

The Inside Agitator

by Robert A. Weinberger



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In this article, Weinberger examines the work of National Taxpayer Advocate Nina Olson, highlighting her interest in improving tax administration and helping low-income taxpayers.

All opinions and errors are the author's alone and should not be attributed to the Tax Policy Center, the Urban Institute, or the Brookings Institution.

National Taxpayer Advocate Nina Olson retired July 31 after 18 years in her post, making it timely to assess the role she has played in tax administration and tax justice for nearly four and a half decades. Olson carved out a distinctive, and often controversial, approach to the national taxpayer advocate (NTA) position that more than fulfilled its statutory scope.

No sampling of her views or skimming of her record can do justice to 18 years of activism. But it can illustrate the extraordinarily significant contributions she made. Olson built a solid record of accomplishment and advocacy, relieving individual taxpayers of hardship through casework, and improving the entire tax system through systemic advocacy. She especially fought to humanize the IRS, recognizing that the push to modernize, automate, and nudge taxpayers

toward self-help leaves behind those who need more personal attention because they might lack education, English language skills, self-confidence, internet access, or money.

I. Role of the Taxpayer Advocate

The role of NTA has evolved over the past 40 years. The IRS created a Problem Resolution Program in 1976 and appointed a "taxpayer ombudsman," a career civil servant, to lead the program in 1979.¹ The Office of Taxpayer Ombudsman was replaced by the Office of the Taxpayer Advocate in 1996, and elevated in status and independence in 1998 by the landmark Internal Revenue Service Restructuring and Reform Act (RRA '98). It renamed the position as NTA. Olson is one of only two permanent occupants of the NTA post.²

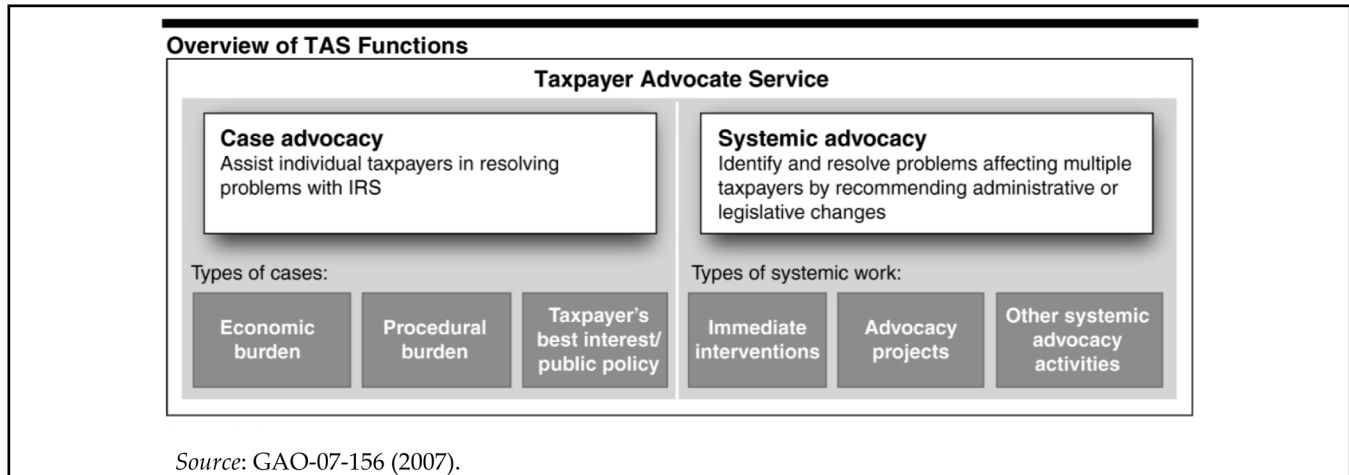
What does the NTA do?

The taxpayer advocate has four main functions: (1) assist individual taxpayers in resolving problems with the IRS; (2) identify areas in which multiple taxpayers have problems in dealing with the IRS; (3) propose changes to IRS administrative practices to mitigate problems; and (4) identify legislative changes to mitigate problems.³

¹ The Office of Taxpayer Ombudsman was codified in the Taxpayer Bill of Rights (TBOR 1), in the Technical and Miscellaneous Revenue Act of 1988, P.L. 100-467 (Nov. 10, 1988). See also NTA, "Evolution of the Role of Taxpayer Advocate" (accessed July 3, 2019); and "Report of the Joint Committee on Taxation Relating to the Internal Revenue Service as Required by the IRS Reform and Restructuring Act of 1998," JCX-53-03, 73-80 (May 19, 2003), at 73-80.

² The Office of the Taxpayer Advocate was established by the "Taxpayer Bill of Rights 2," P.L. 104-168 (July 30, 1996), and the role was expanded by RRA '98, P.L. 105-206 (July 22, 1998), codified at sections 7803(c) and 7811. See also TAS, "Our History" (undated). To ensure the NTA's independence, the act mandated that the NTA could not be an employee of the IRS for two years preceding or five years following their tenure. Olson was preceded in office by W. Val Oveson, a former Utah state auditor, lieutenant governor, and chair of the state tax commission, who served as NTA from 1998-2000.

³ Section 7803(c)(2)(A).



While operating within the statute, Olson viewed her role expansively:

- *Lead the Taxpayer Advocate Service:* Olson led an independent organization within the IRS that helps taxpayers to resolve problems with the IRS, safeguards taxpayers' rights, and recommends systemic reforms using a staff of 1,625 to investigate problems, correct wrongs, and ease economic hardship in part via Taxpayer Assistance Orders that can stop IRS collection or enforcement actions.⁴
- *Advocate within the IRS:* Olson had an open door to the IRS commissioner, access to internal agency data and studies, and joined many IRS senior staff meetings to share her views before decisions were made — she was an inside agitator.
- *Evaluate IRS decisions and performance:* She critiqued IRS performance in testimony and two separate reports to Congress, identified the most serious problems affecting taxpayers, sponsored research, and recommended administrative or legislative reforms — all without prior IRS, Treasury, or Office of Management and Budget review or approval.

