The President’s Letter

New @90

We have begun the 90th year of The American Law Institute in fine style. With enthusiastic applause, our Council in January unanimously elected Daniel Meltzer, Story Professor of Law at Harvard, as the successor Director to Professor Lance Liebman. Dan will begin his tenure at the close of the Annual Meeting in May 2014. Dan continues the line of distinguished thinkers who have given their time and energy to the improvement of American law through the ALI.

Your President, however, may be a very different matter. I began writing today by remembering that the first ALI President in 1923 was George Wickersham, not only a distinguished lawyer, but a former Attorney General of the United States under President William Howard Taft (another of our founders). While these two men were clearly revolutionary thinkers about what should be done to improve American law so that it better serves society, I cannot help but wonder what Attorney General Wickersham would have thought of a New Mexico lawyer (we were still a very young state in 1923), so different in obvious ways, sitting figuratively in his seat. Probably not much. But I think all of the founders would applaud the diversity in our ranks and in leadership positions on the Council, and would feel that it both enriches our dialogue and our perspective and better serves our contemporary democracy.

Judge Diane Wood and the Nominating Committee have been working overtime to fill our officer and Council positions. Before the Annual Meeting in May, you will receive information about nominees for positions on our Council who are recommended to you by the Nominating Committee and the Council. You will be proud, I think, of their distinguished backgrounds of academic excellence and service to the profession.

Annual Meeting Agenda Includes Four Drafts for Member Approval

Ten projects, including a final installment of the Restatement Third of Employment Law, are slated for approval or discussion at the Institute’s 90th Annual Meeting, to be held at The Ritz-Carlton Hotel in Washington, DC, from May 20 to 22. On Monday morning, May 20, Reporters George A. Bermann, Jack J. Coe, Jr., Christopher R. Drahozal, and Catherine A. Rogers are submitting for membership approval their third Tentative Draft of Restatement Third, The U.S. Law of International Commercial Arbitration, covering the two Topics not reached at last year’s Annual Meeting: conduct of post-award actions and correction, modification, and remand of awards. On Monday afternoon, Reporters Tom Baker and Kyle D. Logue will also submit for approval the first Tentative Draft of Principles of the Law of Liability Insurance, covering Chapter 1 on basic liability insurance contract principles and §§ 12 to 23 of Chapter 2, Topic 1, dealing with the defense of potentially insured liability claims.

On Tuesday morning, May 21, Reporters Stephen J. Schulhofer and Erin E. Murphy will present the first Discussion Draft of Model Penal Code: Sexual Assault and Related Offenses, covering § 213.6 (procedural and evidentiary provisions applicable to Article 213 of the Model Penal Code on sexual offenses) and § 213.7 (collateral consequences of conviction). On Tuesday afternoon, Reporters Kevin R. Reitz and Cecelia M. Klingele will present Discussion Draft No. 5 of Model Penal Code: Sentencing, which deals with authorized disposition of offenders, collateral consequences of criminal conviction.
After a discussion that included the members at last year’s Annual Meeting and continued over the last two Council meetings, the Council also approved some changes in the process by which we elect members. These were presented to the Council by Judge Paul Friedman of the U.S. District Court for the District of Columbia, Chair of the Ad Hoc Committee on Membership Process, which, after Council approval, has now concluded its work. The key elements, which will be presented to you in detail at the Annual Meeting, are these:

1. There is no change in the ability of any member to forward a candidate for membership to the Membership Committee.

2. Perhaps the most important change (effective June 2014) is that the process will be confidential, meaning the goal is to have the candidate be unaware of the nomination until the Membership Committee has forwarded it for approval to the Council and it is approved by the Council. An approved candidate would then become a member after agreeing to the requirements of membership.

3. The Membership Committee will be enlarged to take on the work of more rigorous vetting of candidates, and new Regional Advisory Groups may be asked by the Membership Committee to help vet candidates and to propose candidates who reside in their regions.

4. The Outreach Committee will sunset at the end of the Annual Meeting in May 2013, and its charter to ensure diversity of all kinds will be delegated to the Membership Committee and ad hoc committees.

These proposals have been referred to the Governance Committee for study and recommendation of whatever changes in bylaws, charters, or rules may be required.

After these have been completed and approved, we will turn our attention to considering whether changes are needed in our current procedure for electing international members. For now, we will continue with the current ad hoc International Membership Committee, to which the Membership Committee forwards nominations of candidates from other countries.

I hope that you are planning to come to the 90th Annual Meeting. Not only will there be an outstanding menu of speakers and projects for your discussion and approval, but we are working on how to take a picture at the 90th dinner on May 21 in the same panoramic style as the original 1923 dinner, but with a far richer palette.

We are working hard this spring in moving along a number of important projects, including Indian Law, Election Law, Privacy, and the Foreign Relations Law of the United States. We were in DC on February 21 with the second Young Scholars Invitational Conference: Bringing Together Copyright and Patent Law in Court, led by Professor Jeanne Fromer of NYU, one of our two original Young Scholars Medal winners. Our current Young Scholars Committee, led by Associate Justice Goodwin Liu of the California Supreme Court, will meet on April 15 having read mountains of scholarly writing to select the two newest Young Scholars, one of whom will present at this Annual Meeting.

Prepare yourself for being captured for posterity in our 90th-birthday portrait. Though I am looking at our founders with deepest respect and admiration, I am also thinking of a diet in preparation.

Hope spring comes easily to you and springs eternal as well.

Roberta
Roberta Cooper Ramo
President
rramo@modrall.com

Planning to Attend ALI’s 90th Annual Meeting in Washington, DC?

