

The President's Letter

With Justices Breyer and O'Connor as co-chairs, The American Law Institute and Georgetown University Law Center cosponsored a conference on the state of the judiciary at the end of September. The CNN television network recently aired the program "Judges on Trial" as part of its *Broken Government* series. The November elections reinforce the importance of judicial selection, impartiality, accountability, and independence. On September 18, I had the privilege of delivering a Constitution Day lecture on judicial independence at Golden Gate University School of Law as part of the Jesse Carter Distinguished Speaker Series, which honors Jesse Carter, a 1913 graduate of the law school and California Supreme Court Justice from 1939 to 1959. I would like to share with you a condensed version of my remarks, the full text of which will be published in the Golden Gate University Law Review, Volume 37, Number 2 (2007).

JUDICIAL INDEPENDENCE: A CORNERSTONE OF LIBERTY

It is fitting that Golden Gate University Law School honors Justice Carter with this lecture in his name. In light of his example and his independent spirit that attends this lecture, my theme is "Judicial Independence: A Cornerstone of Liberty." The views I state are personal.

1. What is "Judicial Independence?"

The term in my view connotes judges whose tenure is reasonably secure, who have been selected carefully (recognizing that systems of selection vary), and who will decide cases according to the rule of law unconstrained by political fear, fear for physical safety, or other undue pressures, and uninfluenced by the status of the parties, the threat of salary reductions, or extraneous considerations. . . .

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ALI Council Reviews Recommendations on Institute Governance, Approves Drafts for Annual Meeting

At the Council meeting in New York City on October 19 and 20, the Institute's Special Committee on Governance presented its first report and recommended far-reaching changes in the Institute's governance policies and procedures. The Committee, which is chaired by Robert H. Mundheim, was appointed by President Michael Traynor in August 2005 to provide advice about the Institute's present governance, particularly in light of the principles the Institute is developing in its Nonprofit Organizations project and the examination of practices triggered by highly publicized gover-

nance failures in both the commercial and nonprofit sectors. The report generated serious discussion but was generally very well received. Among other changes, the Committee recommends setting term limits for Council members, officers, and standing-committee members, as well as modifying the length of their respective terms. Its proposals include detailed transition rules for persons currently holding those positions. The Committee anticipates that its recommended changes will make the ALI's processes and avenues to leadership more open and transparent. A set of major Bylaw

amendments is expected to be presented to the Council for approval in December and to the membership for approval next May.



During the ALI Council's meeting in New York on October 19 and 20, Council Member John T. Subak was presented with the Institute's first-ever Distinguished Service Award.

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Drawing on Isaiah Berlin's influential *Two Concepts of Liberty*, Professor Pamela Karlan identifies two "judicial independences," one to be "free from certain kinds of pressures or influences," and one to be "free to envision and realize certain goals" and policies, essentially those contained in the Constitution, statutes, and the common law rather than held individually by judges. There is relatively "strong consensus for the negative [or 'freedom from'] conception of judicial independence" but, understandably, more criticism and little consensus on the positive or "freedom to" conception—and, in particular, on how that is manifested in particular cases.

It bears emphasis that there are relationships between and among our three branches of government. A good example is the Supreme Court's recent decision in *Hamdan v. Rumsfeld*, explaining that the President's unilateral decision to institute military tribunals for Guantanamo prisoners disregarded statutory constraints imposed by Congress and that the proper way for a President to address such matters is to work with Congress. Judicial independence should not connote the image of some isolated jurist in the desert completely separated from reality, including separated from the legislature and the executive, or immune from constraints or criticism. After all, legislatures provide the funds for the salaries of judges and the operations of their courts and enact jurisdictional statutes; executives often nominate or appoint judges; and within constitutional limits both the legislature and the executive can change the law that a judge has applied, sometimes in an "ongoing colloquy" between the branches. Judicial accountability is an integral part of judicial independence.

2. Why is Judicial Independence Important?

Our Declaration of Independence describes the British king as having

"made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries." Thomas Paine, providing common sense for the American Revolution, said "Where, you may ask, is our king? In monarchies, the king is the law. In our democracy, the law is king."


In contrast to monarchical domination, Article III of our Constitution provides that federal judges "hold their Offices during good Behavior" and that their compensation "shall not be diminished during their Continuance in Office." Independence of judges from the will of the executive and from threats to their compensation is crucial. Security of judicial tenure also is crucial, although it varies among jurisdictions.

Judicial independence is especially important today because the judiciary and the rule of law are under relentless and severe attacks from various quarters: In ways that both challenge Congress and may implicate the judiciary, the President is bypassing the separation of powers, for example, by the misuse of so-called signing statements saying that he will or may not follow an act of Congress, a practice recently and correctly condemned by the American Bar Association. A notorious example is his recent statement that he will not follow the McCain Amendment forbidding any U.S. official to use torture or cruel, inhuman, or degrading treatment on prisoners if he thinks that doing so would be necessary to prevent terrorist attacks. . . . Congress and the President sought to influence the judicial outcome of a single state case in the Terri Schiavo matter. Congressman Tom DeLay, then powerful, now disgraced, declared that "We will look at an arrogant, out of control, unaccountable judiciary that thumbed their noses at Congress and the President." The "time will come," he said, "for the men responsible for this to pay for their behavior." . . . In recent years

judges and members of their families have been murdered or threatened with violence.

In earlier years, our country's faith in and adherence to the rule of law have been a cause for hope for people as well as an inspiration to judges not just in America but also in other countries. If that faith evaporates and injustice consequently increases, the repercussions will be global. As Martin Luther King wrote in Letter from Birmingham Jail, "Injustice anywhere is a threat to justice everywhere. We are . . . tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

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PUBLISHED BY THE AMERICAN LAW INSTITUTE

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The ALI Reporter (ISSN 0164-5757) is published quarterly by The American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104-3099. Second class postage paid at Philadelphia, PA.

POSTMASTER: Send address changes and any other communications to 4025 Chestnut Street, Philadelphia, PA 19104-3099.

Council Member John Subak Honored with ALI's Inaugural *Distinguished Service Award*



ALI President Michael Traynor and award recipient John Subak

The American Law Institute's first *Distinguished Service Award* was presented to John T. Subak of Boca Grande, Florida, at a dinner in New York City on October 19, 2006, in the presence of his fellow Council members and his wife and children. Mr. Subak, a member of the Institute since 1985 and of the Council since 1987, was recognized for his long and outstanding service to the Institute as an institution and his many contributions to its work.

In recommending the first recipient of an award designed to honor service to the Institute as an organization, President Michael Traynor praised Mr. Subak's many contributions in that regard as steady and stellar: "John's wise counsel over the years has been integral to the success of The American Law Institute, and his work on law reform and service on our Council and on numerous groups and committees would do well to serve as a model for other ALI and Council members."

Mr. Subak has played a major role in several Institute projects. As former ALI President Roswell Perkins emphasized in remarks at the dinner, he was enormously helpful in bringing the Institute's Principles of Corporate Governance, a highly contentious project of intense interest to the corporate world, to a successful conclusion. Council member Robert Mundheim, who was instrumental in establishing

the new award, lauded Mr. Subak's "quiet diplomacy" in negotiating difficult Institute relationships. Noting Mr. Subak's formal role as an Adviser on three ALI projects and his informal role as an adviser on all other projects as a member of the Council and of the Institute, Mr. Mundheim observed that "John's thoughtful comments and carefully crafted language changes had earned the explicit gratitude of the Reporters and contributed materially to the quality" of the Institute's deliberations and work product.

