

MICHAEL GREENWALD: At the end of 1992, Paul Wolkin completed more than 45 consecutive years in the administration of The American Law Institute. He first joined the Institute in the summer of 1947 as assistant to the ALI's new Director, Judge Herbert Goodrich, and he held the title of ALI Assistant Director from 1955 until 1977, when he was named Executive Vice President.¹ In 1963 he had also become Executive Director of the ALI-ABA Committee on Continuing Professional Education, and so for nearly 30 years he was responsible for the day-to-day operations of the two organizations in their shared Philadelphia headquarters. At the beginning of 1993 he became Executive Vice President Emeritus and he joined the Institute's Council.

We are speaking on July 8, 1993, in the sixth-floor studio of the Institute's headquarters in Philadelphia. I doubt that anyone has ever had a more extensive and intensive involvement with the Institute and its many projects and activities than you, and I'm sure that we'll be able to touch on no more than a small fraction of that involvement, but let's begin at the beginning.

You are a native of Philadelphia, a graduate of the University of Pennsylvania Law School, and you attended the law school in the late 1930s and early 40s, at a time when the Institute had its offices right there at the University of Pennsylvania. It was being run still by its original Director, William Draper Lewis, out of that small office at the law school. Is that when you first became aware of the Institute and its work?

PAUL A. WOLKIN: Well, I became aware of the Institute when I was a student, and there were other references to the Restatement of Contracts and, of course, of Torts in other courses. The Restatement was an integral part of our learning, or trying to learn, the law of these subjects.

MR. GREENWALD: Did the professors actually make it part of the curriculum?

¹ Wolkin assumed primary responsibility for the administration of the ALI's Philadelphia offices in 1962, following the death in June of Judge Goodrich.

MR. WOLKIN: Well, they referred to it for propositions. The Contracts professor, Foster Reeve, would always talk about the Restatement Sections and the fact that Pennsylvania hewed very closely to the Restatement, if indeed it did not adopt Sections outright. And in Torts, which Goodrich taught, but I had Larry Eldredge for Torts, and he, of course, emphasized the Restatement, so that the Restatement was always hovering over our classes at the law school.

MR. GREENWALD: It was part of the law-school culture at that time already?

MR. WOLKIN: Right.

MR. GREENWALD: Now, William Draper Lewis was a former Dean of the Law School and he taught there. I guess he was retired from the faculty by that time?

MR. WOLKIN: I think he was retired. He was well advanced in age by that time. As I recall, he was a tall individual with white hair, and he had a chauffeur-driven car, and he would be coming in wearing a long black coat with boots in the cold winter, and a hat, and there would be fleeting glimpses of him going to the office of the ALI, which was on the first floor of the law school, I think near the Law Review office, if I remember correctly.

MR. GREENWALD: But he himself didn't, at that time, have any real contact with the student body? He never gave talks about the Institute or anything to the students?

MR. WOLKIN: Not that I am aware of. At least in my activities there that did not come across.

MR. GREENWALD: Right. So when you finished law school, I guess it was in 1941, you then became a law clerk to Judge Herbert Goodrich.

MR. WOLKIN: Well, that had a curious twist. In my second year in law school, I became very ill in early November, and I was out until the rest of the first semester. I didn't want to repeat the semester, so I sent a letter to the Dean, who was Goodrich. He said it would be best if I stayed

out, but I said I'd rather complete the year, so I went back. The result was that I didn't do too well that year, but in the third year I forgot whether I finished second or third in the class, and things were looking up. But I went around looking for employment with the large offices in New York, and I think the story is generally known about the policies of the large law offices there, and I was not doing anything in particular for a while. A man with whom I briefed cases, Lippy Redman, went from law school to be Goodrich's clerk. Lippy was on Law Review. I had tried out for Law Review but because of my illness I was forced to drop out. Well, Lippy was being drafted and sometime—I suppose in the spring of '42—the judge asked him who should take his place and Lippy mentioned me, so I went down and saw the judge and was hired. That's how I became Goodrich's law clerk.

MR. GREENWALD: So you came in in the middle of the tenure of your predecessor?

MR. WOLKIN: Right.

MR. GREENWALD: At that time, I guess, the federal judges had only a single law clerk. Is that how it worked?

MR. WOLKIN: At that time there was only one law clerk, and in the Third Circuit there were only five judges, and there was a close, intimate relationship between judges and law clerks.

MR. GREENWALD: Must have been.

MR. WOLKIN: And there was still time to spare.

MR. GREENWALD: I guess the workload for the judges was not quite what it is now either, although maybe they were able to get their work done better.

MR. WOLKIN: Well, I don't know. Goodrich had the great facility of doing his opinions promptly and quickly. He didn't brood over them, and he always was the first judge at the end of the year to have finished all of his cases—whether the load was lighter or not—and he believed in

short opinions, too, without the voluminous footnotes. He always said God made the world in six days, on the seventh day he rested, and it shouldn't take any longer to decide a case and write an opinion.

MR. GREENWALD: Did he draft his opinions himself?

MR. WOLKIN: Well, when I went to work for him I wasn't told what to do. He gave me some briefs and on the brief the holding was indicated, the temporary decision was indicated, so I sat down and wrote opinions and gave them to the judge, and he did what he thought he had to do with them.

MR. GREENWALD: I see.

MR. WOLKIN: If he disagreed—he was really a generous person—if he disagreed he would send his draft around with mine attached saying, “Enclosed is a dissent by Brother Wolkin.”

MR. GREENWALD: And did your dissent sometimes carry the day?

MR. WOLKIN: Well, a couple of times. Judge Jones, who was on the Third Circuit at that time, before he went to the Supreme Court of Pennsylvania, picked up one or two of them as dissents, and then—he was firm—his dissents prevailed in the Supreme Court.

MR. GREENWALD: So you really had an influence?

MR. WOLKIN: Well, I had good law teachers. I kept my notes, and John Mulder taught bankruptcy, and there was one bankruptcy case in which his notes made the law when it reached the Supreme Court.

MR. GREENWALD: Well, I know we'll be talking about John Mulder later on, but when you joined Goodrich as a law clerk he [Goodrich] was already, of course, very active with the Institute. I believe his title at that time was Director of Professional Relations.² He later, I think in

² Goodrich's actual title was Adviser on Professional Relations.

1945, became Assistant Director,³ and of course eventually, in 1947, became Director. But at that time he was clearly doing a lot for the Institute, and were you at all aware of that?

MR. WOLKIN: Oh, I was aware that he was very much involved in the work of the Institute. I didn't know the particulars, but he had great capacity. He was involved in many things. He was, I think, Chairman of the Board of the Women's Medical College, he was President of the National Conference of Christians and Jews, he was active in the American Philosophical Society. Learned Hand once sent him a letter extolling his ability to do many things and said, you're omni this, omni this, you're omni omni, if I remember the words correctly. But he had that great capacity to do things and do them in a short span of time.

MR. GREENWALD: I got the impression from just looking at his reports during this period that the major part of his responsibility in those days with the Institute was developing relationships with the bar, going out and making them aware of the work of the Institute. He also, I believe, had a good deal of involvement with publications, working with the ALI Publishers in getting the works out. Is that your recollection?

MR. WOLKIN: That's correct. He would meet with the representatives. At that time, the ALI Publishers consisted of West Publishing and Lawyers Co-op and The American Law Institute, and there would be periodic meetings over lunch at the, I think, St. Regis in New York, and that was the time when the favorite item on the menu for this group was eggs Benedict. Goodrich thought that they made the best eggs Benedict in the country, and we would meet and have a very friendly time talking about publishers, business, and such matters.

MR. GREENWALD: So this was while you were still a clerk or later on?

MR. WOLKIN: I think this was later on. While I was a clerk I was not involved in the Institute too greatly. The first Annual Meeting I attended was in May of '47, May or June I forgot

³ Goodrich actually became Assistant Director in 1944.

which. That was the meeting at which Goodrich became Director. But while I was clerking for the judge the Institute was meeting in Philadelphia due to the war, and they met at the Bellevue. He asked me if I wanted to go to the Meeting, and I attended several sessions and just sat in as an observer. That was, I think, my first full exposure to the austere goings-on at the Bellevue.

MR. GREENWALD: And I guess you little imagined at the time how much involvement you would have with those goings-on over so many years.

MR. WOLKIN: That's correct. But I attended one or two meetings and in '44 I thought I ought to do something else, more connected with the war effort. I'd been turned down by the draft—this flowed from that illness I had when I was in law school—so I told the judge I wanted to leave, and he understood, although he seemed to be distressed, and I went to Washington to work for the Foreign Economic Administration.

MR. GREENWALD: What did the Foreign Economic Administration do?

MR. WOLKIN: Oh, they were in charge of Lend-Lease. It was an outgrowth of several agencies. There was the Lend-Lease Agency, if I remember correctly, and there was the Board of Economic Warfare, and there were a number of corporations that were involved in procurement for the United States of things that were difficult to get, like rubber, and they dealt largely with those matters. The general counsel was a Yale graduate named Oscar Cox, and, interestingly enough, Lippy had preceded me there, too.

MR. GREENWALD: Really?

MR. WOLKIN: Before he was drafted, he got a war job, he went to the Lend-Lease Agency, and that's how I knew about it and I applied. Lend-Lease had then become the Foreign Economic Administration. I applied for work there in the general counsel's office, and I think Goodrich sent a letter supporting the application. When I worked there, I was involved largely in

legislative matters. That's where, to my horror, I learned that when there is a legislative hearing, you then get a transcript and rewrite it.

MR. GREENWALD: First time you learned about that?

MR. WOLKIN: Yes. They also had the export-import bank. I remember working on that legislation, and I remember working on the annual reports of the Lend-Lease Administration.

MR. GREENWALD: You also became involved as liaison with the French government. Is that right?

MR. WOLKIN: Well, I was with the Foreign Economic Administration when the war ended, and at that point many of the activities of the Foreign Economic Administration were being wound up. The gentleman who had been associate general counsel of FEA, the Foreign Economic Administration, was George Ball, and he was very friendly with [Jean] Monnet. And the French, to maintain the flow of materials that they were getting under Lend-Lease, formed a groupement. That's the type of corporation that was responsible for obtaining supplies, continuing the pipeline, as it were, of Lend-Lease, and he became general counsel for the groupement. I went over there and worked for him as associate general counsel, and I was with them, the Foreign Economic Administration, for a year. Then someone whom I had known at the Foreign Economic Administration, a man by the name of John Howard, had gone to the State Department and he suggested I might be interested in going there. So I went from the French Supply Council, which was the name of the agency obtaining supplies, to the State Department to work for—

MR. GREENWALD: The Legal Adviser's office, wasn't it?

MR. WOLKIN: Yes, the Legal Adviser. Charles Fahy was the Legal Adviser at that time. But while I was there I kept corresponding with Judge Goodrich, and if memory serves me right—I'm pretty sure this is accurate—he was being actively considered to be Chief Justice, and once, in

fact, he said—I believe I was told—that he was looking for a house in Washington. And in fact he asked me if I'd be his law clerk if he became Chief Justice, but that may have been after Roosevelt died and Truman came in then, and with the change of administration that fell through. I'd have to check the dates on that, but that sequence is a very vivid recollection.⁴

MR. GREENWALD: Vinson I guess was named Chief Justice—

MR. WOLKIN: Yes.

MR. GREENWALD: —around that time, wasn't he?

MR. WOLKIN: Well, I had a discussion of this with Herb Wechsler and we weren't sure of the dates and just how it worked out, but—

MR. GREENWALD: At that time did you consider staying in Washington in government service?

MR. WOLKIN: Well, if the judge would have gone on the Court I would have stayed, but when that didn't materialize, he in '47 knew he was going to be Director and he knew I wanted to come back to Philadelphia and go into practice, so he asked me if I wanted to help him at the Institute on a part-time basis where I could practice law. That seemed agreeable, so I went back to Philadelphia in the summer of 1947.

MR. GREENWALD: So you never considered staying on with the State Department?

MR. WOLKIN: No, no.

MR. GREENWALD: So you really wanted to come back to Philadelphia, and at that time you saw yourself as a practitioner?

⁴ Wolkin's memory here may have been inaccurate. Roosevelt died in 1945. There was no vacancy in the office of Chief Justice until 1946, when Chief Justice Stone died. President Truman subsequently appointed Vinson to replace Stone. Other evidence suggests that Roosevelt considered Goodrich as the replacement on the Court for his fellow Pennsylvanian Owen J. Roberts, who retired in 1945. Indeed it appears that the nomination of Goodrich was on Roosevelt's desk awaiting transmission when he died in April of 1945. Truman instead nominated Senator Harold H. Burton of Ohio to the seat. See ROGER K. NEWMAN, *HUGO BLACK: A BIOGRAPHY* 337–339, 341, 344, 347–348, 680 n.4 (Pantheon Books 1994).

MR. WOLKIN: Well, things were starting to get in some respects difficult in Washington, with the witch hunt for communists and—not that I ever was a communist, but I might have contributed to the Loyalists in Spain or something like that—so I thought it best to go back to Philadelphia and work for some magnificent sum, I think it was something like—well, when I was a law clerk I was getting \$1900 a year. I'm saying that to shock today's young people. And then when I went back to Philadelphia to work for Goodrich I think I, part time, I was getting \$2600 for half time.

MR. GREENWALD: Princely sum, I guess. Correct?

MR. WOLKIN: Yes, princely sum. It was almost like a salary in the Depression.

MR. GREENWALD: Well, this, of course, was a time of great significance and transition for the Institute in 1947. It wasn't just that Goodrich became the new Director, but there were other changes and questions about the Institute's direction.