⁴ In fiscal 2018 the TAS received nearly 217,000 requests for assistance and closed 199,000 new and carryover cases. The size of the TAS's staff has varied, peaking at 2,500 at year-end 2000. Local taxpayer advocates are in 78 locations; the office's budget is \$207 million; the number of staff working on case advocacy is 908 (31 percent below the number in 2010, despite an increased caseload). See Pub. 55B, "IRS Data Book, 2018," at 49, Table 20 (May 2019); and NTA, "Fiscal Year 2020 Objectives Report to Congress," Pub. 4054 (June 2019).

- *Manage the Taxpayer Advocacy Panel and administer the low-income taxpayer clinic grant program:* She appointed and managed a 75-member grassroots network of citizen volunteer-advisers who work in issue subgroups, listening to taxpayers, identifying issues, and suggesting improvements in IRS service. Since 2003 she administered LITC grants and oversaw clinics' performance, traveling almost weekly to do so.

II. Personality and Performance

Beyond her generic job checklist, there is Olson herself. She brought her distinctive personality to bear. She is smart, sincere, devoted, indefatigable, passionate, and especially tenacious. And occasionally, some might say, misguided.⁵

Olson doesn't give up. She doesn't identify a problem, make her case, and move on. She returned to the issue in successive reports, deepening her arguments and pressing ahead.

⁵ It would be hard to survive 18 years in a highly visible government role in which one wades regularly into controversial territory without some misfires. Examples on which opinions may differ include (1) her support for pre-certification of claimants to improve earned income tax credit compliance (*see infra* note 32); (2) her preference for online fill-in forms over simpler IRS Free File tax preparation software; (3) her desire to limit taxpayers' ability to consent to the use or disclosure of their return information to tax preparation only — even if the taxpayer gives affirmative informed consent (*see* response to question from Senate Finance Committee Chair Chuck Grassley, R-Iowa, in a hearing on "Preparing Your Taxes: How Costly Is It?" (Apr. 4, 2006) (unofficial transcript)); and (4) her enthusiasm for a hard-to-implement "Taxpayer Anxiety Index," to give taxpayers more access to IRS personnel in proportion to the anxiety they feel (*see* NTA, *supra* note 4, at 5-6).

That doggedness impressed many — and irked some.⁶

In a world of bland and hypercautious bureaucratic rhetoric, Olson dispensed refreshingly blunt, if occasionally overheated, assessments: The IRS's approach is not just mistaken, it's "foolhardy"; IRS service isn't just lacking, it's "woefully inadequate," "remarkably poor," or "abysmal"; and the IRS's fraud detection system doesn't just have high false positive rates, it's "a debacle" that "wreaked havoc for hundreds of thousands of taxpayers."

Olson admonished like a biblical prophet, delivering thundering pronouncements: "Budget constraints can't be used as an all-purpose excuse for mediocrity"; "the taxpayer wants *answers*, and instead gets a runaround"; the agency is behaving as "a coercive bully."⁷ And those are just from her last report to Congress! It's one of 37 that she's delivered, of increasing volume (and volumes), along with more than 60 testimonies before congressional committees, 65 research studies, and frequent blog posts.⁸

Consider just the year 2017: In March and May she testified before three separate House subcommittees; in June she issued her "Fiscal Year 2018 Objectives Report to Congress" in two volumes totaling 301 pages; and in December she published a program report on LITCs along with her doorstep of a "2017 Annual Report to Congress" in three volumes, including multiple research studies, a "Purple Book" summarizing 50 accumulated legislative recommendations, a compendium of most litigated issues and cases,

plus a 77-page executive summary, totaling a hefty 1,030 pages.⁹ Not to mention her blog posts or town hall meetings. Later, she added a 128-page "Report Card," listing her recommendations in the annual report, the IRS's response, and the TAS's assessment of the IRS's actions.

Olson's verdicts, recommendations, and warnings in her reports to Congress flow in such a torrent that they are impossible to ignore but hard to implement, and the sheer volume may cause readers to discount their importance. Still, any researcher looking for history or arguments will find her reports an invaluable resource, and they provide a foundation and a guidebook for her successor.

"There are times," Olson wrote, "when I have felt like Cassandra, the daughter of King Priam of Troy, of *Iliad* fame. Zeus, in a fit of pique, grants Cassandra the gift of foresight but also curses her by preventing anyone from believing her prophecies." She tried urgently to:

shake off that curse — to get people to wake up to the consequences of shrinking the IRS budget, virtually eliminating funding for training, reducing taxpayer service to laughable levels (if it weren't so sad), and undertaking enforcement actions before any meaningful attempt to communicate with taxpayers — in short, reducing taxpayers to widgets and dehumanizing them into objects that need to be "processed efficiently."¹⁰

III. Fans and Critics

Olson has fans. Members of Congress value her candor, independence, and willingness to criticize the IRS. She has been effective in courting Capitol Hill. Low-income-taxpayer defenders celebrate her concern for the poor. Tax clinic

⁶ Olson's voluminous reports will survive in the IRS archives, but will her recommendations be a transient, or a more lasting, reform agenda? Olson's answer is unapologetic: "Avoid the mentality of 'you have to pick your battles.'" See Paul Merrion, "From Dinosaurs to Goats, Nina Olson Plots Her Next Move," 31 MLEX US Tax Watch 2 (June 24, 2019).

⁷ While the tax world is typically tame, and Olson has been criticized for her outspokenness, she is unrepentant: People "really don't know how much I'm holding back." Allyson Versprille and Kelly Zegers, "'Advocate Zealously' for Taxpayers, IRS's Olson Urges Successor," BNA DTR, July 22, 2019.

