

# CHARLES L. B. LOWNDES— FIVE TRIBUTES

BY ELVIN R. LATTY\*

CHARLES LUCIEN BAKER LOWNDES died on July 28, 1967, in consequence of a heart attack, just before his sixty-fourth birthday. He had been on the Duke Law Faculty since 1934.

If any single word could begin to epitomize his life, that word would be “scholar.” This was impressed upon me from the very beginning of my 30 years with him on the Duke Law Faculty. Here was the scholar who wanted to know “why,” and for whom the sacrifice in manhours for seeking “why” was never cost-accounted. Indeed for him such labor was no “sacrifice” but a delight beyond measure. “I can’t get over it,” he told me once, “Duke actually pays me to do what is fun.”

For Charlie, it was fun to probe to the depths of his favorite fields of federal income tax law and federal gift and estate tax law. His joy did not stop with his probing; it carried over into the presentation of his insights to a grateful world of tax-law *conoscenti*. His publications stand as towering monuments to his understanding and articulation, even more for their unexcelled quality than in the memorable quantity of his published works, listed elsewhere in this *Journal*.<sup>1</sup> He fully lived up to the expectations created when he was elected to the editorial board of the Harvard Law Review at the age of twenty one.

No one who had ever seen him at work or engaged him in discussion will be in any way surprised at the greatness of Charlie’s contribution to legal learning over a period approaching 40 years. He was the indefatigable worker. For him, the weekend (and particularly Sunday morning after early Mass) was the occasion to delve degrees further into points pursued all week. You could always find Charlie at his desk, pounding away at his typewriter with his unique high-speed index-fingering, or deep in concentration, not only all day every normal-working day but most of the day even on Saturdays

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<sup>1</sup> See pp. 918-22 *infra*.

and Sundays—vacation periods included. Charlie was far from the non-academic's image of the university professor as the few-hours-a-day worker with eternal vacation in summer, Christmas, Easter, *et al.* For Charlie, a fitting epitaph well might be: *Labore Gaudebat.*

Charlie got into tax law on the ground floor in the late 1920's and early 30's when income tax law was in its infancy. For close to 40 years, then, he had been a constant student of federal income and estate and gift taxation. One great advantage which this background gave him was that he knew intimately the historical antecedents of the complicated features of the Internal Revenue Code, an area in which often a page of history need not yield to an equal amount of logic.

Williston once observed that there is something about the study of law that makes one not only well satisfied about the way things are but quite convinced that they could not very well be otherwise. Even if there were some force in that extremely dubious observation, one might venture that in any particular field of law the more expert the student the weaker the statement. Certainly Charlie, with his encyclopedic knowledge of tax law, was no apologist for the taxation status quo. He was particularly critical of one of the corner stones of federal income tax law, the capital-gains structure, on which he blamed a good deal of the monstrous complexities of tax law. Nor had he kind words for oil-well percentage depletion or similar political miscarriages.

Let me not give the impression that this man was a tax expert and nothing more. Thirty-five years ago, in his article on "Civil Liability Created by Criminal Legislation,"<sup>2</sup> Charlie came out with a significant exposition, characteristically original, of a fundamental basis of liability which is constantly cited even to this day in legal writings, including judicial opinions, particularly in the currently dynamic area of implied civil liabilities under federal securities legislation.

Small wonder, then, that the first distinguished professorship established at Duke Law School went to Charlie Lowndes, the James B. Duke Professorship. The choice was inevitable.

The humility of the scholar, the diffidence of the scholar, the gentle benevolence of the scholar—all these are clichés often belied (think of the arrogant scholars you can name!) but they were true

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<sup>2</sup> 16 MINN. L. REV. 361 (1932).

in Charlie's case. Kindness, whether to man or beast, was one of his outstanding attributes—not so much love in the abstract for all mankind in general but a warmth and sympathy and helpfulness for each individual who crossed his path. He could not bear to see anyone's feelings hurt. I suspect that his distress was great when he had to turn in a failing grade for a student.

Despite the constant deadlines under which he labored because of his innate aversion to give disappointment by refusing commitments, his office (I should say, his study) saw a steady stream of colleagues and students dropping in to discuss a point or to get his advice (not necessarily on tax matters), or just to swap an anecdote. You always had the feeling, walking in on Charlie, that he was glad to see you. For great gatherings of people he felt no inclination; conventions, association meetings, Conferences (with a capital C), *et al.*, he avoided like the plague, except when professional duty allowed no escape. I often suspected that he viewed such gatherings as occasions not to learn but to show off. Showing off was one thing for which Charlie felt no compulsion.

