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The Wisdom of Crowds™

By William F. Lee of WilmerHale

ADAPTED FROM A SPEECH PRESENTED AT THE 89TH ANNUAL MEETING

I have been a member of this extraordinary institution for 30 years. For all of us, the ALI has been a meaningful and special organization. Since my election, much has changed in law practice, and much has changed at the Institute as well.

One of those changes—a change that is profound and will have far-reaching effects—is the need for all of us in the profession to work and think effectively as leaders and team members in the practice of law. To use the title of the well-known book, the profession has come to recognize and need *The Wisdom of Crowds*.

How does this relate to The American Law Institute, and what does it mean for The American Law Institute? The ALI is one of the pioneers of this very concept. When the Institute was formed in 1923, it immediately issued drafts of Restatements of various totems of the legal profession: Agency, Contracts, Property, Torts, Restitution, Conflict of Laws, and more. These Restatements, and more broadly the Institute's collaborative process for issuing its Restatements, its Principles, its Model Codes, are truly, in my view, among the best and earliest examples of this concept. Each of these efforts demonstrated that the work of a group as a whole is greater than the sum of its parts, and the wisdom of the crowd is greater than any of us individually.

The Institute's process for developing these publications is a prime example, in my view, of the success that comes from aggregating the wisdom and experience of many very, very smart people on a particular subject to develop the best statement of the law that a collective group can provide.

As we prepare for our 95th Annual Meeting, I hope we will all consider just how the Institute and the profession in general can use this model, the wisdom of the crowd, to address the new challenges of the American legal landscape. The Institute itself is doing it. It is addressing the developments in the law of torts, property, and other legal constructs that have existed since the time of Blackstone. But it is also bringing to bear its collective wisdom on contemporary areas: policing, international arbitration, data privacy, and government ethics.

The concepts of leadership, teamwork, and collective effort are, of course, not discipline dependent. I mentioned the fascinating book, by James Surowiecki, *The Wisdom of Crowds*[1]. It has nothing to do with law practice. It has nothing to do with most of what you are doing every day. But it provides a compelling case for the conclusion that the collective wisdom of groups is better suited to solve problems and come to wise decisions than an elite few.

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THE DIRECTOR'S LETTER BY RICHARD L. REVESZ

Codes and Majority Rules

As I indicated in my Summer 2015 letter, early in my tenure The American Law Institute clarified the rules that govern its Restatements and, accordingly, updated its Style Manual (formally "Capturing the Voice of The American Law Institute: A Handbook for ALI Reporters and Those Who Review Their Work"). As the Style Manual now indicates, the starting point in fashioning Restatement black-letter rules is ascertaining the nature of the majority rule. Restatements can depart from majority rules under specified circumstances but, if they do, they must say so explicitly and explain why (pp. 5-6). Do the same rules apply to the ALI's Codes? The Style Manual does not provide much guidance on this issue. It indicates that our codifications "have built upon, rationalized, and synthesized previous legislation ... rather than proposing legislation in fields where it had not previously existed" (p. 11). The second clause indicates that we should not undertake codifications in emerging areas of law, which have not yet been the subject of sustained legislative attention, like for example, driverless cars or artificial intelligence. But the first clause does not give guidance on how codifications of established areas should treat existing statutory enactments. For this reason, the best place to seek answers to the question of whether the relationship between Restatements and majority rules applies to codes is in the approach the ALI took with respect to this issue in its prior work. Here, I will focus on our two most influential codifications: the Model Penal Code (MPC) and the Uniform Commercial Code (UCC).

Prior to the MPC, efforts to codify the criminal law in the United States, including undertakings in New York and Louisiana, had been non-reformist. In contrast, the MPC departed from this earlier tradition. Sanford Kadish, a distinguished criminal law academic, noted that the MPC was motivated by "the spirit of

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Upcoming Meetings & Events

For more information, visit *www.ali.org*.

JANUARY 2018

January 18-19
Council Meeting - January 2018
Philadelphia, PA

APRIL 2018

April 5 (JOINT)
Principles of the Law, Data Privacy
Washington, DC

April 13 (JOINT)
Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

April 25
ALI Members Reception: Chicago
Hosted by Sidley Austin LLP and Teresa Wilton Harmon
Chicago, IL

VIEW ALL UPCOMING MEETINGS AND EVENTS ON PAGE 23.

SAVE THE DATE
95th Annual Meeting
MAY 21-23 | WASHINGTON, DC

Projects in Action: *The ALI Adviser*

Have you visited *The ALI Adviser* lately? This website provides readers information about legal topics and issues related to ALI's current projects. Visit *www.thealiadviser.org* to read more.

To Sue and Be Sued: Capacity and Immunity of American Indian Nations

Can American Indian nations sue and be sued in federal and state courts? Specific issues are whether tribes have corporate capacity to sue, whether a Native group has recognized status as a tribe, and whether and to what extent tribes and their officers have governmental immunity from suit.

Digital Surveillance and the Fourth Amendment

This week, the U.S. Supreme Court heard oral arguments in *Carpenter v. United States*, where the question presented is whether the Fourth Amendment permits the warrantless seizure and search of a user's cellphone location and movement information.

Should Juvenile Court Include 18-year-olds?

The Northwestern District Attorney is working to reform juvenile court in Massachusetts by lobbying the State House to include 18-year-olds in its system.

Journal of Tort Law

The faculty-edited *Journal of Tort Law* is hosting a symposium on the Restatement Third of Torts: Intentional Torts to Persons. Professors Anita Bernstein, Martha Chamallas, Mark Geistfeld, Nancy Moore, and Stephen Sugarman have published articles commenting upon the project, and Reporters Kenneth W. Simons and Jonathan Cardi will be drafting a response.

U.S. Supreme Court Denies Review of Indian Child Welfare Act

In the case, *S.S. v. Colorado River Indian Tribes*, the U.S. Supreme Court recently denied a petition for certiorari filed by the Goldwater Institute. The petition alleges the Indian Child Welfare Act, a federal law that established standards for the placement of Native American children in foster and adoptive homes, is unconstitutional.

THE DIRECTOR'S LETTER CONTINUED FROM PAGE 1

root-and-branch rethinking and reformulation toward a more just and more effective criminal law."

The ALI's goals for the MPC were clearly elaborated in the memorandum proposing the project. After indicating that criminal law, "should surely be as rational and just as law can be," the memorandum criticized the status quo in strong terms: "penal law to-day almost as much as twenty years ago shows the neglect with which it has been treated for so long." And, it indicated that the MPC was responsive to the need of engaging in "systematic re-examination of the content, methods and objectives of the penal law."

The MPC rose to the challenge. While the drafting was underway, Herbert Wechsler, its Chief Reporter and later an illustrious ALI Director for more than two decades, noted that the ALI was seeking to construct an "ideal penal code," which would "take account of long range values as distinguished from immediate political demands." And, in his foreword to the MPC, Wechsler said that "the purpose of the Institute in undertaking preparation of the [MPC]" was to "stimulate" legislatures to revise the content of their penal laws by reference to "a contemporary reasoned judgment."

Consistent with this objective, the MPC was responsible for significant substantive innovations. For example, the MPC pushed back against the growing application of strict liability in criminal law. Herbert Packer, another distinguished criminal law academic pointed to the Code's provisions on mistake of fact, unpublished criminal laws, felony-murder, and intoxication as examples of the Code's commitment to the requirement of *mens rea* and aversion to strict criminal liability. Even where the MPC allowed strict criminal liability, it severely narrowed its scope. The Comment on Section 2.05, after noting that the section "makes a frontal attack on absolute or strict liability in the penal law," added that "[t]he liabilities involved are indefensible, unless reduced to terms that insulate conviction from the type of moral condemnation that is and ought to be implicit when a sentence of probation or imprisonment may be imposed."

The MPC was also concerned with reforming law in accordance with current scientific knowledge. For example, in a memorandum to the MPC's advisory committee, Wechsler argued that the MPC should reflect the current technical capacities of psychiatrists in evaluating mental disease, as well as an increasing lack of clarity about what constitutes mental disease in the psychiatric community and the public at large. Consistent with this approach, the MPC determined that lack of criminal responsibility could result not only from cognitive challenges but also from "noncognitive impairments," the exclusion of which "leads psychiatrists to believe that much that they consider relevant to a defendant's responsibility or lack of it is considered irrelevant by the law."

The UCC follows a similar reformist pattern. Seeking funding for the project, George Wharton Pepper, the ALI's President at the time, wrote that then existing commercial laws were outdated, inefficient, and inapplicable to the realities of commerce, noting, for example, that "[t]he law regulating negotiable instruments is almost fifty years old and the Uniform Sales Act only ten years younger." He underscored that "many changes in business practices have occurred." As a result, "[l]aws which were entirely suitable in 1900 are necessarily outmoded in many important respects at the present time."

Accordingly, Chief Reporter Karl Llewellyn, another iconic ALI figure, approached the drafting of the UCC with a strong reformist agenda. In particular, Llewellyn and the other UCC drafters were concerned with reforming current law to better protect the rights of consumers. Writing on the UCC's history, Allen R. Kamp indicated that Llewellyn was heavily influenced by contemporary social science and that "[t]hese teachings gave rise to his goals for his proposed commercial statute: the use of norms of merchant behavior, the achievement of fairness that would result from balanced trade rules and equality of bargaining, and the achievement of modernistic efficiency that would come from discarding outmoded concepts and formal rules unrelated to commercial reality." Moreover, Llewellyn was concerned with, "good, rather than merely standard, merchant practices." Though some of the more ambitious reforms were curtailed during the drafting process, as Homer Kripke, a leading commercial law scholar, noted, Llewellyn's reformist orientation, significantly focused on the protection of consumers, was reflected in requirements concerning the requirement for a conspicuous writing to modify or exclude implied warranties, unconscionability, and the placement of risk on market professionals.

