

On Tax—Ali Denning of Cravath

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, our guest is Ali Denning. Ali is a partner at Cravath in the Trusts and Estates group. Ali, welcome to the podcast and thanks for being with us.

Ali Denning: Thanks for having me, Len. It's a pleasure to be here.

Len: So, Ali, where do we have to go in your life, in your journey, to hear about how you got put on a path to tax? Where do we go?

Ali: Well, I'm one of those people who never really decided what I wanted to be when I grew up. So, you could go pretty recently, actually. I think probably college is where I started thinking about law and eliminating some of the other potential things to do. But it actually wasn't until I was clerking after law school that I became interested in trusts and estates. And obviously trusts and estates has a large tax component to it.

Len: Can I ask what were some of the other pathways? Like, astronaut, musician? What were the other things that you were thinking about?

Ali: Well, I sort of am interested in a lot of different things. So, I sort of had a slow burn process of elimination to figure out what I wanted to do. But the two areas that I was most interested in, other than law, were history, and—I was a history major in college and I spent a lot of time thinking about whether I wanted to go into academia.

I was also a minor in chemistry, and I was particularly interested in organic chemistry and the intersection with biology, which led me towards medicine. But I am particularly squeamish. So, I did a fair number of really embarrassing internships at medical establishments where I inevitably fainted at some point during the day and was more of a burden on the institution than a help.

So, I decided that probably that wasn't for me. Actually, after college, I was sort of thinking I needed something that was intellectually challenging, had sort of an academic bent to it. And then, also—you'll notice from, like, the professorial, the medical—I'm looking for something where I help others in some way, broadly defined.

So, that's what led me to law. And, after college, I was a legal assistant at Cravath to sort of make up my own mind that that was the right path to go down. And I had a great time. I actually had a wonderful time.

Len: I don't think I knew this. Where in Cravath were you a legal assistant? Which group?

Ali: I was in the Webster Hall Group.

Len: OK, so that's an M&A group in corporate. What do you remember about that experience?

Ali: It was really exciting. So, I graduated college in 2004. So, I was a legal assistant '04 to '06-ish, which was a very active time in the M&A markets. It was a 24/7 job for the most senior partners in the group.

I remember I was so impressed by Susan Webster, who was the senior woman partner in the group. She would be there at two in the morning, fully on her game, negotiating deals, you know. And I was in this corner making copies or whatever I was doing.

But it was a great experience. Cravath, in general, is full of wonderful people and the work we do is so team-based that it's a very bonding experience. And I still have some of my best friends in the world—both fellow paralegals and also some of the more junior associates I worked with—I'm still in touch with them and they're wonderful people. And I really look back fondly on those times.

Len: Wow. OK. So, then you decided you want to go to law school and it was, you said, during your clerkship that you really started to focus on tax or T&E as a place to begin your legal practice. What was it in your clerkship that focused you on that?

Ali: So, I came out of the Cravath experience thinking, "Yes, there's enough areas in law that I can really get excited about the substance. I love the people. This is a great area. I can find my place."

And then I went to law school and spent three years trying all kinds of different things and didn't really figure out what I wanted to do. Everyone who goes to Yale Law School thinks about being a professor at some point. So, I did the whole professor thing. I was a research assistant. I taught undergrads in a seminar in Con Law. I tried all that. I spent some time thinking I wanted to be a prosecutor. So, I did a summer at the U.S. Attorney in Seattle.

I did an internship at the Connecticut U.S. Attorney. But, ultimately, I decided that courtroom is not for me. So, you know, I continued on my long process of eliminating things. I did actually try tax and trusts and estates—and this is not a knock on Yale at all. I love Yale. It was a great experience. I learned so much about how to think.

But I took tax with Professor Markowitz, so that was really the philosophy of tax. And I took T&E with Professor Langbein, and so that was really the history of T&E. So, I didn't really get what it's like to be a practitioner out of those classes even though they were wonderful classes and very challenging.