In faculty meetings his cool, respected judgment was time and again the deciding factor in the determination of the matter under discussion. He had an instinctive judgment for the sound, pragmatic solution, tainted with no trace of the grandstand play nor flair for intellectual posturing. For this quality in particular he was urged by the Faculty on several occasions to take the Deanship. He yielded to the extent of serving as Acting Dean on occasions, on each occasion demonstrating that he would have been a most outstanding Dean.

The only people who ever came away from Charlie in disappointment were those who went in to get tax-evasion (or dubious "avoidance") advice, hoping that he would exercise his expertize to get around the tax, or at least to advise skating on thin ice. Charlie could quickly deflate a grand scheme for slick avoidance or evasion of the tax, unerringly putting his finger on the key weakness. From Charlie you always got the straight, honest tax answer, even though it may not have been what you wanted to hear.

Charlie Lowndes was the only son of Rear Admiral Charles Henry Tilghman Lowndes (M.C.) U.S.N., and Mary Leonard Baker Lowndes. He was 22 years old when he received his LL.B. from Harvard in 1926, 19 years of age when he was graduated from George-

town University in 1923. At the age of 24, he was back at Georgetown teaching on the Law Faculty, after a year with the New York firm of Masten & Nichols (now Milbank, Tweed, Hadley & McCloy). He returned to Harvard for graduate work in 1930, receiving his S.J.D. degree in 1931.

He is survived by his wife, Dorothy Foy Lowndes; son Charles Lucien Baker Lowndes, Jr., of Orlando, Florida; son John Foy Lowndes, of the Orlando, Florida, Bar; son William Sinclair Bowen Lowndes, of the Charlotte, North Carolina, Bar; daughter Mary Baker Lowndes Robbins of St. Petersburg, Florida; and fourteen grandchildren.

BY ROBERT KRAMER\*

“And gladly wolde he lerne, and gladly teche.”

In 1947 Charlie Lowndes and I began our association together when I became his very junior colleague on the faculty at the Duke Law School. My two young daughters soon discovered his generous affection for children and insisted that we frequently drop by his office for short visits, when he never failed to produce goodies of some kind for them.

Charles also decided that, as a city boy, I should take advantage of country life at Duke, and, somewhat against my inclinations, he persuaded me to follow his example and start a vegetable garden. Despite his best efforts, he never succeeded in making my awkward thumbs very “green” ones, but he never lost patience and constantly encouraged me by showering my family with the delicious products of his own fertile garden patch.

At a school as small as Duke—the faculty was then less than a dozen in all—one man could easily teach all the tax courses. There never was any question that that one man was Charlie Lowndes. I think, however, that he very much wanted a colleague who would lend him sympathetic ears and eyes as he discoursed and wrote on federal tax questions. In a sense, as the only tax man on this small faculty, he was lonely. He found me, I hope, at least a happy listener.

In any event, whatever the reasons, he began to talk taxes to me, to show me drafts of tax articles, and quite deliberately, I think, to

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\* Dean, George Washington University Law School. Co-author, C. LOWNDES & R. KRAMER, *FEDERAL ESTATE AND GIFT TAXATION* (2d ed. 1962).

whet my appetite for more of his thoughts about taxes. I confess I responded warmly, quickly and eagerly—who could resist his sparkling wit, his generous praise, his keen clear insights. It was not long before we found ourselves working together on tax matters, even though I was not teaching in this field—in fact, I rarely did while I was at Duke.

Our first joint effort, to which my own contribution was quite modest and small, was a short, privately published piece in 1948. After collaborating on an article or two, we exchanged ideas about a book. There were several false starts. We did one or two chapters for a primer on the income tax before abandoning this effort because we concluded that this tax was far too complicated for this type of treatment. We experimented with a proposed text on tax planning. Finally—and this was Charlie's idea and a favorite of his from the start—we decided to do a single volume book on federal estate and gift taxes—as comprehensive and as readable as we could manage.

We started writing early in 1953 and had most of the material done when Congress made such sweeping changes in the Code with the enactment of the 1954 Act that we had to start all over again. It was not until 1956 that the first edition appeared in print.

In 1959 we agreed to make substantial revisions for a new edition, since the first one was virtually out of print. By then I had left Duke, ultimately never to return except for one or two short visits. However, we knew each other's habits of thought and style so well that even at a distance of several hundred miles we had little trouble in reworking the already published chapters to our mutual satisfaction, although we both sadly missed the daily dialogs, the exchanges of ideas, and the never-ending questions and more questions. Somehow, like all teachers, we instinctively could always ask the toughest questions. In fact, at one time we put together in a month a pamphlet of questions for students using the book, and then spent many more weary months preparing a book of answers for the teachers.

