

# THE ALI Reporter

THE QUARTERLY NEWSLETTER OF THE AMERICAN LAW INSTITUTE

VOLUME 39 NUMBER 4

FALL 2017

## ALI and ULC Continue Work on Revisions to UCC Articles 1, 3, and 9

*By Kristen David Adams of Stetson University College of Law,  
Amelia H. Boss of Drexel University Thomas R. Kline School  
of Law, and Teresa Wilton Harmon of Sidley Austin LLP*

Since the national mortgage crisis began, there has been substantial interest in creating a more efficient system for tracking residential mortgage notes. A more efficient and effective system would serve the interests of both obligors and lenders. One of the difficulties that courts, and others, had in dealing with the mortgage crisis was understanding the relationship between a mortgage and the underlying note. This became especially important in situations of default when it was necessary to identify the holder with rights to enforce the mortgage.

Mortgage Electronic Registration Systems, or MERS, had been intended to simplify the process of tracking mortgages as they were sold to various new holders throughout their lifetime. When mortgage loans are registered in the MERS system, MERS acts as the nominee for the lender and servicer in county land records and becomes the mortgagee of record and nominee for the mortgage loan's beneficial owner. While MERS provided a good mechanism for tracking the holder of the mortgage, it did not do the same for the underlying note.

---

**DID YOU KNOW:  
THE FIRST UCC WAS  
PUBLISHED IN 1952,  
65 YEARS AGO.**

---

More information about the project, including drafts of both the Act and the proposed revisions to Articles 1, 3, and 9, is available on the ALI website at [www.ali.org/ucc](http://www.ali.org/ucc).

A second major issue with tracking paper notes garnered national attention in 2005 with Hurricane Katrina and again in 2012 with Superstorm Sandy. The fact that these two storms were responsible for the destruction of so many promissory notes contributed to the desire to provide a mechanism that allowed for immobilization and dematerialization of residential mortgage notes. The goal was to make it possible for residential mortgage notes either to be originated in electronic form or to be converted from paper to electronic form. Thus began the project that became the National Mortgage Repository Act of 2017.

The Federal Reserve Bank of New York has taken the lead in drafting the Act. The Act is intended to provide

---

*continued on page 2*

THE DIRECTOR'S LETTER BY  
RICHARD L. REVESZ

## How the ALI Empowered Fiduciaries to Have Better Investment Strategies

Today, it is considered axiomatic that a well-designed investment portfolio should balance risk and return in a manner that is consistent with the investor's financial objectives, and that stocks, typically offering higher expected returns and higher risks, should constitute a significant portion of portfolios that have long-term objectives. Likewise, there is a consensus among financial professionals that over the long run, investment in stocks has a significant positive impact on a portfolio's long-term financial return (financial economists call it the "equity premium"). But until about 25 years ago, there were significant legal barriers to constructing optimal portfolios in fiduciary accounts.

The ALI played a key role in bringing down these barriers, by adopting a Restatement rule on prudence and risk that was flatly inconsistent with the majority rule prevailing at the time. Instead, the Restatement followed the strong consensus of economic theorists, and, in particular, the teachings of modern portfolio theory, which was embraced by investment professionals but was contrary to court applications of fiduciary investment law. A recent article by Professors Max M. Schanzenbach and Robert H. Sitkoff (a member of the ALI Council), "The Prudent Investor Rule and Market Risk: An Empirical Analysis," which was published earlier this year in the *Journal of Empirical Legal Studies*, provides an excellent legal and financial analysis of how the ALI reshaped the modern law of fiduciary investment.

---

*continued on page 3*

## EDITOR

Jennifer L. Morinigo  
(215) 243-1655  
jmorinigo@ali.org

## MANAGING EDITOR

Pauline Toboulidis  
(215) 243-1694  
ptoboulidis@ali.org

## ASSOCIATE EDITOR

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

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

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

# Upcoming Meetings & Events

For more information, visit [www.ali.org](http://www.ali.org).

## OCTOBER 2017

### October 12-13 (JOINT)

Restatement of the Law Fourth, Property  
Philadelphia, PA

### October 13 (JOINT)

Model Penal Code: Sexual Assault and  
Related Offenses  
New York, NY

### October 19-20

Council Meeting - October 2017  
New York, NY

### October 26 (JOINT)

Restatement of the Law, Consumer Contracts  
Philadelphia, PA

### October 26 (JOINT)

Restatement of the Law Third, Conflict of Laws  
Philadelphia, PA

### October 27 (JOINT)

Principles of the Law, Compliance, Enforcement,  
and Risk Management for Corporations,  
Nonprofits, and Other Organizations  
Philadelphia, PA

## MAY 2018

### May 21-23

95th Annual Meeting  
Washington, DC

**VIEW ALL UPCOMING MEETINGS  
AND EVENTS ON PAGE 15.**

## ALI AND ULC CONTINUE WORK ON REVISIONS TO UCC ARTICLES 1, 3, AND 9

CONTINUED FROM PAGE 1

greater transparency to borrowers, to make the secondary mortgage markets more efficient and liquid, to provide for paper residential mortgage notes to be converted to electronic entries on a national repository system, to provide clear rules for electronic notes in a way that promotes their use, and to protect consumers throughout this process.

As part of this effort, a committee of the Uniform Law Commission has been drafting proposed revisions to UCC Articles 1, 3, and 9 to accommodate electronic promissory notes in the mortgage registry, the conversion of such notes from paper to electronic form, and the impact of a central registry. This committee, which began its work in 2016, includes Commissioners as well as American Law Institute members. Article 3, which was written with paper instruments in mind, will be revised to accommodate electronic promissory notes in the mortgage registry. Likewise, Article 9 will be revised to cover issues relating to electronic notes held as collateral, including how security interests will be granted and perfected, as well as issues relating to attachment, possession, and priorities. Conforming amendments to the relevant Article 1 definitions will ensure consistency with the changes made to Articles 3 and 9.

Some of the major issues being examined by the drafting committee, which is led by Edwin E. Smith (Morgan Lewis) as Chair and Professor Steven L. Harris (Chicago-Kent College of Law) as Reporter, include how rules are allocated between the UCC and the Act and the proper balance between protecting the rights of obligors and those of secured parties and holders.

**The Members Consultative Group on UCC Issues is open to all ALI members who are interested in the UCC, and the committee looks forward to receiving comments from the ALI membership. To join the Members Consultative Group for this or other projects, visit the projects page on the ALI website at [www.ali.org/projects](http://www.ali.org/projects).**

# Economic Harm

*September 8 in  
Philadelphia, PA*

Project participants discussed Preliminary Draft No. 4 during what may be the last project meeting for this Restatement. Pending approval by Council, the project is slated to be presented at next year's Annual Meeting for final membership approval.



*Deborah A. DeMott of Duke  
University School of Law*

## THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

In 1992, ALI completed the Restatement (Third) of Trusts: Prudent Investor Rule, which made several key changes to the law of trusts contained in the Restatement (Second), each under the rubric of a new “prudent investor rule.” First, contrary to the prevailing view in the case law, the Restatement (Third) directed that the prudent investor rule was to be “applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.” Second, the Restatement (Third) folded the “duty to diversify the investments of the trust” into the prudent investor rule itself. Third, the Restatement (Third) imposed on trustees an “ongoing duty to monitor investments and to make portfolio adjustments if and as appropriate, with attention to all relevant considerations.”

