

The Dramatic Moments Set To Shape Tom Goldstein's Appeal

By Jeff Overley and Jared Foretek

Law360 (August 6, 2026, 6:41 PM EDT) -- Prurient revelations, brash recriminations and purportedly glaring judicial errors in Tom Goldstein's criminal case have captivated the appellate bar for nearly 19 months, and many of those moments will be center stage in the star attorney's imminent appeal.

Long admired for his pioneering U.S. Supreme Court advocacy and creation of SCOTUSblog, Goldstein is now also known for philandering and a self-described "reckless style of gambling" in poker matches. That style eventually bled over into Goldstein's personal and professional finances, culminating in his conviction on 12 counts involving tax evasion, false tax returns, unpaid taxes and lying to lenders.

The 56-year-old's fall from grace since his January 2025 indictment — which vividly described him flying "from Hong Kong to Dulles International Airport carrying a duffel bag containing approximately \$968,000 in United States dollars" — occurred amid nearly nonstop courtroom tumult that fascinated even the most seasoned white collar lawyers.

"We're talking about a prosecution of one of the most prominent Supreme Court advocates, at least of this generation, and that's not something that happens every day," Crowell & Moring LLP partner Joshua M. Robbins, a former federal prosecutor, said in an interview. "There were a lot of salacious details about extramarital relationships and gambling activity with celebrities [and] other high-profile people. Those are not things that are part of every white collar prosecution."

Many of the sensational moments — such as testimony from "Spider-Man" actor and fellow poker aficionado Tobey Maguire, a prosecutor's account of Goldstein winning "17 one-kilo gold bars," and the U.S. Department of Justice's spotlighting of the defendant's collapsing marriage — won't matter much at the Fourth Circuit. But other episodes — such as eleventh-hour revisions to jury instructions, the exclusion of text messages about gambling and new misconduct allegations on the day of sentencing — could give Goldstein ammunition to attack a Maryland federal jury's verdict.

"Having read his papers, I do think he's got something. ... It does seem like he's got a decent argument," Hughes Hubbard & Reed LLP partner Marc A. Weinstein, a onetime DOJ prosecutor, said regarding one of several grievances Goldstein appears likely to pursue on appeal.

As the verdict enters the appellate phase, Law360 reviewed hundreds of pages of court records — including transcripts, emails, briefs and rulings — for a fuller picture of the case's extraordinary moments, and asked white collar experts to predict which events could help Goldstein avoid spending the next six years behind bars.

The Early Fireworks: "Something Shady Is Going on Here"

Eleven days after the indictment, Goldstein pled not guilty to all charges at a chippy arraignment. In hindsight, the hearing looks like a trailer for the cinematic drama that has since unfolded, and sowed the seeds for appellate arguments. Over the course of 80 minutes, comments in the courtroom referenced marital infidelity, witness tampering, mysterious cryptocurrency movements, the threatened forfeiture of Goldstein's home and concerns he might abscond overseas.

U.S. Magistrate Judge Timothy J. Sullivan had some of the strongest words. He suggested Goldstein was "a serious risk of flight," declared "something shady is going on here" when the defense resisted collateralizing Goldstein's home, and mused that he might "put Mr. Goldstein in custody" for theoretical violations of release conditions.

Two weeks later, Judge Sullivan did just that after the DOJ accused Goldstein of furtively funneling a small fortune through cryptocurrency accounts. But the claim soon seemed tenuous; in court, Goldstein asked to speak under penalty of perjury and disavowed involvement in the crypto transfers, adding that "this prosecution has just lost its mind."

That evening, defense counsel emailed a DOJ attorney and wrote, "You have made a serious mistake." Amid revelations the crypto kept flowing while Goldstein was incarcerated, he was set free.

Over the next year and a half, warring accusations of deceit and outright lies darted back and forth, and it now appears that views of Goldstein's honesty will be pivotal on appeal.

The Excluded Text Messages: "Deeply Prejudicial" or "Harmless"?

Goldstein testified at trial, but the exclusion of "clearly admissible" evidence was "deeply prejudicial" to his credibility, he wrote while unsuccessfully seeking a new trial. The evidence consists of text messages from 2016 — the year for which he was convicted of tax evasion — about gambling income. Although U.S. District Judge Lydia Kay Griggsby let the DOJ show similar texts to the jury, she blocked others that Goldstein sought to present, deeming them hearsay.