Early this summer, we began exploring the possibility of a new edition of the book. Just before his death, I wrote the publisher that we would start work on such a revision. Only a day after the first of the series of heart attacks which proved fatal to him, he had his daughter write me a letter—the last one I was to receive from

him—in which he pointed out with his unfailing quiet courage and optimism, that the long period of convalescence which his doctors insisted upon would be an ideal time for him to work at this task.

Charlie Lowndes was above else a superb teacher. I was more fortunate than his other pupils, because, quite literally, he taught me for two decades. In the classroom he was patient, understanding, thoroughly prepared, crystal clear and always accurate. Much like Randolph Paul, he combined an encyclopedic knowledge of the Code, Regulations and case reports with the philosophic mind which goes far beyond mere technical virtuosity. He was, first and foremost, a rock of integrity, never willing to compromise what he thought in the best public interest, yet never dogmatic or impatient with others, no matter how different their point of view from his.

Federal taxes are infamous for their complexity. Charlie Lowndes had the unique talent, never equalled in my judgment, for speaking and writing with such rare clarity that the most muddled provisions of the Code became intelligent and clear without any sacrifice of accuracy. His style—his use of innumerable examples, his felicitous phrasing and comparisons—was a joy to follow. This kind of writing looks easy, but actually represented hour after hour of revisions—first in pencil and then on his trusty old typewriter. In it he combined the grace and polish of an Addison with the power, naturalness and clarity of a Swift.

Henry Adams remarked in his account of his own Education that a “teacher affects eternity; he can never tell where his influence stops.” So true of Charlie Lowndes. To him, as to Adams, “education was a serious thing.”

BY JOSEPH A. McCLAIN, JR.\*

I came to Duke Law School in 1950. Charles Lowndes had served well as Acting Dean for 1949-50, but did not desire to continue in administrative work. His love for teaching and research overrode any consideration for administrative work, although during my six years as Dean he was constantly and continually helpful in the solution of any administrative problem. He always gave freely of his time.

He was recognized by all students as a master teacher. All were

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familiar with his custom of ending his lecture at the classroom door and being the first one out of the room. He did not like post discussions at the lecture podium, but would spend any amount of time with any student who would come to his office with a problem. His door was always open to students.

He was a most versatile teacher. Not only was he nationally recognized as an outstanding authority and teacher in the field of taxation, but he was also a master teacher in other areas of the law. Few people, perhaps, know that he was an outstanding teacher in the area of tort law—a subject which he first taught at Georgetown Law School before joining the Duke Faculty. Dean Prosser, of the University of California, and author of *Prosser on Torts*, once asked me, "Do you know that Professor Lowndes is one of the finest tort teachers in the country?" He had a comprehensive grasp of the entire spectrum of law. There was no area in which he did not possess knowledge and competence, regardless of his usual modest disclaimer when asked for an opinion.

He had a rare ability to reduce the complexities of tax law to terms that could be understood by the general practitioner. Dean Henry Brandis, of the University of North Carolina Law School, himself an excellent tax specialist, one remarked, "Charlie Lowndes is the only person I know that can take a new federal revenue act and explain it to a group of lawyers within permissible time limits so that they can comprehend what it really means." This was a just and generous compliment from the head of a competing institution. This gift of reducing the complex and difficult to understandable terms made him a popular choice to speak before Bar groups on tax law and its development. He responded generously to these invitations and spent many hours preparing for such assignments.

Although Charles Lowndes remained on the Duke Law Faculty for over thirty years, students in other law schools experienced the mastery of his teaching. He frequently taught in the summer session at the University of North Carolina and at other summer sessions throughout the country. His sabbatical year, 1965-66, was spent on the law faculty at the University of Florida. Frequently I hear high praise of his teaching from Florida students who were privileged to be in his classes during that year.

No effort will be made here to list his legal writings in their

entirety.<sup>1</sup> His treatise, co-authored with Dean Robert Kramer of George Washington University, *Federal Estate and Gift Taxation*, is nationally recognized as an outstanding work in this field of law. Many lawyers of my acquaintance place great reliance on the scholarship and practicality of this text and have found it of inestimable value in dealing with tax problems in this area. The treatment of subject matter in this treatise is not only scholarly, but the lucidity of expression and explanation regarding complex tax problems is a significant characteristic of the work.

