Taxation in the Law School
WALTER J. BLUM

It is perhaps a sign of the times that in The Law School the course called "Taxation" is a course on federal taxes. In recent years an increasing number of law schools have come to orient their work in taxation around the national tax system. Nevertheless, in reviewing the treatment of taxation in our school, it may be useful to start by noting those aspects of taxation which are not covered by the basic taxation course.

For present purposes, tax problems in the United States can conveniently be divided into five kinds. There are, first, the purely intrastate problems which grow out of the large diversity and number of state and local revenue enactments. Most of these problems are not dealt with at all in the School today, exceptions being the due-process issues coming up under the federal Constitution, which are treated with in the Constitutional Law course, and the state death-transfer taxes, which are given a passing glance in connection with the federal estate tax.

The decision to exclude from the basic Taxation course any consideration of local taxes, such as property taxes, sales taxes, franchise taxes, and the like, seems entirely sound. Almost all the legal issues presented by these taxes are peculiar to the particular statutes involved or to the constitutions of the states in question. There are relatively few issues which are common to a substantial group of taxing jurisdictions; and it would be chaotic to try to put together teaching materials dealing with the taxing systems of the thirty-four states from which the current student body is drawn. Conceivably the study of local tax problems could be based upon those which arise in a jurisdiction heavily represented in our student group. One is likely to find, unfortunately, that a tax in that jurisdiction, say, the personal property tax, has fallen into disrepair and that practice pertaining to such a tax cannot be taught in a law school. This very fact, however, suggests that there is a need for examining these taxes to determine whether they are inherently unworkable and, if not, to ascertain what can be done to improve them. A study of this type, to be useful, would have to be concentrated on particular taxes in particular jurisdictions and therefore would have a limited appeal. Taking all these factors into account, it seems that the suggested topic is almost ideal for a seminar or a small course. Perhaps the subject could best be examined as part of a more general course or seminar on the main legal problems connected with municipal government. In any event, the study of local tax problems seems especially appropriate for Illinois in view of the current proposal for amending the revenue article of the Illinois constitution. But these are speculations: state and local tax problems are, by and large, not covered in The Law School.

There are next the problems which might be classed as the interstate or extra-state aspects of state and local taxes. These arise when a taxing body attempts in effect to reach across its state's lines or when a transaction or situation concerns two or more states which are seeking to derive revenue from it. The resulting problems might then be cast in the constitutional form of whether a taxing body has exceeded the limits of due process in trying to extend its jurisdiction or whether it has unreasonably burdened interstate commerce; or the problem might come up under one of the growing number of interstate compacts on taxation. These problems have
long been contained in the curriculum, but they have had a migratory residence. At one time they were simply regarded as a part of the basic Constitutional Law course. Then they became pillars of the Taxation course at a time when it was given by a teacher primarily interested in constitutional law and constitutional history. Still later the jurisdiction issues were included in the Conflict of Laws course on the theory that they were essentially choice of law questions. And now, after some further rearranging, the whole subject is again back in the basic Constitutional Law course.

Problems of a third kind concern the relationship between state and local taxes, on the one hand, and federal taxes, on the other. The interplay between the national and state tax systems raise important constitutional questions about the power of the national government to tax activities of the state governments, and vice versa, and these are examined in the Constitutional Law course. Otherwise the interplay presents relatively few concerns which are predominantly legal, and the more important of these are touched upon in the Taxation course. For example, attention is paid to the credit allowed against the federal estate tax for state death taxes, to the deductibility of various state and local taxes in computing taxable income under the federal income tax, and to the measures taken by some states to tie their income-tax systems to the federal income tax. These of course are fairly narrow matters. The broader and more troublesome problem of dividing up the whole tax field between the national and state governments is left almost completely untouched, save in the case of gift and death taxes, where brief consideration is given the proposal to confer a monopoly on the states as to these transfer taxes.

Just as the existence of many states within our federal system presents jurisdictional and “double taxation” problems, so the existence of many national states in our world raises these difficulties at the international level. Problems of this fourth kind are steadily and rapidly growing in number and importance as commerce and intercourse among the nations continue to increase. It need only be pointed out that the past decade has seen the development of many international tax treaties and that the United Nations Organization has been inquiring into taxing arrangements which are appropriate for separate nations attempting to live in commercial harmony. Nevertheless, these international tax problems are still of very limited concern to the American bar in general, and they tend to be regarded as outside the range of the all-round lawyer’s fields of interest. Furthermore, to deal adequately with most of these problems, a fair degree of familiarity with at least the American tax law is a prerequisite, and for this reason the international questions are not very suitable material for a basic taxation course in law school. Again it seems likely that they would constitute excellent content for a seminar, but as yet such a seminar has not been tried.

