

**NOMINATION OF LAURENCE J. WHALEN AND  
ROBERT P. RUWE**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

LAURENCE J. WHALEN, AND ROBERT P. RUWE TO BE JUDGES ON THE  
UNITED STATES TAX COURT

NOVEMBER 3, 1987

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**NOMINATION OF LAURENCE J. WHALEN, AND  
ROBERT P. RUWE TO BE JUDGES ON THE  
UNITED STATES TAX COURT**

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**TUESDAY, NOVEMBER 3, 1987**

**U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.***

The hearing was convened, pursuant to notice, at 10:20 a.m. in room SD-215, Dirksen Senate Office Building, the Honorable Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Baucus, Boren, Rockefeller, Daschle, Danforth, Heinz, and Wallop.

[The press release announcing the hearing and the resumés of Laurence J. Whalen and Robert P. Ruwe follows:]

COMMITTEE ON FINANCE  
United States Senate  
205 Dirksen Building  
Washington, D.C. 20510

PRESS RELEASE #H-69

FOR IMMEDIATE RELEASE  
October 28, 1987

COMMITTEE ON FINANCE ANNOUNCES HEARING AND MARKUP ON  
TWO TAX COURT NOMINATIONS

Washington, D.C. -- Senator Lloyd Bentsen (D., Tex.), Chairman, announced Wednesday that the full Committee will hold a hearing and markup on the nominations of Lawrence J. Whalen and Robert P. Ruwe for positions as judges on the United States Tax Court.

The hearing and markup will be held on Tuesday, November 3, 1987 at 10:00 a.m. in Room SD-215 of the Dirksen Senate Office Building.

Whalen, 42, is a partner in the Oklahoma City, Oklahoma law firm of Crowe and Dunlevy, and has served in the United States Justice Department's Tax Division. Ruwe, 46, is Director of Tax Litigation in the Internal Revenue Service Office of Chief Counsel.

LAURENCE J. WHALEN

Office:	Home (temp.):
1800 Mid-America Tower	1507 West Wilshire Blvd.
20 North Broadway	Oklahoma City, Oklahoma 73116
Oklahoma City, Oklahoma 73102	(405) 848-8421
(405) 235-7744	

Personal Background:

Born: December 9, 1944, Philadelphia, Pennsylvania

Married: Nan Shaver Whalen (Nan Margeson Shaver of Charleston, West Virginia)

Children: Edward Holmes Whalen, age 4.

Professional Experience:

Crowe & Dunlevy Oklahoma City, Oklahoma Specializing in Taxation and Tax Litigation	1984-Present
Hamel & Park Washington, D.C. Specializing in Taxation and Tax Litigation	1977-1984
Private Practice Charleston, West Virginia	1975-1977
Tax Division, Department of Justice Special Assistant to Assistant Attorney General and Trial Attorney (Court of Claims and Criminal Sections)	1971-1975

Professional Associations and Activities:

Immediate Past Chairman, Insurance  
Companies Committee, Tax Section,  
ABA

Member, Tax Council, Federal Bar  
Association

LAURENCE J. WHALEN (continued)

Member, Committee on Tax Litigation,  
Section of Litigation, ABA

Member, Section of Corporation, Banking  
and Business Law, ABA

Former Chairman, Subcommittee on Taxation,  
Bar Association of the District of  
Columbia

Lecturer at various tax institutes and  
seminars including the West Virginia  
Tax Institute, October, 1981;  
Insurance Trade Association Seminar,  
November, 1980; seminars sponsored by  
Oklahoma University, in November and  
December, 1986; seminars sponsored by  
Oklahoma City University in September  
and October, 1986; and a seminar  
sponsored by the Oklahoma Bar  
Association in May, 1986.

Adjunct Professor of Law, Georgetown  
University Center, 1982-1983.