He was a loyal Catholic and spent a substantial amount of his free time in working for projects of the Church. However, never in the six years that I served with him did he permit any religious belief he might have held to enter into a discussion or consideration of any problem.

He had a keen sense of humor. At one time he bought a farm and gave some consideration to farming, which had become fairly profitable in some areas of North Carolina. From this experience he related a most humorous story regarding our present tax burden. In conversation with a successful neighbor farmer, he found that the man had never filed an income tax return. He warned the man about the penalties for not filing a return, and advised him to file one. Some time later he inquired of the farmer about filing a return. The man replied that he had filed a return, but said he would "never do that again." When asked why not, he replied, "I simply can't afford to do that again."

Charles Lowndes was a modest man, despite his extraordinary gifts and talents. His was a personality of warmth and sympathy which made him an invaluable confidante regardless of the problem involved. With his death the law teaching profession has lost a truly great teacher, an outstanding scholar, and his friends have suffered an irreparable personal loss. It was a great privilege to know him and to be able to call him "friend."

BY HUGH G. ISLEY, JR.\*

In this series there will be tributes by those who knew Charles L. B. Lowndes as an admired and beloved colleague, as a co-author,

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<sup>1</sup> See pp. 918-22 *infra*.

\* Member of the Florida bar.



and as an intimate personal friend. I wish I could have been his faculty colleague; I consider him as a personal friend; but my restricted purpose here is to attempt to convey, in admittedly inadequate measure, the esteem, the admiration, the reverence in which I, along with innumerable others, held and hold him as a teacher.

I first met CLBL (isn't that what he was called by all of us?) on a beautiful June day in 1950. We discussed my application to Duke Law School. He was Dean at that time, a position which he had temporarily and reluctantly accepted (in my judgment) solely because Duke Law School was without a Dean and it was part of CLBL never to let his beloved Law School down. My impressions of that first meeting are still somewhat vivid. Even though he was acting the capacity of Dean, he still preferred the small office of a professor. He was in shirt sleeves; his typewriter was pounding when I entered; it resumed as I departed; and as we spoke, he effortlessly devoured more lifesavers in one sitting than any other man I have ever known. When he had generously and completely answered all of the questions I could muster, I departed on that bright day in June knowing that this was a man I had to know better.

Over the next three years the laws of taxation and CLBL became synonymous. The organized, rapid-fire, concise presentation of his lectures reflected the incomparable genius and humor of the man. His hypothetical examples referred to by all CLBL students as "hypos" are legendary. We marveled how one man could say so many complex things so concisely and so clearly in so short a span of time. During those three years I, along with many others, as was the case before and has been the case since, took every course that CLBL could offer. We recognized this as a priceless opportunity to study under a master. There are professors who are recognized as authorities in their field because they are scholars and great authors, not necessarily great teachers. CLBL was not—and cannot be—considered among them. He was a great scholar, a great author, *and* a great teacher.

It is no secret that professors are the subject of many midnight dorm sessions, complete with coffee, and at times, perhaps, something stronger. These "brilliant philosophical dissertations" are memories treasured by all of us. One that I remember in particular dealt with the concept which an eminent author has termed "peace of mind."

For hours we debated the concept only to conclude that none of us was really sure "what it was," but whatever it was, CLBL possessed it.

To evaluate or to describe the talents of the man would be a hopeless task for anyone, certainly this writer. And yet I was privileged to observe the accomplishments of CLBL out of the classroom as well as within. I recall one particular tax seminar for practitioners. CLBL was the organizer, but as was his way, the instructors were practicing attorneys selected because of their qualifications in some area of the tax field. One of the instructors received an emergency call immediately before his presentation. CLBL took over; prefaced his remarks with a humble apology for the substitution; but stated that he would speak from notes and a text prepared by the departed speaker. During the next hour, the audience was treated to one of the most concise and complete presentations that I have ever heard in one of the most complex areas of tax law and tax planning. After the seminar, I requested him to let me review the text and make more detailed notes from it. He gave it to me rather reluctantly, with the explanation that he might have "strayed here or there." But the truth was self-evident—he hadn't used the text at all. While the text may have been good, the brilliant lecture and analysis was pure extemporaneous "CLBL."

During my first month in private practice, I encountered a tax problem which I personally discussed with CLBL. He adamantly refused to discuss the matter on a fee basis, but welcomed the opportunity just to get together. "I believe," he said, "that this situation is covered by (and he named the case) which is reported at (and he named the volume number). I don't recall the page, but I will have it for you in a moment." And he did. And it was. I might share your disbelief if I had not been there.