Discounted room rates are available at the Ritz-Carlton Hotel (meeting headquarters), the Washington Marriott Hotel, and the Club Quarters. Reservation information can be found on the ALI website: http://2013am.ali.org/. ALI group rates are valid until April 26 or until the ALI room block is full, whichever comes first. Questions? Contact our Meetings Department at (215) 243-1657 or meetings@ali.org.
Harvard Law Professor Daniel Meltzer to Succeed Lance Liebman as ALI Director in May 2014

Daniel J. Meltzer, the Story Professor of Law at Harvard Law School, has been named Director Designate of The American Law Institute. Professor Meltzer will work together with ALI Director Lance Liebman until Professor Liebman completes his 15-year directorship in May 2014. A search committee consisting of Judge Diane P. Wood of the Court of Appeals for the Seventh Circuit and Gerhard Casper, President Emeritus of Stanford University, working with ALI President Roberta Cooper Ramo, unanimously recommended Professor Meltzer, whose selection was approved by ALI’s Council on January 17.

“In our 90 years of working toward law reform, we have had only five Directors, and each one was a giant in the law,” said ALI President Ramo. “In Dan Meltzer, we have found another major legal figure to carry on this essential work of clarifying, modernizing, and improving the law.” Harvard Law School Dean Martha L. Minow said: “Dan Meltzer’s superb judgment, analytic power, and devotion to public service grace Harvard Law School and now will also wonderfully advance the American Law Institute’s vital projects improving law and legal administration for the public good.”

Professor Meltzer, who joined Harvard Law School’s faculty in 1982, received his A.B. in Economics from Harvard University and his J.D. from Harvard Law School, where he was president of the Harvard Law Review. After graduation, he clerked for Judge Carl E. McGowan of the District of Columbia Circuit and for U.S. Supreme Court Justice Potter Stewart. He recently served in the Office of White House Counsel, where he advised President Obama on issues including terrorism, healthcare reform, and preparation for the confirmation hearings for Justice Sonia Sotomayor. After leaving that position, he was appointed to the President’s Intelligence Advisory Board and the Intelligence Oversight Board, on which he continues to serve. He is also a coauthor of recent editions of a classic casebook, Hart and Wechsler's The Federal Courts and the Federal System. An ALI member for 24 years, Professor Meltzer was elected to the Council in 1999, resigning during his service in the Obama White House. He was reelected to the Council in 2010. Professor Meltzer also has served as an Adviser for ALI’s Federal Judicial Code project and for the Model Penal Code projects on Sentencing and Sexual Assault.

The role of the Director is to identify subjects for ALI work, recruit distinguished academics to serve as Reporters on those projects, and appoint judges, professors, and practicing lawyers as Advisers who assist the Reporters in formulating legal principles that are then helpful to judges and practicing lawyers, discussed and debated in academic literature, and taught to law students.

Annual Meeting Agenda continued from page 1

and research and evaluation. As their titles indicate, these drafts are submitted for discussion only and will not be put to a vote. The Tuesday afternoon session will conclude with Coordinating Reporter Sarah H. Cleveland and Reporters William S. Dodge and David P. Stewart leading a one-hour discussion of the new project, Restatement Fourth, The Foreign Relations Law of the United States. Coordinating Reporter Paul Stephan may participate remotely from China.

Also up for membership approval is Tentative Draft No. 6 of Restatement Third, Employment Law, covering Chapter 4 on principles of employer liability for harm to employees, Topic 2 of Chapter 7 on protection of employee personal autonomy, and Chapter 9 on remedies, which Reporters Samuel Estreicher, Matthew T. Bodie, and Michael C. Harper will submit on Wednesday morning. If Tentative Draft No. 6 is approved, the Reporters will then prepare a Proposed Final Draft of the entire Restatement for possible final approval by the Council and the membership next year. Also on that morning, Reporters Matthew L.M. Fletcher, Wenona T. Singel, and Kaighn Smith, Jr., will present the first Discussion Draft for Restatement Third, The Law of American Indians, which covers Chapter 1 on federal–tribal relations, with a preview of Chapter 2 on tribal governance and Chapter 4 on tribal business relations.

The Wednesday afternoon session will open with a one-hour discussion of the ALI’s new project, Restatement Third, Information Privacy Principles, led by Reporters Paul M. Schwartz and Daniel J. Solove. Then Reporter Evelyn Brody will submit for approval Tentative Draft No. 4 of Principles of the Law of Charitable Nonprofit Organizations, covering Topic 2 on private enforcement, and Topic 3 on a charity’s costs, of Chapter 5, Enforcement (formerly Chapter 6, in Tentative Draft No. 3). The Meeting will conclude with a one-hour discussion, led by Reporters Ellen S. Pryor and Kenneth W. Simons, of the new project, Restatement Third, Torts: Intentional Torts to Persons.
Webster and Hazard to Be Honored at Annual Meeting

At this year’s Annual Meeting, The American Law Institute will bestow two of its most prestigious awards.

Judge William H. Webster is the recipient of the Henry J. Friendly Medal, which recognizes outstanding contributions to the law in the tradition of the late Judge Friendly and The American Law Institute.

Professor Geoffrey C. Hazard, Jr., who served for 15 years as ALI’s Director, will receive the Distinguished Service Award, given from time to time to a member who over many years has played a major role in the Institute as an institution, accepting significant burdens as an officer or committee chair.

