

ALI
Audiovisual History

No. 3

A. James Casner

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Introduction

Professor James A. Casner, a legendary law teacher, continuing legal educator, and estate law practitioner, devoted a significant portion of his professional career to yet another calling — as Reporter for various American Law Institute projects. He was a Special Reporter and Adviser for portions of the original Restatement of Property and the Reporter for the Restatement, Second, of Property (Landlord and Tenant and Donative Transfers) and for the Institute's projects on Federal Estate and Gift Taxation and Subchapter J of the Internal Revenue Code. In each endeavor he advanced important new concepts and ideas that, while regarded as radical at the time, were later incorporated in good part into our legal system.

Professor Casner's Institute reportorial tenure — he also served as an Adviser for the Restatement, Second, of Trusts, as a Consultant for the Study on Generation-Skipping Transfers Under the Federal Estate Tax, and as Consultant to the Reporter for Restatement Third, Property (Servitudes) — spanned most of the Institute's existence. His recollections about his work for the Institute, as intertwined with his professional life, project pertinent and interesting images of a remarkable relationship.

The interview with Professor Casner was recorded on videotape at the Mayflower Hotel in Washington, D.C. on May 16, 1990, during the Institute's Annual Meeting, months before his death, which was totally unanticipated when the recording was made. The interview was subsequently transcribed, and the edited transcript is published herein.

The videotape is available for viewing in the Library of The American Law Institute, 4025 Chestnut Street, Philadelphia, Pennsylvania 19104-3099 (telephone 215-243-1658).

PAUL A. WOLKIN
Interviewer

January 19, 1993

Audiovisual History

No. 3

A. James Casner

Mr. Wolkin: Good morning, Jim.

This is an audiovisual interview with Professor A. James Casner. It is taking place in the Mayflower Hotel on May 16, 1990, during the ALI's Annual Meeting. Professor Casner yesterday submitted his Tentative Draft on Donative Transfers, completing more than a half century of service as an ALI Adviser, Reporter, and Consultant.

Jim, if our research is correct, you started with the ALI as an Adviser in 1936, dealing with Chapter VII and the General Revision of Volumes I and II of the first Restatement of Property. How did this association start, come about?

Professor Casner: Well, I would like to go back a little bit before the date you mentioned. In 1935 and 1936, the first contact I had with The American Law Institute was doing the State Annotations to the Restatement of Agency, and that's what brought my attention particularly to The American Law Institute; but my real work for the Institute, of course, came a little bit later, as you suggested in your comments a moment ago.

The way things developed for me was that after teaching in Maryland from 1930 to 1935, I felt the need of doing some graduate work at some place, so I applied for a graduate fellowship at Harvard and I applied for one at Columbia. I received an invitation at both places, but the one at Columbia attracted me more because of the person who was then the Reporter for the Restatement of Property, namely, Richard Powell,¹ professor at Colum-

bia, because my field of interest was Property; I had been teaching Property for some six years.

If I can just digress for a moment into how I got into teaching, teaching Property, because that was somewhat accidental, too. I was graduated from the University of Illinois College of Law in 1929, and of course, Paul, you're too young to know what the general economic condition was in 1929, but it was rather difficult to get any job as a lawyer and if you got one it was at rather low salary. So I was asked by Jim Harno,² who was then Dean of the law school, to stay on the day after graduating in 1929 from the College of Law, and teach the courses that were being taught by a Professor Summers,³ Walt Summers. They were all Property courses, so that it was accidental that I started teaching in Property at all during this one-year absence of this professor, and I was offered a salary of something like \$4,000 to teach that year and the job offer I had to go into practice was \$150 a month. I was married and so the money induced me to go into teaching, although it never had occurred to me before then to go into teaching.

After teaching for that year, during the course of that year I went to the sort of slave market that we had where teachers — people who want jobs in teaching — would go, and the meeting was down in New Orleans, a meeting of the Association of American Law Schools. While I was down there, I met the then Dean of the University of Maryland Law School, and they had a vacancy in the Property field and they invited me to come to Maryland. Well, that was another development that never occurred to me at all. In fact, on the way down to New Orleans I had stopped in Atlanta and visited with the law firm of Sutherland & Tuttle, with the idea of going to Atlanta in the practice of law at the end of the year at Illinois. But I went on to New Orleans, and I got this offer to go to Maryland, and I accepted it. I got a rather substantial raise in salary, and this was during the depression, I mean where people were not teaching and getting jobs, so, again, the money side of the thing sort of induced me to go to Maryland and not give up and go out into practice.

And so after five years at Maryland, as I indicated earlier, I felt the need of getting away and doing some graduate work, and I ended up at Columbia for the year 1935-36 and worked with Dick

Powell, the then Reporter for the Restatement of Property. Dick evidently took quite an interest in me because he invited me to attend some sessions of his meetings with his Advisers during that year, and I went to several meetings and was asked to stay on as an Adviser for what was then Chapter VII, as you indicated, and the General Revision of the first two volumes of the Restatement, and I worked in that capacity.

But at the end of my year of graduate work at Columbia I got the offer from Illinois to go back to Illinois as a teacher; there was no opening in teaching Property, but I wanted to go to Illinois again. My family was there, I grew up there, and so it was a natural thing for me to want to go back there, and so I went back to Illinois and took on teaching Constitutional Law, Public Utilities, and other public law courses; no Property courses.

But at the same time I continued in my capacity with the Restatement, and I would teach public law a week and on the weekends go out to one of those Property meetings with the Restatement work, so I kept up my interest in the Property field as a result of that. This was in 1936 when I went back to Illinois after finishing the year of graduate work at Columbia, and after that, in the summer of 1937, I guess it was, I was asked to go up to Michigan, to Ann Arbor, to teach in the summer program. This was obviously a look-over job; I mean, they used summer teachers that they invited in to look them over, and Dean Stason⁴ was then the Dean of Michigan, and we spent the summer there at Michigan. It was very enjoyable at Ann Arbor, and a Professor Martin from Ohio State was there. He was another Property man, so we had a very enjoyable experience. I remember during those days, particularly at Ann Arbor, if you wanted to have a drink you had to pull the shades down in your house, and we found after being there a while there were only a few places where if you were invited out for dinner that you'd get a cocktail anyway, and it was a pretty dry, dry area.

But I enjoyed Ann Arbor, and I went back to Illinois. I didn't get any permanent invitation to stay at Michigan but I went back to Illinois at the end of the summer teaching, and then I got the offer during that period to go out to Stanford in the next summer, and it was again obviously one of these things where you were

going around summer teaching to see if you could make an impression on somebody that they might give you an offer better than the one you had. And all this time I was still working on the Restatement, even though I was teaching in the public law area, but both at Michigan and at Stanford I was back teaching in the Property field in the summertime.

