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Introduction

Professor Homer Kripke, the doyen of commercial law academics and practitioners, was a faculty member of ALI-ABA's Advanced Course of Study on The Emerging New Uniform Commercial Code presented in New York City September 7-9, 1989. The Occasion presented an opportunity to conduct a video recorded interview of Professor Kripke for inclusion in the audiovisual history of The American Law Institute.

Founded in 1923, the Institute has been involved with the National Conference of Commissioners on Uniform State Laws in the drafting of the Uniform Commercial Code and its revisions since the 1940's. Many of those who initiated and led the Code effort, names that recur in the interview, are deceased. Homer Kripke, an important player in the process almost from its inception, candidly offers in this interview insights and recollections that bring to light forgotten, unknown, or unrecorded episodes in the Code’s development.

Involved also in the 1970’s as a Consultant in the Institute’s Federal Securities Code project, Professor Kripke opines on the failure of this landmark effort to be enacted by the Congress.

This interview was recorded on videotape and subsequently transcribed. The edited transcript is published herein.


Paul A. Wolkin
Interviewer

February 24, 1992
Mr. Wolkin: This interview is part of an American Law Institute audiovisual history of persons active in its affairs over the years. Today we shall be interviewing Professor Homer Kripke. Professor Kripke served as Associate Reporter for the Review Committee on Article 9 of the Uniform Commercial Code from 1967 to 1971, and as a Consultant on The American Law Institute's Federal Securities Code from 1971 to 1978. He is now an emeritus member of the Permanent Editorial Board for the Uniform Commercial Code.

I did some research on your background, Homer. I understand you got your J.D. at Michigan in 1933?

Professor Kripke: Right.

Mr. Wolkin: Michigan Law Review?

Professor Kripke: I was on the Law Review.

In those days the Michigan Law Review was a faculty-run review, so there weren't any presidents, editors in chief, or note editors or the like. I was on it both in my junior year and during my senior year as one of four advisers to the juniors on the review. That's the nearest they came to having any officers. I was the top man in my class.

Mr. Wolkin: Then you went into private practice from '33 to '38, according to Who's Who?

Professor Kripke: Yes.

Mr. Wolkin: In Chicago and New York?
Professor Kripke: In Chicago, originally in Toledo, Ohio, my hometown, for six months, and then in Chicago. I went from there to the SEC [Securities and Exchange Commission].

Mr. Wolkin: Where you were until 1944, I take it, and then Assistant General Counsel, CIT Financial Corporation?

Professor Kripke: Right, in New York.

Mr. Wolkin: Till 1960; private practice again, then back to Allied Concord Finance Corp.?

Professor Kripke: Financial Corp.

Mr. Wolkin: Financial Corp., until '66, and then — And from there you went to NYU?

Professor Kripke: That's right.

Mr. Wolkin: Where you were a Professor and became Professor Emeritus in '81, then a Distinguished Professor in San Diego. You're also a member emeritus of the National Bankruptcy Conference, and with that background, we come to the Uniform Commercial Code. How did that area of law become your area of expertise?

Professor Kripke: Well, when I left the SEC I had been Assistant General Counsel, I had argued some of the great cases, I had been in charge of appellate litigation of the SEC for about three years. I had argued the first cases on the famous death sentence under the Public Utility Holding Company Act and some other important leading cases, and I didn't mean to demean myself by going from there to just a money grubbing organization.

I talked to Henry Friendly, who was not yet a judge but was a senior partner of the firm of Cleary, Gottlieb, Friendly, and later Hamilton. Originally there was some other name instead of Hamilton, probably Cox, and he told me that he thought CIT was an excellent organization with excellent financial people. In talking to the person who was becoming General Counsel and who hired me, I got the picture, which I have always entertained and which I mentioned in my lecture yesterday, that there was a process of distributing our enormous outpouring of goods and that it took a lot of financing, and the banks had not seen either the need or the opportunity, and were leaving it to organizations like CIT.
CIT was then the leading independent organization in the field. Of course, there was General Motors Acceptance Corporation, owned by General Motors, limiting itself to General Motors financing exclusively, there was the General Electric Credit Corporation, limiting itself to products in which General Electric motors or the like were at least important parts. There was similarly a Westinghouse Credit Company, there was Commercial Credit, CIT's biggest rival, also Associates Finance, which was a smaller rival. But CIT was the biggest independent and it was extremely prosperous at that time, so much so that there was at least one year in which CIT made more money than any bank in the country. Banks, as I said, were missing a great opportunity. Not only that, but CIT recognized that the business depended on building a body of law that would be useful.

The remarkable thing about General Motors Acceptance, the biggest company, is that it had no lawyers. It had a couple people with law degrees who functioned as political people, keeping an eye on legislatures, but it had no lawyers. It sort of depended on CIT to take care of the law. Commercial Credit had no lawyers in its employment but it did have law firms in both New York and Baltimore which primarily did Commercial Credit work, and when their senior partner, Mr. Dills, died, one of their most important, ablest men, Jack Levinson, left Commercial Credit and came to CIT, strengthening our legal department. So we were busily engaged in consciously developing the law of the field when other companies, like General Motors and General Electric, literally did not understand that this was necessary.

Mr. Wolkin: So how did you get involved with —

Professor Kripke: Pardon me?

Mr. Wolkin: How did you become involved with the UCC, with Karl Llewellyn and the ALI and the Commissioners?

Professor Kripke: Yes. Well, I had been told by the fellow who was primarily keeping an eye on the development of the law that there was a Uniform Commercial Code in process and he asked, did I have any pet provisions I would like to try to get in it, and I ignored that. I didn't have any, and then Milton Kupfer of New York, who was the first General Counsel of an organization whose present name is National Commercial Finance Association
its prior names I've forgotten — went to an American Bar Association meeting in Seattle in 1948, followed by a meeting of the Commissioners on Uniform State Laws, and he brought back the first published draft of a chapter in our field of secured credit. It was a chapter on inventory, and he sent it to me. I read it, and Karl Llewellyn — who was the Chief Reporter of the Code — had used the expression in an article in 1948, "inventory in the broader sense, including accounts receivable," and I hadn't thought much of that. I'll come back to Llewellyn's earlier exploration in this field in a moment.

I hadn't thought much about that because he had recognized in the earlier law the close relationship between inventory and the accounts or other receivables arising from sale of inventory; so that remark was not exceptional, but in his draft he defined inventory to include accounts receivable. Having written the draft, he forgot about his definition. The treatment of inventory was an excellent first draft, which translated into understandable English an excellent statute he had written in the field before, namely, the Uniform Trust Receipts Act, which was usable but un-understandable. I'll explain that in a minute. This time he wrote a reasonable good first draft on inventory, but when you remembered the definition and applied it to accounts, it gave you nightmares, because inventory is primarily a two-person relationship, a dealer in merchandise and a lender, and accounts receivable is a three-party relationship: a seller and a buyer and a third party who takes over the credit obligation from the seller. Since he had totally ignored his definition, this draft gave me nightmares. I didn't know whether one dared approach the famous Karl Llewellyn, but Allison Dunham I knew was working with him and I knew Allison Dunham because we both lived in Westchester County, New York, and we had met socially, and so I asked Allison whether Llewellyn would talk to me; he said yes.

