

# *Nova Law Review*

---

*Volume 28, Issue 3*

2004

*Article 13*

---

## A Tax Professor's Journey into Law and Popular Culture

Gail Levin Richmond\*

\*

Copyright ©2004 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

## A TAX PROFESSOR'S JOURNEY INTO LAW AND POPULAR CULTURE

GAIL LEVIN RICHMOND\*

On December 28, 1999, Bankruptcy Judge A. Jay Cristol issued an “order determining that the Internal Revenue Service is still naughty and not nice.”<sup>1</sup> Perhaps the holiday season,<sup>2</sup> coupled with popular perceptions of the IRS,<sup>3</sup> occasioned this choice of language. But perhaps it merely reflected the judge’s literary sensibilities. As a law professor, I’m not surprised when a judge cites a work of fiction.<sup>4</sup> Faculty members have done it for years. If law school professors draw from popular culture in their teaching and writing, why shouldn’t judges? Or is it the fact that the case involved tax that surprises non-tax lawyers?

Many tax professors remember a time when it was fun to be a tax professor, a time when colleagues conversed with us in months other than April, a time when we weren’t shunned for being ignorant of semiotics.<sup>5</sup> Some of

---

\* Professor of Law & Associate Dean-Academic Affairs, Nova Southeastern University Shepard Broad Law Center, Fort Lauderdale, Florida.

1. *In re Cohen*, 85 A.F.T.R.2d 489, 2000-1 U.S.T.C. ¶ 50,161 (Bankr. S.D. Fla. 1999).

2. See HAVEN GILLESPIE & J. FRED COOTS, *SANTA CLAUS IS COMING TO TOWN* (1934).

3. E.g., DR. SEUSS, *HOW THE GRINCH STOLE CHRISTMAS* (1957).

4. References to fictional works can be divided into two categories. The larger category includes any reference to a fictional work. The second category, a subset of the first, covers those works that actually revolve around lawyers and their clients. Fictional works in this category represent the intersection of law and popular culture. Judicial opinions include both types of reference. See, e.g., *Greene v. United States*, 185 F.3d 67, 69 (2d Cir. 1999) (“This divergence is so out of the ordinary that, upon an initial reading of § 1256, a person might feel like Dorothy did upon finding herself transported to the Land of Oz, and, speaking to her dog, said: ‘Toto, I’ve a feeling we’re not in Kansas anymore.’”); *United States v. Noah*, 130 F.3d 490, 493 (1st Cir. 1997) (“Noah insists, in a mien reminiscent of the legendary Perry Mason, that the evidence produced at his trial actually establishes the guilt of a third person.”); *Brown v. United States*, 74 A.F.T.R.2d 5096, 5098 n.2 (N.D. Ga. 1994) (“While this court expresses no opinion as to the issue of whether or how much taxes are owed, the court is reminded of an excerpt from Charles Dickens’ *David Copperfield*: ‘It was as true . . . as turnips is. It was as true . . . as taxes is. And nothing’ truer than them.’”).

5. See Erik M. Jensen, *Critical Theory and the Loneliness of the Tax Prof*, 76 N.C. L. REV. 1753, 1753–54 (1998) (footnote omitted):

Tax professors are the air-fresheners of the American law school. If a tax prof tries to talk about serious tax research with a bunch of law school generalists, the room clears out instantly.

We tax law types are expected to sit, without nodding off, through interminable discussions on Satanism and the First Amendment. But raise one tax question with a con law person, and he's gone: “Sorry. I just remembered I have to meet with a student.”

*Id.* See generally Paul L. Caron, *Tax Myopia, or Mamas Don't Let Your Babies Grow Up to Be Tax Lawyers*, 13 VA. TAX REV. 517 (1994).

us strive to reconnect by teaching non-tax subjects, showing movies in class, writing about fictional lawyers, publishing in journals that omit “tax” from their titles,<sup>6</sup> and creating titles that illustrate how truly creative a group we are.<sup>7</sup>

If my experiences during the 1999-2000 academic year are typical, popular culture can lead to unexpected behavior. That year, I showed a movie segment in class for the first time and passed up a college basketball game to watch the opening and closing credits of *Air Force One*.<sup>8</sup> The events that prompted a classroom traditionalist<sup>9</sup> and basketball fanatic<sup>10</sup> to take these actions were totally attributable to law and popular culture. Although I committed these transgressions, I’m not planning to don a Scarlet R (for relevance) yet. As the saga below illustrates, popular culture led me to linkages I might never have made when I was a “pure” tax professor. Although I remain primarily a traditionalist, I believe my diversion that year continues to have value.

