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Ground Broken For New Building

The luncheon, in Burton Dining Hall, which followed the groundbreaking ceremony.
Invocation

Almighty God, creator and sustainer of all life, without whose blessing and sufferance no human work can long prosper, we praise Thee for that which we have begun in this place and time.

We thank Thee for the sense of justice which Thou hast implanted within mankind and for the readiness of men and communities to uphold and preserve a just order.

We thank Thee for the dedication and vision of leaders in this community which have led to this new undertaking, for teachers and students committed to justice and human dignity, and for the noble heritage upon which this new venture is built.

We pray, O God, for Thy guidance and direction in all our labors. May freedom under the law continue to flourish among us. May the men and women who go forth from this place to their responsibilities be continually aware that Thou art a God of justice who dost see to the right, maintaining Thy Rule and overthrowing all powers in opposition to it.

Help us, O God, to be faithful to the whole legal tradition which lies behind our understanding of law and justice in our day; to be ready to deal with this tradition with critical insight and boldness; and to be courageous in the battle for that proper balance between freedom and order, apart from which we can not live and flourish in accordance with Thy Will.

 Unless the Lord builds the house, those who build it labor in vain.
 Unless the Lord watches over the city, the watchman stays awake in vain.
 Amen.

Delivered by Dean Walter Harrelson of the University of Chicago Divinity School at the groundbreaking for the new Law School Building.
On December 5, 1957, ground was broken for construction of the new Law Building. The Building, which will face on the south side of the Midway, will connect with Burton-Judson Residence Halls on the west, and will immediately adjoin the national headquarters of the American Bar Association on the east. The result will be a Center for the Law without parallel in the nation.

The brief ceremonies at the site opened with an invocation by Dean Walter Harrelson of the University Divinity School. That invocation is reprinted elsewhere in this issue of the Record. Chancellor Kimpton then asked all those present to join with him in turning a spadeful of earth. Included in the large gathering were alumni, Faculty, University officials, students and other friends of the School. Following

Immediately after the formal ceremony, the steam shovel goes to work.

The enthusiastic groundbreakers are, left to right, E. Douglas Schuette, President of the Chicago Bar Association, Barnabas Sear, President of the Illinois State Bar Association, Charles Rhyne, President of the American Bar Association, Lawrence A. Kimpton, Chancellor of the University, Hon. Charles Davis, JD'31, Chief Justice of the Supreme Court of Illinois, and Glen A. Lloyd, JD'23, Chairman of the Board of Trustees of the University of Chicago.

the groundbreaking ceremony, a luncheon was held in the Dining Hall of Burton Court.

Glen A. Lloyd, JD'23, Chairman of the Board of Trustees of the University, presided and spoke briefly about the past achievements of the School and the great assistance the new building would provide in carrying out its program for the future. Dean Levi discussed the School's current opportunities and problems, and introduced a representative group of guests. Charles Rhyne, President of the American Bar Association, closed the program with an address which is printed elsewhere in this issue of the Record.

The new Building will provide, among other facilities, ample lounge and exhibit space, a spacious Library Reading Room, stack space for 300,000 books, a large number of Faculty and research offices, four classroom and five seminar rooms of various sizes, a courtroom, an auditorium, administrative offices, a legal aid suite, rooms for the Law Review, a conference room, student study rooms, stack carrels, and a variety of other special facilities. It is the current expectation, based on contractor's estimates, that the Law School will be installed in the new building for the Autumn Quarter of 1959.
JOHN P. WILSON
1844-1922

My Father was born on a farm in Whiteside County, Illinois, in 1844, the fifth of thirteen children. He was of Scotch descent and his was the first generation born in this country. From an early age he did such work as he could on the farm and attended the country school in Morrison, Illinois. He was of delicate and frail physique, and was often made uncomfortable by his older brothers because he lacked physical strength. When he was nine years old, one of his brothers drove an ax into the end of a log and told Father he would give him a nickel if he could work it out. This was more than sufficient incentive and the work began with determination. The ax was successfully loosened and in giving it the final shove he fell forward and split his right kneecap on the blade. This accident doubtless changed the entire course of his life. No adequate medical or surgical services were available and he was confined to his bed for two years in the kitchen of the farm house which was the only place warm enough for a child so ill. Here he was nursed and cared for by his Mother who inspired in him the desire to read and realizing he would be unfit for farm work he prepared himself from then on for mental achievement.

At the end of this two year period his right leg had become permanently stiff at a right angle.

I might add in passing that on the 50th anniversary of his accident there was a family gathering at which my Father was presented with a small gold cup in celebration of what he was pleased to say was the foundation of whatever success he had.

In 1861 he entered Knox College and graduated with the Class of '65.

I found among his college papers three essays bearing the following titles:

"Unity of Purpose—A Condition of Success"

"Industry"

"In Government as Elsewhere Knowledge is Power"

These titles further disclose his fundamental beliefs. Above all, he followed the title "Unity of Purpose." Once he decided on the law, all else was subservient.

Among my Father's papers are essays and other memoranda written during his college career which, in spite of his singleness of purpose, clearly show that he led a normally versatile life, entering into all the activities except those which were physical. He wrote several plays of a humorous character and took part in many debates.

Most of the time he cooked his own meals and was a diligent student, although I am sure he was not a grind. He had the keenest possible sense of humor which stayed with him throughout his life.

After graduating from college, he taught for two years in the preparatory academy at Galesburg. His subjects were primarily mathematics and history.

In 1867 he came to Chicago with the definite purpose of meeting the challenge of a large city. He knew no one except Mr. John D. McIlvaine, who had previously run a general store on the Mississippi River where Grandfather Wilson traded. He took Father in which proved to be the greatest blessing of his life because his association with the family resulted in his marriage to Mr. McIlvaine's daughter.

Upon reaching Chicago Father secured employment as a law clerk and errand boy. He also had a job as a teacher in night school. His regular program was to work in the law office during the day, teach night school, and then read law. He started with Vol. 1 of the Illinois Supreme Court Reports and read them all. Fortunately there were only 45 volumes at that time, and it may be this was one of the earliest instances of studying law by the case system.

One of his letters of introduction from a friend in Galesburg discloses that Father was admitted to the Bar sometime in 1867 before he came to Chicago. I remember his telling me that in those days an applicant for admission to the Bar was introduced to a sitting Judge upon adjournment of court. The Judge without leaving the Bench asked the candidate only a few oral questions generally relating to pleading, which at that time was highly important and technical. This shows one of the great changes which has taken place in this regard.

Except for his association with certain firms for a short period after his arrival in Chicago, Father practiced alone practically all of the time until the early 1880s when his younger brother, Thomas R. Wilson, joined him under the firm name of J. P. and T. R. Wilson. T. R. died in 1885 and the following year Mr. Nathan G. Moore joined my Father. In 1892 Mr. William B. McIlvaine came into the firm which was subsequently known as Wilson & Moore; Wilson, Moore & McIlvaine; and in 1920, as Wilson, McIlvaine, Hale and Templeton.

During the 1870s and 1880s the practice of law was fundamentally different from today. Practically no one specialized in any given subject—everyone undertook whatever character of business came to him. This was certainly Father's experience. In the late sixties and early seventies Chicago was in the throes of making many improvements by special assessments. A great number of objections were filed by property owners. At this time Father was employed to contest a certain special assessment. He had no other practice and devoted his entire time to the preparation of his objections and the moment that it was possible to file them he did, to the great amazement and amusement of the other lawyers who never filed their objections until the last moment, each seeking to take advantage of what the other men had done. The result was that many of them copied Father's objections with very real success. Many an assessment was defeated where Father represented the objectors. The result was that he shortly had a tremendous number of clients for whom he filed objections. In the case of the Town of Lake View, where he lived, he defeated so many assessments that they finally elected him town attorney.

I found among Father's papers an old printed receipt which disclosed that his volume of assessment work was so large his regular going rate for charges was one percent on the amount of the assessment. The particular bill I refer to was for forty-five cents.

Father also tried many jury cases during the first twenty years of his practice. During that period he tried jury cases almost every day, consulted with clients during the noon hour instead of eating luncheon, and examined an abstract of title to real estate practically every evening at home.

Early in his practice he had a couple of admiralty cases and thought favorably of specializing in that branch of the law, until the captain of a ship which had been in a collision came to him. Father asked him to tell him the facts. The captain responded: "You tell me what you want to know and I will tell you." That was the last conference in admiralty law that my Father ever had.

Father's daily program, to which I have referred, was
so strenuous that in 1888, when he was only 44 years old, he had a severe nervous breakdown and heart trouble. The doctors advised him that he would probably never be able to work again. As soon as he was satisfied that the doctors had practically abandoned his case, he decided to act on his own with every intention of regaining his health and going on with his practice. He applied to a banker friend for a substantial loan. He stated his situation, that he had no security for the loan, that he proposed to take half the money and with his wife go abroad and live there until he was entirely well. The balance would be used to support his family during his absence. Amazingly enough the banker had confidence in him and lent him the money. My Father spent several months abroad during which time he never even read an American newspaper. He gradually took exercise and went through an established regime of his own. At the end of that time he returned to Chicago tremendously improved and started to work once more. At first he only worked half a day and never at any time after 4:30 in the afternoon. He had scarcely returned to the city when he was asked to prepare the papers incorporating the World’s Columbian Exposition, which he did and acted as counsel for the Fair.

From that time on my Father’s practice developed rapidly. He was one of the pioneers in the drafting of 99 year leases and was one of the few in the early days who had a large volume of work in this branch of the law. During all this time he was still busy examining abstracts of title. It had not yet become the practice to rely on guarantee policies.

He never tried a jury case after 1888 but he was frequently in court on the chancery side.

He had a wide experience in the drafting of wills and trusts and in various corporate matters. He had a rare facility for turning from one thing to another and apparently becoming rather an outstanding expert in each subject in turn. Many of the prominent and wealthy citizens of Chicago became his clients in addition to which he had an active practice on behalf of various corporations.

Among his longest corporate associations were Marshall Field & Company, which he incorporated in 1901 and acted as counsel during the entire balance of his life, and International Harvester Company, where he acted as consulting counsel from about 1901 to his death.

One of his most interesting experiences was with the Associated Press. Victor F. Lawson, the owner of the Daily News, engaged Father to incorporate and organize the Associated Press. This was accomplished in 1893 and the original incorporation was for profit under the laws of Illinois. There were stockholders and also members. The contracts between the several newspapers in the Association were very strenuous with reference to the distribution of news to any paper which was not a member of the Association. Several of the member newspapers complained that the Intercean was breaching its contract by selling and buying news to and from a rival. Before the complaint could be carried before the Board of Directors of the AP, the Intercean filed a bill in the Circuit Court of Cook County asking for an injunction against the AP stopping it from cancelling its membership and contract agreement. The case finally reached the Supreme Court of Illinois which held that the injunction should issue for the reason that the AP was impressed with a public interest and had to make available to any newspaper the news that it gathered regardless of the terms of any contract between the several newspapers constituting the AP. This was a subject of international importance and I believe a matter of first impression in the courts. The AP was immediately dissolved as an Illinois corporation. It moved to New York where Mr. Francis Lynde Stetson and my Father reincorporated it under the New York law as a cooperative association, and incorporated under the Membership Corporation Law. It was not a profit making company, strictly cooperative, paying its expenses by assessments levied upon its members. It was practically on the basis of a social club to which you could not belong unless you were elected. It operated for many years on this basis but finally in 1945 was held by the Supreme Court of the United States to be violative of the Sherman Anti-Trust law.