I called Llewellyn, he invited me out, and he agreed readily that his draft had to be changed because of that definition, and then he started talking generally. He said that he knew that he had no touch, no feel for these problems in what we now call asset-based financing, although that is a fairly new term, and he had tried to get the feel of it by talking to the banks and then he quoted
to me what I will try to repeat the way he said it. The banks told him: “We don’t know anything about chattel mortgages and that kind of stuff. We only deal with persons who come well recommended,” and he said that “the banks give me no help.”

And fortunately there was a fellow at CIT named Harold F. Birnbaum whom he had known and who had been very helpful to him in understanding this business realistically. Unfortunately for him, but fortunately for me, Harold F. Birnbaum had left CIT because he didn’t get the general counselship and had gone to Los Angeles to practice law, and I was his successor. So it was just natural for Llewellyn to attach himself to me as someone who could give him guidance in the realistic application of this business. That was in 1948 and I have been working on the Code a substantial part of my time ever since.

Just as an aside, Harold F. Birnbaum is still alive and living, retired, in Hawaii. He must be about 92 years old. His mind is still excellent. I came to know him when we were both working on the Code together. He’s always anxious to be briefed on anything that’s going on and he made some very valuable suggestions on Article 9, which are reflected in Section 9-103.

Mr. Wolkin: Harold is a member of the Institute and each year when we send out the Annual Meeting drafts we receive a note or two from him commenting on what might be done. I saw him in Hawaii several years ago. I didn’t realize he was now 92. His handwritten notes come talking about suggestions on how to improve the draft.

Professor Kripke: Ninety-two is just my guess as to his age, but he is certainly in his 90s or 89 or something like that.

Mr. Wolkin: Was Allison Dunham the Reporter at the time for Article 9? Or was —

Professor Kripke: Allison Dunham and Grant Gilmore were Co-Reporters for Article 9. Not very long afterwards, before I got very deeply into it, Dunham, who had been chosen because he was basically a real property lawyer, decided that there was no similarity between the law of real property and this field of the law and withdrew from Llewellyn’s team. That left Gilmore as his drafting assistant on Article 9. Now, Gilmore had been a teacher of French. He went to law school and became a professor of law.
In the field — I think he has described this himself somewhere — the fields he was to teach were originally unknown and he got assigned to teaching personal property law and that’s how Llewellyn picked him up. When I saw him first, which was either that first time I went over or my next trip, he had a new draft of the chapter on inventory and it looked pretty good but it wasn’t complete and wasn’t perfect by any means, and Llewellyn sent him back for a redraft.

I might mention that his theory was, their theory was, that they would have separate chapters on inventory financing, accounts receivable financing, consumer goods financing, and so on. As these separate drafts progressed it became apparent that there was a lot of duplication in them and that the proper structure was not by types of goods or types of transactions but by basic aspects of the securities transaction, such as the making of the agreement, perfection, rights of third parties, and so on, and the structure of Article 9 gradually evolved to what it presently is.

Soia Llewellyn [Mentschikoff] was, of course, the Associate Chief Reporter, and Karl had very great respect for her. Soia was suspicious of anybody from the finance industry from the start, and when the New York City Bar began to organize to deal with the Code, Charlie Willard was the first chairman of a committee and I showed up at the organization meeting of the committee. Charlie Willard told me that Soia had instructed him not to let the finance companies capture the committee, and I was excluded from that committee. It wasn’t till later that Soia recognized I was trying to do my best, and as she and Grant both subsequently said in written documents, I always knew whether I was representing my client in the industry and when I was acting pro bono, and I left no doubt with them, if I was ever representing the industry that I was doing so at that particular time, so I got along fine after that with them.

Mr. Wolkin: Was Soia on Article 9 from the beginning when you started?

Professor Kripke: I think Soia was a floating halfback, on everything.

Mr. Wolkin: The chemistry among all of you must have been very interesting. Karl was, to say the least, —
Professor Kripke: Karl was at the top and he was, until he began to get ill, very active in it and we would talk about these problems together. Later, as he got ill, Soia became his executive assistant and Grant and I and Jerry Ireton of Commercial Credit, and Milton Kupfer to a limited extent, although I think he never got beyond representing his industry, would kick these problems around, and so we ultimately produced that first version of Article 9 which was embodied in the Code.

I should say we had a lot of trouble with these. We soon recognized the proceeds problem and the priorities problems resulting from it, and we tried to solve them. We never could solve them. I sort of hoped that we could perfect a Code and do what has recently been suggested, say that in adopting states it will become effective five years from now, and in the meantime I and others working in the field would try to apply it to pending developments and see if it worked right. That, of course, was impossible. We had a problem with budget and Bill Schnader and Judge Goodrich were very anxious to finish the Code because they had not only budgetary problems but the problem of maintaining the interest of the advisory committees on all the chapters. At one point when I was puzzled by something, I told Schnader Article 9 was not yet ready; we had to go through at least another draft. He said, "Well, we've got to get this thing out; if Article 9 is not yet ready we'll drop it." But fortunately it didn't happen that way, because I think while the other chapters are undoubtedly highly meritorious, the novelty and coordination achieved by Article 9 as against the fragmentary, diverse laws in the field has been the greatest achievement of the Code.

Mr. Wolkin: I understand there was a subcommittee to review Article 9 before the 1958 edition. You've mentioned Ireton. He was the chairman of that, and the other names on there I have here is yourself, Tony Felix, Peter Coogan, Grant Gilmore, and then Harold Birnbaum, and Richard Winters. Remember that subcommittee that reviewed Article 9 before the '58 edition?

Professor Kripke: Before the '58 edition. That was after the New York Law Revision Commission had come out with its report. I don't remember much about that. I don't remember who Richard Wallace was.
Mr. Wolkin: Winters, Richard Winters. I don't remember him either. And of course the other names — when did Peter Coogan get involved?

Professor Kripke: Oh yes, I meant to tell that story. I can't give you a definitive date, but Walter Malcolm of Boston had come into the discussions at an early date and was a frequent speaker on the background of the Code. I don't think he got down into the nuts and bolts of Article 9 very much, but he was a strong supporter of the Code. Then one day fairly early in the game, as early perhaps as 19 — let's see, the Code was adopted in Massachusetts in 1954, — I mean Pennsylvania effective '54 — this must have been as early as '52, Walter Malcolm invited Karl and me to meet at the Association of the Bar of the City of New York on 44th Street with Peter Coogan, whom he brought along. Now, Peter and he were in effect rivals, or their law firms were rivals, for the business of the First National Bank of Boston, but they were very good friends together. Peter was a very adventurous lawyer in asset-based financing, doing innovative financing on moving pictures and television, which was just then beginning, for a very adventurous vice president of the bank, whose name slips me.

Mr. Wolkin: Is that the Russian name?

Professor Kripke: Huh?

Mr. Wolkin: It was a Russian?

Professor Kripke: Yes.

Mr. Wolkin: I don't remember his name but I remember Peter talking about him.

