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**THE STORY OF THE AMERICAN LAW INSTITUTE\***

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This article is a report prepared for the Survey of the Legal Profession. The Survey is securing much of its material by asking competent persons to write reports in connection with various parts and aspects of the whole study. As reports in some fields of the Survey will require two years or more, the Survey Council has decided not to withhold all reports until the very last has been received but to release *seriatim* for publication in legal periodicals, law reviews, magazines and other media. Thus the information contained in Survey reports will be given more promptly to the bar and to the public. Such publication will also afford opportunity for criticisms, corrections and suggestions. When this Survey has been completed, the Council plans to issue a final comprehensive report containing its findings, conclusions and recommendations.

In the early part of the 1920's a group of prominent American judges, lawyers and law teachers, organized as "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law," reported to the members of the legal profession that the "two chief defects in American law are its uncertainty and its complexity." The Committee roster contained some great names in the law. Only a few can be mentioned since this account should not be turned into a series of biographies of American lawyers. But some must be for here were the men whose experience and prestige combined to make a contribution which was to have lasting effects in the development of law in America.

Elihu Root should be mentioned first for he was the Chairman of the Committee. At this time people called him the "dean of the American bar"; he had earned the title. His public services both in and outside the legal profession plus his eminent profes-

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sional achievements made him an authority on whatever subject he spoke. George Woodward Wickersham, former Attorney General of the United States, was the Vice-Chairman. He, too, brought both professional eminence and wide public service to the Committee. There was Harlan Fiske Stone, soon to become Attorney General of the United States and, subsequently, to become a justice and then Chief Justice of the United States Supreme Court. On the judicial side also was Benjamin Nathan Cardozo, in 1923 a judge of the Court of Appeals of New York and later to become Chief Judge of that court and a justice of the United States Supreme Court. Judge Learned Hand and Cuthbert W. Pound, also of the judiciary, served on the Committee.

Perhaps less well known to the country at large but a man of great influence among lawyers was James Byrne, President of the Association of the Bar of the City of New York, a member of the Harvard Corporation. And likewise there was Victor Morawetz. Outside of the law he was not known at all. But to lawyers who dealt with corporate affairs he was famous as the author of *Morawetz on Corporations*. The same tough, guided analysis which appears in his book was given to every problem with which the Committee, and subsequently The American Law Institute, dealt. John W. Davis and R. C. Leffingwell, prominent New York lawyers, were members.

From the law schools there was Samuel Williston of Harvard, author of *Williston on Sales*. Likewise, there were Joseph H. Beale and Roscoe Pound from the same institution, James P. Hall and Ernst Freund from the University of Chicago, John H. Wigmore, famous for his work in the law of evidence, and William Draper Lewis from the University of Pennsylvania, Secretary of the Committee, who subsequently became Director of the organization which grew out of this Committee's report.

More should be said about Dr. Lewis, even at the risk of interrupting the continuity of the story of the Committee with the long name, for the work which this Committee began was deeply influenced by the Lewis personality for nearly a quarter of a century. Dr. Lewis was a Philadelphian. He had practiced law, been a Law Professor and Dean of the University of Pennsylvania Law School. He had edited law books and he dabbled in Pennsylvania politics for the then Progressive Party. He was

deeply interested in public service, and the opportunity for professional contribution through the work this Committee began called him to exciting adventures. Dr. Lewis was a hard worker, partly because he did everything the hard way. Sometimes he would write two or three longhand drafts before he tried a typewritten copy. All his procedures were elaborate, accurate and slow. But he had one of the warmest personalities that anyone could have the privilege to work with. It was he who got Mr. Root interested in the subject-matter of the work of this Committee. It was he, also, who by dint of his earnestness, his diligence and his warm personality helped the Institute to make its contribution in bringing together judges, law teachers and practicing lawyers into a working unit.

Now to get back to our Committee. Its report was submitted following several months spent in discussion and thought. Part of the uncertainty of the law, it found, was due to the lack of agreement among the very members of the profession on what the fundamental principles of the common law were. Other causes included "conflicting and badly drawn statutory provisions," "lack of precision in the use of legal terms," "the ignorance of judges and lawyers" and "the number and nature of novel legal cases."

As a step towards remedying these conditions, the Committee proposed the formation of a lawyers' organization to improve the law and its administration. It believed that such an organization had to be established in response to the growing feeling that lawyers had a distinct public function to perform towards this end. Such an organization should concern itself with the form in which public law should be expressed, the details of private law, procedure or administration of law, and judicial organization. It should neither promote nor obstruct political, social or economic changes. It should pursue that patient, legal scientific and scholastic work which had to precede all real improvements of substantive and procedural law.

