In Innocent Spouse Review, a Regrettable Omission

To the Editor:

In the Woodcraft column in the August 8, 2011, issue of Tax Notes (“Spousal Tax Secrets Exposed: A Review of Innocent Spouse,” p. 635, Doc 2011-14659, 2011 TNT 154-4), Robert W. Wood reviews Carol Ross Joynt’s memoir, Innocent Spouse. Having recently read the book myself, I read the review with interest and was not surprised that Mr. Wood began his review, intended for an audience of tax lawyers, by commenting on precisely the material that makes the book so interesting for tax lawyers — its combination of a tax-sensitive, hot-button issue with descriptions of actions taken in response to it by real tax lawyers practicing in Washington.

In the very first paragraph of the review, Mr. Wood observes that the book “is a potboiler centered on a big but common tax problem” and is “even peoples with real-life tax lawyers. They include Cono Namorato of Caplin & Drysdale and former IRS Commissioner Sheldon S. Cohen, then at Morgan Lewis & Bockius LLP (and now at Farr, Miller & Washington).” Out of the four tax lawyers who were identified by name in the book, Namorato and Julie Davis of Caplin & Drysdale, and Cohen and Miriam Fisher of Morgan Lewis & Bockius, Mr. Wood mentioned two, Namorato and Cohen in that first paragraph, almost certainly because they were the two who had been public figures. Cohen is a former IRS commissioner, as Mr. Wood noted, and Namorato had been director of the IRS Office of Professional Responsibility for two years (2004-2006) as well as senior adviser to the IRS commissioner and deputy assistant attorney general in charge of criminal tax enforcement at the Department of Justice. Both men are likely to be known to many Tax Notes readers either personally or by reputation. For that reason, I understand Mr. Wood’s decision to omit the names of the two women from his listing of tax lawyers in that paragraph.

It is Mr. Wood’s omission of Fisher’s name later in his review, when he discusses Morgan Lewis’ representation, that I don’t understand and that I think is regrettable. The review accurately remarks on the status of the author of Innocent Spouse, Carol Joynt, as an elite Washington insider who could “ask Watergate reporter Bob Woodward of The Washington Post to read an IRS report about their tax liability,” and explains that it was Woodward who suggested that his own tax lawyer, Cohen, read the IRS report on her. But in the paragraph that follows that explanation Mr. Wood states that “Within days, Joynt meets with Cohen. Cohen and others at Morgan Lewis then take over for Caplin” (emphasis added). It is the reference to others and Mr. Wood’s omission of any reference to Fisher that prompted me to return to the book and then to write this response.

Although Cohen’s wisdom, expertise, and understanding appropriately come across loud and clear in the book, it is Fisher who develops the closest personal relationship with Joynt and who does much of the heavy lifting in her defense. It is Fisher about whom Joynt says, “Miriam and I talked as often as close sisters.” Innocent Spouse at 207. When threatening letters arrived from the IRS, Joynt would “open them, read them, and fax them to Miriam Fisher,” Innocent Spouse at 116, and it is Fisher who starts the “summit meeting” of various legal and other advisors at Morgan’s offices. Innocent Spouse at 126-127. It is Fisher who calls with the good news about the resolution of the case and has a long discussion about its aftermath, Innocent Spouse at 130, 207-209, and it is Fisher who is described as having written the report that forms the basis of the successful innocent spouse claim. Innocent Spouse at 170-174. Joynt observes that a pivotal meeting was held “in one of Miriam’s conference rooms,” Innocent Spouse at 173, where “point by point Miriam went through the report,” id., and shortly after the meeting, when Joynt learns important new information she says, “We’ve got to go back and tell Miriam. Come on, we’ve got to tell Miriam now….Miriam, Miriam…Where are you?….Wait till you hear this!” Innocent Spouse at 174. She then reports that “Miriam finalized the report by the end of October and submitted it to” the IRS agent. Id.

In addition, Fisher did a lot more than deal with the IRS. When tax issues threatened to affect the restaurant’s employees, “Miriam agreed to come to Nathans to talk to the staff, to answer their questions and to try to calm them,” Innocent Spouse at 188, even though it was clear that she could not represent them. Innocent Spouse at 189. The ensuing detailed description of that meeting, including what Miriam wore (a black suit), how her “talk was tough” and how she handled difficult and surprising questions, reveal the depth of admiration that Joynt had for Fisher. Innocent Spouse at 188-189. That it was Fisher
who organized Joynt’s limited liability company after the settlement with the IRS also reveals that the representation had extended beyond the tax controversy that began it. *Innocent Spouse* at 225.

