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GOVERNMENT ETHICS - How Can Rossotti Reform the IRS?

By John Berlau

Senators sat in stunned silence as **IRS** revenue agent Jennifer Long detailed abusive practices that were commonplace at her agency. "Courageous Jennifer Long," as she was referred to by then-Finance Committee chairman William Roth, R-Del., was the only **IRS** agent testifying at that fall 1997 committee hearing who did not conceal her identity.

Long shocked committee members and much of the nation with charges that the **IRS** selectively audited taxpayers who were poor and vulnerable, routinely fabricated evidence against taxpayers and used rigid quotas and goals for revenue collection as a means of encouraging agents to "stick it" to taxpayers. The sworn testimony of Long and others resulted in Congress passing a law in 1998 to overhaul the agency and give taxpayers added protection from abuse.

But lawmakers also were concerned about the fate of Long and other whistle-blowers inside the **IRS**. One month after Long testified - during the confirmation hearing of Charles **Rossotti**, Bill Clinton's nominee to be the new **IRS** commissioner - Roth asked **Rossotti** to pledge under oath to "protect employees who report **IRS** misconduct from retaliation."

Citing his experience as cofounder and senior executive of the information-technology consulting firm American Management Systems (AMS), **Rossotti** answered that "probably the most powerful management tool over the last 28 years is trying to create an atmosphere where people feel that they should report good, as well as bad, news; that they **can** talk." That said, **Rossotti** promised to "take action to eliminate the kind of unacceptable practices that were said in your hearing" to exist at the **IRS**. Hailed as a reformer, **Rossotti** was confirmed as commissioner by a vote of 92-0.

Three-and-a-half years later, despite bipartisan praise of **Rossotti** for changing the culture of the agency, Long believes she still is being made to

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pay for exposing those **IRS** abuses. On April 15, 1999, the **IRS** gave Long a notice of termination - which it decided not to act upon after she alerted Congress and the press. But the apparent vendetta was not put to rest. Recently some of her **IRS** bosses tried to derail Long's application for an accounting license by telling the Texas State Board of Public Accountancy that she lacked skill, character and integrity.

Long and her attorney believe **Rossotti** sanctioned the recent action. "It appears from information we are getting that Commissioner **Rossotti** has taken a direct interest in her case," said Long's attorney, David Lopez, citing unnamed observers inside the agency. "He is the root source of some of the problems."

There is considerable concern in Washington that **Rossotti's** actions in the Long case, combined with potential conflicts of interest from not divesting his millions of dollars in stock in AMS - a direct vendor to the agency he heads - could demoralize **IRS** employees and derail congressional efforts to reform the agency. Pete Sepp, a vice president of the National Taxpayers Union (NTU), once praised **Rossotti** as a reformer. But after recent incidents, Sepp tells Insight that, while he's not sure that **Rossotti** is part of the problem, "he's looking less and less [like] part of the solution."

In February, after Long passed her certified public accountant (CPA) exam, she gave her bosses at the **IRS** office in Houston a routine form from the Texas licensing board that asks employers to verify an applicant's character and fitness for duty. The **IRS** sent the form back to the Texas board, declining to answer the question but saying that it would send a "narrative." K. Steven Burgess, an **IRS** compliance area director based in Dallas - someone Long says she had neither met nor discussed her work with - drafted a letter accusing the whistle-blower of sloppy practices during audits. The letter, a copy of which Insight has obtained, called Long's audit probes "inadequate." Burgess did not return Insight's telephone calls asking for comment.

The Texas board granted Long her accounting license before the letter, dated March 22, was sent. But to **IRS** watchers, the matter is far from over. Sen. Charles Grassley, R-Iowa, has replaced Roth as chairman of the Senate Finance Committee and is a staunch champion of whistle-blowers. He has sent **Rossotti** a strongly worded letter noting that the committee had verified before the 1997 hearing that every performance evaluation Long had received gave her at least a satisfactory rating. "I can only conclude that this action by the **IRS** may be a precursor to a termination of Ms. Long in retaliation for her testimony as a congressional witness," Grassley wrote.