And in the spring of 1938, before I went to Stanford, I got the offer to go to Harvard, and of course the offer to Harvard was largely due to Bart Leach,⁵ who was one of the members of the group on the Restatement of Property that I had been working with, and if I hadn't been on the Restatement work and hadn't met Bart Leach it would have been doubtful whether I would have ended up at Harvard. But at any rate, we got this offer in the spring of '38 to go to Harvard, and so the trip to Stanford was just a lark. We didn't feel that we had to impress anybody. When the summer was over we had to go all the way from Palo Alto across the country to Cambridge, and I was to teach in Cambridge, at Harvard, in the Property field again, so I was back home where I belonged, in that regard anyway. We arrived in Cambridge and about a week or so later the 1938 hurricane hit Cambridge and it was really a very demolishing hurricane, but we lived through that.

When I was invited to go to Harvard I asked for a leave of absence from Illinois, because I was on tenure at Illinois. I was an Associate Professor with tenure status, and they granted that to me for one year, and I went to Cambridge in the status of a visiting professor. There was no permanency attached to it. But at the end of the first year at Cambridge the question came up as to whether I would go back to Illinois, because my visiting professorship at Cambridge had ended, and I was asked by the faculty to stay on, not on a tenure position but to stay on as an Assistant Professor, without tenure status. Well, I had to face the decision whether to give up a tenure position at Illinois or stay on at Harvard for what was just another trial period.

The first year that I went to Harvard, in 1938, I was about the only visiting professor, I think, on the premises. It was, I think, the first time any young man had gone to Harvard who wasn't a graduate of the Harvard Law School. They had had

some senior professors, like Ralph Baker,⁶ who was at Pennsylvania, come up, but they were senior men when they came on the faculty, and so it was somewhat of an experiment for Harvard to see whether anybody that hadn't gone there to law school could be acceptable and come up to the standard that they expected.

Well, as I say, at the end of this first year they asked me to stay on as Assistant Professor without tenure status. At that same year there were added to the faculty three other men. One was Paul Freund⁷ and one was Milt Katz⁸ and the other was Lon Fuller,⁹ so there were four of us who had the status of Assistant Professor, but I was in the second year of being there and they were in their first year of being there.

At the end of that year, in 1939, I guess it was — I went there in '38 — at the end of '39 they had to make up their minds what they were going to do with these four people who were in this status of Assistant Professor, because at that time, unlike it is now, you either made it in a hurry or you didn't make it at all. They made up their minds pretty fast, because they didn't have Assistant Professors hanging around there very long, and so there was a long faculty meeting near the end of 1939, and it was quite clear that there wasn't any problem so far as Lon Fuller was concerned — he was nationally known for his work in jurisprudence — or Paul Freund, who was a graduate of the Harvard Law School, or Milt Katz, but I found out afterwards that most of the meeting was related to me, as to whether I would stay on or not. But they finally, I guess over considerable objections from some people — I never inquired who they were — took a chance and I stayed on, and of course I made full professor at the end of 1939 and stayed there in that capacity until I retired, from teaching at least, in 1977.

Mr. Wolkin: Harvard was never the same after that.

Professor Casner: I think probably not. Of course, since then they have at least taken a chance with other people who didn't get their undergraduate work there, but, you know, when you got on the faculty at the Harvard Law School they still didn't want it to be a person who didn't have a degree from Harvard, so they gave me a Master of Arts degree when I was given

tenure, and therefore they could still say that nobody is teaching at Harvard that didn't have a degree from Harvard at least. I don't think they do that anymore.

But to get back to the Restatement work, going back to 1936 when Volumes I and II were published, as you indicated earlier, I worked as an Adviser on Chapter VII and as an Adviser on going over the entire two volumes, because they had been some years in the process of making; in fact, Volumes I and II of the Restatement started in 1927. Harry Bigelow¹⁰ of Chicago was the original Reporter, and when he became Dean of Chicago — I think in 1929, around that time — Richard Powell was made the Reporter to succeed him, but Bigelow stayed on as one of the Advisers to the Restatement.

Mr. Wolkin: You're quite right. It says, "Bigelow . . . Reporter (January 1927 - June 1929)."

Professor Casner: Right. And that was an extremely interesting experience for me because as a young man I found myself attending meetings with respect to these first two volumes of the Restatement and the list of Reporters — I mean Advisers — was almost a Who's Who of the professorial people of that time. One of the Advisers was Harry Bigelow. He stayed on as Adviser. I guess you never knew Harry Bigelow.

Mr. Wolkin: No.

Professor Casner: He had a kind of a tic, and when he'd talk his head would do like this all the time and therefore you couldn't be sure whether he was shaking his head in approval until he started to speak, but it was something that when you would talk directly with Harry and he would start to shake his head you would almost start — your head would almost start shaking too. But he was a wonderful person, magnificent person.

There was also in that group, that initial group that I was fortunate enough to work with, Charlie Clark,¹¹ who later became Dean of Yale; Everett Fraser¹² from Minnesota and, of course, Dean of Minnesota later; Warren Madden¹³ from Pittsburgh; Ollie Rundell¹⁴ from Wisconsin; Simes¹⁵ from Michigan; and a practicing lawyer named Sims¹⁶ from someplace down South. But that was certainly the cream of the crop so far as

Property teachers were concerned, and in addition, of course, there was Bart Leach from Harvard.

Mr. Wolkin: I think it's interesting that there were only, as I look at this list, two practitioners: Sims and a chap by the name of White.¹⁷

Professor Casner: White I never got to know particularly, but Sims, Upson Sims, attended lots of our meetings. But this was entirely a pedagogical group. There's no question about it.

Mr. Wolkin: It's a little different today. Most projects have quite a few practitioners as well as academics.

Professor Casner: Yes, that's true, but I still think the academics pretty well predominate in the kind of work that is done and in the leadership that's established. Back in those days you wouldn't think of having a Reporter who wasn't a professor, but I think now there are Reporters that are not professors.

Mr. Wolkin: Was Lewis¹⁸ in attendance at these meetings, William Draper Lewis?

Professor Casner: Yes. William Draper Lewis was the Director and of course he attended all the meetings, and many of our meetings were up at his place up in Maine. It wasn't Bar Harbor but another name that ended in Harbor, Northeast Harbor, and he had a big house up there. So in the summer we always went up to a place called Asticou Inn, which is at Northeast Harbor, and had our meetings there, and he, of course, presided, as the Director, of the meetings; at least he was there at all of them. William Draper Lewis was a very interesting person. He never remembered your name, and in fact he would almost invent names when he was calling on somebody, and you had to respond, and there was no sense in trying to correct him because he wouldn't remember it the next day for some reason. He just didn't bother with names.

Mr. Wolkin: It's like Buddy Ryan, the coach of the Eagles. He never remembers the names of his players. He gives them nicknames.