⁸ One observer summarized her "Fiscal Year 2016 Objectives Report to Congress" as "a fire bell ringing in the night," which could apply to her other reports as well. See Jasper L. Cummings, Jr., "Who Watches the Watchers?" *Tax Notes*, Feb. 1, 2016, p. 549. To see her in action, watch any of the videos from her 43 appearances on C-SPAN television. See C-SPAN Library, "Nina E. Olson" (accessed July 8, 2019).

⁹ See Bryan T. Camp, "What Good Is the National Taxpayer Advocate?" *Tax Notes*, Mar. 8, 2010, p. 1243 (discussing the length of Olson's reports as well as their importance).

¹⁰ Olson, prologue to her May 9, 2013, Laurence Neal Woodworth Memorial Lecture, American Bar Association Section of Taxation, "A Brave New World: The Taxpayer Experience in a Post-Sequester IRS," *Tax Notes*, June 3, 2013, p. 1189.

leaders are inspired by her “tireless energy” — “listening to her is like drinking a double shot of espresso,” one wrote.¹¹ Taxpayers caught in the IRS’s bureaucratic web applaud her readiness to free them. An estimated 4.5 million taxpayers have been helped by her staff’s interventions and, much earlier, before her elevation to the IRS post, by her own work for 16 years as a tax return preparer, head of an LITC, and champion of taxpayer rights.¹² Even Steve Forbes, the flat tax advocate, called her a “taxpayer heroine.”¹³

Without a statutory term of office, she served for an extraordinarily long period for a government appointee, using that time to master multiple issues and become part of their history. One tax law professor noted that “part of Olson’s success is that she has stuck it out . . . the secret to success in a bureaucracy is often just a matter of outlasting those who oppose you. More importantly, however, longer tenure gives one an opportunity to learn the players, create support groups, form alliances, learn how various systems work and, most importantly, develop a sense of history.”¹⁴



Nina Olson, IRS national taxpayer advocate (Tax Analysts/Derek Squires).

Olson also has critics. Some colleagues were hurt by her rhetoric or put off by her style or certainties; they preferred more honey and less vinegar. She did not always acknowledge opposing views or reply to the merits of counterarguments. She’s gotten a taste of her own medicine, not always fairly: The Treasury Inspector General for Tax Administration has critiqued her oversight of LITCs,¹⁵ her administration of the Taxpayer Advocacy Panel,¹⁶ her process of identifying systemic issues,¹⁷ her handling of economic burden cases,¹⁸ and the pace of her casework and corrective actions.¹⁹

Most stingingly, 15 years ago, TIGTA concluded that her office had neglected casework

¹¹ See various reflections on Olson as taxpayer advocate, Procedurally Taxing Blog, Mar. 7 - July 31, 2019, from 17 LITC leaders or law professors. See also Michael Hirschfeld, “2017 Distinguished Service Award Recipient: Nina E. Olson,” 36 *ABA Tax Times* (June 2, 2017) (tribute to Olson on her receipt of the award as a “tireless champion of pro bono tax services, the American taxpayer, and the IRS itself”).

¹² Olson and the late American University tax law professor Janet R. Spragens were parents of the LITC movement and responsible for the matching grant program authorized by section 7526 of RRA ‘98, *supra* note 2. The number of clinics has increased from 14 in 1998 to 134 in 2018, and funding has grown sixfold to \$12 million. See Office of the Taxpayer Advocate, “Low-Income Taxpayer Clinics Program Report,” Pub. 5066, at 1, 17 (Dec. 2018). See also T. Keith Fogg, “Taxation With Representation: The Creation and Development of Low-Income Taxpayer Clinics,” 67 *Tax Law.* 3 (2013); Olson, “Low-Income Taxpayer Clinics: A Challenge to Tax Professionals,” 19 *Tax Prac.* 361 (Sept. 21, 1998); Spragens and Olson, “Tax Clinics: The New Face of Legal Services,” *Tax Notes*, Sept. 18, 2000, p. 1525; Spragens and Nancy Abramowitz, “IRS Modernization and Low-Income Taxpayers,” 53 *Admin. L. Rev.* 701 (2001); and Leslie Book, “Tax Clinics: Past the Tipping Point and to the Turning Point,” *Tax Notes*, Aug. 20, 2001, p. 1089.

¹³ Forbes, “Taxpayer Heroine,” *Forbes*, Mar. 16, 2009 (admiring Olson’s 2008 annual report’s description of the complexity of the tax code as the most serious problem facing taxpayers).

¹⁴ Camp, *supra* note 9, at 1256.

¹⁵ TIGTA, “The Taxpayer Advocate Service Can More Effectively Ensure Low Income Taxpayer Clinics Are Appropriately Using Grant Funds,” 2011-10-067 (July 19, 2011) (including Olson’s 11-page response).

¹⁶ TIGTA, “The Taxpayer Advocate Service Should Reevaluate the Roles of Its Staff and Improve the Administration of the Taxpayer Advocacy Panel,” 2009-10-121 (Sept. 29, 2009) (including Olson’s nine-page response).

¹⁷ TIGTA, “The Identification and Evaluation of Systemic Advocacy Projects Designed to Resolve Broad-Based Taxpayer Problems Can Be Improved,” 2011-10-052 (June 27, 2011) (including Olson’s 19-page response).

¹⁸ TIGTA, “The Taxpayer Advocate Service Needs to Improve Its Processing of Economic Burden Cases,” 2008-10-088 (Apr. 21, 2008) (including Olson’s 13-page response).

