

IV
*REMARKS AT TUESDAY
MORNING SESSION —
WISDOM AWARD*

By Robert A. Stein
*Professor at University of Minnesota Law School
and ALI Council Emeritus*

By Neil B. Cohen
Professor at Brooklyn Law School

*The Tuesday morning session
of The American Law Institute convened in the
Ritz-Carlton Ballroom,
Washington, DC, on May 20, 2014.
President Roberta Cooper Ramo presided.*

President Ramo: Let me introduce to you, to present in some ways I think one of our most important awards, someone well known to everyone in this audience, and that is my friend Bob Stein. We thought Bob Stein was the perfect person to present this award because his own distinguished career really is emblematic of the very kind of activity that we are talking about today.

As everybody but maybe some of the newest folks may not know, Bob was a long-standing dean of the University of Minnesota Law School. He has a named professorship there. He gives a class that I have been dying to take analyzing the 25 most important cases of the United States Supreme Court, for which, to the extent possible, he brings in many of the people that were involved in the cases. And apparently now, after watching the Michael Jackson video, he is going to bring holographs of the people who were involved (*laughter*) but aren't possibly there.

He was the Executive Director of the American Bar Association, has been very active in legal education for years, but is a towering figure, I think, as a teacher of the best not only substantive qualities that we hope from everybody that passes through a law school, but more importantly of the kind of integrity that we expect every law-school graduate to have.

Bob Stein. (*Applause*)

Professor Robert A. Stein (MN): Thank you very much, Roberta, for that very generous introduction. I hope that all of you have an opportunity, sometime during your life, to be introduced by Roberta Ramo. (*Laughter*) It is just wonderful.

Good morning. The Judge John Minor Wisdom Award was established by The American Law Institute to honor the late Council member Judge John Minor Wisdom, former judge on the U.S. Court of Appeals for the Fifth Circuit, who died in 1999. The award was endowed in 1990 by Judge Wisdom's then present and former law clerks, who did so on the occasion of the celebration of his 85th birthday.

The award is given from time to time, not every year, but in specific recognition of a member of the Institute for outstanding contributions to the work of the Institute. The recipient of the award this year fits that description to a tee.

Judge Wisdom is legendary as a judge on the United States Court of Appeals for the Fifth Circuit during the 1950s and 1960s when that court became known for a series of decisions crucial in advancing the civil rights of African Americans. Until 1981, the Fifth Circuit included Alabama, Georgia, Florida, and the Panama Canal Zone in addition to its current states of Louisiana, Mississippi, and Texas. Judge Wisdom, writing for the majority in *U.S. v. Jefferson County Board of Education* [372 F.2d 836, 876 (5th Cir. 1966)] in 1966, wrote: “The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate governmental purpose.”

I had the pleasure of serving with Judge Wisdom on the ALI Council during my early years as a member of the Council. Judge Wisdom was a larger-than-life individual who made every occasion with him interesting, enjoyable, almost always humorous, and certainly memorable. If there were time, it would be fun to tell some Judge Wisdom stories today.

The list of Judge Wisdom’s clerks is a veritable Who’s Who of leaders in our profession. It includes a United States Senator, numerous federal- and state-court judges, professors and deans of law schools throughout the country, and a current member of the Institute’s Council, Judge Brock Hornby.

It is an honor to present the Judge John Minor Wisdom Award to a person whom I admire so highly, Professor Neil Cohen of the Brooklyn Law School. As a Council member, I have observed Neil’s remarkable contributions to the work of the Institute over many, many

years. As President of the Uniform Law Commission, as well as an ALI Council member, I saw his outstanding contributions to many projects jointly sponsored by the Institute and the Uniform Law Commission.

Neil is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School, where he has been a member of the faculty since 1985. Early in his career, Neil taught at Seton Hall University School of Law, and before that he began his career practicing law in Boston following his graduation from NYU School of Law.