Professor Casner: Well, that's about what William Draper Lewis did. We had a meeting one time in Cambridge of this group and Mrs. Lewis was along and we had a gathering of an

evening out at our house in Belmont, and it was in the winter because there was all snow on the ground, and we lived up on a kind of a hill and rather steep incline going down to the road, and when the taxi came for Mr. and Mrs. Lewis I tried to help Mrs. Lewis down this terrace to the taxi, and we slipped and we rolled down the hill together, all the way down this hill to the taxicab, and she was a good sport and didn't mind that very much at all.

Mr. Wolkin: Did Lewis participate extensively in the meetings?

Professor Casner: No. Unlike Herb Wechsler¹⁹ as a Director and certainly unlike the present Director, Hazard,²⁰ Geoff Hazard, he just more or less presided. He didn't really take an active part in the discussion. His technical field was not the Property field anyway, but he didn't do more than just sort of preside at the meeting and keep order, and I don't recall offhand any real contribution he made to the substance of the material that we were talking about.

Mr. Wolkin: Did Goodrich²¹ do more than that when he was Director?

Professor Casner: Not a great deal, not a great deal; not nearly to the extent to which Wechsler and Hazard have participated in the formulation of really important decisions from time to time with respect to the material, and that is true even though Herb Wechsler was not a Property man — he was, of course, in an entirely different field — and Geoff Hazard's background is not necessarily in the Property field, but they both had a knack of seeing what was really causing the difficulty that we were arguing about and being able to step in and make a suggestion at least that would move the thing along. That's a real art, of course, when you're not versed in the field technically, to be able to sit in a meeting and follow what's going on and then make a contribution that the experts haven't been able to work out for themselves. And I think that technique did not really develop until Herb Wechsler came along, to any great extent. I think William Draper Lewis and Herb Goodrich probably didn't think of that as being their function particularly.

Mr. Wolkin: How about the Presidents, like Senator Pepper?²² Did he attend these meetings at all?

Professor Casner: He never attended the meetings of the Advisers. Of course every time I was up on the platform presenting material at the Annual Meeting during the early years here either George Wharton Pepper or sometimes Judge Hand,²³ Learned Hand, presided. I remember one time when I was up there when Learned Hand was presiding at the Annual Meeting and somebody got up and made some kind of a long statement and Hand said out of the side of his mouth, "How do we shut this guy up?" He was not disrespectful, I mean, but it was just that he needed some way to get the meeting going forward rather than listening to somebody with a long harangue about something that he himself didn't know much what he was talking about probably.

Now, these first two volumes of Property were published in 1936 and then we went on to Volumes III and IV. Going back to Volumes I and II, I prepared the index to Volumes I and II, and if you've never prepared an index it's really quite a job, but they thought somebody who was familiar with the terminology and so forth would do a better index than somebody who was completely outside of the fold, so that the first time I ever prepared an index was for Volumes I and II, and I think it's the best index, of course, of the Restatement, there's no question about it.

Mr. Wolkin: Without a doubt, without a doubt.

Professor Casner: But when we went into Volume III, which moved us into the area of powers of appointment and class gifts and so forth — I had done my doctoral thesis at Columbia on the subject of class gifts, and so it was perfectly natural for Powell to give me some more significant role in dealing with that particular area of the law — in Volume III I served as an Associate Reporter on certain segments, particularly in the areas where class gifts were the subject of the discussion.

At Columbia, in order to get your doctorate degree, you had to publish a doctoral thesis at that time. I don't know whether that's still true or not, but I finished my graduate work at Columbia in 1936 when I went from there to Illinois, but I didn't finish the doctoral thesis until sometime later — I think it

was about 1940. So my sketch of my degree shows me getting my doctorate degree at Columbia in 1940, I think, which was when I finished the doctoral thesis, because I had to put it on one side when I went out to Illinois to teach entirely new courses, and then when I went back to Harvard to teach I had to put that somewhat on the side, but I was doing some work on it all the time in connection with the Restatement, which in Volume III deals with the subject of class gifts.

Mr. Wolkin: Did you publish that as an article? Was that published as an article?

Professor Casner: It was published as a book, as a bound book on the subject of class gifts. At that time the area of class gifts was in quite a bit a state of confusion and so it was the first real attempt to bring some order out of that extremely important area, because you can't make a donative transfer very well without getting involved in a class gift; sooner or later the beneficiaries you're trying to describe will be people that are yet to be born or something and therefore you have to describe them by their membership in some class of relatives. Of course, on the subject of class gifts, one early time when I was doing class gifts they thought that was a question of classes of society. It didn't seem to dawn on most people at that time that that was simply the terminology for gifts where individuals were not described by names who were beneficiaries of a gift — weren't described by names because you couldn't describe them — and anyway, if you're making a gift to your children and you simply name the ones that are now alive you leave out some that may come in that you want to insert. Sooner or later after naming A and B, you've got to say, "and any other children," and then you get a class gift and you use a class gift term.

Mr. Wolkin: I remember reading an article when I was a clerk for Goodrich on class gifts — I think it was in the *Harvard Law Review*. Was that yours?

Professor Casner: Yes. These articles were first published in the *Harvard Law Review* and then they were taken and put into a book form for purposes of clearing out my doctorate degree at Columbia.

Mr. Wolkin: Goodrich had a tax case that involved class gifts, and I think you shed all the light that was necessary for him to decide the case.

Professor Casner: Yes. Well, it's very interesting, and of course, as you know, when I got back, becoming the Reporter for the Restatement of Property, Second, I developed a whole volume on class gifts that we'll get to as we continue this discussion.

Now, as you've pointed out in your earlier remarks, my tour of duty with The American Law Institute and the Restatement was terminated by the war. You know, in 1941, when Pearl Harbor came into the picture, there was a total state of confusion in colleges as far as students were concerned. They didn't know what to do, whether they should go and enlist or whether they should stay in school, and the then President Conant²⁴ of Harvard thought that some office ought to be set up to advise students what to do, give them somebody to talk to anyway, and he called me over from the Law School and asked me if I would set up an office in University Hall — this was shortly after Pearl Harbor — and let students come in and talk and give them whatever help I could.

I went down to Washington to see what opportunities there were for people who were in the status of college students, and particularly law students, and of course they said there's one thing we don't need in the Army — lawyers — and that was about the general attitude at the beginning of the war. There were, of course, the jobs for court-martialing and things of that sort where legal people were involved, but lawyers as such didn't seem to have much to contribute, and the most advice I could give these students when they would come into this office I had set up is, "Stay where you are, calm down, just stay where you are, don't, don't jump too quickly. If they want you they'll come and find you, but just stay until things shake down and see what happens" — and many of the students did that. Some ran off but not many.

