

DEDICATED TO CLARIFYING AND IMPROVING THE LAW

Richard L. Revesz of NYU Is ALI Director Designate

In late January, the Council of The American Law Institute announced a transition in leadership as Richard L. Revesz of New York University School of Law was named Director Designate. An ALI member since 1991, Professor Revesz is the Lawrence King Professor of Law and Dean Emeritus at NYU and will remain a member of NYU's full-time faculty. He will work with ALI Director Lance Liebman until May 2014, when Professor Liebman will complete his 15-year directorship.

The Nominating Committee of the ALI Council appointed Chief Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and Gerhard Casper, President Emeritus of Stanford

University, to work with ALI President Roberta Cooper Ramo as a search committee. The search committee unanimously recommended Professor Revesz, whose appointment was approved unanimously by ALI's Council.

ALI President Roberta Ramo said: "In more than 90 years of working toward law reform, we have had only five Directors, and each one was a giant in the law. In Richard Revesz, we have found another major legal figure to carry on the essential work of clarifying, modernizing, and improving the law."

President Ramo said she was "especially happy because Lance is so enthusiastic about his successor. The ALI will

continued on page 2



NYU Law Dean Emeritus and
ALI Director Designate Richard L. Revesz

Inside...

Chairs Selected for Regional Advisory Groups

pages 6-7

Q&A with Trevor Potter

page 8

News about the 91st Annual Meeting

May 19-21, 2014 • Washington, DC

Pages 3, 4 & 5

▶ The President's Letter News from Philadelphia, Without Snow

In a brilliant, prescient moment of scheduling, the Council of the ALI met in Philadelphia in January the week before a crippling snowstorm hit the area. This meeting had a particularly packed agenda, with seven project drafts to consider and with many reports of Council Committees deep in their work for the year.

The Philadelphia meeting was held just before the Council appointed Richard Revesz, professor and former dean at NYU Law School, our Director Designate as successor to Lance Liebman. You have already seen his sterling resume and you can learn much more about him in the cover article in this issue of our quarterly *Reporter*. We are all—Lance, Stephanie Middleton, Dan Meltzer, and the entire Council—excited at the reality that Ricky will succeed Lance at the close of our Annual Meeting in May. He is already working hard to get up to speed on our 14 projects in various states of development and

continued on page 20

benefit from Lance and Ricky working together as a team along with Stephanie Middleton, our Deputy Director, until May, which will ensure that our 14 ongoing law-reform projects continue without interruption.”

Professor Revesz is one of the nation’s leading voices in the fields of environmental and regulatory law and policy. He has published eight books and 60 articles in major law reviews and journals, and his work focuses on the use of cost-benefit analysis, the allocation of regulatory responsibility in a federal system, and the design of liability regimes.

As dean of NYU School of Law from June 2002 to May 2013, he increased the size of the full-time faculty by more than 30 percent, building the leading faculty groups in many significant areas of the law. He more than doubled the number of clinics, and established 11 new centers and institutes—interdisciplinary ventures that bring together faculty members, professional researchers, and students to work in areas of legal and policy salience. Professor Revesz also enhanced NYU’s commitment to public-interest law and to scholarships to support students from socio-economically disadvantaged backgrounds.

Born in Buenos Aires, Argentina, to parents who had fled Europe in the 1930s, Professor Revesz came to the United States just one week before beginning his studies at Princeton University. Professor Revesz graduated *summa cum laude* from Princeton and earned a master’s degree from the Massachusetts Institute of Technology in environmental engineering before attending Yale Law School, where he was Editor-in-Chief of the *Yale Law Journal*.

Professor Revesz clerked for then-Chief Judge Wilfred Feinberg on the U.S. Court of Appeals for the Second Circuit and for Justice Thurgood Marshall on the U.S. Supreme Court. It was then that he met his wife, Vicki L. Been, who was clerking for Supreme Court Justice Harry Blackmun.

Professor Been—one of the nation’s leading scholars at the intersection of land use, urban policy, and affordable housing—is the Boxer Family Professor of Law at NYU School of Law, the Director of NYU’s Furman Center for Real Estate and Urban Policy, and an Affiliated Professor of Public Policy of the NYU Wagner Graduate School of Public Service. On Feb. 8, 2014, New York Mayor Bill de Blasio announced that she will be the Commissioner of the Department of Housing Preservation and Development.

A Reminder from the Membership Department:

When updating your online bio or CV, please include your membership in The American Law Institute. For website bios, consider adding a link to the ALI’s home page. Doing so enhances your professional credentials and promotes ALI by making you a potential source of information about the Institute for your colleagues.

EDITOR

Marianne M. Walker
(215) 243-1627
mwalker@ali.org

ASSOCIATE EDITOR

Todd David Feldman
(215) 243-1682
tfeldman@ali.org

MANAGING EDITOR

Shannon P. Duffy
(215) 243-1694
sduffy@ali.org

MEMBERSHIP DIRECTOR

Beth M. Goldstein
(215) 243-1666
membership@ali.org

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

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

With our responsive design,
the ALI 91st Annual Meeting website
looks good on every device.



<http://2014annualmeeting.org>

Justice Ginsburg to Present Distinguished Service Award to Gerhard Casper

The American Law Institute's Distinguished Service Award will be presented at this year's Annual Meeting on Tuesday, May 20, to Gerhard Casper, the President Emeritus of Stanford University, whose extraordinary service over more than three decades has helped to chart the Institute's course and shape its agenda.

Presenting the award will be U.S. Supreme Court Justice Ruth Bader Ginsburg, who developed a friendship with Professor Casper when they both served as directors of the American Bar Foundation, a relationship that continued and deepened during their 13 years on the ALI Council together.

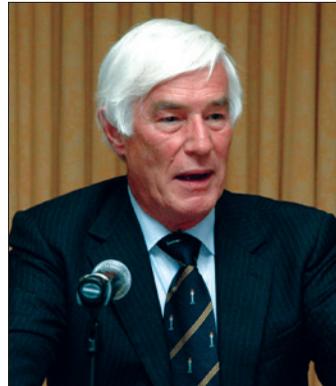
Professor Casper was elected to the ALI in 1977 and served for 30 years on the Council, from 1980 to 2010. As Chair of the Nominating Committee, he led the efforts to identify qualified candidates for the ALI's Council, volunteer officers, and Executive and Audit Committees.

He continues to be an active participant as an emeritus member of the Council, most recently by serving on the three-member search committee—along with Chief Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and ALI President Roberta

Cooper Ramo—that was tasked with identifying and recommending a new Director. In late January, the search committee unanimously recommended and the Council unanimously approved Richard L. Revesz, the Dean Emeritus of NYU School of Law, as ALI's Director Designate to replace Lance Liebman when he ends his directorship in May 2014.



GINSBURG



CASPER

To increase the ALI's profile among rising stars in the ranks of law school professors, Professor Casper suggested the idea of an invitational meeting of promising young scholars. This led to the creation of ALI's Young Scholars Medal, which recognizes academics whose work has the potential to influence improvements in the law. First bestowed in 2011, the medal is given every other year to one or two early-career law professors. Each of the scholars is asked to speak at an ALI

Annual Meeting, and the Institute later sponsors a conference on issues related to the scholars' work.

Professor Casper was also a member of the Program Committee from 2001 to 2007, assisting the Director in discerning which new projects should be started. He has also served since 2002 as an Adviser on the ALI project Principles of the Law of Charitable Nonprofit Organizations, bringing his experience to an area that needs clarification and simplification.

A lifelong leader in academia, Professor Casper is the President Emeritus of Stanford University and a Professor of Law Emeritus at Stanford Law School. Before joining Stanford, he was a longtime faculty member at the University of Chicago, where he served as provost of the University, dean of the law school, and a professor of law. He began his career as a professor of political science at the University of California at Berkeley.

A native of Hamburg, Germany, Professor Casper studied law at the Universities of Freiburg and Hamburg, where he earned his first law degree. In the United States, he studied at Yale Law School, earning an LL.M., then returned to Freiburg, where he received his doctorate, writing his dissertation on the realist movement in American law.