My Father’s services were frequently sought in matters of public interest. There were a number of important ones of this character, such as the Sanitary District case. As you well know, this involved the question of the sanitation of the entire city of Chicago. The Board of Trustees of the Sanitary District was organized in pursuance of the Act entitled: "An Act to create sanitary districts and to remove objects in the DesPlaines and Illinois Rivers." Subsequently the Board of Trustees passed an ordinance providing for the issuance and sale of bonds of the Sanitary District of Chicago. Almost immediately a bill was filed on behalf of a resident of Cook County and an owner of both real and personal property wherein it was asserted that the statute was invalid and unconstitutional, as well as the ordinance, and asked that a decree be entered enjoining the Trustees of the Sanitary District from issuing the bonds or causing any general tax to be levied and any other relief which might be appropriate. The sole issue raised in the court below and in the Supreme Court was whether a municipal corporation, such as the Sanitary District, could have its boundaries in part at least superimposed over another municipal corporation—in this case, the City of Chicago—and still remain a separate entity and not subject to the limitations with reference to bonding power, etc. imposed upon the other municipality—again, the City of Chicago.

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Some Off-Center Observations About Our Tax System

A Talk delivered by Walter J. Blum, Professor of Law, University of Chicago Law School at a Tax Institute sponsored by New York University.

My function at this Institute needs to be defined. I was asked to speak on any topic of my choice, subject to two limitations: I was not to talk on any procedural or substantive aspect of federal taxation, since the mere mention of the name of any case or the number of any Code section would almost certainly clash with the jurisdiction of some other speaker. And I was to confine myself to remarks appropriate to this opening day, dinner session of the Institute. To comply strictly with this latter requirement, I turned to precedent as a guide. You can well guess my initial reaction upon finding that in previous years the spot I now occupy was reserved for entertainment, and that my nearest predecessors appear to have been a professional ventriloquist and a renowned fortune teller. Naturally I began to wonder what precisely was my reputation among my hosts—considering that I am, as you might know, somewhat closely associated with another annual tax conference.

But as time went by I realized that these precedents were perfectly sound. The fortune teller and the ventriloquist surely are the proper motifs for this occasion on which taxes are to be discussed, but not at close range and not in a practical vein. What could be more in order tonight than a few peeks into the crystal ball—a la the fortune teller—regarding taxation in the next ten years, and a report thereon—a la the ventriloquist—which might just occasionally seem to have been delivered out of the side of the mouth?

My role tonight is thus clear. In it, of course, any statement which is forthcoming does not necessarily represent the views of my hosts, the government, the Corning Glass Company, or even myself.

My first glance into the tax future raises an unmistakable image of the highly progressive character of our income tax. I feel on perfectly safe ground in foreseeing that our income tax will continue to feature graduated rates; the interesting question is whether the degree of progressivity of the tax will change significantly.

There are signs today that the crest of progressive taxation in our country has passed and that we might expect a considerable relaxation in its application. In the last few years there has been a revival of dispassionate analysis of the role of progression in our society, and the case for it has been re-examined closely and critically. The predominant note in these studies has been that the case for progression in a private enterprise society is far from easy. In fact, the more penetrating the analysis of it, the more difficult is the defense of steep progression. While these studies might not demonstrate that progressive taxation is wrong in principle for our type of society, they might well serve to brake enthusiasm in pushing its application. To the extent that the case for progression has weaknesses, the reasonable man might hesitate to go along with it fur.

Another sign pointing in the same direction is the apparent decline in political fervor for redistribution of wealth and income. In large part our present progression is an outgrowth of the New Deal of the thirties. This movement put together a heavy emphasis on more economic equality as a social goal and some spurious economies according to which equalization of income would tend to promote prosperity. While these economic doctrines have not by any means disappeared, they no longer are in vogue; and on the surface the same seems to be true of economic equality as a political goal.

Still another sign is the growing sense that, despite rockets and satellites, our country is not faced with a continuous or permanent military emergency. If the New Deal is one parent of our present steep progression, national emergency is the other. Finance during both World Wars provides evidence that there is a strong notion in the community that emergencies justify a high degree of progression. As the feeling of emergency recedes, is it not reasonable to expect that this support for continued high progression would diminish?
In my glimpse into the future, however, all three of these signs turn out to be misleading. Steep progression is likely to be with us for some time to come.

To begin with, the more careful re-analyses of the case for progression do not appear to have reached or interested a wide audience. A prime illustration of this is to be found by a perusal of the text books now in use at the college level (as well as the high school level). When they deal with the problem of allocating the tax burden among the people, most of them state the case for progression in a loose, uncritical manner. In many instances progression is equated with equity on the basis of some overgeneralized and unexamined notion of ability-to-pay. Frequently there is an endorsement of progression on the ground of an equalitarianism which is impliedly accepted as a good without any adequate supporting analysis.

I am not under the illusion that what appears in school books is likely to be of political importance. In the long run, however, the values we impress on youth in school are bound to have some repercussions in our political doctrines. In the short run, moreover, they can serve as an instrument for measuring the penetration of ideas in various directions in our society. By this standard, education pertaining to progressive taxation is today about where it was ten or even twenty years ago.

The apparent decline in greater economic equality as a political goal likewise should not be over-rated as regards the future of progression. Even assuming such a decline has really taken place—and the assumption is at least doubtful—there may be reason to believe that this has not necessarily been accompanied by a change of attitudes toward steep progression. An exploratory investigation conducted by the University of Chicago Law School indicated that, among people who comprehend what a progressive rate structure is and who approve of progression, only a small minority think of progression as accomplishing a redistribution of income. The great majority think about progression in terms of some ability-to-pay notion and approved of it on this ground. In other words, the widespread foundation for progression seems to be divorced from equalitarian ideals and to stem rather from a view that money has a declining utility—that the last dollar of the richer man will be less important or produce less satisfactions for him than the last dollar of someone not so wealthy.

This might be taken to suggest that a decline in equalitarianism as a political goal would not even affect the support for progression. Such a view of the relationship, however, is too simple. The exploratory investigation also indicated, roughly, that those who advocated progression as an equalitarian measure favored a steeper degree of progression than those who favored it on some ability-to-pay basis. If this correctly captures the situation, it is possible that a decline in equalitarianism as an ideal would be reflected in a lessening of support for very steep progression.

The effect on progression of a diminution in the feeling of national emergency likewise is easily overestimated. So long as the total tax burden remains virtually the same, it is most unlikely that the allocation of it will be changed substantially. Historically it has been the case that the progressivity of the system has been altered significantly only when revenue goals have been modified. Our Law School experimental study also showed that there is a very wide acceptance of the status quo in distributing the burden, whatever the status quo happens to be. Thus a change in feeling about the existence of an emergency is likely to have a bearing on progression only if it is accompanied by a material reduction in total taxes.

But it would be simple-minded to think that because taxes became more progressive with the emergency, the lesser degree of progression which existed beforehand will be restored afterwards. Several forces work against such symmetry. First, it is unlikely all will agree that the emergency is completely over at any particular time. People differ widely in their perception of the military threat with which we are confronted. Second, for some persons the emergency was only an excuse for heightening progression; they would have advocated it then on other grounds, and they will continue to do so. Third, most people ap-
parently have one standard for applying their ability-to-pay ideas to tax increases, and another to tax reductions. The experimental work at the Law School again is suggestive here. We asked people what they thought was the fairest way of allocating a given increase in tax burden necessitated by a national emergency; and then later we asked them a comparable question about tax reduction at the end of the emergency. In the case of most of our respondents, the share of the increase imposed on upper income families was substantially larger than the share of the reduction assigned to them. Ability-to-pay apparently has a decided one-directional bias. Fourth and finally, the long duration of the emergency seems to have established steep progression as a kind of norm. The burden of persuasion in effect has been shifted to those who wish to return to the distribution of taxes that previously prevailed.

In reporting this look into the future of progression, I am not even remotely suggesting that there are inevitable forces at work here which cannot be controlled. On the contrary, it should only be concluded that mitigation of our high progressivity will require a considerably greater educational effort. If less progression is to prevail, more persons will have to be brought to face up to the redistributional impact of progression, to the desirability of continuously coercing economic equality, and to the emptiness of the idea that differential taxes can be meaningfully set on the basis of ability-to-pay, which is little more than a slogan.

My second glance into the future brings the subject of capital gains into focus.

It is with considerable confidence, but also regret, that I foresee the continuation of preferential treatment for capital gains. In part this vision is tied up with the past and future of progression. While we have been willing to legislate a steeply progressive income tax, never have we been willing to accept such progression without providing escape hatches; and favorable treatment for capital gains has been the most important way out. Unless we were to become much more serious about effectuating a redistribution of income through taxation, it is highly probable that in the future these same conditions will obtain.

But continued special treatment for capital gains seems a likelihood even if the progressivity of our surtax rates were substantially moderated. To be sure, there has been considerable talk about arranging a kind of political deal by which the elimination of various preferential provisions would be swapped for a reduction in surtax rates. This thinking seems most unrealistic. I cannot imagine who would be in a position to act in a representative capacity for purposes of such a bargain. Furthermore, those who are the principal beneficiaries of the capital gain provisions surely understand that, dollarwise, they are far better off now than they would be under any conceivable reduction in surtax rates in the near future. And only the most naive would fail to appreciate that the present capital gain haven is more secure from pronounced change than are the regular rates of tax, which (despite any implied compact of the moment) can always be raised in the future without confronting technical or conceptual difficulties.

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Dean Levi introduces guests at the luncheon following the groundbreaking. Thomas R. Mulroy, JD'28, Chairman of the Committee for the Edward Douglas White Lecture Hall, is visible at right center.

Laird Bell, JD'07, Hon. LLD'53, former Chairman of the Board of Trustees of the University of Chicago, Hon. Jacob Braude, JD'20, and Moses Levitan, JD'13, join in the groundbreaking.
Meltzer on Welfare and Pension Legislation

Senator John Kennedy, Chairman of the Senate Sub-committee on Welfare and Pension legislation, requested Professor Bernard D. Meltzer, of the Law School, to comment on various bills for the regulation of welfare and pension plans. Professor Meltzer, after his written comments were received, was invited to testify at the hearings on the pending bills. After his testimony on July 1, 1957, Professor Meltzer prepared a supplemental memorandum for the sub-committee. Because of the widespread interest in the legislation involved, Professor Meltzer’s memorandum is (except for the introductory paragraph) reproduced below, following a summary of his oral testimony.

In his testimony, Professor Meltzer emphasized the need for avoiding legislation which would produce an unmanageable mass of reports, but at the same time he questioned the basis for the various exemptions from comprehensive disclosure regulation embodied in the various bills. He pointed also to the practical and legal obstacles to the enforcement of fiduciary obligations by private litigation, and he urged that federal legislation should go beyond disclosure requirements and should prohibit transactions incompatible with fiduciary standards. He suggested that the penal provisions of the pending bills which sought to do this were unduly vague and indicated how they could be made more specific. He recommended also that penal provisions should be supplemented by provisions authorizing civil suits in the federal courts on the part of both the enforcement agency and the aggrieved beneficiaries. Finally, he presented the reasons for making the Securities and Exchange Commission, rather than the Secretary of Labor, the enforcement agency.

In his supplemental memorandum Professor Meltzer stated:

My testimony on July 1 emphasized both the substantial administrative difficulties involved in general disclosure regulations and the reasons for doubting the effectiveness of such regulation unless it was supplemented by provisions incorporating and implementing fiduciary standards. I did not, however, explicitly challenge the desirability of comprehensive disclosure on the motion of non-exempt plans, as part of a total regulatory program.

I feel it appropriate to supplement my testimony because further consideration has persuaded me that such automatic disclosure is probably not necessary for effective regulation and that legislation which concentrated on the definition and enforcement of fiduciary standards would be a preferable alternative.

Such an alternative program would contain the following elements, which are developed more fully below:

1. Prohibitions against specified violations of fiduciary standards, implemented by both criminal sanctions and civil actions in the federal courts;
2. Provisions requiring adequate and accurate disclosure to beneficiaries, implemented by criminal sanctions and injunctive relief at the request of the enforcing agency;
3. Provisions authorizing the enforcing agency
   a) by regulation to prescribe record-keeping requirements for health and welfare plans;
   b) by regulation, subject to veto by either House of Congress, to prohibit additional classes of transactions deemed incompatible with fiduciary standards;
   c) to call for comprehensive reports from, to subpoena and/or to inspect the books and records of, or pertaining to, particular welfare and pension plans selected by the agency.

