April 1952

Judicial Interpretation of the Ordinary and Necessary Clause of the Internal Revenue Code

L. A. S.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Taxation-Federal Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol54/iss2/6

This Student Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
JUDICIAL INTERPRETATION OF THE ORDINARY AND NECESSARY CLAUSE OF THE INTERNAL REVENUE CODE.—During its short life, the “ordinary and necessary” clause of the Internal Revenue Code has been subjected to several interpretations, arrived at by the use of differing judicial formulae. Frequently, these different interpretations have led to arbitrary and contradictory results. In the recent case of Lilly v. Commissioner of Internal Revenue, the case that gave rise to this query, it was decided that public policy would not allow the deduction of secret rebates as ordinary and necessary business expenses. This note will explore the existing interpretations given to this clause and will propose a standard for the examination of new cases.

There is a need and justification for judicial legislation in connection with the clause, which is apparent from the wording of the clause itself, and most courts have exercised a liberal discretion in applying the clause. Some courts, however, do not do so, saying, “We are asked in the guise of construing the words ‘ordinary and necessary’ to amend the statute. In other words to engage in a little judicial legislation. We decline the invitation.” This disagreement stems, perhaps, from a more basic argument, whether judicial legislation should be used at all in the development of statutory law. To answer this would be beyond the scope of this paper, but it will suffice to say that it is used and its use is recognized. One cannot help but take cognizance of this fact in viewing the past tax decisions. So recognizing it, the question of the propriety of its use resolves itself into the question of whether it is being properly applied. From the present inconsistencies, it appears that it is not.

A review of decisions will reveal the present position of the courts as to the allowance or disallowance of deductible expenses.

---

1 INT. REV. CODE § 23 (a) (1939). “In computing net income there shall be allowed as deductions: . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . .”

2 188 F.2d 269 (4th Cir. 1951). Taxpayers, who were engaged in the business of grinding, fitting and selling eye glasses and spectacles, entered into oral contracts with various oculists whereby taxpayers agreed to pay the oculists one-third of the retail price of all eye glasses and spectacles purchased by patients sent them by the oculists. The evidence shows that the oculists did not inform their patients of this rebate arrangement but that such disclosure was made only when it was specifically requested by individual patients. Held, the rebates were not deductible as ordinary and necessary expenses as they were against public policy.


4 Heininger v. C.I.R., 133 F.2d 567 (7th Cir. 1943).
After the enactment of the statute, certain primary principles quickly became established. It is not disputed that the allowance of deductions is not a matter of right; it is a matter of legislative grace.\textsuperscript{5} The burden is on the taxpayer to prove his exemption, not on the commissioner to justify the disallowance of it.\textsuperscript{6} The exemption must be both ordinary and necessary,\textsuperscript{7} although it must be admitted that considerable violence has been done to the generally understood meaning of the words. So as not to afford illegal businesses any tax advantage, it has been held that their income is taxable.\textsuperscript{8} With this solution, however, the courts presented themselves with an embarrassing situation, should these businesses be allowed exemptions. It was decided that they should. The general idea was that "legal expenses of illegal business"\textsuperscript{9} could be deducted. If the operation, however, is too nefarious, such as the income created by kidnapping, the court will not allow deductions "on the grounds that petitioner was not engaged in any business within the meaning of the statute."\textsuperscript{10} But, as it now stands, the testing of the deductibility of the expense is not done by the source of the income; it is the nature of the expense that governs. Generally, the court will allow expenditures as deductions that, in themselves, are not violations of the law or against public policy.

For ease of discussion, the cases will be presented according to a division suggested by a case comment\textsuperscript{11} on this problem. Litigation over claims can be said to be concerned with three different classes of expenditures.

1. Those that are prohibited by statute or are unconnected with the business; the test applied is the proximity to the business. This class concerns itself with decisions based on the statutory or common import of the words. The deductions rest mainly on fact determination.