The American Law Institute was organized as a result of the Committee's recommendations and efforts at a meeting in Washington, D. C. in the year 1923. Present were several hundred leaders of the bench, bar and law schools of the country. A charter was adopted and stated the purpose of the Institute to be "to promote the clarification and simplification of the law

and its better adaptation to social needs, to secure the better administration of justice and to encourage and carry on scholarly and scientific legal work." This is the story of what The American Law Institute has done since its formation and what it is doing now.

## THE RESTATEMENT OF THE LAW AN ANSWER TO UNCERTAINTY OF THE LAW

Among its recommendations, the Committee included a suggestion for an initial project for the Institute. Since uncertainty of the law upon the part of lawyers and judges was one important defect, why not do something that would help overcome that trouble? In the United States, each of the forty-eight states has its own system of courts making law every day. In addition, there are the federal courts. Decisions of these courts are the precedents for future cases and, together with the statutory law, make up the framework of the law. A lawyer working on a case must not only find, read and digest the cases, past and present, of all the courts in his state, but where the proposition he wants to urge is without firm precedent there, he must research the law of all other states and the federal courts. Even after all this work, he may not find a clear-cut authority. Textbooks and cyclopedias might be of help but their quality is always a question and with rare exception they lack the status as authority of a court opinion.

The Committee accordingly suggested that the first undertaking of the new organization should be to produce a restatement of certain phases of the law which would tell judges and lawyers what the law was. Such a work would dispel uncertainty in the fields of law it dealt with if it had "an authority greater than that now accorded to any legal treatise, an authority more nearly on a par with that accorded the decisions of the courts." A judge, a lawyer, a law teacher could then go to one source, find what the law in point was and with confidence state it to be so.

It would have been surprising, had a poll of the members of the bar been taken at the time, to find that any appreciable number thought that such an ambitious program could be achieved. How could the thousands upon thousands of decisions of courts be reduced to a systematic, concise statement of law? Even

if this could be accomplished, why should such a work be any more authoritative than any other legal text or encyclopedia?

A thousand members could not as a group produce this kind of work. Accordingly, the plan worked out for the preparation of the Restatement involved four steps. One person, an expert in the field of law to be considered, would be designated as a reporter for each subject to be undertaken. He, with the help of assistants, would do the basic research, and would prepare the initial draft material. This would be submitted to a group of ten or more advisers, persons with special knowledge of the subject, for suggestions and changes. The revised product would then be submitted for further analysis and consideration to the Council of the Institute, consisting of some thirty or forty prominent judges and practicing lawyers. At the advisers' stage and the Council stage, either body could refer the draft back for further consideration.

When finally approved by the Council, the draft would be submitted to an annual meeting of all the members of the Institute for debate and discussion. The fall membership, a cross section of the country's eminent lawyers, judges and teachers, could order amendments to be made in a proposed text and refer it back for further consideration by the reporter, advisers and the Council. This would require the draft to go through all the stages once more. Ultimately, the Council would recommend to the full membership the final draft which upon acceptance by the full membership would constitute the official product of the Institute. A final restatement of a subject would thus be the product of highly competent group scholarship subjected to a searching criticism of equally learned and experienced members of the bench and bar.

It was apparent at the very start that such a plan of work would be time consuming and would require the services of leading professional experts. Since the Reporter had to do the initial work, the time required of him would be considerable and compensation would be required for him and his assistants. Advisers and Council members, coming from all parts of the country to meetings, while giving freely of their valuable time, had to be reimbursed for travelling and out-of-pocket expenses. While the members attended annual meetings at their own expense, holding a meeting of 500 or 600 lawyers would also be

costly. Printing and distribution costs would also be considerable. All this indicated that a substantial amount of money, far in excess of the sum received from dues of members, would be necessary to finance a Restatement of the Law. Such aid could not be expected from any governmental agency nor from individuals.

A prospectus of the program requesting funds for work over a ten-year period at the rate of \$100,000 a year was submitted to the Carnegie Corporation. \$1,075,000 was applied for. The Carnegie Corporation generously granted this request. Subsequently, experience demonstrated that considerably more money would be necessary. The Carnegie Corporation increased its initial grant for the work of restatement to a total of \$2,419,196.

With the money on hand for the work contemplated and a work plan prepared, the Institute was ready to restate the law. Every subject of the law could not be undertaken. Some subjects were not worth the time and effort required. Moreover, there were neither sufficient funds on hand nor time in the foreseeable future to do this. Certain of the more important, more perplexing subjects were selected for the undertaking planned.

The Institute worked at restating the law of the subjects selected from 1923 to 1944. Like the course of true love, the enterprise did not always run smooth. Theoretically, it might have been thought to do so. Lawyers here were not arguing the case of any client. Nor was the object to make a statement of ideal rules of law. It was, instead, to endeavor to state the law of today with due regard, of course, for current trends. But the project occasioned a great many disputes. The men engaged in it were strong men with pretty definite notions. At one time the differences between Professor Joseph H. Beale, Reporter for Conflict of Laws, and Vice-President Byrne produced such violent controversy that the whole material on Conflict of Laws was held for two years' additional time and re-examined by the Institute's Executive Committee. But the work went on. Over the span of two decades, nine broad phases of the law were studied and restated:

Agency, concerned with the legal problems arising from the principal-agent, master-servant relationship, was begun in the fall of 1923 and was completed as two volumes in 1933.