Mr. Subak has served on the Investment Committee since 1993 and skillfully chaired that Committee for five years. More recently he has served with distinction on the Executive Committee and the Special Committee on ALI Governance. Mr. Mundheim, the Special Committee chair, acknowledged the debt owed to Mr. Subak as the catalyst for the Committee's re-

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Jack B. Weinstein Receives ALI's John Minor Wisdom Award

At the ALI Council dinner on October 19 in New York City, the Institute presented its fifth John Minor Wisdom Award. Jack B. Weinstein, Senior Judge of the U.S. District Court for the Eastern District of New York, was honored for his exemplary, steady, and constructive participation in the Institute. This marks the first time the Wisdom Award has been given to a member of the judiciary.

Judge Weinstein was introduced by ALI Council member Louis H. Pollak, judge of the U.S. District Court for the Eastern District of Pennsylvania, who praised his colleague as "a legal polymath"—a creative jurist, a productive scholar, a pioneering civil-rights advocate, and "one of the few judges whose achievements warrant mention in the same breath as the achievements of Judge Wisdom."

On accepting the award, Judge Weinstein recalled the exasperated third-grade teacher who told his parents, "Nothing good will ever happen to your son unless he lives a very long time and stays out of jail." He then spoke with feeling of the "eight magical words" that still lift spirits, inspire hope for the nation's future, and have a profound influence at home and abroad: "All men are created equal" and "We the People."

Commending Judge Weinstein for his role in the Institute's work, ALI Director Lance Liebman said, "Jack Weinstein was a great professor and is a great judge. His contributions to the ALI's law-reform work have been extraordinary. He reads drafts carefully, comes to meetings, identifies issues that others have missed, and offers constructive suggestions. Right now, he is a tremendous help to our work on Aggregate Litigation. Jack gives the ALI his experience, his knowledge, his wisdom, and his sense of humor."



Judge Louis Pollak and award recipient Judge Jack Weinstein

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ALI and Georgetown Law Center Cosponsor Conference on Judicial Independence

On September 28 and 29, the ALI cosponsored, with Georgetown University Law Center, an important meeting in Washington on the subject of judicial independence. The invitational conference, titled “Fair and Independent Courts: A Conference on the State of the Judiciary,” was initiated, planned, and chaired by Justices Sandra Day O’Connor and Stephen Breyer. This subject—the challenges in achieving and preserving a first-class judiciary and judicial system—is at the top of Justice O’Connor’s agenda for her years as a retired Justice.

“Directing anger toward judges has had a long tradition in our nation, I’m sorry to say,” Justice O’Connor said during her opening remarks. “While scorn for some judges is not altogether new, I do think that the breadth of the unhappiness being currently expressed, not only by public officials but in public opinion polls in the nation, shows that there is a level of unhappiness that perhaps is greater than in the past and is certainly cause for great concern.”

More than 250 individuals attended the day-and-a-half conference. The emphasis in inviting participants was not on lawyers, but on important people from the business world, the nonprofit sector, and the media, people who need to know more about the challenges facing the judiciary and who can be influential in protecting judicial independence and in obtaining the resources needed for strong state and federal court systems.

Conference participants heard several plenary panel discussions and speeches; they could also attend three

small-group breakout sessions where all attendees actively participated in discussion and the generation of possible action plans for future consideration. Among the participants were several state chief justices and other distinguished state judges. One panel included former members of Congress Newt Gingrich, Tom Daschle, and Warren B. Rudman. Another speaker was Attorney General Alberto R. Gonzales.

Conference attendees included Supreme Court Justices Samuel Alito, Ruth Bader Ginsburg, David Souter, and Clarence Thomas. Chief Justice John G. Roberts, Jr., the dinner speaker, delivered an excellent analysis of the challenges and needed solutions.

Among topics discussed in depth were state judicial election systems, federal constitutional limits on regulation of the state election processes, and the need for more resources—including appropriate judicial salaries—to strengthen the courts.

Justice O’Connor will now devote significant time to this subject, including public hearings and discussions in various parts of the country.

A wealth of information about the conference can be accessed on the Georgetown University Law Center website. In-depth coverage of the conference can be accessed at www.law.georgetown.edu/news/events/conference_story.html; the conference program, webcasts, and transcripts may be accessed at www.law.georgetown.edu/Judiciary/program.html. ↻

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3. Can We Distinguish Between Appropriate Criticism and Inappropriate Criticism of the Judiciary?

Judges are subject to procedural and substantive constraints, such as principles of personal jurisdiction, subject matter jurisdiction, standing, ripeness, mootness, applicable statutes and rules, the common law, and precedent and stare decisis. Courts other than the Supreme Court of the United States or the highest state court on a nonfederal issue are also subject to appellate review. They are not free to disregard these constraints. In appellate courts, panels of three or more judges provide an additional safeguard against one judge disregarding

applicable law. Although federal judges are rarely impeached and removed from office, the circuit courts of appeal occasionally administer discipline. State judges are subject to censure and removal for misconduct or disability, for example, in California by a Commission on Judicial Performance and ultimately by the state supreme court, and to removal by the electorate—for any reason or for no reason—when they run for reelection or retention. Moreover, most judges want to establish a good reputation with their colleagues, the profession, and the public.

On various matters, judges are appropriately accorded discretion and their exercise of that discretion is reviewable only for abuse. It is im-

portant to have judges exercise their discretion with judicial temperament, impartiality, and wisdom together with a sense of responsibility for seeking the right answers to the questions before them.

What are the limits, if any, to criticism of individual judges, individual decisions, and the judiciary as an institution? Apart from violations of the criminal law or acts that constitute contempt of court, given the extensive protections of the First Amendment, there are very few limits on what is permissible criticism, as distinguished from what is appropriate or fair criticism.

Thomas Jefferson, for example, challenged life tenure for judges and

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Fair and Independent Courts: Scenes from the ALI-Georgetown Conference

On September 28 and 29, The American Law Institute and Georgetown University Law Center cosponsored an invitational conference on the state of the judiciary. The photos below are courtesy of Georgetown University Law Center unless otherwise indicated.



Pictured at the conference, from left: ALI Director Lance Liebman, retired Supreme Court Justice Sandra Day O'Connor, ALI 1st Vice President Roberta Cooper Ramo, Supreme Court Justice Stephen Breyer (photo by Steve Petteway, from the Collection of the Supreme Court of the United States)



Members of the panel on Public Understanding, Media, and Education, from left: Linda Greenhouse, New York Times; Fred Graham, Court TV; Kathleen Hall Jamieson, Director, Annenberg Public Policy Center; Moderator Gloria Borger, CBS News.



Justices Ruth Bader Ginsburg, Sandra Day O'Connor, Stephen Breyer, and David Souter share a light moment.



Members of the panel on Judicial Selection and Removal, from left: Vicki C. Jackson, Georgetown Univ. Law Center; Ronald M. George, Chief Justice of California; Ruth V. McGregor, Chief Justice of Arizona; Moderator Tony Mauro, Legal Times



Members of the panel on Judicial Independence: Justifications and Modern Criticisms, from left: C. Boyden Gray, U.S. Ambassador to the EU; Jack N. Rakove, Stanford University; Kathleen M. Sullivan, Director, Stanford Constitutional Law Center; Moderator Pierre Thomas, ABC News



John G. Roberts, Jr., Chief Justice of the United States, was the dinner speaker.