MR. WOLKIN: Well, Harrison Tweed became President, he succeeded George Wharton Pepper, who became Chairman of the Council, and Goodrich became Director and I think Lewis Director Emeritus, if that was the title. And this was the time when, leading up to this change in administration, there had been a study by a committee to consider the future of the Institute, of which I think Learned Hand was the chair. There was some thought, as I recall, that the Institute, having done most of the Restatements it was supposed to do, should wind up its affairs and complete its mission. But there were, I think, some people that felt very strongly about not doing that. One of them was William Schnader, they used to call him General Schnader, who was active in the work leading up to the Commercial Code.

The Institute had undertaken, I think before '47, the revision of the Uniform Sales Act, with [Karl] Llewellyn as Reporter on that, and they were working with the Commissioners on

Uniform State Laws. It started out just as a revision of that bit of legislation, and Schnader had the great idea, I thought, of redoing all the commercial laws, starting off doing the individual laws. I'll tell you later how the UCC evolved as a code. Well, I might as well jump ahead. They were working on several of the uniform acts, I think bills of notes and bills of lading, and there were drafts extant, and there was one session where, as I recall, Schnader took a scissors and cut out the sections that were of general application and put them up front and made a Uniform Commercial Code, with scissors and paste, out of the separate efforts that were under way.

MR. GREENWALD: Just by cut and paste, he moved it up to the front and suddenly realized the—

MR. WOLKIN: Well, that was to carry out his idea, to make an entire code out of these various pieces of work that were going on.

MR. GREENWALD: That's fascinating. So Schnader was the one who really had the inspiration to unify these disparate efforts that were going on?

MR. WOLKIN: I think he was—he might, in my mind anyway, properly be called the father of the Uniform Commercial Code. That's why I think there's a chair on Penn now on commercial law—that's in his name. He was also very active with the Commissioners, so that he was the glue between the two organizations, and he was responsible for the code being drafted, getting off the ground, and being enacted in good part.

MR. GREENWALD: Of course, people think of the Institute in that period as being mainly involved with the Restatements, but there were a few other projects with the Commissioners before that had laid the groundwork. This wasn't the first involvement with the Commissioners, as I recall.

MR. WOLKIN: Well, there were several projects that did not involve the Restatement. Very important work was done on youth correction, and there's a Youth Correction Authority Act. A chap by the name of [John] Ellingston was involved in that.

MR. GREENWALD: Yes.

MR. WOLKIN: And there was another piece of legislation—

MR. GREENWALD: I think there was the Uniform Property Act that Casner was involved with in the '30s.

MR. WOLKIN: There was the Uniform Property Act. They had several pieces of legislative work that were being drafted, with and without the Commissioners.

MR. GREENWALD: Right.

MR. WOLKIN: I think at one time they were talking about a Uniform Aviation Act even, if I remember correctly.

MR. GREENWALD: Yes, there were some drafts of that, I believe.

MR. WOLKIN: These things preceded me. I think when I came in there was great activity on the Youth Correction Authority Act, and there was another youth act, I forgot the name of it. There were two pieces of legislation, I believe.

MR. GREENWALD: This was something I gather that Draper Lewis was very interested in.

MR. WOLKIN: Well, Draper Lewis, and Timothy Pfeiffer was very interested and had money—he was a member of the Council and a partner of Harrison Tweed, who became President in 1947, and he was able to secure funding from the Rockefeller people, I believe, to fund the act. Then Ellingston went around trying to have the proposals adopted in various jurisdictions. There

was some real pioneering work in that field done by the Institute dealing with a very difficult subject in those days.

MR. GREENWALD: Did the Institute also review those drafts during that period?

MR. WOLKIN: When I came in, there were reports on the status of legislative enactment and the likes of that. I don't know whether they went through the full ALI process.

MR. GREENWALD: I was doing a little research into that. It was kind of interesting because, during the period I think in the '40s, the late '40s, what was happening was there were reports by Ellingston constantly about legislative enactments, but the Institute itself wasn't doing anything, and in fact there was some indication that, I think, Judge Wyzanski and Norris Darrell raised questions as to whether the Institute was getting involved in lobbying by working for those things.

MR. WOLKIN: Well, that's been a recurring concern, but all this, we started talking about this because of the change of administration in '47, when the Hand committee did its report on the future of the Institute, all with a purpose of saying the work of the Institute was not done, that there was much more work that could be done and the Institute should not wind up its affairs.

MR. GREENWALD: Right.

MR. WOLKIN: There are a number of projects that they spoke about: The work in corporations, which took many years to be undertaken.

MR. GREENWALD: Right.

MR. WOLKIN: They spoke about continuing education, continuing legal education. Harrison Tweed, the new President, was very strongly interested in that subject, and if you read that report it lists more work on restatement and I think it might talk about the Uniform Commercial Code. I'd have to refresh my recollection about all the projects it mentioned.

MR. GREENWALD: I don't remember whether it was in that report or not, but Lewis at that time or right before was doing some thinking about it too, and I remember he talked not only about corporations but also about foreign relations and about criminal law, all areas that later were picked up.

MR. WOLKIN: Yes. That report was a rather farsighted report if you look back at it, considering what was going on at that time.

MR. GREENWALD: But, of course, that was a crucial period for the Institute, because as far as the Restatements were concerned, they were winding down, I think they finished the first Restatement in 1944, and I noticed that there was a three-year period where they were not to do any further work on the Restatement—that was part of the requirements of the grant, the original grant from Carnegie—and then after the three-year period they could begin work again, and I guess that's when the revisions begin.

MR. WOLKIN: Well, they started a process of keeping the restatement up to date.

MR. GREENWALD: Yes.

MR. WOLKIN: That was, I think, Goodrich's suggestion, in which they would take each, various Restatements, have a Reporter designated, and not revise the entire Restatement but deal with new developments in Restatement format. I think Conflict of Laws was one subject and Torts may have been another, and they published very slim pamphlets. These were considered at the Annual Meeting. They were reviewed—

MR. GREENWALD: I think around 1948, wasn't it?

MR. WOLKIN: Well, I think they, yes, they, 1948, started in '47 or the likes of that, and that kept the Institute busy until they decided to go into total revision of a Restatement. And about that time, too, one of the things Goodrich, in working with the publishers, had an interest in—and I

think Lewis, too—originally there was something called Annotations to the Restatement, and that project goes back I think to the Depression and was funded in part by WPA to help penniless lawyers survive the Depression. What it involved was annotating the Restatement to the law of each particular state, and there are a great many of those annotations that were developed, and some of them are very helpful and very, very good in dealing with the local law. But that then—I think this was Goodrich’s idea—gave birth to another venture, and that was the Restatement in the Courts, whereby citations of cases in which the Restatement was cited were sent to the Institute, by Shepard’s, I believe, and West also, and the Institute would hire someone to digest any case citing a Restatement and show whether the case cited was in support or dissent, and these were published, I think each year, as supplements to various Restatement products.

MR. GREENWALD: They used to be all in a single volume, all the Restatements put together, and then later as separate supplements to specific Restatement volumes.

MR. WOLKIN: Yes. Ultimately there developed the present system. They stopped publishing the annotations because they fell into disuse. West Publishing had a large inventory of these, which it wanted to dispose of, and they said that it wasn’t profitable to deal with the state annotations anymore, and besides, the Depression was over. So then work continued in the Restatement in the Courts, which developed into its present format, and that has been a source of substantial revenue for the Institute.

MR. GREENWALD: Yes. Can we focus for a minute on 1947, when you actually came to work for the Institute? I am interested to know what the situation was like, the conditions then. You started off still in that office at the University of Pennsylvania in 1947?

MR. WOLKIN: Yes. Martha used to say that when I started the Institute consisted of two rooms and two clerks or secretaries, Goodrich and myself, which was an accurate description.

There were two rooms on the ground floor, where Lewis had his offices. There was a glass partition dividing one room, that's how we got two rooms, and on one side there were two desks, one of which I used and one of which Judge Goodrich used when he came—he did most of his work in chambers—and on the other side there was Eleanor Twohig, who was the chief secretary, I suppose, and a woman by the name of Betty Ferguson, who was her assistant, and that was the staff of the Institute. In those days minutes were done on a ditto machine. I don't know how many people know what a ditto machine is. It's blue ink and you rolled it out—

MR. GREENWALD: I remember them.

MR. WOLKIN: —and if it had to have a longer run there were stencils that were cut on a typewriter. And the Institute's inventory and files were in the basement of the law school, which periodically would be flooded, so that many historical items, old files, were destroyed, as well as books, and also some of it was chewed up by the rats that used to run around down in the basement of the law school. Eleanor Twohig had a lot of courage. She decided we'd clean out the basement. She and Betty went down and they got rid of a lot of stuff, maybe papers we should have retained, but they were in very poor condition, so that's what happened.

Then there was a very meager office, I don't know whether it had two typewriters or one typewriter, no such thing as a dictating machine. Judge Goodrich wrote his opinions longhand, or occasionally he would dictate to his secretary downtown. But much of the material for the Institute, much of the material was done downtown or he'd come out to the office once a week and do it there. I wrote everything out by longhand, and that was the way we worked then.

MR. GREENWALD: What sort of work did you yourself do when you first started?

MR. WOLKIN: Well, I was working on the Restatement in the Courts, getting people to do it. I had to engage people. We paid them I think 25 cents a digest.

MR. GREENWALD: That's what we still do, although we pay a little more than that now, I think.

MR. WOLKIN: Yes. And, well, of course sometimes one case would hit a gold mine, it'd be 25 citations, so they'd use the same digest for all 25 citations.

MR. GREENWALD: Right.

MR. WOLKIN: And then, at that time, Llewellyn had written commentaries to the sales article, or the Uniform Revised Sales Act that they had prepared, and they were much too voluminous, so one of the things I did in those days was condense those comments to the Sales Act. And also about in '47, '48, there was interest in doing work in taxation, and Norris Darrell was a tax lawyer, a new member of the Council, or was to become a member of the Council, and there was a question of obtaining grant funds, and I was writing prospectuses for doing work in taxation.

MR. GREENWALD: In that connection, I saw something kind of interesting. Apparently the Council decided to leave it up to, I think it was the Falk Foundation, whether to do tax or to do a project in corporate law, and I gather once again corporate law at that time lost out, just as they had earlier when there was a choice between security and corporations law. At least there's something in the minutes that suggested that it was left up to the foundation.

MR. WOLKIN: Well, there was a lot of ferment in taxation in those days, and I think in 1947 or '48 Congress enacted a tax law to make applicable to all of the jurisdictions the benefits of community-property states.

MR. GREENWALD: Right.

MR. WOLKIN: And there was talk of other tax revision. So it seemed to be a moment where work by the Institute in taxation would make a significant contribution, and, especially since Norris Darrell was a tax lawyer, he spurred the interest in doing that kind of work.

MR. GREENWALD: Was there a good deal of skepticism at the time about that being an appropriate subject for the Institute? It's certainly a departure.

MR. WOLKIN: Well, there's always an element of skepticism in any project the Institute wants to undertake.

MR. GREENWALD: I know. Sure.

MR. WOLKIN: And it depends what the administration wants to pursue as to how it turns out.

MR. GREENWALD: And Judge Goodrich, I guess, was in favor of it?

MR. WOLKIN: Yes, Judge Goodrich was very much interested in taxation. Being a federal judge, he had many tax cases on his docket that he dealt with and he knew the importance of having good tax legislation. And the taxation concepts were changing in those days. There was work to be done in the field and the Institute thought it might be an opportunity. In fact, the work it ended up doing after it got the money was very significant. Stanley Surrey became the Chief Reporter, he'd been in government, and Dean Warren of Columbia was the Associate [Chief] Reporter, and the work they did on the federal income-tax law made significant contributions to the tax law.

MR. GREENWALD: Yes.

MR. WOLKIN: And from that, of course, after that they went on to other things in taxation.

MR. GREENWALD: Yes, right up to the present.

MR. WOLKIN: Well, after a while there was not too great an interest in continuing work on taxation, and I worked closely with Stanley Surrey in trying to stir up interest and was successful in reviving interest in taxation. Once we got it going, it became an interesting subject to

members of the Council, and other projects were authorized with Jim Casner, and we moved on from there to many other tax projects.

MR. GREENWALD: Right up to the present tax involvement. Well, one area that you haven't discussed yet is, of course, one with which you became so closely involved, continuing legal education. You did mention that the committee had recommended involvement and the involvement did begin around that period, but I take it at first you were not involved in it.

MR. WOLKIN: No; that's correct. In 1947, the Institute approved the project of continuing legal education. That's a big story in itself. It grew out of World War II. There was a perceived need to do something for lawyer veterans who would be returning, lawyer soldiers who would become veterans and return, and the thought was to have programs in continuing legal education for them. Goodrich and Tweed were very much interested in that, but the American Bar Association was working with the Practising Law Institute and had programs for lawyers all over the country. In connection with that, the Practising Law Institute undertook publication of little booklets on select subjects. Indeed, I prepared one; I started on this when I was in Washington, at the suggestion of Judge Goodrich, on *Erie Railroad [Co.] v. Tompkins* [304 U.S. 64 (1938)], which grew out of an article I had written, at the judge's prompting, for *Penn Law Review*. But there seemed to be some degree of discontent about the way the continuing-education program was going forward for returning veterans, and ultimately the American Bar Association asked The American Law Institute to undertake a program, with its cooperation. I guess Harrison Tweed worked that out with the powers that be in the American Bar Association, whom he knew well, and that's how the Institute, as early as '47, started in continuing legal education.

The initial problem was to get some money and to select a Director, and Harrison Tweed was successful in getting a quarter of a million dollars from the Carnegie Corporation to fund the

effort, and I think Goodrich is the one who put forward John Mulder as the first Director. John Mulder had been a law professor at Penn and during the war, when Penn's faculty contracted, he went to work in the Schnader office downtown. Goodrich put John forward, with Tweed's support, as the Director for this new enterprise, the ALI's effort in CLE with the cooperation of the American Bar Association, and the grant was obtained and Mulder was approved and things moved rapidly then.