Conflict of Laws, which deals with what law should determine

the rights and liabilities of parties when the facts giving rise to a law suit occur in more than one state, was begun in 1923. Its restatement consists of one volume and was finished in 1934.

The law dealing with contractual relations between parties was started in 1923. The *Restatement of the Law of Contracts* consists of two volumes and was completed in 1932.

Work on the subject of Judgments lasted from 1940 to 1942 and resulted in a one-volume Restatement.

The subject of property rights covered a vast field. Work in this field began in 1927 and was completed in 1944. The results are reflected in five volumes dealing with the subject of the *Restatement of the Law of Property*.

Restitution dealing with situations in which one person is accountable to another because he would unjustly benefit or the other would unjustly suffer loss was undertaken in 1923 and completed in 1937. It is a one-volume work.

The *Restatement of the Law of Security* covering certain cases where one person acquires an interest in the property of another as security for an obligation due from the other required five years' work beginning in 1936. The Restatement of the Law of this subject consists of one volume.

Torts was another big subject. It dealt with the wrongful invasion by one person of the interests of another. It covers such subjects as intentional harms to persons and chattels, injuries as a result of negligence, absolute liability and interference with business relations. Work in this field was begun in 1923 and was completed in 1939. There are four volumes of the *Restatement of the Law of Torts*.

The last subject covered involved trusts of property. This work, begun in 1927, lasted eight years and the product consists of two volumes of the *Restatement of the Law of Trusts*.

With the index materials and the Institute's special tools for the use of the Restatement the twenty-year period of work resulted in 22 volumes consisting of over 16,000 pages. In addition, programs were undertaken in cooperation with state bar associations in each state to research the law of that state and find whether it agreed or disagreed with the propositions carried in a particular Restatement. This state work was labeled

Annotations and such Annotations have been produced in many if not most of the states on most of the subjects of the Restatement.

The Institute started with the belief that out of the overwhelming mass of law cases and legal literature clearer statements of the rules of the common law in effect in a great majority of the states could be made and expressed. The result in terms of the actual volumes produced justifies this belief, for the Restatement of each subject expresses as nearly as possible the rules which courts will apply today. These rules govern not only situations which have already arisen in specific cases, but by analogy all rules which would apply in situations which may arise for the first time. The Restatement on any subject is thus more than a picture of what has been decided by the courts; it is a picture of present day law expressed by the foremost members of the profession. While such an evaluation may be pleasant and is gratifying to all those who have worked on the Restatement and have sponsored it, this is not, however, the final test of whether the work was worth doing. That must be found in the use that has been made of the Restatement by the bench, bar and law schools.

A study was recently made of the effect of the *Restatement of Torts* in Pennsylvania from 1939 to 1949. "To the extent that past cases are in conflict with the view of section 339 of the Restatement of Torts which we have adopted, they are no longer authority." This quotation from a Pennsylvania Supreme Court opinion, the author finds representative of the effect of the *Restatement of Torts* in that Court. Three out of four cases of first impression rely on the authority of the Restatement. One section has been cited with approval in changing the common law. In only one instance in the years between 1938 and 1949 has the Supreme Court of Pennsylvania cited a section of the Restatement without following it. The Restatement, the author concludes, has become "primary authority" in Pennsylvania.

The results of this investigation are borne out by the experience of a lawyer who recently had occasion to spend an entire day in one of the Pennsylvania courts while waiting for his particular case to be argued. He reported that in the many cases which were argued before the court, lawyer after lawyer



relied in the main upon sections from the Restatement of the law to support the contentions advanced. When a lawyer failed to indicate what the view of the Restatement was on a particular question, he was asked for it by the Judge. The lawyer concluded that for any advocate who appeared before this court it was as important to find support in the Restatement as it was in the decisions of the highest courts of the State and he felt all the more confident of his case because the research on his brief had started with the Restatement.

A Federal Court of Appeals Judge put the matter thus in a paper recently written:

When we find ourselves citing with confidence a paragraph of the Restatement in addition to, if not instead of, a dictum from an earlier opinion, I think we shall be making substantial progress toward solving the problem which induced this dissertation, for, with ever-decreasing necessity of case-hunting on every question presented to them, lawyers may find it more expedient to build their libraries around such splendid resources as the Restatements, and to establish group libraries for the casebooks.