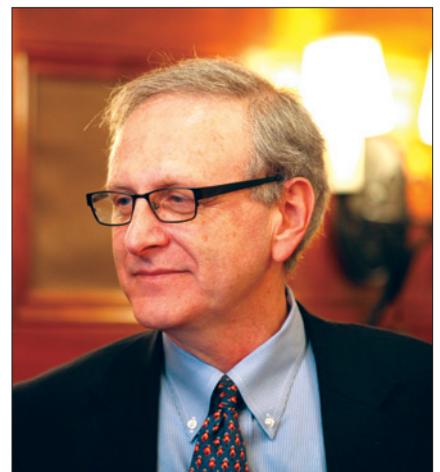
Professor Neil Cohen to Receive Wisdom Award

The John Minor Wisdom Award recognizes extraordinary contributions by a member to the work of the Institute. Bestowed only occasionally, it has been given to just six individuals since it was established in 1993. This year, the award will be presented on Tuesday, May 20, at the Annual Meeting, to Professor Neil B. Cohen, whose unflagging participation in ALI's work has enriched more than two dozen projects.

Professor Cohen is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School, and has been a key participant for more

than 25 years in major domestic and international law-reform projects. He has been an intellectual leader on ALI's work in the field of commercial law and a political leader on the Institute's relationship with the Uniform Law Commission. The Director of Research on the UCC's Permanent Editorial Board, he was elected to ALI in 1987, and has been a dedicated and valued participant in ALI activities ever since.

He formerly held the Institute's R. Ammi Cutter Reporter's Chair for his



COHEN

continued on page 17

Speakers for the 91st Annual Meeting

Stephen G. Breyer—Annual Dinner—Tuesday, May 20



Stephen G. Breyer has served as an Associate Justice on the United States Supreme Court since 1994. A native of San Francisco, he was appointed to the U.S. Court of Appeals for the First Circuit in 1980, and became its Chief Judge in 1990. After graduating from Harvard Law School, he clerked for Supreme Court Justice Arthur J. Goldberg, and then served for two years as Special Assistant to the Assistant Attorney General for Antitrust at the U.S. Department of Justice. In 1967, he returned to Harvard as an Assistant Professor of Law and became a full Professor in 1970, specializing in antitrust and administrative law.

His years at Harvard were interrupted by several periods of government service—as Assistant Special Prosecutor for the Watergate Special Prosecution Force in 1973; as Special Counsel for the Administrative Practices Subcommittee of the Senate Judiciary Committee in 1974 to 1975; and as Chief Counsel to the Judiciary Committee in 1979 to 1980.

A prolific writer, Justice Breyer’s book titles include: *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1993), *Active Liberty: Interpreting Our Democratic Constitution* (2005), and *Making Our Democracy Work: A Judge’s View* (2010). In 2008, he received the Fordham-Stein Ethics Prize, which recognizes one individual each year whose work “exemplifies outstanding standards of professional conduct, promotes the advancement of justice, and brings credit to the profession by emphasizing in the public mind the contributions of lawyers to our society and to our democratic system of government.” An ALI member since 1977, Justice Breyer previously spoke at the 2010 and 1997 Annual Meetings.

Lance Liebman—Opening Session—Monday, May 19

As the Director of The American Law Institute since 1999, Lance Liebman has overseen a significant expansion of the Institute’s work. New projects begun during his tenure include American Indian Law, Consumer Contracts, Employment Law, Information Privacy, International Commercial Arbitration, and three Torts projects—Economic Harm; Intentional Torts; and Physical and Emotional Harm—as well as Concise Restatement volumes on Law Governing Lawyers, Property (compiled by Director Liebman himself), and Torts. The Institute also marked a milestone with the Restatement Fourth of the Foreign Relations Law of the United States (the first in the Fourth Restatement series). New Principles projects started during Professor Liebman’s tenure include: Aggregate Litigation, Charitable Nonprofit Organizations, Election Law, Government Ethics, Liability Insurance, Software Contracts, and Transnational Intellectual Property. The Institute also began work on two portions of the Model Penal Code: Sentencing and Sexual Assault and Related Offenses.



A former dean of Columbia Law School, Professor Liebman continued to teach throughout his directorship as the William S. Beinecke Professor of Law and Director of Columbia’s Parker School of Foreign and Comparative Law. An ALI member since 1977, Professor Liebman is a graduate of Harvard Law School and later taught at Harvard Law for 21 years, serving as Associate Dean from 1981 to 1984. After serving as a law clerk to Justice Byron White of the U.S. Supreme Court, he worked on transportation and community issues as an Assistant to New York City Mayor John V. Lindsay. Professor Liebman has also had extensive international teaching experience. He was a Visiting Fulbright Professor of Law at Maharajah Sayajirao University in Baroda, India, a visiting lecturer at Tokyo University, and an adviser for the Japanese Institute of Labor. He also taught at the Harvard-Fulbright School in Ho Chi Minh City, Vietnam, and at the Hebrew University of Jerusalem, Israel.

William A. Fletcher—Closing Day Luncheon—Wednesday, May 21



A native of Philadelphia, William A. Fletcher has been a judge of the U.S. Court of Appeals for the Ninth Circuit in San Francisco since 1998. A Yale Law School graduate and former professor of law at the University of California, Berkeley, Boalt Hall School of Law, Judge Fletcher worked for the Office of Emergency Preparedness in the Executive Office of the President from 1970 to 1972, during which time he was also a U.S. Navy lieutenant. He was also the Northern California co-director for President Clinton's campaign in 1992. An ALI member since 1989, Judge Fletcher serves as an Adviser for Restatement Third, The Law of American Indians. He was also an Adviser for the Federal Judicial Code Revision Project published in 2004, and chair from 2010 to 2012 of the Special Committee on the ALI Young Scholars Medal.

Phoebe A. Haddon—Life Member Luncheon—Tuesday, May 20



Recently voted one of the 25 most influential people in legal education in a poll conducted by *The National Jurist*, Dean Phoebe A. Haddon has brought new, transformative academic resources to the University of Maryland's Francis King Carey School of Law since her appointment as dean in 2009. A graduate of Duquesne University School of Law, Dean Haddon joined the University of Maryland after more than 25 years as a distinguished faculty member at Temple University's Beasley School of Law in Philadelphia. Previously she had practiced at Wilmer Cutler & Pickering in Washington, DC, and clerked for Judge Joseph F. Weis, Jr., on the United States Court of Appeals for the Third Circuit. An ALI member since 1989, she served for many years on the ALI-ABA Committee on Continuing Professional Education, and for six years she chaired the ALI-ABA subcommittee on Diversity in CLE.

James R. Silkenat—Afternoon Session—Monday, May 19



American Bar Association President James R. Silkenat is a partner in the New York office of Sullivan & Worcester and a member of its Corporate Department. He is a former Legal Counsel at the International Finance Corporation of the World Bank Group in Washington, DC, a Fellow in the U.S. State Department Scholar/Diplomat Program, and a Fellow of the National Endowment for the Humanities. Mr. Silkenat is also a member of the Council on Foreign Relations and served as Chair of the Lawyers Committee for International Human Rights (now Human Rights First), as well as Chair of the Commission on the World Justice Project and of the Council of New York Law Associates (now the Lawyers Alliance for New York). A graduate of the University of Chicago School of Law, Mr. Silkenat is a frequent author and lecturer and is the editor or co-editor of 14 books and author of more than 100 articles on the legal and justice systems.

Members Reception at Freer Gallery



Enjoy cocktails and a sumptuous buffet amid a glorious display of Asian art at this year's Members Reception at the Freer Gallery of Art on Monday, May 19, from 6:30 p.m. to 8:30 p.m.

Part of the Smithsonian group of museums, the Freer Gallery houses some of the most significant and exquisitely beautiful Asian art from Neolithic times to the early 20th century, with works from India, China, Japan, Korea, and the Islamic world. The Gallery also boasts some of the most exceptional works from 19th-century artist James McNeill Whistler in his celebrated Peacock Room.

The cost for this event is \$90 per person. The museum is located at 1200 Jefferson Drive, SW, Washington, DC. Transportation from The Ritz-Carlton to the museum and returning to the hotel after the reception will be available.

Chairs Selected for Regional Advisory Groups

The recent changes to The American Law Institute’s membership process are now in place and chairs have been selected for each of the 16 Regional Advisory Groups. By May, these groups will each have a full complement of members.

The three primary tasks of the Regional Advisory Groups are to **confidentially**:

- identify candidates for membership
- develop membership proposals for consideration by the Membership Committee
- review candidates proposed for membership within the region as requested by the Membership Committee

The emphasis of the Groups is on fostering a membership that will reflect the broad diversity of highly capable and accomplished lawyers, judges, and academics in the United States and abroad, including with regard to (but not limited to) age, gender, race, ethnicity, expertise, geographic region, and type and size of practice or other professional work.

