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ASIDE

THE HEROIC NATURE OF TAX LAWYERS

ERIK M. JENSEN†

"We'd slice out his liver and feed it to the rats."¹

John Grisham's² *The Firm* is it, the book that will change the image of the tax lawyer. Though a work of fiction, it gives birth to a new conception, a new vision, of the tax specialist that entire libraries of law review articles cannot duplicate.

Those of us in the tax law business know that we are bright, engaging, and athletic; we combine animal magnetism³ with erudition. However, tax lawyers are lumped with accountants in the public mind,⁴ and are burdened with the images of thick spectacles, green eyeshades, cluttered minds, and unlimited capacities for boredom.⁵ One commentator has even stated that a "tax lawyer is

† Professor of Law, Case Western Reserve University, Cleveland, Ohio. I would like to thank Christine A. Corcos, Helen B. Jensen, and Elizabeth A. Kaye for their comments on an earlier draft. I am particularly grateful to Ms. Corcos, Head of Public Services at the Case Western Reserve University Law School Library, for her encyclopedic knowledge (sometimes electronically enhanced) of tax law, the cinema, and obscure works of literature.

¹ JOHN GRISHAM, *THE FIRM* 280 (1991) (typical dialogue).

² The book jacket describes Mr. Grisham as "a criminal defense attorney in Mississippi. A graduate of Mississippi State University and Ole Miss Law School, he has also served two terms in the Mississippi House of Representatives." However, because of the success of this book, Grisham has abandoned law practice for full-time writing. See Daniel Wise, *'The Firm' Lets Lawyer-Author Quit Practice for Fiction-Writing*, N.Y. L.J., Apr. 18, 1991, at 1.

³ Cynical readers who recall high school physics are discouraged from remembering that magnets can also repel.

⁴ See, e.g., Don Shirley, *'Matrimony' on NBC*, L.A. TIMES, Sept. 28, 1987, § VI, at 12 (reviewing the television movie, *Assault and Matrimony* (NBC television broadcast, Sept. 28, 1987), Shirley writes that "[Michael] Tucker's character . . . is much like his Stuart Markowitz on *L.A. Law*. He isn't a tax lawyer, but he is an accountant.").

⁵ See Edward D. Kleinbard & Suzanne F. Greenberg, *Business Hedges After Arkansas* Best, 43 TAX L. REV. 393, 417 (1988) (observing that "tax lawyers would be able to amuse themselves indefinitely" with debates about the *Corn Products* doctrine); see also Dana Milbank, *Some Manage; Some Muse; Some Do Both*, WALL ST. J., Apr. 4, 1991, at B1 (describing investment banker who thinks undergraduate "philosophy training gave her a long attention span and patience with difficult concepts—helpful when dealing with tax lawyers"). For an extreme case of getting bogged down in tax law,

a person who is good with numbers but who does not have enough personality to be an accountant."⁶

No one, it has been said, ever made a movie or television series called *Frontier Accountant*.⁷ "Exciting scenes of people resolving whether revenue should be recognized or deferred, or the appropriate amortization of good will, doesn't sound like it could build up the appropriate suspense before the commercial."⁸ Someone must have totalled the receipts at the Longbranch Saloon, but he (or she) was hidden off-screen in a back room. And can you think of any books in which a major character has been a swashbuckling accountant?⁹

Tax law also has generated no cinematic spectaculars, unless you count films like *The Untouchables*¹⁰ or other stories of "revenooers" prowling the hills for moonshine. But Kevin Costner and Sean Connery were not playing tax lawyers.¹¹ And tax cases that have

see *infra* note 43.

⁶ James D. Gordon III, *A Dialogue About the Doctrine of Consideration*, 75 CORNELL L. REV. 987, 1001 n.98 (1990). Professor Gordon is, among other things, a securities lawyer, which may explain why he dumps on higher forms of law practice. In any event, the comparison is unfair. Twenty percent of the members of the Dull Men's Club are accountants, while only five percent are lawyers. See Lee Berton, *Why You Never Saw Charles Bronson Cast as Hero Accountant*, WALL ST. J., Apr. 26, 1984, at 1.

⁷ See Berton, *supra* note 6, at 1 (attributing the "*Frontier Accountant*" idea to Bob Newhart).