Across the Atlantic there has been a translation of the *Restatement of the Conflict of Laws* into French. From England there appeared an interesting sidelight on the Restatement in an address given by the Right Honorable Lord Justice Denning to English law teachers. The Lord Justice was talking to the law teachers about recognition in America of the value of the work of the universities. He pointed out that it was not unusual in America for law professors to be appointed judges. Then he said that the greatest work done by the universities is the Restatement. The Lord Justice spoke of a case in which he was counsel before he went on the bench. The case was lost in the trial court and the Court of Appeals affirmed. Counsel was sure, backed by the *Restatement of Restitution*, that he was right and he took the case to the House of Lords for nothing, the client being unable to venture the cost of an appeal. The appeal was won. The Lord Chancellor cited the Restatement. And best of all, the client was so pleased that it paid counsel an honorarium from its own pocket.

But these are for the most part opinions of individuals. The story of what has been accomplished by the Restatement of the Law can best be told by statistics. It will be recalled that the

founders of the Institute contemplated a Restatement which would become almost as authoritative as court cases and decisions. Court opinions are authoritative in the sense that they are cited to buttress the conclusion of the court in the case before it. Thus the hope that the Restatement be authoritative in this sense meant that courts would resort to it with increasing frequency in deciding cases before them. This hope proved to be well founded. The first Restatement appeared in 1932 and the last one in 1944. From 1932 to 1950, a period of less than twenty years, the Restatement of the Law has been cited by appellate courts 17,951 times. This total does not include the number of times it has been cited by many of the lower courts whose decisions are not reported. The Restatement has been cited by the courts of each of the forty-eight states of the nation and by the Federal Courts including the Supreme Court of the United States. It has been cited in Federal courts a total of 3,673 times; by Pennsylvania courts almost 2,000 times; by New York and California courts about 1,500 instances each. The Restatement has become authoritative, to a far greater extent, than those who organized the Institute had ever anticipated and by that very fact is evidence that it has served the purpose of dispelling some of the uncertainty of the law which led to the formation of the Institute.

#### CONTINUING LEGAL EDUCATION

##### AN ANSWER TO THE NEED FOR A BETTER LEGALLY INFORMED BAR

In 1923 the founders of the Institute recognized the urgent necessity for continued learning by lawyers, even though they were already members of the bar and had received their formal legal training to become such members. This need, it will be recalled, was one of the reasons for the establishment of The American Law Institute.

During World War II, many lawyers were called from their practice into the service of the United States Armed Forces and were away for a long time from day to day contact with the law. At the end of the war, the bars of many states became aware of the importance of bringing these lawyers up-to-date with the developments that had taken place in the law during their absence. An organization in New York City known as the Practicing Law Institute became a leader in this task. It produced literature and organized courses, including correspondence

courses, which told lawyers about changes in the law during the war years. Using its material in many instances and, at times, specially prepared material, bar association groups throughout many parts of the country organized refresher law courses for returning war veterans.

The American Bar Association, which had been sponsoring the development of veteran refresher programs, concluded as these were coming to an end, that an over-all program of continuing legal education should be maintained. An organized program should be made available to lawyers for learning about changes and new developments in the law and for refreshing from time to time their learning in the old fields of the law. An American Bar Association committee considered the best method for establishing a nation-wide continuing legal education program in a series of meetings held in 1946 and 1947. It recognized that although any such program would have to get its life blood from state and local bar associations, a national agency had to serve as its core. The committee in its report recommended that The American Law Institute be the agency to undertake the responsibility.

The Institute readily assumed the work, for it deemed it to be in accordance with one of the purposes for which it had been organized. A committee of twenty-two members from the American Bar Association and The American Law Institute was established to determine general policy. A Director was placed in charge of the program for the Institute. Once again in the quest for funds, the Carnegie Corporation was approached. Recognizing the importance of the project, the Carnegie Corporation made a grant for a program of continuing legal education in the amount of \$250, 000.

Continuing Legal Education as an Institute project was formally inaugurated in 1948. Since then the Institute has encouraged and assisted in the creation upon a national scale of permanent agencies, state-wide and local, to conduct regularly planned educational projects for members of the bar. It has helped in the planning and holding of lecture courses and institutes at the local level throughout the country. It has participated directly in lecture courses and institutes on selected legal subjects in thirty states. Such meetings have been attended by more than 9,000 lawyers.

The other part of the program has been concerned with the preparation and publication of literature consisting of lecture outlines and complete texts useful not only for lecture courses and institutes, but having a permanent value in a lawyer's library. Publications have already appeared covering federal taxation problems, a subject of increasing concern to lawyers, the drafting of business instruments for the organization of various business enterprises, labor law, accounting for lawyers, and special business problems arising under federal laws. These are the kinds of subjects which lawyers are being increasingly called upon to deal with and in which rapid developments and changes are taking place. While the lecture courses and group meetings are traditionally preferred educational methods, the printed texts have made possible self-education in many parts of the country where, for various reasons, more formal teaching methods cannot be employed. The sale of literature for such purposes has met with good results and is increasing as more and more lawyers become aware of the existence of the program.