But I was sitting in this office one day in 1941. Later on, right after — Pearl Harbor was in 1940,²⁵ this was '41, spring of '41 — President Conant's office called me on the telephone and said, "There's a Colonel DeRohan over here from the Army intelligence in Washington and he's looking for some people. Will you talk to him?" And I said, "Sure, send him over. I'll tell him

what I can — talk to him about anything he wants to know.” He came over and I said, “What are you looking for?” He said, “We’re looking for some people to come in and analyze the German battle tactics to form the basis of a training manual for our troops,” and I said, “Well, you’re not just looking for college students then?” He said, “Oh no, we’re looking for people of some status.” And I said, “Well, what are you offering to induce these people to come into Army intelligence in Washington?” And he said, “We’re offering two majorities, that is, two majors, and two captains. Four of you we want.” And I said, “All right, we only need one more major.” And he said, “You’ll go?” I said, “Sure I’ll go.” And so I said, “There’s only one condition. The other major I’ll bring along is a colleague of mine at the Law School named Bart Leach, but I want to be sure my commission comes over ahead of his so I will outrank him.” And they had no difficulty in doing that, and so I always outranked Bart.

We both went in as majors. I became a lieutenant colonel before he did. I became a full colonel before he did. And he stayed in, though, after the war was over, until he became a brigadier general and that’s how he finally got to outrank me as far as the military service was concerned. We were, of course, always very close friends. Every time he got a divorce he came to live with us, so my children thought of him as their uncle or something. And we, of course, wrote, right after the war, a case-book together that has had pretty good success, *Casner and Leach: Cases and Texts on Property*.

But to get back to my story, the war interrupted. I went overseas in 1942, not long after I went into the service, because we went down to Washington and analyzed the German battle tactics and did the work they wanted us to do and then I decided that I wanted to get out of that and get into a little different kind of activity in the service and somebody told me they were organizing a command out at Bolling Field to go overseas. And so I went out there and saw the general who was organizing the command and he said, “Do you know anything about Air Force equipment?” I said, “No, but I can learn.” And he said, “All right, here’s an OEL, Organizational Equipment List, for this whole command. It’s got to be in the Brooklyn Navy yard for loading for shipment overseas in such and such a time.” And he took me in as

what we call A4 of the command, of the headquarters command, which is like in the Army G4, which is the supply and so forth section of the work of the headquarters unit. And so I found an Air Force sergeant, an old-timer, and I said — because there wasn't enough equipment to go around at that time, I mean you had to go fight for what you could get — and I said, "You find out at what warehouses this equipment is located and I'll get some trucks and go down and get our equipment." Of course, it was silly to do it because that meant one commander would be fully equipped and the other wouldn't get anything; it wasn't spread around evenly. But things were in a state of confusion — you just couldn't imagine — so you had to go for yourself, and we got an award as being the best equipped command landing overseas. But a lot of others had to take nothing because of the fact we went down and got it ahead of them.

Mr. Wolkin: Another Casner achievement.

Professor Casner: So we went overseas and we set this command up in Northern Ireland. It was a training command. Fliers were to come over and they would be sent to our bases in Northern Ireland to learn to fly in that atmosphere, and then they would go on to bases over in England. We were there for several years in Northern Ireland, and we were able to get along, because they couldn't set up British things there because the animosity between the British and Northern Ireland even existed then, so the job of developing this largely went to Americans. We got along all right. Some of our fliers would come over, fly B-17s over. They'd see land and they'd come down and they'd be in Southern Ireland and we had to go down to Southern Ireland and get them out. Southern Ireland was, of course, neutral, and they should have been really, I suppose, locked up, but —

Mr. Wolkin: For the duration.

Professor Casner: They operated by certain things that we left there to let them come out so we would bring them out and bring them back up into Northern Ireland and get them back where they belonged. I remember sitting in the Gresham Hotel in Dublin and on one side of the room were German officers. They were in there just the same as we were. We were all in civilian clothes, though.

When we went overseas, this command, we flew over and we landed at Limerick in Southern Ireland in civilian clothes but in our bags were all of our military accouterments covered over with a sheet, and we went through inspection; they knew who we were. They'd open the bag and they'd close it and off we'd go, so that Southern Ireland in a sense helped us more in ways than they might have if they'd have been belligerents because we got quite a bit of assistance in moving our people around through that part of the country.

But I finally, right after VE Day, asked if I could go home. I'd been over there from 1942 until 1945, spring of '45, and I was anxious to get back. I had flown back once to headquarters to present some plans that we were working out, because I moved finally into the planning for the taking over the government of Germany and others when the war was over. We became a planning division, and I'd gone back to present to Washington the plans that we had been working on for moving in to take over command when we finally had an ultimate victory, but then I went back. That's the only time I, of course, saw my wife and family for three years, the few weeks when I came back to Washington.

Then when the war was over, though, I said, "Well, I've had enough. I want to go back and go back to teaching again." So I was relieved in Europe and sent back to Washington, and when you came back at that time they gave you what they call rest and rehabilitation leave, and I was sent to Atlantic City, where I could take my wife and children, to sort of be rehabilitated. When you landed in Europe you had to go and go through this medical report. They take you in and show you what horrible things would happen to you if you got certain kinds of diseases, and I saw that sex lecture about five times, I think, during the war, and true, it scared the hell out of you, I mean what might happen to you.

After this rest and rehabilitation I thought they were going to let me out, but they sent me to Washington, to headquarters, General Anderson's staff, to work out a plan at the end of the war to make a career in the Air Force attractive for nonflying officers. See, I was a nonflying officer, but they knew to build up the Air Force, that they weren't going to be able to build it up

solely with people who were flying officers, and so I spent from the spring of that year until VJ Day in Washington working up the plans for trying to make a career in the Air Force attractive for nonflying officers. And I finally got it approved by General Arnold²⁶ and I said, "Now can I go home?" And so I was relieved and got back to Cambridge in time to begin teaching in the fall, September program at the Law School. And we went then on a year-round basis. So we taught fall, spring, and summer for several years so that people coming out of the service could catch up the time that they had lost, and that was a very time-consuming job. So there wasn't much time to do anything but teach, as you went around the clock.

Mr. Wolkin: You came back when, in '46?

Professor Casner: '45.

Mr. Wolkin: '45.

Professor Casner: See, VJ Day was around September of — I've forgotten exactly.

Mr. Wolkin: Around Labor Day.

Professor Casner: Around Labor Day, and it was right after that that I was relieved, had finished my assignment in Washington. We lived in Washington, and Margaret, my wife, and the two boys came down here to live with me over that summer when I was here in Washington working on these plans to make the Air Force attractive as a career, and when I turned it in to the general I said, "This makes it attractive for a career but it's not attractive enough for me."

Mr. Wolkin: How did you get an apartment in Washington?

Professor Casner: What's that?

Mr. Wolkin: How did you get a place to live in Washington?

Professor Casner: Well, that was again my friend Bart Leach. He had been down here and they were giving up a house that he had had, because he was doing something out at Georgetown, and so we moved into a house that he had had. It was out here near the hotel.

Mr. Wolkin: Wardman Park?

Professor Casner: Wardman — yes, yes.