The overall goal is to ensure a membership that will keep the Institute a vibrant, relevant, and distinguished membership organization as it carries out its mission throughout the 21st century.

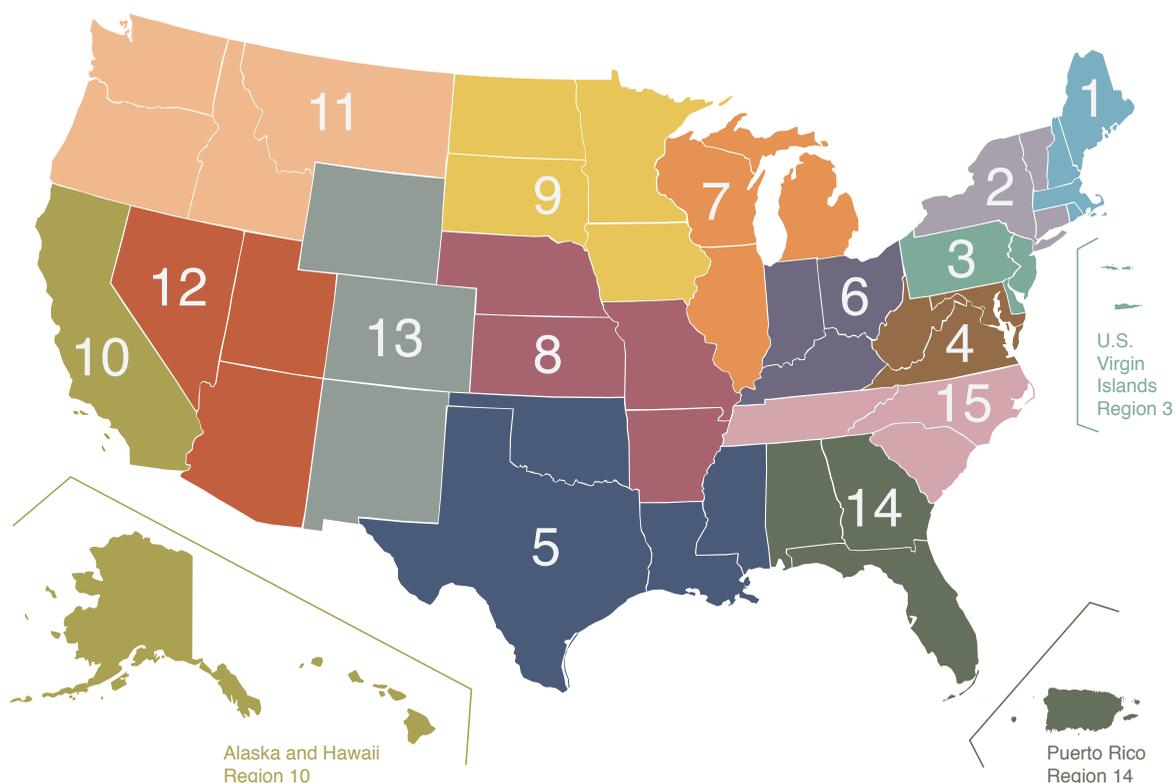
ALI President Roberta Cooper Ramo worked closely with the ALI staff to analyze the data from each of the regions in order to identify the specific goals each of the Regional Advisory Groups will have as they begin their work.

“One of the benefits of our new process was to take a granular look at our membership in each Region,” said President Ramo. “We can now identify for the Regional Chairs areas of need to round out our membership.”

Under the new, confidential membership proposal process, all new members will be **confidentially** nominated by an ALI member, with supporting personal letters from two additional ALI members.

It is the responsibility of the sponsors to ensure that, to the best of their ability, the candidate’s nomination remains confidential until the Membership Committee has decided to recommend the candidate to the Council. At that time, candidates will be contacted to confirm that they (1) accept election to ALI and (2) are committed to its purposes and are willing to participate in the work of the Institute.

Much more detailed information about the membership proposal process, including the Online Proposal Form, is available in the **Members Only** section of the ALI website. Please visit www.ali.org, log in with your member ID, and consult the menu options on the left.





John A. Nadas
Choate Hall & Stewart
Region 1
(ME, MA, NH, RI)



Sheila L. Birnbaum
Quinn Emanuel
Urquhart & Sullivan
Region 2
(CT, NY, VT)



Judge Anthony J. Scirica
U.S. Court of Appeals,
Third Circuit
Region 3
(DE, NJ, PA, USVI)



Carolyn B. Lamm
White & Case
Region 4
(DC, MD, VA, WV)



Wallace B. Jefferson
Alexander Dubose
Jefferson & Townsend
Region 5
(LA, MS, OK, TX)



Prof. Frank Sullivan, Jr.
former Justice, Supreme
Court of Indiana, now Indiana
University School of Law
Region 6
(KY, OH, IN)



Teresa W. Harmon
Sidley Austin
Region 7
(IL, MI, WI)



Maury B. Poscover
Husch Blackwell
Region 8
(AR, KS, MO, NE)



Prof. Robert A. Stein
University of Minnesota
Law School
Region 9
(IA, MN, ND, SD)



Judge Carolyn B. Kuhl
Los Angeles County
Superior Court
Region 10
(AK, CA, HI)



Marvin L. Gray, Jr.
Davis Wright Tremaine
Region 11
(ID, MT, OR, WA)



Patrick V. Apodaca
Sr. VP, GC & Secretary
PNM Resources
Region 12
(AZ, NM, NV)



Justice Christine M. Durham
Utah Supreme Court
Region 13
(CO, UT, WY)



Larry S. Stewart
Stewart Tilghman
Fox Bianchi & Cain
Region 14
(AL, FL, GA, PR)



Judge Bernice B. Donald
U.S. Court of Appeals,
Sixth Circuit
Region 15
(NC, SC, TN)



David W. Rivkin
Debevoise & Plimpton
International

Q&A with Trevor Potter



Comedian Stephen Colbert (left) consults with attorney Trevor Potter during his testimony before the Federal Election Commission.

by Shannon P. Duffy
ALI Director of Communications

Trevor Potter is a partner in Caplin & Drysdale's Washington, DC, office and the founding President and General Counsel of the Campaign Legal Center. Elected to The American Law Institute in October 2013, he is perhaps best known for his work as general counsel to Senator John McCain's presidential campaigns and counsel to comedian Stephen Colbert's 501(c)(4). Mr. Potter currently serves as an Adviser on ALI's Principles of Election Law: Resolution of Election Disputes project. He has previously taught campaign finance law at the University of Virginia School of Law and Oxford University, and has testified before Congress on federal election proposals and campaign finance regulation.

Q—What led you to focus on campaign and election law?

A—As with so many things in life, it was serendipity, good fortune, or seeing and then seizing opportunities others saw less clearly. Two UVA Law professors of mine started me on the way by suggesting that my legal career would benefit from some federal government experience, rather than going straight back to practice with a Chicago law firm as I had intended (I started life as a Chicagoan). They introduced me to officials at the Department of Justice and I accepted an offer from the DOJ Office of Legal Policy in 1982. Looking back, what strikes me is that this would almost certainly not happen in today's

Washington—this was the Reagan Justice Department, and one of the professors recommending me had been a top official in the Carter DOJ, and the other had worked for Nelson Rockefeller.

But back then, professionalism trumped pure partisanship and ideology, and the Reagan team were willing to accept a Republican lawyer (it was a political slot) even when proffered from such non-Reagan sources. DOJ led to the FCC (a Justice official went over as General Counsel and took me) and then to a Washington law firm (by then I had discovered I liked living in the Washington area a great deal, and was equally happy not

continued on page 9

to have to face Chicago winters). My new firm undertook to advise then Vice President George Bush on his 1988 campaign for President, and as an associate I was able to join the Bush legal team. After the primary campaign, the convention, the general election (as Deputy General Counsel), the Inaugural, and the four-year FEC audit of the campaign, I found myself a partner of the firm and one of the handful of Washington lawyers with extensive knowledge of federal election and campaign finance law.

Q—Just 12 years out of law school, you were serving as the Chairman of the Federal Election Commission. How did that opportunity come about?