Memorial Minute

On October 19 the Council adopted the following Minute in Remembrance of Sherwin P. Simmons by Council member George H.T. Dudley:

Sherwin Palmer Simmons January 19, 1931 – May 24, 2006

Some people of superior intelligence and achievement display their ability and success like a suit of highly polished armor. So hard, so bright that you have difficulty getting to know the individual behind the glare. Others, a gifted few, wear their genius like a favored comfortable coat. You see the person first and only after you get close do you appreciate the quality of the garment, the depth of the intellect you have encountered. Sherwin Simmons was the epitome of the latter. He had a folksy demeanor, quick wit, and engaging personality to which you could not help but be attracted. That drew you in.

That personality served Sherwin well because for many in the legal profession, especially the tax bar, Sherwin Simmons was an Olympian force.

Sherwin Palmer Simmons was born in Bowling Green, Kentucky, on January 19, 1931 to Carl and Helen Simmons. Sherwin's father was a chiropractor who had been trained at the Palmer School of Chiropractic Medicine. The school's founder, Dr. Daniel David Palmer, was one of the nation's first proponents of Chiropractic Medicine, and it was after Dr. Palmer that Sherwin was given his middle name by his father Carl.

Sherwin was the eldest of three children. He had two younger sisters but when his mother was pregnant with what was to become Sherwin's second sister, Sherwin told Helen, his mother, that he wanted a younger brother. When Helen brought home Sherwin's newest sister Martha from the hospital, Sherwin promptly named her "Butch" and kept calling her by that name, so that to this day everyone knows Sherwin's youngest sister as "Butch" and to her nieces and nephews she is "Aunt Butch."

That same persistence carried Sherwin through his academic career. He finished high school at age 17. He

earned a scholarship to attend Columbia University and started law school during his senior year in college. Sherwin received his A.B. from Columbia in 1952 and his law degree in 1954, graduating as the law school's Harlan Fiske Stone Scholar.

Sherwin's professional career started in Washington, D.C., as an Attorney-Advisor in the United States Tax Court. In 1956, he moved to Florida, joining and then quickly becoming a partner in the Fowler White law firm in Tampa, Florida. In 1970, Sherwin took a leap of faith and with four close colleagues founded the firm of Trenam, Simmons, Kemker, Scharf & Barkin. In 1994, Sherwin left his own successful firm to accept what Sherwin himself described as the, "proverbial offer I could not refuse," and moved to Miami to become a partner in, and Chair of the Tax Group of, Steel Hector & Davis, LLP. In early 2005, Sherwin moved again, joining the Miami office of the law firm Buchanan Ingersoll.

At Sherwin's funeral, the managing partner of Buchanan's Miami office described his first meeting with Sherwin. He stated that sitting in his office in front of him was the nation's leading tax lawyer. He knew that Sherwin was considering leaving Steel Hector and had come to learn more about Buchanan Ingersoll. He said that Sherwin began the meeting by asking him to describe the firm's retirement policy. The managing partner was unsure how to answer, so he replied that he was not certain about the firm's policy and asked Sherwin what would he like it to be. Sherwin's immediate response was, "Good! I don't plan to retire." That was an objective Sherwin accomplished by practicing literally from his hospital bed until the day before he died.

We all know the mission statement of the Institute:

to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.

But how many of us can say that we live that statement as a part of our professional lives? Such could be said about Sherwin. He spent hundreds of hours traveling around the United States and, sometimes, other parts of the world lecturing; teaching other lawyers, especially young lawyers, and CPAs about many and varied aspects of tax law, estate planning, and compensation. An adjunct professor in tax law at two law schools and a guest lecturer at more than a dozen other schools, Sherwin was the author of more than 800 articles and books on tax-related subjects. He was a tax practitioner who had served as a Chair of the Section of Taxation of the American Bar Association and as Chair of the American College of Tax Counsel—the head of both of the nation's national organizations devoted to tax law and tax practitioners. Sherwin was a founding trustee and a president of the American Tax Policy Institute. Among tax lawyers, Sherwin was acknowledged as the Dean of the nation's tax bar.

Perhaps Sherwin's singular contribution to our profession was his service as Chair of the ABA's Commission on Multidisciplinary Practice. For almost three years, from 1998 to 2000, Sherwin traversed the nation as a principal architect and moderator of the national debate on one of the most important issues to face a generation of lawyers: the conflation between the practice of law and the work of other disciplines and the resulting evolution of the relationship between lawyers

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Memorial Minute

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and law firms with professionals in related fields. Guiding that debate was a daunting task that Sherwin discharged with the same easy going and folksy persistence that sustained him throughout his legal career.

With all of this success and his devotion to the law you might get the impression that Sherwin was one-dimensional. That impression would be mistaken. Sherwin was a person with a variety of interests and several passions. He enjoyed good wine and fine dining. Sherwin and his wife Mary Anne, together with a couple of close friends, traveled the world exploring, with Sherwin taking pictures everywhere they went. Sherwin and my wife Susan shared a passion for genealogy and the search for ancestors. They both were gadgeteers and computer geeks. At more than one meeting of the Council, Sherwin's first question upon seeing me was not to inquire after my well-being but to inquire whether Susan had accompanied me to New York or Philadelphia or wherever we were meeting. Sherwin had achieved a breakthrough in his genealogy research or had acquired some new gadget or software that he wanted to share with Susan.

Sherwin's greatest passion was his 32-year love affair with his wife Mary Anne, whom he married on Christmas Day in 1974, and their shared devotion to their children, stepson Stephen Andrew Leal and Sherwin Palmer II (both successful lawyers practicing in Florida) and their families. Sadly, Sherwin learned about but did not live to see the birth of his second grandson, who was to be named Sherwin Palmer III by his parents, not after his father but after his grandfather.

Sherwin was elected to The American Law Institute in 1966 and to the Council in 1985. He twice served on the Executive Committee from 1994 to 1997 and again from 1999 until this past May. For nine years, from 1997 to May of this year, Sherwin was a member of the Institute's Membership Committee, serv-

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Notes from the ALI Archives

by C. Jordon Steele, Archivist

Biddle Law Library
University of Pennsylvania

I appreciate this opportunity to introduce myself. Last spring, I was appointed Archivist of Biddle Law Library at the University of Pennsylvania Law School. As many of you know, one of the Archives' signature collections—and by far its largest—is the Archives of The American Law Institute. The ALI Archives contains correspondence, meeting minutes, Council Drafts, and other materials that led to the creation of ALI's influential Restatements of the Law. In the early days of ALI, William Draper Lewis, ALI's founding Director, ran the Institute out of his office at the University of Pennsylvania Law School. Thus, Penn Law is a fitting location for the records of ALI today.

I come to the Archives from the University of North Carolina-Chapel Hill, where I did my graduate work in Library Science with a concentration in Archives. The archives track at UNC is well regarded among information-science professionals, and I feel fortunate to have studied and worked under many experts in archives. While at UNC, I worked in the Department of Rare Books and the Photographic Archives. I grew up in Roanoke, Virginia, and I received my B.A. in English from Davidson College in Davidson, North Carolina. This is my first extended venture into northern climes; I await the winter with a mixture of enthusiasm and dread!

