The American Law Institute, 1923-1998

John P. Frank
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I. IN THE BEGINNING

In 1923, President Warren G. Harding died from pneumonia in San Francisco, Adolph Hitler staged his “Beer Hall Putsch,” Colonel Jacob Schick patented the first electric razor, and author Felix Salton wrote Bambi. Also, The American Law Institute was incorporated on February 23rd.

The incorporators were William Howard Taft, former President and then Chief Justice of the United States, and Charles Evans Hughes, past member of the Supreme Court and future Chief Justice. Elihu Root, Secretary of State under Theodore Roosevelt, became Honorary President of the Institute in 1923, serving in that limited capacity for fourteen years. George W. Wickersham, Attorney General in the Taft Administration, was President from 1923 to 1936; former Pennsylvania Senator George Wharton Pepper from 1936 to 1947; Harrison Tweed from 1947 to 1961; Norris Darrell from 1961 to 1976; R. Ammi Cutter from 1976 to 1980; Roswell B. Perkins from 1980 to 1993; and Charles Alan Wright from then until the present time. Among the other officers, Bernard G. Segal of Philadelphia was variously Vice President and Treasurer, and Bennett Boskey has been Treasurer since 1975. These are great names in our profession, and they set the standard.

The events of 1923 had long preparation. The realistic origin proba-

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bly was the December 1914 meeting of the Association of American Law Schools ("AALS"). There, Professor Wesley N. Hohfeld of Yale spoke of the need for a "vital school of jurisprudence and law," and Professor Joseph H. Beale of Harvard read a paper on *The Necessity of the Study of the Legal System*. The President of the Association, Dean Harry S. Richards of the University of Wisconsin, suggested that the thoughts developed by the two professors might result in an institute in Washington where American and English students and scholars could gather.

A committee to consider such an institute was appointed in 1914, but World War I interrupted meetings of the AALS. The topic was taken up again in 1920 by Professor Eugene A. Gilmore of the University of Wisconsin Law School, who successfully proposed that a committee of five be appointed to work toward the creation of "an institute of law." Professor Beale was made chairman of that committee. The committee reported to the AALS at the 1921 meeting, recommending that a new committee be established with power to invite the creation of parallel committees from the courts and the American Bar Association "for the purpose of jointly creating a permanent organization for the improvement of the law." A Committee on the Establishment of a Juristic Center was appointed by the AALS to carry on the program.

Professor William Draper Lewis of Pennsylvania was a member of that committee. Lewis, the emanating spirit of the Institute both before it was born and after it was created, believed that the initiative for the Institute must come from Elihu Root, who was then clearly the leader of the American bar.

Lewis went to Root in 1922 with a plan to create an organization which became The American Law Institute, the goal of which would be to "produce an orderly restatement of the law." Mr. Root immediately accepted that proposal and the Institute was on its way. This led to a meeting held at the Association of the Bar of the City of New York on May 10, 1922, with Mr. Root acting as chairman and Professor Lewis as secretary. The group of twenty there formed a "committee on the establishment of a permanent organization for the improvement of law." Lewis prepared a report for that committee, with the help of Professor Samuel W. Williston of Harvard.

This laid the foundation for the 1923 meeting, a meeting the likes of which may neither before nor after have occurred in America. Chief Justice Taft and Associate Justices Holmes and Sanford were present from the Supreme Court. There were five judges of circuit courts of appeals, twenty-eight judges of state supreme courts, and special representatives of the American Bar Association and the National Conference of Commis-
sioners on Uniform State Laws. Mr. Root presided. Any amount in the bank in 1924 was subsequently agreed to go to the Carnegie Foundation, of which Mr. Root was also the head, for funding; the Carnegie Foundation made a grant of $1,075,000, to be given over a ten-year period to match the $100,000 a year budget that Mr. Lewis estimated would be necessary. Subsequent donations to the Institute doubled that contribution.

The Institute at its first meeting received a report of a committee of thirty-five, which was the basis of its future program. Members of that committee included Benjamin Cardozo, John W. Davis, Learned Hand, Roscoe Pound, John Wigmore, and Harlan F. Stone. The report set forth the need for an institute to deal with the deplorable state of the law. First and foremost, there was the “great volume to the annual increase of the already overwhelming mass of reported cases,” which the report accurately concluded, “cannot be directly checked by any action which may be taken by the profession.” That profusion was, of course, as nothing compared to the flood seventy-five years later. But the report continued that, in addition to the proliferation of cases, “badly drawn statutory provisions and the unnecessary multiplication of administrative provisions” caused great uncertainty and complexity. In the mind of the originating committee, the ultimate problem was the “lack of agreement among lawyers concerning the fundamental principles of the common law” and “the lack of precision in the use of legal terms.” The committee concluded that these “two causes of uncertainty and complexity are precisely those over which the legal profession has the greatest control.”

The cure, the committee believed, was a “Restatement of the Law,” a source “to enable a lawyer to learn without the necessity of consulting further authority, the simple and certain matters of the law.” The committee concluded the specific task of the Institute should be to create a “Restatement of the Law.”

A problem, which has confronted the Institute from then until now, was foreshadowed in that original committee report: the problem of the “is or the ought”; is it the function of a Restatement to report precisely what the law is, as by counting decisions, or should it give some consideration to what the law ought to be? The original committee report declared that the object of the Restatements “should not only be to help make certain much that is now uncertain, to simplify unnecessary complexities, but also to promote those changes which will tend better to adapt the law to the needs of life.” It should cover not merely what had been decided, but should “take account of the situations not yet discussed by courts or dealt with by legislators, but which are likely to cause litigation in the future,” for “[t]he law is not always well adapted to promote
what the preponderating thought of the community regards as the needs of life.” However, the changes should be restricted to those that are “generally accepted as desirable.”

That restriction would bar the Restatements from considering laws pertaining to taxation or other fiscal matters or the advocacy of novel social legislation, such as old age or sickness pensions, but

[when, however, a social or industrial or any other policy has been embodied in the law, and also it has been so far generally accepted as to be no longer a subject of public controversy, then the improvement of the law in relation thereto may not be beyond the province of the Restatement.

The original committee report laid out how the work should be done. There must be uniformity of form. Since there would be different Reporters on different projects, “[t]he questions of form are of the first importance.” The original report established the form that, for the most part, has been followed for the succeeding seventy-five years: there “should be the separation by typographical or other device of the statement of the principles of law and the analysis of the legal problems involved” and there should be a “statement of the present condition of the law and reasons in support of the principles as stated.” In short, there should be black letter and comment—the reporter’s notes were a later development.