Although the international problems are not dealt with academically, some aspects of them are repeatedly considered in connection with actual problems of our students, visitors, and teaching fellows. Over the last five years I can recall that such personal questions required looking into our tax relations with England, Australia, Canada, Holland, France, Germany, Austria, Norway, Sweden, and Brazil. It is a good guess that the general community will not be far behind the University community in becoming interested in the international aspects of taxation. (The personal tax problems of our students sometimes also necessitate learning about the domestic tax laws of other countries. No doubt when increased attention is paid to the international issues there will follow a heightened interest in what might be regarded as the comparative law aspects of taxation.)

There remain the tax problems of a fifth kind—those concerning our national tax system. With the exceptions already noted, the content of the existing basic Taxation course is built almost entirely around them. Even so, great areas of our national tax system are by-passed. Virtually no consideration is given to the tariffs, excise taxes, stamp taxes, and the like. These subjects are omitted not because they are unimportant; the fact is they constitute highly significant segments of our national tax system. However, they are not likely to offer any challenging problems for any large number of lawyers. The architecture of these taxes is in the main relatively simple, and understanding of them comes fairly easily. The operating legal problems by and large are shallow, and often they are tied in with the organization or practices of a specified industry. It perhaps is not too much of an overstatement to conclude that the only really difficult and interesting question about these taxes is whether we ought to continue them. This issue is better examined in the context of economic analysis, and from time to time this has been done in the Law School course in Economics.

One omission which is more debatable is the social security tax portion of the national tax system. Obviously this is gaining in significance, and lawyers more and more are coming into contact with it. If, too, is relatively simple in architecture, and this might be reason enough for doing nothing major with it in a law school. But the whole social security program is now so extensive, and affects so many persons, that it cannot reasonably be left on the academic sidelines. The social security taxes, while perhaps not meriting attention as taxation matters, certainly should be included in an examination of our social security system in its entirety.

Thus the basic Taxation course is largely confined to the federal income tax, both individual and corporate, and the federal gift and estate taxes. The inclusion of the income tax is a natural. It is today our most important tax: it is by far the largest producer of revenue, and it brings into the tax system the largest number of taxpaying units. The architecture of the tax is highly elaborate, the provisions being greatly structuralized and interrelated in innumerable respects. There is much room (Continued on page 10)
Conference on Divorce

The second all-day conference sponsored by The Law School during the past academic year was on the subject of "Divorce" and was held on February 29, 1952. This largest conference which The Law School has sponsored attracted almost five hundred lawyers, social workers, psychiatrists, and students to its all-day sessions. Max Rheinstein, Max Pam Professor of Comparative Law, was chairman of the conference committee, which was composed of Professors Allison Dunham, William R. Ming, Jr., and Sheldon Tefft. Joining with The Law School faculty on the conference committee were Ernest W. Burgess, Professor Emeritus of Sociology, and Helen R. Wright, Samuel Deutsch Professor and Dean of the School of Social Service Administration. Karl N. Llewellyn presided at the morning session, devoted to aspects of divorce law and practice today. The opening speaker was Justice Edwin A. Robson of the Appellate Court of Illinois, First District, who pronounced today's divorce act, drafted in 1874, as "patched, depreciated, and outmoded by the years ... inadequate to cope with the impact of problems in modern society." Justice Robson pointed to divorce practice as one of today's greatest social problems and cited the tremendous cost, on the one hand, of resultant juvenile delinquency and, on the other, of the direct financial costs of state and county aid to dependent children. Justice Robson made a plea for a complete review of the judicial system as the first step toward clearing the accumulated abuses in divorce procedure.

The two other speakers of the morning session discussed the financial side of divorce. Mr. William C. Boyden, member of the Illinois Bar, spoke on the property aspect of divorce. Mr. Robert W. Wales, member of the Illinois Bar, read a paper on "The Tax Aspects of Divorce" by Mr. Harry J. Rudick, of New York, who was prevented by illness from attending the conference.

Professor Max Rheinstein spoke at the luncheon session on "Our Dual Law of Divorce: The Law in Action versus the Law of the Books." Professor William R. Ming, Jr., presided.

The Honorable Paul W. Alexander, Judge, Court of Common Pleas, Lucas County, Ohio, and chairman of the Interprofessional Commission on Marriage and Divorce Laws, was the principal speaker at the afternoon session. Judge Alexander, in speaking on "A Therapeutic Approach," charged that the law, "instead of doing all in its power to facilitate reconciliation, so that there will not have to be a divorce ... forces the litigants into a position of hostility, so that divorce is almost inevitable .... The law of divorce appears to be even less civilized than the criminal law." Judge Alexander described the American Bar Association committee's proposal to transform the divorce court from a morgue into a hospital. This plan, he explained, would take over almost bodily the entire philosophy, technique, and procedure of the juvenile

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Divorce (Continued from page 3)

courts. In the juvenile court the criterion is what is best for the child; in the divorce court the criterion would be what is best for the family.