When deciding on which area of librarianship to study, I was drawn to the archives profession because I could make an immediate impact in the way materials are used by the public. As is the case with most collections, the ALI Archives entered our department in need of a major reorganization. Recordkeeping practices in the 1930s were not what they are today. My predecessor, Melissa Backes, and I both believe that a simple organization of the materials, coupled with a description of the Archives' contents, leads to increased use of the materials by researchers. A case in point is a recent request I received from a retired law-school professor who had previously written about Arthur Corbin's commentary on the Restatement Second of Contracts. The professor explained that a few years ago he wished to obtain copies of Corbin's analysis for an article he was writing, but was unsuccessful because the Institute's Archives remained disorganized. Thanks to Melissa's efforts, the Archives are now organized to the point where I could consult a finding aid, identify a folder called "Corbin's comments," retrieve that folder, and photocopy for the professor original correspondence between Corbin and members of the committee involved in drafting the Restatement Second of Contracts. I anticipate that the professor's analysis of these documents will make a substantial contribution to legal scholarship.

Making archives "accessible" (that is, both obtainable and intelligible to the researcher) is an evolving process. I am currently involved in fine-tuning Melissa's prodigious work. Once this project is completed, I intend to begin organizing some 60 boxes of new materials that ALI sent to the Archives last October. I look forward to a long and successful relationship with the Archives and the Institute. I will continue to employ a mixture of traditional archival techniques as well as technological innovation to ensure that the history of ALI remains relevant and accessible to the larger research community for years to come.

Questions about ALI's Archives may be directed to C. Jordon Steele, Archivist, via e-mail at steelej@law.upenn.edu or by telephone at 215-898-5011. ☺

ALI-ABA Goes Global, Offers Programs for Chinese Law Students

ALI-ABA, the national CLE organization jointly overseen by the ALI and the American Bar Association, nominally cosponsored two courses of study on U.S. civil litigation at China's premier law schools this past summer: at Renmin University School of Law in Beijing from June 7 to 9, and at Shanghai Jiao Tong University School of Law from June 12 to 14. The courses were designed for and attended principally by law students from the two universities; no tuition was charged. Both courses were chaired by ALI member Sol Schreiber of Milberg Weiss Bershad & Schulman LLP in New York, who is a 1985 recipient of ALI-ABA's Francis Rawle Award for outstanding achievements in post-admission legal education. The courses were supported by generous grants from Orrick, Herrington & Sutcliffe LLP and from Milberg Weiss. This was not ALI-ABA's first venture in China; it cosponsored a similar event in June 2005 at Shanghai Jiao Tong University School of Law.

Julene Franki, ALI-ABA's Executive Director, who attended both courses and met with the deans at both law schools, found the law students she met filled with a sense of energy, optimism, and interest in the rule of law. One aspect of the changes in Chinese society that must be addressed by the legal system is the rapid growth of nongovernmental organizations, or NGOs, which fill in the gaps in aid and services that underfunded government agencies cannot provide. She anticipates that ALI-ABA will continue to explore ways to offer programs in China through cosponsorships with other educational organizations. ☺



Law students listen intently at the program cosponsored by ALI-ABA and Renmin University of China Law School in June.



ALI-ABA Executive Director Julene Franki and Wang Liming, Dean of Renmin University of China Law School, Beijing



A plaque at Renmin University in Beijing celebrates the common-law tradition of Great Britain and the United States, depicting a barrister's wig and a gavel, as well as representations of (clockwise, from lower left) the U.S. Code, the U.S. Constitution, the Restatements of the Law, the Uniform Commercial Code, the Act of Settlement, the Magna Carta, and Blackstone's Commentaries.

Notes About Members and Colleagues

- The University of Virginia Board of Visitors, in conjunction with the University School of Law, recently appointed ALI Council member **Kenneth S. Abraham** as a David and Mary Harrison Distinguished Professor of Law. The professorship recognizes the most distinguished and accomplished senior faculty.
- **Shirley S. Abrahamson**, Chief Justice of the Wisconsin Supreme Court and a member of the Institute's Council, was honored September 6 in the State Capitol rotunda in recognition of several important anniversaries marked in 2006: the 10th anniversary of her elevation to Chief Justice, the 30th anniversary of her appointment to the high court, and her 50th year as a lawyer.
- **Luke J. Bierman**, a Fellow in Government Law and Policy at Albany Law School's Government Law Center, has been appointed to a new statewide task force created to improve town and village courts. The 14-member panel, formed by the New York City Bar Association and including judges and lawyers, will develop proposals to improve the state's town and village court systems.
- **Alfred Blumstein**, a former chairman of the Pennsylvania Commission on Crime and Delinquency and an Adviser for the Institute's Model Penal Code: Sentencing project, is the co-winner of the 2007 Stockholm Prize in Criminology. Professor Blumstein, who teaches urban studies at Carnegie Mellon University in Pittsburgh, was awarded the prize for pioneering research into criminal behavior.
- In July, **Elizabeth J. Cabraser**, an ALI Council member, received a Distinguished Leadership Award from the Legal Community Against Violence, a San Francisco organization, in recognition of her extraordinary commitment to ending gun violence.
- ALI Council member **Gerhard Casper**, President Emeritus of Stanford University, has been named to the Chair of American Law and Governance in the John W. Kluge Center at the Library of Congress. As a Scholar in Residence, his main research will focus on Max Weber's views on democratic governance.
- **William G. Guerri** was one of 24 honored at the St. Andrew's Resources for Seniors "Ageless-Remarkable St. Louisans" 2006 celebration. The event recognized those who continue to make a positive impact throughout the community through volunteerism, philanthropy, and/or their career.
- **D. Brock Hornby**, U.S. District Judge for the District of Maine and an ALI Council member, was the keynote speaker at the 25th anniversary celebration of Gulfcoast

Legal Services in Bradenton, Florida, where former ALI Council member **Jack Martin** of Boca Grande, Florida, received a Spirit of Justice Award for his outstanding lifetime achievement in pro bono service.

- In recognition of the contributions of **Mary Kay Kane**, also an ALI Council member, as chancellor and dean, the six-floor structure at 200 McAllister Street, which houses the University of California, Hastings College of the Law administrative and student service functions, faculty offices, dining commons, bookstore, and law library, has been renamed Mary Kay Kane Hall.

- **Roberta D. Liebenberg** of Philadelphia was one of seven named a "Distinguished Daughter of Pennsylvania" at ceremonies in Harrisburg for her work as an attorney "in handling complex commercial litigation and class actions."

- **Carol Bensingier Liebman**, Clinical Professor at Columbia University School of Law, has been selected as the first-ever Mediation Settlement Day Frontline Champion. This annual event is sponsored by NASD Dispute Resolution, in conjunction with the Association of the Bar of the City of New York, the New York State Unified Court System, and over 100 national and regional alternative-dispute-resolution programs, bar associations, community-based programs, public-service organizations, and schools.

- On October 14, The Yale Law School Association, the alumni organization of Yale Law School, presented the Award of Merit to three Chief Justices: **Margaret H. Marshall** of the Massachusetts Supreme Judicial Court, a member of the Institute's Council; **Drayton Nabers, Jr.**, of the Alabama Supreme Court; and **Randall T. Shepard** of the Indiana Supreme Court. The recipients of this Award are recognized for having made a substantial contribution to public service or to the legal profession.

- **Barbara W. Mather** and **Michael H. Reed** of Philadelphia were among the 17 partners from Pepper Hamilton LLP recognized by Chambers USA as leaders in the 2006 edition of *Chambers USA: America's Leading Lawyers for Business*.