⁸ Alison L. Cowan, *C.P.A. Rallying Cry: Dull No More!*, N.Y. TIMES, Dec. 21, 1989, at D1, D5 (quoting accounting firm partner who is better with numbers, one hopes, than with grammar). Nevertheless, emboldened accountants are getting more screen time these days. See *id.* at D1 (discussing, among other things, LOOK WHO'S TALKING (Tri-Star 1989) (portraying heroine as accountant), MIDNIGHT RUN (Universal 1989) (portraying accountant as "likable risk-taker who is willing to embezzle \$15 million from the mob to give to the poor"), and SHE-DEVIL (Orion 1989) (featuring Ed Begley as "tall, fair-haired accountant who leaves his wife only to have two sultry women fighting over him")); see also Mary Stevens, *Home Front New Beat for 'Lethal Weapon 2,'* CHI. TRIB., Feb. 2, 1990, § 7, at 63 (discussing LETHAL WEAPON 2 (Silver 1989), which features an "eccentric accountant [not played by Mel Gibson or Danny Glover, unfortunately,] who has laundered nearly half a billion dollars in narcotics money for an organization linked to the South African government").

Television has featured at least one popular character who is an accountant. See Cowan, *supra*, at D1 (describing an episode of the television program, *Cheers* (NBC), in which "Norm, the resident accountant [at the Boston bar], invites some colleagues over for a raucous party. The invitations say wear togas. They come in suits. The band asks for requests. No one has any.").

⁹ Actually, there was one: Brian Garfield's 1973 novel, *Death Wish*. When filmed, however, with Charles Bronson playing the role of the vigilante, the character was changed to an architect. See Berton, *supra* note 6, at 1. Cf. PATRICK R. DELANEY, ET AL., *GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP): INTERPRETATION AND APPLICATION* (1990 ed.) (movie rights available).

¹⁰ THE UNTOUCHABLES (Paramount 1987).

¹¹ I should note that in *The Untouchables*, Oscar Wallace was a heroic accountant

arisen from movie production really should not count for this purpose either.¹² When tax lawyers have appeared on the silver screen or in works of literature, the poor guys have generally been characterized as “nerdy,”¹³ “toady,”¹⁴ “nebbishy,”¹⁵ or “off-the-wall.”¹⁶

Tax law may be important.¹⁷ It may even deal with sexy matters.¹⁸ It involves money, and some glamour attaches for that

(the words don't ring true, do they?) who gave his life (such as it was) as part of Elliot Ness's mob-fighting group. By suggesting that Al Capone could be prosecuted for tax evasion, Wallace was a credit, as it were, to his profession. See Cowan, *supra* note 8, at D5.

¹² See, e.g., *O'Brien v. Commissioner*, 25 T.C. 376 (1955) (discussing “collapsible corporation” formed by Pat O'Brien to produce the grade B flick, *SECRET COMMAND* (Columbia 1944)), *acq.*, 1957-1 C.B. 4. Anyone who can locate a print of *Secret Command* will perform a noteworthy service to tax law film societies, even though the film was not about tax lawyers.

For present (and most other) purposes I ignore foreign films. *Don't see* John E. Woodruff, *Tweaking the Japanese is Juzo Itami's Trademark*, L.A. TIMES, Jan. 1, 1991, at F13 (describing “two films about ‘A Taxing Woman,’ a tax-collection bureaucrat operating amid the large-scale corruption and penny-ante cheating found in Japanese business and politics”).

¹³ A reviewer of *GHOSTBUSTERS II* (Columbia 1989), for example, found most of the film's limited laughs associated with a museum curator and “Rick Moranis as a nerdy tax lawyer, whose return [(apparently the word was not used here as a term of art)] allows him a romance with the Ghostbusters' secretary.” Dave Kehr, *'Ghostbusters' Sequel Missing Original's Charm*, CHI. TRIB., June 16, 1989, § 1, at 28; see also Jake Tapper, *Ethnic Stereotypes in Prime Time*, CHRISTIAN SCI. MONITOR, Oct. 11, 1989, at 18 (viewing Michael Tucker's character, Stuart Markowitz, on L.A. Law (NBC) as an example of ethnic prejudice: a “roly-poly little tax attorney” who is “short and nerdy”). *But see* Cowan, *supra* note 8, at D1 (“[A]ccountants have always been Hollywood's favorite nerds.”).