¹⁹ TIGTA, “A Statistical Portrayal of the Taxpayer Advocate Service for Fiscal Years 2005 Through 2009,” 2010-10-081 (Aug. 16, 2010); TIGTA, “Casework Quality Improved, but Continued Vigilance Needed,” 2002-10-074 (Mar. 2003); and TIGTA, “Improvements Are Needed in the Taxpayer Advocate Service Process to Implement Recommended Corrective Actions,” 2017-10-005 (Nov. 22, 2016). Some delays are related to resource limitations and the recent IRS shutdown. See Allyson Versprille, “Taxpayer Advocate Service ‘Drowning’ in Cases, Causing Delays,” *BNA DTR*, June 19, 2019.

and systemic advocacy projects to redeploy staff for eight months to help write her annual report to Congress. This prompted a 22-page reply from Olson, but TIGTA reaffirmed its finding the following year.²⁰

The IRS Oversight Board complained about the time it took her and the IRS operating divisions to resolve taxpayers' problems. The American Institute of CPAs grumped about slow responses from local TAS offices, but a Government Accountability Office review was more favorable.²¹ While Olson accepted responsibility for some TAS failings, she pushed back vigorously when she felt the rap was unfair.²²

She chronicled her own frustrations with those who criticize her for seeing things from a taxpayer's view, not an IRS perspective: "Every single commissioner I have worked for has said to me in one form or another, 'You are not being a team player, Nina.' And my response to that has been, 'I am a team player. The NTA is a team player. I just have a different role to play on that team. My role is not to be a shill for the IRS.'"²³

²⁰ See TIGTA, "The National Taxpayer Advocate Could Enhance the Management of Systemic Advocacy Resources," 2003-10-187 (Sept. 2003) (TAS did not address potential systemic problems that affected large groups of taxpayers because a significant number of staff were redirected to work on the NTA's Annual Report to Congress); and TIGTA, "The Taxpayer Advocate Service Needs to Improve Case Management to Ensure Taxpayer Problems Are Resolved Timely," 2004-10-166 (Sept. 2004) (including Olson's 17-page response).

²¹ IRS Oversight Board, "Oversight of the Office of Taxpayer Advocate: Principal Findings and Actions" (Sept. 2002); Brant Goldwyn, "AICPA Asks IRS Taxpayer Advocate to Join in Improving Local TAS Offices," *BNA DTR*, Sept. 29, 2003, at G-6; GAO, "Taxpayer Advocate Service: Caseload Has Grown and Taxpayers Report Being Satisfied, but Additional Measures of Efficiency and Effectiveness Are Needed," GAO-07-156 (Feb. 22, 2007). Many of the criticisms of the TAS's work were early in Olson's tenure.

²² "I acknowledge that there is room for improvement," Olson has written in more than one response. See, e.g., TIGTA 2017-10-005, *supra* note 19, at 27. Compare TIGTA, "The Taxpayer Advocate Service Centralized Case Intake Program Needs Improvement to Provide Better Customer Service," 2019-10-009 (Oct. 31, 2018) (TIGTA found program weaknesses; the NTA agreed with all six recommendations and planned corrective action), with TIGTA, "The Taxpayer Advocate Service Can Improve the Processing of Systemic Burden Cases," 2014-10-033 (June 24, 2014) (TIGTA found areas where service could be improved; the NTA accepted seven of the eight recommendations and pledged corrective action, but in a 14-page response disagreed strongly with aspects of TIGTA's analysis, identifying multiple shortcomings). Olson is not shy about critiquing those who critique.

²³ Michael Cohn, "Taxpayer Advocate Olson: 'My Role Is Not to Be a Shill for the IRS,'" *Accounting Today*, June 21, 2019. See also Cummings and Alan J.J. Swirski, "Interview With Nina E. Olson," 26 *ABA Section of Taxation News Quarterly* 6 (Spring 2007).

IV. Selected Issues and Contributions

A. Tax Return Preparers

Among her many crusades was advocating stronger oversight and minimum standards of competency for unlicensed tax return preparers by requiring their registration, testing, certification, and continuing education — a subject to which she repeatedly returned since 2002. But courts have held that the IRS lacks statutory authority, and Congress has failed to enact it despite multiple recent Treasury requests.²⁴ Olson calls the situation "akin to the Wild, Wild West," with most preparers being unlicensed and a significant minority being incompetent or unethical.²⁵

B. Taxpayer Rights

Olson championed taxpayer rights in framing the problems identified in her annual reports, urging legislation to codify her Taxpayer Bill of Rights (initially adopted by the IRS in 2014 and

²⁴ See, e.g., Olson's annual reports for 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2013, 2015, 2017, and 2018; her objectives report in 2015; and Book's studies in her 2007 and 2008 reports. Olson identified the issue as early as her 1998 testimony before the Finance Committee. The IRS initially supported registering and certifying return preparers, but, after review, opposed her recommendation as premature. See IRS Position Paper, "Regulation of Federal Tax Return Preparers" (Apr. 2003), included in IRS answers to Finance Committee questions following an April 1, 2003, hearing, at 24-28. In a reversal, IRS Commissioner Douglas Schulman urged testing and certification of unenrolled preparers and made it a signature issue of his administration. But the IRS's initiative was rejected by the courts in *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), which held that the IRS and Treasury lacked statutory authority to regulate tax return preparation as practice before the IRS, affirmed in *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014). Legislation to authorize IRS regulation of unenrolled return preparers has never been enacted despite passage once by the Senate. What survives today is an IRS requirement that all tax return preparers obtain a preparer tax identification number and a voluntary Annual Filing Season Program. See IRS, "Annual Filing Season Program" (updated May 7, 2019). Although about 40 percent of the 768,255 paid return preparers are attorneys, CPAs, or enrolled agents, the remaining 60 percent have no professional credentials or license. About 60,000 unlicensed preparers completed the Annual Filing Season Program in 2019. See IRS Return Preparer's Office, "Number of Individuals With Current Preparer Tax Identification Numbers (PTINs) for 2019" (updated Aug. 2, 2019).