It was a question of getting a place for this enterprise to be headquartered. There was no room in the law school so John Mulder located a place at 36th and Walnut—there's a bank building there on the northeast corner—and he rented the loft of that building, and the elevator went to the fifth floor and you had to walk up to the sixth floor, but the view from the sixth floor was impressive; you saw the entire city of Philadelphia. This was before Penn built a building facing that. And the summer of, or fall of '47, or shortly thereafter, is when John started CLE for the Institute.

Sometime very soon following that, Justice Roberts became Dean of the Penn Law School, and for some reason he wanted that space that the Institute occupied, so we were asked to leave, and we moved into the loft space at 36th and Walnut. And it wasn't bad. The offices were rather nice there, for those days. It wasn't initially air conditioned, but we got air conditioners and so forth and so on.

MR. GREENWALD: And there was some new staff brought in to work on ALI-ABA?

MR. WOLKIN: Well, John organized the staff. He hired a lawyer and shortly thereafter he hired for the bookkeeping a young veteran by the name of Walter McLaughlin, who just recently, I think—well, maybe it was a little later—had been in the—when was the Korean war? '54?

MR. GREENWALD: It started in 1950.

MR. WOLKIN: Yes. Well, it was sometime after that that he hired Walt to do the bookkeeping, so he must have had somebody else working there. There was a midwestern director, Charlie Joiner, now Judge Joiner, and there was a western director, Professor Brenner, I think, and the idea was to encourage local bars to get involved in CLE. John spurred that movement.

MR. GREENWALD: This is what I believe Mulder called the grassroots approach?

MR. WOLKIN: That's right, yes. And the other thing he started was preparing literature, as he used to call it, little pamphlets, pretty much the way PLI had done with its program for returning veterans. John had many students and he prevailed upon a number of them to write books on taxation and various other subjects, and these little pamphlets were the initial effort in publication by ALI-ABA.

MR. GREENWALD: I really enjoyed this.

MR. WOLKIN: Good. Well, we'll continue. We'll go on every day for a couple years.

MR. GREENWALD: We could very easily. I mean, 45 years is a lot of ground to cover.

MR. WOLKIN: Very good.

(The discussion was adjourned and resumed on the following day.)

MR. GREENWALD: We are resuming our discussion with Paul Wolkin on July 9, 1993. Yesterday we had reached the point in our discussion in which we were talking about the ALI-ABA establishment in 1947 in the same office as the ALI, and I wanted to ask you this. I think we did make it clear that at the beginning, at least, you were not brought in for the purposes of doing anything with ALI-ABA, that that began later on. So my question that I wanted to ask you is, how did you in fact become involved with ALI-ABA? Was it a slow process, a gradual process, or—

MR. WOLKIN: Well, as I think I mentioned yesterday, ALI-ABA leased offices at 36th and Walnut, some loft space, and they moved into those offices first. Shortly thereafter, ALI was

asked to leave the law school because the law school needed the space, so we moved over to the same address and the same floor, the loft space—I think it's 133 South 36th Street—and there I was in intimate communication with John Mulder, who was the Director of ALI-ABA, although I continued to work primarily, indeed solely, on Institute matters. But with the passing of weeks and months, I came to know more about ALI-ABA and what it was involved in, and I think in the very early '50s I suggested to John that ALI-ABA should publish a periodical that would do, in periodical format, what his literature of handbooks was doing more extensively. A typical handbook would be 50, 75, 100 pages, and my thought was that it would be well to have articles of five, ten or so pages that would be practical, minimal—no citations—but would offer how-to-do-it advice, and he, I think, liked the idea. Then we discussed it with Judge Goodrich and Harrison Tweed, who were the major movers for the Committee, and it was an evolving process. We took it up in a meeting of the ALI-ABA Committee and, after extensive discussion, they approved it, and I think it was even taken up at a meeting of the ALI Executive Committee, and the proposal was approved. We got to work then, we had the services of an advertising agency that drew up an advertisement piece to solicit subscriptions, we solicited articles, and I think about 1953 or early 1954 we sent out a limited number of solicitations for subscriptions. At that time it was eight issues for I think \$6, which was a large sum, I suppose. But the initial solicitation effort brought in 10,000 subscribers. It was a return that was very impressive for those in this business, and then we had another one that came to 15,000, and I think the first issue was published late in 1954 or early in 1955 and it was an instant success. Tweed thought up the name of *The Practical Lawyer*; I think he got it from *The Practical*—

MR. GREENWALD: *Navigator*, wasn't it?

MR. WOLKIN: —*Navigator*, and that seemed to fly well, and that was the story. Thereafter we set up a little Editorial Board. John Mulder was the Chairman of it, I was the Editor, and from that time on I spent part of my time working on *The Practical Lawyer* and part of the time on Institute matters. Judge Goodrich thought it appropriate that, in submitting reports to the Annual Meeting, there be his report and there be John Mulder's report and there'd be a separate report on *The Practical Lawyer*, so that was the plan that was followed for quite a while.

Being involved with *The Practical Lawyer*, I became still more closely involved with the work of the ALI-ABA Committee. I started attending meetings of that Committee, when they met in Chicago and Washington, and one thing led to another and I had more ideas for the Committee and that was my involvement initially, until, I think, 1963 or so, when John Mulder stepped down as Director and it was agreed that I would succeed him as Director of ALI-ABA. That was approved initially by, I think Herb Wechsler and Norris Darrell and I think Harrison Tweed. That started the ALI-ABA affair.

MR. GREENWALD: And *The Practical Lawyer* was, as you indicated, a great moneymaker and made a big difference financially for the fledgling operation, ALI-ABA.

MR. WOLKIN: Well, it made a significant contribution, because you may recall that the initial grant from Carnegie was \$250,000, and that was about to be exhausted, because John Mulder was subsidizing a lot of the effort, ALI-ABA was subsidizing it, of spreading the word about CLE, and there was talk of maybe terminating the Committee when we ran out of funds, but *The Practical Lawyer*, even at \$6 a subscription, yielded ample revenue to support the work of the Committee thereafter.

MR. GREENWALD: And really turned things around.

MR. WOLKIN: Yes. That was a crucial move. And not only that. I think not only was the financial end significant but *The Practical Lawyer* was the first periodical in the country to treat material the way it did: short, concise, how-to-do-it articles. Now practically every state bar and the ABA has a publication like that; it's become rather commonplace to have how-to-do-it articles featured in bar publications.

MR. GREENWALD: Do you remember how you came up with the idea? Was it a sudden inspiration or were you influenced by something else?

MR. WOLKIN: Sudden inspiration is the answer.

MR. GREENWALD: Pure genius, right?

MR. WOLKIN: Well, I don't know if I'd go that far, but it was seeing a set of facts and realizing that there was an opportunity for something different that would fit into the environment of those facts.

MR. GREENWALD: Well, during that period, from the late '40s through the '50s into the '60s, when you became the Executive Director, there was clearly a gradual change that took place in the approach and the philosophy of ALI-ABA. *The Practical Lawyer* was obviously one aspect of it, but that grassroots approach that we talked about, that—to use Mulder's own phrase—gradually evolved and changed, and I was wondering if you could tell us how that came to be.

MR. WOLKIN: Well, what happened was that the idea of continuing legal education rapidly took hold in the profession in those 10 or 15 years. One of the things that stimulated the growth was an Arden House Conference that was held I think in 1953.

MR. GREENWALD: I think '58 was the first one, wasn't it?

MR. WOLKIN: Was '58 the first one?

MR. GREENWALD: Then '63 was the second.

MR. WOLKIN: Well, maybe it was '58. And that Arden House Conference—it's in that book there; we could look it up—that Arden House Conference was an important event in continuing legal education. Invited were bar leaders, like John Lord O'Brien, Erwin Griswold, Judge Hand, and also bar-association officials. By that time the idea began to take hold of the state bar having a person in charge of continuing legal education, a professional administrator, and there may have been, by the time of the Arden House conference, four or five such—Felix Stumpf is one of them and there were some others—but one of the recommendations that came out of the Arden House conference was that every state should have a CLE program and that it should be in charge of a professional administrator who would conduct operations and be responsible for the program, plus a committee to support the administrator and so forth, and Arden House I gave great impetus to that idea, and in the years that followed one of the primary aims of the committee was to encourage this movement. There were other recommendations in the Arden House I report, but I think that may have been among the most important, if not the most important one, because the appointment of an administrator, someone in full charge of a program at the local level, was a great impetus towards further development.

And so that was a change. States began to conduct their own programs. In the past, ALI-ABA had been doing programs. For example, I went down and lectured on partnership law all through North Carolina in little towns at one point, and there were others who lectured on taxation at the local level, all at the instance of ALI-ABA. With the growth of state administrators they took over that function, so gradually the emphasis in programming shifted to—in addition to publications—to holding and sponsoring programs directly on subjects of national interest, and that was just starting to happen when I became Director, and that became an important part of the

program thereafter, because it not only contributed significantly to the know-how in the field but to the finances of the ALI-ABA Committee.

You were right on the '58 date because the second Arden House Conference was held in '63, when I became Director. I remember I was told I'd be Director in a meeting of the Council in New York in December, and from there we went to Arden House for the Arden House II Conference, and I was asked to speak there, so that was the chain of events.

But by going into national programming on courses we made a big difference, and it was interesting how eager the response was. We had programs with hundreds of people in attendance. Mendes Hershman always reveled in the story that he had a real-estate program that he inaugurated in California, they put us in a Coconut Grove at the, I think, Ambassador Hotel, and there he was and his cohorts performing in a nightclub on this very serious subject. But the audience was so large we had no other choice.

MR. GREENWALD: Well, I certainly got the impression that in the early days, I think you described it in your book as missionaries going out and moving across the country, especially with the west-coast representative and the central representative, moving around, spreading the gospel of CLE but basically doing it through encouragement of local organizations. And then, as you say, there was clearly this movement toward the national programs being created, as well as being facilitated by ALI-ABA. Was there any controversy about that? Were there people that felt that ALI-ABA should have kept to the grassroots policy?

MR. WOLKIN: That was the subject of discussions at Committee meetings, but I don't think there was any great controversy. What we were doing starting in '63 was expanding the program. We increased the number of publications. Our publications became larger and each book more comprehensive and more complete, and our programs became of a two- or three-day duration,

leading ultimately to the idea of having week-long courses in the summer, starting with one I think in Madison, Wisconsin, at the University of Wisconsin, on the Uniform Commercial Code. The only controversy that emerged out of this what I call success story was that some individuals in the American Bar Association at that point realized the potential that continuing legal education had for activities of a bar association, and they thought this was something that the bar, the American Bar Association, should become involved in and take back, as it were, after having asked us to do it initially.

I might say that between those two periods Harrison Tweed was, almost from the very beginning, insistent that the ABA play a larger role in ALI-ABA. Originally, ALI-ABA had the larger representation and the ABA was just cooperating, and he was very much engaged in involving the ABA to a greater extent, not monetarily but to have equal representation, equal participation. He worked closely with ABA future-President Ross Malone, who was of the same mind, and another ABA President who became a judge, Wally Craig, to have a closer relationship with more involvement. But the pull in Chicago was in the direction of pulling out of ALI-ABA. There is an interesting episode. We had a meeting in New York and to involve closer integration I proposed that every section have a CLE committee and the CLE chairmen of each section be an Advisory Committee to the ALI-ABA Committee. Well, that almost set the ABA house on fire because an order came down enjoining, as it were, anybody from ABA from pursuing this or participating in events of ALI-ABA, and there was serious talk of dissolving the participation, the partnership. That went on for quite a while and it wasn't until people like President [William T.] Gossett and Bernie Segal held high office in ABA that there was a softening of the attitude and closer cooperation, but the price paid for that after negotiations was that ABA received "consent," or agreement, from ALI-ABA that ABA could have a CLE program of its own and that they would

be coordinated, whatever. Even though peace was established and there was no dissolution, the result was that ABA had an active program of continuing legal education. And it's interesting that although ALI-ABA had the ABA name in it and ABA participation, because half the members were ABA, even to this day ABA never fully acknowledged that ALI-ABA was doing important work for ABA members, as it were, and that's just a peculiar thing.

Now, as you know, they're talking about merging what ABA has done with ALI-ABA, forming a new entity, for reasons that involve finances and matters like that. But that period when there was the movement towards separation was a difficult period, but we were prepared to go it alone. We were thinking of what steps we would take if there were a separation or dissolution of what we would call the enterprise, how we would proceed. I never had any doubt that, if there had been a separation, ALI-ABA would have been successful. The ALI interest going it alone would have been very successful and would have succeeded, but I also always thought it would be better to have ABA as a coparticipant because it gave the entity greater universality in the country.

MR. GREENWALD: I guess that the reason that ABA developed its own separate CLE branch was largely because CLE was becoming such a successful thing.

MR. WOLKIN: Well, it became a successful thing and Bert Early, who was Executive Director of ABA, had the correct belief that it would be a great membership attraction, that more members would join ABA if they knew that there was a strong CLE program that was being conducted by its sections and divisions, and he thought that that would be something that would boost ABA membership and the finances and activities.

MR. GREENWALD: Well, you, of course, have watched all of this, and there have been these continual ups and downs, I guess, for 30 years, in the relationship between ALI and ABA; there has been a lot of periods of where there have been talks about ABA pulling out and then talks

about merger, and of course, I guess, there's another such period right now. You actually had another suggestion, I believe, instead of a merger.

MR. WOLKIN: When, currently?

MR. GREENWALD: Recently.

