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# ALI-ABA...XL!

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COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION  
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## Preface

**T**HE FORTIETH ANNIVERSARY of The American Law Institute-American Bar Association Committee on Continuing Professional Education is an appropriate occasion to record and review the significant events of its four decades. Although forty years of effort to advance post-admission legal education is a thin thread in the fabric of American legal history, unravelling its three strands is an instructive exercise. The three are:

ALI-ABA's missionary goal to stimulate throughout the United States the rapid and sound development of continuing legal education for professional competence and responsibility.

ALI-ABA's fashioning its own model, multifaceted program of continuing legal education.

ALI-ABA's pursuing and attaining its aims and aspirations and surviving amidst the swirls of bar politics.

The author was a witness to the unfolding of the story told. He seeks in this account to be objective, an elusive goal in recording history, particularly when one has also participated in much of its making. Fairness is a more readily realizable standard, which the author hopes he has met.

PAUL A. WOLKIN

May 6, 1988

For  
Herbert F. Goodrich,  
Harrison Tweed,  
and  
John E. Mulder

## Conception and Parturition

**I**N 1947 THE AMERICAN BAR ASSOCIATION (ABA) asked the American Law Institute (ALI) to undertake a national program of continuing education of the bar. ALI, which was engaged in restating the law and drafting codes and model laws since its founding in 1923, responded favorably. The Practising Law Institute of New York (PLI), a leader in the development of the concept of continuing legal education, enthusiastically supported this new ALI venture. The effort that ABA initiated, ALI undertook, and PLI blessed, has become today's ALI-ABA — The American Law Institute-American Bar Association Committee on Continuing Professional Education.<sup>1</sup> This is the story of how ALI-ABA started and how it reached its 40th Anniversary, and of the roles of its founders, ALI and ABA, in the enterprise.

### **CLE's Beginnings**

Early efforts by the organized bar to conduct continuing legal education programs were sporadic.<sup>2</sup> The Association of the Bar of the City of New York sponsored continuing legal education lectures before and following World War I. There were programs undertaken in Iowa, Cleveland, and Minnesota in the late '20s and in the '30s. In New York, Harold Seligson initiated continuing legal education courses at the beginning of the '30s that developed into the PLI.<sup>3</sup> Activity at Stanford University during that decade inspired a California State Bar program.

A report of the ABA Section of Legal Education and Admissions to the Bar, to the effect that very little was being done at the time in post-admission legal education, led to the adoption of a resolution by the ABA in 1937 to sponsor and encourage a nationwide program of

continuing legal education.<sup>4</sup> The Section in the latter half of the '30s performed a vital role in advancing the cause of post-admission legal education, nationally, at the state and local levels, and in the governing bodies of the ABA. It promoted legal institutes and spurred bar groups throughout the country, in urban and non-urban localities, to initiate and support such activities. This period saw an increase in emphasis on locally conducted programs, and an awareness developed in bar organizations that continuing legal education served as an excellent vehicle for increasing association membership and activities. Well-attended courses on the 1938 Federal Rules of Civil Procedure demonstrated the eager response that awaited educational programs on significant new developments.<sup>5</sup>

PLI may fairly claim to be the progenitor of organized continuing legal education in the United States.<sup>6</sup> The vision of Harold Seligson, PLI's founder, of post-admission legal education as a vital force in enhancing professional competence started modestly. By the end of World War II, PLI was flourishing, offering a wide range of programs in New York and publishing a landmark series of monographs on developments in the law to refresh returning lawyer-veterans on the law they were unable to practice and study while in the service of their country. ABA, of course, had a strong interest in retooling these veterans and a cooperative ABA-PLI venture toward this end went forward based on the experience of an earlier successful national ABA Section of Taxation-PLI joint endeavor in federal taxation.<sup>7</sup> This program encouraged ABA to think of longer-range aspects.

### **ABA Momentum and Action**

In 1946, an October meeting of the ABA House of Delegates in Atlantic City unanimously adopted a resolution that the Association undertake to initiate and foster a national program of continuing education of the bar and that the development and coordination of such a program be implemented by the Association's Section of Legal Education, acting through the Section's Committee on Continuing Education of the Bar.<sup>8</sup> The resolution was adopted upon a submission by John Kirkland Clark of New York on behalf of the Section. Mr. Clark, in proposing the resolution, commented:

The Section of Legal Education has long been concerned with post-admission education of practicing lawyers. Since 1944, the Section's main efforts have, as you know, been devoted to the problem of refresher courses for lawyer veterans.