Continuing legal education on a nation-wide basis is still at the infant stage—it is only two years old. In that time, however, a good deal has been accomplished. As of today, the Committee on Continuing Legal Education is in a position (1) to aid in the creation of permanent state organizations to sponsor continuing legal education programs, (2) to furnish appropriate literature for use by such organizations and by individuals, and to prepare additional literature, and (3) to supply panels of experienced and competent lecturers.

The number of programs that have been held and the avid response to the literature that has been produced have been a welcome response. Certainly the practicing lawyer is anxious to continue his legal education and a means has been found for making that possible.

## MODEL ACTS AND CODES

### AN ANSWER TO CONFLICTING AND BADLY DRAWN STATUTES

No report on what The American Law Institute has accomplished would be complete without mention being made of the "model laws" which it has prepared. These are drafts of statutes which have the force of law when state legislatures adopt them.

There are two aspects to the statutes that the Institute has prepared. The first is a matter of form and concerns the language in which they have been drawn. A badly written statute is a troublesome law to administer because it is difficult to tell from a reading of it what it says. One of the defects of American law, pointed out by the Committee which gave life to the Institute, was the existence of many such statutes. In the statutory laws that the Institute has prepared, it has, employing the same work plan it used for the Restatement, written laws which it believes read easily and well and are understandable.

The language of a statute, however, is only a means for expressing goals sought by the statute and is not an end in itself. One of the purposes of the Institute is to promote the better adaptation of the law to social need and to secure the better administration of justice. The statutes which the Institute has drawn have, in conformance with this purpose, dealt with important social, economic, and judicial administrative problems:

#### *Criminal Procedure*

Criminal procedure deals with the methods of enforcing criminal laws—the steps involved from the time a complaint is filed for the issuance of a warrant to arrest a person for the commission of a crime, until the disposition of the case on appeal, should it reach that stage. Intermediary steps include bail, proceedings before the grand jury, indictment, arraignment, trial, judgment and sentence.

A committee of the Institute investigating criminal procedure in the United States in 1925 found a remarkable degree of uniformity among the forty-eight states. But it also found remarkable how little change had occurred in methods of enforcing the criminal law in the last hundred years. Many old technical rules abandoned in England and Canada were still in force in a majority of the states.

For example, it was required that an indictment state the time at which an offense was committed. Yet the true time did not have to be stated. A defendant informed by an indictment that he was charged with having committed robbery on January 1, 1924, could be legally convicted although the proof at his trial showed that the robbery was committed on March 15, 1920.

The defendant had to be informed of the nature of the accusa-

tion against him; therefore property alleged to have been stolen by him had to be "properly described." It was not sufficient to describe the property as "cattle," because there were different kinds of cattle, but it was sufficient to describe it as a horse, although there were many different kinds of horses. If it were stated to be a "horse," it was not necessary to describe the horse as bay or black; but if it were described as bay and the proof showed it to have been black, even though the proof of larceny was complete, the defendant could not be convicted on the indictment; as he could not be if the indictment charged the larceny of a horse and the proof showed the animal stolen by him to be a gelding. So also in some state the middle name or initial of the defendant did not have to be stated in the indictment, but if it were stated and stated incorrectly the defendant could not be convicted on the indictment.

Such rules did not make for trials that achieved justice either for the state or the defendant. Indictments being technical and complex failed to inform the defendant of the crime with which he was charged unless the defendant happened to be a lawyer. On the other hand because of a technical defect, a conviction could not be obtained although it was abundantly clear according to the evidence at hand that the person charged with the crime had committed it. In some states a given rule would result in the conviction of a defendant while under the same circumstances in another state but under a different rule of criminal procedure an acquittal would follow.

Following the findings of its committee, and requests by the American Bar Association, the Association of American Law Schools and the American Institute of Criminal Law and Criminology, the Institute in 1925 undertook the preparation of a Code of Criminal Procedure. The same meticulous procedure used in preparing the Restatement was followed in drafting the Code. In 1930 the meeting adopted the final product which consisted of some 470 rules and included complete notes on each rule summarizing the law prevailing in each of the states at the time.

Since 1930 one state, Arizona, adopted the Code in its entirety. Florida, Iowa, North Dakota and Utah have included a very substantial number of code sections in their laws of criminal procedure. Other states, too numerous to list, have taken over provisions from the Code on a smaller scale. In addition, together

with commentaries, the Code has served as an important point of reference in the drafting of the Federal Rules of Criminal Procedure.

### *Youth Correction Authority Act*

Another field of criminal law where the Institute has acted is concerned with the handling of youthful offenders.

