

THE MUSEUM OF MODERN ART ORAL HISTORY PROGRAM

INTERVIEW WITH: DONALD ELLIOTT (DE)

INTERVIEWER: SHARON ZANE (SZ)

**LOCATION: 180 MAIDEN LANE
NEW YORK CITY**

DATE: JUNE 7, 1994

BEGIN TAPE 1, SIDE 1

SZ: Tell me where and when you were born and just a little bit about your background.

DE: I was born in New York City in 1932. I was the son of a professor at Union [Theological] Seminary, grew up in the city, and I practiced law.

SZ: So you grew up in Manhattan?

DE: Yes.

SZ: And went to public schools, private schools?

DE: Private school. I went to a school run by Teachers College, the old Lincoln School, until it was closed by Teachers College, then went to New Lincoln, and I was, in fact, one of the plaintiffs in the lawsuit to try to stop Teachers College from closing Lincoln.

SZ: What year did they close the old Lincoln School?

DE: Nineteen forty-eight.

SZ: So you knew the Guckers.

DE: Sure. I worked at their camp.

SZ: My son goes there. I went there [laughing].

DE: Is that right?

SZ: Yes, that's why I smiled when you said the Lincoln School.

DE: I was a counselor there, for four or five years.

SZ: And, of course, that was the school that David Rockefeller went to, right, at one point? Somewhat earlier.

DE: The Rockefeller children went until prep school, and then they would all leave and go to prep school.

SZ: So you graduated from New Lincoln?

DE: Yes.

SZ: And went on to...?

DE: Carleton College.

SZ: So that was 1950?

DE: Graduated in 1950, and then went to NYU Law School, as a Root Tilden in 1954, and graduated in 1957.

SZ: Was law something you knew you wanted for yourself?

DE: I think so. It seemed to be the least restrictive of the graduate disciplines, so that's really why.

SZ: The least restrictive--philosophically?

DE: Lawyers have maintained the myth that they can do almost anything.

SZ: I think you're telling me you believe that, is that right [laughing]?

DE: I've done what I can, to perpetrate that [laughter]. Then I started to work for this firm, I mean for Webster Sheffield [Fleischmann Hitchcock & Brookfield]. Then I went into [John] Lindsay's government as counsel to the mayor and then chairman of the planning commission during his period as mayor.

SZ: How did that come about?

DE: When I was looking for a job in 1957, the world was much simpler, and I was interviewed by a fellow at Winthrop Stimson [Putnam & Roberts] and he said that before I decided where I was going to go I ought to be sure I talk to the firms I might be interested in, and had I talked to Webster Sheffield. I said no, I hadn't, because I'd never heard of them. He said, "Well, they're upstairs." So I went out of his office, into the elevator and upstairs, without an appointment or anything, and I interviewed Bethuel Webster, Frederick Sheffield and John V. Lindsay, in that order, and they made me an offer and I took it. He [Lindsay] had just come back from being [Herbert] Brownell's executive assistant, when Brownell was Attorney General during the Eisenhower Administration.

SZ: Did they have a particular specialty that appealed to you?

DE: They had a public service interest, and Lindsay, of course, had just come back...and I

always was interested in public service.

SZ: I would imagine that that had something to do with Union Theological.

DE: Might have [laughter].

SZ: But in terms of planning, is that something that you...

DE: Well, I started out as counsel to the mayor. I had been very much interested in planning issues. I was chairman of the local urban renewal project on the Upper West Side for a couple of years and had been active in reform Democratic politics. When I got into the mayor's office, I was counsel to the mayor. I didn't have any staff. I was responsible for organizing the housing program and the poverty program and so forth, and I started using the staff of the planning department, because they were the only people around. The incumbent planning commissioner was not somebody that we related to very well.

SZ: Who was that?

DE: Bill Ballard. So I went over and became chairman in November of that first year, and I was there until February of '73.

SZ: So that was a fairly long time.

DE: I wasn't chairman the last year that Lindsay was mayor, because it's not a very great time to be planning commission chairman [laughing].

SZ: Who did that?

DE: I got John Zuccotti to take my place, and that started him on his way. Then I went back to Webster Sheffield.

SZ: Anything you can say about the whole climate for planning in those days?

DE: We were interventionists. That was a period when government was expected to make things better and was held to some responsibility for doing it. So we did a lot of innovative, unusual things. We had a mayor who was a believer and supported us. One of the things we spent time working on was how you shape development by permitting air-rights transfers (or development-rights transfers) which is a very powerful tool for figuring out a way to take the legal requirement that zoning be even-handed and use it to shape different projects. In other words, if you have the same zoning apply to an area and every building is the same, it restricts what you're able to do; but if you can transfer the right to develop from one site to another, you can leave a site untouched and make it into a park without having to spend public money. There are a lot of examples. The park across the street from what was the U.S. Steel Building; I guess it's now called One Liberty Plaza. We transferred the development rights from the new park to One Liberty Plaza, in return for their building the park. The South Street Seaport exists because we transferred the development rights off of the Seaport and the banks which held a mortgage on the land, released the land and used the development rights as security. Therefore, the Museum was able to function without having to spend \$12 million paying off the mortgage.