2. Those that are related to unlawful activities, the test here being whether the expenditure is against the policy of the law. This class contains those cases arising from the disallowance as expenses money paid in the commission or in furtherance of an illegal act or paid as the consequences of an illegal act. Although the decisions are a result of conflict with positive

\textsuperscript{5} Deputy v. DuPont, 308 U.S. 488 (1940).
\textsuperscript{6} Welch v. Helvering, 290 U.S. 111 (1933).
\textsuperscript{7} Reading Co. v. C.I.R. 132 F.2d 306 (3d Cir. 1942).
\textsuperscript{8} United States v. Sullivan, 274 U.S. 259 (1927).
\textsuperscript{9} Comeaux v. C.I.R., 10 T.C. 201 (1948).
\textsuperscript{10} Humphreys v. C.I.R., 125 F.2d 340 (7th Cir. 1942).
\textsuperscript{11} Comment, 54 HARV. L. REV. 698 (1941).
law, they are not harmonious. The great weight of opinions is to disallow items such as fines, lobbying expenses, penalties, legal expenses spent in the defense of successful criminal prosecutions, etc.

(3) Those that are considered undesirable; this class is best tested by the doctrine of public policy or by considerations of the public welfare.

Under the first classification in regard to those cases concerning the deductibility of contributions, some confusion has arisen. This has led one court to state that, "No safe generalization may be made regarding the deductibility of particular items. In some cases, contributions were not allowed unless the business benefits were immediate and direct; in others, very indirect benefits were considered sufficient justification for allowing deductions." The general view of the courts is "whether balancing the outlay against the benefits to be reasonably expected, the business interest of the taxpayer will be advanced." But expenditures made into an employee's annuity fund were allowed by the test of public policy. Certainly the connection between the benefit derived from the expenditure is remote, but the court upheld its opinion by reviewing the history of labor and the present views concerning it, arriving at the conclusion that such an expenditure today is not extraordinary.

Another example of contradiction in the first class can be seen in cases concerning the payment of debts of another, which usually cannot be considered a normal business expense. When an accountant, in starting a new business, paid the debts of the firm he had formerly worked for in order to buy "good will", the claim for allowance of this expense was disallowed on the basis that it was a capital outlay for a new business. This case was cited and distinguished in a following one. A corporation had paid the personal debts of its deceased president who had incurred them by borrowing from the company's salesmen. The expenses were approved on the basis that these expenditures for "good will" were expenses necessary for the continuance of a going business. Nonetheless, it was an expenditure for good will, a capital item, and should not have been allowed if this were the basis for the decision.

12 GAA, Taxation of Corporate Income 163 (1944).
13 American Rolling Mill Co. v. C.I.R., 41 F.2d 314, 315 (6th Cir. 1930).
16 Dunn & McCarthy v. C.I.R., 139 F.2d 242 (2d Cir. 1943).
The latter case explained its deviation from normal interpretations by saying, "The situation may be unique in the life of the petitioner, but it is not so in the life of business corporations as a group."

In connection with illegal expenses, a myriad of cases have arisen concerning illegal businesses attempting to claim deductions. It seems that certain types of illegal "commercial" activities are prone to have questionable expenditures, but a plentiful number of cases have arisen concerning disreputable claims made by ordinarily reputable businesses. These cases are usually concerned with:

(a) Payments in direct violation of the law.
(b) Payments of fines and penalties arising from violations of the law.
(c) Legal expenses in litigation arising from criminal charges and civil actions and from defense against imposition of fines, penalties, and cessation orders.

Examples of division (a) are bribery of government officials and losses on horse racing. There is generally not much trouble in disallowing these deductions, but an example of contradiction is a case concerning payments made to a state senator while he was acting as a bona fide salesman for the company. Such payments were in violation of the state laws, but they were allowed as deductible expenses. The court apparently considered the company's intent, and because its intent was legitimate, the deductions were allowed. Justice Holmes, however, dissented, saying that "payments of such commissions to a state officer were contrary to public policy." An attempt has been made to justify this by saying, "The mere fact that an expenditure bears a remote relation to an illegal act does not make it non-deductible."