MR. WOLKIN: Well, this all came about when it was agreed that I would leave ALI and ALI-ABA and do other things and a successor had to be selected, so it was determined that there ought to be a search committee and the search committee should also then consider the idea of merger. The President of ALI, Rod Perkins, asked me who should be on the committee and I suggested most of the individuals that are on there—the only others that are on the committee were proposed by ABA representatives for their end of the participation—and they prepared a paper outlining format if they agree there should be a merger and they form a new 501(c)(3) corporation. This new entity would take over the assets of the ABA division on CLE, their copyrights and their inventory, and the assets of ALI-ABA, and would conduct continuing legal education as an independent, separate, nonprofit entity. All the operations and the work would take place in Philadelphia, and it occurred to me that rather than go to something that elaborate there's a much simpler procedure. That is that ALI-ABA could do everything they said could be done by a merged corporation. The Chicago office, which was to be continued under their plan for dealing with sections, would remain in Chicago, and without transferring assets we would accomplish all the objectives that the committee had in mind, with the least difficulties, because there is a lot of opinion that the merger is not desirable, that the two entities should remain separate. But if there is a reason to combine them it seems to me that this is the simplest way to do it and it would save money on both ends. ABA would have substantial savings and we would continue along our way, and the merged entity ALI-ABA taking over many of the activities of ABA and still preserving the

integrity of the sections would accomplish the objectives in an easier, more efficient way. Whether that will be accepted remains to be seen.⁵

MR. GREENWALD: As we speak now we still don't know what's going to happen.

MR. WOLKIN: No, no. That committee is holding hearings and having testimony.

MR. GREENWALD: Well, perhaps we're getting a little bit ahead of ourselves, moving right up to the present. We could get back a little bit further and talk about some of the other developments, particularly after you took over as the Executive Director. One thing that struck me particularly is that you have always been extremely alert to the possibility of new ways of delivering CLE: new technology and so forth.

MR. WOLKIN: Well, all that is a long story and it's in a book that is called *ALI-ABA...XL!* and is available from ALI-ABA. It tells the history of the first 40 years of ALI-ABA, and one of the things it stresses is that while courses and publications are the standard means of delivering CLE, CLE should be concerned with matters beyond those things. On the delivery end there was the idea that use should be made of television, of telecasting programs, and we had the first programs some years ago. We had, I think, 10 programs that emanated from WGBH in Boston, went to a number of sites, then we used our Philadelphia studio, then ABA joined us and ultimately PLI, and we now have the American Law Network, which does 30, 40 programs a year, and they telecast them and it goes out all over the country, so that was one innovation.

Another innovation was that very early it occurred that we ought to tape our programs, audiotape them, and do some modest editing of the audiotapes and make them available to lawyers who are unable to attend, and that became very popular, especially in jurisdictions where there were vast areas to be traversed by lawyers in their cars and they could take the tapes and listen to programs in their cars. And it's funny, somebody told me a story that his children were driving with

⁵ Ultimately the merger did not take place.

him and he was playing a tape that we did on broker-dealers, and originally that was taped by a lawyer in Philadelphia, Gordon Cooney, who was the Chair, and the kids in the car go, "There's Gordon again," when the father turned on that tape. So that was one.

Then we went into videotapes, which was another natural, and we experimented with computer-assisted instruction through CALI [the Center for Computer-Assisted Legal Instruction], which is a law-school organization, and it's evolved into computer-assisted learning, and we had some of their materials converted for use by lawyers. So finding new delivery methods of CLE was an important part of the endeavor to make the subject, the teachings, more widely available.

The other phase that I had strong belief in was that CLE should do something to improve the profession and professional competence. And we started, we had conferences, we had a conference on revising the bankruptcy law, and we called those invitational conferences. People were invited to attend and they were participatory, pretty much like an ALI meeting. A proposition would be advanced and there would be discussion from the floor. And in addition to these invitational conferences we had specific projects. We had a project on the structure, curriculum of CLE, on which we had a Reporter and Advisers, and they spent some time and came out with a very interesting document.

We had another project, the idea that peer review would be a good way to advance confidence; in other words, a lawyer's performance would be reviewed by peers and handled that way, and we developed a very fine proposal under a member of the committee who just died last week. Haskell Cohn was the Chair of it, and he was fully supportive of it and had a good Advisory Committee and Reporter, and we came out with a peer-review project but lawyers didn't cotton to it, so we had what we called an invitational conference in Williamsburg on peer review, a small conference. Lawyers were present, we talked about peer review in other professions, Susan Martyn

was the Reporter for that, and we solicited the views of the attendees and peer review was of little interest or no interest to them. They thought lawyers didn't need anyone to tell them how to do their job better; they could do it best themselves.

From that we went into two other projects, one on enhancing professional competence, which is a very fine document that had an Advisory Committee and Reporters. This committee was chaired by Haskell Cohn, and it came out a couple of years ago with an excellent report, recommendations that deal with conflicts of interest, how you start a representation and how you terminate it, with alternative dispute resolution. There's a wealth of material in there. Whether it's being used today, I don't know. And then we had still another project going forward on enhancing the quality of CLE, how can we improve the quality of CLE. Felix Stumpf was the Reporter on that. Again, he had a group of Advisers and a superb report came out, which, if every CLE organization observed it, I think would really improve the quality of what lawyers are taught.

But all these projects, the latter kind, the peer review and CLE curriculum and quality projects, were subsidized by the ALI-ABA Committee. We had no outside grants for them, and that's how we used the profits that we made on courses and books. Books were never a great profit-making venture. Most of the real revenue came from courses, but they also helped support the publication of our books, which are carefully edited, deal with a variety of subjects, and I think make a real contribution. And our aim was to devote revenues that we earned elsewhere to what I think Ted Kolb calls pro bono activities, pro bono publico, and that's what we did. Then came the recession two years ago, when we had a very substantial loss, which was most unusual for us. The loss was unusual and the amount of it was unusual, so we had to retrench a bit. We stopped certain projects, we had a project going on learning for lawyers, and we had to have some retrenchment in

staff, but there was a very quick turn-around and the following year we had a very substantial profit and now there's opportunity for the Committee to do some of these things again.

MR. GREENWALD: I understand there's interest in reviving that project on adult education in some form.

MR. WOLKIN: Yes, yes. It's a question of how fast they get going on it. It's a good project.

MR. GREENWALD: Clearly one of your major interests all the way through this has been the educational process and how it can be improved. I noticed in your book there was reference also to a rather ambitious plan at one time back in the late 1960s to look at the entire process, as I understand it, of legal education. Willard Wirtz was to be the chairman of that.

MR. WOLKIN: Yes, he did a preliminary study of that and came out with a superb report recommending a project that would look at legal education from cradle to grave, as it were. That required substantial financing, which wasn't available. More recently, Bob MacCrate was Chair of an ABA Commission on Legal Education, and when he discovered this Wirtz report that we had worked on, he was really taken by it as being the very thing he had in mind, and I think what Willard Wirtz recommended shows up in the MacCrate reports, which came out just last summer.

MR. GREENWALD: So sometimes the influence of these projects is a little slow, but they're out there and they eventually do have impact.

MR. WOLKIN: Well, in a sense it's similar to ALI endeavors. ALI does a Code of Criminal Procedure or Model Land Development Code and it promulgates it, after many years of work and dollars spent, and says, here it is, and doesn't try to get anyone to enact it, but it puts it out and then anyone who is interested in those subjects and knows about it can avail himself or herself of it as a model for legislation.

MR. GREENWALD: Was peer review one that you were particularly disappointed in that it didn't go more quickly or have more of an impact?

MR. WOLKIN: Well, I thought peer review was an interesting experiment. It's going on to some extent in hospitals in the medical field. It's going on I think in accountancy, which has had a very extensive, elaborate peer review, where—I don't know if it's still continuing—under the program, accountants from other firms come in and audit a firm's performance and publish a report, and this presumably has had significant impact on the quality of practice in accountancy. And engineers have some form of it, I believe. The only ones to whom it is anathema are lawyers.

MR. GREENWALD: But some of the insights of that peer-review project, as I understand it, are now being utilized in self-assessment projects. If the lawyers won't be reviewed by others, they might perhaps use it to look at themselves and examine themselves; is that a possibility?

MR. WOLKIN: Well, if they will. Among the significant contributions of the peer-review project was its definition, I think, of competence—

MR. GREENWALD: Right.

MR. WOLKIN: —and that's found its way into the code, is it the Code of Professional Responsibility? What do they call it, the ABA Rules?

MR. GREENWALD: Rules, I think, is the way it's listed.

MR. WOLKIN: Yes, and in other documents of a similar nature, so that made a contribution in that respect. Doug Rosenthal worked on that and I think made a helpful contribution by that definition.

MR. GREENWALD: Right.

MR. WOLKIN: But talking about self-assessment, that brings to mind another project that ALI-ABA has been pursuing, and that is to develop self-assessment tests in specific subjects. A lawyer can test the degree of his knowledge in a given field by taking these tests. It's nonthreatening, he can do it in privacy, there's no public record of it, and that would point out his weaknesses, if any, or her weaknesses, if any, and he or she could do something about it. When I left, they were pursuing that in several subjects and I'm waiting for the publication.

MR. GREENWALD: So under your leadership, ALI-ABA I think was remarkable for the variety of delivery methods you developed and also for the pedagogical theory and ideas that were sparked and generated by these projects.

On the delivery, just a question or two. Clearly, by having various kinds of delivery methods—video courses, books, and so forth—you clearly increased the options, the possibilities, for lawyers. Did you feel that ever created a problem for the organization in that we started competing with ourselves in the different mediums?

MR. WOLKIN: Oh, I never had that thought. It's interesting that it occurred to you. As far as I know, there is no evidence of it. Of course, you know, when you have a program and you make audiotapes and then you put out audiotapes, the thought occurs that maybe people are not going to come to the program, they're going to wait for the audiotapes, but I don't think there's any evidence of that. To the contrary, I think listening to the audiotapes may encourage lawyers to attend programs, because the value of attending a program is the interchange, interaction with other lawyers, the ability to go up and talk to faculty members, ask questions.

MR. GREENWALD: I gather, though, it does create certain problems for the administrator in managing the resources, deciding which service is more needed, which one is not so needed, that sort of thing?

MR. WOLKIN: We never thought of it as a problem. We did everything till we had a recession; then we had to start thinking about it, but that wasn't a serious problem. Especially when you have good people who take charge of each one of these activities. We had Larry Meehan doing the television network, Susan O'Connor [Tomita] doing the audiovisual material, Mark Carroll doing publications. I might add—we didn't mention this—that there have been many progeny of *The Practical Lawyer*. There are other periodicals that have come along: *The Practical Litigator*, *The Practical Estate Planner*, several other practical magazines that were spin-offs. And the same thing happened in audiotapes. We didn't confine the audiotapes to tapes of programs; we started audiotape periodicals, as it were: *The Audio Lawyer* for general practice, for real estate we had *The Audio Real Estate Lawyer*, for estate planning there was *The Audio Estate Planner*, and the like.

MR. GREENWALD: Some of that, I guess, was a response to the greater specialization in the profession, having those specialized publications.

MR. WOLKIN: Right.

MR. GREENWALD: Whereas, I guess, back in the '50s there were many more solo general practitioners.

Now another thing that's happened, I suppose, with education in recent years is the widespread, almost universal, development of mandatory CLE education. I know you have, in the past, been skeptical about mandatory CLE. Do you still feel that way?

MR. WOLKIN: Well, not only was I skeptical, I strongly opposed it. I still feel that way. I think it's contrary to the notion of professionalism to a learned profession, and the evidence I see of it is that lawyers take courses, but very frequently they wait till the end of a period when they have to meet the requirement, and they all rush in and take whatever's available; they practice tax law but if the course is admiralty law, they'll take the admiralty course. I just don't think mandatory is

the way to treat a learned profession. I know it's in certain other professions, but I think it's really unfortunate to have it for lawyers.

MR. GREENWALD: So you still feel that education would be better if it weren't for these easy mandatory programs that drive out better ones?

MR. WOLKIN: Well, not only that, but one of the things that's happened—they call new tax acts lawyers full-employment acts—well, mandatory education is, in that sense, a full-employment act. They set up a separate committee with a separate administrator and they have to have separate computers, and the cost of administering a mandatory program is very substantial. How do they recover the cost? They have to increase the tuition; lawyers pass it on to their clients so it raises, in a sense, the cost of legal services all the way down the line.

MR. GREENWALD: In general, are you optimistic about the future of continuing legal education? Do you see any particular problems? There are always problems, I'm sure, but any major problems on the horizon now?

MR. WOLKIN: Well, I'm sure that there are problems. I think the future depends on the people that sponsor continuing legal education, how much imagination and creativity they have, how much foresight. There is some great work being done on it in various countries around the world. Canada has an interesting program; Australia has. In some respects they have gone beyond what most of our jurisdictions do. They have these programs for new lawyers in which they are required to take a practice program for a certain period of time after completing their law school, and these make for better practitioners. So what happens in the future? Well, it depends on the lawyers that run the bar associations and the committees they set up to run continuing legal education and the kind of administrators that are hired to do it and the economics of it.

MR. GREENWALD: Well, there's no doubt that, whatever happens in the future, your work with ALI-ABA will have a tremendous influence on it, and for the good.

Perhaps we should move back. We jumped way ahead and maybe we should move back a little bit to ALI—

MR. WOLKIN: Sure.

MR. GREENWALD: —and some of the things that were happening in your early days with the Institute.

MR. WOLKIN: Well, I thought this was interesting, if I could interrupt. I looked again at the report of that committee on future work of the Institute, and this was in '45 and '46, they'd mapped out a program that in a sense is still being implemented.⁶ For example, one of the things, the Restatement of Mortgages. Well, we just recently—

MR. GREENWALD: They talked about that?

MR. WOLKIN: —yes, starting a Restatement of Mortgages. They spoke about work in criminal law, and that, of course, then we did the Model Penal Code; business associations, we did corporations. They listed, interestingly, that more work should be done in property, and one of the subjects, they said there ought to be a Restatement of Landlord and Tenant, and sure enough, years later Jim Casner became the Reporter for Landlord and Tenant, and there ought to be a Restatement dealing with estates, I think, and wills, and that's going forward now.

