INTERVIEW WITH
BORIS KOSTELANETZ*
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by Jasper L. Cummings, Jr.
and Robert P. Hanson

Q Before we get into your history,
Boris, tell us what you are doing
at the present time.

A In deference to my 88th birthday
coming in June of 1999, I
became “Of Counsel” to my firm
about seven years ago. What that
meant is that I have minimal involve-
ment in the day-to-day handling of
clients’ cases and maximum involve-
ment in pursuing pro bono work, to
which I have become increasingly
attached over the years. I enjoy pro
bono work because it allows me to
continue contributing to the profes-
sion that has extraordinarily favored
me over the years, and I thank clients
and courts and everyone else I have
ever come in contact with for being
very good to me. This applies even
to my adversaries and more particu-
larly to judges and most juries.

Q In that same context, are there
any judges that are particularly
memorable?

A I think I was very fortunate to
spend a good part of my years in
the Courthouse before some tough,
tough judges. Obviously, anyone
who grew up in the Second Circuit
during my years will always remem-
ber and indulge in happy recollec-
tions of Judge Learned Hand. He
was a fantastically able person and in
his own way, without really meaning
to do so, really dominated the entire
legal scene—judges, lawyers, and
probably even clients to some extent.

Q Many of us remember Learned
Hand’s opinions and his use of a
well-turned phrase, but are you
speaking more in terms of his
demeanor on the bench and the way
he dealt with attorneys?

A It seems to me that Learned Hand
did just about everything right,
whether evaluating trials on the bench
or in drafting his own very unique
opinions. For instance, it is my recol-
lection that I had some long and diffi-
cult cases for his review. After a long
trial covering several months, I would
set forth my statement of facts in my
briefs to the court. Fortunately,
Learned Hand’s opinions frequently
concurred with my assessment of the
situation and favored my side. The
amazing thing is that he wrote his own
statement of facts in each and every
case. This was a departure from the
usual situation where an appellate
judge mainly accepts facts argued by
the prevailing party.

Q There were other famous judges
on that Second Circuit. Some
lawyers have said that Augustus Hand,
Learned Hand’s cousin, was a better
judge than Learned. Do you agree?

A My guess is that people who
were spanked gently on the top of
their heads by Learned may have
felt that way. Augustus was certainly
able, but Learned was simply in a
class by himself.

Q How did you first come to get
involved with the tax law?

A The question cannot be briefly
answered. There is a story to
tell; mainly, things develop as a matter
of circumstances. To tell my story, I
have to go back a few decades.

My father was an able and indeed
wealthy man in the days prior to the

Communist Revolution in Russia.
Nevertheless, he found trouble in
adjusting to life in New York after his
arrival in the United States. It was to
be my future that, on getting out of
high school, I would have to work dur-
during the day and attend college at night.
When one is young and ambitious, that
is really no problem at all.

Consequently, I started night school
at New York University while I had a
job in Wall Street during the day. My
major at NYU was in investments and
my minor was accounting. When the
crash came in 1929, I was working in
Wall Street in various clerical capaci-
ties. By 1933, I had reached 21 and
was eligible under stock exchange
rules to become a “customer’s man,”
an opportunity which I accepted. The
“customer’s man” rating allowed me to
share a secretary and a lovely office,
but no pay. Accordingly, I looked
around for better opportunities. As a
bit of luck, I was interviewed by Price
Waterhouse. Since I had fairly good
accounting credits, obtaining a job was
really no problem. However, I had a
lot of competition when I arrived there.
I could see right off that I had to have
something which the other fellows
with whom I competed did not have.

It just so happened that many
neighborhood friends were attending
law school at that time. They fre-
quently talked about what happened
to them as they progressed in law
school. It sounded interesting. After
looking over the competition at PW, I
approached the man in charge of per-

* Boris Kostelanetz is the recipient of the Section of Taxation’s 1999 Distinguished Service Award.
sonnel and told him that I thought I could be more valuable to PW if I went to law school. However, PW had to cooperate by not sending me out of town and not having me work overtime or the arrangement wouldn’t work. They were accommodating in that regard. I never went out of town and I never worked overtime. Since I couldn’t be sent on out of town engagements, they put me in the tax department. That was the beginning of my career in the tax field.

Q What was the day-to-day tax practice like at that time?

A At that point, at the main office of PW, there were nine men in its tax department. It is hard to envision that now. We served as a service organization to the rest of the firm. We were not supposed to go out and develop business. The other accountants in the firm would come to the tax department for advice and problems which arose in the course of their audits so, for the most part, the tax department acted as in-house consultants to the auditors. I was there for two and a half years, and it was a wonderful training school. This was during the period of 1934 to 1937. The SEC had just been established, and there was a great urgency for public companies to hire outside accountants. A lot of big companies who never had accountants in the past suddenly found that they had to have accountants to conform to the new SEC requirements.