In division (b) the courts until recently had dedicated themselves to not allowing deductions for such expenses. An example of this is a fine incurred for violation of prohibition laws. Generally, it makes little difference if the fine be paid without litigation, reached by consent judgment, or imposed after unsuccessful litigation, the view being that it is not the intent of Congress to mitigate

---

17 McGlue v. C.I.R., 45 B.T.A. 761 (1941); Rugel v. C.I.R., 127 F.2d 393 (8th Cir. 1942).
19 Alexandria Gravel Co. v. C.I.R., 95 F.2d 615 (5th Cir. 1938).
21 Superior Wines & Liquors v. C.I.R., 134 F.2d 373 (8th Cir. 1943).
the sum by the allowance of it as a deduction. When a corporation violated the anti-trust laws of the State of Texas and was prosecuted for the statutory penalty, a consent judgment was reached. The court in disallowing the claim said, "A statutory penalty is a punishment inflicted by the state upon those who commit acts violative of fixed public policy of the sovereign, and to permit violators to gain a tax advantage through deducting the amount of the penalty as a business expense would frustrate the purpose and effectiveness of that public policy." One decision made the sweeping statement that "whatever reasoning be adopted, it is a fact that both in this country and England fines have not been allowed as business expenses even when they were due either to incidents of the business almost inevitable or to innocent mistakes." But again an inconsistent case appears. When a company accidentally violated an O.P.A. regulation and was fined, the fine was allowed as a necessary expense. Here again the court searched the intent of the parties. The court thought that it was just to say that "the payment made to the government was not ordinary and necessary solely because a law had been violated. Where, because of its nature, the law has been violated without intent, or without carelessness tantamount to intent, violation of itself is not decisive of the problem." This more or less overrules the long held belief that it should never be necessary to break the law and that to allow such an expense would be against the policy of the law. The opinion went on to state that "The law violated was highly complex and difficult to comprehend and therefore innocent violations were not uncommon. It was error [on part of the tax court] in our opinion to conclude simply because the Price Control Act was admittedly violated and the expenditure was incurred as a direct consequence . . . that expenditure was non-deductible for income tax purposes." In the case of the Jerry Rossman Corporation, it was thought that "a penalty may be deducted as an 'ordinary and necessary' business expense in computing federal income tax where allowance of such deductions will not frustrate the policy of the statute under which the penalty was imposed." So again it appears that there is no firm ground for decision.

24 Burroughs Bldg. Material Co. v. C.I.R., 47 F.2d 178, 180 (2d Cir. 1931)
25 National Brass Works v. C.I.R., 182 F.2d 525 (9th Cir. 1950).
26 175 F.2d 711 (2d Cir. 1949).
In consideration of division (c), if the litigation expenses result from civil litigation, contract or tort, the courts invariably allow them as deductions, for they were incurred in the furtherance of legal right. A different policy prevails if the money is spent in defense of criminal charges. If the defense is successful, the expenses are recognized, but if unsuccessful, they are denied, apparently because "an expense cannot be necessary if incurred in the defense of an unlawful business"27 or an unlawful incident to a business. But there have been contrary cases giving more consideration to the thought that to disallow the expenditures would attach serious penalties to the violation of laws, and such a consequence was not the intent of the legislature.28 A division has also been made concerning the seriousness of the crime. One case allowed the expenses by considering that no moral turpitude was involved in the crime.29 Another view states that there is nothing in the revenue code requiring expenses to be legal, nor was there intent to penalize illegal businesses.30 One court considered the legality of the business and disallowed the claim saying, "The legal fees and expenses and the penalties and payments made to the State . . . were in some way connected with the defense or satisfaction of suits or claims bottomed on the unlawful operation of the gambling ship . . . such operations being against the law . . ."31 The majority view is that the expenses of an unsuccessful defense against criminal prosecution should be disallowed. This does not decide what should be done with legal expenses that were incurred in reaching a consent judgment. Here the taxpayer admits no guilt. He may have consented because of economical considerations. Although the fine may not be an allowable expense as mentioned earlier, this does not necessarily concern the litigation fees. One court stated that "if the fines and costs cannot be deducted, the legal expenses incurred in litigating the question . . . naturally fall with the fines themselves."32 Another took the view that the expenses were payments to extinguish a cause of action to impose a penalty and were not entitled to be treated as necessary items.33

27 Great Northern Ry. v. C.I.R., 40 F.2d 372 (8th Cir. 1930).
29 Burroughs Bldg. Material Co. v. C.I.R., 47 F.2d 178, 180 (2d Cir. 1931).
32 See note 29 supra.
33 See note 23 supra.
Outdoor Advertising Bureau\textsuperscript{34} case the court disallowed the fees necessary to reach a consent judgment for a suit in equity on the basis that consent "was an acknowledgment of the proximity of the danger", and thus extinguished a cause of action. Fees spent to prevent the issuance of an injunction were not allowed. "There is indeed less to be said for spending money in that way than in defending a criminal prosecution, for the decree by hypothesis will do no more than forbid what the taxpayer ought not to do anyway."