Educational Background:

LL.M. (Taxation), 1971 - Georgetown  
University Law Center, Graduate  
Fellowship

J.D., 1970 - Georgetown University Law Center  
Editorial Assistant, The Tax Lawyer

A.B., 1967 - Georgetown College

LJW06387

OUTLINE OF INFORMATION REQUESTED OF NOMINEES

**A. BIOGRAPHICAL:**

1. **Name:** Robert Paul Ruwe
2. **Address:** **Residence:**  
317 Westview Court,  
Vienna, VA 22180
- Office:**  
Tax Litigation Division  
CC:TL:,Rm. 4050  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224
3. **Date and place of birth:** July 3, 1941  
Cincinnati, Ohio
4. **Marital status:** Married February 4, 1967,  
Mary Kay Ruwe (Sayre)
5. **Names and ages of children:** R. Paul Ruwe, age 19  
Michael E. Ruwe, age 17  
Christian S. Ruwe, age 14  
Stephen S. Ruwe, age 12
6. **Education:** Xavier University,  
Cincinnati, Ohio  
B.S.B.A. 1963
- Salmon P. Chase College of Law,  
Cincinnati, Ohio  
J.D. 1970
7. **Employment record:** Director, Tax Litigation  
Division  
Office of Chief Counsel,  
Internal Revenue Service  
Washington, D.C.  
1984 to present
- Acting Associate Chief Counsel  
(Litigation)  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C.  
Sept., 1985 to March, 1986
- Deputy Associate Chief Counsel  
(Litigation)  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 1982-1984
- Director, Criminal Tax Division  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 1979-1982



Continuation of No. 7.

Technical Assistant to Deputy  
Chief Counsel  
Office of Chief Counsel  
Internal Revenue Service  
Washington, D.C. 1977-1979

Trial Attorney, District  
Counsel  
Internal Revenue Service  
Indianapolis, IN 1970-1977

Special Agent, Intelligence  
Division (Criminal  
Investigation)  
Internal Revenue Service  
Cincinnati, Ohio 1963-1970

8. Government experience:

Same as No. 7.

9. Membership:

American Bar Association

Federal Bar Association

Phi Alpha Delta Law  
Fraternity

Roger Bacon High School  
Alumni Association

Cardinal Hill Swim & Racquet  
Club

Bishop O'Connell High School  
Parents Organization

Our Lady of Good Counsel PTO

Vienna Youth Organization  
(Sports)

10. Political affiliations:

No membership or office held  
in or financial contributions  
or services rendered to any  
political party or election  
committee for the last ten  
years.

**11. Honors and Awards:**

Recipient of Senior Executive Service Awards for Excellence in 1981, 1982, 1984, 1985 and 1986.

**Law School Honors:**

Graduated 1st in Law School Class  
Order of the Curia  
Dean's List 1967, 1968, 1969, 1970  
R.B. Bettman Award 1968, 1969  
Ohio State Bar Association Award 1968  
American Law Book Award 1968, 1969

**12. Published writings:**

"Ethical Problems in Multiple Representation," Federal Bar Association, Section of Taxation Report, Fall, 1986

## STATEMENT OF SENATOR DAVID BOREN

Re: Nomination of Laurence J. Whalen to U.S. Tax Court.

Mr. Chairman, it is a pleasure for me to introduce to this Committee a fellow Oklahoman who has much to offer as a public servant. Laurence J. Whalen came to Oklahoma in 1984 as a result of a national search on the part of his current employer Crowe & Dunlevy, a highly respected law firm based in Oklahoma City, for a distinguished tax practitioner. They found an expert in Mr. Whalen.

He has had over 15 years experience in the tax profession beginning with a four year term with the Tax Division of the Department of Justice as a special assistant to Assistant Attorney General and Trial Attorney. After three years in private practice in West Virginia he joined Hamel & Park here in Washington, specializing in taxation and tax litigation.

In addition to his professional service in both the public and private sectors and his experiences in and out of the courtroom, Mr. Whalen has been very involved with several bar associations, lending his expertise to the advancement of the body of tax law. He comes to us highly educated and experienced and we are indeed fortunate to have someone of his caliber available for public service.

Mr. Whalen enjoys a very fine reputation among his colleagues in OK, all of whom have recommended him to me without reservation.