MR. GREENWALD: Right.

MR. WOLKIN: So—

MR. GREENWALD: So this was a real blueprint for the future?

⁶ The reference is to the Committee on the Future of the Institute. See N. E. H. Hull, *Back to the "Future of the Institute": William Draper Lewis's Vision of the ALI's Mission During Its First Twenty-Five Years and the Implications for the Institute's Seventy-Fifth Anniversary*, in *THE AMERICAN LAW INSTITUTE SEVENTY-FIFTH ANNIVERSARY 1923–1998* 105, 151–156.

MR. WOLKIN: Yes. The members of that committee had good imagination and real foresight to list all this work that has to be done, and they laid a blueprint out that has—as you mentioned yesterday—Restatement of International Law work. I know ALI now has a Program Committee that passes on programs from day to day ad hoc, but it might not be a bad idea to have, at some point, another committee on the future of the Institute in the 21st century, what kind of projects it might undertake.

MR. GREENWALD: To really take the long-range view.

MR. WOLKIN: Right, and emulate what was done almost 50 years ago in planning for the future and planning ideas that might not be carried out for 30, 40 years, but when the Institute thinks it wants another project. I know the present Director has a number of items on the agenda, but it would be well to have a comprehensive overview of what might be done in the next 50 years.

MR. GREENWALD: Good suggestion. A good part of those 50 years may be spent just doing the Restatement of Torts again, but there are plenty of other things out there to do as well.

MR. WOLKIN: Well, I was looking at the reports for 1947, '48, and '49, and it's interesting how the program expanded. Every year there was a report on the Youth Correction Authority Act and work was starting on federal taxation and keeping the Restatement up to date, interim work, but that was a very narrow program, and gradually it expanded, in the Goodrich administration. When Goodrich died, I think in 1962, the idea of a Model Land Development Code had been approved, and I think the idea of a Pre-Arrest Code of [criminal] procedure had been approved, and when Herb Wechsler came in he was very successful in getting funding for those projects so that they were able to go forward. But if you compare the work in '47, it's been like you're looking at the base of a vase that expands upward and it's just getting bigger and bigger.

MR. GREENWALD: Division of Jurisdiction was another Goodrich-inspired project.

MR. WOLKIN: That's right.

MR. GREENWALD: Wasn't it, because of his federal interests and background?

MR. WOLKIN: Well, back in the old days the Institute had done a Code of Criminal Procedure; one of the things I did very early, when I first started with the Institute, was make a compilation of how many states had adopted provisions of that. But the groundwork was being prepared for work in the future. I mean, this notion that the Institute had finished its mission was just incorrect. There was an agreement with the Commissioners [on Uniform State Laws] to draft a Uniform Commercial Code, and while they were working on Articles separately, as I said yesterday, Bill Schnader put it together with scissors and paste and made the Uniform Commercial Code out of it, and there was much [else] to be done.

MR. GREENWALD: What about the Second Restatement? You mentioned before, of course, there was talk about the Institute having nothing more to do, but it clearly became obvious that there was plenty to do with the Restatements because these things tend to get out of date. When it got started again, in the early '50s, did Goodrich have any particular ideas about how the Second Restatement might be different than the first?

MR. WOLKIN: I think in his '48 or '49 report he mentions that it might be done differently, that they would cite authorities, that where there was division [of opinion] they would take what they thought the better view—they wouldn't count noses—that it wouldn't be speaking ex cathedra as much as the first Restatement, and that there would be cases cited in the Reporters' Notes. He referred, as an illustration, to the Notes of Seavey and Scott to the Restatement of Restitution, which was one of the first times that was done, and that was carried on and in later

years. Herb Wechsler, when he was Director, wrote an article about this matter of the Institute's approach to Restatement work, whether it states law as it is or does something a little different.

MR. GREENWALD: Yes, that was, I guess, precipitated by the Restatement of Torts, wasn't it? Some people felt that the Institute was departing from its role of stating the law as it is and suggesting what it should be.

MR. WOLKIN: That seems to come up in every Restatement.

MR. GREENWALD: Yes.

MR. WOLKIN: There are some who have this notion that the Institute should strictly state what is the law, what they think is the law, and each time the Director has to explain. Goodrich laid the foundation for that, and Wechsler very eloquently elaborated it in that article—where was that, in the *ABA Journal*?

MR. GREENWALD: There was a version of it in the *ABA Journal*;⁷ I think a longer version of it was in the *St. Louis Law Review*.⁸

MR. WOLKIN: *St. Louis Law Review*?

MR. GREENWALD: Also in a speech to the Chief Justices I think he delivered.⁹

MR. WOLKIN: And Geoff Hazard has been citing that and talking about it, and it keeps coming up; I guess it always will.

MR. GREENWALD: Herb Wechsler's innovation of phrasing this was to suggest that the Institute should regard itself as being essentially in the same position of a court, the highest court in the land, obviously paying attention to precedent but not being absolutely bound by it, and also

⁷ See Herbert Wechsler, *The Course of the Restatements*, 55 A.B.A. J. 147, 149–151 (1969).

⁸ See Herbert Wechsler, *Restatements and Legal Change: Problems of Policy in the Restatement Work of The American Law Institute*, 13 St. Louis U. L.J. 185, 189–194 (1968).

⁹ The speech was delivered to the Conference of Chief Justices at its 20th Annual Meeting in Philadelphia on August 1, 1968. It is referred to and formed the basis for the article in the *St. Louis University Law Journal*. See 13 ST. LOUIS U. L.J. 185, 185 n.* (1968).

looking at policy and looking at new trends and new tendencies as well, and that clearly must have made a difference.

MR. WOLKIN: Well, to thoughtful readers it makes a difference.

MR. GREENWALD: Yes. But as you suggest, there are other people.

MR. WOLKIN: Maybe that article ought to be condensed and be a preface to each new Tentative Draft.

MR. GREENWALD: That's a good thought. You know what else is going to happen? I believe Geoff Hazard, just a week or two ago, suggested that the quotation from Wechsler about that should be put on the wall in the meeting room downstairs so that all the Advisers can see it as they work on it, because many times when Advisers come in to work on a project they're not fully aware of this latitude.

MR. WOLKIN: Yes. That should even be put into each draft, on the page I mean, so that the members are aware of it.

MR. GREENWALD: That's a thought.

MR. WOLKIN: It becomes dogma rather than something that has to be pulled out whenever somebody is unhappy that we're making new law, not restating it.

MR. GREENWALD: Right.

MR. WOLKIN: I think the trouble flows from the name Restatement. Many people take a narrow view of what it means. To restate something means to restate it, not to newly state something.

MR. GREENWALD: Well, I guess it can be taken two ways. If you restate something it can mean stating it over again or it can mean stating it in a new way, and clearly we have the

concept that it's more than simply stating it the same way, it's got to be stated in a clearer way, and hopefully a better way.

Well, you mentioned Herb Wechsler already, and we should probably talk about his tremendous influence, which you observed, first of all as a Reporter, as the Chief Reporter for the Model Penal Code, and then later on as Director.

MR. WOLKIN: Well, on the Penal Code he really got together a symphony of lawyers and orchestrated it beautifully. He had all the disciplines represented, he had a sociologist, he had criminologists, he had psychiatrists, he even had an English professor—

MR. GREENWALD: Lionel Trilling, I think it was.

MR. WOLKIN: —dealing with it, and he ran a tight ship as the Director, but [he was a] very excellent Reporter; he always paid attention to what the Advisers were thinking, the Council was thinking, and the membership, and he would make a presentation that would cover all aspects and [he would] abide by their conclusion. Geoff Hazard was a great Reporter too when he took over Restatement of Judgments, and was very impressive in the way he handled the subject.

MR. GREENWALD: Good preparation for becoming a Director, I guess, to be a good Reporter first.

MR. WOLKIN: Goodrich had been a Reporter also on various parts of [Conflict of Laws], and in fact he was the Reporter on keeping the Restatement of [Conflicts] up to date, that interim [project]. And he had an interesting way when he was a judge and hearing an appeal—it was like conducting a class; he would ask the questions—and when he was Director, at Advisory Committee meetings he would summarize, when necessary, and move the meeting along very efficiently; it worked.

MR. GREENWALD: You talked about how well Herb Wechsler orchestrated the Model Penal Code. Was that project controversial? Was there a lot of pressure put on the Institute for some of the positions that were being taken or lobbying? Some of those points I imagine today would be great flash points, like the view on abortion and maybe the death penalty and so forth.

MR. WOLKIN: Well, they were, abortion, the death penalty, I think. On the death penalty they decided to take a nonbinding vote of the members, and on abortion they reached some kind of—I don't remember the details—compromise solution.

MR. GREENWALD: But these were rather progressive views for the time, I would think, and later on, they weren't intended as constitutional law, obviously, but they clearly influenced developments in constitutional law.

MR. WOLKIN: Well, the insanity test was another big issue.

MR. GREENWALD: Right.

MR. WOLKIN: The defense of insanity.

MR. GREENWALD: A very influential formulation, obviously.

MR. WOLKIN: Wechsler did a superb job on the Penal Code and thereafter, when he became Director, brought the same insights, intelligence, to every project, when he sat on Advisory Committee meetings or Council meetings and the like. The Institute has been very fortunate in the quality of its Directors.

MR. GREENWALD: Was Wechsler's style markedly different from Goodrich's as Director?

MR. WOLKIN: Yes. Wechsler was in a sense more verbal than Goodrich, and by that I mean you read a Goodrich Report and it's marked by brevity and pithiness. A Wechsler Report has overlays of intellectual content that he works very hard at developing.

MR. GREENWALD: A very careful, precise writer?

MR. WOLKIN: Very careful. He writes everything, as I recall, out in longhand, very straight, small writing and very specific, and for him I think it was a worthwhile but hard-working effort and the results showed in his writings, in the articles—that Holmes lecture at Harvard¹⁰—and other works. He made a very significant contribution to Institute work, and with it all there was a certain amount of conviviality, especially in Advisory Committee meetings. Golf was an important element of every meeting, when possible, as was hospitality.

MR. GREENWALD: There was an interim period between the death of Goodrich, which I guess was rather sudden, and the [selection of Wechsler].

MR. WOLKIN: Yes. Goodrich went in to have a hip replacement at the university hospital. He had severe arthritis and had great pain walking, and he finally decided to have it replaced, which today is a pretty routine operation. He went to Penn and apparently had the operation and it was successful, but thereafter, a couple days later, he had an embolism. I remember getting a call very, very, very early in the morning from his daughter that her father had died.

MR. GREENWALD: And so that, obviously, was a tremendous shock to the Institute and to you, and there was then a period of transition before Herb Wechsler became the Director, although he had coincidentally just finished the Model Penal Code. But as I understand it, you were in effect not only taking over at that period as the Director of ALI-ABA but for a while you had to be at least the interim Director of ALI too, until Wechsler came in. So that must have been a really busy period for you.

MR. WOLKIN: Good summary.

¹⁰ Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, Oliver Wendell Holmes Lecture at Harvard Law School (April 7, 1959), in 73 HARV. L. REV. 1 (1959), *reprinted in* H. WECHSLER, *PRINCIPLES, POLITICS, AND FUNDAMENTAL LAW* 3 (1961).

MR. GREENWALD: But obviously your relationship with Wechsler would have been a different sort than with Goodrich, because Goodrich was your mentor, in a way.

MR. WOLKIN: Well, it was different in other respects. Goodrich was in Philadelphia, and while he didn't spend most of his time at the office, he would come out about once a week or once every two weeks. Wechsler was in New York and most of the communication was by telephone—occasionally I would go up there or at Advisers' meetings we'd see him—so that was different. And I didn't know Wechsler as well as I did Goodrich when Wechsler came in as Director, the relationship developed over the years, and after Wechsler became Director we had many meetings at New York. Herb picked the Westbury Hotel, which was nearby then, and that became our meeting place for most of the Advisory Committee meetings, and people liked it; it was a nice hotel in a good location. And then in the summertime there would be meetings at some resort-type places, not too many of them but occasionally. When Jim Casner came in, we would meet frequently at a country club outside Atlantic City, the Seaview Country Club, which had two golf courses, and it made for very pleasant meetings.

MR. GREENWALD: Now the meetings are almost invariably here in Philadelphia, of course, in our offices, which are much more efficient, but maybe some of that congenial atmosphere is lost as a result?

MR. WOLKIN: Well, I don't know. The new President has some ideas about travel.

MR. GREENWALD: Well, that's right, there was that Unfair Competition meeting.

MR. WOLKIN: They wanted a final meeting at that resort area.

MR. GREENWALD: Seaview.

MR. WOLKIN: So they met down in Georgia.

MR. GREENWALD: Right, at Seaview. But also during that period when Wechsler came in as President—

MR. WOLKIN: As Director.

MR. GREENWALD: I mean as Director, but a new President took over right about that time too, Norris Darrell succeeding Harrison Tweed, and did that change the dynamics of the leadership of the Institute?

MR. WOLKIN: Well, each President was a distinct personality. I wasn't present when George Wharton Pepper was President but I attended some Annual Meetings and Council meetings when he was Chair of the Council, and George Wharton Pepper had his own style—it was almost Emperor Pepper—and a very grand and beautiful way of doing things. Harrison Tweed came in and was considerably less formal. He introduced, to his lasting credit, a reception with real liquor instead of punch, and he made that big change when he became President of the Association of the Bar of the City of New York; he made that a lively place.

(The discussion was adjourned and resumed on July 26.)

MR. GREENWALD: Today is July 26, 1993, and we are continuing our interview with Paul A. Wolkin. When last we met, you were reminiscing about some of the Presidents of the Institute and in particular you were talking about Harrison Tweed. Do you have some more thoughts about Harrison Tweed?