It was emphatically concluded that the Restatements should not be adopted as statutes—the goal was to maintain the flexibility of the common law. The original plan contemplated that there would be full citation of authority, but assumed that these would be in treatises published by the Reporters essentially simultaneously with the Restatements—a *Williston on Contracts* was contemplated from the beginning.

All of this activity, as included in the original committee report, required an organization. From among the civil judges in the United States, the leaders of the bar, the deans of the law schools, and others in a position of leadership in the profession, there should “emerge an organization to be known as The American Law Institute.” That body should have a Council, originally twenty-one persons and now about sixty, who should “have full power of management,” but all projects should be submitted to a meeting of the members.

What the original committee contemplated was an amazingly durable blueprint. It contemplated Reporters, committees of Advisers who were experts in the particular field, and, as noted, the submission of the projects, when ready, to the Council and finally to the membership. It was the task of the Council to approve the Reporters and Advisers. The chief
executive for the organization would be the Director.

The system of Reporters and Advisers began at once. William Draper Lewis became the first Director. The initial projects undertaken were Contracts, completed in 1932, with Professor Williston as Reporter; and Agency, completed in 1933, with Professor Floyd R. Mechem of the University of Chicago as the first Reporter and Professor Warren A. Seavey of Harvard as his successor. The Conflicts project, with Joseph H. Beale of Harvard as the initial Reporter and with Herbert F. Goodrich of the University of Pennsylvania sharing some of the duties, was completed in 1934. Others in the first series of Restatements included Torts (1939), with Francis H. Bohlen of Pennsylvania as the lead Reporter and Fowler V. Harper of Indiana as one of the associates; Security (1941), with John Hanna of Columbia University as Reporter; and Judgments (1942), produced by Austin W. Scott, Warren A. Seavey, and Erwin N. Griswold.

In 1944, the last Restatement in the first series, Property, was completed with the publication of its fourth and fifth volumes. Richard R. Powell of Columbia was the main Reporter for Property (Harry A. Bigelow of the University of Chicago had served briefly in the post prior to his appointment as Dean of the Chicago Law School), Oliver S. Rundell of the University of Wisconsin was Reporter for the volume on Servitudes, and W. Barton Leach and A. James Casner, both of Harvard, served as Special Reporters for other portions of the work. Professor Casner eventually became the guru of all Property Restatements, his colorful personality making, of all unlikely things, Property the liveliest topic on the agenda. In the 1990 Director's Report, Professor Geoffrey C. Hazard, Jr. said, "His contributions will not be matched by any successor. He is unique, as is his work." A special Reporter's Chair has been established in his memory.

II. A STABILIZED PROCEDURE

Within a few years, the Institute had a stabilized program. While there has been growth and change, the bedrock remained the same. By 1935, the Restatement was committed, as a contemporary analysis put it, to restating the common law "with such care and accuracy that courts and lawyers may rely upon the Restatement as a current statement of the law as it now stands"; and to expressing those principles "with clarity and precision." The work on statutes was just beginning. The American Bar Association asked the Institute to prepare a model code of criminal procedure, and that code was completed by 1930. Parts of it were adopted by various states while the work was still in process.

The procedure was to search for a Reporter who, whenever possible,
would be the foremost legal scholar in the country on the topic. The Reporter had as Advisers, teachers, judges, and practitioners; William Draper Lewis reported that the Advisers soon became "co-workers with the Reporter." This group would meet on a regular basis. When the work was ready, the Director would forward it to the Council, which would examine it in a dialogue with the Reporter. On occasion, the work might be sent back to the Reporter and the Advisers for further consideration. When the project was satisfactory to the Council, it was made available to whoever in the country might be interested; and in due course it came before the Annual Meeting of the membership in May. The goal was to have each Restatement represent the considered legal judgment, not merely of the Reporter, nor even of his Advisers, but of the profession throughout the country.

All this took time, and still does. The first product, the Restatement of Contracts published in December of 1932, immediately was in heavy use nationally.

By 1935, the Institute had already moved beyond the common law to deal with criminal justice—witness the Code of Criminal Procedure, which by then had already been published. A special Advisory Committee on Criminal Justice had its first meetings in 1934, and the result was a proposal for what eventually, after World War II, became one of the most satisfactory products of the Institute, a Model Penal Code. This work was undertaken in 1950 with Professor Herbert Wechsler of Columbia, later Director of the Institute, as its Chief Reporter, and completed in 1962. From the beginning of this project, the Institute was dreaming no little dreams, recognizing at the start that the task involved a "fundamental reexamination, not only of the legal, but of the pertinent extra-legal bases of the criminal law as well as its aims, administration and effectiveness in action."

All was not sweetness and light, for the Institute has never been free of criticism. The founders and developers were not exclusively, but were to a considerable extent, the conservative bulwark of the American law, more daring in their conception of a national legal system than in topics or execution. At the 1935 annual meeting of the Association of American Law Schools, Professor Hessel Yntema, then at Johns Hopkins, condemned the Restatements as failing to make "analytical, critical, and constructive... improvements in the law itself." He found the work unduly static. In March 1933, Dean Charles E. Clark of the Yale Law School denounced the "Restatement straitjacket" by saying that the Institute was "caught between stating the law which should be and the law that is" and as a result "stating only the law that was."
The President of the Institute, George W. Wickersham, responded in a statement that was toned down from its first draft, but nonetheless dismissed Dean Clark’s comment as “charming naiveté.” Mr. Wickersham said that the critics represented the realist school, which to Wickersham was one of the unfortunate developments of the era. To him, the practical need was for “definite standards by which the activities of business, commerce and industry are conducted.”

But the critics were a minority. The dominant view of the time was expressed by then Chief Judge Benjamin N. Cardozo of the New York Court of Appeals and Vice President of the Institute, who in 1930, said that while there was room for difference of opinion on details, “My residuary conviction is still strong and unabated that no project so important for the simplification of our common law and for its harmonious development has been launched during all the years of its history upon the soil of the new Pavlovian World.”

The early Restatements were authoritative without authorities. The commentaries were brief. Case analyses were not set out. For a time, the Institute effectively encouraged state bars to publish annotations on the law of their own states as it related to the Restatements. There was, nevertheless, a need felt for something more comprehensive than black letter and brief supporting paragraphs. At the December 1924 meeting, the Council, having gone over the tentative drafts on Conflicts, Contracts, and Torts, requested the Reporters to prepare and submit parallel treatises in connection with their respective drafts. This was a pie-in-the-sky concept.