The CHAIRMAN. This hearing will come to order.

Now the first nominee for our consideration this morning is Mr. Laurence J. Whalen. Mr. Whalen, welcome. We are pleased to have you here.

Mr. WHALEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Whalen is a partner in the Oklahoma City law firm of Crowe and Dunlevy. He has been associated with that firm since 1984. Prior to that time he was associated with the law firm of Hamel and Park, of Washington, D.C., and previous to that he had experience as general counsel for a West Virginia company, and as an attorney in the Tax Division of the United States Department of Justice.

He is a graduate of Georgetown College and Georgetown Law School.

And I would say, Mr. Whalen, that you are very much further fortified by the man on your right, our distinguished member of this Committee.

Mr. WHALEN. I am certainly honored he is here, Mr. Chairman.

The CHAIRMAN. No question but what you are. [Laughter]

Senator Boren, we are delighted to have you.

Senator BOREN. Thank you very much, Mr. Chairman. And we have heard a very good answer to the first comment by the nominee.

Mr. Chairman, it is a pleasure for me to introduce to this Committee a fellow Oklahoman. He has much to offer as a public servant. Laurence Whalen came to Oklahoma in 1984 as a result of a national search on the part of his current employer, Crowe and Dunlevy—which is a very highly respected law firm based in Oklahoma City—as they were seeking a well experienced and highly capable tax practitioner, and they found that expertise in Mr. Whalen.

My only hesitation in presenting him to this Committee and in urging his confirmation is the fact that we felt privileged to have him come to Oklahoma. He and his family are certainly a well regarded part of our community in the part of our State, and we hate to lose them back to the Washington area.

He has over 15 years of experience in the tax profession, beginning with a 4-year term with the Tax Division of the Department of Justice as a special assistant to the Assistant Attorney General and Trial Attorney.

After three years in private practice in West Virginia, he joined the firm of Hamel and Park here in Washington specializing in taxation and tax litigation.

In addition to his professional service in both the public and private sectors and his experience in and out of the courtroom, Mr. Whalen has been very involved with several bar associations in the States and communities where he has practiced, lending his expertise to the advancement of the body of tax law. He comes to us highly educated and experienced and we are indeed fortunate to have someone of his caliber available for public service.

He enjoys, as I have said, a very fine reputation among his colleagues and his peers in Oklahoma, all of whom have contacted me and have recommended him to me without reservations.

So, Mr. Chairman, it is certainly a privilege for me to present Mr. Whalen to the fellow members of this Committee.

The CHAIRMAN. Thank you very much, Senator.

Mr. Whalen, you have undoubtedly heard about the Taxpayers' Bill of Rights that we attached to our Reconciliation Bill. Do you have any feeling concerning that? Have you had the chance to look at any of its provisions? And if you have, I would like you to share your reactions with us.

#### STATEMENT OF LAURENCE J. WHALEN TO BE A JUDGE OF THE U.S. TAX COURT

Mr. WHALEN. Thank you, Mr. Chairman.

Let me start out by again thanking Senator Boren and by telling you how flattered and honored I am for him to have introduced me to this Committee. He is extremely well thought of in Oklahoma and it is an honor to me for him to have done that.

The Taxpayer Bill of Rights is relatively new in terms of receiving serious consideration by the tax bar because it is a perennial type of tax legislation. Initially, I believe that the bill would have required a shifting of the burden of proof with respect to the proof of a deficiency. So that rather than a taxpayer being required to prove his case before whichever forum he selected, the Internal Revenue Service would have to disprove his claim.

That, I guess, is a provision that even as a tax practitioner, I don't think the Internal Revenue Service could live with. And I would not be in favor of that. But it is my understanding that at least in the more recent versions of the bill, that provision has been eliminated.

The CHAIRMAN. Mr. Whalen, I did not agree with that one either. And I think that turned into a general feeling of the Committee, and the author of the bill made a major change in that.

