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## Decisions, Decisions, Decisions: A profile of Tax Judge Arthur L Nims III

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A Profile of Tax Judge Arthur L. Nims III

# Decisions, Decisions, Decisions

Every surface is piled with paper. Briefs, draft opinions, government documents, schedules, and reference materials choke the shelves and cabinets, sit stacked on desks and tables. Many of the 46,000 cases filed with the United States Tax Court in 1981 passed through rooms like these. Yet, it is the calm that impresses you first. There is no disorder here, no hurriedness, no clamor. In the Washington, D.C. chambers of Judge Arthur L. Nims III, there is time to think. He wants, above all, to get it right.

"When I first came on the court, I said that I was going to let the chips fall where they may," he says. "I try to stick to that. I'd like to be remembered as having written respectable and sensitive opinions and having decided cases

correctly, without being overly technical about it." That takes a lot of work, something Nims thrives on.

Marion Mitchell, his confidential secretary, calls him a "real workaholic," referring to his commitment rather than to any judicial style, for if anyone looked less the part, it would be Nims. Low key and soft spoken, he works hard because he takes his public trust seriously. He has been known to spend weeks, even months, deciding a particular case. Arriving early, as he does every morning, drinking the first of what he says are too many cups of coffee, Nims strips down to his shirt sleeves and goes to work. He always takes the time he needs. He has certainly had more of it since he left private practice for the bench.

*"He takes a lot of time to make his decisions," says Fred Rohn, a tax partner in Touche Ross's New Jersey office. "It's the way he's always operated—you can't get fast decisions out of him. But he's no drudge." Rohn has known Nims for many years, first as a neighbor, then professionally. "He has his own life as well. But when he works, he works hard. He's highly intellectual, deep thinking, very careful, and very, very thorough."*

"In my law office, the phone never stopped ringing," Nim says. "In coming on the court, I entered a kind of cloister." Not only is he isolated from the outside world and from clients, he also is secluded from his fellow judges. His chambers consist of six rooms—his office, those of his clerks, a file room, a small law library, and the anteroom for his two secretaries. With his staff of four, he operates in a quiet world in which, he says, "everything's channeled down to pure tax questions." Not since he encountered the field of tax law at the University of Georgia Law School has he had the chance to view it from such a perspective.

"Tax law touches every citizen," he explains. "I have the feeling that the layman thinks of it in terms of balance sheets and profit/loss, but that's the

farthest thing from the truth. You deal with people from every conceivable walk of life—truck drivers, restaurant employees, croupiers in Las Vegas, multinational corporations, widows, orphans—everybody.” The enthusiasm is evident in his voice, and Nims seems almost surprised that others cannot see how varied a field tax law is.

He began his tax law career in 1951 with the Internal Revenue Service, working as a special attorney in its New York office, one of the busiest in the country. It was a baptism of fire. “They had cases coming out of their ears,” he recalls, “so they had no choice but to give a young lawyer some big cases. It was a wonderful experience.” Then in 1955, he became an associate with McCarter & English, a major New Jersey law firm; six years later, he was a partner.

“I went from trying one case after another to almost no litigation,” he says. “I was mainly in tax planning.” As the years passed, in fact, he dealt with fewer and fewer clients who needed legal advice on tax compliance. “They wanted me to be a lot of other things besides a tax lawyer,” he says. So he became a generalist, concentrating on corporate law and estate planning. Eventually, he headed the tax department before he finished his 24 years with the firm.

*“It was always a delight to deal with him,” says Sidney Glaser, the director of New Jersey’s Division of Taxation, who has known Nims for almost 20 years. We were able to resolve many cases without trial because we each understood the other’s position. Sometimes he would convince me he was right; sometimes I would convince him, and he would readily agree, go back to his client, and straighten matters out. He knows all the finer points of law, which is important on the court. Judges have to have a real understanding of the cases and what they involve. He does.”*

In June 1979, by decree, President Jimmy Carter appointed him a judge on the tax court—“reposing special trust and confidence in the Integrity and Ability of Arthur L. Nims III.” Says Nims, “I think being a judge is something you think about, something to cap your career. It certainly was a new challenge.” On the

*With law clerk Alan Talkington.*

court, he would gain more insight into how the tax law works and how Congress writes that law. Because the court’s decisions are the law of the land, he might even have a chance to affect national tax policy.

