



Hon. Albert G. Lauber

Judge, U.S. Tax Court

by Jacob Dean



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Every judge brings something different with them to the bench. For some, it is a career in government. For others, a lifetime of private practice. Yet others come from the halls of academia. While it is not uncommon for jurists to cross lines from one to the other throughout their career, one is hard pressed to find someone with a more well-rounded legal career in government, private practice, and academia than Judge Albert G. Lauber of the U.S. Tax Court. When coupled with his impressive educational credentials, it is easy to see why those who know Judge Lauber were not surprised when he received a call from the White House about serving as a judge on the Tax Court.

Background

One does not need to be a close friend or associate, however, to remember Judge Lauber's birthday—Jan. 1, 1950. He was born in Bronxville, N.Y., to Albert G. and Margaret Lauber and raised outside of New York City.

Judge Lauber attended a Jesuit high school in New York City, and it was there that he first started to study Latin and Greek. His studies of the classics continued throughout his undergraduate and graduate education, and as a result, he became a self-described “very careful reader of text.” He sees these studies as a formative experience that has colored his judicial attitude. “I pay a lot of attention to the precise grammatical structure of sentences and so forth, because if you don't do that, you cannot grasp the Latin or Greek text, and I think I bring that same attitude toward statutes and regulations,” he said.

Education

Lauber attended Yale College where he studied English literature and philosophy. Unsurprisingly, he graduated first in his class. His initial intention was to get a Ph.D. in English and comparative literature. Things changed for him during the recession in 1973-1974. With the country experiencing market crashes and stagflation during this period of time, he determined that becoming a professor of English was probably not the safest career move and decided to go to law school.



After Yale, Lauber studied at Clare College at Cambridge University in the United Kingdom. There he continued his study of Latin and Greek and classical texts. As described above, these were formative years for Lauber that had a great impact on his judicial approach. And as his clerks know all too well, they continue to affect his writing today (practice tip: He really hates split infinitives!).

Lauber returned to Yale for law school. There he continued to have great success. He was a member and note editor of the *Yale Law Journal*.

Clerkships

The judge's first stop after law school was the Federal Court of Appeals for the District of Columbia, where he clerked for Judge Malcolm R. Wilkey. He next clerked on the U.S. Supreme Court for Justice Harry A. Blackmun. There he honed his writing skills, while experiencing the inner workings of our nation's highest court and having a firsthand view of the decision-making behind some seminal cases in U.S. history.

Private Practice

Lauber left the Supreme Court for the Washington,

D.C.-based law firm of Caplin & Drysdale. At the time, it was still a relatively new firm that had been founded by former IRS Commissioner Mortimer Caplin and his legal partner Douglas Drysdale. Lauber spent over 25 years there and worked on a wide range of tax issues. He also had the unique opportunity to return to the Supreme Court a number of times in private practice—this time to argue cases.

Solicitor General's Office

The opportunity to argue in front of the Supreme Court in a private practice setting, stems from Lauber's time arguing in front of the Court for the government. After practicing at Caplin for four years, Lauber had the opportunity to go to the Office of the Solicitor General as the tax assistant to the solicitor general and later the deputy solicitor general working for Rex Lee. It was there that Lauber first cut his teeth in appellate advocacy and argued 15 cases, including such notable tax cases as *American Bar Endowment*,¹ *Boyle*,² and *Hughes Properties Inc.*³ He spent four years at the solicitor general's office before returning to private practice at Caplin, where he remained until 2005.

When asked recently if he misses the opportunity of getting up and arguing a big case in front of the Supreme Court, he responded, "No, I really don't." He elaborated that while he did enjoy it at the time, it was also "terrifying" to work on oral argument preparation because there is no clear end to the preparation. Because one can never know what may get asked at the argument, the preparation did not seem to have a logical completion point. In addition, there is, he said, "incredible pressure to think quickly on your feet."

"Frankly," he said, "I'm glad I did a lot of that, but I don't miss doing it anymore. It's much nicer to sit down at your word processor and write the opinion in peace and quiet." But don't let the anachronism fool you—Judge Lauber does use a computer.

Georgetown

The next stop in Judge Lauber's illustrious career was as the director of the graduate tax program at Georgetown University Law Center. There he oversaw one of the top tax programs in the country, which included teaching. He still continues to co-teach a class for foreign-trained Master of Laws students with his husband, Craig Hoffman, who is a professor at Georgetown University Law Center.