Mr. WHALEN. The other provisions of the bill I am not entirely familiar with. There are two things that I understand about the bill. One provision would be a technical amendment to allow the Tax Court to enjoin collection activity with respect to cases that have been filed in the Tax Court to assure that a taxpayer is not

burdened with collection activities while he is trying to petition the Tax Court. There are paper flow problems and before the Collection Division finds out about the filing of the petition, it has apparently in some cases taken steps to undertake collection. I think that would probably be a worthwhile provision.

Keep in mind that my understanding of the bill is not based upon any study, but newspaper reports and the like.

The other provision that I am familiar with to some extent is a revisitation of the burden of proof which would be required in order to obtain attorney's fees on behalf of a successful taxpayer; whereas, the 1986 Act requires a taxpayer to meet a burden of showing that the position of the Internal Revenue Service after it reached the District Counsel was substantially unjustified. The Bill of Rights bill would convert that to require the Internal Revenue Service to show its position to have been substantially justified.

And I think generally, the threat of having attorney's fees awarded with some limitation is probably a significant step so that the Internal Revenue Service and its agents would have to be careful.

The CHAIRMAN. Significant step, good or bad?

Mr. WHALEN. I am not sure. I think generally it would be, from a private practitioner's point of view, I think it would be good, Mr. Chairman. I don't think that it is needed, but I do not think that it would do much harm.

The advantage is that it would make the Internal Revenue Service better police itself. And I think that the use of the provision would probably, over a period of time, diminish substantially because the Service, which I think is a fairly solid organization, would develop a routine and procedures to make sure that it could meet that burden of proof when called upon to do so.

I hate to waffle on that, Mr. Chairman.

The CHAIRMAN. Well you did.

Mr. WHALEN. But I am not sure that it is needed. I do not think that it would do much harm if it were limited.

The CHAIRMAN. Oh, waffle is probably not a fair word. I guess you can do that. But it is a close question, I suppose, in the minds of many.

Now, Mr. Whalen, the Tax Court was created to try to get some consistency and some coherence in tax decisions, at least in part. Do you think it has succeeded in that?

Mr. WHALEN. The Tax Court, of course, hands down not only memoranda opinions and regular decisions by one division, which would be one judge, but also decisions that are reviewed by the Court, which is a function similar to an appellate function, where the Tax Court meets and considers an area of the law in connection with a particular case and decides what its view is. That is a persuasive type of opinion by the Tax Court. It is something that, as a tax practitioner, I pay attention to as having more dignity than a regular opinion. And I think that does serve to make the administration of the tax laws more consistent.

The CHAIRMAN. I see on the list of arrivals it is Senators Heinz, Boren, Baucus and Danforth. Senator Heinz.

Senator HEINZ. Mr. Chairman, I have no questions.

The CHAIRMAN. Senator Boren.

Senator BOREN. No questions, Mr. Chairman.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. No questions, Mr. Chairman.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. No questions.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. I have no questions, Mr. Chairman.

The CHAIRMAN. You have overwhelmed them. Thank you very much. I am delighted. It is nice to have you.

Mr. WHALEN. Thank you, Mr. Chairman.

The CHAIRMAN. Our next nominee for consideration this morning is Mr. Robert P. Ruwe. Mr. Ruwe, we are pleased to have you. Take a seat, please, sir.

Mr. Ruwe is currently the Director of the Tax Litigation Division in the Office of General Counsel of the IRS. He has served in the IRS in various capacities since 1963. He is a graduate of Xavier University and the Salmon P. Chase College of Law. He has wide experience in all aspects of civil and criminal tax litigation. I guess most of your career has been in litigation before the U.S. Tax Courts, has it not?

Mr. RUWE. That is correct, Mr. Chairman.

The CHAIRMAN. Well we are pleased to have you and would be delighted to have any statement you want to make.

#### STATEMENT OF ROBERT PAUL RUWE TO BE A JUDGE OF THE U.S. TAX COURT

Mr. RUWE. Thank you, Mr. Chairman, members of the Committee. It is indeed an honor to have the Committee consider my nomination to the Tax Court. As you noted, Mr. Chairman, most of my professional career has been spent with respect to litigation before the Tax Court. And the Tax Court, as you also know, is the primary forum in the United States for resolving tax controversies. So I am very pleased to be here.