Better still, the job would be interesting. As an attorney, Nims had to work up each of his cases in great depth—leaving him with little time to enjoy the variety that had drawn him to the field in the first place. “Although it’s exciting to have your clients rely so much upon you, their demands can become unreasonable,” he says. “They don’t think they’re unreasonable, of course, because it’s their case you’re dealing with, but they want you to drop everything else.”

On the bench, Nims is up to his neck in variety. Though a large part of his job

requires hours of work in his Washington chambers, he must also travel around the country on court calendars. Calendars are assigned to a judge based on the number of petitions accumulated for the area. A court calendar can take a judge to New York City one month, to Oklahoma City two months later, and to Chicago later in the year. “It’s interesting,” says Nims, who was leaving for New York within days. “When I go to Boston, I get a lot of trust cases; they’re crazy about trusts. When I go to Oklahoma City, there are all kinds of oil and gas and natural resource cases. California has a lot of cases dealing with the entertainment industry. And in New York, you get everything. I’ve got wire-tapping cases up there, Fourth Amendment cases, corporate law cases.”

More than 50 groups of cases were scheduled for Nims’ court calendar in New York, cases that would take an estimated 276 hours to try. As Nims spoke

about his travels, a trunk filled with case folders was on its way to the Federal Building in New York. So packed and heavy was the trunk that Kim Oberg, the deputy clerk sent to assist Nims on the calendar, would find its straps broken when she arrived the next Monday morning. And if that weren't enough, the really time-consuming work wouldn't begin until the judge returned to Washington to begin the long process of deciding the cases. "Being a judge is an intellectual challenge, because you have to take a great mass of facts in a given case and try to see how the Internal Revenue Code applies to those facts," he says, pointing to a thick book on the table in front of him. Thousands of pages long, filled with tiny print, the code is the basis of the tax system. Enacted by Congress in 1913, it has been growing in size and complexity ever since. "And sometimes," Nims adds, "I have to fill in the gaps between what the law says and what the law means."

*"Arthur Nims has real standards of excellence," says Peter C. Aslinades, a senior tax partner at McCarter & English. "I once saw him turn down the motion of a young lawyer who had not followed proper procedure. But at heart he's a*

*With Judge Theodore Tannenwald, chief judge of the U.S. Tax Court.*

*teacher, so he didn't chew the young man out. Instead, he made sure that the lawyer understood why he'd had to rule that way. Arthur's a very good judge, and he was probably one of the smartest tax attorneys I've ever known. He was my professional mentor."*

It takes certain qualities to make a judge responsive to these demands. Nims places patience, and then common sense, above them all. "You have to sit there and let these people have their day in court," he says. He looks for a balance between taxpayer and government, "which is not hard to find if you're a fair-minded person."

Rather than writing his philosophy of life into a decision, Nims believes it more important to apply the letter of the law. "People have got to be able to say, 'If I'm going to do this, then this is going to happen,'" he says. His decisions apply in all 50 states, so even if he is reversed by one of the circuit courts, his decision stands everywhere else. "I have been accused of being too literal-minded," Nims says, "but Congress passed a law, and you've got to apply the law as Congress passed it."

Unfortunately, says Nims, he and his colleagues are being asked to apply the laws of Congress more and more often, indicating that fewer cases are being resolved at lower levels. Ideally, disputes are settled in meetings between the taxpayer and the IRS. But if no satisfactory agreement is reached and the taxpayer still refuses to pay the tax demanded, the IRS will send him what Nims calls a "deficiency notice." He now has 90 days to pay up or to file a petition with the tax court. Maneuvering the taxpayer into court, Nims points out, puts the government in the enviable position of having to prove nothing; it is the respondent. The taxpayer, the petitioner, has to demonstrate that he is not liable for any tax. "If he's not careful," Nims says, "he can dig himself an awfully big hole."

