin University for some of the early spadework in the social security program.

I sincerely hope you will have an opportunity to follow in some of his footsteps. I may not always agree with some of the actions taken, but they were very sincere.

The CHAIRMAN. Senator Butler?

Senator BUTLER. Mr. Chairman, may I say to Mr. Nestigen that I believe what Senator Douglas has said is a very salutary thing. But so many people come here, and after they have been here awhile they conform and lose their grassroots habits.

I hope you will persevere, Mr. Nestigen, and keep that freshness of spirit and view during your term of office.

Mr. NESTIGEN. I certainly hope so.

Senator BUTLER. Because this may work the other way. We have a lot of nice grassroots people who come here, but sooner or later they seem to shake those grassroots off. So I hope you will persevere and bring that spirit of the grassroots here.

Mr. NESTIGEN. I would be as disappointed as anyone if I did.

The CHAIRMAN. Senator Smathers, do you have any questions?

Senator SMATHERS. No, sir.

The CHAIRMAN. Thank you very much.

The next witness is Alanson W. Willcox, of the District of Columbia, to be General Counsel of the Department of Health, Education, and Welfare.

STATEMENT OF ALANSON W. WILLCOX, NOMINEE, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The CHAIRMAN. I am placing your biographical sketch in the record. (The sketch referred to follows:)

BIOGRAPHICAL DATA OF ALANSON W. WILLCOX

Born: Akron, Ohio, July 30, 1901. Spent childhood in Ithaca, N.Y.

Education: The Hill School, Pottstown, Pa.; graduated 1918. Cornell University, A.B., 1922. One year at Cambridge University, England, 1922-23. Harvard Law School, LL.B., 1926; served as case editor of the Harvard Law Review.

Legal experience: Admitted to the New York State bar, 1926; practiced in New York City as law clerk in Hughes, Schurman, Rounds & Dwight, 1926-29; as member of Schurman, Wiley & Willcox, 1929-34; attorney, Bureau of Internal Revenue, 1934; Assistant General Counsel, Treasury Department, 1934-36; Assistant General Counsel, Social Security Board, 1936 to January 1939; principal attorney, Federal Security Agency, 1939-42 (Assistant General Counsel, 1942-47, and General Counsel, 1947-53); various part-time work and writing 1953-56; general counsel, American Hospital Association, 1956 to January 1961.

Married: Marjorie D. Champion, 1943; two sons—Alanson W. and Dana C.

Miscellaneous: Member of U.S. Supreme Court bar, New York State bar, District of Columbia bar, Association of the Bar of the City of New York, Federal Bar Association, Cosmos Club (Washington, D.C.); published writings include a number of discussions of the financing and other aspects of the old-age and survivors insurance system and a consideration of the role of lawyers in nonregulatory Government agencies.

Mr. WILLCOX. Mr. Chairman, of course I am very happy and humble to have been designated to the post of General Counsel of the Department of Health, Education, and Welfare.

I served the greater part of my professional career on the Social Security Board and the Federal Security Agency, the predecessor of the present Department of Health, Education, and Welfare, so to some extent I am going back to an old area of activity and interest, and I certainly will undertake to do my utmost to further the work with the Department and the program.

Do you want me to continue with my experience, Mr. Chairman?

The CHAIRMAN. Have you completed your statement?

Mr. WILLCOX. Yes, sir.

The CHAIRMAN. Are there any questions?

Senator DOUGLAS. May I say that I know Mr. Willcox. He has made a distinguished record in the field of social security. He is a very competent, highly public-spirited man. And I regard this also as a fine appointment.

Mr. WILLCOX. Thank you, sir.

The CHAIRMAN. Senator Smathers?

Senator SMATHERS. No, sir.

The CHAIRMAN. Senator Fulbright?

Senator FULBRIGHT. Mr. Willcox, how did you happen to go to Cambridge University?

Mr. WILLCOX. I was a little younger than most when I got out of college, and my father was a very strong believer in the values of learning, at a relatively early age, to know some of our European friends at firsthand. I think it was more my father's interest than any other that led to it.

Senator FULBRIGHT. What did you study?