SZ: But when you started doing this, it was really the first time it had been done?

DE: It wasn't the first time, but we began to do it with a lot more energy and a lot more systematically. It was a tricky...we had to determine the technical procedures. We expanded transfer of developments significantly for landmarks; in other words, we allowed the transfer to be further from the site in order to protect the landmark. It's a very powerful tool for protecting a landmark, because you can take the development value of the site and move it next door.... You can save the existing building and still give the owner of the landmark the value of his land, since value in land comes

primarily from the right to develop it.

SZ: What happened when the administration changed to these kinds of....

DE: A lot of the ideas were carried forward at least in form. We tried to analyze and to determine how each part of the city ought to develop and how it ought to be regulated, so we created a whole series of special districts, and there were a lot of special districts created afterward. I think in recent years the general public hasn't expected the city to make things better, and we're back to the time when, if you want to do a project, you see the city as a series of hurdles to be overcome. We tried to find projects that carried out our view of how the city ought to develop, and then we became the advocate of the project in the city bureaucracy. We set up development offices in various parts of the city to do that. The idea was that we would encourage private investment by rewarding it in the sense that you would help it get through the approval process and thereby be able to shape the result. Most private developers are willing to respond to city initiatives if they can still make money. That's how we did the theater district and a lot of the parks and so forth. The Minskoff Theater, the Uris Theater, the American Place over on Sixth Avenue were all done as a result of this incentive zoning.

SZ: It really does point up how much a difference administrations make. Sometimes you don't really think about it.

DE: Lindsay was responsible for an extraordinary number of innovations in municipal government. He was mayor during a period when the city was very attractive to smart young people who had a social conscience who wanted to see something happen. A lot of them are still in positions of significant authority in the city government. They were an extraordinary crew. In part, it was a historical accident. It was one of those times when, briefly, the cities had their moment in the sun and talented people

wanted to make them better.

SZ: You came back to work, and your practice was mainly...?

DE: I did a lot of land use, because that's what I had been doing for eight years and there were a lot of possibilities around; development was still quite strong. And one of them was The Museum of Modern Art.

SZ: So tell me, from the very beginning, how you got hooked into that.

DE: We had done in the government the theater district, and we had been very much interested in trying to find ways that nonprofit institutions could use their land resources creatively. The particular impetus for this was Richard Weinstein, who had been in the government with me almost from the beginning. He was in the original Urban Design Group, and was hereafter working as a consultant for the Rockefeller Brothers Fund when Bill Dietel was its president. Richard said we ought to be able to take the value of the garden and use it for the Museum without destroying the garden. So we got a very small grant from the Rockefeller Brothers Fund and we put together a group that started to think about that with the Museum people.

SZ: Who was in the group, do you remember?

DE: The three original consultants were Richard Weinstein and Peter Pattism and me.

SZ: And from the Museum?

DE: Dick Koch, who was the staff person, we spent most of our time with. I think [William S.] Paley at that point was chairman, and Mrs. [Blanchette] Rockefeller was president and was very active. I believe she became chairman during the course of the project.

SZ: So this idea of Richard's came from an expressed interest in doing something to give

the Museum more space? Had that already begun, and that was why Richard was thinking about it?

DE: It was a period when the Rockefeller brothers were trying to figure out what to do with the charities that they were very interested in. The Modern was an unusual museum in the city in that it got virtually no city support, as opposed to all the other great museums--the Metropolitan, the Natural History Museum, the Brooklyn--they're all largely, although indirectly, supported by the city. But the Modern had only gotten a few small grants for educational programs and so forth, but virtually nothing for operations, and they were hurting. As I understood it, they had had a fundraising campaign for the endowment, much of the money that was raised had been used to pay operating deficits. It was becoming increasingly difficult for them to figure out how to look forward to a future that didn't have the Rockefellers as backup philanthropists. So that was part of it. It was really as much a way to try to stabilize the financial situation as to give them more space. It was clear they needed more space. I remember that at one point in the course of the project we were working very closely with the city and the state, obviously, and I wanted to be sure that we really had a case for the need for expansion. I didn't know very much about museums. So Bill Rubin put on a little show for us one morning, where he just went through a description of the various works of art that were in the Museum's basement or in storage, and what he had to do to try to give them an opportunity to be seen. Having only taken a few art courses at college, there were all of these paintings that you were completely familiar with. There were the original drawings for a painting would be on display in Munich and the painting itself would be in the basement at the Modern. It was just the Picassos that they had or were promised. So it was really quite a dazzling display. We weren't just trying to build up a monument to somebody in the sense of a building. They had a building that didn't work, fundamentally. It was marvelous in its small, intimate spaces, but you couldn't get around. So, the need for changing the physical situation of the Museum was pretty obvious; the financial need

was the one that we were focused on, and it was also serious. We were told by one of the fundraising consultants that, unless they could do something that demonstrated the really serious possibility that they could put the Museum on an even keel, it would be very difficult to do a major fundraising campaign. So this project was conceived as a tripartite undertaking with contributions from different actors adding up to a project that none of the participants could achieve alone. The City was to permit the building to be constructed and the real-estate taxes from the new condominium building to be used to pay off the bonds which were issued to pay for the expansion. The Trust for Cultural Resources would float the bonds and receive the tax equivalency payments and the Museum would undertake a major fundraising campaign, and raise any money not paid for by the tax equivalency payments. Richard did the early design work on the new building to form the basis for the financial calculations that would be made. He solved the most delicate problems concerning the relationship of the new building to the existing museum and to the Garden.