Other participants of the afternoon session discussing “Contributions to a Therapeutic Solution to the Divorce Problem” were Meyer F. Nimkoff, professor of sociology, Florida State University; Thomas M. French, M.D., associate director, Institute for Psychoanalysis, Chicago; and Emily H. Mudd, executive director, Marriage Council of Philadelphia. The discussion following Judge Alexander’s paper was opened by Francis J. Nosek, chairman, Matrimonial Law Committee, Chicago Bar Association, and Sarah Schaar, head of the Legal Department, Jewish Family and Community Services, Chicago.

Dean Edward H. Levi presided at the dinner session on the “Social and Legal Aspects of Family Conflict.” The Honorable Herbert F. Goodrich, Judge, United States Court of Appeals for the Third Circuit, spoke on “Migratory Divorce.” The Honorable Anna M. Kross, Judge, Home Term Magistrates Court of the City of New York, discussed “The Family Conflict.” Judge Kross described her “little court,” as she calls it, which appears to be doing a notable job of putting into practice many of the techniques which Judge Alexander and other participants projected as the desirable direction for the development of realistic divorce procedure.

The summary and appraisal of the all-day session was led by Professor Karl N. Llewellyn.

On Exhibition

The lobby of The Law School these days is serving as an art gallery. Frederico Castellon has loaned the School his nine paintings depicting “Memorable Victories in the Fight for Justice.” The subjects of the paintings which trace the history of the law in Western civilization are: “The Roman Praetor,” “Laws of Commerce,” “Rights of Citizens,” “Justinian’s Codification,” “Eternal Vigilance,” “Magna Carta,” “The Law and the King,” “Freedom of the Press,” and “Bill of Rights.”

Alumni may recall having seen the paintings, which were reproduced in Life magazine in the March 12, 1952, issue. Life commissioned the paintings and published with the pictures an article tracing the history of the rise of Western law by Judge Jerome Frank '12. The exhibition is open to the public, and alumni are urged to come in at their convenience to see the paintings as well as the School’s bright new decorating job.

Placement

The new Law Placement Office under Dean of Students Sims Carter is in full operation. Alumni are urged to get in touch with Mr. Carter to discuss opportunities for law graduates in their firms.
Richberg Talks on "Where Labor Is Heading"

The Law School was honored on April 8, 1952, by a visit from Mr. Donald R. Richberg. The distinguished partner in the Washington firm of Davies, Richberg, Beebe, Busick and Richardson spoke at a dinner meeting attended by students, faculty members, alumni, and friends. In introducing Mr. Richberg, Professor Bernard Meltzer welcomed him as a University alumnus and partial member of the Chicago Bar. Mr. Meltzer quoted Mr. Richberg's description of himself as "one of President Roosevelt's 999 intimate advisers" and cited "this many-sided career, master in chancery, legislative draftsman, busy practitioner, author . . . distinguished career as an advocate, particularly before the Bar of the United States Supreme Court. . . . Mr. Richberg has broken an unfortunate tradition, the tradition that the lawyer that deals with labor matters must work for labor or management and not cross over."

Mr. Richberg's topic of the evening was "Where Labor Is Heading," and he introduced his remarks by pointing out that he has had "a very long, well, honorable or dishonorable, experience as a male Cassandra in the city of Chicago." He emphasized that an important change had taken place in his thinking and interest. He recalled that early in his career he was antagonistic to the private operation of public utilities; his energies and interest had been directed toward regulating public utilities and working on labor's behalf in its fight for power. Now he has arrived at a position making him equally sure that the concentration of power is certain to lead to abuses no matter on which side of the fence it rests. "I think I do not have to go very far into the record to tell you that I fought for many, many years labor's battles for recognition of the right of self-organization, the right of collective bargaining, in order to maintain freedom, freedom of the worker, and maintain a balance of economic power which meant economic freedom. But I have found myself growing more and more hostile to the change of collective bargaining into collective coercion, and the change of a balance of economic power into attempts at economic and political dictation . . . I have lived to see the progressive era, the effort to get increasing freedom and prosperity distributed, as we said in the old days of Teddy Roosevelt, 'pass prosperity around.' I have seen that progressive era transformed into what for want of a better term I must call a 'socialist era' of diminishing freedom and inflation or austerity, or both. Whether reactionary socialism or progressive individualism will win in the end depends on world-wide forces much beyond our control and on the conversion of the American mind, and this is the trouble as I see it, in which I must place my discussion of tonight's topic."

Mr. Richberg briefly surveyed the trend of judicial opinions and the rulings of the National Labor Relations Board and cited two trends which he felt had become increasingly apparent in recent years: first, the trend of organized labor to monopolize trade coercively or in conspiracy with employers and, second, the trend to monopolize employment with the aid of employers.