A distinction has been made in these litigation fee cases by investigating the intent of the statute. If the statute intends not to punish the defendant but to protect the public or to be regulatory, a different result can be obtained. In a case\textsuperscript{35} where a taxpayer's business was the selling of mail order dentures, a fraud order was issued against him by the Postmaster General; the fees for the unsuccessful defense against the order were allowed as deductions. "The single policy of these sections is to protect the public from fraudulent practices committed through the use of the mails; it is provided by separate statute and can be imposed only in a judicial proceeding in which the accused has the benefit of constitutional and statutory safeguards appropriate to trial for a crime. Nor is it the court's policy to deter persons accused of violating their terms from employing counsel to assist in presenting a bona fide defense to a proposed fraud order. It follows that to allow the deduction of respondent's litigation expenses would not frustrate the policy of these statutes, and to deny the deduction would attach a serious punitive consequence to the Postmaster General's order which Congress has not expressly or impliedly indicated should result from such a finding." So it can be seen that the cases concerning litigation fees remarkably illustrate that there is great difficulty in ascertaining what a proper test should be.

There is not as yet a wealth of cases in the third classification, but the existing few illustrate the application of public policy. An early Treasury Regulation\textsuperscript{36} held that lobbying or campaign expenses were not legitimate items for deduction, although both certainly could be considered as ordinary and necessary. This regulation was later incorporated into a case.\textsuperscript{37} Within this category falls the Lilly case, \textit{ supra,} which held that secret rebates were

\textsuperscript{34} 39 F.2d 878 (2d Cir. 1937).
\textsuperscript{35} See note 20 \textit{ supra.}
\textsuperscript{36} U.S. Treas. Reg. 74, § 262 (1928).
against public policy. Presented before were cases in which deduc-
tions were upheld because the doctrine of public policy indicated
that they were desirable. One upheld the payment of a moral
obligation,\textsuperscript{38} and in another, extra benefits paid to labor were con-
sidered laudable.\textsuperscript{39} There has been some disagreement with the use
of the doctrine of public policy to arrive at a decision. In a note\textsuperscript{40}
that considered this problem, it was said that "justification of dis-
allowance on grounds of effectuating public policy must overcome
both the contrary import of the statutory language and the counter-
vailing policy against judicial conversion of a tax on net income
into a possibly exorbitant tax on gross receipts." Henderson\textsuperscript{41}
views this method of interpretation as a rather busy-bodyish notion of the
judiciary, and sardonically states that the decisions under this
clause "get into a twilight zone which amounts to moral policing
on the part of the Treasury of the activities of those who are for-
tunate enough to have income . . ." Despite these objections, there
will be many more of these fringe cases. Should a lawyer be per-
mitted to deduct the expenses of an extensive advertising campaign,
or should a coal stripper be permitted to deduct as an expense
forfeited bonds created to insure the replacement of topsoil? There
is no good reason why one should be allowed to deduct as necessary
expenses fees caused by spiteful civil litigation or as a result of a
malicious, intentional tort.

From this review, it clearly appears that there has been no one
method, test, or process by which claims for deductions are sorted.
As a consequence, the results have not been uniform while in all
fairness they should be. Is there a common thread, a unified method
of approach that can be inferred from the decisions? Many times,
the courts seem to be in the same position as Judge Scrultan was
when he determined whether a taxpayer should have a deduction.
"It seems to me that the obvious answer is, 'of course he cannot'. But
. . . when one comes to state the reasons why that obvious answer
should be given, perhaps it is not so easy as saying, 'of course he
cannot.'"\textsuperscript{42} Another decision intimated similar difficulty. "A review
of the situations would serve no useful purpose, for each case should
depend upon its particular circumstances."\textsuperscript{43} Obviously, the courts