As a former dean, I would observe that Neil is a dean's dream professor in covering the curriculum. By my count, he has taught 13 different courses in the curriculum, and he has not only taught all of those courses, he has written books and chapters and articles on most of those subjects and many others. He even has a book [NEIL COHEN, *BASEBALL AND THE AMERICAN LEGAL MIND* (1995)], and you may want to go out and check this out later, and an article about baseball, and the article is entitled: "Taking Pop-Ups Seriously: The Jurisprudence of the Infield Fly Rule" [Neil B. Cohen and Spencer Weber Waller, 82 *WASH. U. L.Q.* 453 (2004)]. (*Laughter*)

Some of you are aware there is a classic article that has been out there for decades about the infield-fly rule [Aside, *The Common Law Origins of the Infield Fly Rule*, 123 *U. PA. L. REV.* 1474 (1975)]. What Neil and a colleague did was update it by analyzing the infield-fly rule under modern legal theories. Law and economic analysis, feminist jurisprudence, (*laughter*) critical legal studies, all of those are brought to bear on the infield-fly rule.

But it is Professor Cohen's extraordinary contributions to the work of The American Law Institute for which he is being honored today with the Judge Wisdom Award. Many of those contributions have involved revisions of the Uniform Commercial Code. I believe that Neil has been involved in almost every UCC-related project of the ALI or the ULC since he became a member of the Institute, but we have time today only to mention the most significant of those activities.

He was an active member of the Committee that drafted the most recent comprehensive revision of Article 9, which was promul-

gated in 1998. Then Neil continued his Article 9 work as a member of the joint ALI-ULC Committee that studied the need for and drafted a set of targeted amendments to Article 9, most importantly to resolve some issues relating to how to designate the debtor's name, and those amendments were completed in 2010.

Neil was also the Reporter for the revision of Article 1 of the UCC, which was a project completed in 2001, and that role led him to be deeply involved in the end game of a series of projects, unfortunately not successful from an enactment point of view, to undertake a comprehensive review of Articles 2 and 2A of the Uniform Commercial Code.

Since 1998, Neil has provided important leadership for the Permanent Editorial Board of the UCC by serving with distinction as the PEB's Research Director. His role as PEB Research Director led Neil to being Co-Reporter of a very important PEB report on the application of the UCC to selected issues relating to mortgage notes. Many of you are aware of this report, which addressed foreclosure issues that we have had in the United States following the housing crisis. This report clarified a number of issues with which courts and lawyers had been struggling, and the report has frequently been cited by courts, both federal and state, since that time.

In recent years, Neil has also served as an ALI Advisor or observer to a number of ULC projects that have relation to the UCC, such as a current Committee drafting amendments to the Uniform Fraudulent Transfer Act and a prior Committee that drafted the Uniform Manufactured Housing Act.

Neil's extensive service to the ALI extends beyond the realm of the UCC, and in the interest of time I will mention just two areas. Neil was the Reporter for the Restatement Third of Suretyship and Guaranty, serving in that role from 1990 to 1996, and during the last years of that project the Council designated Neil the R. Ammi Cutter Reporter. I believe that was the first time we had designated an endowed Reporter position, and Neil was the obvious Reporter to receive that recognition.

Neil has also been an important representative of the ALI to three major international law-reform organizations: UNIDROIT [the International Institute for the Unification of Private Law], UNCITRAL [the United Nations Commission on International Trade Law], and the Hague Conference on Private International Law. Neil was the ALI-nominated member of the U.S. delegation to UNCITRAL that prepared the U.N. Convention on the Assignment of Receivables in International Trade. He is currently a U.S. delegate to the UNCITRAL working group on security interests, which developed an international legislative guide on secured transactions. At UNIDROIT, Neil served as the ALI observer to a working group that prepared 2010 amendments to Principles of International Commercial Contracts. At the Hague, Neil has been a member of the Working Group on Choice of Law in International Commercial Contracts and is now a member of the Editorial Committee that is finalizing the nonbinding principles and commentary on choice of law.

I could go on and on, but I think it is clear, to everyone in this room, that Neil Cohen is abundantly deserving of receiving this award in Judge Wisdom's name.

I am very pleased that Neil's wife, Amy Bona, is present today as he receives this award, as is his daughter, Liz Bona Cohen. We are very happy that you both are here on this important day in your father and husband's life.

It is my great pleasure to present, on behalf of The American Law Institute, the Judge John Minor Wisdom Award for outstanding contributions to the work of The American Law Institute to Professor Neil B. Cohen. (*Applause*)

Professor Neil B. Cohen (NY): Thank you for those wonderful words. I don't know that I have earned them, but I will certainly try to live up to them.

