

RANDOLPH W. THROWER AS COMMISSIONER OF INTERNAL REVENUE—A PERSONAL TRIBUTE

*K. Martin Worthy**

I first came to know Randolph Thrower when I returned as a student to the Emory University School of Law after World War II and enrolled my senior year in an advanced Tax Problems course Randolph taught as a part-time adjunct professor. Instead of studying court opinions on particular legal issues—which had been the traditional method of teaching law since its introduction at Harvard in the nineteenth century—Randy gave us, each time we met, a set of questions raised by a theoretical client on which we were to identify potential tax problems and advise the client what he should do. This, of course, is just what tax lawyers are called to do in real life, and I have always thought that this was the best course I ever had in law school. Randy proved to be extremely personable and extremely bright, and he was a great help in advising me about seeking a job after law school.

In the absence those days of an *Emory Law Journal*, he invited me to write a law review-type article, under his supervision, on the taxation of dispositions of partnership interests, which appeared in two installments in the *Georgia Bar Journal*. The article was later summarized in the *American Bar Association Journal* as the first serious study of the issues discussed. The fact that the article was published solely under my name, with no mention of Randy, was wholly consistent with Randy's interest in legal scholarship and in the encouragement and credit he liked to give others—particularly young people.

Soon after I began to practice with a rival firm of Randy's in Washington, I began to see Randy frequently at meetings throughout the country of the Tax Section of the American Bar Association, of which, in due course, he became Chairman.

It was during these visits that my wife and I first got to know Randy's wife, Margaret. By coincidence I had roomed with two of her nephews years earlier

* B.Ph., Emory University, 1941; M.B.A. *cum laude*, Harvard University, 1943; J.D. *cum laude*, Emory University, 1947. Chief Counsel, Internal Revenue Service, 1969–1972. Chairman, Tax Section of the American Bar Association, 1973–1974. Chairman, American College of Tax Counsel, 1985–1987. Chairman, Emory Law School Council, 1993–1995. Retired senior partner, Hopkins, Sutter, Hamel & Park (now Foley & Lardner), Washington, D.C. Of Counsel, Gilbert, Harrell, Sumerford & Martin, Brunswick, GA, since 2008.

at summer camp and had then been fraternity brothers at Emory with both nephews as well as her much younger brother. My wife, Nell (and after her death, my wife, Putsie) found Margaret to be most delightful, and the Worthys and Throwers became long-devoted friends.

* * *

In the spring of 1969, after years of an outstanding practice—principally in tax matters—at Sutherland Asbill & Brennan in Atlanta, Randy was appointed by President Nixon to be Commissioner of the Internal Revenue Service as a part of his new administration. Another older tax lawyer with whom I had worked closely on some pro bono matters in Washington—who knew nothing of my long friendship with Randy—said to me shortly afterward that he thought I would be a good selection to be Chief Counsel at the IRS. I was subsequently invited to meet with various Treasury officials (including Randy), and shortly thereafter Randy himself announced at a meeting of the Tax Section—even *before I had been told*—that the next day the President would send to the Senate my nomination to be Chief Counsel.

I was delighted to have the opportunity to serve with Randy. I went to work at the IRS the next day under a temporary Civil Service appointment and officially became Chief Counsel a few weeks later after my nomination was approved, first by the Democratically-controlled Senate Finance Committee, and then the Senate itself.

By law, I reported to the General Counsel of the Treasury; Randy was my client, technically not my superior, but needless to say a most important and most respected client. He and I were the only Presidential appointees—in fact, the only non-career employees—at the IRS, and we spent a lot of time together reviewing issues and seeking advice from each other. I spent perhaps 20% of my working time with Randy and to the extent that I did not already know, quickly observed the many wonderful qualities he possessed. He was bright, knowledgeable, thoughtful, industrious, and conscientious—yet modest, kind, fair, and respectful of the views of others. I never knew him to raise his voice, but there was usually little doubt of his wishes. He had excellent technical skills and sound judgment, and, of the greatest importance to me, he was a man noted for his integrity, with a strong sense of responsibility to his country and fellow man.

* * *

Randy was responsible for collecting taxes of nearly \$200 *billion* a year (an all-time record set during his tenure) and supervising over 65,000 people.

Some of the career employees—especially high-level career employees—initially expected Randy to be primarily a “figurehead”—but they were soon disillusioned.