Judge Webster’s extraordinary career in the law includes service as the Director of both the Federal Bureau of Investigation (1978-87) and the Central Intelligence Agency (1987-91). He also served as a federal judge on both the Eastern District of Missouri and the U.S. Court of Appeals for the Eighth Circuit. In addition to his long history of public service, Judge Webster has also been a staunch member of the Institute for 53 years. Elected to the ALI Council in 1978, he served for 25 years as chair of the Nominating Committee, which recommends candidates for ALI’s Council and officer positions, and was a member of the Executive Committee for 20 years. He was also an Adviser for the ALI’s Principles of Corporate Governance. The Friendly Medal will be presented by Judge Merrick B. Garland of the U.S. Court of Appeals for the District of Columbia Circuit on Wednesday, May 22.

Professor Hazard, a member of the Institute’s Council since 1999, is considered a leading expert in the fields of civil procedure and legal ethics. He is the author or coauthor of 16 books, and his writings are a mainstay in American legal education. Professor Hazard was the Reporter for the Restatement Second of Judgments and served as Co-Reporter for the ALI/UNIDROIT Principles of Transnational Civil Procedure. During his tenure as Director, many new ALI projects were begun, including Restatement Third works on Agency, The Law Governing Lawyers, Property, Restitution, Suretyship, Torts, Trusts, and Unfair Competition; and Principles of the Law projects on Family Dissolution, Transnational Civil Procedure, and Transnational Insolvency. The Distinguished Service Award will be presented on Tuesday, May 21, by Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit.

Also on Tuesday, California Supreme Court Justice Goodwin Liu will present the ALI Young Scholars Medal to this year’s recipient(s), whose names are to be announced.

During a break in the January 2013 Council meeting, former Massachusetts Chief Justice Margaret H. Marshall speaks with Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit.
Dynamic Speakers Highlight 2013 Annual Meeting

Judge Brett M. Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit will offer remarks at the opening session on Monday, May 20. He will be followed to the dais by Laurel G. Bellows, the President of the American Bar Association.

Professor G. Edward White of the University of Virginia School of Law will be the featured speaker on Tuesday, May 21, at a luncheon honoring new Life Members (25-year) and new 50-year Members. This luncheon will also feature the presentation of the 1988 Class Gift by class members Michael D. Green of Wake Forest University School of Law and George M. Newcombe of Simpson Thacher & Bartlett LLP in Palo Alto.

At the black-tie dinner on Tuesday evening, the speaker will be longtime ALI Council member Kenneth C. Frazier, the Chairman, President, and CEO of Merck & Co.

And at the closing luncheon on Wednesday, May 22, the speaker will be former Deputy Solicitor General Maureen Mahoney of Latham & Watkins, one of the most familiar faces in oral arguments before the U.S. Supreme Court.
With Professor Kami Chavis Simmons of Wake Forest University School of Law

By Shannon Duffy, ALI Director of Communications

Elected to ALI membership in September 2012, Professor Kami Chavis Simmons is a Harvard Law graduate and a former federal prosecutor who now teaches at Wake Forest University School of Law. Her scholarship has focused on hate crimes, racial profiling, and police accountability. Prior to her work as a prosecutor, she was an associate at two major law firms, Fried Frank Harris Shriver & Jacobson and Latham & Watkins. Along with two coauthors, she is currently at work on a book, Criminal Law: Prosecution, Punishment and the Prevention of Crimes, to be published by Carolina Academic Press. Professor Simmons participates in ALI’s Members Consultative Groups for the Model Penal Code: Sentencing and the Model Penal Code: Sexual Assault and Related Offenses.

Q One of the focuses of your scholarship is the enforcement of hate-crime statutes. What attracted you to this subject?

A There is an ongoing debate among criminal-law scholars and practitioners about enhancing penalties for those convicted of hate crimes. Critics of these enhancements argue that there is no need to inquire into a defendant’s motives for committing a crime, and they note that for very serious crimes, such as murder, defendants are already subjected to lengthy periods of incarceration or even the death penalty in some jurisdictions. On the other hand, proponents of hate-crime legislation argue that enhanced penalties for these crimes are not only significant deterrents, but send a strong symbolic message that communities will not tolerate intolerance.

In my article [“Subverting Symbolism: The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act and Cooperative Federalism”], I wanted to focus on new federal legislation that alleviates some of the hurdles for federal jurisdiction and broadens protected classes to categories such as sexual orientation. I primarily analyze some of the federalism issues and discuss ways in which local jurisdictions and the federal government can work together to prosecute these cases.

Q Your studies abroad during college took you to Mexico. Have you been back? And as someone who lived in Mexico, what surprised you most about the people and the culture? Did your extended stay dispel any myths?

A I will always remember my time I spent in Mexico as a pinnacle moment in my development. I grew up in a rural part of North Carolina, but I was always attracted to large cities. Looking back, I was green—I had never even taken public transportation. I decided to study in Mexico City because I knew that it was one
of the largest and most populated cities in the world. I was still learning Spanish, and learning to live on my own for a while in a foreign country where I barely spoke the language was challenging and rewarding. I thought that if I could live there under those circumstances, I could be successful anywhere. I learned a lot about myself and my capabilities.

Also, I met a lot of wonderful people and for many years I kept in touch with friends I met there. They came to visit me for extended periods in the United States so it was a great cultural exchange. I returned several times to study or for pleasure. I am saddened by some of the violence, fueled by the drug trade, that seems to have increased since the time I visited, but I plan to go back soon.

Q. As a child, when did you first think of becoming a lawyer? Were there specific teachers or family members who made that dream seem possible?

A. I cannot remember a time when I did not want to be a lawyer. I was very in tune with issues of inequality and from an early age. I admired civil-rights leaders and the sacrifices they made to improve conditions for groups that experienced discrimination in the United States. Thurgood Marshall, Charles Hamilton Houston, and Constance Baker Motley were my early role models.

Q. After Harvard Law School, you worked briefly for two large and well-known law firms in Washington. What lasting lessons did you gain from those three years inside the big-firm culture?