So, when I got to the clerkship, that's when I realized, "Oh man, I should probably actually figure out, like, what I want to do after this clerkship." And I talked to a number of people, including some of the people I'd worked with in the past at Cravath.

And it was actually my conversation with a Cravath partner, Roger Turner, who was a real estate partner—I didn't work with him when I was at Cravath, but he's actually a family friend. And so, he's known me my whole life. He's heard my soul searching about what to do with my life.

And he's a very wise person, so he sort of took it all in. And he was the one who suggested, "You know, Ali, you should talk to my partner Dan Mosley, who's the Head of the Trusts and Estates Department. I think this would be a good fit for you given your sort of diversity of interests. You want an area where you can really dig into some research and have the academic element of figuring out a problem."

And also, I have an affinity for the individual-to-individual scale of advice rather than advising big companies and big transactions. So, he suggested that.

After which, of course, given my A-type nature, I talked to what feels like thousands of trusts and estates attorneys to kind of, like, do the due diligence. And that was sort of the beginning of the end. I talked to a large number of people in the field. My interest only grew from there. It's a fascinating area of law.

And also, I did not talk to a single trusts and estates attorney who was unhappy with their career and their job, which I thought was a great data point.

Len: That's interesting. So, when you started here, was there ever a sense in early days that, "Oh, man, this isn't quite what I expected." Or has it really been kind of exactly what you bargained for since the very beginning? Was there any doubt when you started?

Ali: Well, that's interesting that you say that. So, I actually started in corporate group because I took so long to figure out what I was doing in life. I hadn't summered at Cravath, so I wasn't coming back from a 2L summer. I had to call up Susan and say, "Can I maybe come back as an associate?"

I spoke to Dan and Dan said, “We’d love to have you, but it’s two months before you’re starting. We’ve already hired for this year, so go do corporate.”

So, I did a year in corporate, which was wonderful. I was in the capital markets group. I learned so much. And the nice thing about trusts and estates is it’s a varied field. So, whether you come from corporate or litigation or tax, you bring experiences that are useful and bear upon the things you’ll be doing in trusts and estates.

So, I had a wonderful experience and some of the things I learned in corporate have been very helpful to my trusts and estates practice.

But back to your original question, was there anything that was surprising? One of the things that appealed to me about trusts and estates is the diversity of things that you do on a daily basis. You keep learning. Random things come out of the woodwork pretty much on a weekly, if not monthly basis.

So, yes. There’s been plenty that’s surprised me about practice and I’ve enjoyed all of the challenge that goes along with that. There’s never a dull moment.

Len:

You mentioned the kind of individual client nature of your work, which makes perfect sense. One of the things I have come to understand over time is that even when you’re dealing with corporations or partnerships—which is to say legal entities—as your clients, the success of a practitioner and a practice, broadly speaking, has to do with the personal relationships that you make with the people who are running those organizations, either on the boards or in management or a VP of tax, what have you.

But I have also observed that people care a lot more about any particular issue when it is their own money. And it seems that, in your case, that’s almost all the time.

What things have you learned about the practice of law or people, dealing with issues like that on a regular basis, that you think maybe when you were in corporate wasn’t quite as an acute part of the daily routine?

Ali:

I think the biggest difference—and look, I was a very junior associate in corporate, so I think the “forming a relationship with the people who make decisions and advising them on an individual basis” comes more as you get more senior.

But the thing for me that I’ve noticed in terms of the advising relationship, corporate to trusts and estates is—and the thing I’ve really appreciated—is, in corporate, the individual on the other side was quite knowledgeable already about the subject area. They’d maybe done several deals that were the same before. The team was very sophisticated in the matter you were dealing with.

In trusts and estates, almost all of our clients are incredibly smart, incredibly successful people who know a lot about a lot but they don’t know a lot about estate and gift tax.

