

ERWIN N. GRISWOLD DISTINGUISHED LECTURE

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I was surprised and honored when Mr. Gomez sent the invitation to speak to you today, because I thought that my public speaking career was over. After all, one of my colleagues introduced me at a law clerk orientation as having been the chief judge in the last century. I thought that was funny, so when I repeated it at a meeting of the judges one of them stated loudly “it was the last millennium.”

Mr. Gomez included a hyperlinked list of the distinguished lawyers who have given this lecture, and I was delighted to see that I had personal interactions with many of them.¹ When he added that Judge Tannenwald was the only other Tax Court judge who had done this, and that was in 1998, the last millennium, I thought it would not be too difficult to just update the last twenty-five years of developments at the Court, skipping the first fifteen years that I was there. As you will hear, however, when I begin my serious remarks shortly, the most significant changes have occurred in the last three years. Those developments are website and case management improvements, pandemic responses, and assistance to unrepresented taxpayers.

But I cannot resist a few personal reminiscences about my years on the Tax Court, starting with before I was appointed. In 1979, I was the Chair of the ABA Tax Section Committee on Civil and Criminal Tax Penalties, but still a shy young lawyer from a very small firm on the

¹ See *Erwin N. Griswold Distinguished Lecture*, AM. COLL. TAX COUNS., <https://www.actconline.org/griswold-lecture-on-tax-policy/> (last visited Mar. 8, 2024).

West Side of Los Angeles. I was the moderator of a panel featuring Dean Griswold and then Chief Counsel Stuart Siegel and a very feisty private practitioner commenting on a mock trial demonstration of a fraud case. I will just say that I survived, but I did get to meet the famous Dean Griswold; and the exposure got some attention that eventually may have contributed to my appointment to the Tax Court.

In 1981, I was contacted about my interest in an appointment to the Tax Court in what was frankly an affirmative action search for a qualified woman because Judge Hall was going back to California to serve on the district court, and Judge Scott was taking senior status. I went to discuss the offer with my then partner, Louis Lee Abbott, who had hired me fifteen years earlier when large firms would not, and he said that, if he were my age and single, he would do it. He said I could always come back, and I naively assumed I was filling out the remaining five years of Judge Hall's fifteen-year term. Moreover, I had taken a continuing legal education course from Professor Wolfman, one of your prior speakers, who asserted that no one could be a real tax lawyer who had not spent time in Washington, DC, or New York. So, I called a DC lawyer who was a recent chair of the Tax Section and asked if I could use him as a reference. He hesitated and told me that he had great respect for the Tax Court and that I was too young for him to believe I intended to make a career out of it. I went back and told Lee Abbott that I was supposedly too young, and Lee said to call him back and tell him I would get over it. Oh, I wish they were here today, forty-one years later, to see that I am still on the Court and indeed did get over being young.

When I visited Washington that fall to discuss the position, I was interviewed by Ken Gideon, then Chief Counsel of the Internal Revenue Service, who persuaded me that public service had its own rewards. I had always lived and worked in Los Angeles, so the idea of traveling around the country and visiting other cities was very appealing.

Although I was somewhat apprehensive of being a judge, I was more nervous my last day trying a case as counsel than I was my first day on the bench as a judge. From then on, I felt that I was in the right place. Now I will turn to recent Tax Court developments.

Website and case management improvements

If you have not looked thoroughly at our website lately, you might be surprised to know that it has links to the Hellwig update and rewrite of the volume on the history of the Tax Court as well as a documentary about the architect of the Tax Court building.² As a result of former Chief Judge Foley’s outreach and diversity initiatives, there are also interviews of an amazing combination of academics, government officials, practitioners, and judges.³

If you litigate in the Tax Court, you most likely use our new case management system, known as DAWSON,⁴ which was long planned but implemented about the same time our in-person trial sessions were suspended. You probably know that you can now file petitions electronically,⁵ but must carefully follow the practitioner’s guide and not get caught by last minute technical difficulties or by assuming that a petition may be filed by midnight California time on the last day for timely filing.⁶ You were probably frustrated by the delay in getting the search function operational, but I assure you that you were no more concerned than the judges and law clerks. I can tell you that it seems that almost every weekend we are told to sign off the network from

² See *History*, U.S. TAX CT., <https://ustaxcourt.gov/history.html> (last visited Mar. 8, 2024).

³ See *Engagement & Outreach*, U.S. TAX CT., https://ustaxcourt.gov/engagement_outreach.html (last visited Mar. 8, 2024).

⁴ DAWSON, which stands for “Docket Access Within a Secure Online Network” shares the same name as my former colleague, the late Howard Dawson. Judge Dawson was the Court’s longest serving judge, nominated by President John F. Kennedy in 1962 and continuing to serve as a senior judge until his death in 2016. See *The Honorable Howard A. Dawson, Jr., 1922–2016*, U.S. TAX CT. (Jul. 18, 2016), <https://www.ustaxcourt.gov/resources/press/071816.pdf>. I joined the Court twenty years after Judge Dawson and succeeded him as the judge with the longest tenure among those currently serving. While I have no target date for retirement, I have no intention of matching his impressive 54 years on the Court.

⁵ *Filing a Case in the United States Tax Court*, U.S. TAX CT., https://ustaxcourt.gov/resources/forms/Petition_Kit.pdf (last visited Mar. 8, 2024).

⁶ See Tax Court Rules of Practice and Procedure, Rules 22 and 25.