Years later, I was privileged to participate with three other Duke graduates in a symposium devoted to procedural and trial considerations in the handling of a tax case. CLBL was our host; he made available space for our use; and in every way was his usual congenial, unassuming self. After seeing that we were comfortable and supplied with the necessities, CLBL retired from the room with the parting comment "I am really looking forward to your program; I don't know much about your subject." I regret that he did not hear our comments as the door closed, for one of the panel members expressed

the consensus "He oughta' be the panel; we oughta' be the audience."

Lawyers, whose practice is predominantly tax, live in a world surrounded by constantly changing tax services and publications. Among them are Commerce Clearing House, Prentice-Hall, Research Institute of America, Merten's, New York University Publications, Tabkin & Johnson—just to name a few. Generally the publications are revised weekly for no other area of the law is to my knowledge the subject of more constant judicial, legislative, and administrative change. And yet with all of these services I, from time to time, still, as I regard it, "talk to CLBL"; for within my immediate grasp rests a file of battered fifteen year old clumsily typewritten notes—the treasured lectures of CLBL. Many of the laws have changed since those lectures were delivered, many of the inequities which he discussed have been remedied; and many of his predictions have come to pass. Notwithstanding these changes, when the problem of the forest and the trees becomes a factor, the fifteen year old lectures of CLBL are as enduring in the field of taxation as the work of other masters in other fields.

I haven't done what I set out to do. Perhaps I knew when I began. In the last analysis, I'm not really sure that any of us would really agree on what loyalty, genius, integrity, humility, or peace of mind really are. I just know that CLBL had and was all of them.

BY MARK B. EDWARDS\*

The distance between the podium and the seats in the classroom of Duke Law School is not great; at most fifty feet to the most distant. Yet this distance between professor and student often represents a chasm of insurmountable proportions. The aspiring attorneys regard their teachers as modern-day Oracles, bringing to the uninitiated the accumulated wisdom of years of legal scholarship. And like the Grecian Oracles, the professors are considered to be Centaur-like creatures—half divine, half human—but totally different and apart from the students they teach.

Not so the feelings of the students of Professor Charles L. B. Lowndes. Professor Lowndes was a rare man—a dedicated scholar whose writings were acknowledged as definitive by his colleagues; an accomplished teacher who had mastered the task of leading

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\* Member of the North Carolina bar.

fledgling law students through the intricate mazes of the Internal Revenue Code; a practicing attorney in whom his clients placed the deepest trust. We, who were privileged to sit in his classes, marvelled at his knowledge and at this logical and orderly thinking. We took copious notes of his lectures and were amazed to find at a later reading that they read as well as a polished textbook. We studied our cases diligently, fearing that sloppy preparation would bring us to grief in the face of his famous—and infamous—question: “Now, Mr. Jones, what do *you* think about that?” We received from him a thorough introduction into the principals of taxation, and, like many other students, we did not realize the depth and quality of our education until it was tested by the demands of our practices.

Yet a recitation of the professional accomplishments of Professor Lowndes, impressive as they may be, cannot convey to the reader the sense of the joy of living and the intense interest in humanity which he conveyed to his students and which bridged that chasm between student and teacher. Dry, technical discussions were always brightened when Professor Lowndes leaned back in his chair, and, with a characteristic chuckle and grin, proceeded to analyze the problem in terms of human nature and political philosophy. He never let us forget that the taxing statutes are the products of legislative compromise between the government’s need for revenue and the desire of special interest groups to avoid the tax. He emphasized time and again that the statutes, regulations, and cases could be understood only if we were aware of their economic and social context.

His office was always open to a student or ex-student, and he was always eager to consider a new problem or to be of whatever aid and assistance possible. His enjoyment of these discussions was obvious and he always seemed to me to be at his best in the Socratic method—a running dialogue between student and teacher in which both learn.

Professor Charles L. B. Lowndes was an institution at Duke Law School, a legend in his own time. As is often the case, his students were too close to greatness to recognize its full proportions. Only by the passage of time did we learn the true meaning of what he taught us and the joy with which we learned. There can be no more fitting summation of our association with Professor Lowndes than the words spoken by one of his colleagues in remembrance of another:

To have known him is a part of our life’s unalterable good.<sup>1</sup>

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<sup>1</sup> J. Francis Paschal, *Douglas Blount Maggs*, 1963 DUKE L.J. i, iii.