In contrast, the Restatement (Second), completed in 1959, used the “prudent man rule,” which had been adopted by a majority of states by the mid-1900s. That rule traced back to an 1830 Massachusetts Supreme Judicial Court decision requiring trustees to “observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.” Courts applying this rule, however, presumed that certain kinds of investments were imprudent, in effect creating judicially determined legal lists of proper and improper investments. Consistent with these common law rules, the Restatement (Second) establishes that federal, state, municipal, and corporate bonds and first mortgages are considered prudent investments, but that “purchase of shares of stock on margin or purchase of bonds selling at a great discount because of uncertainty whether they will be paid on maturity” and “purchase of securities in new and untried enterprises” are presumed improper. The Restatement (Second) recognized as proper the purchase of stock with “regular earnings and paying regular dividends which may reasonably be expected to continue,” but noted that some states limited the purchase of stock to a certain percentage of trust holdings.

During the late 1980s, many scholars working in the law-and-economics tradition began to call for reforming the law. Drawing on modern portfolio theory, they argued that market risk must be accepted in exchange for higher possible returns and that idiosyncratic risk could be balanced by diversified portfolios. At the time the 1992 Restatement was drafted, some legislation—such as the Uniform Management of Institutional Funds Act (promulgated in 1972 and adopted by more than half the states by 1992) and the Employee Retirement Income Security Act of 1974—already absorbed principles of portfolio theory into prudent investment standards. Only a minority of states, however, had adopted a prudent investor rule rooted in modern portfolio theory for trusts prior to 1992, and none had done so through the common law.

Following the adoption of the Restatement (Third), several states—Illinois, Virginia, Florida, and New York—swiftly adopted the “prudent investor rule” by legislation, relying significantly

on the Restatement. In particular, Illinois, the first state to do so, modelled its law on draft versions of the Restatement.

The drafters of the 1996 Uniform Prudent Investor Act (UPIA) were also influenced by the Restatement, writing that “[t]his Act draws upon the revised standards for prudent trust investment promulgated by the American Law Institute in its Restatement (Third) of Trusts: Prudent Investor Rule (1992).” The UPIA drafters also in some sections drew from the 1992 Illinois law which they said was “closely modeled on the new Restatement.” By the end of the 1990s, all but five states had adopted prudent investor legislation to align the law of those states with the position of the Third Restatement, and by 2006, all states had done so. In turn, the UPIA has been adopted by forty-five U.S. states or territories (including some that had previously enacted non-UPIA prudent investor legislation).

Schanzenbach and Sitkoff’s article analyzes reports of bank trust holdings and fiduciary income tax returns to show the effect the prudent investor rule has had on asset allocation and management of market risk. Since the adoption of the prudent investor rule, they find an increase in stockholdings by trusts with relatively greater risk tolerance. The increase in percentage of stockholdings occurred in banks with larger average trust account sizes, those in and above the 25th percentile, but not for those below the 25th percentile. Schanzenbach and Sitkoff also find a pattern of portfolio rebalancing, consistent with the prudent investor rule’s requirement that the portfolio’s risk be managed in accordance with the purposes of the trust. These two findings, that increased stockholdings correlated with risk tolerance, and that portfolio risk was managed through rebalancing, serve to rebut criticisms, made in the wake of the 2008 financial crisis, that the prudent investor rule led to overly-risky investments by trustees.

Three features concerning the adoption of the “prudent investor rule” are particularly noteworthy. First, while the ALI is explicit that its black letter need not follow majority rules and that departures are appropriate in light of “the relative desirability of competing rules,” which can be determined by “social-science evidence,” it is unusual for a Restatement to adopt a black letter rule contrary to the case law and without support in a minority line of cases. Second, while we think (and hope) that over time the ALI’s work will be influential, it is unusual to see such a quick and universal response. In fewer than 15 years, every single state had enacted a statute that adopted the position of the Restatement (Third). Third, while it is reasonable to believe that the ALI positively affects the strength of the U.S. economy through its mission “to promote the clarification and simplification of the law,” we do not generally think that a single black letter rule could have a large impact on long-term wealth creation. The “prudent investor rule” stands as one of the ALI’s greatest successes!

**Editor’s Note: A version of this Director’s Letter that includes a bibliography of related material with links to relevant documents is posted on the News page of the ALI website: [www.ali.org/news](http://www.ali.org/news).**



# Project Spotlight: Restatement of the Law Fourth, Property

## Why Re-Restate Property?

*By Henry E. Smith, Harvard Law School and Reporter for the Property Restatement*

“Restatement Fourth of Property” sounds like an exercise in excess. It isn’t. It is true that there have been three rounds of previous Restatements of Property that have contributed greatly to the development of the law. And it is also the case that property law presents a large and seemingly disparate set of problems, doctrines, and institutions, making any attempt to restate the law in this area no small challenge.

Nonetheless, now is the time for a new Restatement. Why?

In the era spanned by the Restatements of Property, centrifugal forces have been at work on property law, to the point where some observers believe that there is nothing to the notion of property and nothing holding together the law of property at all. And yet something called the law of property persists in some form or other. In the actual world of law and in society, property law provides more guidance than one might expect. A Restatement can contribute to the guidance function of law by highlighting its overall architecture.

It is the overall structure of property law that has received the least attention in past Restatements. For a variety of reasons, mostly fortuitous, ALI has never produced a comprehensive unified treatment for property of the sort familiar in contracts and torts. The First Property Restatement was begun by Harry A. Bigelow in the 1920s. Bigelow’s vision for the field – and indeed the vision of ALI founder William Draper Lewis – was heavily influenced by the analytic framework famously developed by Wesley Newcomb Hohfeld, who taught at Yale and died in 1918 at the age of 39. In Hohfeld’s scheme, every legal relation is made up of atomic parts (rights, privileges, powers, immunities, and so on), and it is the job of the legal analyst to reduce more complex legal concepts, such as property, to its constituent elements. Circumstances intervened, and Bigelow became the Dean of the University of Chicago Law School. He handed the baton to Richard Powell of Columbia Law School, who took the Restatement project in a more historical direction. As a result, five volumes appeared in the 1930s and early 1940s, which covered the



*Front row, from left to right: Christopher M. Newman of The Antonin Scalia Law School at George Mason University, Henry E. Smith of Harvard Law School, ALI Director Richard L. Revesz, Sara C. Bronin of UConn School of Law, Thomas W. Merrill of Columbia Law School, Daniel B. Kelly of the University of Notre Dame Law School  
Back row, from left to right: Brian A. Lee of Brooklyn Law School, John C. P. Goldberg of Harvard Law School, ALI Deputy Director Stephanie A. Middleton, and Tanya D. Marsh of Wake Forest School of Law*

Hohfeldian framework, estates in land and future interests, and servitudes. The rest of the field went uncovered, with one exception: the property torts (trespass, nuisance, conversion) were shifted over to the Restatement of Torts. The end result was that the Property Restatement did some things very well, but left the field as a whole in an “un-restated” state.

Subsequent Restatements carried this targeted approach further. The Second and Third Restatements filled in some of the many gaps left by the First Restatement and took a second look at a few others. This made sense at the time. The dominant view, especially in academic circles, maintained that there was nothing holding together the various parts of the area of law traditionally called “property.” Thus, there was nothing particularly to be gained by putting its various doctrines together in a single Restatement. Indeed, it was perhaps considered more honest not to. Thus, the individual targeted efforts in the second round of Restatements from the 1970s to the early 1990s and the subsequent third round have offered important clarifications of and insights into individual aspects of property law, and yet have necessarily left out or downplayed the threads connecting them.