Professor Kripke: The name will come to me. And Peter came to us and said, in substance, I have an enormous problem finding any firm guidance as to what I have to do to perfect a lien, or what we now call a security interest, on some of the intangible assets which are my security in moving picture or television financing. In the beginning all I have is the contracts of the producer and the director and the star and other actors and the rights to the story, all of which are intangible, and when I'm all through all I have is a can of film, which in itself is worthless. It's the product that is valuable and we just don't know what we have to do to give us a firm legal hold, what we now call a security interest, on them. They don't fit into any normal categories. They
don’t fit into your categories in your drafts of accounts receivable or equipment or as consumer goods or the like; they don’t fit as notes or chattel paper. What you need is some catch-all for this kind of valuable intangible.

And so we concocted the name “general intangibles,” put it in the Code, provided for filing to perfect it, and give Peter a firm hold in the future, and Peter became a loyal supporter of the Code, the hardest worker, the most productive writer, the best technician, and he and Walter Malcolm put the Code through in Massachusetts in ’57 or 1958, when it had faltered with no enactments other than Pennsylvania since the 1952 enactment, and I think the two of them saved the Code. Peter was a very vigorous worker there, became the great star of the Code, and, as you know, published and maintained a book which grew to four volumes on the Code.

Mr. Wolkin: Walter Malcolm was a pretty take-charge person. I remember he used to drive Judge Goodrich wild with trying to take over, run the project, and Goodrich would tell me that he doesn’t know how he’s going “to cope with Walter; he just wants to run away with the ball.”

Professor Kripke: Well, that was good, because, frankly, some of us used to say Goodrich and Schnader were running around making speeches about this being a superlative Code, and we sometimes wondered whether they had ever read it. It had to be slowed down until the technical knots were gotten out. And let me tell you a story there.

There was a fellow who drafted Article 6 named Charlie Bunn. He was a professor at the University of Wisconsin, I think. I didn’t really know him, but I saw him presenting Article 6. He explained at one stage there are two present types of bulk sales laws. One is the New York model, in which the buyer does not have to see to the application of the proceeds of a bulk sale; the other is the Pennsylvania model, in which the buyer has to see to the application and if he doesn’t he’s going to be liable. Most of the states have the New York model; about 17 or 19 have the Pennsylvania model. Naturally up goes a hand: “Which one does the Reporter recommend?” And Bunn puts up his hand like this (indicating). It was obvious he’d never anticipated the question or knew
what he was going to answer. Well, that formed my judgment on Bunn.

Then as Article 6 worked toward final form some matter arose, I can't remember what the detail was, but I was convinced that Bunn had an error in his draft, so I wrote him about it. I never got an answer, but the next draft had the same error so I wrote him again. The next draft had the same error and I wrote him a third time. This time I did get an answer but it came not from Bunn but from Judge Goodrich, and what he said was a paraphrase of a sentence that is connected with Oliver Cromwell. I looked this up once and I can't remember whether Cromwell said it or whether somebody said it to him, but what Goodrich said to me was, "Homer, I beseech you in the bowels of Christ to bethink yourself that you might be mistaken."

Mr. Wolkin: Goodrich was great on these quotes. I remember, I was his law clerk and he would turn out an opinion with great dispatch and some of the other judges were considerably slower, especially the chief judge. It would exasperate Goodrich and he would say, "God made the world in six days and on the seventh day he rested, and it shouldn't take any longer to write an opinion." And he stuck to that.

You mentioned Schnader several times. He rode herd on the Code all the way through and that was, I think, his —

Professor Kripke: He what?

Mr. Wolkin: He rode herd on getting it through, trying to get it completed.

Professor Kripke: As I said, he never volunteered any substantive comment, either good or bad, or said, "you missed this," or, "I've had this problem and I don't see that you handled it," nothing like that, but he was concerned with getting it enacted. That was his problem, and, as I said, if we weren't ready to go he was going to drop out Article 9 and go ahead with what he had, and once he had some enactments and the problem arose of completing them, he was furious to have people known as those who had drafted the Code criticizing it and suggesting that it was imperfect, because that just multiplied his problems in getting it enacted in the remaining states. The three biggest offenders were Coogan, Gilmore, and I.
Mr. Wolkin: Dunham, too. He was quite upset with Dunham one time.

Professor Kripke: He may have been but Dunham dropped out very early in my contact. I know that Dunham wrote some articles on the Code as far back as 1948.

Mr. Wolkin: Absolutely infuriated Schnader.

Professor Kripke: At any rate, one problem that we knew we had not settled right, and it caused considerable pain, was the problem of fixtures, Section 9-313, which was essentially modeled on the fixture provision of the Uniform Conditional Sales Act, which was essentially modeled on a New York statute of 1904, which for the first time, instead of saying that once personal property is affixed to real property, it becomes real property, and all personal property financing on it disappears — instead of saying that, as most states said, it said that under certain circumstances, that personal property financing can be preserved.

There were problems with it. For instance, it took for granted that the debtor in the personal property financing was the owner of the real estate to whom the goods were affixed, and yet on its face it would apply even if a debtor was a contractor who had bought the bathtubs from a supplier and executed conditional sales contracts on them and then affixed them to real estate that had no connection with the contractor, so there were search problems. Now, Coogan dealt with some of the defects in a 1962 article in the Harvard Law Review. Gilmore came back with a 1963 article in the Harvard Law Review which, like Gilmore, went way back to the historical foundations of this problem in Fosdick v. Schall and other ancient railroad doctrines, and in 1964 I, just being a pragmatic guy, dealt with what was wrong with the Uniform Conditional Sales Act and what was wrong with the first version of 9-313 and what we had to do to correct it.

Schnader was furious at us for writing these articles and in 1963 the American Bar Association met in Chicago; and at that meeting we had the first of many subsequent meetings in which a group of the Article 9 specialists, Gilmore and Coogan, Haydock or Walter Malcolm, whoever else was around at the time, and a referee in bankruptcy who had written some notable article on leases, got around a table and I was the interlocutor, no doubt
because they figured it was safer to let me ask the questions than try to answer, and we had an informal, unrehearsed free-for-all discussion on existing problems of Article 9. There are at least three published versions of that kind of discussion. That first one is published in 19 *Business Lawyer* and there are at least two others which are published as separate volumes, and here at this session we were picking apart flaws in the Code, and the Gilmore and Coogan articles on fixtures had already been written and Schnader was furious. He summoned Coogan and me to his hotel room — he would have summoned Gilmore but Gilmore was not in Chicago at the time — and he gave us hell for making his enactment job difficult by criticizing the product he was trying to sell, and he said, "I want you to stop criticizing it — until we get all the states, except Louisiana, to enact it," and we said, "When will that be?" He said, "1967." And he was exactly right, because by the end of '66 he had all states but Louisiana and he kept his word.