¹⁴ Among the greedy “toads” or “toadies” who surrounded (and were despised by) Graham Greene's Doctor Fischer were an international lawyer and a tax adviser. See GRAHAM GREENE, *DOCTOR FISCHER OF GENEVA OR THE BOMB PARTY* 16 (Simon & Schuster ed. 1980). The tax adviser “hasn't had the time to develop [a soul]. Countries change their tax laws every budget, closing loopholes, and he has to think up new ways to evade them.” *Id.* at 93.

¹⁵ See Tapper, *supra* note 13, at 18.

¹⁶ See Clifford Terry, *Robert Redford Goes Behind the Camera for a New Image*, N.Y. TIMES, July 27, 1980, § 2, at 17 (“Donald Sutherland, who seems to specialize in off-the-wall characters, plays the father, a suburban tax lawyer” in *ORDINARY PEOPLE* (Paramount 1980)).

¹⁷ Barber Conable, once ranking minority member of the House Ways and Means Committee, put it like this: “There is no issue more central to the relationship between government and people than taxation.” BARBER B. CONABLE, JR., *CONGRESS AND THE INCOME TAX* 33 (1989). Or, as Henry Block might say, “Nothing comes between me and my Schedule D addenda.”

¹⁸ See Cass R. Sunstein, *Naked Preferences and the Constitution*, 84 COLUM. L. REV. 1689, 1689 (1984) (describing naked preferences). Former Commissioner of Internal Revenue Sheldon Cohen sees indirect excitement in tax law: “[T]axation, in reality,

reason alone.¹⁹ Tax lawyers are often public-spirited²⁰ and always smart. Professor Amsterdam has noted: "It is seldom given to mortal man to feel superior to a tax lawyer."²¹ And occasionally

is life. If you know the position a person takes on taxes, you can tell their whole philosophy. The tax code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity." JEFFREY M. BIRNBAUM & ALAN S. MURRAY, *SHOWDOWN AT GUCCI GULCH* 289 (1987) [hereinafter *GUCCI GULCH*] (quoting Sheldon Cohen).

¹⁹ A well regarded description of the 1986 Tax Reform Act's genesis, *Showdown at Gucci Gulch*, drew on that glamour. Titled to attract the fans of Louis L'Amour and Imelda Marcos, *Gucci Gulch's* point of view was clear: "Money is the engine that fuels much of our politics." Albert R. Hunt, *Introduction* to *GUCCI GULCH*, *supra* note 18, at xii. In general, the bad guys are the lobbyists, those who "paid \$200, \$300, even \$400 an hour to influence legislators and preserve tax benefits worth millions of dollars to their anxious clients." *GUCCI GULCH*, *supra* note 18, at 4. Outside the Senate Finance Committee room, "[t]he desperation in their voices makes it clear that big money is at stake. Their expensive suits and shiny Italian shoes give this hallway its nickname: Gucci Gulch." *Id.* The lobbyists were proponents of what Professor Sunstein titillatingly calls "naked preferences." See Sunstein, *supra* note 18, at 1689 (describing effect of naked preferences as "the distribution of resources or opportunities to one group rather than another solely on the ground that those favored have exercised the raw political power to obtain what they want").

Pairs of Guccis have obviously gained a toehold—and often taken over (a Gucci Gucci coup?)—in the worlds of intrigue and power. See GRISHAM, *supra* note 1, at 238 (describing an FBI agent's reference to "Gucci-footed hotshots" at "the firm").

²⁰ Cf. Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 48, 58-59 (1988) (noting role of tax bar in fighting to create a "clean" Internal Revenue Code and to define the boundaries between avoidance and evasion). Because he has nice things to say about tax lawyers, and because of the new *Bluebook* rule requiring that first names be included in citations to books and periodicals, see *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* 101, 111 (15th ed. 1991), you can tell that this Professor Gordon is not the same person as the Gordon cited in note 6. It is important to keep the various Gordons straight. The first Gordon (James D.) teaches at Brigham Young University, a good indication that no one could be straighter.