Grassley and his staff so far have refrained from publicly placing blame on **Rossotti**, but Long and Lopez say the commissioner's fingerprints are all over this matter. Long says she called Washington headquarters several times to complain. Her phone calls went unreturned, she says, until an **IRS** deputy commissioner, Dale Hart, called and told Long she would get a copy of the narrative letter when it was finished. "I felt like they were aware and supporting this effort to try to keep me from getting the CPA license," Long tells Insight. Hart did not return Insight's calls.

Lopez says that because Long's testimony created such a high profile and had personally been called to the attention of the commissioner by the Senate Finance Committee, **Rossotti** would have had to sign off on the narrative letter. "It does not appear to us, from what we hear informally within the agency, that this kind of action would have been taken without being pretty well-considered all the way up to the commissioner's office," Lopez said.

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What's more, **Rossotti** appeared to defend the **IRS** action in a recent interview with the Associated Press (AP). He told reporter Larry Margasak that he was "very familiar" with the situation and that there was no retaliation against whistle-blowers at the **IRS**. "I can tell you I am personally certain that none of these people were retaliated against and all have been treated fairly," **Rossotti** told the AP in an April 18 story.

Margasak and others take **Rossotti's** statement that there was no retaliation as meaning that the **IRS** attack on Long's work somehow was justified. "His remarks were a lot different than they were when they tried to fire her on Tax Day '99," Margasak tells Insight. "At that time he said that it appears there is retaliation, and he sent some top people down there to Texas to check it out. i Obviously, he's doing a 180-degree turn."

The cofounder of a Washington group that helps whistle-blowers expressed shock and outrage at **Rossotti's** comments. "He's leaving the appearance of active leadership to sustain a blacklisting campaign," said Tom Devine, legal director of the Government Accountability Project. "What the **IRS** commissioner's quotation means is that he's staying personally involved, and he's publicly endorsing a hostile reference. Almost by definition, he expanded the blacklisting potential from one job to any jobs that Ms. Long seeks."

Lopez believes **Rossotti's** comments violate Long's rights as a federal employee. "The whole idea behind the Privacy Act is that you do not disclose any information with respect to employees without their specific permission," Lopez says. "He's saying essentially in his statement that there is no merit to any complaint being made by Ms. Long about retaliation. When he goes over that line, I think he is violating the letter of the act."

IRS spokesman Frank Keith tells Insight that **Rossotti's** comments "do not violate any provisions of the Privacy Act." Keith would not say if **Rossotti** believed Long's treatment was justified. "I cannot discuss specifics," Keith says. He insists, "The commissioner has not discussed Privacy Act-governed information with anyone who is not entitled to receive such information."

Insight has been told that the AP interview may not be the only time that **Rossotti** discussed the Long case in what may be an unauthorized way. A source who asked not to be named tells Insight that at a February meeting **Rossotti** shared details of the Long case with people who were neither **IRS** employees with a need to know nor congressional staffers engaged in oversight. Keith said he could not comment on whether **Rossotti** had further conversations about the Long case with people outside the agency; to do so, he said, would violate the Privacy Act.

Devine isn't sure whether **Rossotti** violated the act, but he says the **IRS** commissioner should have respected Long's privacy for the sake of other potential whistle-blowers. "My concern is that it sustains the dynamic of reprisal through blacklisting, and that has a chilling effect for all other **IRS** whistle-blowers," he says. "It means that the head of the agency has chosen to use a bully pulpit to continue attacking them after the dispute is theoretically resolved."

Devine says that, even if the charges against Long were true, **Rossotti** should have handled the problem internally and not commented to the press. He says this might deter good-faith whistle-blowers from coming forward. "In no circumstances should an agency leader publicly endorse and broadcast a hostile reference because the other employees don't know the facts one way or the other," Devine emphasizes. "By publicly

endorsing a hostile reference, regardless of the facts in any given case, an agency leader creates a chilling effect for all the employees who will take that as a warning that if they blow the whistle they're vulnerable to getting smeared from the top after the dispute theoretically is over."