²⁵ See, e.g., NTA, "MSP #5, Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing Its Efforts to Effectively Regulate Unenrolled Preparers," in Pub. 2104, "2013 Annual Report to Congress," at 67 (Dec. 2013). Olson likes the wild west metaphor, also using it in relation to the IRS Free File program: "As currently structured, Free File amounts to a Wild, Wild West of differing eligibility requirements, differing capabilities, and differing availability of, and fees for, add-on products." "Written Statement of Nina E. Olson, National Taxpayer Advocate, Before the U.S. Senate Committee on Finance, Hearing on Tax Return Preparation Options for Taxpayers," at 19 (Apr. 4, 2006).

enacted in 2015), training IRS employees, and originating an International Conference on Taxpayer Rights.²⁶ Olson argued that enabling taxpayers to see and understand their rights improves voluntary compliance because it fortifies their belief in the fairness of the tax system and affords taxpayers the dignity they deserve.²⁷

Some have dismissed the formal adoption of a taxpayer bill of rights as a meaningless gesture that simply reaffirms current law (indeed, Olson said it did not create new rights but was a statutory framework for rights that could be incorporated into tax administration). Two law professors, however, described it as a new source of substantive rights and the basis for remedies. By using the language of rights, they wrote, “TBOR recasts the existing obligations of IRS officials into entitlements possessed by taxpayers”; it strengthens taxpayers’ normative basis for enforcement; and it has “the power to transform the tax practice and the relationship between taxpayers and the IRS.”²⁸

C. The Disadvantaged

Olson consistently warned that IRS modernization has costs beyond dollars. It creates a tiered system that disadvantages vulnerable taxpayers — often low-income, senior, or disabled — who need or prefer one-on-one interaction

with live assistants. She criticized the IRS’s “Future State Vision” as redefining tax administration into “a class system, where only taxpayers who are the most *noncompliant* or who can ‘pay to play’ will receive concierge-level service or personal attention. The compliant or trying-to-comply taxpayers will be left either struggling for themselves or paying for assistance they formerly received for free from the IRS.”²⁹

And Olson consistently pressed for more and better service, outreach, and education for all taxpayers, arguing that making the IRS more taxpayer-friendly pays greater dividends and is more cost-effective in yielding voluntary compliance than increased enforcement, though both are needed.³⁰

D. Defending the IRS

While sometimes a fierce critic of the IRS — a form, perhaps, of tough love — Olson was also its ardent defender, praising its dedicated, overstressed staff and explaining reasons for IRS initiatives or performance limits. She documented the no-win consequences of reducing the IRS budget and workforce, telling Congress bluntly “that is no way to run a railroad,” and “the IRS is stretched to its breaking point” (referring to

²⁶ See IRS, “Legislative Recommendation: Taxpayer Bill of Rights and *De Minimis* ‘Apology’ Payment,” in NTA, “2007 Annual Report to Congress,” *supra* note 24, at 478-498 (Dec. 2007). As enacted, the 10 rights are: (1) the right to be informed, (2) the right to quality service, (3) the right to pay no more than the correct amount of tax, (4) the right to challenge the position of the IRS and be heard, (5) the right to appeal a decision of the IRS in an independent forum, (6) the right to finality, (7) the right to privacy, (8) the right to confidentiality, (9) the right to retain representation, and (10) the right to a fair and just tax system. See Consolidated Appropriations Act, 2016, P.L. 114-113, Div. Q, Title IV, section 401(a) (Dec. 18, 2015), codified at section 7803(a)(3); and IRS, “Taxpayer Bill of Rights.” See also Olson, Woodworth Lecture, *supra* note 10 (In a 2012 survey commissioned by her office, only 46 percent of U.S. taxpayers said they believed they had rights before the IRS, and only 11 percent said they knew what those rights were (citation omitted)).

²⁷ NTA, “2007 Annual Report to Congress,” *supra* note 26, at 485. Olson followed this report six years later with “Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration” (Nov. 4, 2013), a 66-page set of “Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights.”

²⁸ Alice Abreu and Richard Greenstein, “Embracing the TBOR,” *Tax Notes*, Nov. 27, 2017, p. 1281. See also Fogg, “Can the Taxpayer Bill of Rights Assist Your Clients?” 91 *Temp. L. Rev.* 689 (Jan. 15, 2019); and Book, “Giving Taxpayer Rights a Seat at the Table,” 91 *Temp. L. Rev.* 759 (Feb. 8, 2019) (abstract). Although the 2015 TBOR statute does not contain an enforcement provision in case of IRS violations, taxpayers have started using it to seek remedies.

²⁹ As Olson has written, “Low income taxpayers are more likely to have low functional, financial, and reading literacy; be unbanked and transient; have low computer literacy and less access to the Internet and computers; and have less access to representation.” Woodworth Lecture, *supra* note 10, at 1191. The future state vision has been rebranded and merged into the IRS’s “Strategic Plan 2018-2022,” Pub. 3744 (Apr. 2018). See preface and “MSP #1, Taxpayer Service: The IRS Has Developed a Comprehensive ‘Future State’ Plan That Aims to Transform the Way It Interacts With Taxpayers, but Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet,” in NTA, “2015 Annual Report to Congress,” *supra* note 24 (Jan. 6, 2016) (about 45 percent of individual taxpayers are eligible for pro bono or nominal fee assistance from LITCs). See also GAO Director of Strategic Issues James R. McTigue Jr.’s letter to Finance Committee Chair Orrin G. Hatch and House Ways and Means Committee Chair Kevin Brady, “Status of IRS Future State Vision” (Oct. 3, 2018).