Mr. WILLCOX. History and economics.

Senator FULBRIGHT. That is very good.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Dr. Willcox—

Mr. WILLCOX. I appreciate the compliment, Senator, but I am not a doctor.

Senator CARLSON. You are with me, because your service has been for many years with the Social Security Board, and I well remember the days in the Ways and Means Committee from 1936 on.

And I think we are very fortunate that you are assuming this position.

Mr. WILLCOX. Thank you, sir.

The CHAIRMAN. Thank you.

The next witness is Mr. Mortimer M. Caplin of Virginia, to be Commissioner of Internal Revenue.

**STATEMENT OF MORTIMER M. CAPLIN, NOMINEE TO BE
COMMISSIONER OF INTERNAL REVENUE**

The CHAIRMAN. I am placing your biographical sketch in the record.

(The sketch referred to follows:)

BACKGROUND OF MORTIMER MAXWELL CAPLIN

Birth date: July 11, 1916; New York City.

Home: Charlottesville, Va.

Education: B.S., University of Virginia, 1937 (Phi Beta Kappa, varsity boxing team, Virginia Players); LL.B., University of Virginia, 1940 (first in class; Order of Coif; editor-in-chief, Virginia Law Review); J.S.D., New York University Law School, 1953.

Career summary: 1940-41: Law clerk to U.S. Circuit Judge Armistead Doble, U.S. Court of Appeals for Fourth Circuit; 1941-50: Practiced law with Paul, Weiss, Rifkind, Wharton & Garrison in New York City (military leave: 1942-45); 1950 to January 25, 1961: Professor of law, University of Virginia; 1952 to January 25, 1961: Counsel to Perkins, Battle & Minor, Charlottesville, Va.

Professional activities: Tax Advisory Group, American Law Institute; chairman, Legal Research Committee, American Bar Association Tax Section; board of governors, Virginia State Bar Tax Section Committee on Taxation, Virginia State Bar Association; advisory committee, NYU Institute on Federal Taxation; director, Annual Virginia Conference on Federal Taxation (in June, 1959, received award from committees on taxation of the Virginia State Bar Association and Virginia Society of Certified Public Accountants).

Other professional activities: Lecturer at tax institutes in various parts of the country; author of numerous articles on tax and corporate matters; testified and prepared papers for House Ways and Means Committee on general revision of Internal Revenue Code (on invitation of Chairman Wilbur D. Mills).

Professional societies: Virginia and New York bars; American Bar Association; Virginia State Bar Association; Charlottesville and Albemarle Bar Association; American Law Institute; National Tax Association.

Directorships: Community Children's Theater; the Ellen Bayard Weedon Foundation.

War record: 1942-45: Lieutenant, USNR. Served as beachmaster, Normandy invasion. Received Army Distinguished Unit Award for service with Seventh Beach Battalion in France on June 6, 1944. Served also with Office of Naval Intelligence.

Family: Wife: Ruth Sacks Caplin; children: Lee (14), Mary Ellen (12), Michael (9), Jeremy (5), Catherine (2).

Mr. CAPLIN. Mr. Chairman, I should first like to thank this committee for the courtesy of this early hearing.

I believe the committee does have a summary of my background before them.

I might merely add that I have been a student and practitioner in the field of taxation for 20 years, and I consider it a great privilege and opportunity to be able to participate in the strengthening of our tax system.

I would be very happy to answer any questions that the committee has, sir.

The CHAIRMAN. The Chair has been requested by Senator A. Willis Robertson of Virginia to read this letter into the record:

It gives me pleasure to warmly endorse the nomination of Mortimer M. Caplin of Charlottesville, Va., for the position of Commissioner of Internal Revenue.

Mr. Caplin is an outstanding authority in the field of tax legislation, a man of the highest integrity and, in my opinion, unusually well qualified to fill the important office for which he has been chosen by the President. And naturally, therefore, I hope it will be the pleasure of the Senate Finance Committee to recommend his confirmation to the Senate.

I would like to say, Mr. Caplin, that I join with Senator Robertson in that recommendation.