\begin{footnotes}
\item See note 16 supra.
\item See note 14 supra.
\item Note, 54 HARV. L. REV. 852 (1941).
\item HENDERSON, INTRODUCTION TO INCOME TAXATION 259 (1943).
\item Inland Revenue Comm'r v. Von Glehn, (1920) 2 K.B. 553, 571.
\item See note 20 supra.
\end{footnotes}
are refusing to be bound by any strict interpretation of the words, ordinary and necessary; and are searching for a more justifiable method of examining business expenses. When the expense is repugnant to their ideas of ethics, justice, or morality, they look upon the "particular circumstances" and say "of course he cannot." Apparently, they have acted more as "men of the world" than as members of the bench. Perhaps it can be said that they have viewed the expense in question through the eyes of a prudent business man. Taking as a premise that the courts have been subconsciously influenced by this prudent business man's opinions, an examination of past decisions will show the qualities and attributes with which he has been endowed. Such an approach to this tax problem has its counterpart in the field of torts in relation to negligence and also can be related to the law of merchants that aided the development of the negotiable instruments law.

In cases dealing with the proximity of the expense to the business, the difficulty in determining whether an expenditure was sufficiently related to a business in order to be ordinary and necessary has been discussed previously. It is realized for example that contributions to certain activities will result in certain benefits to a business. The issue in this class of cases is, where do the benefits derived cease to justify the expenditure? This unquestionably depends upon the circumstances of each case—the amount, type of business, the contributor. Unless contributions were ruled out in toto, a precise line of decisions could not be drawn beforehand. By resorting to this business man concept, the courts have weighed the various facts of cases and reached decisions that at first blush may appear inconsistent; but by the use of this method, the courts have also kept abreast with the times. In 1900, it may have been unusual to make voluntary payments into an employee's annuity fund, but a recent decision states that it is not. By this method of allowing business economics to test the proximity of the expense to the business, the courts can release themselves from the embarrassing use of unrelated legal principles. So in the aforementioned "good will" cases when it appeared that the expense did justify the benefit, when tested by common-sense business policies, the taxpayer was allowed his deduction. From this first group, the concept is developed that any time this business man can say that the expense creates benefits, whether tangible or intangible, that have a proper

---

44 See notes 15 and 16 supra.
relation to the business from his expenses, then it should be allowed as a deduction.

In connection with group two concerning illegality, it would first have to be established which enterprises are going to be recognized. Then their expenses could be examined by this business man. Although the general rule is that it is never necessary to break the law in the conduct of a business, there have been the usual exceptions. One could not resort to bribery without the intent to violate the prohibitive law, but a business man could in good faith employ one who would measurably benefit his business. Such a thought probably moved the court to the consideration of technically "illegal" commissions paid to a state senator, and from such a consideration, it allowed deductibility. If the intent is sincere, and the value of the employee approximates the increased business revenue, then why should the expense be condemned by adherence to strict legal precedents that are obnoxious to good sense? Instead of drawing a fine line between legality and illegality of the expense, the courts use the test of the prudent business man to justify it. From the past decisions, the courts can be said to have given this person a rather high sense of right conduct in that he never knowingly, or by negligence tantamount to knowledge, violates the law. The same motivations are inferably present from the O.P.A. cases and again caused an exception to the general rule that fines should not be mitigated. When a manufacturer tries in good faith to comply with lengthy and confusing price regulations and still unavoidably incurs a fine by reason of their violation, then from common business sense, the fine was a justifiable outlay within the meaning of the words, ordinary and necessary. The courts have been saying this, perhaps, when they allow the deduction of an expense, when to do so does not frustrate the policy of the law.

It can be reasonably said that some men as a matter of business economics would be tempted to violate the law after considering the possible benefits to be obtained as against the probability of being apprehended and the amount of the fine. A more ideal business man has been cast by the courts in that his sense of right conduct prevails over such temptations. This is illustrated by the case where an oil company's wholly owned subsidiary was fined for its improper conduct in obtaining an oil lease from the government. The reason for the disallowance as a "bad debt", the amount