I distinctly remember one very large international company for which PW did accounting. We had a meeting in the most senior partner’s office with a few top people in the company. To my surprise, I was told to attend the meeting. The man in charge started pointing to various individuals in the room, telling one man that he was in charge of the South American subsidiaries, the next man would take the Caribbean subsidiaries, the next one would take relations with Europe, the next one would be responsible for domestic subsidiaries, and so on. He then turned to me and said, “You, kid, take the reserve for taxes.” I proudly confess that while I did good work on the reserve for taxes, I received enormous assistance from elsewhere within the organization. PW was certainly a cornerstone of my early growth and development in the tax area.

In the meantime, I was going to law school at night, and I did well at law school. I graduated magna cum laude, was an editor, although not the editor-in-chief, of the Law Review at St. John’s University Law School, etc., etc.

Q How did you decide to attend St. John’s University Law School?

A The only law schools which then gave three-year night courses were St. John’s, Brooklyn and New York Law School. I decided to visit Brooklyn Law School to learn something of the admission process. I arrived in Brooklyn, a strange territory to me, on a hot summer day in the middle of August. I walked up to a policeman and asked for directions to Brooklyn Law School. He said it was 2 1/2 blocks that way. Then I asked for directions to St. John’s Law School.

The policeman said it was a block and a half the other way. Obviously, my first stop was at St. John’s.

I asked a lady there for a circular about their courses. She pleasantly asked me if I would like to see the Dean of the law school. I said, “Sure, why not.” I met with the Dean who cross-examined me for 15 minutes. I then made a check payable to the Bursar. There were no LSATs in those days, no letters of recommendation, it was all done, right then and there, in the Dean’s office in less than 15 minutes. I never got to Brooklyn Law School. My legal education took place at St. John’s, and I am pleased to say that night students had some very capable lawyers conduct classes along with some full-time professors. I was very satisfied with my education there, and I passed the bar shortly after graduation.

Q Can you tell us about your practice during the first few years after law school?

A By coincidence, arrival of my CPA certificate and my admission to the bar occurred within a month of each other. Lamar Hardy, a wonderful gentleman of the old school, was then the United States Attorney for the Southern District of New York. Someone told him about this CPA lawyer, which combination at that time was really rare. Today, it is much more common. It was just good luck that he thought having a CPA/lawyer was “valuable property” (as they say in Hollywood), and I was appointed an Assistant U.S. Attorney.

Practically all cases then referred to me involved some kind of “hocus pocus in the books,” whether it was false financial statements submitted to banks, concealing assets in bankruptcy, or indeed any cases which dealt with improper use of money. I also had early tax fraud cases, and I even had a few early SEC cases.

Q Can you describe one of the more celebrated cases you handled while you were Assistant U.S. Attorney?

A The story began around the year 1939 when the IRS delivered a file involving a taxpayer named Joseph M. Schenck. Mr. Schenck was chairman of the board of Twentieth Century Fox. He was the brother of Nicholas Schenck, who headed up another company in Hollywood, I think it was Loews. Warner Brothers had their own company, Louis B. Mayer ran MGM. Cohn ran Columbia Pictures.

There was a panic in Hollywood at the time. Movie theatres were literally being stink-bombed, effectively closing some of the theatres, particularly on Saturday nights. Hollywood stu-
dios panicked because closed movie houses meant there were no receipts to run the studios in Hollywood. The panic was produced by a union known as the International Alliance of Theatrical and Stage Employees. IATSE ran the theatres and some producers of pictures in Hollywood. Here’s how the story unfolded.

With the help of the Chicago mob, George Brown, a labor leader in Chicago, was elected president of IATSE. Brown brought with him an out of work gangster by the name of Willie Bioff. They worked in a small way initially in Chicago just shaking down burlesque houses and local theatres. At the same time, Schenck ran Twentieth Century Fox. His prime assistant was a man named Moskowitz whose office was in New York. Coincidentally, the IRS was investigating Schenck and brought a tax fraud case to me.

Analysis showed that Schenck had done things by charging off expenses which for tax purposes he should not have done. He had also done things with capital gains which he also should not have done. Initially, the Schenck matter was a pure and simple income tax fraud case, and when this case was brought into our office, we had no knowledge or understanding of the workings of the mob in the movie industry. We prosecuted Joe Schenck for tax evasion. He was convicted and received three years, and Moskowitz got one or two years. On appeal, they had outstanding counsel, John W. Davis, but they still lost, and Schenck went to jail. After he arrived at jail, we got word through Schenck’s lawyer, I believe, that they wanted to talk to us. We were always receptive to a story, and we listened. The story was shocking, almost unbelievable.

Q Was Schenck looking for some kind of a plea bargain to reduce his sentence for tax fraud?

A Yes, although in those days there really was no such thing as a plea bargain. If you even mentioned the term “plea bargain,” it would sound as if you wanted some kind of a sleazy, underhanded deal. Then, a defendant would either plead guilty or go to trial. Nevertheless, Schenck called us through his lawyers and said that he wanted to tell his story. He told us all about his brothers in the industry, including himself, paying off the IATSE people.