SZ: What does that mean? You mean Richard really laid out the basic premises, the space planning and all that, right?

DE: And the basic design of the building from the exterior point of view. You'll have to get him to tell you the story of the choosing of the architect, because that was one of the unsung but high points of our enterprise.

SZ: Can I get you to tell it to me, too, and then I'll have two versions?

DE: Philip Johnson and Gordon Bunshaft were both great architects and both on the Board of the Museum. But I decided for two reasons that it would be inappropriate for any member of the Board to be the architect of the project. First, the project was to have very large public support in that the real estate taxes which would otherwise be paid by the condominium owners would go to pay part of the cost of the Museum expansion. This would be the first time that the Modern had ever gotten major public

support and I did not want there to be, nor appear to be any conflict of interest. Second, we were concerned that the cost of the new building had to be within certain limits if the financial goals of the project were to be realized. Frankly, we were concerned that such cost control would be very difficult if Mr. Johnson were the architect. But they became part of the committee that was to choose an architect, and it was very hard for them to find an architect who was up to the task. One always had the sneaking suspicion that they thought in the end the world might come back to one of them. The fundamental physical problem was how you put a big building next to the garden without ruining the garden, and how you solve the circulation problems in the Museum without destroying the feel of the building and the garden, which is, of course, one of the masterpieces of the city. We've always been extremely pleased with the result, and that was, really, in its original conception, Richard's. We formed a group that was made up of, as time went on, Mrs. Rockefeller, Dick Oldenburg and Dick Koch and the three of us and various other people who would be joining from time to time--Jim Snyder, as the project went along. And then, of course, when Dick Koch left and Ed Saxe took over, he became a part of it. [Donald] Marron was very much involved as the project went along. In the very early stages we made a series of projections in terms of what the impact of the various parts of the project would be on both the costs and the revenues of the Museum. It was a quite sophisticated piece of work. We tried to figure out what the added admissions would be and what the added memberships would be and what the revenues from the bookstore would be and how big a bookstore there should be and what the restaurant would be. This was in the period when the Met was just developing its department store and that seemed to be a terrific source of revenue, since so much of the work that The Modern was showing would have possibilities of being copied and sold.

SZ: You wrote the Trust [for Cultural Resources] legislation, did you not?

DE: Let's go to the financing side. We started out with a city administration. Abe Beame, who really knew very little about The Museum of Modern Art--I doubt if he'd ever been there, frankly--but we were in the midst of a very difficult time in the city, a mini-

recession at the very least. There were half-finished buildings up in view of the Modern, particularly to the west. So we were offering the city an opportunity to get a major construction project underway, and our argument was, while it was not going to pay any taxes--the land on which it was built wasn't going to pay any taxes anyway, so the city wasn't losing anything--if this project went forward, it would generate economic activity and it would generate revenue for the Museum, but it wouldn't in fact steal any activity from the city as a whole because there weren't enough units, there weren't enough apartments to make any difference in overall demand for apartments, even though it was going to be a big building. We asked the City to support State legislation that would dedicate the real estate taxes that would be paid by the owners of the condominium units to pay principal and interest on the bonds that would be floated to pay for the expansion of the Museum. In effect, this would dedicate a flow of particular taxes to a designated purpose over a long period of time. Our arguments in favor of this were several; one, it would stimulate a major construction project when there was very little development in the City and show confidence in the luxury housing market; and two, the Museum didn't pay any real estate taxes and there would be no building and thus no taxes unless this project were allowed to go forward. The major reason, of course, was to allow the Museum of Modern Art to better show its world class collection, accommodate many more visitors and members and further enhance the cultural life of the City. The countervailing argument was that it was bad public policy to dedicate a stream of tax revenues for one use. Of course, any time the government contracts or leases space it commits future taxes, but not those from a particular source. I think you can make what I think are quite convincing arguments for both sides of the issue. Marty [Martin] Segal, who was then Beame's commissioner of cultural affairs, understood what we were trying to do and was an early supporter; he was really the only one in the administration who understood what was going on. He had the mayor's confidence and the mayor was very pleased with the idea that we would get a construction project going, so he was quite supportive. So then the question was, what was the mechanism for doing this? This had been done a couple of times in the city's history. Cooper Union is supported by tax-equivalency payments from the Chrysler Building,

and that had been done many, many years ago. The possibilities for us were the Dormitory Authority, if we added the Museum to its list of projects...but that didn't seem like a very good idea, because they do most of their construction themselves, and the Museum didn't really want to get involved in a Dormitory Authority project; in fact, I don't think at that point they had ever done anything that was quite as far from being a school building [as our project], so that didn't seem like a very good idea. UDC [Urban Development Corporation] was a possibility, but we were at a period when UDC was on very shaky ground. That was the period when its bonds were threatened with default.