In the fall of '66 they began organizing the Review Committee, which functioned from '67 to '71 and produced the 1972 amendments to Article 9. Now, there's a bit of history there. It was we three people who were the worst offenders and we showed our respect for Schnader's view because I published my fixture article in '64, after that meeting, and in '66, before the Review Committee project was announced and organized, I wrote an article in the *New York University Law Review* on suggestions for revising Article 9 in the intangibles field, and of course Gilmore and Coogan had not been muzzled either, so when it came to picking the personnel of the Review Committee, on reflection Schnader showed his teeth and exacted retribution. I was in Alamogordo, New Mexico, visiting my son, who was a captain in the Air Force, which had a big base there, and he had on view my first grandchild, and I got a call from Bob Braucher of Harvard Law School announcing that there was going to be a Review Committee and he, Braucher, was going to be the Reporter. I was going to be the Associate Reporter, but because he, Braucher, was also at the same time the Reporter for the Restatement of Contracts, I would be expected to do the work and carry the ball, so I accepted that and didn't think much about it. He gave me a list of names of the 10 people selected for the committee, which included two judges and people like Millard
Ruud, whom I didn’t know very well, Dave Henson, whom I did not know as well then as I have come to know him, Harold Marsh, and there were so many potential people who could have been chosen that I failed to be impacted as I should have been by the absence of Gilmore and Coogan. I must say I just overlooked it, so I agreed with Braucher, and then I realized at some later time that Gilmore and Coogan had been omitted purposely and, on reflection, I realized that I had been chosen as Reporter but with Braucher sitting over me to keep me from going wild. And so there was some to-do about it. Some people threatened, and I joined them, not to go ahead on this committee unless Gilmore and Coogan were brought in, and an arrangement was made to have them designated as Consultants to the committee but without a vote. That was their punishment, and my punishment was to have Braucher sitting over me.

I don’t want to dwell on that because Braucher was very able. He did his share of the work. If you read the 24 or so working reports I wrote to the committee in preparation for meetings you’ll find that Braucher seldom got around to reviewing them in time to join in them so they are mostly under my name alone, but he was a meticulous ultimate reviewer. He knew the style of the Commissioners for drafting and enforced it vigorously on me so that it was acceptable to the Commissioners, and he was a better draftsman than I. He solved some problems that I was stumbling on, so I have no complaint about my interconnection with Bob Braucher in that four years. It was an excellent experience.

Mr. Wolkin: I’ll give you a postscript to the story about Coogan and Gilmore. When they weren’t designated, I got together with Herb Wechsler and I said, “We must have them on there in some capacity.” You may recall that you, Coogan, and Grant were doing a lot of CLE programs for us at that time around the country, talking about the Code, and Herb agreed that they should be on there, and, working with Herb, they were made Consultants. When Schnader found out that I had been instrumental in having them as Consultants he didn’t speak to me for a half year, and he was absolutely furious with me. I finally went up and met with him at his office. “Look,” I said, “Bill — Mr. Schnader” — I never called him Bill — I said, “I really didn’t do this to
offend you as you think." I explained to him their participation in the CLE programs, their contribution, their interest, and I said I didn't think this project would have the legitimacy it ought to have if they weren't involved in some way. He sort of softened up then and forgave me, and after that we were friends again.

Professor Kripke: As it happened, Coogan, who recognized how invaluable a good Article 9 was and could be in practice, worked very diligently on it. I think Gilmore's mind was already off on other things. For one thing he had written his book by then and it meant an early obsoleting of his book. That's not quite true because his book is so penetrating as to fundamentals that even after its discussions ceased to be accurate in view of changes in the Code, his book is still a penetrating discussion with broad historical background of many of these problems. Incidentally, his book is supposed to be being updated by Professor Baker of Alabama, to whom I lent some of my working papers, oh, many years ago, and then recalled them. I haven't seen his book yet.

Mr. Wollin: Some of these books never get produced. Of course Schnader was driven by this uniformity concept. To him that was the most important thing, and I notice when he created the Permanent Editorial Board, a large Permanent Editorial Board, uniformity was one of the prime criteria for action that the Board might take.

Professor Kripke: Schnader wanted these reports of the Board, which are published as prefaces basically to having committees pronounce against even the slightest variation which might conform to state drafting style, and none of the rest of us were interested in that kind of thing; and on certain things, like fixtures, we didn't see any great need for uniformity anyway. We weren't going to jeopardize the Code to fight for uniformity as to fixtures in states like Ohio and California, which had that old approach to fixtures which said once goods are affixed to realty, chattel financing is dead as to them, because ultimately there was no way to make uniform a decision of a state as to when personal property had become real property. That was going to vary in accordance with a hundred years of background in each state. You had to adopt local state law on it, and it didn't make that much difference anyway, because real property law is not uniform and
can never be uniform. Fixture law is part of real property law and if we had no uniformity as to fixtures the Code would survive, so none of us got bothered by it. We were bothered by having a workable provision and we dealt very hard, we worked very hard on it. Coogan and I took the lead on this. Braucher more or less washed his hands except in drafting, helping me very much in drafting the solution. Coogan and I met with a joint committee of the Real Estate Section of the American Bar Association and a committee of the American Land Title Association, and insurers, real estate insurers. We met the equivalent of at least two full weeks over a period of several weeks, battling out the present Section 9-313, and once we had it, with minor exceptions people accepted it, and states which had refused to enact 9-313 originally one by one fell in line. Even California, which had long resisted it, fell in line a few years ago through the work of George Richter of Los Angeles, whose excellent work on the Code has seldom been credited enough.

Mr. Wolkin: He was a quiet person but an effective one.

Professor Kripke: Very able. George Richter and Al Buerger of Buffalo, while we were working on the Code, took the lead in drafting the Uniform Certificate of Title Law, which conformed to Code thinking long before the Code had made very much progress and became the first workable certificate of title law and integrates beautifully with the Code, because those two men took the lead in drafting it.

Mr. Wolkin: I remember the Article 9 Review Committee worked very, very hard, had a number of meetings, and I think it was chaired, as I recall, by Herb Wechsler.

Professor Kripke: It was chaired by Herb Wechsler, who, of course, was very frank, just as our present chairman.

Mr. Wolkin: Geoff Hazard.

Professor Kripke: Geoff Hazard. Herb Wechsler and Geoff Hazard both took the position that they didn't know anything technically about the subject, but when we were stumbling over a drafting problem Herb Wechsler was remarkably able to solve a drafting problem even though he didn't know the subject substantively.
Mr. Wolkin: I think he's unduly modest. He may not know the subject when it started out but after a couple of meetings he was —

Professor Kripke: That's right.

Mr. Wolkin: — very conversant with it. He would start out saying, "This is not something I know much about," but halfway through he knew as much, almost, as anyone who was participating.

Well, let's change, shift gears a minute. You were also involved in another ALI project, the Federal Securities Code, the Reporter for which was Louis Loss, and you were engaged as a Consultant there.

Professor Kripke: Well, Herb Wechsler refused to let me be appointed to the Federal Securities Code until we completed the 1972 revisions of Article 9, and once — so they had two years jump on me, and once that one was wrapped up in a bundle he let me be appointed to Louis Loss's project.

Mr. Wolkin: And I take it there were some differences there that developed?

Professor Kripke: Yes.

Mr. Wolkin: I don't think Louis Loss would mind having you put it on the record.