A 1940 study showed that young people, of sixteen to twenty-one, constituted a fifth of our criminals; they were responsible for fifty percent more of America's crimes than their number in the population made reasonable. Included in the category of such youngsters were not only boys but also girls in large numbers. Crime among impressionable youths tended to become a habit. The first crime led to the second and the second to the third, and the mere threat or experience of punishment did not stop youths from committing crimes. A youth who slipped once was on his way to becoming a repeater the moment he was arrested, for the classrooms for continued crime were the police stations and the detention cell and our prisons did not rehabilitate young offenders but made hardened criminals out of them. The attempt to subject youthful offenders to the penalties applicable to criminals generally failed to achieve their rehabilitation.

In approaching this problem the Institute realized that while any law to help meet it had to be written by lawyers, representatives of other social sciences should participate in shaping its content. The committee selected thus represented all pertinent professions to look into the crime situation among youths. It included sociologists, a criminologist and representatives of welfare organizations. The committee adopted certain general principles to guide its work. The object of criminal justice should be the protection of society. The treatment of a convicted youth should take into account his characteristics and other important factors of his conduct and should not depend entirely on the crime of which he is guilty. This treatment should be directed primarily to the correction of his anti-social tendencies, and he should be kept under control until it is reasonably certain that he is cured of these tendencies.

The result of all this work was the Model Youth Correction Authority Act aimed at rehabilitation of youthful offenders. It creates a Youth Correction Authority whose members hold office for nine years to insure continuity of policy. The Authority is

responsible for the organization, administration and policy-making of a state-wide system that would integrate the handling of young offenders. The Authority works through existing agencies but it employs its own psychiatrists, educators and other specialists to determine the offender's background and capacity for reform and in the light of such findings the scientific treatment of the offender. It follows him up from time to time to see whether he is responding to such treatment and decides when he should be released or allowed greater liberty or whether he should be maintained in strict custody. The Authority has control of the youth from the time of his conviction, but its influence would be felt earlier because it is authorized to approve places of preliminary detention upon arrest. The trial judge retains his usual discretion in acquittals and fines but he is required to sentence any convicted youth to the Authority without determining the length of sentence.

The Authority has exclusive control over the convicted youth as to his detention, imprisonment, training and treatment and subject to constitutional limitations of the rights of individuals, such as court review at the age of twenty-five, it has the power to keep any youth under supervision and control so long as in its judgment such control is necessary for the protection of the public. The Authority may discharge a youth as soon as in its opinion there is a reasonable possibility that he could be given full liberty without danger to the public. Throughout its program the emphasis is on individual treatment. The Act does not affect existing criminal law, and the Authority while using the facilities of the state for law enforcement in no way has any control over their management or policies.

The Model Youth Correction Authority Act was completed by the Institute in 1940. Since then California, Minnesota, Wisconsin, Massachusetts and Texas have adopted it and this summer the Congress of the United States enacted a version of the Act into the federal statutes. Jurisdictions which have adopted the Act have modified it in part to meet local conditions. It has also been combined with a preventive program part of which involves giving teachers and parents deeper insight into child needs and behavior and encouraging them to substitute positive approaches for the old negative authoritarian ideas and methods.

The Institute's activity in this field also has been financed from



private rather than public funds. Mr. John D. Rockefeller, III, the Mary W. Harriman Trust, the Grant Foundation, the American Children's Fund, Inc. and Independent Aid, Incorporated have been among the contributors to this work.

### *Model Code of Evidence*

The motion picture, radio, and television have made popular the courtroom scene of a lawyer preventing a witness from answering a question by a dramatically interposed objection. They have not made clear why such objections were successful. Sometimes the testimony of the witness is excluded because it falls into the category called "hearsay" evidence—the witness is testifying as to something which he did not observe first hand but which was reported to him by another. Since that other person is not in court and cannot be cross-examined as to truthfulness, the general rule is to exclude such testimony. Sometimes the witness's testimony constitutes his opinion and for that reason is objectionable. The jury is supposed to form its own opinion based on facts, not opinions related by the witness. All in all there are a multitude of many other grounds for interposing an objection to the presentation of testimony or other evidence at a trial. These all constitute a part of the law of evidence which deals with the subject of proof in the trial of a case. It is a complex subject. The leading law text on the subject consists of nine thick volumes with thousands of citations of cases.

To unravel some of the mysteries of the law of evidence and in an attempt to simplify it and bring it away from the many complexities which had developed over a period of centuries, the Institute in 1939 with a grant of \$40,000 from the Carnegie Corporation undertook the preparation of the Model Code of Evidence. This work was completed in 1942.

In terms of brevity and simplicity, the Model Code of Evidence accomplished much, for it states all the rules in a thin pamphlet. The Code as a whole has not as yet been adopted by any one state. Many administrative bodies, such as labor relations boards, have taken the Code as the model for governing the introduction of evidence in proceedings before them. The Code has also found increasing use as teaching material in law schools. It constitutes a real pioneer work and in time its effects will be felt in the law of evidence.