A. I enjoyed the time I spent in private practice. Even though I left for the public sector and I am now in academia, I would not trade that time for anything. I worked with incredibly bright, energetic lawyers who were handling complex legal issues. I was also fortunate to work at a firm that had a strong commitment to pro bono work, and it was great to work on those issues in an environment without huge resource constraints. I always encourage my students to spend time at a firm if they can, and I remind them that one of the great things about a legal career is that lawyers often move between the public and private sector and can use their skills in a variety of contexts.

Q. Do you cook? What’s your specialty?

A. Funny—I think my family would starve if not for the deli at Whole Foods. I do have one dish that always gets rave reviews when we serve it at brunch—Caramel French Toast Casserole. I do not even want to know how many calories are packed into that dish!

Q. Besides reading related to your scholarship, what’s on your bedside table right now?

A. I am currently re-reading Profiles in Courage by John F. Kennedy. I am also reading The New Jim Crow, Michelle Alexander’s book, which takes a sobering look at our nation’s criminal-justice system and the focus on incarceration.

Q. In addition to law-review articles and the book you’re currently working on, you have also written for The Huffington Post blog about issues such as police misconduct in New Orleans and the shooting of teenager Trayvon Martin. Is that a diversion for you, or do you think of it as an extension of your academic work?

A. Law-review publications are great when you are looking for a deep, detailed treatment of an issue. It can take over a year for a law-review article to be published even once a journal has accepted it. Blog posts are different because the relevance often depends on the currency of the issue. I think blogging is a great way to reach a broader audience and still lend a nuanced analysis to issues that are in the current news cycle. The issues you asked about—Trayvon Martin and the NOLA police department—were highly publicized at the time, and I had been writing about similar issues for a while, so I hoped that I could provide readers with some thought-provoking questions and angles that other news outlets were not discussing.

Q. Where do you get your news? Are you the type who has to have a paper copy of The New York Times with her coffee every morning? Or is it The Wall Street Journal on your iPad? Or Newsweek on your Kindle? Or CNN while you’re on the treadmill?

A. My household is quite hectic with two small children (Sydney, 7, and Zoe, 4) because we are constantly rushing to school in the morning and then running to practices or other after-school activities in the afternoon. Therefore, the days of leisurely reading The New York Times over tea are few and far between. Usually, I grab headline news on my iPad. However, I always make time for catching up on reading newspapers and journals on the weekends. In this age of electronic media, I still love physically flipping through the pages.

Q. Prior to teaching, you spent three years as a federal prosecutor. How has that experience in trying cases informed your current work? When teaching Criminal Law and Criminal Procedure, do you often draw on examples from your own trial experience?

A. I endeavor to bring as much of my practical experience into the classroom as possible. Learning the legal doctrines is paramount to success in law school, but having the necessary practical skills is paramount to succeeding as a lawyer. Students are always interested to know how what we learn in class is applied in the practice of law. When it is appropriate, I recall my own experiences from practice. Increasingly, I am using other practitioners as guest lecturers so that students have a better sense of what is happening on the ground.
ALI Winter Meetings

The Membership Committee reports to Council. From left: Judge Yvonne Gonzalez Rogers of the Northern District of California; ALI President Roberta Cooper Ramo; Judge Paul L. Friedman of the District of Columbia; and Second Vice President Douglas Laycock, professor at the University of Virginia School of Law.

The glorious Lester Pollack Room at New York University School of Law was the setting for the first meeting of the Advisers for Restatement Third, The Law of Consumer Contracts. From left: ALI Director Lance Liebman; Reporter Oren Bar-Gill of New York University School of Law; and Reporter Omri Ben-Shahar of the University of Chicago Law School.

The first meeting of the Advisers for Restatement Third, The Law of Consumer Contracts, gets underway. From left: ALI Director Lance Liebman; Reporter Oren Bar-Gill of New York University School of Law; and Reporter Omri Ben-Shahar of the University of Chicago Law School.

The glorious Lester Pollack Room at New York University School of Law was the setting for the first meeting of the Advisers for Restatement Third, The Law of Consumer Contracts.
Philadelphia Deputy District Attorney Ronald Eisenberg follows the discussion at the meeting of Advisers for Model Penal Code: Sexual Assault and Related Offenses.

Judge Lee H. Rosenthal of the Southern District of Texas peruses a draft during the January 2013 meeting of The American Law Institute’s Council—the first meeting held in the newly renovated meeting space.

The meeting of Advisers for Model Penal Code: Sexual Assault and Related Offenses gets underway. From left, Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy, both of New York University School of Law.

ALI Council member Anton G. Hajjar of O’Donnell, Schwartz & Anderson in Washington, DC, seeks to make a point.

Zachary Britton, a student observer from Georgetown University Law Center, talks with U.S. District Judge Virginia M. Kendall of the Northern District of Illinois during a break in the meeting of Advisers for Model Penal Code: Sexual Assault and Related Offenses.

Former Massachusetts Chief Justice Margaret H. Marshall, now of Choate, Hall & Stewart in Boston, MA, and John J. McKetta, III, of Graves, Dougherty, Hearon & Moody in Austin, TX, listen to proceedings in the January 2013 meeting of The American Law Institute’s Council.

photos continued on page 16
At its January meeting in Philadelphia, the ALI Council elected Margaret H. Marshall, senior counsel at Choate, Hall & Stewart and a former chief justice of Massachusetts, to a three-year term as Treasurer of the Institute. She will succeed Judge Carolyn Dineen King of the U.S. Court of Appeals for the Fifth Circuit. Judge Paul L. Friedman of the U.S. District Court for the District of Columbia was elected to a three-year term as Secretary. He will succeed Professor Susan Frelich Appleton of Washington University School of Law in St. Louis, who has served as Secretary since May 2004. Both terms will begin at the close of the Annual Meeting on May 22.