Professor Kripke: Well, as it happened, Louis Loss made his project too comprehensive and thus it took too long and he missed his timing. He really had the Democratic Congress and an at least neutral Democratic President ready to go on the Code but the Democrats lost the 1980 election and that was the end of the Code, as you know. Of course nobody could have foreseen that result of taking too long by trying to encompass too many topics, but Louis’s great mistake was in trying to be a codifier of everything there, and I could see and I could welcome a codification of all of the disclosure sections of the several statutes, not only the 1933 and the '34 acts but also the related disclosure sections of the Public Utility Holding Company Act and of the Investment Company Act and the Investment Advisers Act and so on. But he insisted on also codifying the substantive provisions of those statutes, the regulation of public utility holding companies, the infinitely complex and tiresome regulation of investment companies, the vast number
of definitions of that kind of stuff, sticking them into this statute, messing up the simple flow of disclosure and filing provisions by provisions about public utility service companies and the like, many of which were dead materials by the time he got there. The so-called death sentence, the breaking up of the holding companies, was substantially complete long before 1980. Nobody was interested in it anymore, just paperwork to do and unnecessary filing, and even the SEC wanted to get out from under and at one point favored either repeal of that act or, in the alternative, letting somebody else do it. They wanted no part of it. Louis sat there insisting on codifying it all and did, I think, a beautiful editorial job, but it lengthened the damn thing. It lengthened the time it took to present it to the layers of review that he had. It involved problems that were no part of a unified disclosure code and, as I said, the result was that he lost his timing.

Lou was primarily an editor rather than one who dealt with substantive problems. I'll give you one example. At least two of these statutes, the Securities and Exchange Act of 1934 and the Securities — the Public Utility Holding Act of '35 definitely, and I think also the Investment Company Act of 1980, have preliminary legislative recitals, the purpose of which is to give congressional recitals of facts to serve as the basis of the constitutionality of the statutes by mentioning problems which required federal as against state enactment. So Louis came along 30 years, 40 years after these recitals had been written and put them together in haec verba, word for word, as they had been written 40 years earlier. I had made a practice, because our meetings sometimes were very wasteful of time while somebody argued about minor points — I determined I would never hold up a meeting with minor corrections that I could deal with with correspondence with Louis, so I kept my mouth shut on his draft and I wrote Louis and I said, look, Lou, if the Congressional recitals of evils in 1934 and 1935 and 1940 are still in effect and can be described in the same words today, then these statutes have obviously been totally useless; instead of revising them we should repeal them. So he got the point and he dropped those recitals, but that's, in some respects, the kind of unduly careful repetition of everything in the statutes that he did instead of judicious pruning in the process.
Now, he and I had one big argument. As I said, the SEC at one point wanted to repeal or get out from under the Public Utility Holding Company Act. At some public meeting Joe Weiner, who had been the Director of the Public Utility Division, and other knowledgeable people in that field expressed a strong view that the public utility portions of this statute, of this securities code, ought to be deleted and that we should limit ourselves to the disclosure material. Louis would not hear of it. I came back to our consultants' group meeting and advocated that. I told Lou that others had advocated it publicly. He would not hear of it because he was building his monument, and so he wrote around, "Who agrees with Homer that we ought to take out the utility and the investment company sections?" Nobody had the courage to destroy Louis's dream by saying to his face what they had said elsewhere, so all that stuff stayed in, and, as I said, he lost his timing because of the extra years that it took.

Another example was that he put in there the provisions of the Securities Investors Protection Act, which had been put in by Congress and which is in effect a guarantee, somewhat similar to the Federal Deposit Insurance which is now plaguing us, to protect securities investors because of the collapse of many brokerage companies in 1970 as a result of the so-called back office problem. And that statute is not administered by the SEC; it's a guarantee statute rather than a regulatory statute. It doesn't tell anybody how he must run his business; it barely provides for charging the companies a premium based on some formula, pooling that and providing insurance for investors up to a specified amount, which may be $300,000, I've forgotten, of that insurance plus the private additional insurance that some brokerage firms offer. So it had nothing proper to do with the Federal Securities Code but it did have the word "securities" in it. He was damn insistent that he was going to put it in. But he didn't understand the problems at all. Actually the general counsel of that administering corporation, whose name slips me now, and who had been an SEC lawyer, and Roberta Karmel and I updated that statute for him but he insisted on putting it in.

Now, his approach of that kind, primarily an updating editorial job, was, I think, a beautiful job, but I don't think it was the
greatest job in terms of maximum contribution, a contribution that would have cleaned out a lot of dead stuff. Examining it substantively instead of just rewriting and consolidating it would have been a much greater contribution. Louis, of course, is recognized as the greatest authority on the SEC, undoubtedly makes a fortune on his books, has just published a new edition, in three volumes, successfully, and I am a poor struggling guy living on a pension, so who am I to criticize him?

Mr. Wolkin: Let's get back to the final phase of this little interview and talk about the Commercial Code again. There's a process of reexamination and revision going on now. Is it worth the effort that's taking place? How do you view this review process? There's a new Article 2A; there is a new Article 6.

Professor Kripke: As you know, I think we needed an Article 2A. I no longer had a vote when Article 2A came before the Board, but I announced that if I still had a vote I would have voted against it. I think we did need an Article 2A but not that one.

Mr. Wolkin: What was wrong with it, in your view?

Professor Kripke: Well, we had gone through a long history, and Karl Llewellyn fought this battle in Article 9, of publicizing cases of split ownership of property; he fought it on the question of filing as to accounts receivable, while Milton Kupfer and his group said that if we have to file as to accounts receivable, we'll be out of business and we can't live with it. There's a transcript somewhere in the New York Law Revision Commission in which Grant Gilmore called Kupfer's group a lot of names for that. And, of course, Karl was instrumental in providing for filing of conditional sales and chattel mortgages. Way back in 1941 John Hanna wrote an article in the Columbia Law Review arguing that there was too much filing going on, and Karl took the opposite position and caused the filing as to accounts receivable and authorized the filing as to chattel paper in the Code, and a lease is so close to a security interest that you have to have arbitrary demarcations to separate them. That being so, it seems to me that the simple way to avoid a lot of headache is to require filing on leases as we do for conditional sales and other security interests. Of course, if a person rents a punch bowl and punch cups for a week for a wedding you don't want a filing there, so someone would have to work out a de
minimis provision for short terms and small amounts, but that could be done. Nobody would argue very hard as to where you draw the line, but we have leases that are so close to conditional sales that you have to provide arbitrary definitions to draw the line. Then to say you can avoid filing by doing a deal in the lease form, I think is a fundamental mistake.

Now, 30 years ago there was a practice of avoiding filing on what were really sales by couching them in the form of a lease — as to which there were then no filing rules — and making sure that at the end of the lease the lessee kept the property by writing an option on a separate piece of paper, either in favor of the lessee or in favor of an affiliate of the lessee, just to be sure he got the property at the end. The reason for doing it that way was that if the lease was for a fairly short term he got the deduction of his whole cost as rent, because the rent is deductible, while if it was frankly a sale transaction with security, instead of deducting the payments you could only deduct depreciation, and depreciation could be much longer than the period of payments, so that the contractors’ association published a form of lease with a separate option, which was used to cheat the government on taxes. Now, that problem ultimately was wiped out when accelerated depreciation came along and you could get the same deduction substantially either way. But now if you recreate a situation in which you can avoid filing a public disclosure with that kind of unethical device, I think you’re going to see it again, and I think the reason that the contractors’ association and the other lessors’ associations fought so vigorously for this Article 2A and against filing was precisely that. We haven’t seen it yet, but I would bet that you’re going to see it.

Mr. Wolkin: Well, what do you think of the revision process article by article? Do you think they ought to do the whole Code at one time? I think Marty Aronstein has a concept that the entire Code ought to be done as a unit rather than in separate pieces.