*Uniform Commercial Code*

A businessman writes a letter ordering additional stock for his shelves. A factory in Minnesota ships some cartons of merchandise to a dealer in Philadelphia. A housewife buys some groceries and pays the grocer with a check. A cleaning establishment purchases expensive machinery on credit. These are some of the kinds of commercial and business transactions the legal effect of which will be governed by the Institute's Uniform Commercial Code when it is adopted by state legislatures.

The field of business law is of vital concern not only to merchants but to everyone who writes a check and to every person who makes a purchase of equipment or consumable goods, be he a businessman or a consumer. It was recognized at the turn of the century that the laws that govern such transactions should not differ from state to state, and a movement was begun then for the preparation and enactment of uniform business laws. Since 1898 a number of such laws have been prepared by the National Conference of Commissioners on Uniform State Laws and have been adopted in many states. They deal with such matters as checks, promissory notes, the sale of goods and documents of title. However, many changes affecting the business world have taken place since 1900. Developments in the fields of transportation and communication alone have outstepped commercial laws in those fields. Such developments made possible types of business transactions which were not even contemplated at the time existing uniform laws were written.

In 1945 The American Law Institute and the National Conference of Commissioners on Uniform State Laws undertook, as a joint project, the preparation of a model up-to-date code of business laws. They have tried to write a set of laws to govern common business transactions in such language that it could be readily understood not only by trained lawyers but by those whose daily commercial transactions it would govern. Initially, some 100 corporations and businesses contributed over \$100,000 to this work. Subsequently The Maurice and Laura Falk Foundation of Pittsburgh granted \$250,000 for the further prosecution of the project.

The year 1951 will, in all probability, see the completion of the Code. It will be known as the Uniform Commercial Code and will deal with sales, commercial paper, bank deposits and collections,

letters of credit, foreign banking, documents of title, investment securities, secured commercial transactions and bulk sales. In preparing this Code the Institute has consulted bankers, railroad shippers, foreign traders, credit houses, farm groups and many other business interests to be affected by it. At the present time such groups and representatives of bar associations throughout the country are studying the Code and making their suggestions for improvements to those of the Institute who are working upon it. It is hoped that upon its completion the Code will be introduced into state legislatures for prompt adoption. If the states adopt the Code, complete uniformity in the law governing commercial transactions will be achieved, a factor of tremendous importance to the many enterprises in the United States doing business across state lines. And that law will be a modern up-to-date law reflecting current business practices.

#### *Federal Income Tax Statute*

The introduction in the Congress of a bill to deal with Federal income taxes is invariably the signal for the start of heated debate in and outside the Congress. This is understandable, for usually such proposed legislation is bound to affect the amount of money that will have to be paid as taxes. Those whose taxes are reduced are pleased. The chorus of objections arises when a proposed bill raises or increases tax rates as such. It also comes about when, although there is no direct change in tax rates, the legislation embodies major policy changes such as the split income provisions of the 1948 Revenue Act which gives to a husband and wife tax advantages which had previously prevailed in community property states.

When the Institute, some years ago, investigated the possibility of its doing some work in the income tax field, it realized that any such work could not deal with tax rates or major policy changes which would directly affect the amount of revenue to be collected. But upon investigation it found that even apart from such matters there still remained a wide area where the income tax laws could be improved.

For example, basic to the income tax law is a question of what is "gross income." To be sure, the economists have definitions. One states that "Personal income may be defined as the algebraic sum of (1) the market value of rights exercised in consumption

and (2) the change in the value of the store of property rights between the beginning and end of the period in question." Apart from the fact that this particular economist's definition does not agree with those advanced by others, it is too broad, inconclusive and difficult of application. The present income tax law, on the other hand, defines gross income primarily in terms of "gain or profits and income." This has caused a great deal of trouble. Does it cover the situation where a creditor forgives an indebtedness owed to him as a result of a commercial transaction so that the debtor has to pay a tax on the amount of the debt since it is a form of gain to him? Suppose a doctor writes a prize-winning essay in a competition sponsored by a medical association; is the prize which he receives to be treated as income and therefore taxable? Or what happens when a community as an inducement to having a factory locate there gives the factory money or a valuable piece of land? Problems such as these are not covered by the definition and are not specifically covered by any particular provisions.

This discussion of what gross income means is but one aspect of the present income tax law that needs clarification. There are many other such provisions and problems which create difficulties for the taxpayer, the Courts, and that part of the Government which is responsible for the administration of the income tax law. In 1948, the Institute made an application to The Maurice and Laura Falk Foundation for a grant to undertake a study of the income tax laws and the writing of an income tax statute. The Falk Foundation made an initial grant of \$225,000 and an additional grant of \$75,000 and the Institute is now well advanced in this work.