It worked for Reporters like Williston (Contracts), Beale (Conflicts), and Scott (Trusts), who had treatises already done or in progress and who were essentially codifying the treatises with the Restatements, but for a Reporter who did not already have his treatise in his pocket when he began Restatement work, the task was simply impossible. There have continued to be occasional post-Restatement major publications by Reporters; the work on Contracts by Professor E. Allan Farnsworth of Columbia is an example. But for the most part, a Restatement by itself took as much of a Reporter’s life as he could give to it.

At the time of the 1924 discussion, Institute Director Lewis was concerned that several of the Reporters were already over sixty years of age, and while he thought it essential that there be “additional and corroborating material,” he was concerned that by adding a duty of treatise writing the Reporters might never get the Restatements done.

The treatises didn’t happen, and the Council continued to be concerned. In 1930, the Council asked the Reporters to give to their Advisers a brief of authorities, both in support and in opposition to the Restate-
ments, so that the Advisers would be informed as to "the present state of the case law"; and it suggested that the most important of those case briefs, headed "Explanatory Notes," be bound up with the tentative drafts.

In December 1932, Justice Cardozo, by then on the Supreme Court of the United States, wrote Director Lewis on the same general topic. He stated:

I confess that the absence of explanatory notes will to my thinking detract greatly from the value of the Restatement. It is plain that you had no alternative in the case of the contracts, but I hope that the decision is not a final one as to other branches of the law. The local annotations [referring to the state bar notes] are a supplement, but not a substitute.

This handwritten letter by Justice Cardozo was reprinted in the annual report of the Institute for 1978. With the 1978 publication, Director Wechsler observed that, despite the obvious need for explanatory notes and supporting material, the Institute went without them until the second Restatement began its first publication in 1953. He observed "that the Institute's revered Vice President could not prevail for so long upon a proposition that so plainly was correct induces sobering reflection. We hope and think the Institute today would benefit more readily and rapidly from wise advice, but we must recognize the risk of self-deception."

Today, the Advisers and Council may struggle over the Comments as much as the black letter and the Comments are often cited. The reporter's notes, giving the supporting data for the text, remain the Reporter's prerogative and are not officially authorized by the Council or the membership, although the notes are often used in the discussion. There can be occasional sharp disputes as to whether the notes really support what is said in the commentary.

III. RESTATEMENT SECOND

In 1947, Judge Herbert F. Goodrich of the Third Circuit Court of Appeals succeeded William Draper Lewis, the founding Director of the Institute. During the Lewis era, the Institute produced nine Restatements comprising nineteen volumes and four model statutes, three relating to criminal matters and the fourth, the Model Code of Evidence.

The first great post-World War II accomplishment was the drafting, in collaboration with the Commissioners on Uniform State Laws, of the Uniform Commercial State Code in 1952, revised in 1958 and subsequently. This has completely dominated the law of the United States in this vital area ever since and it is currently undergoing comprehensive re-
vision. Other codes, most notably the Model Penal Code already mentioned, followed.

In 1947, the Institute made some effort to update its original Restatements and soon realized that a more radical change was needed. A 1947 report of a committee chaired by Judge Learned Hand concluded that the first Restatement had been overly static. It believed that the second Restatement needed to consider which rules were “founded on historical facts,” which were “unjustified by any principles of justice, but are unimportant or harmless and may be left as they are because of the desirability of certainty,” and “what rules are insupportable in principle and evil in action.” In 1951, the trustees of the Mellon Educational and Charitable Trust granted the Institute $60,000 for Restatement reexamination. That reexamination persuaded both the Trust and the Institute that substantial revisions were necessary, and in 1953 the Mellon Trust granted the Institute $500,000 for revised Restatements.

Serious changes were made in the Second Restatement. Ex cathedra pronouncements were no longer the rule—discussions by way of commentary were enlarged and expanded. Revised Restatements, as for examples Trusts, Torts, Conflict of Laws, Contracts, and Judgments, followed, and new subjects, landlord and tenant and foreign relations law, were added.

A new and large focus on statutes also came in the post-World War II era. As Director Wechsler said in a paper presented to the Conference of Chief Justices in 1963:

The emphasis of our programs has been shifting through the years from the Restatements to some legislative form, be it a model act, a proposed code, or the proposed revision of specific legislation. The shift reflects important changes in prevailing views as to the role of legislation and the sound development of our law and also in prevailing practice. I greet it with enthusiasm . . . what our law requires most and will increasingly require in the future is that systematic reexamination and rethinking at the legislative level that is not within the competence of courts.

The last words of Judge Learned Hand to the Institute in 1961 referred to “our model codes, which I dare believe will in the end be the most important part of our work.” Chief Justice Warren specifically called on the Institute to undertake its Study of the Division of Jurisdiction Between State and Federal Courts.

The effectiveness of the statutory projects is open to some dispute. The Restatements sell themselves because the courts largely adopt them. The statutes are more subject to pull and haul by the nature of the legisla-
tive process, and the Institute feels barred by the tax laws from pushing legislation.

The Restatements Second (and eventually Third) have opened wide the disputes of the 1930s as to whether the Institute should merely codify the cases—"the law as it was"—or whether it should adopt the better view; whether it could accept on occasion the minority view, or go where the law was going, rather than merely where it had been. Most of the time the Restatements reflect the majority view; the only exception in the first Restatement of Contracts was section 90, which adopted the minority view on promissory estoppel. But when in the opinion of the Reporters, the Advisers, the Council, and the Institute, the majority view is not the better view, may the Institute adopt what it considers that better view?

As has been noted, from the very beginning the Institute has felt free to accept changes "generally accepted as desirable." Yet the Institute was pulled very heavily in the direction of adopting the view that "would be today decided by the great majority of courts." As President Harrison Tweed put it in 1957, "The Institute... confines itself to stating the law as it is." At the Council meeting of May 10, 1930, with reference to the Restatements of Contracts and Conflicts, the Council directed the Executive Committee and the Director "to take under consideration whether any of the statements of law made are not warranted by the analogy of existing decisions and if so, if such statements are not eliminated, in what way or ways the absence of existing decisions should be indicated."