A native of South Africa, Chief Justice Marshall served 14 years on the Supreme Judicial Court of Massachusetts, 11 of them as chief justice. Prior to that, she was in private practice for 16 years before becoming vice president and general counsel of Harvard University. She holds a master’s degree from Harvard and received her J.D. from Yale Law School. Elected an ALI member in 1990, she joined the Council in 1999 and has served on ALI’s Program and Audit Committees. She is the recipient of numerous honorary degrees and professional awards and is a fellow of the American Academy of Arts and Sciences.

Judge Friedman was appointed to the U.S. District Court for the District of Columbia in 1994. Prior to joining the bench, he practiced at the law firm of White & Case for 18 years and was managing partner of its Washington office. He previously was an Assistant to the Solicitor General of the United States and an Assistant U.S. Attorney for the District of Columbia. Judge Friedman received his B.A. from Cornell University and his J.D. from the State University of New York at Buffalo. He became an ALI member in 1984 and was elected to its Council in 1998. A former chair of ALI’s Program Committee and member of the Executive Committee, Judge Friedman currently chairs the Ad Hoc Committee on Membership and serves as an Adviser on ALI’s Model Penal Code: Sentencing project.

The Supreme Court of Nevada has expressly adopted § 51 of the Restatement Third, Torts: Liability for Physical and Emotional Harm. In Foster v. Costco Wholesale Corp., 291 P.3d 150 (Nev. 2012), the plaintiff sued defendant Costco for injuries he sustained when he tripped on a pallet of boxes that an employee was unloading in an aisle of the store. The trial court granted summary judgment for Costco but the state supreme court reversed. Costco had relied on the open-and-obvious doctrine as a basis for asserting that it had no duty of care to the plaintiff. The trial court adopted Costco’s rationale. Examining the evolution of a landowner’s duty from early American common law to the present, the state supreme court reviewed the open-and-obvious doctrine’s development through the Restatements. It noted that under the Restatement Second, a landowner “should anticipate, and is liable for failing to remedy, the risk of harm from obvious hazards when an invitee could be distracted from observing or avoiding the dangerous condition, or may forget what he or she has discovered, and the landowner has ‘reason to expect that the invitee will nevertheless suffer physical harm.’” The court characterized the duty imposed by the Restatement Third as “amplified” because it applies not just to invitees, but to “all entrants on the land (except for flagrant trespassers . . .)” and results in landowners bearing “a general duty of reasonable care . . . regardless of the open and obvious nature of dangerous conditions.”

The Foster court relied on Comment k of § 51 to hold that the open and obvious nature of a condition “does not automatically preclude liability” and “instead is part of assessing whether reasonable care was employed.” Even when a danger is open and obvious, the question remains whether the defendant “nevertheless breached its duty of care . . . by allowing the conditions to exist and by permitting [the plaintiff] to encounter those . . . conditions.” Also relevant is the plaintiff’s actions under comparative negligence theories.

Because the Restatement Third, Torts, imposes a general duty of reasonable care on a landowner regardless of whether a danger is obvious to an entrant on the land, and because material facts remained as to whether Costco exercised reasonable care, the grant of summary judgment in Foster could not be sustained.
ALI Publishes New Concise Restatement of Torts

The rave reviews are pouring in for the new third edition of *A Concise Restatement of Torts*. The 399-page softcover volume, compiled by Professor Ellen M. Bublick of the University of Arizona James E. Rogers College of Law, contains provisions from both the second and third Restatements of Torts, including ALI’s recent Torts project on liability for physical and emotional harm, as well as relevant material from the Restatement Third of Agency.

Torts Professor Stephen D. Sugarman of the University of California at Berkeley said the new volume “brings together both the black letter law and key comments to the essential sections of the Restatement of Torts that apply to the topics typically covered in a first year Torts course. This not only provides students with ready access to the completely up-to-date thinking of the ALI and its Reporters on the law of Torts, but also it provides in-depth analysis and great illustrations to bring home a clearer comprehension of the issues with which common law judges are grappling today.”

Professor Ken Simons of Boston University School of Law said: “The organization of the materials is extremely clear, and much improved from the prior editions of the Concise Restatement. Because the Restatement Third of Torts project is ongoing, it is sometimes difficult to determine which portions of the Restatements that are especially pertinent to an introductory study of the subject. The topics covered include intentional and negligent harms to persons or property, emotional harm, liability of employers and those who hire independent contractors, strict liability, products liability, nuisance, apportionment of liability, and damages.

A Concise Restatement of Torts, Third Edition (product code 1CRT3) can be ordered online at www.ali.org (click on “Publications,” then “Concise Restatements”) or by calling the ALI Customer Service Department at 800-253-6397. The price for this volume is $36 plus shipping and handling.