---

6. Although student-edited journals that include tax in their titles can be counted on the fingers of one hand, environmental law journals abound. Aren’t their statutes and regulations as challenging as ours? I quickly ran out of digits while counting the number of international law reviews. See generally *On-Line Directory of Law Reviews and Scholarly Legal Periodicals* (Michael H. Hoffheimer, compiler), <http://www.lexisnexis.com/lawschool/faculty/lawreviews> (last visited Apr. 6, 2004).

7. See, e.g., James Edward Maule, *Instant Replay, Weak Teams, and Disputed Calls: An Empirical Study of Alleged Tax Court Judge Bias*, 66 TENN. L. REV. 351 (1999); William J. Turnier, *The Pink Panther Meets the Grim Reaper: Estate Taxation of the Fruits of Crime*, 72 N.C. L. REV. 163 (1993); Gwen T. Handelman, *Zen and the Art of Statutory Construction: A Tax Lawyer’s Account of Enlightenment*, 40 DEPAUL L. REV. 611 (1991).

8. AIR FORCE ONE (Columbia/Tristar Studios 1997). Don’t ask why I didn’t tape the game. I’m a tax professor, not an engineer, and neither of my VCR-savvy children was home that night. Being technologically challenged, I had to watch the entire movie to ensure that I didn’t miss any of the relevant credits.

9. But I do teach a summer course entitled “Income Tax for the Uninterested,” using non-tax cases, such as defamation suits involving famous individuals, to introduce the relevant tax consequences. See, e.g., *Faigin v. Kelly*, 978 F. Supp. 420 (D.N.H. 1997).

10. Basketball is a way of life in my home state of Indiana. Remember the movie *Hoo-siers*? A few facts were changed, but the passion trumps Hollywood hyperbole. Indeed, nine of the top ten high school gyms in terms of seating capacity are in Indiana. See Sal Ruibal, *Fieldhouse a cathedral to high school hoops*, USA TODAY, Feb. 26, 2004, at 3C.

## PRELIMINARY HISTORY

The saga actually begins in 1992, when I co-authored a moderately frivolous article/play geared to law librarians.<sup>11</sup> My co-author and I made another foray into “play-writing” in a 1993 symposium on legal humor.<sup>12</sup> She moved to another law school in 1994, and I returned to more serious work.

In late 1996, two of my colleagues, knowing that I was an avid fan of *Law & Order*,<sup>13</sup> asked me to write a chapter for a book on television lawyers.<sup>14</sup> Although they offered me *Matlock* instead of *Law & Order*, I considered it my duty to accept and begin field work back in North Carolina, where Andy Griffith grew up.<sup>15</sup> Along the way I learned a lot about sports franchises in the South, Southern mystery writers, and race relations. Based on that chapter and the work mentioned above, I “joined” my school’s popular culture faculty.<sup>16</sup>

## FROM LOUIS AUCHINCLOSS TO PAUL NEWMAN

The previous section sets the background; my real immersion into popular culture began a few years later. On July 1, 1999, one of the *Prime Time Law* co-editors e-mailed a call for papers for an admiralty popular culture symposium. He planned “to show how often maritime law and lawyers have been presented in works of popular culture.”<sup>17</sup> I answered quickly and flip-

11. Carol A. Roehrenbeck & Gail Levin Richmond, *Three Researchers in Search of an Alcove: A Play in Six Acts*, 84 LAW LIBR. J. 13 (1992). We had a serious purpose—proselytizing for tax alcoves—and reported on our survey of law school law librarians.

12. Gail Levin Richmond & Carol A. Roehrenbeck, *From Tedious to Trendy: A Tax Teacher's Triumph*, 17 NOVA L. REV. 739 (1993).

13. *Law & Order* (NBC television broadcast, since 1990). My law school transcript indicates that I know virtually nothing about Criminal Law, but basketball isn't on every night.

14. PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE (Robert M. Jarvis & Paul R. Joseph, eds., 1998).

15. I acknowledge Professor Joseph J. Kalo of the University of North Carolina-Chapel Hill School of Law for giving up his ticket so that I could attend a UNC-Wake Forest basketball game during one of my research visits.

16. Several members of my faculty are known for their involvement in law and popular culture scholarship. See, e.g., Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, 1986 AM. B. FOUND. RES. J. 281; Robert M. Jarvis, *Legal Tales from Gilligan's Island*, 39 SANTA CLARA L. REV. 185 (1998); Paul R. Joseph & Sharon Carton, *The Law of the Federation: Images of Law, Lawyers, and the Legal System in "Star Trek: The Next Generation,"* 24 U. TOL. L. REV. 43 (1992).

