

INTERVIEW WITH **MILLIE SEIDMAN**

by Jasper L. Cummings, Jr. and Alan J.J. Swirski, Washington, DC



MILLIE SEIDMAN

INTRODUCTION: Millie Seidman recently retired from the Tax Division of the U.S. Department of Justice after serving the Division with distinction for 50 years. Since 1985 Ms. Seidman had been the Chief of the Tax Division's Court of Federal Claims Section, where she supervised and coordinated litigation of large-dollar cases totaling (in 2005) more than \$2 billion. Always a tax lawyer's lawyer, Ms. Seidman's technical skills were unsurpassed, and she was a recognized authority in many of the most complex areas of tax law. During her decades with the Tax Division, she relentlessly pursued the government's best interests, regardless of complexities or obstacles.

Q How did you come to work for the Tax Division?

A The answer goes back a long way. I decided I wanted to be lawyer because I did not want to be a secretary or a bookkeeper. Getting into law school was not that difficult, but it was statistically interesting. I

went to Columbia. There were 265 people in my entering class in 1949. Thirteen of them were women—five percent. Actually, Columbia was relatively advanced in admitting women.

Then came the “looking for a job” part. At that time there was practically no interviewing at the law school. You received a list of firms, you took your resume and you walked around from firm to firm. I walked around from November to June of my third year until I finally got a job offer in June with a small firm, which only lasted for several months. Then they told me that someone was coming back from the Army and therefore I was let go. For the next two and a half years, I worked as what Columbia called an associate in law, which meant teaching legal writing to the first-year students.

Because I had heard that tax law was a good area for a woman, I took every tax or tax-related course at Columbia during this period. Actually, I was working towards a JSD (doctorate of jurisprudence). I did all the course work, but I never did my thesis because I came down to Washington, D.C., and loved working on cases.

I knew that the government was better at hiring women and one of the people at Columbia told me that the Tax Division was a great place to work. So I came down to Washington and went to the Justice Department. I was interviewed by the Civil Division, which offered me a job on the spot. I was interviewed by the Tax Division, which told me I was completely unqualified for the job. The Executive Officer looked at my resume. I had been on Law Review and had decent grades and had the additional tax-related courses. But I was completely unqualified.

I went back and got letters sent from the Dean at Columbia to every executive in the Justice Department with the exception of the Attorney General. I came back and spoke to the Assistant Attorney General and a cou-

ple of days later Tax gave me an offer. Incidentally, the IRS called me and said that they would have put me somewhere on the Joint Committee Staff. But I was very happy to go to work for the Tax Division.

I started working two weeks later in 1955. At that time, you just started working and all the investigation took place afterwards. Background checks and everything took place afterwards.

Q How was the Tax Division organized when you started?

A About the same way that it is organized now. There was an Appellate Section, a Criminal Section, one Trial Section which handled refund suits and another Claims Section which dealt with what was subsequently called General Litigation, and the Compromise Section, which subsequently became the Review Section and then the Office of Review.

Thereafter, the trial section was split geographically. Still later, the Refund Trial Sections were merged with the General Litigation Section, which made a great deal of sense.

Q How would you compare the types of lawyers attracted to the Tax Division today versus 30-40 years ago?

A The Tax Division has always been able to get good lawyers. Are they different today in any respect? Well, they do not smoke, they are more health conscious, and they go to the gym and work out. I'm not sure if I see a difference in where they come from, as between law firms or right out of law school.

In 1955, some of them were people who had come over from IRS in the 1930s, but there were many about my age.

Q Had there been any lawyers who had passed through your Division while you were here that went on to other careers that seem to have nothing to do with tax? One in particular is Sumner Redstone, who is now the CEO of Viacom.

A I really don't know. Over the years there were a number of people who left the Tax Division, went to a firm and came back and there were people who were hired from IRS. That was true in 1955 and is the same today. We still hire some people from IRS.

The number of people we get, and their quality, can sometimes be affected by whether or not there is a tremendous boom in law firm hiring, so a lot of the top people go to law firms. On the other hand, there are people who come from law firms and take a 70 or 80 thousand dollar decrease in salary to come to the Tax Division. The credentials of people the Tax Division hired the last year have been absolutely spectacular.

Q Some observers think the Tax Division has seen far fewer jury trials in the past 15 years than it used to see during 1960s – 1980s. Do you agree, and if so, do you have any idea why that is the case?

A I agree. There was a tremendous blossoming of District Court litigation in the 1960s. Actually, there were geographical differences depending on court congestion to the extent that District Court litigation generally moved swiftly in the South where you had a tremendous amount of District Court litigation and therefore jury trials. In courts where the docket was congested, there was less District Court litigation, and therefore fewer jury trials. That was my perspective.