The refresher program will be completed by next July, but the need for continuing education of the bar remains. It is important that the impetus given continuing education by the refresher program shall not be lost. To that end, the Section of Legal Education has set up a Committee on Continuing Education of the Bar to deal with this important subject.

I know of no field in which the American Bar Association can be of greater aid to the legal profession as a whole, or where its efforts will be more appreciated by its members. Continuing legal education is clearly within the jurisdiction of the Section of Legal Education. It is certainly a duty of the American Bar Association to approve it. The brief resolutions which I shall propose are simply declaratory of the Association's policy and the Section's responsibility.

The Council and the Section, both of which unanimously recommend the adoption of these resolutions, feel that a clear declaration of this sort by the House is important to the future development of post-admission legal education. These resolutions have also been approved by the Board of Governors. . . .<sup>9</sup>

Following the House of Delegates action, the Chairman of the Section appointed 14 members to serve on a Committee on Continuing Education of the Bar to be chaired by Sidney Post Simpson, a Professor at New York University Law School and a PLI trustee.

Professor Simpson about this time published in the Harvard Law Review an article titled "Continuing Education of the Bar"<sup>10</sup> that is still perhaps the most perceptive analysis of the function and purposes of continuing legal education. The article considered what the character and scope of continuing legal education should be, as well as the need for an effective national program. Professor Simpson asked, "What

kind of an organization should be entrusted by the organized bar with the national aspects of continuing education?" He answered:

It must be a national organization, with directors or trustees geographically representative of the American Bar. It must be a non-profit organization. It must be an organization which can work harmoniously with the bench, the bar and the law schools throughout the United States. It must be able to gain the confidence of the entire organized bar. It must be prepared to pioneer in continuing legal education.

If such an organization did not exist, it would be necessary to invent it. But it does exist. That organization is The American Law Institute. It has the confidence of the bench, bar, and law teachers on a national basis, and could, perhaps with some internal reorganization, turn its hand to the implementation of a continuing education program under the auspices of the American Bar Association without delay, and to the great good of all concerned.<sup>11</sup>

Matters then moved swiftly. In December of 1946, the Association of American Law Schools (AALS) at its Annual Meeting in Chicago unanimously adopted a resolution to cooperate with the ABA Committee and authorized appointment of a subcommittee to implement such cooperation.<sup>12</sup>

Two months later, the Executive Council of the ABA Junior Bar Conference at its mid-year meeting in Chicago also adopted a resolution of cooperation with the Committee on Continuing Education of the Bar and authorized its committee on relations with law students to implement such cooperation.<sup>13</sup>

On August 25, 1947, Mr. Simpson circulated among members of his ABA Committee on Continuing Education of the Bar a copy of its final report. Copies of the report were also circulated by the Chairman of the Section of Legal Education to the ABA Board of Governors and House of Delegates as a basis for action that the Sections hoped the Association would take at its meeting in Cleveland.<sup>14</sup>



The Committee recognized that any effective program of continuing legal education would have to be conducted at the state and local levels or by regional agencies. The purpose of a national agency would be to provide a core around which strengthened and united local effort would grow, in addition to sustaining and fostering continuing legal education activities throughout the United States.

The Committee considered three possible administrative organizations to assume the responsibilities envisioned: the ABA itself, either directly or working through its Section of Legal Education; a new and independent agency created for this purpose that would have some relationship to the ABA; and an existing agency adapted to meet the needs of a centralized national program.

These possibilities were reviewed in the light of the urgent need that an immediate program be undertaken and developed; the requirement that the national agency charged with the responsibility have the capability of continuity of operation; the consideration that a principal function of the national agency would be that of coordinating and channeling the regional activities in the field; and, finally, the need that the national agency have flexibility to adapt itself to changing circumstances and conditions. The possibilities for financing the work of the national agency were also considered.

Weighing the four factors enumerated, the Committee concluded that the most feasible and practicable plan was “[T]o have the American Law Institute, with the cooperation of the American Bar Association, act as the central agency for the administration of continuing education. In such work The American Law Institute would expect to have the full assistance and cooperation of the Practising Law Institute, which has successfully carried on the Section of Taxation’s national program in post-admission federal tax education, as well as the major part of the veteran’s program. It would also have the cooperation of the Association of American Law Schools and the National Conference of Bar Examiners.”