MR. WOLKIN: Oh, he devoted an immense amount of time to the Institute, both to ALI matters and to ALI-ABA. On the ALI side, he had a strong interest in almost every project, particularly in the Model Penal Code, as it moved along with Herb Wechsler, and it was usual for him to attend nearly all Advisory Committee meetings on every project. He would be in constant

communication with Judge Goodrich, the Director at that time, about aspects of the work as it was going forward, and his interest showed, I think, in improving the quality of the enterprise.

He also had a strong interest in continuing legal education. You may recall, I think I said earlier, that it was when he became President in 1947 that work began in continuing legal education, and he was one of the prime movers in bringing that about. He knew everything that happened in the work on that project. He was constantly calling John Mulder and talking to him about it, and he had a personal knowledge of each of the members of the ALI-ABA Committee. In those days, there were frequent meetings of that Committee. I know they met at least twice a year, once at the time of the ALI Annual Meeting in Washington and also in the winter in Chicago; in those days, I think the ABA had its midwinter meeting in Chicago, and the site was the old Edgewater Beach Hotel, I think, on the lake. Those were some of the coldest visits I ever endured to that area, but Tweed ran the show of the ALI-ABA Committee. When I became Director of ALI-ABA, I met with him almost weekly, I think, in New York to review what we were doing, and he was interesting. I'd come up to his law firm, and I think by that time he had retired as an active partner, and one of the penalties of that was a smaller office but the office still had a good view, and preliminary to every lunch he'd open a closet and extract a bottle of Scotch and that's the way we started lunch. I remember spending one week with him in Chicago at an ABA meeting, and he was there alone, and I spent every evening with him in what was a threesome: Tweed, Wolkin, and a bottle of Scotch. And it worked out very well. His interest in continuing legal education was stimulating. He always egged me on to do more. He was always interested in new ideas and new projects. He was, at one point, very put out with the American Bar Association because of their inclination to leave ALI-ABA—I think I spoke about that earlier—and he almost treated that as a personal affront to him and he became disenamored in those days about the ABA. At one time—I

don't know if I mentioned this—at one time he had considered running for President of the ABA, and this was while he was also President of ALI, but there was one individual who put that idea down real fast and that was Judge Learned Hand. I understand he told Mr. Tweed no way can you do both.

MR. GREENWALD: Conflict of interest or just too much work?

MR. WOLKIN: Too much, focus entirely on ALI, and Tweed followed that astute advice. Harrison Tweed also had a great interest not only in CLE as it manifested itself in ALI-ABA but in spreading the word nationally. You may recall that one of the primary objectives of ALI-ABA was to interest local and state organizations in emulating what we were doing, in other words, organizing programs in continuing legal education, and one of the ways Tweed thought of encouraging this was to build up a camaraderie among the various CLE administrators as they were being appointed and increasing in number. Originally I think there were but four or five, and it happened that at ABA meetings John Mulder and I would meet with three or four or five administrators. We would talk very informally about what we were doing, and I went back one time with John and I said, “John, we ought to formalize this group and have the administrators form an organization, a professional organization of CLE administrators.” Well, John took that idea up and Felix Stumpf, who was the CLE man in California and who really contributed a great many innovative ideas to continuing legal education, particularly in the publishing area, was receptive to the idea when it was put to him by John, and there were a few people then—I'm trying to recall what their names were—there was Felix, I think there was somebody by the name of Eli Jarmel, Richard Milstein. They may have come in at different times, but that was the nucleus around which the organization now called the Association of Continuing Legal Education Administrators was organized, and the organization grew from a handful to the many, many members that it has now,

but the origin of it goes back to what John Mulder and I were talking about when we participated in these informal sessions of a few of us.

MR. GREENWALD: So that was a major development in the nationalizing and spreading of the word of CLE, having a national organization?

MR. WOLKIN: What ACLEA [the Association for Continuing Legal Education] did, to its credit, was it provided a forum for those who were members to learn of the techniques for advancing CLE. In those days, particular jurisdictions would have special ideas of how to spread the word, how to have better education, how to improve quality, how to have more people attend, and they would come to an ACLEA meeting—ACLEA still meets twice a year at the time of the ABA meetings, at the time of the midwinter meeting and at the time of the ABA Annual Meeting—and at these sessions there would be an exchange of ideas, an exchange of plans, and later on experts in various fields, such as in advertising or promotion or in learning, would come in and speak to the group, and this has been of great value to those who are responsible for conducting continuing legal education.

MR. GREENWALD: In those pioneering days, was there any tension in ACLEA or among the CLE administrators between the local organizations and the national organizations?

MR. WOLKIN: Well, to some extent there was. It was a delicate matter. ALI-ABA started out when there were no state organizations and to set an example would conduct programs at the state level frequently on subjects of particular interest to the states, such as law partnerships, and as ACLEA grew, or as the number of state administrators increased, each of them was particularly concerned about the welfare of the organization in his jurisdiction, or her jurisdiction, and there was concern that a national organization running programs in a jurisdiction might siphon off attendance, interest, money, to the detriment of the local organization. But this was worked out by

discussion and example, and experience showed that this did not happen, the more CLE was offered in a place the more interest there was, whoever was offering CLE, and in time it more or less worked out.

There were a couple national conferences that dealt with the specific problem of coordinating activities and avoiding conflicts, and there were sets of guidelines that were developed that CLE administrators, if they signed up for those guidelines, were expected to follow and did follow, and it turned out to be a pretty civilized enterprise all around. If organization A was doing a program and organization B announced it was going to do one, then they would talk about it and they would avoid any conflict as to time and date and place.

MR. GREENWALD: I take it that Harrison Tweed was a great supporter of moving beyond the original grassroots policy and having ALI-ABA become an active sponsor of national programs. Is that right?

MR. WOLKIN: Well, I don't know that he consciously promoted that or endorsed it, it's just something that happened, and when it produced substantial revenues there was little reason to quarrel with it. It helped spread the word and spread the activity.

MR. GREENWALD: How did John Mulder feel about that? Reading between the lines of your book, I get the impression that he wasn't altogether comfortable with the new approach.

MR. WOLKIN: Well, John, to his credit, really launched CLE around the country. He planted the seed in many jurisdictions that flowered, and he had some concern about ALI-ABA straying from direct support of all the CLE organizations and not giving them the attention that they should have, but he liked the idea too, because it helped support the enterprise and the enterprise needed all the support it could get in the late '50s and early '60s.

MR. GREENWALD: You mentioned that one thing that he wasn't comfortable with was marketing, the idea of marketing the CLE product.

MR. WOLKIN: John may have had some reservations about that, but he looked at CLE in a different way, I think, than those who followed him, when CLE was a different thing, a different enterprise, would regard it. He looked at it as a small-town, small-state, small enterprise, replicated in many places, rather than as one over-large enterprise encompassing many facets.

MR. GREENWALD: I see. Now, Harrison Tweed, after he stepped down as President of the ALI in 1961, did continue for some years after that as Chair of the ALI-ABA Committee, I believe. Norris Darrell came in as President in 1961, but he also was quite active in CLE, wasn't he?

MR. WOLKIN: Yes, but Tweed's interests kind of—I should mention this—shifted. I forgot the date, but President [John Fitzgerald] Kennedy had a meeting of lawyers from all around the country to do something about civil rights. Those were the days when there were problems in some of the states that involved the federal government, and Kennedy called a meeting of lawyers from all over the country, which led to the development of the Lawyers' Committee for Civil Rights [Under Law], I think, and the Chair of that, the original Chair, and he may have been the one that promoted the idea, was Bernie Segal, Bernard Segal of Philadelphia, an active member of the Institute. But Bernie Segal persuaded President Kennedy that he, Bernie, needed a Co-Chair and the Co-Chair should be Harrison Tweed, and Harrison Tweed sort of was pushed into it, I think, with some reluctance, but after he took the position co-chairing it, being Co-Chair with Co-Chair Segal, he became a great enthusiast and he did a tremendous amount of work in that and I think, at that stage, his interest in CLE sort of gave way to this more important cause, in his eyes, that needed national attention.

Now you mentioned Norris Darrell coming in. Yes, he became President. Norris's original interest in the Institute was in tax work, and he was responsible for the first tax project the Institute did in the late '40s and early '50s. He gave the project much of his attention, and when it came to choose a successor, the Nominating Committee chose him and he entered the scene, became very active. As I mentioned earlier, most of the Advisory Committee meetings were in New York at the Westbury near Herb Wechsler's home, and Norris became a faithful attendee at those programs. He was a supporter of continuing legal education. He worked at it. I don't think he gave it the time and attention that Harrison Tweed did, but maybe by then it didn't need it, except as there was this crisis with the ABA, and Norris worked on that. I remember the agreement, I think of 1974, between ABA and ALI, was worked out under Norris's auspices and under Chesterfield Smith's auspices, then President or President-Elect of the ABA, and I remember meeting in Norris Darrell's apartment on Fifth Avenue with Chesterfield Smith and Norris and working out the final details of that agreement that sort of put the enterprise back on track, on two tracks, that of ALI and that of ABA. It was an interesting meeting. We had dinner there, Darrell sent out for Chinese, and it was a pleasant evening and with good results. And Norris continued to push the work of the ALI and support it. He always wanted to get funding to support more work, and one of his ideas was to have an endowment that would pay the compensation of the Director and Executive Vice President, or Assistant Director at that time, but that didn't quite come off—I talked to them in those days about having a capital-fund campaign. There were efforts to get people to write the Institute into their wills, but the capital-fund campaign really never came to fruition until Rod Perkins became President.

MR. GREENWALD: Norris Darrell, as you mentioned, first became active in the Institute through the tax work, and he may have been one of the few people who was simultaneously elected

to the Institute and the Council, I believe, in 1947, and was very much instrumental in starting the work on the federal tax project. Did he remain very involved in the tax work later on too?

MR. WOLKIN: Oh, absolutely. I might mention that he had a special connection with the Institute. Norris Darrell was married to Learned Hand's daughter, Mary,—

MR. GREENWALD: Right.

MR. WOLKIN: —and so there was a special reason for the affinity to the Institute of maybe even to his becoming President. But that's an interesting sidelight.

MR. GREENWALD: All right. Well, he stepped down, I think, in 1976 and was succeeded by Judge Cutter for a relatively brief period of about four years. Do you have any recollections about Judge Cutter?

MR. WOLKIN: Oh yes, one thing stands out particularly. Judge Cutter, I might say, gave the Institute nearly all of his time that he had to spare from his work as a judge, but I remember one of the early meetings Bennett Boskey, Judge Cutter, and I had in Boston. We had discovered, I think in connection with preparing the budget, that certain charges that were made at the annex resulted in ALI-ABA being overcharged and added up to a tidy sum, and this was one of the problems we faced early in the administration. The question was, what do we do about this? You know, I think only three people knew about it, when I pointed it out, Bennett and Judge Cutter and myself, and Judge Cutter, straight as an arrow, said, "Well, we can't let that happen; even though it's going to cost the Institute a substantial sum of money, the Institute should reimburse ALI-ABA for this overcharge." And that's what was done. I think that incident illustrates the character of the person that imbued everything he did as President of the Institute. He had a wry sense of humor and didn't have the light touch that Harrison Tweed or Senator Pepper or Norris Darrell had, and he

was businesslike, efficient, and straightforward. If you read the Proceedings or read the Proceedings of the Annual Dinner, you will get that sense.

I might add, Norris Darrell had a very light touch. He frequently at Council meetings, which were held at the Association of the Bar, would go to the piano—there was a piano in the room there—and he loved to play tunes. He was a good pianist. I might add, he was the son of, I believe, an itinerant minister and somehow settled in Minnesota and later was law clerk to a [U.S.] Supreme Court justice. But he had a song that he sang, a ditty about the queen of bees; I have asked his son to send me the lyrics of it. You might follow up on that. It's really a very cute little ditty and he loved to perform that for the Council on occasions.

MR. GREENWALD: Queen of bees?

MR. WOLKIN: Yes.

MR. GREENWALD: Okay. Well, I guess the other President that you did deal with was Rod Perkins, and I don't know if any President was ever more identified with work on a single project, although he was also involved in so many others, but did you ever know one to get so involved with a project as he did with Corporate Governance?

MR. WOLKIN: Well, Tweed was very involved, I think, with the Model Penal Code, and perhaps Wechsler would corroborate that, as well as other projects, and Darrell was involved with tax projects, but I think no President did as much work,—

MR. GREENWALD: Substantive work.

MR. WOLKIN: —hard work on a project as Rod Perkins did. There were problems in the other projects, political problems, as it were, but I don't think they were of the magnitude that they were in the Corporate Governance Project, and that required extraordinary skill, patience, negotiating, all the skills of a successful corporate lawyer, which Rod Perkins brought to bear with

success in the Corporate Governance Project. That, I think, was almost coterminous with his administration as President. Somehow or another Institute projects have a way of living beyond their projected lifetimes, in fact several times over their projected lifetimes, and Corporate Governance was such a project.

MR. GREENWALD: This was originally supposed to last only three years, I believe, wasn't it?

MR. WOLKIN: Yes, and we set it up on that basis. I remember working on a budget, I suggested that, you know, that if we're going to do it in three years we ought to have more time from the Reporters, and we gave them compensation that was several times the normal rate of compensation on the theory that they would devote time and bring it to fruition within a very short span of time, but that was another unfulfilled prophecy.

MR. GREENWALD: Can you think of any other project in which the climate was so—

MR. WOLKIN: Charged?

MR. GREENWALD: —misjudged, so misjudged that you expected it to be easy and it turned out to be much more complicated?

MR. WOLKIN: Not to that extent. The Model Penal Code had periods of stress; there was the death penalty and it was decided there to have a vote of the members.

MR. GREENWALD: Right. There weren't that many people who actually participated in that vote, as it turned out.