The Restatement Fourth has the potential to add this missing element. While accurately reflecting the law and articulating some of what is left implicit in previous Restatements, the new Project will draw out threads that provide some – some, not complete – unity to the field. Notions like possession run through property law. Is it possible that, with a suitably modest definition of possession grounded in social norms, seemingly disparate topics such as trespass, bailments, and the like can be illuminated and harmonized? What about other key notions such as notice, good faith, the generality of in rem duties, and the interplay between the in rem and in personam aspects of complex entitlements? Establishing these connections will allow for easier navigation of the law and, consistent with the original impetus behind the Restatements, will allow the contours and stakes of some problems to become clearer and so more amenable to solution. Notoriously convoluted areas plagued by ambiguous terminology, such as bailments and licenses, clearly stand to benefit from such a systematic treatment.

Also of potentially great value to judges and practitioners will be the coverage of areas left untouched by prior Property Restatements. Important and sometimes contested aspects of property law such as adverse possession will be restated for the first time, not to mention most of the entire area of personal property. The Fourth Restatement project benefits from an outstanding team

of Associate Reporters: Sara C. Bronin, John C.P. Goldberg, Daniel B. Kelly, Brian A. Lee, Tanya D. Marsh, Thomas W. Merrill, and Christopher M. Newman. Lawrence W. Waggoner, the Reporter for the Restatement Third of Property (Wills and Other Donative Transfers), has graciously agreed to serve as a Special Consultant. We are committed to carrying forward the simplification of the estate system consistently with a modest conception of the judicial role in amending the basic forms of property. We have already received invaluable feedback from the group of advisers and consulting members, without whose expert assistance and good judgment such an ambitious project could not possibly be undertaken.

This is not a small undertaking, and we do plan to leave specialized areas for other current and future Restatement projects. We will do our best to connect property law to areas like intellectual property and trusts, recognizing that they are best treated in a standalone fashion.

A Fourth Restatement of Property could have a salutary effect of bringing coherence to a field that is notoriously disjointed and we look forward to reporting back on our progress soon.

Don't miss out on the opportunity to be a part of the Restatement of the Law Fourth, Property, a project dedicated to enhancing the role of property law as a building block to other areas of law.

This October marks the project's third meeting. With plenty of issues left to be addressed in this seven-volume project, now is the time to join.

Visit [www.ali.org/projects](http://www.ali.org/projects) to learn more and sign up for the Members Consultative Group.

## *A Concise Restatement of Donative Transfers and Trusts Now Available*

*A Concise Restatement of Donative Transfers and Trusts*, a joint publication of ALI and West Academic Publishing, is now available for purchase. This title is a single volume, concentrated version of the seven volumes of Restatement of the Law Third, Trusts, and Restatement of the Law Third, Property (Wills and Other Donative Transfers). A great resource for those interested in learning about this area of law, the publication presents key Restatement provisions in a compact, convenient, and readily accessible format.



*Thomas P. Gallanis*

The Concise Restatement was compiled and edited by Thomas P. Gallanis of the University of Iowa, College of Law. Professor Gallanis served as an Associate Reporter for Restatement of the Law Third, Trusts, and currently serves as Adviser to the Property and Charitable Nonprofits projects.

Available at [www.ali.org/concisetransfersandtrusts](http://www.ali.org/concisetransfersandtrusts).

## Children and the Law

*June 14 in Philadelphia, PA*

Preliminary Draft No. 3 included portions of several Chapters in Part I (Children in Families), Part II (Children in Schools), and Part IV (Children in Society). Materials presented for the first time include work on Part I, Chapter 3 (Introductory Note), on child abuse and neglect, and Part II, Chapter 6, § 6.01, on the right to an education under state constitutional law. Portions of the project will be presented at the October 2017 Council Meeting.



*Reporter Elizabeth S. Scott of Columbia Law School (second from right) talks with Associate Reporters and project participants during a project meeting break.*

# Member Spotlight: Carolyn B. Kuhl

*Superior Court of California,  
County of Los Angeles*

**You are the Assistant Supervising Judge of the Complex Litigation Division of the Superior Court of California for the County of Los Angeles. How specifically does your experience as a state trial judge bring value to ALI?**

The principal purpose of the ALI at the time of its founding was to bring order to the common law by weaving the strands of individual case precedents from the different state courts into a tapestry that provides a coherent whole. In turn, that tapestry serves to assist lawyers and courts, particularly state courts, as new cases require embellishment or extension of the tapestry.

When I look at a draft of a Restatement or Principles project, I am thinking about how it will be used in court. I sometimes suggest that Reporters consider how their work would be translated into jury instructions by a court. Have the principal elements of a claim been adequately defined? Do the comments and illustrations provide guidance about how a court should address factual variations that are likely to arise? Are burdens of proof well-defined? What kind of evidence would be required to prove a particular element and how much discovery would be required? Is the draft clear as to whether an issue is one for the court, rather than for the jury, to decide? How will the legal rules apply in representative actions or class actions?

I hope this perspective is useful to the work of the Institute. State courts are like the infantry in the military. We are there on the ground grappling with society's disputes of every nature – family law, probate, dependency, unlawful detainer, sexual assault, domestic violence, felonies, neighbor disputes, insurance coverage, small claims, class actions, personal injury cases, consumer and corporate contract disputes, and on and on. The ALI's work product needs to – and does – provide support for the troops on the ground.

**Prior to becoming a judge, you served as a lawyer in the public and private sectors. What challenges did you face as a woman lawyer? Do you think the obstacles women face today have changed?**

I was very lucky to come to the Bar at a time (the late 1970s) when women were being hired in the major law firms across the country. The cost of that progress was borne by many women who came before me, including, of course, Justice Sandra Day O'Connor, who was turned away by law firms in Los Angeles in the 1950s.

I had a wonderful career in practice at Munger, Tolles & Olson for more than 10 years and I owe my former partners a great deal for the mentorship I received. There, too, I was preceded by some very strong women lawyers, Carla Hills



and Nancy Bekavac (who later served as President of Scripps College), who paved the way and gave me excellent advice.

I enjoyed helping my male colleagues make some necessary adjustments along the way. For example, when I first served on the staff of the Attorney General of the United States, he would open doors and stand aside for me when I accompanied him to events. So, I and others on staff took him aside and said, "General, you are the Attorney General and you can't open the door for Carolyn when you are walking with her. As the senior official you need to go first. And Carolyn is quite capable of opening the door for you." He smiled sheepishly and immediately understood. I treasure that memory of Attorney General William French Smith, whom I admired very much.

As far as challenges for women lawyers today, the most significant, I believe, still is accommodating family and practice. Many firms have made substantial progress in this area, but the problem has not been solved. In most families, the responsibilities for children still fall on women. When law firms and clients expect total, full-time commitment throughout a lawyer's career, stresses and conflicts between the personal and professional aspects of a woman's life can be extremely difficult. No doubt these stresses contribute to the fact that women continue to be significantly underrepresented at the partner levels in major law firms.