New Members Elected

**On January 18, the Council elected the following 29 persons:**

Ethan A. Brecher, New York, NY; William J. Chriss, Austin, TX; Karin Ann DeMasi, New York, NY; Cindy Dyer, Washington, DC; Joseph P. Esposito, Washington, DC; Zachary D. Fastman, New York, NY; Sean J. Griffith, New York, NY; Michael A. Harring, Moline, IL; Mary K.W. Jones, Moline, IL; Chimène Keitner, San Francisco, CA; Kenneth C. Kettering, Brooklyn, NY; Michael J. Leech, Chicago, IL; Stacy L. Leeds, Fayetteville, AR; Ronald M. Levin, St. Louis, MO; Veronica S. Lewis, Dallas, TX; Raymond J. Lohier, New York, NY; Gerard N. Magliocca, Indianapolis, IN; Emily Hammond Meazell, Winston-Salem, NC; Harriet E. Miers, Dallas, TX; Michael Pinard, Baltimore, MD; Jennifer E. Rothman, Los Angeles, CA; Ettore Argeo Santucci, Boston, MA; Henry E. Smith, Cambridge, MA; A. Benjamin Spencer, Lexington, VA; Richard C. Squire, New York, NY; Bryan N. Tramont, Washington, DC; William Woodward Webb, Raleigh, NC; Edward L. Wilkinson, Fort Worth, TX; Margaret H. Williams, Jackson, MS.

**On March 21, the Council elected the following 40 persons as the newest members of the Institute:**

James Allsop, Sydney, Australia; Mark I. Bernstein, Philadelphia, PA; Curtis A. Bradley, Durham, NC; Samuel L.Bufford, University Park, PA; Dan L. Burk, Irvine, CA; Alyssa A. DiRusso, Birmingham, AL; Lucy Clark Dougherty, Detroit, MI; Timothy B. Dyk, Washington, DC; Donna Lee Elm, Tampa, FL; Nita A. Farahany, Durham, NC; Jeremy D. Fogel, Washington, DC; Curtis E. Gannon, Washington, DC; Sharon L. Gleason, Anchorage, AK; Jonathan Ian Gleklen, Washington, DC; John M. Golden, Austin, TX; C. Scott Hemphill, New York, NY; Timothy Holbrook, Atlanta, GA; Craig Iscoe, Washington, DC; Mark Weston Janis, Hartford, CT; Raymond M. Kethledge, Ann Arbor, MI; Gary E. Marchant, Tempe, AZ; Michael Mattler, Washington, DC; David H. Moore, Provo, UT; Kathleen McDonald O’Malley, Washington, DC; Nancy E. O’Malley, Oakland, CA; Florence Y. Pan, Washington, DC; Barrington D. Parker, Jr., New York, NY; Jacqueline A. Parker, Cherry Hill, NJ; Stuart Rabner, Trenton, NJ; Arti Rai, Durham, NC; Robin S. Rosenbaum, Fort Lauderdale, FL; Jason M. Schultz, Berkeley, CA; David L. Sloss, Santa Clara, CA; Gary D. Solis, Washington, DC; Carol S. Steiker, Cambridge, MA; William M. Treanor, Washington, DC; Zhenmin Wang, Beijing, China; C. Rachel Winger, Seattle, WA; Charles W. Wirken, Phoenix, AZ; Ingrid Brunk Wuerth, Nashville, TN.
Notes About Members and Colleagues

• University of Virginia law professor and ALI Council member Kenneth S. Abraham has received the Liberty Mutual Prize for his paper, “Four Conceptions of Insurance,” published in February in the University of Pennsylvania Law Review, Vol. 161, No. 3. The prize, established by the Liberty Mutual Insurance group in 2008, is given to the author of the year’s best article on insurance law.

• Diane Marie Amann, a professor of international law at the University of Georgia School of Law in Athens, GA, has been appointed by International Criminal Court Prosecutor Fatou Bensouda as Special Adviser on Children in Armed Conflict. In addition, Leila Nadya Sadat, a professor, Director of the Whitney R. Harris World Law Institute, and Director of The Crimes Against Humanity Initiative at Washington University School of Law in St. Louis, MO, was appointed as the Special Adviser on Crimes against Humanity.

• William T. Barker, a partner in the Chicago office of SNR Denton and an Adviser for the Institute’s Principles of the Law of Liability Insurance project, and Charles Silver, a professor at the University of Texas School of Law in Austin, who served as an Associate Reporter for ALI’s Principles of the Law of Aggregate Litigation, have released a new book, Professional Responsibilities of Insurance Defense Counsel, published by LexisNexis.

• Victoria B. Bjorklund, of counsel at Simpson Thacher & Bartlett LLP in New York City, serves as chair of the Robin Hood Relief Fund, which raised more than $50 million for disaster-relief efforts through a concert for Hurricane Sandy Relief at Madison Square Garden on December 12.

• The Federal Aviation Administration recently awarded ALI First Vice President Allen D. Black, of Fine, Kaplan and Black, R.P.C., in Philadelphia, the Wright Brothers Master Pilot Award, recognizing his contributions to maintaining and promoting aviation safety over his more than 50 years as a pilot.

• Justice Christine M. Durham of the Utah Supreme Court, a member of the Institute’s Council, recently received an award from the Children’s Service Society of Utah, a nonprofit child and family support agency, for her work with children.

• Anne S. Emanuel, a professor (retired) at Georgia State University College of Law in Atlanta, received the inaugural Lifetime Achievement Award last year from the Southern Center for Human Rights, honoring her accomplishments as a legal educator, author, speaker, and advocate and her continuing efforts to advance justice in Georgia’s legal system.

• Judge Raymond C. Fisher of the U.S. Court of Appeals for the Ninth Circuit in Pasadena, CA, took senior status effective April 1. Judge Fisher, an Adviser for the Institute’s Principles of Election Law: Resolution of Election Disputes, currently serves on the Judicial Council of the Ninth Circuit and has been a member of the U.S. Judicial Conference’s Committee on the Judicial Branch since 2005.

• Shubha Ghosh, a research fellow, professor of law, and associate director of the Initiative for Studies in Transformational Entrepreneurship at the University of Wisconsin-Madison School of Law, is the author of Identity, Invention, and the Culture of Personalized Medicine Patenting, published by Cambridge University Press in 2012.