It is a real honor to receive the John Minor Wisdom Award. Not only was John Minor Wisdom an American hero, but the previous recipients of this award named for him are like a hall of fame of those who are devoted to the law, and I have had the privilege of knowing the

last several recipients of the award: Guy Miller Struve, whose wonderful acceptance speech just three years ago is still ringing in my head; the legendary Judge Jack Weinstein; the late Michael Marks Cohen; and Donald Rapson, without whose prodding and encouragement I would not be here today.

Early in my career, I was fortunate to have several excellent mentors who took it upon themselves to take the new kid under their wing and show him the ropes, to badly mix a metaphor, and this ranged from telling me where the really good pencils were stored, to teaching me that first drafts were never the final word, and helping me realize that you can learn a lot from people who disagree with you, especially humility. (*Laughter*) Some of those mentors are here today, and without them I would not be here today.

I was particularly fortunate that these important figures in my life were not only wonderful mentors, but they were also members of The American Law Institute. From them, I learned not only about how to be a good law professor, but also about the importance to their professional lives of their membership in the ALI and about the important and vital role that the Institute plays in the development of the law in a coherent and clear manner.

While, like everyone who has graduated from law school in the last 80 years or so, I knew about the Restatements as an important product of the ALI, I otherwise might not have fully understood and appreciated the breadth of the Institute's projects or the working method that guarantees their high quality.

I became a member of the ALI thanks to those mentors. And a few years later, Donald Rapson, who received this award in 1999, convinced Geoff Hazard to take a chance on a relatively young and relatively unknown law professor and appoint him as Reporter for a Restatement, with the goal of taking an area of the law that was both obscure and complex, but commercially important, and trying to make some sense of it. How Don managed to pull that off I will never know, but I will be forever grateful for it, because that chance to work intensively on an Institute project changed my professional life

entirely, exposed me to new vistas, and it gave me the opportunity to work with a number of talented people from whom I learn every day.

One project leads to another, and now, a quarter century later, I have had the privilege of working with two exceptional Directors of the ALI, Geoff Hazard, who took the initial chance on me, and Lance Liebman, with whom I have had the pleasure of working closely for the last 15 years, on a variety of ALI projects relating to commercial law, many in partnership with the organization that Bob has run so well, the Uniform Law Commission, and these projects, in turn, have led to opportunities for involvement in similar projects in the international arena.

I have been able to apply some of the lessons I have learned from the Institute in those contexts, and all of these projects have enabled me to work with and learn from a large number of remarkable people, who bring to the study of commercial law not only great depth of knowledge but also great breadth of practical experience, exactly the strengths that the ALI seeks and excels in utilizing.

Before finishing these remarks, I have to let those of you who have not yet worked closely on an Institute project in on a secret. We tend to talk about these projects very seriously, because they are indeed serious and important, and we take their quality seriously, because that is all we have to sell, but doing this serious work is not just serious. It is fascinating, it is exhilarating, and it is in fact a lot of fun. What could be better than immersing ourselves in areas that we know and love, identifying their key principles, and expressing those principles in a way that leads others through the thicket and can guide judges to the advancement and development of those principles? If you have not been involved in the preparation of an ALI product, you are missing the experience of a lifetime.

So all I have left to say is thank you. Thank you, Bob, for your kind words. Thanks to those of you who encouraged my involvement in the work of the Institute. Thanks to the Council for selecting me for this honor. Thank you to Geoff Hazard and Lance Liebman for teaching me so much about the process of law reform. And most impor-

tantly, thank you to my family, a few important members of which, as Bob has pointed out, are present, my wife Amy and my daughter Liz; they are here in the audience and without their support none of this would be possible. So thank you all. (*Applause*)

President Ramo: Years ago, when the American Bar Association gave Judge Wisdom a medal, my husband, the cardiologist, was seated next to him at dinner and noticed that he ate everything and ordered two desserts. And they asked my husband what he wanted to have for his dessert, thinking he would say fruit, and like the line in the famous movie, he said, “I’ll have what he’s having,” so all good. Thank you very much.