As Director Wechsler reviewed the problem upon his retirement as Director at the 61st Annual Meeting of the ALI in 1984, he described the traditionalists as those who "held to the conception of the common law as a closed system, yielding answers to all questions that arose in litigation by conformity to earlier decisions or deductions from the principles that they declared." But, he said, it is the principle of the common law "that courts have a responsibility to reconsider and rework decisions of the past to serve new values and to meet emerging needs."

Chief Justice Shirley S. Abrahamson of Wisconsin has comprehensively reviewed the role of the Institute in relation to the law either as it is or as it ought to be in her Fairchild Lecture in the 1995 Wisconsin Law Review. The problem is at its most elementary where there are conflicting lines of authority. Here, Judge Goodrich in his 1948 Report of the Director said that "in cases of division of opinion a choice had to be made and naturally we chose the view we thought was right." A preponderating balance of authority would normally be given weight even if it was not conclusive. Part of the task of the Institute has been to estimate where the law was going. Director Wechsler in a 1968 address noted that the Institute
had adopted fundamental opinions of Judge Cardozo in the *Palsgraf* case and in *MacPherson v. Buick Motor Co.* well before those problems had reached a majority of the courts.

Perhaps the sharpest disputes in Institute history over prediction of where the law was going concerned section 402A of the Second Restatement of Torts on products liability and numerous provisions of the Principles of Corporate Governance. These highly controversial matters involved not merely the philosophical problem of the role of the Institute, but also a problem that has become the more acute where expanded membership permits pressure groups to form. This essay puts that topic momentarily aside until the expanding membership can be discussed; suffice it to say that the Restatement Second, while never supposing that it was writing on a blank slate, accepted more minority or developing views than the original Restatement. In Judge Goodrich's historical review in 1961, he stated:

There are many places in the law where a direction is so clearly marked that one can say with considerable certainty that the next step will be taken and that the rule will be thus and so. On the other hand, there are places where the path made by authority stops far short of areas that may well be the subject of litigation, but where there is no established course of authority. In such instances, a new edition develops how the unsettled question arises, states the logical application of what is settled, and adds that the matter is not covered by any authority.

**IV. Membership**

**A. The Numbers**

The Institute in 1923 began with a membership of 308 and set a membership limit at 500. There have been gradual increases; the allowed number reached 2,000 in 1982; 2,500 in 1987; and 3,000 in 1994. In addition, there are life members, persons who have been members for twenty-five years and need thereafter pay dues only as they wish (most do) and these run to approximately 600 additional members. Finally, there are ex officio members, including the members of the United States Supreme Court, the chief judges of the United States Courts of Appeals and of the highest court of each state, the Attorney General and Solicitor General of the United States, bar association presidents, and law school deans.

Names of proposed members are submitted to the Membership Committee by a current member on an Institute-prescribed form, with additional letters of support from two other members. While there is no
age minimum for membership, the criteria are detailed and assume some distinction in the law, which necessarily presumes substantial experience. Essentially, members are chosen by the Membership Committee and while its reports must be approved by the Council or Executive Committee of the Institute, the conclusions of the Membership Committee are generally final. Membership Committee duty is heavy and its review is scrupulous.

The number of ALI members in proportion to the size of the ABA and to the number of lawyers in the country as a whole has consistently gone down—that is to say, the ABA and the bar itself grows much faster than the ALI. For example, in 1923 the ALI’s authorized membership was approximately four for every thousand lawyers in the country and, with the enormous growth of the bar, at the present time that number is approximately three for every thousand lawyers. Seventy-five years ago, the number of ALI members in proportion to a thousand members of the ABA was about twenty-six. Today it is approximately seven.

The most massive data on the collection of membership is found in the Interim Report of the Special Committee on Institute Size, dated February 16, 1993, and chaired by Professor Charles Alan Wright. When Professor Wright became President of the Institute, the Special Committee passed to Allen D. Black, who took over the chairmanship with a graceful allusion to the “masterful” leadership of Chairman Wright.

But these numbers only opened the door to the problems of membership. More important than raw membership is participation. Council Rule 6.00 specifies that “Elected members are expected to participate in the work of the Institute in some significant way,” but there is no operating enforcement mechanism accompanying this expectation. What has membership meant in terms of doing something?

It is the membership that must make the final decisions as to whether a given section of a Restatement, or any part of a statute, or either as a whole, rises or falls. These decisions are made at the Annual Meeting in May, which usually has been in Washington. To increase membership involvement by bringing in persons for whom traveling to Washington may be difficult, the Institute has experimented with an occasional meeting outside Washington, variously in Philadelphia, Chicago, and San Francisco. These meetings have doubtless brought in different members from those who come to Washington, but attendance away from the Capitol has averaged two to three hundred fewer than the Washington meetings. However, the numbers of those actually participating in the meetings outside Washington have been excellent.

The membership continues to be divided among private and corpo-
rate practitioners, professors, and judges. There were approximately 3,600 members in 1997, including some 300 ex officio or special status members. There were approximately 700 life members, of whom about 450 were practitioners, 100 were academics, and 150 were judges. The elected membership in 1997 therefore was about 2,600 persons. Of that number, approximately 1,300 were practitioners, approximately 100 were corporate counsel, something over 700 were professors, and about 265 were judges.

Membership does not necessarily mean active participation. It is the vote on the floor at the Annual Meeting that determines what the work product of the Institute will be. For illustration, there were approximately 3,000 elected and life members in the Institute in 1992, and approximately 1,150 in attendance. But attendance, in the sense of functioning as a working member, is highly variable. Corporate Governance or Law Governing Lawyers drew a considerably larger attendance than Donative Transfers or Mortgages or Suretyship. Most conclusions are approved on the floor by voice vote or show of hands without the necessity of counting votes; but occasionally there are formal divisions of the House. The largest vote recorded between 1978 and 1992 was on an issue in Corporate Governance, when 513 members participated. The smallest was on an issue concerning Mortgages in which thirty-one members participated.

These relatively small numbers have not diminished confidence in the work of the Institute because the Reporters are excellent and the review by the Council, the meetings of which are very well attended, is meticulous. In addition, the drafts are distributed throughout the country in advance of the meetings, written comments are invited, and many come in. Nevertheless, the numbers have inspired the Institute leadership to undertake new means of making the membership effective participants without requiring that they spend several days in Washington.

Under the leadership of President Roswell B. Perkins, the Institute established a system of Members Consultative Groups for each project, gathering members throughout the country to discuss the work in progress; the recommendations of these consultative groups are taken very seriously. Members of these groups are sent all of the drafts for their projects and asked to comment on them in writing; in addition, they are invited to meet once a year with the Reporter to discuss the current draft. These meetings are usually scheduled in conjunction with a meeting of the Advisers and involve the same draft that the Advisers review.