Pointing out that the closed shop is not something that has always been with us, he recalled that, years back when he was functioning as a labor lawyer in his opposition to the closed shop, he relied on the strong support of Louis Brandeis, who repeatedly argued that it was a weakness and a mistake for organized labor to seek the closed shop. Mr. Richberg warned that the inevitable outcome of compulsory unionism will be the domination of management by labor and the starvation of private investment.

The man who once served as general counsel to the NRA and was often referred to as the "assistant Presi-
dent" went on to quote from a book by Sherman Rogers which pointed out that for the last seventeen years on an average in the manufacturing industries employees have received 86 cents of every dollar of income produced; corporation and dividends in addition to surplus, 11 cents; rent, royalties, and interest payments, 3 cents. An analysis of 70 billion dollars capital investment in American industries during the period between 1925 to 1942 showed an average return of 3.67 per cent, with the highest return in any one of these industries being 4.67 per cent. On the basis of these statistics he called the claims of the labor leaders "wild" when they insist that the level of profits of American industry allowed wage increases without increases in prices.

Mr. Richberg offered the audience an alternative term for socialism which he calls "socialitis" or, as he sees it expressed in the direction of labor today, "malignant socialitis." "I wish I could take the time tonight, which I can't, to go back over the history of a few thousand years in the endeavor to point out that this trend toward socialism, or malignant socialitis, the trend toward compulsory cooperation, the use of government force to make people do what they ought, isn't liberalism at all, but reaction to the oldest form of government the world has known."

Maintaining his historical perspective, Mr. Richberg went on to point out that from 1776, the date both of the Declaration of Independence and of the publication of Adam Smith's Wealth of Nations, to 1952 is not a very long time in the life of mankind. "This period has shown extraordinary results compared with the long, long centuries of experimentation, with all sorts of forms of compulsory co-operation, which was the meaning of government throughout the world until practically the dawn of the nineteenth century."

On the positive side for labor, Mr. Richberg stated that the transformation of American labor in the last quarter-century was inevitable and in countless ways beneficial but that the political counterpart of the growth of the power of organized labor has transformed our nation from a government supported by the people to "a people that is supported by the government."

In conclusion, after quoting a few sentences from a brief cited by the American Federation of Labor in the right-to-work cases which he argued in the Supreme Court, one sentence of which read, "Workers cannot thrive but can only die under competition between themselves," Mr. Richberg made a few prophecies about where he feels labor is going. If for a few years we can have a peacetime economy, he believes the drive of labor politicians for labor monopolies will be checked and that the obligation of good citizenship will fall upon members of unions as well as upon all other citizens. The tendency, as he sees it, is toward more union responsibility to its own members and to the people and competition to give "an honest day's work for a reasonable wage." He sees the necessity for additional antimonopoly legislation, antiviolence legislation, and antistrike legislation in matters of public necessity. All this, concluded Mr. Richberg, depends on whether we have a peacetime economy again.

"God knows whether we will again, I may not say within your lifetime, but within my lifetime certainly, so I will say, on the other hand, if the intentional insanity of Soviet Russia's policies continues, and the unintentional insanity of our foreign policies and domestic policies, then I suspect the shortsighted leaders of our policies, and not only shortsighted but under terrific pressure; I have got to concede that they will persist in their efforts to rule or ruin until some catastrophic day when they will learn, as others have learned before, that you can bulldoze some of the people all the time and all the people some of the time, but you can't bulldoze all the people all the time. Maybe that is a little plagiarism. This oncoming generation has got a great decision to make. All I can do as a late surviving member of a passing generation is to try to keep faith with the faith that is in me which I would like to say without being unduly emotional is that God made men to be free. As long as I live, I would like to help carry on the fight for that."

Shown above at lunch are two distinguished recent visitors to The Law School, Right to left: Professors Ernst W. Puttkammer and Max Rheinstein with Henry B. Ussing, professor of law at the University of Copenhagen, Denmark, and Justice Lester A. Wade '17, of the Supreme Court of Utah. Dr. Ussing presented a lecture at the School entitled "The Impact of Insurance on the Law of Torts."

Another recent visitor to the School was Arthur L. Goodhart, master of University College and professor of jurisprudence, Oxford University, who delivered a public lecture on the subject "Law Reform in England."

The Law School has also been paid recent visits by Professor Seve Ljungman of the University of Stockholm and Dr. Knud Illum, professor at the University of Aarhus, Denmark.
ALUMNI NEWS

Dorothea Blender

When The Law School received word that Dorothea Blender, Ph.B., '30, J.D., '32, had been nominated for the presidency of the National Association of Women Lawyers, we called to congratulate her and to ask whether we could run a profile. Miss Blender cautioned that, although she had been nominated by the Council of Delegates, the election would not take place until September and that perhaps we were jumping the gun. Currently first vice-president of the Association, in 1947-48 she served as president of the Women's Bar Association of Illinois. So at her request we withhold congratulations until September; we feel certain that by then they will be in order.