SZ: There was a whole fiscal crisis.

DE: Yes, we were at the tail end of the fiscal crisis, so that didn't seem like a very good idea. The city generally was in terrible shape, so getting direct grants from the city and leaving the building on the tax rolls didn't seem like a very good idea. So we decided to create our own agency that could float tax exempt bonds...interestingly enough, there wasn't any bond-issuing instrumentality that could handle 501 (c) (3)s; there were many financing agencies for universities, hospitals and even the Industrial Development Authority that could issue tax-exempt bonds for businesses, but nobody could finance with tax-exempt bonds cultural institutions. Now that has since changed, but that was the situation then. So we decided to create this trust, and we really had a much broader view than simply doing the Modern. It was much easier to do a general project if you had a specific project to show why you were doing it. So when we did a re-zoning in the theater district, we did it around a particular [theater]--we did it around the Minskoff Theater, originally--even though we expected to use it, and did in fact use it, for a number of other theaters. That was really the theory on which we were going with the Trust, that this could become an institution that would allow not only the Modern, but maybe the Brooklyn Museum and others to build in a similar vein. The system was for the Trust to become temporarily the owner of the land, and thereby gain tax exemption for it; and then to impose in lieu of tax payments that were equal to and set in the same way as taxes, so that there would

be no advantage to the condominium owner, only to the charitable institution. As it turned out, after we completed The Museum of Modern Art, [Edward I.] Koch became mayor--I guess he became mayor while we were in the process--and he did not like the idea of the in-lieu-of-tax payments, so while the Trust has done eight or ten other financings, this tax-equivalency payment feature has not been a part of any of them; it's simply become a financing vehicle for cultural institutions.

SZ: One of the criticisms that appeared a lot was that this had in fact been created just this way only for this institution.

DE: We had to defend a lawsuit.

SZ: I had that on my list [laughter].

DE: Which we successfully did, even though the legislation did define by metes and bounds one portion of this property.

SZ: So the actual drafting, I don't know whether it was passed -- what the legal process was for doing this?

DE: We started to draft legislation, and we went to Albany. It is customary when a project is in a particular district to try to get the people who represent that district to sponsor the legislation. Roy Goodman was the state senator who covered this area, and he was very supportive all the way along. The assemblyman, who was our sponsor, Mark Alan Siegel, was a young Democrat in that district, covered that district -- so we went to him with this idea -- and he was taken by it, and liked it. We drafted the legislation with him and Manfred Orenstein and Albert H. Blumenthal, who was the majority leader in the assembly, if my memory serves me, and with Roy Goodman and his staff. The leadership in the state senate, whose names escape me at the moment, were also very important. One of the interesting things was, Mark was reading [Robert] Caro's book on [Robert] Moses. As you may recall, Moses used the

Triborough Bridge and Tunnel Authority bonds as a method for controlling what was able to be done afterwards by the technique by making a covenant with bond holders that could not then be overcome. Mark was very concerned that this trust might grow into some kind of gargantuan shaper of policy. The legislation, which is in many ways extraordinarily complicated, was drafted to...a good bit of its complication was drafted in order to satisfy Mark's concern, that no one else either understood or thought a likely problem. But it was one of the fun things as we were going through it, because we couldn't convince him, either, that this wasn't a likely prospect--so there are limitations on how long the bonds could be out for and how long the notes could be there, and various kinds of other things.

SZ: But they haven't really had an adverse effect, in the end, have they?

DE: No. When it was finally passed and when the governor was trying to decide whether to sign this or not, and the various state agencies that review legislation got a hold of it, they couldn't...I mean, it was so complicated, but they couldn't figure out why. They thought that we were doing something that they didn't understand, and so we had to explain to them that a lot of this was an abundance of caution as opposed to any real concern. But the passage of the legislation was really quite an exciting event. We finally got the legislation in shape and ready to go, and it was very near the end of the session, as everything is of any significance. The city government told us that they were for it and that they would pass it, and that we really ought not to interfere. So they really did not want us lobbying it at the end. The result was catastrophic. There was a fellow whose name I've now forgotten who voted very early in the assembly, and apparently it was a kind of tradition that, if the city wanted something seriously, he would always vote for it, because he was a city guy. But the city, even though it wanted it, didn't really care too much; so this legislator believed he was on his own. This was a bill he thought to help a Rockefeller museum, as perceived by many in the legislature, and not much more. So he voted against it, and the result was we lost in