- **Charles E. McCallum** of Grand Rapids, Michigan, has been named chair-elect of the American Bar Association's Section of Business Law. Mr. McCallum, who concentrates his practice in corporate and international business law, will become chair of the 45,000-member section in August 2007.

- Professor **John D. McCamus** of the Osgoode Hall Law School of York University in Toronto, an Adviser for Restatement Third, Restitution and Unjust

Enrichment, has been elected to the Royal Society of Canada.

- **David B. McCormack** of Charleston, South Carolina, has been selected as a Fellow of the College of Labor and Employment Lawyers. This appointment is the highest recognition by one's colleagues of sustained outstanding performance in the profession, exemplifying integrity, dedication, and excellence.

- **William C. Powers, Jr.**, was installed as the 28th President of The University of Texas at Austin on September 29. Formerly dean of the university's School of Law, President Powers is the Co-Reporter, with Professor **Michael D. Green**, for Restatement Third, Torts: Liability for Physical and Emotional Harm, and was Co-Reporter, also with Professor Green, for Restatement Third, Torts: Apportionment of Liability.

- **Nancy B. Rapoport**, professor at the University of Houston Law Center and its dean from 2000 to 2006, has been named the Gordon & Silver, Ltd. Professor at the University of Nevada, Las Vegas's William S. Boyd School of Law. This professorship is conferred upon a leading teacher and scholar in the area of commercial, bankruptcy, and business law.

- **Mark Reutlinger**, Professor Emeritus at Seattle University School of Law, has published the second edition of his book, *Washington Law of Wills and Intestate Succession* (Washington State Bar Association 2006). First published (with coauthor William Oltman) in 1985, it is the only comprehensive treatise on the subject in Washington State.

- **Ronald D. Rotunda**, University Professor and Professor of Law at George Mason University School of Law in Arlington, Virginia, has published: "Frische Datteln für die Häftlinge," *Sueddeutsche Zeitung* (Germany), January 2, 2006, at p. 2 (published in German); "The Propriety of a Judge's Failure to Recuse When Being Considered for Another Position," 19 *Georgetown Journal of Legal Ethics* 1187 (2006); the second edition of *Principles of Constitutional Law* (West Group 2005), with Professor **John E. Nowak** of the University of Illinois College of Law; the fourth edition of *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* (ABA-Thomson-West 2006), with Professor John S. Dzienkowski of The University of Texas School of Law; and "CMS Information Policy Under Medicare 'Part D' Creates 1st Amendment Problems," 21 *Legal Backgrounder* (Washington Legal Foundation, No. 21, July 7, 2006).

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said that “man is not made to be trusted for life, if secured against all liability to account,” and that judges were “thieves of liberty.” Theodore Roosevelt, who had appointed Justice Holmes, strongly expressed his disappointment after Holmes sided with the trusts in the *Northern Securities* case, in this way: “I could carve out of a banana a judge with more backbone.” Franklin Delano Roosevelt tried to pack the Supreme Court and accused it of establishing itself as a “third house of Congress—a superlegislature.” . . .

4. What Can We Do About the Public's Inadequate Understanding of Judicial Independence?

I start with the following suggestions:

- If the criticism is not based on an objective standard but simply on the speaker's personal opinion, or religious belief, or disagreement with the decision or the underlying law, it should be unpersuasive to fair-minded listeners. The same goes for attacks on the integrity or motives of judges. Disparaging a judge as “soft” on criminals, or “political,” “immoral,” or “anti-religious” does not invoke objective standards.
- Because of ethical considerations, judges rarely respond to attacks on their rulings. Such attacks are a cheap shot for complainers or bullies like Tom DeLay. Most people have an innate sense of fairness. If adequately informed, perhaps they may be unwilling to be persuaded by a cheap shot.

We have a long way to go, however, in educating the public about judicial independence.

About 30 years ago, I served on the California Commission on Fair Judicial Election Practices. At a public hearing in Los Angeles, witnesses did not comprehend the difference between state or county legislators campaigning on their past records and future programs and judicial candidates who are

neither advocates for their decisions nor sponsors of program agendas. Some witnesses wondered why, for example, judges should not have to defend their sentences in particular cases. The public does not seem to appreciate that every judicial election presents both the opportunity to educate the public about the judiciary and the risk of misinformation and partisanship. I do not sense any improvement in public understanding or appreciation for the role of our judiciary over the past 30 years. In fact, the situation has gotten worse. With the reduced emphasis on teaching civics in the schools, the prominence of so-called judicial reality shows that do not necessarily correspond to reality, the general failure of the media to educate the public seriously and in depth, and public apathy in general, the public does not have a good understanding of the role of judges or the importance of their independence.

Such education [of the public] is not going to occur just in schoolrooms, new classes in civics, street law programs, and visits by students to courts, important as they are. It must occur also in civic meetings, in Internet discussions, in professional organizations, in neighborhood gatherings, in volunteer groups, at the family dinner table, and in the media. In state judicial election campaigns, incumbent judges as well as candidates can educate voters about judicial independence, as Wisconsin Chief Justice Shirley Abrahamson and others have urged. Justices Breyer, O'Connor, and Kennedy have taken the lead in educating our citizens about our Constitution. Such judges are setting the example of what responsible members of our profession can do.

The media has a special responsibility. Consider, for example, the infamous McDonald's hot coffee case, which became a poster child in the campaign against the judiciary. Most newspaper articles focused on the \$2.7 million verdict for punitive damages.

Their selective reporting in general did not report the third-degree burns and permanent scarring the elderly victim suffered; the painful skin grafts she endured; the fact that she was willing to settle for her medical expenses of about \$20,000 and that the company offered her only \$800; the fact that McDonald's coffee was served about 20 degrees higher than what was standard in the trade; the 700 previous complaints against McDonald's for similar complaints; the company's indifferent response but eventual payment of nearly three quarters of a million dollars to settle such complaints; or the reduction by the trial judge of the punitive damage award to \$480,000, after which the parties reached a confidential settlement.

Americans that are informed are ready to renew their natural self-reliance and resiliency. An informed and self-reliant and resilient public is ready to engage in our democracy. An engaged public will resist abuses of power and threats to judicial independence. It will demand that its President stop abusing executive power and that Congress stand up to him. It will replace timid legislators with courageous ones, authoritarian legislators with freedom-loving ones, and venal legislators with honest ones. Its expressions and actions, literally and figuratively, will be the footsteps of Americans. When elected representatives hear those footsteps, not just once or twice, or here and there, but every day, pounding in a crescendo of strong beats, then, maybe, they will begin to do what is right.

5. Why Is Better Public Understanding of Judicial Independence Important, Especially Now?

Unlike the world astronomers who by resolution can eliminate Pluto from our solar system, we cannot erase the last six years of our political history. In

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ALI Council *continued from page 1*

The Council also reviewed a complete draft of the Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes project and approved its submission as a Proposed Final Draft at the 2007 Annual Meeting. Two of the Reporters for the International Intellectual Property project, Professors Rochelle C. Dreyfuss and Jane C. Ginsburg, presented Council Draft No. 2, containing all four portions of the project: Part I on definitions and the scope of the principles, Part II on jurisdiction, Part III on applicable law, and Part IV on recognition and enforcement of foreign judgments in transnational cases. (A Discussion Draft containing an earlier version of the material was submitted to the membership at the 2006 Annual Meeting.) The Council's discussion focused on several issues identified by the Reporters: the proposed methods in §§ 221-223 for coordinating and streamlining litigation of multiterritorial actions, the joinder of insurers and other third parties described in § 207, and the consistency of the project with the ALI's recently completed Recognition and Enforce-

ment of Foreign Judgments project and its ongoing Software Contracts project.