The foregoing proposals would, I believe, have the following advantages over the general and automatic disclosure provisions which are a central feature of pending bills:

1. They would avoid the logical and political difficulties raised by exemptions which are deemed necessary to keep the enforcement job manageable, but which are highly controversial.
2. They would more directly and effectively attack the central problem of misconduct by fiduciaries.
3. They would involve less cost to the government and to properly managed plans, which presumably represent the overwhelming majority of all plans of any type.

Before I examine the merits of general disclosure regulation and the alternative program outlined above, it is appropriate that I make explicit my assumptions concerning the primary purposes of the contemplated legislation. I assume these purposes to be: (1) the deterrence of misconduct, i.e., malfeasance, by fiduciaries; (2) provision for adequate and accurate disclosure to beneficiaries; and (3) the enforcement of appropriate criminal and civil sanctions against delinquent fiduciaries. I assume, moreover, that the pending bills are not designed to insure wise, as distinguished from honest, administration. They are, for example, not directed at achieving actuarial soundness in pension plans or wise investment policies.

I consider this limitation of the legislative purpose desirable, and I will not extend this memorandum by examining the many problems involved.

I exclude also from the legislative purposes the collection of comprehensive data concerning the general impact of welfare and pension plans on employee-employer relationships or on our economic life generally. This is not to deny that such data might be interesting and useful and might have implications for public policy. Nevertheless, the data necessary for such purposes can be collected by means which are much less costly than disclosure regulation. Furthermore, the collection of such data generally
proves more useful if it is prompted by specific problems rather than by the vague hope that the information will come in handy. Finally, any attempt to use disclosure regulation for the collection of comprehensive data would clash with the objective of using such regulation for the purpose of promoting proper conduct by fiduciaries. This is true because the policing of fiduciaries, if the administrative burden is to be kept manageable, requires the narrowing of coverage so as to exempt plans in which danger of abuse is negligible, whereas the accumulation of complete data demands comprehensive coverage. For these reasons, in the discussion which follows, disclosure requirements and alternatives thereto will be tested solely by their probable contribution to the observance of fiduciary standards; any collateral benefits arising from the availability of comprehensive data regarding welfare and pension plans will be disregarded.

Legislation which relies largely on general disclosure requirements involves two fundamental difficulties. The first, which has been a principal concern of the Committee, is the need for exemptions with three characteristics: (1) They must be numerically significant so as to avoid either enormous administrative costs or a mass of reports, most of which cannot be carefully examined. (2) They should be based on principles with a rational relationship to the legislative purposes, i.e., the exempted plans should be an identifiable class in which the probability of fiduciary abuse is low both in relation to non-exempt plans and as an absolute matter. (3) Finally, the exemptions must, of course, command the necessary political support. The second difficulty of disclosure regulation, which has apparently been of less concern to the Committee, is the uncertainty as to whether such regulation, even though appropriate exemptions are made and an adequate enforcement staff provided, would significantly advance the legislative purposes. I turn now to a discussion of each of these difficulties.

As my testimony indicated, each of the exemptions contemplated by the various bills (except the Administration bill) involves a serious question as to whether it is rationally related to the legislative purposes. There is no need to repeat my testimony, but I do wish to supplement my discussion of the proposed exemption for level-of-benefit plans. Such plans, according to the Committee’s data, constitute by far the largest single class of plans and are usually administered solely by the employer. For this reason, my comments concerning the level-of-benefit exemption are to a large extent applicable to the exemption for employer-administered plans contemplated by S. 1813.

Fiduciary misconduct disclosed by recent investigations has been concentrated in jointly-administered plans which, at present, generally provide, not for a specified level of benefits, but for a specified level of expenditure. Despite this fact, a statutory exemption for level-of-benefit plans seems unwarranted, for the following reasons: First, such investigation involved level-of-benefit plans administered by large, respected and publicly exposed companies, such as General Motors. The result of such investigation plainly cannot properly be viewed as a certificate of good character for all such plans. Secondly, such plans are susceptible to the abuses, such as split commissions and kickbacks, which have occurred in other kinds of plans. And a flat statutory exemption for level-of-benefit plans might well generate pressure by strong and unscrupulous union officials to transform existing or future plans so as to bring the exemption into play. If such pressure proved successful, a statutory exemption would on practice operate to exempt plans and administrators quite different from those contemplated when the exemption was embodied in the statute.

It is true, of course, that an employer has an incentive to keep the cost of the level-of-benefit plans low. But the term “employer” is an abstraction which obscures the fact particular employees may not be averse to feathering their personal nests. Furthermore, the “employer’s” incentive operates only as to his actual costs, as opposed to his ostensible costs. He has no incentive, for example, to forego kickbacks and the like so long as they go back to the enterprise. On the contrary, he may have an incentive to arrange for such transactions in order to inflate the ostensible costs of the benefits. This is true because the costs of specified benefits are in effect wages, and the total
of such actual or ostensible costs will be a factor in collective bargaining negotiations. High costs, actual or ostensible, will provide arguments against requested increases in the level of benefits or the level of conventional wages. Since the ostensible costs are wages, the employees are entitled to an adequate quid pro quo in the form of benefits which are not diluted by excessive commissions, kickbacks, and the like. In connection with the employer's cost-cutting incentive, it should also be noted that companies making cents-per-hour contributions also have an incentive, albeit a more indirect one, to get the most for their money in the form of employee benefits. Benefits attract and hold efficient employees—a not unimportant consideration in a period like the present when there is vigorous competition for such employees. Furthermore, the employee's cost-cutting incentive, even assuming its effectiveness, does not achieve one of the objectives of the proposed legislation, namely fair and adequate disclosure to the employees.

Under the National Labor Relations Act, as amended, an employer is, of course, obliged, when requested by a union representing his employees, to furnish data as to actual costs where that is relevant to collective bargaining negotiations. But this obligation is plainly not the same as an obligation to make periodic reports to the employees concerning the costs and the benefits under a plan. This difference is underscored by the increasing tendency toward longer term collective bargaining agreements. Furthermore, employers have apparently resisted demands for disclosure on the ground that their duty is discharged when they provide the level-of-benefits contracted for. This attitude is inconsistent both with employers' insistence in other contexts that fringe costs are indistinguishable from wage costs and with the controversial proposition that employees are entitled to know the level of their wages. In view of the foregoing considerations, level-of-benefit plans, even if exempted from the duty to disclose to the government, should not be exempted from a requirement of adequate disclosure to the beneficiaries of the plans.

On the basic issue raised by the level of benefit exemption, the probability of malfeasance in administration, it is, I believe, fair to say that of all contemplated exemptions, it has the strongest claim to support on the basis of investigations thus far. But the investigation obviously did not consider the possibility that strong and unscrupulous elements in the labor movement might exert effective pressure to secure the benefits of this exemption for improper purposes. And, as already indicated, the investigations were limited, and the abuses they disclosed in other plans could occur, and may have occurred, in level-of-benefit plans. For these reasons, the exemption of such plans from disclosure regulation rests on grounds that are questionable.

The foregoing objections to the "level-of-benefit" exemption have been urged by organized labor, whose opposition may, of course, defeat any legislation. Such opposition is, doubtless, reinforced by the fear that such an exemption would involve the distasteful implication that abuses result only when unions are the sole administrators of plans or jointly participate in their administration. As my testimony indicated, the practical political problems resulting from such opposition are a matter on which the Committee needs no comment from outsiders. Nevertheless, it is significant that one consequence of such opposition may be legislative proposals for disclosure regulation so comprehensive in their coverage that they would involve the dilemma of either an unmanageable mass of reports or a mammoth and very costly enforcement staff. Such a dilemma would, for example, appear to be the necessary result of the enactment of the Administration bill, which does not provide for any exemption at all. Such possibilities reinforce more fundamental considerations indicating that the disclosure regulation contemplated may, in the context of pension and welfare plans, be the wrong way to attack the problem of fiduciary abuse.

Disclosure requirements alone obviously do not prohibit improper transactions. All they do is to make them known. Their effect as a deterrent depends in part on the sense of shame of those who would otherwise engage in improprieties and in part on the effect-
The Class of 1960

Again this autumn, the Law School welcomed an entering class drawn from a wide variety of geographic backgrounds and undergraduate educational institutions. The total enrollment in the School is now approximately 360, of whom about 150 are entering students. There are thirty-six states and thirteen U. S. territories and foreign countries represented in the student body; these students have come to the Law School from 185 different colleges and universities. The colleges and universities represented are:

University of Alabama
Albion College
American Conservatory of Music
American University
Amherst College
Antioch College
University of Arizona
Augustana College
Aurora College
Austin College
Baghdad Law School
Bard College
Barnard College
Bates College
Beloit College
University of Berne
Birmingham Southern College
University of Bonn
Boston University
Boston University School of Law

Bowdoin College
Brandeis University
Brigham Young University
University of British Columbia
Brooklyn College
Brown University
University of Buffalo
University of California
Cairo University
Calvin College
Carleton College
Central State College
University of Chicago
City College of New York
Colby College
Colgate University
Colorado College
University of Colorado
Colorado University Law School
Columbia University
University of Connecticut
Cornell University
Culver-Stockton College
Dartmouth College
Davidson College
University of Dayton
Dennison College
De Paul University
De Pauw University
Doane College
Drew University
Earlham College
Elmhurst College

The Kosmerl Scholars for 1958-59: Sheldon Lebold of Chicago, Ronald Fisch, of Anna, Illinois, and Charles Brainard, of Towson, Maryland. Not shown are Jay Snider of Portsmouth, Ohio, and John Satter, of Sioux City, Iowa.

The Commonwealth Fellows for 1958-59: left to right, David Casson, of England; William Twining, of Tanganyika; Robert Carswell, of Northern Ireland; and James Walsh, of Australia.
Emory University
University of Forthare
University of Frankfort
University of Geneva
George Washington University
George Washington Law School
Georgetown University
University of Göttingen
University of Graz
Grinnell College
Hamilton College
Hampden-Sydney College
Harcourt College
Harvard University
Haverford College
University of Hawaii
Herz Junior College
Hobart College
Holy Cross University
Hope College
Illinois College
University of Illinois
Illinois Institute of Technology
Indiana University
Institute of Charrtered Accountants, London
Iowa State Teachers College
University of Iowa
James Millikin University
John Carroll University
Julliard School of Music
University of Kansas
University of Kansas City
Kenyon College

Knox College
Lake Forest College
Lawrence College
Lincoln University
London School of Economics
University of London
Loyola University
Loyola School of Medicine
University of Leyden
Makerere College
Macalester College
University of Maine
Maryville College
Mercer University
University of Miami
University of Michigan
Michigan State University
University of Minnesota
University of Missouri
Morehouse College
Morningside College
Morton Junior College
National University of Mexico
University of Nebraska
University of New Mexico
New Mexico Military Institute
University of North Dakota
University of North Carolina
North Park College
Northwestern University
Notre Dame University
Oberlin College

The members of the University of Chicago Law School chapter, the John Marshall Chapter of Phi Delta Phi legal fraternity.

The Raymond Scholars for 1958-59: Luther Harthun, of Wayside, Wisconsin, Kenneth Howard of Birmingham, Alabama, Mrs. Amy Scupi, of Chicago, and Peter Clarke, of Grossmont, California.
Ohio Wesleyan University
University of Oregon
Our Lady of Providence Seminar
Oxford University
Palos Verdes College
University of Paris
University of Pennsylvania
Pepperdine College
University of Pittsburgh
Pomona College
Principia College
Princeton University
Providence College
Purdue University
Queens College
Reed College
Rice Institute
University of Rochester
Rockhurst College
Roosevelt University
Rutgers University
St. Bonaventure University
St. John's Seminary

St. Joseph College
St. Mary of the Lake Seminary
St. Mary's College
St. Olaf College
Sampson College
Shimer College
University of the South
University of Southern Illinois
Southern Methodist University
University of Stockholm
Swarthmore College
Syracuse University
Talladega University
Temple University
Texas Christian University
Texas Western University
University of Toronto
Trinity College
Tufts College
Union Theological Seminary
United State Coast Guard Academy
Valparaiso University
Vanderbilt University

Donald Strickland, of Tacoma, Washington, the Wormser Scholar.