I owe a debt of gratitude to quite a few people along the way, but none more so than to my immediate family who I am proud to say is here today. And with your indulgence, I would like to introduce them.

The CHAIRMAN. Sure. We would be delighted.

Mr. RUWE. Seated to my right immediately in the first row is my wife, Mary Kay; to her left is my son Christian; to the right is my son Paul; my son Michael; my son Stephen.

The CHAIRMAN. You have a very handsome family. I can understand your wanting to introduce them.

Mr. RUWE. Thank you, Mr. Chairman.

Again, I would like to thank the Committee for its consideration, and I would be pleased to answer any questions that you might have.

The CHAIRMAN. Well let me ask you one. You have been practicing law where you have been prosecuting, in effect, against the defendant, and you have been doing that for quite some time now. What do you think that does to your objectivity as a judge? Do you end up with a bias there or do you think you can be objective?

Mr. RUWE. I really don't think that I would have a bias. In fact, Mr. Chairman, I am sure of that.

I would like to think of litigation, at least successful litigation, as having the ability to see both sides, and the strengths and weaknesses of not only one's own case but that of one's opponent. And I think that being involved in active litigation like that, where you are continuously in that context, does give one that perspective. And I hope that I have that perspective too.

I might add that in my professional career I have tried to keep involved with professional associations, such as the Tax Section of the American Bar Association and the Federal Bar Association. I have tried to attend as many of their meetings as I can, and I have been a frequent speaker at those meetings. And it does afford one an opportunity to get the views, primarily of private practitioners, and an appreciation for what one's opponents in my role as Director of Tax Litigation feel, and I think that helps quite a bit.

The CHAIRMAN. You have quite a backlog of cases in the Tax Court. Do you have any thought on how that might be cut back?

Mr. RUWE. Yes, I do, Mr. Chairman. Actually a number of efforts and initiatives have been taken within the last several years to cut back on the inventory that is pending before the Tax Court. And as a matter of fact, for the first year in recent memory it has borne some fruit, in that the inventory of the Tax Court during fiscal year 1987 has actually decreased by about 2,000 cases from an all time high of about 83,600 cases, down to approximately 81,500 cases. And that is I think as a result of a combination of efforts that are ongoing and should be continued.

The CHAIRMAN. Let me have those numbers again.

Mr. RUWE. All right.

The current inventory pending before the Tax Court is approximately 81,500 or 600. It is a very substantial inventory, obviously.

The CHAIRMAN. Do you have any idea of the average period of time they have been pending?

Mr. RUWE. Well, I do not have an exact figure on the average period of time that the cases have been pending. I can give you some idea, I believe. For example, in the "S" case, those cases where the petitioners elect the small case procedure and the deficiency per year is \$10,000.00 or under, the inventory basically turns over on an annual basis. So that the inventory over the last four or five years has remained static in spite of the fact that 12 to 14 thousand petitions are received each year.

In the rest of the inventory, I know that from some of our statistical analysis that approximately 40 percent of the beginning inventory in the Tax Court every year is turned over. And while the inventory has risen over the last 10 years fairly dramatically, the 40 percent turnover is a relative constant throughout the last 10 years. So I think that is probably one of the more relevant figures to look at, that the inventory does seem to turn over at approximately the same rate.

The CHAIRMAN. Well, that leaves unanswered a lot of questions as to that 60 percent, do they remain the same cases?

Mr. RUWE. Sure.

The CHAIRMAN. So you really need to have some idea as to the length of time a little better than just that it seems to me. Obviously there is a lot to be done yet.

Senator HEINZ, do you have any questions?

Senator HEINZ. No, Mr. Chairman.

The CHAIRMAN. Senator Boren?

Senator BOREN. No questions, Mr. Chairman.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Ruwe, I notice that you have extensive experience in Washington with service of various capacities. I also notice that you have essentially been working for the Government for about 10 years. I am wondering how great an opportunity you had to get out of Washington and talk to folks around the country, you know, where the people reside.