In summary, two of the ALI's most significant figures, Herbert Wechsler and Karl Llewellyn, did not seek, as the lead Reporters of their respective projects, to reflect the approaches followed at the time in a majority of jurisdictions. Quite to the contrary, they were motivated by a desire to discard outmoded approaches and to adopt rules that better comported with modern understandings of justice and fairness, and that reflected contemporary work in the social sciences. In summary, these codes treated existing law in a manner that is altogether different from the approach of the Restatements.

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*.

Many Voices. Collective Wisdom.

95th Annual Meeting
May 21-23
Washington, DC

THE WISDOM OF CROWDS CONTINUED FROM PAGE 1

As Mr. Surowiecki states: "With most things, the average is mediocrity. With decision making, it's often excellence. You could say it's as if we've been programmed to be collectively smart."[2]

Nowhere have I seen this concept become more true than in the practice of law. To some degree, this is simply the product of the size and complexity of the matters and the cases that we are dealing with today.

Today, the world is different. Our roles as lawyers have changed. No longer is it enough to be just a superior analytical thinker. You need to be just that, but it is not enough. No longer is it enough to be just a superior individual contributor. It is important that you be so, but it is not enough. Today, great lawyers fulfill three roles. They are great analytical thinkers, just as lawyers have been for centuries, but they are great leaders and effective team members, and they are wise counselors.

I have had the honor of teaching the course, "Problem Solving Workshop," at Harvard Law School. The course was the brainchild of then-dean, now Justice, Elena Kagan, Martha Minow, Todd D. Rakoff, Joseph William Singer, and some others. It took over five years to develop and has now become a required course of all first-year students.

The course is not labeled "torts"; nor "contracts"; nor "criminal law." It actually presents the students with a series of real-world problems that are complicated legally, ethically, and morally.

On the first day, to get the students' attention, I do two things. First, I talk about the three roles of a lawyer: great analytical thinker, great leader and team member, and wise counselor. The second thing I do to get their attention is this. On the very first day, I give them 10 questions. The questions are as varied as this: What is the per capita consumption of eggs in the United States on a daily basis? When was the Gutenberg press invented? What is the 101st prime number?

They all laugh. They are very accomplished people. They have no idea why we are asking these questions, but here's what we do. We have them answer all of the questions individually, and they give a confidence interval. Then, we organize the students into the teams, teams in which they will work with for the rest of the semester. In their teams, they answer the questions again. And I promise you that when they do it, they laugh; there is a lot of laughter and tittering in the classroom. They think the exercise a little bit of a joke.

That evening, we run the answers through a computer program. The results are the same every year. The best-performing teams outperform the best-performing individuals by a statistically significant margin. The best-performing teams do not have the best-performing individuals on them. Individually, the men are much, much more confident in their answers than the women. Individually, the women are much closer to right than the men.

We can use the computer-program results to actually show the students how their teams have learned and come closer to what is a correct answer. I promise you even for this accomplished group of first-year law students, the results grab their attention, and every year the room gets very quiet. You can almost see them thinking to themselves: well, maybe there's something here after all.

To make the point, I intentionally organize the teams so that students with very different backgrounds and perspectives have to work together. One year, I had one team who had a man who had interned for Newt Gingrich, a man who had interned for Jeb Bush, two avowed feminists from Berkeley, and a person who wanted to be an environmental lawyer. They struggled at first. They struggled at first because they were so different in their perspectives; they were so different in their outlooks. They came to see me because they said it couldn't work. At the end, they produced the most creative work in the class. They brought together their different perspectives and had some of the best ideas, the best thinking, the best recommendations of any team that we had taught. And, on the very last night of the class, the five of them went out to dinner in Boston's North End. I considered that a triumph of some kind.

This course, like the Restatements and the Institute's other initiatives, teaches, I hope, our newest generation of lawyers that if they work together, if they engage in collective conduct, they will come up with better, more meaningful answers than even the best students could come to individually. The course itself and the type of teaching the course provides has garnered enough interest that faculty from the Harvard Law School who are involved in teaching the course have held one-day workshops for people from other law schools throughout the country just to describe how to teach the course. At the most fundamental level, we hope we are teaching the students the benefit of collective judgment; the need to be more than an individually great analytical thinker; and the need to be a leader, a good team member, a wise counselor.

So, let me end where I began by expressing my appreciation to the Institute for the honor of being a member of this great Institute, by, more importantly, thanking the Institute for its extraordinary work and extraordinary efforts in the development of the law, and finally for being a true pioneer in recognizing and employing the wisdom of the crowd.

1 James Surowiecki, *The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies, and Nations* (Doubleday 2004).

2 *Id.* at 11.

Project Spotlight: Restatement of the Law, Children and the Law

By Justice Debra H. Lehrmann, Supreme Court of Texas

INTRODUCTION:

For the first time, the ALI is undertaking a comprehensive explanation of the legal issues related to children, which should be of great benefit to the legal community and to society generally. Traditionally, children had few rights, and full authority over their lives was vested in their parents. A paradigm shift began in the 1960s and was helped along by several Supreme Court decisions extending certain constitutional rights to children. Since then, children have gained stronger protection of their expressive and due-process rights and greater autonomy in some circumstances. At the same time, ceding independence to children in some spheres may have resulted in harsher consequences for delinquency and criminality. The historic justification for rehabilitative treatment for youth offenders—diminished culpability by virtue of immaturity—had been eroded. That trend itself has recently been reversed by courts and lawmakers in light of developments in social-science research into juvenile development.

The law regulating children, and their relationships with family and the state, has grown complex. We now grapple with creating a cohesive understanding of the law that balances children's rights against parental authority and the state's commitment to support child wellbeing. That is the purpose of this project. And though this is a Restatement rather than a model code, when there is no clear consensus, we aim to support progressive statements of the law. For example, the Restatement disfavors black letter formulations that allow unwarranted state intrusions into the workings of low income or cultural minority families.

DISCUSSION:

The Restatement is organized into four broad, context-oriented Parts that overlap slightly. The first Part examines the law relevant to family relationships, namely the authority and responsibilities of parents as well as the grounds and consequences of state interventions in familial relations. The second considers children's rights in public schools, where the state's power over children is heightened. That Part also explains the state's obligations to provide education and to keep students safe. Third, the Restatement deals with children in the justice system. Children possess procedural rights in delinquency proceedings that trace back to the Supreme Court's 1967 *In re Gault* opinion, and the law regarding a child's competence to stand for criminal proceedings has changed greatly in the last decade or so. Social science factors heavily into the developments in this Part. Finally, the fourth Part contemplates the relationship between the child and society outside the contexts of family, school, and the justice system. While children do not possess the full rights of adults, there are some situations in which children (and especially mature children) do enjoy more autonomy, such as in medical decisionmaking.

Part I first aggregates the obligations parents owe their children and the authority parents have over their children. Core parental rights include the abilities to inculcate a child in the religion of the parent's choosing and to decide the type of education the child will receive. With power comes responsibility; among other things, parents must provide an education and economic support. Parents must also provide reasonable medical care to their children, though the law allows for religiously motivated alternatives in many circumstances.

Another power parents wield is the ability to make decisions about a child's familial associations. While the Supreme Court, in *Troxel v. Granville*, held that a court cannot interfere with a parent's associational decision under a best-interest standard, the Restatement recognizes that a court may interfere with such a decision under a harm standard. Significantly, harm is not an element of the claim when the third party claims to be a de facto parent, has lived with the child for a significant period of time, and has performed a majority of the parenting functions for the child or has shared parenting functions with a biological parent. The underlying policy consideration: a child is presumptively harmed when bonded relationships are severed. The relevant Section does not limit the right to seek visitation only to close family members, like siblings and grandparents. Instead, in recognition of diverse family dynamics across cultures, the Section refers simply to third parties.

Part I then looks to what happens when parents don't live up to expectations. The state may intervene in cases of abuse and neglect, which each come in many varieties. Here, the guiding principle for the state is to protect the child's wellbeing. That may mean removing a child from an abusive home, or, in egregious cases, terminating the parental rights of an offending parent. However, the societal presumption that a child is typically best off in the care and custody of his or her parents reveals a tension inherent in the cardinal rule. The Restatement attempts to make sense of these competing child-protection and family-protection interests.

Part II turns to the relationship between children and the state in the context of public schools. To begin, all states offer a constitutional guarantee of free education. When a child is in public school, the state takes on a quasi-parental role, and its authority over the child is necessarily heightened. Though a school may regulate students in many ways, its powers are not unlimited. The second Part deals largely with the First Amendment rights of children in schools. Students' expressive rights and the limits on schools' abilities to limit said expression have been the subject of much litigation, but the Supreme Court has as yet stitched an incomplete patchwork explaining the extent of those rights. The Restatement pulls the important principles from the Supreme Court's five cases on the subject to give a fuller account of the law.