**What has changed about serving as a judge since you first joined the bench in 1995?**

Sadly, the courts of California, and of many other states, are not well supported, as they once were, by the Executive and Legislative Branches. We once had security provided by sworn officers in all of our courtrooms, and now many courtrooms are without that level of security. Most recently, in the aftermath of the Great Recession, we closed courthouses and courtrooms and laid off our skilled staff. In order to keep operating, we were forced to reorganize, creating larger caseloads that preclude us from giving each case as much attention as it deserves. And in



our civil courts, we do without court reporters and without electronic recording unless the parties can afford to bring a court reporter. Sadly, we do not see on the horizon the potential for funding at a level that would allow us to return to the way we were organized ten years ago.

Another aspect of judging that has changed is the number of litigants who appear without counsel. Self-represented litigants predominate in family law, debt collection, and eviction cases, and parties in conservatorship and guardianship cases frequently lack representation. Our court has done its best to provide self-help to these litigants, and, increasingly, we can provide streamlined pathways for litigants to access the court online. But it is a distinct challenge to provide access to justice for these litigants.

What has not changed is the devotion of my colleagues to their work. Our Los Angeles Court has judges who previously were partners at many of the major law firms and judges who were at the top of their field in public law sectors before joining our court. We have met the challenges presented in recent years, and I believe we are providing excellent service in every area. Most recently, we are implementing electronic case management systems that we hope will allow us to make our valued staff more effective and will provide easier access to court records for the public.

**You have been an ALI member since 1988 and a Council member since 2012. In what ways have you used the Institute's projects?**

First of all, just attending Annual Meetings is an excellent education in the law. Even in areas where one does not practice, expanding the breadth of one's understanding is valuable – it is high-level “practice” in legal analysis. I find as I become more mature as a lawyer, different aspects of the law integrate in my mind. I hope I become better at what I do by making connections from what I am learning to what I already know and thereby arrive at a deeper understanding of a particular legal problem.

California has a great deal of case law in most areas, but I turn to the Restatements and ALI's other projects when I need to understand how a case fits into a larger pattern in an area of law. I have more than 300 class action cases on my docket, and I frequently consult the Principles of the Law of Aggregate Litigation to be certain that the parties' arguments fit into the larger picture, protecting the rights of absent class members and ensuring fair and reasonable settlements.

The Restatement of Employment Law is the first treatise to rationalize state employment law across the country, and it was well worth the Reporters' considerable efforts to produce a balanced, reliable work product that is extremely practical. Recently, I had occasion to think about the remedy of rescission in the context of class actions, and both the Principles of the Law of Aggregate Litigation and the Restatement of Contracts were helpful.

**Your husband, William F. Highberger, is also a judge. What is the dynamic of a two-judge household? Who wins the most arguments?**

A two-judge household is mostly challenging for the children. Our two daughters were treated to dinner discussions about the law from their earliest ages. Recently, our younger daughter's fiancé, who is a student at Emory Law School, recounted that his civil procedure professor introduced the topic of civil procedure to his students by saying, “Most people have some context when they are first introduced to contracts, torts or criminal law. But no family talks about *in personam* jurisdiction at the dinner table.” We laughed and laughed because in our family that is precisely the sort of thing we talk about at dinner.

Bill and I enjoy having the ALI in common. He has been an Adviser on the Restatement of Employment Law (his area of practice at Gibson, Dunn & Crutcher before taking the bench) and on the Restatement of the Law, Liability Insurance. We enjoy talking over the questions we have about the material before we attend meetings where the drafts will be discussed.

As far as arguments, thankfully we do not argue much. However, we first met on opposite sides of a lawsuit. I argued my first motion (concerning *in personam* jurisdiction) against Bill, and he won. So I had to marry him (after the case was resolved, of course).



John G. Buchanan III, Carolyn B. Kuhl, and William F. Highberger

# A Basic Guide to Participating in ALI Annual Meetings

*By Victor Schwartz of Shook, Hardy & Bacon*

ALI is the most prestigious and, more importantly, “influential” organization of lawyers in the United States.

The Institute’s work products, particularly our Restatements, have shaped American common law like no other treatises or publications. Many courts treat our Restatements as pure gold. They rely on Restatements, and in some states, Restatements are adopted virtually in whole. They become that state’s common law.

Members are an essential part of ALI. The future of ALI and its continued impact on American law is in our thoughts and constructive input. With this ability to impact the law comes responsibility: the responsibility to be involved, to engage in good natured debate, and to be fair to all sides.

Some people who have the privilege of being elected to ALI simply utilize that membership as an honor on their resume. Looking at the exceptional strength and backgrounds of our membership, I believe that we all should do more: we should help ALI fulfill its mission.

I would like to share with you a little bit about how you can actively participate in the in ALI’s work.

When I first went to an ALI Annual Meeting, I was 27 years old. I was a law professor filling in for the dean of my law school who could not attend that year. The members at that time not only were the age of my father and mother, but some of my grandparents. I was the youngest person in the room. I was guided by a man whom I came to respect and to whom I will be forever grateful, Bill Thornton.

Bill was a member of the ALI staff. I told Bill that I was both overwhelmed and apprehensive about the debates over ALI work products. Bill gave me guidance. He eased my apprehension. What I have

known to be true ever since that first discussion is that we should get to know ALI staff right away.

Following Bill’s advice, I said nothing at the microphone at my first Annual Meeting. Rather, I learned by listening and watching others. Of course, you, who are more experienced than I was at that time, do not have to follow this path.

When I finally did get up to one of the several microphones to comment on a draft, I was comfortable doing so. In the big picture, there are some ALI members who never comment on drafts; and there are others who perhaps engage in microphone overkill. Find the right balance between these two opposite approaches.

Commenting on ALI drafts is unlike other things in your professional experience: It is not a statement in court. It is not testimony. It is not teaching. It is simply a comment. The protocols are actually pretty simple and easy to remember. Common sense governs all of them. You have three minutes to make a comment and that leads to what is a major protocol: when you see a red light that means three minutes are up and stop. I stop when I see the orange light which means that you have one minute to go.

Here are some additional guidelines I hope you will find helpful:

First, as I am sure you would appreciate, commenting on drafts is not the place to correct grammatical or other minor errors. That should be done with an email or letter to the Reporters of the draft. Floor time at ALI is a precious thing and should be reserved for substantive comment.

Second, floor comments on ALI work products should focus on significant omissions, commissions of error, or disagreements about what is sound public policy.



*Victor E. Schwartz at the Liability Insurance project meeting on September 7.*

If your disagreement is substantial, the microphone may not be the place to bring it up for the first time. You may file a formal motion a few weeks before the meeting. If you file a motion, you are permitted to speak at the microphone for up to five minutes.

There are some other key protocols:

- Do not read from a script. Even more importantly, do not read something that somebody else wrote. The ALI microphone is not a place for quoting other people’s work.
- Be sure to read the Comments and Reporters Notes before commenting on the Black Letter. ALI Reporters are pretty smart and have thought of almost everything. The “almost” part is your key. Maybe they forgot something or made a fundamental error. That happens too.
- You may have the greatest point in the world, but if it has already been made, then you should not raise it. Again, ALI floor time is precious.

I am sure there are other unwritten rules that you will learn over time. I very much hope you will participate and truly enjoy your time and membership. It is a great gift. You should use it wisely.