Professor Kripke: That was Marty Aronstein’s contention and he undoubtedly figured that he might play a leading role in it, but no one else got strongly behind it. It’s an awfully big project and the needs are not uniform. Obviously the Sales article is ripe for revision. Grant Gilmore used to comment that the real prob-
lems of Sales were not dealt with in the present Sales article, because the real problems of sales are in franchising and that kind of thing, and the Code just doesn't deal with them. Article 6 certainly required something to be done. Don Rapson, after having for years contended that the best thing to do with 6 was to repeal it, finally won his victory, but I asked Steve Harris, who was the final draftsman, about it just yesterday and he told me that so far as appears from limited exposure the abandonment option is not going to meet with favor, and apparently the new revision is not being enthusiastically received either. So I don't know what's going to come of it, but Article 6 is comparatively unimportant and might well have been left out of the Code, so it's not important.

But let's see where we are. Article 8 is important, and I'd like to talk about an incident there. When we had drafted the revised Article 9 in '71, the Reporters and the Review Committee, we took it to the then Permanent Editorial Board, on which I think none of us sat, and on the day of the appointment as we sat down we were in effect pushed out of our chairs by representatives of the American Bankers Association and American Bar Association, who seized the opportunity of that meeting of the Board to say, "We have a national crisis in the paperwork debacle in the back offices of the brokers and bankers in the securities field, and we must immobilize or get rid of the stock certificate," because someone had figured out that it takes 19 different motions to sell a hundred shares of stock from one client through his broker, through a transfer agent and registrar, to another broker, to a second client; that's the minimum. You had to have a new stock certificate prepared by the transfer agent and a registrar — I don't know where there were 19 steps but there were — and lower Manhattan was crowded with messengers running back and forth with stock certificates, so they said, "We must get rid of the stock certificate. So we want you immediately to draft amendments to Article 8 which will make it possible to run stocks on book account." Well, it's easier said than done, of course, and you remember a famous controversy between Coogan, who belatedly criticized the amendments in the Harvard Law Review, and Aronstein, Haydock, and Hill, was it, of Philadelphia?

Mr. Wolkin: I don't remember.

Professor Kripke: I know the man but Hill is not quite the right name, defending the statute.
Mr. Wolkin: Don Scott, was it?

Professor Kripke: Yeah, I think it was Don Scott. It took much longer than those people originally wanted and in the meantime the need had been achieved in other ways. For one thing, part of the crisis was due to the fact that the banks and brokers had just computerized and the computers couldn't talk to each other, they weren't uniform, so it was a mess. Another part of it was that there were no provisions for immobilizing the stock certificate. In the meantime the Depository Trust Company had been created, so they had all the nominees put their stock in the Depository Trust Company and there is one big stock certificate; it never changes hands, it's just a question of whom they're holding it for. They're holding for a broker, who's holding it for his clients, and so now even federal bills and notes are done that way and stock is done that way. The Article 8 amendments on non-certificated stock have not been widely used because by the time they were drafted other devices came along to immobilize the stock certificate and make its abolition unnecessary. But it's interesting that when a crisis arose, instead of appealing to Congress they came to the Code authorities as the fastest and best way to get it done correctly.

Now, we've got lots of other projects that come before the Code authorities, primarily because the drafting of the Code has been well done, and so we have Article 4A as a part of the Code; the Federal Reserve and the clearinghouses seem content with that. You've got proposals for intellectual property to be drafted into the Code and electronic messaging, whatever that is, to be made part of the Code — I don't even know what it is — so the Code has proved itself in all these things. The Code is just too big to be revised all at once. It would take forever, it would take too many subcommittees, which would have to be coordinated. But what it does need, even better done than was done the first time, is some coordinator who knows the Code pretty well, and when you get a new article on sales or a new 4, 4A, and so on, be sure that the definitions in one are appropriately changed and, if it affects 2 or 4 or 9, that the changes are coordinated.

Now, Bob Braucher was the coordinator of the final article of the Code the first time, and I don't criticize Braucher — it's an enormous job — but there are some mistakes in it. We still strug-
gle with the fact that the definition of security interest uses the term "lien" as being a form of security interest, when the Code practice is to use the term "lien" for judgment and not for any consensual security interest. That's in the definition of security interest, 1-201(37), and that was missed, and I have come across a couple other things: "purchase" and "purchaser." "Purchase" includes one who takes by lien. Well, our concept is that a lien is a judgment, not anything that is part of what the Code regulates. That was missed. You can't criticize it because the Code is just too big, but the old mistakes would help us to be alert the next time around, and a lot of people are better coordinated on it now. Can I tell one interesting anecdote?

**Mr. Wolkin:** Absolutely.

**Professor Kripke:** I was at New York University shortly after the Code was promulgated. New York University had two summer programs for judges, one of them for State Supreme Court Judges and Circuit Court of Appeals Judges, another for lesser judges, and the Code having just been adopted, I was asked to speak to the senior judges for an hour about this Code. Of course, in one hour you couldn't begin to talk about substantive issues, so I talked generally about the differences in drafting style. I said Article 9 was largely influenced by lawyers who practiced and they wanted to get from Article 9 answers to specific questions. Article 2 was drafted by the Llewellyns and they favored broad statements which would be interpreted by the courts.

I once said in an article in 1962 in the Illinois Law Forum that the Llewellyns were actually anti-statute. What they wanted was to reverse certain directions which the common law had been taking, give it a fresh start and with some generalities, and let the courts take over from there. Ten years later Soia, in a lecture at the New York State Bar Association, said that that article of mine was the only intelligent statement as to what they had tried to do.

So, coming back to my lecture to the judges, I said Article 2 is in broad generalities and it doesn't pin anything down to precise answers; in fact it's worse than that because the structure invites saying everything twice. Part 3 of Article 2 is on Formation of the Contract and Part 5 is on Performance. Obviously what the contract is and whether it's performed are two sides of the same coin;
so when you say the same thing twice in different language there is going to be some shades of difference, and it permits argument as to what the Code really means. Similarly, Part 5 on Performance and Part 6 on Default are two sides of the same coin, and again you have everything said twice in somewhat different ways and an element of ambiguity creeps in. And again, Part 6 on Default and Part 7 on Remedies are two sides of the same coin, and again everything is said twice and you have ambiguities and minor conflicts, with the result that you can never look to Article 2 and get a firm answer to a question, because everything is said twice in somewhat different ways.

So I said to the judges that may have been Karl Llewellyn's broad strategy, because he believed that in commercial cases there was usually something to be said on each side, that the best thing to do was to settle them, and that if he didn't give any solid answers the cases would be settled. So when I got through, two of the great state judges of this century, Judge Schaefer of Illinois and Judge Traynor of California, both came up and they gave me hell for having thrown mud at the figure of one of the great saints of American jurisprudence. (Laughter)

Mr. Wolkin: Good story.

[Earlier Professor Kripke referred to the fact that banks were not helpful in Karl Llewellyn's Code drafting efforts. What follows is his fuller explanation.]