Robert Martineau, of Oconto, Wisconsin, the Blake Scholar.
The states, territories and foreign countries from which the School currently has students are:

- Alabama ........................................ 5
- California ...................................... 5
- Colorado ........................................ 3
- Connecticut ..................................... 6
- Delaware ......................................... 1
- District of Columbia ......................... 4
- Florida .......................................... 3
- Georgia ......................................... 2
- Illinois
  - Chicago ......................................... 89
  - Outside of Chicago ......................... 44
- Indiana ........................................... 13
- Iowa ............................................. 6
- Kansas .......................................... 4
- Kentucky ....................................... 2
- Maine ............................................ 4
- Maryland ........................................ 3
- Massachusetts ................................. 12
- Michigan ........................................ 8
- Minnesota ....................................... 9
- Missouri ......................................... 7
- Nebraska ........................................ 3
- New Jersey ..................................... 12
- New Mexico .................................... 1
- New York ........................................ 44
- North Carolina ................................ 3
- North Dakota .................................. 1
- Ohio .............................................. 15
- Oklahoma ........................................ 2
- Oregon .......................................... 2
- Pennsylvania ................................... 5
- Rhode Island ................................... 2
- South Dakota ................................... 2
- Tennessee ....................................... 2
- Texas ............................................ 3
- Utah ............................................. 2
- Washington ..................................... 5
- Wisconsin ...................................... 6

Foreign Countries and U.S. Territories:

- Australia ........................................ 1
- Canada .......................................... 1
- Egypt ............................................ 1
- England ......................................... 3
- Germany ......................................... 3
- Guam ............................................. 1
- Hawaii .......................................... 5
- Iraq ............................................... 2
- Ireland ......................................... 1
- Jordan .......................................... 1
- Switzerland ..................................... 1
- Tanganyika ..................................... 1
- Uganda .......................................... 1

Francis Kareken, the Phi Sigma Delta Scholar.
Legal Aid Clinic

With the opening of the Autumn Quarter, the Edwin Mandel Legal Aid Clinic came into being. The Clinic, conducted by University of Chicago law students, has been made possible through the generosity of Mr. Edwin F. Mandel who has contributed $75,000 to the University of Chicago for this purpose. A portion of Mr. Mandel's gift will be used for the suite of rooms in the new Law Building which will house the Clinic.

Mr. A. Conrad Olson, Jr. is chairman of the student committee on the Edwin Mandel Legal Aid Clinic. Forty-seven students are currently participating in the legal aid work. Mr. Olson is a third year student from Lakewood, Ohio; he did his undergraduate work at DePauw University.

The faculty committee on the Edwin Mandel Legal Aid Clinic is composed of Professor Nicholas Katzenbach, chairman, and Professors Wilber Katz and Francis Allen. In addition, Mr. Alex Elson, '28, has accepted an appointment for the Winter and Spring quarters as a special adviser to the law faculty on the operations and development of the Clinic.

The Edwin Mandel Legal Aid Clinic will develop in close collaboration with the Legal Aid Bureau of the United Charities and with the National Legal Aid Association, housed in the American Bar Center. The close collaboration with the Legal Aid Bureau has been furthered by the creation by the Legal Aid Bureau of the new South Branch Office at 63rd and Kimbark. Mr. Henry J. Kaganiec of the South Branch Office has been appointed also as Director of the

Professor Nicholas Katzenbach, Professor Wilber Katz, Richard Orlikoff, JD'49, Chairman of the Chicago Bar Association Legal Aid Committee, and Professor Francis Allen at the opening of the Legal Aid offices. The three Faculty members make up the Faculty committee on Legal Aid.

Mr. C. Bouton McDougall, Chairman, Legal Aid, United Charities, JD'32, Mr. Avery, Mr. Young, Henry Kaganiec, Lawyer in charge of the Legal Aid Clinic, and Professor Nicholas Katzenbach, Chairman of the Faculty Committee on the Legal Aid Program.
Edwin Mandel Legal Aid Clinic. According to Mr. Arthur K. Young, Director of the Legal Aid Bureau, it is planned to move the South Branch Office into the specially designed suite which will house the Edwin Mandel Clinic when the new law building is ready.

Close collaboration with the National Legal Aid Association is assured through the acceptance by Mr. Emery Brownell, Director, and Mr. Junius Allison, Associate Director, of the National Legal Aid Association, of membership on an advisory committee of distinguished lawyers.

**Law and Outer Space**

As a possible forerunner of the curricula of the future, the Law School sponsored a discussion of "The Law of the Age of Space." The speakers were Mr. Andrew Haley, of the Washington, D. C. Bar, President of the International Astronautical Federation and Chairman of the American Rocket Society, and Dr. Welf Heinrich, Prince of Hanover, who wrote his doctoral thesis at Gottingen University on space law.

The Prince devoted the major part of his presentation to developing an analogy between space law on the one hand and the rules of international law regarding the high seas and rights of passage in air space on the other. Mr. Haley discussed possible technical standards for drawing a line between the areas in which the present rules of air law should continue to apply and areas in which an entirely new approach is needed.
International Association of Legal Science

During mid-September, the Law School was host to the Fifth Annual Conference of the International Association of Legal Science. The Association is composed of a large variety of national organizations which share a common interest in problems of comparative law, jurisprudence, and international law. The 1957 Conference was the first to be held in the United States. Max Rheinstein, Max Pam Professor of Comparative Law, has long taken a prominent part in the work of the Association, and had the leading role in arranging the program of the 1957 Conference. Law School Assistant Dean James Ratcliffe acted as Conference Secretary.

Registration at the Conference was over 120, with some twenty-two countries represented. The substantive work of the Conference took place in three Roundtables, devoted to a study of The Rule of Law as Understood in the West, The Rule of Law as Understood in Oriental Countries, and The Influence of Law on the Stability of the Family.

In addition to this program, many special events were arranged for the delegates. They visited the jury trial of a civil case, rare in most parts of the world, they were given a tour of the Chicago Title and Trust Company, visited the offices of Kirkland, Fleming, Green, Martin, and Ellis, and toured the American Bar Center. In addition, delegates were guests of the Law School at a dinner at which Professors Harry Kalven, Jr., and Soia Mentschikoff discussed the School’s research in Law and the Behavioural Sciences, and were entertained at a lawn party by Mr. and Mrs. Glen A. Lloyd at their home in Libertyville.
Roemer Lecture

Some years ago the Law School began a custom of sponsoring a public lecture, with a dinner preceding, as a welcome to its entering students. This autumn, Mr. Erwin Roemer, a member of the firm of Gardner, Carton, Douglas, Roemer and Chilgren, past president of the Illinois State Bar Association and member of the Law School Visiting Committee, was the featured speaker. His subject was "The Practice of Law." Mr. Roemer was guest of honor at a dinner held at the Quadrangle Club just before his lecture. In addition to members of the Law Faculty and the entering students and their wives, the members of the Law School Visiting Committee and the Law School Alumni Board were in attendance.

At the reception preceding Mr. Roemer's lecture; Richard Bentley and Tappan Gregory, members of the Law School Visiting Committee, Professor Nicholas Katzenbach, and Laurence Carton, JD'47, Secretary of the Law School Alumni Board.

The dinner for members of the Alumni Board, the Visiting Committee and entering students which preceded Mr. Erwin Roemer's lecture.
ABA Welcomes New Building


On behalf of the legal profession of America I extend congratulations to all who have made this new law school building a reality. The chairman of the Board of Trustees, Trustees, Dean Levi, the Faculty, Alumni and friends of the Law School and the University certainly have a right to be proud that your great law school will now have one of the finest law school buildings in the Nation.

We of the American Bar are particularly happy to welcome the law school as a neighbor. The proximity of the new building to the Bar Center will be mutually beneficial. There will be occasions when we can "borrow" their auditorium and moot courtroom. While we use their fine library they may find our specialized library and research facilities useful too.

This new building is above all a tribute to the role of law in our Nation. And law is indeed the foundation and reason for the greatness of the United States of America.

While you do a complete job in training able lawyers, to me the most significant work your great law school is doing today is in the international field. Your program for training foreign law students and lawyers in our law and your courses in international law, especially commercial law, are well known. And in the light of the current world situation may I express the hope that this work will be multiplied a hundredfold in your new building.

The great technological achievements of our day have shrunk nations to neighborhoods. Distance is now meaningless. Nations must learn to live together in our shrunken world or risk annihilation in a war of devastation. To me the best formula for living together is by developing a system of law and courts whereby disputes formerly settled by the bloodshed of war are settled in tribunals of justice.

International law is to most lawyers a vast unknown and mysterious subject. So too are the few existing international tribunals of justice. In fact, the need for law in the world community is the greatest gap in the legal structure of civilization. To fill that gap is today the legal profession's greatest challenge and its greatest opportunity.

It is up to lawyers to develop a plan whereby the arms race can be ended with disputes between nations settled under the rule of law just as such disputes between individuals are now settled.

In a few days we will reveal at NATO our plans for meeting the Russian challenge as brought to a head by the Sputniks. I earnestly hope our program will include not only a demonstration of our capacity to equal and exceed the Kremlin in arms but a plan for an end to the arms race.

To me the best plan we could espouse would be a plan for peace under law. This plan offers the best hope for all peoples to move out from under the shadow of the H-bomb and allow nations to live in peace as neighbors in a world where technological achievement has made such living essential to survival.
Labor Conference

As a part of its regular Conference Program, the School recently sponsored a Conference on Fiduciary Responsibility in Labor Relations. Recent investigatory activities of the Federal Government have served to emphasize sharply some of the problems in this area. Elsewhere in this issue of the Record may be found a report of testimony recently delivered to a subcommittee of the United States Senate by Professor Bernard Meltzer on one of the issues discussed during the course of the Conference. The program of the Conference, which was of one day’s duration and which was held on the Quadrangles, included:

MORNING SESSION:

- Wilber G. Katz, James Parker Hall Professor of Law, The University of Chicago Law School, Presiding
- FIDUCIARY STANDARDS AND THE BARGAINING AND GRIEVANCE PROCESS, by Charles O. Gregory, Professor of Law, University of Virginia Law School
- Commentators: The Honorable Abner J. Mikva, Member, House of Representatives Illinois General Assembly; George B. Christenson, Esq., Winston, Strawn, Smith and Patterson, Chicago
- INDIVIDUAL ENFORCEMENT OF COLLECTIVE BARGAINING AGREEMENTS, by Archibald Cox, Professor of Law, Harvard University Law School

LUNCHEON SESSION:

- Bernard D. Meltzer, Professor of Law, The University of Chicago Law School, Presiding
- STATUTORY AND FIDUCIARY STANDARDS AND THE ADMINISTRATION OF PROPERTY, by The Honorable Paul W. Williams, United States Attorney, Southern District of New York
- Commentator: The Honorable Robert Tieken, United States Attorney, Northern District of Illinois

AFTERNOON SESSION:

- Jo Desha Lucas, Associate Professor of Law, The University of Chicago Law School, Presiding
- RIGHT-TO-WORK LAWS AND RESPONSIBLE UNIONISM, by Sylvester Petro, Professor of Law, New York University School of Law
- Commentators: Mozart C. Rutner, Esq., Jacobs & Rutner, Chicago; Owen Fairweather, Esq., Seyfarth, Shaw, Fairweather & Geraldson, Chicago
- Commentators: Lester Asher, Esq., Asher, Gubbins & Segall, Chicago; William P. Treacy, Esq., Stevenson, Conaghan, Veld & Hackbert, Chicago

DINNER SESSION:

- Soia Mentschikoff, Professor of Law, The University of Chicago Law School, Presiding
- INTERNAL SELF REGULATION by Tom Harris, Associate General Counsel, AFL-CIO
- A LEGISLATIVE PROGRAM, by Gerard D. Reilly, Esq., Reilly, Wells & Rhodes, Washington, D. C.
Tenth Tax Conference

During the Autumn Quarter, the Law School sponsored its Tenth Annual Federal Tax Conference. The Conference, which met for three days in the Auditorium of the Prudential Building, was attended by more than three hundred tax lawyers, accountants, and corporate executives who work with tax matters. The Planning Committee, which arranged the Conference this year, was composed of William M. Emery, of McDermott, Will and Emery, Chairman; John Potts Barnes, of MacLeish, Spray, Price and Underwood, Walter J. Blum, Professor of Law, The University of Chicago Law School; Frederick O. Dicus, of Chapman and Cutler; William N. Haddad, of Bell, Boyd, Marshall and Lloyd; James D. Head, of Winston, Strawn, Smith and Patterson; Paul F. Johnson, of Ernst and Ernst; Robert R. Jorgensen, of Sears, Roe-buck and Company; William A. McSwain, of Eckhart, Klein, McSwain and Campbell; James M. Ratcliffe, Assistant Dean, The University of Chicago Law School; Frederick R. Shearer, of Mayer, Friedlich, Spiess, Tierney, Brown and Platt; Michael J. Sporrer, Arthur Andersen and Company; and Harry B. Sutter, of Hopkins, Sutter, Owen, Mulroy and Wentz. The Program of the Conference was as follows:

ADDRESS OF WELCOME
J. Parker Hall, Treasurer, The University of Chicago

COUNSEL FOR TAXPAYER AND COUNSEL FOR GOVERNMENT
Nelson P. Rose, Chief Counsel, U.S. Internal Revenue Service

TAX HIGHLIGHTS OF THE PAST YEAR
Lee I. Park, Hamel, Park and Saunders; Washington

CURRENT DEVELOPMENTS IN FRAUD INVESTIGATIONS
Spurgeon Avakian, Avakian and Johnston; Oakland, California

ACCOUNTING TREATMENT COUNTS IN DETERMINING NET TAXABLE INCOME
Raymond A. Hoffman, Price, Waterhouse and Company

CHANGES IN ACCOUNTING METHODS AND PERIODS
Mark E. Richardson, Lybrand, Ross Brothers and Montgomery; New York

TAX PLANNING FOR INCORPORATION
John S. Pennell, McDermott, Will and Emery

TAX OPPORTUNITIES AND PITFALLS IN THE PURCHASE AND SALE OF CORPORATE BUSINESSES
Richard H. Levin, D’Ancona, Pflaum, Wyatt and Riskind

PANEl DISCUSSION:
Michael J. Sporrer, Arthur Andersen and Company
John S. Pennell, McDermott, Will and Emery
Richard H. Levin, D’Ancona, Pflaum, Wyatt and Riskind

Frederick R. Shearer, Mayer, Friedlich, Spiess, Tierney, Brown and Platt
C. Ives Waldo, Jr., Hopkins, Sutter, Owen, Mulroy and Wentz

PENALTY TAX ON CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS
Richard Barker, Ivins, Phillips and Barker; Washington

CURRENT DEVELOPMENTS AFFECTING LOSS CORPORATIONS
Albert E. Arent, Berge, Fox and Arent; Washington

PANEL DISCUSSION:
William M. Emery, McDermott, Will and Emery
Richard Barker, Ivins, Phillips and Barker; Washington
Albert E. Arent, Berge, Fox and Arent; Washington
Charles W. Davis, Hopkins, Sutter, Owen, Mulroy and Wentz
Everett C. Johnson, Arthur Andersen and Company

TAX ASPECTS OF ESTATE DISTRIBUTIONS
William K. Stevens, The First National Bank of Chicago

ELECTIONS AND DISCRETIONS UNDER THE 1954 CODE
Byron E. Bronston, Continental Illinois National Bank and Trust Company

PANEL DISCUSSION:
Frederick O. Dicus, Chapman and Cutler
Williams K. Stevens, The First National Bank of Chicago
Byron E. Bronston, Continental Illinois National Bank and Trust Company
Sheldon Lee, Wilson and McIlvaine

Middletown Miller, Sidney, Austin, Burgess and Smith

TAX PLANNING FOR PROFESSIONAL PARTNERSHIPS
Paul Little, Wickes, Riddell, Bloomer, Jacobi and McGuire; New York

and a ROUND TABLE DISCUSSION OF SELECTED PROBLEMS.

Bernard Nath, JD’21, Chairman of the Fifth Annual Alumni Fund Campaign, Henry F. Tenney, ’15, Chairman of the Law School Visiting Committee and Trustee of the University, Claude Natherton, JD’69, Arnold Shure, JD’29, and Morris E. Feinell, JD’15, President of the Law School Alumni Association, at the groundbreaking ceremony.
Alumni Notes

EDWIN L. WEISL, JD'19, has been appointed special counsel to the U.S. Senate's Preparedness Armed Services Subcommittee. After his graduation from the Law School, Mr. Weisl served for four years as an assistant United States Attorney in Chicago. He then engaged in private practice in Chicago for several years, before moving permanently to New York in 1929. He has, for many years, been a partner in the New York law firm of Simpson, Thacher and Bartlett. The Senate subcommittee he will serve is involved in a special investigation of the current level of preparedness in the American armed forces.

It is with deep regret that the School notes the death of the Honorable H. NATHAN SWAIM, JD'16. Judge Swaim, a native of Indianapolis, practiced law in that city for more than twenty years before being elevated to the bench. He served as a Judge of the Supreme Court of Indiana from 1939 to 1945. He was appointed to the United States Court of Appeals for the Seventh Circuit in 1949, and was serving that court at the time of his death.

A Remarkable Collection

Mr. Louis H. Silver, JD'28, has presented the Law School with a rare and important collection of portraits and autographs of justices of the United States Supreme Court. The text of the John Marshall letter, of which a photograph is shown, is as follows:

George Washington, Esquire
Mount Vernon

Richmond March 26th 89

Sir:

I had the honor to receive a letter from you enclosing a protested bill of exchange drawn by the executors of William Armstead esquire. I shall observe your orders, sir, with respect to the collection of the money. I shall only institute a suit when I find other measures fail. I presume Mr. Armstead's executors had notice of the protest. If they had, you will please to furnish me with some proof of the fact or inform me how I shall obtain it. Should a suit be necessary this fact will be very material.

Your caveat against Cresap's heirs is no longer depending. It was dismissed last spring under the law which directs a dismissal if the summons be not served.

I wrote to you on this subject before that session of the court and supposed it to be your wish that it should no longer be continued.

I remain Sir
with perfect respect and attachment
Your obt ct servt
(signed) John Marshall

From
John Marshall Esq.
March 28, 1789

An alumni luncheon held in Des Moines during the most recent meeting of the Iowa State Bar Association. Standing, left to right, Ernest Ruppert '26, Judge William F. Butler, '17, Joseph Brody, '15, who arranged the meeting, and Henry J. TePaske '29, past President of the Association. Seated, clockwise, Jesse E. Marshall '14, Mrs. Marshall, Mrs. Alan Loth, Alan Loth '12, Professor Sheldon Tefft, the speaker, Carroll Johnson '38, William E. Jackson, '15, Theodore G. Gilinsky '47, and Joseph H. Johnson, '05.

At the dinner honoring Mr. Weymouth Kirkland on his 80th birthday, announcement is made of the establishment of the Weymouth Kirkland Courtroom in the new Law Building. Mr. Kirkland and Dean Levi are shown with a portrait of Mr. Kirkland, painted by Mrs. Howard Ellis, which now hangs in the Law Library.

The Weymouth Kirkland Courtroom

The eightieth birthday of Mr. Weymouth Kirkland proved to be a day of great importance to the Law School, as well as to Mr. Kirkland himself. Announcement was made, as part of the birthday celebration, that colleagues and other friends of Mr. Kirkland had established, in his honor, the Weymouth Kirkland Courtroom, in the new University of Chicago Law School Building.

Mr. Kirkland, senior partner of Kirkland, Fleming, Green, Martin and Ellis, has long been an eminent member of the Chicago Bar, and is widely known as a trial lawyer. His friends concluded, therefore, that a courtroom would be an eminently suitable tribute.

The Weymouth Kirkland Courtroom in the new Law Building will be designed to seat about 250 spectators. It will be completely equipped with bench, jury box, counsel tables and the like in the courtroom itself, and with conference rooms, a jury room, offices and other facilities immediately adjoining. It will not only house the School’s Moot Court activities, but it is expected that the Supreme Court of Illinois will sit there during a part of each year, so that students may become acquainted at first hand with the trial of cases before the state’s highest appellate tribunal.

A Distinguished Lawyer

For some time, the Law School has sponsored a series of lectures on distinguished lawyers. The most recent talk in that series was delivered in November by Mr. John P. Wilson, of Wilson and McIlvaine, who spoke on the career of his father. Mr. Wilson’s paper will be found elsewhere in this issue of the Record.

Prior to his lecture, the Law Faculty was host to Mr. Wilson, his partners and their wives, and to third year law students, at a Quadrangle Club dinner.

The members of John P. Wilson’s firm and their wives were guests of the School at dinner, together with members of the Law School’s current senior class.
Father was associated in this case from its inception on behalf of the Sanitary District of Chicago, and presented the briefs and final argument in the Supreme Court. In the lower court the act was sustained and that decision was affirmed by the Supreme Court of the State of Illinois. It is hardly necessary to mention the vital importance of this decision to the people of the City of Chicago.

Many years ago when we had Justices of the Peace in Chicago, the conduct of their affairs was subject to severe criticism and it was truly a public scandal. Because of this there was a great desire to have them done away with and a Municipal Court substituted in the City of Chicago.

At the same time there was active agitation to secure a new and separate charter for the City of Chicago. Neither of these results could be accomplished without an amendment to the State Constitution.

A group of men organized the Chicago Charter Convention. In this group my Father was a very active member, and with Judge Murray F. Tuley and John S. Miller, was instrumental in preparing a constitutional amendment for submission to the Legislature in 1903. This amendment sought to accomplish two ends: First, to grant to Chicago a new and separate charter; and, second, to create Municipal Courts in the City of Chicago and do away with the Justices of the Peace in the City. That was submitted to the people in 1904 and adopted as an amendment to the State Constitution.

Immediately after this became effective, an Enabling Act was drafted and submitted to the Legislature by the same group and in the face of great opposition was duly passed.

The validity of the amendment was attacked in court in the Fall of 1905 on the grounds that it was unconstitutional. The Circuit Court of Cook County Illinois held that the amendment, as well as the statute, was unconstitutional. An immediate appeal was taken to the Supreme Court in the case of City of Chicago v. Reeves, 220 Ill. 274. My Father filed a separate brief and he was primarily responsible for the presentation of the case in the Supreme Court, as well as the oral argument. The Supreme Court reversed the trial court and held that the amendment and the statute were constitutional. Thereby the Municipal Court became a reality, and it was possible for the Legislature to grant a new charter to the City of Chicago, which it promptly did.

In 1909 the Illinois Legislature adopted an act "to provide for a commission to inquire into the subject of taxation for State and local purposes, and the expediency of revising and amending the laws relating thereto, and making an appropriation therefor."

In accordance with this act, the Governor of Illinois appointed a special tax commission of seven persons of whom my Father was one. He was elected president of the commission by its members.

The commission prepared a complete report and submitted it to the Governor in accordance with the provisions of the statute. He in turn transmitted the same to the General Assembly for their action. The report was most carefully prepared and submitted a number of material changes which were definitely thought to be improvements in the provisions of the laws governing taxation. Nevertheless no affirmative action was taken thereon because of the opposition in the main from downstate. I speak of it here solely for the purpose of showing the character of services which my Father rendered from time to time in the public interest.