the assembly by forty votes. We had something like thirty-six hours before the end of the session, and we were devastated. But we rallied our forces in the legislature, who agreed at that point that we could go to work and lobby. Robert Douglas happened to be, as I recall--these are all the way I recall it, and I hope they're accurate; I've always believed so--but Douglas was in Albany for Con Ed and Nelson Rockefeller happened to be in New York, so, using them, among many others, we started lobbying for this bill. One of my friends in New York said that he was sitting in Mead Esposito's office, listening to Mead talk [on the phone] about the "Elliott bill." He couldn't figure out what on earth this is, and so when Mead gets off the phone and he says, "Who was that?", and it turns out it was Nelson Rockefeller calling Mead Esposito about this bill -- which they didn't know exactly how to describe -- and Mead assuring him that the Brooklyn delegation would do its part. But it was that level of energy which went into this. Twenty-four hours later, in the middle of the night, we passed it by forty votes in the assembly. By this time, it's three o'clock in the morning, and a stringer for the New York Times comes up to me and says, "I understand you've been involved in this bill." I said yes. She said, "I don't understand. Last night it goes down by forty votes. Tonight it wins by forty votes. You folks must have really broken a lot of arms." I said, "No, no. It's just that the assemblymen hadn't had the opportunity to read it" [laughing]. The last line in the article in the Times is this little quote, quoting me saying that the assemblymen hadn't had a chance to read it, which I thought was sort of fun. During the course of that, Ollie Koeppel--there are a lot of ironies in this project--is now running for attorney general, is now the attorney general, was an assemblyman from Riverdale whose constituents, of course, use the Modern, and he was totally opposed to it. He put on a great cross-of-Gold speech at two o'clock in the morning about how this would steal hospitals and services from the poor, and what a terrible thing this was. Shortly after him, an assemblyman named Al Vann, who was a black leader from Brooklyn, Vann stood up and said, "I was the last vote that was necessary to pass the...."

END SIDE 1, TAPE 1

BEGIN SIDE 2, TAPE 1

DE: He said, "I was the last vote that was necessary to pass Big Mac"--the fiscal bail-out bill of a couple of years earlier--"and I was told that if I voted for this bill the flight of services and programs from my neighborhood would stop and things would begin to get better. So I voted for it. And lo and behold, it didn't happen that way at all. The flight continues to this day. This evening I'm told that, if I vote for this bill, services are going to be stolen from my community. And so, having learned from the past that what happens is likely to be the opposite of what I'm told, I am going to vote for this bill." And then, I swear, he winks, but he pauses and says, "And besides that, I've got a contract." So anyway, the second time around we win by forty votes. We had met in the Speaker's office after we went down originally, and they said, "We've got to do something." The counsel to the Speaker said, "What are we going to do to make this turkey fly?" I'll never forget that. Then he said, "We've got to do something to change this bill so that the second time around when we vote on it, it won't be the same bill we just voted down." So they said, "What can we do?" So we decided we'd require another public hearing before the bill was implemented. I can't remember whether there was any action that followed the public hearing, but it was to change it so that the bill would appear different. So that was in the bill. After it passed and it was signed by the governor, we had to have this public hearing. We held it in the auditorium of the library across the street, the Donnell Library. By this time, the Trust was headed by Martha Redfield Wallace. Originally, the chairman was a retired chief executive, a very distinguished fellow who came out of the Arts and Business Council, Gavin K. MacBain who unfortunately died. Martha became chairperson, and she was for quite a while. So we had a hearing, which, as you can imagine -- was a very carefully organized hearing.

SZ: This was the same year? Because this is '76. It was more than a year later.

DE: This is after the project had gone quite a ways. It was a requirement that it be...I think the language in the statute required that the project be the most feasible way of carrying out the goals of the statute, something like that. There had to be a couple of findings made, and it couldn't be done until after the project was quite far along. The whole project had been designed, and there had been a lot of controversy over the question of the mid-block tower.

SZ: You had a lot riding on it.

DE: Yes, but we were very near the end. This hearing had been quite carefully scripted so as to present this project in its best possible light, and we had all of the officials of the Museum there testifying--Dick [Oldenburg] was there, Mrs. Rockefeller, and so forth. We had one dissenting voice, who was actually, we believe, financed by a competitive building down the block, who tried to raise some procedural questions as to whether we had properly carried out the requirements of the statute. So that was the only excitement in the hearing, until we're at the very end, and Mrs. Wallace says, "Is there anyone else who would like to testify?" And a woman puts up her hand, that she would like to be heard, and it is obvious to everybody in the room that she is under a lot of stress. [Mrs. Wallace] says, "Won't you come up?" She walks to the front, and you knew something was going to happen, because she was so out of [place]; I mean, everything was pretty calm. She stands up and identifies herself as an assistant curator at The Museum of Modern Art, and she says, "The Museum is extremely important to me. I love the place, I work here, I think what it is doing is very important. But this tower, when built, is going to obliterate, for all time, light and air from this part of Manhattan, and I cannot in good conscience support it. Works of art in the Museum can be shown in other places." Then she stops, and you have the feeling that she expects the heavens to open and lightening to come down and strike her at that very moment. But not a word is said by anybody, just a complete, sort of shocked silence in the hall. Mrs. Wallace looks around and says, "Thank you very

much," and she walks back to her seat and the hearing was adjourned. It was really a very dramatic moment. During the implementation of the project we went through a great deal of controversy as to whether this tower was going to work and whether it would fit and whether it broke the zoning and so forth and so on. Interestingly enough, to my knowledge, since it has been completed, I don't think there have been any criticisms of the way it works architecturally. It's right on the line. As you go to the south, it's all very heavy office buildings in the mid-block, and as you go to the north, there were then fewer of them; there are a few more now.