And so, when you’re talking to the client, you’re starting from pretty much zero in terms of the subject matter. And so, your substantive subject area expertise is really valuable to these incredibly smart people who could run circles around you in other areas of the world.

So, it’s been a really challenging and fun project to learn how to advise clients like that who are incredibly intelligent, but just need some of the inputs on the subject matter to sort of make the right decisions.

I think one of the key skills for a trusts and estates attorney is to have the flexibility of mind and the patience to understand, really understand the client’s goals. Because if you leave me in a dark room to come up with the perfect estate plan or the perfect transaction, I’m going to be focused on the tax efficiency of that transaction.

And sometimes you walk into a room with a client, you know, with your perfect plan in place and within three minutes it becomes clear that saving the last dollar of tax is really not what this client is focused on, and they have any number of other goals they’re trying to achieve.

So, the project of getting yourself into the client's mind and seeing the role from their perspective and then overlaying your subject area expertise onto that sort of viewpoint is really the challenge and the delight of the practice because you can really bring a lot of value. But you have to understand where the client's coming from and where they want to end up rather than just serving up some cookie cutter, here's-how-you-save-taxes solution.

Len: It's a really useful observation that I think is applicable to a transactional lawyer like me because when I see something, I've got to go, you know, kind of hammer in the tax efficient solution. Or at least my mind goes there as an instinctual matter.

But even corporate clients have other priorities besides tax. Sometimes they don't actually want to be bothered with tax. Other times tax is essential to the deal and they know they have to make the deal tax free or it doesn't work.

And then other times it's somewhere in between, you know: "What are the other considerations that we should take into account besides tax?"

But I think it really is useful for lawyers in any practice to realize that, especially if you're a specialist, your particular area of expertise may not be aligned with the goals of the client you're talking to. And that's fine. It doesn't mean that you're not important, it just means that your role is secondary in the client's mind.

You still have to do your part of the thing right. But the client has other objectives that, you know, other lawyers at the Firm can manage or deal with. But having a sensitivity to that is really kind of an interesting way to think about it. And it's very similar in your practice and mine.

Ali: Absolutely. I think there's a lot of similarities there. And I'm sure you've found, Len, that when you're dealing with a client who wants and needs to be aware of the tax implications, but may make choices that don't optimize the tax outcome, there's a real skill to packaging your advice in a way that is understandable and digestible, but doesn't take 40 minutes to deliver, because the client's focused on something else.

And they do need to understand the tax implications, but they don't want to dwell on them.

Len: You're absolutely right. I mean, sometimes if a client isn't going to follow your advice and it's going to be catastrophic, you have to say, "This is a red light I'm giving you here," right? Other times it's like, "Look, this is a green light over here and this light is slightly less green. It's not even yellow, it's just slightly less green. But you can go through this intersection—you can do this thing this way. It's just not quite as optimal."

And you're right: I think packaging that in a way people can process makes sense. This brings me to a question that I ask almost all of my guests, and that is: What do you think it is that the best tax lawyers do well? Or T&E lawyers? What do they do that makes them especially effective? What are the common personal characteristics that you see?

Ali: It's a great question. And honestly, there are many different styles that make effective T&E lawyers, and any number of them can work. I think—following up on a theme that we've discussed already—the best T&E lawyers are client-led, in the sense that they're not prescriptive.

We do a lot of listening and thinking and hearing what the client wants to achieve, and then coming up with a—usually simple is best—a simple, elegant solution that solves the client's objectives and also layers in a whole bunch of very efficient either tax or governance or whatever optimizes the plan in some way.

But often that optimization work is happening almost in the background. So, you're hearing what the client wants to do, you're achieving those objectives, and then when you come up with your proposal or your plan and you present it, it's great in all these other ways that we're focused on in our practice group, generally. But it's not sort of the focus of why the client came to you in the first place.

So, I guess that's a long way of saying the best T&E lawyers are excellent listeners and excellent communicators.