The main object of the Institute's income tax project is an improvement of the technical provisions of the present income tax statute. No attempt is being made to write a complete income tax code. To do so would be to enter the arena of political argument on rates, exemptions, and other questions affecting the amount of taxes paid. These are not the kind of problems the Institute was meant to solve.

What the Institute is seeking to do is to improve many technical provisions which breed litigation, are difficult to administer or apply, are too complex, represent an obsolete approach, or inadequately or incompletely treat a subject. The Institute will

also seek to fill in gaps in the present law, and harmonize different provisions of the statute which treat various aspects of a single problem. Such work involves careful analysis of the existing statutes and the many decisions which have been handed down by courts on the subject of income taxation. It must also consider Treasury Department practices which have become formally established. As in all its statutory drafting work a general over-all objective is the simplifying of language, and anyone who has had occasion to read provisions of the income tax law or even fill out a tax return form, knows that the statutes are in great need of this.

This project affords an excellent illustration of the topflight help which the Institute is in a position to obtain for the projects which it undertakes. The Chief Reporter and his Associate Chief Reporter are law school professors and are experts in the tax field because of their teaching experience and their experience in private practice and Government work. The work they and their assistants perform is subject to the most careful consideration, review and approval of a small, select group of tax lawyers. But the matter does not stop there. Before any drafts are submitted to the Council or the membership of the Institute, a larger group of about 40 tax experts from all parts of the country screens them and discusses them with the Reporters and their advisers.

The income tax project is still being worked upon, and it is not possible to say now that the finished product will be entirely incorporated in the Federal tax statutes. However, it is testimony to the quality of the work and to its ultimate reception to reveal now that in the process of enacting the Revenue Act of 1950, the Congress was aware of the work that is being done by the Institute, and in one or two instances found parts of that work relevant and of sufficient high caliber to incorporate in the statute which it passed.

The American Law Institute today has more than a thousand elected members. Its President is a prominent New York lawyer—Harrison Tweed. William A. Schnader, former Attorney General of Pennsylvania, and John G. Buchanan, of Pittsburgh, are its Vice Presidents. Its Treasurer is William Dean Embree of New York City. Former United States Senator, George Wharton Pepper, is the chairman of the Council. Represented on the Council from the law schools are: Fletcher R. Andrews, of

Western Reserve University; Edwin D. Dickinson, of University of Pennsylvania; Albert J. Harno, of University of Illinois; Frederick D. G. Ribble, of University of Virginia; Austin W. Scott, of Harvard University; and Harry Shulman, of Yale Law School. On the Council are judges from many courts: Hon. Augustus N. Hand, Hon. Learned Hand, Hon. Joseph C. Hutcheson, Jr., Hon. John J. Parker, Hon. Orrie L. Phillips and Hon. Thomas W. Swan of the United States Courts of Appeals; Hon. James A. Fee and Hon. Charles E. Wyzanski, Jr., of the United States District Courts; Hon. Laurance M. Hyde, of the Supreme Court of Missouri and Hon. Henry T. Lummus, of the Supreme Court of Massachusetts.

Making up the rest of the Council are prominent practicing lawyers from all over the United States: Dillon Anderson of Texas, Francis M. Bird of Georgia, Howard F. Burns of Ohio, Herbert W. Clark of California, R. Ammi Cutter of Massachusetts, Norris Darrell of New York, Charles E. Dunbar, Jr., of Louisiana, Earl G. Harrison of Pennsylvania, William V. Hodges of New York, Joseph F. Johnson of Alabama, Monte M. Lemann of Louisiana, William L. Marbury of Maryland, Robert N. Miller of the District of Columbia, Timothy N. Pfeiffer of New York, Henry Upson Sims of Alabama, Eugene B. Strassburger of Pennsylvania, Thomas Day Thacher of New York, Floyd E. Thompson of Illinois, Robert B. Tunstall of Virginia and Cornelius W. Wickersham of New York.

The general work of the Institute is under the direction of its Director, Judge Herbert F. Goodrich, of the United States Court of Appeals for the Third Circuit. John E. Mulder, a former law school professor and practicing lawyer, is in charge of its program on Continuing Legal Education. John R. Ellingston has been responsible for the handling of the Youth Correction Authority Program. Were it possible to list all the members of the Institute, the names of many other prominent lawyers, judges and teachers would appear.

For the privilege of helping to improve the law, Institute members and officers are required to pay their dues annually, incur the expenses of travelling to and attending Institute meetings, and spend considerable hours doing their homework for such meetings. Their purpose must be an entirely unselfish one; for, so far as anyone has ever been able to discover, member-

ship in the Institute is not a means for obtaining wealthy clients nor do its meetings offer the customary inducements for fun and riotous living that are part and parcel of most conventions. In the final analysis, the Institute is an organization where the members participate in the fulfillment of a sense of public obligation and duty to help in the realization of the sole purpose and reason for the Institute's existence—to improve the law under which men live.