In addition, the Council discussed and approved drafts from Reporter Evelyn Brody on the governance portion of the Nonprofit Organizations project, and from Reporter Kevin R. Reitz on the Model Penal Code: Sentencing project. The Sentencing draft contained material on the authority of sentencing commissions, presumptive sentencing guidelines, and the authority of courts in sentencing, and an Appendix concerning advisory sentencing guidelines. Drafts of both projects will be submitted for consideration by the membership in 2007.

Finally, Professor Mark P. Gergen of The University of Texas School of Law introduced the Council to the project on Economic Torts and Related Wrongs. Council Draft No. 1 contained Chapter 3 on the economic-loss rule and Chapter 4 on liability rules. The draft was not presented for approval, and the Chapters will be revised for further presentation and discussion at subsequent meetings in the project.

At the Council's dinner on October 19 at the Century Association in midtown Manhattan, the Institute's first Distinguished Service Award was presented to Council member John T. Subak and its fifth Wisdom Award was presented to Jack B. Weinstein, Senior Judge of the U.S. District Court for the Eastern District of New York. (For more on the awards and presentations, see articles on page 3.) To conclude the evening, Council member Herbert P. Wilkins delivered a light-hearted talk entitled "Life after the Supreme Judicial Court."

At its next meeting in Philadelphia on December 7 and 8, the Council will consider new Restatement drafts on Restitution and Unjust Enrichment and Torts: Liability for Physical and Emotional Harm, as well as drafts in the Software Contracts and Aggregate Litigation projects. The complete agenda for the 2007 Annual Meeting, which will be held in San Francisco on May 14 to 16, will be determined after the December meeting. ☺

Jack Weinstein *continued from page 3*

Elected to ALI membership in 1971, Judge Weinstein was an Adviser for the Institute's Complex Litigation: Statutory Recommendations and Analysis project, and he currently serves as an Adviser for its Principles of the Law of Aggregate Litigation project. He was an ALI luncheon speaker in 1996, representing the ALI life members' class of 1971. Judge Weinstein has also contributed to the Institute through service to ALI-ABA: he is the author of an ALI-ABA book entitled *Basic Problems of State and Federal Evidence* and has served on the faculty for ALI-ABA courses on civil practice and the use of expert testimony.

A native of Wichita, Kansas, Judge Weinstein was appointed in 1967 to the U.S. District Court for the Eastern District of New York, and served as Chief Judge from 1980 to 1988. He took senior status in 1993. He has worked with a number of mass-tort cases including cases relating to Agent Orange, asbestos, tobacco, and handguns. Judge Weinstein taught at Columbia Law School from 1952 to 1998 and has been an adjunct professor at Brooklyn Law School since 1987. He worked for the NAACP Legal Defense Fund and was a member of the litigation team for

Brown v. Board of Education. He has written many books and more than a hundred articles on a variety of topics, including civil procedure, constitutional law, evidence, mass-tort litigation, sentencing, education, Judaism, and ethics. He is the recipient of many honorary awards, including the Judicial Recognition Award of the National Association of Defense Lawyers and the *National Law Journal* Lawyer of the Year Award. He received his undergraduate degree from Brooklyn College and his law degree from Columbia Law School.

The Wisdom Award was established by the Institute's Executive Committee to honor the late emeritus ALI Council member John Minor Wisdom, former Senior Judge of the U.S. Court of Appeals for the Fifth Circuit, who died in 1999. The Award was endowed in 1990 by Judge Wisdom's law clerks in celebration of his 85th birthday. It is given from time to time in specific recognition of a member's contributions to the Institute's work.

Previous recipients were W. Loeber Landau in 1993, M. Bernard Aidinoff in 1995, Donald J. Rapson in 1999, and Michael Marks Cohen in 2004. ☺

reviewing these years, I venture to predict that future political historians will help us understand four points:

- *First*, the current President aggressively, relentlessly, and often lawlessly attempted to increase executive power and succeeded in doing so. When the President lacks executive restraint, the other two branches, Congress and the judiciary, in specific cases, are challenged either to check him and keep our system in balance or acquiesce. Acquiescence by one branch increases the pressure on the other.
- *Second*, the Congress as a whole did not stand up to the President, and the majority often accommodated or even applauded him. There were significant exceptions on particular matters such as the McCain Amendment against torture and cruel, inhuman, and degrading treatment, which the President then undermined with his signing statement. Together with the minority—which itself could have done better—the handful of so-called “moderate” Senators in the majority could have protected both the country and the United States Senate as an independent institution but did not muster the sufficient collective courage, capacity, and will to just say “No” to the President. . . . By contrast, on June 1, 1950, then freshman Republican Senator Margaret Chase Smith from Maine delivered her Declaration of Conscience against McCarthyism at a time when such a statement was a rare act of great political courage. Although joined by only six colleagues at the time, and disparaged by McCarthy as “Snow White and her Six Dwarfs,” her brave act helped inspire the country to reject McCarthyism and the Senate to censure him.
- *Third*, although the Supreme Court was responsible for allowing the President to take office without pursuit of further voting or procedures in the Constitution, it also held in later cases that he had exceeded his

powers. *Hamdan v. Rumsfeld* is the most recent and notable example. It did so, however, with only a fragile majority of justices who displayed courage, judicial independence, and the quiet force of reason.

- *Fourth*, although there were some courageous voices, the American public as a whole was phlegmatic, uninformed, fearful, apathetic, and unengaged.

Will you be a part of changing this sorry history? Are you willing to let the Supreme Court brave the hurricane winds of politics alone?

When Judge Learned Hand gave his famous speech entitled *The Spirit of Liberty* to new citizens in 1944, he said: “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.”

Fifty years ago, when I was in my first year of military service, and when our country was emerging from the McCarthy Era, we faced the real and imagined threats of communism and a Soviet regime that had executed millions of people and enslaved millions of others in hard labor. With reference to Judge Hand’s haunting words, my father [Justice Roger J. Traynor of the Supreme Court of California] then remarked as follows: “The judges whose job it is to apply [the Constitution] must carry liberty in their hearts even when other men have ceased to. Who is to say that liberty is dead in the hearts of men who are silent? Liberty is not lost suddenly, catastrophically; it is lost imperceptibly, by erosion. Who is to say it is irretrievably lost until it has died in the hearts of those whose job it was to care that it lived in the hearts of others?”

It is time for our country and our people and institutions to reaffirm our basic values and show courage in the defense of our liberty. Our liberty and our values are our best defense as well as our best weapon against terror. Our country needs activist citizens. It is

time for our profession to take the lead. A cornerstone of liberty is judicial independence. Whenever politicians or others engage in collateral attacks on judges, lawyers and their bar associations should expose the fallacies immediately, set the record straight, and educate the public. A central purpose of a law school is to foster analysis, advocacy, and leadership. We as lawyers can help citizens understand the importance of an independent judiciary and support it. We can help them understand the difference between legitimate criticism and inflated rhetoric, partisan sniping, and other collateral attacks. President James Madison understood the “Constitution as the people’s law, which was to be revered and not remolded by their servants.” It seems little to ask that “We the People” stand up for our law, our Constitution, and our judges.