The picture of Fisher that emerges from the book is that of the consummate professional woman, junior to the former IRS commissioner she works with but an accomplished lawyer who becomes the pointperson for her firm’s client and who has front line responsibility for her defense. In my view, Fisher is the tax lawyer featured most prominently in the book — an assessment which is confirmed by a search of the book on an e-reader, which reveals that Fisher’s name appears nearly twice as often as Cohen’s (92 versus 54). It is too bad that Fisher’s prominent role in the book and the tax matter that it describes did not make it into the review designed for an audience of tax lawyers, many of whom are women and all of whom would benefit from reading the portrayal of a tax lawyer as competent, compassionate, able to see the merits of the IRS’s position while still representing her client zealously and bringing the matter to a satisfactory resolution for both sides. I would recommend the book for that reason alone.

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Aug. 23, 2011

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1One of the notable aspects of the book and the quality of the tax representation described there is captured by the following passage which occurs during Joynt’s first meeting with Cohen and Fisher:  
“There are many things Bob is smart about,” Sheldon said, “but he’s not a tax lawyer. That’s why he has me. It would be wrong for you to go to court. You could lose. This is not an example of the IRS being mean-spirited or wrong. In this case the IRS was doing their job. They got the evidence and they got their man.”  
Miriam paced back and forth and then perched herself at the edge of Sheldon’s desk. “Even with the atmosphere as it is right now on Capitol Hill,” she said, “where everyone is down on the IRS, where everyone is crying for reform, this would stand as an example of the IRS behaving properly.” *Innocent Spouse* at 75.

After Joynt explains that what she’s most concerned about is retaining a means of supporting herself and her son, Fisher informs her that “I read the report and I see a lot of opportunity.” Further exchanges take place and Cohen announces that he thinks “you do have a chance” and that he should know because he drafted the innocent spouse provision in question. *Innocent Spouse* at 76. Then, after further questions from the attorneys and answers from the potential client, as well as a discussion about payment, she hires them, and the relationship deepens.

Wood Responds

To the Editor:

Prof. Abreu’s comments are well taken, and I appreciate the correction. As she surmised, I named only several famous tax lawyers. By doing so, I did not mean to minimize Ms. Fisher’s accomplishments or role. Yet I now see that I did. Abreu’s page references and support make it eminently clear that while a luminary may attract the client and be the first point of contact, the luminary can only remain so if lawyers like Ms. Fisher thereafter take the reins to ensure success. I would like to thank Prof. Abreu for highlighting it.

Sincerely,

Rob Wood  
Wood LLP  
Aug. 24, 2011

Better Late Than Never on Release of Timely Filing Rule

To the Editor:

The IRS and the Treasury have finally finalized the “Timely Postmark equals Timely Filing” rule of reg. section 301.7502-1 (76 Fed. Reg. 52561, Aug. 23, 2011), thereby resolving administratively a question that has caused a split among the Federal Circuit Courts, nearly seven years after the Proposed Regulation was initially published in the *Federal Register* on September 21, 2004. The seven-year turnaround time was somewhat extended (though not nearly as extended as the IRS/Treasury’s work on prop. reg. sections 20.2036-2 and 1.280A-3, which remain in limbo for 28 and 31 years, respectively; during my service as an attorney for the IRS I had occasion to be admonished for allowing a case to age for far, far less time).

I submitted comments on the proposed regulation (Doc 2004-21185, 2004 TNT 212-17), testified at the January 11, 2005, public hearing on the matter (Doc 2005-1144, 2005 TNT 12-21), and, on September 21, 2006, the two-year anniversary of the proposed regulation, wrote a letter to then Treasury Secretary Henry Paulson, copies of which were transmitted via several Postal Service and Private Delivery Service modes (Doc 2006-19776, 2006 TNT 184-15), in order to illustrate the need for the regulation to be finalized and to take into account the available practical options, many of which did not exist when the regulation was initially crafted under the Internal Revenue Code of 1954.