"The excluded text messages were key to Mr. Goldstein's state-of-mind defense for every tax charge and would have bolstered Mr. Goldstein's credibility across the board," the defense wrote in a July 22 filing just before sentencing.

Importantly, Judge Griggsby at a June hearing conceded that "the defense has some strong arguments" the texts should've been admitted. She later concluded, however, that "to the extent that the court erred in excluding this evidence," it was harmless. That's because Goldstein "testified extensively about the excluded evidence," and because a curative instruction told jurors "not to speculate" about the exclusion, Judge Griggsby wrote.

But it's strange to say Goldstein's testimony compensated for the exclusion, the July 22 filing stated, given that prosecutors "repeatedly told the jury that Mr. Goldstein was lying and that his self-serving testimony was not credible." And the curative instruction wasn't therapeutic at all, the filing added, because the court "cannot instruct the jury about the importance of evidence that it has not seen."

The same filing stressed that "the government was able to support its argument regarding Mr.

Goldstein's state of mind with contemporaneous evidence, whereas Mr. Goldstein was forced" to rely solely on his testimony. Soon after the verdict, a juror told Law360 the DOJ's presentation of certain materials, including text messages, was pivotal, and that "it was just a lot of evidence to overcome."

At the Fourth Circuit, Goldstein may face an uphill battle simply because appeals courts are deferential to trial judges when assessing evidentiary rulings.

"You have to prove that a judge could not have rationally made that decision, and that ... the judge is wildly wrong — a total abuse of discretion," Anderson Kill PC shareholder Samuel M. Braverman, a veteran criminal defense lawyer, told Law360. "That's a hard thing to get."

The details of the texts, however, might make Goldstein's task a little less hard. Although the judge could've excluded texts meant to prove something was true, that's not why Goldstein sought to admit them; instead, he said they would illustrate his beliefs in 2016 about winnings, losses and debts — a crucial issue, since the DOJ had to show he willfully skirted taxes on poker proceeds.

"It seems [like a] pretty standard, non-hearsay reason to be admitting those, because they go to his state of mind at the time," Weinstein, the Hughes Hubbard lawyer, said in an interview. "It kind of guts a criminal defense a little bit if you can't get in [messages] that support what he says his intent was at the time."

The Prurient Information: "What Else Did You Lie About?"

Goldstein's truthfulness also came up in the context of romance. Prosecutors, for example, declared last year that "Goldstein lied to the court" and exhibited "serial dishonesty" regarding extramarital relationships. That was one of many times the DOJ invoked Goldstein's intimate liaisons to portray him as untrustworthy.

Experts told Law360 that attacking Goldstein's candor usually wouldn't be out of bounds, but that maligning his personal conduct may have come closer to crossing lines.

"In most high-profile, high-stakes white collar cases that go to trial ... there's a lot of emotion and energy on both sides," and "that's going to result in some pretty aggressive elbows being thrown," Robbins, the Crowell & Moring lawyer, told Law360. Prurient information is sometimes fair game, but if it's invoked "gratuitously when litigating issues that are unrelated to that topic, just to try to prejudice the decision-maker, then that is not appropriate," Robbins added.

That's precisely what Goldstein has sometimes contended. Last year, he accused prosecutors of probing his "sexual habits and preferences" in order to "prejudice the grand jury against him," adding that "misconduct in the grand jury can be a basis to dismiss the indictment."

Separately, Goldstein tried to torpedo the entire case by insisting the DOJ "improperly asked questions before the grand jury about the intimate details of his relationships with four women," according to a December 2025 order.

Those complaints fell flat, however, and at trial, prosecutors kept pushing the issue. "You lied to your wife about your poker debts? What else did you lie to her about?" DOJ counsel Sean P. Beaty asked during Goldstein's cross-examination. "You did not tell your wife that you were having many, many

affairs on her, right?"

Generally, Robbins said, if prosecutors air "heavily inflammatory material" that is "not clearly probative of anything that the jury was asked to decide, and there was an objection to it on that basis, that can definitely be [pursued on] appeal."

In motions previewing his appeal, Goldstein focused on relatively technical issues, not the DOJ's discussion of his sex life. He could still assert that inquiries about infidelity made the trial unfair, but there could be obstacles. One hurdle is the leeway that trial judges possess to decide what's admissible. Another is the fact that Judge Griggsby only greenlit discussion of romantic relationships after the defense made related references.