Miss Dorothea Blender was graduated from The Law School in 1932 and for twenty years has been a staff member and official of the Commerce Clearing House, Inc., of Chicago. The daughter of Dr. and Mrs. William Blender, of Peoria, Miss Blender came to the University after three years at Bradley University. While at The Law School she was made a member of Kappa Beta Pi, the legal sorority, and in her last year at The Law School served as dean of the chapter.

Miss Blender joined the Commerce Clearing House, where for five years she served as editor on bankruptcy, state tax, and trust reporters. In 1937 she transferred to the sales department and now holds the office of assistant to the president. When we asked Miss Blender just what she does, she replied, "My duties involve just about everything—from keeping in touch with what lawyers are doing and thinking to helping plan new publications. As you may know, our business has grown enormously since the early days, reflecting the growth of federal and state taxes and the increasing control of business. Because most of our publications concern tax and business regulatory law, my interest naturally centers in these fields."

Not only has Dorothea Blender made important contributions to the Illinois and the National Women's Bar associations but she has served for the last two years as a member of the American Bar Association's standing committee on publications. From 1948 to 1950 she was editor of the Women Lawyers' Journal but insists that she is no ardent feminist. "I hold no particular brief for women being lawyers unless their intellectual and personality traits point in that direction. I am an ardent admirer of Soia Mentschikoff and believe that The Law School is to be congratulated in appointing her to its faculty. Her views on women in the law are just about mine, and she happens to be realistic and hardheaded but not at all with a chip on her shoulder."

In concluding her remarks about herself, Miss Blender in return complimented The Law School. "I should like to be able to come back to The Law School and start all over again under the new program. The alumni are thrilled with the great development in The Law School and expect even greater things in the future."

We know that alumni will watch with interest the September meeting of the National Association of Women Lawyers and look forward to greeting its future president.

Andrew J. Dallstream

There is no need for delay, however, in congratulating Andrew J. Dallstream '17, who on June 12 was elected president of the Chicago Bar Association.

Andrew Dallstream came to the University from James Millikan University in Decatur and won the Ph.B. and J.D. degrees in 1917. A native of Hoopston, Illinois, Mr. Dallstream settled in Centralia after service in World War I. He was a partner in the firm of Noleman, Smith and Dallstream. He was active in civic and bar affairs in southern Illinois and served as chairman of the grievance committee of the Illinois State Bar Association for the southern district.

In 1927 he left Centralia to join the now nearly hundred-year-old firm of Pam and Hurd in Chicago. Today he is senior partner, and Pam and Hurd is now Dallstream, Schiff, Stern and Hardin. The firm will celebrate its one hundredth anniversary in 1953.
Dallstream's activities have included membership in the American, Illinois, and Chicago Bar associations, the American Judicature Society, the Lawyers' Club of New York, and the Law Club and Legal Club of Chicago. He has an impressive record of service to the Chicago Bar Association as a member of its governing board, as first and second vice-president, and as a member of its committees on professional ethics, public utilities, grievance, administrative law, judicial candidates, and many others.

He was active in the reorganization of the school districts in the northeastern part of Cook County; served as a member of the commission which drafted the Cook County zoning law; and has been a member of the Zoning Board of Appeals for Cook County for the last ten years and is currently its acting chairman.

While Dallstream's Chicago practice has at all times been of a general nature, he has specialized in the field of corporate law, with particular attention to corporate financing, mergers, consolidations, and reorganizations. He has participated in many of the more important antitrust cases.

He is a director of Celotex Corporation, Jessop Steel Company, UARCO Incorporated, Domestic Finance Corporation, Binks Manufacturing Company, Cardox Corporation (of which he is also chairman of the executive committee), Athletic Shoe Company, Bell Investment Company, and other industrial and finance companies.

He has served for three years as lawyer member of the Board of Examiners for Certified Public Accountants. He is past president of the James Millikan Alumni Association, a member of the board of trustees of the Alumni Fund, a member of the Visiting Board of the University of Chicago Law School, and a member of the executive committee of the Chicago Lighthouse for the Blind.

Mr. and Mrs. Dallstream, the former Dorothy Ricketts, of Charleston, Illinois, have two children, Andrew John III and Dorothy, and reside at Andora Hill, Barrington.

Congratulations

To Robert F. Mathews '20, professor of law at Ohio State University, who is serving this year as president of the Association of American Schools.

To Jerome Kritzner '41, the new director of the SEC Division of Public Utilities.

To Donald Cronson '49, who has been practicing with White and Case, New York, and who has just received the appointment of senior clerk to Mr. Justice Jackson.

To Robert Lawrence Randall '50, who has been appointed clerk to Mr. Justice Reed.

Professor Allison Dunham met with Iowa alumni at lunch on June 13 at the Iowa State Bar Association's annual meeting. Left to right (bottom row): Carroll Johnson '36, T. G. Gilinsky '47, Professor Dunham, Robert S. Blatt '52; (rear row) John Hughes '33, John Sarbough '48, J. C. Pryor '10, Verlin Cubbage '21, Allan Loth '13, and Joseph Brody '15.