The third Part shifts focus to the interactions between children and the state in the justice system. How the state handles youth crime has changed drastically since the 1960s, and this Restatement aims to buttress the progressive reforms that have occurred. In 1967, the Supreme Court ruled in In re Gault that children are constitutionally entitled to counsel and other procedural protections in delinquency proceedings, just as are adults in criminal proceedings. Thus began the proliferation of the idea of children as rights-holding people. By the 1990s, perhaps spurred by this new view of children and by an increase in crime generally, laws regarding youth crime became more punitive. As such, more children were shifted into the adult criminal system. But the system again shifted in the 2000s when social-science research suggested that the mental immaturity of children made them less responsible and more prone to rehabilitation. It is this developmental approach that our project entrenches in its statement of the law. In that vein, Part III features explanations of the competence of minors to participate in delinquency proceedings as well as related procedural issues. This Part also discusses the age boundaries for delinquency and criminal proceedings, and the standards employed in transferring a child to adult criminal court. We mostly leave the topics of prosecution and sentencing to the Model Penal Code.

The fourth and final Part examines the broad area of children in society. That is, it considers children as rights holders outside the familial, educational, and judicial contexts explored in the previous three Parts. Part IV spans such topics as ability to contract, liability in tort, and child-labor laws. It also addresses children's rights of access to various products and services, including those geared toward adults—tobacco, alcohol, pornography, and violent video games. And while parents have great authority over medical care for their children, the children themselves have complicated rights in this sphere, especially in relation to sexual and reproductive health decisions. The upshot is that the law affords mature minors more bodily autonomy to reflect the reality that a 16-year-old possesses vastly greater intellect than does a six-year-old. Importantly, the Restatement even summarizes the quickly developing law surrounding child sexual orientation and identity, including sexual (re)assignment procedures. This will no doubt be relevant to many practitioners.

SUMMARY:

This first Restatement of Children and the Law is a big undertaking. It takes a broad view of the law, hones in on important legal themes, and aims to create a comprehensive statement of the law. Two of the greatest challenges in the process are reconciling differences between jurisdictions and filling in gaps. To do this, we balance competing values. Foremost is protection of the wellbeing of the child, which acts as the guiding principle. But we must temper that against the core rights of parents to control the upbringing of their children and against the needs of the state to maintain order. We also look outside the law, to things like developmental science and principles of self-determination, for guidance. These threads are weaved throughout the Restatement to give readers a complete and coherent account of children and the law.

As a jurist who has devoted much of my professional career to the betterment of children, I am proud to work with the ALI on this important project. The willingness of this institution to embark upon this venture reflects society's move towards recognition of children as autonomous beings with individual needs, desires, feelings, and concerns. Two competing realities present real challenges in this area of the law: (1) children frequently lack the maturity and knowledge necessary to protect themselves and to make appropriate decisions, and (2) children are worthy individuals entitled to varying degrees of independence, deference, and respect depending upon their maturity levels. I admire the ALI for rising to the challenge—our children deserve it.

ALI Council Reviews Eight Project Drafts at October Meeting

Meeting in New York City on October 19 and 20, the ALI Council reviewed drafts for eight Institute projects. Drafts or portions of drafts for six projects received Council approval, subject to the meeting discussion and to the usual prerogative to make nonsubstantive editorial improvements.

Reporter Kermit Roosevelt III of the University of Pennsylvania Law School and Associate Reporters Laura Elizabeth Little of Temple University Beasley School of Law and Christopher A. Whytock of the University of California, Irvine School of Law, submitted Council Draft No. 2 of **Restatement of the Law Third, Conflict of Laws**, consisting of an introductory first Chapter, Chapter 2 on domicile, and §§ 5.01-5.08 of Chapter 5 on choice of law. Chapter 1 and §§ 2.01-2.07 of Chapter 2 previously received Council approval. The Council approved § 2.08, pertaining to juridical persons, and § 2.09, pertaining to governing law, as well as §§ 5.01-5.08 covering introductory choice-of-law issues and foreign law.

Council Draft No. 2 of **Restatement of the Law, Children and the Law**, was presented by Reporter Elizabeth S. Scott of Columbia Law School and Associate Reporters Richard J. Bonnie of the University of Virginia School of Law, Emily Buss of the University of Chicago Law School, Clare Huntington of Fordham University School of Law, Solangel Maldonado of Seton Hall University School of Law, and David D. Meyer of Tulane University Law School. Council Draft No. 2, comprising 14 Sections covering parental authority and responsibilities, state intervention for abuse and neglect, the state's obligation to provide education, delinquency proceedings, juveniles in the criminal-justice system, and medical decisionmaking, was approved by the Council.

The Council discussed but did not vote on Council Draft No. 3 of **Principles of the Law, Government Ethics**, presented by Reporter Richard Briffault of Columbia Law School and Associate Reporter Kathleen Clark of Washington University School of Law. The draft contains Chapter 3 on conflicts of interest and outside activities and Chapter 5 on post-government employment. Chapters 3 and 5, as revised to reflect the Council's discussion, will be on the Council's agenda in January, as well as a draft of Chapter 2 on gifts and financial relationships.

Reporter Matthew L.M. Fletcher and Associate Reporter Wenona T. Singel, both of Michigan State University College of Law, and Associate Reporter Kaighn Smith, Jr., of Drummond Woodsum submitted Council Draft No. 4 of **Restatement of the Law, The Law of American Indians**, consisting of §§ 15-16 and 20-35 of Chapter 2 on tribal authority. The Council approved Council Draft No. 4 with the exception of § 33 on the sovereign immunity of tribal officials, which the Reporters deferred for consideration at a future meeting.

Council Draft No. 2 of **Principles of the Law, Data Privacy**, comprising §§ 4-10 of Chapter 2, Data Privacy Principles, was submitted by Reporters Paul M. Schwartz of the University of California, Berkeley School of Law, and Daniel J. Solove of George Washington University Law School. The Council voted to approve § 6 on confidentiality, § 7 on use limitation, and § 8 on access and correction. Sections 4 on individual notice and 5 on consent were deferred until material on remedies is drafted. As the Reporters received numerous suggestions concerning § 9 on data retention and disposal and § 10 on data portability, that material will be revised and considered at a future meeting.

Reporter Kenneth W. Simons of the University of California, Irvine School of Law, and Associate Reporter W. Jonathan Cardi of Wake Forest University School of Law presented Council Draft No. 4 of **Restatement of the Law Third, Torts: Intentional Torts to Persons**. The draft contains several Sections of Chapter 1 on the definitions of intentional torts to persons, including selected consent provisions for specific intentional torts, and §§ 12-19 of Chapter 2 on consent. The Council approved § 3 on the definition of offensive contact, § 10 on participation in an intentional tort, § 12 on categories of consent precluding liability, and § 13 on actual consent. A revised draft of § 3 was distributed to the Council prior to the meeting and is available on the project page on the ALI website. There was insufficient time to consider the remaining material in the draft.

Reporter Vicki C. Jackson of Harvard Law School and Associate Reporter Suzanne Goldberg of Columbia Law School submitted their first Council Draft for **Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities**. Council Draft No. 1 contains four of 11 planned Chapters. The Council approved Chapter 1, covering first principles for procedural frameworks, and Chapter 2, covering notice and clarity of policies, support, and interim measures. As there was insufficient time to review Chapter 3 on the reporting of sexual assault and related misconduct and Chapter 4 on inquiries and investigations, the Council will consider those Chapters when it meets in January 2018.

The Council discussed Council Draft No. 6 of **Model Penal Code: Sexual Assault and Related Offenses**, presented by Reporter Stephen J. Schulhofer and Associate Reporter Erin E. Murphy, both of New York University School of Law, but no approval of any portion of the draft was sought. Council Draft No. 6 includes Sections dealing with forcible rape, rape or sexual assault of a vulnerable person, sexual assault by coercion or exploitation, criminal sexual contact, sex trafficking and related offenses, and permission to use force. As planned, the project will be on the agenda for the Council's January 2018 meeting.

Council Meeting

October 19 and 20 in New York, NY

Troy A. McKenzie of NYU School of Law

Matthew L.M. Fletcher and Wenona T. Singel of Michigan State University College of Law and Kaighn Smith Jr. of Drummond Woodsum present the latest Council Draft along with Council member Diane P. Wood of the U.S. Court of Appeals, Seventh Circuit, and ALI Director Richard L. Revesz.

Ivan K. Fong of 3M Co.

Annual Report and Appeal

By now you should have received The American Law Institute's Annual Report in the mail, which highlights achievements accomplished during our 2016–2017 fiscal year. Notably, letters from President David F. Levi and Director Richard L. Revesz reflect on ALI's recently completed works and ongoing projects, and express their gratitude for the key roles played by our dedicated and insightful Reporters, Advisers, and members, who volunteer countless hours of their time advancing the Institute's mission.

ALI's work cannot be done, however, without the financial support of our members. One of the Institute's great strengths is our ideological and financial independence. Unlike many other nonprofit organizations, the Institute will not turn to interest groups or sponsors with agendas for funding. Because ALI membership is limited, broad member support is essential to ensuring that our work remains independent and free from any appearance of outside influence.

We hope that every member will make an end-of-year charitable contribution to ALI by completing and returning the gift card that accompanied the Annual Report, or the envelope that is included in this edition of *The ALI Reporter*. Donations to the Institute can also be made online at *www.ali.org/makeagift*, or by calling Kyle Jakob, ALI Development Manager, at 215-243-1660.

Thank you in advance for your generosity and best wishes for a happy and healthy 2018.

You may view the Annual Report online at *www.ali.org/AnnualReport*.

Member Spotlight: Brian E. Nelson

Brian Nelson is Vice President and General Counsel of LA 2028.

This interview is adapted from a transcribed conversation between Brian Nelson and ALI Communications Manager Pauline Toboulidis during the Compliance project meeting on October 27.

Pauline: How did you get to the Olympics?