Now the courts have enforced settlement conferences and mediations. That really has made a difference, particularly with respect to jury trials since all involve factual issues.

They are the cases which can and do benefit most from mediation and settlement procedures.

Also the frequency of jury trials, like other tax litigation, is going to depend on the extent to which returns are audited.

Q How has the makeup of the Court of Federal Claims tax litigation docket changed over that same period, if at all?

A I don't think it has changed substantially. But you had a change in 1982 when the Federal Circuit and the Claims Court (now the Court of Federal Claims) were created. Under the "old" Court of Claims, if you moved for partial summary judgment, you could skip the trial section and go straight to the Court itself, which was rather attractive. But that is no longer possible. I had taken a Court of Claims case in 1960 and at that time plaintiff moved for partial summary judgment because he wanted to avoid going through the Trial Commissioner. You did not have that possibility after you had what were the Claims Court and the Federal Circuit.

Q How has the Tax Division's interaction and coordination with IRS and Chief Counsel staff changed over the years, particularly with regard to setting strategy on litigating particular cases?

A There has been a great deal more interaction recently and a great deal of very extensive coordination now, particularly because of the tax shelter cases. We can say that the IRS is very interested in our tax shelter cases and obviously we have to be coordinating in all the courts. There is much more coordination now than there used to be, and it is a really active coordination. That would have started certainly in the last few years.

Q The IRS and the Justice Department sometimes have different perspectives on litigation strategy and arguments. Who controls those decisions?

A The Justice Department has good trial lawyers that look at the strengths and weaknesses of a case and may tend on occasion not to want to pursue the government position in a case that the Treasury might want pursued.

In my opinion, the IRS is our client. It is not very good to have conflicts with the client. Many conflicts have been resolved by settlement. And in settlement, generally, but not always, you could reach agreement. You can't always reach agreement within the Division, either. But generally with respect to settlements, one side could convince the other. And if not, one could live with it.

The Justice Department does have the last say, of course, because the 1933 Executive Order 6166 gave jurisdiction to the Justice Department, and in cases where we have jurisdiction we would have the last say.

Q In your career have you had much contact with the Joint Committee on Taxation, in connection with its refund settlement review function? Please describe the type of contact you have had.

A Actually, relatively little since I became chief of what was then the Review Section, simply because, frankly, we write such good memoranda that the Joint Committee rarely has had questions. I spoke with John DiCicco, who is now Chief of Review, to see whether things have been different more recently. He confirmed that the settlement people have a very good relationship with the Joint Committee. Generally someone from the Joint Committee calls up and asks the Review attorney a question about the case. Normally, those questions are resolved amicably. In the past 30

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years, I have been to a meeting with the Joint Committee only twice, once when I was in Review and once when I was in the Court of Federal Claims Section. I do know that previously there had been a strong disagreement as to two cases, but that was a long time ago.

Q Do you see any parallels or differences between tax shelter litigation in the 1970s and the same today?

A I see more differences than I see similarities. The 1970s tax shelters were much simpler. They frequently involved questions like valuation. They were sort of retail operations. Your insurance agent

might suggest it. You had individuals involved and \$25,000 or \$50,000 would be the investment in a tax shelter. There were very small investors in tax shelters and very simple issues.

Now it is infinitely more complicated. It is a search for loopholes in the law in my perspective. You have much more complex structures, much more complex arguments and a different class of people are litigating.

Q Have the federal courts changed much, from your perspective, in their approaches to tax cases over the years?

A I think in the post WWII years, we used to win more cases than we do today. You had more tax cases in the

Supreme Court, and the Supreme Court generally decided in favor of the government. But I cannot compare the circuits or the trial judges.

Q What is your general philosophy about going for cert on tax cases? Do you have an overall test that you apply to a case to determine whether it is a good one for cert?

A In my view the questions are: Is the decision grievously wrong? Is there a lot of money involved? Is it a really important principle? Is it unlikely that there will be a conflict of decisions after a Federal Circuit decision adverse to the government? ■

SECTION SURVEY ON APPEALS PROCESS

The Section of Taxation will distribute a questionnaire to conduct a survey this spring on practitioners' experiences with the IRS Office of Appeals. If you receive the questionnaire, we encourage you to complete and return it. The questionnaire will be sent from the Section either by e-mail or regular mail. Your participation is critical to the survey results, which will be used to inform the Section on the Appeals process.

If you receive the questionnaire, but have not had experience with Appeals, please answer the initial questions and return it so that we can have an understanding of the overall frequency of appearances that Section members have before Appeals. We appreciate your interest and contribution to this important project.