• In October, Thomas C. Goldstein, a partner at Goldstein & Russell, P.C., in Washington, DC, and the publisher and cofounder of SCOTUSblog, spoke at the University of Chicago Law School to reward the Chicago Law student team that won the blog’s Supreme Court prediction contest, which invited law-school teams to predict the outcome of last Term’s cases.

• Carl F. Goodman, an adjunct professor of Japanese law at the Georgetown University Law Center and the George Washington University School of Law in Washington, DC, is a visiting professor at the University of Washington School of Law in Seattle during the Winter 2013 Quarter. A third edition of his book, The Rule of Law in Japan: A Comparative Analysis, was published by Kluwer Law International in December.

• Professor Elizabeth Lutes Hillman of the University of California, Hastings College of the Law, in San Francisco, has been appointed as academic dean, beginning July 1, 2013.

• In November, Lyman P. Q. Johnson, a professor at both Washington and Lee University School of Law in Lexington, VA, and the University of St. Thomas School of Law in Minneapolis, MN, delivered the 28th Annual Francis G. Pileggi Distinguished Lecture in Law in Wilmington, DE, on “Unsettled and Unsettling Issues in Corporate Law.”

• At the end of December, Professor Patricia Ann King of Georgetown University Law Center in Washington, DC, stepped down from the Harvard Corporation, Harvard’s principal fiduciary governing board.

• Louise A. LaMothe, an arbitrator and mediator based in Santa Barbara, CA, was honored by Santa Barbara Women Lawyers on December 10 as its Woman of the Year.

• ALI Second Vice President Douglas Laycock, a professor at University of Virginia School of Law in Charlottesville, was the keynote speaker at the recent opening of Stanford Law School’s Religious Liberty Clinic, the nation’s only clinic devoted to religious liberty.

• William H. Levit, Jr., the senior member of the Litigation Practice Group of Godfrey & Kahn S.C., in Milwaukee, WI, taught a course last fall on international commercial arbitration and mediation at Baikal National University of Economics and Law in Irkutsk, Siberia, Russia.

• Roberta D. Liebenberg, a partner at Fine, Kaplan and Black, R.P.C., in Philadelphia, and the chair of the ABA Gender Equity Task Force, received the inaugural award for “Outstanding Contributions to Gender Diversity and Equality” at the Chambers Women in Law Awards ceremony in New York City on January 15.
On January 23, **David H. Marion**, a partner at Archer & Greiner P.C. in Philadelphia, received the American Jewish Committee's 2013 Judge Learned Hand Award for his lifelong commitment to the profession and his contributions to many organizations that enhance the quality of life in the Philadelphia area.

**Professor Leo P. Martinez** of the University of California, Hastings College of the Law, in San Francisco, became President of the Association of American Law Schools at the conclusion of the 2013 AALS Annual Meeting in New Orleans in January. Dean **Daniel B. Rodriguez** of Northwestern University School of Law in Chicago, a member of the Institute's Council, was named President-Elect. In addition, **Guy-Uriel Charles**, a professor of law at Duke University School of Law in Durham, NC, and an Adviser to the Institute's Principles of Election Law: Resolution of Election Disputes project, and Dean **Wendy Collins Perdue** of the University of Richmond School of Law, in Richmond, VA, were appointed to three-year terms on the Executive Committee.

**Council member George H. T. Dudley of Dudley, Topper & Feuerzeig in St. Thomas, VI, chats during a break in the January Council meeting with ALI Director Designate Daniel Melzer of Harvard Law School.**

**Professor Petros C. Mavroidis** of Columbia University School of Law and the European University Institute, the Co-Chief Reporter with Professor **Henrik Horn** in the Institute’s recently completed Legal and Economic Principles of World Trade Law project, has been chosen to receive an honorary doctorate from the University of Antwerp in recognition of his expertise in the field of international economic law.

**Robert H. Mundheim** of New York, an emeritus member of ALI’s Council, is the 2013 recipient of the John Phillips Award, presented from time to time by the trustees of Phillips Exeter Academy to an Exonian whose life and contributions exemplify nobility of character and usefulness to society.

**NastLaw LLC**, founded by **Dianne M. Nast**, has opened an office in Philadelphia with an emphasis on complex civil litigation, including antitrust and mass-tort law.

**Judge Jed S. Rakoff** of the U.S. District Court for the Southern District of New York was profiled in the February 4 issue of *Fortune* magazine, in which he discussed SEC v. Bank of America and white-collar crime.

**ALI Council member David W. Rivkin**, a litigation partner in the New York and London offices of Debevoise & Plimpton, was named a 2012 “Global Lawyer of the Year” by The American Lawyer’s newsletter *Am Law Litigation Daily* for his successful representation of Occidental Petroleum Corp. in its win over the Government of Ecuador in arbitration before the International Centre for the Settlement of Investment Disputes. Mr. Rivkin also began his two-year term as Vice-President of the International Bar Association on January 1.

**Diane W. Savage**, of counsel to Cooley LLP in Palo Alto, CA, who has served as an alumni trustee to Emory University’s Board of Trustees since 2006, has been elected to the board as a term trustee.

**ALI Council member Jane Stapleton**, a professor at the Australian National University College of Law in Canberra and at the University of Texas School of Law in Austin, has been elected an Honorary Fellow of St. John’s College, Cambridge, England. She is the first woman to be elected an Honorary Fellow since the College’s founding in 1511.

**Judge Elizabeth S. Stong** of the U.S. Bankruptcy Court for the Eastern District of New York, a member of the Institute’s Council, has been elected to the Council on Foreign Relations, an independent, nonpartisan membership organization, think tank, and publisher in the field of international affairs.