Len: That's a theme that's come up a lot, but it's interesting to hear how you would apply it to your practice.

So, I'm curious about training young lawyers, which has been a theme that a lot of our guests have talked about because of the way they were trained.

I wonder how it works for you. I mean, we've heard about your experience as an associate, but can you talk about how, today, you and the other T&E partners are training young lawyers in your group? What kind of tasks you're giving them, what kind of responsibilities, and how you identify the ones who are really thriving.

Ali: That's an excellent question and a consistent challenge because everybody has a different learning style. So, part of the challenge is recognizing talent and finding out how to support it in different ways that work for different people.

But, generally speaking, I think it remains true, even in the world of remote work and all the flexibility we've added to the workplace, that law is essentially an apprenticeship field. And so, you kind of learn by doing and by watching.

And so, we try and give our junior associates maximum exposure to what we're doing, even if that's not sitting in every client meeting. There'll be a discussion between the partner and the associate working on the matter after to give the full background, the full spectrum of what's happening, because most trusts and estates problems are not just one tax issue.

Everything that's related to the client matters and goes into the sausage making. And I think this is probably true across the rest of the Firm. I mean, our philosophy is: We hire a bunch of smart people; they will learn on the job; they'll be fully supported on the job; but it's best to give people a lot of autonomy and responsibility early because very good attorneys will rise to that challenge.

And the best associates will take these opportunities to have early responsibility and leverage that into a situation where, within a month or two, the client's calling them—because they're responsive, they have a very good way of moving things forward and leveraging all of the support in terms of partner interaction to help think through problems, or other attorneys in the group to do research and find out the right path forward.

But I guess I would say, like most things in trusts and estates, we're pretty traditional in our training model.

Len: I like the point you make about how clients will start calling your team members, your associates. That happens in tax, too. And it's a great sign. I mean, clients will tell you—in this way, of course they'll tell you—but they'll also call you up and tell you, "I really like working with this person. Thank you for introducing me to them."

But more commonly, they'll just start calling them instead. And it's great to see people develop those relationships over time.

Let me ask this question. I've been thinking a lot these days about what changes to the federal tax law will happen at the end of the year or next year, in part because there's, you know, a big election and the entire House of Representatives is going to be reelected, et cetera.

What are a couple of things that you think the general public misunderstands about T&E law or the estate tax? What's kind of a fundamental misunderstanding about the way the legal rules work or the way the practice of T&E works?

Ali: That's a great question. I would say, just anecdotally, in talking to friends of mine about subject matters that touch on what I do for a living: I think there's two things that there's a popular misconception about. One is the number of people to whom the estate tax and the gift tax actually apply.

Because, as listeners may or may not know, the amount that you can give away free from any gift or estate tax is a very large number, currently. I think we're at \$13.6 million per person. That gets inflation-adjusted upwards every year.

Now, to your point about legislative changes, that number is scheduled to come down again at the end of 2025, absent congressional action. But I think many people sort of assume that the estate tax is going to apply to them. And, really, for most people, it's not something they need to worry about, and their estate plan doesn't need to be tax-driven.

Len: So, this reminds me that Steve Gordon, who's been a guest on the podcast and used to be the head of the tax group here once told me—gosh, it was long ago—about this. He said, “Most people have never met anyone who's met anyone who's met anyone who's met anyone who will be subject to the estate tax.”

And I thought that was kind of an interesting way to put the point that you just made. So, I'll just leave—I'll leave that there. What were some other thoughts?

Ali: The other observation, just anecdotally, is: There is a popular belief that if your estate is subject to probate, it's the end of the world, and we all need to avoid probate as much as we possibly can— which is interesting because probate is sort of annoying. It's an administrative process.

It involves courts, and dealing with courts is always a little bit slow and a little bit formal, but it's really not the end of the world.