The report further noted that it was the consensus of the Committee that ALI “by virtue of its national reputation and its stated expression that its entrance into the field of continuing education was felt to

be both a privilege and an obligation to the bar as a whole, would — with appropriate modifications in its present organization — be ideally suited successfully to carry out such activities. It seemed to the Committee that if, as indicated above, it was imperative that a program be gotten under way quickly, if such a program required continuity of operation, coordination on a national basis, and flexibility in organization, the American Law Institute was the most appropriate and best suited instrument for a program such as the one which has been envisaged.”

The Committee report then described the plan that had been developed for ALI's undertaking the proposed program. That plan was reflected in a draft “Memorandum of Understanding between the American Bar Association and the American Law Institute in connection with a National Program of Continuing Education of the Bar.” A copy of the proposed Memorandum of Understanding was attached to the report of the Committee, the document having been approved by the Committee and the Council of the Section of Legal Education on June 6, 1947.

At the meeting of the ABA House of Delegates in 1947, Herbert W. Clark of California, Chairman of the Section of Legal Education, explained in detail the program proposed in the Committee's report. He noted that the primary problem of the Committee had been the decision as to “what would be the most appropriate and effective central agency through which such a national program could be operated.” He reported that the Committee recommended as the national agency the ALI, with the cooperation of the ABA and the PLI. He summarized the proposed Memorandum of Understanding and submitted a resolution that was unanimously adopted:

*Whereas*, the House of Delegates, on October 31, 1946, directed the Section of Legal Education and Admissions to the Bar, acting through its Committee on Continuing Education of the Bar to develop and coordinate a national program of continuing education of the Bar; and

*Whereas*, the Section through its said committee has perfected a Memorandum of Understanding with the American Law Institute and has filed its report and recommendations, now therefore, be it

*Resolved*, (1) That the report of the Committee on Continuing Education of the Bar as approved by the Section be and is hereby accepted, and the Memorandum of Understanding attached thereto be and hereby is approved.

(2) That the Board of Governors of the Association be and is hereby authorized and empowered to take such further steps as are necessary and proper to carry out the terms of the proposed agreement.<sup>15</sup>

### **ALI Acts**

ALI in 1946 had been in being only 23 years, years devoted to drafting the Restatement of the Law, a Code of Criminal Procedure, and during the war an International Bill of Rights.<sup>16</sup> However, it faced the question in the early '40s whether its mission had been completed. Work with the National Conference of Commissioners on Uniform State Laws on a Revised Uniform Sales Act that developed into a plan for a commercial code appeared to augur well for the continuation of the Institute and stimulated an inquiry into possible additional future programs through a special ALI Committee chaired by Judge Learned Hand. The Committee's report, in March of 1947,<sup>17</sup> enumerated much that could be done, including a project in "Post-Admission Legal Education."

It stated:

The continuing legal education for lawyers following their admission to practice has become a matter of great interest in the last decade . . . . Everyone connected with the law schools, the bar associations and the Practising Law Institute is agreed that the general project of the continuing education of the bar is a matter of first importance to the profession and the community and that if it is carried through successfully, it will be the most important development in legal education in

the last sixty years. The already developed move in this direction was given enormous impetus by the necessity of providing the means whereby the lawyer, who had been in war service, could make up, in part, for the gaps in his knowledge which were produced by developments during his absence. Your Committee believes that an opportunity is presented to the Institute for service in this field which is fully as important as the undertaking to restate the law in 1923.

The Committee concluded that "we are here presented with a golden opportunity for usefulness. . . . Our nationwide reputation for solidity of work in the law and our ability to command the help of the leaders of the profession everywhere would insure us favorable reception from the start. The opportunity, in the judgment of your Committee, is challenging and exciting and one which we should grasp with enthusiasm."

With plans for new missions drawn,<sup>18</sup> ALI's continued role in the law was assured. A new administration assumed the direction of ALI in May of 1947. Harrison Tweed, of the New York firm of Milbank, Tweed, Hadley and Hope and President of The Association of the Bar of the City of New York, succeeded Philadelphia's Senator George Wharton Pepper as President. The eminent conflict of laws scholar, Judge Herbert F. Goodrich of the United States Court of Appeals for the Third Circuit and a former Dean of the University of Pennsylvania Law School, was the new Director, following the Institute's first Director and founding father, William Draper Lewis.