45 Standard Oil Co. v. C.I.R., 129 F.2d 363 (7th Cir. 1942).
paid the company for its subsidiary's fine was given as public policy.\textsuperscript{45} This, in effect, is saying that reputable business men would not indulge in such practices. Another characteristic of this business man appears from the litigation fee cases. Under economic considerations, a business man is not prone to "throw good money after bad." The opinion of the courts has been that if he loses a criminal case, he must have known he was guilty and as a consequence did a foolish thing in spending money as a monument to his innocence. The converse is true if he were successful, for the expense would have been incurred in defense of a right. Straying from the rule that fees of unsuccessful criminal litigation are not allowed, are cases concerned with quasi-criminal administrative proceedings and injunctions in equity. These are cases where honest men could have a reasonable difference of opinion as to the outcome. Even though unsuccessful, a business man feels that it is "worth the money" to settle the issue, or, as in the case of the mail order dentures, an absolute necessity that the matter be litigated to the fullest extent as the life of the business may depend upon the outcome. The bench, as shown by the line of division in these cases, apparently has been moved by this spirit. So too as to the borderline cases of litigation fees in consent judgments; here the business man's test was used subjectively to examine the seriousness of the charge, the amount of the expense, the "proximity of the danger", the reasonableness of the chance for success. The expense was not viewed from the results but rather from the reasonableness of the facts as they appeared before the expense was incurred. In this light, the same basic question had to be answered: would the probable benefits to be derived justify the expense?

The use of public policy in the decisions illustrates the court's tendency or desire to move away from any hard and fast rules. This use made of public policy has installed other, perhaps finer, qualities in this business man. Although lobbying, campaign expenses, or commercial bribery may certainly have a very important effect on the business, the courts have thought that a man should be able to see the overall long range results of his acts. They have said in effect that he should be above the use of any means to obtain his end-profit. The Lilly\textsuperscript{46} case illustrates these characteristics and further injects into him ethical considerations to be used in dealings with others. The issue in this group has not been one of balancing

\textsuperscript{46} See note 2 \textit{supra}. 
the expenditure-benefit problem, but has been one of profit acquisition versus public welfare. When considering the deductibility of an attorney's advertising expenses, the benefits of such an expense would have to be admitted, but they would have to be condemned as being against the established ethics of the profession itself. In this sense, they would not be ordinary expenses. The economic desirability of not replacing the topsoil in strip mining operations would dictate that the bond for replacement of the topsoil be forfeited. When due consideration is given to the great moral wrong that such a practice commits, the expense would be disfavored as not being necessary. On the same basis, it could never be necessary to commit a malicious tort to further one's business activities, nor would it be good economics spitefully to seek revenge by means of a civil action.

This note has suggested that the elements necessary for this test of the business man exist in the ashes of the past decisions, or in the subconscious mind of the court. From what has been presented, it appears that the courts have seen fit to use several standards that are not basic, in order to allow various degrees of freedom in deciding the cases. By their use, a need for a more uniform and natural method of examination has arisen. The prudent business man has been suggested as an answer to this need. All the qualities necessarily contained in such a test have not been put forth—this would be a vain attempt. This method, however, has been shown to have the ability to examine the question of deductibility of business expenses without making fine distinctions between illegality and legality, or between types of litigation expenses. This method judges an expense by itself, in relation to the reasonableness of it as shown from the facts that existed at the time it was made, and does not concern itself with the actual results of the expense. Exemplifying this is the statement that each case must be decided on its own facts, and very many factors, including the nature and condition of the business, will be injected into the ultimate determination.47 In essence, this method embodies the prudent business man. As shown, this hypothetical person has been endowed with certain features. He uses prudent, discriminative judgment in balancing the expenditure against the foreseeable gain to be had by it. He does not expect to make an unreasonable or unfair business profit. He is not inclined to

47 Hirsch v. C.I.R., 124 F.2d 24 (9th Cir. 1941).
violate intentionally the law nor to litigate uselessly the issue when he does. He is possessed with a sense of right conduct, good morals, commendable ethics, and sensitivity to the public welfare and business customs. These characteristics and more already exist within this prudent business man, and what further substance will be given him remains to be seen.

In the future, as the tax burden increases, more borderline cases will be placed before the courts because of the inventive mind of the taxpayer, and because of the commissioner’s attempts to increase the extraction by a closer examination of expenses. By definition, this business man is more ideal and stringent than any who actually exist, but with proper use, he can assist the courts to reach decisions with less embarrassment than before, and to achieve results that will be not only more justly uniform, but also more legally and morally proper.

L. A. S.