As one example: The Tax Reform Act of 1969 was enacted a few months after Randy took office. The ‘69 Act contained the most extensive changes in the Internal Revenue Code since 1954, and taxpayers and government alike were interested in getting an explanation and illustration as quickly as possible of how the IRS intended to enforce the new law. Until Randy’s time, drafting of all the regulations for ultimate signature *by the Commissioner* was largely delegated to lawyers in the Legislation and Regulation Division of the Chief Counsel’s office (L&R), with some oversight by people in the office of the Assistant Secretary for Tax Policy. As a result, the regulations got little detailed personal attention by the Commissioner or Chief Counsel. But Randy felt—and the Assistant Secretary and I concurred—that important policy questions, which needed to be dealt with in the regulations, should be resolved by officials appointed by the President, who indirectly represented the electorate. Accordingly, a Committee was created to review issues *as they arose in drafting*. The Committee consisted of the Commissioner (Randy)—who would be responsible for carrying out the regulations and would serve as chairman of the Committee; the Assistant Secretary for Tax Policy (Ed Cohen)—who had been closely involved with the Congress in developing the statute we were expected to interpret; the Chief Counsel—who would be responsible for the drafting by L&R and defending the regulations in court; and the Assistant Commissioner—who would be responsible for their interpretation.

We met at eight o’clock almost every Monday morning, and our meetings usually lasted several hours—sometimes all day. We expected lawyers in L&R and the lawyers in the Assistant Secretary’s office to bring before us issues as they arose in drafting or in reviewing proposed regulations, and give us policy papers in which the pros and cons of each issue were fully discussed. The Committee would ultimately decide how to solve these issues, with each of us having one vote. All of us except the Assistant Commissioner were presidential appointees. It was understood that if one of us was unable to attend, he could be represented only by a subordinate at the next lowest level, and virtually all of the time Randy and other non-career members constituted

the majority in attendance. We also set priorities and deadlines for drafting specific regulations, with the result that in 1969–1970 we produced more regulations than had ever been produced in the same amount of time. (Simultaneously I formalized procedures by which a taxpayer or his advisor could submit written questions, complaints, or other suggestions with respect to each regulation as it was published in proposed form and later participate in a formal hearing on the matters he had raised—a hearing at which I normally presided.)

The creation and operation of this Committee produced a bonus in that it greatly improved the working relationships between the tax officials at “main” Treasury and those at the IRS, which we were advised had been quite unsatisfactory in the previous administration.

* * *

As another example: Randy was very much interested in the Service’s treatment of charities and other “tax exempt” organizations. Before his time, most Service officials thought that because such organizations generally produced little, if any, tax, it was foolish to waste time auditing such entities. But Randy believed that they often skimmed the line and engaged in non-exempt activities with the result that if audited, they might produce substantial tax revenue and thus reduce the tax burden of ordinary taxpayers. He accordingly ordered that these organizations be audited more frequently, created a new Exempt Organizations Branch in Washington, and brought a highly qualified special Assistant to the Commissioner for Exempt Organizations to his office to see that his orders were appropriately carried out. It was made clear that partisan political considerations were not to be taken into account.

Randy was also concerned that there was inadequate disclosure—among the FBI, Secret Service, IRS, etc.—of known criminal activities, which resulted in a lack of coordination in pursuing individual perpetrators. In 1970 the President created a National Commission on Organized Crime of about twenty members (mostly Cabinet officers and Congressional committee chairmen), to which he appointed both Randy and me, and we worked thereafter much more closely with other government agencies in dealing with such activities. Greater attention was given to tax audits of known criminals, and the IRS loaned substantially more personnel (especially agents knowledgeable in accounting and other business records) to government “strike forces” concerned with organized crime.

* * *

Neither Randy nor I was entirely satisfied with the existing organization and delegations of authority within his office and mine, and Randy created a Committee outside of the Service—consisting of a former Chairman of the ABA Tax Section, a former Chairman of the Tax Division of the American Institute of CPA's, a former IRS Commissioner, a former Assistant Secretary of the Treasury for Tax Policy, and a former Secretary of the Treasury—to review such matters. The Committee met several times, took testimony from various people, including both Randy and me, and made very helpful suggestions, which we then largely implemented, making both his office and mine more effectual.

* * *

Randy felt very strongly that while it was his statutory duty to “protect the revenue” by collecting the taxes Congress had imposed, he also repeatedly insisted on recognition of a corresponding duty to treat taxpayers with absolute candor and fairness, and to make sure that the great powers of government not be used to give special favors to, or take advantage of, individual taxpayers—particularly for partisan political reasons. This attitude eventually got Randy into political trouble.