²¹ Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 349 (1974). But see Hoffman F. Fuller, *Tax Simplification and Its Limits*, 27 TAX NOTES 423, 433 (1985) ("[A] society which turns so many of its best and brightest into tax lawyers may be doing something wrong."), quoted in Edward J. McCaffery, *The Holy Grail of Tax Simplification*, 1990 WIS. L. REV. 1267, 1297 n.148.

tax law is tinged with humor²² or mysticism.²³ But a tax lawyer as hero? Nobody would have thought it possible.²⁴

Until now. Mitchell Y. McDeere, the protagonist in Grisham's thriller, is a tax lawyer²⁵ who graduates near the top of his class at the Harvard Law School²⁶ and who is recruited by a secretive Memphis tax firm. Normally someone with Mitch's credentials and interests would have headed for New York or Washington, at least for a few years of apprenticeship. Bendini, Lambert & Locke has only about forty lawyers, a number that is very small by Wall Street standards,²⁷ and Memphis does not have the cachet of the eastern metropolises. However, Bendini's attractions—huge salary, incredi-

²² See Martin D. Ginsburg, *Teaching Tax Law After Tax Reform*, 65 WASH. L. REV. 595, 595 (1990) ("Basic tax, as everyone knows, is the only genuinely funny subject in law school. It is an appreciation of human greed four morning hours each week."). Author Grisham apparently does not agree with Professor Ginsburg's characterization. See Wise, *supra* note 2, at 2 (revealing that "as an undergraduate, Mr. Grisham had studied accounting and thought he would become a tax lawyer until he took a tax course at Ole Miss").

²³ See James S. Eustice, *Tax Complexity and the Tax Practitioner*, 45 TAX L. REV. 7, 11 (1989) (speaking of those accruing their livelihood from tax-related pursuits as a "group of 'medicine men' (or are they witch doctors?)—the tax lawyers, tax accountants, tax teachers, tax return preparers, and various other published sources of fact, fantasy, and fiction"). Other medical metaphors have stressed the cutting edge aspect of tax law: "[S]uccessful tax lawyers are like surgeons." Boris I. Bittker, *The Bicentennial of the Jurisprudence of Original Intent: The Recent Past*, 77 CAL. L. REV. 235, 250 (1989).

²⁴ See Bill Brashler, *Corporate Lawyers Who Lead Wild Lives*, CHI. TRIB., Feb. 24, 1991, § 14, at 6 ("Corporate and tax attorneys, those steel-labeled 'of counsels,' usually languish in mahogany suites, out of metaphor's eye."). I do not consider Susan Wolfe's *The Last Billable Hour* to be an exception to this proposition. In that story of greed and lust in Silicon Valley, hero Howard Rickover does some estate planning, and he therefore must deal with tax issues. In fact, *The Last Billable Hour* must be the only mystery ever to note "an 83b election" (referring to I.R.C. § 83(b) (1988)). See SUSAN WOLFE, *THE LAST BILLABLE HOUR* 169 (1989). Nevertheless, Howard, whose investigative work helps him to blossom from a case of near-terminal nerdism, is a tax lawyer only in the sense that all lawyers must take account of the tax consequences of client work.

²⁵ OK, he also has an accounting background, but I attribute his derring-do to legal training. The accountants can defend their own profession and, besides, they've been getting better movie roles lately. See *supra* note 8.

²⁶ The Harvard degree helped overcome the drawbacks of a suspect background—broken family, brother in prison, and a bachelor's degree from Western Kentucky University. See GRISHAM, *supra* note 1, at 4.

²⁷ A 100-person firm is now "midsize." See Amy Dockser, *Midsize Law Firms Struggle to Survive*, WALL ST. J., Oct. 19, 1988, at B1; see also Erik M. Jensen, Book Review, 1990 COLUM. BUS. L. REV. 133, 141 n.52 (reviewing NANCY LISAGOR & FRANK LIPSUS, *A LAW UNTO ITSELF: THE UNTOLD STORY OF THE LAW FIRM SULLIVAN & CROMWELL* (1988)) (discussing changes in law firm size).

ble fringe benefits (including a new BMW in the color of his choice),²⁸ and interesting work—are irresistible.