**ALI’s 95th Annual Meeting will be held on May 21 – 23 in Washington, D.C. Keep an eye out for the Winter 2017 and Spring 2018 issues of *The ALI Reporter* to learn more about next year’s Meeting.**



# The Institute in the Courts: Iowa Adopts Torts 3d Provision on Landowner Duty

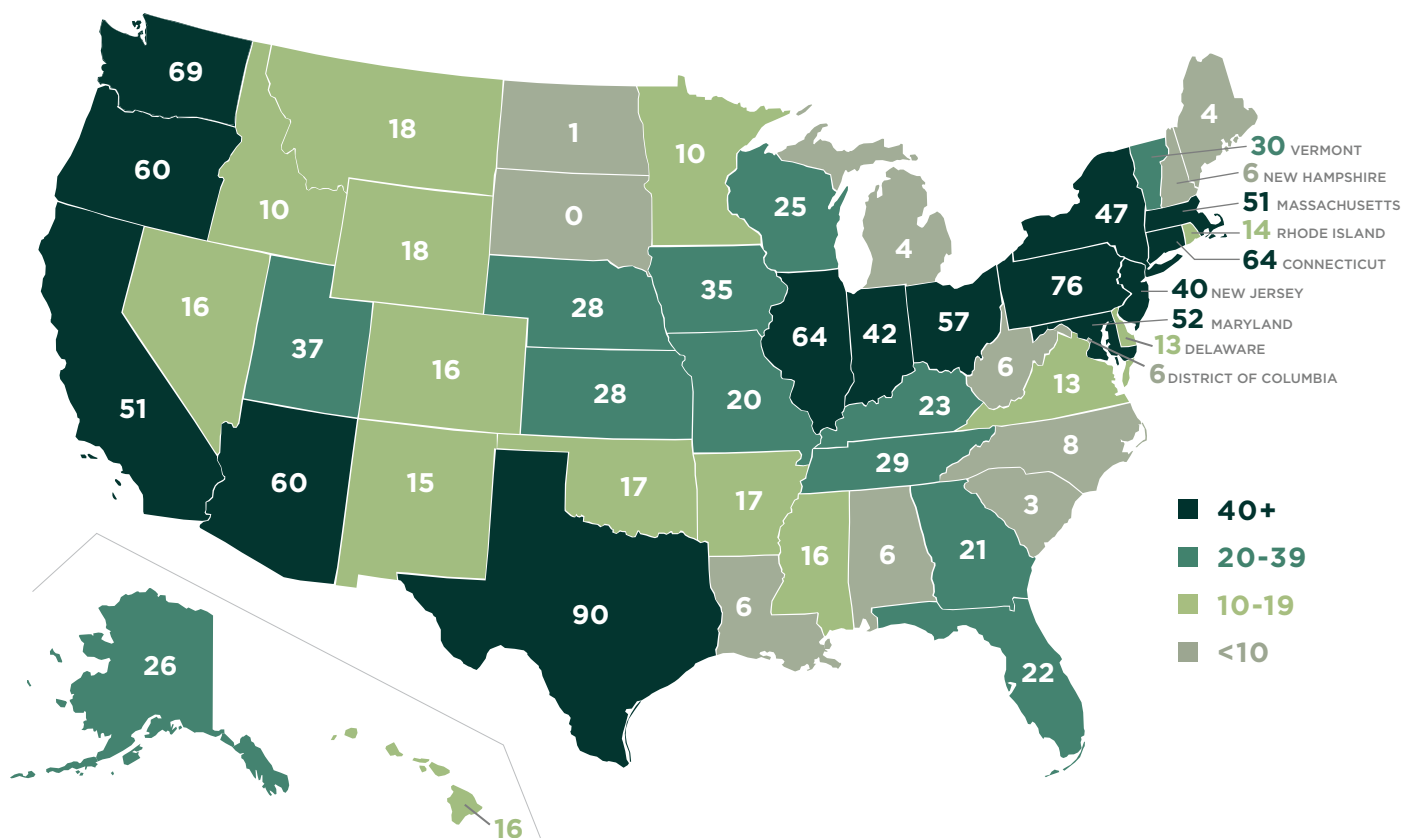
In *Ludman v. Davenport Assumption High School*, 895 N.W.2d 902 (Iowa, 2017), the Supreme Court of Iowa adopted Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm § 51. In that case, a high-school baseball player brought a premises-liability action against a high school after a foul ball struck him in the head and fractured his skull while he was standing in an unprotected part of the visitor's dugout at the school's baseball field. The trial court denied the school's motions for summary judgment and entered judgment on a jury verdict finding that the school's negligence caused the injuries that the player sustained. Reversing on other grounds and remanding to the trial court for a new trial, the Supreme Court of Iowa held that the trial court was correct in overruling the school's motions for directed verdict on the duty element of the player's negligence claim. The court "adopt[ed] the duty analysis for land possessors contained in section 51 of the Restatement (Third) of Torts: Liability for Physical and Emotional Harm," and concluded that the instructions given by the trial court

in this case were consistent with the Restatement. The court explained that the primary assumption of the risk or limited-duty rule due to an open and obvious condition did not relieve the school of the duty contained in § 51, noting that "[t]he Restatement (Third) of Torts: Liability for Physical and Emotional Harm and the Restatement (Third) of Torts: Apportionment of Liability indicate there is a move to abandon a no-duty rule when plaintiff knows of an open and obvious risk inherent in an activity."

The Institute is currently working on other portions of the Restatement Third of Torts—Restatement of the Law Third, Torts: Intentional Torts to Persons and Restatement of the Law Third, Torts: Liability for Economic Harm. To join the Members Consultative Group for these or other projects, visit the projects page on the ALI website at [www.ali.org/projects](http://www.ali.org/projects).

## State Citations of ALI's Work

Below is a breakdown of state citations of ALI publications and drafts for the 2016-2017 fiscal year.



# Liability Insurance

*September 7 in Philadelphia, PA*

Advisers and members gathered to discuss Preliminary Draft No. 4 of the Liability Insurance project. The Reporters presented the full draft for discussion, which included edits made after the discussion at the 2017 Annual Meeting.



*Project participants discuss PD No. 4 at September's meeting.*

# Student Sexual Misconduct

*June 26-27 in Philadelphia, PA*

Preliminary Draft No. 4 included portions of Chapters 1-4. This project has recently been renamed Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities. It is scheduled to appear on the October 2017 Council Meeting agenda.



*Fatima Goss-Graves of the National Women's Law Center and Dean A. Strang of StrangBradley*

# Donor Spotlight: Judith A. Miller and Peter Buscemi

ALI members Judith Miller and Peter Buscemi, who recently celebrated their 36th wedding anniversary, are one of the Institute's many married member-couples. Elected to ALI in 1992 and 2002, respectively, they continue to make a significant contribution to the Institute's work by generously volunteering their time, intellect, and financial resources. For Judith and Peter, developing a circle of interesting and diverse friends while advancing the law through ALI's projects is truly life-enriching.

Judith, a graduate of Beloit College and Yale Law School, clerked for Judge Harold Leventhal of the U.S. Court of Appeals for the D.C. Circuit and Associate U.S. Supreme Court Justice Potter Stewart, before serving in the Department of Defense. In 1979, she joined Williams and Connolly LLP, where she remained until 1994 when she was confirmed as General Counsel of the U.S. Department of Defense. Judith returned to Williams and Connolly in 2000 until 2006, when she joined Bechtel Group for four years as Senior Vice President and General Counsel. Today, Judith dedicates much of her time to serving on nonprofit and corporate boards—including ALI's Council.

Peter, a partner at Morgan, Lewis & Bockius LLP until his retirement at the end of 2015, built a distinguished career in Washington, D.C., as a litigator with extensive experience in appellate work, arguing cases before the Supreme Court and in federal and state appellate courts. After graduating from Columbia College and Columbia Law School, Peter began his career as a law clerk to Judge Carl McGowan of the U.S. Court of Appeals for the D.C. Circuit, who was also a dedicated member of the Institute.