There is just one question I would like to ask you.

You have made a study through the years of our tax system. And you have taught tax law in the University of Virginia?

Mr. CAPLIN. Yes.

The CHAIRMAN. To what extent would you expect to participate in the policymaking decisions of the Treasury Department with respect to taxation.

Mr. CAPLIN. Senator Byrd, I have no understanding concerning any participation in these policy decisions. As I view the position of Commissioner of Internal Revenue, he is primarily an administrator of tax law, accepting it as he finds it, as the Congress sees fit to pass the law.

And from that standpoint I would not expect to participate in policy in the narrow sense. I suppose, in terms of administration in general, you must be making administrative policy decisions from day to day on existing law.

The CHAIRMAN. I had in mind policy matters relating to legislation on taxation.

Mr. CAPLIN. As Commissioner, I would not expect to participate in that, Senator.

The CHAIRMAN. You expressed some views in an appearance before the Ways and Means Committee in 1958—

Mr. CAPLIN. Yes sir. In 1958 and 1959, Mr. Mills invited me to appear.

The CHAIRMAN. You then made certain definite concrete recommendations. You would not expect to advance those opinions as the Commissioner of Internal Revenue?

Mr. CAPLIN. No, sir. I would not see that there would be an occasion for doing so in that position.

The CHAIRMAN. Of course, if your advice were requested by the policymaking officials of the Treasury Department, you would give that advice, would you?

Mr. CAPLIN. If it were requested, I would be very happy, sir.

The CHAIRMAN. But you wouldn't initiate any policymaking decisions with respect to tax legislation?

Mr. CAPLIN. I would not, sir.

The CHAIRMAN. Senator Douglas?

Senator DOUGLAS. No questions, Mr. Chairman.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. Mr. Caplin, you have been practicing law prior to this assignment?

Mr. CAPLIN. Yes, sir. My primary assignment was that of professor of law at the University of Virginia. With the approval of the administration I was given the opportunity to practice law as a partner of former Governor Battle with Perkins, Battle & Minor in Charlottesville since 1952.

Senator WILLIAMS. In that capacity do you have any cases outstanding which are involved in the revenue department, or have you made a complete separation?

Mr. CAPLIN. I have resigned and ceased all connections with that firm, effective February 1.

If I am approved by this committee and by the Senate, it is my intent to circularize the Internal Revenue Service with a memorandum referring to the members of my former law firm and stating that I would not want to be involved in any of their cases, whether pending or in the future.

Senator WILLIAMS. You have no contingent fees pending upon the settlement of any case?

Mr. CAPLIN. No sir. My arrangement with the law firm is to liquidate my interest on a fixed dollar basis with no contingent arrangement.

Senator WILLIAMS. You told the chairman that you would not be in an advisory capacity in this new assignment, but that you would if asked for your opinion be glad to give it. You haven't changed your mind too much as to some of the recommendations which you made before you were appointed, have you?

Mr. CAPLIN. No sir, I have not. Mr. Mills had asked me, on the assumption that we were living in a perfect world and could start all over again, "what do you think might be done to strengthen and improve our Federal income tax laws?" And I expressed that opinion as a student of the tax laws.

Senator WILLIAMS. I notice that one of your recommendations was that there should be a change in the depletion allowance. Do you still feel that that is a loophole that should be given consideration?

Mr. CAPLIN. I think it should be given consideration in the light of existing conditions, like any tax provision it should be reexamined from time to time to see if it is justified and in the best interests of our country.

Senator WILLIAMS. I believe before the Mills committee you went a little further than recommending that it be studied, I think you recommended a reduction, is that correct?

Mr. CAPLIN. At that time I did, sir.

Senator WILLIAMS. Do you still feel that way, sir?

Mr. CAPLIN. Yes sir, I do feel that way.

Senator WILLIAMS. Thank you.

I might add, Mr. Caplin, that you will have some support in that opinion.

I am glad the administration has put somebody with that opinion, and you will have some help.

Mr. CAPLIN. Of course, in that connection I am expressing my views as a citizen and not as an official.

The CHAIRMAN. Senator Gore.