MR. WOLKIN: Well, there weren't that many members in those days. And there was concern about, I think, abortion in that project, and there was concern about consensual acts among adults, but they didn't take on the crusading element that we saw on the part of the opposition in the Corporate Governance Project. In the Torts project there was, to Prosser, some opposition, but that

was usually voiced during the discussion at the Annual Meeting and overwhelmingly defeated. So there was no continuing fight on that. And in one of the tax projects, there was considerable opposition to some of the ideas Jim Casner was advancing in the federal estate- and gift-tax field, and interestingly the Tax Section at the time had showed—some members anyway—hostility to ideas that Stanley Surrey was advancing in the Income Tax Project and particularly to Jim Casner with his proposals. His first draft, as I recall, had to be abandoned, and it's interesting to note that the ideas Jim espoused have become embedded in the law, the marital deduction and transfers among spouses—I'm not a tax lawyer; I'm just trying to recall some of them—and treatment of the taxation [in the] Subchapter J project, matters that the Sections had opposed are now, in the main, embedded in the tax law. But there was opposition on the Council to some of the ideas that were advanced in the tax project. There was very ardent support of the Institute by Mr. [Robert N.] Miller, who I think at one time was Commissioner, who thought [nevertheless the] ideas being composed were far too radical, and so did some of the Tax Section, but I think those controversies turned out to be more civilized than the controversy that erupted in the Corporate Governance project.

MR. GREENWALD: I gather Herb Wechsler was quite appalled at the organized quality of the opposition to Corporate Governance?

MR. WOLKIN: Oh yes, he was. He would have been appalled by any organized lobbying, and so was, I think, in a sense Rod Perkins, and—if you read the Proceedings—I think he stated what the proper conduct of an ALI member should be when he differs with a project.¹¹

MR. GREENWALD: Right.

MR. WOLKIN: But everything turned out, I guess, as well as could be expected.

¹¹ See 68 A.L.I. PROC. 9–10, 225 (1991).

MR. GREENWALD: And the Institute has never been really a stranger to controversy and wouldn't expect to be, I guess.

MR. WOLKIN: No.

MR. GREENWALD: And I imagine that will continue. Well, you've talked about Jim Casner a little bit. Was he one of the, perhaps the most, memorable of the Reporters that you've worked with?

MR. WOLKIN: Oh, I think most of the Reporters were memorable. I think Stanley Surrey was superb as a Reporter. Originally he was a Reporter, I think, on the Federal Income Tax Project. Later on he sort of was a flash point for people in the Section. Some of the ideas that he had when he was in government, in Treasury, aroused considerable opposition, and after the Federal Tax Project was completed, work on taxation was dormant. I had a number of conversations with Stanley, and I think he and I conspired, in a sense, to have the Institute go back to tax projects, and gentle persuasion I used on Herb Wechsler I think won him over, and the Institute then embarked on other tax projects. Stanley sort of was the coordinator or the overseer, he was not the active Reporter, although he would be sitting at the table with the Reporters.

MR. GREENWALD: This was in contrast to the original project, when he was the Reporter, I guess, back in the '40s?

MR. WOLKIN: Yes, yes, and then even when Casner started, while Stanley was alive he was sort of omnipresent on the project. He worked well with all the Reporters and we had Subchapter K, Subchapter J, the—

MR. GREENWALD: International Aspects?

MR. WOLKIN: —International Aspects, accessions tax studied by Bill Andrews, but Jim, he had a remarkable career as a Reporter. It started almost at the beginning of the Institute and

lasted in one way or another throughout his lifetime. He may have been a Reporter on more projects than any other individual. And he had his way of challenging the audience to respond to his outrageous statements and then working things around so everything came out the way it should.

Seavey and Scott were great Reporters. Seavey did Agency and with Scott did Restitution, and Scott, of course, did Trusts, and they were almost unchallenged as Reporters.

Willis Reese had real difficulty. He was the Reporter on the Conflict of Laws, and in the early days he aroused the antagonism, for some reason, of a number of Council members. Willis had some remarkably new ideas and concepts that he incorporated in Conflict of Laws, which was, the field was, generating all sorts of new thoughts, getting away from the conflicts. But Willis had a very loud voice that he couldn't really modulate, and Willis had another problem that when there was disagreement he would agree with everybody, and this was difficult. He particularly got Judge Learned Hand upset about that, and it reached a point where there was a special meeting of the Executive Committee that was called really to see what they were going to do about the reportership for Conflict of Laws. Well, I did some lobbying with some people then—I didn't want anything to happen to Willis—and the solution was to appoint as Reporter with him—I forgot what his exact title was—Professor Scott, and after that the project went on to conclusion, after a long period of time. As you may recall, there was even difficulty with Conflicts later on.

MR. GREENWALD: The revisions in the late '80s?

MR. WOLKIN: Not the revisions so much, very recently in the—

MR. GREENWALD: Oh, in the Complex Litigation Project.

MR. WOLKIN: Complex Litigation Project. They're very difficult questions.

MR. GREENWALD: Some of the scholars, some of the members of the Institute complained that the proposals for the Complex Litigation Project were going back to more specific rules and retreating back to the first Restatement rather than—

MR. WOLKIN: That's right.

MR. GREENWALD: —the greater flexibility of the second. So I guess it's a continuing battle over Conflicts.

MR. WOLKIN: Contracts was a long, enduring project, but Allan Farnsworth did a superb job on that.

MR. GREENWALD: He replaced Braucher, when Braucher became a judge.

MR. WOLKIN: Braucher, of course, was first rate as a Reporter, and both Braucher and Farnsworth really contributed a great deal to the ultimate success of that project.

MR. GREENWALD: What about Prosser on the Second Restatement of Torts?

MR. WOLKIN: Well, Prosser was a freight train, or not a freight train, an express train that you couldn't stop. He had ideas, and he had very supportive Advisers: Wex Malone, to name one of them, and the Keetons, and Justice Traynor, and he came in with, what was it, § 420 or—

MR. GREENWALD: Section 402A.

MR. WOLKIN: — § 402A, and I think at that point the objection was raised that there were only two, he could only cite two or three jurisdictions for the proposition but he was confident. And he made the statement that in time everybody would adopt § 402A.

MR. GREENWALD: Guess he was right.

MR. WOLKIN: His forecast was correct. The Institute had many, many great Reporters. Each had his own style. Now take Judgments, for example. The Restatement of Judgments originally I think was done by Scott and Seavey, who also did jointly, if I remember correctly, the

Restatement of Restitution, and then when it came time to do a new Restatement of Judgments they selected Professor Kaplan—Ben Kaplan; I don't know if he was a professor then or already on the Supreme Judicial Court of Massachusetts.

MR. GREENWALD: I think he was a professor then.

MR. WOLKIN: And [Professor] Shapiro, and they were well on their way when I think Shapiro was taken ill and matters came to a point where they had to have a new Reporter, and who did they select? Somebody by the name of Professor Hazard, who did a tremendous job on that Restatement and I think so impressed everyone with his work that that was the reason for his ultimate selection as Director to succeed—among other reasons but that especially—to succeed Professor Herb Wechsler.

MR. GREENWALD: Just as Wechsler had become Director after having done such a good job with the Model Penal Code as Reporter.

MR. WOLKIN: Right.

MR. GREENWALD: You mentioned earlier that people like Scott and Seavey were virtually unchallenged. I get the impression that the Second Restatement of Trusts, for example, did not vary all that much from the first Restatement, and because of Scott's authority it was more of an updating job than a real revision the way we're used to now. Is that right?

MR. WOLKIN: I think that's right. It may have been true of Agency also, which Seavey did, and Scott did Trusts. Conflict of Laws, Second Restatement, was a complete changeover and departure in theory and rules. Contracts became a different kind of Restatement in the hands of Braucher and Farnsworth, and at that time it was a great influence on the Uniform Commercial Code.

MR. GREENWALD: Right.

MR. WOLKIN: They interacted, the two of them.

MR. GREENWALD: You get the impression, as a matter of fact, that the earlier Restatement Second Restatements were essentially regarded as revisions—they followed the same Section numbers and the same order and so forth—whereas the later ones seem to be more complete rethinkings, and in Torts you had § 402A. Instead of renumbering things, to follow the usual pattern they just put in a § 402A. Contracts was following the original order, I think, for a while, and then halfway through it they simply decided to reorder the whole thing, and subsequent projects have been much more complete revisions.

MR. WOLKIN: Well, as time went on, the work rules for Institute efforts became less rigid.

MR. GREENWALD: Right.

MR. WOLKIN: That's one of the differences between the first Restatement and the second Restatement. The second Restatement had Reporters' Notes, cited authorities, didn't speak, as Goodrich used to say, so much *ex cathedra*, and I guess as they go into third Restatement there's still more flexibility.

I should mention another Reporter that made a lasting impression was Butch Fisher on the Foreign Relations Law Restatement. That subject evoked controversy on some of the particular Sections.

MR. GREENWALD: Yes, certainly did. I can remember the controversy with the second one in particular, the famous incident where the project was delayed for a year so that there was a chance for more comments, at the urgings of the State Department and other government agencies.

MR. WOLKIN: It seems as the work of the Institute gains more and more influence nationally, it also gains, brings in, more interest and therefore more controversy, because there is a wider audience with more diverse interests to respond to what's being put forward.

MR. GREENWALD: One other Reporter I wanted to ask you about, maybe the only Reporter I can think of who subsequently became not Director but President of the Institute, Charles Alan Wright. He was, of course, a Reporter for the Division of Jurisdiction project.

MR. WOLKIN: Yes, he and—

MR. GREENWALD: Field, wasn't it?

MR. WOLKIN: —Field of Harvard were Reporters on that, and Charlie Wright was elected to the Council following that reportership. He was an ardent participant in the affairs of the Council and a very devoted member, and his contribution was such that when it came to selecting a successor, his name loomed larger and larger and ultimately he was the choice.

It's interesting to note, we were talking about increased opposition and how the ways of the Institute have changed over time: from an originally very rigid set of rules to be followed, things have become broadened and practice has become more flexible, and an illustration is, for example, the degree to which members participate in the work of the Institute.

At the time Geoff Hazard became Director, we discussed that there ought to be committees on program, Institute program, and Institute procedures, and I had for some time harbored the notion that it would be interesting to have members of the Institute invited to review a draft prior to its going to the Advisers, the notion being that why wait until the Annual Meeting to have the input of interested members, at which point drafts are pretty well formulated. Why not have their input at an earlier stage so that the Advisers and Reporters will have the benefit of it when the Advisers meet, and then the Council will have the benefit of the Advisers and the members and so on down

to the Annual Meeting? And there was a special committee appointed on both program and procedure, and the Members Consultative Group idea was adopted. That member participation was given the name of Members Consultative Group.

MR. GREENWALD: Yes, there was a committee, I guess, on member participation.

MR. WOLKIN: Yes. I think Gerhard—

MR. GREENWALD: No, that was the committee on procedures; Gerhard Casper was the Chair of that.

MR. WOLKIN: Yes, he was Chair of one of those, and out of that, I think that Members Consultative Groups have really increased the interest and participation of members in the projects of the Institute.

MR. GREENWALD: And I think that, as I recall, when Rod Perkins became President he indicated that that was one of his great priorities, to find ways of getting the members more involved than simply at the Annual Meeting stage, those members that wanted to be.

MR. WOLKIN: That's true. The member-participation rule used to be that if a member didn't attend three meetings, he could be dropped from membership.

MR. GREENWALD: One every three years.

MR. WOLKIN: One every three, something like that, and the rule was never really enforced, but the rule was broadened to say that participation could take several forms, in addition to attendance at meetings, in Members Consultative Groups and participation in ALI-ABA affairs, and I might add that some members of the Institute have made great contributions to work of ALI-ABA and that they, to this day, have been very active in programs and publications of ALI-ABA. Can we have a recess?

MR. GREENWALD: Sure.

(A short recess was taken.)

MR. GREENWALD: We are going to continue the discussion now, and I think that a question that probably a lot of people have about the Institute and the way it gets things done is the decisionmaking process in terms of the relationship between a President, a Director, and, in your case, an Executive Vice President. Did that ever cause any problems or difficulties or uncertainties as to where the lines were, or was that easy to draw?

MR. WOLKIN: Oh, there were no lines. It's a question of talking, communicating. If I had some thoughts I would tell the Director or the President, and if the President had ideas he'd tell the Director and me, and if there was any difference we would discuss it. Ideas would be advanced, they might be rejected, very seldom did that happen, and it was a cooperative enterprise, without any friction or problems in that respect. Everything I think worked remarkably well.

The other aspect of it, not directly related to that question, was the notion of having the Institute and ALI-ABA together. As you may recall, it started off originally with ALI-ABA being under John Mulder and the Institute under Goodrich and ultimately, when I became involved in ALI-ABA, particularly in 1963, when I became the Director of ALI-ABA, I was sort of sitting in several chairs, and the thing worked remarkably well, I think, because of the lawyers that we had working in the office. Everybody viewed the enterprise as being well integrated, whether it was Walt McLaughlin, who was in charge of Administrative Services and Fiscal Affairs, or Don Maclay, who was in ALI-ABA, or yourself when you were working primarily in ALI, and Mark Carroll, Sharon [Terrell], Larry Meehan.

MR. GREENWALD: Meyer Kramer?

MR. WOLKIN: Meyer Kramer. Meyer Kramer at one time was in charge of both publications and periodicals [after] Mort Freeman [left as head of publications]. Nobody felt that

they were confined to their activity if they were called upon to do something in another sphere of either operation, and particularly in the area of common services, like printing and accounting and personnel. [There were] never any problems, no question of priorities, everything was discussed, and we did the best we could and it worked out. And I think the people that were involved in the work of ALI-ABA and of ALI really made the enterprise a harmonious one, working as a team without any thought of there being two different entities here.