Lopez thinks **Rossotti's** treatment of Long could send a message to **IRS** employees not to cross him on other issues, such as **IRS** business dealings with AMS, the company in which **Rossotti** and his wife own between \$16 million and \$80 million in stock. "Certainly, the way that he has reacted in respect to the internal complaint by Miss Long and others clearly is indicative that if anybody messes with him - making any kind of disclosure with respect to the conflict between his interest in the company and his position in the agency - they **can** expect the same kind of reaction," Lopez says.

And AMS apparently is throwing its weight around the agency. According to Tax Notes, the respected weekly journal of tax policy, AMS executives met with **IRS** officials in May 2000 and "expressed concern that the **IRS** was reluctant to procure upgrades and new releases of AMS' financial software." AMS has not returned Insight's phone calls to comment on the Tax Notes article or other issues related to the alleged multimillion-dollar conflicts of interest.

David Keating, a counselor to NTU who was a member of the congressionally created National Commission on Restructuring the **IRS**, says **Rossotti's** huge stake in the company puts **IRS** employees in a dilemma. "No matter what an employee does, it's got to enter into his mind, one way or the other, either, 'I've got to bend over backward to make sure I'm not giving special treatment to the company my boss owns stock in,' or, 'I don't want to say no to a contract with this company because my boss owns stock in it,'" Keating tells Insight. "What you could have is a freeze on action one way or the other. I don't understand why he just doesn't sell it."

According to a former top **IRS** official, **Rossotti's** refusal to divest his AMS holdings is having a negative effect even on employees who don't directly work with AMS contracts. Bob Starkey, a former national director of collections who now is vice chairman at JK Harris & Co., a tax-resolution firm, says more than a half-dozen **IRS** revenue agents have called him since Insight began reporting on **Rossotti's** potential conflicts and the midnight waiver of the ethics rules he received from the Clinton administration (see news alert!, May 14).

"It's decreasing morale in that they think the commissioner ought to be held to a higher standard, or at least the same standard they're held to," he says. **IRS** spokesman Keith denies that **Rossotti's** interest in AMS is affecting employees, declaring, "I've seen no evidence that that's true."

But Devine says both **Rossotti's** comments about Long and his acceptance of a waiver of potential conflicts of interest could affect the functioning of the agency. "The combination of exercising leadership both to sustain an apparent conflict of interest and to sustain a smear campaign against whistle-blowers is a highly effective one-two punch against accountability," he says. "It's a one-two punch against the good-government goals that whistle-blowers personify."

NTU's Sepp says that **IRS** treatment of Long could hurt overall efforts at agency reform. "The problem with even isolated instances of possible retaliation against employees is that they have a ripple effect throughout the tax agency," he warns. "They reinforce the public stereotype of the big, bad **IRS** agent, and they **can** undermine the agency's efforts to make itself

an arm of the law that people respect rather than fear."

Long is not optimistic that the **IRS can reform** itself with its current leadership. When the commissioner went along with the alleged retaliation, she says, it made her doubt that **Rossotti** had the grit to stand up to entrenched **IRS** management. "If I investigated a taxpayer the way he investigated this retaliation, everybody's return would always be 100 percent correct."

Long says that neither **Rossotti** nor his Washington deputies ever discussed with her the harassment to which she has been subjected. Furthermore, she tells Insight, some of the **IRS** supervisors who tried to fire her in 1999 have been promoted.

By contrast, none of the **IRS** whistle-blowers who testified before Congress have received promotions. "I have applied for one or two opportunities, and they won't even accept my application," she says. "They send it back and say, 'We're not letting you apply.'"

Long fears the **IRS** may be at risk of going back to the bad old days of harassing innocent taxpayers. She says comments from **Rossotti** and others about a "weak" **IRS** may just be a ploy for more funding and less accountability from Congress. "As soon as they get more money out of Congress, they're going to start the same thing again because it's the same people, the same management," Long says. "They're going to start seizing houses again."

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