The proposal to undertake a program of continuing education was not of the same genre of ALI projects, past and proposed, and more persuasion was needed to convince ALI's governing body, its Council, to pursue the program. Tweed and Goodrich strongly believed in the merits of the project and wanted it to be a part of their new agenda. To assist them in convincing the Council of the project's worthiness, Arthur A. Ballantine, a leader of the New York bar and President of PLI, pleaded its case. The Minutes of the 78th Meeting of the ALI Council<sup>19</sup> report that Mr. Ballantine in his presentation summarized PLI's history, its methods of working, and the success it had achieved. He

pointed out the great advantage and opportunity offered to the Institute to carry on at a time when nationwide interest in post-admission legal education was aroused by the "Refresher Courses for Veterans." Mr. Ballantine called attention to the fact that when PLI was formed its activities were local in scope but later developed into a national program. He believed that if ALI would put the prestige, contacts, and confidence of the bar, which it had, into this work, the project would be an important component of the future work of the Institute. To drive his plea home, he observed that the Institute was interested in the "Improvement of the Law," and that post-admission legal education would broaden out into the field of the "Improvement of the Lawyer." He concluded that the time was ripe for this type of work, but that it was necessary that there be some central agency to supply material, methods, and stimulation, and that the Institute was the logical organization to take over this important task.

Judge Learned Hand in commenting on Mr. Ballantine's presentation said that the proposal was by far the widest departure from Institute work ever suggested to it, and that, like all other new ventures, it had its risks, but that the decision could not be delayed on the question and should be acted upon immediately.

After some discussion the Council adopted a resolution that read:

Resolved: That the Council approve in principle the plan of work for Post Admission Legal Education and that a Committee be appointed to work out the details with the Practising Law Institute and to report back to the next meeting of the Council or Executive Committee with their recommendation; that final action shall be subject to the approval of the Council;

Further Resolved: That the Executive Committee be authorized to propose such amendments as may be necessary to the Charter and By-Laws and be requested to present their recommendations in time for the necessary changes in the Charter and By-Laws.

At a meeting of the ALI Executive Committee on June 20, 1947, President Tweed submitted the proposed Memorandum of Understanding with ABA for work in continuing legal education. This is the agreement that had been approved by the Committee on Continuing Education of the Bar and the Council of the Section of Legal Education. The ALI Executive Committee voted approval of the Memorandum.

The Minutes of the next meeting of the ALI Executive Committee, on July 15, 1947, report further discussion of the project, focusing on the selection of a Director. The name of John E. Mulder, a University of Pennsylvania Law School Professor was favorably received, but since funds had not been appropriated for the project, it was not possible to offer the appointment to Professor Mulder at that time.

Funding was pursued while the project was going through the ABA process for approval. President Tweed, Director Goodrich, PLI's Nicholas Kelly, and Norris Darrell, a member of the Institute and of the PLI Board, met with Devereaux C. Josephs, President of the Carnegie Corporation. Their plea was favorably received and the Corporation ultimately made a grant of \$250,000 to ALI for its continuing education project.

At an October 1, 1947, meeting of the ALI Executive Committee, President Tweed reported that the ABA's Board of Governors and House of Delegates had approved the Memorandum of Understanding and that the ABA had nominated its members for the Committee referred to in the Memorandum. The Executive Committee delegated selection of the 12 nominees of the Institute to a committee consisting of President Tweed, Norris Darrell, and Director Goodrich, with power to act. The Executive Committee also directed the President and Director to make the necessary arrangements to implement the Memorandum of Understanding with the ABA and to conduct negotiations with PLI pursuant to provisions in the Memorandum. Paragraph 3(g) of that agreement called for ALI to make "arrangements with PLI for taking over and carrying forward its national activities in the field of continuing education of the bar to the end that the experience and resources of PLI may be utilized in the national program to the maxi-

num benefit of the legal profession and the public." A preliminary report was submitted to the Executive Committee by the future Director, Professor Mulder.

### **A Mystery**

The events and the attendant circumstances that gave birth to the new Committee under the aegis of ALI with the cooperation of ABA, have a number of surprising aspects and raise questions to which answers 40 years later may only be the products of speculation. ABA and PLI by 1946 and 1947 had substantial experience in the conduct of continuing legal education programs. That experience had shown the subject to be fertile for successful development with possibilities of substantial benefit to the sponsoring organizations as well as the bar. ABA through its Section on Legal Education had for more than 10 years explored the problems and potential of continuing legal education. PLI had, working with ABA and through its own efforts, enjoyed success in offering its programs and publications nationally beyond the borders of New York. By contrast, ALI in 1947 had not experienced or been responsible for any activity in post-admission legal education and had no staff or administrative means for dealing with an activity that was alien to ALI's 24 years of being.