Judith and Peter are steadfast supporters of ALI's work and have attended nearly every Annual Meeting since their elections to the Institute. Judith, who began her term on ALI's Council in 2010, currently serves as ALI's Development Committee Chair. She also has been an active participant on several projects, including the Restatement of the Law Fourth, the Foreign Relations Law of the United States; Principles of the Law, Government Ethics; and Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations.

Recently, Judith and Peter demonstrated their commitment to ALI's future by making a generous contribution to the 1992 Life Member Class Gift, which will be used to ensure the Institute remains independent and free from outside influence. The gift was presented during a luncheon honoring ALI's Class of 1992, whose members became new Life Members of the Institute.

*We sat down with Judith to learn more about why she and Peter are passionate supporters of ALI.*

**What was your first introduction to ALI?**

My first introduction to ALI, other than seeing the Restatements in the library as a law student, came through Judge Harold Leventhal, for whom I was clerking. Judge Leventhal was a very avid supporter of the work of the Institute and invited me and my co-clerk to come along with him to the Annual Meeting. That was when I first saw the actual work of ALI in person.

**What makes the Institute's work so special?**

I believe that ALI's work is a key to maintaining the bedrock of our American democracy, and to our courts functioning effectively to protect rights within that democracy. The Institute contributes extraordinarily to sustaining both the vibrancy of the rule of law in our country and to making it fair and just. The diversity of participants and views that I first observed with Judge Leventhal is truly central to every single project that the Institute has taken on. The reliability and helpfulness of our work stem from that diversity—geographic diversity, ethnic diversity, and really, fundamentally also, professional diversity—which allows people to look at the broad picture, instead of just being narrowly channeled in a particular part of the law. That's what attracted me to ALI and that is what has kept us both involved for all these years.

**You and Peter recently made a very generous gift to the 1992 Life Member Class Gift. Why do you feel that ALI is deserving of philanthropic support?**

One of the great strengths of ALI, and why our work is so influential, is our independence—but it still takes funds to pull that off. We have to compensate Reporters, who spend amazing amounts of time drafting the materials—whether it's Principles, Restatements, or other kinds of projects that we've engaged in. We have to be able to provide financial support to members who work outside of the private sector and may not have the means to come to our project meetings, in order to ensure a diversity of views in all of our work. All of that takes money, and in today's world, where publishing revenue is no longer as straightforward as it once was, we want to operate in a way that makes it absolutely clear that we are not beholden to anyone in the course of actually developing these projects. Independence is the key goal, and charitable contributions from members are central to sustaining that independence and the genuinely important work that we do.

**As we look toward ALI's centennial celebration in 2023, what do you see ahead for the Institute's second century of law reform?**

I definitely think the work of ALI is going to be even more important than ever. We are able to pull people of very diverse perspectives together, to talk about issues on the cutting edge, and actually reflect on where we should be going and what the rules should be, instead of simply doing what we started out doing, which was trying to summarize and codify, in a helpful way.

On the financial front, although ALI for years didn't really think about how important it was that independent contributions be sustained, we understand that it's very important now. It's just realistic in the 21st century to realize that the way we supported ourselves during the first 100 years may not be sufficient to guarantee the independence we need to carry on all of the exciting projects that we're doing right now.

So I think that there's a real opportunity for ALI to be even more significant. It's one of the few places where you can truly get a diverse group of people together, to think seriously and be able to respond quickly to new issues that are arising every day. What we do really matters to the effective functioning of our justice system, which is something we should all care about.





# Model Penal Code: Sentencing Update

On August 7, ALI Deputy Director Stephanie A. Middleton and Sentencing Project Adviser Margaret Colgate Love met with the criminal justice committee of the Conference of Chief Justices to report that the ALI membership approved the Proposed Final Draft of Model Penal Code: Sentencing, explaining that the project proposes lasting reforms, including institutional arrangements, with explanations of evidence-based best practices.

The project replaces approximately two-thirds of the 1962 MPC and covers incarceration, economic penalties, and civil disabilities.

Some black letter highlights:

- a strong preference for determinate sentencing;
- various means to deal with prison release within a determinate sentence system;
- a recommendation that states charter a permanent, balanced sentencing commission with specified duties, including promulgating guidelines and conducting research and data collection;
- opposition to mandatory minimums, along with ways to mute the impact of mandatory penalty provisions in states that have mandatory penalties;
- a structure for the common law of sentencing by the courts;
- delineation of powers that should be allocated to, or exercised by, legislatures, sentencing commissions, trial courts, appellate courts, department of corrections, prison releasing authorities, and community corrections agencies;
- a discussion of collateral consequences, including guidelines, notification, and order of relief
- a statement that revenue generation is not a legitimate purpose of criminal sentencing;
- explanation that sentences should not impose payments that push defendants below subsistence and a means to meet family obligation;
- guidance on sentencing of juvenile offenders in adult criminal court;
- procedures and protections for states that want to experiment with restorative justice; and
- suggestions on prioritizing of correctional resources at the front end and back end.

ALI also hopes to work with the National Conference of State Legislatures and other organizations that are exploring ways to address the issues of mass punishment and collateral consequences of criminal conviction.

We encourage you to download and distribute the black letter. The editing process continues on the comments and Reporters' Notes produced during the nearly 15 years we worked on this project, but significant edits to the black letter are not expected.

**The black letter of MPC: Sentencing, along with an introduction by Kevin R. Reitz and Cecilia M. Klingele, is available on the ALI website for free download at [www.ali.org/sentencing](http://www.ali.org/sentencing).**

## 50-State Report on Effective Relief Mechanisms *By Margaret Colgate Love*

This fall, the Collateral Consequences Resource Center will be finalizing a 50-state report on the availability of relief from the adverse civil effects of a criminal arrest or conviction. Using research from the Restoration of Rights Project, the report analyzes the data in several different categories, including executive pardon, judicial record-closing and certificates, and regulation of employment and licensing.

It showcases those states that have the most comprehensive and effective relief mechanisms, and at the same time provides a snapshot of the extraordinary recent interest in restoration of rights and status in state legislatures across the country. It also looks at what states are doing to enable less serious offenders to avoid a criminal record altogether, through statutory deferred adjudication programs managed by the courts.

**A preview of the report is available at [www.ccresourcecenter.org](http://www.ccresourcecenter.org).**

# Notes About Members and Colleagues

The *New York Law Journal* announced the 2017 honorees for Distinguished Leadership, part of its Professional Excellence Awards recognition event. Among the honorees were **Linda L. Addison** of Norton Rose Fulbright, **Molly S. Boast** of WilmerHale, **Richard L. Revesz** of NYU School of Law, and **E. Joshua Rosenkranz** of Orrick.

The Uniform Law Commission elected the following ALI members in officer positions: **Thomas J. Buiteweg** of Hudson Cook LLP as ULC Treasurer; **Carl H. Lisman** of Lisman Leckering as Chair of the Executive Committee; and **Dan Robbins** of the Motion Picture Association of America as Chair of the Committee on Scope and Program.

**David W. Clark** of Bradley Arant Boult Cummings received the Mississippi Bar's Distinguished Service Award for 2017. This award recognizes individuals for their outstanding achievement and/or a significant contribution to the legal community.