As with the Adviser meetings, most consultative group meetings are held in Philadelphia for administrative convenience; the members of the consultative groups generally pay their own way to these meetings, al-
though there is a special program to pay eighty percent of reasonable travel expenses for those who ask for such assistance to attend a particular meeting. Since on average only about one-seventh of each group actually attends these meetings, some of the smaller groups—Servitudes and Transnational Insolvency, for example—generally meet together with the Advisers rather than separately.

Mr. Perkins reported, in his 1990 Reflections on a Decade, that in that year 796 members had participated in consultative groups covering eight projects. It remains possible for a member to do nothing but pay his or her dues and get nothing but a handsome resumé addition, but the Institute is doing its best to maximize involvement and to date, there is no sign of any particular harm to the product or to its acceptance because of the somewhat floating nature of the participation.

B. Diversity

In 1923, the original Institute was almost entirely male and virtually one hundred percent WASP. In recent years, this has changed radically. Under the leadership of Professor Charles Alan Wright, first as Chairman of the Special Committee on Institute Size, and then as President of the Institute, there has been an aggressive program for diversification. In 1994, eighty-eight persons were elected to membership. Half were women and a significant number were African Americans or Hispanics. Between 1994 and 1996, with approximately the same number of elected members in each year, the number of women rose from thirteen to sixteen percent of the total, the number of African Americans increased by fifty percent, and the number of Hispanics more than doubled. Of the 2,651 elected members at the time of the Annual Meeting in 1997, 413 were women, 91 were African American, 28 Hispanic, and 17 Asian. This is a truly radical, truly substantial change in the membership composition, and the membership of the Council also reflects these developments. No part of the Institute now ever meets, dines, or sleeps in a place or establishment that discriminates against anyone.

C. Pressure Groups

The product of the Institute should be objective. It should reflect the best and most independent judgment of which the members are capable. Necessarily, the members bring their experience with them, and that experience creates its own set of convictions, but it is imperative that these be objective convictions and not the product of client desire. There is no more fundamental or essential principle of the Institute than that its prac-
titioner members should check their clients at the door. Council Rule 9.04 provides in pertinent part: “Members should speak and vote on the basis of their personal and professional convictions and experience without regard to client interests or self-interest. It is improper under Institute principles for a member to represent a client in Institute proceedings.”

This is not always as easy as it sounds. Some projects may affect clearly definable economic interests, and those economic interests may wish very strongly to mold in their own behalf the projects that may affect those interests. As membership expands, with only a small fraction of the membership likely to be on the floor at even a maximum moment, there may be clients appealing to member attorneys either to vote in a particular way if they are present, or to be present when otherwise they might not have been. This has happened.

The two areas in which these pressures have been most acute have been Corporate Governance and Products Liability. With Corporate Governance, a primary corporate group, the Business Roundtable, sought to persuade individual lawyers, and specifically some who represented their members, to attend and to take particular positions on particular votes.

The Institute is no jellyfish and there has been many a lusty argument in the Council and on the floor over the years. An historical sketch by Judge Goodrich and Assistant Director Paul Wolkin in 1961 reported that in the 1920s and 1930s disputes between Professor Beale, the Reporter for the Conflicts Restatement, and Vice President James Byrne drew such controversy that the whole Conflicts project was held over for two additional years and had to be thoroughly reexamined within the Council. There were also strenuous battles, for example, on such matters as federal diversity jurisdiction and the Model Code of Pre-Arraignment Procedure, as well as many others. In the Institute, the war over the equitable remedy for nuisance was, as nearly as such things can be, a death struggle. The Institute would neither be useful nor much fun if its pattern was placid acquiescence.

But none of those battles were waged by hired champions. In all of them, the professors and the judges were as vigorous as the lawyers. The Corporate Governance project was the product of a stellar team: Melvin A. Eisenberg of the University of California at Berkeley was Chief Reporter; the rest of the team were Professors John C. Coffee, Jr. and Harvey J. Goldschmid of Columbia, Ronald J. Gilson of Stanford, and Marshall L. Small of the San Francisco Bar. In the 1993 Report of the Director, Professor Hazard noted the completion of the Corporate Governance Principles and the “extraordinary effort” that President Perkins had put into it: “Completion of the work would not have been possible without his
devotion, as well as that of the Reporters, particularly Professor Eisenberger. There cannot be souls of greater patience in this kind of undertaking.” With reference to that project, Director Wechsler had earlier denounced the Business Roundtable, not for expressing its views to the Institute, which were welcome, but rather for the effort to bring “uninformed outside forces to bear on all of us, even to reach us through our clients.” He stated:

This is the nadir in my long experience in this great organization, in which civilized discourse and reasoned dialogue have heretofore been the only weapons allowed or brought to bear. It is a frontal attack on the integrity and objectivity of our Institute, and, insofar as the conduct of lawyers is involved, a challenge to what I conceive to be the proper standards of the bar.

Denouncing the Roundtable by name, Director Wechsler said, “Our Council and many of our membership have thus been deluged with unsolicited commentary on the project and the drafts, which undertakes as well to instruct us in our traditions and appropriate procedures, including when it is in order to submit a matter to a vote.”

In his Reflections on a Decade as President, Roswell B. Perkins, President of the Institute, observed that the Corporate Governance project had consumed “certainly a disproportionate amount of my own time devoted to the Institute's affairs.” The brutal weight of the Corporate Governance Principles fell particularly heavily on him. He worked out the accommodations that were necessary to see the project through. In his 1990 report, however, President Perkins put the matter more gently: “The Project is receiving an unprecedented degree of attention from outside the Institute.”

The Corporate Governance project was, in due course, approved virtually unanimously. The process that it had gone through was not free from counter-criticism. In 1994, two of the distinguished members of the Institute, Alex Elson and Michael Shakman, in The Business Lawyer denounced the project as “A Tainted Process and a Flawed Product,” overly reflecting “the interests of corporate management.” Nevertheless, in April 1997, the Supreme Court of Pennsylvania specifically adopted the formulation of the business judgment rule and related provisions as set forth in section 4.01 of the Principles of Corporate Governance. It also commended the balance of the Principles to the courts of the state, observing that the scholarship reflected in the Institute's work has been “consistently reliable and useful.”