Mr. RUWE. Yes, sir.

Senator BAUCUS. The longer I have this job here, the more I am convinced that Washington is very insulated, it is very isolated. In fact, I think we would make better decisions if we met fewer days of the year and were out in the country talking to people more often.

How much of an opportunity have you had during the last 10 years to talk to the folks, talk with practitioners, talk with the tax attorneys, talk with the taxpayers, just get a sense of what is happening, which sometimes is different from the briefs or from the memoranda, from the textbooks and the law books, and so forth?

Mr. RUWE. Senator, what I have tried to do is accept as many speaking engagements or engagements to be a panelist before academic groups at various universities and tax panels, such as the New York University Tax Institute. And predominantly, the attendees at those meetings are private practitioners, and I have not found them to be bashful in expressing their views on the operations of the Internal Revenue Service and how we litigate cases.

I would estimate that I have gone out on that type of trip about four or five times a year for the last five or six years. In addition to that, I certainly get out to our field organization. While that is a lot of contact with Government people, it does give one a feel of how things are going outside of Washington, D.C.

I agree with you, it is extremely important to get those views and I have gotten an earful on several occasions.

Senator BAUCUS. Well I encourage you, as a judge, that you do that as well as you possibly can, and in addition to speaking to, listening. Sometimes we can learn more by listening than we can by speaking.

Mr. RUWE. I certainly agree with that.

Senator BAUCUS. And I wish you good luck.

Mr. RUWE. Thank you, Senator.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. One question, Mr. Chairman.

We have got a deficit, as you know, that we are trying to overcome. And you have spent time with the IRS. As you leave it, do you have any advice as to how we might better collect the 80 to 100 billion dollars in taxes which are out there by taxpayers who still are not paying it, even though there has been better enforcement?



Mr. RUWE. Well, Senator, of course, there have been a lot of measures taken to increase the compliance level, such as the information return reporting and the computerization of all of the wage statements and the 1099s, et cetera.

I think—this is my opinion—that probably there is room for additional compliance measures in terms of examination coverage to set a better atmosphere for a voluntary compliance system. The examination coverage in recent years has gone down dramatically from what it was previously. And I think that, at least to me, common sense would indicate probably an increased level of compliance efforts, especially in the Examination Division area. Of course, I recognize that that does burden taxpayers to a certain extent too. There is no question about that, because there is cost involved in responding to examination requests and getting one's records together. But at least in my opinion, I think that the examination coverage level probably could be increased.

Senator ROCKEFELLER. And what would we have to do to do that?

Mr. RUWE. Well, Senator, I think that to a great extent, what I was thinking of was increase examination personnel. Now I have to say that that is not an original thought and that is an ongoing process right now. I believe the Congress has appropriated additional funds for an increase in the compliance level. And the problem is it does take time to train and get the type of experience to have a long-range impact in that area. But it is an ongoing process right now.

Senator ROCKEFELLER. Do you agree that there is about 80 to 100 billion dollars out there or would you have different figures?

Mr. RUWE. I really hesitate to say that. I have seen those studies, and they include, undoubtedly, a lot of figures in the area of illegal income, actually areas that probably one couldn't expect realistically to get a high level of compliance in. They also probably include a lot of relatively low income, cash recipients that one would question whether compliance efforts in those areas would be cost effective. That is one way of saying it. I really don't know what the figure is. But I have seen the studies, but they are based on a lot of assumptions.

Senator ROCKEFELLER. Is 80 to 100 billion dollars in the range that would be acceptable to you?

Mr. RUWE. Yes, I think that would be acceptable.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wallop.

Senator WALLOP. Mr. Chairman, I have no questions. I wish you well, sir.

Mr. RUWE. Thank you, Senator.

The CHAIRMAN. Any further questions of the witness?

[No response.]

The CHAIRMAN. Mr. Ruwe, we are very pleased to have you and thank you very much.

Mr. RUWE. Thank you, Mr. Chairman.

[Whereupon, at 10:44 a.m., the hearing was concluded.]