A—When the White House called and asked if I would like to come into the administration, the conversation got around to my interest in a vacant FEC Commissioner position. This is where the seeing and seizing opportunities part comes in—the White House reaction to my interest in the FEC was “You’re kidding—you’d take that? We have been wondering who we could find for that job.” And my wise older Washington mentors counseled me that the position was a thankless dead-end, better suited to retired hacks. But I was enough of an idealist to think that what I had seen during the Bush campaign—laws broken with impunity by other campaigns, FEC inaction or action which missed the mark, lobbyists using political funding outside the system to obtain influence—was a problem for our democracy, and likely to get worse if not corrected. And so, having no idea of what I was really taking on, I became an FEC Commissioner and set out to reform and improve the agency’s administration, procedures, and policies. My colleagues were no doubt a bit bemused by my youthful and naïve enthusiasm (I was the first new person at the Commission meeting table in many years—the agency had been remarkably static for about 10 years) but we worked together collegially and productively for five years. When I left, we had made important changes and I believed the Commission was a stronger place with a clearer mission.

Unfortunately, what I had really done was stimulate a backlash from members of Congress and political party officials who did not want an independent or activist FEC. For a while, I am told that the call in certain Washington circles was “no more Trevor Potters” when decisions about FEC appointments came up. Today, of course, the FEC is riven by a fierce and often bitter partisan and ideological 3-3 deadlock (like much of the rest of the federal government) and it is lucky to be able to have the majority votes necessary to even hire staff.

Q—What was your first big break in your law career?

A—Actually there were two. The first was to become a lawyer for the Bush 1988 campaign, which came about because I was a new and as-yet underutilized associate in the Washington firm asked by Vice President George H.W. Bush to provide legal advice as he was putting together his presidential campaign. This was of course made possible by the fact that I was a Republican, and a strong believer in the vice president, and helped by the fact that many of my Washington friends also ended up being active in the campaign.

But it was the second break that set my professional course for the last 15 or so years: John McCain’s invitation to me when I left the FEC to help him with the McCain-Feingold bill. When I left the FEC I was convinced of the necessity and importance of new campaign-finance reform legislation, because I knew that some aspects of the system could not be improved by regulation (even if the FEC wanted to) but only by statute. I had a fascinating couple of years working with Senators McCain and Feingold and Congressmen Shays and Meehan on this legislation as an outside advisor. I had a ring-side view as Senator McCain performed magic in helping get the legislation through a Republican House whose leadership was adamantly opposed, and then past the threat of filibuster in the Senate to passage and a Presidential signature. A landmark

court battle followed (the legislation had special provisions for expedited review by a rare three-judge panel written into it) and culminated in a 5-4 Supreme Court victory. This, of course, stood for exactly five years, until the sands of time washed Justice O’Connor off the Court, and her replacement voted to overturn significant portions of the law and the constitutional precedent on which it was based.

Q—Who is your legal hero?

A—Elihu Root is at the top of my list. A successful New York corporate lawyer, a United States Senator, a Secretary of War for President McKinley and Secretary of State for Theodore Roosevelt, and the President of the Carnegie Endowment for International Peace, he was an eminent public figure of the early 20th century. All of that is impressive—and none of it readily explains why I name him here, or why he was being quoted to the Supreme Court in the oral argument over the McCain-Feingold law in the early 21st century, or why the majority opinion upholding that law began by citing his wisdom. Root worried that the legitimacy of elections and legislative process

continued on page 18

Model Penal Code: Sexual Assault and Related Offenses, Advisers Meeting

► Lynn Hecht Schafran (center), Senior Vice President of Legal Momentum, participating in discussion at the meeting of Advisers for Model Penal Code: Sexual Assault and Related Offenses in New York



▲ Ronald Eisenberg of the Philadelphia District Attorney's Office



▲ Judge Reggie B. Walton of the U.S. District Court for the District of Columbia serves as an Adviser on the Model Penal Code: Sexual Assault and Related Offenses project.



◀ From left, Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy, both of NYU School of Law, and ALI Deputy Director Stephanie Middleton

ALI Council Approves Drafts for Consideration at 2014 Annual Meeting

At its meeting in Philadelphia on January 16-17, the ALI Council approved four drafts and part of a fifth to be submitted for membership approval at the upcoming Annual Meeting, subject to changes the Reporters will make in response to discussion at the Council meeting and to editorial and other minor improvements. An additional draft reviewed by the Council will be sent to the Meeting for discussion only.

The Council also discussed a memorandum on the Uniform Commercial Code and the Uniform Law Commission's Home Foreclosure Procedures Act, submitted by Professor Neil B. Cohen of Brooklyn Law School, the Director of Research on the UCC's Permanent Editorial Board, and Teresa Wilton Harmon of Sidley Austin in Chicago, and a Reporters' Memorandum for Restatement Third, The Law of Consumer Contracts, submitted by Reporter Oren Bar-Gill of New York University School of Law (Reporter Omri Ben-Shahar of the University of Chicago Law School could not attend the meeting), but no action was taken on either project.

Chief Reporter Samuel Estreicher of New York University School of Law, and Reporters Matthew T. Bodie of Saint Louis University School of Law, Michael C. Harper of Boston University School of Law, and Stewart J. Schwab, Dean of Cornell Law School in Ithaca, NY, received Council approval of Council Draft No. 11 of the **Restatement Third, Employment Law**, consisting of five Chapters already approved by the Council and the Institute membership at previous Annual Meetings: Chapter 5 on the tort of wrongful discharge in violation of public policy; Chapter 6 on defamation, wrongful interference, and misrepresentation; Chapter 7 on employee privacy and autonomy; Chapter 8 on employee obligations and restrictive covenants; and Chapter 9 on remedies. As Chapters 1-4 of Council

Draft No. 10 were previously approved for final Annual Meeting consideration at the October Council meeting, all nine chapters will be submitted as a Proposed Final Draft for membership approval at the 2014 Annual Meeting. In preparing Council Draft Nos. 10 and 11, the Reporters primarily made editorial revisions to improve or clarify language.

The drafts approved by the Council in January for submission as Tentative Drafts at this year's Meeting are: **Restatement Third, Torts: Liability for Economic Harm; Model Penal Code: Sentencing; Model Penal Code: Sexual Assault and Related Offenses; and Restatement Fourth, The Foreign Relations Law of the United States – Jurisdiction.** Dean Ward Farnsworth of the University of Texas School of Law in Austin, presented Council Draft No. 2 of Restatement Third, Torts: Liability for Economic Harm, containing §§ 7-8 of Chapter 1 on unintentional infliction of economic loss and Chapter 2 on liability in tort for fraud. Since there was insufficient time to consider § 6 at the 2012 Annual Meeting, it is expected that that Section will also be on the 2014 Annual Meeting agenda.

Continuing a discussion of Council Draft No. 4 started at the Council's meeting in October 2013, Reporter Kevin R. Reitz of the University of Minnesota Law School and Associate Reporter Cecelia M. Klingele of the University of Wisconsin Law School presented a Memorandum to the Council for Model Penal Code: Sentencing, proposing to make extensive changes to Council Draft No. 4's Article 6x on collateral consequences of criminal conviction; new suggested black-letter language was set forth in an appendix to the memorandum. The Council voted to approve the draft as modified and send it on to the Annual Meeting.

The Reporters for the Jurisdiction portion of the Foreign Relations Restatement, William S. Dodge of the University of California, Hastings College of the Law, in San Francisco, Anthea Roberts of the London School of Economics and of Columbia University School of Law, and Coordinating Reporter Paul B. Stephan of the University of Virginia School of Law in Charlottesville, joined by Coordinating Reporter Sarah H. Cleveland of Columbia University School of Law, received approval of their first Council Draft, containing Chapter One on the recognition and enforcement of foreign judgments in the United States of Part IV on jurisdiction to enforce.

Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy, both of New York University School of Law, presented their first Council Draft for Model Penal Code: Sexual Assault and Related Offenses. Section 213.7, dealing with procedural and evidentiary principles, will go to the Annual Meeting for approval, while §§ 213.0-213.6, defining substantive offenses, will be sent to the Annual Meeting for discussion only.

Reporter Matthew L.M. Fletcher and Associate Reporter Wenona T. Singel, both of Michigan State University College of Law, submitted their first Council Draft for **Restatement Third, The Law of American Indians**, containing Chapter 1 on Federal-Tribal Relations. (Associate Reporter Kaighn Smith, Jr., of Drummond Woodsum in Portland, ME, could not be present.) This chapter will be presented as a Discussion Draft at the Annual Meeting.

Also on the Annual Meeting agenda will be a Tentative Draft for the **Principles of the Law of Liability Insurance**, approved by the Council at its meeting in October 2013, and a Discussion Draft for the **Restatement Third, Torts: Intentional Torts to Persons**.