SZ: People were calling for setbacks, if you should do it at all.

DE: There was a lot of concern.

SZ: Just to stay with this for a minute. Anything about the rest of the process, the City Planning Commission, the Board of Estimate, those procedural things, that come to mind?

DE: I think we had to get a special permit for the building originally, but I'm not absolutely certain of that. It was not terribly controversial. Fundamentally, once we got the legislation through and we had a single zoning lot, we were building within...it was a transfer of development rights, but in a fairly traditional form. We met most of the city requirements. We had to acquire the site next to the Museum, where the Tower now is. That was in private ownership, and that was a very difficult problem for us, because it was owned by somebody who refused to sell it. The only way we could get around it was to put in the legislation the power to acquire it by condemnation, and that didn't look very much like general legislation, because this general legislation for the Trust for Cultural Resources had the metes and bounds of a parcel on 52nd Street described in it. Of course, once we had the power to condemn it, we didn't have to; we then negotiated a contract with the owner, which is what we anticipated doing. So we never had to use the condemnation power, but if we hadn't had it, we probably couldn't have ever gotten the land, and we certainly couldn't have gotten it

at the price that made any sense. Then we had a difficult problem with the relocation of the people who were in that building, but that eventually all got worked out. That, of course, was a sensitive issue for the city. We had to try to deal with that as carefully as we could.

SZ: Which you eventually did do. Did you hire a relocation outfit?

DE: Yes, we hired a fellow who helped us relocate them.

SZ: Maybe this would be a good place to tell me about the lawsuit that ensued.

DE: The Dorset Hotel was immediately behind the Museum--is behind the Museum--on 54th Street, between 53rd and 54th.... I ought to remember that by this time. The story is that the owner of the Dorset, the original owner, whose name at the moment escapes me [Sir Peter Bing], was the owner of a very large number of properties in New York City. He had what he thought was a commitment from Governor Rockefeller to eliminate rent control, at least as it affected his properties, but clearly, as it affected everybody's properties. That did not happen, and he sold the properties, and as a result of their still being subject to rent control, the buyer failed and Bing had to take a lot of them back. He never forgave the governor, and that is, we believe, the reason why he brought the lawsuit. He attacked our statute on the grounds that it was not general legislation but that it was a specific bill designed to benefit a single private user and that the conventions which were used, of all cities of more than a million or so forth, were illegal. We won in the trial court, it was reversed by the first appellate court and we finally won in the Court of Appeals.

SZ: It was upheld in the appellate division.

DE: The statute was upheld?

SZ: No, the challenge was upheld in the appellate division.

DE: We lost in the appellate division, then we won in the Court of Appeals.

SZ: What's the first court?

DE: The first court's the supreme court.

SZ: And you lost in that.

DE: No we won in the Supreme Court and lost in the appellate division?

SZ: The challenge was upheld.

DE: And then we finally won.

SZ: Was that tough? Were you surprised by that?

DE: Yes. It was tough, and we were surprised. It's a very arcane part of municipal law. There had been the so-called Schulze cases. This whole question of how the city and state can operate had, of course, come to the fore in the fiscal crisis. We actually had been quite careful and had, in what the Court of Appeals eventually upheld, a legitimate way of doing this; but it did not appear that way to the unaided observer. So we brought everything to a halt for a couple of years, because we obviously couldn't float any bonds if we had a statute that was unconstitutional.

SZ: The design process went on in spite of it, I believe?

DE: Right. We were confident of eventual success, but it did not add to the ease with which the project went forward.

SZ: So you took care of all that?

DE: It was argued in the Court of Appeals by Ted [Merrell] Clark from Winthrop Stimson. Yes, we were very actively involved.

SZ: We sort of started talking about the choice of the architect, but we never finished with the actual choice.

DE: There was a committee, and they interviewed a series of architects and took it very, very seriously--went out and looked at their work, took a trip to...Columbus [Indiana], where the guy [J. Irwin Miller] who makes engines, Cummins [Engine Company, Inc.], is. They looked at a lot of other.... I was only indirectly involved in that. Richard [Weinstein] was the guy who staffed that.

SZ: I guess I was really looking for an opinion from you on the actual choice. [César] Pelli was chosen over I. M. Pei and [Romaldo] Giurgola, right?

DE: We were hopeful that they would choose someone who was sympathetic to what we were trying to do, and Pelli turned out to be good choice.

SZ: How did he go over with Philip and Gordon Bunshaft?

DE: It was a hard decision, but they took it. In the end, they were very gentlemanly.

SZ: It's not really the end of the legal process.