11:30 p.m. Saturday night until 2:30 a.m. Sunday morning, instructions that I follow assiduously. During that time, upgrades to the system are implemented.⁷

We are aware that many tax lawyers are not happy that you cannot access online parts of the record in cases in which you are not counsel—other than orders and opinions. We are actively seeking a way to accommodate the demand without exposing sensitive information in the records of cases to identity theft by anonymous persons or entities. You may still obtain copies of materials not sealed from the Clerk’s Office in person, by telephone, or by mail;⁸ but these methods leave a record by which unauthorized use may be traced.⁹

There are, of course, ways of sealing and redacting parts of the record. Sealing is always a balancing process between a public trial and trade secrets or other strictly confidential information. We cannot seal an entire tax return, for instance, just because someone wants to keep it private. The rules provide for redacting names of children, social security numbers, bank account numbers and other information that is the likely subject of identity theft.¹⁰ In response to some of the pressure on the Court to make more parts of the record available, one of the judges conducted a survey of redactions in large cases involving leading firms (presumably with large numbers of law clerks or paralegals to do the redacting). The results were not reassuring. This sample revealed that redaction was imperfect and did not protect the interests of the parties. If it were your client’s information that was revealed, you might think differently about the importance of viewing a document filed by a party in another case. Copies are still available by going to the Public Files section at the Court, but most interested lawyers or members of the

⁷ The website, <https://ustaxcourt.gov/dawson.html>, includes an email address to which practitioners may send questions or comments about DAWSON.

⁸ *Transcripts & Copies*, U.S. TAX CT., https://ustaxcourt.gov/transcripts_and_copies.html (last visited Mar. 8, 2024).

⁹ After I delivered my remarks, the Court added access to post-trial briefs filed by practitioners on or after August 1, 2023. Unlike orders and opinions, post-trial briefs cannot be searched separately—they instead are available by accessing a link from within a case docket. *See* Administrative Order No. 2023-02 (May 5, 2023).

¹⁰ *See* Tax Court Rules of Practice and Procedure, Rule 27(a).

press order copies by phone and online. Very seldom is the computer available in the Public Files section for researching dockets in use.

Pandemic response

In March 2020, all scheduled sessions were cancelled, and the Tax Court building was closed. Mail deliveries to the building were suspended. All “nonessential” employees were told to stay home, and anyone who had to come to the building was told that parking would be available in the building and employees should not take public transportation. Protocols were established, such as stairways designated as up or down, and occupancy limitations for the elevators set. Sanitizer dispensers were set up at all entrances to the building. Many judges continued to come to their chambers. At one point, however, because some of the security officers had been exposed to COVID-19, all of them had to stay home; thus, the building was closed entirely for security reasons.

Once the building was closed, arrangements for telework by staff were made and equipment was distributed. Cases that had been on in person trial calendars were assigned to the judges who had the calendars. By May 2020, arrangements for remote calendaring were made.¹¹ Most of the cases previously scheduled for trial were handled by phone calls or orders or scheduled for trial on Zoom. We were able to keep up with processing those cases through orders or conference calls. For example, ninety-seven cases on the Philadelphia calendar scheduled for May 2020 were assigned to me. All but two were resolved without trial.

Once arrangements for Zoom trials were in place, sessions proceeded. For the most part, judges and the parties and witnesses were able to conduct trials without problems. In the summer of 2021, after our controlled courtrooms were fitted with safety shields and rules for entry were posted, in person trials resumed. Most of the judges strongly

¹¹ See Administrative Order No. 2020-02 (May 29, 2020).

preferred in person trials, but remote trials continued in places where borrowed space was difficult to obtain because of backlogs in federal buildings that had also been closed. Eventually in person trials again became the norm, although remote trials and hearings continue to be available in limited circumstances.

Assistance to unrepresented taxpayers

As you probably know, a majority of our cases by raw numbers involve small amounts and unrepresented taxpayers. Looking at our website and the amount of guidance included, you will see that it is geared towards helping them navigate processing of a case.¹² But due in large part to Judge John Colvin and Special Trial Judge Peter Panuthos, the number of law school programs and professional legal clinics providing aid to pro se taxpayers has multiplied to the point where we have a program available at the calendar call at virtually all of the places for trial.¹³ Where we had Zoom sessions, the effective availability of assistance was increased substantially because volunteers at the calendars were not limited by geography but could assist taxpayers in breakout rooms controlled by the trial clerk. Many settlements were reached this way, and cases were closed without any accumulation resulting from the necessity of remote sessions.

One presumably permanent effect of the involvement of the pro se programs has been the Court's adoption of procedures for limited entries of appearance.¹⁴ This is indeed new to the Court. On our website are the procedures for reducing to writing the terms of limited appearances for the benefit of the client, lawyer, and Court, which allows volunteers to communicate better for such clients and to continue to assist them beyond the calendar call but not necessarily for trial or briefing. These

¹² *Guidance for Petitioners: Starting a Case*, U.S. TAX CT., https://ustaxcourt.gov/petitioners_start.html (last visited Mar. 8, 2024).

¹³ *Clinics & Pro Bono Programs*, U.S. TAX CT., <https://ustaxcourt.gov/clinics.html> (last visited Mar. 8, 2024).

¹⁴ See Tax Court Rules of Practice and Procedure, Rule 24(a)(4).

procedures were adopted primarily in response to the low-income taxpayer outreach and volunteer lawyer programs.

Conclusion

Although I have seen many personnel, technological, and procedural changes over the last forty years on the Tax Court, the developments of the last three years have most impressed me with the Court's ability to do what is needed to serve the public in a prompt and efficient manner. We look forward to continuing to work with the parties in making this possible.