John B. Phillips Library

Classmates and friends will welcome the knowledge that the library being established in Beecher Hall (see page 12 of the RECORD) for the use of Law students has been named in honor of John B. Phillips '41, who died in action in World War II. The first member of the Chicago Bar Association killed in action in the war, John Phillips served as intelligence officer with a Marine battalion and met his death in Tarawa.

A graduate of Princeton University, John Phillips served as business manager of the Law Review and was elected to membership in Phi Delta Phi. Upon graduation he became associated with the firm of Eckert and Peterson of Chicago and taught Business Law in the Downtown College of the University.

A fund established by his classmates has been used to defray the expenses of establishing the Phillips Library in the Law dormitory. This memorial to a heroic alumnus will be a valuable part of the new student center.
CONFERENCE ON THE ARTS, PUBLISHING, AND THE LAW

MAY 5, 1952

John F. Harding, general counsel, Cowles Magazines, addressing the morning session on “Libel and Right of Privacy Problems Involved in the Publication of National Magazines.” On the speakers’ platform are (left to right) Associate Professor Harry Kalven, who spoke on “The Law of Defamation and the First Amendment”; John D. Martineau, of Kirkland, Fleming, Green, Martin and Ellis, Chicago, whose subject was “The Limits on Newspaper Comment and Judicial and Other Official Proceedings”; and Professor Malcolm Sharp, who presided.

Allison Dunham (left) and Morris I. Leibman ‘33, of Carney, Crowell and Leibman of Chicago. Mr. Leibman spoke on “Problems Arising on Use of Art and Ideas by Business” at the afternoon session on the topic “Art as Property” chaired by Sheldon Tefft.

Participants (left to right) Harding and Martineau chatting before dinner with Norman R. Tyre, of Gang Kopp and Tyre, Los Angeles, who addressed the afternoon session on “Protection of Ideas (Radio, Television, and Movies).”

The luncheon session of the conference, presided over by Kenneth C. Sears, was on the general subject of “Marketing of the Arts.” Shown above addressing the participants is Herman Finkelstein, general counsel of American Society of Composers, Artists and Publishers, whose subject was “Antitrust Laws and the Arts.” The other luncheon speaker was Robert L. Wright, member of the District of Columbia Bar, who reviewed “The Film Industry: Its Sherman Act Past and Communications Act Future.”

Chatting at the cocktail party preceding the dinner session are Glen Lloyd ‘23, president of the Law School Alumni Association, and Arthur E. Farmer, of Stern and Reubens, General Counsel, American Book Publishers Council, New York City, who made a stirring appeal for intellectual freedom in his discussion of “The Pressure Group Censors the Author.”

The evening session on the general subject “Restraints on the Production of Art” was chaired by Walter J. Blum (left), shown above with Judge Leon R. Yankwich, U.S. District Court for the Southern District of California, whose topic was “The Right of Privacy as a Limitation on Expression.”
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under the tax for maneuvering by taxpayers in the sense that alternative lines of conduct, characterized by different forms, frequently entail vastly different tax consequences. The areas of conduct affected by the tax, moreover, are very extensive. Under these circumstances there are bound to be a large number of legal questions, and these are likely to concern many persons in many different connections. It is clear that the common saying that today “taxes are everywhere” has reference primarily to the federal income tax.

The case for including the gift and estate taxes in the basic Taxation course obviously cannot be as strong, but it is persuasive. These transfer taxes also are highly structuralized and have a depth which tends to produce difficult legal issues. While they do not affect nearly as many persons as the income tax, they impinge upon persons in a large number of situations, and their bite is substantial. They are, furthermore, closely related to the income tax in many respects, and a sound approach to income-tax problems frequently requires an appreciation of gift and estate tax matters. Finally, the transfer taxes and the income tax have an element in common which distinguishes them from all the other taxes and intensifies conflict over them: they are the progressive and direct elements in our tax system.

But it is somewhat misleading to say that the basic Taxation course is largely “confined” to these taxes. The difficulty in constructing the course is not that too much has been left out; rather it is that the boundaries staked out offer too many attractions. These direct taxes have a bearing on practically every other substantive law subject in the School’s curriculum, and in many instances it would be dangerous to employ one’s knowledge of such subjects without being aware of the tax implications. Last year, for example, the materials studied in Taxation were directly connected with transactions or situations taken up in Property, Contracts, Torts, Agency, Domestic Relations, Commercial Transactions, Trusts and Future Interests, Competition and Monopoly, Labor Law, Business Organizations, and Bankruptcy and Reorganization. It is no wonder that Taxation has been regarded by students as a course to be tackled only in their last year in school.