ALI Council Meeting, January 2014



▲ The ALI Officers (from left) President Roberta Cooper Ramo, Director Lance Liebman, and Treasurer Margaret H. Marshall



Wallace B. Jefferson, the former Chief Justice of the Supreme Court of Texas, now of Alexander Dubose Jefferson & Townsend (facing) speaks with John H. Beisner of Skadden Arps Slate Meagher & Flom at the ALI Council Meeting.



▲ The ALI Council Meeting in January 2014 at the ALI headquarters in Philadelphia



David F. Levi, the Dean of Duke Law School, speaking to ALI Treasurer Margaret H. Marshall of Choate Hall & Stewart



▲ John J. McKetta III of Graves Dougherty Hearon & Moody speaking to former ALI Director Geoffrey C. Hazard, Jr.



▲ Judge Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California (left), speaks with Kim J. Askew of the Dallas office of K&L Gates and Marsha E. Simms, retired partner of Weil Gotshal & Manges.



▲ Judge Patricia M. Wald, ALI Secretary Judge Paul L. Friedman, and Professor Geoffrey C. Hazard, Jr., the Director Emeritus of ALI



▲ ALI President Emeritus and Chair of the Council Emeritus Roswell B. Perkins, retired partner of Debevoise & Plimpton



◀ After the first day of their two-day meeting, the ALI Council gathered for dinner at the Four Seasons in Philadelphia, beginning with some classical music by a string quartet from the Curtis Institute. The members of the Dover Quartet: Joel Link, violin, Bryan Lee, violin, Camden Shaw, cello, Milena Pajaro-van de Stadt, viola.



▲ New members of the ALI Council offer remarks at the dinner. Here, Justice Goodwin Liu of the California Supreme Court and Laura Stein of Clorox Co. begin their talks.



Consumer Contracts, Advisers and MCG Meetings



▲ Professor Omri Ben-Shahar, Reporter for the Restatement Third, *The Law of Consumer Contracts*, begins the discussion at the Advisers meeting at NYU School of Law in December.



▲ From left (front row): Professor James J. White of University of Michigan Law School, Judge Raymond M. Kethledge of the U.S. Court of Appeals for the Sixth Circuit, Professor Robert A. Hillman of Cornell University Law School, Professor Michael M. Greenfield of Washington University School of Law, Wallace B. Jefferson, the former Chief Justice of the Texas Supreme Court, now of Alexander Dubose Jefferson & Townsend, and Hans Schulte-Nölke, Director of the European Legal Studies Institute

▶ Howard M. Erichson of Fordham University School of Law



▲ From left, John H. Beisner of Skadden Arps Slate Meagher & Flom and Alan S. Kaplinsky of Ballard Spahr, at the meeting of Advisers on Restatement Third, *The Law of Consumer Contracts* project



Notes About Members and Colleagues

- **Frank S. Berall**, principal of Copp & Berall, and senior tax consultant to Andros, Floyd & Miller, P.C., both of Hartford, CT, was awarded the designation of Distinguished Accredited Estate Planner® in November at the 50th annual conference of the NAEPC Education Foundation and National Association of Estate Planners and Councils, in Las Vegas, NV, and he was inducted into its *Estate Planning Hall of Fame*®.

- On June 1, Professor **Luke J. Bierman**, associate dean for experiential education and distinguished professor of the practice of law at Northeastern University School of Law in Boston, will become dean of Elon University School of Law in Greensboro, NC.



- Professor **Carl S. Bjerre** of the University of Oregon School of Law in Eugene, the chair of the American Bar Association's Uniform Commercial Code: Investment Securities Subcommittee, has been appointed to the Permanent Editorial Board for the UCC, a joint committee of the ALI and the Uniform Law Commission that assists in attaining and maintaining uniformity in state statutes governing commercial transactions by discouraging nonuniform amendments to the UCC by the states and by approving and promulgating amendments to the UCC when necessary.

- On February 6, Professor **Richard Briffault** of Columbia University School of Law, the Reporter for ALI's Principles of Government Ethics project and a leading authority on government ethics and campaign-finance law, was nominated by New York City Mayor Bill de Blasio to a six-year term on the city's Conflicts of Interest Board. Professor Briffault, if confirmed by the

City Council, would serve as the board's new chair.

- In January, **Marina Corodemus**, managing partner of the alternative dispute resolution firm Corodemus & Corodemus, in Iselin, NJ, who served more than 10 years as New Jersey's sole mass-tort judge, became president of the Academy of Court-Appointed Masters, an independent organization of experienced masters who serve in both federal and state courts.

- Associate Academic Dean for Research **William S. Dodge** of the University of California, Hastings College of the Law, in San Francisco, a Reporter for the Institute's Restatement Fourth, The Foreign Relations Law of the United States – Jurisdiction, and a member of the State Department's Advisory Committee on International Law, has been appointed the first Honorable Roger J. Traynor Professor of Law. As part of his appointment, he will give an inaugural lecture in the spring. The family of Chief Justice Traynor created the Traynor Professorship in honor of the late jurist, who taught at UC Hastings after he retired from the California Supreme Court. Chief Justice Traynor's eldest son is ALI President Emeritus and Chair of the Council Emeritus **Michael Traynor**.



- **Michael A. Fitts**, dean of the University of Pennsylvania Law School since 2000, has been named president of Tulane University in New Orleans. He will assume the post on July 1.



- Former Virginia Solicitor General **E. Duncan Getchell, Jr.**, an architect of the first lawsuit filed by a state challenging the constitutionality of the 2010 federal health-care law, has

returned to the Richmond, VA, office of McGuireWoods LLP, as a partner and senior litigator. He had previously worked at the firm for 33 years and once served as chair of the firm's Appellate Practice Group.



- In October, **Pamela S. Karlan**, a professor of public-interest law and co-director of the Supreme Court Litigation Clinic at Stanford Law School, was the co-recipient of the National Public Service Award of the John and Terry Levin Center for Public Service and Public Interest Law at Stanford Law School, given to attorneys whose public-service work has had national impact. Professor Karlan was specifically recognized along with co-recipient Roberta A. Kaplan for their success in the Supreme Court case of *United States v. Windsor*, in which the Court struck down a key provision in the federal Defense of Marriage Act.

- The lectures of Prof. Dr. **Richard Kreindler**, entitled "Competence-Competence in the Face of Illegality in Contracts and Arbitration Agreements" and delivered at the Hague Academy of International Law in 2012, have been published in the *Collected Courses of the Academy*, Volume 361. Professor Kreindler is a partner at Cleary Gottlieb Steen & Hamilton in Frankfurt and a professor at the University of Muenster.

- In December, Professor **John H. Langbein** of Yale Law School and Professor Emeritus **Lawrence W. Waggoner** of the University of Michigan Law School, who have served as Reporters for a number of Uniform Acts in the fiduciary field and were the Associate Reporter and Reporter, respectively, for Restatement Third, Property (Wills and Other Donative Transfers), were honored by the Joint Editorial Board for Uniform Trust and

continued on page 16

Estate Acts with the Richard V. Wellman Award for “Outstanding Contributions to Uniform Laws in the Field of Trusts and Estates.”

- ALI Council member **Gerard E. Lynch**, a judge on the U.S. Court of Appeals for the Second Circuit, was profiled in Patrick L. Gregory’s



article, “Second Circuit’s Lynch Brings Scholarly, Pragmatic Approach to Bench,” in U.S. Law Week’s Eye on the Bench, 82 U.S.L.W. 579 (2013). The article discusses his major decisions, philosophy, and record in five major areas of law: administrative law, business law, constitutional law, criminal law, and procedure.



- **Michael M. Marick**, a founding partner of the Chicago law firm of Meckler Bulger Tilson Marick & Pearson, has been recognized by IIT Chicago-Kent College of Law as

one of “125 Alumni of Distinction,” chosen from graduates over the history of the law school in celebration of its 125th anniversary. Mr. Marick, who has represented insurers across the country in insurance-coverage and bad-faith cases for more than 30 years, serves as Chair of the Defense Research Institute’s 2500-member Insurance Law Committee.

- On January 1, **James C. Martin**, Appellate Practice partner at Reed Smith, who serves Reed Smith clients from the firm’s Pittsburgh, Los Angeles, and New York offices, assumed the presidency of the American Academy of Appellate Lawyers. The Academy, which currently has 244 members, was founded in 1990 to recognize outstanding appellate lawyers and promote the improvement of appellate advocacy and the administration of the appellate courts.