Senator GORE. I have heard the view expressed that the largest single escape of rightful tax revenue was in abuse of expense accounts. Much of this can be corrected, in my opinion, by efficient, effective and strict administration of the law. I would like to know your views with respect to this problem.

Mr. CAPLIN. Senator Gore, there has been great publicity given to expense account abuses. And the Internal Revenue Service over the last 2 or 3 years has embarked upon a more vigorous program of enforcement.

Senator GORE. Some more vigorous?

Mr. CAPLIN. Some more vigorous, I would accept that.

I think that this an area which requires the constant attention of the Service. In the absence of enabling legislation, I think it is an area which does have a great deal of potential abuse.

Now, under existing law, of course, an ordinary and necessary business expense is properly deductible; and entertainment, closely related to business activities, could be properly deductible. The problem relates to abuses in this area, where people are perhaps taking personal items related to their homes and families and friends, and blending this into so-called legitimate business expense deductions and legitimate entertainment deductions. And I think the distinction has to be clearly made under existing law. For I feel very strongly that when one taxpayer does not pay his proper share of tax, someone else must pay the bill. I feel that the honest taxpayer suffers when we have these excesses by people who are overstepping the line. And I share with you a desire to move strongly and more vigorously in this area.

Senator GORE. I am satisfied with that statement. I was going to give you some lurid details, but I will not do so after that statement.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Mr. Caplin, I understood from the statement you made to the chairman that you do not expect to participate in making tax policy for the Treasury or the administration, but would be willing to express your views if you were called in.

Mr. CAPLIN. Yes.

Senator CARLSON. I notice in your appearance before the Ways and Means Committee in 1958, I believe it was January 31, 1958, that you expressed yourself on the withholding of taxes on interest and dividends. And this is your statement:

This could be corrected without a major business or administrative inconvenience by a required withholding procedure for dividends and interest.

Now, my information is that the withholding on interest particularly would be rather complicated and difficult. I would be glad if you could discuss with this committee how it could be corrected without major business or administrative inconvenience. If you have some way I would like to know.

Mr. CAPLIN. Again, as a citizen, Senator Carlson, I agree with you that there are certain difficulties in the interest area. I think a distinction would have to be made between interest paid by corporations, let us say, on bonds or debentures, as contrasted with private interest and interest on savings accounts. The position I took at the hearing was more or less a broad position on principle. During the past year, there has been an effort on the part of the Internal Revenue Service to procure improved voluntary compliance, and some of the recent statistics show a definite improvement. Now, whether this trend can be continued is a matter of judgment. But I do recognize the interest withholding difficulties. I think the dividend difficulties could be overcome sooner.

Senator CARLSON. Mr. Caplin, you are going into this position, and you will be able to give us some information—I am familiar somewhat, and the committee is, with the effort that has been made to make some of these collections without withholding of interest and dividends, and after you have been there 30 days I personally would appreciate very much if you could give us some information as to some of the progress that has been made, the progress that has been

made in making collections on these additional items without legislation.

Mr. CAPLIN. I will be glad to do that, Senator.

I may say that I am sensitive to burdens being placed on businessmen. I have represented businessmen for many years. And I would not be in favor of burdening them if there were a voluntary way of collecting this revenue. I would want to look into it, from the Department of Revenue side, to see if this could be done voluntarily.

Senator CARLSON. After you have studied it I would appreciate having the information, and if you could suggest it, some legislation.

Before I conclude, Mr. Chairman, I wouldn't want Mr. Caplin to get the idea that the committee is unanimous on the depletion allowance, particularly with oil.

Mr. CAPLIN. I fully appreciate that, Senator Carlson.

Senator CARLSON. That is all.

The CHAIRMAN. I believe Senator Carlson raised a very important matter with respect to the withholding of dividends and interest. We would like to set a date for getting that information. Approximately how long do you think it would take to determine how successful the methods are now?

We would be interested in the collection of dividends especially. I agree that there is much greater difficulty with respect to the interest. So if you would set a date, say, approximately 30 days from now, we would like to have it.

