

**UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY**

DIRECTOR OF PROFESSIONAL)	
RESPONSIBILITY,)	
)	
Complainant,)	
)	
v.)	Complaint No. <u>2003-2</u>
)	
JOSEPH R. BANISTER,)	
)	
Respondent.)	
-----)	

**RESPONDENT'S PROFFER OF
OFFERS OF PROOF AND ARGUMENT AT HEARING**

The respondent, Joseph R. Banister ("Banister"), by and through his attorneys, The Law Office of Robert G. Bernhoft, S.C., hereby submits this proffer pursuant to the court's request of November 24, 2003.

Due process of law, fundamental fairness, and good conscience all require that Banister be allowed to appear personally before the court and make a statement regarding the appropriate sanction to be imposed against him in this proceeding. Furthermore, Banister is entitled to have his attorneys make oral argument, based on the pleadings, records, and files of this case, regarding that same matter at the hearing scheduled for December 1, 2003. Finally, substantial evidence can be adduced at the hearing going directly to the issue of an appropriate sanction.

As the oft-quoted Thomas Erskine opined in his defense of Thomas Paine for Paine's alleged "disreputable" conduct in issuing "false" opinions in his book, "The Rights of Man":

[A]s infallibility and perfection belong neither to human individuals nor human institutions, the policy of all free nations must permit the most unbounded

freedom of discussion...other liberties are held under government, but the liberty of opinion keeps governments themselves in due subjection to their duties.

The evidence would show Banister's impeccable record of professional service and accomplishment as both a certified public accountant and IRS Criminal Investigation Division Special Agent. Such evidence would attest to his skill, talent, ethics, and integrity - issues clearly relevant to the sole issue of appropriate sanction left by the court's grant of summary judgment for the IRS. The evidence would also show that someone in Banister's position could reasonably believe taxpayers could benefit from Banister's political opinions, as evidenced by the IRS reducing the tax liability of other taxpayers based on identical arguments allegedly advocated by Banister. Moreover, the evidence would show how the IRS deliberately misled Banister and instigated this proceeding merely for the impermissible purpose of punishing political speech and advocacy it did not like, and that Banister has never knowingly and willfully disobeyed any federal law in his entire professional life.

In this proceeding, the IRS denied Banister the required opportunity to correct the record or achieve compliance with any applicable rules and/or regulations. The IRS denied Banister an opportunity to know the specific facts of the charges alleged. The IRS denied Banister an opportunity to conduct any discovery. The IRS denied Banister an opportunity to cross-examine any of the Director's witnesses or evidence. The IRS denied Banister an opportunity to introduce witnesses on his behalf as to the charges alleged. The IRS denied Banister an opportunity to introduce any evidence, testify, or even have counsel argue as to the merits, reasonableness, or sincerity of his statements and positions even though the allegations against him all require proof of willfulness.

Now, the IRS requests that the court cancel the hearing and deny Banister even this beggar's quantum of due process with respect to an appropriate sanction.

If this hearing is not suddenly cancelled on its very eve – long after counsel incurred significant expense to prepare for this hearing and after the court refused to grant an adjournment of the hearing date – then the evidence, in addition to Banister's own statement and his counsel's oral argument, would provide a direct, material, and relevant foundation for the court's consideration of an appropriate sanction. Expected testimony is as follows:

1. Ken Canfield, the IRS Revenue Agent who began this investigation of Banister and made the only written referral against Banister, initiated his investigation of Banister before Banister ever even spoke to Canfield concerning his client. In fact, Canfield surveilled Banister's political appearances and decided to start an investigation into Banister based on those political appearances. Canfield even spoke with the office of the IRS Director of Practice about investigating Banister for alleged "disreputable" practice based on Banister's political speech on talk radio. Canfield then surreptitiously contacted Banister's former employment supervisors, supervisors who informed Canfield that Banister had nothing disreputable during his work tenure. Canfield even knew that Banister was not challenging the constitutionality of the tax system in his representation of clients before the IRS, but merely informing the IRS of his own political opinions and his client's political opinions, as recommended by the IRS own Offer in Compromise publication. Canfield also had no knowledge of what Banister would actually argue on behalf of his client, because Canfield never gave Banister's client a hearing. Further, Canfield will admit that he knew the IRS granted taxpayers

reduced tax liabilities based on these same arguments and he knew that Banister knew this. Finally, Canfield's testimony will reveal that Canfield never notified Banister Canfield was conducting a private investigation into Banister and attempting to entrap Banister after the fact. His own written notes and written referral will further corroborate and confirm many of these details.

2. Priscilla Ousley, another IRS employee, would testify that the IRS reduced the tax debts of taxpayers who made identical argument to the ones Banister allegedly made around the time Banister made them involving similar taxpayers to Banister's clients.
3. Sue Erwin & Patrick McDonough. These two witnesses all know one critical fact - that the IRS chose to bring this complaint against Banister after he appeared on Sixty Minutes II. In fact, their own written notes will reflect that Sue Erwin, an IRS employee, contacted the Director's office and inform them that her contacts told her Banister would be appearing on Sixty Minutes II. The private notes also reflect that the Director of Practice decided to bring charges if and after Banister appeared on the show. McDonough can also testify that the Director of Practice knew about a pending criminal investigation into Banister, a criminal investigation the Director kept hidden from Banister during the entire proceeding until the Director ambushed Banister with this fact on the eve of the hearing.
4. Jay Kessler. Kessler has already admitted that he eavesdropped on the political conversations of Joe Banister. In fact, Kessler admitted he initiated the "amended complaint" component of the proceeding without ever filing a written referral report. Kessler can also testify as to the secret conferencing between the IRS and

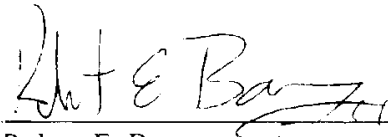
the Department of Justice in conducting a parallel criminal investigation of Banister, and the possibility that grand jury information was leaked to the IRS.

5. Commissioner Rossotti. Rossotti would testify that Banister had asked the IRS a host of questions concerning identical issues and asked the Commissioner to correct any errors by Banister. Rossotti never did.

Banister also anticipates calling the witnesses named on his witness list to testify as to his good character, extraordinary skill, and exceptional ability as a practitioner on behalf of his clients, which saved them thousands of dollars in federal and state tax liability, and finally, his stellar record of government service.

Respectfully submitted this 25th day of November, 2003.

THE LAW OFFICES OF ROBERT G. BERNHOFT, S.C.
Attorneys for the Respondent, Joseph R. Banister

By: 
Robert E. Barnes
Wisconsin State Bar No. 1038252

207 East Buffalo Street, Suite 600
Milwaukee, Wisconsin 53202
(414) 276-3333 telephone
(414) 276-2822 facsimile
rgbernhoft@bernhofflaw.com