The principles which governed Father throughout his life in the practice of the law were not in any sense unusual. In fact, they were quite normal. But what was unusual was the tenacity with which he followed them. For twenty years after his illness in 1888 he decided that his sleep must be unimpaired and that could be best accomplished by a simple diet. The result was that he ate nothing for his evening meal except boiled cornmeal mush and milk.

The doctor recommended golf. As an illustration of his tenacity of purpose he wished to play golf but his lame leg prevented him from playing right-handed. He simply decided to play left-handed and played for the last ten or twelve years of his life.

His golf and restraint in eating evidenced his determination to make his body as good an instrument as self-discipline would permit to implement his mental equipment.

He had a most resourceful and fertile mind. He seemed to be able to find a way of accomplishing things which no one else had discovered. This fact is why so many lawyers brought matters to him as a last resort. He made it a practice not to serve on corporate boards. His only exception of long duration was the International Harvester Company where he acted as consulting counsel from about 1901 until his death in 1922.

Perhaps the outstanding qualities of my Father's mind were simplicity and directness. He had the rare ability to cut through any problem to the essentials. In the trial of cases his firm belief was that only the key points should be dwelt upon and reiterated and that no time should be spent in spinning fine theories which might easily become confused with the main issues. As an illustration of this, I refer to an incident that happened not long before my Father's death. He had been addressing the court steadily for about two hours and upon adjournment an elderly colored man, who had been in court all of the time, came up to one of my partners and said: "Who is that gentleman? He is a great lawyer because I can understand him."

His firm belief was that integrity is the greatest asset any man can possess. He had several sayings which he unfailingly followed. Among them were the following:

"Never seek advice you have no intention of following."

"What a client really wants to know is what he can do—not what he can do not."

"Never make a contract for a lease—draw the lease."

He had a very keen interest in children. For about ten years he served as President of The Children's Memorial Hospital in its early days and had much to do with its development.

He also served as one of the original trustees of the Newberry Library from the foundation of the library to the date of his death.

He had a very unusual interest in all recreational facilities furnished particularly for the underprivileged.

He took a keen interest in the parks and in the forest preserves.

For many years prior to his death he served as a trustee of Knox College.

Fifty years ago he was one of a small group who stimulated the development of the University Club and contributed of his efforts and means to the construction of the new building.
He was most generous with his time and efforts in being of assistance to young men who came to him for advice and counsel.

Among his leading characteristics were versatility and resourcefulness in adjusting himself to all changing conditions. An example of this was in connection with the federal income tax and estate tax laws. These laws were passed in the latter part of 1913 and 1916. In the early part of 1913 before either of these laws had been formulated, Father drew a number of trusts for himself and for his clients which to this day have been of great value to the parties in interest and could not have accomplished the same results had their execution awaited the effective dates of the law.

Father in his seventy-ninth year was stricken while playing his customary eighteen hole golf game and died seventeen days later.

I cherish and value above all others the twenty years which I was privileged to enjoy working with my Father.

JOHN P. WILSON

At the dinner preceding the John P. Wilson Lecture. Left to right, Robert Zener, Editor-in-Chief of the University of Chicago Law Review, Mr. Wilson, Mrs. Edward H. Levi, and Glen A. Lloyd, ’23, Chairman of the Board of Trustees of the University.

Edward D. McDougall, Jr., JD’23, Chairman of the Law School Alumni Building Fund Committee, with John P. Wilson Professor Roscoe T. Steffen.

Blum—
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More plausibly it has been suggested that, while an explicit deal is out of the question, the lowering of surtaxes might create an atmosphere in which the elimination of preferential provisions could become a political practicality. The underlying thought is that since we have been willing to impose high rates only by offering special exits, the reduction of rates will lessen the pressure to retain the exits, including of course the capital gain passageway.

There is obviously much sense to this view; today a material decrease in progressivity is virtually a pre-requisite to accomplishing something drastic in removing preferential provisions from the income tax. Yet I am not hopeful that even a very great reduction in rates would eventuate in taxing capital gains on a par with other income.

It should be recognized that the more than thirty-five years of favorable treatment for capital gains has had a pronounced effect on attitudes toward the whole matter. Capital gains are thought of by many as being different from other income if for no other reason than that we have for such a long time treated them as being different. The law indeed has been an educational force here. And of course it is the people who have been nearest the tax law who are most convinced that capital gains are something wholly apart from ordinary income. If you want to know, don’t ask the man who owns one; ask his tax lawyer or his tax accountant!

The prevailing feeling that capital gains are not ordinary income is strongly augmented by the inflation we have experienced. Among the many points raised in behalf of going lightly on capital gains, that with widest appeal today is the notion that most advances in the value of property are fictitious in the sense that they reflect a decrease in the purchasing power of the dollar. People have become highly sensitized to the rising price level; and they understand that there is a general relationship between increases in asset values and the deterioration of the dollar. However, they forget that particular capital gains
generally have no direct relationship to the inflation; they overlook the fact that to take account of the inflation for all persons it would be necessary to adjust all gains and all losses for changes in the value of money; and they lose sight of the fact that among persons possessing wealth it is those who have capital gains who fare best in the inflation. But as long as inflation is perceived in this one-sided manner, there is likely to be strong support for taxing capital gains lightly during a period of rising prices. In my crystal ball the coming decade (despite the mood of the stock market at this moment) will have a pronounced inflationary tilt; and capital gains will continue to be generally associated in the public mind with the inflation.

With the continuation of bargain treatment for capital gains, a main issue in the future, as in the past, will be the definition of capital gains. Here I must confess to a somewhat clouded preview. The boundaries of capital gain land have frequently shifted over the years, and no doubt will remain fluid. From time to time some so-called capital gain loopholes surely will be closed. All this means is that some particularly novel or jarring device for achieving a capital gain will be ruled out-of-bounds, so that a few especially adept schemers will have had their plans frustrated. Of course these loophole-closings will be given great notoriety by our professional publications, and a considerable number of us will thereby learn about some of these outmoded tricks of the trade for the first time. But while this variety of pea-shooting might be good sport, in total it can make only an infinitesimally small inroad on the whole capital gain territory. Perhaps it has the unheralded merit of keeping the fiscal watchdogs alert by giving them some kind of practice.

In contrast, it is hard to foresee any major contraction of the capital gain area and easy to envisage substantial expansion. Unless we were to equate capital gains strictly with inflationary price changes—which we never have done—the definition of a capital gain necessarily must be arbitrary. Our whole concept of capital gains is a creation of the tax law, and the concept has been pretty much fashioned out of the air over the years. This fact is likely to be of considerable importance in shaping the future of the definition. Since the delineation of capital gains is arbitrary, our political representatives will be hard put to defend taking away the privilege from any substantial group so long as others retain it. And they likewise will find it difficult to resist enlarging the arbitrary definition to include additional situations which are analogous to those now blessed.

Accordingly I would not be surprised to find, in an inflationary economy, that capital gain treatment has been at least in part extended to such items as interest on government savings bonds, periodic payments from retirement or pension plans, and various welfare payments that are not tax exempt. But these are only illustrations, and the line of candidates will no doubt continue to form on the right. On another occasion I shall be only too happy to explain why, if we are to have favored treatment for capital gains, I am convinced that the purest form of capital gain is the salary of a law teacher in a Midwestern urban university.

My third look into the crystal ball conjures up a vision of the complexity of our tax law of the future. This part of the act hardly needs any magical props. We all know that our income and transfer taxes have grown more complex year by year almost since their inception. Most of us, I am sure, intuitively feel that this process will go on, come what may.

Nevertheless there need be no mystery about why this process occurs. At least three aspects of it can be distinguished. The first is the now familiar point that high graduated rates of tax in our society apparently can be had only at the price of numerous special exceptions. It is patent that an exception, which means a special rule, necessarily adds complexity to the law. The capital gains apparatus, for example, is the prime contributor to the complications we presently enjoy. But what is important for explaining the sustained growth of complexity is the observable fact that exceptions have a persistent tendency to breed other exceptions and exceptions to exceptions, and the progeny have a complexity potential all their
own. The matter is almost this simple: when we grant preferential treatment to one group, it is not long before others can demonstrate that their cases are equally deserving, and then there is need to define the scope of the new preference.

A second aspect of increasing complexity is common to many areas of law, but stands out in the case of taxation. As general principles and rules are interpreted and applied to particular situations, subordinate principles and rules are evolved. The law thus becomes more extensive and more highly structured. In tax law this process operates at an unusually fast pace. New situations are often created by taxpayers and their advisers in response either to the development of rules or to their absence; the new situations in turn lead to new issues; and the resolution of these contributes to the further evolvement of rules and principles. This kind of evolutionary growth is virtually inherent in tax law for a dynamic society. We should recognize, however, that its dimensions expand greatly as the number of root distinctions built into the law are increased.

A third aspect of the growth of complexity is somewhat related. We have increasingly turned to legislative codification of our tax law, and in doing so have increasingly sought detailed specification of the rules. A variety of causes underlies this approach to taxation. There is the desire for increased certainty about the rules; there is the misguided optimism about the omniscience of legislative draftsmen, even of top quality; there is the belief that courts (particularly appellate courts) fail to appreciate the niceties of taxation; there is the widespread conviction that an administrative agency cannot be relied on to give taxpayers a fair shake in applying general rules; and there is the feeling that Congress after all houses one's best political friends. But whatever its causes, we can easily understand why the detailed codification approach to taxation tends to promote expanding complexity in the law.

To start with, in a comprehensive type statute there is a temptation to cover every situation which comes to mind, whether or not they have actually arisen. Consequently the rules proliferate more than might otherwise be the case. In the next place, the attempt to use language to cover the host of situations which have been envisaged aggravates the difficulty of finding words which say precisely what is meant, and no more. Every new phrase introduces possible ambiguity which can augment the complexities of the law. Then, too, the effort at specificity provides taxpayers and their advisors with a temptingly detailed map of these boundaries which are soft and remain to be tested. This invites the kind of probing and planning which constantly produce new situations that call for further interpretation of the rules, and thus require the creation of yet additional rules.

There is another but more subtle characteristic of detailed codification of tax law which makes for increasing complexity. Often our tax law represents a compromise of not wholly consistent ideas or principles. When the law is left to evolve on a case by case basis, the gaps and inconsistencies are apt to be less noticeable or less awkward. A lack of consistency can always be attributed to a bad decision; head-on clashes of ideas or doctrines generally can be avoided by courts; and even when they cannot be postponed, courts usually need only attempt a partial reconciliation, and then only after the profession has had ample time to talk and write about the problem. Almost the opposite seems to be true of a comprehensive codification. The gaps and inconsistencies tend to come to the foreground; once discovered there is apt to be impatience with them; and the demand for correction or improvement by further legislation is very likely to be raised. The more experienced and more agile minds among the profession of taxmen will be the quickest to recognize shortcomings in the detailed statute. And when these experts are appointed to advisory committees they of course will be capable of proposing the greatest amount of legislative repair. And, naturally,
the solutions they offer will frequently consist of additional detailed rules, even more highly structured than before. If illustration be needed, our recent experience with the income taxation of trusts and estates is made to order. We might have guessed that the solution offered by the experts to the defects of the two-tier system would be a four-tier derivation.

Please understand that none of this is said in criticism. It is only intended to explain why the effort to simplify the Code in 1954 resulted in increased complexity of the law, and why successive amendments of that Code most probably will do the same. Further, it might set us on guard that the next Internal Revenue Code, despite the best of intentions, probably will be twice as long and at least twice as complex.

From these observations I should like to remark briefly on the certainty or clarity of tax law in the future, without even a pass at my crystal ball. The increasing specificity of the statute will make the law both more certain and more uncertain. This is an ancient paradox of law, but by now taxmen surely ought to be in the lead in appreciating it. The law becomes more certain in that particular old problems are specifically answered. New uncertainty, however, is introduced because, as already noted, we can never be sure that language used to solve these old problems will be understood to mean precisely what we wanted it to mean. The very words which clear up one problem thus may well create others. In taxation this disconcerting development is especially likely to occur because, with dollars involved, each of us at some time or other might try to discover the furthest limits to which a rule will allow us or clients to go.