In addition to serving as a complement to virtually the balance of the substantive law courses, these direct taxes are ideal materials for other study purposes. They form an excellent vehicle for a study of administrative law. It has often been observed that administrative law problems are best explored in the context of a specific body of law, since the role of an administrative agency is to be understood in the light of the nature of the particular problems which society is attempting to handle through law. The great merits of the income tax, in this respect, are that it presents a wide variety of problems and that the development of the law is taking place at a rapid pace. The role of the Bureau of Internal Revenue, including its relationship to the courts, in the matter of interpreting and applying the law lends itself to analysis that superbly highlights the fundamental aspects of rule by administration in our society. The income and transfer taxes are equally rich material for exploring the workings of the legislative process. Each year living examples are provided ready made for observing how legislation comes about, the limitations on rule by statute, the compromises and ambiguities which are inherent in the legislative process, and the extent to which the legislature can effectively control the courts and an administrative agency. Add to these factors the scope and intricacies of the statutory law, and it can be perceived why these taxes also afford a grand opportunity for gaining insight into the process of statutory interpretation by judicial action. The reading of almost any paragraph of these taxes is almost necessarily a venture in statutory interpretation.

The three direct taxes invite attention to other facets of legal training. They are unsurpassed as texts for acquiring the various skills now fashionably lumped under the caption of “planning.” I suspect that many persons now automatically associate “planning” with “tax planning.” Inasmuch as every lawyer is constantly facing a barrage of tax-planning literature from the trust companies and publishing houses, there is no need to elaborate on the special adaptability of the income and transfer taxes to forward-looking action on the part of farsighted counsel. But it should be observed that the plasticity of these taxes make them valuable training material in other ways. They furnish a golden opportunity for the student to watch the ingenious legal mind at work. The tax cases are replete with wonderful illustrations of what a flexible lawyer can do for his clients and equally telling examples of what a too flexible lawyer can do to his clients. And the same plasticity, along with the high stakes involved, forever points up for students some of the most persistent questions of legal ethics. Of all the casebooks with which I am acquainted, those in federal taxation seem to be most constantly challenging to the morality of the bar.

In addition to offering all these possibilities, the taxation material almost inevitably lures the inquiring mind to reflect upon the relationship of law and economics. With the possible exception of the antitrust laws, in no other area in a law curriculum is the student reminded so often that there is an economic dimension to the legal matters under consideration. More and more the principal controversies in taxation get stated in terms of economic principles or doctrines. One simply cannot go very deeply into taxation without coming upon what purports to be economic analysis.

With all these lively elements inhering in the direct federal taxes, an almost limitless number of combinations for a basic Taxation course could be fashioned. We have experimented with a few, both to improve the package and to guard against any calcification. While the course has been undergoing periodic modification there has been emerging a general prescription for teaching
taxation, and it can be thought of as containing ten ingredients:

1. Students are made acquainted generally with a huge amount of substantive tax law and caused to visualize the full range of the situations or events which might bring into play the various tax rules. This broad-brush method seems most likely to make one aware of where to expect tax issues and consequences.

2. From the plethora of rules the central skeleton and the chief concepts of each of the three taxes are abstracted and emphasized. No beginner can reasonably hope to remember more than a small fraction of the substantive rules, but he can expect to understand the main architecture of the structure and the nature of the main building blocks that are employed. Stress therefore is laid on the concepts of gross income and net income; the principles of tax accounting; the pattern of taxing gains from property (that is, capital gains); the methods of taxing income derived by or through legal entities such as trusts, partnerships, and corporations; and the arrangements for relating the tax on the income of an entity to the income derived from it by its owners. A good grasp of those fundamentals enables one to analyze the source of a tax problem, and this, after all, is more important for the student than knowing the specific answer to it which happens to prevail at the moment. In law one is more apt to come up with the correct answer if he fully understands what there is about the structure of the law that produces the particular issue in question.

3. An effort is made to get students to appreciate the variety of consequences which flow from the fact that the tax law distinguishes between certain types of dollars. There is a strong tendency for students to think of the tax law without thinking of how persons are likely to shape their conduct to the distinctions which it makes. Tax law ought always be viewed through the eyes of not only the tax collectors but also the taxpayers. Tracing the full impact of any one significant distinction drawn by the law, such as that between ordinary income and capital gains, tends to direct attention to human responses to tax rules. And it assists greatly in getting hold of the main concepts on which the law rests.

4. The areas that are the storm centers in the law are emphasized, particular attention being given to why interests are likely to clash in those places. By understanding why, for example, the penalty tax on unreasonably large corporate accumulations is apt to produce controversy, one can better fit together the decided cases and appraise current situations. Concentration on the storm centers also serves to further comprehension of the central skeleton of the law.