The same thing applied to our headquarters. We started off at 36th and Walnut. When it came time to leave there, we went over to—I think—133 South 33rd Street, and we had very nice offices there. Then when we moved to 4025 Chestnut Street, we all worked to make this a pleasant environment, a good place to work, and we started I think on one floor here and now we have three floors. In that connection, we had ongoing negotiations for many years with the University. Going back to the '40s, when the law school was doing some renovating, there was talk of our moving into the law school, but that never came about, and all the time that kind of talk continued: What can we do to have a closer identity with the law school? Bernie Segal, who was Treasurer of the Institute and later I think Vice President, and also a Trustee of the University of Pennsylvania, kept those discussions going. I remember several meetings with the President of the University about doing something to have a permanent home for the Institute in the University. It was even in the Executive Committee when the law school was going to put on an addition; there were several things discussed. One was that they would have a research center on Sansom Street across from the law school and we would move in there; another was that there would be one on the other side of the street, and these were the continuing discussions about locating the Institute in the law school. Well, ultimately we moved to this building, and, when we moved to this building, this building was owned by a private entrepreneur and the tenants were the University, and by continuing our

discussions about a closer liaison ultimately this building was purchased by the University and the Institute as a joint enterprise. Bernie Segal played a significant role in that, working with the University, and then ultimately we decided split ownership was not the best of worlds; we would have one ownership and we got involved in negotiating that, and now the Institute owns this building, which brings me back to the role of the Treasurers in the Institute.

The first Treasurer I recall was a Washington tax lawyer by the name of Larry Williams, who was very active in our tax projects, and he was an Adviser on, and prime mover in, those projects. Larry was a superb Treasurer, but not in detail. Bernie Segal succeeded him as Treasurer, and Bernie and I worked harmoniously. We did most of the work here and sent it to Bernie for his final approval. I remember check signing became a burden. In those days, the Treasurer signed the checks, and as our activities increased, the number of checks grew exponentially, and ultimately it was agreed that I would do the check signing, under appropriate resolution of limiting it a certain amount, and that worked pretty well. But Bernie went over the budgets and the like when it came to presenting budgets to the Executive Committee, and Walt McLaughlin and I would prepare them and Bernie would approve them.

Then Bennett Boskey became Treasurer, and Bennett as a Treasurer was an activist. He, I think, has a secret desire to run the Institute personally and to be involved in every facet of its operation, which showed great interest in the Institute and willingness to devote much of his time to our endeavors, and he took a personal interest in almost everything that involved the expenditure of money and even in what our projects would be and what we would do, and I think he still does that.

MR. GREENWALD: He's also very involved in reading every word of every draft too.

MR. WOLKIN: Well, I remember how he became involved in the Council. He was an elected member and at the Annual Meeting, on every draft, Boskey of the District of Columbia

would have a contribution to make. This happened project by project, year by year, and at one point when it came time to elect a member to the Council, I think it was I with the support of Herb Wechsler said, well, there's one man who really participates in the work of the Institute and he should be on the Council and that's Bennett Boskey, and everyone agreed and Bennett was elected a member of the Council. And later on, when Bernie Segal stepped down as Treasurer and stepped up to the Vice Presidency, the question was who should be Treasurer, and again I urged, with the strong support of Herb Wechsler, that Bennett Boskey should be Treasurer. And Bennett was Treasurer.

MR. GREENWALD: I think one possible correction we might want to make is that I think Laurens Williams came after Bernie Segal as Treasurer and then died in office, I think, in '74 or '75? And then [came] Boskey.

MR. WOLKIN: I have to check that. Maybe Bernie Segal was Treasurer and when he became Vice President, Larry Williams became Treasurer. I thought it was the other way around, but you may be quite right on that.

MR. GREENWALD: I think that may be the case, but we'll have to check to make sure.¹²

On the subject of administration and the functioning of the joint enterprise, clearly having ALI-ABA sharing the same space and working together in the same building has made a tremendous difference for the efficiency of the operations of the Institute. Isn't that right?

MR. WOLKIN: Well, not only made a difference for the efficiency of the operation of the Institute, but I think for a very good part of the time it made possible—because the Institute could not afford, in many ways, to have the facilities that were required for that kind of operation—the printing, distribution, office space, if it were involved alone, because in those days, while we

¹² The dates of service for the three above-mentioned ALI Treasurers are as follows: Bernard G. Segal, 1955 to 1968; Laurens Williams, 1968 to 1974; and Bennett Boskey, 1975 to 2010.

allocated time—in other words, if you worked for the Institute and ALI-ABA you would allocate your time and would be compensated from both sources—for a while there the people that did direct work for the Institute were just a handful, as compared to the people that were involved with the work of ALI-ABA. So it is true that the sharing of physical space, the sharing of equipment, the sharing of personnel to operate the equipment, made available to the Institute techniques and processes that it could not otherwise afford.

Things have changed financially for the Institute. The Institute's revenues are from dues, which go to support overhead, and grants, which support projects, and then there is revenue from its publications, the ALI Publishers, and that revenue for many years would fluctuate depending on when a new Restatement came out or a new edition of a Restatement. Then there would be a distribution to what Goodrich used to call the SOB list, which was the standing-order-of-business list that West maintained. When a new book came out, it would be mailed to everybody on that list, and there would be revenue from that and then there would be sales, but that blew hot and cold depending on the progress of the work, and then an idea occurred that was accepted. We had the Restatement in the Courts, which came out periodically in a volume. One of the first things I did in the Institute—and I think I mentioned it earlier—when I came here was to hire young people to make those digests.

MR. GREENWALD: Right.

MR. WOLKIN: Well, the thought occurred that publishers were making money or deriving revenue from regular supplementations and why couldn't we do this by having the Restatement in the Courts come out as pocket parts, and that, of course, was adopted. That resulted in a more even flow of income, an additional flow of income, because the Restatement in the Courts [is] published now in once- or twice-a-year supplements and pocket parts, and then every

once in a while the citations on the subject are gathered up and published as a separate volume, and the Restatement in the Courts through this mechanism has really been a source of important revenue for the Institute.

MR. GREENWALD: You rather modestly said “the thought occurred.” The thought occurred to you, I believe.

MR. WOLKIN: I think that may be right.

MR. GREENWALD: And also it occurs to me that, you know, you I’m sure rightly spoke about how important all the various lawyers in various departments were to the smooth functioning of the organization. Clearly you were the one who administered the whole thing and were able to see the entire picture and to keep it running so smoothly. How were you able to do that?

MR. WOLKIN: Well, I think God was good in the sense that he sent good people my way. Really I meant it when I said that the contribution of the staff was unbelievable. Look at the quality of the staff we have. You are a Ph.D., you’re a graduate of Harvard, we have lawyers that have worked, like Mark Carroll and Leslie Belasco—there may be others—who worked for large law firms, gave up rather substantial incomes to come work for the modest sums we were able to pay, at least when they started, and I think luck was with me in the people that I was able to hire to work for the Institute. And I might add that nobody interfered with that. I was the one that interviewed people and hired them, and I was just lucky that they were top-quality people.

MR. GREENWALD: Well, you know, Branch Rickey said that “luck is the residue of design,” and I suspect there was a good deal of design on your part as well as luck.

In doing the research, by the way, for this interview I came across some minutes from back around 1949 or 1950 of the Executive Committee indicating that Judge Goodrich, at that time, had received a proposal from the Ballard law firm in Philadelphia to make space for ALI-ABA and

have it a separate office in the Ballard firm's office, and the Executive Committee turned down that request, saying that the two organizations ought to remain together. It's fascinating to think how your career might have been different and how ALI-ABA and the Institute might have been different if that had been accepted.

MR. WOLKIN: I think if I—as an aside, you ought to dig out those minutes and send it to the special merger committee that's meeting now as historical [background].

MR. GREENWALD: What goes around comes around.

MR. WOLKIN: Yes, what goes around comes around. Again, you know, talking about the good fortune in people that we can get, and an illustration is the person who's recording this interview, somebody by the name of Matt Yaple. I mean, how do you find somebody like him? You can advertise or do whatever you want, but unless you have the good fortune of having someone like that come and say they want to work here, you will have problems.

MR. GREENWALD: Well, you did have a lot of good fortune then, I guess.

MR. WOLKIN: Well, I think in that sense, yes.

We were talking about the money flow of the Institute before. I don't know if I mentioned that I started to work for the Institute for the magnificent sum of \$2600, and getting increases in those days was a Herculean task that frequently failed. I remember Goodrich I think was making—and he gave it a lot of time—\$5000, and it was suggested that his salary was not adequate, and it was difficult to get the then-President to agree to increases. The one who carried the ball on increasing Goodrich's salary, I think by the magnificent sum of \$2500, was William Schnader, who was on the Executive Committee, and it took some engineering. I don't know whether Harrison Tweed was out that day of the meeting or not, but Bill Schnader got the increase approved.

MR. GREENWALD: So Tweed was a bit parsimonious?

MR. WOLKIN: Well, everybody was in those days. It was unbelievable. I think if they saw what the Institute's spending now they would nearly be dumbfounded.

MR. GREENWALD: Well, I guess money went further in those days, too, didn't it?

MR. WOLKIN: Not far enough, not the money that the Institute was paying anyway.

MR. GREENWALD: Well, we're coming, I think, to the end, for the time being at least, of this interview, and when I read interviews I always think that if I were doing the interviewing I would have asked this or I would have asked that, why didn't that person ask the question, but I've asked a lot of questions; I know you've had experience doing this too. One of your accomplishments was to start this whole tradition of oral history, so as an experienced question asker I have to ask you, what would you ask yourself that I haven't asked you yet that you think ought to be brought out?

MR. WOLKIN: Well, I'd have to review the proceedings to know. I'd have to think about this. Nothing occurs to me offhand. We have had one advantage over the previous ones that were done. They were sort of done on a spot-chance basis. I think Jim Casner's was done at The Mayflower during the Annual Meeting, and Homer Kripke's was done at a UCC course that ALI-ABA was running, and Herb Wechsler's was done at his apartment and we spent a day, but in none of those instances did I have the advantage that you have of bringing the subject back for further grilling.

MR. GREENWALD: Which we may still want to do. But let me just conclude with a question that you asked Herb Wechsler, which seems like such a good question that I can't resist asking it to you. You said to Herb: "What, if anything, would you do to revise the way the Institute operates, the way its membership is selected, the way the Council is elected, and the way leadership is provided? Are there any changes that you think are indicated, or would you let well enough alone

and think that things are working pretty well and may continue in the same way?" That's a very broad question.

MR. WOLKIN: What was his answer, before I answer?

MR. GREENWALD: "Well," he said, "let me say that I think that, if I were still involved with policymaking on those points, I probably would not have favored the principal change that was made in Institute procedures, namely, opening the matter up to further preliminary discussion among volunteer groups of members."

MR. WOLKIN: That's where Herb and I differed, and I was waiting for a new Director to spring that plan again. Oh, I think there ought to be greater communication between the Executive Committee and the Council and between the Council and the members. We had a meeting recently, a telephone conference call, of the Bylaws committee. I would be all in favor of having the minutes of the Executive Committee meeting and the Council meetings either summarized or distributed to the members, so the members have a fuller sense of what's involved in the work of the Institute. Right now I think the conception is that drafts are published, this is it, and we have a chance to discuss it in a members advisory group or at the Annual Meeting. They don't know, they don't fully appreciate, the labor and thought that goes into producing that kind of draft, and if they saw the minutes of discussions at Council meetings or if they were aware of the problems of administration that the Executive Committee considers, if they knew more about the budgeting process, I think it would make for a greater involvement on their part and have a membership that would be going to do more to advance the objectives of the Institute, both financially and substantively on the projects. Many years ago, when I first started, there was even less information exchanged between the members, the Council, and the Executive Committee than there is today,

and I think there is much to be gained by having fuller disclosure and distribution of information and that this would make for a stronger membership generally.

MR. GREENWALD: In that context, of course, we've overlooked another one of your innovations, *The ALI Reporter*, which is a newsletter and does communicate to the membership various things that go on in the Institute. Perhaps that could be a means of conveying more of that kind of information.

MR. WOLKIN: I think the *Reporter* has made a great impression on the membership. They know things that are happening currently, but I think it still doesn't give the full picture. If you read the minutes of a Council meeting and see what goes into the discussion, I don't think members have any idea of the amount of effort, thought, and work involved of individual Council members in the process of approving drafts.

MR. GREENWALD: Right.

MR. WOLKIN: I think it's something to be thought about. It'd involve much more work and perhaps more money, but we can afford that now. We can even afford more people to help you do this.

MR. GREENWALD: That would be welcome.

MR. WOLKIN: All right. So moved.

MR. GREENWALD: Okay. Well, you mentioned the Council, and of course you are now a member of the Council, but you have indicated that you don't want to talk about that yet because that's not history, that's the future. So I hope that we will be able to get together some time at a later date, after you've had some history on the Council, and be able to reminisce about that as well.

MR. WOLKIN: I think what we ought to do on these audiovisual histories is have annual pocket parts.

MR. GREENWALD: Well, that sounds like a good idea.

MR. WOLKIN: If the subject survives.

MR. GREENWALD: Well, I am confident that it will, and again, I think that's another great idea.

MR. WOLKIN: I might mention, I was up last week at the memorial service for Haskell Cohn, who did so much for ALI-ABA, and it was interesting how many members of the Institute and the Council showed up at that. I guess one reason is that so many of them live up in Boston and its environs—one of the speakers was Dean Griswold, and Justice Wilkins was there and others—but I think it shows the regard and love that Institute members have for each other, particularly at the level of the Council.

MR. GREENWALD: Well, that's a great note to end on for the time being, and I hope we will be able to continue it later on, and you can tell us more about your views of the Council when you've had more experience as a member. Thanks.

MR. WOLKIN: Very good. Thank you, Mike, you were good.

MR. GREENWALD: Well, thanks very much for doing it.