Mr. Wolkin: We were in Washington from '44 till '47 and lived in 13 places.

Professor Casner: I'll bet you did. Well, we were fortunate enough to get this one place throughout that entire summer and that sort of got us back to somewhat of a normal life, but the normal life didn't really resume until we got back to Cambridge in the fall of '45 and I started teaching again, right after VJ Day.

Mr. Wolkin: Did you get right into the Restatement again then?

Professor Casner: Well, you see, at that time the first Restatement, Volume IV had been published — it was published, I think, in 1944. So there really wasn't any Restatement work right then of a property nature going on that I would naturally be concerned with, and I didn't get back to Restatement work until Restatement of Property, Second, got under way, but in the interim time I got other kinds of American Law Institute work, because the tax area started to move into the picture.

Mr. Wolkin: Well, I understand you were an Adviser — well, this was '55 you became an Adviser on Trusts.²⁷

Professor Casner: Oh yes, I had done that when Scott²⁸ was working and I appear as one of the Advisers in some of the published volumes of the Restatement of Trusts, but I — and that was in the '50s — I had that much, but the Property Restatement work didn't really begin until Restatement of Property, Second.

Mr. Wolkin: But in between there was a little project known as Federal Estate and Gift Tax, '61.

Professor Casner: Yes. Surrey²⁹ was appointed as the overall seer and the Institute decided it ought to get into the tax field in various ways. There was corporate tax, but the estate and gift tax and the income tax, Subchapter J on Trusts and Estates, became a topic under Surrey's overall management, and I was selected to be the Reporter for the Institute project on Estate and Gift Taxation, and that volume was published — I think I've got it here someplace — about when?

Mr. Wolkin: '68 or so.³⁰

Professor Casner: That was the one that was published in '68, and we had been working on it for some time.

Mr. Wolkin: I remember your first draft created a lot of consternation.

Professor Casner: Well, the problem of the consternation grew out of the fact that I had pointed out in this draft and tried to develop in this draft the idea that you had to pay a tax every generation to avoid — in other words, this was the beginning of the doctrine of the generation-skipping tax and imposition of a tax so that you couldn't, by setting up a long-range thing that would go for 60 or 100 years, avoid an additional estate and gift tax. If they had paid attention to us in '69 when this came out we wouldn't have all the complications we've got now. What we proposed and the Institute adopted was a plan that, if you set up a property disposition that would go on from generation to generation, you would pay an additional tax when you set it up, estimated on the basis of the taxes you were avoiding, but you'd pay it up at the beginning and then there would be no complications as it moved from generation to generation. And it was a very simple thing, but, of course, they didn't accept that and they tried to work out another system, and we now have the extreme complexity of Chapter 26 of the Internal Revenue Code on generation skipping, but we got our report out.

I had as an assistant, as you know, Bill Andrews³¹ of our faculty, and we turned him loose on the development of the accessions tax, while I continued to work on a straight gift and estate tax but taking into account the problem of how you handled the generation-skipping problem. Well, that material was published and it certainly had some effect, I think, on the development of the tax law, but they didn't adopt what we had proposed, and I think that was a mistake because it's caused extreme complexity and it wasn't till some years later that the generation-skipping problem was taken care of, and then it was in this very complex state.

Mr. Wolkin: Well, you really, as I remember, shook up the tax bar with the first tentative draft — with your first preliminary draft even.

Professor Casner: Well, of course the idea that I was proposing was one that they fought bitterly; that is, that we ought to be allowed to skip generations, and it was such a drastic change at that time in the policy, and by fighting it they knocked it down and

they got something worse, eventually. That frequently happens, that you fight and what started out may have been a much more lenient and sensible doctrine than what finally develops when they try to iron out all the complications that are involved in generation-skipping transfers.

Mr. Wolkin: I think the war must have done something to you because after that, in each of the projects for the Institute that you undertook, something very significant, different, and important came out, starting with federal estate and gift taxes, and then there was, of course, landlord and tenant.

Professor Casner: Yes, we get to that in a little bit because that started around 1970, and we just finished this tax thing in 1969.

Mr. Wolkin: That's right.

Professor Casner: And then we also had another tax thing that I was working on that didn't come out until the '80s. That's on the Subchapter J, Income Taxation of Trusts and Estates.

Mr. Wolkin: You started that, I think, in 1979.

Professor Casner: Yes, and it was actually published in 1985.

Mr. Wolkin: '84 or '85.

Professor Casner: Yes. And that was going on at the same time as my work for Restatement of Property, Second. I was running two horses.

Mr. Wolkin: I think you set a record as the only Reporter who ever was a Reporter on two projects for the Institute at the same time.

Professor Casner: I think that may be true. I think that may be true. Now, early in 1970, though, they decided that they ought to do something about the Property Restatement again, and at that time Dick Powell was still alive and was reasonably active, and when the Institute came to me they said, "Will you work up a study as to what ought to be done, in general terms, in going through a Restatement of Property, Second, with the material that was covered in the first four volumes?"

And so I went to work on a study. They didn't ask Dick Powell to do it, but I talked to Dick about it. This was in 1970. Dick was then — I've forgotten how old Dick would have been,

but he was still around and reasonably active. And I was concerned about taking on the Restatement of Property, Second, and hurting Dick Powell, because I had been in a sense his protégé in some ways and worked with him closely, and he gave me every opportunity that I had to work on the first Restatement as a very young man. And so I thought we ought to start, in doing the Restatement of Property, Second, if we could, on something that really wasn't covered in the first Restatement, and I suggested to the Council that we start with landlord and tenant, because landlord and tenant had not been mentioned in the first Restatement except rather briefly in connection with describing the different estates, different tenancies, such as a tenancy for years and tenancy at will and from year to year and so forth. And that would not be redoing something that Dick Powell had done, and I thought it would be better, since it should be done anyway, that if I could start with something that would not be going and redoing the work that he had done, that it would not be as serious an affront to Dick, because I certainly didn't want to hurt him. I didn't go into this analysis about not hurting Dick Powell in connection with the presentation to the Council but I thought it was a sensible place to start anyway, and the law of landlord and tenant had evolved to new significant proportions over what it was when we did the first Restatement. So that's how we got started in 1970 on the volumes on the Restatement of Property, Second, Landlord and Tenant, and those two volumes were worked on for seven years, from 1970, approximately, to 1977.

Mr. Wolkin: And they made some very significant contributions.

Professor Casner: I think so, yes, I think it's been very significant, and we had a number of real experts in that field as Advisers, made up of more practicing lawyers than almost any other set of Advisers.

Mr. Wolkin: I remember the bane of your existence, Mr. Friedman.³²

Professor Casner: Yes. And they were somewhat resistant to some of the things that were being prepared. But I think those two volumes, as far as I know, have been a significant contribution to the landlord and tenant area.