All this is more acutely conveyed by the story of the tax lawyer who telephoned his colleague shortly after the gift in contemplation of death provision of the estate tax was liberalized by inclusion of the specific rule that gifts more than three years before death were never so tainted. With considerable emotion he complained: "How can they expect me to plan properly for my clients under this sloppy drafting? Now I'll have to wait until the Regulations come out before being sure whether the day of death is included or excluded in computing the three years."

My fourth effort at seeing into the future, unlike the others, is something of a command performance. I feel that while my crystal ball is warmed up, I am obligated to my hosts to see what I can about the future of tax institutes. And I am sure it will be understood that what I am about to say should be legally privileged, since it is but an accurate report of that which I have been graciously privileged to foresee.

Happily I can set my hosts at ease. Tax institutes, and in particular this Institute, will flourish. Ten years from now the Twenty-sixth Annual Institute of New York University will meet. The attendance will be heavy, indeed so heavy that the sessions will have to be held in the Coliseum. The speeches will be longer, despite everyone's good intentions of making them shorter. The papers as usual will be even longer than the speeches; and their length will make it impractical to publish them in a single volume. Fees for attending the Institute of course will have to be raised accordingly. The speakers, however, will as ever remain uncompensated.

Perhaps all of you, and no doubt members of the Planning Committee for the Institute, are wondering what will be the principal topics at the 1967 meeting. Anticipating this, I knowingly squeezed my crystal ball very hard, and I can only hope that the images which arose, and which I now relay to you, were not too distorted by my eagerness. With this caution, I give you the titles of a few of the talks which seemed most intriguing, as well as some commentary on them:

(1) "How to avoid having a group of trusts taxed as multiple trusts." After much trying, the forces of righteousness finally got Congress to pass a watered-down provision to curb the use of multiple-trusts. Though it has been in the law for several years, there apparently has not been a single instance in which the provision has been found applicable. This talk,
by a leading developer of multiple trusts, should help to keep the record clean.

(2) "The eight-tier system for taxing distributions of trusts and estates." Enacted as a simplification of the old four-tier system, this new system has the merit of putting every distributee in his proper place. In tax parlance it is known as the "do re mi fa so la ti no-do" arrangement. The advisory council which sired it thought that a full octave range of tiers might simplify things by enabling the official instructions to be set to music. Perhaps an adaptable score would be "Beat me Daddy, Eight to the Bar."

(3) "The proposed multiple-corporation legislation." This proposed legislation does not have the endorsement of any known association of lawyers or accountants. One taxpayer appeared before the Congressional Committees to urge its adoption. It appears that his only connection with corporations is that he works for one. The Treasury, however, is enthusiastic about the proposal, even though it is copied after the infertile multiple-trust provision.

(4) "The collapsible individual." Though spurred on by what I thought was a particularly fine title, I was unable to set any clues about this talk, other than the fact that a collapsible individual is a taxpayer.

(5) "How to squeeze the last drop out of percentage depletion for water." Old-time taxmen might be surprised today to learn that percentage depletion will soon be extended to water, especially in view of the widely-held idea that oil and water do not mix. But once it was decided under existing law that sand and clay were entitled to percentage depletion, some very learned persons pointed out that on this planet water was only slightly less rare. The law, quite appropriately, provides different percentage rates for the depletion of ordinary water, ice water, hard water, soft water, fresh water, salt water, mineral water, and branch water. Ice manufacturers, incidentally, are contending that they are entitled to base their percentage depletion for water on the price of ice cubes.

(6) "Accelerated amortization for automobiles." This talk explores a brand new provision. In years when the sale of passenger autos falls below industry expectations, the Secretary of the Treasury, upon petition of any one manufacturer, is authorized to certify that all purchases of new model autos are entitled to amortize their purchase price over a two-year period. The origin of this arrangement is interesting. Certain Michigan economists proposed it as a sure-fire means of keeping our economy in high gear and hitting on all cylinders, through fuel injection. This is known as the new forward look in taxation.

(7) "When to claim the optional standard business deduction." The problem of policing expense accounts and similar expenditures became so sticky that Congress finally came to the rescue of the administrators; it did so by allowing any taxpayer in trade or business to deduct 10 percent of his trade or business income in lieu of itemizing expenditures for entertainment, meals and lodgings while in travel status, and the like. From now on any taxpayer who chooses to itemize these items must attach to his return a certified report of a recent lie detector test.

(8) "The new simplified method for taxing partnerships." Ever since 1949 some of the best brains in the profession have been working on the problem of how to simplify the taxation of partnerships. The 1966 Act tackles the problem in a new way. It allows partnerships to be taxed as trusts. No doubt the next simplification will be to permit trusts to be taxed as partnerships.

(9) "How to convert ordinary income into capital gain." No commentary is needed regarding this talk, except perhaps to note that a dozen new methods of accomplishing this old stunt were newly discovered by younger men in the profession. A number of them, very likely, are here in the audience tonight.

Some of you may be curious about what the speakers will say on their various subjects, especially after twenty-five annual tax institutes have gone by. While it is not given to me to know their exact texts, a few refrains were emphasized by so many of the participants that I could not but help pick up traces of them. What follows is a quasi-quote which perhaps is the best available sample of these points:

"Now we all know that the amendment of Section 100.001 of the 1964 Code made by the Technical Changes Act of 1966 was specifically intended to bring order out of the chaos produced by the multiplicity of inconsistent decisions which the courts had handed down. You will remember that the Tax Court first adopted one position and then overruled itself; then the district courts tended to adopt the initial position of the Tax Court; then the circuit courts split three different ways on the issues; and then the Supreme Court finally confused this whole area of law. It handed down a decision on grounds which worried all of us because it seemed to give the government the power to successfully attack these tax-saving arrangements no matter how skillfully they were contrived. The Technical Changes Act amendment was designed to undo this damage and provide a simple, clear rule of law. It has to be read very carefully, for it has eleven separate sections, some of which I am afraid are quite involved. In addition there are important glosses provided by the Committee Reports of both the House and the Senate and the Report of the Joint Committee, and there are several
supplemental Committee Reports which fill in a few of the gaps. But because the amendment, for practical considerations, had to be pushed through Congress rapidly, there unfortunately are a number of questions about it which are vexing, to say the least. In fact, some experts have suggested that technically there is doubt whether the legislation is adequate to reverse the Supreme Court decision which set it in motion. Moreover, even assuming it does this much, there is a disquieting rumor that the Treasury will again thwart the intention of Congress by adopting a very narrow construction in its forthcoming proposed regulations. In the meantime we are very much at sea since the Service refuses to issue any rulings on the vital questions. Under these circumstances, things at the moment are almost as unsettled as they were before passage of the amendment. Perhaps by this time next year we will have some definite word in the form of Regulations and will be able to make our plans with confidence. We can only hope that the Treasury will see the light and interpret the Amendment reasonably so that we won't have to ask Congress to amend the Amendment.

In view of the fact that I chose this excerpt only as a sample, I am sure you will understand my omission of the author's name. I hope that he, too, will be understanding.

Finally there is one other item concerning the 1967 Institute program which candor compels me to reveal. On the opening day there is a dinner session. The announcement of it, which is set in exceptionally bold type, reads as follows: "This session is reserved exclusively for entertainment; absolutely no speeches of any kind will be permitted."

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Meltzer—

tiveness of sanctions against improper conduct once it is disclosed.

I will not speculate on the sense of shame of those involved in the serious abuses uncovered by the Committee, beyond saying that those disclosures do not warrant any optimism. The inescapable danger under the pending legislation is that disclosure regulation, unaccompanied by effective sanctions against improprieties disclosed, would have no significant effect on the conduct of thick-skinned and faithless fiduciaries. Disclosure regulation which at best produces confessions, without repentance, scarcely justifies the heavy burdens which such regulation would impose on honestly administered plans and on the government.

The sanctions now applicable to maladministration of the plans involved have, as the Subcommittee's investigation has indicated, been inadequate in practice and may remain so. In this connection, it is important to note that notwithstanding the superficial resemblance between the contemplated disclosure legislation and the Securities Act of 1933, there is a basic difference between them. In the securities field, there is a drastic and well-known sanction supplementing the criminal provisions for false disclosure. A stop order by the SEC will, in general, make the securities unmarketable. No comparable sanction exists for disclosure in the context of welfare and pension plans. Furthermore, it seems clear that in exercising its authority to issue stop orders, the SEC considers not only the adequacy of disclosure but also any overreaching or unfairness in a securities offering. The SEC is thus in effect exercising a regulatory authority, which would not be available to the enforcing agency under the pending legislation.

It is possible, of course, that the contemplated disclosure requirements, coupled with effective federal-state cooperation, might lead to more effective enforcement on the state level by state agencies as well as by the beneficiaries of the plans. But the variety of state regulatory systems and the substantial obstacles to effective enforcement by beneficiaries which would persist leaves this matter in considerable doubt.

The foregoing discussion suggests that (1) disclosure regulation, without direct and effective sanctions against malfeasance by trustees (as distinguished from sanctions for false reports) may be ineffective in advancing the statutory purposes; and (2) there is, accordingly, a serious question as to whether the conjectural benefits of such legislation justify the heavy burdens involved. Alternative means of regulation, which do not involve general disclosure requirements

Emil Sandstrom of Sweden, President of the International Association of Legal Science, and Andre Bertrand of France, Secretary-General of the Association, with Professor Sol Mintzchikoff.
Mr. Charles Rhine, of Washington, D.C., President of the American Bar Association, with Professor Sota Mentshikoff, during the luncheon held in Mr. Rhine’s honor by the Law Faculty. It has become customary for the Law Faculty to entertain the President of the ABA shortly after he assumes office.

could, I believe, achieve the statutory objectives more effectively and with significantly less cost to the government and the legitimate private interests involved.

The alternative regulation would incorporate the following elements:

(1) Criminal provisions against embezzlement of the assets of a plan and against the following kinds of specified misconduct, by any trustee, administrator, or employee of any plan or by any employee or officer of any enterprise or organization establishing a plan (all of whom are herein included in the term “fiduciary”):

(a) Receipt of any compensation, direct or indirect, from any person or company, selling, directly or indirectly, insurance or any other service to the plan involved or to any other welfare or pension plan.

(b) Owning the securities of, or having a property interest in (other than an interest resulting from the issuance of personal insurance policies in the ordinary course of business), or serving as an officer, employee, or member of the board of directors, of any company, firm, person, agency, broker, selling insurance or other services to the plan involved or to any other welfare or pension plan. This provision should, however, be so limited as to be inapplicable to banks, trust companies, investment advisors, actuarial experts and the like, which are not involved in the purchase of insurance or other services for a plan but only carry out investment functions or other functions which do not involve any possibility of conflicting interests in enterprises selling insurance or other services to a plan. Furthermore, in order not to prohibit, in appropriate cases, ownership of insurance companies or of medical clinics, etc., by welfare and pension funds, there should be a provision for administrative exemption from this restriction. Such an exemption might, for example, be granted to the Amalgamated Clothing Workers of America with respect to insurance companies owned by funds administered by that union. (See p. 44 of Final Rept. of Sen. Committee on Labor and Public Welfare, Rept. No. 1734, 84th Cong. 2d Sess.)

(c) Lending money to, or borrowing money from, a plan of which he is a fiduciary.

(d) Selling property or assets of any kind, directly or indirectly, to the plan unless the market value thereof is independently established by transactions on an organized securities exchange or the like and the price to the plan is not in excess of the price so established.

(c) Purchasing property from the plan unless the market value thereof is independently established (as above) and unless the purchase price is at least as high as the price so established.