DE: We also had a lawsuit by a...there were two developers involved in the project. When we started, and after we got the legislation through and we were serious-- I guess before we got the legislation through--there was only one other building that was even remotely comparable to this one, and that was Olympic Tower. What we were trying to do was to build an apartment house on top of a museum, which meant that the costs of the apartment house were very much greater and very much more

difficult than they would have been had it been built on the ground. At the same time, we were trying to get enough money for the sale of the land to make the enterprise worthwhile. The Olympic Tower had been built by Arlen [Realty], and was in the final stages of construction when we got started. My memory is that they were selling at \$125 a foot, which was an unheard of price at the time, and we had to have a number that approached that for this project to work even marginally. We did not go through an elaborate process to choose the developer. [Bill] Paley wanted to use Arlen, so The Museum chose Arlen. We worked very, very closely with them for a very significant period of time on not only the design issues, but what the economic relationship was going to be between the two. There are just dozens of problems when you think of putting an apartment house on top of a museum, particularly overlooking this garden that we were working so hard to save, everything from can somebody hang their laundry out their window--from silly sorts of things, to very serious questions of, what happens if they don't finish it, what happens if something goes wrong in the apartment house, and is it possible to develop a building that will sell for this kind of money. Then Arlen got into trouble, and the Museum shifted and said we're not interested in them anymore and took Charlie Shaw to build it. But while Arlen was the developer, they had been doing some advance marketing--conditionally. They didn't own anything yet, but they'd been doing some advance marketing of the building, so they and the Museum were sued, and the Trust was sued, by someone who claimed they had bought a floor or two of this building to be constructed. During the course of the project, of course the costs and the values all escalated enormously, so a price which had been thought about at the time that we would be getting, which was in the \$125 range, all of a sudden became very attractive for a project that was going to sell for \$300 or \$350 a square foot, whatever it was. So that suit dragged on for a long time.

SZ: And that was after you were out of the relationship with Arlen anyway.

DE: Yes.

SZ: Do you remember some of the issues that really forced the split between the Museum and Arlen?

DE: Arlen was in a lot of trouble. Citibank had somebody on the board, and I think there was increasing concern that they simply wouldn't have the financial capacity to pull off the project, and that if it did, it would be....

SZ: Not so beneficial.

DE: They lost their aura of being a major, successful real estate developer and went to being a company in a lot of trouble. This was an intriguing project, because after Olympic Tower, it was really the most intriguing building in the city--partly because of the problems and partly because of the result of having your apartment above the Museum. On the nuts and bolts of trying to put this thing together, we spent a long period of time with them. The way it worked out eventually with Charlie Shaw, is that we sold the development rights--we sold the land, which was actually air--and then had the tax-equivalency payments in addition to that. The Trust floated a bond issue for the construction costs; it got a triple-A rating because it was backed by an escrow of securities put up by the Museum from the Museum's endowment. We were extremely fortunate with the timing, because we ended up with an issue that had a better rating than either the state, the city or the national government at the time we went out. The way it works is, the Trust is responsible for paying for the Trust bonds, and the revenues are the tax-equivalency payments that come from the Tower; but to the extent that they're insufficient, the Museum makes up the difference. The Trust in effect borrows that money from the Museum and agrees to pay it back, if it can, but only from these tax-equivalency payments in the future. Because residential construction at the time had a tax abatement for ten years, we had to build that tax abatement into the Museum structure. So it's only very recently that the taxes have been anywhere near full taxes. So we built up this theoretically enormous debt between the Trust and the Museum which in fact can't be paid except if eventually the taxes go up enough to pay it off. I was trying to remember the numbers. There

had been various projections as to what the value of it was, but what I remember is, if you took the actual flow of funds, it'd be around \$75 million was the impact for the Museum. So we were all really very pleased with that result. Then, during the course of the project, this became...the Museum was not accustomed to the controversy that this project evoked, so that there was a lot of soul searching as to whether what we were doing was a good idea or not, whether it would work, and there was a lot of concern, needless to say, whether the whole adventure was going to be able to be pulled off. At the critical moments, David Rockefeller really was responsible for being sure that people didn't lose their nerve. Don [Marron] was the Chairman of what I think we called...the expansion committee. In the early stages it was a much more informal group, and then, as the project went forward, it became a more formal one. It obviously impacted the entire life of the Museum in terms of who was going to get what space. There was a big go-round about the restaurant. Paley had had a very unhappy experience with the restaurant in Black Rock; I think his son-in-law ran it for a while, and he was convinced that restaurants were just a disaster. We were very enthusiastic about having a members' restaurant that worked better than the one that was up on the sixth floor of the old museum, it was sort of like the old Schrafft's. So the idea of the restaurant on the top of the little building where it is now is one that was very attractive to us. But Paley was very skeptical. That space, as you may recall, had been almost unusable, [that space] on top of the small building. They used to put sculpture up there.

SZ: Yes, because they had stairs going up.

DE: It was very difficult to get to. And, of course, the access for the handicapped became increasingly problematic....

SZ: You were basically there for the whole design for these different elements as well, is what you're saying.

DE: Yes. I guess Richard and I were really in this project from the very beginning, and

then I've continued to represent the Trust ever since, so we got a whole series of other projects and we've refinanced these bonds a couple of times.

SZ: Is there anything else in your mind when you think of the whole [enterprise]? You just touched on, for instance, some of the criticisms that were floating around.

DE: I think the major criticisms were architectural. Once we got past the Ollie Koepfel attack in the political process of the statute, nobody has really ever pursued the attack because fundamentally, even though you can argue whether we were diverting tax revenues, these are revenues that would not have existed otherwise. And, of course, the city has a long tradition of supporting major cultural institutions directly out of tax revenues, so the idea was not particularly shocking.