Nomination—Tax Court

It was while at Georgetown that Judge Lauber got the call from the White House about serving as a judge on the U.S. Tax Court. The call came somewhat as a surprise since he had not sought it out. He had been intrigued by the thought of serving on the bench—given that he had completed two judicial clerkships and his penchant for writing—but he did not think such an opportunity would be in the cards for him. As a resident

of the District of Columbia without a senator to support him, and not being particularly politically connected, he assumed that such an opportunity would not present itself. He welcomed it when it did, though.

Tax Court Workhorse

Once confirmed, Judge Lauber quickly established himself as a workhorse at the Tax Court, often volunteering for cases on assignment and filling his plate with trials. He has already published a number of notable opinions, including *Amazon*,⁴ *Webber*,⁵ *R.V.I. Guaranty Co. Ltd.*,⁶ and *Guralnik*.⁷

The move to the bench did not bring too many surprises for the judge given the time he spent as a clerk and in a courtroom throughout his career. However, he has said that the move to the bench necessitated learning more about the rules of evidence and learning how to manage a courtroom. In doing so, he seeks to advance what he views his purpose as a judge to be: "decide each case fairly and correctly" and "to try generally to advance the body of tax law" as a coherent whole.

Not all the cases are high profile, however. One thing that did come as a surprise to Judge Lauber was the high percentage of Tax Court cases where the taxpayer represents himself or herself pro se. While he had mastered the technical aspects of the law in his long career, working with so many pro se litigants has required him to learn a little bit about "bedside manner" and how to handle pro se cases without improperly putting a thumb on the proverbial scale. He likens that aspect of the job and courtroom management as more like being a doctor or psychiatrist than a lawyer. In such instances, he seeks to make the proceedings as user friendly as possible—helping to explain difficult concepts in plain English and trying to have pro se litigants tell their story in simple terms. In his view, this helps the proceedings move forward more efficiently and is intended to prevent people from getting nervous.

When asked what the most encouraging thing he's seen as a judge has been, Lauber responded that it's been "the behavior of counsel." On the part of both the IRS chief counsel and private practitioners, with few exceptions, he has found these individuals to be honest, ethical, and straightforward in their representation. His experience so far has been that individuals who may have been frustrated by dealing with the IRS service centers or examiners, generally have an easier time

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communicating with IRS chief counsel. Thus he encourages communication among the parties and especially encourages pro se litigants just to talk to the IRS chief counsel because the government attorneys are generally reasonable and willing to entertain conversations with Tax Court litigants.

In addition to his work in the courtroom, Judge Lauber also acts as a mentor to many individuals—both formally and informally. One can find his chambers brimming with interns and externs throughout the year, and his door is always open. If one walks by his office at the Tax Court, that person is likely to see him talking or discussing a case or life with a clerk or a student, freely imparting wisdom from his years of experience.

Outside the Court

Outside the courtroom, Judge Lauber's life is as well rounded as his legal career. He is truly a man of many interest and is not solely defined by his work. He is an avid traveler, bridge player, arts patron, and amateur sommelier. He also enjoys hiking, gardening, good food, and throwing wonderful dinner parties (as anyone who has attended can attest).

On a personal level, he is a loyal, generous, and kind person. Though his credentials may be intimidating, the man is not. Those of us who know him personally have all been taught not only how to be better lawyers, but how to be better people. It is an honor to know Judge Albert G. Lauber. ☺

Endnotes

¹*United States v. American Bar Endowment*, 477 U.S. 105 (1986).

²*United States v. Boyle*, 469 U.S. 241 (1985).

³*United States v. Hughes Prop. Inc.*, 476 U.S. 593 (1986).

⁴*Amazon.com Inc. v. Commissioner*, 148 T.C. No. 8 (2017) (involving transfer pricing).

⁵*Webber v. Commissioner*, 144 T.C. 324 (2015) (involving the so-called investor control doctrine).

⁶*R.V.I. Guaranty Co. Ltd. & Subsidiaries v. Commissioner*, 145 T.C. 209 (2015) (involving the definition of insurance for tax purposes).

⁷*Guralnik v. Commissioner*, 146 T.C. 230 (2016) (addressing the tax implications of snow days).

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