Mr. Wolkin: Landlord warranties and —

Professor Casner: Implied warranties, fitness for a particular purpose, which has developed to a considerable extent, which was throwing greater burdens on landlords than previously in connection with certain transactions so that certainly the landlord bar was somewhat resistant to some of the things we were doing, but I think that's a good job that was done.

Mr. Wolkin: I think it's one of our best.

Professor Casner: But there were some really good Advisers on that, though, people that knew what they were talking about in that field.

Mr. Wolkin: I have a photograph in the office — I think I sent you a copy — a color photograph that we took at Seaview of you and all of the Advisers.

Professor Casner: Yes. Now we're up to 1970 to '77. I might just skip back a little bit, because I got involved rather heavily in the problem of lecturing to lawyers, post-legal education. You're, of course, heavily steeped in this problem, have been for a long time, but if you put yourself back in the early 1950s there was very little going on in the way of developing arrangements for lawyers in a sense going back to school, and I conceived the idea in 1953, when the American Bar was meeting in Boston for the first time — it hasn't met there since; I think it's going to meet there in a couple of years from now — of having Harvard put on a course for lawyers coming to Boston to go to the American Bar Association, and we gave the first Harvard program of instruction for lawyers — I was the Director of it — in 1953. We gave two courses. I gave the one on estate planning and Louis Loss³³ gave the one in his field in corporations, and we had a very large group, but at that time it was not common. If one looks at the situation today, you'd think this was going on all the time, but the idea of lawyers going back to school again, in effect, or back to get some additional training after some years out was very new at that time, and that was the beginning of Harvard getting involved in it, and of course I remained as Director of the Harvard Program of Instruction for Lawyers from that date until 1977 — 1976, I guess it was. Then Louis Loss succeeded me, and Professor Herwitz³⁴ is now running the program. I still teach in it — I'm teaching this summer in the

program — but I think that's been the most successful of the Law School efforts on a continuing basis over a long period of time. We now get between 600 and 700 coming in.

Mr. Wolkin: I got you into trouble, teaching, when you came to Philadelphia to teach.

Professor Casner: Yes, I know. Of course I didn't just lecture in that program. I would go around the country giving lectures to members of the bar, and I think I was just overdoing it. Of course I ran into the problem in Philadelphia when you got me there to give a course to lawyers that were in Philadelphia. I remember that I was teaching three days and the first two days went along all right and we went out to dinner —

Mr. Wolkin: You had spaghetti.

Professor Casner: — at the end of the second day and had a big dinner, and I was feeling fine. I went back to the hotel and went to get up in the morning and I fell on the floor, and I thought my leg and arm had fallen asleep, like they do, but I found they didn't wake up any way, and of course I ended up in the hospital with a stroke. It was in 1984.

Mr. Wolkin: Jefferson Hospital, I remember.

Professor Casner: Yes. And it has knocked out my left arm and my left leg, but it didn't affect my speech. You know, if you get a stroke on the right side it affects the left side, but the speech side is on the left side, and fortunately if you can talk, why, you can do almost anything. It's when you can't talk that you get into difficulties.

Mr. Wolkin: Well, I always marveled that it really didn't slow you down.

Professor Casner: Well, now we're through with the Restatement of Landlord and Tenant, and we then come to what we're going to do now in connection with the Restatement of Property, Second. By this time I think it was obvious from the age of Dick Powell that he was not going to be concerned about somebody taking over the work that he had done and going over it again, but I felt, in looking at those first four volumes, that we did not really need at that time to redo Volumes I and II. They dealt with the

basic development of estates in land and things, and that basic development hadn't changed significantly.

The area of real development that I thought needed more immediate attention was the area covered in Volumes III and IV of the first Restatement, and of those I thought the first thing we ought to tackle was what was done in Volume IV, because I thought we were really ready to get the bar to come along for the wait-and-see rule on the rule against perpetuities, and that this was a golden opportunity to try and get some sense into that area with respect to the rule against perpetuities. So we started with the material in Volume IV of the first Restatement, to become Volume I of the Restatement, Second, on Donative Transfers, which was largely developed on the rule against perpetuities.

Mr. Wolkin: And the famous debate.

Professor Casner: And then, yes, it was at this time, after we had developed this material, that Dick got quite upset about tinkering with the rule against perpetuities that had been so admirably presented in the first Restatement, and it was arranged that he would have the floor of the Institute to oppose the adoption by the Institute of the proposal that, under my Reportership, had been worked out on the wait-and-see rule in connection with the rule against perpetuities. And I remember that, that ballroom at the Mayflower Hotel was packed for two days while we argued about the rule against perpetuities, which I thought was one of the most amazing things, that that particular subject matter could demand that kind of attention and excitement. And when the vote was taken and they voted in favor of the proposal I had made on the wait-and-see rule I really felt very sorry about it, because Dick came to me and he said, "Well, you beat me, Jim." And that was almost a sad thing for me in some ways.

Mr. Wolkin: Rather poignant.

Professor Casner: Yes. But it was one of the saddest moments of my life, to win something and then feel so upset about it, because he was a great person. Of course if you knew Dick Powell, when he presented something it was done very vigorously, it was done very positively, with quite a great deal of dynamism and force, and I felt so indebted to him for so many things that hap-

pened in my life that it was not a pleasant thing for me — I never gloated over the fact that it went across.

But of course the idea of a wait-and-see rule really originated with Bart Leach. He wrote some articles and he and I, along with some others, got a statute passed in Massachusetts which was a modified wait-and-see statute, so that we had done some work outside getting acceptance of the thing. The bar generally didn't oppose it because it made it easier for them to avoid malpractice suits, in a sense, because they'd get caught on the old rule and the old rule would devastate you, and the wait-and-see rule at least gave you a chance. We always took the position that, if you didn't qualify for the interest after waiting and seeing, then the court should revamp the disposition so that instead of cancelling out the whole thing they would give you an alternate disposition that would carry out the intention of the testator to the best of the ability at that time, and of course that sort of reformation principle has been carried over. Now, of course, the wait-and-see rule has swept the country, and the Restatement started it, and it has been done by statute in many states, and it's been done without the aid of statute. Of course the present Uniform Commissioners now propose a modification of a period of 90 years, a flat 90-year period you wait and see, instead of having to have a wait and see tied in to lives in being and 21 years, and that has caused some problems — because there's been some criticism of the 90-year rule in light of some tax traps that it may get you into — and Dukeminier³⁵ has been writing some articles about how the Uniform Commissioners may have created a problem, but that's a statutory change. There's been no promotion developed by case law of a flat 90-year rule, so that I don't think that part of our Restatement needs to be revised, except that possibly there should be some annotation maybe of the fact that there is a proposal that's been adopted in some states for a flat 90-year rule for waiting and seeing.

Mr. Wolkin: Let's get back to taxes a minute. You made a significant contribution to the marital deduction business, didn't you, with the total transfer?