Professor Kripke: I mentioned in the beginning that Llewellyn had said that the banks told him they didn't know anything about chattel mortgages and that stuff because they did business only with people who came well recommended. That meant that they were dealing only with high class balance sheet risks and they were excluding two vast groups of potential credit users. One was consumers, the other was the small businessman; vast users of credit if they could get it. The banks reasoned that the consumer had no assets, was probably in debt, and was obviously an unsafe credit risk, and I come back to my former company, CIT, not merely because I am more familiar with them than any other but because I genuinely believe that they were a pioneer in both of these fields.
CIT began,interestingly enough, in 1908 as a so-called accounts receivable company. Its founder, Henry Itleson, had worked as a credit man for the Shoenberg Furniture Store, or whatever the name was, which became the May Department Store Company; the Mays and the Shoenbergs were related. They backed Itleson in founding this company, and the Mays and the Shoenbergs became the largest stockholders of CIT except Mr. Itleson himself. In 1916 Itleson saw an opportunity. He dropped essentially out of the accounts receivable business, except for very large deals, and pioneered the business of extending credit to consumers on the security of automobiles being purchased under so-called installment plan. He had the field almost to himself at first because, as I say, consumers were not balance sheet credits, and for years, as late as 1944, when I came to the business, people were writing articles saying, "Comes a depression, the consumers won't be able to pay and the automobile finance business will collapse." It was never true, and the people at CIT knew that it wasn't true, because the thing had been severely tested at the very bottom of the biggest collapse, the 1933 bank holiday, when all of the banks were closed. When I came to CIT they told the story that when all of the banks were closed, consumers came to CIT's main office by the hundred with cash and plunked it down on the directors' meeting table, hundreds of thousands of dollars worth of cash, to maintain their payments when there wasn't a dollar available in any of the banks of the country. That proved that consumers would maintain their accounts if they humanly could and that the big consumer asset is his job and not necessarily any balance sheet assets.

A similar point the CIT people saw was true of the small businessman, and somewhere toward the end of the 1920s or early in the 1930s CIT established some so-called industrial lending offices which began to finance the purchase of machinery, machine tools, road building machinery and the like, construction machinery, almost any kind of hard machinery that was durable and had a resale value. And again, the debtor was frequently not a balance sheet risk but CIT saw what the banks did not see, that he was going to be able to pay out of the earnings of the machine being financed and out of the depreciation which protected some reve-
nues from taxation. Those credits proved to be very sound, and when I left CIT in the early 1960s the original three “industrial lending offices” — New York, Chicago, and San Francisco — had grown to well over 30 offices and I understand that in the later years they had something like 50 or 60 such offices.

Now, why did the banks overlook these huge opportunities? The banks, as I say, simply did not see that these were sound credits, and secondly, there were legal complications that the banks were not prepared to face. As to automobiles, you had a vast confusion. You had in some states no special rules for automobiles; they were very mobile and it was hard to keep track of them. In other states you had an original certificate of title law which was no good, and finally there was an effective uniform certificate of title law, which happened to fit in very well with the Code because, as I said, it was drafted by two people who were fully familiar with the Code, George R. Richter, Jr., and Alfred Buerger. That was one aspect of the law that was straightened out for the banks without any help from them.

The second part was the lack of uniformity in the standard form of legal contract for sales on the so-called installment plan, the conditional sale contract. The Uniform Conditional Sales Act was in force in only 13 or 14 states. Some states did not recognize conditional sales, others had enormous variations, some required acknowledgment, some required affidavits, some required witnesses, etc. CIT had gone to the trouble of working out all of those variations with a manual for completion and filing, and a set of forms which provided all the variations on the formal requirements of the different states so that lay people could operate with them. Similarly, when I came to it, CIT had begun to make so-called capital loans, substantial loans on the security of machinery already owned by a prospective debtor. My first major deal and my first travel for CIT was during 1944 to close a loan for several hundred thousand dollars made to a farsighted man who wanted to buy a hosiery machine company in Tennessee somewhere because he realized that right after the war there was going to be an enormous demand for silk stockings again, and he wanted to have the plant that could produce them. So we made a chattel mortgage loan on a huge variety of machinery. Before long I drew a second
manual for CIT on all of the variations in the chattel mortgage law in the 48 states, which was even more complicated as to the variations than the conditional sale book which we already had. And it was in use so that any of our people could make a chattel mortgage loan without the aid of lawyers.

Now, the Code came along and wiped out all of these state variations and all of these complications, thus making it easy for the banks to repair their error and get into these businesses, which, as I have described, consisted of making possible our enormous flow of goods through financing the inventory, secondly, financing the buyer, and thirdly, enabling the dealer to cash in the buyer's obligation so he got the cash with which he could pay off his inventory loan — three stages. The banks were able to get into that, but there remained one obstacle, the doctrine of *Benedict v. Ratner*. That case was a United States Supreme Court case purporting to decide New York law in a bankruptcy context. New York had a 19th century doctrine which said that a chattel mortgage on a stock of goods, an inventory, was fraudulent as a matter of law if the lender permitted the debtor to keep the proceeds of inventory as inventory was sold off, because it was inconsistent with the concept of lien that the debtor could keep the proceeds of collateral when the collateral disappeared. Justice Brandeis, in *Benedict v. Ratner*, which is cited and discussed in the comments to Section 9-205 of the Code, said the same thing holds true as to accounts receivable, by analogy with the chattel mortgage doctrine in New York. If a pledgor of accounts receivable can collect them and keep the money and exercise dominion over the money, that makes the transaction fraudulent as a security interest as a matter of law. Now, that doctrine spread throughout the country and the worst area for it was the New York Second Circuit area, where the cases were unusually and unreasonably strict. One reason that they were so strict was that Judge Learned Hand, usually a great commercial lawyer and the leader of the Court, said that in his opinion Brandeis's doctrine made no sense and therefore he could not undertake to apply it reasonably in terms of its purpose, and the cases in the Second Circuit were perfectly hideous.

But the finance companies learned to deal with it, exercising dominion by requiring the proceeds of collection to go into special
bank accounts, or to custodians and the like. The banks never bothered to learn how to comply with it and that, again, excluded the banks from this necessary financing. Karl Llewellyn proposed to and did ultimately abolish *Benedict v. Ratner* by Section 9-205 of the Code, and that, again, made it possible for the banks to enter this field.

On a personal note, I will mention that when that proposal to wipe out *Benedict v. Ratner* was made, and before it happened, members of the finance company industry knew that I was working on the Code and they approached me and said, you block that; keep Llewellyn from repealing *Benedict v. Ratner*. If you do that, we'll never have to face bank competition and we'll have this lucrative field to ourselves. I refused. Other finance lawyers who worked on the Code refused to take that attitude, and we took the position we were representing the public and not our industry in that respect. With *Benedict v. Ratner* out of the way, the banks have entered this field; as a matter of fact they entered it not so much by competing with the finance companies but by buying the finance companies. Even CIT, the biggest independent finance company, is now a subsidiary of a bank. Most of the smaller ones are. The banks bought them not to get the money but to get the trained personnel. So as I look back on the Code’s simplification of finance law, I see it as having done what was necessary to bring in the vastly greater resources of the banks into this enormous field of financing our enormous distribution of goods. I don’t think it would have been possible without the Code and it was a very necessary thing.