Mr. CAPLIN. That would be fine, Senator. I think we would be in a position to provide some information to the committee at that time.

The CHAIRMAN. Senator Smathers?

Senator SMATHERS. Mr. Caplin, to follow up the questions of Senator Carlson, just a bit, of course you recognize that the Constitution provides that Congress shall be the authority to levy taxes. I am sure you recognize that it is not an administrative function?

Mr. CAPLIN. I recognize that completely, Senator Smathers.

Senator SMATHERS. Even though, you, as others, might have the belief that the present depletion allowance might be unfair or should be changed, nevertheless that does not fall within your jurisdiction to make any changes with respect to the provisions of existing law. It is a matter that should be left to the Congress, is it not?

Mr. CAPLIN. I recognize that completely. As a matter of fact, at the time I gave that testimony I was representing some rather significant clients in Florida who lean heavily on the depletion allowance.

Senator SMATHERS. That, of course, is one of the reasons I am asking this question. And I know they were ably represented. And I am glad that you had that viewpoint.

With respect to authorized business deductions, again there may be an area in which Members of Congress disagree as to what should be permitted as deductions and what should not be. I am certain that you would recognize that by virtue of your practice. As you said, you are sensitive to the burdens placed on businessmen. In an effort to see that there are no abuses, you nonetheless will not abuse the businessman in trying to determine whether or not deduction should be permitted or should not? Do I make myself clear?

Mr. CAPLIN. Yes, I understand you, sir.

This is a very difficult task, where to draw the line. And this is something that the Internal Revenue Service must meet head on—establishing sufficient safeguards under existing law, and at the same time not creating a maze of regulation and detail and minute report requirements.

Senator SMATHERS. I noticed in some articles which you have written that you have made the statement there should be simpler and easier ways for a person to file an income tax return—and to determine what their tax should be. I am one of those who feel that that certainly is within your jurisdiction. Do you have any plans to change the forms that we now have, or would you care to give us your ideas as to how this process can be simplified?

Mr. CAPLIN. In the first instance, simplification is a very difficult end to attain in the field of taxation. It is difficult to simplify returns when you have an involved statute. Perhaps the approach is that we should try to make the law less complex. But on the administrative side, in an unofficial way, I have already been conferring with the people in the Internal Revenue Service on an immediate study of income tax forms and instructions in the hope of working out something which is more palatable and more understandable. I believe that the whole system depends upon taxpayer confidence, and that we have got to make it simpler for them, we have got to help them. This is a major part of the job—a program of taxpayer assistance.

Senator SMATHERS. I know that this is possibly a little premature, but do you feel that additional revenue agents might be desirable?

Mr. CAPLIN. I am not yet in a position, Senator Smathers, to express an opinion on whether the number should be increased. But I am in complete accord with you on this question of regular audits. I think that the connotation of an audit ought to be explained to the people, that there is nothing wrong in being audited, that it is something that the American people should expect. It is almost a mere accounting device. I think that if we had a healthy audit program it would help restore taxpayer confidence.

Senator SMATHERS. I take it you have been audited yourself.

Mr. CAPLIN. Yes, sir; I was quite recently.

Senator GORE. Will the Senator yield?

Senator SMATHERS. Yes.

Senator GORE. Having been audited also, I don't think there is such a thing as a healthy audit. It raises my blood pressure.

Mr. CAPLIN. I think, if there was a better understanding of the procedural rights of the taxpayer and what the revenue agent was looking for from the taxpayer, that our blood pressures might be lowered a little bit.

Senator GORE. I will look forward to an improvement in that respect under your direction.

Mr. CAPLIN. I will make every effort.

Senator SMATHERS. Mr. Chairman, I have no further statement, other than to say that I believe we are very fortunate to be able to get the services of Mr. Caplin. He is well conversant with the problems. I am satisfied that he is also conversant with the fact that the Congress is very jealous of its own prerogatives with respect to making tax policy and that his primary job is merely to collect taxes as best he can. I think we are indeed fortunate in getting him.

Mr. CAPLIN. Thank you very much, Senator.

The CHAIRMAN. Senator Butler?