17. E-mail from Robert M. Jarvis to *Prime Time Law* contributors (July 1, 1999) (on file with author).

pantly: “Of course I’d be interested—it was too bad that no fictional material linking tax and admiralty existed.” Soon thereafter he called my bluff and produced a volume of short stories by Louis Auchincloss.<sup>18</sup> That collection of works, about the fictional firm of Tower, Tilney & Webb, included a story entitled “The Deductible Yacht.” In that instant I became a symposium contributor for the *Journal of Maritime Law and Commerce*.<sup>19</sup>

The story’s protagonist was an associate, Bayard Kip, who determined that his client was not entitled to deduct entertainment expenses associated with his yacht because the guests were not sufficiently related to his trade or business activities.<sup>20</sup> The story included Kip’s family background, the possibility that he wouldn’t be considered for partnership when he refused to sign the tax return, and words of advice from a cynical revenue agent.<sup>21</sup>

After beginning an outline of topics to pursue, I read the other stories to find additional instances of tax or admiralty being important to the firm.<sup>22</sup> I struck out with admiralty but tax turned out to be the mother lode that would lead me, ultimately, to *Air Force One*.

*The Deductible Yacht* was not Kip’s only appearance in this book. Appearing at a partners’ lunch, he was asked to report on a conference with Commissioner Caplin regarding the elimination of tax deductions for business entertainment.<sup>23</sup> Eureka! I’m old enough to know that there really was a Commissioner Caplin, and a web search yielded an article by him on that very same topic.<sup>24</sup> Now I was in business. I could devote space to the changes in I.R.C. section 274 between 1961 and 1999, detail other problems

18. See LOUIS AUCHINCLOSS, *POWERS OF ATTORNEY* (1963).

19. Gail Levin Richmond, *The (Once) Deductible Yacht*, 31 J. MAR. L. & COM. 593 (2000).

20. Interested readers will find my descriptive limerick in *The (Once) Deductible Yacht*. *Id.*

21. *Id.*

22. Remember, I had “joined” the law and popular culture group in 1996, so this was serious research and not merely time spent away from class preparation or other writing.

23. AUCHINCLOSS, *supra* note 18, at 176.

24. Mortimer M. Caplin, *The Travel and Entertainment Expense Problem*, 39 TAXES 947 (1961). My visit to Caplin & Drysdale’s web site ([www.caplindrysdale.com](http://www.caplindrysdale.com)) establishes my willingness (although not necessarily my eagerness) to use alternative research tools. Fortunately, I was able to read the Caplin article in hard copy (a hearty thanks to all previous NSU law library directors for collecting all these old volumes), for it led to a discovery I would not have made online. Once I had the volume of *Taxes* in my hands, I did what every self-respecting book lover does; I leafed through it to see what else might be there. Double Eureka! I found articles by an attorney named Victor R. Wolder. See, Victor R. Wolder, *How the Tax Court Treats Reasonable Compensation*, 39 TAXES 473 (1961). When my class reached *Wolder v. Commissioner*, 493 F.2d 608 (2d Cir. 1974), in the casebook, they were amazed to learn that Mr. Wolder was a tax lawyer.

that might have tempted high-income taxpayers in the early 1960s,<sup>25</sup> and report on the real-world aspect of Auchincloss's text.

*The Deductible Yacht* ends with information about the client stinging another company for the yacht, which turned out to have a split main shaft. My symposium editor wondered whether the other company was a buyer, a creditor, or an insurer and suggested I ask Mr. Auchincloss. Taking advantage of my opportunity, I not only asked Mr. Auchincloss about the company that was stung and the fictional law firm, I also mentioned that I enjoyed his mention of Commissioner Caplin. In his response, Mr. Auchincloss noted that he and Caplin were old friends.<sup>26</sup>

That was just the beginning. At the back of my mind was *The Heroic Nature of Tax Lawyers*,<sup>27</sup> a review of *The Firm* whose title I liked. Bayard Kip may not have faced as dangerous a group as did Mitch McDeere, but he still acted heroically in refusing to sign the client's return.<sup>28</sup> If Tom Cruise could play McDeere, who might have played Kip in the early 1960s? From the dim recesses of my mind, I remembered *The Young Philadelphians*, a 1959 movie starring Paul Newman as a tax attorney.<sup>29</sup> If you've played a tax lawyer once, why not a second time?

After "nominating" Paul Newman for the Kip role in the movie that was not made of this book, I decided to watch *The Young Philadelphians* to see what the tax issue was. Imagine this scene—a wealthy, and somewhat ditzy, older woman who sounds remarkably like Glinda the Good Witch<sup>30</sup> sits across from Paul Newman and holds a Chihuahua named Carlos. Newman dispatches his secretary to learn who the client is. A call from the senior partner explaining that she was worth at least \$50 million causes Newman to

25. E.g., high marginal tax rates, limited marital deduction, and modest gift and estate tax exemptions.

26. Response from Louis Auchincloss to Gail Levin Richmond (postmarked Oct. 6, 1999) (on file with author). Both earned their law degrees at the University of Virginia, Caplin in 1940 and Auchincloss in 1941. University of Virginia, Notable Alumni: Literature, at <http://www.virginia.edu/notablealumni/> (last visited Apr. 6, 2004).