The work load at Bendini is staggering, even taking into account the firm's billing practices: "[I]f the [client's] name crosses your mind while you're driving to work, stick it for an hour."²⁹ But what aspiring young Harvard lawyer has reservations about 100-hour weeks when there are difficult intellectual puzzles to solve and the resources, like a 100,000 volume library, to maximize quality? Apart from the firm's clubbish characteristics (all lawyers are white, male,³⁰ and Christian), Mitch and the other Bendini superstars fit Marty Ginsburg's characterization precisely: "The tax bar is the repository of the greatest ingenuity in America, and given the chance, those people will do you in."³¹

Sure, family life suffers. "I'm competing with the firm, and I'm losing badly," complains Abby McDeere.³² The ducks at the Peabody Hotel and the spirits of Graceland are limited in their capacities as spouse-substitutes.³³ However, the Bendini partners assure Mitch, and Mitch tries to assure Abby, that short-term deprivation can lead to early retirement and long-term gratification.

Potential readers with limited tax backgrounds may be relieved to know that *The Firm* contains no references to the passive activity loss rules.³⁴ Nevertheless, any reasonable reader might be con-

²⁸ See GRISHAM, *supra* note 1, at 7.

²⁹ *Id.* at 86.

³⁰ *But see infra* note 41 and accompanying text (noting the demise of the first and only woman lawyer at Bendini).

³¹ *Legislation Relating to Tax-Motivated Corporate Mergers and Acquisitions: Hearings Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means, 97th Cong., 2d Sess. 90 (1982) (testimony of Martin D. Ginsburg), quoted in Jonathan L. Entin, Privacy, Emotional Distress, and the Limits of Libel Law Reform, 38 MERCER L. REV. 835, 835 (1987).*

³² GRISHAM, *supra* note 1, at 156.

³³ At least deserted spouses can generally believe the stories about work pressures. The firm frowns on excessive drinking and purposely hires unattractive secretaries to keep any randy lawyers behind their desks.

This Aside takes no stand on the issue of "lookism." See SMITH COLLEGE OFFICE OF STUDENT AFFAIRS, SMITH'S NEW GUIDE FOR THE PERPLEXED (1990) (defining "lookism" as "the belief that appearance is an indicator of a person's value; the construction of a standard for beauty/attractiveness; and oppression through stereotypes and generalizations of both those who do not fit that standard and those who do"), reprinted in ACADEMIC QUESTIONS, Spring 1991, at 80, 81.

³⁴ See (if you dare) I.R.C. § 469 (1988). Personally, I prefer both passive passivity and active passivity to passive activity. But as Robert Maynard Hutchins (or somebody) stressed, all are preferable to active activity: "Every time I think about exercise, I lie down until the thought passes." Jack Smith, *Seeing Eye to Eye with More Couch Potatoes*, L.A. TIMES, Sept. 14, 1988, § V, at 1 (discussing the origin of the

cerned that a book peppered with discussions of Caribbean tax shelters, limited partnerships, Indonesian oil and gas deals, and so on, could soon become a drag.³⁵ And it might have been just that, if Bendini were your regular tax firm.³⁶ But, happily, it is not. In the midst of his around-the-clock work on perfectly legitimate client problems, Mitch realizes—a tax lawyer's brilliant deduction—that all is not right in his new world.

For one thing, an ethereal partner, who appears at quite inopportune times, has "the most evil face [Mitch] had ever encountered."³⁷ For another, although no lawyers have left Bendini in seven years, a sizeable number have suffered violent deaths—*real* deaths³⁸—since 1970. In fact, almost immediately after the McDeeres' arrival in Memphis, two Bendini lawyers end their taxable years early while scuba diving off Grand Cayman Island. When Mitch is caught examining the portraits of the deceased in the firm's library,³⁹ the remonstrations of the omnipresent Mr. Black Eyes add to the pervasive sense of evil.

A little bit of death would have gone unnoticed; the connection between death and taxes is of long standing.⁴⁰ And one of the earlier deaths, when the firm made its one try at breaking the

quotation and noting that Hutchins denied authorship of the line).