Senator BUTLER. Mr. Caplin, the administration of the revenue laws will come directly under your supervision, will it not?

Mr. CAPLIN. Yes, sir.

Senator BUTLER. Have you received any complaint as a practicing lawyer—maybe I had better not put it on that basis—have you in talking to your lawyers had the impression conveyed to you that the Department in some cases has taken a very harsh and unreasonable position, in the hope that the taxpayers, rather than sue, will make some settlement?

Mr. CAPLIN. I think it is rather obvious, Senator, that there are numerous complaints in this area, whether justified or unjustified.

Senator BUTLER. I heard—in any meeting of any bar association you can hear a score of such complaints. And I would like to ask you, if in the administration of the tax laws you find that there are such cases and very harsh and unreasonable position is taken by the Government, whether you would take steps to correct such cases and try to arrive at some uniformity in the administration of the tax laws?

Mr. CAPLIN. Senator Butler, that is an aim, I think, that any experienced tax lawyer would seek to attain.

Senator BUTLER. Personally, I do believe that the Government does assume very harsh positions in some cases, hoping to get a settlement from a taxpayer who will not go to the expense of suing, or where the claim is not large enough to justify the time and effort of the suit. And if we are going to have the confidence of the people, and if we want the people to cooperate with the Department, I feel that the Department should lean over backward to give the appearance of fairness in the administration of tax laws to the public.

Mr. CAPLIN. As a practitioner, I am sure that over the years I have shared your views, depending upon the particular case. But I do believe with you that we should try to have uniformity as far as possible, a single rule which applies in California as well as in the East.

Senator BUTLER. How far does the theory of nonacquiescence go, in your opinion?

Mr. CAPLIN. Well, I think that this is a function of the Chief Counsel's office, in collaboration with the Commissioner. He does collaborate in the coordination of the administrative side with the attorneys who are handling the litigation in the Tax Court. I think there has been a healthy improvement in the number of acquiescences and nonacquiescences, letting the public know the position of the Service.

I think there are instances where inconsistencies have become apparent. And I have expressed the opinion strongly that this is an area that should be corrected.

Senator BUTLER. I think I would be remiss in my duty as a member of this committee if I didn't point out to you that thoughtful people have called it to my attention time and time again that they thought the Government has been harsh in the treatment of well-meaning taxpayers.

Mr. CAPLIN. The literature is replete with articles on this subject. And I assure you, sir, that it will be given my close attention.

Senator BUTLER. I know that you will do that, because I know you are the kind of man that would interest yourself in complete

justice in the administration of the tax laws, which after all are burdensome on the people.

Mr. CAPLIN. I appreciate your confidence.

The CHAIRMAN. Senator Fulbright?

Senator FULBRIGHT. Mr. Caplin, I wasn't quite clear from your response to Senator Gore, do you feel that existing law is quite adequate to deal with this question of corporate expense accounts, and we need no new legislation?

Mr. CAPLIN. I am not sure of that, Senator Fulbright. I know that the Congress recently has ordered a detailed study of the expense account area, with a report to be made back to the Congress. I would like to await the results of that study—and the Internal Revenue Service is making it right now—before expressing any personal opinion on that.

Senator FULBRIGHT. A few days ago I heard of a rather unusual convention of an organization. The convention was held on a boat 2 days going to Bermuda and 2 days coming back. And it was qualified as a convention, and therefore a business expense.

I have also heard of these trips to hunting reserves in Georgia—there are some in my State—where a prospective customer is invited, and it qualifies as a legitimate expense of the corporation.

Is that not a common practice?

Mr. CAPLIN. I think that it is fairly widespread.

Senator FULBRIGHT. Is that not in accordance with existing law?

Mr. CAPLIN. If these facilities are used directly in connection with the operation of a business, it would be in accordance with existing law. As a matter of fact, the Tax Court of the United States has permitted a deduction for an African safari by a milk company, on the theory that this was advertising, legitimate advertising by the milk company.

Now, this presents a rather difficult legislative question.