SZ: I was thinking more of the mid-block issue, which you've talked about a little bit--just whatever impact it has had on the garden, but certainly the impact that it was thought it would have was much greater.

DE: Yes. We did a series of sun studies--everybody does these sun-and-shade studies. Those are always somewhat questionable. But there was a bunch of air-conditioning equipment on the top of the original building that cast a shadow on the garden, although people weren't particularly aware of it. We took that away--it's incorporated into the building now--so, in terms of minutes of sunlight, you can make a case that the new building does not decrease the minutes of sunlight. You know, the sun keeps changing its position, so when you do these studies, it's a complicated series of...when you look at it at twelve noon and at two o'clock on sixty different days, how much sun is there? My fundamental interest was in the legal relationships and in the institutional relationships between the Trust and the Museum, the creation of the Trust and the whole contractual relationships between the building below and above. We spent a lot of time and effort on that, and that all worked out very well, even though you were building two totally different buildings that just happen to be on the same site in a pretty congested part of town, so the mechanics of that were

interesting. Charlie Shaw and Fred DeMatteis, who eventually built it, were very professional, and as it ended up, that worked very well. The idea of transferring air rights and so forth, there were a lot of legal niceties, none of which were unheard of but many of which hadn't been often used. The top is a condominium, but the condominium sits in the air rights above a certain plane, and then the rights come down the stairways and elevators and stuff. You're not aware of it when you're in the Museum itself, but the whole circulation system for the Tower has to go right through the Museum. So, if you knew where it was, you would think it was disruptive, but since you don't really know where it is, it's just another wall. But, of course, there's an elevator and a stairwell going down through the Museum.

SZ: Which is interesting, because I assume that these are things that architects, planners and developers know but can't necessarily convince others of until they're in place.

DE: One of the things that is always fascinating about planning and that I found enormously fascinating with architects is that they're always dealing in a world that doesn't exist, that you're trying to make happen. A world that is very much harder to communicate to a lay person than any of us are aware--than the lay people are aware themselves. People always have a concern about what a building is going to do that may be totally unrealistic, but when you describe the building--it's fifty stories high, it's going to be so big--it's not only this project, but it's on all kinds of others. You know, tall buildings in New York are not an unknown commodity, and they actually work very well, but it is true that they still evoke an enormous amount of concern...a tall building next to a small building is a very difficult problem. There are a bunch of what I consider very interesting, basic issues: What is the relationship of the city to these major cultural institutions? Was this an appropriate object of the city's bounty? That, in New York, is not a very difficult issue, because it's got such a long history. But what we have is really illogical, in one sense, these very significant amounts of public money being spent on institutions that are totally controlled by self-perpetuating private boards, which are of course no longer in any way representative of the city they serve. And yet it works--or it has worked--to everybody's satisfaction,

or generally everybody's satisfaction, on an extraordinary scale. If you look at the Met [The Metropolitan Museum] or Lincoln Center, even a museum like the Brooklyn, which is dominated by public money, it's still run by a private board, and it's not even a private board that's responsible, it's a private board that's self-perpetuating. So this question of what we were doing with the tax flow, we were just sort of heightening that issue. Internally, the whole process of trying to think about the Museum as, in effect, a business organization--what's it going to cost to do this, what is the result, how much are you going to have, what kind of long-range financial planning are you going to do? We were running ten-year projections; that's now very common, but at that point the Museum really hadn't done that before. That was pretty exciting.... It was obviously way beyond my expertise, but you got down to some issues--you know, a few large rooms can be guarded by fewer people than many small rooms, how many people are going to be around, what are you going to do about it? We always talked about this, and the way it worked out is, everybody contributed. The Modern had this big fundraising campaign, the city put in the taxes, the state allowed the Trust to be created and the bonds to be issued. The net result of it all was a much stronger institution.

SZ: And as a precedent? You've done several others?

DE: We did one other in Pittsburgh, in the rebuilding of an old movie palace into a new opera house. We've used the N.Y. Trust to finance a whole string of museums in the city and Channel 11. We haven't actually used the air-rights tax-equivalency part of the statute since, because the mayor...really, in effect we wrote it out of the statute and we agreed we wouldn't use it. One of the things that didn't help us a lot in our lawsuit, one of the things that Mark Alan was very strong on was, we tried to make it a really general statute that any qualifying institution could use, and he forced us to limit the qualifications pretty radically so that we would really have to go back and let the legislature consider anew whether they wanted to use it for any other purpose. So we've had to go back half a dozen times to get the statute broadened. But the conceptual idea, which we never really strayed from, is that we wanted to use this to

support established, serious institutions, not some rich man that wanted to create a tax shelter. We were very careful. So we built into the original legislation quite stringent requirements with respect to admissions and length of the institution's life and so forth, trying to protect against that. Fortunately, a few other museums around the state qualified.

SZ: I can't think of anything else. What about you?

DE: Not at the moment.

SZ: Thank you.

END SIDE 2, TAPE 1

END INTERVIEW