On August 17, **Mariano-Florentino Cuéllar** of the California Supreme Court addressed newly naturalized U.S. citizens during their U.S. Citizenship and Immigration Services Naturalization Ceremony at the Paramount Theater in Oakland, California.



*Bernice B. Donald receiving the 2017 Margaret Brent Women Lawyers of Achievement Award.  
Credit: American Bar Association*

**Bernice B. Donald** of the U.S. Court of Appeals for the Sixth Circuit was awarded the 2017 Margaret Brent Women Lawyers of Achievement Award by the ABA's Commission on Women in the Profession.

A law review article written by **Steven J. Eagle** of George Mason University Law School was cited in

the U.S. Supreme Court decision, *Murr v. Wisconsin*. The opinion upheld the rulings of Wisconsin courts, finding that the family owners of two adjacent riverside lots were not entitled to compensation as a result of development regulations that barred the sale of one of the lots.

In his July speech before the Judicial Institute of Hong Kong, **Robert S. French** discusses the work of ALI and its Restatements and their relevance to the work of the courts in Hong Kong.

**Andrew L. Frey** of Mayer Brown testified at a hearing before the Senate Judiciary Subcommittee on Crime and Terrorism. The subcommittee held the hearing to consider past investigations by the legislative and executive branches in light of current investigations into Russia and the 2016 elections.

*A Concise Restatement of Donative Transfers and Trusts*, compiled and edited by **Thomas P. Gallanis** of the University of Iowa, College of Law, is now available for purchase.

**Leonard H. Gilbert** of Holland & Knight was honored on June 19, at the International Insolvency Institute's (III) Legendary Dinner, held at Middle Temple in London, England.

**Raymond M. Kethledge** of the U.S. Court of Appeals for the Sixth Circuit has co-authored *Lead Yourself First: Inspiring Leadership Through Solitude*. This guide to the role of solitude in good leadership, penned by Judge Kethledge and Michael S. Earwin, includes profiles of historical and contemporary figures.

Duquesne School of Law announced plans to establish the **Thomas R. Kline** Center for Judicial Education of Duquesne University School of Law, the first of its kind in the nation. The center partners Pennsylvania's law schools and the Administrative Office of Pennsylvania Courts to create and deliver continuing education courses and seminars for jurists throughout the commonwealth.

**Ann M. Lousin** of The John Marshall Law School in Chicago was honored by the Illinois State Historical Society for her writings on Illinois constitutional law. This is the sixth year in a row that Professor Lousin has been honored by ISHS.

**Catherine P. McEwen** of the U.S. Bankruptcy Court for the Middle District of Florida has been appointed by Chief Justice John Roberts Jr. to serve a two-year term as the non-voting bankruptcy judge observer to the Judicial Conference of the United States, beginning October 1, 2017.

**Paula A. Monopoli** was named the Sol & Carlyn Hubert Professor of Law at the University of Maryland Carey School of Law where she teaches Property, Trusts and Estates, and a seminar on gender in the legal profession.

**Colleen P. Murphy** of the Roger Williams University School of Law received the Rhode Island Bar Association's Pro Bono Publico Award in June, and was voted Professor of the Year by the law school's 2017 graduating class.

**Dr. David Orentlicher** joined the UNLV William S. Boyd School of Law faculty as the Cobeaga Law Firm Professor of Law and co-director of the UNLV Health Law Program.

At its June meeting in Detroit, the ABA Board of Governors elected Young Conaway Stargatt & Taylor partner **Norman M. Powell** to a second three-year term as the ABA's Advisor to the Permanent Editorial Board for the Uniform Commercial Code.

## NOTES CONTINUED FROM PAGE 13

**Anita Ramasastry** of the University of Washington School of Law has been elected to serve a two-year term as President of the Uniform Law Commission. Professor Ramasastry's election took place at the Commission's 126th Annual Meeting. She is the first Asian American to serve as ULC President.

**Jonathan Rose** of the Sandra Day O'Connor College of Law at Arizona State University has published *Maintenance in Medieval England* (Cambridge University Press), part of the Cambridge Studies in English Legal History series.

**Marshall S. Shapo** of Northwestern University School of Law has released the seventh edition of *Shapo on the Law of Products Liability* (Edward Elgar Publishers).



Frank Sullivan Jr. receiving the 2017 American Inns of Court Professionalism Award for the Seventh Circuit.

**Frank Sullivan Jr.** of Indiana University Robert H. McKinney School of Law received the 2017 American Inns of Court Professionalism Award for the Seventh Circuit. The award was presented at the annual dinner of the 66th Annual Meeting of the Seventh Circuit Bar Association in Indianapolis.

**Chang Wang** of Thomson Reuters has authored *Constitutional Law: Lectures, Cases, and Resources* (Thomson Reuters and China University of Political Science and Law Press). The two-volume, 1,200-page book is the first English-to-Chinese textbook of U.S. Constitutional Law.

**Mark G. Yudof** of UC Berkeley Law taught a summer course on selected topics on freedom of expression at Hebrew University.

If you would like to share any recent events or publications in the next ALI newsletter, please email us at [communications@ali.org](mailto:communications@ali.org).

## In Memoriam: George C. Freeman Jr.

George Clemon Freeman Jr. passed away on June 26 in Chesterfield County, Virginia. He was 88.

Born in Birmingham, Alabama, in 1929, Mr. Freeman graduated, *magna cum laude*, from Vanderbilt University in 1950. He served as a line officer in the U.S. Navy on aircraft carriers USS Wasp and USS Hornet during the Korean War, and as a legal officer for the fleet. For several months, Mr. Freeman also served on Lord Louis Mountbatten's staff in Malta. After graduating from Yale Law School in 1956, he clerked for Supreme Court Justice Hugo Black.



Mr. Freeman joined Hunton & Williams (at the time, Hunton, Williams, Gay, & Moore) in 1957. Throughout his decades-long association with the firm, Freeman was a leader in regulatory and environmental law on the state and national levels. He appeared before congressional committees on legislation involving the Clean Air Act; Clean Water Act; Superfund Act; National Environmental Policy Act; Atomic Energy Act; and Fuel Use Act and Public Utility Regulatory Policy Act portions of the National Energy Act of 1978.

After leaving his full-time law practice with Hunton & Williams, Mr. Freeman had been active on conservation easements in the Northern Neck. His substantial contributions on behalf of preserving Virginia's land have been recognized by the groups to which he dedicated his time and efforts. He received the 2012 FitzGerald Bemiss Scenic Hero Award in recognition of his many years of conservation efforts in the Commonwealth.

ALI was fortunate to have Mr. Freeman on its Council from 1980 to 2010. He was an Adviser on two Torts Restatement projects and served on several committees, including the Steering Committee for the ALI Capital Campaign.