And certainly, we take certain steps within trusts and estates to make sure that there are assets that are outside of the probate process. The issue with probate is it delays access to assets when someone passes away. So, we always make sure that there'll be plenty of assets that are available to their surviving spouse or the children or remaining beneficiaries immediately post-death.

Len: Interesting. So, I've had two other thoughts since you've been speaking. The first is: I think a lot of people are—you probably know this—a lot of people are probably scared about T&E law. They're scared about the idea of writing their wills for, I think, obvious psychological reasons.

And I think many people may not understand the importance of writing a will, even for, say, a couple with, you know, modest assets. So, understanding that we aren't giving legal advice on this podcast, what is the elevator pitch for why it's a good idea for everybody to have a will? And what kind of bad things can happen without it?

Ali: That's an interesting question that I've never been asked before. I agree with you entirely that having a will is an excellent idea because it provides your plan for what should happen when you pass away. And if you don't have that plan written down, everybody's scrambling at the time of your death to figure out what should happen and, “How do we organize ourselves?”

The best reason to make a will is that you can always change it. A will is entirely changeable at any time. So, even if you only have an idea of 70% of what you want to do, put that on paper. Put it in place, because if you don't do that, 0% of what you want to happen is going to happen.

And I have found that some clients are hesitant to make the will because they don't completely know how they want to leave their assets. But I always suggest that it's best to make a will and then put it in a drawer and look at it again about every five years and make updates as you go.

But dying without a will—if you have a surviving spouse, it's actually relatively straightforward. If you have a surviving spouse and children, depending on default law, you end up dividing assets between spouse and children.

Most couples assume that their spouse will receive all of their assets when they die. That's not always true if you don't have a will because some portion might get diverted to your children at your death, meaning that your spouse doesn't have access to all of your assets.

Len: Very interesting.

So, Ali, at the end of each of our podcast episodes, we like to talk to our guests about what they do in their spare time when they're not working and doing tax stuff. What is that for you? How do you stay busy?

Ali: This is always the most challenging question for lawyers in Big Law, I think. I have a couple things I like to do to keep myself sane, that are just for me. I have a young family, so, you know, they take up time.

But the things I do for me: I like to run. I really love music and I can't dance. So, in order to allow me to move my body to music in a manner that is not embarrassing for everybody in the immediate vicinity, I run. So, that's one of my outlets.

I also really enjoy reading. Historical fiction is one of my passions. And when I say reading, actually, I mean listening to audiobooks. I commute to work. And so, that's what I do on the commute, is listen to audiobooks, and historical fiction is one of the things that I most enjoy.

But I've also just recently started rediscovering the classics that we all read in high school. So, I just finished *Wuthering Heights*. It is really fun to reread those books once you're an adult because you—I think you bring a very different perspective when you're reading them as part of your, you know, English class in high school versus in real life. So, that's why it's been fun.

And finally, I have a sort of eclectic interest in arts and crafts. So, before I had a family, you'd come to my Halloween party and I had ridiculous amounts of, like, decorations. It was just fun to make them—all the, like, food in the shape of ghosts, et cetera. I don't have time for that now. But instead, I like to do little arts and crafts projects with my kids, and it's sort of a fun opportunity. Like, you know, boats made out of popsicle sticks and you have, like, the physics lesson that you give them along with that.

So, it's just an entertaining way to spend time with the kids. Although, as a public service announcement for anyone else who's thinking about this, there are always unintended outcomes. You know, like, my plan is like, "Oh, I'll teach them how to mix colors and we'll have some paints and, you know, two colors mixed together yields a third color."

And the lesson I'm trying to give is not the one they're interested in taking. They're more interested in how it feels to paint your entire face with a paintbrush and, you know. But yeah, that's how I mostly occupy my time outside of work.

Len: That's great. Our guest today has been Ali Denning, a Trusts and Estates partner at Cravath. Ali, thank you for being with us.

Ali: It was my pleasure.

Len: Take care.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast. And don't forget to subscribe on Apple Podcasts or Spotify.

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