Products Liability was originally before the Institute in the early 1960s as part of the Second Restatement of Torts. It went through a proc-
ess of change because the law itself was changing while this section was before the Institute. It first came up in 1962 as a proposal by the Reporter, Dean Prosser, to create strict liability for sellers of food and products of intimate personal use, such as cosmetics. But in 1964, the Reporter brought to the attention of the Institute that the law of strict liability was growing enormously and that sixteen states had by then expanded strict liability to cover products generally; hence, section 402A, as approved in 1964 adopted broad strict liability, and this rule swept the country.

This eventually led to perhaps the most elaborate exchange in the literature on the Institute. In an exchange in the 1985 Pepperdine Law Review, Professor W. Noel Keyes gave a scorching denunciation of the Institute as an irresponsible lawmaker. Professor John W. Wade, who had been reelected to the Council after having earlier resigned to become Dean Prosser’s successor as the Reporter for Torts Second, made a comprehensive response, which is perhaps the most detailed statement applauding Institute-established policies, but which also contains suggestions for improvement. Professor Wade and Alex Elson and Michael Shakman, from opposite viewpoints, have thus provided critical review of the Institute, its policies, and its procedures. Success may have bred a certain complacency, and these suggestions have not as yet been adopted.

The new Products Liability Restatement, part of Restatement Third, precipitated sharp differences of opinion between members who were defense lawyers and those who were plaintiff lawyers, but these were simply lusty disagreements. However, there was insurance company lobbying from outside the Institute and the insurance companies, like the corporations in the earlier instance, had their dependents. The struggle of these pressure groups came to a head at the 1995 Annual Meeting in Chicago. With members of the two bar groups pressing for conflicting amendments, and with insurance companies declaiming from the sidelines, the membership rejected all of them and sustained the recommendations of the Reporters in every instance. The episode illustrated a way for the future—the Reporters were flexible in considering suggestions from their Advisers and from members submitted between meetings, accepting some and rejecting others, and the unaffiliated middle of the Institute carried the day. Since these battles, the Institute appears to have achieved an equilibrium, and there have been no comparable efforts to manipulate the members for one purpose or another.

V. Finance

The ALI is thoroughly solvent. It is not rich as that term is used in these billion-dollar days, but it is thoroughly capable of carrying on its
programs. Keeping the Institute adequately but not excessively financed has been a continuing aspiration.

The revenues and the budget rise. Exclusive of ALI-ABA revenues, the total revenues of the Institute in 1948 were $187,000; in 1988, $4,450,000; and in 1998 they are expected to be $4,300,000. The total expenses for 1948 were $124,000; for 1988, $2,100,000; and for 1998 they are projected to be $3,450,000.

On the income side, membership dues produced $14,000 in 1948 but in 1998 will produce $496,000. Members’ contributions over the same period have risen from $4,000 to $34,000. These amounts, however, remain relatively small compared to the proportion of income derived from publication sales and revenues, which in 1998 is expected to approach $1,500,000.

Nevertheless, in order to carry out the Institute’s programs successfully, these sources of revenue must be supplemented by grants and investment income. Ongoing projects have increased in number. There were four in 1923, twelve in 1988, and twenty in 1998. These projects have been underwritten by foundations, by philanthropists, and occasionally by corporate donors. For example, the main contributions for the Corporate Governance Project were from the Pew Memorial Trust, which gave $426,000, and from the John D. and Catherine T. MacArthur Foundation, which contributed $500,000. The general Federal Income Tax Project was underwritten to the extent of $559,000 by the Fund for Public Policy Research, while the Harvard Law School Fund for Tax and Fiscal Research subsidized a discrete portion of that tax project. The Model Penal Code was subsidized by the Rockefeller Foundation in the amount of $510,000, and the Uniform Commercial Code received a grant of $750,000 from the Maurice and Laura Falk Foundation and others. The underlying grant from the A.W. Mellon Educational and Charitable Trust of $500,000 in the 1950s underwrote the creation of Restatement Second. The State Justice Institute has contributed a total of over $300,000 towards the support of two important projects—Complex Litigation and the Principles of the Law of Family Dissolution. The Ford Foundation has also financed major projects.

A rising tide lifts all boats, and this truism has applied to the ALI investments as well. An Investment Committee was created in 1968 under the original chairmanship of Arthur H. Dean. Roswell B. Perkins succeeded to the chairmanship in 1973, and when he became President of the Institute, Ernest J. Sargeant (universally known as Ernie) took his place. Beginning in 1973, the Institute’s investments were handled by professional investment managers under the direction of the Investment Com-
mittee. Sargeant has been enormously liberal with his time and talent, and the results from all concerned have been spectacular. The investments in 1948 amounted to $100,000, in 1988 $8,800,000, and in 1997 $25,700,000, a mix of returns from the labors of the Investment Committee and the capital funds. The revenues from investments help to finance the Institute as an ongoing enterprise.

There has been one capital fund drive, a byproduct of a report by Director Herbert Wechsler in 1976. Wechsler noted that in both 1974 and 1976 expenditures outran income, and he called for an increased endowment. A capital campaign was eventually organized for endowment purposes. The Campaign Committee, which raised $5,500,000, had as its co-chairmen Vester T. Hughes, Jr. and Martin Lipton. The vice-chairman of the Committee was Lloyd N. Cutler and the Steering Committee was chaired by James H. Wilson, Jr. of Atlanta. The Committee did the job and the requisite funds were raised.

The Treasurer of the Institute, Bennett Boskey, is a real hands-on director of the financial affairs of the Institute. Boskey's value to the Institute is unparalleled. He became ALI Treasurer in 1975 and has been on the Committee on Institute Program, the Capital Campaign Steering Committee, the Finance and Development Committee, and the Investment Committee. At the same time, he has been an Adviser on four of the major projects of the ALI, including the very successful Restatement Second of Judgments, and has been a member of the committee working with ALI-ABA. He is a big picture, as well as a detail man, and his comments on the Council and on the floor of the Institute materially affect the result. With his proximity to Philadelphia from his Washington office, he is regularly rung in on administrative problems and his oral Treasurer's reports are appreciatively received. He is the renaissance man of the Institute.