³⁰ Olson noted that 98 percent of revenue collected by the IRS is through a combination of voluntary compliance and the hard-to-measure indirect effect of enforcement, while only 2 percent comes through direct enforcement action. Adding enforcement resources “to maximize the 2 percent of collections without grappling adequately with what is required to maximize the remaining 98 percent of collections is a bit like letting the tail wag the dog,” she contended. See IRS, “Written Statement of Nina E. Olson, National Taxpayer Advocate, Before the Committee on the Budget, U.S. House of Representatives, on the IRS and the Tax Gap,” at 15 (Feb. 16, 2007). Olson urged a more taxpayer-friendly IRS as early as 1998 in testimony before the Finance Committee as it considered RRA ‘98: “The IRS should develop incentive awards for politeness, not collections levels.” Response to Sen. Roth’s Question 5, Finance Committee “Hearings on H.R. 2676,” 105th Cong., 2d Sess., Hrg. 105-529, Jan. 28, 29; Feb. 5, 11, and 25, 1998, at 339.

delays in IT modernization because IRS staff was diverted to implement legislative mandates).³¹ She defended the IRS's ill-fated 2003 pre-certification program to reduce earned income tax credit improper payments by requiring more upfront documentation, later withdrawn after a limited test.³² "Sometimes I had to save the IRS from itself," Olson said, recalling agency slip-ups like an enforcement program about to be misnamed "Harpoon."³³

Olson highlighted the dilemmas and impossible tradeoffs faced by the IRS: the conflicting roles and skillsets of tax collector and benefits administrator; the use of too-few employees either to answer telephones or to answer correspondence; the urgent but delayed need to modernize IRS systems while being forced to divert IT workers to implement new laws; the need to speed refunds against the need for time to enhance fraud checks; the desire to use information the IRS possesses to reduce unnecessary enforcement versus the limits of the IRS's IT systems; and the bias in audit selection toward easy correspondence audits of EITC recipients rather than the harder, more resource-intensive audits of businesses and high-income taxpayers. She implored Congress for more resources so the agency can do its job in core areas without impossible tradeoffs.

While most IRS officials are careful to note deferentially that tax policy is the exclusive province of Treasury, Olson fearlessly plowed in,

most recently recommending that the EITC be split into two credits, recognizing that many tax issues are a hybrid of policy and administration.³⁴ Her brief was unchecked — in part because her role allowed her to recommend legislation, and in part because her power was limited to proposals and the bully pulpit. She could provoke or persuade, but she didn't threaten power centers. In tax administration, however, process can be as potent as policy. Here her leadership had real impact.

E. Research and Scholarship

Going well beyond the narrowest definition of her responsibilities, Olson included literature reviews and commissioned seminal articles on important tax policy questions in her reports to Congress. While she is not a one-person think tank (though close), she successfully leveraged her access to IRS data and used her staff, other researchers, and outside contractors to gain original insights to guide more effective tax administration and contribute to scholarly debates.³⁵ She extended her role overseas in interchanges with other tax administrators and shared ideas at international conferences.

A few of these 65 studies might be called "advocacy scholarship" in that they support policy positions Olson took rather than being entirely grounded in objective considerations.³⁶ She described her 2019 comprehensive "Special Report to Congress on the Earned Income Tax

³¹ Statement of Olson in hearing on "Improving Tax Administration Today" before the Finance Subcommittee on Taxation and IRS Oversight, at 12 (July 26, 2018); and NTA, "2018 Annual Report to Congress," *supra* note 24 (Feb. 2019).

³² The program met with much criticism from low-income consumer advocates and others as being burdensome and intrusive. It would have required EITC claimants to file affidavits to verify relationships or residence in advance of the return filing season. *See, e.g.,* "Senators Call for Hearing on Proposed IRS Program" (July 23, 2003) (45 senators urged President Bush to prevent the IRS program from being implemented, stating their concern that the program would discriminate against low-income taxpayers and prevent them from receiving the tax relief they need); "Statement of Leonard E. Burman, Senior Fellow, the Urban Institute, and Co-Director, the Tax Policy Center, Before the Committee on Ways and Means, U.S. House of Representatives, on Waste, Fraud, and Abuse," at 11-13 (July 17, 2003); and Heidi Glenn, "Sides Square Off Over EITC Precertification," 39 *Tax Prac.* 13 (July 4, 2003).

³³ Laura Saunders, "'My Role Is Not to Be a Shill for the IRS,'" *The Wall Street Journal*, Aug. 2, 2019.

³⁴ NTA, "Special Report to Congress: Earned Income Tax Credit," *National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress*, Pub. 4054-D, vol. 3 (June 2019). Reports from the NTA are not official legislative recommendations of the administration, which remain a Treasury responsibility. *See* Joint Committee on Taxation, "General Explanation of Tax Legislation Enacted in the 104th Congress," JCS-12-96, at 21 (Dec. 18, 1996).

³⁵ The richly diverse studies cover compliance, customer service, the EITC, TAS operations, and tax behavior. Her own scholarship includes Olsen, "Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy," 22 *Advances in Taxation* 1 (2015).

³⁶ A list of TAS research studies is available online. Section 1301 of the Taxpayer First Act, P.L. 116-25 (July 1, 2019), requires the NTA to coordinate research studies in the annual report to Congress with TIGTA and requires the IRS to provide statistical support and state whether the IRS or NTA information is statistically valid and based on sound methods.

Credit,” for example, as “not just a research document [but] a call to action.”³⁷ Nonetheless, most are evidence-based and valuable. The number and quality are impressive.

F. Tax Tools and Roadmap

The TAS developed several online tools for taxpayers: a *Small Business Health Care Tax Credit Estimator*, a *Premium Tax Credit Change Estimator*, and an *Individual Shared Responsibility Provision Payment Estimator* to complement other IRS applications like the *EITC Assistant* and the *Withholding Calculator*.