Brian: Prior to coming to the effort to bid for and organize the Olympic and Paralympic Games, I was in government service; first working in the U.S. Department of Justice and then at the California Attorney General's Office. I was not really a corporate lawyer. I had overseen government contracting work but hadn't practiced corporate law in the private sector. When we first spoke, LA 2028's Chairman said, "Specialized corporate experience is not what we're looking for. We need a strong legal manager. Someone who has broad experience managing a range of legal issues and, from a regulatory perspective, has seen where problems have arisen in nonprofits and other corporate arenas." That's how I came to the Olympics, and, if I recall correctly, this background in regulatory enforcement is also why I was invited to join the ALI's Compliance project.

When I think of the Olympics today, I think of what is highlighted in the news; that these cities go through this effort and, in the end, they aren't really left with anything.

How do you tackle that? Do you think about that when you're making decisions?

One hundred percent. Good fiscal stewardship is the number one mantra. Two things you absolutely have to do to be successful are put on a great Games and do it under budget. Otherwise, the city of Los Angeles is contractually on the hook for any cost overruns and beyond that the State of California would be on the hook. We are confident we won't end with cost overruns because we have the benefit of an unprecedented amount of existing sports infrastructure and partners who are at the top of the sports marketing world and who know what the potential of that market can be.

It is a very unique world.

Very unique. Very specialized. We are going through this process now of developing an organizational governance structure that's going to be flexible enough for the small group of experts in the organizing committee for the next few years but that will also be formal enough that it can be scalable to a massive workforce, which is what it will be right before the Games in 2028.

So how do you manage those two extremes and how formal do you have to be now versus how formal do you have to be later?

You need to create corporate features that are sufficiently forward looking through this 11-year period so that you don't arrive at year 10 of our planning process and discover you have a significant issue. We can also well manage our Games planning by beginning to cement some of the key features of our Games planning soon. For example, we're going to begin to secure our major sponsors starting in two years. Once you have revenue flow that is certain, then you can focus on cost management and your risk profile goes way down.

Looking at the Compliance project. You've been involved with this project for a while. Do these project conversations help you make decisions?

For me, the timing has been perfect and has been perfect throughout this process. LA 2028 is thinking as an organization about the same issues the Compliance project is tackling. What are the big risk areas corporations face? What internal-control processes are corporations using to identify those big risk areas? How are corporations communicating and addressing those risks with their leadership and with their broader organizations? How are they enforcing their compliance programs? This exercise is less about the baseline legal and regulatory rules and more about developing the analytical tools to identify and implement best governance practices.

This project has been great in helping me think through how these strategies can be applied in practice to my organization and what issues to anticipate in the context of the much larger organization we will be down the road. And getting input from all of the various industries that are feeding into this project gives me confidence in its scope and approach and that we have the analytical tools we need to build a compliance program that is both scalable and resilient. We're going to modify it along the way as we need to, but we should not be starting from scratch in five or ten years. From that perspective, I think our leadership team is very happy I'm participating in this project with the ALI.

I saw your head pop up when we were talking about the liability of parent corporations ...

Oh yeah, we will need to form a commercial joint venture with the U.S. Olympic Committee, and we're currently thinking about how the joint venture will relate to the organizing committee. So thinking about governance, compliance and risk management with the ALI in that context will be extremely valuable as we develop that joint venture.

I love the melting pot of experience and backgrounds in this project, and how you can get to a point where participants agree that these are the best practices for everybody. It's a really cool thing. Are there similar experiences in the Olympic context?

When you're involved with an international mega-event, you have to especially consider best practices in the context of the international rules that relate to how we communicate with people—particularly, for example, the EU's privacy rules. In that sense, we are fortunate in that we operate cooperatively with lawyers practicing around the world. It has, for example, been great to hear the legal issues that my counterparts at the Paris 2024 Committee are worried about from an American law perspective. We will also have opportunities to interact and discuss how we broadly approach compliance and internal control issues on our respective ends. Some of that input is going to inform what I focus on for the European fans who are going to attend or participate in our Games and vice versa for Americans with the 2024 Games in Paris.

We also spend a lot of time thinking about the FCPA as an important body of U.S. law that sets out basic rules of the road for our international interactions. And the International Olympic Committee has certain compliance and ethics requirements that are derived from how that Swiss-based organization interacts with European compliance rules. There will be lots of occasions like this where the LA Games organizing committee will be called upon to deal with multiple forms of laws, regulations, and rules.

As the head of the worldwide Olympic Movement, the International Olympic Committee independently also works hard to create a single set of rules that applies equally to all of its partners. A core Olympic value is that the Games can be hosted anywhere in the world so the International Olympic Committee understandably tries to maintain a universal set of rules from that perspective.

I need to know which athletes you've met.

Our head of athlete relations is Janet Evans, a world famous swimmer who sits in our office. She has put together an incredible coalition of athletes that includes sprinting legends Michael Johnson and Alyson Felix, NBA star Kobe Bryant, and fellow swimmers Michael Phelps and Katie Ledecky. Their passion for the Olympic and Paralympic Games is incredible and is a reflection of the fact that their lives, in some way or another, have been changed by the Olympic movement.

I think one of the great things about this corner of the sports world is that for the athletes who have the honor of representing their county as an Olympian or Paralympian – even though at some point the athletic part of the career comes to an end – that athlete is recognized as an Olympian or Paralympian for life. That lifetime recognition reflects the belief that participation in the Games becomes a core part of who the athlete is and what the athlete represents to his or her home communities. In that way, it's really inspirational to work in an athlete-centered environment, and it helps frame everything we do.

It comes back to our own organization's value system. I don't think very many of us working for the organizing committee are in it just for two two-week events 11 years away. We are constantly asking ourselves what can we do with the incredible platform that the Games represent to have a conversation that is going to hopefully move society forward on a community level, and maybe even nationally, in a way that is more positive than where we are today? We aspire for the Games in 2028 to become integral to the broader narrative and growth of our community just as they will be for the lives of the athletes who participate in them.

That's the heartbreaking part about the U.S. failing to qualify for the World Cup. It burns you a little bit. We're running out of places where we can be this way.

That's right. Sports used to be this free space to just enjoy the competition on the field of play. One of the pitches that we made in the campaign to host the Games was that the United States really needs the Olympic and Paralympic Games at this point. To your point, we do not have enough opportunities to all support each other and really celebrate together. So, hopefully the Games will do that in 2028, and we can also use the excitement at the prospect of a U.S. Games for the next ten years to start to bring some of that good feeling back into our communities well before 2028.

I think L.A.'s a great spot for that. Which sport do you recommend for the future generation of Olympians? You now have the inside scoop.

One of the cool things is we get to introduce a couple of exhibition sports. We haven't begun that process of deciding what those could be. Exhibition sports in the 2020 Games in Tokyo are going to include surfing, which is obviously a Southern California icon and rock climbing, which is another great outdoor Southern California sport.

Now I want to go!

Good, good! No, but truly, it is an honor to have this great opportunity to help lead the conversation on how we set up a durable corporate structure so that we'll be able to do all of these things in 11 years and do it in a way that doesn't create a bad outcome for the taxpayers of the city or state or country. A lot of that thinking will be informed by the ALI's Compliance project, so it's been fantastic.

Project Meeting Updates

Charitable Nonprofit Organizations

October 5 in Los Angeles, CA

Preliminary Draft No. 4 contains Sections drafted or revised since the 2017 Annual Meeting, including portions of Chapters 2, 4, and 5. The membership approved Tentative Draft No. 2 at the Annual Meeting.

Property

October 12 and 13 in Philadelphia, PA

During this two-day project meeting, participants discussed Preliminary Draft No. 3, which consists of new provisional Sections on possession, revised provisional Sections on trespass and nuisance, a revised draft Division on bailments, a new draft Division on the estate system, and a revised draft Division on land-use regulation.

MPC: Sexual Assault

October 13 in New York, NY

At the October meeting, the Advisers and MCG discussed Preliminary Draft No. 8, which includes definitions of "sexual contact" and "registrable offense," as well as Sections on Forcible Rape, Criminal Sexual Contact, Sex Trafficking and Related Offenses, and Permission to Use Force. This project is scheduled to appear on the January 2018 Council Meeting agenda.

Conflict of Laws

October 26 in Philadelphia, PA

Preliminary Draft No. 3 includes revisions of Chapter 6 (Torts), Topic 1 (General Rules), and Chapter 7 (Property), as well as two new segments, portions of Chapter 6, Topic 2 (Particular Torts and Issues), and Chapter 8 (Contracts).

Consumer Contracts

October 26 in Philadelphia, PA

The Reporters presented Preliminary Draft No. 3. The Advisers and MCG reviewed this complete draft, updated since the discussion at the 2017 Annual Meeting. A Council Draft will be prepared and presented at the January 2018 Council meeting.

FROM TOP TO BOTTOM

Associate Reporter Brian A. Lee of Brooklyn Law School (Property)

I. Bennett Capers of Brooklyn Law School (Sexual Assault)

Linda J. Silberman of NYU School of Law (Conflict of Laws)

Cedric C. Chao of DLA Piper US, Andrea K. Bjorklund of McGill University Faculty of Law, and Abby Cohen Smutny of White & Case (International Commercial Arbitration)

Compliance

October 27 in Philadelphia, PA

Preliminary Draft No. 3 covers the entire scope of the project: Chapter 1 (Definitions), Chapter 2 (Subject Matter, Objectives, and Interpretation), Chapter 3 (Governance), Chapter 4 (Risk Management), Chapter 5 (Compliance), and Chapter 6 (Liability and Enforcement).

Policing

November 9 in Philadelphia, PA

The Policing MCG and Advisers discussed Sections of Part II, Principles of Search and Seizure, including suspicionless searches and seizures, Encounters, particularly ensuring the legitimacy of police encounters, and Policing Databases.