³⁵ Cf. 1 MARTIN D. GINSBURG & JACK S. LEVIN, *MERGERS, ACQUISITIONS AND LEVERAGED BUYOUTS* 94 (1991) (noting that co-author Levin "has authored numerous articles and chapters of books on a variety of exciting tax subjects, although, to the best of his knowledge, no one has read any of them").

³⁶ See Robert W. Gordon, *Introduction to Symposium on the Corporate Law Firm*, 37 STAN. L. REV. 271, 272-73 (1985) ("[E]ven the lawyers most devoted to it have to admit [that corporate practice] contains some of the world's dullest jobs."). This is Gordon number two. See *supra* note 20.

³⁷ GRISHAM, *supra* note 1, at 62. "It was the eyes, the cold black eyes with layers of black wrinkles around them. . . . When he spoke, the eyes narrowed and the black pupils glowed fiercely. Sinister eyes. Knowing eyes." *Id.* The eyes of taxes are upon you?

³⁸ Cf. Arthur D. Austin, Book Review, 11 HARV. J.L. & PUB. POL'Y 527, 528 (1988) (reviewing MARK STEVENS, *POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS* (1987)) ("Why do [young lawyers at big firms] compete to self-embalm and become the walking dead?").

³⁹ Thinking of tax lawyers studying pictures of recently deceased colleagues reminds me of something that I have to fit into a footnote somewhere. Those who are into tax memorabilia and are planning vacations should know of Rotterdam's Professor van de Poel Museum of Taxation. It has a first-rate collection of "assaying materials, fiscal seats and stamps, playingcards, round games, papyri, uniforms, weapons, means of smuggling." *Belastingmuseum: "Prof. Dr. van der Poel"* (advertisement for the museum, on file with author). Has anyone ever seen an administrative law museum?

⁴⁰ See *infra* note 43 (discussing "Bog Man").

gender barrier, was of no particular concern to anyone.⁴¹ But the other decedents seem to have been good fellows, and, in any event, the number of "accidental" deaths defies the laws of probability.⁴²

Any lingering doubts that Mitch is mired in quicksand are erased by the appearance of the FBI. Three days after the announcement that he has passed the bar exam, Mitch is approached by an agent at a hole-in-the-wall delicatessen. When Mitch reports the contact to Bendini partners, he is told that both the Internal Revenue Service, nobody's friend,⁴³ and the FBI are after the firm's clients. Those clients may not have perfect morals, but they deserve legal representation. "It's harassment" by the government, nothing more, he is told.⁴⁴ Mitch is reassured that the firm's extraordinary measures, including a security force that occupies an entire floor of the five-story Bendini building, are needed for protection against the feds.

Any relief that Mitch feels is temporary, however. Everything doesn't add up, a fatal flaw for a tax firm, and Mitch soon learns that the FBI is really on to something: Bendini is mob-controlled. In fact, the firm's role in national organized crime activities is so central that the FBI Director himself gets involved. The Director wants Mitch, bean-counter *extraordinaire*, to spill the beans on his senior colleagues.

The FBI may have the national interest in mind, but Mitch is not sure that the Bureau sees protecting his life as a part of protecting the public interest. In the greater scheme of things, the McDeeres are small potatoes.⁴⁵ Mitch and Abby wind up caught between the

⁴¹ The former associate is described to McDeere as follows:

Typical female lawyer. Came here from Harvard, number one in her class and carrying a chip because she was a female. Thought every man alive was a sexist and it was her mission in life to eliminate discrimination. Super-bitch. After six months we all hated her but couldn't get rid of her.

GRISHAM, *supra* note 1, at 92.

⁴² Tax lawyers should be intimately acquainted with probabilities due to their knowledge of audit "lotteries." See *Report of the Special Task Force on Formal Opinion* 85-352, 39 TAX LAW. 635 (1986).

⁴³ See DAVID BURNHAM, *A LAW UNTO ITSELF: POWER, POLITICS AND THE IRS* (1989) (presenting a scathing attack on IRS practices). Tax collectors have never been popular. Many bodies found preserved in European peat are assumed to be the remains of Druidic sacrifices. But "[s]ome bog bodies have been found that were clearly victims of simple murder rather than religious rites For example, a tax collector murdered in the 14th century turned up in Danish peat, and since he was fully dressed, we know the murder had nothing to do with religion." Malcolm W. Browne, 'Bog Man' Reveals Story of a Brutal Ritual, N.Y. TIMES, Jan. 26, 1988, at C1.

