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CHARLES GALVIN—A COURAGEOUS ADVOCATE OF TAX REFORM

by

*Mac Asbill, Jr.**

MY closest association with Dean Galvin occurred during the course of a project on substantive tax reform undertaken by the American Bar Association's Section of Taxation—a project that told me and others a good deal about the dynamics and the politics of tax reform and a great deal about the qualities of Charles O. Galvin.

The project began in 1962 when the Council of the Section of Taxation terminated the long-standing custom of the Section to restrict its activities to "technical" tax issues, that is, to relatively minor improvements in existing law that were designed to increase equity and administerability within the existing framework without altering significantly that framework itself. The ABA's House of Delegates passed a resolution calling upon the Section of Taxation

to undertake a comprehensive study and analysis of our present tax structure and policies, looking to ultimate substantive tax reform that will best contribute to the preservation of our form of government and advance our economic national stability and growth . . . and to make such recommendations . . . as it may deem appropriate¹

Shortly thereafter, the Council of the Section established a Special Committee on Substantive Tax Reform under the chairmanship of Edwin S. Cohen, later to become Assistant Secretary of the Treasury for Tax Policy, and then Under Secretary. Galvin was appointed vice-chairman of that committee.

The significance of this series of events may well escape a newcomer to the federal tax scene who does not recall the self-imposed limitations under which the Section then operated and who may be unaware of the fact that many tax lawyers at that time considered basic tax policy something beyond their ken, something best left to economists and politicians. The creation of the Special Committee marked the first full realization by this major segment of the organized tax bar that it might contribute significantly to the development of sound tax policy. This change enhanced the tax lawyer's opportunity to influence the development of federal tax legislation.

The Special Committee promptly undertook studies, with the help of

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1. 87 REPORTS OF AMERICAN BAR ASSOCIATION 147 (1962).

special subcommittees created by other committees of the Section, in a dozen or so broad areas that it thought deserved priority. It reported to the Council of the Section in early 1963. On the basis of that report the Council urged upon the Board of Governors of the ABA two significant resolutions.² The first, after decrying the inequitable distribution of the tax burden, the stifling of incentive for work and investment, and the myriad exceptions and special provisions under the present system, called upon the Board to approve continuing inquiry and research by the Section "leading to the objectives of establishing a fair and equitable tax system, broadening the tax base, and providing incentives for work and investment,"³ and requested the consideration of specific provisions designed to broaden the tax base, lower the rates, and eliminate double taxation of corporate income. The second resolution charged that the Kennedy Administration's proposals for tax reform, which had been submitted to the Congress in January, "would not accomplish the type of basic reform required, but are piecemeal in nature and add greater complexity,"⁴ and urged the Congress to defer consideration of major structural changes until it could enact a program of basic reform. These resolutions were adopted by the Board of Governors in May of 1963 and by the House of Delegates in August of 1963. Together with their accompanying reports, they constitute a rather remarkable document, worthy of careful reading by anyone seriously interested in the history of efforts to achieve basic tax reform.

I have recounted the foregoing as background for a description of Galvin's role in the tax reform drama. In August 1963, he became chairman of the committee, which consisted of about twenty experienced and respected practitioners and leaders of the tax bar, including several former chairmen of the Section. As the most junior, and certainly the least distinguished, member of the committee, I was its vice-chairman. Having been heavily involved in the nuts and bolts of tax practice, and seldom having been required to ruminate about matters of broad tax policy, I could contribute little of a substantive nature to the work of the committee. Essentially my function was that of an administrative assistant to the chairman, assisting him in the handling of a substantial volume of paperwork, the coordination of views expressed by the committee members and the editing of papers they prepared. In that role, I observed Galvin in operation from close range.

He immediately organized the committee into teams to study and develop position papers on specific subjects. He set forth the basic assumptions on which our considerations were to be premised, including, for example, a rate structure ranging from ten to fifteen percent at the bottom to thirty-five to forty percent at the top, very limited special treatment of capital gains, virtual elimination of double taxation of corporate income, and substantial broadening of the tax base by inclusion in gross income of

2. 16 ABA BULL. OF SECTION OF TAXATION, No. 4, July 1963, at 4.

3. *Id.*

4. *Id.* at 5.

items theretofore excluded and by eliminating or reducing nonbusiness deductions. He specified the matters to be considered with respect to each study area, such as revenue effect, economic effect on the relevant market, intergovernmental relationships, political problems, administrative difficulties, transitional problems, and treatment of the particular item under the tax systems of other countries. Within this framework, some twenty-six specific topics were assigned, including retirement income, the interest element in life insurance, interest on state and local bonds, capital gains, all of the personal deductions, depreciation, depletion, and double taxation of corporate income. Characteristically, Galvin assigned to himself the highly controversial areas of depletion and tax-exempt interest.

There then began a period of intense activity, led by the committee, but joined in by many others in the Section, involving accumulation of data, preparation of reports, and detailed discussions with the Council of the Section. In the spring of 1964, the Treasury Department was asked to provide us with computer data showing the revenue effects of various substantive changes and a rate structure ranging from ten to forty percent that would produce about the same revenue as present law after taking into account specified base-broadening changes.

During this period I worked closely with Galvin; we were in touch by telephone almost daily and we had many personal meetings. He was, in my view, a superb committee chairman. His guidance was skillful and gentle; he operated by power of persuasion, never by fiat. He was always open-minded and never dogmatic. As might be expected in a project of this sort, there were many disagreements among members of the committee, not to mention the disagreements between the committee on the one hand and others in the tax bar and in industry on the other hand. Galvin played a key role in reconciling those differences, and he brought a balanced perspective to our deliberations.