It's not uncommon for the DOJ to emphasize "things that it thinks are salacious," and it "gets a lot of free rein," Braverman told Law360. "Sometimes," he added, "defendants open the door to these sorts of problems."

The Jury Instructions: "An Unprecedented Violation"

In recent briefs, Goldstein has also criticized last-second changes to the jury instructions, and observers say those changes could be the strongest basis for erasing his convictions.

The dispute boils down to the removal — after closing arguments — of language in the instructions regarding "accessory liability," or aiding and abetting. The indictment included accessory statute citations alongside citations to statutes for specific charges, such as tax evasion. But the verdict form lacks any statutory citations, and Goldstein insists the jury may have convicted him under the accessory statute without knowing the essential elements of that offense. Elements are discrete components of crimes, and to obtain a conviction, each element must be proven beyond a reasonable doubt.

According to court records, the DOJ proposed deleting the accessory language, calling it unnecessary because the instructions would still contain accessory statute text. Judge Griggsby approved.

By doing so after closing arguments, the judge committed "an unprecedented violation of [an] unambiguous rule," Goldstein contends. He pointed to Federal Rule of Criminal Procedure 30, which says a court "must inform the parties before closing arguments how it intends to rule" on jury instructions. Omitting the elements also "violated core due process principles," Goldstein wrote in a late May brief.

Those are promising arguments, attorneys say, partly because the Fourth Circuit will start on a blank slate — rather than simply asking if the instructions fell within Judge Griggsby's discretion, the circuit will determine if the instructions were in fact legally sound.

"Jury instructions are one of the best places to argue, because the standard of review is de novo," or from scratch, Braverman said. "The appeals court [essentially asks], 'What is the correct answer?' Not, 'Did the judge abuse their discretion?' Really a good place to be."

In a May brief, the DOJ defended the revised instructions; although they contained text from the accessory statute, that text "merely summarized the indictment" and "did not permit the jury to convict" under the statute, prosecutors wrote.

But that characterization "makes no sense," Goldstein responded, because it would mean the court approved instructions that "jurors were not permitted to act on" and "could only serve to confuse the jury."

Weinstein said Fourth Circuit precedent appears favorable for the defense, generally stipulating that it's "not sufficient" to present statutory text to jurors without also describing elements.

"There's no way to know what the jury decided, and so, it may be that the jury found him guilty on the aiding and abetting theory without being instructed what the elements are," Weinstein told Law360. "And that's a problem, in my mind."

The Sentencing: "I Can't Believe We're Having This Conversation"

In a case that delivered one bombshell moment after another, it perhaps shouldn't have been surprising that the trial court denouement — Goldstein's sentencing — produced even more intrigue than expected. That came in the form of a prosecutor's description of new concerns about tax shenanigans.

After the 72-month sentence came down, DOJ attorney Emerson Gordon-Marvin said Goldstein tried to move a multimillion-dollar tax credit to his wife and didn't report the attempt to his probation officer.

"His statement to probation is flatly false," Gordon-Marvin said at the July 24 hearing. "More infuriating, frankly, is that we are yet again playing another game of cat and mouse."

Judge Griggsby appeared to suggest the tax maneuver was a factor when she refused to let Goldstein remain free pending appeal.

"I can't believe we're having this conversation, to be perfectly frank," she told Goldstein. The judge added, "I sadly find myself" having run out of patience, and "regret, quite candidly," ordering him into custody immediately.

It's not clear whether the development might shape appellate proceedings. Defense counsel protested that they were being blindsided, but Judge Griggsby replied that it was "just one of a number of concerns."

In any event, Goldstein has acknowledged that a Fourth Circuit win won't bring back everything he's lost. A court filing before sentencing described him losing friends, no longer being able to practice law, being forced to sell SCOTUSblog and enduring "a public dissection of intimate aspects" of his once-enviable life.

"Even if Mr. Goldstein prevails ... on appeal," his lawyers wrote, "the impact of this case on his life is irreversible."

The case is U.S. v. Goldstein, case number 8:25-cr-00006, in the U.S. District Court for the District of Maryland.

--Additional reporting by Phillip Bantz. Editing by Alanna Weissman.
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