Mr. Wolkin: I have here, Homer, the April 1981 issue of the *New York University Law Review*, which I think was dedicated to you, and there are some nice essays in there in the introduction, one especially by Grant Gilmore, and I want to read you something he said. He said: "Homer and I often found ourselves in disagreement, both on points of substance and policy and on points of drafting. In more instances than I really like to think of, I have been forced to the conclusion that Homer was right and I was wrong. I'd like to think that there may have been some instances in which the reverse was true. If there were such instances, Homer would be the first to acknowledge, and indeed to assist on them. In
a profession in which intellectual theft is not unknown, Homer has always been generous to a fault in giving credit to others."

I think that's a great tribute. I hope you agree.

Professor Kripke: Yes, I do. I'm very pleased with that. That I think is the nicest part of that introduction. You know, the whole volume was dedicated to me and the last two issues were a combined issue. They were a, what's the word, a Festschrift?

Mr. Wolkin: Festschrift, yes.

Professor Kripke: Festschrift.

Mr. Wolkin: Louis Loss in that issue enlarged that word.

Professor Kripke: Louis Loss wrote a very pleasant introduction to it. Bob Braucher had agreed to contribute and died just at that time. In the four or five fields that I have specialized in, Article 9, bankruptcy, consumer credit, securities, and accounting, there were articles by people in each of the fields. I still cherish that issue.

Mr. Wolkin: Well, I think we ought to conclude this session by my reading the last paragraph of what Grant says. "Nearly 20 years ago, in the course of acknowledging my own considerable debts, I wrote of Homer Kripke, that his comments always remind me that he has mastered the useful art of shedding the greatest light where the legal darkness is most intense. It is a useful art indeed and Homer, in the several fields of law that have engaged his attention, has for a long time been one of its ablest practitioners."

Professor Kripke: That's very nice. I think what Grant said there I prize perhaps the highest, because Grant was one of the greatest intellects I ever encountered.

Mr. Wolkin: Homer, thank you very much. I thoroughly enjoyed this.

Professor Kripke: I did, too.
Notes

1Henry Friendly, New York City lawyer, later Judge of the U. S. Court of Appeals for the Second Circuit.
3Allison Dunham, Associate Professor, Columbia University School of Law, later Professor, University of Chicago Law School, and Co-Reporter for Article 9 of the Code (1952 edition).
4Harold F. Birnbaum, Los Angeles lawyer and member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition.
5Grant Gilmore, Professor, Yale Law School, Co-Reporter for Article 9 of the Code (1952 edition), member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition, member of Subcommittee No. 3 to consider Article 9 that produced the 1962 revisions of Article 9, and Consultant to the Article 9 Review Committee that produced the 1972 revisions of Article 9.
6Soia Mentschikoff, Professor, University of Chicago Law School, Associate Chief Reporter of the Code (1952 edition), and wife of Karl Llewellyn.
7Charles H. Willard, New York City lawyer, member of the Council of The American Law Institute, member of the Enlarged Editorial Board for the 1952 edition of the Code, and Chairman of the Subcommittee that considered Article 1 of the Code in the work leading to the 1958 edition.
8William A. Schnader, Philadelphia lawyer, First Vice President of The American Law Institute (1947–1968), member of an Editorial Board that was in charge of the original drafting and editorial work that led to the 1952 edition of the Code, and former Chairman of the Permanent Editorial Board for the Code.
9Herbert F. Goodrich, Judge of the U.S. Court of Appeals for the 3d Circuit, Director of The American Law Institute (1947–1962), Chairman of an Editorial Board that was in charge of the original drafting and editorial work that led to the 1952 edition of the Code, and later Chairman of the Permanent Editorial Board for the Code.
10Anthony G. Felix, Jr., Philadelphia lawyer, member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition, and member of Subcommittee No. 3 to consider Article 9 that produced the 1962 revisions of Article 9.
11Peter F. Coogan, Boston lawyer, member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition, member of Subcommittee No. 3 to consider Article 9 that produced the 1962 revisions of Article 9, and Consultant to the Article 9 Review Committee that produced the 1972 revisions of Article 9.
Richard R. Winters, Pittsburgh lawyer and member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition.

Walter D. Malcolm, Boston lawyer, member of an Editorial Board that was in charge of the original drafting and editorial work that led to the 1952 edition of the Code, and former member of the Permanent Editorial Board for the Code.

Charles Bunn, Professor, University of Wisconsin Law School, member of the Council of The American Law Institute, and Chairman of the Subcommittee that considered Article 6 of the Code in the work leading to the 1958 edition.

Robert Haydock, Jr., Boston lawyer, member of the Article 9 Review Committee that produced the 1972 revisions of Article 9, Chairman of a committee to consider the implications of electronic data processing developments for Articles 3, 4, and 8 of the Code, and member of the Permanent Editorial Board for the Code.

Robert Braucher, Professor, Harvard University Law School, later Justice of the Massachusetts Supreme Judicial Court, Co-Coordinator for the revisions leading to the 1962 edition of the Code and preparer of the final editorial work for that edition, and Reporter for the Article 9 Review Committee that produced the 1972 revisions of Article 9.

Millard H. Ruud, Professor, The University of Texas School of Law, and member of the Article 9 Review Committee that produced the 1972 revisions of Article 9.

Ray David Henson, Chicago lawyer and member of the Article 9 Review Committee that produced the 1972 revisions of Article 9.

Harold Marsh, Jr., Professor, University of California at Los Angeles School of Law, and member of the Article 9 Review Committee that produced the 1972 revisions of Article 9.

Herbert Wechsler, Professor, Columbia University School of Law, Director of The American Law Institute (1963–1984), and former Chairman of the Permanent Editorial Board for the Code.

Donald W. Baker, Professor, The University of Alabama School of Law.

George R. Richter, Jr., Los Angeles lawyer, member of the Enlarged Editorial Board for the 1952 edition of the Code, and former member of the Permanent Editorial Board for the Code.

Geoffrey C. Hazard, Jr., Professor, Yale Law School, Director of The American Law Institute, 1984–, and present Chairman of the Permanent Editorial Board for the Code.


Roberta S. Karmel, Professor, Brooklyn Law School, formerly Assistant Regional Administrator and later Commissioner, United States Securities and Exchange Commission.
26 John Hanna, Professor, Columbia University School of Law, and member of the Subcommittee that considered Article 9 of the Code in the work leading to the 1958 edition.

27 Martin J. Aronstein, Philadelphia lawyer, Professor, University of Pennsylvania Law School, Reporter for 1977 revisions to Article 8 of the Code, and Counsellor, subsequently Counsellor Emeritus, to the Permanent Editorial Board for the Code.

28 Donald J. Rapson, New Jersey lawyer and member of the Permanent Editorial Board for the Code.

29 Steven L. Harris, Professor, University of Illinois College of Law, Reporter for 1989 revisions to Article 6 of the Code, Co-Reporter for present Article 9 Study Group, and Adviser on present Article 2 Study Group.

30 Donald A. Scott, Philadelphia lawyer and Chairman of the Committee on Stock Certificates of the Section of Corporation, Banking and Business Law of the American Bar Association that initially proposed revisions to Article 8 of the Code that were adopted in 1977.

31 Walter V. Schaefer, Justice of the Illinois Supreme Court and member of the Council of The American Law Institute.

32 Roger J. Traynor, Chief Justice of the California Supreme Court and member of the Council of The American Law Institute.

33 268 U.S. 353 (1925).