☞

Michael Traynor
President

In-Depth Article on Actions Taken at 2006 Annual Meeting Is Now on ALI Website

A detailed discussion of actions taken at the 2006 Annual Meeting has been posted on the ALI website (www.ali.org). Included are summaries of the actions taken on Tentative Draft No. 5 of Restatement Third, Property (Wills and Other Donative Transfers), which was approved for final publication, and of the extensive deliberations on the five Discussion Drafts, on which, as planned, no votes were taken: Model Penal Code: Sentencing; Principles of the Law of Aggregate Litigation; Principles of the Law of Nonprofit Organizations; Restatement Third, Employment Law; and Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes.

ation and observed that the Committee's recommendations "largely reflect themes that John has been articulating for many years."

In concluding his remarks about Mr. Subak at the Council dinner, Mr. Mundheim delivered the following commendation: "John cares passionately about the Institute, passionately about his colleagues at the Institute and the work of the Institute, but his judgment on substantive issues in the projects and on Institute policy has always been dispassionate. John embodies the spirit of the Institute—a passion for the work combined with a sense of balance, fairness, and integrity, the very qualities which make the ALI a significant institution." The physical representation of the new award—a 21-inch-high hand-formed glass torch with soaring blue flame—was chosen "to honor that spirit."

The Distinguished Service Award complements the Institute's two other awards. The *Henry J. Friendly Medal* recognizes contributions to the law in the tradition of Judge Friendly; any person, whether or not a member of the Institute or even a lawyer, is eligible for the Medal. The *John Minor Wisdom Award* honors a rank-and-file member of the Institute—that is, not

an officer, Council member, or project Reporter—for making substantial contributions to law reform through participation in the Institute's work. (See article on the latest Wisdom Award on page 3.) Unlike the Friendly Medal, the newly created Distinguished Service Award is restricted to ALI members, and unlike the Wisdom Award, it may be awarded to any member, including an officer, Council member, Reporter, or other formal project participant.

The Distinguished Service Award is specifically intended to recognize members of the Institute who have, over many years, played a major role in the Institute and its projects by accepting significant burdens as an officer or committee chair and helping to keep the Institute on a steady course as the greatest private law-reform organization in the world. Like the Friendly Medal and the Wisdom Award, the Distinguished Service Award will not necessarily be bestowed annually or on any other regular basis, but will be given from time to time to particularly deserving members of the Institute as determined by the Council.

Mr. Subak accepted the first Distinguished Service Award with characteristic modesty and warmth, noting

that the award was very special for two reasons: because it was bestowed not by his peers but by his "betters," and because it was bestowed by a unique and special institution. He said he regards the ALI as a family in which professional and personal relationships flourish and contribute to improving the law and thereby improving the world. He applauded the Institute for doing more than simply restating the law and encouraged it to continue to point out the direction in which law should develop, citing the successful Principles projects on corporate governance and on family dissolution.

In closing, he counseled the audience, and all lawyers, to remember, quoting the inscription on the statue of a child in London's Inner Temple Garden (which in turn quotes Charles Lamb's essay "The Old Benchers of the Inner Temple"), that "lawyers, I suppose, were children once." ☺

In Memoriam

Elected

Robin Cooke (Lord of Thorndon), Wellington, New Zealand; **Earle F. Kyle, IV**, Brooklyn Park, MN; **Earl Finbar Murphy**, Indianapolis, IN; **Petar A. Šarčević**, Zagreb, Croatia

Life

Jim DeWitt Bowmer, Temple, TX; **Roland William Donnem**, Charleston, SC; **Barton E. Ferst**, Philadelphia, PA; **James O. Freedman**, Hanover, NH; **William P. Hackney**, Pittsburgh, PA; **Vance N. Kirby**, North Chatham, MA; **Franklin Poul**, Philadelphia, PA; **Larry D. Soderquist**, Nashville, TN

Institute Elects 53 New Members

On October 19, the Council elected the following 53 persons as the newest members of the Institute:

Gregory S. Alexander, Ithaca, NY; **Jerome I. Braun**, San Francisco, CA; **Barry D. Burgdorf**, Austin, TX; **David A. Chaumette**, Houston, TX; **Jim Chen**, Minneapolis, MN; **Richard D. Craig**, Oklahoma City, OK; **Ross E. Davies**, Arlington, VA; **John A. Day**, Brentwood, TN; **Brannon P. Denning**, Birmingham, AL; **Diane V. DeVasto**, Tyler, TX; **William S. Dodge**, San Francisco, CA; **Chai R. Feldblum**, Washington, DC; **Steven G. Frost**, Chicago, IL; **Larry T. Garvin**, Columbus, OH; **Steven S. Gensler**, Norman, OK; **Michael Z. Green**, Fort Worth, TX; **Teresa W. Harmon**, Chicago, IL; **Zachary J. Harmon**, Washington, DC; **Joan M. Heminway**, Knoxville, TN; **Elizabeth Lutes Hillman**, Camden, NJ; **Mark D. Hinderks**, Overland Park, KS; **A. Stephen Hut, Jr.**, Washington, DC; **Robert W. Ihne**, Livingston, NJ; **Kirk C. Jenkins**, Chicago, IL; **Cynthia S.**

Kent, Tyler, TX; **Daniel M. Kowalski**, Austin, TX; **Richard H. Kreindler**, Frankfurt, Germany; **Erika F. Lietzan**, Washington, DC; **Thomas O. Main**, Sacramento, CA; **James C. Martin**, Pittsburgh, PA; **Tracey L. Meares**, Chicago, IL; **Elizabeth S. Miller**, Waco, TX; **Barbara Moses**, New York, NY; **Kevin C. Newsom**, Montgomery, AL; **Kathleen M. O'Sullivan**, Seattle, WA; **Stephen M. Orlofsky**, Cherry Hill, NJ; **Richard C. Pepperman, II**, New York, NY; **Sally M. Rider**, Tucson, AZ; **Burt M. Rublin**, Philadelphia, PA; **Pablo Salvador-Coderch**, Barcelona, Spain; **Donald J. Savery**, Boston, MA; **Girardeau A Spann**, Washington, DC; **Michael K. Steenson**, St. Paul, MN; **Joseph A. Stern**, New York, NY; **Mark P. Strasser**, Columbus, OH; **Catherine T. Struve**, Philadelphia, PA; **Jeffrey S. Sutton**, Columbus, OH; **William Swadling**, Oxford, England; **Linda B. Thomas**, Dallas, TX; **Lu-in Wang**, Pittsburgh, PA; **Alan M. White**, Philadelphia, PA; **Charles K. Whitehead**, Boston, MA; **Mary Jo Wiggins**, San Diego, CA

Seventh-Inning Stretch



The Members Consultative Group for the Principles of the Law of Software Contracts project took a break from its labors during its meeting on September 16 in Philadelphia. Among the participants depicted are project Reporter Robert Hillman of Cornell Law School (front row, second from left), Associate Reporter Maureen O'Rourke of Boston University School of Law (front row, fifth from left), and ALI Deputy Director Elena Cappella (front row, third from right).

Notes About Members and Colleagues *continued from page 9*

- **Marsha E. Simms** of New York City has been elected Co-Chair of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law. She serves as Co-Chair with **Robert E. Harrington** of Charlotte, North Carolina.
- **William K. Slate, II**, of New York City has been elected a member of the Board of Trustees of the University of Richmond. A 1968 graduate of the University's School of Law, he is the President and Chief Executive Officer of the American Arbitration Association.
- ALI Council member **Robert A. Stein** recently stepped down after serving 12 years as Executive Director and Chief Operating Officer of the ABA to return to teaching at the University of Minnesota Law School. During his tenure the ABA

experienced notable growth in membership and diversity.