(f) Receiving direct or indirect compensation from the plan for services rendered to it if the fiduciary, during the calendar year in which such services are rendered, was employed by an employer or union establishing, or contributing to the plan, or participating in its administration, or representing employees who are beneficiaries of the plan, at an annual rate of compensation in excess of $3,500.

(2) Criminal sanctions against any person who is not a “fiduciary,” who knowingly participates in the violation of any of the foregoing provisions by a fiduciary.

A portion of the French delegation at the Conference of the International Association of Legal Science: Counsellor of State Marc Ancel, Counsellor of State Andre Letourner, and Andre Bertrand, Secretary-General of the Association.
(3) The provisions of paragraphs (1) and (2) above would be enforceable by civil as well as criminal actions.

(4) A provision that fiduciaries should be under a duty (a) to administer the assets of the plan solely in the interests of its beneficiaries and (b) to avoid any transactions in the name of, or on behalf of, the plan, as a result of which, or in connection with which a fiduciary benefits directly or indirectly, except in his capacity as a beneficiary. This provision would be implemented by civil actions exclusively.

(5) A provision that third persons knowingly participating in a breach of the general duties imposed on fiduciaries by par. 4 (above) would also be subject to civil actions for damages.

(6) The enforcing agency would have authority by regulation to provide that specified classes of transactions would be subject to either criminal provisions or to the civil fiduciary standards. Such regulations prior to their promulgation would be filed with Congress while in session and would become effective only if neither House registered its dissent within a specified period.

(7) Both the enforcing agency and the beneficiaries would have a right to bring the civil actions provided for and to intervene in actions brought by the other. The enforcing agency, prior to instituting civil actions would give notice of its intention to do so, so as to permit the beneficiaries, within a specified waiting period to institute the action. Beneficiaries who established a serious breach by a fiduciary in actions which they filed or made a substantial contribution as intervenors in government-instituted actions would, in the court’s discretion, be entitled to a reasonable counsel’s fee. A judgment on the merits in a federal court would be bar to an action on the same transaction in a state court and vice versa. In order to prevent collusive actions, provision should be made for this bar to operate only if the enforcing agency was given prescribed notice as to filing of actions by private individuals so that the agency, in appropriate cases, could intervene. (If violations of the statute should occur in connection with level-of-benefit plans, there would be problems as to who would be entitled to the resulting damages. The employer-entity would generally seem entitled to the damages where such violations increased his net cost for the agreed-upon benefits. Nevertheless, in some cases, those owning all or the controlling interest in the employer-entity might be responsible for the abuse which may have been prompted by a desire to inflate the costs of the plan. In such a situation, recovery of full damages by the entity would seem anomalous. It is difficult to deal specifically with the variety of circumstances which may arise. Accordingly, the court should in its discretion be authorized to grant all or part of the damages to the employer, to the employees, or to the government, and should be directed to allocate damages so as to promote the statutory objectives.)

(8) The enforcing agency should be authorized to prescribe by regulations the content, auditing and the form of the accounts and records, etc., of the plans as well as the period which the accounts and records should be kept. Violations of such regulations should be made a crime.

(9) The statute should also provide:

(a) For periodic reports to the beneficiaries showing the total contribution made by the employer and the employees, respectively, and the benefits available or accrued under the plan.

(b) For authority in the enforcing agency to prescribe the form and content, including information in addition to that provided for in (a) (above), of such reports.

(c) That such reports to the employees should advise them of the name and address of the enforcing agency and should indicate that information as to improper conduct or as to inadequate disclosure in con-
section with the administration of the plan should be sent to the agency.

(d) That a duly verified copy of such reports be filed and preserved by the custodian of the books and records of a plan, in accordance with the regulations of the enforcing agency.

(e) That willful falsification in such reports, or willful failure to make them, or willful omissions therefrom constitute a crime.

(f) That designated persons (clearly described in the statute or by administrative regulation) shall be under a duty to make such reports to the beneficiaries. (This provision should, I believe, impose this duty on officers of employers in connection with plans established and administered solely by employers, on trustees of jointly-administered plans, and on union officers in connection with plans established and administered solely by unions. This provision should not require organizations such as banks and trust companies rendering services to plans to report directly to beneficiaries but should require such organizations to certify the data within their possession necessary for such reports. (Compare S 1122, Sec. 6(a) and 6(d) of S 1122.)

The agency should be authorized, in its discretion, to require plans to furnish the information described in Section 6 of S 1122, to subpoena their books or to inspect their books at reasonable times and should be given similar subpoena and inspection authority with respect to the books of any person which are relevant to the administration of any plan.

The foregoing proposals are a tentative framework which could be vastly improved by the informed criticism of the Committee’s staff and others. Consideration of these proposals by the Committee is, I believe, warranted because, as already indicated, they appear to have the following advantages over pending bills relying largely on general disclosure requirements.

1. The alternative proposals would avoid the analytical and practical problems involved in carving out exemptions from disclosure regulation.

2. They would avoid the great burdens which general disclosure requirements would impose on both the government and on honestly administered plans unless exemptions from such requirements could be devised for honestly administered plans in any class of plans, which seems unlikely.

3. They would directly prohibit, and impose appropriate sanctions on, improper conduct; this promises to be more effective than the indirect requirement of disclosure, which is a doubtful method of deterring fiduciary abuses in this area.

4. They would authorize administrative requirements for proper record-keeping, thereby facilitating proof of impropriety.

5. They would permit the enforcing agency to be selective in its demands for comprehensive disclosure, thereby conserving its resources for situations which warrant scrutiny.

6. They would encourage beneficiaries to enforce the fiduciary duties owed to them and would, at the same time, avoid the dangers arising from the concentration of enforcement in a single agency or group.

The foregoing proposal for the elimination of general, as opposed to selective, disclosure requirements involves judgments on difficult questions of degree. Accordingly, before I conclude this memorandum, it seems desirable to refer to considerations qualifying the position developed above.

General disclosure requirements would, of course, make some contribution to the legislative purposes, a contribution which would be increased if automatic disclosure to the government was part of a balanced program which included effectively implemented fiduciary standards. But this conclusion does not answer the underlying question, which is whether the return from disclosure regulation would justify both the resultant burdens and the logical and practical problems raised by an attempt to reduce such burdens by means of the various exemptions contemplated by the pending regulations. Although I have expressed my doubts about the adequacy of the return I recognize the difficulty of making firm judgments about the impact of disclosure requirements. Similarly there is no formula for determining the wisdom of the costs of enforcing a legislative program even when such costs can be reliably estimated, which is not the case here. Finally, as to the exemption problem, statutory exemptions are usually crude and imperfect qualifications on the legislative purposes, and exemptions which cannot neatly be supported on logical grounds often result from the practical need to reduce both the government’s enforcement burden and the cost
of compliance by especially appealing interests, such as "small business." Such necessarily practical and imperfect accommodation of conflicting objectives may be inescapable in connection with pension and welfare legislation.

The foregoing considerations, which weaken the objections to the disclosure and exemption features of the pending bills, are re-enforced by the large stakes involved in welfare and pension plans and the comparative helplessness of beneficiaries to protect their own interests.

However the issues as to general disclosure requirements and exemptions are resolved, it bears repetition that it seems unlikely that the regulatory burdens of such disclosure requirements would be justified unless they are coupled with an effectively implemented code of fiduciary conduct. Such a code appears to be an indispensable prerequisite for effective legislation. Furthermore, as my testimony indicated, the reasons for exemptions from disclosure requirements do not operate to justify exemptions from such a code; on the contrary, disclosure exemption increases the need for the applicability of fiduciary standards. Accordingly, I renew my recommendation that such standards should be made applicable to all plans, and especially to those plans which are exempted from general disclosure requirements.

Respectfully submitted,

Bernard D. Meltzer

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**Book Review**

_The Administration of Technical Assistance—Growth in the Americas._ By Philip M. Glick. The University of Chicago Press. 390 pgs. $5.50

Reviewed by Elmer Gertz

This is one of a series of books on technical cooperation in Latin America, sponsored by The National Planning Association. It is the first complete story of the organization and management of the technical assistance programs South of the Rio Grande, written by the former general counsel of the Institute of Inter-American Affairs and of the Technical Co-operation Administration and one of the drafters of the immortal Point Four Program. It is likely to become a classic in its special but increasingly important field.

During the more than thirty years that I have known Philip M. Glick, I have always been impressed by his earnestness, understanding and integrity, and the sort of subdued brilliance and quiet drive of the man. He was one of a group of classmates at the University, all personal friends, who rose to the manifold Governmental opportunities under the New Deal in its first aureoled days. They were all, and none more so than Mr. Glick, highly articulate, social minded and dedicated men, who helped give tone and meaning to the new administration. There was nothing blase nor passive in their temperaments. They welcomed public service because of the larger opportunities it offered for men of vision. Each one was capable of filling remunerative posts in private business, but they
preferred the spiritually greater rewards under the dashing new regime in Washington.

I mention these things about Mr. Glick and his associates, because they explain the qualities of this book. It is a thorough study, in all of its ramifications, of a complex program. The book deals with the origins and history, the legislation, the regulations, the economics and sociology and philosophy, the agencies and personalities, in all of their technicalities and details. It never sacrifices the hard core of facts for the sake of brilliance or wit. But it is not lacking in the human understanding, nor in the meaning behind the bare recital of facts and figures.

The roots of the program ran a long way back, but this book deals only with the three periods closest to our own day: the period immediately prior to 1940, the decade from 1940 to 1950, and the period which begins with President Truman's inaugural address of January 1949 when "Point Four" was officially born. "The past is prologue," Mr. Glick concludes and finds from his long survey of the history "that the basic administrative problems are four in number: the choice of instruments for effective co-operation; the structure needed for program planning; the measures necessary to secure competent technicians in adequate number; and the type of organization that can best serve the objectives of the program and the growing needs of American foreign policy." He devotes long chapters to each of these four basic administrative problems.

Mr. Glick is a diplomat with a difference. He does not hesitate to deal candidly with each of the problems, albeit in sober language. Any sensations are implicit. The problems are compounded by the general weakness of democracy in Latin America, the frequent changes of administration, the highly centralized structure and function of government, the shortage of trained professional people, the inadequacy of personnel practices, widespread corruption, the red tape, and much besides. One sometimes wonders that anything is achieved.

The great bulk of the work performed in Latin America in the bilateral program is done through the so-called servicio. Mr. Glick describes it as a new type of public agency, "probably the most interesting mechanism for international co-operation that has been created." The servicio is a means whereby a partnership, in effect, is created between the appropriate ministry of the "host government" and the technical mission of the United States.

The book is so packed with details on this and other matters that it would be difficult and unfair to summarize it with the brevity appropriate to a review in a non-technical publication. There are certain facts that loom up in my mind as particularly interesting, where others might justly select other facts, as even more important. Mr. Glick feels, as I do, that the success of the program should be measured by the ease with which citizens of the host country are able to train themselves to carry on the work alone. No one should look forward to permanent spoon-feeding by the United States.

In a final chapter, significantly called "Plural Efforts Toward a Common Goal," Mr. Glick sums up the lessons as he sees them and the hopes for the future. He takes each kind of program and tells its strength and weakness with the knowledge of one who has lived with each problem but does not content himself with personal knowledge alone. He shows the weakness, not to say danger, of regarding the Point Four program, for example, as an inducement to poorer countries not to plunge into the Communist sea of troubles. It is clear that he prefers to think of that program, as well as other forms of technical assistance, as a means of benefiting all parties in all respects, the United States as well as the countries it aids, least of all in a military sense, most of all as an incentive to genuine world cooperation. That way lies world progress and universal welfare, peace in our day and beyond.

"This," he is quick to add, "is written out of a belief that the future can be built—that we need not despair of it and can do more than just hope for the best—a belief, not a conviction. Man's intractability may ultimately defeat all efforts at social construction, but the belief has as much warrant as the foreboding in the story of man's past."

Those who share the optimist's belief and who would help implement it should read Mr. Glick's book even if it is not always easy going. In that respect, it is typical of the road that lies ahead.