27. Erik M. Jensen, *The Heroic Nature of Tax Lawyers*, 140 U. PA. L. REV. 367 (1991).

28. Although Jensen insists that big-firm tax lawyers do not spend most of their time filling out hundreds of individual tax returns, tax lawyers at Tower, Tilney & Webb definitely prepared returns. *Id.* at 376; AUCHINCLOSS, *supra* note 18, at 88–89. In his autobiography, Auchincloss laments seeing the merger of corporate and personal work into "the great sea of taxation and the practice of law evolve into something more like accounting." LOUIS AUCHINCLOSS, *A WRITER'S CAPITAL* 89 (1974).

29. *THE YOUNG PHILADELPHIANS* (Warner Brothers 1959). I am not making this up. Although I didn't recall exactly what it was, I really remembered there was something about tax in the movie. Perhaps my adolescent brain filed it away because it knew I was destined to be a tax lawyer.

30. Of course she sounded like Glinda. Billie Burke played both roles.

reach for Carlos. The ensuing dialogue begins with Burke lamenting how many dogs aren't loved. Thank goodness for the SPCA, to which she gives \$5,000 per year.

Newman: "In cash?"

Burke: "Well, of course. How else?"<sup>31</sup>

Eventually Newman explains the advantage of making the gift with appreciated securities and avoiding the capital gains tax. A few scenes later, Burke leaves her old firm and becomes Newman's client.

Obviously, I had to play this scene for my income tax class. And, as Paul Newman was the star, I had to watch the entire movie myself. That led me to *Air Force One*.

#### FROM PAUL NEWMAN TO JEROME SHESTACK AND *AIR FORCE ONE*

Newman's character, Anthony Lawrence, joined a fictional Philadelphia law firm, Wharton, Biddle & Clayton. As Lawrence climbed in the firm, passing his less-talented peers, his name moved up on the lobby listing. Wait, freeze the frame!<sup>32</sup> One of the listed lawyers, Jerome J. Shestack, wasn't fictional. A Wolf, Block, Schorr and Solis-Cohen LLP partner, Mr. Shestack served as American Bar Association President in 1997-1998. I could not rest without knowing why his name appears in the movie and asked him about this in an e-mail.<sup>33</sup>

Mr. Shestack called back to explain his role as a technical advisor and the director's insertion of his name. He added that his son produced movies, including *Air Force One*, and had cast Mr. Shestack's wife in them. After that, how could I not watch the movie?<sup>34</sup>

---

31. THE YOUNG PHILADELPHIANS, *supra* note 29.

32. Had I not watched the movie on a VCR, I probably would never have even noticed this listing.

33. In a twist of "six degrees of Kevin Bacon," I was not being totally presumptuous. I actually knew Jerome Shestack. We'd served together on an ABA site inspection team a few years earlier.

34. The two movies have another commonality. Harrison Ford, the star of *Air Force One*, and Paul Newman have been recognized for both their looks and their acting. *See, e.g., Paul Newman Voted Greatest Actor*, CNN.com, at <http://www.cnn.com/2001/SHOWBIZ/Movies/01/16/Newman/> (Apr. 6, 2004). The article, which ranked Ford fourth, noted that its rankings included "box office success, Oscar nominations, acting range and marriage appeal . . . ."

## CONCLUSION

Actually, there is no conclusion. I put popular culture on hold for awhile because Foundation Press thought I should finish the sixth edition of *Federal Tax Research*. Although I realized their idea of camera-ready copy didn't include Paul Newman, I didn't regret for a moment a scholarly detour that led to correspondence with both Louis Auchincloss and Jerry Shestack and a few good nights watching movies.

Now I'm back with a vengeance. My Tax and Wills classes watch *The Young Philadelphians* (the tax scene does begin with Billie Burke's desire to change her will), my Accounting class has viewed *The Producers*, and there's a tax scene in *Giant* I'll be adding next year.<sup>35</sup> I'm now editing a humor column for the ABA Section of Taxation newsletter. It includes more judicial quotations and my most recent ditty, "Hummer, 1- Section 280F, 0: A Scorekeeper's Limerick."<sup>36</sup>

---

35. Is there a "back to my childhood theme" here? The young Elizabeth Taylor and Rock Hudson certainly complement the young Paul Newman.

36. *Tax Bites*, NEWSQUARTERLY, Winter 2004, at 28.