Why under these circumstances did ABA and PLI seek to have ALI assume national leadership in post-admission legal education? Why would PLI agree to turn over its publications to the new venture and to confine its activities to New York? Why would ALI want to assume the leadership proffered to it? Was ABA lacking in purpose or staff to do this? Or PLI? The record would appear to contradict this thesis. Or, were there some events in the ABA-PLI joint experience during and following World War II that convinced each their joint venture should not go forward and, thus, precluded either from pursuing a national effort individually? Under the latter theory, ALI, with a new administration seeking a new program, offered a solution for continuing the forward momentum of emerging post-admission legal education, for all the reasons given in the report of the ABA Section of Legal Education. This scenario might explain the combined effort of the leadership of ABA, PLI, and ALI to achieve shared but unexpressed objectives.<sup>20</sup>

## Footnotes to Chapter 1

- <sup>1</sup> “The American Law Institute-American Bar Association Committee on Continuing Professional Education” has been denominated differently from time to time during its history. “ALI-ABA” is used in this discussion to refer to the Committee, whatever it may have been called at the time of the reference.
- <sup>2</sup> A 1972 publication by the American Bar Foundation, MORELAND, *PROFESSIONAL EDUCATION OF THE BAR, GROWTH AND PERSPECTIVES* (Chicago) traces in its introductory chapter, pp. 1-20, the early beginnings and development of continuing legal education in the United States in greater detail. References to the early history are based on that chapter. It is of interest to note and, perhaps relevant to ALI’s involvement in post-admission legal education, that a series of significant institutes in the early 30’s in Cleveland featured Reporters for American Law Institute Restatements then in progress — Professors Francis H. Bohlen (Torts), Austin W. Scott (Trusts), and Samuel Williston (Contracts). *Id.* at 10.
- <sup>3</sup> See PRACTISING LAW INSTITUTE, *THE FIRST FIFTY YEARS* (1983), Chapter I.
- <sup>4</sup> 62 A.B.A. REP. 364, 964 (1937).
- <sup>5</sup> MORELAND, *supra* note 2, records in detail the developments during this period at 21-37.
- <sup>6</sup> See PRACTISING LAW INSTITUTE, *supra* note 3. See also, Seligson, *Post-Admission Education for Lawyers*, 22 A.B.A.J. 231 (April 1936).
- <sup>7</sup> See Chapter III, *The War Years*, PRACTISING LAW INSTITUTE, *supra* note 3.
- <sup>8</sup> 71 A.B.A. REP. 121 (1946).
- <sup>9</sup> *Id.* at 120, 121.
- <sup>10</sup> 59 HARV. L. REV. 694 (1946).
- <sup>11</sup> *Id.* at 717, 718.
- <sup>12</sup> 72 A.B.A. REP. 308 (1947).
- <sup>13</sup> *Id.*
- <sup>14</sup> The full text of the report of the Committee appears in 72 A.B.A. REP. 307 (1947).
- <sup>15</sup> 72 A.B.A. REP. 110 (1947). The 1947 Memorandum of Understanding is reproduced in Appendix A of this volume.
- <sup>16</sup> The reasons for the organization of ALI appear in the *Report of the Committee on the Establishment of a Permanent Organization for the Improvement of the Law Proposing the Establishment of an American Law Institute*, 1 A.L.I. PROCEEDINGS, Part I (1923).
- <sup>17</sup> *Report of Special Committee on Future Program* (Submitted to ALI Council March, 1947).
- <sup>18</sup> Among the projects proposed in addition to that of Post Admission Legal Education were work on (a) Business Associations; (b) Criminal Law; (c) A Critique of Legal Rules; (d)



Income Tax Code; (e) International Law; (f) A Revision of the Patent Laws; and (g) Additional Restatement work. All were pursued in the years that followed except (c) and (f).

<sup>19</sup> The Minutes of the ALI Council and Executive Committee are unpublished, but on file in the ALI Library, 4025 Chestnut Street, Philadelphia, PA.

<sup>20</sup> For a view from PLI's vantage of this phase of ALI-ABA's history, see PRACTISING LAW INSTITUTE, *supra* note 3, pp. 41-49.