It is now known from the Watergate hearings that some White House personnel in the Nixon administration attempted to use the Internal Revenue Service for political purposes. Section 6103(a)(1) of the Internal Revenue Code provided that tax returns “be open to inspection only upon order of the President and under rules and regulations . . . approved by the President.”¹ Contrary to known practices in the previous Democratic administration, Randy stood firm in refusing to permit members of the White House staff to rummage freely through individual taxpayer records without supervision and insisted on a personal directive of the President, supervision of any such examination by an IRS official, and the maintenance of a record of whose returns were examined. White House counsel John Dean later wrote, “We have been unable to obtain information in the possession of IRS regarding our political enemies. We have been unable to stimulate audits of persons who should be audited. We have been unsuccessful in placing RN [Nixon] supporters in the IRS

¹ I.R.C. § 6103(a)(1) (1970) (amended by the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, 1667-68).

bureaucracy.”² The latter referred to Randy’s refusal to create positions within the IRS: first for G. Gordon Liddy and then for John J. Caulfield—both of whom were later exposed in the Watergate hearings for their criminal conduct.

As a result, the President himself wrote that Randy must go, and Randy submitted his resignation in January 1971. Remarkably, however, even after his resignation was publicly announced, he was repeatedly asked by the President to stay on temporarily until finally, in June 1971, he declined to stay any longer and returned to practice in Atlanta.

In order to avoid too much upheaval, Randy urged me to stay on as Chief Counsel for a few months, and I remained at the IRS until I submitted my resignation, which was accepted effective in January 1972.

* * *

Happily, my involvement with Randy did not end there. We met repeatedly thereafter, not only in the Tax Section but also as members of the House of Delegates of the American Bar Association, as fellow representatives of the ABA in the National Conference of Lawyers and CPA’s (of which he was Chairman), and as members of Emory’s Law School Council (of which I was Chairman), which is now called the Emory Law Advisory Board.

Randy also got me interested in the work of the Associated Marine Institutes and its affiliate, the Georgia Wilderness Institutes (of which he was Chairman). This shows a different side of Randy: he was involved—and frequently the head—of many pro bono organizations, but was especially interested in helping the young and underprivileged.

In the late 1960s a judge in southeast Florida had tried and convicted several teenagers, but thought they were worthy of rehabilitation and put them on probation after asking a close friend to take them as workers under the friend’s supervision on the friend’s boat. The boat was normally in the ocean off the coast, and it would be almost impossible for the boys to escape. The idea worked; the boys earned a trade and caused no further trouble, and the judge repeated the process with later teenage defendants. With the help of legislation and some funding by the State of Florida, the Associated Marine Institutes evolved as a charity, gradually acquiring boats by gift and accepting assignments from the courts of troubled teenagers who were put to work on the

² See *Federal Tax Return Policy: Hearings Before the Subcomm. on Admin. of the Internal Revenue Code of the S. Comm. on Finance*, 94th Cong. 11 n.16 (1976).

boats for months and months under supervision of AMI staff employees. The idea spread to other states. But in recognition that Georgia has a relatively short coastline, a decision was made to operate wilderness (instead of marine) institutes and locate them in secluded areas outside of the towns of Cochran and Baxley in central Georgia.

Each location houses twenty to thirty teenage boys or girls who have been convicted of serious crimes and assigned there by a Georgia judge or other authority. They are kept under close restraint in a heavily fenced area, and, if they have not finished high school, they are required to attend classes on the grounds that are conducted by teachers provided by the local school system. They engage in sports and are taught various trades by persons experienced in such trades. They are strictly punished for any disobedience or trouble-making. The guiding philosophy is “tough love.” Most stay for about a year, and the recidivism rate is far below national averages.³ Randy was chairman of both the Georgia Wilderness Institutes and the Associated Marine Institutes Foundation, and I had the privilege of serving with him several years in the 1990s on the boards of both organizations.

* * *

Randy was invited to return to the IRS as a member of the Commissioner’s Advisory Committee in 1983. In 1993, I was asked to chair a committee to raise \$600,000 to furnish the “Randolph W. Thrower Floor” in the new Emory law library, and it took only a few weeks to fill the quota with contributions from over 100 of his friends and associates. His career was capped in the same year when he received the American Bar Association’s highest award: the American Bar Association Medal. Only one Medal is awarded each year, and Randy joined such distinguished lawyers and judges over the past century-and-a-half as Oliver Wendell Holmes, Roscoe Pound, Charles Evans Hughes, Samuel Williston, John Henry Wigmore, Felix Frankfurter, and Harrison Tweed, in receiving such award.

* * *

Would that the Country have more such citizens.

³ The program is described as it existed when we were involved. There may have been later changes.