International Commercial Arbitration

November 10 in Philadelphia, PA

Project participants were presented with Preliminary Draft No. 10, which consists of Chapter 1 (General Provisions), Topic 2 (Federal Preemption of State Law) and Chapter 3 (The Judicial Role in Connection with the Arbitral Proceeding). This project is scheduled to appear on the January 2018 Council Meeting agenda.

FROM TOP TO BOTTOM

Lauren E. Willis of Loyola Law School, Los Angeles (Consumer Contracts)

Kathryn S. Reimann of Citigroup Inc. (Compliance)

Reporter Barry Friedman of NYU School of Law and Associate Reporter Tracey L. Meares of Yale Law School (Policing)

Reflection on Collective Thought

By Ward Farnsworth, Reporter for the Restatement of the Law Third, Torts: Liability for Economic Harm

THIS PIECE IS ADAPTED FROM A SPEECH BY WARD FARNSWORTH ON NOVEMBER 14.

I consider a Restatement in general to be an exercise in harnessing collective wisdom, not the wisdom of a Reporter. It's an attempt to gather the collective wisdom of the courts in this country on various difficult questions, and the collective wisdom of the bench, the bar, and the legal academy in making sense out of what the courts have said. My job as a Reporter is to gather, assimilate, and make sense out of data from those two directions—to understand very well what the courts are saying and doing, then to understand as well as I can what lawyers and scholars have to say about all the issues raised when the courts do not agree.

As for my project: everybody has heard of the Restatement of Torts and especially the Second Restatement. The Second was written in the 1960s and 70s and greatly influenced American tort law in the years afterwards. The American Law Institute then set out in the 1990s to restate the law of torts once again. Every area of American law that is active needs to be restated and then re-restated from time to time, because of course the law changes and evolves. For a Restatement to be a useful and meaningful document to the bench and bar, it must be reasonably current. It has to be restating where the courts currently are, not where they once were. Tort law of course is an area that is often in flux. Courts are deciding new questions all the time or deciding old questions differently than they used to. It falls to the ALI to keep up.

For the Third Restatement of Torts, however, the ALI decided to go about the project a little differently than it had before. The Second Restatement of Torts was just that: one Restatement of all of tort law. The Third Restatement project was divided into parts. There is a products-liability Restatement. There are also Restatements of Torts on physical and emotional harm, apportionment of liability, and intentional torts to persons. My job as Reporter has been to work on a different part of the project: Liability for Economic Harm. This project covers torts that just cause money losses.

To return to the process of creating this Restatement, I repeat that our job one is to harness collective wisdom. That wisdom is embedded in the judicial decisions that our common-law courts make. Not any one decision, but the accumulation of them. Our first job is to ascertain the consensus of the courts if there is one. A judge who is confronted with a new question wants to know how a majority of American courts have answered it. But we seek to do more than just explain that. Our goal is to make the law as rational as we can, to understand not just where our courts are but the best reasoning they have been able to offer to explain why, and then to present their position—the consensus view of American courts—in the most rational and intelligent light we can.

I CONSIDER A RESTATEMENT IN GENERAL TO BE AN EXERCISE IN HARNESSING COLLECTIVE WISDOM, NOT THE WISDOM OF A REPORTER.

With that said, we don't always adhere to the majority approach. It sometimes happens that in the considered view of the Reporter, the Advisers, the Members Consultative Group, and the ALI Council, the best view on a question is the one taken by a minority of American courts. The ALI gives itself the liberty to restate the law as it is represented in a minority of jurisdictions for good and sound reasons that are then explained in the Restatement itself. But this is not done lightly. I carry a very strong presumption in favor of restating the law as I find it in the majority view of American courts. But sometimes a smaller number of courts will offer strong enough reasoning to overcome that presumption.

I think of this as something like managing a bank account. The ALI accumulates credibility, and its Restatements accumulate force, to the extent they are faithfully recounting the position of a majority of American courts on various questions. When the ALI takes a position contrary to the majority, in effect it spends some of that capital. People have come to trust the ALI and its judgment, and they're willing to defer to the ALI even when it doesn't agree with the majority of courts, because usually the ALI is quite conservative in their approach to these kinds of questions—not politically conservative, but conservative in method.

Once I create a draft that reflects the priorities just described, it is put before a series of audiences for comment and criticism—the Advisers, the Members Consultative Group, the ALI Council, and finally the general membership.

This is not always the most pleasant process in the world for a Reporter. You spend a lot of time writing something, and then sit in front of a lot of people who know at least as much about it as you do, if not more; their job is to throw darts at it and try to expose weaknesses, problems, or things that did not occur to you. They do a great job, and as a Reporter I'm always chagrined by the number of excellent points offered in those settings that I had not thought of myself. But of course I am also delighted, because this process improves the project considerably. I go back home with a book full of comments and objections that are usually very well taken. I revise the document and end up with something far better than before, because—again—it reflects collective wisdom: not just the collective wisdom of the courts, but this time the collective wisdom also of lawyers, judges, and scholars who have thought hard about the draft.

The result is never what I would have written by myself. It's better. So when the draft is finally done and approved, I don't quite view it as something that I wrote. It's more like something I coordinated. That's how it should be, because the Restatement was never supposed to be about what I thought anyway. It's supposed to be about the best we can all create together. And the more points of view the draft takes into account and the greater the number of contributors, the better the result will be.

The Institute in the Courts: State Supreme Courts Adopt Restatement Approaches

The Supreme Court of Nevada recently adopted the approach of Restatement of the Law Second, Torts § 46, Comments *j* and *k*, in *Franchise Tax Board of California v. Hyatt*, 401 P.3d 1110 (Nev. 2017). In that case, a taxpayer brought an action against the Franchise Tax Board of the State of California (FTB), which had determined that he owed the state millions, alleging that the FTB disclosed personal information and delayed resolution of his protests for 11 years, resulting in a daily interest charge of $8,000, that the imposition of tax assessments was the objective of the audits, and that an FTB auditor made disparaging remarks about him and his religion. The trial court entered judgment on a jury verdict for the plaintiff. The Supreme Court of Nevada affirmed in part, concluding that the defendant was not entitled to a statutory cap on damages that a similarly situated Nevada agency would be entitled to under similar circumstances. The United States Supreme Court vacated and remanded, holding that the Constitution did not permit Nevada to award damages against California agencies under Nevada law that were greater than it could award against Nevada agencies in similar circumstances. On remand, the Nevada Supreme Court affirmed in part, reversed in part, and remanded, holding, inter alia, that, even though the plaintiff did not present any medical evidence of severe emotional distress, "substantial evidence supports the jury's findings as to liability and an award of damages up to the amount of Nevada's statutory cap" for the plaintiff's claim of intentional infliction of emotional distress (IIED). The court explained that Restatement Second of Torts § 46, Comments *j* and *k* "provide for a sliding-scale approach in which the increased severity of the conduct will require less in the way of proof that emotional distress was suffered." The court determined that, in this case, the "facts support the conclusion that this case is at the more extreme end of the scale, and therefore less in the way of proof as to emotional distress suffered by [the plaintiff] is necessary," "specifically adopt[ing] the sliding-scale approach to proving a claim for IIED." The court also relied on §§ 652A, 652B, 652D, and 652E in examining the plaintiff's invasion-of-privacy claims and adopting the tort of false-light invasion of privacy.

In *2DP Blanding, LLC v. Palmer*, 2017 WL 3909824 (Sept. 6, 2017), the Supreme Court of Utah adopted the rule set forth in Restatement of the Law of Restitution § 74, Comment *i*. In that case, a third party that had purchased a parcel of real estate while the appeal of a trial court's order authorizing the foreclosure sale of the parcel was pending, which later resulted in the reversal of that order, brought an action to quiet title. The trial court entered summary judgment for the plaintiff. Affirming, the Supreme Court of Utah held that "an appeal from an unstayed foreclosure order d[id] not create a cloud on title" and that the plaintiff did not take the property subject to the resolution of the case on appeal. Quoting Restatement of Restitution § 74, Comment *i*, the court explained that a purchaser is "'protected as a bona fide purchaser' even if 'he has knowledge that an appeal is pending or even that he has knowledge of the grounds for appeal, except where he knows that the judgment was obtained by fraud.'" In adopting this rule, the court explained that it cited "the First Restatement on this point because it is the clearest articulation of the rule of relevance to this case. But we view this statement of the rule to be consistent with the law as stated in many jurisdictions and in subsequent restatements of the law of restitution," citing Restatement Third of Restitution and Unjust Enrichment § 18, Comment *f*.

The Institute is currently working on 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*.

What it Means to Be "Reckless"

By Stephanie A. Middleton, ALI Deputy Director

ALI's Sexual Assault project will update the Sexual Offenses provisions in Article 213 of the 1962 Model Penal Code. The project will define and grade offenses based on the act—what a person does—and the person's culpability or mental state. In order to understand the grading of offenses in the project, one must look at the 1962 Model Penal Code, Section 2.02. General Requirements of Culpability.

Model Penal Code Section 2.02. General Requirements of Culpability.

(1) Minimum Requirements of Culpability. Except as provided in Section 2.05, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of Culpability Defined.

(a) Purposely.

A person acts purposely with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly.

A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly.

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently.

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Provided. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for Negligence, Recklessness and Knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

The Model Penal Code of 1962 clarified and simplified criminal law in many ways, including by clearly defining four mental states relevant to determining culpability. The majority of states use the Model Penal Code's mental-state classification, and most jurisdictions have adopted criminal codes that substantially incorporate the Code's formulation of "recklessness."