I have never seen Galvin teach in a formal setting, but his talents as a teacher shone through clearly during this period. He stretched the minds of many of us who were working on the project, opening up new vistas of inquiry and gently leading us to reflect on matters that far transcended the normal concerns of practicing lawyers. He put on one of the finest exhibitions of on-the-job teaching that I have ever witnessed.

But my overwhelming impression of Galvin during this period was one of steadfastness and courage in the face of intense pressure. I suppose it was inevitable that taxpayers who benefitted substantially from various exclusions, deductions, and other forms of special treatment in the Internal Revenue Code should become alarmed over the prospect of a project that questioned the necessity for, or wisdom of, such treatment. It was, perhaps, a reflection of some naiveté on Galvin's part that he did not foresee the intensity of such a reaction. In any event, the reaction came with hurricane force. Industry groups and their representatives fiercely attacked the work of the committee, challenging its purpose, taking elements of its deliberations out of context, and applying every available pressure to bring

the study to a halt. Most of us on the committee felt these pressures to some extent—house counsel of valued clients called to protest further continuation of certain lines of inquiry; many lawyers who had theretofore shown little interest in the Section of Taxation became members in order to express their views in opposition to various directions that they perceived the committee's inquiry to be taking.

But the pressures felt by the rest of us were mild compared to those exerted on Galvin. The most intense pressure, as might be expected, emanated from the oil and gas industry, which saw the project as a threat to the continuation of percentage depletion and perhaps to the expensing of intangibles. The industry trade publications mounted attacks on the "Galvin Committee" and on Galvin personally. Many letters of complaint were directed to the trustees of SMU where Galvin was dean of the law school. It was much to the credit of William Clements, then chairman of the Board of Trustees, that he discussed the matter calmly with the dean, and assembled a number of the leaders of the industry so that Galvin could explain the nature of the study. Once these leaders were advised of the comprehensive nature of the project, the fact that specific items were considered only in the context of a drastically revised tax system with greatly reduced rates, and the fact that the selection of an item for study did not imply any conclusion by the committee as to the appropriate ultimate treatment of that item, their anxieties were somewhat, though not totally, alleviated. Similar pressures were exerted by the coal and timber industries. The municipalities, sensing a threat to the exemption from tax of interest on their obligations, took action through their trade associations. In almost every instance, the focal point of the attack was Galvin.

Galvin reported these attacks to his committee—matter-of-factly and at times with incredulity. But he never whimpered or complained. Most significantly, he never once suggested that we retreat in the face of these pressures. Indeed, his steadfastness and his determination to complete our assigned task exemplified the courage under fire that all lawyers hope to be able to muster whenever our activities for the public good are challenged by clients or by others who in one way or another have the power to control our destinies.

The data furnished us by the Treasury Department made it clear that there were many problems, requiring long-range study and analysis, presented by the type of broad-based tax contemplated by the committee. Thus, the Treasury's rate schedule, though close to the minimum and maximum rates suggested by the committee, reflected an unacceptably sharp progression in the lower and middle brackets. The impact of the schedule upon types of income and upon different adjusted gross income groups required further detailed consideration. The elimination of the double tax on corporate income appeared to result in a revenue loss that imperiled other desirable objectives.

Accordingly, in its report to the Section in July 1964, the committee concluded that completion of the project would require paid professional

assistance by personnel qualified in other disciplines in order to insure informed judgments on the numerous political, social, and economic implications inherent in a program of basic tax reform. It recommended that the necessary funds be sought so that the project could be completed. The committee's report concluded:

The committee feels that lawyers can contribute significantly to such a project by bringing to bear on the problems involved a wealth of technical competence and practical judgment. Given the basic facts, presented with the pros and cons, lawyers, in the Committee's view, are well qualified by training and experience to weigh alternatives and recommend solutions. Consequently, the Committee recommends that members of the interested Sections of the Association play an active and vital role in the continuation of this project.⁵

Funds were sought and obtained for a pilot project, under the direction of Arthur Willis of Los Angeles, designed to demonstrate the effectiveness of a large-scale project utilizing computer programming and statistical analysis along with traditional forms of legal research. Although that pilot project, in the views of Willis, Galvin, and other independent experts, justified continuation of the type of interdisciplinary analysis that Willis had begun, in 1968 the Board of Directors of the American Bar Foundation declined further financial support.

Friends of the project then persuaded the Washington-based Fund for Public Policy Research to sponsor a substantive study of greater depth, building on the models used in the American Bar Foundation project. This study, under the co-chairmanship of Galvin and Willis, was completed in 1973. It demonstrated the possibilities of broadening the base, integrating the corporate and personal income tax, eliminating estate and gift taxes by including gifts and inheritances in the income base, and taxing the family as a unit. Under such a system it was further demonstrated that a rate structure ranging from four to fifty-four percent could garner the same revenue as under the then existing law.

Some members of the technical staff of this project went on to work on the staff of the Treasury in preparing the publication, *Blueprints for Basic Tax Reform*,⁶ a study of proposed comprehensive tax reform released by the Secretary of the Treasury, William E. Simon, in the closing days of the Ford administration.

Meanwhile, the Section of Taxation through its Special Committee on Simplification, of which Galvin has been a member, has prepared a series of position papers and analyses in response to *Blueprints*.

And so the work of critical analysis of the system of taxation goes on. Galvin's impact on substantive tax reform was to be a lasting one. He had led a large segment of the tax bar to its initial realization that lawyers are well equipped to play a significant role in the development of tax policy. But perhaps his most significant contribution was his exhibition of courage.

5. 17 ABA BULL. OF SECTION OF TAXATION, No. 4, July 1964, at 286.

6. U.S. DEP'T OF TREASURY, BLUEPRINTS FOR BASIC TAX REFORM (1976).

under fire—a performance that will always be an inspiration to those of us who were privileged to observe it.