Professor Casner: We, yes, that was a part of the tax study we were doing, to get an arrangement whereby that which we now call the "qualified terminable interest," where you don't have to give the person the power — have to give the wife the power to

appoint someone else where she can give the spouse, the wife or the husband, as the case may be, a straight life estate without any power to change it and still have it qualify for the marital deduction. That idea started back with our material, and it now, of course, has swept the country.

Mr. Wolkin: And you made some important changes with Subchapter J, too, I think.

Professor Casner: Yes. The whole development of income taxation of trusts and estates as it's now evolved in the development of the throwback rule all was a part of the study that we did on Subchapter J, and that, I think, has had considerable influence on the tax law. Of course, Surrey was a great leader of that whole movement, as you know. Stan Surrey, a colleague of mine that everybody knew, had been steeped in the tax law for years and I was sitting next to him, because he always sat with me when I was up as the Reporter — he was director of the whole project — when he had that stroke or something.

Mr. Wolkin: Philadelphia.

Professor Casner: Was it in Philadelphia? Someplace, where he blacked out and got into difficulty, and he was sitting next to me and I turned to him and I asked him a question. I said, "Stupid, answer the question." I asked him, and he was out, I mean sitting next to me right on the platform there.

Mr. Wolkin: Yes, Stanley did a lot for taxes through the Institute over a lot of opposition for a while. Miller³⁶ of Washington —

Professor Casner: Robert Miller, yes, of Washington was very against us on certain things we were doing, and he was a rather powerful figure in the tax bar at that time, very powerful. And some people thought that the things that I was advocating were really fed to me through Surrey. They said I was the mouthpiece for Surrey, but that was not true, because Stan's strong forte was not in the estate and gift tax area; it was in the income tax area.

Mr. Wolkin: Sure. Norris Darrell³⁷ got us started in taxes, even before he was on the Council.

Professor Casner: That's right. He was a tax lawyer, you know.

Mr. Wolkin: And then they got Surrey and Warren³⁸ to do the first federal income tax study.

Professor Casner: Right, right. I didn't come into the picture until they got into the estate and gift tax.

Mr. Wolkin: Then they went into the estate and gift tax.

Professor Casner: You see, through this period of time right after the war, I developed the first course that was given in any law school on the subject of estate planning. It wasn't that the material that was involved in estate planning wasn't being taught, but it was being taught in property and a separate course in trusts and a separate course in conflict of laws, a separate course in income taxation, a separate course in estate and gift taxation. There was no attempt to bring that all together and think it through in the process of doing an estate planning job, and I gave, in 1948, the course at the Harvard Law School in estate planning, and it was the first time a course by that name had been given in the law schools. Well, that, of course, has swept the country, but I started to work on, at the beginning, in that time, on what is now my treatise on estate planning, which has grown from one volume in 1951 or '2 into nine volumes now, on the subject of estate planning. It tries to coordinate these various impacts upon the estate planning decisions that are made, and that was when I was lecturing throughout the country to lawyers; it was always on something in connection with estate planning, and particularly the tax aspects of estate planning.

Mr. Wolkin: Jim, how important do you think the contribution of the Institute has been to the development of American jurisprudence? I want some of your general observations.

Professor Casner: I can only speak with some degree of knowledge of the field that I am concerned with, and there's no doubt that through the mechanism of The American Law Institute we have had tremendous influence on the development of property. You can write articles here and there and so forth and they have some impact, but it was the organized effort of The American Law Institute to deal with the statement of the law, including in the statement of law to bring out the needs for reforms and so

forth, that caused practically everything that's happened of significance in the property field to have been brought to fruition. Now what would have been done if we didn't have The American Law Institute I don't know; maybe some other mechanism would have been found, but it needed some kind of national push.

Now, whether it's had the same significant effect in other areas I'm not really too much of a judge, not too much being capable of judging, but I think the original idea of the Restatement of the Law, which in the first Restatement became a mechanism of deciding what the weight of authority was and stating the weight of authority and not opening a door to very much criticism of that, didn't really help it get off the ground as much. It was later, when they got the development that we could criticize existing law, we could even suggest that the minority position was the one that the Restatement adopted, and that came along a little bit later. The first Restatement was pretty much that you found out what the weight of authority was and that's what you stated. You could argue over what the weight of authority meant, because Powell, I know, would say, well, I think if we had decisions from New York and Pennsylvania and Illinois, even though there may be some adverse decision someplace else, but the weight of authority wasn't necessarily a nose count. That was injected somewhat in the Restatement of Property, but the idea of moving out with something entirely foreign to what was the predominant authority in the country and stating it as the Restatement, as we did in the rule against perpetuities, didn't come along very much until we were working on the second Restatement.

Mr. Wolkin: I think Goodrich started some of that development and then Herb carried it forward.

Professor Casner: Herb always said — and I know some of the things I have done go back to what Herb said — it's perfectly all right to take a statutory policy and say that that now has become such a policy that courts ought to do it without the aid of having a specific statute. That's how we got some of the things in the Restatement that — and in this work that I have just been finishing on where we have pointed out that the policy evidenced by a statute should be carried over into situations not covered by the statute when those situations are identical in respect to what

has been. That's how I've gotten into this problem of substitutes for a will that I was talking about yesterday, how those should take over the body of the policy that is evidenced by statutes that are in terms applicable only to wills when you've got substitutes for a will that are so similar.

Mr. Wolkin: Do you think that the membership today is less resistant to change than it was when you first started?

Professor Casner: Oh, I think so. There were some that you would always know how they were going to vote almost, and there were some that were afraid of anything that changed; lawyers are afraid of being educated out, of their knowledge being educated out in one sweep of the Institute.

Oh yes, we had much, much more resistance to change, it seems to me, than the present bar, because the present bar I think has gotten adjusted somewhat to the fact that law is an evolving thing, it isn't necessarily static, and that therefore you've got to expect sensible changes to be made from time to time.

One of the things that has slowed up the work of the Institute somewhat is the widespread development of statutes. The Commissioners on Uniform State Laws have taken up some of the cudgels here and developed various kinds of statutes. In the field I have just been working on, the Uniform Probate Code deals with most of these problems. What I was trying to do is to say what a court could do even if they hadn't gone to the statutes, that the courts ought to be able to move and develop the same principles that sometimes many people think can only be done by statute, and that idea still hasn't been fully accepted by a lot of people — the idea that I said last week that I thought a court could render a statute obsolete, that a court could decide that the statute was passed at a time to accomplish certain things, and that those conditions have changed. The court ought to rule, if that's true, that the statute is no longer effective. Well, that's still a shocking idea to a lot of people. I wasn't able to get it across.

Mr. Wolkin: I think if you stayed around for a couple more decades you might persuade them that there's some validity to that proposition.

Professor Casner: That's the reason we get so many obsolete laws on the books. It's hard to get the laws off the books

sometimes, to tell the legislature to repeal them. We would be able to get out from under some of these laws that were passed some time ago that no longer really make sense in light of changed conditions.