The U.S. Supreme Court recently discussed the Code's mental-state construct in *Voisine v. United States*:

> To commit an assault recklessly is to take that action with a certain state of mind (or *mens rea*)—in the dominant formulation, to "consciously disregard[ ]" a substantial risk that the conduct will cause harm to another. ALI, Model Penal Code § 2.02(2)(c) (1962).... For purposes of comparison, to commit an assault knowingly or intentionally (the latter, to add yet another adverb, sometimes called "purposefully") is to act with another state of mind respecting that act's consequences—in the first case, to be "aware that [harm] is practically certain" and, in the second, to have that result as a "conscious object." Model Penal Code §§ 2.02(2)(a)-(b); Me. Rev. Stat. Ann., Tit. 17–A, §§ 35(1)-(2).

136 S.Ct. 2272, 2278 (2016).

The *Voisine* Court, in discussing the intent of the federal gun-control statute at issue in the case, explained:

> Several decades earlier, the Model Penal Code had taken the position that a *mens rea* of recklessness should generally suffice to establish criminal liability, including for assault. See § 2.02(3), Comments 4–5, at 243–244 ("purpose, knowledge, and recklessness are properly the basis for" such liability); § 211.1 (defining assault to include "purposely, knowingly, or recklessly caus[ing] bodily injury"). States quickly incorporated that view into their misdemeanor assault and battery statutes. So in linking § 922(g)(9) to those laws, Congress must have known it was sweeping in some persons who had engaged in reckless conduct. See, e.g., *United States v. Bailey*, 9 Pet. 238, 256, 9 L.Ed. 113 (1835) (Story, J.) ("Congress must be presumed to have legislated under this known state of the laws").

Id. at 2280.

The American Law Institute undertakes a project or portions of previous projects when there is evidence that there is need for clarification or revision. Article 213. Sexual Offenses, though forward looking in 1962, is outdated by both legal and societal standards. The Sentencing provisions from the 1962 Code recently were updated by ALI for similar reasons, and are being prepared as an official text now.

There is little evidence that Section 2.02. General Requirements of Culpability, is in need of revision. The project drafts should be read in conjunction with Section 2.02 and the other provisions of Article 2 of the 1962 Code ("General Principles of Liability"), which also defines other basic concepts and general rules of interpretation that govern the Model Penal Code as a whole. When using or analyzing any portion of the Code, it should be considered in the context of the whole Code, rather than as a discrete separate part.

The Model Code of Evidence and the Federal Rules of Evidence

This year, the Model Code of Evidence, published by ALI in 1942, celebrates its 75th anniversary.

In 1939, the Council approved the project to begin under the guidance of Reporter Edmund M. Morgan of Harvard Law School and an Adviser committee that included Learned Hand of the U.S. Court of Appeals for the Second Circuit.

In the Introduction to the Code, ALI Director William Draper Lewis noted that a "thorough revision of existing law" was needed. At the time, it was a tremendous undertaking for ALI. As Director Lewis noted, "the Rules themselves in numerous and important instances are so defective that instead of being the means of developing truth, they operate to suppress it."

Although it was a pioneering work at the time, the Model Code of Evidence is not itself cited today. Rather, its legacy is cemented in its influence on the Federal Rules of Evidence, originally enacted in 1975, including in areas such as "Hearsay" and "Summing Up and Comment by Judge." In the Letter of Submission to the Chairman of the Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States, Albert E. Jenner Jr., Chairman of the Advisory Committee on Rules of Evidence wrote, "The Committee acknowledges its indebtedness to its predecessors in the field of drafting rules of evidence. The American Law Institute Model Code of Evidence, Uniform Rules of Evidence, New Jersey Rules of Evidence, and California Evidence Code, with their supporting studies and commentaries, were invaluable in suggesting general approaches and organization as well as particular solutions."

The Federal Rules of Evidence govern the introduction of evidence at civil and criminal trials in federal courts, and many states either adopted (with or without alteration) the Federal Rules.

Class of 1993 Facts & Figures

39%
PRACTITIONERS

39%
ACADEMICS

- **14%** SERVE OR HAVE SERVED AS JUDGES OR JUSTICES
- **7%** HAVE SERVED IN THE U.S. MILITARY
- **5** FORMER LAW SCHOOL DEANS
- **4** ALI PROJECT REPORTERS
- **4** COUNCIL MEMBERS
- **3** RECIPIENTS OF THE ABA MARGARET BRENT WOMEN OF ACHIEVEMENT AWARD
- **1** NFL HALL OF FAMER
- **1** FORMER U.S. AMBASSADOR TO IRELAND
- **1** MEMBER HAS LIVED THROUGH 16 PRESIDENCIES (BEGINNING WITH CALVIN COOLIDGE)

30 DIFFERENT STATES

3 DIFFERENT COUNTRIES

12% FROM NY

10% FROM TX

9% FROM CA

ALI to Celebrate its New Life Members: the Class of 1993

Each year, The American Law Institute recognizes its members who have contributed 25 years of service by granting them Life Member status. Life Members are not required to pay dues or adhere to the Institute's participation requirement, yet continue to enjoy all the rights and privileges of elected membership and remain some of ALI's most involved and devoted members.

In May, the Institute will honor its new Life Members—the Class of 1993—at a special luncheon that will be held during the 2018 Annual Meeting and will include remarks by 1993 Class Member **Elizabeth J. Cabraser** of Lieff Cabraser Heimann & Bernstein, LLP. New Life Members will have the opportunity to commemorate this milestone by making a contribution to the 1993 Life Member Class Gift.

Class members **Larry S. Stewart** of Stewart Tilghman Fox Bianchi & Cain, P.A., **Charles J. Cooper** of Cooper & Kirk, PLLC, **Joan Sidney Howland** of University of Minnesota Law School, **David W. Ichel** of Dispute Resolution LLC, **Mark S. Mandell** of Mandell, Schwartz & Boisclair Ltd, and **Bettina B. Plevan** of Proskauer Rose LLP, have graciously volunteered to serve on the special committee for the 1993 Life Member Class Gift Campaign. The committee, chaired by Mr. Stewart, will present the Class Gift to the Institute during the luncheon.

The Class Gift program enters its seventh year having raised nearly $850,000 to support key aspects of ALI's mission, including the MCG Travel Assistance program and the Judges & Public-Sector Lawyers Expense Reimbursement program—two vital components of the Institute's efforts to minimize financial concerns that inhibit member participation. This past year, these important programs provided 62 members a total of almost $60,000 in assistance to attend project meetings and the 94th Annual Meeting.

The Class Gift initiative has also provided funding for the Early Career Scholars Medal and annual conference program, which raises awareness of the Institute's work while engaging up-and-coming legal academics. Additionally, as ALI has expanded the breadth of its endeavors, the Class Gift program has helped fund the numerous costs required to maintain the high level of quality that distinguishes the Institute's work.

The Institute looks to continue the program's tremendous success with the 1993 Life Member Class Gift campaign, which is now underway.

For more information about the 1993 Life Member Class Gift campaign, please contact Development Manager Kyle Jakob at 215-243-1660 or *kjakob@ali.org*. To learn about ALI's other ongoing fundraising initiatives, please visit *www.ali.org/support*.