VI. CONTINUING LEGAL EDUCATION: ALI-ABA

Near the end of his tenure as Director of The American Law Institute in 1961, Judge Goodrich, collaborating with Paul A. Wolkin, the Assistant Director of the ALI, published a history of the Institute. Continuing legal education ("CLE") has become a very major part of the Institute program, and a sketch of its beginnings is drawn here from that Goodrich/Wolkin account as well as from the forty-year history of ALI-ABA by Mr. Wolkin published in 1988. As the Institute developed its program in legal education, John E. Mulder was in charge from 1947 to 1963; Mr. Wolkin was responsible from 1963 to 1992; and Richard E. Carter has now succeeded him.
The need for continuing legal education was early recognized by the Institute. Quite apart from the Institute, in 1932 the Practising Law Institute was organized in New York for improvement of the competence of lawyers. The demand for adult education became particularly serious after World War II when many returning veterans needed to be refreshed and updated. The American Bar Association considered the best means of achieving continuing legal education in 1946 and 1947 and recommended that the ALI undertake the responsibility with the cooperation of the ABA. This resulted in the formation of a joint committee shorthandedly known as ALI-ABA under the chairmanship of Harrison Tweed, the President of the ALI. A grant of $250,000 from the Carnegie Foundation enabled the Committee to engage John E. Mulder, a professor at the University of Pennsylvania Law School, as its first Executive Director.

ALI-ABA presented compact programs around the country and by the midsummer of 1961 had sold more than 340,000 copies of the handbooks it had produced on a wide variety of legal subjects. Its first periodical, *The Practical Lawyer*, was started in 1955 with Paul Wolkin as the editor and continues to this day. This deals not only with substantive legal matters, but also with practical topics of law office management, accounting, equipment, and other details of operating the office.

In December of 1958, the Presidents of the ALI and the ABA sponsored a conference at Arden House in New York, which published a report focusing in detail on how to improve continuing legal education. The 1958 Arden House Conference and a second Arden House Conference in 1963 did much both to establish CLE on a permanent basis throughout the country and to enhance its quality.

In 1958 the ALI-ABA Committee was restructured to provide for an equal number of representatives from each organization, but strains eventually arose in the course of the collaboration. In 1966, a summit meeting of five past, present, or future Presidents of the ABA, the Chairman and President of the ALI, and the President of the Association of American Law Schools met to consider alternatives. To put it bluntly, by this time continuing legal education was not merely a public service but had become a significant source of funds, and in the view of then Institute Director Wechsler, "[t]he essential dynamics are competitive." The possibility of letting the two organizations run competing programs was considered. The resolution was an odd split.

ALI-ABA continued its program and the ABA undertook simultaneously its own program through its Standing Committee on Continuing Education of the Bar. In 1974, a written understanding was reached between the two organizations. The ABA was free to conduct programs
through its own Sections, and any ALI-ABA program that involved coordination or cooperation with an ABA Section was to be cleared with the ABA before it was undertaken. The chairmanship of ALI-ABA rotated between the two organizations, but ALI-ABA’s assets continued to be managed by ALI. Meanwhile, the Practising Law Institute, which had been operating only in New York state, wished to expand its activities. In 1968, it decided to go national, and Mr. Wolkin on behalf of ALI, which had no desire to monopolize the field, warmly endorsed the expansion.

ALI-ABA began to conduct large-scale summer programs, one of them a four-week “post graduate course in federal securities law” at Haverford College in Philadelphia. A 1968 program on taxation was offered in some twenty cities with over 2,000 participants. By 1987, ALI-ABA had published some 100 titles and distributed 1,668,920 copies of its books. The all-time best seller was *The Revocable Trust*, by A. James Casner, which sold 71,925 copies. The ALI-ABA program expanded into educational films, audiotapes, television, and videotapes, as well as satellite transmission.

In 1980, Robert K. Emerson, Chairman of the ABA Standing Committee on Continuing Education of the Bar, and Mendes Hershman, a member of the ALI-ABA Committee from the ALI, discussed with ABA President William Reece Smith, Jr. the possibility of a true merger of the programs under a separate organization operating out of Philadelphia, with initial funding of $750,000 from the ABA and $1 million from ALI. Thus began a long and intense interest of Smith in the possibilities of a unified program. Sherwin P. Simmons of Tampa, Florida, and Hugh Calkins of Cleveland, Ohio, as well as Paul Wolkin, worked with Smith to develop a merger plan, but it became apparent that no agreement could be then reached and the ALI-ABA program continued.

Subsequently, in 1991, the Presidents of the ABA and ALI appointed a special committee to recruit a new Executive Director to succeed Paul Wolkin, who would retire in 1992, and to reconsider merger of the respective educational programs. Mr. Smith, now a member of the ALI Council, chaired this committee. Richard E. Carter, Director of the ABA Division for Professional Education, was selected as the new Executive Director, and in 1993 the committee unanimously recommended a merger. There was to be a single staff to develop both programs, and offices would be maintained both in Philadelphia, home of the ALI, and Chicago, headquarters for the ABA. The 151 programs of the two organizations of the preceding year had proceeded largely without conflict. The revenues of ALI-ABA had been $7,558,000 and of the ABA $3,357,000. Savings of $1 million to the ABA were contemplated by the merger.
However, in 1994, the Board of Governors of the ABA rejected the plan. Mr. Smith, who had worked mightily for merger, wrote to President Wright of The American Law Institute with greatly excessive modesty, "I am sorely disappointed by the outcome, not only because I believe the public and our profession would best be served by the merger, but also because of the shortcomings in my leadership without which there could have been a different result." Since that rejection, merger talks have lapsed.

The ALI-ABA program has remained an active and financially significant part of the ALI program in the 1990s. Its annual operating income has averaged about ten million dollars during this period.

VII. LEADERSHIP

The leadership of the Institute is in its officers, of whom the most important are the President, the Treasurer, and the Director. Heavy duties also fall on the Deputy Directors Elena A. Cappella and Michael Greenwald. The Presidents tend to serve a long time and chair the Executive Committee of the organization, as well as direct the course generally and preside at the Annual Meetings. The only exception with respect to length of service is noted in the 1980 Report: "When Judge R. Ammi Cutter succeeded Norris Darrell as President of the Institute in 1976, he made clear that he wished to serve no longer than was necessary to permit the Council to select a younger person who would carry on for a substantial term." Hence, he was succeeded in 1980 by Roswell B. Perkins. Judge Cutter's stiff New England manner was a fooler—he was a leader with measured merriment.