- **Jacob M. Monty** of Houston, the managing partner and founder of Monty & Ramirez, has been appointed by Texas Governor Rick Perry to the Texas Higher Education Coordinating Board for a term to expire August 31, 2015. The board sets policies and coordinates efforts to improve higher education in Texas.



- **Clifford A. Rieders**, a partner in the firm of Rieders, Travis, Humphrey, Harris, Waters, Waffenschmidt & Dohrmann in Williamsport, PA, has been named as a 2014 Top Rated Lawyer in Medical Malpractice Law. The designation is given by *The American Lawyer*, *The National Law Journal*, and *Corporate Counsel*.

- In January, Illinois Solicitor General **Michael A. Scodro** joined the firm of Jenner & Block as a partner in the Appellate and Supreme Court Practice in its Chicago office. In November 2013, he was named the first Appellate Lawyer-in-Residence at IIT Chicago-Kent College of Law’s Institute on the Supreme Court of the United States. He is also a Lecturer in Law at the University of Chicago Law School and is secretary of the Appellate Lawyers Association.

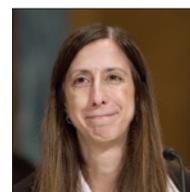


- On December 18, 2013, **M. Melvin Shralow**, of Bryn Mawr, PA, received

an award from the Senior Lawyers Professional and Public Service Committee of the Philadelphia Bar Association, “for his leadership, hard work and guidance as a member of the Committee and as Chair for 2010 and 2011.” Mr. Shralow, the president and principal of ShralowADR, LLC, is a mediator and arbitrator of commercial and construction disputes.



- **Mary L. Smith** of Lansing, IL, general counsel of the Illinois Department of Insurance, is serving a two-year term as president of the National Native American Bar Association. Ms. Smith is Chair of the ABA Standing Committee on Constitution and Bylaws.



- On January 29, **Leo E. Strine, Jr.**, chancellor of the Delaware Court of Chancery, was confirmed unanimously as the eighth chief justice of Delaware’s Supreme Court by the state Senate’s Executive Committee.

- On December 12, the Senate voted to confirm Judge **Patricia M. Wald** of Washington, DC, an emeritus member of ALI’s Council, to another term on the Privacy and Civil Liberties Oversight Board. Judge Wald’s term expires January 29, 2019.



On December 23, **Jeh Charles Johnson**, a former partner in the Washington, DC, office of Paul, Weiss, Rifkind, Wharton & Garrison LLP and the former general counsel for the U.S. Department of Defense, was sworn in as the fourth Secretary of the U.S. Department of Homeland Security.

continued on page 17

The Institute in the Courts

by Todd David Feldman, Editorial Coordinator

In **Burrage v. U.S.**, a recent opinion delivered by Justice Scalia, the Supreme Court considered whether the 20-year mandatory-minimum provision of the Controlled Substances Act applies when use of a covered drug supplied by the defendant contributes to, but is not a but-for cause of, the victim's death or injury. Noting that the phrase "results from" imposes a requirement of actual causality, the Court cited *University of Tex. Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517, 2525, 186 L.Ed.2d 503 (2013), which in turn quoted Restatement of Torts § 431, Comment *a*, for the proposition that "In the usual course, this requires proof "that the harm would not have occurred" in the absence of—that is, but for—the defendant's conduct." Quoting § 2.03(1)(a) of the Model Penal Code, Justice Scalia said that the Code "reflects this traditional understanding; it states that '[c]onduct is the cause of a result' if 'it is an antecedent but for which the result in question would not have occurred.'" "That formulation," he said, "represents 'the *minimum* requirement for a finding of causation when a crime is defined in terms of conduct causing a particular result.'" *Id.*, Explanatory Note (emphasis added). Citing the Institute's 39th

Annual Meeting Proceedings 135-141 (1962), the Court noted that the ALI declined to adopt a rule in its Model Penal Code that "an act or omission is considered a cause-in-fact if it was a 'substantial' or 'contributing' factor in producing a given result." The Court held that, "at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of the death or injury." *Burrage v. U.S.*, 134 S. Ct. 881, 2014 WL 273243, January 27, 2014 (No. 12-7515).

In **Roy v. Woodstock Community Trust, Inc.**, 2014 WL 298031 (Vt. January 7, 2014), the defendant nonprofit corporation proposed to build a housing development on property it owned that was subject to water-line easements, owned by some of the plaintiffs, adjoining landowners. The plaintiffs argued that the trial court erred by allowing, on summary judgment, the unilateral relocation of two of the easements so that they would

continued on page 21

Professor Neil Cohen to Receive Wisdom Award continued from page 3

outstanding work on the Restatement Third of Suretyship and Guaranty, initiated in 1989 and published in 1996, and was also the Reporter for Revised Article 1 of the UCC. Professor Cohen has served as an Adviser (Principles of the Law of Software Contracts), as an ALI representative on the Drafting Committees for UCC Articles 2/2A and 9, and on the Members Consultative Group for more than 20 ALI projects, including the Institute's current projects on the law of charitable nonprofit organizations, international commercial arbitration, information privacy, foreign relations law, election law, consumer contracts, and torts.

Presenting the award will be Professor Robert A. Stein, the Everett Fraser Professor of Law at the University of Minnesota

Law School, where he was dean from 1979 to 1994. Professor Stein is also an emeritus member of the ALI Council and served as the Executive Director and Chief Operating Officer of the American Bar Association for 12 years before rejoining the law faculty in 2006.

The Wisdom Award is given from time to time in specific recognition of a member's contributions to the work of the Institute. ALI Reporters, officers, and Council members are not eligible for the Award, the primary purpose of which is to recognize members who do not have an official role in Institute projects. The Award was last presented to Guy Miller Struve in 2011 and to Judge Jack B. Weinstein in 2006.

Membership Notes continued from page 16

- Judge **William H. Webster**, the former Director of both the FBI and the CIA and an emeritus member of ALI's Council, received the inaugural William H. Webster Award for National Resilience Leadership at the International Disaster Conference and Expo in New Orleans on January 7. Judge Webster received the award in recognition of his vision and leadership in helping to make the nation and its critical infrastructure better prepared and more resilient against a range of threats, from natural disasters to terrorist incidents.
- The *New York University Annual Survey of American Law* is dedicating a forthcoming issue to ALI Council member **Diane P. Wood**, Chief Judge of the U.S. Court of Appeals for the Seventh Circuit. The volume will include tributes and scholarship on Judge Wood's achievements and contributions to American law. Judge Wood was honored on February 25 at a dedication ceremony held at NYU. Speakers at the event included ALI Director **Lance Liebman**; Professor **Ross E. Davies** of George Mason University School of Law in Arlington, VA; NYU law professor **Samuel Estreicher**; and Professor **Geoffrey R. Stone** of the University of Chicago Law School.

is undermined by the role of large campaign contributions and expenditures by entities seeking—and routinely obtaining—specific benefits from government. In a speech early in his political career to the New York state constitutional convention, he called for a ban on corporate money in elections “to prevent the great railroad companies, the great insurance companies, the great telephone [sic] companies, the great aggregations of wealth from using their corporate funds directly or indirectly to send members of the legislature to these halls in order to vote for the protection and advancement of their interests as against those of the public.” What Root understood, even as he represented business leaders like Andrew Carnegie and was a member of a political party that received direct and substantial corporate funding, was that American business ultimately benefits from public confidence in the integrity of government.

Q—What are you most proud of?

A—My work to strengthen and improve our election and campaign-finance systems.

Q—What is your greatest regret?

A—I continue to regret that it proves so hard to translate the strong yearning of the American people for a transparent and fair and widely participatory and corruption-free system of elections and legislating into practice. But I still have hope that we will be able to move toward those goals.

Q—You’re a newly minted ALI member, but you’ve been an Adviser on our Principles of Election Law project for several years. What were your first impressions of working on an ALI project?

A—It is serious—and hard—work! Those involved in ALI projects spend a lot of time and mental power painstakingly looking at the issues presented from every side. It helps if one has the ability to endure long hours of intense—if not always exciting—discussion.

Q—What’s your idea of a perfect vacation?

A—I actually have two polar opposites. One is to travel to a country or culture I do not know well, meeting interesting new people, having discussions about government, politics, culture, and life that I would not have at home, seeing new (to me) art and architecture and history, and generally broadening my knowledge of human civilization so that I return home to the U.S. with a fresh perspective on our country and world. Sometimes that means I realize how fortunate we are to have the

society and physical world that we do; other times I wonder why we have not yet found answers to problems that others have. But either way, it is an enriching and mind-expanding experience that I value.