1993 LIFE MEMBER CLASS

Jennifer H. Arlen, New York, NY; New York University School of Law
Bernard F. Ashe, Delmar, NY
Joseph R. Bankoff, Atlanta, GA; Georgia Institute of Technology
D. Benjamin Beard, Moscow, ID; University of Idaho College of Law
Caryl S. Bernstein, Washington, DC; Bernstein Law Firm PLLC
Richard M. Blau, Tampa, FL; GrayRobinson, PA
Ira Mark Bloom, Albany, NY; Albany Law School
Molly S. Boast, Brooklyn, NY; WilmerHale
Hildy Bowbeer, St. Paul, MN; U.S. District Court of Minnesota
Elizabeth J. Cabraser, San Francisco, CA; Lieff Cabraser Heimann & Bernstein, LLP
Michael A. Cardozo, New York, NY; Proskauer Rose LLP
Stephen L. Carter, New Haven, CT; Yale Law School
Lung-chu Chen, New York, NY; New York Law School
Charles J. Cooper, Washington, DC; Cooper & Kirk, PLLC
LaDoris H. Cordell, Palo Alto, CA
J. Donald Cowan, Jr., Raleigh, NC; Ellis & Winters LLP (Retired)
Yvonne Cripps, Bloomington, IN; Indiana University Maurer School of Law
Eric R. Cromartie, Dallas, TX
Karen Czapanskiy, Baltimore, MD; University of Maryland, Francis King Carey School of Law
William J. Davey, Champaign, IL; University of Illinois College of Law
Robert C. Denicola, Lincoln, NE; University of Nebraska College of Law
R. Lawrence Dessem, Columbia, MO; University of Missouri-Columbia School of Law
Warren W. Eginton, Bridgeport, CT; U.S. District Court
Norman L. Epstein, Los Angeles, CA; California Court of Appeal, 2nd Appellate District, Division Four
Victoria L. Eslinger, Columbia, SC; Nexsen Pruet, LLC
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Francesco Francioni, Florence, Italy; European University Institute, Law Department
Susan M. Freeman, Phoenix, AZ; Lewis Roca Rothgerber Christie LLP
Richard D. Friedman, Ann Arbor, MI; University of Michigan Law School
David Joel Frisch, Richmond, VA; University of Richmond School of Law
Patricia Brumfield Fry, Edgewood, NM
Marc Galanter, Madison, WI; University of Wisconsin Law School (Retired)
R. James George, Jr., Austin, TX; George, Brothers, Kincaid & Horton, L.L.P.
Lynne Z. Gold-Bikin, Norristown, PA; Weber Gallagher Simpson Stapleton Fires & Newby LLP
Susan P. Graber, Portland, OR; U.S. Court of Appeals, Ninth Circuit
Susan Marie Halliday, McLean, VA; U.S. Department of Labor, Employee Benefits Security Administration
Jean C. Hamilton, St. Louis, MO; U.S. District Court, Eastern District of Missouri
V. Nathaniel Hansford, Lexington, GA
Ronald J. Hedges, Hackensack, NJ; Dentons US LLP
J. Michael Hennigan, Los Angeles, CA; McKool Smith Hennigan
Gregory Alan Hicks, Seattle, WA; University of Washington School of Law
Joan Sidney Howland, Minneapolis, MN; University of Minnesota Law School
Arnette R. Hubbard, Chicago, IL; Illinois Circuit Court, Cook County
David W. Ichel, New York, NY; Dispute Resolution LLC
Vicki C. Jackson, Cambridge, MA; Harvard Law School
James W. Jones, Reston, VA; Legal Management Resources LLC
Paul F. Jones, Buffalo, NY; Phillips Lytle LLP
Craig Joyce, Houston, TX; University of Houston Law Center
James E. Kaplan, Brunswick, ME
Bruce P. Keller, Esquire, Newark, NJ; U.S. Attorney's Office, District of New Jersey
Douglas W. Kenyon, Raleigh, NC; D.W. Kenyon PLLC
Colleen A. Khoury, Portland, ME; University of Maine School of Law
David G. Klaber, Pittsburgh, PA; K&L Gates LLP
Martin A. Kotler, Wilmington, DE; Widener University, Delaware Law School (Retired)
Sim Lake, Houston, TX; U.S. District Court, Southern District of Texas
Louise A. LaMothe, Santa Barbara, CA; U.S. District Court, Central District of California
Paul A. LeBel, Grand Forks, ND; University of North Dakota School of Law (Retired)
John B. Lewis, Cleveland, OH; Baker & Hostetler LLP
Hugh G. E. MacMahon, Falmouth, ME; Drummond Woodsum (Retired)
Mark S. Mandell, Providence, RI; Mandell, Schwartz & Boisclair Ltd
Barbara W. Mather, Philadelphia, PA; Pepper Hamilton LLP
Catherine M. A. McCauliff, Newark, NJ; Seton Hall University School of Law
Margaret D. McGaughey, Portland, ME; U.S. Attorney's Office
James C. McKay, Jr., Washington, DC; Office of the Attorney General for the District of Columbia
M. Margaret McKeown, San Diego, CA; U.S. Court of Appeals, Ninth Circuit
Beverly McQueary Smith, Jersey City, NJ; Touro College Jacob D. Fuchsberg Law Center (Retired)
Barry J. Nace, Washington, DC; Paulson & Nace
Raymond T. Nimmer, Houston, TX; University of Houston Law Center
Kevin F. O'Malley, St. Louis, MO; Greensfelder, Hemker & Gale, P.C.
Alan C. Page, St. Paul, MN; Supreme Court of Minnesota
Thomas E. Plank, Knoxville, TN; University of Tennessee College of Law
Bettina B. Plevan, New York, NY; Proskauer Rose LLP
Donald J. Polden, Santa Clara, CA; Santa Clara University School of Law
Edward M. Posner, Philadelphia, PA
Alice E. Richmond, Boston, MA; Richmond & Associates

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ALI TO CELEBRATE ITS NEW LIFE MEMBERS

CONTINUED FROM PAGE 19

Brett A. Ringle, Dallas, TX; Remeditex Ventures, LLC
Edward B. Rock, New York, NY; New York University School of Law
Peter M. Saparoff, Boston, MA; Mintz Levin Cohn Ferris Glovsky and Popeo PC
Gary L. Sasso, Tampa, FL; Carlton Fields P.A.
Daniel M. Schneider, Chicago, IL; Northern Illinois University College of Law (Retired)
Steven L. Schwarcz, Durham, NC; Duke University School of Law
Richard W. Shepro, Chicago, IL; Mayer Brown LLP
William C. Slusser, Houston, TX; Norton Rose Fulbright US LLP
Christina A. Snyder, Los Angeles, CA; U.S. District Court, Central District
Larry S. Stewart, Miami, FL; Stewart Tilghman Fox Bianchi & Cain, P.A.
H. Woodruff Turner, Pittsburgh, PA; K&L Gates LLP
Lea S. VanderVelde, Iowa City, IA; University of Iowa College of Law
Ruth Wedgwood, Washington, DC; Johns Hopkins University
Robert N. Weiner, Washington, DC; Arnold & Porter Kaye Scholer LLP
Michael Wells, Athens, GA; University of Georgia School of Law
David S. Willenzik, New Orleans, LA
James A. Williams, Austin, TX; Hughes Vanderburg Williams PLLC
Michael M. Wiseman, New York, NY; Sullivan & Cromwell LLP
Nicholas J. Wittner, East Lansing, MI; Michigan State University College of Law
Ben Woodward, San Angelo, TX; 119th State Judicial District
Marie R. Yeates, Houston, TX; Vinson & Elkins LLP
Eric M. Zolt, Los Angeles, CA; University of California, Los Angeles School of Law

NEW 50-YEAR MEMBERS

Charles C. Allen, Jr., St. Louis, MO; Lewis Rice LLC
Milo G. Coerper, Chevy Chase, MD; Coudert Brothers (Retired)
Earl M. Colson, Washington, DC; Arent Fox LLP (Retired)
J. William Doolittle, Washington, DC; Prather, Seeger, Doolittle & Farmer
John E. Nolan, Washington, DC; Steptoe & Johnson LLP
Shulamith Simon, St. Louis, MO
Edwin P. Wiley, Milwaukee, WI; Foley & Lardner LLP

Effective May 2018

Every attempt has been made to publish an accurate list of each member's current company and geographic location. If you wish to update your information, please contact Membership at 215-243-1623 or membership@ali.org.

New Members Elected

On October 19, the Council elected the following 37 persons:

Ricardo Anzaldua, New York, NY
Enrique Armijo, Greensboro, NC
Reeve Tyler Bull, Arlington, VA
Alejandro E. Camacho, Irvine, CA
Frank P. Cervone, Philadelphia, PA
Aloke S. Chakravarty, Boston, MA
Anupam Chander, Davis, CA
Judith C. Cutler, Boston, MA
Justin Driver, Chicago, IL
Jordan Elias, San Francisco, CA
Julia L. Ernst, Grand Forks, ND
Paul G. Gardephe, New York, NY
Christopher S. Gontarz, Newport, RI
Danielle C. Gray, New York, NY
Dean M. Hashimoto, Newton, MA
Renee McDonald Hutchins, Baltimore, MD
Diane M. Johnsen, Phoenix, AZ
Robb Jones, Bethesda, MD
Harold H. Kim, Washington, DC
Deborah Gordon Klehr, Philadelphia, PA
Yvette Joy Liebesman, St. Louis, MO
Sharon V. Lovejoy, Honolulu, HI
John G. Malcolm, Washington, DC
Michael S. McGinniss, Grand Forks, ND
Martin Michaelson, Washington, DC
Saira Mohamed, Berkeley, CA
Eloise Pasachoff, Washington, DC
Daria Roithmayr, Los Angeles, CA
Elizabeth A. Rowe, Gainesville, FL
Wadie Edward Said, Columbia, SC
Alexandra A.E. Shapiro, New York, NY
David E. Skaggs, Denver, CO
Marilyn S. Skoglund, Montpelier, VT
Shanin Specter, Philadelphia, PA
Ann Elizabeth Sternhell-Blackwell, St. Louis, MO
Joseph T. Waldo, Norfolk, VA
Thomas C. Wright, Houston, TX

In Memoriam

ELECTED MEMBERS

Arthur W. Lefco, Philadelphia, PA;
James M. O'Fallon, Eugene, OR

LIFE MEMBERS

J. Sherman McLaughlin, Pittsburgh, PA;
Karla W. Simon, Washington, DC

Notes About Members and Colleagues

On November 7, **Kim J. Askew** of K&L Gates received the inaugural Dallas Bar Association Distinguished Service Award.

Wayne State University Law School professor **Laura B. Bartell** has been appointed associate reporter of the Advisory Committee on Bankruptcy Rules to the Judicial Conference of the United States.

William R. Bay, a partner with Thompson Coburn in St. Louis, has received the Missouri Bar Foundation's Spurgeon Smithson Award, one of the top awards given by the Missouri Bar.

Scott M. Bernstein and **Judith L. Kreeger** of the Eleventh Judicial Circuit of Florida, and **Burton Young** of Young, Berman, Karpf & Gonzalez were honored at the Dade County Bar Association's Family Court Awards Luncheon. Judge Bernstein received the Lawson E. Thomas Award, Judge Kreeger was given the Lifetime Achievement Award, and Mr. Young was presented with the Lifetime Achievement Award for Family Law Practitioner.

Duke Law School professor **Curtis A. Bradley** was elected co-editor-in-chief of the *American Journal of International Law*, effective April 2018.

Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein is one of three attorneys to receive *The National Law Journal*'s 2017 Lifetime Achievement Award.

University of Hawai'i at Mānoa William S. Richardson School of Law professor **David L. Callies** was presented with William & Mary Law School's Brigham-Kanner Property Rights Prize. The prize is given to a scholar, practitioner, or jurist whose work affirms the fundamental importance of property rights.