## In Memoriam

### ELECTED MEMBERS

**Ann Marie Hanrahan**, St. Paul, MN; **Allen M. Linden**, Toronto, Canada; **Miguel Angel Méndez**, San Carlos, CA; **Harry C. Sigman**, Los Angeles, CA

### LIFE MEMBERS

**William H. Allen**, Washington, DC; **Thomas Edgar Baker**, Houston, TX; **Marian Mayer Berkett**, New Orleans, LA; **Aubrey R. Bowles, III**, Richmond, VA; **David R. Brink**, Minneapolis, MN; **Alfred P. Carlton, Jr.**, Raleigh, NC; **Norman Dorsen**, New York, NY; **George Clemon Freeman, Jr.**, Richmond, VA; **Stanley Godofsky**, Boca Raton, FL; **Robert J. Haft**, Washington, DC; **James Clinkscales Hill**, Amelia Island, FL; **Joseph E. Irenas**, Camden, NJ; **Thomas L. Jones**, Tuscaloosa, AL; **Edward T. Kenyon**, Summit, NJ; **Richard D. Leggat**, Cohasset, MA; **Herbert L. Meschke**, Minot, ND; **Richard W. Odgers**, San Francisco, CA; **Roger V. Pugh**, New York, NY; **David A. Rice**, Chestnut Hill, MA; **Wallace M. Rudolph**, Orlando, FL; **John H. Schafer**, Washington, DC; **Frederick K. Steiner, Jr.**, Westlake Village, CA; **Neil Underberg**, New York, NY; **George Whittenburg**, Amarillo, TX



## New Members Elected

On July 20, the Council elected the following 58 persons:

**Daniel Abebe**, Chicago, IL  
**Douglas G. Baird**, Chicago, IL  
**Lynn A. Baker**, Austin, TX  
**Jeffrey A. Beaver**, Seattle, WA  
**Michelle A. Behnke**, Madison, WI  
**Michael M. Berger**, Los Angeles, CA  
**Boris Bershteyn**, New York, NY  
**Elise Boddie**, Newark, NJ  
**Deborah L. Brake**, Pittsburgh, PA  
**Colleen V. Chien**, Santa Clara, CA  
**Donald Earl Childress III**, Malibu, CA  
**Tanya S. Chutkan**, Washington, DC  
**Danielle Citron**, Baltimore, MD  
**Eric R. Claeys**, Arlington, VA  
**Margaret Oertling Cupples**,  
 Jackson, MS  
**Alicia J. Davis**, Ann Arbor, MI  
**Nancy Scott Degan**, New Orleans, LA  
**Michelle Adams Earley**, Austin, TX  
**Miguel A. Estrada**, Washington, DC  
**Richard T. Ford**, Palo Alto, CA

**Susan Gary**, Eugene, OR  
**Angela P. Harris**, Davis, CA  
**W. Scott Hastings**, Dallas, TX  
**Oona A. Hathaway**, New Haven, CT  
**Damaris Hernández**, New York, NY  
**Steven G. Horowitz**, New York, NY  
**Olatunde Johnson**, New York, NY  
**Wilbur E. Johnson**, Charleston, SC  
**John B. Kirkwood**, Seattle, WA  
**Dan D. Kohane**, Buffalo, NY  
**Charles R. Lawrence, III**, Honolulu, HI  
**Nancy Leong**, Denver, CO  
**Kay L. Levine**, Atlanta, GA  
**Lewis J. Liman**, New York, NY  
**Gerald López**, Los Angeles, CA  
**Julia D. Mahoney**, Charlottesville, VA  
**Jennifer S. Martin**, Miami Gardens, FL  
**Mari J. Matsuda**, Honolulu, HI  
**Jonathan S. Mothner**, Stamford, CT  
**John F. K. Oberdiek**, Camden, NJ

**Eduardo Peñalver**, Ithaca, NY  
**Saikrishna Bangalore Prakash**,  
 Charlottesville, VA  
**Carlton Wayne Reeves**, Jackson, MS  
**Patricia Lee Refo**, Phoenix, AZ  
**Liesa L. Richter**, Norman, OK  
**Beth Robinson**, Montpelier, VT  
**Randolph Stuart Sergent**,  
 Baltimore, MD  
**Robyn S. Shapiro**, Fox Point, WI  
**Katharine B. Silbaugh**, Boston, MA  
**David Alan Sklansky**, Stanford, CA  
**Carla C. van Dongen**, Bloomington, IL  
**Chilton Davis Varner**, Atlanta, GA  
**Kim McLane Wardlaw**, Pasadena, CA  
**Jane M. N. Webre**, Austin, TX  
**Kennon L. Wooten**, Austin, TX  
**Carolyn Wright**, Dallas, TX  
**Katrina M. Wyman**, New York, NY  
**Lawrence A. Zelenak**, Durham, NC

## Meetings and Events Calendar At-A-Glance

(for more information, visit [www.ali.org](http://www.ali.org))

Below is a list of upcoming meetings and events. This schedule may change, so please do not make travel arrangements until you receive an email notice that registration is open.

### 2017

#### October 12-13 (JOINT)

Restatement of the Law Fourth, Property  
 Philadelphia, PA

#### October 13 (JOINT)

Model Penal Code: Sexual Assault and Related Offenses  
 New York, NY

#### October 19-20

Council Meeting - October 2017  
 New York, NY

#### October 26 (JOINT)

Restatement of the Law, Consumer Contracts  
 Philadelphia, PA

#### October 26 (JOINT)

Restatement of the Law Third, Conflict of Laws  
 Philadelphia, PA

#### October 27 (JOINT)

Principles of the Law, Compliance, Enforcement,  
 and Risk Management for Corporations, Nonprofits, and  
 Other Organizations  
 Philadelphia, PA

#### November 9 (JOINT)

Principles of the Law, Policing  
 Philadelphia, PA

#### November 10 (JOINT)

Restatement of the Law, The U.S. Law of International  
 Commercial Arbitration  
 Philadelphia, PA

#### November 30 (JOINT)

Restatement of the Law, The Law of American Indians  
 New York, NY

#### December 1 (JOINT)

Restatement of the Law, Children and the Law  
 Philadelphia, PA

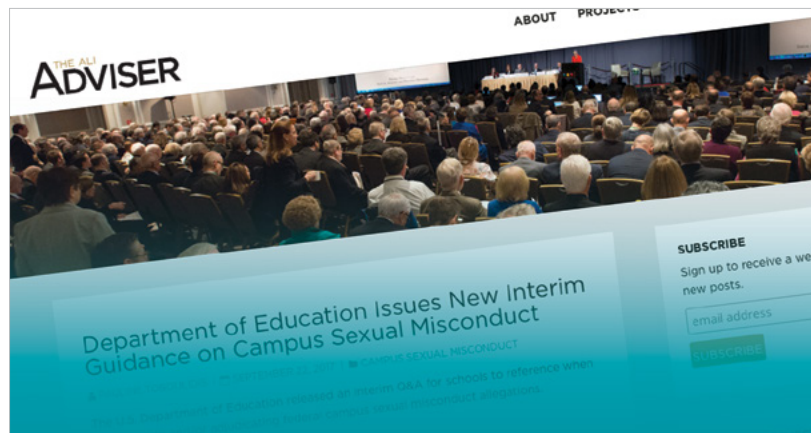
#### December 7 (JOINT)

Restatement of the Law, Copyright  
 Philadelphia, PA



(ISSN 0164-5757)  
THE AMERICAN LAW INSTITUTE  
4025 CHESTNUT STREET  
PHILADELPHIA, PA 19104-3099

NONPROFIT ORG  
U.S. POSTAGE  
**PAID**  
ALI



## Happy Anniversary to *The ALI Adviser*

This September marked the one-year anniversary of *The ALI Adviser*. For the past year, the *Adviser* has been sharing with the public information related to current ALI projects, including black letter discussion, project updates, and coverage on legal topics related to ALI's current projects. Be sure to subscribe to our weekly digest by visiting [www.thealiadviser.org](http://www.thealiadviser.org).

We are always on the lookout for articles by ALI members. If you are interested in contributing a piece, email the Communications Department at [communications@ali.org](mailto:communications@ali.org).