"Remember," Nims adds, "the government doesn't have the burden of proof, so the taxpayer has to have plenty of evidence, documentation, and witnesses. People just don't know that, and it's one of the biggest misconceptions about the rules of the court." Still, the taxpayer who tries his own case often does well. Because there is no jury present, judges

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**M**ore than 30 years in tax law and three years on the bench have given Judge Arthur L. Nims III a perspective of the U.S. tax system that few others have.

#### **On the organization of the U.S. tax system...**

*"It's become unnecessarily complicated. The whole system needs to be looked at. If I were the president, I would appoint a blue-ribbon commission and hand them the code and say, 'Look at this; it's a mess.' I think the average citizen in a self-assessing system ought to be able to make out his own tax return without professional help."*

#### **On tax protesters...**

*"We've had a lot of trouble with so-called tax protesters. They cause you a lot of headaches, and yet I think that it's sort of symptomatic of the cutting edge of a growing feeling of helplessness and general dissatisfaction."*

#### **On what the public thinks the tax court is...**

*"A lot of people seem to think that the tax court is another level of the IRS, so when they file their papers with us, they figure that they're going to tell it to another guy in the IRS. They don't realize that they're really in a court and that they have got to present their case to a judge. They don't think of it as an opportunity to have an impartial hearing before a court, and they tend to get a little casual."*

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can be a little more liberal as to what evidence is admissible and many even help guide the taxpayer through his case, trying to keep him on the right track.

Some of the *pro se* cases have been among Nims' most interesting. "A year or so ago," he recalls, "I had a case in Los Angeles involving a lady who had a little hotdog stand about the size of my desk. Well, she prepared all of her food a couple of miles away in the kitchen of her home, and she was claiming part of her home maintenance cost as a business expense. This lady tried her own case. She came to court with a shoe box filled with pictures showing what the little hotdog stand looked like. It fascinated me, listening to this lady tell me about the business she had." In the end, Nims decided the case in favor of the govern-

ment. Despite the woman's honesty, he ruled that the 1976 Tax Reform Act disqualified her from taking any deduction, since her kitchen was not used exclusively for business purposes.

*"When he first came on the court," says Howard A. Dawson, Jr., one of Nims' fellow judges, "he was already widely known and respected as knowledgeable on all aspects of federal taxation. Now he's shown he's got a fine judicial temperament. I've seen him handle counsel and petitioner alike with an even hand. He doesn't fuss, and he's not excitable in court, so he's able to deal with each case firmly but fairly."*

Dealing directly with the law is one of the joys of being a judge. Nims had little opportunity to do so in private practice. Indeed, even the opportunity to read the law was rare. "Being on the court is wonderful in that sense," he says. "You can think about problems here without

people bothering you all the time. It gives you the chance to read the law and do some research."

As in private practice, a good law clerk is a necessity. Nims smiles. "I have two now, and they're mine. They don't belong to anybody else. In my law firm, I always had to share clerks with the other partners, so it became a kind of tug-of-war over whose work they'd do first. And just because they were informally assigned didn't keep other partners from poaching on your turf." No one invades his turf now. His two law clerks, Carlton Smith and Alan Talkington, work solely for him, doing a great deal of the paperwork on the cases, researching and verifying information, and writing draft opinions for him.

"A judge turns out anywhere from four to eight cases a month," Nims explains. "First, you've got to make a decision. Then you've got to write it. Each decision is 10, 20, 30, 70, 100 pages long. You've got to check all kinds of facts; you've got to rewrite it; then you rewrite it again." Too much work for 16 judges and their staffs, Congress decided. So under the Carter administration, it created three new positions, to which President Reagan appointed three judges in 1981. One of those three is taking his place on the court in a few minutes.

Nims stands, stretching an arm as he puts on his suit coat. He is due at the swearing-in ceremony. A large audience waits in the wood-paneled main courtroom of the tax court building. "All rise," the clerk announces as a door near the bench opens and a column of black-robed judges enters. Slowly, in complete silence, the men and women judges take their places. Nims looks very much one of them. Gone is the simple, good-humored man of earlier. Here with his peers, in the enveloping robes, he is sober and impassive, a member of a select group of people entrusted with making decisions of law. 

—Eve B. Rose