The *New York Law Journal* recently featured profiles of **Evan R. Chesler** of Cravath, Swaine & Moore and ALI Director **Richard L. Revesz**.

University of Minnesota Law School professor **Bradley G. Clary** has been appointed to serve on the Accreditation Committee of the American Bar Association's Council on Legal Education.

John C. Coffee Jr. of Columbia Law School presented on the topic "The Agency Costs of Activism" at the 18th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities and Financial Law on November 8 at Fordham University School of Law.

John J. Connolly of Zuckerman Spaeder, who serves as a member of the board of directors for the Baltimore Bar Library, served as editor and contributed the introduction, as well as the articles "Habeas Corpus in Maryland," "God and the 1867 Constitution," and "Toward a New Maryland Constitution" to the Baltimore Bar Library Company's publication, *The Maryland Constitution at 150: A Symposium and Appraisal*. Also, **George W. Liebmann** of Liebmann & Shively, the president of the Baltimore Bar Library, authored for the publication two pieces, "George William Brown and the 1867 Convention" and "Against a New Maryland Constitution."

Montie R. Deer has been re-appointed to a second six-year term on the Muscogee (Creek) Nation Supreme Court. The Court is vested with exclusive appellate jurisdiction over all civil and criminal matters that fall under Mvskoke jurisdiction and serves as the final interpretive authority on Mvskoke law.

On January 4, Dean **Darby Dickerson** of John Marshall Law School will receive the 2018 Association of American Law Schools Section Award from the Section on Legal Writing, Reasoning, and Research. The award recognizes individuals who have made significant lifetime contributions to the field of legal research and writing; it has sometimes been called a "Lifetime Achievement Award in Legal Writing Education."

John F. Dolan, Distinguished Professor Emeritus at Wayne State University, has published two works: *The Domestic Standby Letter of Credit Desk Book for Business Professionals, Bankers and Lawyers* (LexisNexis); and *The Drafting History of UCC Article 5* (Carolina Academic Press).

Ivan K. Fong of 3M Co. was awarded the 2017 James Madison Legacy Award by the Constitutional Sources Project during its annual dinner in Washington, DC. The award recognizes an individual for his or her support of the Constitution and education, as well as a belief in and dedication to the people in the spirit of James Madison.

Ivan K. Fong receiving his James Madison Legacy Award from ConSource

The Uniform Law Commission has named **James Paul George** as Reporter for Registration of Foreign Judgments to Harmonize the Law of Canada and the United States. Professor George teaches at Texas A&M University School of Law in Fort Worth and is Of Counsel at Gardere Wynne Sewell LLP in Dallas.

Jamal Greene of Columbia Law School was a panelist and **Patti B. Saris** of the U.S. District Court for the District of Massachusetts was the moderator of a discussion hosted by the American Academy of Arts & Sciences, in Cambridge, MA, that explored how our current system of electoral districts represents (or fails to represent) Americans and their interests.

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NOTES ABOUT MEMBERS AND COLLEAGUES CONTINUED FROM PAGE 21

WHITE AND WILLIAMS COVERAGE COLLEGE 2017

White and Williams held its 11th annual Coverage College on October 26 in Philadelphia, PA. The College provides an opportunity for insurance-claims professionals to engage in a rigorous study of a diverse insurance-coverage curriculum. This year's Coverage College featured an afternoon discussion on the Restatement of the Law, Liability Insurance, with Liability Insurance Reporter **Tom Baker** of the University of Pennsylvania Law School, and project Liaison **Laura A. Foggan** of Crowell & Moring.

Oona A. Hathaway of Yale Law School has coauthored, with Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster 2017).

D. Brock Hornby of the U.S. District Court for the District of Maine published in the latest issue of *The Green Bag* his ninth chapter of *Fables in Law*, and in *Judicature* his third imagined conversation among federal judges, lawyers, and law professors, this one on the topic *Whether, When, and What to Write: Federal Judges and Opinion Writing*.

Robert H. Hu of St. Mary's University School of Law has recently published the second edition of his book, *Research Guide to Chinese Copyright Law* (William S. Hein & Co., Inc. 2016). Additionally, in October 2017, he gave a presentation, entitled "American Legal Education and Legal Profession," to law students and faculty at Jiangxi University of Finance and Economics in Nanchang, China.

John Calvin Jeffries Jr. of the University of Virginia School of Law, has received UVA's Thomas Jefferson Award for excellence in scholarship. The Jefferson Awards are the highest honor given to members of the University community.

Dean **Kevin R. Johnson** of the UC Davis School of Law and **Kevin K. Washburn** of the University of New Mexico School of Law have been appointed to the ABA Accreditation Committee, of which **Scott Bales**, Chief Justice of the Arizona Supreme Court, is Chair.

The Institut de Droit International (Institute of International Law) has elected University Panthéon-Assas (Paris II) professor **Catherine Kessedjian** as an Associate Member. Associates are selected from among those nations who have given service to international law, either in the field of theory or in that of practice.

The National Asian Pacific American Bar Association presented its 2017 President's Award to California Supreme Court Associate Justice **Goodwin Liu** at its annual convention, in Washington, DC, on November 3.

Former U.S. pardon attorney and current representor for applicants for presidential pardon, **Margaret Colgate Love**, has written an op-ed for *The Washington Post* examining presidential pardons from today's and previous administrations and the controversy surrounding them.

University of California President and former Homeland Security Secretary **Janet Napolitano** made an appearance on MSNBC's *Morning Joe* to discuss the potential pick for the next Department of Homeland Security chief and how the United States should handle Syrian refugees.

Robert L. Parks, principal and founding partner of The Law Offices of Robert L. Parks, is the 2017 corecipient of the Plaintiff Lawyer of the Year Award, given by the Florida Chapter of the American Board of Trial Advocates. The award was presented at the chapter's 20th annual conference, held in Orlando.

Texas Tech University School of Law professor **Marilyn E. Phelan** completed the second edition of the three-volume treatise, *Nonprofit Organizations: Law and Taxation* (Thomson Reuters 2017).

Ellen S. Podgor of Stetson University College of Law was honored with the Raeder-Taslitz Award by the ABA Criminal Justice Section.

Eduardo Roberto Rodriguez of Atlas Hall Rodriguez received the 2017 American Inns of Court Professionalism Award for the Fifth Circuit and was recognized at the American Inns of Court Celebration of Excellence, held at the U.S. Supreme Court, in October. Also at the Celebration of Excellence, **Anthony J. Scirica** of the U.S. Court of Appeals for the Third Circuit received the 2017 American Inns of Court Lewis F. Powell, Jr., Award for Professionalism and Ethics.

John Jeffries receiving UVA's Thomas Jefferson Award

In the latest issue of *Judicature*, Chief Judge **Lee H. Rosenthal** of the U.S. District Court for the Southern District of Texas reviews *Unwarranted: Policing Without Permission* by **Barry Friedman** of NYU School of Law.

In Harvard Law Today, **Robert H. Sitkoff** discusses his work on the Uniform Directed Trust Act. The Act, which the Uniform Law Commission approved in July, provides rules to resolve the unique issues faced in directed trusts, a structure that involves the division of trust administration between the trustee(s) and a trust director.

University of Virginia School of Law professor **A. Benjamin Spencer** was appointed to the Advisory Committee on Civil Rules of the Judicial Conference of the United States by Chief Justice John G. Roberts Jr.

Courting Death: The Supreme Court and Capital Punishment (Harvard University Press 2016), authored by **Carol S. Steiker** of Harvard Law School and Jordan M. Steiker of the University of Texas School of Law, is the Grand Prize winner of the 2017 University Co-op Robert W. Hamilton Book Award, the highest honor for literary achievement given by the University to UT Austin authors.

Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York has been reappointed to a second term. Her term began on September 2 and she has served since 2003.

University of Virginia School of Law professor **G. Edward White** delivered the 2017 William M. Acker Jr. Visiting Lecture at Birmingham-Southern College on November 2.

Duke Law School professor **Lawrence A. Zelenak** spoke with Duke University's *The Chronicle* on his ALI membership and current topics in American tax policy.

If you would like to share any recent events or publications in the next ALI newsletter, please email us at *communications@ali.org*.

Director Revesz Addresses Chinese Delegation

The US-Asia Institute invited ALI Director Richard L. Revesz and ALI Council member Elizabeth S. Stong to meet with a Delegation of the Legislative Affairs Commission of the Standing Committee of the Chinese National People's Congress. The US-Asia Institute brought together leaders of bar organizations, law schools, and courts to discuss law promulgation and reform that may assist China in its formulation of a comprehensive Civil Law.

After brief introductions, the panel discussed a variety of topics, with a focus on the Restatements. Director Revesz discussed how ALI works and why the Restatements are so influential. The conversation included a discussion of artificial intelligence and self-driving cars, specifically within the areas of law of torts, contracts, and agency.

Meetings and Events Calendar At-A-Glance

(for more information, visit 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.

2018

January 18-19
Council Meeting - January 2018
Philadelphia, PA

April 5 (JOINT)
Principles of the Law, Data Privacy
Washington, DC

April 13 (JOINT)
Restatement of the Law Third, Torts: Intentional Torts to Persons
Philadelphia, PA

April 25
ALI Members Reception: Chicago
Hosted by Sidley Austin LLP and Teresa Wilton Harmon
Chicago, IL

May 21-23
95th Annual Meeting
Washington, DC

Thursday, October 18-19
Council Meeting - October 2018
New York, NY

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

95TH ANNUAL MEETING

SAVE THE DATE

MAY 21-23, 2018

WASHINGTON, DC