**Professor Eugene Volokh** of the University of California at Los Angeles School of Law participated in a discussion on “Addressing Threats to the First Amendment” held in November by the Children of Jewish Holocaust Survivors, a Los Angeles nonprofit organization.

**R. David Whitaker**, former Senior Company Counsel in the Strategy & Operational Risk Group at Wells Fargo Bank, N.A., has joined the law firm of BuckleySandler LLP as Counsel in its Washington, DC, office.

In November, **Peter A. Winograd**, associate dean and emeritus professor of law at the University of New Mexico School of Law in Albuquerque, NM, received the first Distinguished Service Award of the Liaison Committee on Medical Education, which reviews and awards accreditation status to educational programs leading to the MD degree in the United States and Canada. The award acknowledges the contributions of volunteers who devote many hours to improving medical education through accreditation.

**University of California President Mark G. Yudof** has announced his intention to step down from the presidency in August, after almost five years of leading the 10-campus system, to return to teaching. President Yudof was the ALI Annual Dinner speaker in San Francisco in 2011.
Maritime lawyer **Michael Marks Cohen** of New York died on December 1, 2012, at the age of 75. Elected to ALI in 1982, Mr. Cohen was a fixture at Institute meetings, serving as an Adviser for the Restatement Third of Agency and participating in the Members Consultative Groups for nine different Institute projects, including the current projects on Principles of the Law of Liability Insurance and the Restatement Third, The U.S. Law of International Commercial Arbitration. In 2004, the Institute honored him with its John Minor Wisdom Award in recognition of his outstanding contributions to ALI’s work. A former senior partner at Burlingham Underwood LLP, he was of counsel to Nicoletti Hornig & Sweeney; he also taught admiralty at Columbia Law School for more than 30 years. Shortly before his death, Mr. Cohen was selected by the American Bar Association to receive the 2013 Leonard J. Theberge Award for Private International Law.

**Wm. Reece Smith, Jr.**, the chair emeritus and shareholder of the law firm of Carlton Fields, died at his home in Tampa, FL, on January 11 after a brief illness. He was 87. An ALI member for 46 years, Mr. Smith served on the ALI Council for nearly three decades before taking emeritus status in 2010. He was a member of the ALI-ABA Committee on Continuing Professional Education for nearly 25 years and chaired the ALI-ABA Planning Subcommittee from 1999 to 2004. A former Rhodes Scholar, a past president of the American Bar Association, and the first American to serve as president of the International Bar Association, Mr. Smith was the recipient of countless awards, including the ABA’s highest honor, the rarely given Gold Medal, and its Pro Bono Publico Award. He was a tireless advocate for the provision of legal services to the poor. A Minute in Remembrance of Mr. Smith was read at the ALI Council’s meeting on January 17; it will be published in a forthcoming issue of the *Reporter*.

**Ronald M. Dworkin**, 81, the Frank Henry Sommer Professor of Law at New York University, known for his theory that moral integrity should guide legal actions, died of leukemia on February 14 in London. A former Rhodes Scholar and law clerk to Judge Learned Hand of the U.S. Court of Appeals for the Second Circuit, he taught at Yale Law School before coming to NYU in 1975. Professor Dworkin, who was considered one of the greatest legal scholars of his time, wrote several extremely influential books on legal philosophy; his most recent volume, *Justice for Hedgehogs*, was published in 2011 to enthusiastic reviews. In 2005 he was the recipient, along with Judge Richard A. Posner, of the ALI’s prestigious Henry J. Friendly Medal.

**Anthony Lewis**, a former *New York Times* reporter and columnist who twice won the Pulitzer Prize for his work, died at his home in Cambridge, MA, on March 25 at the age of 85. Known for his authoritative and accessible coverage of the Supreme Court, particularly during the years of the Warren Court, Mr. Lewis was the author of several books, including *Gideon’s Trumpet* (1964), which covered the landmark case of Gideon v. Wainwright, and *Make No Law: The Sullivan Case and the First Amendment* (1991). For more than three decades he also wrote a regular column for the *Times* on national and international affairs. In 2002, Mr. Lewis and fellow *New York Times* reporter Linda Greenhouse received ALI’s Henry J. Friendly Medal for contributions to the law in the tradition of Judge Friendly and the Institute; they are the only nonlawyers to have received the award. An honorary member of the ALI, Mr. Lewis was the husband of Margaret H. Marshall, a retired chief justice of the Massachusetts Supreme Judicial Court and a member of ALI’s Council.
### Calendar of Forthcoming Meetings
(for more information, visit www.ali.org)

#### April 2013

#### May 2013
1. **May 20** Council Meeting. The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC
2. **May 20-22** Annual Meeting. The Ritz-Carlton Hotel (22nd & M, NW), Washington, DC

#### September 2013
3. **September 26** Restatement of the Law Third, Torts: Liability for Economic Harm. Advisers. ALI Headquarters, Philadelphia, PA

#### October 2013

#### November 2013
1. **November 15** Model Penal Code: Sexual Assault and Related Offenses. Advisers. New York, NY
2. **November 16** Model Penal Code: Sexual Assault and Related Offenses. Members Consultative Group. New York, NY

#### December 2013
Winter Meetings

ALI Young Scholars Medal winner Jeanne C. Fromer speaks with Justice Stephen G. Breyer.

Margaret Colgate Love of Washington, DC, speaks during the meeting of Advisers for Model Penal Code: Sentencing.

Supreme Court Justice Stephen G. Breyer is greeted by Director Lance Liebman and President Roberta Cooper Ramo at ALI’s Young Scholars Medal Conference on Copyright and Patent Law in Washington, DC.