The other is to return to the coast of Maine—the insular community I have vacationed in for most of the summers of my life—to swim in the cold ocean, walk the golf course, bicycle, climb the familiar rocky coast, and revel in the company of multi-generational family and friends, mourning those who are no longer there and marveling at the new talent that has appeared. That sort of tight-knit communal experience can be rare in our lives today, and for me that return to roots is as important as learning from new experiences.

Q—Do you cook? If so, what’s your specialty?

A—Risotto. Almost any version.

Q—In an early 2013 article you wrote for *Atlantic Monthly*, you seemed optimistic that comprehensive voting-reform legislation might be on the horizon and that Congress was exhibiting “stirrings of bipartisan cooperation.” Do you remain sanguine?

A—I was never sanguine. I was hopeful. And my hope for those developments is now a longer-term hope. But I continue to think that Congress will at some point hear what I believe will be the increasingly loud demand of the American people for action on these issues.

Q—You represented Presidential candidate John McCain and later comedian Stephen Colbert. Which one was more fun?

A—The Colbert work was certainly more “fun,” and the McCain work more intense, as it lasted far longer and we had to dig deeper. That said, both representations had a certain high-wire nature to them: giving legal advice under intense time pressure—with either high stakes or in front of a national television audience—certainly causes one to look down on occasion and hope the footing remains good!

As for John McCain and Stephen Colbert themselves, they have a lot in common, perhaps surprisingly. Quick active intelligence, a sardonic sense of humor and of irony, love of history, the enjoyment of a good story, the ability to recognize foolishness for what it is—they are both great fun to be around. I am a lucky lawyer to have such extraordinary people as clients!

Former ALI-ABA Executive Director Richard E. Carter Has Died

Richard E. Carter, a pioneer in the field of continuing education for lawyers, died at his home in Philadelphia on January 27 at the age of 78.

Mr. Carter served from 1993 to 2005 as the Executive Director of the American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA, now known as ALI CLE), a major national provider of continuing legal education. He led ALI-ABA during a time of expansion, when the number of its courses and other offerings increased significantly, and major changes in technology and the method of delivery of continuing legal education were taking place.

Mr. Carter had a prominent career in legal education for more than 40 years. In the 1970s, he directed the Legal Services Corporation's Office of Program Support, providing training for lawyers representing poor clients across the country. Later, he led the Attorney General's Advocacy Institute, which trained lawyers in the U.S. Department of Justice. When that Institute was combined with the Legal Education Institute to form the Office of Legal Education, which became responsible for the continuing education of lawyers and paralegals in all federal agencies, Mr. Carter was its first director. He then served from 1985 to 1993 as Director of the Division for Professional Education of the American Bar Association.

A native of Indianapolis, Mr. Carter was a graduate of Butler University and Indiana University's Maurer School of Law. He

attended the Université Internationale des Sciences Comparées for law in Luxembourg before returning to the IU Law School to teach for two years as a Krannert Fellow. In 1963 he moved to Washington, DC, where he worked for the Federal Trade Commission and Neighborhood Legal Services before joining the law faculty of Catholic University. There he established a clinical legal-education program serving Washington's inner city and later started a national program to provide continuing legal education for 3,000 legal service attorneys. He helped to organize the new Legal Services Corporation in 1975.



Mr. Carter was a life member of The American Law Institute and the Fellows of the American Bar Foundation. In 1997, he was elected to the Academy of Law Alumni Fellows at the Indiana University School of Law. After his retirement from ALI-ABA, he became active in the International Bar Association, chairing the Legal Education Committee and becoming a member of the Council of the Section

on General Practice. He was also an elected shareholder of the Library Company of Philadelphia and a member of the Athenaeum of Philadelphia.

Mr. Carter is survived by his wife of 47 years, Constance Crowder Carter, by his brother David, and by a niece and two nephews.

A memorial service will be held from 4 to 6 p.m. on Friday, May 16, at the Athenaeum, 219 S. 6th St., Philadelphia. Contributions may be sent to the United Way of Philadelphia.



THE RITZ-CARLTON

May 19-21, 2014

**The 2014 ALI Annual Meeting
The Ritz-Carlton, Washington, DC**



to think about possible new projects. I look forward to introducing Ricky to you at the Annual Meeting.

At the January meeting, the Council reviewed, discussed, and took action on various drafts of Employment Law; the Law of American Indians; Torts: Liability for Economic Harm; Model Penal Code: Sentencing; Model Penal Code: Sexual Assault and Related Offenses; the Law of Consumer Contracts; and the Foreign Relations Law of the United States. Before I highlight those that will come to the membership for votes in May, let me note that Council discussion, like the discussion at the Annual Meeting, requires Reporters who are not only experts in the area of focus, but who also have strong constitutions as they listen to the broad range of comments about their hard work. And further, it requires Reporters who can then incorporate the comments that they find helpful or that the Council indicates are important into their reworking of the draft.

After years of effort by Sam Estreicher and his fellow Reporters, and also by the Advisers, the Members Consultative Group, the Council, and the members at previous Annual Meetings, the complete text of the Restatement of Employment Law will come before you in May. This is a major effort, with a huge waiting audience. With the usual Boskey motion*, the Council has approved edits to accommodate Council comments, and a Proposed Final Draft of Employment Law will be on this year's Annual Meeting agenda for a final vote.

I hope that you will take the time, regardless of your field, to respond to our e-mail inviting you to select Annual Meeting drafts, to read one or two of the drafts when they are forwarded to the membership, and to make comments to clarify the content at our Meeting.

* *The Boskey motion, named for former Treasurer Bennett Boskey, moves the approval of a draft, subject to the discussion at the meeting and to the "usual editorial prerogative" to improve language and syntax.*

Many of the most helpful comments at the Council meetings are made by those who are not experts in a particular area, but whose good common-sense responses represent those of most of the judges and lawyers in practice who will use this Restatement once it is approved, final editing is done, and it is hot off the presses. Or these days maybe we should say "hot off the cloud," though that sounds a little bit dramatic for the understated style of *The American Law Institute*.

The Council is also forwarding parts of the Model Penal Code: Sentencing; Model Penal Code: Sexual Assault and Related Offenses; Principles of the Law of Liability Insurance; Torts: Liability for Economic Harm; and the Foreign Relations Law of the United States for your review, comments, and approval.

We have recently started bringing to the Annual Meeting more Discussion Drafts: earlier drafts of projects that are not up for approval, but are intended for general discussion by the membership. This allows the Reporters, and the work itself, to benefit from a wider range of readers and comments at a much earlier stage. This year, after editing based upon the Council's comments, we are anxious to have you read and react to the first portions of the Restatement of the Law of American Indians and the Restatement of Torts: Intentional Torts to Persons. After your discussion and another meeting of Advisers and MCG for each, we hope to have drafts (of just sections, of course) ready for approval by the Council and the membership in 2015.

Let me highlight some administrative issues that I think are particularly important to all of us as members. The first concerns our new membership process, which, as you know, became effective in January. The primary difference between the past and current membership process is this: If at all possible, your nominations should be made without the knowledge of your proposed candidate. Once candidates

have been reviewed by the Membership Committee and the Committee votes to recommend them to the Council for election, they will then be informed of their nomination and asked to confirm their willingness to become ALI members and to participate in our work. If they agree to the nomination, their names will be submitted to the Council for formal approval.

See the article on page 6 for more information. If you have any questions about the new membership process, please contact Membership Director Beth Goldstein at 215-243-1666 or bgoldstein@ali.org. Further information is also available on the members-only section of ALI's website, but you must sign in using your e-mail address as your username and your member ID as your password. If you need assistance signing in, please contact Membership Manager Jane Giacinto at 215-243-1623 or jgiacinto@ali.org. As an aside, sometime after the Annual Meeting we will turn our attention to making our website both more user-friendly and more informative.