The lawyers for Schenck obviously told the lawyers for other companies what they were doing, and pretty soon there was a convention of all those people coming in and telling us their story. That led to the indictment of Willie Bioff and George Brown for shaking down the movie industry. It eventually went to trial, and Bioff and Brown each got ten years under a statute which was then called the “Copenland Act.” Today it is known as RICO. It had just been enacted in 1934, and what Brown and Bioff had done seemed to fit within the Act. They had solicited bribes and payments. Brown and Bioff got long sentences because it was more than a tax evasion case. They were sent to prison in Minnesota.

It was cold up there. We got word they wanted to come down and talk to us. We issued grand jury subpoenas and brought Brown and Bioff to New York. They then laid out the whole scheme. We then had to bring in each of the studio heads for questioning. Most of them fell in line, but some kicked and screamed. They were afraid of this or that.

Eventually, the big people in the industry, practically all of them, became our witnesses in the mob case. We got an indictment against several members who were leaders of the mob. The acknowledged leader of the mob who took over from Al Capone was Frank Nitti. To our surprise, on the day the indictment was filed, Nitti went out in the prairie, waited for a passing train to go by, then shot himself in the head so that the train engineer could see him. He wished to prove that no mobster had killed him, that he did it himself. At least that was the inference that we drew from his actions. The leaders of the mob we indicted and tried in a three-month trial. They were convicted and jailed.

Q After you put the mob out of the movie business, what came next?

A After that, Francis Biddle, who was then the Attorney General of the United States, had a problem. The Middle District of Pennsylvania had two federal judges, Johnson and Watson, for the whole district. The reputations of both judges were terrible. Congressman Estes Kefauver was appointed to head a committee to investigate judges Johnson and Watson. Francis Biddle was sensitive to the fact that he, the Attorney General, came from Pennsylvania. Biddle decided that the Department of Justice was going to run a grand jury investigation of their own in the Middle District of Pennsylvania, effectively in competition with the House Committee. Biddle called me and asked me to go to Scranton and take charge. I did what he asked although it was a difficult time for me personally. I had a wife and young children in New York. I had to commute Friday nights and Sunday nights back and forth from Scranton.

Q What did you find when you went to Scranton and started the grand jury?

A One of the judges, Johnson, was a special character. He actually asked for permission to appear before the grand jury. He was questioned for days because there were so many instances of actions as a federal judge which seemed improper. One day he just strolled in with a letter of resignation. This effectively put Kefauver out of business. Since I had no one to
A One case I particularly remember involved Mr. Vincent Quinn. He had been the United States Attorney for the Eastern District of New York and then became the Assistant Attorney General in charge of the Criminal Division in Washington. He left the Justice Department in the late 1940’s and returned to New York. He wanted to be a judge. However, the local political machine told him that he couldn’t be a judge unless he did something for the party. Now, what can one do for the party? Well, it was decided that he should run for Congress. It was expected that Dewey would win the Presidency and Quinn wouldn’t have much of a chance of becoming a Congressman, but at least Quinn would have a record of doing something for the party.

Well, no one expected Truman to win, but win he did and so did Quinn. While Congressman, Quinn became a partner in a tax firm. They had a lot of business with the IRS. Quinn did minimal work for the firm. He would generally come in on Fridays, pick up a small check, see some local constituents and generally do not much more. Unfortunately for Quinn, there was a statute which forbade members of Congress from taking money for appearing before government agencies. It was a felony for a member of Congress to appear before a governmental agency for that purpose. I defended Mr. Quinn before Judge Weinfeld, one of the best district judges ever to sit on the bench in New York. He directed a verdict in Quinn’s favor; the case never went to the jury.

Q Were there any specific tax cases that stand out?

A There were too many cases litigated, all equally interesting for revisiting. Therefore, I will choose a specially challenging case even though it never got to a court.

I represented the United Nations employees union at one point in an interesting tax-related case. One thing I fondly recall about that case is that there was a very large guard working a gate at First Avenue, and his job was to bark, “You can’t come in here. Go to other gates.” He was rough with people who wanted to come see the United Nations, but when I appeared he would say in a specially loud voice, “Mr. Kostelanetz, our lawyer, please come in.”

As a private lawyer, even though I represented the United Nations employees, I couldn’t negotiate or appear before the United Nations. To negotiate with the United Nations you had to go through the IRS, then to our Treasury Department who then talked to the State Department, and only the State Department could talk to the officials at the United Nations (private counsel could not).

As I remember it, the controversy arose out of a most extraordinary situation. Virtually every member nation of the United Nations had citizens who were employed at the United Nations and exempted from taxation salaries received at the United Nations (except citizens of Canada, Turkey and the United States). The United Nations would gross up the pay of employees who were subject to withholding so as presumably to make everyone equal. The United Nations requested tax return information from the United States since, in addition, the employees may have had income from other sources, etc., etc. The United Nations thus requested tax information, and IRS invoked confidentiality of its records. Thus, the IRS and the United Nations’ employees seemingly were on the same side of the controversy.

Q In the end, did the United States have to turn over the information?

A No, after a year or a year and a half, the United States prevailed. The IRS agreed with our side that, consistent with our statutes dealing with confidentiality of tax information, it was not required to turn over tax information and that was the end of that controversy.