5. The whole range of factors which might enter into tax planning in typical situations is assayed. To make this experience realistic, it seems advisable to concentrate each year on one or two hypothetical cases in which a generous supply of ersatz flesh-and-blood facts is given. For the past several years it has been my practice to crib from the panel discussions at the annual University of Chicago Tax Conference (which, incidentally, has become such an attraction that last year it was unfortunately necessary to turn down almost a hundred applications because space was not available). The discussions on tax planning are useful in counteracting the tendency to read cases from the viewpoint of litigation and not of counseling. To some extent they remind students that sound tax advice depends on a sense of good judgment as well as knowledge of the rules.

6. At least once each year an ingenious scheme proposed or executed by someone else for minimizing taxes is explored intensively. We have in the past worked on the collapsible corporation, the sale and leaseback device, and the three-generation insurance trust arrangement (and, I should add, a couple of intricate schemes whipped up by our Dr. Szilard, the atomic scientist who as a hobby is still seeking to discover a new formula for converting ordinary income into capital gain). These bright devices, in addition to buoying up the spirits of the class, are perfect for focusing attention on some of the hard ethical questions to which a lawyer should address himself.

7. An attempt is made to impart to students a sense of the abundant change that tax law is constantly undergoing. With the income tax being changed every year by legislation and sometimes twice a year, and with administrative and judicial change more than keeping pace, it is important for those on the way to becoming lawyers to get a feel for the spots and directions in which change is probable. The transactions planned or executed today very likely will be subject to a markedly different tax law of tomorrow, and the student should therefore at least mildly feel the need for anticipating what the law might come to be. To this end considerable attention is devoted to marking out the paths which changes have followed in the past and to analyzing recent and contemporary proposals for change which have been urged by responsible sources.

8. In connection with past and prospective changes, the legislative process and the role of the courts and the Bureau of Internal Revenue in effectuating change is carefully observed. It has seemed fruitful to inquire into the relative advantages and disadvantages of elaborating in great detail a statutory provision, a procedure that appears to have become more prevalent in recent years, and the alternative of couching tax legislation in general terms and leaving the details up to the Bureau or the courts.

9. While considering changes, an investigation of the standards that are available for determining whether a given change is good or bad or neutral is made. In an area where the law is undergoing rapid change it is all the more important that lawyers, who as a group are highly influential in shaping the development of the law, should understand and analyze the principles on which the law is founded. Most change in the tax field, other (Continued on page 12)
Beecher Hall To Be New Law School Dormitory and Center

With the opening of the Autumn Quarter, 1952, Beecher Hall will become a Law School dormitory and center for student activities of the School. Located immediately opposite The Law School, the building will provide living quarters for law students, eating facilities for those who wish to eat there regularly, and a central lounge for all law students.

The use of Beecher Hall as part of the Law Center plan will further the program of the School, particularly with respect to the informal faculty-student seminars and the meetings between students and members of the Bar and the Judiciary.

Taxation  (Continued from page 11)

than that designed to bring about greater clarity, is offered on the ground of making the tax more equitable. But to view a shift in relative tax burdens as working equity, one must have accepted some standard of fairness in taxation. And the fairness standard necessarily must call into question the ultimate justice of the distribution of the tax burden in our society. It is for this reason that discussion in the Taxation course probes deeply into this question of justice—e'en to the extent of calling the progressive tax principle itself into issue.

10. The economic factors which bear upon taxation are taken into account. Apart from justice in the distribution of tax burdens among individuals, the only other ultimate consideration in taxation is the economic impact of a tax. Our tax laws cannot avoid having a bearing upon the level of productivity and the stability of employment in our society. At present rates of tax and at the existing level of government spending the economics of taxation is rightly a matter of concern for lawyers. An informed judgment, for instance, on the proposed constitutional amendment to limit income taxes to 25 per cent of income calls for an acquaintance with monetary and fiscal theories and programs. The same is true as to many other less far-reaching proposals. In introducing students to the economics of taxation, we have in the past been very fortunate in getting Roy Blough of the Department of Economics (but now on leave as member of the Council of Economic Advisers to the President) to act as co-leader in the class discussions; and I look forward to resuming this arrangement again next year.

This prescription probably sounds like a large order; and perhaps it is, even though the basic course is allotted 80 classroom hours (and thus is exceeded only by Property, which wins on tradition and seniority). However, in spite of the coverage and pace, there is a gratifying amount of enthusiasm displayed by contemporary law students for work in taxation. I suppose that this too has an explanation close to the purse: it appears that law students (or their families) have more tax problems than any other type of legal problems!

There is one other phase of taxation in The Law School that deserves brief mention. Each year one or two seminars in advanced work in federal taxation are given. The seminars are organized around large themes which are surrounded by clusters of knotty problems. The last few seminars have been on such troublesome matters as the tax aspects of estate planning, compensation for executives, and getting profits out of closely held corporations.

To round out the picture, I should add that the nearest we have come to the brink of complete obscurity was a seminar on the present excess profits tax. Unlike the tax itself, the seminar probably was profitable.