Among Olson’s most recent acts is the building of a colorful map of a taxpayer’s journey through the IRS maze — a good example of her creativity and leadership. It enables those who lack awareness to trace where they stand, view their options, and understand the consequences. The route moves from seeking answers to tax law questions, to preparing and filing a return, to IRS return processing and screening, through notices, examinations, appeals, collection, and litigation. When the interactive digital version is completed, taxpayers or their representatives will be able to enter online at any stage, see the context, input the number of an IRS letter or notice, and generate a pop-up window with relevant information and next steps.

If it is accessed, that knowledge can be empowering. “Anyone looking at this map will understand that we have an incredibly complex tax system that is almost impossible for the average taxpayer to navigate. . . . If only taxpayers who are represented by tax professionals have access to that knowledge, then we do not have a fair and just tax system,” Olson says.³⁸

V. Personal Notes

Olson was born in 1954. After graduating from Bryn Mawr College in 1975, she opened an accounting and bookkeeping service in Chapel

Hill, North Carolina. “I ‘hung out my shingle’ as a tax return preparer for the first time,” she wrote recently. “As a young, newly divorced mother struggling to pay bills, I myself received the EITC.”³⁹ She earned a law degree from North Carolina Central University, attending night school for four years, and then commuted to Georgetown University Law Center in Washington, where she secured her LLM in taxation.⁴⁰ There she hatched the idea of forming a freestanding LITC.

The nonprofit clinic she founded in Richmond, Virginia, was independent — the nation’s first that was not affiliated with a law school. The IRS’s former district counsel in Richmond recalls its birth and Olson’s early struggles to make it successful. “She wanted a clinic that marshalled the tax bar into a force to fight for low income taxpayers,” he wrote:

Starting from scratch she built the Community Tax Law Project into a statewide clinic seeking to assist taxpayers who would otherwise go unrepresented. She not only chased down tax lawyers to join her pro bono panel but she chased down donors from many different sources. Even though she received enough donations and pro bono volunteers to keep the doors open, she hardly had enough to pay herself. She lived a Spartan existence. I have joked with her that I invited her regularly to come and speak to the students who volunteered at my office because that way we could feed her.⁴¹

Olson found a key ally in the cause of representing low-income taxpayers in the late Janet R. Spragens, an exceptionally gifted and visionary professor of law at American University. Spragens’s testimony before the IRS

³⁷ NTA, *supra* note 34, at viii. Olson’s analysis notes that the EITC as currently structured imposes taxpayer burdens and challenges IRS administrability.

³⁸ IR-2019-23; the map is IRS Pub. 5341. It builds on seven separate maps charted in her 2018 annual report to Congress. NTA, “2018 Annual Report to Congress,” Pub. 2104, vol. 1, at 10-16 (Feb. 2019). For background on the project’s gestation, see NTA Blog, “The Roadmap to the Roadmap: A Travelogue” (July 29, 2019).

³⁹ See “Preface: Introductory Remarks by the National Taxpayer Advocate,” in NTA, *supra* note 34, at vii.

⁴⁰ “Taxpayers, Meet Your Advocate,” *Bryn Mawr Alumnae Bulletin* (undated).

⁴¹ Fogg, “Reflections on Nina Olson as the National Taxpayer Advocate,” *Procedurally Taxing Blog*, Mar. 8, 2019.

Restructuring Commission and Olson's before Congress built the case for the LITC matching grant program authorized by RRA '98.⁴²

Olson prepares her own tax returns "agonizingly," now using Free File Fillable Forms: "I feel it is my duty to slog through the actual return on my own," she says.⁴³ She experiences what other taxpayers experience without the simplifications of tax software. Not surprisingly, she has a few suggestions for improving the product.⁴⁴ She also adjusted her own tax withholding in response to changes made by the Tax Cuts and Jobs Act. It took her three tries.⁴⁵ She shares in our frustrations.

In her spare time, Olson has pursued fiber arts projects and an interest in textiles, dying, knitting, sewing, and weaving. She has participated in workshops at the Maryland Sheep and Wool Festival and in classes in Turkey. She says that in retirement, she hopes to find a farm on which she can raise goats and sheep, presumably shearing wool (and possibly mohair and cashmere), or having it sheared, for her own use. She is a former trustee and board vice president of the Textile Museum and past treasurer of the Textile Society of America.⁴⁶ (Could a talent for detangling and spinning help in problem resolution and advocacy?)

Olson visits Paris yearly, most recently to celebrate her 65th birthday. Friends report that

she is a fan of the British rocker Elvis Costello, whose debut album title, *My Aim Is True*, may resonate with her career.

VI. Olson's Legacy

Olson's role in establishing LITCs and championing taxpayer rights would secure her legacy even if she had never become national taxpayer advocate. The heart of her advocacy — cases as well as causes — has been to ensure that taxpayers' rights are protected and that IRS modernization does not sacrifice good customer service on the "path from tax collector to fiscal automaton."⁴⁷

Olson does not, however, to paraphrase William F. Buckley Jr.'s manifesto for conservatives, "Stand athwart history, yelling Stop." She is not, like the 19th century English textile workers and weavers who destroyed machinery to protest industrial automation, a latter-day Luddite. She simply wants a kinder, gentler IRS — one in which, "at the table when decisions are made . . . before the initiative gets written into stone," someone asks, "But what about the taxpayers?" She wants, to borrow from a book title, the machine to have a soul.⁴⁸

The ultimate verdict on her performance will depend in part on whether the positions she argued for prevail and whether the TAS is still respected and heeded as the voice of the taxpayer before the IRS and Congress on issues that are not yet fully formed. Will the TAS continue to be independent? Will it get the resources it needs to do its job? Will the IRS work with the TAS and understand that its recommendations and research have as their underlying aim sound tax administration, albeit with perhaps a different weighting of values and interests?