⁴⁴ See GRISHAM, *supra* note 1, at 214.

⁴⁵ For more vegetables used in a thriller context, see JOSEPH WAMBAUGH, *THE*

FBI and the mob. By questioning whether there is a significant difference between those two organizations when it comes to using people like the McDeeres, *The Firm* has some of the moral ambiguity of a John LeCarre novel. But *The Firm* lacks any of LeCarre's subtlety. Grisham has stated that, "[w]hen I write, I never think about William Faulkner."⁴⁶ As I was reading, I didn't either.

So be it. It's a good yarn, with a lot of rock 'em, sock 'em prose⁴⁷ and goings-on that cannot be described in an academic law review.⁴⁸ In addition, it's such a page-turner that one can almost forget the preposterousness of the entire story. Almost. Most of this book is about the chase to escape the FBI and the mob. It's *Thelma and Louise*⁴⁹ in pinstripes, and about as plausible. Suffice it to say that Mitch and friends outwit both the G-men and the hitmen, helped by Lady Luck and her very extended family.

Grisham is obviously not a fan of law practice, particularly business law practice. He left the legal world as soon as his royalties made it possible.⁵⁰ However, I do not think he intends to suggest

ONION FIELD (1973). *But see* Judith Valente, *With All Its Virtues, the Poor Cabbage Remains a Pariah*, WALL ST. J., June 18, 1991, at A1, A12 ("Cabbage isn't even celebrated in literature; it's hardly mentioned. Lewis Carroll's walrus thought it was time to talk of cabbages and kings, as if the two were opposites."). The definitive article on fruit, suspense, and the law is not yet ripe for publication, although the potential is obvious. *See, e.g.*, *Wong Sun v. United States*, 371 U.S. 471, 488 (1962) ("fruit of the poisonous tree"); ANTHONY BURGESS, *A CLOCKWORK ORANGE* (1963); JOSEPH WAMBAUGH, *THE GOLDEN ORANGE* (1990).

However, the definitive judicial opinion on fruit, vegetables, and the law has been written. *See Nix v. Hedden*, 149 U.S. 304, 307 (1893) (containing the Supreme Court's authoritative pronouncement that, botanists be damned, tomatoes are vegetables); *see also* Russell Baker, *Gipper, Scrooge and Santa*, N.Y. TIMES, Sept. 12, 1981, at 23 (noting that the Reagan administration was "debating whether school-lunch costs can be whittled further by counting ketchup on the french fries . . . as a second vegetable").

⁴⁶ Robin Street, *A Mystery No More*, OLE MISS ALUMNI REV., Summer 1991, at 8, 9 (quoting John Grisham).

⁴⁷ *See, e.g.*, *supra* text accompanying note 1.

⁴⁸ It would be different if this were an article on First Amendment obscenity analysis. *The Firm* does have one direct academic connection: it illustrates how law school can inculcate skills of wide application. For example, Mitch learns how to deal with a spouse who finds evidence of a one-night stand:

Deny. Deny. Deny. His criminal-law professor at Harvard had been a radical named Moskowitz, who had made a name for himself defending terrorists and assassins and child fondlers. His theory of defense was simply: Deny! Deny! Deny! Never admit one fact or one piece of evidence that would indicate guilt.

GRISHAM, *supra* note 1, at 148.

⁴⁹ *THELMA AND LOUISE* (Metro-Goldwyn-Mayer 1991).

⁵⁰ *See Wise, supra* note 2, at 1; *see also* Joanne Kaufman, *Legions of Lawyers Turned*

that Bendini, which is corrupt from top to bottom, is representative of business law firms in the United States. Grisham himself says not to attach any great moral to his story—"It's pure entertainment"⁵¹—and I'll take his word on that.

Nevertheless, many readers will have their suspicions confirmed that tax law and organized crime are much the same thing. Those not acclimated to the law firm environment should resist that tempting conclusion.