- **Symeon C. Symeonides**, Dean of the Willamette University College of Law in Salem, Oregon, has been elected to two new international law association positions. At a meeting held in Utrecht, the Netherlands, he was elected vice president of the International Association of Legal Science. He also was elected president of the American Society of Comparative Law, the premier international comparative law organization.
- **Patricia M. Wald**, former Chief Judge of the District of Columbia Court of Appeals and a member of ALI's Council, served on the ABA's Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, which issued a report

and recommendations to the ABA House of Delegates at its annual meeting in August.

- On October 9, **Martha Lee Walters** was sworn in as a Justice on the Oregon Supreme Court. Currently serving as Chair of the Executive Committee of the National Conference of Commissioners on Uniform State Laws, Justice Walters will become its President in the summer of 2007.
- ALI Council member **Herbert P. Wilkins**, the former Chief Justice of the Massachusetts Supreme Judicial Court and currently the Huber Distinguished Visiting Professor at Boston College Law School in Newton, Massachusetts, has been reappointed as chairman of the Massachusetts Access to Justice Commission for a three-year term.

ing as Chair of the Committee from 1999 until being replaced by me at the last Annual Meeting.

After Sherwin was diagnosed with leukemia in the summer of 2005, true to his lifelong persistent nature, Sherwin was determined not to let the disease slow him down. He shared the fact of his illness with a very limited number of persons and only on the condition that we not disclose his illness to anyone else. During his treatment for the disease, Sherwin continued an almost full workload and when the leukemia went into remission briefly this past winter, Sherwin promptly returned to the office. Unfortunately, the remission lasted only a short while and when the disease returned aggressively, nevertheless, Sherwin continued to battle his illness and to work from his home and later from the hospital.

Sherwin reviewed his last set of candidates proposed for election to the ALI and sent his last ballot on those candidates by e-mail from his hospital bed.

Finally, this past April, Sherwin sent his last e-mail to Mike Traynor in which he only would acknowledge that, "my illness is back and the future uncertain." In the concluding paragraph of that e-mail, Sherwin said, "As to the future, I do not want to take emeritus status as I love the ALI; but I do think you should not reappoint me to the Executive Committee or as chair of membership."

That e-mail encapsulated Sherwin Simmons: his sense of professional responsibility compelled him to relinquish his duties as a member of the Executive Committee and Chair of Membership; his persistence had him

looking only to the future, not contemplating his demise; and his love of this Institute would not let him seek emeritus status and relax his ties to the organization.

One month after that e-mail, Sherwin passed away. He is survived by his wife, Mary Anne; his two sons, Sherwin II and Stephen; their wives, Amie and Lisa; his grandsons, William Leal and Sherwin Palmer III—who was born 13 days ago, October 6, 2006—and by his sister, Butch.

"I do not want to take emeritus status as I love the ALI." Sherwin . . . dear friend . . . the feeling very much was mutual. ☺

Statement of Ownership, Management, and Circulation

		Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
1. Publication Title: The ALI Reporter.	15. Extent and Nature of Circulation		
2. Publication No. 01645757.	a. Total No. Copies (<i>Net Press Run</i>)	.4300	.4400
3. Filing Date: September 30, 2006.	b. Paid and/or Requested Circulation (By Mail and Outside the Mail)		
4. Issue Frequency — Quarterly — Fall, Winter, Spring, Summer.	(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)	.0	.0
5. No. of Issues Published Annually — 4.	(2) Paid In-County Subscriptions Stated on Form 3541 (Include advertiser's proof and exchange copies)	.0	.0
6. Annual Subscription Price — No Charge.	(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	.0	.0
7. Complete Mailing Address of Known Office of Publication: The American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104-3099.	(4) Other Classes Mailed Through the USPS	.0	.0
8. Complete Mailing Address of Headquarters or General Business Office of Publisher: Same.	c. Total Paid and/or Requested Circulation [Sum of 15b.(1), (2), (3), and (4)]	.0	.0
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Publisher — The American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104-3099; Editor — Marianne M. Walker, same address; Managing editor — None.	d. Free Distribution by Mail and Outside the Mail (<i>Samples, Complimentary, and Other Free</i>)		
10. Owner: The American Law Institute (a nonprofit corporation), 4025 Chestnut Street, Philadelphia, PA 19104-3099.	(1) Outside-County as Stated on Form 3541	.3979	.4063
11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities: None.	(2) In-County as Stated on Form 3541	.150	.152
12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates): The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes have not changed during preceding 12 months.	(3) Other Classes Mailed Through the USPS	.0	.0
13. Publication Title: The ALI Reporter.	(4) Free Distribution Outside the Mail (<i>Carriers or Other Means</i>)	.80	.80
14. Issue Date for Circulation Data Below: Summer 2006.	e. Total Free Distribution (<i>Sum of 15d(1), (2), (3), and (4)</i>)	.4209	.4295
	f. Total Distribution (<i>Sum of 15c. and 15e.</i>)	.4209	.4295
	g. Copies Not Distributed	.91	.105
	h. Total (<i>Sum of 15f. and g.</i>)	.4300	.4400
	i. Percent Paid and/or Requested Circulation (<i>15c./15f.x100</i>)	.0	.0
	16. This Statement of Ownership will be printed in the Fall 2006 issue of this publication.		
	17. Signature and Title of Editor, Publisher, Business Manager, or Owner		
	MARIANNE M. WALKER, <i>Editor</i>		
	Date: September 30, 2006		
	I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (<i>including fines and imprisonment</i>) and/or civil sanctions (<i>including civil penalties</i>).		

Calendar of Forthcoming Meetings

December 2006

7-8 **Council Meeting.** ALI Headquarters, Philadelphia, Pa.

May 2007

13 **Restatement of the Law Third, Economic Torts and Related Wrongs.** Members Consultative Group. The Westin St. Francis, San Francisco, Calif.

14-16 **Annual Meeting.** The Westin St. Francis, San Francisco, Calif.

June 2007

1 **Restatement of the Law Third, Economic Torts and Related Wrongs.** Advisers. ALI Headquarters, Philadelphia, Pa.

2 **Restatement of the Law Third, Employment Law.** Advisers. ALI Headquarters, Philadelphia, Pa.

3 **Restatement of the Law Third, Employment Law.** Members Consultative Group. ALI Headquarters, Philadelphia, Pa.

8 **Principles of the Law of Nonprofit Organizations.** Advisers. Millennium Knickerbocker Hotel, Chicago, Ill.

9 **Principles of the Law of Nonprofit Organizations.** Members Consultative Group. Millennium Knickerbocker Hotel, Chicago, Ill.

9 **Restatement of the Law Third, Trusts.** Advisers. Millennium Knickerbocker Hotel, Chicago, Ill.

10 **Restatement of the Law Third, Trusts.** Members Consultative Group. Millennium Knickerbocker Hotel, Chicago, Ill.

13 **Transnational Insolvency: Principles of Cooperation.** Advisers. (Site to be determined.)

The Reporter
PUBLISHED BY THE AMERICAN LAW INSTITUTE

(ISSN 0164-5757)
4025 Chestnut Street, Philadelphia, Pennsylvania 19104-3099

Periodicals
Postage Paid
Philadelphia, Pa.