I also want to remind you that in the next few months California Supreme Court Justice Goodwin Liu, the Chair of our Young Scholars Medal Committee, will be sending out letters to the deans of law schools to solicit our third round of Young Scholars nominations, to be submitted in the early fall of this year. For those of you on law school faculties and those of you who have a chance to speak to the deans of your law schools, I hope you will remind them of the importance of this program. We will write more about this later in the year, but the Young Scholars Medal has been one of our most important innovations. Our project on Consumer Contracts came out of the work of one of the first Young Scholars, Oren Bar-Gill of NYU. We are considering work in the area of intellectual property after the conference chaired by NYU's Jeanne Fromer, another first-round Scholar, and in the

continued on page 21

The President's Letter continued from page 20

area of housing finance in connection with the work of Georgetown University Law Center Professor Adam Levitin, who spoke at the 2013 Annual Meeting. Amy Monahan of the University of Minnesota Law School, who shared the Young Scholar designation with Adam, will address us this May on "The Law and Politics of Public Pensions." We look forward not only to Amy's lecture, but also to her conference that will follow in the fall of this year.

Last, I hope that you will consider the superb speakers we will have at our 2014 Annual Meeting and make every effort to join us. Lance will address us as he

concludes his 15 years as our Director, and Supreme Court Justices Stephen Breyer and Ruth Bader Ginsburg will join us, as will Judge William Fletcher from the Ninth Circuit. Phoebe Haddon, Dean of the University of Maryland Francis King Carey School of Law, will talk to us about troubling issues in legal education and her views about solutions to what appears to be a permanent paradigm shift in the world of law practice.

Writing about what is on the Institute's plate reminds me of how important this experiment in law reform is, not only in the breadth and importance of our

written work, but in the miraculous, very American way the three sectors of our profession come together to make law useful to our democracy. One might say "only in America," but that would no longer be true, as we join with our fellows across the globe to encourage and participate in world conversations about the ideals of legal systems that support the evolution of all peoples.

Hope to see you in May.

Roberta

Roberta Cooper Ramo
President

The Institute in the Courts continued from page 17

not interfere with construction. The defendant represented that the relocation would neither inconvenience the plaintiffs nor affect the delivery of water to their homes after a brief interruption in service to relocate the pipes. It offered to pay all costs of relocation and to provide the plaintiffs with bottled water until service was restored. Affirming as to the trial court's decision allowing the unilateral relocation of the easements, the court adopted, with regard to underground easements, the approach of Restatement Third, Property (Servitudes) § 4.8(3), which permits the owner of a servient estate to make reasonable changes in the location of an easement to permit normal use or development of the servient estate when doing so would not burden the easement owner or affect the easement's utility. The court distinguished its prior holding in *Sweezy v. Neel*, 179 Vt. 507, 904 A.2d 1050 (2006), which affirmed the traditional common-law rule that the owner of a servient estate may not change the location of a right-of-way without the consent of the easement owner, on the ground that *Sweezy* involved a surface easement, while the location of an underground easement is relatively unimportant so long as the easement's purpose is satisfied.

In **Hook v. Trevino**, 839 N.W.2d 434 (Iowa November 8, 2013), the Iowa Supreme Court considered, inter alia, whether an attorney could reduce a malpractice-damage award by the 40 percent contingent fee he would have taken if the underlying action had been successful. The former client had had a good tort claim against the state, as the state's agent admitted running a red light and causing the collision that injured the client. The client's tort claim against the state failed because her attorney missed the deadline to file it. Noting that courts in other jurisdictions were divided on this issue, the court adopted the majority and better-reasoned rule reflected in Restatement Third, The Law Governing Lawyers § 53, Comment *c*, denying such a setoff on the ground that the defendant attorney would be credited with a fee he did not earn, and the client would have to pay two lawyers (the defendant attorney and client's counsel in the malpractice action) to recover one judgment. Concluding that the attorney did not earn a fee from the client's recovery, the court declined to reduce her malpractice recovery where doing so would leave her less than whole after paying the fees of counsel in the malpractice action.

ALI is now on YouTube!

www.youtube.com/user/AmericanLawInstitute



Consumer Contracts, Advisers and MCG Meetings



▲ *Professor Elizabeth Renuart of Albany Law School*



▲ *Guy Miller Struve of Davis Polk & Wardwell*



◀ *Arnold K. Mytelka of Kraemer Burns at the Members Consultative Group meeting on Restatement of the Law of Consumer Contracts*



▶ *At the meeting of the Advisers for the Restatement Third, The Law of Consumer Contracts, (from left) Professor Omri Ben-Shahar of the University of Chicago Law School, ALI Director Lance Liebman, and Oren Bar-Gill of New York University School of Law.*

New Members Elected

On January 17, the Council elected the following 45 persons:

Michelle J. Anderson, Long Island City, NY
William D. Araiza, Brooklyn, NY
Max W. Berger, New York, NY
Arthur R. Block, Philadelphia, PA
David Bowker, Washington, DC
Philip A. Brimmer, Denver, CO
Ralph Brubaker, Champaign, IL
Thomas W. Brunner, Washington, DC
Tom Campbell, Orange, CA
Eric R. Carpenter, Miami, FL
Tracy Christopher, Houston, TX
Nancy L. Cohen, Denver, CO
Gregg Costa, Galveston, TX
Denise L. Cote, New York, NY
Sharon H. Cott, New York, NY
Mark A. Cymrot, Washington, DC
Sarah C. Dodds-Brown, New York, NY
Seamus C. Duffy, Philadelphia, PA
José Angelo Estrella Faria, Rome, Italy
Joshua Fairfield, Lexington, VA
Susan D. Franck, Lexington, VA
James L. Garrity, Jr., New York, NY
Henry L. Garza, Belton, TX

Suzanne E. Gilbert, Orlando, FL
Victor P. Goldberg, New York, NY
Barbara Howe, Buffalo, NY
Townsend Hyatt, Portland, OR
Allan Ides, Los Angeles, CA
John B. Kennedy, Stamford, CT
Nancy S. Kim, San Diego, CA
John W. Kropf, Washington, DC
Julian G. Ku, Hempstead, NY
Stewart M. Landefeld, Seattle, WA
Lloyd H. Mayer, Notre Dame, IN
Mary Elizabeth McLeod, Washington, DC
Amy B. Monahan, Minneapolis, MN
R. Ashby Pate, Koror, Palau
Robert P. Schuster, Jackson, WY
Wenhua Shan, Xi'an Shaanxi, China
Sidney H. Stein, New York, NY
David B. Thronson, East Lansing, MI
William B. Traxler, Jr., Richmond, VA
Vincenzo Varano, Firenze, Italy
Robert C. Walters, Dallas, TX
Susan M. Wolf, Minneapolis, MN

In Memoriam

Elected Members

Robert E. Beck, Murphysboro, IL;
Barry E. Carter, Washington, DC; **Christian Kirchner**, Berlin, Germany

Life Members

Burton C. Agata, Hempstead, NY; **Warren M. Ballard**, Catonsville, MD; **Florian Bartosic**, Davis, CA;
Robert R. Bowie, Towson, MD; **Richard E. Carter**, Philadelphia, PA; **Thomas E. Deacy, Jr.**, Kansas City, MO;
David L. Freeman, Greenville, SC; **Daniel M. Friedman**, Washington, DC; **Eino M. Jacobson**, Dewey, AZ;
Eugene F. Scoles, Eugene, OR; **Kent B. Smith**, Longmeadow, MA; **Numa L. Smith, Jr.**, Naples, FL;
William P. Sutter, Village of Golf, FL; **William C. Weitzel, Jr.**, Cornish, NH



(ISSN 0164-5757)

The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104-3099

PERIODICALS
U.S. POSTAGE PAID
LANGHORNE, PA



Calendar of Upcoming Meetings

(for more information, visit www.ali.org)

March 2014

- 27 **Principles of the Law of Liability Insurance. Advisers.** ALI Headquarters, Philadelphia, PA
- 28 **Principles of the Law of Liability Insurance. Members Consultative Group.** ALI Headquarters, Philadelphia, PA

April 2014

- 4 **Restatement of the Law Third, The Law of American Indians. Advisers and Members Consultative Group.** ALI Headquarters, Philadelphia, PA
- 25 **Restatement of the Law Third, The U.S. Law of International Commercial Arbitration. Advisers and Members Consultative Group.** ALI Headquarters, Philadelphia, PA

May 2014

- 19 **Council Meeting.** The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC
- 19-21 **Annual Meeting.** The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC

October 2014

- 16-17 **Council Meeting.** New York, NY

January 2015

- 15-16 **Council Meeting.** Philadelphia, PA

May 2015

- 18 **Council Meeting.** The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC
- 18-20 **Annual Meeting.** The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC

October 2015

- 15-16 **Council Meeting.** New York, NY

May 2016

- 16 **Council Meeting.** Chicago, IL
- 16-18 **Annual Meeting.** Chicago, IL