Grisham has no particular expertise in describing big-firm practice. His knowledge of such firms comes "from the experience of his friends at law school *interviewing* for big-city firms,"⁵² and it shows. The description of tax practice is absurd, a figment of Grisham's imagination:

A week before April 15, the workaholics at Bendini . . . reached maximum stress and ran at full throttle on nothing but adrenaline. And fear. Fear of missing a deduction or a write-off or some extra depreciation that would cost a rich client an extra million or so. Fear of picking up the phone and calling the client and informing him that the return was now finished and, sorry to say, an extra eight hundred thousand was due.⁵³

The thought of filling out hundreds of individual tax returns fills me with fear, too, but that is simply not what big-firm tax lawyers spend most of their time doing. (Remember that other profession, accounting?⁵⁴)

So don't read this book to learn what the practice of tax law is like. Read it for thrills and to gain new respect and admiration for the valiant tax lawyers living in your neighborhood. As reviewers have noted, "Boring old tax attorneys will never seem the same again,"⁵⁵ and "Grisham . . . has made the world of a firm specializing in tax law seem so enthralling."⁵⁶ Furthermore—the ultimate

Novelists, WALL ST. J., Aug. 1, 1991, at A10 (relating Grisham's statement: "I was tired of everything . . . I was tired of the pressure, the stress, the clients and most of the opposing attorneys. I'm very happy to be out of it.").

⁵¹ Tony Mauro, *Another Winner in the Legal Thriller Genre*, THE RECORDER, Apr. 1, 1991, at 10 (quoting John Grisham).

⁵² Wise, *supra* note 2, at 2 (emphasis added).

⁵³ GRISHAM, *supra* note 1, at 306. Needless to say, this passage also demonstrates an astonishing skill for dredging up clichés and mixing metaphors. Does an ill wind blow for legal writing or what?

⁵⁴ See *supra* notes 4-9 and accompanying text.

⁵⁵ Joel Selvin, *Legal Eagle Turns Snoop for the FBI*, S.F. CHRON., Feb. 21, 1991, at E5.

⁵⁶ Mauro, *supra* note 51, at 10.

thrill for tax lawyers—this is “[t]he sort of book that will be staring out of supermarket racks next year in a die-cut cover.”⁵⁷ If Scott Turow’s *Presumed Innocent*⁵⁸ stimulated interest in the lives of big-city district attorneys, Grisham’s *The Firm* may be counted on to do the same for tax attorneys. And this is no small feat.⁵⁹

I suggest one further, perhaps more modest, indication that the tax lawyer’s image will be irrevocably changed by *The Firm*. In Mitch’s negotiations with the FBI, it is taken for granted that, if he cooperates, the McDeeres’ identities will have to be changed. Mitch and Abby will have to be protected for the rest of their lives so that the mob can never find them. If nothing else from *The Firm* survives in the public consciousness, the idea that a tax lawyer has a recognizable identity is a major step forward for the tax bar.⁶⁰

⁵⁷ Selvin, *supra* note 55, at E5. The book is already a major marketing success. “[I]t was cleverly built into a best seller, partly by marketing directly to law firms through advertisements in legal journals and by seeding the market with mailings of sample books.” Roger Cohen, *A Long, Slow March Out of Storybook Land*, N.Y. TIMES, June 9, 1991, § 4, at 4. Moreover, “a one-sentence description” from the agent was all that was necessary to sell the movie rights for \$600,000. See Wise, *supra* note 2, at 2.

⁵⁸ SCOTT TUROW, *PRESUMED INNOCENT* (1989).

⁵⁹ See *supra* notes 3-24. *The Firm* shows how far Grisham’s own views about tax lawyers have evolved. See JOHN GRISHAM, *A TIME TO KILL* 306 (1989) (A threatened small-town lawyer sometimes wishes “he’d become an insurance agent or a stockbroker. Or maybe even a tax lawyer. Surely those guys didn’t regularly suffer from nausea and diarrhea at critical moments in their careers.”).

⁶⁰ Of course, it will take another spate of books to bring the public’s perception of lawyers in general to the point at which they are accorded the same respect given, say, garden slugs, but that must be the subject of a future essay. The *University of Pennsylvania Law Review* has agreed to publish the sequel.