Mr. Wolkin: Well, Jim, I think you've given us a pretty good overview of the development of the Institute and the important part that people played in it, especially someone like you.

Professor Casner: Well, it's been constant with me. I feel that I have been working for The American Law Institute since 1935 without any real gap. It just seems to me it's been a continuous thing and it has fed me into various other things, but they all in a sense grow out of the fact that, if I hadn't been involved in American Law Institute work, my history of what I have accomplished would be quite different.

Mr. Wolkin: And the history of what the Institute would have accomplished would have been quite different and not as great. Thank you very much.

Professor Casner: I enjoyed it.

Notes

¹Richard R. Powell, Professor, Columbia University School of Law, and Chief Reporter, ALI's Restatement of Property.

²Albert J. Harno, Professor and Dean, University of Illinois College of Law, and member of the Council of The American Law Institute.

³Walter Lee Summers, Professor, University of Illinois College of Law, and Adviser, ALI's Restatement of Property.

⁴Edwin Blythe Stason, Dean and Professor, University of Michigan Law School.

⁵W. Barton Leach, Professor, Harvard University Law School; Special Reporter for Chapters 15 and 25, member of Advisory Committee for Chapters 7-25 and General Revision, ALI's Restatement of Property; and co-author *Cases on Property* (with A. James Casner).

⁶Ralph J. Baker, Professor of Law, Harvard University Law School, and Adviser, ALI's Restatements of Trusts and Restitution.

⁷Paul A. Freund, Professor, Harvard University Law School, and subsequently member of the Council of The American Law Institute.

⁸Milton Katz, Professor, Harvard University Law School.

⁹Lon L. Fuller, Professor, Harvard University Law School.

¹⁰Harry A. Bigelow, Professor and Dean Emeritus, University of Chicago Law School, Chief Reporter, ALI's Restatement of Property (1927-1929), and subsequently member of Advisory Committee.

¹¹Charles E. Clark, Professor, Dean, and Lecturer, Yale Law School, and member of Advisory Committee for all Chapters and General Revision, ALI's Restatement of Property.

¹²Everett Fraser, Dean Emeritus and Professor, University of Minnesota Law School, and member of Advisory Committee for all Chapters and General Revision, ALI's Restatement of Property.

¹³J. Warren Madden, Professor, University of Pittsburgh School of Law, and member of Advisory Committee for Chapter 7 and General Revision, ALI's Restatement of Property.

¹⁴Oliver S. Rundell, Dean and Professor, University of Wisconsin Law School; member of Advisory Committee for all Chapters and General Revision, and Reporter for Servitudes, ALI's Restatement of Property.

¹⁵Lewis M. Simes, Professor, University of Michigan Law School, and member of Advisory Committee for Chapters 7-17 and General Revision, and Special Adviser, ALI's Restatement of Property.

¹⁶Henry Upson Sims, Birmingham lawyer; member of Advisory Committee for all Chapters and General Revision, ALI's Restatement of Property; and member of the Council of The American Law Institute.

¹⁷Charles C. White, Cleveland lawyer and member of Advisory Committee for Chapters 1-6, ALI's Restatement of Property.

- ¹⁸William Draper Lewis, Professor and Dean, University of Pennsylvania Law School; Director of The American Law Institute (1923-1947) and member of the Council; and Chairman Ex Officio of Advisory Committee, ALI's Restatement of Property.
- ¹⁹Herbert Wechsler, Professor, Columbia University School of Law, Chief Reporter, ALI's Model Penal Code, Director of The American Law Institute (1963-1984), and member of the Council.
- ²⁰Geoffrey C. Hazard, Jr., Professor, Yale Law School; Reporter, ALI's Restatement Second, Judgments; and Director of The American Law Institute, 1984-.
- ²¹Herbert F. Goodrich, Judge of the U.S. Court of Appeals for the Third Circuit, Director of The American Law Institute (1947-1962), and Assistant Director (1944-1947).
- ²²George Wharton Pepper, Professor, University of Pennsylvania Law School, later U.S. Senator, Vice President of The American Law Institute (1932-1936), President (1936-1947), and Chairman of the Council (1947-1960; Emeritus 1961).
- ²³Learned Hand, Judge of the U.S. Court of Appeals for the Second Circuit, Vice President of The American Law Institute (1935-1947), and member of the Council.
- ²⁴James Bryant Conant, U.S. educator and scientist, President of Harvard University, and U.S. High Commissioner for Western Germany following World War II.
- ²⁵The Japanese actually attacked the U.S. naval base at Pearl Harbor, Hawaii, on December 7, 1941.
- ²⁶Henry Harley Arnold, air strategist and commanding general in World War II of U.S. Army Air Corps.
- ²⁷Professor Casner actually became an Adviser for the ALI's Restatement Second, Trusts, in 1953, the year the first Tentative Draft on Trusts was published.
- ²⁸Austin W. Scott, Professor, Harvard University Law School; Reporter, ALI's Restatement of Trusts and Restatement Second, Trusts; Co-Reporter (with Seavey) on ALI's Restatements of Restitution and Judgments; and member of the Council of The American Law Institute.
- ²⁹Stanley S. Surrey, Professor, Harvard University Law School; Chief Reporter, ALI's Federal Tax Project, 1947-1960; and Project Supervisor, ALI's Federal Income Tax Project, 1975-1984.
- ³⁰The Institute's Federal Estate and Gift Taxation Project was approved in 1968, but it was not actually published until 1969.
- ³¹William D. Andrews, Professor, Harvard University Law School; Associate Reporter, ALI's Federal Estate and Gift Taxation Project, 1964-1969; Reporter for Subchapter C of ALI's Federal Income Tax Project, 1974-1982, 1987-1989; and Co-Reporter (with Warren), ALI's Federal Income Tax Project, Integration of the Individual and Corporate Income Taxes, 1989-.

- ³²Milton R. Friedman, New York lawyer and Adviser, ALI's Restatement Second, Property (Landlord and Tenant).
- ³³Louis Loss, Professor, Harvard University Law School, and Reporter, ALI's Federal Securities Code, 1969-1980.
- ³⁴David R. Herwitz, Professor, Harvard University Law School.
- ³⁵Jesse Dukeminier, Professor, University of California at Los Angeles School of Law, and Adviser, ALI's Restatement Third, Property (Servitudes).
- ³⁶Robert Miller, Washington lawyer and member of the Council of The American Law Institute.
- ³⁷Norris Darrell, New York lawyer, President of The American Law Institute (1961-1976), and Chairman of the Council (1976-1979; Chairman Emeritus 1980-1989).
- ³⁸Alvin C. Warren, Jr., Professor, Harvard University Law School, and Co-Reporter (with Andrews), ALI's Federal Income Tax Project, Integration of the Individual and Corporate Income Taxes, 1989-.