There have been four Directors in this seventy-five-year period, William Draper Lewis, Judge Herbert F. Goodrich, Herbert Wechsler, and now Geoffrey C. Hazard, Jr. The first Director gave up his teaching to give full time to the Institute; Judge Goodrich continued his judicial duties on the Third Circuit Court of Appeals while serving as Director; and Professors Wechsler and Hazard maintained teaching schedules respectively at Columbia and, in Hazard's case, first at Yale and later at Pennsylvania. The Director's tasks are not merely to administer and lead the enterprise but to participate directly in all of the projects; it is thus a tremendously difficult and consuming job. All the Directors had played major roles on Institute projects before taking office. Mr. Lewis more than anyone else created the Institute and later was Reporter for an abortive Restatement on Business Associations. Judge Goodrich had been Assistant Director and a Reporter on Conflicts. Professors Wechsler and Hazard were responsible as Reporters for two of the Institute's most successful projects, the Model
Penal Code (Wechsler) and the Second Restatement of Judgments (Hazard).

The Council, ranging in number from fifty to sixty-one in recent years, is basically a self-perpetuating organization with a nominating committee, although its members are formally elected by the membership at the Annual Meeting. The current President, Professor Charles Alan Wright of Texas, in a report on the Council in 1997 said, “The rough rule that I think everyone has held in mind for many years is that the Council should be approximately half practitioners and half judges, academics, and government lawyers.” In 1990, which he took as a sample, twenty-seven of the fifty-four members were practitioners and there were thirteen judges (six federal and seven state), twelve academics, and two government lawyers. As of June 1997, those numbers had shifted to thirty-four practitioners, fifteen judges (nine federal and six state), and twelve academics. The membership is fairly well distributed by circuits, with at least two from every circuit and a maximum of eight from the District of Columbia and Second Circuits. Currently forty-eight are male and thirteen female. Because as a practical matter the Council members tend to serve indefinitely, the 1997 median age was sixty-four.

The Council’s work from the beginning until the present time has been heavy. It regularly meets at least three times a year, normally for several days in October in Philadelphia, similarly in December in New York, and more briefly in connection with the Annual Meeting in May, normally in Washington. The Council is not merely the basic governing body of the Institute, but it also continues the duty of considering every single work product of the Institute in detail. The practice remains as from the beginning, with Reporters, designated by the Director and approved by the Council, who work up their Restatements or statutory projects over a period of years with the help of their Advisers and, now, their Members Consultative Groups.

When units of those projects are ready, as for example sections on a specific topic in a Restatement, they are brought to the Council for some hours of discussion. The Council rarely rejects a draft entirely, but it almost invariably makes many suggestions for change. If there are differences of opinion, and often there are, the Council vote is controlling, subject only to the views of the membership at the Annual Meeting.

Now, as seventy-five years ago, it is fully understood that the laboring oar will be pulled by the Reporters; their selection is of the utmost importance. While they differ greatly in style, a standard of excellence has been maintained. Whereas in the beginning the Reporters came almost exclusively from the Ivy League schools, now they are recruited from
across the country. A project recently completed, the Restatement Third of Torts: Products Liability, the Reporters were Aaron D. Twerski of Brooklyn Law School and James A. Henderson, Jr. of Cornell Law School, a duo that maintained extraordinarily effective leadership through several difficult years.

There is also the internal staff of the organization, now approximately ninety persons operating out of the Philadelphia headquarters. The Deputy Directors are Elena A. Cappella and Michael Greenwald, and the Executive Director of ALI-ABA is Richard E. Carter. Roswell B. Perkins is Chair of the Council, Charles Alan Wright is President of the Institute, Judge Patricia M. Wald is the First Vice President, Michael Traynor of San Francisco is the Second Vice President, Bennett Boskey of the District of Columbia is Treasurer, and Geoffrey C. Hazard, Jr. is Director. Geographically the officers are a cross section of America, hailing from New York, Texas, the District of Columbia, California, and Pennsylvania.

Basically the dependence of the Institute has been on its four Directors during this seventy-five year period. It is not hyperbole to say that they have been four of the ablest leaders of the legal profession in America.

VIII. IMPACT

When William Howard Taft and Charles Evans Hughes incorporated The American Law Institute in 1923, they were thinking big. They and their associates believed that American law was in serious disarray and that the bar, the bench, and the schools, by working together through the Institute, could achieve uniformity at least in the common law through Restatements. To a remarkable degree, that vision has been realized.

In one important respect, the game has changed. The founding fathers of the Institute were mainly concerned about the common law, and today's flood of statutes was never contemplated. Even with regard to statutes, however, the Institute has had enormous successes. The two greatest have been the Uniform Commercial Code (with the National Conference of Commissioners on Uniform State Laws) and the Model Penal Code.

But in the common law target area, the success of the Institute has been immense. In some states, where there is no conflicting statute or earlier case law precedent, the Restatements are the law. As Wisconsin Supreme Court Justice Shirley Abrahamson pointed out in her Fairchild Lecture, as of March 1994 there had been 125,000 published court citations to Restatements, and the United States Supreme Court had cited the Restatements in no fewer than nine cases during the 1993-1994 term.
Judges in every one of the fifty states have utilized the Restatements; while some of these are simply string citations, as Justice Abrahamson has observed, Restatement work has had "a substantial impact in the 'real world.'" This impact has, if anything, intensified since; total published citations to Restatements by 1998 were up to 141,087.

The effect of the Institute on court decisions, on advocacy, on scholarship, and on continuing legal education has been simply immense. The complaints of 1923 about the scattered nature of the common law are now rarely heard. The vision of the founders has been realized.

IX. CONCLUSION

The Institute continues at the horizon of the law as well as in familiar fields. The current project on Family Law (Principles of the Law of Family Dissolution) is an innovative illustration. Restatements on Unfair Competition, Suretyship and Guaranty, and Mortgages have recently been completed. Extensive revisions of the Uniform Commercial Code are presently going forward. Just as business has become international, so must the work of the Institute. A major project, which will be led by Director Geoffrey Hazard, is an attempt to develop Transnational Rules of Civil Procedure.

Candor requires the admission that the Institute has never since fielded quite as distinguished a group as its founders. Neither has the profession; an aggregation of a Root, a Taft, a Hughes, and a Cardozo has not gathered lately. Of the famous founding fathers, the two whose names most resonate today are Justice Benjamin Cardozo and Judge Learned Hand. If we review their philosophies of law and their workmanship as reflected in the Justice's Nature of the Judicial Process or the recent splendid biography of the Judge by Professor Gerald Gunther, we may preen ourselves a bit on this 75th anniversary. Their successors have maintained their standards and they have kept the faith.