Senator FULBRIGHT. We read in the paper about yachts—I am sure this isn't true, but it has been said that 90 percent of the yachts at Fort Lauderdale belong to corporations and are used to entertain prospective clients. I don't say that, but I have heard it said. I don't see how you ever draw the line. You can always invite one or two clients to go for a weekend with you, and qualify it as a business expense for the corporation.

I am not an expert on this, but I have heard many lurid stories about it, and I thought there was some legislation needed.

Mr. CAPLIN. Well, in the last situation you posed, Senator, there would be an allocation problem. To the extent that the yacht was used directly in connection with the business, it would be deductible. For example, if for 10 days during the year the yacht was so used, then ten three-hundred-sixtieths would be deductible.

Senator FULBRIGHT. You never know when a man might be a customer or a client, do you? Anybody might become a client or customer. It is a difficult administrative problem.

Mr. CAPLIN. It is an extremely difficult administrative problem.

Senator FULBRIGHT. I come from a very poor State, in which there are many small businesses. And the impact of the Federal income tax on small businesses is very large, and it still seems to me out of proportion that a small business making \$5,000 a year must pay 30

percent, and General Motors or any of the large ones—A.T. & T. now is the current leader, I think, making \$3 or \$4 billion—is limited to 52.

When you consider the development of nationwide television and radio, which is almost exclusively used for the benefit of the big companies—no little ones can participate in this means of communication—and the other things which I think contribute to the advantage of the big companies. I think it is wrong.

I tried to convince this committee that this is an absolute allocation of the burden of the Federal taxes. Have you given any consideration to this problem?

Mr. CAPLIN. Again as a citizen and not as a potential Commissioner of Internal Revenue, I would be very happy to express myself.

I, too, have lived in a small community for most of my life, in Charlottesville, and have represented primarily small businessmen, although occasionally I have represented a larger business. There are a number of provisions in the tax law providing relief today for small businesses. In the situation you mention, for example, many small corporations elect to be taxed somewhat like a partnership under a special provision. These are the real small corporations with 10 or less stockholders.

At the same time, if there should be a comprehensive revision of the tax law, I think that real serious consideration should be given to a more graduated rate structure for corporations.

Senator FULBRIGHT. This was recommended by a Cabinet committee, I believe it was called, a study committee by the last administration, this principle was. But the Secretary of the Treasury never did get around to making specific recommendations, and opposed the proposals that I submitted.

You say that there are some provisions for the small ones. But there are many more for the big ones that I needn't go into now.

Of course, this device of stock options is available to everybody, but as a practical matter it is available only to the large companies. And it is extremely important as a means of compensation to their officials. There is no way that the little company, without a market in which the stock can be sold, can take advantage of that way to evade—I am not sure of that—avoid—what is the proper word?

Mr. CAPLIN. Minimize.

Senator FULBRIGHT. Minimize the tax on their officials. And you know how widely stock options are used. But I think this is certainly a great disadvantage to all the small companies in the country.

And, of course, I am conscious of it because of my own constituents. I represent that type of people, and I don't think they get a fair shake under present tax laws.

I think 30 or 40 years ago there wasn't the same distinction growing out of these other conditions, and that they had a better break. And modern developments, I think, contributed to the advantages of the very large corporations. I don't think in the long run this is good for what we call a free enterprise society.

This is in itself one of the strongest impulses toward the socialized state, if you like; that is, the government controlling the business eventually.

Mr. CAPLIN. You are touching on some very delicate problems. Your point on stock options is well taken. Practically speaking the small business is not in a position to place an accurate valuation on

its stock, and therefore cannot meet the restrictive stock option requirements.

Senator FULBRIGHT. It can't do it. The ones that I am familiar with are just not in a position to take advantage of that.

And as to a lot of these provisions for depreciation, most of these small companies have relied on buying used machinery and equipment, and many of the privileges of amortization do not apply to them, they haven't in the past.

There are all sorts of things designed to benefit the big ones. I am not opposed to big business, but I think it is our duty to allocate this burden in a reasonably equitable manner.

Mr. CAPLIN. These are serious legislative problems.

Senator FULBRIGHT. Are you going to be concerned about them?