The answers will depend on forces out of Olson's control. In selecting her successor, the

⁴² Spragens testified before the Restructuring Commission; Olson met with commission staff and testified before House and Senate committees. See "Statement of Nina E. Olson, Executive Director, the Community Tax Law Project," hearing before the Ways and Means Subcommittee on Oversight, 105th Cong., 1st Sess., on "Taxpayer Rights Proposals and Recommendations of the National Commission on Restructuring the Internal Revenue Service on Taxpayer Protections and Rights," Serial No. 105-62 (Sept. 26, 1997); and "Hearings on H.R. 2676," *supra* note 30, at 124-126, 329-340 (Olson testified on Feb. 6, 1998).

⁴³ Woodworth Lecture, *supra* note 10, at 1191. See also Sandra Block, "Nina Olson: The Softer Side of the IRS," *Kiplinger's Personal Finance* (June 6, 2019) ("I've always done my own returns. I believe that's my duty to find out how painful it is.").

⁴⁴ Olson has been a critic of the Free File program's online tax software for 15 years and recommends that the IRS terminate the program unless it can better oversee and improve it while continuing to make available an electronic version of fill-in paper forms online. See NTA Blog, "Free File: The Free File Program Is Failing to Achieve Its Objectives and Should Be Substantially Improved or Eliminated" (Mar. 15, 2019) (detailing her suggestions).

⁴⁵ Laura Davison and Kaustuv Basu, "Trouble With Tax Withholding? Taxpayer Advocate Had Same Problem," *Bloomberg News/Accounting Today*, Mar. 7, 2019.

⁴⁶ Textile Society of America, "TSA Has a New Treasurer!" *Textile Society of America Blog* (undated).

⁴⁷ Woodworth Lecture, *supra* note 10, at 1190.

⁴⁸ Buckley, "Our Mission Statement," *National Review*, Nov. 19, 1955; ABA Tax Section interview with Olson, *supra* note 23, at 5-6; and Tracy Kidder, *The Soul of a New Machine* (1981). See also Camp, *supra* note 9, at 1245-1248, 1255. The late IRS Commissioner Mortimer M. Caplin warned about the IRS not capitulating to "overmechanization and underhumanization of tax administration." "Commissioner Caplin Reviews His Record as IRS Chief," *Federal Taxes Report Bulletin* (July 16, 1964), reprinted at 29 *Va. Tax Rev.* 177, 180 (2009), referenced in NTA, "2011 Annual Report to Congress," Pub. 2104, vol. 1, at iii. (Dec. 31, 2011).

Treasury secretary will have to decide whether to pick another aggressive, independent voice for taxpayers or a more collaborative team player, or something in between. Olson may be the role model or the anti-role model.

Olson hopes her successor will be someone “strong,” “passionate about taxpayer rights,” who “knows how to lead employees” and “will protect the independence” of the TAS. In response to an observation that the Trump administration has been known “to put proverbial foxes in charge of the proverbial henhouses, such as a coal industry lobbyist now heading the Environmental Protection Agency,” Olson countered, “That is certainly not true in tax,” where competent professionals have been the rule.⁴⁹ Many tax practitioners want to avoid politicizing her position and prefer a successor who is a substantive, nonpartisan tax professional. But conservative groups reportedly are lobbying for someone who can rein in the IRS, while some lawmakers favor a strong consumer advocate.⁵⁰

In any case, Olson will remain a watchdog. She has formed a nonprofit Center for Taxpayer Rights as her next base of operation. If the past is prologue, one should expect informed and passionate advocacy not only for taxpayer rights, but also for improved tax administration and a more just tax system. For that, she has built a solid and, one hopes, enduring foundation.

In her 2013 Woodworth Memorial Lecture at the American Bar Association Section of Taxation meetings, Olson sharpened her focus on taxpayer rights:

At their core, taxpayer rights are *human* rights. They are about our inherent

humanity. Particularly when an organization is large, as is the IRS, and has power, as does the IRS, these rights serve as a bulwark against the organization’s tendency to arrange things in ways that are convenient for itself, but actually dehumanize us. Taxpayer rights, then, help ensure that taxpayers are treated in a humane manner.

If we do not make taxpayer rights the linchpin of our tax system, as our Bill of Rights is the linchpin of our constitutional democracy, we lose our heart and soul. This is what taxpayer rights are about — protecting them not only recognizes the taxpayer’s human condition but also reminds us of our own humanity. It saves us from our prejudices and our preconceived notions. It makes it impossible for us to think of taxpayers as widgets or cases or pieces of paper. Even more than being about the taxpayer’s humanity, taxpayer rights are about reclaiming our own humanity.⁵¹

With characteristic zeal, Olson has the last word. ■

⁴⁹ Merriam interview, *supra* note 6. The replacement chosen as head of the Consumer Financial Protection Bureau is a cautionary tale. See, e.g., Nicholas Confessore, “Mick Mulvaney’s Master Class in Destroying a Bureaucracy From Within,” *The New York Times Magazine*, Apr. 16, 2019.

⁵⁰ See David van den Berg, “Conservative Groups Want New Taxpayer Advocate to Ride Herd on IRS,” 32 MLEX US Tax Watch 2 (July 15, 2019) (quoting Dan Alban of the Institute for Justice hoping for a successor who will advocate limits on the power of the agency, such as preventing regulation of paid tax return preparers, and Finance Committee ranking member Ron Wyden, D-Ore., as preferring “almost a carbon copy of Nina Olson,” who “really set the gold standard for being independent [and] factual”). By statute, the decision on her successor will be made by Treasury Secretary Steven Mnuchin after consultation with the IRS commissioner. Bridget T. Roberts, a 14-year TAS veteran and most recently the deputy national taxpayer advocate, will be acting taxpayer advocate until a successor is appointed.

⁵¹ Woodworth Lecture (emphasis in original), *supra* note 10, at 1190, 1199, which she highlighted in NTA, “2013 Annual Report to Congress,” Pub. 2104 (Dec. 2013).