Mr. CAPLIN. They will not pass within the bailiwick of the Commissioner of Internal Revenue.

Senator FULBRIGHT. Your opinion would always be welcome.

Mr. CAPLIN. I will always be glad to give it.

Senator FULBRIGHT. I request you now to give thought to it.

Mr. CAPLIN. Thank you, I will.

The CHAIRMAN. Senator Morton?

Senator MORTON. I think we are indeed fortunate that Mr. Caplin has agreed to accept this responsible position. And I want the committee to know that I am sure he is going to be a vigorous administrator, which is proper, and also a man of charity, which is a very good combination. My son is at the University of Virginia in the last 2 years of law school, and he says he is a man of charity, because he has passed in law.

Mr. CAPLIN. We are very happy to have your son, Senator Morton, in the law school.

Senator MORTON. I may say it is charity, because my son unfortunately inherited his father's limited intellectual horizon.

I thank you very much, and wish you well, Mr. Caplin.

Mr. CAPLIN. Thank you very much.

The CHAIRMAN. Senator Long?

Senator LONG. If I understood you correctly, your position does not deal with the recommendation of legislation, your job is to collect money?

Mr. CAPLIN. That is correct, sir.

Senator LONG. And it is the part of the others in the Treasury to recommend what the changes in law will be?

Mr. CAPLIN. Yes.

Senator LONG. Thank you.

The CHAIRMAN. Are there any further questions?

Senator WILLIAMS. I would like to ask Mr. Caplin one question in connection with the point raised by Senator Smathers as to the increase in the number of agents and the necessity of more extensive audits.

In rating your agents in efficiency for promotion, what basis would you use, the amount of revenue which they brought in additional assessments against the taxpayers or the number of audits which they conducted in a thorough manner, or just what would be the basis for distinguishing between a good and bad agent?

Mr. CAPLIN. The point you are touching on, Senator Williams, is something that has concerned the tax bar for a great number of

years. We have felt—and I join with them—that agents should not be judged on the number of returns processed, nor the amount of revenue raised; that there should be an overall evaluation of a man's performance, his ability, his treatment of taxpayers, and his efficiency in performing an audit. But it should not be measured on either of the two standards that you mentioned.

Senator WILLIAMS. I am glad to hear you say that, because we do get those complaints raised occasionally. And it was called to my attention about a couple of months ago that in one of the areas they have received a directive from their superiors to the effect that they had not produced their quota of prosecutions. Do you think that you can sit in Washington or at the regional level and pick out an area and say that the national level of prosecutions is X percent and, therefore, every district should come up with a similar percentage; do you think you can establish a quota system such as that?

Mr. CAPLIN. No; I do not. Obviously, people will start making comparisons. But I just don't think that different areas of the country or even close counties within the same State can be truly comparable. And I think we have to rely upon the decentralization within the field and the judgment of our district directors, with some overall central supervision, but certainly not establishing any automatic dollar figure or number-of-returns figure.

And I hope to make that clear, given the opportunity, to the Service.

Senator WILLIAMS. I appreciate your answer on that, and I am in agreement with you.

Now, just one further question. While you are not in a policy-making position, do you consider the present exemption which is extended to State and municipal bonds as being a loophole?

Mr. CAPLIN. Again as a citizen I would like to say that, while technically it might be a preference that is not justified if we were living in a perfect world, I did not cover that as one of the areas in my testimony before the Ways and Means Committee. I think there could be certain implications on the local financing that I didn't feel qualified at that time to express an opinion on.

Senator WILLIAMS. Since you are not in a policymaking position, I will not ask you questions, except to congratulate the President on selecting another member of this important body who does agree with him and some of us on this committee that the depletion allowance should be examined.

Mr. CAPLIN. Thank you, Senator.

The CHAIRMAN. Thank you very much, Mr. Caplin. I think you have made a very frank statement. And I want to say that your services as professor of law at the University of Virginia have been highly commended in the years that you have been there. And I am proud as a fellow Virginian that you have been selected for this position.

This concludes the hearing, and the committee will now go into executive session.

(Whereupon, at 11:30 a.m., the committee went into executive session.)

